

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

Decided: April 17, 1961

Appearances:

Ernest L. Wilkinson, with whom were John W. Cragun, Glen A. Wilkinson, Robert W. Barker, Donald C. Gormley and Francis M. Goodwin, and H. Lawrence Garrett, Jr., Attorneys for petitioner..

John D. Sullivan and Ralph A. Barney, with whom was Mr. Assistant Attorney General Perry W. Morton, Attorneys for Defendant.

OPINION OF THE COMMISSION

Chief Commissioner Arthur V. Watkins delivered the opinion of the Commission.

The subject area claimed under original Indian title by petitioner in its own behalf and on behalf of the Upper, Middle and Lower bands of Spokane Indians or any one of them alternatively, is located in northeastern Washington. Petitioner is an organization formed by

residents of the Spokane Indian Reservation which is situated within the claimed area. It has a constitution and by-laws approved by the Secretary of the Interior. Other persons of Spokane blood reside upon other Indian reservations near the claimed tract.

Defendant admits petitioner may sue as an identifiable group of Indians but it denies that petitioner is entitled to recover for any alleged interest in land. It claims the pre-reservation Spokane Indians were not a single land-using unit but an ethnic or linguistic group of three separate divisions or independent tribes whose political basic units were a village or local band. It relies upon the testimony of its ethnologist Stuart Chalfant who made a study of all available documentary data concerning the Spokanes and who, in turn, relies upon various documents recounted in his written report which is identified herein as Defendant's Exhibit No. 67.

After a careful study of the entire record, however, we are convinced the evidence reflects the form of government existing among the Spokane Indians as early as 1848 was that of an over-all unifying council consisting of a head chief and several lesser chiefs; that the Spokanes considered themselves one people, made common use of their hunting and gathering grounds and formed but one land holding entity; and that until about 1881 the defendant's agents and representatives so regarded them. This is apparent from statements made by a number of ethnologists, anthropologists and others who have studied or had personal contact with the Spokane Indians in earlier times. James M. Teit whose research among the Spokanes occurred about 1906, said neighboring tribes considered them one

people, a tribe with each band under a chief and assistant chiefs; that the chiefs formed a council for administering the major tribal affairs (Pet. Ex. 5, p. 374). Mr. Chalfant referred to them as an ethnic group on a socio-economic basis, with a sense of belonging together, having blood ties and interfamily relationships (Trans. p. 310), and cited Teit's report that a head chief functioned during war or while hunting (Def. Ex. 67, p. 69-70). Hubert Howe Bancroft in his "Native Races" published in 1886 said they were a tribe of eight bands (Pet. Ex. 15). Father DeSmet in 1842 described them as several small tribes of one nation, numbering nearly 800 souls, living on the produce of their own land (Pet. Ex. 18), Horatio Hale who went through the region in 1838-42 as philologist and ethnologist for the United States Naval Expedition under Commander Charles Wilkes, said the Spokane Indians were a tribe; that they roamed in small bands but joined together for mutual support against their enemies, the Pikani or Blackfeet (Def. Ex. 49). The official report of George Gibbs on behalf of the Stevens Survey party which traversed the region in 1853 refers to them as a tribe (Def. Ex. 57; Pet. Ex. 7). The earliest known report of them was made by Ross Cox, a trader who wintered in this region in 1812-1813 and who wrote of the Spokanes as "a quiet, honest, inoffensive tribe" (Pet. Ex. 127).

Petitioner's witness, Dr. Anastasio, testified that he had documentary proof of a tribal council held by the Spokanes in 1848 (Trans. p. 178) and said they were a tribe with a head or over-all chief and several village chiefs or headmen. Petitioner's witness, Dr. Ray, worked with the Spokanes in the 1930's and early 1940's. He had an exceptionally good opportunity for late research, having visited petitioner Indians as often as

once a week while serving for five months during 1940 as Director of Indian Emergency Conservation Work, when he met virtually every member of the organization. He testified the early day head or over-all chief was invariably known as The Raven and belonged to the Lower Spokane group or band; that a tribal council was held twice a year; that any Spokane might appear before it. He identified the Spokanes as a tribe ethnically, culturally, and politically (Trans. p. 107-111).

There are a number of references to the three divisions of Spokane Indians as "bands" and to Garry as principal chief of the Spokanes. These suggest an over-all tribal organization existed, and included James Mooney's 1896 "Ghost Dance Religion" (Pet. Ex. 20); Inspector E. C. Watkins' official report of August 23, 1877; the annual reports of the Superintendent of Indian Affairs for 1854 and 1851; Governor Stevens' letter of June 3, 1856 to Lieutenant Colonel Craig; Agent G. A. Paige's letter to Superintendent Waterman on July 1, 1867, and the annual reports of the Indian Agent at Colville, Washington, dated August 31, 1882, August 15, 1883, and August 12, 1886 (Pet. Exs. 144; 51(3); 166; 136; 52; 76; 135-A; Def. Exs. 3(1); 13; 14; 15).

There are also earlier references to the Spokane bands as independent tribes, but we think it well substantiated that any such separation existed, if it existed at all, in earlier times and that by the middle of the 19th century the Spokanes were united under an over-all tribal council form of government with a head chief and lesser chiefs, and comprised a tribe within the meaning of the Indian Claims Commission Act.

The land involved herein was originally Oregon Territory. It appears many whites settled in that territory before Indian title was extinguished

because of a popular belief that the Donation Act of 1850 had opened it to settlement (9 Stat. 323; 10 Stat. 172; Pet. Exs. 43, 44, 47, 48, 55, 61). By 1855 conflict existed between the two races and the Governors of the Territories of Washington and Oregon were authorized to extinguish Indian title to all land in those Territories located east of the Cascade Mountains. (Pet. Ex. 50). They procured cessions from a number of tribes south and east of the Spokane Indians, but the program was interrupted by the Yakima outbreak of 1855, and the Spokanes were never treated with (Def. Ex. 67, p. 34; Def. Ex. 33; Pet. Exs. 136, 137-A).

The record discloses that by 1858 the Spokane Indians were anxious to cede part of their land. They were envious of treaty annuities paid neighboring tribes, resentful of defendant's failure to treat with them and of white traffic through their country which had increased materially upon discovery of gold in northwestern Idaho and about Colville, Washington. Their seeming neglect by the defendant led them to forbid the passage of troops through their country in 1858. When Colonel E. J. Steptoe started north of the Palouse River on his way from Walla Walla, Washington, to Colville, Washington, his forces were attacked and routed by the combined forces of Palouse, Coeur d'Alene and Spokane Indians. Shortly thereafter, on September 25, 1858, the Spokanes entered into a peace treaty which specified that it also extended to the Palouse Indians, whereby whites were granted free passage through Spokane country, without, however, designating boundaries. (Def. Exs. 26; 67, p. 36-9; 64(3)).

Thereafter a number of councils were held with the Spokanes but no attempt was made to procure a cession from them. As a means of pre-

-serving the peace and to create a home for all the non-treaty tribes in northeastern Washington, the Colville Reservation was established by Executive Order on April 9, 1872. It was relocated July 2, 1872, north and west of the Columbia River (Pet. Exs. 77, 78, 79, 80; I Kapp. 916). Both sites were outside Spokane territory and the Spokane Indians refused to leave their homes, fisheries and root grounds or sever tribal relations to go upon it, or to become citizens and take out individual homesteads or land claims as urged by defendant (18 Stat. 402, 420; Def. Ex. 37; Pet. Exs. 173, 84, 86). Many of the few individual Spokanes who did attempt to establish claims were ejected from their lands by whites.

At a council held August 16, 1877, between Indian Inspector E. C. Watkins, General F. Wheaton and Captain M. C. Wilkinson on part of defendant, and the Coeur d'Alene, Pend d'Oreille, Chawalah, Okanagan, Colville and Palouse and Spokane Indians, an instrument providing that the Spokane Tribe would move upon a described tract by November 1, 1877, was executed by six members of the Lower Spokane Band. The described tract extended north from the Spokane River between the Columbia River and Chamokane Creek to a line extending from the mouth of Numchin Creek to the headwaters of Chamokane Creek, and the Lower Spokane occupied that area. The Palouse Indians by separate agreement agreed to either move to this tract or to the Coeur d'Alene Reservation by November 1, 1877. Neither instrument called for cession of lands or payment of consideration, and neither was presented to Congress for ratification (Def. Ex. 67, p. 44-8; Pet. Ex. 96).

It is also disclosed that the Army forbade settlements in the south portion of this tract in anticipation of an Indian reservation there. (Pet. Ex. 174; I Kapp. 925). On January 18, 1881, an Executive Order

set aside all of that tract south of the 48th parallel as a reservation for Spokane Indians. This was considered part of the Colville Reservation but was later known as the Lower Spokane Reservation. It does not appear that any of the tribe changed their residence to go upon it so it does not follow that the Spokane Tribe accepted the reservation or abandoned their original title claims although the Lower Spokane band received benefits as reservation Indians. The reserve was known as Lot's or Whistleposum's, he being chief of the Lower Spokane Band.

One of the duties of the Northwest Indian Commission created in 1886 was to negotiate with the Upper and Middle Spokane Bands for removal to the Colville, Jocko or Coeur d'Alene Reservations. On March 7, 1887, these bands executed an agreement which provided in Article 1 for the cession to defendant of "all 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." The Indians were to go to the Colville, Jocko or Coeur d'Alene Reservations or take out individual patents to land. The agreement by its terms became binding on ratification, July 13, 1892. Many of the Upper and Middle Spokanes went on the Spokane Reservation after 1887, and Congress later extended the benefits of the 1877 agreement to them. Spokane Indians now reside upon each of these reservations. It follows that petitioner may present this claim in a representative capacity, but any award must be for the benefit of the members of the Spokane Tribe as it existed when the cause of action arose, or for their descendants.

Members of the Lower Spokane Band attended the 1887 council but it is not known whether any signed the 1887 agreement. (Pet. Exs. 152, 54; 151; 153; 114; 179). Defendant required all of the Spokane Tribe who were

off reservations to go upon one of those mentioned in the 1887 agreement and the original title held by the tribe was extinguished under that treaty.

Documentary evidence identifying the amount of land used or claimed by the Spokanes is none too definite. Lewis and Clark were told in 1804-6 by Indians along the Snake River to the south that the Wheelpo Nation, which has been equated with the Colville Indians living north of the Spokanes, resided on both sides of the Columbia River "from the entrance of the Lastaw (Spokane) to the great falls of Clark's river" (Kettle Falls on the Columbia River). (Def. Ex. 58). The Colville Indians were said to extend south to the mouth of the Spokane River by Alexander Kennedy in 1822-3, John Work in 1830, the Assistant Inspector General in 1870, Captain M. C. Wilkinson in 1877, and the Agents at Colville during 1874, 1875, and 1880 (Pet. Exs. 39, 42, 89, 95, 170, 173), each having had opportunity to familiarize himself with the true facts. George Paige while Agent there in 1865 reported the country for about 30 miles south of Kettle Falls belonged to the Colvilles, but the following year he placed the Spokane-Colville boundary farther north of the 48th parallel. Numerous other reports extend Colville territory south to the Spokane River.

In his 1935 publication entitled "Tribal Distribution in Washington" Dr. Leslie Spier stated that he doubted if any of the Washington Indians thought in terms of territorial boundaries, but that he preferred to assign boundaries to mapping only permanent sites and he adopted Paige's first Colville-Spokane line (Pet. Ex. 67; Def. Ex. 56). George Gibbs stated that the Spokanes claimed the country south of a large plain at the head of Colville River (Def. Ex. 57); the Isaac Stevens Map of 1856

shows the northeastern-most point for Spokane country in the vicinity of Springdale, Washington (Pet. Exs. 31, 159). W. P. Winans, while Farmer in Charge of the Colville Reservation in 1871, mapped the south boundary of Spokane country as a line paralleling and slightly north of the 48th parallel, but noted thereon this was a reflection of territorial cession lines and the line is that specified in the Yakima treaty of 1855. (Pet. Ex. 34). Captain Pinkey Lugenbeel while stationed at Colville Valley during 1859, gave the Colville Indians the drainage of Colville River and the Spokanes the drainage of Spokane River (Pet. Ex. 63).

In his "Ghost Dance Religion" published during 1896, James Mooney also gave the basin of Spokane River to the Spokane Indians (Pet. Ex. 20) and James M. Teit in his "Salishan Tribes of the Western Plateau" gave them the northern feeders of Spokane River, including Loon and Deer Park Lakes and Peone Prairie (Def. Ex. 66). It is stated in "North American Indians" published by Edward S. Curtis in 1911, that Spokane country extended from Mt. Carlson south to a line 30 miles south of the Spokane River (Def. Ex. 61; Pet. Ex. 10). It is unfortunate that Teit's Deer Park Lake and Curtis' Mt. Carlton cannot be located upon present day maps available to us, although witnesses seem to equate Deer Park Lake with present Deer Lake. At a council held in 1887 Chief Louis Welso said his father owned the country between Bald Mountain which is immediately north of Deer Lake (Pet. Ex. 160-B) and Colfax, Washington (Pet. Ex. 152).

In his 1932 publication "Sanpoil and Nespelem" Dr. Verne F. Ray

placed the Colville-Spokane line in the immediate vicinity of Hunters Creek which flows west from the Huckleberry Mountains into the Columbia River. He said the Huckleberry Mountains were in Colville territory but were hunted over by Sanpoil and Nespelem Indians (Pet. Ex. 14, pp. 14, 77). In his 1936 article "Native Villages and Groupings of the Columbia Basin" (Pet. Ex. 11) he gave the Lower Spokanes "the lowermost part of the Spokane River valley," the Middle Spokanes the middle Spokane River and the Upper Spokanes the upper reaches of Spokane River, saying their territories extended considerable distances north and south from that river. He cautioned that freedom of use prevailed among many Salish tribes and while boundaries might be quite specific, still the hunting territory of one group might also be available to another. In other words, Dr. Ray's reported limits were not delimitative of exclusive use.

On Petitioner's Exhibits Nos. 160 and 160-A, Dr. Ray has shown the Colville-Spokane division line extending from a point on the Columbia River opposite the mouth of Nez Perce Creek eastward to Huckleberry Mountains, thence along their summit northeasterly until opposite Waits Lake, thence southeast passing between Waits Lake and Deer Creek and between Deer and Loon Lakes to the confluence of Little Spokane River and its West Branch; thence easterly along the divide between Dry Creek and Deer Creek to Blanchard Creek about 3 miles north of Mt. Spokane; thence southeasterly across Mt. Spokane and around Shadow Mountain. All but the eastern side of Mt. Spokane is thus claimed by Ray as Spokane territory (Pet. Exs. 160-A, Maps 3, 4, 5, 6). He has drawn the same line

in less detail on Petitioner's Exhibit No. 160 and has noted the sites of claimed villages and camps. Nowhere has he indicated occupancy dates for these sites. The village at the mouth of Hunters Creek is said in his 1936 publication to be "a small winter camp of three or four families." Dr. Ray's Spokane-Colville boundary is substantially the same as testified to by him before this Commission in Docket No. 181. (See Trans. and Pet'rs. Exhibits 532-4, Dkt. 181.)

Defendant's witness, Stuart Chalfant, who also testified in Docket No. 181, testified that his ethnological field work with the Spokane Indians disclosed they hunted and controlled the mountainous area northwest of Rathdrum Prairie (Def. Ex. 67, p. 88; Pet. Ex. 160-A, Map 7); that the Sampoil and Nespelen hunted in the Huckleberry Mountains (Def. Ex. 47, p. 90); that the Kalispel dug bitterroot near Hilyard, Washington, (Def. Ex. 67, p. 91), and that the area which was used by the Spokane Indians more than by any other Indians was bounded on the north by a line commencing near Hunters, Washington, and running easterly along the divide between the Colville and Spokane Rivers. In marking this line on Defendant's Exhibit No. 71 he labeled the enclosed area as "Spokane Area of Exclusive Use and Occupancy."

It is curious that there are no references to Mt. Spokane, Mt. Carson or Shadow Mountain to be found in the early accounts of this region since each is an outstanding topographical feature. We are inclined to believe they would have been mentioned had they been identification points along the boundaries between the friendly tribes in this region. However, we have given careful consideration to all of the evidence before us, and particularly that referred to above, and we are of

the opinion that the northern limits of the country exclusively used and occupied by Spokane Indians follows along a line commencing at the mouth of Hunters Creek on the Columbia River and running up that creek to its fork, thence directly to Bald Mountain north of Deer Lake and thence east and southerly around Deer Lake.

The numerous and rather conflicting reports before us do not substantiate petitioner's claim of original Indian title quite as far east or south as is contended for. John Work in April, 1830, said the Spokanes were located on Spokane River "from near its discharge" to the Awl Heart (Coeur d'Alene) country above the upper falls of Spokane River (Pet. Ex. 42; Def. Ex. 31). In 1846 John Scouler, who obtained his information from the early Missionary Samuel Parker, said the Palus (Palouse) Indians occupied "the sources of Spokan River," and Father DeSmet said they were occupants of the borders of Lewis River (Def. Ex. 42, 53). Commander Wilkes on his 1841 map indicated the Salish or Flathead and the Walla Walla and Nez Perce division line ran westerly across the headwaters of streams flowing into Couer d'Alene Lake from the south, across the headwaters of what appears to be Palouse River, and southwest to Priests Rapids on the Columbia River (Def. Ex. 48). Latah Creek is not depicted, but Wilkes' line places the Palouse Indians on that creek and on drainage into Couer d'Alene Lake, which is the source of Spokane River. This corresponds with Scouler's report. Father DeSmet said the Palouse Indians were on the borders of Lewis River (Def. Ex. 42, 53) and Ross Cox in his 1832 "Narrative of a Residence of Six Years" tells of Nez Perce Indians in 1815 chasing his party north from Lewis River to within a day's journey of Spokane House

which would probably be slightly north of the 47th parallel (Def. Ex. 60; Pet. Ex. 10).

During 1853-4 Governor Stevens sent a Lieutenant Saxon from the mouth of the Columbia River overland to Fort Cwens, Montana. At Rathdrum Prairie, immediately east of Antoine Plant's ferry over the Spokane River at present Opportunity, Washington, Saxon officially noted "this region belongs to the Pointed Heart Indians (Coeur d'Alene) whose lands adjoin those of the Spokane." (Def. Ex. 67, p. 26) When Governor Stevens passed through the country in 1854, his official ethnographer, George Gibbs, assigned the high plain between the Spokane River and Lewis' Fork to the Spokane and Nez Perce Indians, without indicating any division line between them. He reported meeting Spokane Indians on Gates Creek but identification of this stream is impossible other than that it is part of Snake River drainage. He divided the Spokanes into 8 bands and said the three easternmost were located one at what is identified as Ninemile Falls, another nearby on the Little Spokane and the third in the western edge of Rathdrum Valley where the Spokane, Flathead and Colville Indians are reported to have held their horse races (Pet. Ex. 180, Def. Exs. 60 and 57). Gibbs said there was a question of boundary here between the Coeur d'Alene and Spokane Indians but "no resort to arms has, however, occurred, and the territory continues under joint occupation." (Pet. Ex. 51(3)). This is substantiated by Farmer G. W. Harvey's report to Indian Agent Simms on April 30, 1874, that about 600 Spokane, Coeur d'Alene and Kalispel (Pend d'Oreille) were assembled on Peone Prairie for the joint celebration of Easter (Pet. Ex. 89) since Peone Prairie

is in the fork of Deadman Creek, immediately north of Opportunity, Washington. Other supporting evidence is Agent Paige's 1865 report that about 60 Coeur d'Alene Indians belonged in Washington Territory (Def. Ex. 1), the location of about 150 Coeur d'Alene Indians on Spokane Prairie in Washington by Brevet Colonel Samuel Ross in 1870 (Def. Ex. 5) and his report that the Kalispel (Pend d'Oreille) wintered their stock there. The Farmer at Colville Reservation in 1869 reported about 150 Coeur d'Alene "have places they cultivate in Washington" (Pet. Ex. 34) and James Mooney in 1896 reported these two tribes held some land in common (Def. Ex. 20; see also Pet. Ex. 51). He also adopted Wilkes' southern Spokane boundary.

Other anthropologists and ethnologists have given various eastern limits to Spokane country although it must be borne in mind that they do not necessarily indicate areas of exclusive use. James M. Teit (1927) gave the Spokanes all land west of a point a short distance east of Spokane Falls and all north of Cow Creek, saying that "some say" their limits ran along Cow Creek almost or quite to the Palouse River (Pet. Ex. 5; Def. Ex. 66). He said the country about Hangman (Latah) Creek and the towns of DeSmet, Idaho and Teoka and Farmington in Washington belonged to the Coeur d'Alene. Dr. Spier in his 1936 publication, *supra*, noted permanent winter villages of the Coeur d'Alene "are noted on the Spokane River from the Idaho line to a point about twenty miles above Spokane city." (Def. Ex. 56, p. 7).

Other evidence respecting the extent of country south of the Spokane River used by the Spokane Indians includes the report of Lieutenant Johnson of the Wilkes Expedition that about 300 Spokanes

were observed digging camas about 40 miles southeast of the mouth of Chamokane Creek which would place them near Sprague, Washington (Def. Ex. 67, p. 19); Ross Cox's 1812-16 report of meeting Spokane hunters near Sprague (Pet. Ex. 180); and the presence of Nez Perce Indians near the summit and north of the low divide north of Palouse river noted by Rev. Parker in 1837 (Def. Ex. 69, p. 13; Pet. Ex. 126) and Father deSmet in 1842 (Pet. Ex. 18), as well as Governor Stevens' 1857 map showing the Nez Perce-Spokane boundary running along Palouse River as far west as Rock Creek and then along the 47° of latitude to a point southerly of the mouth of the Grand Coulee (Pet. Ex. 29) and Mr. Winans' Map of 1871 placing the division line on the 47° of latitude (Pet. Ex. 159, p. 34). Dr. Ray located it in the immediate vicinity of Palouse River in 1936 (Def. Ex. 54, p. 103) and a short distance northward in 1938 (Def. Ex. 46). He testified herein that it followed the escarpment of Palouse River east to Steptoe's Bluff and then ran northeast to Opportunity, Washington. Mr. Chalfant testified it ran through the Colville Lake area east to Lamont, thence to Pine City and Malden, and then to Spangle, Washington (Def. Ex. 71), passing south of the Spokane village on Latah Creek. He said the Coeur d'Alene were about Liberty Lake in 1869 (Def. Ex. 67, p. 43) and that his Spokane informants had said the Coeur d'Alene used the country about Spangle, Rosalie and Steptoe, Washington, jointly with the Spokanes (Trans. p. 280-5), going southwest as far as Colfax, Washington.

It is also reported that the Spokane agreed to ask for a reservation along the Spokane River eastward to the Coeur d'Alene Mountains and

south 20 miles, which is not quite to Sprague, Washington, when all of the northwestern Indians east of the Cascade Mountains met at the Grand Ronde in Oregon in 1854 to agree upon a division of this region between them that they might ask Governor Stevens in the forthcoming treaty councils for sufficient land as reservations to encompass all of the country (Pet. Ex. 22). It would seem the divisions agreed upon among all the tribes at that time would more likely approximate their actual holdings than some of the extensive claims made later in councils with the defendant's agents. For example, in 1870 council Chief Garry claimed as far east as the Coeur d'Alene Mountains and from the Kootenai river down the Columbia river to Priests Rapids, while in 1873 he claimed south to the Palouse river (Def. Ex. 38; Pet. Exs. 74, 87).

Petitioner emphasizes two instances as illustrating Spokane territorial ownership. The first is a report that during a council held on Spokane River during 1855 when word was received that rebellious Yakima Indians had been driven across the Columbia River at Priests Rapids the Spokanes protested the United States forces pursuing them on "this side" of the Columbia River. Priests Rapids is some distance southwest of the tract petitioners claim under aboriginal title so their interpretation of this incident is not justified. Next they point to the notice given Colonel Steptoe in 1858 when his troops were about to cross Palouse River on the way to Colville, that the Spokanes would not permit troops to enter their country, and a second message that his troops might not cross the Spokane River. There are two reasons why these notices merit little attention. First, Mr. Manring who reports them (Def. Ex.

26, 65) is not shown to have been familiar with the country or the Indians in this region, and Palouse or Nez Perce, Coeur d'Alene and Spokane Indians were united in their stand against Colonel Steptoe's forces advancing northward. Secondly, the peace treaty of September 23, 1858, specified it extended to and included the Nez Perce Nation, which is clearly an acknowledgement on part of the parties concerned that the Nez Perce or Palouse Indians had been involved (Def. Ex. 65). We are of the opinion that the references to the Spokane and Palouse Rivers were probably because of their visual aspect rather than as definitive of territorial claims. According to Curtis' comments on these incidents, the Coeur d'Alene were digging camas near Spangle and according to Father deSmet's writings the Palouse were hunting food in Spokane country (Def. Ex. 69, p. 19) when they learned of Steptoe's advance and united with the Spokanes against him. So we do not think these incidents support a finding that the Palouse River was the southern limits of Spokane country or that Steptoe's Bluff is on the southern Spokane boundary simply because the three tribes attacked Steptoe's forces there.

It seems there is no dispute but that north of Peach, Washington, the Columbia River bounded the area of Spokane exclusive use. General reference to the Spokanes fail to locate them in the region south and west of that town. It is true in the Yakima Treaty of June 9, 1855, 12 Stat. 951, Governor Stevens specified the Yakima-Spokane division line was the $119^{\circ} 10'$ of longitude south to the 47° of latitude and then a line running east to the Palouse River, but it is also true that he was then engaged in procuring treaties of cession from all the Indians living east of the Cascade Mountains in Washington and Oregon territories and

for that reason was not interested in the precise area acquired from any one tribe. See Confederated Tribes of the Warm Springs Reservation of Oregon, Docket No. 198, 8 Ind. Cl. Comm. 557. Naturally Stevens' subsequent maps reflected his treaty line. Petitioner's Exhibit No. 34 prepared by W. P. Winans also reflected this cession line as he was careful to note upon his 1871 map.

Charles Wilkes' 1841 line between the Salish and Pischous (Palouse) Indians runs from Ross Rapids below the mouth of Methow Creek on the Columbia River in a southeasterly curve to a point slightly west of Ritzville (Def. Ex. 48). According to Dr. Ray, the western boundary runs about 10 miles west of Ritzville (Def. Ex. 54, 55; Pet. Exs. 160s) and Dr. Chalfant said it runs from slightly west of Peach southeast across Hawk Creek to Davenport, Washington, and thence west of Sprague to Colville Lake. He ran this line to Davenport because Nespelem, Sanpoil and Colville Indians had told him these tribes also dug camas south of Peach and as far east as Davenport. Beyond Davenport his line follows the rather dry creek-bed of Coal Creek (Trans. p. 270, 283; Pet. Ex. 14, p. 77).

A careful consideration of the record and particularly the exhibits above referred to is, we think, convincing that the area bounded as described in our Finding of Fact No. 31 this day entered of record is as accurate a determination of the area exclusively used and occupied by the Spokane Indians as can be made at this late date. Since petitioner is awarded in its representative capacity Indian title to this tract, the alternative claim set forth in its petition will not be considered. However, there remains the question of the date of taking by defendant of the original title to this tract.

We cannot accept defendant's thesis that the facts show an 1881 date of taking. The evidence adduced leaves no doubt but that the 1877 council was held with the entire Spokane tribe; that the instrument executed that day was drafted for execution by the tribe and the proposed reservation was for its occupation. Only those sub-chiefs whose bands already lived within the chosen area executed that treaty, and while there appears to have been a passive acceptance of the 1881 reservation by these individuals, it is not evident that any Spokane Indians who lived outside the designated area ever moved upon it before the 1887 agreement. The tribe proper did not accept nor go upon that reservation, so we think the rule applied in Confederated Tribes of the Colville Reservation vs. United States, 4 Ind. Cl. Comm. 151, 186, is inapplicable. By admitting the existence of an unextinguished Indian title (Def. Ex. 67) as a cloud upon the title to the public domain, and by taking, ratifying, and promulgating the 1887 agreement extinguishing such title outside the Indian reservations, defendant placed itself in the same position it occupied in Coeur d'Alene Tribe vs. United States, 6 Ind. Cl. Comm. 42. Since the 1887 agreement by its terms became effective July 13, 1892, that being the date of its ratification, that date becomes the date of taking of all land outside the reservation area.

An order determinative of the right of representation, identity of the land-owning entity, the boundaries of the area held by aboriginal title and the date of extinguishment as herein arrived at, will be entered, and this case will now proceed to trial on the consideration paid the Spokane Indians, the acreage acquired of them and its fair market value,

together with the amount of offsets or credits on the claim, if any, which defendant may show itself entitled to have applied herein.

Arthur V. Watkins
Chief Commissioner

We concur:

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner