

BEFORE THE INDIAN CLAIMS COMMISSION

THE SPOKANE TRIBE OF INDIANS,)
 suing on its own behalf and on)
 behalf of THE UPPER, MIDDLE AND)
 LOWER BANDS OF SPOKANE INDIANS)
 or THE UPPER SPOKANE, MIDDLE)
 SPOKANE, or LOWER SPOKANE BAND)
 OF INDIANS, or any one or two)
 of them alternatively,)
)
 Petitioner,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 331

FINDINGS OF FACT

1. Petitioner is a tribal organization recognized by the Secretary of the Interior. Its petition was timely filed with this Commission pursuant to authority of the Indian Claims Commission Act of 1946. As amended, the petition states a claim for additional compensation for land ceded to the United States by agreement of March 18, 1887, ratified July 13, 1892 (27 Stat. 120, 139, II Kapp. 446, 449, 453-4). An alternative claim is presented for damages as the result of duress and unfair and dishonorable dealings on part of defendant in obtaining this cession. By stipulation of the parties hereto the issue presently for determination is that of original Indian title, which necessarily includes that of identity of the land using entity or entities by which such title, if any, was held.
2. The area to which petitioner asserts its claim of original

title is located in northeastern Washington. It includes a small portion of those tracts which this Commission in Docket No. 181, 4 Ind. Clms. Comm. 151, 167, found was held by the Colville Tribe of Indians under original title and which this Commission in its Docket No. 81, 4 Ind. Clms. Comm. 1, 11, found was held under original title by the Coeur d'Alene Tribe of Indians, including what is known as Rathdrum Prairie. Small portions of the area claimed by petitioner are also claimed by the Yakima Tribe of Indians (Docket No. 161), the Moses Band of Columbia Indians (Docket No. 224), and the Palus Tribe of Indians (Docket No. 222), in other dockets presently pending before this Commission.

3. When the United States extended sovereignty over northeastern Washington about the middle of the 19th century, the Spokane Indians were a land-using tribal entity, comprised of three bands known as the Upper, Middle and Lower Bands of Spokane Indians. Most of the descendants of the Spokane Indians living between 1855 and 1887 now reside upon the Spokane Indian Reservation in Stevens County, Washington, and are members of petitioner organization. Substantial numbers of them also reside upon the Colville Indian Reservation in Washington and the Coeur d'Alene Indian Reservation in Idaho. Petitioner is entitled to institute this action in a representative capacity on behalf of all such survivors or descendants of the membership of the Spokane Tribe as it existed during the period beginning 1855 to and including March 18, 1887.

4. It is estimated that the Spokane Tribe numbered 1,400 souls in 1780. By 1850 smallpox and other diseases had reduced that number to around 500. There were 716 Spokane Indians in 1870, 685 in 1883, 901 in 1877, and 769 in 1905.

5. British and American trappers were the first white men to visit the claimed area. The region was traversed by the United States Naval Expedition under Commander Charles Wilkes during 1841, and sovereignty of the United States was acknowledged over it by Great Britain in the Treaty of June 15, 1846. It was included within Oregon Territory as that Territory was established August 14, 1848, and within the limits of Washington Territory when it was established March 2, 1853, with Isaac Stevens the first Governor. Isaac Stevens led a survey party through the area in 1853 and returned during 1855 as a treaty commissioner authorized to extinguish Indian title to land east of the Cascades.

6. Much friction developed between the Indians and the whites in both Oregon and Washington Territories when the Donation Act of September 27, 1850, was generally interpreted as opening all land within those Territories to settlement. Congress authorized extinguishment of Indian title to all land east of the Cascades in 1855. Governor Stevens as one of the designated treaty commissioners procured a series of treaties of cession with Indians to the south and east of the Spokanes and met with the Spokane Tribe in council on Spokane River during December, 1855. It was there agreed that he would return the following spring to discuss a cession of their land with them, an Indian uprising having made his immediate return to the capital expedient. Stevens never fulfilled this promise. Subsequently numerous councils were held with the Spokane Tribe but no cession was procured from that tribe until March 18, 1887.

7. With the discovery of gold near Colville, Washington, an influx of prospectors and other whites traveling through the Spokane country

followed. The Spokanes felt neglected by defendant in that no treaty was ever negotiated with them; they were envious of annuities paid to nearby treaty tribes and irritated by traffic through their country. During 1858 one Colonel E. J. Steptoe was directed to investigate two murders at Colville, Washington. The later writings of Benjamin F. Manring who was with Steptoe's troops, supported in part by official documents, disclose that while Steptoe's troops were encamped on Palouse River the Spokanes notified him they would resist the armed forces entering their country, and again he was told his forces might not cross the Palouse or Spokane rivers. On proceeding northward, the forces were attacked and defeated on Pine Creek near the present site of Steptoe, Washington, at Steptoe's Bluff, by united Spokane, Palus (Palouse) and Coeur d'Alene Indians. A few weeks later Colonel George Wright led a retaliatory force into this country and on September 24, 1858, entered into a treaty with the Spokane Tribe signed by 36 of their leaders, providing for cessation of all hostilities and granting whites passage through Spokane country, the specific area not being defined. The treaty specified it also applied to the Palouse Nation, but it was never presented to Congress for ratification. There is no other record of the Spokane Tribe or its separate bands ever bearing arms against the United States.

8. Commencing during 1859 there are numerous official reports that the Spokane Indians desired to treat for the sale of their land and that famine and disease had greatly reduced their number. On April 9, 1872, a reservation for the "Methow, Okanagon, San Poel, Lake, Colville, Calispel, Spokane, Couer d'Alene and other scattering bands of Indians in Washington" as well as such other Indians as the Department of Interior might wish to locate thereto, was by Executive Order created for the non-

treaty Indians of northeastern Washington. This reservation extended from the Spokane and Little Spokane Rivers north to the 49th parallel, and from the Columbia River eastward to the Pend d'Oreille River and the 117th meridian. The Order was revoked July 2, 1872, and in lieu thereof a reservation encompassing all that land between the Columbia and Okanogan Rivers south of the 49th parallel was set aside for the same Indians. This forms the present Colville Indian Reservation.

9. On March 3, 1875 (18 Stat. 402, 420), Congress provided that individual Indians who renounced their tribal relations and became citizens could acquire patents to tracts of lands occupied by them. The Spokane Indians refused to sever their tribal relations, or to leave their own lands to reside upon the Colville Indian Reservation. They continued to express a desire to remain in their own country and to retain possession of their fisheries along the Spokane River.

10. Thereafter the Indians residing upon the Colville Reservation sought to have annexed thereto a six-mile wide strip of land extending north and south along the east bank of the Columbia River from the Spokane River to the 49th parallel.

(a) On August 18, 1877, at a council held by Indian Inspector E. C. Watkins, General Frank Wheaton and Captain M. C. Wilkinson on behalf of the United States with the Coeur d'Alene, Spokane, Pend d'Oreille, Chewelah, Okanogan, Colville and Palus (Palouse) Indians, the Colville Reservation Indians waived their request for annexation of any land south of Numchin Creek. An instrument drafted for signature by Chiefs and headmen of the Spokane Tribe of Indians, agreeing on behalf of their people to accept and by November 1, 1877, go upon a tract of land north of Spokane River, south of a line extending from the mouth of Numchin Creek

of the Columbia River east to the source of Chamokane Creek was then executed by six Indians who are each identified as chiefs or headmen of the Lower Spokane Band. By separate instrument the Palus (Palouse) Indians on said date also agreed to move upon this Spokane Reservation or upon the Coeur d'Alene Indian Reservation by November 1, 1877. Neither of these treaties contained a cession of land, called for payment of consideration by the United States, or granted any future benefits or privileges to the signatory tribes, nor were they ever presented to Congress for ratification.

(b) In his official report concerning the treaty council of 1877, Inspector E. C. Watkins said the described area was recommended as a reservation for "the Spokan, Palus, and the other roaming Indians of the vicinity;" that it was entirely satisfactory to the Lower Spokane and "many of the upland and the Palus Indians;" that his arrangements took care of the greater portion of the Spokane Tribe, a few having expressed a preference for the Coeur d'Alene reservation and told to go there, a few wanting to retain their farms and become citizens and having been told they might do so, and "a few of Geary's band" having been told to remain where they resided since they neither wished to become citizens or to leave their farms without pay for their improvements.

(c) By Field Order No. 8 on September 3, 1880, the Army directed that all that part of the tract described above lying south of a line drawn east from the Columbia River to a point on Chamokane Creek eight miles north of the Spokane River should be protected from white settlement in anticipation of an Indian Reservation being established in that area. On January 18, 1881, an Executive Order issued setting aside as a reservation for the Spokane Indians all of the above tract

which is south of the 48th parallel.

11. Minutes of the 1877 council, the treaty of August 18, 1877, and the report of Inspector E. C. Watkins disclose that the treaty of August 18, 1877, was intended to bind the Spokane Tribe. These instruments and the Executive Order of January 18, 1881, disclose that the reservation established by that Order was for the use and occupancy of the Spokane Tribe. Throughout the 1877 council the Spokane Tribe was represented by its head or principal chief, Garry, and by lesser chiefs.

12. Most of the Lower Spokane Band resided within the area defined as a reservation by the Executive Order of January 18, 1881. Few members, if any, of the Upper or Middle Bands of Spokanes moved upon the reservation prior to 1888. Government officials referred to the reservation as an addition to the Colville Reservation, as the Spokane Reservation and later as the Lower Spokane Reservation. The Spokane Indians called it "Lot's (Whistlepossum's) Reservation," he being the chief of the Lower Spokane Band.

13. After the 1877 council white settlers gradually crowded the Spokane Indians away from their fisheries and settled upon their hunting and food gathering grounds outside the Spokane reservation. The general condition of the Spokanes became sadly deteriorated. Numerous reports were made to and by government officials concerning the need of aid for the Spokanes and about their unextinguished claim to land on and about the Spokane River.

On August 4, 1852, 10 Stat. 28, Congress authorized the granting of free right of ways across the public domain to facilitate construction of rail and plank roads. March 3, 1855, 10 Stat. 683, this Act was

extended to the public domain within the Territories. By 1884 at least one such grant had been made through the Spokane country for construction of a railroad. On May 29, 1858, 10 Stat. 293, existing laws for the survey and disposal of the public land in the Territories of Washington and Oregon west of the Cascade Mountains were extended to public land east of those mountains within those Territories. On August 15, 1876, 19 Stat. 207, Congress created the Whitman Land District which encompassed all that part of the present state of Washington north of Snake River and east of the Columbia Guide Meridian and included the claimed area.

14. The Spokane Indians did not oppose construction of the railroad nor did they attempt to prevent the survey of land within the Whitman Land District. Missionaries had early introduced agriculture among them and by 1880 many had small crudely fenced and cultivated fields. Defendant's agents repeatedly urged that they file upon individual tracts under the Act of February 8, 1887, 24 Stat. 388, which provided that every Indian not residing upon a reservation, or whose tribe had no reservation by treaty, Act of Congress or Executive Order, make settlement upon surveyed or unsurveyed, unoccupied public land for allotment purposes, or that they become citizens and file under the general homestead laws. Some few Indians did move upon separate tracts with intent of acquiring title, but most of them did not understand the need of filing their land claims, nor did they have money to pay the filing fees. Many Spokane Indians lost their farms to whites claiming title through a railroad grant or homestead filing. These instances emphasized the need for treating with the Indians both for their welfare and that conflict might be avoided through the extinguishment of Indian title.

15. On May 15, 1886, Congress among other things provided that negotiations be entered into with the Upper and Middle Bands of the Spokane Indians for their removal to the Colville Reservation in Washington, the Jocko Reservation in Montana, or the Coeur d'Alene Reservation in Idaho. The Commission appointed on July 27, 1886, to carry out this direction was known as the Northwest Indian Commission and consisted of J. V. Wright, H. W. Andrews and J. W. Daniels.

The Northwest Indian Commission arrived at Spokane Falls February 23, 1887, and on March 7, 1887, called a council with the Upper and Middle Bands of Spokane Indians which council was also attended by members of the Lower Spokane Band. On March 18, 1887, an agreement was entered into by defendant and the Middle and Upper Bands of Spokane Indians (27 Stat. 120, 139, I Kapp. 446, 449, 453). By Article 1 thereof the Indians ceded all the "right, title and claim which they now have, or ever had, to any and all lands lying outside of the Indian reservations in Washington and Idaho Territories, and they hereby agree to remove to and settle upon the Coeur d'Alene Reservation in the Territory of Idaho." Under Article 4 of the agreement all of those Indians who had settled upon and improved land outside of any reservation limits with intent to acquire title under homestead, pre-emption or other laws of the United States were permitted to remain thereon and receive a patent thereto as well as participate in the individual allotments the treaty provided the Spokanes should receive upon the Coeur d'Alene Reservation. Under Article 10 the Spokanes were permitted to go upon the Jocko or Colville Reservations if they preferred either one to the Coeur d'Alene Reservation, and to receive their pro-rata benefits

under the agreement when located thereon.

16. The Agreement of March 18, 1887, by its terms became binding upon ratification thereof. This occurred on July 13, 1892.

17. The Agreement of March 18, 1887, was signed by 87 chiefs and headmen of the Spokane Indians on that date and by 8 others on April 27, 1887. Petitioner has been able to identify the band affiliations of only three of the parties signatory thereto. Whistleposum or Lot, Chief of the Lower Spokane Band, did not execute the Agreement.

18. About 1888 many of the Upper and Middle Spokane Band members had moved upon the Spokane Reservation and thereafter Congress provided for their pro-rata participation in the benefits of the 1887 agreement. Those Spokane Indians who refused to go upon any reservation prior to 1897 were moved to a reservation during 1897. There are Spokane Indians now residing upon the Coeur d'Alene, Spokane, Colville and Jocko Reservations, as well as elsewhere.

19. The Spokane Indians and the Columbia, Sanpoil, Colville and Kalispel or Pend d'Oreille Indians to their west and north, each spoke Salish dialects and conversed with each other. The Coeur d'Alene Indians next east of the Spokanes spoke a Salish dialect but their language and that of the Spokanes were mutually unintelligible. There were dialectical differences among the Spokane Indians, the Lower Band or Sineka'lt group speaking a dialect more nearly resembling the Sanpoil language than that of the Sinkoomany or Upper Spokane and the Sqasi'lni (Ray's Skyseelny) or Middle Spokane. The Palus or Palouse Indians living south of the Spokanes spoke a Sahaptin dialect. Many of the members of these tribes were bi-lingual, and the tribes were friendly, frequently hunting and gathering food together or meeting at Moses Lake and elsewhere for horseracing and other sports.

20. The culture of the Spokane Indians was typical of the central Plateau region. As stated by Dr. Verne F. Ray, an ethnologist testifying on behalf of petitioner, the Spokane Indians like other central Plateau tribes placed considerable emphasis on peacefulness, democracy and religion. Cultural differences between them and the Sanpoil and between them and the Colville Indians were relatively slight, but sufficient to be distinguishing. Greater differences existed between the Spokanes and their other neighbors, the greatest occurring between them and the Palus or Palouse Indians to their south.

21. Documentary reference to the Spokane Indians covers a long period beginning with the Lewis and Clark Journals of 1804-6, although Lewis and Clark were not in this vicinity. The name "Spokane" was first applied to them in 1807 by David Thompson, a trapper with the Northwest Trading Company and the first white man known to have visited them. They were identified as a tribe of Flathead (i.e., Salish) Indians in 1811 by another trapper, Alexander Henry, who described them as river-dwellers, seldom leaving their country to hunt buffalo on the plains. Agents of the Pacific Fur Company applied the name "Spokane" to the river along which they dwelt in 1813. They were said to be divided into three groups or bands, each under its own chief or chiefs, by Alexander Henry (1822-23), J. W. Dease (1827) and John Work (1830). The region within which they lived was mapped first by the French in 1821, about 1825 by Reverend Samuel Parker, and a few years later by Father Pierre-Jean DeSmet who located them and neighboring tribes roughly with respect to various topographical features of the country.

Official contact with the Spokane Indians began during 1841 with the United States Naval Exploring Expedition under Commander Charles Wilkes. Ethnological or ethnohistorical work has been done among them by James M. Teit about 1904, by Dr. Verne F. Ray between 1928 and 1947, including a five-month term as Director of Indian Emergency Conservation work in 1940, and by Mr. Stuart A. Chalfant whose research occurred between 1951 and 1954, inclusive. Students of historical data touching Spokane history include Professor Leslie Spier who published in 1936, and petitioner's witness, Dr. Angelo Anastasia. Other students of the North American Indians have contributed to existing information respecting the culture, organizational formation and areas of use and occupancy of the Spokane Indians.

22. The Spokane Indians possessed a concept of local band autonomy but had a single form of tribal government in the nature of a council under one head chief. When affairs of tribal importance required consideration the duly recognized leaders or chiefs of the various autonomies met. The chairman of such meetings was the chief of the Little Spokane Band residing at Little Falls on the Spokane River. He was known as The Raven, a name indicative of his office and passed on to his successor. During 1854 Governor Isaac Stevens issued a document to one Spokane Garry, a half-breed who had attended white schools, naming him head chief of the Spokane Tribe, and thereafter Spokane Garry was frequently referred to and recognized by the whites as principal chief of the Spokane Indians.

23. The Spokane Indians were a tribe of Indians and were usually recognized and considered to be such by defendant and its representatives and agents. The tribe was the land-using unit, all members making use

