

BEFORE THE INDIAN CLAIMS COMMISSION

THE UPPER SKAGIT TRIBE OF INDIANS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 92
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: March 25, 1960

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The Upper Skagit Tribe of Indians, petitioner herein, is an identifiable group of American Indians within the meaning of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049; 25 U.S.C. Sec. 70(a)). Presently constituted as a tribe since about 1915, petitioner's ancestry and predecessors in interest were a number of separate, independent villages situated along the upper reaches of the Skagit River above the present site of Mount Vernon, Washington, as hereinafter more particularly described (Findings 3-5, 10-13, 16-19, inclusive).

2. The name "Skagit" in Indian parlance is somewhat ambiguous; it may mean (1) Skagit Tribe proper, also called Lower Skagits or Whidbey Island Skagits, or (2) Upper Skagits, a modern term referring to aboriginal villages on the Upper Skagit River, or (3) Upper and Lower Skagits, or (4) Lower Skagits and a few of the Upper Skagit villages, or (5) as a linguistic classification of the Salishan language, the Skagit dialect, or (6) as a geographical classification in reference to Puget Sound land areas where "Skagit speakers" resided in aboriginal times (R. 93, 117, 117 and 206; Pet. Ex. 5, p. 2; R. 36).

3. The Upper Skagits, in aboriginal times, consisted of ten autonomous "extended villages" each politically separate and distinct from the other and from the Skagit Tribe proper (Pet. Ex. IR). The Skagit Tribe proper resided in aboriginal times at the mouth of the Skagit River and on Whidbey Island (Hodge, Handbook of American Indians, 1910).

The names and locations of said ten extended aboriginal villages are listed by petitioner's expert, Dr. June McCormick Collins, as follows:

- I. Nook-wa-cha-mish (Nookachamps or Dook-wa-shabs). Nine winter houses between Clear Lake, Mount Vernon, and Sedro-Woolley, Washington.
- II. Seek-weeg-gweelts (Mee-see-qua-quilch). Seven winter houses between Lyman and Burlington, Washington.
- III. Cho-bah-ah-bish. Two winter houses situated in the vicinity of Lyman, Washington.
- IV. Baosloh-a-loh. One winter house west of Hamilton, Washington.
- V. Sabaliuhk. About two dozen winter houses variously situated near Birdsvew, and the mouths of Pressentin and Finney Creeks, and extending to a point east of Van Horn, Washington, known as Faber's Ferry on the Skagit River.
- VI. Say-lay-ot-sid. A small winter house at Old Sauk east of present townsite of Rockport, Washington, and two houses situated upon what is now said townsite.
- VII. Shay-ay-ot-sid. Three winter houses on the Skagit River between Rockport and the mouth of Rocky Creek near Marblemount, Washington.

VIII. Shay-wih. Six winter houses extending from near Marblemount to the mouth of Bacon Creek, along the Skagit River.

IX. Kwa-bats-absh. Three winter houses extending from west to Damnation Creek to the present site of Newhalem, Washington.

X. Sah-ku-mehu. Described in Finding 5 below.

Only the first three of the above named village bands are specifically mentioned by name in the preamble to the treaty of Point Elliott and also village X, together with "other allied and subordinate tribes and bands" which are not further identified by name in said treaty (Pet. Ex. 1, a map with villages and house sites marked by numbers 1 through 41; Pet. Ex. IR., Dr. Collins' village list).

4. Petitioner's antecedents, comprised of the above listed ten extended villages along the Upper Skagit River, were signatory parties to the Treaty of Point Elliott of January 22, 1855, 12 Stat. 927, II Kappler 669; (Duwamish, et al v. U. S., 79 C. Cls. 530, Fdg. IV at p. 533).

5. The Suttle-Sauks were in aboriginal times constituted of one extended village, according to Dr. Collins, and also mentioned by her in the cited exhibits in above Finding 3. This extended village is named in the Treaty of Point Elliott preamble as "Sah-ku-mehu" and was constituted of some five winter houses extending from the mouth of the Sauk River to Sauk Prairie with a summer house upstream near Bedal, Washington (Pet. Exs. I, IR., pp. 5-6; also see Finding 12 below).

6. The petitioner, in January 1951, filed its petition herein under provisions of Section 2 of the Indian Claims Commission Act, alleging that it was an aboriginal tribe of "Skagit Indians" and that by virtue of

the Point Elliott Treaty defendant, the United States of America, acquired certain land belonging to petitioner, paying therefor an inadequate and unconscionable consideration. Said lands so claimed conflicted with claims of the Skagit Tribe, also known as the Lower Skagit Tribe or Skagit Tribe of Whidbey Island in Docket 294 filed with the Commission. Thereafter, on October 17, 1958, petitioner herein filed its amended petition describing itself as the "Upper Skagit Tribe of Indians" and modifying the boundaries of its claim, all with leave of this Commission. The respective amendments in the two claims (Docket 92 and Docket 294) thus removed the conflict of tribal name and of the lands respectively claimed by each of them. The land for which fair compensation is now alleged or claimed extends along the drainage system of the Skagit River from near Mount Vernon, Washington, to the Canadian border. This claim is estimated to aggregate a total of 1,769,804 acres of land (Pet. Ex. 19, Planimeter Report; Amended Petition, Oct. 1958; Lower Skagit Tribe v. U. S., 7 Ind. Cl. Com. 292 (1959); Map, Pet. Ex. I).

7. In the amended petition, filed herein on October 17, 1958, petitioner reduced its claim of Indian title from an original claim describing all of the lands ceded by all Indian parties to the Point Elliott Treaty of January 22, 1855, to claim Indian title to only a portion of same described as follows (Amended Petition, par. 4, p. 3):

Commencing at a point on the Skagit River approximately one mile south of the present site of Mount Vernon, Washington; thence westward to the divide separating the waters of the Skagit River from the waters of Padillo Bay; thence northward along said divide separating the waters of Skagit River from the waters of the south fork, middle fork and north fork of the Nooksack River, through the crest of Mount Baker and along the divide separating the waters of Chilliwack River and Skagit River, to the International Boundary Line between the United States and Canada;

thence eastward on said International Bounday Line to the crest of the Cascade Mountains; thence southward along the crest of said mountains to the most eastern point of the divide separating the waters of Sauk River from the headwaters of Skykomish River; thence westward, northward, and again, westward, along said divide, said area including the watershed of the Sauk River and the Skagit River, to a point on said divide approximately due south of the present town of Ehrlich, Washington; thence northward and westward along the divide west of Big Lake to the point on the Skagit River at the place of beginning.

8. It was orally agreed and stipulated between the respective parties on September 10, 1958, at the commencement of the hearings of this case, that only those issues related to title would be tried at this stage of subject litigation and that all evidence, testimony of experts, documentary and ethnographic exhibits are introduced and are interchangeably applicable in both this claim and in the Snoqualmie claim, Docket 93 (R. 2, 3, 4).

9. We find and conclude from the copy of Attorney's Contract No. 58-A, as filed with this Commission, that same is a valid and sufficient contract executed with the necessary formalities and approval of the Secretary of Interior.

The mere fact that petitioner has amended its name to read "Upper Skagit Tribe of Indians" (see Finding 6 above) does not invalidate same nor the authority of petitioner's counsel of record to prosecute this claim on behalf of claimant Indians.

10. References to Upper Skagit by Dr. George Gibbs.

The report of George Gibbs to Captain George B. McClellan, dated March 4, 1854, on the subject of the Indian Inhabitants of Washington Territory contains the following comment upon the identity, population, and location of petitioner's antecedents (originally marked Petitioner's

Exhibit No. 16, in Docket Nos. 155 and 242, Quileute and Quinault cases, and included herein by reference as Defendant's Exhibit No. 3):

It requires notice in this place, that besides the tribes, or bands, inhabiting the shores and lower part of the rivers, there are on the headwaters of the latter, along the whole course of the Cascade Mountains, another range of tribes, generally independent of the former, who rarely descend from their recesses, but are intermediate in their habits between the coast and mountain tribes; except the Taitinapam, however, they all belong to the general family upon whose borders they live. Those in the neighborhood of the passes own a few horses, which subsist in the small prairies skirting the base of the mountains.

The tribes living upon the eastern shore possess also territory upon the islands, and their usual custom is to resort to them at the end of the salmon season--that is, about the middle of November. It is there that they find the greatest supply of shell-fish, which form a large part of their winter stock, and which they dry both for their own use and for sale to those of the interior. The summer and fall they spend on the main, where they get fish and put in their potatoes (p. 432).

*** The Skagits are about three hundred all told; and there are other bands upon the headwaters of their river, amounting probably to as many more (p. 433).

*** Captain Wilkes' Estimate, 1841 - (p. 435):

<u>Tribes and Localities</u>	<u>Population</u>
***	***
Penn's Cove, Whidby's Island (Scatchae Tribe)	650
***	***

Estimate of Indian Tribes in the Western District of Washington Territory - January, 1854 (pp. 435-436):

<u>Names of Tribes and Bands</u>	<u>Where located</u>	<u>Total</u>
Skagit	Skagit river and Penn's Cove	300
N'qua-cha-mish)	Branches of Skagit river	300 (Remarks: Estimate)
Sma-lih-hu)		
Mis-kai-whu)		
Sa-ku-me-hu)		
***	***	***

Contributions to North American Ethnology, Volume I, Government Printing Office, 1877, contains in Part II under a sub-title "Tribes of Western Washington and Northwestern Oregon" by George Gibbs, M. D., the following comment (Def. Ex. 4):

In former times, before the diminution of the tribes and the diversion of trade to the posts, there were numerous trails across the Cascades by which the Indians of the interior obtained access to the western district. Of late, many of these have fallen into disuse, becoming obstructed with timber and underbrush which they have not industry enough to clear out. In fact all their trails through the forest, though originally well selected, have become excessively tortuous, an Indian riding around the fallen trunks of tree after tree sooner than clear out a road which he seldom uses. The old Klikatat trail across the mountains to Vancouver had become impassable and was cut out by Captain McClellan in 1853. Another led from one of the branches of the Yakama, south of Mt. Rainier, to the Kowlitz River, which in like manner has been almost abandoned, and the northern trails from the Winatshapam and Tselann Lake to the Sto-luch-wha-mish and Skagit seem to be altogether so. The two most used at present are those by the Nahchess and the main Yakama or Snokwalm̄ passes, the former of which is the route of the United States military road from Steilacoom to Walla Walla (pp. 169-170) ***.

There remains on these waters what may be termed the Niskwalli Nation, which is thus divided, pursuing the geographical order:

1st. The Skokomish, ***

2nd. The bands occupying Puget Sound and the inlets opening into it as far down as Point Pully *** (p. 178).

3d. The Snohomish, with whom are included the Snokwalm̄, Skiwhamish, Sk'tah-le-jum, Kwehtl-ma-mish, and Stolutswamish, living on the Snohomish and Stolutswamish Rivers *** (p. 179).

4th. The Skagits, including the Kikiallu, Nūkwatsamish, Tow-ah-ha, Smali-lu, Sakumehu, Miskaiwu, Miskeekwigweelis, Swinamish, and Skwonamish, occupying the remaining country between the Snohomish and Bellingham Bay, with the northern part of Whidbey Island and Perry Island. With them a different dialect prevails, though not so distinct but what they can be understood by those already mentioned. They altogether amount to 1475, and have been assigned Goliah as head Chief. This division have no horses but are altogether canoe Indians. With the

exception of the Islands and the immediate shore of the main, their country is altogether unexplored. They formerly had some communication with the Indians beyond the mountains; but it is supposed to have been discontinued in consequence of obstructions to their trails. The Skagit reservation, as agreed upon in the treaty, was the peninsula forming the southeastern extremity of Perry Island (p. 180).***

POPULATION

In my report to Captain McClellan, I made an attempt to compare all of the estimates of the Indian population of the Territory which was within my reach. Since then, an actual count or census of most of the tribes in this part of the Territory has been twice attempted, once by myself and once by Colonel Simmons. In considering the different statements which have been made from time to time, I am well satisfied that none of them can be taken as the basis of any accurate calculations respecting the ratio of increase or diminution, and I am further inclined to the opinion that the aggregate former population, taking one period with another, has never been very much greater than within our knowledge of it (p. 181). In arriving at any conclusion, it is necessary to regard not merely the actual facts of increase or mortality known to us, but the capacity of the country to furnish subsistence, the modes of obtaining it followed by the Indians, their general character and habits, their fecundity, their wars, and various circumstances directly or indirectly bearing upon life. That the estimates, even of residents, cannot be relied upon with confidence, has been made sufficiently evident by the discrepancies in our different attempts at an actual enumeration, and those of travelers, like Lewis and Clarke, are likely to have been still wider from the fact. Still, as no other data exist upon which to found any opinion, we are driven to assume these for the purpose of discussion (pp. 181-182).***

FOOD

The principal food of the Indians on the west side of the Cascades may be briefly set down as fish, roots, and berries. Game furnishes to but few of them any considerable item. There are mountain-sheep or, more properly goats, in the higher parts of the range; but they probably never constituted an important article of food, their wool being the principal object of their capture. Elk and deer are hunted to a certain extent, chiefly by the bands nearest the mountains; *** (p. 193).

Governor Stevens reported to the Congress on April 30, 1857, a tabular statement of Indians west of the Cascades, including a map of the Point Elliott Treaty cession of January 22, 1855. The positions of

the Upper Skagit villages are shown by name on said map (Pet. Ex. 11, map; see an enlargement copy of this exhibit, Def. Ex. 16, Dkt. 46).

11. Language. All of the villages situated on the Skagit River and its tributaries spoke the same Salish language called the "Skagit dialect." However, there were some slight dialectical differences between some of the villages (R. 150-151).

The adjacent villages who spoke a mutually intelligible language to the Upper Skagits were Lower Skagits, Nuwaha, Swinomish, Kikiallus, Stillagnamish and Skykomish (R. 36-40; Pet. Ex. 28, Collins' language map). Skykomish tongues were not intelligible to the others above named. Language differences presented no difficulty to Indians of western Washington according to reports of Dr. Verne F. Ray (Quinalet, Dkt. 242, R. 43; Def. Req. Fdg. 11, p. 14).

Speaking of the general bilingual character of Indians of this region, the celebrated work of James G. Swan "Three Years at Shoalwater Bay" quotes Dr. (General) George Gibbs that Upper Bands of Snoqualmie, Cedar River, Green River, White River, the Puyallup, Nisqually, and Cowlitz speak two languages (Def. Ex. 86, p. 426). It is interesting to note how the eminent pioneer ethnologist, George Gibbs, notes this characteristic of "Upper Bands," viz., those Indians living within the interior. Although this is a specific reference as to Indians "living south of the Snoqualmie River and west of the mountains (Cascades) to the Columbia River, it lends credence to Dr. Collins' statement as to the bilingual character of petitioner villages, north of the Snoqualmie River.

12. Culture. The Upper Skagit area was in aboriginal times, and is today, a relatively isolated area (R. 113-114; Pet. Ex. 2, p. 69). Travel,

except on the waterways and a few back trails, was most difficult because of the dense forests and sharp undulations of the terrain. The Upper Skagits had a difficult time in those seasons when the winters were long and the spring season late in finding sufficient food (Pet. Ex. 5, pp. 31-35; Pet. Ex. 4, p. 337; R. 265; Pet. Ex. 2, p. 8). The log jam at Mt. Vernon offered some impediment to reaching the Sound by canoe (Pet. Ex. Ii, Collins' map). Upper Skagits were dependent upon the river primarily for fish, and secondarily upon the adjacent salt water areas for shell fish as distinguished from the Lower Skagit Indians.

Although petitioner's expert, Dr. June M. Collins, described the culture of the Upper Skagit and the Lower Skagit as "both sharing in the same broad culture base, they differed considerably from one another." (Pet. Ex. 5, p. 31).

The distinctions between the salt-water (Lower) Skagits and the "up-river" Skagits are discussed at length by Dr. June McCormick Collins in her thesis "Influence Of White Contact On Class Distinction And Political Authority Among The Indians Of The Northern Puget Sound" (Pet. Ex. 3, pp. 8-76).

13. Dr. Collins classified the Suiattle-Sauk as a subgroup of the Upper Skagit group (R. 129, 48, 55, 56, 130).

The Suiattle-Sauk has prosecuted an alleged tribal claim in its own right on two occasions. The first was dismissed by the Court of Claims for lack of prosecution (82 C. Cls. 697, 1936) and the second was dismissed by this Commission for failure of the proof (2 Ind. Cl. Com. 374, 1952). This Commission in dismissing said suit noted

