

BEFORE THE INDIAN CLAIMS COMMISSION

THE SNOQUALMIE TRIBE OF INDIANS,)
 on its own behalf, and on relation)
 of the SKYKOMISH TRIBE OF INDIANS,)
)
 Petitioner,)
)
 v.) Docket No. 93
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Decided: June 30, 1960

Appearances:

Donald C. Gormley and Charles A. Hobbs,
of Wilkinson, Cragun and Barker,
Attorneys for Petitioner

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

OPINION OF THE COMMISSION

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

The petition, as amended, presents the claim of the Snoqualmie Tribe of Indians and claim of the Skykomish Tribe, the latter alleged also in the alternative as a constituent extended village tribe of the Snoqualmie, or as a separate tribe. Petitioner is an identifiable group of American Indians within the meaning of the Indian Claims Commission Act (60 Stat. 1049). Said Indians were in aboriginal times two extended independent villages, the Snoqualmie and the Skykomish (Findings 1 and 2).

Pursuant to instructions from the government, Territorial Governor Isaac I. Stevens entered into a treaty at Point Elliott with some twenty-two

tribes and bands of Indians at Point Elliott for the purpose of extinguishing claims of Indian title of said Indians to certain described lands west of the Cascades in contemplation of releasing the lands for white settlement.

Petitioner contends that the United States in the Treaty of Point Elliott of January 22, 1855 (12 Stat. 927, II Kapp. 669) secured a cession of lands to which petitioner's alleged predecessors in interest held original Indian title, and for an unconscionable consideration, for which relief is prayed under the provisions of Section 2 of the Indian Claims Commission Act.

By the terms of this treaty of cession some twenty-two or more tribes and bands of Indians ceded to the United States "all of their right, title and interest" to a large area of land. No interior boundaries within the ceded tract are set out in the treaty to describe separate or specific boundaries of any of such groups of Indians. Petitioner's claim is based upon its alleged Indian title to a specified portion of such ceded lands, which comprised generally the drainage systems of the Snoqualmie and Skykomish Rivers in what is now northwestern Washington (Findings 3 and 4).

The petitioner originally filed its petition herein as "The Snoqualmie Tribe of Indians." By leave of this Commission, and over objections of the defendant, this Commission allowed petitioner to amend its allegations of identity in the alternative as "the Snoqualmie and Skykomish Tribes, or the Snoqualmie Tribe of Indians only," (Amended Petition filed October 17, 1958).

The defendant contends "counsel for petitioners have approved contracts to represent only the 'Skagit Tribe' and the 'Snoqualmie Tribe'." Therefore only these two if they met other requirements of the law, could be proper party petitioners" (Def. Req. Fdg. 1).

In effect, defendant questions again this Commission's authority to permit this petitioner to include a claim of the Skykomish Tribe in its amended petition filed herein October 17, 1958.

The original petition, paragraph 4, filed herein on January 29, 1951, sufficiently and timely placed defendant upon notice that the subject matter of this claim is the land cession of the treaty of January 22, 1855, of which "petitioner and members of petitioner tribe held, occupied, possessed and owned * * * from time immemorial * * *."

The fact that Skykomish Indians held or owned lands that were not included "around the Snoqualmie River," and the further fact that we have found the Skykomish extended village was a separate land-using entity, although most closely associated with the Snoqualmie Tribe, does not preclude this petitioner from asserting such claims of the Skykomish Indians in a representative capacity and notwithstanding petitioner's failure to prove that it is the successor in interest of the Skykomish Tribe, or even the successor in interest of the Snoqualmie Tribe (Finding 9-F). In other words it is within the jurisdiction of this Commission to hear such claim whether or not the identifiable group upon whose behalf such claim is presented was or was not the land-using entity in aboriginal times. This Commission must require more precise proof on the merits of a claim than upon the jurisdictional issue of the petitioner's capacity to bring suit, and has been careful to point out that the presently existing identi-

fiable group does not necessarily become the successor in interest to its constituent units. Also proof is necessary to show the present existence of descendants of the tribe, band or group for which claim is made.

(The Confederated Salish and Kootenai Tribes of the Flathead Reservation. Montana v. U.S., 8 Ind. Cl. Com. 40, 64; Confederated Tribes of the Colville Reservation v. U. S., 4 Ind. Cl. Com. 151, 193; Peoria Tribe of Oklahoma v. U. S., 4 Ind. Cl. Com. 223, 248).

Section 10 of the Indian Claims Commission Act (§10, 60 Stat. 1051; 25 U. S. C. 70i) provides:

Any claim within the provisions of this chapter may be presented to the Commission by any member of an Indian tribe, band, or other identifiable group of Indians as the representative of all its members; but whenever any tribal organization exists, recognized by the Secretary of the Interior as having authority to represent such tribe, band or group, such organization shall be accorded the exclusive privilege of representing such Indians * * *

In Finding 16 we find there was no proof of identity of any living descendants of the aboriginal Skykomish Indians. The necessity for this proof has been discussed by this Commissioner in prior cases cited above.

Petitioner apparently proceeds on a theory that the Skykomish were a sub-group of the Snoqualmie and therefore proof of the present existence of the one included the other. It is true that Pat-kanam dominated (and was Chief over) the Snohomish, the Snoqualmie, and the Skykomish, but the extension of his powers, recognized by defendant's treaty agents did not constitute a merger of these land-using entities until after their respective Indian titles were extinguished by terms of the Treaty of Point Elliott. Petitioner cites Swanton's work as contrary authority, i. e., the Skykomish were a sub-group of the Snoqualmie, but Swanton

defines, as do earlier authorities, the separate aboriginal location of each tribe.

The weight of the evidence clearly establishes that said tribes were separate land-using entities and, in the absence of proof of the existence of present day descendants of the aboriginal Skykomish entity, claim for such entity must fail (Finding 16). The Skykomish were closely associated with the Snoqualmie (Finding 9) and there are inferences both of early and modern writers that these Indians constituted one political entity; however, the weight of the evidence shows they were each separate land-using entities.

In an earlier case this Commission noted that it is "difficult to ascertain from the historical and ethnological material of record whether the Skykomish should be considered a part of the Snohomish" (The Snohomish Tribe v. U.S., 4 Ind. Cl. Com. 549, 566 (1956)), and it was decided that the Skykomish were not a part of the Snohomish. Upon the record of evidence in this case we have affirmatively found the Skykomish were a separate land-using entity (Finding 9).

Defendant alleges (Answer, par. 2) that petitioner's claim is barred by the decision of the Court of Claims in Duwamish, et al v. United States, 79 C. Cls. 530 (Cert. den. 295, U. S. 755). The claims presented in the Duwamish case were limited to those claims "growing out of said treaties" (Jurisdictional Act, 43 Stat. 886) and the instant claim is presented "under authority of the Indian Claims Commission Act, approved August 13, 1946 (60 Stat. 1049; 25 U.S.C.A. 70)" (Amended Pet., par. 2) upon claim of original Indian title (par. 4) and the taking of such lands against

standards of equity and conscience and for an unconscionable consideration (Amend. Pet., par. 6).

As in previous decisions too numerous to cite, this Commission holds the 1934 Duwamish decision was not res adjudicata of claims presented under the authority of the Indian Claims Commission Act. Defendant's said plea of res adjudicata is denied and overruled.

In determining the aboriginal boundaries of the lands here claimed, this Commission has considered the whole record, the various fact issues of identity, language, village location, tribal organization, subsistence methods, exclusive use and occupancy evidence. The fragmentary nature of the evidence of these Indians in treaty times, no doubt caused by their remote location, as well as other factors, renders it difficult to determine their boundaries.

The Snoqualmie and also the Skykomish ranged over a wide expanse of territory from the crest of the Cascades to all of the bays and inlets along Whidbey Island and the Puget Sound. The central problem in evaluating the evidence is to determine the areas of land upon which the land-using entity exercised exclusive use and occupancy.

The 1855 population of the Snoqualmie extended village and in treaty times was 348 Indians and the Skykomish extended village numbered about 450 (Finding 12).

The location of the extended winter village of the Snoqualmie Tribe extended from the vicinity of the mouth of their river to North Bend (Finding 2).

The location of the extended winter village of the Skykomish Tribe extended along their river from near its mouth to about the present site

of Skykomish, Washington. An element of this extended village on Saltan River was called Stakta'ledjabsh and another element below Goldbar was sometimes distinguished as "Skykomish". (Swanton, Indian Tribes of N.A.); however, these elements appear to be all of the one extended group, the Skykomish village (Finding 2). Because the evidence is insufficient to trace the Skykomish land-using entity to living descendants, it is concluded the United States is not shown to be liable for any taking of lands described in Finding 14-b, the Skykomish aboriginal tract (Finding 16).

The means of obtaining their subsistence of the two aboriginal extended villages was essentially the same, by fishing, gathering and hunting.

The extent of the dependence of the Snoqualmie Tribe and the Skykomish Tribe upon hunting as a means of subsistence is a contested fact issue in this case. The Snoqualmie aboriginal economy was not unlike other interior tribes of the Puget Sound region, that is, they depended primarily upon marine life and root and berry gathering for subsistence. However, Gibbs and other early authorities described the Snoqualmie as among the best hunters of the Coast Salish Tribes. Petitioner contends that seasonal scarcity of fish and other foodstuff along the banks of the river, their native habitat, stimulated hunting activities in the mountains as an essential means of survival. Defendant insists that food was everywhere abundant and that plentiful game came down to the prairies from the mountains to escape the cold of winter and that hunting was limited to the near proximity of the river. We have concluded that hunting was not

limited merely to the banks of the river but also the high mountain areas were shared by Indians east of the Cascade passes (Finding 10, 11 and 14).

In conclusion the Commission is of the opinion that as of the date of the ratification of the Point Elliott Treaty of January 22, 1855, to-wit, March 8, 1859, the Snoqualmie Tribe held Indian title to the land described in Finding 14-A, and The Skykomish Tribe held Indian title to the land described in Finding 14-B but for the reasons mentioned in the beginning of this opinion and in Finding 16, et al., no judgment can issue against the United States for the loss of lands described in Finding 14-B.

Any rights which the Snoqualmie Indians or their ancestors may have retained in the land described in Paragraph A of Finding 14, or may have acquired in other lands in consideration of the taking of same by defendant, may be made the subject of inquiry at the further hearing respecting the consideration paid to the Snoqualmie Tribe or their predecessors in interest, and of the value of said lands as of the effective date of the treaty, March 8, 1859.

s/ EDGAR E. WITT
Chief Commissioner

s/ WM. M. HOLT
Associate Commissioner

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