

BEFORE THE INDIAN CLAIMS COMMISSION

UPPER CHEHALIS TRIBE, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket No. 237
	)	
THE UNITED STATES,	)	
	)	
Defendant.	)	

Decided: March 14, 1960

Appearances:

Joseph W. Creagh and  
E. L. Crawford,  
Attorneys for Plaintiffs

Donald R. Marshall, with whom  
was Mr. Assistant Attorney  
General, Perry W. Morton,  
Attorneys for Defendant

OPINION OF THE COMMISSION

WITT, Chief Commissioner, delivered the opinion of the Commission.

This case is before the Commission for a second time. When previously considered and dismissed (4 Ind. Cl. Comm. 301) this Commission found that within the area claimed by plaintiffs on the basis of Indian title there was aboriginally a number of autonomous villages, or tribelets, and that there was no evidence of a merger of these village-tribes into a "Chehalis Tribe" or into two tribes -- the "Lower Chehalis" and the "Upper Chehalis." The Commission further found that there was no substantial evidence that the plaintiffs herein

were the successors in interest of the village-tribes and that the proof did not show from what predecessor tribes or bands plaintiff, The Confederated Tribes of the Chehalis Reservation, was organized or formed. The Commission also noted that plaintiff had failed to prove the tribal affiliation of the individually named plaintiffs. In addition to the claim based on Indian title, plaintiffs had filed a claim in the same docket for the alleged taking of 3,753.63 acres of land from the Chehalis reservation by an Executive Order of October 11, 1886. The Commission found that this land had been allotted and patented to the Indians residing thereon, except for those lands reserved for school purposes, and dismissed said claim. The plaintiffs appealed to the Court of Claims and in an opinion (140 C. Cls. 192), that Court set aside our final determination with respect to the claim based on Indian title and remanded the case to the Commission for further proceedings not inconsistent with its opinion. No mention is made by the Court of Claims of the claim pertaining to the 3,753.63 acres of reservation land so the Commission's determination with respect thereto is final.

The Court of Claims, after discussing the findings of the Commission, held as follows:

After consideration of the record in this case, the briefs and arguments of counsel, and in view of the purposes of the Indian Claims Commission Act, the background of the various Indian tribes and groups, and the authorities on the subject of Indian affairs and modes of living, we are of the opinion that the Upper Chehalis and the Lower Chehalis Indians constituted tribes or identifiable groups of Indians within the meaning of the Indian Claims Commission Act. We are also of the opinion that the evidence in the record does not support the findings of the Commission and its conclusion that there was no political organization of the Upper Chehalis Indians and the Lower Chehalis Indians to the extent necessary to constitute

tribes or other identifiable groups of American Indians. Neither is there substantial evidence to support the finding and conclusion of the Commission that the Upper and Lower Chehalis Indians did not use and occupy at least their villages and the land surrounding them as identifiable groups or bands of Indians. Absolute accuracy of location and extent of occupancy is not essential, and the record in this case is sufficient for the Commission to determine with reasonable accuracy the location and extent of the areas actually occupied by the tribes involved herein. Snake or Piute Indians v. United States, 125 C. Cls. 241; Alcea Band of Tillamooks, et al., v. United States, 103 C. Cls. 494, affirmed 329 U. S. 40; Nooksack Tribe of Indians v. United States, 1 Ind. Cls. Com. 333, and 3 Ind. Cls. Com. 479; Huckleshoot Tribe of Indians v. United States, 2 Ind. Cls. Com. 424, 3 Ind. Cls. Com. 658.

The Court of Claims was further of the opinion that the claim asserted by plaintiffs would seem to fall squarely within the provisions of clause 4 of Section 2 of the Indian Claims Commission Act (60 Stat. 1049).

This claim was filed with the Indian Claims Commission by the Upper Chehalis Tribe, Lower Chehalis Tribe, Satsop Tribe, Humptulip Tribe, Upper Chinook Tribe, Lower Chinook Tribe, Chinook Tribe, Hoquiam Tribe, Clatsop Tribe, Confederated Tribes of the Chehalis Reservation and portions and descendants of such tribes and bands as plaintiffs. Plaintiffs were permitted by this Commission to omit the Upper Chinook, Lower Chinook, Chinook and Clatsop tribes as plaintiffs and to add "Ralph A. Heck, Frank F. Pete and Murphy Secena, who are members of the Chehalis Tribe individually and on behalf of all other members of the Chehalis Tribe and subordinate bands not members of the Confederated Tribes of the Chehalis Reservation" as plaintiffs. The Confederated Tribes of the Chehalis Reservation is organized and recognized by the Secretary of the Interior. The other named plaintiff tribes are not

organized. In the original and amended petitions, it is alleged that the Confederated Tribes of the Chehalis Reservation is "composed of a confederation of the other plaintiffs named above, and as such confederation of Indian tribes, said plaintiff has capacity to maintain this proceeding and to prosecute the claims hereinafter named." (Par. I). In the original petition, plaintiffs alleged joint and several occupancy of certain lands in what is now the State of Washington (Par. VI). In the amended petition, plaintiffs apparently allege joint ownership by Indian title to a large area of land in northwestern Washington (Fdg. 2), bordering the Chehalis River and its tributaries (Par. VII), totaling an estimated 1,444,480 acres (Pl. Reply Br., p. 22). Plaintiffs contend that the alleged taking of their tribal lands occurred on March 3, 1855 (Pl. Req. Fdg. 22).

With respect to the capacity of the plaintiffs herein to maintain this action the Court of Claims stated (140 C. Cls. 192, at pages 198-199):

The Commission has held that the proof before it was insufficient to establish that the plaintiffs bringing suit were the descendants of the Upper and Lower Chehalis tribes. Section 10 of the Indian Claims Commission Act provides as follows:

Any claim within the provisions of this Act may be presented to the Commission by any member of an Indian tribe, band, or other identifiable group of Indians as the representative of all its members; but wherever any tribal organization exists, recognized by the Secretary of the Interior as having authority to represent such tribe, band, or group, such organization shall be accorded the exclusive privilege of representing such Indians, unless fraud, collusion, or laches on the part of such organization be shown to the satisfaction of the Commission.

All the groups covered in the evidence are named parties plaintiffs, and individuals are named as their representatives. Under section 10 above, an identifiable group of Indians may be represented by an individual as a representative of all the members of the group. It would therefore appear that the Indian groups having a cause of action would be adequately represented for the purpose of bringing this action through the representation of one of their members. If there is some doubt as to the identity of the Indians entitled to share in the judgment, if any, such a problem would appear to be administrative.

The question of the right of plaintiffs to present the claims having been so determined we may now discuss the remaining issues before the Commission and the contentions of the parties.

Following the remanding of this case a further hearing was held before the Commission at which time the parties indicated they would file additional briefs pertaining to the action. Defendant thereafter filed supplemental requested findings of fact and plaintiffs filed a statement calling the Commission's attention to certain facts in evidence and a copy of plaintiffs' brief in its appeal to the Court of Claims. Plaintiffs urged in their brief before the Court of Claims that the Upper Chehalis Indians and the Lower Chehalis Indians constituted tribes with a tribal organization and were not merely a number of autonomous village units. Plaintiffs further urged that both groups (or tribes) used and exploited the entire watersheds of their tribal lands. Defendant in its statement accompanying its supplemental requested findings of fact and in said requested findings calls the attention of the Commission to certain cases pending before the Commission and to decisions already rendered pertaining to land in or

adjoining the land claimed by plaintiffs, and to testimony in other cases relative to the Indians in the claimed area. It is defendant's position that the plaintiff should not be allowed to recover under any view of the law and the evidence.

The Court of Claims, as previously stated, agreed with plaintiffs' view of the evidence since it was of the opinion that the record did not support the findings of the Commission and its conclusion that there was no political organization of the Upper Chehalis Indians and the Lower Chehalis Indians to the extent necessary to constitute tribes or other identifiable groups of American Indians. The Court of Claims further stated "neither is there substantial evidence to support the finding of the Commission that the Upper and Lower Chehalis Indians did not use and occupy at least their villages and the land surrounding them as identifiable groups or bands of Indians." In considering the claim subsequent to the remand, these views of the Court of Claims have been carefully followed in order that the findings of fact now made, and conclusions reached by the Commission, would not be inconsistent with the opinion of said Court.

The record has been reviewed and analyzed again to determine (1) which Indians belonged to the Lower Chehalis Tribe or identifiable group and which Indians were part of the Upper Chehalis tribe or identifiable group, and (2) what areas were held by these tribes or identifiable groups under Indian title. As stated in the previous decision of this Commission (4 Ind. Cl. Comm. 335-336), Doctor Hebert C. Taylor, anthropologist, in testifying for plaintiffs was of the opinion that

the Lower Chehalis seemed to have been made up of at least five bands, i.e., the Satsop, the Wynoochee, the Humptulips, the Copalis and the Lower Chehalis proper. Historically, George Gibbs, in 1854, differentiated between the Upper Chehalis and the Chehalis Indians living along the Chehalis River from the Satsop River down to Gray's Harbor. John Swan, a settler in the area under consideration, also seemed to consider the Upper Chehalis as separate from the Lower Chehalis. Special Indian Agent Ford in 1857 also noted the separation of the Upper and Lower Chehalis Tribes. Ford identified the Lower Chehalis as consisting of the "Clickquanmish [Cloquallum], Satsop, and Walnoochie Bands, as well as the Indians living at Gray's Harbor, which latter are the Lower Chihalis, properly so called."

While ethnologists are far from agreement as to the propriety of considering many of the Indians along the Chehalis River or north of Gray's Harbor as subdivisions of the Lower Chehalis, many of the early writers did divide the Chehalis Indians into Upper Chehalis, that is those dwelling above the Satsop River, and the Lower Chehalis from that point downstream. The Lower Chehalis Tribe or identifiable group may be identified therefore as including those Indians located in villages located on the Satsop, Humptulips, Hoquiam, Wynoochee and Wishkah Rivers and inhabiting the southern side of Gray's Harbor and the country to the east thereof and also on the south side of the Chehalis River.

The exact number of bands or villages composing the Upper Chehalis Tribe or identifiable group is not ascertainable from the record.

According to Doctor Taylor, plaintiffs' witness, the Upper Chehalis consisted of four bands but this information is based solely on his informants. There is no doubt that Indians often referred to as the Upper Chehalis Indians or the Upper Chehalis Tribe aboriginally used and occupied the upper part of the Chehalis River from near the Satsop River to the vicinity of Chehalis, Washington.

Before proceeding to a discussion of the boundaries of the Upper Chehalis and Lower Chehalis Indians brief mention should be made of the Copalis Indians. The Commission has found (Fdg. 22) the Copalis to be a separate tribal and land holding entity. These Indians were considered by Swan in about 1857 to be a separate tribe. In its prior findings of fact (4 Ind. Cl. Comm. 319, 320) this Commission noted the testimony in The Quinaielt Tribe v. United States, Docket No. 242, that the Copalis Indians were part of the Quinaielt Tribe. Later in the Quinaielt case, 7 Ind. Cl. Comm. 1, 27, this Commission held the Copalis Indians were not part of the Quinaielt Tribe and stated:

Undoubtedly, there was great similarity both in culture and language of the Copalis and Quinaielt. Such likeness existed between the Copalis and the Chehalis and many other fish-eating Salishan speaking tribes and bands of Indians west of the Cascades, such as the Humptulips, Satsops, and those of the Wynoochee and Hoquim Rivers, yet such evidence does not establish sufficient ties of blood, subsistence, and social unity to identify all of these as one tribe of Quinaielt Indians. In our Finding 6 we have set out the views exchanged between Dr. George Gibbs and James G. Swan where a contrary view was expressed, listing the Copalis as a separate group from the Quinaielt Indians. In deference to such respected authorities who had personal contact with the Indians of the Northwest Pacific Coast, we have excluded the area of the Copalis River watershed from the aboriginal boundaries of the Quinaielt in Finding 13.

The lands claimed herein by plaintiffs which were used and occupied by Copalis Indians are therefore excluded from the territory found to have been aboriginally in the possession of the Lower Chehalis Tribe.

The question as to what Indians composed the Upper Chehalis and Lower Chehalis tribes or identifiable groups having been resolved it was necessary to examine the record with respect to their land use and occupancy in order that the land areas to which they respectively held Indian title might be delimited by the Commission. The Indians of the northwest region of the United States for the most part are spoken of as "fish-eating" Indians. Their dependence on other means of subsistence revolved around their location. If they lived near the sea they relied heavily upon the supply of fish and shell fish so abundantly provided therefrom. If, however, they were an inland people they, of necessity, relied more on hunting to supplement their diets. Both types also relied on roots and berries as part of their subsistence.

The Lower Chehalis Indians aboriginally lived in a region of abundance. They had their villages on Gray's Harbor and at or near the mouth of the streams that flowed into the Harbor or into the Chehalis River from the Satsop river downstream to the Harbor. These Indians relied heavily for their subsistence on fish such as salmon and sturgeon and on shell fish since there was an abundance of clams and oysters on the beaches. Hunting was not important to them. They had few horses. Roots and berries were gathered to supplement their diet. Aboriginally they had villages on the south side of Gray's Harbor and several on the north side such as at the mouth of Chenois

Creek and the mouths of Humptulips and Hoquiam Rivers. Other villages were located at or near the mouths of the rivers which were tributary to the Chehalis such as the Wynoochee and Satsop Rivers.

The Upper Chehalis Indians, an inland people, were primarily riverine, canoe Indians. Although relying upon fish, roots and berries they also depended upon hunting for their subsistence. They owned a number of horses after the beginning of historic contact and were somewhat more nomadic than the coast Indians. Their villages were located along the upper part of Chehalis River from about the Satsop River to near what is now Centralia, Washington. Sources with respect to location of their villages are scarce but it would appear they aboriginally had villages at least on Grand Mound Prairie, at the mouth of Black River, on Cloquallum creek, and near Porter, Washington.

In setting the boundaries of the Lower Chehalis Tribe or identifiable group the Commission has taken into consideration the mode of living of these sea oriented Indians; the abundant food resources within easy access of their villages; the recorded population of this group; their lack of dependence on hunting; and the well established fact that from 1820 on there was a southern movement of these people into the Shoalwater Bay region, outside of the claimed area, where fish and shell fish were also abundant. In considering the boundaries for the Upper Chehalis the Commission has considered the fact that although primarily an inland, riverine, canoe people, these Indians did resort to hunting for subsistence in addition to relying on fish, roots and berries. In fixing their boundaries the Commission has also noted their movement

in the early part of the 19th century into the Willipa Hills region, outside the claimed area, to the south and west; the fact that there were doubtful areas between these Indians and the Cowlitz Indians to the south with whom the Upper Chehalis were becoming intermingled; doubtful areas of use and occupancy between the Nisqually and Upper Chehalis Indians; and the population figures of these Indians in the period under consideration.

The Commission concludes that the Lower Chehalis Tribe or identifiable group has proved aboriginal Indian title to the lands described in Finding 23. The Commission further concludes that the Upper Chehalis Tribe or identifiable group has proved aboriginal Indian title to the lands described in Finding 24. The Commission also concludes that the Indian title to the lands described in the aforesaid findings was extinguished for all intents and purposes on March 3, 1855, the day on which negotiations looking to a treaty terminated, since from and after that date the United States dealt with such lands as part of the public domain. In this manner, and as of that date, the lands aboriginally occupied by said tribes were taken from them without their consent and without compensating them for such lands.

Accordingly, an interlocutory order will be entered herein adjudging the defendant liable for the value of the lands of each of said tribes or identifiable groups, subject, however, to whatever offsets, if any,

including land that the defendant may later prove it is entitled to under the provisions of the Indian Claims Commission Act.

Edgar E. Witt  
Chief Commissioner

Concurring:

Wm. M. Holt  
Associate Commissioner

Commissioner Watkins did not participate in this opinion.