

BEFORE THE INDIAN CLAIMS COMMISSION

CONFEDERATED TRIBES OF THE)	
UMATILLA INDIAN RESERVATION,)	
)	
Petitioner,)	
)	
v.)	Docket No. 264
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: June 10, 1960

FINDINGS OF FACT

The Commission makes the following Findings of Fact:

1. Pursuant to authority of the Indian Claims Commission Act of August 13, 1946, c. 949, 60 Stat. 1049, 25 U.S.C. 70a, et seq., petitioner timely filed its petition herein alleging four separate claims against defendant, the United States of America.

2. Claims One and Four only involved herein.

The original petition was amended on January 14, 1958, with leave of this Commission, and claims two and three eliminated from this docket number. Claim One of the petition, as amended, alleges recognized Indian title, and in the alternative, aboriginal Indian title to the lands ceded by the Walla Walla, Cayuse and Umatilla tribes by terms of the Treaty of June 9, 1855, (12 Stat. 945, II Kapp. 694). Claim Four alleges aboriginal Indian title to certain other adjacent lands in addition to the above mentioned ceded lands. All of said lands are situated in northeast Oregon and southeast Washington.

All issues except as to title in Claims One and Four have been postponed pending determination of said title issues as provided by order of this Commission

December 10, 1952.

This cause was consolidated with Docket 198, Confederated Tribes of Warm Springs Reservation, only for purposes of hearing and will be decided as separate cases, Docket Number 198 and 264, respectively.

3. Petitioner has legal capacity to sue.

Defendant admits that the petitioner brings this action as the "tribal organization recognized by the Secretary of Interior as having authority to represent the Confederated Tribes of the Walla Walla, Cayuse, and Umatilla Indians, party to the Treaty of June 9, 1855", 12 Stat. 949, II Kapp. 694. (Answer to amended petition, p. 2, par. 4(a)).

4. Ceded Lands claimed in Claim One.

The lands claimed by petitioner in Claim One are the lands the Walla Walla, Cayuse and Umatilla Tribes ceded to the United States in the Treaty June 9, 1855, more particularly described in the Treaty as follows:

*** Commencing at the mouth of the Tocannon River, in Washington Territory, running thence up said river to its source; thence easterly along the summit of the Blue Mountains, and on the southern boundaries of the purchase made of the Nez Percés Indians, and easterly along that boundary to the western limits of the country claimed by the Shoshonees or Snake Indians; thence southerly along that boundary (being the waters of the Powder River) to the source of Powder River; thence to the headwaters of Willow Creek; thence down Willow Creek to the Columbia River; thence up the channel of the Columbia River to the lower end of a large island below the mouth of the Umatilla River; thence northerly to a point on the Yakama River, called Tohmah-luke; thence to Le Lac; thence to the White Banks on the Columbia below Priest's Rapids; thence down the Columbia River to the junction of the Columbia and Snake Rivers; thence up the Snake River to the place of beginning: ***

The lands thus ceded now include Walla Walla County and portions of Columbia and Benton Counties, State of Washington. In Oregon, the ceded lands include almost all of Umatilla and Union Counties, and portions of

Morrow, Baker, Grant and Gilliam Counties (see Map, Pet. Ex. 521; Royce Cession 362).

The Treaty description did not delineate what portions of the ceded lands were claimed or occupied, respectively, by the Walla Walla, Cayuse, and Umatilla tribes. The preamble to the Treaty of June 9, 1855 (12 Stat. 949) recites that the treaty parties are:

*** the United States, and the undersigned chiefs, headmen, and delegates of the Walla-Walla, Cayuses, and Umatilla tribes, and bands of Indians, occupying lands partly in Washington and partly in Oregon Territories, and who, for the purposes of this treaty, are to be regarded as one nation acting for and in behalf of their respective bands and tribes, they being duly authorized thereto; it being understood that Superintendent I. I. Stevens assumes to treat with that portion of the above named bands and tribes residing within the Territory of Washington, and Superintendent Palmer with those residing within Oregon.

5. Aboriginally the Three Tribes represented by Petitioner had a Common Culture and Language.

The Walla Wallas, Cayuses, and Umatilla in aboriginal times were of the Plateau culture and of the same basic Sahaptin language stock (Ray, Tr. pp. 530, 594, 610; Def. Ex. 18, pp. 9 and 23-27 Suphan Report). Early white observers sometimes confused the Walla Wallas with the Umatillas, and the Cayuse with the Nez Perce (Ray, Tr. 611-612). These three tribes (Walla Walla, Umatilla and Cayuse) "are so intermarried and occupy country so near each other that their interest are in common." (Ltr. of Aug. 1, 1857, by Agent A. P. Dennison, Pet. Ex. 339).

6. Tribal Organization.

Defendant's expert, Mr. Robert Suphan, reported the Walla Walla, Cayuse and Umatilla each were "ethnic entities" (Def. Ex. 18, p. 34). They are identifiable as tribal entities (Pet. Ex. 63, p. 10). In the main, their

more or less permanent winter villages were located along the Columbia, Walla Walla, and Umatilla Rivers in such spots as afforded them a nearby supply of fish, roots, and wood, as well as some shelter from the element. (Def. Ex. 18, p. 12) The plateau concept of village autonomy in local affairs existed with a "spokesman" presiding over the village council (Pet. Ex. 63, p. 10; Ray, tr. 612-613; Def. Ex. 18, p. 13). Lewis and Clark identified the "1st Chief of all the Tribes" near the junction of the Columbia and Snake Rivers as "Yel-lep-pit," a chief of the "Wal lar war lar N. (Nation)." "Head chiefs" subscribed their names to the Treaty of June 9, 1855, on behalf of each of the respective tribes herein represented by petitioner (12 Stat. 945).

7. Aboriginally, Subject Indians were Separate Ethnic and Land-using Entities or Tribes.

Petitioner's expert, Dr. Verne F. Ray, testified that the Cayuse, Walla Walla, and Umatilla were each one a separate tribe in the proper sense of that word as used by students of ethnology (Tr., pp. 530, 594); that each of said three tribes had a very definite tribal organization (Tr. 613); without any dialectical barrier between them (Tr. 614); and that each tribe was a separate tribe with a concept of occupancy of definite areas and with a system of permissive use, each of the other's aboriginal areas (Tr. 630-631), and Dr. Ray drew a map of such internal boundaries between said tribes (Tr. 574; Pet. Ex. 522); but Dr. Ray's opinion with respect to boundary lines had changed somewhat since the date of his 1938 publication (Tr. 569).

This Commission finds that the Umatilla, Walla^{Walla,} and Cayuse were separate tribes in pre-treaty times, both in an ethnic sense and as separate land-using entities.

8. Population.

During the period 1790 to 1850 disease and pestilence reduced the populations of said three tribes. We find that the best population estimate was made by Governor Isaac I. Stevens and General Joel Palmer at the time the Treaty of 1855 was negotiated, who estimated the respective population as 800 Walla Wallas, 500 Cayuse, and 200 Umatillas (Pet. Exs. 276 and 277).

These estimates compare favorably to the government census taken in 1870 when the total number of the three tribes was 1,622; of this number 837 resided on the reservation and 785 were on the Columbia River (Pet. Ex. 438, p. 97).

9. Aboriginal Economy of Petitioner Tribes.

The Walla Wallas and Umatillas whose winter villages bordered the Columbia River relied somewhat more on fishing than the Cayuse, who frequented the uplands and Blue Mountains (Ray, Tr. 635-658; Def. Ex. 18, pp. 23-25; Pet. Ex. 22, p. 341). Essentially fishing, hunting, and gathering of roots and berries constituted the economy of the petitioner tribes.

Their fishing sites included not only the Columbia and Snake Rivers, but also certain smaller streams which rose in the Blue Mountains and were filled with salmon at several seasons of the year. Roots abounded in both higher rocky soil and in low moist soil. In the Blue Mountains were extensive berry patches and also medicinal herbs.

Horses and cattle in large herds formed an important part of the livelihood of these Indians and utilized a considerable expanse of grassland for their very numerous herds (Pet. Ex. 275, p. 41; Pet. Ex. 277, p. 2; also Pet. Ex. Nos. 54 at p. 46, 108 at pp. 88-89, 28 at p. 403, and 36 at p. 89).

In 1611 Ross of Hudson's Bay Company reported the Shaw Haptens (Sahaptins) and the Cajouses (Cayuses) near the mouth of the Walla Walla River, owned large bands of horses, four thousand within sight of the camp, which roam at large over the hills south of the Columbia (Pet. Ex. 275, p. 4; Pet. Ex. 277, p. 2). In early 1830's Pierre C. Pambrun in charge of Hudson's Bay Company's Fort Walla Walla acquired the first cattle for petitioner tribes. (Pet. Ex. 54, p. 46)

The tribes wintered in their respective winter villages on the Columbia and Snake Rivers. In spring they moved southward to the Blue Mountains to dig roots and to headwaters of mountain streams to catch spring salmon. Only in winter were they separated, in other seasons they roamed about in a seasonal subsistence pattern, fishing, gathering roots and berries, hunting elk and deer, and pasturing their livestock. This cycle was repeated year after year. (Ray, Tr. 635-658; Def. Ex. 18, Suphan Report, pp. 23-25)

10. Land Usage Was Often Shared Among the Umatilla, Cayuse, and Walla Walla.

Subsistence areas of each tribe were generally south of their winter villages. These areas were used seasonally and shared by the tribe exercising principal occupancy and use of same with one or both of the other two tribes.

The Umatilla used most, if not all fishing sites, roots and berry gathering, grazing, and hunting areas with members of the Walla Wallas. The Walla Wallas used subsistence areas with the Cayuse, and the Cayuse often used subsistence areas with both the Walla Wallas, and somewhat less, with the Umatillas. (Ray, Tr. 611-615, 631-632; Pet. Ex. (3, p. 17; Map, Def. Ex. 18A)

The Commission finds that such use of subsistence areas did not in fact constitute a "non-exclusive use," or "free use areas," or areas "wandered

over by many tribes." To the contrary, the evidence clearly establishes a fixed pattern of use areas within an annual cycle. The village areas on the Suphan map (Def. Ex. 18A) appear to be reasonably consistent with statements of early white observers of this region (Fdgs. 13a, Jos. Lane: 12f, Sir Geo. Simpson; 12j, Marc Whitman; 12o, Geo. Gibbs and Gov. I. I. Stevens) and with correspondence by early Indian Agents (Fdg. 13). However, the subsistence areas or stations shown on this map must be qualified by observations of overlaps with other Indians, the Snake Indians south of the Blue Mountains and the Nez Perce on the east. Moreover, the source materials for this map are almost entirely based upon information gathered from modern Indians in the 1941 Swindell Report (Tr. p. 747).

Horatio Hale, reporting on interior Indians of Oregon in 1846, found their mode of life "difficult to determine how it should be characterized. They have no fixed habitations and yet they are not, properly speaking, a wandering people. Nearly every month of the year they change their place of residence but the same month of every year finds them regularly in the same place." (Def. Ex. 18, p. 23)

11. Aboriginal Language and Religion.

The language of the Umatilla, Walla Walla, and Cayuse is classified as Sahaptin. The Cayuse language fell into disuse in aboriginal times (Hale, Pet. Ex. 32, p. 214). It was unintelligible to the Walla Wallas and Umatillas. The Cayuse adopted the Nez Perce dialect of Sahaptin language which was intelligible to Walla Wallas and Umatillas. The Umatillas spoke a dialect of the Walla Walla language (Ray, Tr. 610-614; Def. Ex. 18, p. 36).

Each tribe had a very similar guardian-spirit religion which involved a

strong element of earth worship (Ray, Tr. 612, 626).

12. Early White Observers, Showing Use and Occupancy.

a. Lewis and Clark 1805-1806.

In the fall of 1805 Lewis and Clark descended the Snake River from Lewiston, Idaho, to the Columbia River, thence down the Columbia to its mouth. In the spring of 1806 they returned overland along the Walla Walla and Touchet Rivers to Lewiston and eastward.

They reported large numbers of Indians living and fishing along the Snake and Columbia Rivers. Below the mouth of the Walla Walla River they met "Yel-lep-pit" described as "the 1st Chief of all the tribes in this quarter."

Clark estimated the "Wai-low-wai-low Nation on both sides of the Columbia from the entrance of Lewis' river (Snake river) as low as Muscle shell rapid and in winter pass over to the waters of the Tapeel river" as being a probable number of 1600 souls.

Clark's map shows the "You mar talla" Nation on the lower Umatilla River and listed the "sho-Sho-ne (or Snake Indians)" as residing in spring and summer on the heads of the To-war-ne-hi-ooks (Deschutes), La Page (John Day), You-ma-tol-a (Umatilla), and Wal-war-wal-war (Walla Walla) rivers for the purpose of fishing (Pet. Ex. 43, Vol. 3, pp. 131-132, Vol. 6, pp. 113-115; Pet. Ex. 46).

b. Wilson Price Hunt, 1811-1812.

Hunt led the overland expedition of Astor's Pacific Fur Company, 1811-1812, along a route approximately on the later Oregon Trail. Hunt, as had Lewis and Clark, reported the presence of horses and "Chochonis" (Sho Sho-nes) Indians

apparently in Grande Ronde Valley or possibly the Powder River Valley (Pet. Ex. 95, Stuart, Discovery of Oregon Trail). Hunt reported "at least two thousand horses" on the upper Umatilla River.

c. David Thompson, 1811-1812.

Thompson, a partner of the Northwest Company, came down the Columbia River in 1811 and returned upstream in 1812. Yellocpit of the Walla Wallas advised Thompson that his tribe would again possess the south part of their country which was occupied by the "Straw Tent Tribe" (Northern Paiute?). Thompson estimated 13,615 souls lived on the Columbia River between its mouth and its junction with the (Snake) river (Pet. Ex. 100, pp. 489-491).

d. Alexander Ross, 1811-1824.

Ross, a Pacific Fur Company employee, traveled up the Columbia River in 1811. He reported a camp of 1500 Walla Wallas, Shaw Haptens, and Cajouses, near the mouth of the Walla Walla River and noted, "the plains were literally covered with horses, of which there could not have been less than four thousand in sight of the camp." The name "cayuse", because of this tribe's numerous horses, became a generic term for Indian ponies. (Pet. Ex. 66, pp. 137-138)

Ross also commented upon the different tribes around the Walla Walla often going to war with their southern neighbors, the Snakes (Pet. Ex. 65, p. 200). Ross described the west end, or spur, of the Blue Mountains as the north line of the Snake Tribes (Pet. Ex. 65, p. 167).

e. Robert Stuart, 1812.

Stuart of the Pacific Fur Company traveled up the Columbia River to the mouth of the Walla Walla in 1812. Stuart reported on the general

location of the Walla Wallas at the entrance of that river. His journal describes the "Sciagogas" (Cayuse?) as possessing "a tract of country, bounded on the southeast by the Big Flat (Grande Ronde Valley), on the north by Lewis' (Snake) river, on the west by the Columbia, and on the south by the Walamat, comprising nearly 100 miles square, ***." (Pet. Ex. 96, pp. 81-82).

f. Sir George Simpson, 1824-1825.

Sir George Simpson, Governor of Hudson's Bay Company's enterprises in the Pacific Northwest, traveled along the Columbia River in 1824 and 1825. Simpson enumerated petitioner tribes as residing between the Cascades of the Columbia River and the Rocky Mountains, thus:

Yumatilloni
Walla Wallas

Southside Small River
Southside Walla Walla R.

Cayouse

Between Walla Walla & Blue Mts.

g. Nathaniel Wyeth, 1832, 1834.

Nathaniel J. Wyeth, an American trader, made several overland trips through Cayouse, Umatilla and Walla Walla territories. In 1834 Wyeth noted, upon passing through the Powder River Valley, "at our camp two lodges of Kiuses." (Pet. Ex. 109, p. 231).

h. Captain Benjamin Bonneville, 1834.

Captain Benjamin Bonneville, a soldier on leave from the U. S. Army, explored the Umatilla, Grande Ronde, Wallowa River valleys, and visited Fort Walla Walla. Captain Bonneville reported the prairies of the Grande Ronde "are resorted to by small bands of Skyuses, to pasture their horses, as well as to banquet upon the salmon which abound in the neighboring waters." He

described the Skyuse horses as "of a breed infinitely superior to any in the United States." (Pet. Ex. 36, pp. 244-250).

i. Rev. Samuel Parker, 1835.

Reverend Parker, a missionary sponsored by the "American Board of Commissioners for Foreign Missions," in 1835, traveled overland through the Walla Walla Valley, thence down the Columbia River to Vancouver, Washington. Rev. Parker reported the Cayuses west of the Nez Perces, and numbering more than two thousand persons. He described this country, especially about the Grande Ronde, as uncommonly fertile, producing cammas in abundance, upon which, with fish and some game, they principally subsist.

Parker stated the Walla Wallas numbered about five hundred and ranged some distance below their river and the Columbia river (Pet. Ex. 56, p. 301).

j. Marcus Whitman and H. H. Spalding, 1836-1847.

Whitman and Spalding were missionaries sent by the same Mission Board as Parker. Whitman established the Whitman Mission in the Walla Walla Valley in 1836. H. H. Spalding established the Spalding mission the same year among the Nez Perce Indians in Clearwater River Valley, about 100 miles east and north of Whitman's mission. Whitman and his family were killed by Cayuse Indians in 1847.

- The Whitman and Spalding correspondence seems to add little to their predecessor, Parker's observations, by way of description of Indian boundaries. Spalding referred to the "Grand Round" as "in the Chayoos Country."

Whitman reported Cayuse in the Walla Walla Valley and in the upper Umatilla ("Utilla") River Valley (Pet. Ex. 104A, p. 94; Pet. Ex. 104D, pp. 434-447; Pet. Ex. 104B and C).

k. Commander Charles Wilkes and Horatio Hale, 1841.

Horatio Hale, philologist, who accompanied a United States Exploring Expedition commanded by Charles Wilkes in 1841 along the Columbia River to Fort Walla Walla, shows on his ethnographical map that "Shoshonees" (Snakes) Indians were in the Powder River Valley and either "Walla Walla or Cayuse" north of Grande Ronde. The map shows Cayuse language encompassing DesChutes and John Day Rivers at their headwaters, thus extending outside the ceded territory (Map, Pet. Ex. 32).

l. Bvt. Capt. J. C. Fremont's Exploring Expedition, 1843.

The third exploring expedition sent by the United States was that of Bvt. Capt. John Charles Fremont in October, 1843, over the route of the Oregon Trail. The Fremont Journals noted Cayuse Indians near the mouth of the Burnt River, Oregon, returning from a buffalo hunt; and "several Indians, who belong to the tribes on the Columbia *** and on a hunting excursion" in the Powder River Valley (Pet. Ex. 26, pp. 178-188).

Charles Preuss, a member of the expedition, drew a map of Oregon, showing "Wallah Wallah" and "Waillatpu or Cayuse" in the area later ceded by petitioner tribes to the United States in the Treaty of 1855. No reference on the Preuss map appears of "Umatillo" Indians although the "Umah-alah" River is shown (Pet. ex. 23).

m. Joel Palmer, 1845.

Joel Palmer first came through the lands herein claimed by petitioners in September 1845. Palmer kept a journal of his trip over the Oregon Trail which he published as a guide for emigrants (Pet. Ex. 55). He reported a visit from "Aliquot", an Indian chief of the tribe Caagnas (Cayuse), to

barter for cattle while in the Powder River Valley.

Palmer described "the Caaguas, which inhabit the country bordering on the Wallawalla river and its tributaries, the Blue Mountains and Grand round:" (Pet. Ex. 53, p. 108).

n. Father P. J. De Smet, 1845-1846.

Father P. J. De Smet, a Catholic missionary, traveled along the Columbia River and visited Fort Walla Walla and the "Palouse" River. He described the Nez Perces as north of the Shoshones living in a very fertile land well adapted to agriculture, containing a great number of horses and rich grazing lands. DeSmet then described the Cayuses as west of the Nez Perces, with a population of 2,000. He compared their horses and fertility of soil favorably to Nez Perces and also made mention of roots, fish and game as staple foods of the Cayuse.

De Smet mentioned the Walla Wallas as about 500 in number with characteristics, habits, and customs "which differ in no respect" from those of the Indians above named, the Nez Perce and Cayuse.

The "Palooos" tribe belongs to the nation of the Nez Perces, numbers about 300 and inhabits the borders of the Nez Perces and Pavilion rivers. (Pet. Ex. 15, p. 991).

o. Governor Isaac I. Stevens and the Northern Pacific R. R. Exploration and Survey, 1853-1854.

As newly appointed Governor of the Territory of Washington, Stevens led a party of exploreres and surveyors westward from St. Paul, Minnesota, to Vancouver, Washington, 1853-1854. Stevens came down the Palouse River, crossed the Snake River near the mouth of the Palouse, and passed through what is now Walla Walla Country, Washington, thence down the Columbia River to Vancouver. Stevens' distribution map (Pet. Ex. 85) shows the Umatillas as part of the Walla Walla tribe.

George Gibbs, ethnologist, who accompanied Stevens, described the Walla Walla as a number of bands usually living on the south side of the Columbia and on the Snake River to a little east of the Peluse, generally camping in winter on the north side of the river. Gibbs noted "Pu-pu-mux-mux, the Walla-Walla chief," usually resided near "Fort Wallah-Wallah". (Pet. Ex. 28, pp. 402-403).

p. Dr. Henry R. Schoolcraft, 1855.

Schoolcraft's "Indian Tribes of the United States" lists the Umatillas a tribe "Utilias" numbering 200 and positioned on the Utila River; the Cayuses on "John Day's River number 126; and the Walla Walla numbering 130 on the Walla-walla River. " (Pet. Ex. 69, p. 493).

13. Administrative Reports and Correspondence
1849-1855, as to Use and Occupancy.

a. In 1849 Joseph Lane took office as first Governor of the Territory of Oregon and ex-officio Superintendent of Indian Affairs for the Territory (Pet. Ex. 144, p. 58). Governor Lane stated in his Annual Report to "The Secretary of War, or the Commissioner of Indian Affairs," dated October, 1849, on subject Indians:

The Cayuse Indians inhabit the country from the foot of the Blue Mountains to within twenty five miles of Walla Walla ***. They have large herds of horses and cattle, and live on fish, roots, berries and game ***. Their band consists of about eight hundred; ***. The Walla Walla Indians possess the country on the Columbia near Fort Walla Walla, have large bands of horses and cattle ***. They number about One Thousand. (Pet. Ex. 143, p. 1007).

b. In 1851 the Superintendent of Indian Affairs for Oregon, Anson Dart, reported the Walla Walla as numbering only "one hundred and thirty." Dart's Walla Walla population figure is grossly inconsistent with both the report of his predecessor, Joseph Lane, and his successor,

Joel Palmer, in their reports of Walla Walla population (Pet. Ex. 160, p. 90). Palmer commented upon the disparity of Dart's enumeration as incredible (Def. Ex. 86).

c. In 1853 Joel Palmer succeeded Anson Dart as Superintendent of Indian Affairs for Oregon. Palmer had served as Quartermaster General in the Cayuse War of 1848. In a letter to the Territorial Governor of Washington Territory, Isaac I. Stevens, January 16, 1854, Palmer described the boundaries of the Walla Wallas and Cayuse:

The boundary between the Wallawallas and Cayuses, is not well defined, but it is thought that but a small part of the Territory of the former, if any, is within the limits of this Territory. ***

My understanding of their boundary as derived from members of the Tribe in 1848, is as follows:

Commencing on the South side of the Columbia river a short distance above the mouth of the Uvilla, it runs Easterly so as to cross the Wallawalla about ten or twelve miles above fort Wallawalla; thence Northeasterly to the Snake river about twenty or twenty five miles from its mouth; thence down said river and across the Columbia to a point about 20 miles west of the last named river; thence South Westerly to the mouth of the first stream emptying into the Columbia on the North Side, a little above the mouth of John Day's river (Def. Ex. 86).

d. In 1853 Erevet Major Alvord, Commander of Fort Dalles, reported that the Cayuse resided mostly on the Umatilla, claiming an extent of country (large in proportion to their present reduced numbers) from the Willow Creek on the southwest to the Blue Mountains, and including the Grande Ronde, and northward to within fifteen miles of Fort Walla-Walla.

Alvord reported the Walla-Wallas border upon Cayuse and occupy the country around Fort Walla-Walla upon the south bank of the Columbia.

e. In 1854 R. R. Thompson, Indian Agent at Uvilla Agency, reported on the "Cayuses" and "Uvillas" but did not enumerate the Walla Wallas among the tribes of his district (Pet. Ex. 218, p. 1050-II). In the same year Major G. J. Rains, successor to Alvord as Commandant of Fort Dalles, reported the Walla Wallas, Cayuse and Nez Perce were allied together, but Rains distinguished the territory of the Cayuse and Walla Wallas as inhabiting "the region west of the Nez Perce." (Pet. Ex. 205, p. 2).

f. The Swindell Report (1941).

Edward G. Swindell of the Bureau of Indian Affairs in 1941 conducted a study or survey of the location of the "usual and accustomed stations" for fishing, the use of which by petitioner was "secured to the Indians in common with citizens of the United States" by the terms of the Treaty of June 9, 1855. In conducting this survey, its scope was broadened to include the recording of camp-sites, hunting and other subsistence areas regularly used by the tribes who were parties to the treaty of cession. The study was conducted by parties of elderly Indians accompanied by interpreters who drove over the subsistence areas and marked a series of cards to identify each location. (Ray, Tr. 642-645; Def. Ex. 105, p. 110).

The material and information contained in the Swindell Report and the Suphan Map (Def. Exs. 18; 18A, pp. A-1 to A-14), and Mr. Suphan's testimony based thereon (Tr. p. 747-774), does not substantially show (1) aboriginal period and times of Indian use of such subsistence stations, (2) the interests and conflicting claims of adverse Indians, and (3) is not substantially corroborated by historical records, but is based "almost entirely" upon the memory of aged modern Indians.

14. Cession Treaty of 1855 did not
Constitute "Recognized Title."

The Treaty of 1855 recites:

*** Indians cede to the United States all and every part of the country claimed by them *** (Underscoring supplied; Art. I, 12 Stat. 945; 2 Kapp. 694)

There is no substantial evidence of facts or circumstances in the record to establish a "recognized title" by the United States of petitioner tribes' claims to lands ceded by them to the United States in said treaty.

15. In addition to the lands ceded by petitioner's antecedents to the United States for which compensation is claimed in petitioner's "Claim One," petitioner alleges Indian title (aboriginal use and occupancy) to lands located in the State of Oregon, which lands are contiguous to the west boundaries of the lands ceded by the Treaty of June 9, 1855. Petitioner denominates the latter as "Claim Four." Said lands are described in the amended petition as follows:

Commencing at a point on the boundary line of the lands ceded by the Walla Walla, Cayuse and Umatilla Tribes in the Treaty of June 9, 1855, at the mouth of Powder River; thence southerly up the Snake River to the confluence of the Snake and Malheur Rivers; thence southwesterly up the Malheur River to the confluence of Malheur River and Willow Creek, the latter being a tributary of Malheur River; thence northwesterly to the divide separating the waters of said Willow Creek and Bully Creek; thence northwesterly along said divide to the summit of Ironside Mountain, which is a point on the crest of the Blue Mountains; thence westerly along said summit to Spanish Peak; thence north-easterly along the divide separating the waters of Birch Creek and Cottonwood Creek to the confluence of Mountain Creek and John Day River; thence northerly along the nearest escarpment on the west side of the John Day River to the confluence of the John Day River and the North Fork of John Day River; thence northerly, easterly, and northwesterly along the divide separating the waters of the John Day River and the North Fork of the John Day River and Willow Creek, the latter being a tributary of the Columbia River, to the point on said divide nearest the Columbia

River; thence northerly to the Columbia River; thence northeasterly up the Columbia River to its confluence with the last-mentioned Willow Creek, the same being a point on the boundary of the lands ceded by the Umatilla, Walla Walla, and Cayuse Tribes in the Treaty of June 9, 1855; thence southeasterly, and easterly, along the boundary of said cession to the point of beginning, all the foregoing description being shown as a red line on petitioner's exhibit 521 herein.

Petitioner subdivides the above described lands, as contained in Claim Four of its amended petition, into three parcels:

Parcel "A": That portion located in the drainage of and along the west side of Willow Creek.

Parcel "B": That portion located in the drainage of John Day River, including its three forks.

Parcel "C": That portion located in the drainage of Burnt River and Willow Creek (South).

16. Evidence of Aboriginal Usage of
Parcel "A" Insufficient.

The petitioner cites Peter Murdock's map (Pet. Ex. 61, p. 396, fig. 2; Pet. Brf, p. 99) as evidence of historical and documentary nature in support of Dr. Verne F. Ray's conclusion that Parcel "A" is within the aboriginal boundaries of the Umatilla Tribe. It is noted said map does not show the principal river, the Umatilla, used and occupied by the tribe of the same name. We are unable to so interpret the Murdock map as urged by petitioner.

Parcel "A" was included in the cession by the Weyampum Indians in the Treaty of June 25, 1855 (12 Stat. 963, II Kapp. 714) and was not included in petitioner tribes' cession treaty of the same year.

The Suphan map (Def. Ex. 18A) drawn from the Swinell Survey Party records and from "historical and ethnological sources" omits reference to any aboriginal village sites, camp sites, or subsistence areas in Parcel "A".

17. Parcel "B". Evidence Shows Non-Exclusive Use.

The forks of the Upper John Day River and other portions of the area south of the Blue Mountains were non-exclusively used by Snake, Umatilla, and Cayuse Indians.

David Thompson reported in 1811 that the south part of the Blue Mountains was abandoned by Walla Wallas because of hostility with the Straw Tent Tribe. This fact was related earlier by Lewis and Clark (Def. Ex. 18, p. 64; Fdgs. 12a, 12f, above).

Wilson Price Hunt, in December 1811, reported "six huts of Chochoomis" in the valley of the Grande Ronde in or near the Blue Mountains (Def. Ex. 18, p. 64; Fdg. 12b, above.)

Alexander Ross (1811-1824) reported the Blue Mountains "forms the northern boundary of the Great Snake Nation" (Pet. Ex. 65, p. 167; Def. Ex. 18, p. 65; Fdg. 12d, above).

Peter Ogden reported Northern Paiutes on the main John Day in 1826 (Def. Ex. 18, p. 65; Elliott, 1909, p. 350.)

John Work reported Paiutes near present John Day, Oregon, in 1831, and in 1832 reported a family of Mountain Snakes on the Middle Fork of John Day near present Bates, Oregon, and also signs of Paiutes on the Silvies River in 1832. (Def. Ex. 18, p. 66; Lewis & Phillip, p. 171).

Petitioner's claims to both Parcel "B" and Parcel "C" of Claim 4 to extra cession lands raises the question of the aboriginal southern boundary of the Umatilla and Cayuse. On the nature of evidence supporting same petitioner's expert testified as follows (Tr. 639-670):

(Mr. Luce) Q. Speaking generally of the area in the

southern portions of the Cayuse and Umatilla territories is it possible, in your opinion, with only historical materials to determine where the southern line between the Cayuse and Umatilla and the Paiute existed?

(Dr. Ray) A. Quite impossible.

(Mr. Luce) Q. What methods, from an ethnological viewpoint, must be used in an endeavor to locate the point where the Umatilla and Cayuse came into contact with their neighbors to the south, the Paiute?

(Dr. Ray) A. Ethnological field work devoted to what we speak of as the reconstruction of history.

(Commissioner O'Marr) That means information you obtained from informants?

(The Witness) That's right.

(Mr. Luce) Q. Have any other ethnologists expressed a like opinion?

(Dr. Ray) A. Yes, they have. Professor A. L. Kroeber, for one.

Dr. Ray drew the Umatilla-Cayuse southern boundary, extended to the Shoshonean people's northern boundary, above (north of) the forks of the John Day River in the Blue Mountains "in the 18th century and earlier."

(Pet. Ex. 61, map, p. 386). In a publication two years earlier, 1936, Dr. Ray drew the Umatilla boundary encompassing the drainage of most, if not all, of the Upper John Day River (Pet. Ex. 59, map, p. 103). Dr. Ray testified, "Paiute presence on the John Day River, itself, on the course that is shown here, extreme south, was on the same basis as it was farther to the north; that is, a raid and enemy attempt at utilization when they could get away with it." (Tr. pp. 568-569).

Suphan's Report included the accounts of modern ethnologists Omar C. Stewart and Beatrice Blyth that the Humpuitoka or Walpapa Band of Northern

Paiute range just south of the Blue Mountains in the John Day River country from about Burnt Ranch on the west to the Blue Mountains along the North Fork of the John Day. Blyth reported some informants related the presence of Elk Eaters near present sites of Prairie City and Baker, Oregon (Def. Ex. 18, p. 67).

The government's representatives in treaty times affirmatively stated the Cayuse aboriginal country extended "to the Blue Mountains." (Pet. Ex. 165, p. 11, report of Brevet Major Benjamin Alvord; Def. Ex. 86, p. 2, and 1854 ltr. rpt. of Supt. Joel Palmer).

18. Evidence of Aboriginal Usage of Parcel "C" Insufficient.

In support of the opinions expressed by Dr. Verne F. Ray that Cayuse Indians occupied Parcel "C" we are referred to a number of exhibits (Pet. Ex. 61, p. 406, fig. 3; Pet. Ex. 95, Map I; Pet. Ex. 94, Map I; Pet. Ex. 93, p. 447, fig. 29) among other evidence cited by petitioner (Pet. Br., p. 137). We have examined said exhibits and conclude that the most that can be determined from them is that this evidence contains no indication that any tribe "other than Cayuse" resided in Parcel "C". But we do not find a reasonable inference from the reports of treaty times that Cayuse exclusively occupied Parcel "C" or any portion of same.

In Beatrice Blythe's map (Pet. Ex. 61, p. 396, fig. 2) the approximate western half of Parcel "C" is marked "Elk Eaters", a band of the Northern Paiute.

The literature and journals of early writers on the Oregon Trail (Wilkes Journal, Pet. Ex. 108, p. 55; Zackrey's ltr. to Spalding, Pet.

Ex. 76, p. 26; Jennings, Pet. Ex. 38, pp. 51-52; Alexander Ross, Pet. Ex. 65, p. 167, and Pet. Ex. 67; John C. Fremont, Pet. Ex. 23; Indian Agent R. R. Thompson, Pet. Ex. 215, pp. 198-199, and Pet. Ex. 216, p. 216; Capt. Wallen's Wagon Rd. Exped., Pet. Ex. 364, pp. 448, 449) seem to establish that Snake Indians were seen in Parcel "C" more often, and usually in larger numbers than Cayuse Indians. In all events, we conclude that even if it be assumed or inferred that the Cayuse occupied Willow Creek (south) and Burnt River (and the weight of evidence does not support such inference), yet the several references above cited often mention the presence of Snake Indians and establishes that Parcel "C" was not exclusively used by the Cayuse. Certainly they did not exclude their unfriendly neighbors, the Snakes, from repeated unauthorized trespasses on such claimed southern a of the Cayuse.

Suphan's map of subsistence areas, village and camp sites (Pet. Ex. 18A) indicates no Cayuse Indians used Willow Creek (south) or Burnt River or any other portion of Parcel "C".

Parcel "C" also falls within "the limits of the country claimed by the Shoshonees or Snake Indians; thence southerly (westerly) along that boundary (being the waters of the Powder River); thence to headwaters of Willow Creek ***" according to the cession treaty executed by the antecedent tribes of petitioner (12 Stat. 945; II Kapp. 694).

19. Aboriginal Village Bands of Umatilla,
Cayuse, and Walla Walla

a. Umatilla Villages.

Defendant's expert, Mr. Robert Suphan, reported the Umatilla permanent villages were situated along the shores of the Columbia River from about the

Gilliam-Morrow county line in Oregon upstream to the mouth of the Umatilla River with two village sites on the lower course of the Umatilla. From west to east Suphan listed Umatilla Villages as follows:

1. Quas-qui, on the Washington shore 1/2 mile west of Alderdale, Washington.
2. Tee-ow-tush-wa-ta, on the Washington side opposite Thanksgiving Island and across from Boulder, Oregon.
3. Auk Kuk Pa, at Alderdale, Washington
4. Snim asho, one mile east of Boulder, Oregon
5. Slapee-hus, on the Washington shore, north and west of Castle Rock, Oregon.
6. Wulth quas pa, one mile below Castle Rock on the Washington shore.
7. Yep-po-lue-sha, on the Washington side of Blalock Island.
8. So-luc-a, north of Umatilla, Oregon, on the Washington side of the Columbia River.
9. Tko'pa, at Echo, Oregon.
10. Unnamed village, at Hermiston, Oregon

Ray, in the 1936 publication of his "Native Villages and Groupings of the Columbia Basin," (Def. Ex. 51, pp. 150-151), listed six Umatilla villages:

1. i'matitam ("lots of rocks"), both sides of the mouth of the Umatilla river ***.
2. tuq'woyo'pa ("Tule place"), a spring and summer camp on the south side of the Columbia between Umatilla and Cold Springs ***.

3. Xu'lulupa ("rapids in the river"), summer fishing camp on the north side of the Columbia river about three miles above the present Mottinger ***.

4. ana'ama'pa ("island"), on Blalock island ***.

5. ta'ksasam ("elbow in the river"), a temporary camp on the north side of the Columbia near the present site of the village of Roosevelt.

6. K'ami'lpu ("opening through the canyon where the light penetrates"), village on the north side of the Columbia at the mouth of Rock Creek ***.

Dr. Ray's map "Tribal Territories and Village Locations" (Pet. Ex. 524) shows some nineteen dots (Umatilla sites) extending far to the south of the above named villages, in the Columbia Basin, to the South Fork of the John Day River (Tr. 634-647), but omits Paiute or Snake sites.

b. Cayuse Bands.

The Cayuse bands listed by Suphan (Def. Ex. 18, pp. 57-58) and Dr. Ray (Def. Ex. 51, pp. 151-152) were:

1. The Butter Creek Band, kimi'lehicpu, also called ehetma'pu, or lower Cayuse.
2. The Pilot Rock Band, wi-lu'-npu, an Oregon band.
3. The McKay Creek Band, ha'utmipu.
4. Village near Cayuse, Oregon, nixya'wi ("a spring of water").
5. The Gibbon-Umatilla Band, nequicnime pu.
6. The Cottonwood Creek Band, qapqapi'tspu, the Thorn Hollow-Cottonwood Creek band.

7. The Milton-Freewater Band, imtsa'mapu.

8. The Cayuse band of the region of the Walla Walla River, pa'exapu, at and about present site of Walla Walla, Washington.

Dr. Ray by Roman numerals locates the above described bands on his map (Pet. Ex. 524) in the same order as above listed but omits description of "7. Milton-Freewater band" of Cayuse (ray, Pet. Ex. 524; Pet. Ex. 59; Tr. 636), or of Snake sites on the Powder, Burnt, and John Day Rivers.

c. Walla Walla Villages.

Suphan reported "Permanent sites of the Walla Walla were few in number, located on the Columbia near the entrance of the Walla Walla River." (Def. Ex. 18, p. 47).

Dr. Verne F. Ray's aforementioned map of village locations (Pet. Ex. 524) shows fifty-one numbered dots representing locations of Walla Walla sites, apparently both camps and villages, but omits Yakima use stations or sites on the Yakima River or in the Horse Heaven Hills.

Wallula was a principal village, later the site of "Fort Walla Walla" (Tr. 549; 632).

20. The Commission finds, based on the findings of fact, herein made and the record as a whole, that the Umatilla, Walla Walla, and Cayuse Tribes of American Indians exclusively used and occupied, and each of said tribes had, on the date of defendant's liability, Indian title to a separate tract of land, bounded and described as follows:

(NOTE: - Reference is made to the map marked "Petitioner's Exhibit No. 521" for the location of the following described boundary lines).

A. Aboriginal Boundaries of the Walla Walla Tribe.

Commencing at the mouth of Juniper Canyon on the south bank of the Columbia River a short distance above the mouth of

the Umatilla River; thence easterly along the course of Juniper Canyon to the head of its North Fork; thence north-easterly in a straight line to the confluence of the Tucannon and Snake Rivers; thence down the Snake River to its mouth; thence southwesterly in a straight line, to the present town of Horse Heaven, Washington; thence southeasterly in a straight line to the place of beginning.

B. Aboriginal Boundaries of the Cayuse Tribe.

Commencing at the mouth of Juniper Canyon on the south bank of the Columbia River; thence easterly and northeasterly, along the above described Walla Walla boundary, to the confluence of the Tucannon and Snake Rivers; thence up the Tucannon River to the town of Marengo, Washington; thence south, southwest to Langdon Lake; thence south, southeast to Mount Fanny; thence west to the mouth of Fly Creek on the Grande Ronde River; thence northwest to the headwaters of Willow Creek at Heppener, Oregon; thence north to the confluence of the North and South Forks of Butter Creek; thence down Butter Creek to its confluence with the Umatilla River; thence up the Umatilla River to Echo, Oregon; thence northeasterly to the place of beginning.

C. Aboriginal Boundaries of the Umatilla Tribe.

Commencing at the mouth of Willow Creek; thence north-easterly in a straight line to the town of Horse Heaven, Washington; thence southeasterly in a straight line to the mouth of Juniper Canyon on the south bank of the Columbia River; thence southwesterly in a straight line to Echo, Oregon; thence down the Umatilla River to the mouth of Butter Creek; thence up Butter Creek to the confluence of its north and south forks; thence southerly, in a straight line, to Heppener, Oregon; thence down Willow Creek to place of beginning.

21. The Commission finds that the effective date of the Treaty of June 9, 1855, by which the Umatilla, Cayuse, and Walla Walla Tribes, acting as "one nation," and party to said treaty, ceded their claims and rights of Indian title to the tracts of land as same are described in Finding 20, is March 8, 1859, namely, the date the treaty was ratified by the U. S. Senate; that said ratification date also is hereby found to be the effective date of the taking of all lands in the Territories of Washington and Oregon as same are described in above Finding 20.

The case will now proceed to a determination of the acreage involved, the value of the lands as of March 8, 1859, and the issue of whether the consideration paid was unconscionable, leaving to a further proceeding any other issues, including that of offsets, if any.

s/ EDGAR E. WITT
Chief Commissioner

s/ WM. M. HOLT
Associate Commissioner