

BEFORE THE INDIAN CLAIMS COMMISSION

SHOSHONE TRIBE OF INDIANS OF THE)
WIND RIVER RESERVATION, WYOMING,)
et al.,)

Petitioners,)

v.)

Docket No. 326

THE UNITED STATES OF AMERICA,)

Defendant.)

SHOSHONE NATION OR TRIBE OF INDIANS)
on the relation of and represented)
by EDWARD QUEEP BOYER, et al.,)

Petitioner,)

v.)

Docket No. 367

THE UNITED STATES OF AMERICA,)

Defendant.)

Decided: October 16, 1962

Appearances:

Robert W. Barker, with whom
were Donald C. Gormley and Mrs.
Frances L. Horn,
Attorneys for Petitioners

John D. Sullivan, with whom
was Mr. Assistant Attorney
General, Ramsey Clark,
Attorneys for Defendant

OPINION OF THE COMMISSION

Holt, Associate Commissioner, delivered the opinion of the Commission.

The petitions in this action were duly filed with the Commission and prior to the hearing Docket No. 367 was consolidated with Docket No. 326. This is an action under Section 2, Clauses (3), (4) and (5) of the Indian

Claims Commission Act, 60 Stat. 1049. This phase of the suit was limited to the issue of Indian title to the area claimed by petitioners.

Petitioners in Docket No. 326 are the Shoshone Tribe of Indians of the Wind River Reservation, Wyoming, suing on its own behalf and as representative of the Eastern Bands of Shoshonee Indians; the Northwestern Band of Shoshone Indians; the Shoshone-Bannock Tribes, Fort Hall Reservation, Idaho, suing on behalf of the Northwestern Bands of Shoshonee Indians; Western Bands of the Shoshonee Nation of Indians, represented by the Te-moak Bands of Western Shoshone Indians, Nevada, suing on behalf of the Western Bands of the Shoshonee Nation of Indians; the Shoshonee-Goship Band of Indians, also known as the Goshute-Shoshone Indians, represented by the Confederated Tribes of the Goshute Reservation; and the Mixed Bands of Bannacks and Shoshonee Indians and the Bannack Tribes, represented by the Shoshone-Bannock Tribes, Fort Hall Reservation. All of these petitioners also sue on behalf of the Shoshone Nation or Tribe of Indians. The named individual petitioners in Docket No. 367 sue on the relation of and as representatives of the Shoshone Nation or Tribe of Indians.

All of the petitioners in Docket No. 326, with the exception of the Shoshone Indians of the Wind River Reservation, Wyoming, the Northwestern Bands of Shoshone Indians and the named individual petitioner Little-Moon (who sues on behalf of the Shoshonee-Goship Bands), are organized under the Indian Reorganization Act of 1934 (48 Stat. 984) and are recognized by the Secretary of the Interior as having authority to maintain a suit.

Petitioner, Shoshone Indians of the Wind River Reservation, Wyoming, is an organization which, although not organized under the Indian Reorganization Act, is recognized as having the authority to maintain this suit. The so-called Shoshone Nation or Tribe of Indians maintains no organization.

Petitioners claim Indian title in 1863, and prior and subsequent thereto, until taken by defendant, to an area of land in southwestern Wyoming, northern Colorado, northern Utah, central and northeastern Nevada, southern Idaho, and a small strip in southeastern California. The gross area so claimed by petitioners no doubt exceeds 80,000,000 acres of land and from the northeasternmost point of the claimed area to the southwesternmost point covers a distance of about 1,000 miles and almost the same distance in a north-south direction, generally speaking. Petitioners claim that the Shoshone Nation, as a single identifiable group of American Indians, exclusively owned and occupied the claimed area in the usual Indian manner, and that it was taken from them from time to time by defendant, without a treaty or agreement of cession and without any compensation to the Shoshone Nation.^{1/} Petitioners alternatively claim, that the individual groups dealt with by defendant in the so-called Doty treaties in 1863, and otherwise, which groups are named herein as petitioners, were the land-owning entities to whom defendant is liable for the taking of their Indian title.

^{1/} Petitioners agree that by the Eastern Shoshone Treaty of July 3, 1868 (15 Stat. 673) a cession of a portion of the lands was made but state the Shoshone Nation received no part of the consideration.

Defendant takes the position that the issue before the Commission has been limited to the question of whether a single unit, "Shoshone Nation or Tribe of Indians," held Indian title to a definable area of land. Defendant contends that since petitioners at the trial took the position that a single unit "Shoshone Nation or Tribe of Indians," had exclusive possession and use of the area claimed and that the five separate groups named in the petitions had no exclusive possession and use of an area of land but that all of the five named groups were parts of the "Nation," petitioners must show the existence of the land-owning entity known as the "Shoshone Nation or Tribe."

Defendant's counsel at the outset of the trial moved that petitioners be required to elect upon which of the alternative claims they wished to proceed. The Commission denied said motion on the ground that which theory presented by the alternative claims was correct, necessarily depended upon the record to be presented and that the matter was one for the Commission itself to determine when all the evidence was in (Tr. 25-26). The Rules of the Commission (Sec. 7(2)) permit such alternative pleading and defendant cites no authority requiring an election before trial.

Defendant does not dispute the fact that Shoshone speaking people were located in the area in question. Defendant urges, however, that the petitions should be dismissed (1) because the "Shoshone Nation or Tribe of Indians" was not an identifiable group or band of Indians having an overall government or otherwise so constituted as to be capable of owning or holding an identifiable area of land, but rather was, and is, nothing more

than fiction; (2) because neither all nor any definable part of the area claimed by petitioners was exclusively used and occupied by any identifiable group of Indians; (3) for the reason that other than Shoshone Indians used and occupied the claimed area; and (4) that the Shoshone Indians had no concept of ownership or exclusive possession of identifiable territory.

In contending that the Shoshone Nation was a single identifiable group petitioners urge that anthropological and historical evidence supports the position that all bands of Shoshone were of one ethnic, cultural, and linguistic group which together with all affiliated Bannacks held the land of the "Shoshone domain in common," to the exclusion of other tribes. In support of their contentions petitioners presented their principal expert witness, Doctor Omer C. Stewart, who appeared and testified at length before the Commission. Doctor Stewart, who at the time of trial was Professor of Anthropology and Chairman of the Department of Anthropology at the University of Colorado, is a qualified anthropologist. Petitioners' principal expert did not prepare a written report. Doctor Stewart, however, assembled a vast amount of anthropological and historical material pertaining to the Shoshone Indians which accounts for practically all of petitioners' more than 400 exhibits in this case. This witness testified that he had done field work with the Ute Indians of Uintah Valley and the Southern Paiute Indians, neighbors of the Shoshone Indians; with the Goshute Indians; and had testified for the petitioners in Docket No. 87, the Northern Paiute Indians (also neighbors of the Shoshone Indians) before this Commission.

Doctor Stewart testified that "the Shoshone recognized their kinship and close emotional and cultural, linguistic ties one group with another throughout the entire Shoshone country." Petitioners' principal expert stated that no group of Shoshone used any area of land to the exclusion of other Shoshones; that Shoshone Indians seemed welcome wherever they traveled among other Shoshone; and that the Bannack Indians as well as the Shoshone participated in the joint use of the claimed area. This witness testified in part as follows:

* * * Because of the tremendous size or distance between Death Valley and the Wind River Mountain, it was, of course, impossible in pre-horse times for Indians from this area of California, of Death Valley, to travel to Wind River, so that in the aboriginal period before the introduction of the horse to any area their relationships were close and identified with the neighbors they knew. So that the Shoshonean in Death Valley identified themselves and recognized their close relationship with their neighbors next to them and probably a few miles, within walking distance, where they would travel within their territory and have face-to-face relationships with their neighbor. They recognized that they were different from the Northern Paiute and different from the Southern Paiute but that the network of relationships, the tying together of one Shoshone group to another, extended and bound together all of the Shoshone people into one group . . .

According to Doctor Stewart, each Shoshone group had a home base, and had a greater attachment to that base than to the balance of the claimed area but this feeling did not, in his view, give the residents an exclusive right to use the area as against other Shoshone, nor require them to depend upon the immediate vicinity of "home base" for their subsistence.

Doctor Edward Adamson Hoebel, who at the time of trial was Professor of Anthropology and head of the Department of Anthropology at

the University of Minnesota and President of the American Anthropological Association also testified for petitioners. Doctor Adamson had published studies of the "Eastern Shoshone" and on the "H3Kandika or Seed-cater" Shoshone. This witness was of the opinion that the Shoshone constituted an identifiable group. He further testified that each of the Shoshone groups had a very definite sense of belonging to a given territory "and that territory being associated with them as theirs * *," and that each of these bands or groups would receive other Shoshones "as what you might call guest residents." With these views in mind it is necessary to briefly treat the composition of the Shoshone people in order to determine whether there existed an identifiable group as a land using entity which exclusively used and occupied the entire claimed area or any portion thereof.

The Shoshone are part of the Shoshonean linguistic family, and belong to the Shoshoni-Comanche linguistic sub-group. Other divisions of the Shoshonean linguistic family, but not within the Shoshoni-Comanche subfamily, are the Utes, the Southern Paiute and the Northern Paiute. In other words, as explained by Doctor Hoebel, the word "Shoshonean" embraces a larger category of languages that would include some of the people such as the Paiutes who would not be considered as Shoshone and "Shoshoni-Comanche" is a narrower language category within the "Shoshonean" classification. While Shoshone and Northern Paiute fall under the linguistic term "Shoshonean" as far as having related types of languages, they are not mutually intelligible. On the other hand Shoshone and

Comanche are mutually intelligible. Doctor Hoebel explained that the Comanche are linguistically identical with the Shoshone, and speak Shoshone, but that the Comanche who were at one time a part of the Shoshone broke away in the latter part of the 18th century to establish themselves on the plains. Thus, although the Comanche were linguistically identical with the Shoshone, in the passage of time they had become culturally and politically distinct, according to Hoebel. This witness further testified that "Shoshonean" is a linguistic term and the term "Shoshone is linguistic and cultural, which will include a way of life and their system of organization." The "way of life and their system of organization" of the Shoshone groups within the claimed area therefore becomes an important cultural factor to be considered in determining whether the Shoshone were an identifiable group capable of being classified as a land owning entity under the test laid down by this Commission in previous cases.

In considering the existence of identifiable groups as land-using entities it must be stressed at the start that the factors to be considered in determining their existence are not the same as those involved in the question of whether petitioners constitute an identifiable group for jurisdictional purposes Northern Paiute, et al., v. U. S., 7 Ind. Cl. Comm. 322, 412. In Nooksack Tribe v. U. S., 3 Ind. Cl. Comm. 479, 494, this Commission held that while the Nooksack Indians in aboriginal times may have existed as separate villages in a political sense there were ties of kinship, a common culture and language, and the individual Indians of one village were free to utilize the lands within the area occupied

by all Nooksack villages. In Muckelshoot Tribe v. U. S., 3 Ind. Cl. Comm. 658, the Commission found the Indians to constitute a land-owning identifiable group although they were autonomous villages, each village having the exclusive use of their village settlement area, with the outlying areas such as berrying and root gathering spots or fishing waters used in common by the occupants of all the villages. The Commission in that case noted the close cultural and economic ties of the Indians in the area claimed and determined that their lack of political cohesion was not a reason for denying them the opportunity to show Indian title. The Commission in the case of The Washo Tribe v. U.S., 7 Ind. Cl. Comm. 266, 284-287, found the Washo Indians, consisting of three divisions with their social organization in aboriginal times being primarily based upon the family unit, to be an identifiable group applying the test of strong ties of kinship, friendship and close cultural ties of autonomous villages in a small area used by all divisions set forth in the landmark cases, Nooksack Tribe, supra and Muckelshoot Tribe, supra.

There is little information with respect to the composition of the Shoshone in early aboriginal times. One may only infer as to the situation at that time. Since the passage of time has been known to affect a people's way of life and their system of organization we must depend upon the evidence that has come to light during the historic period which for the purposes of this case may be said to have started in 1805 when Lewis and Clark encountered the Lemhi Shoshone in the claimed area. The documentary evidence pertaining to the historic period is confusing and contradictory at times and requires careful scrutiny and analysis to

establish some semblance of clarity. This problem was succinctly noted by Doctor Julian H. Steward ^{2/} in his "Basin-Plateau Aboriginal Socio-political Groups," BAE Bulletin 120 (1938), wherein the anthropologist states under the title "Appendix A - Tribal Distribution" at pages 263 and 264 in part as follows:

* * * It remains to examine early documentary evidence relative to this subject. For the greater part of Nevada south of the Humboldt River source material is almost entirely lacking. For Oregon, Idaho, and northern and western Utah it is abundant but extraordinarily contradictory. In fact it would be valueless to review it had not various authors based classifications of Basin-Plateau groups upon it, thus repeating and even compounding the original errors.

Early writers were liable to several kinds of error. First, the differences between the linguistic divisions are sufficiently slight to have escaped the attention of persons not well versed in these languages. Thus, Wyeth lived two years, 1834-36, at Fort Hall but failed to discover that Bannock and Shoshoni spoke differently. Second, it was often assumed that well-defined, bounded, and named political units would be found everywhere. It was not known that the only grouping in the greater part of the area was the family or village, so that "tribe" had significance only in synonymy with language. As there was little natural geographical grouping, names applied to peoples of localities bore uncertain connotation. Often local names were thought to imply political or "tribal" distinctiveness. Thus the frequent application of Paviotso to Northern Paiute of western Nevada and of Bannock or Snake to their Oregon kin led to the belief that these were three separate tribes. The third and most serious source of error was loose usage. When names were not intended to designate language, they were vaguely descriptive of culture and were applied without respect to locality. Thus "Digger" was used for many groups. Finally, observers

^{2/} Pet. Ex. 353 - Doctor Steward did not testify in this case but is a recognized anthropologist who has appeared before the Commission in the past. This study of Dr. Steward's of the Shoshone has been of great value to the Commission in determining this action.

did not always distinguish the temporary from the habitual residents of a region. Though mounted Shoshoni and Ute were sometimes encountered several hundred miles from their homes, the fact was not always recognized or stated.

The most common usage was to distinguish mounted from "foot" Indians. Shoshonee or Snake was most often applied to the former, Shoshocoe, Shoshoki, Walker, or Digger to the latter (e. g., Wilson, 1849, p. 66; Hoffman, 1886, pp. 296-298; Burton, 1862, p. 476, even included Washo under Shoshoko or Digger). But these terms were applied inconsistently. Snake was often used also for Indians who lacked horses, who were shy, or who were poor. Shoshonie or Shoshonee was sometimes applied to Kroeber's Shoshonean-speaking peoples, e. g., Schoolcraft (1851, p. 198; 1857, pp. 34-35), Wheeler (1879, pp. 19, 408-413) who included southern California tribes under it, and Simpson (1876, pp. 34-35) who included Snake and Bannock under "Sho-sho-nee." (Latham, 1856, p. 106, following Pike, applied Paduca to all Shoshoneans.) Dennison (1858, p. 262), however, made no distinctions, saying that the "Mountain Snakes, Bonnacks, and Diggers" are "generally known as the Shoshone or Snake Indians and are part of that large tribe." Shoshocoe and Snake, as will be shown below, were also applied to Northern Paiute or Mono-Bannock speaking groups as well as to Shoshoni proper. Bannock, though most often used for the Northern Paiute of Oregon, was frequently applied to various Idaho Shoshoni, mounted or unmounted, as well as to Idaho Bannock proper. Many writers, considering it to mean merely "robbers," applied it to any Indians prone to theft. Ute or Utah was usually restricted to the Ute proper, though it was often applied as Pa-Ute to both Northern and Southern Paiute and as Weber Ute and Gosiute (Gosi-Ute) to two groups of Shoshoni. References to early writers in addition to those cited here will be found in Bancroft (1886, pp. 461-470), whose inferences as to divisions and locations of Shoshoneans are far from helpful.

Doctor Steward further stated that the Wyoming Shoshone were consistently called Shoshoni or Snake. With respect to the Shoshoneans of Montana, Idaho and northern Utah he found the literature to have classified them in many contradictory ways and that attempts to interpret the sources had led to unwarranted assumptions of tribal movements and to erroneous linguistic and tribal classification.

Distinct cultural differences were noted among the population within the claimed area that is known generically as Shoshone by the early traders, trappers and explorers. Most early writers distinguished them on the basis of whether or not they possessed horses and pursued the buffalo. The horseless Indians were often referred to as Root Diggers and Shoshokoes while the term Shoshone was applied to the buffalo hunting Indians. One of the early fur traders ("Adventures of Zenas Leonard, Fur Trader and Trapper, 1831-1836") observed that:

The Snake Indians, or as some call them, the Shoshonies, were once a powerful nation, possessing a glorious hunting ground on the east side of the Rocky mountains; but they, like the Flatheads, have been almost annihilated by the revengeful Blackfeet, who, being supplied with firearms were enabled to defeat all Indian opposition. Their nation has been entirely broken up and scattered throughout all this wild region. The Shoshonies are a branch of the once powerful Snake tribe, as are also the more abject and forlorn tribe of Shuckers, or more generally termed, Diggers and Root eaters, who keep in the most retired recesses of the mountains and streams, subsisting on the most unwholesome food, and living the most like animals of any race of beings.

While Leonard noted the cultural differences among the Indians called Snakes, he also, as most early writers did as previously alluded to, included the Northern Paiute within the term "Snake." Washington Irving's "The Adventures of Captain Bonneville (1837)", based on a manuscript and information supplied by Bonneville, also distinguished culturally branches of the Indians called Snakes. This source identifies Indians (no doubt Northern Paiute) met by Bonneville in 1834 at the mouth of the Powder River, in what is now the State of Oregon, as belonging to that branch of the "great Snake tribe, called Shoshokoes, or Root Diggers" who subsisted

mostly on roots and fish and hunted in a small way. These Indians were said to differ in many respects from the other branch of the Snake tribe, the Shoshonies, who possessed horses, were more roving and adventurous, and hunted the buffalo. This same source identifies the Indians met by a detached group from Bonneville's company on the Humboldt River in a region theretofore practically untraversed by the trapper as "Shoshokoes, or Root Diggers, the forlorn branch of the Snake Tribe." These Indians on the Humboldt River, in what is now the State of Nevada, were part of those Shoshone who by tradition and usage were to become known as Western Shoshone. While this source, as most early writings indicate, applies the term "Snake Tribe" to include many other Indians than Shoshone, it does clearly distinguish the mounted Shoshone from the foot Shoshone who are referred to as Shoshokoes or Root Diggers.

The cultural distinction between the various groups of Shoshone are also noted by anthropologists. Doctor Julian Steward differentiates between the cultural group he called "Northern Shoshone," divided into several bands occupying eastern Idaho, northeastern Utah and part of Wyoming and having culturally certain things in common such as the horse, bison hunting and a large number of plains traits, from the Shoshone Indians of western Idaho, a part of Utah and a large portion of Nevada, which had no bands and possessed a remarkably simple culture, and whom he called Western Shoshoni. With respect to economic activities the eastern bands were not primarily seed gatherers as were the western villages but hunters. The very environment in which these culturally distinguishable Indians lived required a different way of life. Those

Shoshone speaking Indians living in the southwestern part of the claimed area inhabited an arid region which had to be scoured to obtain sustenance. The nature of their economy, their poverty and the lack of war-like neighbors made political cohesion in aboriginal times unnecessary. On the other hand the organized bands of Shoshone to the east were far more mobile. They needed the horse, which would have been a burden to the western Shoshone, to hunt the buffalo. Their proximity to hostile tribes such as the Blackfeet, Crow and Sioux made it imperative that there be political organization.

Since culturally there were marked differences between those Indians who have by custom and tradition become known as Western Shoshone and the mounted Shoshone, it is next necessary to ascertain whether these divisions of Shoshone used the claimed area in common. As previously stated the environment of the lands inhabited by the Western Shoshone was arid. While there are several isolated instances of mounted Indians being in parts of the desert country there is no evidence of use and occupancy of such lands by the mounted Shoshone. The very nature of the country itself would make it undesirable for horse owning and hunting Indians. The subsistence cycles of the mounted bands as shown by the evidence of record also discloses that there was no common or joint use of Western Shoshone lands by the eastern Shoshone tribes or groups.

The indiscriminate use of the word "Snake" by the early traders, trappers and explorers is no less confusing than the reports of Government agents and officials when one sifts and attempts to analyze the record with

respect to the political organization of the Shoshone Indians. The following discussion of some of these reports will clearly demonstrate the need for careful scrutiny as to this problem.

In 1849, John Wilson was appointed Indian agent at Salt Lake. On his way to take up his duties he stopped at Fort Bridger in what is now the State of Wyoming and made his first report based upon information supplied him by traders at the Fort. Wilson reported that among the Shoshone there were only two bands, properly speaking with the principal or better portion being called "Sho sho nies, (or Snakes)" who were rich enough to have horses. The second band he named as the "Sho-sho-coes, (or Walkers)" or those who did not have horses. Wilson said one of the principal chiefs of the Sho-sho-nies was "Washikick" who became the famous Washakie of the Wyoming Shoshone. This agent reported the Shoshone claimed the country from "the Red Buttes, on the north fork of the Platte, to its head in the Park, (decayague) or Buffalo Bull Pen, in the Rocky mountains; to the south, across the mountains over to the Yom-pa-pa Yampa, till it enters Green or Colorado river, and then across to the Back-Bone, or ridge of mountains called the Bear River mountains, running nearly due west towards the Salt Lake, so as to take in most of the Salt Lake; and thence on to the Sinks of Mary's or Humboldt's river; thence north to the fisheries on the Snake River in Oregon, and thence south (their northern boundary) to the Red Buttes, including the sources of Green river - a territory probably 300 miles square, * * *." In 1851, Stephen B. Rose, sub-agent of the Uinta Agency, wrote to Brigham Young, Superintendent of Indian Affairs for Utah Territory stating that among the tribes in his

agency were the Shoshone or Snake Indians who inhabited a section of country west of the Rocky Mountains lying along the Wind River Mountains, Henry's Fork of the Snake River, and Bear River. The main band of the Shoshone numbered about 1200 according to Rose.

Indian agent Jacob H. Holeman of the Salt Lake Agency wrote to the Commissioner of Indian Affairs in 1852 that the Indians of Utah Territory were very much scattered over the territory with the tribes being split into small bands ruled by some favorite chief. Of the Shoshone, he said, "The Tribe of Shoshonies, or Snakes is very large and divided into many bands they occupy a large portion of the Territory, but are all on friendly terms with each other." In 1857, Jacob Forney, Superintendent of Indian Affairs for Utah Territory mentioned having met with Little Soldier who, he said, was chief of a small tribe of Shoshone Indians then encamped in Weber Valley, Utah. Early in 1858 this same official reported that Washakie was the principal chief of a small tribe called "Snakes" and that these Indians claimed Green River in what is now Wyoming. While in a report in September 1858, Forney wrote that there were but two principal tribes in the territory, the Snakes and Utes, which were divided into a great number of small bands and they all submitted to the authority of one or the other of the chiefs of their respective tribes, the same official in November of that year reported meeting a band of Indians under Pocatello who acknowledged no chief superior to him. In the Report of the Secretary of the Interior with regard to reports upon the Pacific Wagon Roads (1858) one of the officials of that expedition noted that the Bannacks who were intermarried with the Shoshone had no

regularly constituted chief but came under the influence of Washakie. This same source states that the Western band of Shoshone were not under the direction of Washakie. Forney in 1858 tells of visiting bands on the Humboldt River one of which he said recognized Washakie as their great chief. Then in 1859 the same official in writing of the Humboldt Shoshone stated "These are a fraction of the Snake Nation, but are isolated and not subject to the control of any principal chief." In this letter Forney said the Goshute numbered about 250 people and had not had a principal chief for several years. Forney reported again in September 1859 with respect to the Shoshone or Snake Indians and stated, "This division of the Indians is subdivided into fourteen regularly organized bands." The Superintendent said one of these numbering 1200 was, by common consent, denominated a tribe and was under the complete control of Washakie assisted by four to six sub-chiefs. The remaining bands, he said, were each under one principal and several sub-chiefs. The Superintendent of Indian Affairs for Utah Territory in 1865 reported the tribes located within his superintendency included the eastern and northwestern bands of Shoshone, the mixed bands of Bannacks and Shoshone, the "Goships" and the Utes. The eastern bands of Shoshone and the mixed bands of Bannacks and Shoshone were said to be under the control of Washakie. This report states the northwestern bands were, although Shoshone, an entirely separate and distinct people from those under the control of Washakie and although friendly they were not disposed to associate together. This government official reported the Goshute to be a separate and distinct band.

While there are a few other documentary references which refer to the western Shoshone and Goshute being under the control of Washakie it is

believed that sufficient material has been reviewed to show the contradictory nature of the documentary sources. A careful study of the record leads the Commission to conclude that there never existed a politically organized tribe embracing all Shoshone Indians which was a land-holding entity. The Commission further concludes that because of the differences in culture and economic activities of the Shoshone groups and tribes and the absence of common use of the claimed area by all groups or tribes the Shoshone did not constitute a land-owning identifiable group embracing all Shoshone Indians under the test laid down by this Commission. Certain of the reasons for these conclusions have already been stated and others will be set forth in discussing the groups or tribes which the Commission has found to be the land-using entities.

The Commission has found (Finding 19) that the Western Shoshone Indians in what are now the states of Nevada and California constituted a land-owning identifiable group. Doctor Julian Steward, whose studies of the Shoshone Indians have been relied on in part by the parties herein, found that among the Western Shoshone "the temporary and shifting inter-village alliances of this region instead of consistently allying people of well-defined territories, entailed a linkage of village with village, which extended, net-like, throughout the entire area. Political bonds, like subsistence areas, interlocked in all directions." While Steward's study includes as western Shoshoni the unmounted Indians living along the Snake River to the north of the area as found by the Commission for the Western Shoshone group (Fdg. 23), these Indians have not been included

within the Western Shoshone identifiable group because the Shoshone of western Idaho differed from the Nevada Shoshone as well as the Shoshone Tribe. Living along streams, fishing was their principal subsistence. They seldom, if ever, went south to the lands of the Western Shoshone in Nevada. Their winter villages were located between Hagerman and Bruneau outside the claimed area. Lands used by the western Idaho Shoshone were also used by other Shoshone tribes or groups such as the Shoshone Tribe, the Lemhi Tribe, and the Western Shoshone group for fishing below the Salmon Falls and root gathering in the Camas Prairie by other Shoshone groups along with the Nez Perce Indians and the mixed Shoshone-Northern Paiute of the Boise-Weiser River area.

The evidence and testimony of record discloses that the various tribes and groups of Shoshone Indians considered parts of the claimed area as their respective territories. While the Shoshone had this concept of ownership, which will be discussed further herein, the record does not support the contentions of the petitioners' experts that the Shoshone thought of themselves as one people and as joint owners with the Bannock Indians of all the claimed area. The Western Shoshone as previously stated had little contact for the most part with such Shoshone groups as those located in the eastern part of the lands claimed by petitioners. As to the feeling of "oneness" or unity the testimony of Doctor Stewart is enlightening for he stated (Tr. 264-265):

* * * This may be the one, but I don't see the actual words that I was trying to quote where the Indians of Nevada were, there was an attempt following the report by Powell and Engels in 1873 to have the Western Shoshone placed on

the Fort Hall Reservation, and the Nevada Indians refused to be moved from their territory, and in the process they said partly in this, "They opposed greatly to be broken up as a tribe and distributed amongst strange Indians of other tribes. * * *"

The evidence also shows that the Superintendent of Indian Affairs for Utah in 1869 in a letter to the Commissioner of Indian Affairs recommended separate reservations for the Goshute and the Western Shoshone Indians. This government official reported that the Western Shoshone occasionally committed depredations on the Goshute and the two groups could not live peaceably together. The Goshute were also reportedly afraid of all surrounding tribes and it was said that it would be difficult to induce them to live on any reservations with other tribes.

The record in this case discloses, and the Commission has so found (Findings 22 and 21), that the Goshute Indians were a distinct tribe or identifiable group of Shoshone as was also the Lemhi Tribe. According to Doctor Julian Steward the distinctiveness of the Goshute Indians seemed to be attributable to the fact that they lived more or less isolated in one of the most arid and inhospitable sections of the United States. They had little contact with the Shoshone people to the north and northeast being separated from them by the barren Salt Lake Desert and the Great Salt Lake. While culturally they were essentially like their Western Shoshone neighbors, the Goshute Indians have by tradition and usage been treated a distinct group. In aboriginal times the Goshutes lacked any political organization greater than the village but continued white contact did result in a loose tribal organization with a chief in more or less control for a short period of time.

The Lemhi Shoshone, on the other hand, were a band or tribe of mounted Shoshone with a chief even at the time of the first white contact in 1805. The Lemhi River Indians were one of the most cohesive of all the Shoshone groups. Although not as isolated from the other Shoshone groups as were the Goshute, the Lemhi Indians lived in a region of rugged mountains. Their subsistence pattern was such that they rarely came into contact with Shoshone people to the south except at the Camas Prairie. Except when on the buffalo hunt across the Bitterroot Mountains into what is now Montana, or gathering roots at the Camas Prairie with other Shoshone groups and the Nez Perce, the Lemhi Indians gained their sustenance within their own territory. There is no evidence of joint use of the Lemhi Tribe's lands by other Shoshone groups. While the mixed bands of Shoshone and Bannack to the south of the Lemhi were met by early trappers on the Little Lost River and Big Lost River in Idaho on the northern side of the Snake River plains, in which section of country they also hunted, they did not exploit the mountainous area north of these rivers. Although the mixed bands were said to have on occasion passed through Lemhi country to the buffalo country in Montana and the Lemhi Tribe presumably joined them on such hunts at times, there is no evidence of any cohesion between these groups in aboriginal times. The Lemhi Indians had their closest contacts in aboriginal times with the Tukuarika, or sheep-eater Shoshone of the Sawtooth Mountains in Idaho, who were amalgamated with the Lemhi Tribe during the historic period.

As previously discussed a number of bands of Shoshone were reported by various officials to be under the control of Chief Washakie of the

Wyoming Shoshone. Some of the bands so mentioned never were under his control such as the Goshute and part of the Western Shoshone. Others such as Pocatello's band, said not to be under his control in certain reports, actually were part of his tribe who at times acted independently against the white settlers and emigrants contrary to the policy of friendship to the whites that Washakie favored for his people. According to Nick Wilson, a young boy who had lived in the camp of Washakie for a period of time, Pocatello had tried, but failed, to wrest control of the tribe from Washakie but the tribe rejected his overtures. So there did exist among the Shoshone people a collection of bands under the control of a chief which may be said to have constituted a tribe in fact. The bands of what may be termed the Shoshone Tribe proper consisted of those bands who had their camps or villages in the area, generally speaking, from the vicinity of the Goose Creek Mountains and Thousand Springs Valley in the west to the Green River valley in the east. An integral part of this tribe were the Bannack Indians in the area who were intermarried with and had lived with the Shoshone since before the first white contact. The Shoshone Tribe included the bands treated with in 1863 by Governor Doty and designated in the said treaties of friendship as the "Eastern Bands," the "northwestern bands" and the "mixed bands of Bannocks and Shoshonees." The treaty commissioners in 1863 negotiated these three treaties and also treaties with the Goshute and Western Shoshone Indians in order to secure the lines of transportation and communication through the country inhabited by these Indians. The

treaties disclose the cohesion existing between the "eastern" "northwestern" and "mixed bands." In the treaties with the northwestern and mixed bands these bands of Shoshone Indians ratified and adopted the provisions of the earlier treaty made with the eastern bands and the annuity provided for in the treaty with the eastern bands was increased in the treaty with the northwestern bands and the mixed bands in their treaty agreed to share in the annuities provided for in the treaty concluded with the eastern bands. On the other hand, the treaties with the Goshute Tribe and the Western Shoshone Bands did not incorporate any affirmation of the terms of the treaty made with the eastern bands and the annuities payable under the treaties with the Goshute Tribe and the Western Shoshone Bands were payable only to the Indians parties to those treaties (see Findings of Fact 8 through 13).

The respective bands of the Shoshone Tribe preferred certain sections of that tribe's territory as areas of greater attachment or what may be termed "home bases." The eastern bands preferred the Green River country, the Bear River region and the Wind River Valley (outside the claimed area) in Wyoming; the mixed bands the area along the Snake River Valley and the Portneuf and Blackfoot Rivers in Idaho; and the northwestern bands the lands south of the Snake River and in the vicinity of Bannack Creek and its headwaters. While there was this feeling of greater attachment to certain areas on the part of these bands they all jointly used the tribe's territory, and bands often hunted, fished, gathered and wintered together. The bands of the tribe would also collect to

hunt the buffalo under Chief Washakie often ranging far from the tribe's lands into Montana and the plains of Wyoming.

In support of its contentions (a) that none of the claimed area was exclusively used and occupied by any identifiable group of Indians; (b) that other than Shoshone Indians used and occupied the claimed area; and (c) that the Shoshone Indians had no concept of ownership or exclusive possession of identifiable territory, the defendant relies in part on the testimony and written report (Def. Ex. 116) of its expert witness, Doctor Robert Francis Murphy. At the time this qualified witness testified he was Assistant Professor of Anthropology at the University of California in Berkeley. Doctor Murphy's report contains a comprehensive compilation of historical and ethnological material relating to the Shoshone Indians.

Doctor Murphy in his report states that the Shoshone was a population sharing a common language (except the Bannack) and living in peaceful relations with one another. For the purpose of his study this witness, because of the extent and environmental diversity of the region, subdivided the Shoshone population on the basis of certain geographical areas showing environmental discontinuity with adjacent areas. These differences were selected on the basis of the type of land use and economy except for the Goshute with whom he treated separately because they had been distinguished as a separate treaty-making group although he found them to be in all respects identical with the Western Shoshone. Doctor Murphy's subdivisions also included the (1) Eastern Shoshone, (2) the

Shoshone and Bannock of Idaho (including such groups as the "Boise and Weiser River" Shoshone outside the claimed area, the "middle Snake River" Shoshone, the Fort Hall Bannock and Shoshone, the Shoshone of the Sawtooth Mountains, Lemhi Shoshone, and the Shoshone of Bannock Creek and vicinity), and (3) the Shoshone of Northern Utah. These divisions he explained did not "represent in any sense definable social or political units, or even populations feeling a sense of identity with each other as opposed to Shoshone of adjacent areas." Murphy was of the opinion that fragmentation and individualism were the hallmarks of Shoshone society. "The internal differentiation of Shoshone society," he said, "was not entirely on political lines, for considerable cultural differences existed between different parts of the Shoshone population."

The Shoshone Indians in the Basin-Plateau region according to Doctor Murphy have been distinguished primarily on the basis of their linguistic distinctiveness "as opposed to their surrounding neighbors." Within the Shoshone population, he testified, there were "varying modes of political and social organizations in response to different social and economic conditions." Defendant's witness also testified that his study disclosed no overall Shoshone political organization nor any instance in which the Shoshone-speaking people or even a substantial part of them acted as a unity. Doctor Murphy was of the opinion that since the Shoshone population as a whole formed but a linguistic group any theory that such a group had a concept of ownership of territorial property was most nebulous. Within the region covered by his study he believed there was no individual or group ownership of territory or land.

While the Commission agrees with defendant's expert that all the Shoshone population of the region comprised but what may be termed a linguistic group which was not a land-owning entity, it does not agree that there were no identifiable groups or tribes within the overall Shoshone population which were land-using, or owning, entities. Even if these groups or tribes had no concept of ownership of land, which the Commission believes they did, that factor in itself would not deprive petitioners from establishing Indian title. As the Commission held in Washoe Tribe v. United States, 7 Ind. Cl. Comm. 266, 287-288, the yardstick to be applied in determining Indian title is the fact of exclusive use and occupancy of lands and not what thoughts, or lack thereof, the Indians themselves may have had in a legalistic way as to ownership or property rights.

The Commission has carefully considered defendant's contention that there was no exclusive use and occupation of the area by any identifiable group or groups of Shoshone Indians. The Bannack Indians in Idaho were not, as urged by defendant, a distinct group but an integral part of the Shoshone Tribe having lived with these Shoshone and intermarried with them for long prior to the historic period. The Commission has already discussed the fact that the respective land-using tribes and identifiable groups of Shoshone Indians as found herein had their own territories and the reasons why they did not jointly use or occupy each others' lands either due to cultural differences or because of the nature of their economy. The Commission has excluded certain areas such as lands along

the western boundary as claimed by petitioners where joint use of lands by these Shoshone groups or tribes together with other Indians is shown by the record such as at Camas Prairie and in the vicinity of Salmon Falls. Excluded also are lands along the western and southwestern boundary as claimed where joint use of lands with the Northern Paiute and Southern Paiute is disclosed by the evidence. Lands in the vicinity of Salt Lake City have been omitted because of use of the area by the Ute Indians. Other areas have been excluded for lack of proof of use and occupancy especially the area in Wyoming and Colorado east of the eastern boundary as found for the Shoshone Tribe.

Petitioners urge that both the identity of petitioners, as well as the Shoshone Nation, and the ownership of Indian title by the Shoshone Nation has heretofore been determined as a matter of fact by the Court of Claims in The Northwestern Bands of Shoshone Indians v. United States, 95 C. Cls. 642 (1942). Petitioners also contend that if the Court of Claims findings with respect to these questions are not res judicata then the construction of the evidence therein by the Court of Claims "with its expertise in Indian matters, is entitled to compelling weight." The issues now before the Commission, that is, the identity of petitioners as land-using entities and Indian title to the lands herein claimed were not before the Court of Claims in the Northwestern Band of Shoshone Indians case nor was a determination of said questions necessary to decide the issue in that case. Petitioners in the case before the Court of Claims brought that action under a jurisdictional act which allowed said Court

to hear all claims "which the northwestern bands of Shoshone Indians may have against the United States arising under or growing out of the treaty of July 2, 1863 (18 Stat. 685, 2 Kappler 848); treaty of July 30, 1863 (13 Stat. 663, 2 Kappler 850); * * *." Pursuant to the jurisdictional act the northwestern bands brought suit contending that by the treaty of 1863 the United States recognized, acknowledged and conceded their aboriginal use and occupancy right or title to the territory claimed by them. The Court of Claims held that the United States by the treaties of July 2 and July 30, 1863, did not recognize or acknowledge the use and occupancy right in plaintiff bands to the whole or any portion of the territory claimed by them. In its opinion the Court specifically noted that the jurisdictional act did not embrace a claim based upon aboriginal title. While the "expertise in Indian matters" of the Court of Claims is not questioned and has always been recognized by this Commission which in over fifteen years has acquired its own faculty or adroitness in these matters, the Commission is not bound by the statements of the Court of Claims on questions of exclusive use and occupancy and the socio-political composition of the Shoshone people which are issues herein but were not before the Court of Claims nor were they questions necessary for a determination of the case before that Court.

The Commission concludes that the Shoshone Tribe was a land-using entity composed of the bands previously discussed herein which held Indian title to the lands described in Finding of Fact No. 20 until said lands were ceded to the United States by the Treaty of July 3, 1868,

15 Stat. 673, II Kapp. 1020. The Commission also concludes that the Lemhi Tribe, the Goshute Tribe or identifiable group, and the Western Shoshone identifiable group were land-using entities which respectively held Indian title to the lands described in Findings of Fact Nos. 21, 22 and 23, and that said Indian title was acquired by the United States from these three aforementioned land-using entities without the payment of compensation therefor and said land-using entities are entitled to recover under Section 2, Clause (4) of the Indian Claims Commission Act. The lands of the Lemhi Tribe were acquired by the United States on February 12, 1875, the date that the Lemhi Reserve was established by Executive Order of the President (I Kapp. 839). The Indian title of the Western Shoshone group in their lands located in California was extinguished by the United States on March 3, 1853, Mohave Tribe v. United States, 7 Ind. Cl. Comm. 219. The case will now proceed to a determination of the dates of acquisition of the lands of the Goshute Tribe and the extinguishment of the Indian title of the lands of the Western Shoshone group which were not within the boundaries of the present State of California; the acreages of the land areas found to have been exclusively used and occupied by the respective tribes and groups; the value of the territories on the dates acquired by the United States; the amount of consideration paid where applicable; and the amount of offsets, including money or property given to or funds expended gratuitously for the respective tribes and groups, allowable under the Indian Claims Commission.

The Commission further concludes that petitioners, Shoshone Tribe of Indians of the Wind River Reservation and the Shoshone-Bannock Tribes,

Fort Hall Reservation, Idaho, have the right to maintain this action for and on behalf of all descendants of The Shoshone Tribe which was found to be a land-using entity herein; that petitioner, the Confederated Tribes of the Goshute Reservation, has the right to maintain this action for and on behalf of the descendants of the land-using entity known as the Goshute Tribe or identifiable group; that petitioner, the Shoshone-Bannock Tribes, Fort Hall Reservation, Idaho, has the right to maintain this action for and on behalf of the descendants of the land-using Lemhi Tribe; and that the Temoak Bands of Western Shoshone Indians, Nevada, has the right to maintain this action for and on behalf of the descendants of the Western Shoshone identifiable group.

Wm. M. Holt
Associate Commissioner

We concur:

Arthur V. Watkins
Chief Commissioner

T. Harold Scott
Associate Commissioner