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

Appearances:

Charles F. Luce, Donald C. Gormley, and Wilkinson, Cragun & Barker, Attorneys for Petitioner.

Walter A. Rochow, with whom was associated Mr. Assistant Attorney General, Perry W. Morton, Attorneys for Defendant.

OPINION OF THE COMMISSION

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

The petition in this case was filed by the Confederated Tribes of the Umatilla Indian Reservation, Oregon. Petitioner is an identifiable group of American Indians and includes descendants of the Umatilla, Cayuse, and Walla Walla tribes, parties to the Treaty of June 9, 1855 (12 Stat. 945; II Kapp. 694). The petitioner has adopted a constitution and by-laws, and is authorized by the Secretary of Interior to bring this action in a representative capacity on behalf of the Umatilla, Cayuse and Walla Walla Tribes.

Under the terms of the above mentioned treaty, the Umatilla, Cayuse, and Walla Walla Tribes and Bands of Indians ceded all of their right, title,

and claim to "the country claimed by them" within certain boundaries. The area ceded in the treaty is described in Finding 4. This treaty also set aside a tract of land within the external boundaries of the ceded area as a reservation for said Indians.

Petitioner denominates the claim for additional compensation for such ceded lands as "Claim One," excepting, of course, such area therefrom as was reserved to them for purposes of establishing a reservation.

In "Claim Four" petitioner alleges claim for compensation for certain additional lands outside the area of lands ceded in said treaty.

A stipulation was filed by the parties herein on December 8, 1952, that this Commission might order those parts of the petition enumerated "Claim One" and "Claim Four" consolidated for purposes of the trial, and that the issue of the petitioner"s "Original Indian title" to the lands therein involved, based upon alleged aboriginal posession, be separately tried and before other issues in connection with said claims. This Commission issued such an Order on December 10, 1952, substantially as set forth in the stipulation of the parties.

This case was consolidated with Docket No. 198, Confederated Tribes of Warm Springs, for purposes of hearing only by Order of this Commission issued November 20, 1953. Claims Two and Three were severed from this case and assigned Docket Nos. 264-A and 264-B, respectively, by order of this Commission issued January 15, 1959. The title issues in Claims One and Four came on for hearing before the Commission in March, 1958.

Petitioner alleges that Claim One is based both upon oboriginal Indian title and recognized title. Petitioner urges that " petitioner's title to the lands ceded in the Treaty of June 9, 1855, had been recognized by the United States of America." (Amended Pet., par. 6; Pet. Br., p. 75).

Defendant admits petitioner, Confederated Tribes of the Umatilla Indian Reservation, presently constitutes an identifiable group of American Indians and therefore has the right (legal capacity) to prosecute this action.

Defendant further admits petitioner is "the representative of all descendants of the Umatilla, Cayuse, and Walla Walla Indians who were members of the tribes, bands, or groups of Indians who were parties to the treaty with the United States under date of June 9, 1855, 12 Stat. 945; II Kapp. 694". (Def. Req. Fdg. I).

The foregoing admissions go to petitioner's legal and representative capacity, but do not admit that petitioner is the successor in interest.

Petitioner's present Constitution and By-laws appear to have been adopted by the adult voters of the Confederated Tribes of the Umatilla Indian Reservation, Oregon, on November 4, 1949, and approved by the Department of the Interior on December 7, 1949 (Tribal Const., p. 6), but such adoption was expressly not under the "Wheeler-Howard Act" (Art. III, Tribal Const.), and membership shall consist of enrollees on the "official roll" (Art. IV). It does not affirmatively appear in this record whether or not the 145 Paiutes who were listed on such reservation in the year 1945 (Report of House Subcommittee, H. Res. 66, p. 536, June 13, 1950) are part of such present membership of petitioner.

The preamble of the cession treaty, Treaty of June 9, 1855 (12 Stat. 945, II Kapp, 694), identified the Indian treaty parties as follows:

> *** the undersigned chiefs, head-men and delegates of the Walla-Walla, Cayuse, 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 in Oregon.

Petitioner asserts it is successor in interest of the rights herein claimed because:

a. At the March 1958 hearing, petitioner proved and defendant did not dispute, the political amalgamation of the Umatilla, Walla Walla and Cayuse in a single tribe constituting the presently suing entity.

b. The cession treaty recites the Umatilla, Walla Walla, and Cayuse "*** are to be regarded as one nation acting for and in behalf of their respective bands and tribes, they being duly authorized thereto; ***."

c. Defendant's allegation that petitioner "is not the successor in interest to all the aboriginal and historical tribes" which resided in and claimed land ceded by petitioner to defendant failed entirely for want of proff (Pet. Br. pp. 147-148).

The above recited portion of the treaty preamble did not purport to effect a permanent political merger into a single entity of the three historic tribes of Umatilla, Walla Walla, and Cayuse, or for any purpose other than "purpose of the treaty."

The presence of Paiute Indians residing on the Umatilla Reservation in 1945, at least, suggests the possibility that all of petitioner's members may not be descendants of said three historic tribes. It is not necessarily incumbent upon the defendant to disprove successorship. Any conclusions of petitioner's successorship in interest must be supported by substantial evidence tracing such presently identifiable group of American Indians to

the aboriginal land-using entity or entities, or to a merger or consolidation of tribes and bands before the treaty of cession, and that such merger be recognized in the treaty. (Confederated Salish & Kootenai v. U. S., 8 Ind. Cl. Comm. 40, 64-66)

The respective aboriginal tribes of Umatilla, Walla Walla, and Cayuse Indians were not politically amalgamated prior to the time of the treaty of cession. The treaty did not create a single entity for purposes other than those purposes of the treaty. Therefore, we think the situation of petitioner here is not unlike that of the petitioner in The Confederated Tribes of the Colville Reservation, et al v. U. S., 4 Ind. Cl. Comm. 151. The liability of the government is for each area of land exclusively occupied by each tribe represented by the petitioner confederation. Any judgment therefor must run to petitioner, but only for the benefit of the respective descendants of each tribe.

Other questions to be decided at this time are, as to Claim One, whether subject Indians held any compensable interest in the area ceded by said treaty (a) by such aboriginal possession as constituted Indian title, or (b) by "recognized title." As to Claim Four, the question is whether petitioner's aboriginal predecessors, the Umatilla and Cayuse Indians, had aboriginal Indian title to the lands in Oregon outside the ceded area, which lands are designated Parcels A, B, and C, on the map at page 96 of petitioner's brief, and date of taking same by the United States (Pet. Br., p. 146; Def. Br., p. 2).

In support of petitioner's allegations of "recognized title" to the ceded area for which compensation is sought in Claim One, our attention is directed to certain acts of Congress from 1834 down to the date of ratification of the cession treaty on March 8, 1859, by the U. S. Senate. In petitioner's Requested

Finding 39 is set forth a "Chronology of Relevant Laws and Acts of Congress" alleged to constitute a recognition by the United States that petitioner had valid title to all of the lands ceded in the Treaty of 1855. We have carefully examined petitioner's "Chronology of Relevant Laws and Acts of Congress." The acts of Congress cited by petitioner do relate, at least in part, to the protection of Indians in the enjoyment of the lands of their native habitat, that is, the prohibition of white settlements on "any lands belonging, secured, or granted by treaty with the United States to any Indian tribe," (4 Stat. 729, Sec. 11; Pet. Req. Fdg. 39); and "that nothing in this (Territorial) Act (of Oregon, 1848) shall be construed to impair the rights of person or property now pertaining to Indians in said Territory," (9 Stat. 323; Pet. Req. Fdg. 39). Similar provisions were contained in the Organic Act of the Congress establishing the Territory of Washington, 1853 (10 Stat. 172). In the Act of February 14, 1853, the Donation Claim Act was extended to certain lands west of the Cascade Mountains (10 Stat. 158), and in the Act of July 17, 1854, extending the preemption privilege to lands not claimed, entered or reserved under the Donation Claim Act (10 Stat. 305, Sec. 3; Pet. Ex. 1, p. 1105). The provisions of the Preemption Act of 1841 with its preemption privilege were extended to certain public lands where "Indian title had been extinguished." (5 Stat. 453, 455, Sec. 10: Pet. Ex. 129).

Thus, the Acts of Congress cited in Petitioner's Requested Finding 39, described as a "Chronology," treat upon a number of subjects, including the establishment of territorial governments in Oregon and Washington, surveys of public lands, preemption privileges, regulation of white settlements and relationships of white settlers with Indians and Indian tribes. In these legislative acts Congress sought to open up certain public lands for white

settlement, and incident thereto, the protection of Indians from theft, trespass or other encroachments upon their property by the white settlers. But we are unable to find the requisite express intention, or even an implied intention, of the Congress in said Acts to recognize title to any definable tract of land in any named band or tribe of Indians. (Tee-Hit-Ton Indians v. U. S., 348 U. S. 272, 279 (1955); Quapaw Tribe v. U. S., 1 Ind. Cl. Comm. 469, 479-481 (1951), aff'd. 128 C Cls. 45 (1954); Miami Tribe v. U. S., 5 Ind. Cl. Comm. 180, 204 (1957); Iowa Tribe v. U. S., 6 Ind. Cl. Comm. 464, 498 (1958).

The Treaty of June 9, 1855, expressly provided in Article 1 that "the above named bands of Indians (the Umatilla, Cayuse and Walla Walla) cede to the United States all their right, title and claim to all and every part of the country claimed by them within the following boundaries, ***" (12 Stat. 945; II Kapp. 694). The unmistakable import of this language was to extinguish Indian title. It did not affirm, grant, convey, acknowledge or recognize any title to these Indians; rather it took everything, their rights and claims of rights in said lands, from them, thereby extinguishing same, save and except the reservation lands set apart for the Indians, which is not a part of petitioner's Claim One and Claim Four.

Since the record does not support petitioner's claim of "recognized title" to the ceded area, Claim One, it is therefore necessary to consider whether Claim One is supported by petitioner's allegations of "Indian title" to same by reason of alleged aboriginal possession.

The first recorded white contacts with subject Indians, the Umatilla, Cayuse and Walla Walla, were made by the Lewis and Clark Expedition in 1805-1806 (Finding 12a). After their reports and in the next thirty year period are the reports of various fur traders of Astor's Fur Company, Pacific Fur

Company, Northwest Fur Company and Hudson's Bay Company. The cumulative evidence contained in all of these reports establishes little more than the presence of petitioner's antecedent tribes along the Columbia River and the Umatilla, Walla Walla Rivers, Grande Ronde and Powder River Valleys, and the Blue Mountains. (See Findings 12b, W. P Hunt; 12c, David Thompson; 12d, Alexander Ross; 12e Robert Stuart; 12f, Sir George Simpson; 12g, Nathaniel Wyeth).

These scant reports by members of the fur trading enterprises were followed by reports from missionaries, soldiers, explorers, and government agents during the twenty year period preceding the cession treaty of 1855. Captain Benjamin Bonneville reported in 1834 the prairies of the Grand Ronde "are resorted to by small bands of Skyuses" (Finding 12h). Missionary Reverend Samuel Parker in 1835 reported more than two thousand Cayuses west of the Nez Perces and included the fertile Grans Ronde in their country and that about five hundred Walla Wallas were south of the Columbia and their river (Finding 12i). Missionary Marcus Whitman established Whitman Mission in the Walla Walla Valley among the Cayusé and Walla Walla Indians in 1836. The same year his associate, Missionary H. H. Spalding established Spalding's Mission, situated in Clearwater River Valley among the Nez Perce Indians. Spalding referred to the "Grand Round" as "in the Chuyoos country" (Finding 12j)

Philologist Horatio Hale shows in his ethnographical map (1841) that the Snake Indians were in the Powder River Valley and the "Walla Walla or Cayuse" north of the Grande Ronde River (Finding 12k; Pet. Ex. 32). However, Hale's map appears to be general in nature and not of sufficient detail to base a finding of any boundary.

Two years after Hale's 1841 map the journal of the John C. Fremont Expedition (1843) mentions a Cayuse hunting party at the mouth of the Burnt River returning from a buffalo hunt. Their position was apparently more than eighty miles southwest from the nearest limits of their territory as indicated by the Waiilatpu (or Cayuse) boundary shown on Hale's map, a line drawn north of the Grande Ronde River.

Charles Preuss, cartographer with the Fremont Expedition, drew a map of Oregon and Upper California (Pet. Ex. 23) wherein Preuss shows the Cayuse west of the Burnt River area, rather than north, as indicated by Hale's map (Finding 12L).

Joel Palmer's journal of his trip over the Oregon Trail, year 1845, mentioned a visit from the Caaguas (Cayuse) Chief "Aliquot" in the Powder River Valley. Palmer's journal further described the Cayuse as inhabiting "Grand Ronde, Blue Mountains and bordering on the north to the Walla Walla River and its tributaries."

Governor Isaac I. Stevens' distribution map shows the Umatillas as part of the Walla Walla tribe. Stevens had conducted the Northern Pacific Railroad Exploration in 1853-1854 from St. Paul, Minnesota to Vancouver, Washington, and was familiar with the Columbia River area prior to becoming the Governor of the Territory of Washington (Finding 12o). George Gibbs, ethnologist, who accompained the Northern Pacific Exploration, described the Walla Wallas as a number of bands living on the south side of the Columbia and camping in winter on the north side of the river. An early record of the location of "Utillas" (Umatillas) is mentioned as the "Utila River" in Dr. Henry Schoolcraft's Tables of Indian population shown in his 1855 publication "Indian Tribes of the United States." Also Umatillas were of course mentioned as a party to the treaty cession but

without delineation of any separate tribal boundaries set out in the cession treaty. (Findings 4 and 12p).

Edward G. Swindell of the Bureau of Indian Affairs in 1941 undertook a survey or study of the "usual and accustomed fishing stations" secured to the Indian parties by terms of the Treaty of June 9, 1855. The Swindell report included also camping sites, hunting, and other subsistence areas regularly used by the Umatilla, Cayuse, and Walla Walla Indians in aboriginal times. (Finding 13f).

Defendant delimits the aboriginal lands of petitioner's antecedents in its brief (p. 66) and urges that "as to Umatilla Indians the evidence shows that the only lands exclusively used and occupied by them were lands within the immediate vicinity of their villages on both shores of the Columbia River from above the mouth of Willow Creek upstream to the mouth of the Umatilla River and along the lower course of the Umatilla River about as far upstream as Echo, Oregon."

As to the Walla Walla Indians, the defendant contends "the evidence shows the only lands exclusively used and occupied by them were lands in the immediate vicinity of their villages along the Columbia and the Walla Walla rivers at or near the mouth of the Walla Walla." (Defendant's Requested Finding 16).

As to the Cayuse, defendant urges "the only lands exclusively used and occupied by them were lands along the rivers between the Blue Mountains in northeastern Oregon and southeastern Washington from Butter Creek on the west to about where Walla Walla, Washington, now stands" and that all of the aforesaid villages are clearly shown on Suphan's maps *Def. Ex. 18-A and 18-C).

Thus, the issue of Indian title in Claim One is primarily made only as to

non-village areas Outside of the village areas defendant contends the evicence is insufficient to prove exclusive use and occupancy because (a) petitioner had no existence as an entity prior to the cession treaty, (b) therefore, petitioner must prove the separate boundaries of each tribe, and (c) the testimony of Dr. Verne F. Ray and Mr. Robert Suphan is contradictory and that Dr. Ray's "permissive use" view is insupportable. Dr. Ray explains the non-village areas were occupied and used by permissive use granted by the Cayuse in the eastern portion of Claims One and Four to the other two tribes, and the western portion by permissive use granted by the Umatilla; of the north central portions permissive use was granted by the Walla Wallas to the Cayuse and Umatillas. (d) To the contrary, Mr. Suphan defines these non-village areas to have been free use areas "to any caring to exploit them;" (e) therefore, none of such land was in fact "exclusively used and occupied" by any one tribe in the manner essential to establish Indian title (Def. Br., pp. 67-71).

On the law of "exclusive use" defendant cites the holding of this Commission in the Colville case (DKT. 181, Fdg. 22, 4 Ind. Cl. Comm., at p. 167) for the proposition that "each and every tribe, band or group of Indians should be required to show its separate boundaries, or specific areas, of aboriginal use and occupancy." And, "failure or inability so to do does not justify a judgment by this Commission against defendant based upon probability, conjecture or speculation of the area they may have occupied." (Def. Br., p 70). Moreover, defendant contends Dr. Ray's permissive use explanation is not corroborated elsewhere in the documentary evidence and defendant urges it must be rejected by this Commission.

Dr. Leslie Spier, a well known authority on the Indians of the Northwest, in 1936 succinctly described the evidentiary side of the problem confronted in this case. Spier, with specific reference to the Sahaptin Indians, of which petitioner's predecessors were a part, stated:

> *** For the Sahaptin region (the southeastern quarter) we have received next to no information from recent field workers.
>
> While it is usually possible to set down roughly the general locus of a tribe, it is by no means easy to fix the precise boundaries of its territory. In fact, it is dountful if a single one of the Washington tribes thought in terms of boundaries. Our information usually includes some statement of their well settled sites, to which they returned year after year, and in some instances data on the areas they normally traversed in seasonal wandering. We have two alternatives: to map only the permanent sites or to assign boundaries. I have preferred the latter, though fully aware the procedure is not wholly valid. Except where explicit information on boundaries were on record, I have been obliged to assume that the boundaries followed the divides between the drainage systems.
> (Def. Ex. 62, p. 6).

It has been established by the great weight of the evidence that the aboriginal bands of Umatilla, Cayuse, and Walla Walla Indians came out from their separate winter villages in the springtime and joined together in subsistence gathering groups almost indiscriminately as among tribal members of these three tribes and proceeded to move about over wide expanses of land to fish, hunt, dig roots, gather berries, and graze their herds of horses. Only in winter did they return to their separate villages. (Finding 10). There were wide expanses of land within the ceded area which were necessarily used and occupied in Indian fashion by said bands traveling over it in a seasonal pattern more or less together. (See Suphan's map of village and Subsistence Areas, Def. Ex. 18A).

The main problems here in determining the aboriginal boundaries of non-village areas are the proper application of the well established rule in claims of Indian title that such aboriginal use and occupancy from which Indian title arises must be "exclusive" in nature. (See Defendant's Req. Fdgs. 14 through 20). The guiding precept in deciding this issue was most recently stated by the Court of Claims in Upper Chehalis, et al v. United States, 140 C. Cls. 192, 196 (1957). The opinion stated that it must be shown that the occupant had the possession to the exclusion of other tribes, but the opinion cited the decisions of this Commission in the Nooksack case, 1 Ind. Cl. Comm. 333, and 3 Ind. Cl. Comm. 479 and this Commission's decision in the Muckleshoot case, 2 Ind. Cl. Comm. 424, and 3 Ind. Cl. Comm. 658, 667, as a sound and reasonable approach to the problems of determining aboriginal boundary lines of exclusive use areas of village tribes. The instant claim is based on alleged Indian title of Indians aboriginally occupying villages situated on contiguous fishing streams, of identical or very similar culture, language, ethnic classification, and political and economic history. This is a fact situation similar to the Muckleshoot and Nooksack of village Indians, except here the government took Indian lands by a treaty of cession and from all occupants or claimants as "one nation "

The rule of "exclusive use and occupancy" must be reasonably applied. The term "exclusive" is usually defined as excluding or having the power to exclude, limiting or limited to possession, control, or use by a single individual or organization, and as applied to use and occupancy of land by aboriginal Indians involves considerations of the "land-using entity."

Exogamy between all of the Umatilla, Cayuse and Walla Walla villages

was a common practice. These intermarriages led to a natural tendency to search for food together and to share with each other (Finding 10). The Cayuse had almost entirely abandoned their own dialect of the Sahaptin language by the 1840's and spoke Walla Walla. The Umatilla were often confused for Walla Walla Indians because of the difficulty in determining any linguistic difference between them (Finding 11). The three tribes each had the same plateau culture, each spoke a common language and were treated with by the United States as a single entity in the cession treaty of 1855, and were placed upon the same reservation under the provisions of said treaty. Each of the tribes was assigned in the early years on the reservation separate portions thereof (Pet. Ex. 487, pp. 8-9).

In the outlying subsistence areas of fishing stations, grazing lands, hunting grounds, berry picking and root gathering spots, their Indian use of these areas was shared by such tribe with members of one or both of the other tribes. Thus, the aboriginal tribes whose descendants are represented by petitioner, outside of their respective village areas, used the contiguous and surrounding areas jointly and in common under a system of permissive use. (Ray, Tr. 631). This being true, it becomes a problem to determine separate boundaries of the three tribes as to areas they exclusively used and occupied as separate tribes. The government treated with them as an entity of "one nation" in the taking of their rights and claims to such lands (Preamble, Treaty of June 9, 1855; 12 Stat. 945, II Kapp. 694) because Governor Stevens and Superintendent Palmer recognized these close relationships to each other and to their subsistence area lands, but did not effect a permanent merger of them in treaty times.

The defendant's expert, Mr. Robert Suphan, has indicated the subsistence

areas and village locations of the Umatilla, Cayuse and Walla Walla Indians by color symbols on his map (Def. Ex. 18-A). These symbols cover almost all of the area ceded to the United States by petitioner's ancestors as far as lies within the present State of Oregon but only a relatively small part of the ceded area north of the Oregon-Washington boundary line is shown to have been used and occupied by petitioner's antecedent tribes on said map.

The Nez Perce in Docket 175-A claim a small overlap within the eastern portion of the cession boundary, Petitioner's Claim One. In a memoranda response filed herein on September 14, 1959, this overlap question with the Nez Perce was herein raised.

Consistent with our findings in the Nez Perce case, Docket 175-A, we have herein defined this boundary, which varies from the cession boundary in it our findings fix the boundary as intersecting the Grande Ronde River near the present townsite of Elgin, Oregon.

The early reports, not only of this area but extending northward to the Columbia River, clearly indicate the Northern Paiute (Snake) Indians roamed over this region in the early nineteenth century. Lewis and Clark reported a total absence of Sahaptin Indians on the south bank of the Columbia River from the Snake River junction westward. A Walla Walla Chief perhaps reflected the Sahaptin attitude when he advised David Thompson in 1811 that his people would soon drive "the Straw Tent Tribes" back over the Blue Mountains (see Def. Br., pp. 19-20). It is admitted by defendant that "By 1830 or 1840, however, these Sahaptins had moved into the valleys of the various forks of the John Day River when the subsistence areas of that region were being utilized at least by the Umatillas and Cayuse." (Def. Req. Fdg. 22, bottom of page 20; so Def. Req. Fdgs. 50, 51, 52, and 53).

Parcel "B" was not included in the cession treaty of June 9, 1855, with petitioner's antecedents but was included first in the cession treaty of June 25, 1855, with the Confederated Tribes of Middle Oregon (12 Stat. 963, II Kapp. 714), and was again included some ten years later in the cession treaty of August 12, 1865, with the Woll-pah-pe Tribe of Snake Indians (14 Stat. 683, II Kapp. 876). The date of the latter treaty was several years after the removal of many Oregon Indians onto reservations, thus changing their aboriginal habitat to a considerable extent. (See Treaty with Middle Oregon Tribes, 1865, 14 Stat. 751, II Kapp. 908).

The evidence that petitioner's aboriginal antecendents exclusively used Parcel "A", the area west of Willow Creek (north) and south of the Columbia River, is insufficient to establish exclusive aboriginal use and occupancy of same (Finding 16). Likewise, the evidence is insufficient to establish exclusive aboriginal use and occupancy both of Parcel "B", the area south of the Blue Mountains along the Upper John Day River, and of Parcel "C:, the area of Willow Creek (south) and Lower Burnt River (see Findings 17 and 18).

In considering this problem of determining the southern limit of each historic Sahaptin Tribe, here represented by petitioner, it could not be found from the record of evidence that Umatilla and Cayuse Indians maintained "exclusive use and occupancy" of the broad expanse of lands south of the Blue Mountains. The early reports frequently mentioned the presence of "Sho-sho-nees" along the forks of the Upper John Day River. Moreover, all of the Sahaptin permanent villages appear to have been situated to the north of the Blue Mountains along the region of the Columbia Basin. The southernmost limits of the Cayuse bands are repeatedly described in pre-treaty reports as extending "to the foot of the Blue Mountains."

Dr. Verne F. Ray, petitioner's expert, testified Northern Paiute wintered in the near vicinity of the Upper John Day River, near the south fork (Tr. 628). Ray's publications describe the Paiute northern boundary as encompassing this region (Pet. Exs. 59 and 61). The frequency of the use of this area by the "Sho-sho-nees," the "Straw Tent Tribes," or the "Snake," Indians cannot be explained, in our opinion, merely as "raids" of Cayuse or Umatilla lands by Paiutes. We conclude this area was non-exclusively used by Paiute and Sahaptin Indians (Fdgs. 16 through 19, inclusive).

In conclusion, the Commission is of the opinion that as of the date of the ratification of the Treary of June 9, 1855, namely, March 8, 1859, the three historic tribes represented here by petitioner held Indian title only to the lands described in Finding 20 as occupied and used by each tribe.

The case will now proceed to the trial of the questions of consideration paid the respective tribes represented by petitioner therefor, acreage, value of said lands as of the date of taking of same by defendant, together with the amount of offsets, if any, to which defendant may be entitled under the Indian Claims Commission Act.

Edgar E. Witt
Chief Commissioner

Concurring:

Wm M. Holt
Associate Commissioner

Commissioner Watkins took no part in the consideration and decision of this case.