BEFORE THE INDIAN CLAIMS COMMISSION

THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION
Petitioner,

v.

THE UNITED STATES OF AMERICA,
Defendant.

Docket No. 264

Decided: September 28 1964

FINDINGS OF FACT

The Commission previously entered Findings of Fact in the above Docket on June 10, 1960. Thereafter hearing was had upon the petitioner's motion for a rehearing and upon consideration thereof the Commission finds that the additional evidence offered by the petitioner at said hearing is such that, if received, it would not in any way affect the final determination in this matter. Therefore the motion for rehearing is denied, but the Commission finds upon reconsideration of the entire record that its previous Findings of Fact, Opinion, and Interlocutory Order of June 10th, 1960, should be vacated. An order to this effect being entered, there is for determination herein the issue of title and matters pertinent thereto under Claims One and Four of the Amended Petition.

The Commission now enters the following Findings of Fact:
Representation

1. Following the execution of the treaty of June 9, 1855, 12 Stat. 945, II Kappler 694, the members of the former tribes of Walla Walla, Cayuse and Umatilla Indians located upon the Umatilla Indian Reservation in eastern Oregon. During November 1949, the then residents on that reservation adopted a Constitution and By-Laws and thereby created the petitioner organization. Said Constitution and By-Laws were thereafter duly approved by the Secretary of the Interior. Under such Constitution petitioner's membership is divided into two classes, those who have an interest in treaty rights and those who do not.

Petitioner is entitled to prosecute this action in a representative capacity on behalf of the three separate treaty entities of 1855 and the confederation created by the treaty of June 9, 1855, but it is not the full successor in interest to said treaty entities or the confederation.

2. The area involved herein lies in northeastern Oregon and south-eastern Washington. The tract involved in Claim One is that land ceded by the treaty of June 9, 1855, 12 Stat. 945, which is identified as Area No. 362 on Royce's Maps of Oregon and Washington appearing in Volume 18 of the Reports of the Bureau of American Ethnology. Those tracts involved in Claim Four are smaller tracts adjacent to the subject tract of Claim One. Petitioner claims recognized title or, in the alternative, original title to the land described in Claim One and original title to each of the tracts involved in Claim Four.

Most of the land so claimed by petitioner lies within the Blue Mountains of Washington and Oregon. From between Asotin and Dayton,
Washington, this range extends southwest to near Prineville, Oregon. A second extension runs south along the west side of Snake River. The Umatilla River, Butter Creek, and Willow Creek each rise in these mountains along the southwestern-northeastern line, and flow northerly through a hilly area and across a plain into the Columbia River. The three main branches of the John Day River each rise in eastern Oregon and run westerly, south of the above streams, where they converge at the western limits of the claimed area. Some distance farther west this river turns abruptly north in its course to the Columbia River.

A spur of the Blue Mountains running east and west a few miles south of the main branch of the John Day River and the Willow Creek of the Malheur River, forms the southern boundary of the claimed area. Another east and west spur runs north of the main John Day River and south of Burnt River. Yet another spur, known as the Wallowa Mountains, extends southerly between the Grande Ronde River and its tributaries, the Wallowa and Minam Rivers, and passes north of Powder River. The eastern boundary of the claimed area runs along a subsidiary range east of and closely paralleling the Minam River.

It is frequently impossible because of these several spurs to determine the exact locality being referred to in many of the documentary references in the record wherein the Blue Mountains are mentioned, particularly those referring to the "east" or "west" side of said mountains.

Early travelers along the Columbia River referred to the southwest-northeast range or spur in which rise the Umatilla River and Butter and Willow Creeks as the Blue Mountains.
Recognized Title

3. By Article 1 of the Treaty of June 9, 1855, the confederated tribes and bands of the Walla Walla, Cayuse and Umatilla Indians ceded to the United States "all their right, title, and claim to all and every part of the country claimed by them," and bounded as follows:

Commencing at the mouth of the Tocannon River, in Washington Territory, running thence up said river to its source; thence easterly along the summit of the Blue Mountains, and on the southern boundaries of the purchase made of the Nez Perces Indians, and easterly along that boundary to the western limits of the country claimed by the Shoshones or Snake Indians; thence southerly along that boundary (being the waters of Powder River) to the source of Powder River, thence to the headwaters of Willow Creek, thence down Willow Creek to the Columbia River, thence up the channel of the Columbia River to the lower end of a large island below the mouth of Umatilla River, thence northerly to a point on the Yakama River, called Tomah-uke, thence to Le Lac, thence to the White Banks on the Columbia below Priest's Rapids, thence down the Columbia River to the junction of the Columbia and Snake Rivers, thence up the Snake River to the place of beginning: **

Article 1 also provided:

That so much of the country described above as is contained in the following boundaries shall be set apart as a residence for said Indians, which tract for the purposes contemplated shall be held and regarded as an Indian reservation; to wit: Commencing in the middle of the channel of Umatilla River opposite the mouth of Wild Horse Creek, thence up the middle of the channel of said creek to its source, thence southerly to a point in the Blue Mountains, known as Lee's Encampment, thence in a line to the head-waters of Howtome Creek, thence west to the divide between Howtome and Birch Creeks, thence northerly along said divide to a point due west of the southwest corner of William C. McKay's land-claim, thence east along his line to his southeast corner, thence in a line to the place of beginning; **
* * That the exclusive right of taking fish in the streams running through and bordering said reservation is hereby secured to said Indians, and at all other usual and accustomed stations in common with citizens of the United States, and of erecting suitable buildings for curing the same; the privilege of hunting, gathering roots and berries and pasturing their stock on unclaimed lands in common with citizens, is also secured to them. And provided, also, That if any band or bands of Indians, residing in and claiming any portion or portions of the country described in this article, shall not accede to the terms of this treaty, then the bands becoming parties hereunto agree to reserve such part of the several and other payments herein named, as a consideration for the entire country described as aforesaid, as shall be in the proportion that their aggregate number may have to the whole number of Indians residing in and claiming the entire country aforesaid, as consideration and payment in full for the tracts in said country claimed by them.

Said treaty was ratified March 8, 1859. It became effective on that date.

4. As part of the consideration for said cession, the United States agreed to spend certain sums each year for a period of twenty years "for the use and benefit of the confederated bands herein named." The chief of the Walla Walla tribe, Pu-pu-mux-mux, was given permission to build and operate a post near the mouth of Yakima River for a limited number of years.

5. On June 9, 1855, the Walla Walla, Cayuse and Umatilla Indians were three separate independent tribes. Each were of the Plateau culture and of basic Sahaptin linguistic stock. Each tribe practiced the Plateau concept of village autonomy. Each had adopted many traits of the Plains culture by the 19th century. Each tribe lived in winter villages. Each village had a local council composed of heads of families and noted
warriors. One man was recognized as a "spokesman" but he held no more
authority than any other council member. By 1805 each of the three
tribes possessed a sense of political unity under one chief and several
subordinate chiefs or sub-chiefs.

The Walla Walla and Umatilla tribes could understand each other,
but neither understood the Cayuse language. The Cayuse did not under-
stand the Walla Walla or the Umatilla tongues, but they spoke the Nez
Perce language which was partially intelligible to both the Walla Walla
and the Umatilla tribes. By 1850 the Cayuse had adopted the Nez Perce
language for ordinary usage.

6. South of the Walla Walla, Cayuse and Umatilla Indians during
the latter part of the 18th century and the first part of the 19th cen-
tury were Shoshonean speaking Indians who are usually referred to as:
Snakes or as Digger Snakes, and occasionally as Paiutes. For conven-
ience we shall refer to them as Snake Indians, although they seem to
have been identified by ethnologists as a part of that division of Amer-
ican Indians known as Northern Paiute. East of these Snakes were other
Shoshonean speaking Indians with whom they were friendly. North of these
latter Indians and east of the Walla Walla and Cayuse tribes were Nez
Perce Indians. To the north of the Nez Perce and the Cayuse Indians
were the Palus or Palouse Indians, and to the northwest of the Walla
Walla tribe was the Yakima tribe. West of the Umatilla tribe there were
bands of Wayampam Indians. The last four Indian entities spoke Sahaptin
dialects.
These various Sahaptin dialect speaking tribes and bands were friendly with each other, but a traditional enmity existed between the Snake Indians of southern Oregon and the Sahaptin speaking Indians to the north of them.

7. Oregon Territory originally embraced all the present states of Washington and Oregon, together with other lands. The Organic Act of June 5, 1850, 9 Stat. 437, which extended to that territory all applicable provisions of the Indian Intercourse Act of June 30, 1834, 4 Stat. 729, and the Law for the Provisional Government of Oregon adopted July 26, 1854, each preserved to the Indians their rights of person and property. The right thus preserved was that of permissive occupancy of the land utilized by said Indians. Neither of these acts nor any act subsequently adopted by Congress concerning the territory embraced in the original Territories of Oregon and Washington recognized in its Indian occupants any interest in the soil other than this right of permissive occupancy which is known as original Indian title.

8. The extinguishment of Indian title to land west of the Cascade Range of Mountains in Oregon Territory and the relocation of the Indians in that region among those residing east of the Cascade Mountains was authorized by Congress on June 5, 1850, 9 Stat. 437, and on September 30, 1850, 9 Stat. 544, 555. By the Donation Act of September 27, 1850, 9 Stat. 496, Congress authorized the survey of that country west of the Cascade Mountains and provided for grants of 640 acres of land each to actual settlers, subject to certain conditions. When Washington Territory was carved out of northern Oregon Territory and established on March 2, 1853,
10 Stat. 172, all laws effective in Oregon Territory were extended over it. On July 17, 1854, 10 Stat. 305, the Pre-emption Act of September 4, 1841, 5 Stat. 453, was extended to all land not claimed, entered, or reserved by the Donation Act of 1850, which Act had been extended on February 14, 1853, 10 Stat. 158, to December of 1855. At the same time provision was made for the public sale of all land west of the Cascade Mountains which was not then settled or reserved for public use.

The increasing amount of white traffic along the Columbia River and the trails to the coast, a widespread belief among the whites that the Donation Act of 1850 applied to all land in the Territories of Oregon and Washington whether original title had been extinguished to it or not, and the developing settlement at The Dalles, east of the Cascade Range, and rumors reaching the Indians residing east of that range that the Government intended to relocate among them the Indians from west of the Cascade Range, all led to increasing dissatisfaction among the Indian tribes east of the Cascade Range in these two territories. To preserve the peace and quiet of the frontier, Congress appropriated funds on July 31, 1854, 10 Stat. 315, to finance the negotiation of treaties of cession with the Indians east of the Cascade Range in these territories.

9. Upon the establishment of the Territory of Washington, it had become necessary for the respective Governors and Superintendents of Indian Affairs in the Territories of Washington and Oregon to ascertain which tribes and bands of Indians resided in their respective jurisdictions. Official correspondence between these parties discloses that prior to
the treaty date of June 9, 1855, it was understood by them that the Walla Walla and Cayuse tribes occupied land in both territories; that their boundaries were not well defined and that a controversy existed between them as to a considerable tract of land, which dispute the Government might be called upon to settle. The tract which the Walla Walla tribe claimed, as described by members of that tribe in 1848, and that which the Cayuse tribe was believed to occupy were each described by the Governor of Oregon Territory, Joel Palmer, in a letter addressed by him to the Governor of Washington Territory, Isaac I. Stevens, during January of 1854. No mention of the Umatilla tribe appears in that letter.

10. The Umatilla Indian Agency District encompassed all land in Oregon Territory from the 44° of latitude north to the 46° and the Washington-Oregon Territorial line, between the Cascade Mountains and Rocky Mountains. In his annual report for 1854 R. R. Thompson, the agent then in charge of that District, wrote that he had not yet visited all of the Indians under his charge, but so that the Superintendent might have an idea of their general locality he enclosed a map prepared by one Major G. O. Haller, one of the military officials then stationed at The Dalles, Oregon. Agent Thompson wrote:

The accompanying map it is hoped will enable the department to form a correct idea of the locality of the several tribes and divisions referred to in this report. It has been kindly furnished by Brevet Major G. O. Haller, 4th infantry U.S.A., who has taken great pains in collecting accurate information as to the topography of the country, and it may be relied upon as being in the main correct.

The Haller map was forwarded to the Commissioner of Indian Affairs by Superintendent Joel Palmer with his annual report of September 11, 1854.
11. By letter dated August 15, 1854, the Commissioner of Indian Affairs instructed Superintendent Joel Palmer to negotiate treaties of cession with the Indians in his superintendency, to unite as many as possible of the various tribes and bands and create as few reservations as possible for them. Palmer was also instructed to furnish a skeleton map of Oregon Territory showing thereon the location of the several Indian tribes and the extent of country claimed by each, and to ascertain the "nature of the tenure or claim." It was said the claims of tribes in Washington and Oregon Territories were based "on occupancy alone, and that occupancy of a nature not very fixed and well defined by boundaries."

The Acting Commissioner of Indian Affairs issued similar instructions to Superintendent Isaac I. Stevens of Washington Territory on August 30, 1854, concerning the negotiation of treaties with Indians in the Territory of Washington. Mr. Stevens was instructed to "furnish this office with a skeleton map of Washington Territory, showing the location of the various tribes and bands, and the boundaries of the lands respectively claimed by each, * * ."

12. In response to instructions from Superintendent Palmer dated September 28, 1854, to visit as many of the Indian tribes and bands in his agency district as was possible and ascertain their numbers, location, and condition and means of subsistence, to conciliate their good will and maintain the peace, Agent R. R. Thompson of the Utilla District reported on October 11, 1854, that he had on September 29, 1854, accompanied Major G. O. Haller and a troop of soldiers up the Utilla (Umatilla) River to Wm. McKay's place on How-te-me River which stream entered the Utilla
about 10 miles from the Blue Mountains, at which place the Cayuse camp was usually found, thence to the Grand Ronde Valley where they had met the "greater portion" of the Cayuse tribe and some 60 Nez Perce Indians, and thence through Snake country to Forts Boise and Hall in Idaho. Thompson reported that he had held councils with the Bannock Snakes at Fort Boise, and he described the divisions of Snake or Shoshone Indians and gave their general locale. Major Haller also made an official report of this expedition.

13. During 1853 and 1854 Governor Stevens was in charge of a federal exploring and survey party engaged in seeking a railroad route through this region and to the Pacific coast. His official map accompanying his final report was withdrawn about July 19, 1854, because it reflected known errors in recent maps and compounded all of those known to exist on maps of 1850. Thereafter the Governor sent one James Doty up the Columbia River and into Washington Territory to contact the Indians there and arrange for their attendance at a joint council with Indians of Oregon Territory, and to select a site for such a council. Agent R. R. Thompson was instructed by Governor Palmer to arrange with the Oregon Indians for their attendance at this same council.

The council convened at Walla Walla, Washington, on May 20, 1855. On June 9, 1855, the treaty commissioners on behalf of the United States entered into a treaty with the chiefs, headmen and delegates of the Walla Walla, Cayuse and Umatilla Tribes and bands acting for and on behalf of their respective tribes and bands, which entities were by that treaty confederated into a single entity or unit. The treaty was transmitted
to the Secretary of the Interior on July 9, 1856, and to the President of the United States on July 29, 1856. It was ratified March 8, 1859, and became effective upon that date.

During the council of 1855, other treaties of cession were negotiated with other tribes and bands of Indians.

14. On June 12, 1855, Governor Stevens prepared a plat of the area ceded by the Walla Walla, Cayuse, and Umatilla Indians and of the proposed reservation. Neither Governor Stevens nor Governor Palmer had previously submitted skeleton maps of their respective Indian superintendencies showing the location of the tribes and bands of Indians residing therein. According to the official minutes of the treaty council, the only investigation made during that council into the territorial claims of the tribes and bands represented at that council was to request the Nez Perce Chief, Lawyer, to prepare a map of the country claimed by his tribe. No contact had been had with the Snake Indians to ascertain what territory in eastern Oregon was claimed by them.

15. The object of said treaty was the extinguishment of any and all claim by said Indians in or to the land within the Territories of Washington and Oregon, to confederate the Indian entities signatory thereto into one permanent entity, and to designate a tract within the ceded area for use by the confederation as an Indian Reservation.

There is no evidence of record that the United States granted recognized title to the Confederated tribes and bands of the Walla Walla, Cayuse and Umatilla Indians.
16. During June, 1855, the Umatilla tribe numbered 200 souls. At that time the Walla Walla tribe numbered 800 souls, and the Cayuse tribe numbered 500 souls. In earlier times these numbers were somewhat larger.

Indian Title

17. In prehistoric times the staple food of the Walla Walla, Cayuse and Umatilla tribes was salmon, although they obtained many other species of fish from the Columbia River. After acquiring horses these tribes adopted a fishing, hunting and root-gathering subsistence cycle, and by the early 19th century the Cayuse and to a lesser degree the Walla Walla and Umatilla Indians were engaging in hunting activities, going east of the Snake River to buffalo country near Fort Hall and even farther to the east. By the 19th century the Umatilla and Walla Walla occupied permanent wintering villages along the Columbia and Umatilla or Walla Walla Rivers, with the Cayuse wintering not far to the east and southeast. These villages were also used as more-or-less permanent residences when the tribes were not traveling on their gathering, hunting, and fishing expeditions. Such sites were chosen with a view to avoiding the deep snows in the mountains and for some shelter from the elements, for available fuel and in order that the tribes might conveniently take advantage of the early salmon runs in the spring when the chinook, blueback, and silver salmon migrate up the Columbia River to spawn in the headwaters of its tributaries.

The annual runs of these several species of salmon controlled the subsistence cycle of these tribes. These runs began about the first of May and again in October. The Indians were familiar with the various places
where the salmon could be found in greatest abundance probably beginning with the Columbia River as far down stream as The Dalles and Celilo Falls where their fishing began, and as the fish moved up stream the Indians followed to the headwaters of the tributary streams, principally the Walla Walla and Umatilla Rivers which were encompassed in the territory they claimed they used by right of Indian title. The men fished and hunted game while the women dug roots, gathered berries and pounded and dried the fish and game for winter food. As autumn approached they returned to their winter villages for the late summer run of the salmon, taking with them the food they had accumulated for the winter. There they remained until the following spring when the cycle began again. Hunting trips to the buffalo country to the east were made annually by some members of the tribes to obtain buffalo meat and hides and were of varying duration.

Local winter groups consisted of related families within each tribe dwelling in lodges of mats and rushes. During the "summer" months there was an intermingling of the families not only within the separate tribes but among the three tribes during their summer migrations. The "summer" groups were fluid in composition and heterogeneous in character, and the territory they visited was not owned or claimed by any one tribe, but was used in common by all three tribes and other friendly tribes.

18. Claims of villages out on headwaters of streams in the Blue Mountain and other areas where the summer groups went on their gathering,

"Summer" includes also the period in the spring and fall when the Indians were away from their winter villages on subsistence activities.
hunting, and fishing activities are not realistic. These areas were actually camping areas rather than villages. Webster's dictionary defines a village as "any small aggregation of houses in the country, in general less in number than in a town or city and more than in a hamlet."

There is no evidence in the record that dwellings of any kind existed in any of these areas on anything resembling a permanent basis; in fact no dwellings even in the Indian version of a dwelling are mentioned in the evidence. The only places were lodges are described are in the areas where these Indians lived throughout the winter season which in one sense were their permanent villages. Their life during the summer season seemed to be one round of camp spots after another.

19. During the early decades of the 19th century Walla Walla, Cayuse, and Umatilla tribal members had a large number of horses owned by individual Indians, which as a matter of necessity roamed at large. Those owned by Cayuse Indians were especially numerous. For example, it is claimed that one Indian owned more than 2,000. Other Indians had large bands and since there were no fences the horses ranged over the grazing areas at will. This situation came about naturally as the horses increased in numbers, and fit into the common use of areas adjacent to and south of the areas in which the Umatillas, the Walla Wallas and the Cayuse Indians had their permanent villages, each as a separate and independent entity. With the additional areas being taken from the Snakes, there was enough range for all, not only for the grazing of horses, but for subsistence purposes. Allied tribes such as the Nez Perce, Wayampam, and others were taking part in the drives against the Snakes, used the invaded territory frequently and without leave from anyone. Only their ancient enemy
to the south, the Snakes, were not welcome to use the territory.

With respect to this situation Dr. Ray testified under questioning by petitioner's counsel as follows:

Q. Did the members of these three tribes ever go upon each other's lands?
A. Yes, they did.

Q. Did the members of these tribes ever go upon lands occupied by other tribes?
A. Yes. Upon the lands of all of their neighbors.

Q. When one of these three tribes was on the land of some other tribe, were they there, so far as you have been able to find out, as a matter of right?
A. No. They were there as a matter of privilege, the privilege being given by the tribes upon whose lands they were going.

Q. And when members of other tribes came upon the lands of one of these three tribes, have you been able to discover whether they did so as a matter of right?
A. Yes, I have been able to discover, and they did so as a matter of privilege in the same fashion as that described in reverse.
(Tr. Vol. 5, p. 631)

This situation in which Dr. Ray is of the opinion that these numerous agreements and understandings were arrived at between friendly tribes of Indians with respect to the ownership and permissive use of these lands is indeed complicated. To have such a situation under the circumstances would require a degree of sophistication on the part of these Indians which would seem to be over and beyond their known capacity and their way of living at any time prior to the influx of white settlers in eastern Oregon who brought in the white man's idea of land ownership. Besides, there was
room for all friendly tribes without anyone having to make an issue of specific tribal ownership in the areas used in common.

That this so called "permissive use" involved subsistence activities of the "visiting" Indians is made clear in the last question and answer.

Q. Have you found any instances in which the Northern Paiute were given the privilege of coming upon the Cayuse and Walla Walla lands and exploiting the economic resources to be found there?

A. I have never found such an example.
(Tr. Vol. 5, p. 631)

So we find that during the critical periods in this case, these areas which were used year after year by the intermingled Umatilla, Walla Walla, Cayuse, and friendly neighboring tribes for the exploiting of economic resources, were not used and occupied exclusively by the Umatilla, Walla Walla, or Cayuse tribes, or by any one of them, so that Indian title could come into being or be maintained. No "permissive use" agreements existed.

20. South of the Umatillas, Walla Wallas, and Cayuse tribes were Shoshonean speaking peoples generally referred to in this proceeding and in Docket 198 as the Snake Indians. In this general classification were the Northern Paiutes, the "Digger" Snakes and the Shoshones.

In Docket 87 we found part of them, at least, to be an identifiable group of American Indians entitled to file claims against the United States under the Indian Claims Commission Act as a group because they were not an organized tribe or band.

In fact there were thousands of Snakes or Paiutes scattered over eastern Oregon, western Idaho, Nevada and a few in Utah and northern California. Scattered groups of these Indians occupied and used in their wanderings
much of eastern Oregon in aboriginal times immediately south of the Columbia River. Their subsistence practices were governed largely by the nature of the country in which they were living from the Cascade mountains eastward to the near vicinity of the Snake River in Idaho. They were fierce fighters, largely of the guerrilla type, moving stealthily through the areas where they were seeking their subsistence. When in areas where there was an abundance of fish such as the salmon, and deer, elk, bear, and smaller game animals, together with edible roots, nuts and berries, their subsistence was very much like that of their northern neighbors, the Sahaptins. They were not along the south bank of the Columbia when Lewis and Clark and other explorers and trappers went up and down that river, but were not very far away from it. The explorers, particularly Lewis and Clark, heard of them although they did not seem them. That they were not far away was attested by the Sahaptins who in 1805 and 1806 had their dwellings on the north bank of the Columbia because of their fear of the Snake Indians with whom they were at war. The Snakes were evidently powerful in their way, and were feared by the Columbia River Indians. There was intense enmity between the two groups and as a result they were almost continually at war. The fighting between the Sahaptin Indians and the Snakes over the possession of the areas to the south is referred to by practically all of the anthropologists, historians, travelers and writers dealing with the history of southeastern Oregon. That the Snakes occupied much of the area south of and near the southern banks of the Columbia River in aboriginal times is attested by those who tell of the efforts of the Sahaptins to expell them from these areas. They were
neartily disliked by the Sahaptins who regarded them as "savages" largely, it was said, because of their wandering way of life and the types of food such as dried insects, which these Indians in their need, as they were deprived of more productive areas, were forced to eat as a matter of survival. Little was learned by early white explorers and settlers about these Shoshonean peoples and what was learned came largely from their ancient enemies who were living along the trade and travel routes to the Pacific Northwest, such as the Columbia River and the later Oregon Trail.

In addition to continuous warfare over territory, which was largely inspired by the comparative subsistence values of the lands near the Columbia River and those farther to the south in eastern Oregon, there were at least two other rather minor reasons for this long term hostility between these linguistic groups. First, the Sahaptins considered their horses an evidence of wealth, and the Snakes, who did not have so many horses, used them for food as well as beasts of burden, and also preyed upon the herds of the Sahaptin tribes. And secondly, at least during the early decades of the 19th century, the Sahaptin tribes made slaves of any Snakes they were able to capture during their expeditions against these less fortunate people. They also sold some of these captured Snakes as slaves to other Indians.

**Statements of Ethnologists, Anthropologists, etc.**

21. James M. Teit, a sheepherder who married a Thompson River Indian woman and became interested in Indian history, gathered certain data
concerning the tribes in eastern Washington and Oregon which was edited and published during 1928 by one Professor Franz Boaz. Teit's theory that Shoshonean people moved northward through eastern Oregon about the middle of the 18th century, driving a Salish speaking people into northern Washington and a Sahaptin speaking people north of the Columbia River, was adopted by Joel V. Berreman and by Dr. Leslie Spier, each of whom were attempting to assemble the available data concerning the Indians in this region without benefit of personal field work in the area. Neither of them considered it possible to fix definite territorial limits as of any period for the Indians within the subject area, and Dr. Spier decided that it was doubtful whether the early people in Washington ever thought in terms of boundaries. Teit believed that this northern movement reached its height between 1800 and 1820 or 1830; Berreman believed it did so between 1800 and 1820; Spier placed it at 1800 to 1830.

Other scientists claim that the Sahaptin people moved south against the Shoshonean speaking people in central and eastern Oregon. Among those advancing this claim are Doctors Omer C. Stewart, James Mooney, John R. Swanton, George Peter Murdock, and the two present expert witnesses, Dr. Verne F. Ray and Robert Suphan. With the possible exception of John R. Swanton, each of these parties did some field work among the Indians concerned in this movement. When such movement began, when it reached its height, and when stability was restored among the several tribes in eastern Oregon and southeastern Washington are matters of disagreement among the scientists.
Dr. Julian H. Steward's field work among Northern Paiutes and the Shoshones east of them was fairly contemporary with Dr. Ray's earlier research. Dr. Steward lived among these Shoshonean speaking Indians from 1918 to 1921. Articles concerning them were published by him during 1938, 1939, and 1940. His 1939 informants and, in his opinion, early explorers, considered the Blue Mountains the northern boundary of Snake or Paiute territory. His last publication contains a plat showing this boundary as a line running near the North Fork of John Day River and thence east similar to the line first fixed by Dr. Stewart. (Pet. Exs. 51, Dkt. 198; 93 p. 447)

Dr. Omer C. Stewart did field work among the Northern Paiute during 1936 and subsequently. In his 1939 publication he said their northern limits ran along John Day River and its North Fork, thence south along the Blue Mountains to their terminus, and thence easterly around that range to Snake River. Later he platted the location of these Indians by bands, the northern line following North Fork of John Day River, then dropping south to the headwaters of North Fork of Malheur River; thence southeast to near the 44° of latitude, and then slightly north of east to strike Snake River opposite the mouth of Weiser River. (Pet. Exs. 94, 95)

Dr. Stewart later altered this line, extending it from the northern bend of the North Fork of John Day River east to Snake River, passing north of Pine Creek. See the Opinion of this Commission rendered March 24, 1959, in Docket No. 87, Northern Paiute Bands, et al., v. United States, 7 Ind. Cl. Comm. 322, pp. 406, 399.
Dr. Beatrice Blythe Whiting has located certain bands of Paiute Indians for the period 1840-1850. She said a Hunipuitika band around Canyon City Creek, the town of John Day and in John Day River Valley, hunted west as far as Dayville, wintered as far north as Waterman, and had camps as far east as Baker, Oregon.

During 1844 Haratio Hale drew a linguistic map based on information obtained of traders at Fort Walla Walla and Cayuse missionaries. During 1885 and 1931 J. W. Powell and Melville Jacobs published linguistic maps. Hales's Nez Perce western line runs south along the east side of Palouse River around the headwaters of Walla Walla River and across Grande Ronde River near the upper end of Grand Ronde Valley. His Walla Walla-Cayuse divide follows Touchet River, crosses the Walla Walla, Umatilla and John Day Rivers a short distance above their mouths (Tr. p. 666). Snake or Shoshone are in the east half of Grand Ronde Valley. Jacobs indicated the Umatilla were entirely south of Columbia River, the Cayuse south of the Washington-Oregon line, and the Shoshonean north line ran west in the vicinity of the Blue Mountain spur north of Powder River, following it westward and swinging southwest across John Day River near the mouth of its North Fork. He located Wanapam north and west of the Columbia River from Priest's Rapids to below Umatilla River, and east of the Columbia River from the mouth of Walla Walla River to White Bluffs; Wauyukma on Snake River opposite Palouse River; and Walla Walla on both sides of Walla Walla and lower Snake Rivers, east of the Columbia River.

Dr. James Mooney did research during 1892. He and Cora DuBois who published during 1938, were interested in religion, but they did report the location of some tribes. DuBois' Cayuse are located between Butter
Creek and Grand Ronde headwaters; her Umatilla are on lower Umatilla River, and upper John Day River; her Walla Walla are on Walla Walla River and on Columbia River to above the mouth of Snake River. She placed the Wanapam on the north bank of Columbia River below Snake River, and on both sides of the Columbia above Snake River, and also on the lower Yakima River.

Dr. James Mooney equated some of Lewis and Clark's Indian names with those of present day. He said the Wanapam were also Sokulks and ranged both banks of the Columbia River from Crab Creek to Snake River; their Chamnapam occupied the bend of the Columbia River below Yakima River and the lower Yakima River; that their Pishquitpah were probably the Pisko band of Yakima; their Kowwassayee were a Tenino band residing opposite the mouth of Umatilla River which joined in the Yakima treaty of 1855; that their Chopunnish were Nez Perce, but that the Yeletpo band of Chopunnish was Cayuse, and the Cayuse occupied the heads of the Walla Walla, Umatilla and Grande Ronde Rivers. He located a tribe not equated by anyone with one of these three tribes on the north side of Snake River in three villages between its mouth and that of Palouse River with a fourth village on Palouse River, and placed the Walla Walla on the east bank of the Columbia River below the mouth of Snake River, and on lower Walla Walla River.

Dr. Edward S. Curtis was in this region during 1907. He placed the Cayuse-Nez Perce divide along Tucannon River, located Walla Wallas on the
Walla Walla River and the adjacent bank of the Columbia River south of Snake River; placed Chamnapam about the mouth of Yakima River and included them with the Yakima Tribe; located Umatillas in Umatilla River valley and the country about its mouth south of the Columbia River; and said the Cayuse ranged near the Blue Mountains from the head of Touchet River to that of John Day River, including the Grand Ronde Valley.

Dr. Herbert Spinden worked among the Nez Perce during 1907-1908 and reported that tribe ranged west to the Blue Mountains between latitudes 45 and 47 degrees, that it occupied only part of the area it controlled; that its territory extended along Snake River west to near the mouth of Tucannon River and it divided the Grande Ronde Valley with the Umatilla Tribe, that it may have included the Palouse tribe which inhabited Palouse River valley and controlled the lower Snake River.

Dr. George Murdock, whose research in 1935 was among the Indians residing west of these tribes here represented, said the John Day River Wayampam Indians adjoined the Umatillas near Arlington; that the John Day Indians seem to have always used the middle reaches of John Day River to some extent but that they admitted the country belonged to the Paiute (Snake), and by 1855 the Paiute had been expelled almost as far south as the great bend of that river (east of the claimed land); that the pressure against the Snakes there was at its height between 1810 or 1820 and 1855.

Joel Berreman considered the Snake-Nez Perce divide ran along the divide between Pine Creek and Powder River on the south and the Grande Ronde on the north. John Swanton, writing during 1953, reported the Paiute had
been pushed out of Powder River valley and upper John Day River in the 19th century, but described Cayuse country as including the headwaters of Walla Walla, Umatilla and Grande Ronde Rivers, extending from the Blue Mountains to DesChutes River. He said the Chamnapum were part of the Palouse tribe and assigned the Palouse land on both sides of the Columbia River above the mouth of Snake River and the country north of Snake River.

In many instances boundaries appear to have been fixed without ascertaining claims of adjoining Indian entities. Nor can one be certain from a perusal of these exhibits just what date is intended to be reflected in each, or how long exclusive occupancy if it existed at all, had existed within the various regions assigned to these different tribes.

Expert Witnesses - Dr. Ray and Mr. Suphan

Dr. Verne F. Ray, petitioner's expert witness, holds a Doctor of Philosophy degree from Yale University. He majored in anthropology and teaches that subject at the University of Washington. He has published a number of articles based upon field work among the Indians in the Columbia River Basin performed between 1928 and 1938. During 1953 and 1954 in preparation for his testimony in this case, he did literary research and additional field work among the Yakima, Umatilla, Walla Walla and Cayuse tribes. He has never, except casually, worked with the Snake or Northern Paiute Indians next south of these Sahaptin tribes.

Dr. Ray testified in his opinion that about 1750 the Walla Walla, Cayuse and Umatilla and other Sahaptin speaking Indians began a concerted "drive" against the Snake or Northern Paiute south of them; that by 1790 the Snakes had been expelled from the territory here involved; that by 1810 the Cayuse and Umatilla tribes were in firm possession
of the southern portion of the claimed area and held it under original title until the cession of June 9, 1855; that the territorial boundaries of these three tribes had been quite precise and definite.

(a) Dr. Ray's first article was published during 1936, and based upon informant material secured between 1928 and 1934 (Tr. pp. 48-50). It dealt strictly with aboriginal conditions as they existed around 1850. In it he said:

*** The greater the distance from population centers, the more vague the lines of demarcation grew. Thus, far back in hunting territory or far out in desert root digging grounds, boundaries sometimes completely faded out. *** But during the gathering of this material every group in the basin was visited and the maps were first drawn in the presence of informants as information was given, bit by bit, including village locations as well as lines of boundary. This procedure permitted a degree of accuracy and completeness which could not have been achieved through reconstruction from notes. (Pet. Ex. 59, p. 117)

On the accompanying sketch the Sahaptin-Shoshonean divide apparently follows the course of John Day River and then runs down Powder River. The Umatilla tribe is located on both sides of the Columbia River, its west boundary extending south from the Columbia River between the mouths of John Day and DesChutes Rivers. The Grand Ronde Valley is in Cayuse territory; the Yakima are along Yakima River and on both banks of the Columbia River above the mouth of Snake River, and the Walla Walla occupy both banks of Snake River up to within a few miles of Palouse River and both banks of Columbia River opposite Walla Walla River and below the mouth of Snake River.

Dr. Ray wrote precision in boundary lines should not be taken to be more than a reflection of ethnic unity; the hunting territory of one
group might be quite open to another even though the bounds were highly specific. He listed six Umatilla sites, one on Blalock Island, three in Washington of which one was 3 miles above Mottinger, one near Roosevelt, and one at the mouth of Rock Creek. The remaining two were in Oregon, one between Umatilla and Cold Springs, and the other at the mouth of Umatilla River. He located seven Cayuse bands: one on Butter Creek, one at Pilot Rock, one on McKay Creek, one near Cayuse, Oregon, one on the Gibbon-Umatilla River, one on Cottonwood Creek, and one near the Walla Walla River. He listed no sites for the Walla Walla. Those for the Yakima included one at Pasco, one opposite Richland, and one occupying both banks of Yakima River where Kiona now stands, each of these being within the area presently claimed on behalf of the Walla Walla. He placed them along both banks of the Columbia River in the White Bluffs area.

(b) A second article, "Tribal Distribution in Eastern Oregon and Adjacent Regions," was published during 1938, based upon field work completed around 1935, and including a few weeks' work with the Wayampam Indians living next west of the tribes here represented. Dr. Ray wrote:

"Distribution at the Middle of the Nineteenth Century.

The Umatilla ** occupied both banks of the Columbia River from the vicinity of Rock Creek (Washington) to a point a few miles below the mouth of the Walla Walla River. North of the Columbia the territory extended to the Horse Heaven Hills, south boundary of the Yakima. In Oregon a much greater area was held, reaching south to the John Day River. Beyond lay the Paiute. The eastern and western boundaries were less definite due to greater intercourse with neighboring tribes. Rock Creek *** furnished an approximate western boundary but Umatilla families sometimes camped as far west as the John Day River; reciprocally, the Wayampam or Tenino enjoyed free movement eastward to Willow Creek. Even on the Columbia River, where lines of demarcation were usually very definite, several villages were jointly occupied by Umatilla and Tenino /Wayampam/."
On the east the Umatilla-Cayuse division was equally vague except on the lower Umatilla River and near Ukiah. Both banks of the Umatilla River below the mouth of Butter Creek, and the north side for several miles above, belonged to the Umatilla; but all of Butter Creek was held by the Cayuse. In the gathering grounds to the south the Umatilla occupied the Ukiah region, whereas the nearby Lehman hot springs belonged to the Cause. Village location largely determined these distinctions; ***

The irregular southern boundaries of the Umatilla and Cayuse were not arbitrary but conformed to topographical conditions. The Umatilla utilized the entire drainage area of the North Fork of the John Day River; the Cayuse used the slopes draining into the Umatilla and Powder Rivers.

Walula Walla Walla territory adjoined that of the Umatilla at the bend of the Columbia, but these groups did not intermingle freely. In consequence, the line dividing them was quite definite. *** In addition to a short segment of the Columbia, the Walula occupied both sides of the Snake River from the mouth to Lyons Ferry.

The habitat of the Cayuse (wayi'letpu) did not touch the Columbia at any point and bordered on the Snake for only a very short distance at the northernmost extreme, near Starbuck. *** Much of the area lay within the Blue Mountains. A number of drainage systems were occupied, including those of the Walla Walla, the Umatilla, the Upper Grande Ronde, Powder, and Burnt Rivers, and the Willow Creek branch of the Malheur River. On the northeast the Tucannon River formed the boundary; on the northwest a segment of the Touchet River served likewise.

*** Intercourse was extensive with the Nez Perce but the line of demarcation remained well defined. The southern boundary lay in relatively unoccupied country. Territory to the south was held by the Paiute and Bannock, with whom relations were at all times strained."

"Distribution in the Eighteenth Century

*** Throughout the span of traditional history the Umatilla had been bounded on the south by the range of hills spreading westward from Ukiah, the Cayuse by the Grande Ronde-Powder River divide, and the Nez Perce by the Wallowa and Seven Devils Mountains. ** **" (Pet. Ex. 61, bracketed material supplied)

Dr. Ray's plat shows a Umatilla-Wayampam divide extending south from the Columbia River between Willow Creek and John Day River, crossing the North Fork of John Day River near its mouth. He wrote he had arbi-
trarily divided the land used by these two entities between them. He
platted a Sahaptin-Shoshonean divide along John Day River and thence south-
west to the Malheur River, and down that river to Snake River. An 18th
century Shoshonean-Sahaptin divide runs east and west between the John Day
and Powder River drainage on the south and that of Willow Creek and the
Umatilla and Grande Ronde Rivers on the north, extending east across the Snake
River in the vicinity of the mouth of Pine Creek. The Yakima are shown along
both banks of the Columbia River above the mouth of Snake River.

In a footnote at page 385 of this article, Dr. Ray wrote that a complete
catalogue of Umatilla, Walla Walla, Cayuse and Palouse villages had been
obtained, having reference, he testified, to his 1936 list, which he said was
complete for the scientific purposes of that paper. At the time of trial
he presented a much more numerous list of village sites (Tr. pp. 692-5, 699).
The sites on this last list are places to which the Indians regularly returned.
Lack of permanent occupancy, permanent structures and in addition, the manner
of use, do not seem to have been elements of consideration.

In this article Dr. Ray also said:

Tribal territories *** had persisted without material change
in Washington and northernmost Oregon from time immemorial. But
not so in the southern extensions of the area: Sahaptin peoples
had acquired these regions only after the opening of the nineteenth
century. Formerly Shoshonean peoples had occupied all of the upper
drainage for the John Day River, all of the Powder River, and all
of the Weiser and Payette River basin and the territory to the south ***

On his map referred to above, the Shoshonean-Sahaptin divide line
running from west to east was far enough north of the North Fork of the John
Day River to include in Snake country all the upper drainage of the John
Day River, and the Powder, Weiser and Payette River basin. He also showed
the areas the Umatillas and Cayuse had acquired in the 19th century south
of their 18th century southern boundary.
Dr. Ray also wrote Lewis and Clark's "Chopunnish" included Nez Perce, Cayuse and other Sahaptin Indians; he was uncertain whether their Fish-quit-pah were Umatilla or Cayuse. He wrote the Walla Walla had both sides of the Columbia River below the mouth of Snake River; that Sahaptin tribes never questioned the right of the Snakes to territory occupied by them during the 18th century; that neither of the parties attempted to wrest territory from the other; that "the Shoshoneans often pushed as far north as the Columbia River, forcing the Umatilla sometimes to take temporary refuge on Blalock Island or the north bank of the river"; that they never remained long and never established permanent homes, and that the balance of power was very even until after the turn of the century (18th into the 19th), when it began to shift to the Sahaptins; that this was undoubtedly due in part to acquisition of the horse and introduction of new weapons by the whites. That motives for territorial expansion were introduced at the same time, i.e., encroachments by the whites and depletion of game near the river, and after several decisive battles in Shoshonean territory the Shoshoneans were pushed farther and farther south. This added economic security but resulted in no vital change in habitat and economy for the Sahaptins. He mentioned Lewis and Clark's reports of Shoshonean tribes being on the South Fork of Snake River and on Weiser, Powder, Payette, Malheur and Boise Rivers. In spring and summer they were along the Clearwater, in fall and winter on the Missouri River. He thought less credible their location of the "Shoshone (or Snake Indians)" in fall and winter on the Multnomah and "in spring and summer on the heads of the To-War-ne-hi-ooks (DesChutes), La Page (John Day), You-ma-tol-am (Umatilla) and Wal-lar-wal-lar (Walla Walla) rivers, ***" He stated the
Lewis and Clark material disclosed the Shoshoneans in 1805 were at least as far south as the earlier boundary he had fixed for them, except, perhaps in the region of the Blue Mountains.

(c) During 1937 Dr. Ray wrote the thesis for his Doctor's degree, which was published in 1939. He then wrote Cayuse and Umatilla boundaries were highly specific. He failed to mention the Walla Walla, and on a plat illustrating areas of language, religion or like traits, the area usually assigned the Walla Walla tribe appears to be divided between the Umatilla and Palouse tribes.

(d) During 1936 Dr. Ray worked on a culture element study. During 1937 this was extended to the Umatilla and Wayampam Indians. His report appears as Chapter XXII of "Culture Element Distribution" and describes Umatillas as "itenerant raiders; causing war," having a tribal organization under one chief and sub-chiefs, recognizing tribal territorial and individual property rights.

(e) Since the commencement of this suit and his employment, Dr. Ray has conducted field studies and has done research work concerning the Cayuse, Walla Walla and Umatilla tribes specifically on fishing stations, subsistence areas and other issues involved.

(f) Dr. Ray wrote in his first publication (Pet. Ex. 59, p. 101):

***

Most important is the notorious unreliability of native verbal traditions when they refer to history a few generations or more removed. Such data, through weighing, balancing and comparing, may prove of value for a theoretical discussion or a hypothetical reconstruction, but is of little worth for a purely factual paper.

***
Dr. Ray testified that it is "quite impossible" from historical materials to determine the southern limits of the land the Cayuse and Umatilla held under original title; that one must have informant information; that his Shoshonean-Sahaptin division line on his 1938 publication approximates his 1850 line in his 1936 publication when considered with respect to the mouth of Weiser River (Trans. pp. 698-9); and that during the 19th century the Snake or Paiute Indians were within the region north of his Shoshonean-Sahaptin divide on the south rim of the watershed of John Day River, but that the economic cycle of the Umatilla and Cayuse tribes caused them to winter in the northern portion of the areas he now assigns to them and that:

The northern Paiute, being immediately to the south and engaging whenever they could in small raids into Cayuse and Umatilla territory, sometimes did cross the mountains and get into the actual valley of the John Day River. In fact, they often went even further than that on their raids. But in the wintertime, when none of the Cayuse or Umatilla were in this region, they sometimes actually camped on the John Day River, so that is what led my informants to say that the Paiute were people who were to be found there, and the determination of the boundary as I have shown it here rests upon further information to this effect.

That Paiute presence on the John Day River, itself, on the course that is shown here, extreme south, was on the same basis exactly that it was further to the north; that is, a raid and enemy attempts at utilization when they could get away with it. (Tr. p. 568)

He explained these northern tribes considered the Snakes were "savages," not entitled to the same treatment accorded to other neighbors, and that the Snakes provoked this attitude because the (Trans. pp. 628-630):
nature of the Paiute culture was such that a wandering way of life was characteristic, and in this wandering way of life the small groups of Paiutes penetrated into whatever area they could where they thought they would be able to get something to eat or something to use in their meager culture.

They certainly from time immemorial had attempted to penetrate into the Cayuse and Umatilla lands. Even when the Cayuse and Umatilla were further to the north. And, in turn, then the Cayuse and Umatilla would have to be on the alert and aggressive toward them or else they would soon find that their country in the south was coming to be occupied by these people.

One of the reasons that the Paiute could be partially successful was that they were in this region in the wintertime, whereas the yearly round of activities of the Cayuse and Umatilla took them up further to the north in the wintertime, and there was less danger then for the Paiute.

I do not say that this is the whole explanation. The Cayuse were an aggressive people. * * *

Mr. Luce: Was there any relationship between these people obtaining -- I mean by "these people" the Umatilla and Cayuse, particularly -- obtaining the horse in this drive to the south?

Witness: Yes, there was. We do not know precisely what the history of relationship between these two people was prior to the acquisition of the horse. But it may be safely assumed that with the coming of the horse they were put in a position to move aggressively against the Northern Paiute because the Northern Paiute did not get horses at least in anything to compare with the number that were possessed by the Cayuse and secondarily by the Umatilla.

Mr. Robert Suphan testified for the defendant. He specialized in anthropology at Columbia University, but has not submitted a thesis for his Doctorate. During 1954 he spent six months in historical research followed by three months in field work among the residents of the Umatilla Reservation and three additional months working with residents on the Warm Springs Reservation, all preparatory to testifying in these consolidated cases.
Mr. Suphan placed much reliance upon the publications of Dr. Ray, the Swindell report of 1941 and its accompanying affidavits, and took into consideration material found in the private files of Mr. Swindell following his demise. He prepared a report of his work and conclusions which appears as Defendant's Exhibit No. 18. He testified he had taken care to advise the Indians he interviewed that he represented the Department of Justice and that while he had not interviewed Walla Walla Indians he had found the Walla Walla history common knowledge among the Indians on the Umatilla Reservation. However, he stated in his report his informants had been quite vague concerning usage of the Lower Snake and Yakima River valleys as well as the White Bluffs region along the Columbia River, areas Dr. Ray claims were held by the Walla Walla under aboriginal Indian title.

Mr. Suphan considered the area here involved reflected the post-1730 Plains influence which accompanied the introduction of the horse in Washington and Oregon. He wrote the socio-political organization of the Cayuse, Walla Walla and Umatilla Indians was the same; that they were each ethnic unities, composed of members of several villages or local groups; that each local group was politically autonomous with its own chief and council whose authority was limited to that group, there being nothing to unite the several groups into a tribal structure. He wrote his informants had said personal rights were recognized in property made by and/or used in work by individual Indians but village sites were communal property and the nearby fishing sites belonged to the villages as a unit, although they were open to use by all friendly people regardless of ethnic affiliation.
However, no claim was made to areas beyond the immediate neighborhood of the village, his informants agreeing these were open to whatever friendly people might care to use them. By means of direct statement and through the medium of stories of the old days he ascertained from his informants that there had been no concept of boundaries or trespass among them and ethnographic material to the contrary, was attributed either to misinformation or confusion with conditions prevailing during reservation times.

Mr. Suphan concluded from informant information that in aboriginal times the local groups, composed of extended families, dwelt during the winter months in earth or mat lodges clustered in villages along the Columbia, Walla Walla and Umatilla Rivers in spots affording a nearby supply of fish, roots and wood as well as some shelter from the elements; that their composition was fluid, but the village sites were always within the same general locale. In spring and summer family groups moved out in quest of roots, fish, berries and game, joining other village groups within the larger ethnic unit, but that there were also inter-ethnic aggregations, the heterogeneous groups tending to regroup continually until the families returned to their winter villages.

In his report Mr. Suphan commented concerning a statement by Dr. Ray in his 1939 publication to the effect that there was tribal unity and that leadership among these people rested "more or less (on) arbitrary principles of achievement, with particular emphasis upon war records," saying his Umatilla, Cayuse, and also Nez Perce, informants had emphatically and unequivocally denied this. He discussed the Swindell report, saying
his informants had confirmed that virtually every area exploited by the Umatilla was shared with members of at least one other group, that they verified the sites listed as being used by the Walla Walla and said such visits occurred at least once yearly. That the Cayuse were divided into seven or eight local groups, wintering in areas which correspond to those designated as band locations by Dr. Ray. He concluded "they did not utilize any of their accustomed subsistence areas to the exclusion of other peoples; more commonly, several other Indian groups exploited each spot with the Cayuse."

In respect to the Grand Ronde Valley, Mr. Suphan testified it was his understanding that use of that valley by the Nez Perce was a yearly thing "just as the movement of the Cayuse and Walla Walla, and Umatilla was into the mountains, and that this movement of the Nez Perce was of the same nature -- that is to say, it was part of the summer rounds or at least part of the summer rounds of some of the families among the Nez Perce."

In summation, Mr. Suphan reported he found at least during the early decades of the 19th century the Snakes harassed the Sahaptins from their camps scattered through the Blue Mountains and the Grande Ronde Valley. That by the 1830's and 1840's the Sahaptins had expanded south into the Grand Ronde River valley, undoubtedly a result of having obtained arms and ammunition from trading posts along the Columbia River; that they continued to push yet farther south, but although they used subsistence areas south of the Blue Mountains during the last decades prior to reservation life, the John Day (river) country was jointly exploited not only among the several Sahaptin peoples but with the Snakes as well from about 1820-1830 on.
From further information obtained after the filing of this docket it appears that the two expert witnesses have arrived at entirely divergent views concerning the political structure of these three tribes, their concept of boundaries and trespass, the date the Sahaptin people began a southern expansion of subsistence areas, and whether the Snakes had been excluded from the claimed area.

**Documentary Data**

23. Historical data concerning the tribes in eastern Oregon begins with the journals of members of the federal expedition of 1804-1806 led by Captains Meriwether Lewis and William Clark. That party traveled down the Clearwater, Snake and Columbia Rivers during the late fall of 1805 and the following spring returned up the Columbia River to the mouth of Walla Walla River, and then went overland to strike Snake River near the mouth of Clearwater River. Lewis and Clark were especially trained, and instructed to obtain detailed data respecting the Indian tribes in the country through which they passed, and gather other information. First hand reports of the topography, and identity and location of the Indians they saw or were able to learn about, appear in the daily journals of these two men and of others with that expedition.

The following information has been extracted from those journals as pertinent to this action and we adopt it as fact:

October 16 to October 18, 1805: From October 16 to 1:00 PM on October 18, 1805, the party camped at the mouth of Snake River. There were three different nations represented among the Indians they met there. One "call themselves Sokulk" and the Chim-na-pum were said to reside on the westerly fork "which mouths a few miles above" (that is, on the Yakima River.) (Pet. Ex. 27, Dkt. 264; Def. Ex. 40)
October 19, 1805: Having camped overnight a few miles below the mouth of Walla Walla River, and having been visited that morning by the "1st Chief of all the tribes in this Quarter," the party camped this evening below the mouth of Umatilla River and opposite 24 lodges of Pish-quit-pas whose language differed from that spoken by the nations at the mouth of Snake River. (Pet. Ex. 27, Dkt. 264; Def. Ex. 40)

October 21, 1805: After passing the mouth of John Day River, Clark wrote in his journal: (Bracketed material supplied)

"The probable reason of the Indians residing on the Star[d]/north/ Side of this as well as the waters of Lewis's River is their fear of the Snake Indians who reside, as they nativas say on a great river to the South, and are at war with those tribes, one of the Old Chiefs who accompanies us pointed out a place on the Lrd[d]/south/ Side where they had a great battle, not maney years ago, in which maney were killed on both sides, ***." (Def. Ex. 40, p. 145)

October 22, 1805: The party passed the mouth of DesChutes River, which they recorded had "no Indian name that we could find out except 'the River on which the Snake Indians live,'" and Clark wrote:

"*** The principal Chiefs of the bands residing about this Place is out hunting in the mountains to the S.W. no Indians reside on the S.W. side of this river for fear (as we were informed) of the Snake Indians, who are at war with the tribes on this river. They represent the Snake Indians as being verry numerous, and residing in a great number of villages on Towornehooks /DesChutes/ River which falls in six miles above on the Lrd[d](south) Side and it reaches a great ways, *** they inform that *** they go to war to their first villages in 12 days, the Course they pointed is S.E. or to the S. of S.E. ***" (Def. Ex. 40, p. 149)

October 25, 1805: Having arrived below The Dalles, Clark wrote:

" *** here we met with our two old chiefs who had been to a village below to smoke a friendly pipe and at this place they met the Chief & party from the village above on his return from hunting all of whom were then crossing over their horses *** he /the Chief/ gave us some meat of which he had but little and informed us he in his route met with a war party of Snake Indians from the great river of the S.E. which falls in a few miles above and had a fight. ***" (Pet. Ex. 29, Dkt. 198, p. 158)

October 26, 1806: While encamped on Mill Creek, Clark wrote:
"* * * The Indians had lately lived in Lodges on the Lar^d Side at the falls * * *.

"* * * Those Indians are at war with the Snake Indians on the river which falls in a few miles above this and have lately had a battle with them, their loss I cannot learn." (Pet. Ex. 29, Dkt. 198, p. 161)

In a second draft, he wrote in more detail:

"The nations in the vicinity of this place is at War with the Snake Indians who they Say are numerous and live on the river we passed above the falls on the Same Side on which we have encamped, and, the nearest town is about four days march they pointed nearly S.E. and informed that they had a battle with those Inds laterly, their loss I could not ascertain." (Pet. Ex. 29, Dkt. 198, p. 163)

October 29, 1805: When near the mouth of the Klickitat River, Clark wrote in his journal in a first draft:

"* * * The Indians are afraid to hunt or to be on the Lar^d Side of this Columbia river for fear of the Snake Inds who reside on a fork of this river which falls in above the falls. * * *"

A few miles further downstream he commented on seeing four houses in a timbered bottom on the south side of the River. In his second and more detailed draft, Clark mentioned arriving at the home of a chief he had met at the "long narrows" and visited with him:

"* * * The Chief * * * Showed us 14 fingers (different fingers not little or middle fingers) which he said was the fingers of his enemies which he had taken in war, and pointed to S. E. from which direction I concluded they were Snake Indians, * * *"

When about six miles below Sepulchar Island, and about the mouth of Hood River, Clark mentioned passing four houses on the Lar^d (south) side of the Columbia River, saying:

"* * * those are the first houses which we have seen on the South Side of the Columbia River, (and the axess to those difficault) for fear of the approach of their common enemies the Snake Indians, * * *" (Pet. Ex. 29, Dkt. 198, pp. 169-171)

Confirmation appears in the Joseph Whitehouse journal under this same date:
**Saw 2 or 3 Camps on the Laur. South Side, which was the first we saw on that Side of the Columbia.** *(Pet. Ex. 29C, Dkt. 198, p. 182)*

During the return trip up the Columbia River, and on April 14, 1806, when near the mouth of White Salmon River, Lewis wrote:

"*** some of them informed us that they had lately returned from a war excursion against the Snake Indians who inhabit the upper part of the Multnomah river to the S.E. of them. They call them To-wan-nah-hi-ooks. that they had been fortunate in their expedition and had taken from their enemies most of the horses which we saw in their possession. "**"  *(Def. Ex. 41, p. 280)*

On the same date Clark wrote:

"** Some of them informed us that they had latterly returned from the war excursion against the Snake Indians who inhabit the upper part of the Multnomah river to the S.E. of them. They call them To wan nah hi ooks. that they had been fortunate in the expedition and had taken from their enemies most of the horses which we saw in their possession. "**"  *(Def. Ex. 41, p. 282)*

On April 20, 1806, when near Celilo Falls, Clark wrote:

"** The principal village of the Enesher nation is immediately below the falls of the N. Side. one other village of the same nation above the falls on the opposite side and one other a few miles above on the North Side. I precured a sketch of the Columbia and its branches of those people in which they made the river which falls into the Columbia immediately above the falls on the South Side /DesChutes/ to branch out into 3 branches one of which they make head in Mt Jefferson, one in mount Hood and the other in the S. W. range of mountains, and does not water that extensive country we have heretofore calculated on. a great portion of the Columbia and Lewis's /Snake/ river and betwen the same and the waters of Callifornia must be watered by the Multnomah river "**"  *(Def. Ex. 41, pp. 307-308)*

On April 23, 1806, the party camped near the mouth of Rock Creek (Washington) at a village of Wah-how-pum Indians. On the 24th they found 5 Met-cow-we lodges 12 miles above the Wah-how-pum village, and passed others downstream. A "Chopunnish" (Nez Perce) family accompanied the expedition. On the 25th, 11 miles above the Met-cow-we village they reached a Pish-qvit-pah village of 52 mat lodges containing about 700 souls. Four miles above they passed 5 lodges
of Walla Walla Indians. The following evening the party encamped
about 1 mile below three Walla Walla lodges and about 7 miles above
their encampment of October 19th, 1805. The morning of April 27th
they passed the mouth of Umatilla River, and that night camped with
the Walla Walla Chief, Yellept, 12 miles below the mouth of Snake
River. This chief had visited them the previous October 19th. The
party conversed with the Walla Wallas with the aid of a Sho-sho-ne
woman prisoner of that tribe.

April 29, 1806: The party crossed the Columbia River and camped on
Walla Walla River. Lewis wrote in his journal:

** the indians inform us that it [The Walla Walla River] has its s(o)rces in the range of mountains in view of us to
the E. and S. E. these mountains commence a little to the south
of Mt Hood and extending themselves in a N. Easterly direction
terminate near a Souther(r)n branch of Lewis' [Snake] river
short of the rocky mountains. The Towannahooks river, river
LaPage (You ma lol am R) and the Wollah-wollah rivers all take
their rise on the N side of these mountains; two principal
branches of the first of these take their rise in Mountains
Jefferson and hood. these mountains are covered with snow at
present tho' do not appear high; they separate the waters of
the Multnomah from those of the Columbia river. they appear
to be about 65 or 70 miles distant from hence. The Snake
indian prisoner informed us that at some distance in the large
plains to the South of those mountains there was a large river
running to the N.W. which was as wide as the Columbia at this
place **. this account is no doubt somewhat exagerrated but
it serves to evince the certainty of the Multnomah being a
very large river and that it's waters are separated from the
Columbia by those mountains and that with the aid of a southwardly branch of Lewis's river which passes aroond the eastern
extremity of those mountains, it must water that vast tract
of country extending from those mountains to the waters of
the gulph of California, **" (Def. Ex. 41, p. 336)

24. Plats included in the Lewis and Clark Journals show the Indian
villages along the Columbia River within the area here involved were each
situated north of the Columbia River. (Def. Exs. 40, pp. 130-31; 41, pp.
308-9) In an "Estimate of the Nations and Tribes west of the Rocky
Mountains" these explorers listed and located the following tribes
and bands (Pet. Ex. 29, Dkt. 198, p. 115):

* * *

6. Y-E-LET Po Band of Choponish reside under the S. W. Mountains on a small river which falls into Lewis's Snake river above the entrance of the Kooskooske which they call We-War-Com.

* * *

9. CHOPUNISH of Lewis's Snake river below the entrance of Kooskooske /Clearwater/ on either Side of that river to its junction with the Columbia.

10. SOKULK Nation reside on the Columbia above the entrance of Lewis's Snake river as high up as the entrance of Clarks river.

11. CHEM-NAH Pum on the N.W. side of the Columbia both above and below the entrance of Lewis's river and on the Tapteel /Yakima/ R. which falls into the Columbia 15 M. above Lewis's R.

12. WAL-LOW-WAL-LOW Nation on both sides of the Columbia from the entrance of Lewis's river as low as the Muscle shell rapid and in winter pass over to the waters of the Tapteel /Yakima/ River.

13. FISH-QUIT-PAH's Nation reside from the Muscle rapid & on the N. side of the Columbia to the Commencement of the high Country this N. winter on the waters of the Tapteel river.

* * *

34. SHO-SHO-NE (or Snake indians) residing in Winter and fall on the Multnomah river. Southerly of the S. W. Mountains, and in spring and summer on the heads of the To-war-ne-hiooks /DesChutes/, La Page /John Day/, You-ma-tol-am /Umatilla/, and Wal-lar-wal-lar /Walla Walla/ rivers, and more abundantly at the falls of the Towarnehooks, for the purpose of fishing.

35. SHO-SHO-NE'S on the Multnomah and its waters, the residence of them is not well known to us. or Inds. of-the Columbia say abt.

36. SHO-BAR-BOO-BE-ER Band of Shoshones reside on the S. W. side of the Multnomah river, high up the Said river.

37. SHO-SHO-NE'S residing on the S. fork of Lewis's Snake river and on the Nemo /Weiser/, Walshlamo /Powder/, Shallett /Payette/, Sush-pellanimo /South Fork, Payette/, Shecomskink /Malheur/, Timmooenularwas /Sucker/, and the Cop cop pahark /Boise/ rivers, branches of the South fork of Lewis's river.
25. Based upon the maps and journals of members of the Lewis and Clark Expedition, and other evidence including the topography of the country through which flow the Columbia and lower Snake Rivers, of which we take judicial notice, our factual interpretation of the Lewis and Clark journals is as follows:

Between October 10 and 16, 1805, the expedition traveled from the mouth of Clearwater River down Snake River to the Columbia River. Bands of the "Chopunnish" nation were observed residing along the Snake River.

From October 16 to October 18, 1805, the expedition camped at the mouth of Snake River where they were visited by Sokulk from a village "a little above," and by Chim-na-pum Indians. A third unidentified tribe was represented among the Indians gathered at this point.

October 18, 1805. The expedition passed the mouth of Walla Walla River and encamped near the Washington-Oregon State line, a short distance below the camp of the Walla Walla chief, Yel-lept.

October 19, 1805. Having failed to observe the mouth of the Umatilla River, the expedition passed it and encamped about eight miles below where about 100 Indians of the Pish-quit-pah Nation visited them. They were unable to understand the language of the Pish-quit-pah.

October 20, 1805. The expedition passed the mouth of Willow Creek.

October 21, 1805. The expedition passed the mouth of John Day River. All the Indians along the Snake River and this far down the Columbia River were observed to have their homes on the north side of the rivers. This, the expedition members were told, was due to their fear of attack by the Snake Indians who lived to the south and with whom these Indians were at war.

October 29, 1805. When near the mouth of Hood River, the expedition members for the first time observed permanent Indian homes located on the south side of the Columbia River. These were homes of Wasco Indians. (Emphasis supplied)
The expedition continued down the Columbia River and wintered on the Pacific Coast. During April, 1806, they returned up the Columbia River.

April 21, 1806. The party traveled along the north bank of the Columbia River with 10 horses and two canoes.

April 22, 1806. At a distance of 8 to 12 miles up the Columbia River above the mouth of DesChutes River, the expedition found villages of the Eneshur Indian Nation located on the north bank of the Columbia River.

April 23, 1806. Near Rock Creek, at "Rock Rapids," the expedition reached a Wah-how-pum Indian village, having passed a few Wah-how-pum lodges a few miles below.

April 24, 1806. At distances of 4 to 6 miles above the Wah-how-pum village, the expedition passed lodges of the Met-cow-we Indians, and at 12 miles arrived at a Met-cow-we village. The party then disposed of its canoes and proceeded overland along the north bank of the Columbia River. (The Met-cow-we band was a part of the Wah-how-pum Nation. Pet. Ex. 29, p. 115, Dkt. 198)

April 25, 1806. At 11 miles above the Met-cow-we village the party arrived at a Fish-quite-pah village of 51 mat lodges, containing about 700 people. Four miles farther upstream they arrived at a Walla Walla camp. Both villages are along the north bank of the Columbia River.

April 26, 1806. The expedition traveled 28 miles and camped on the north bank of the Columbia River below the mouth of Umatilla River, a mile below a Walla Walla Indian village and seven miles above their camp of October 19, 1805, on the opposite bank of the Columbia River. (The October 19th, 1805, campsite had been opposite a Fish-quite-pah Indian village.)

April 27, 1806. The expedition traveled 31 miles and camped at the village of the Walla Walla Chief, Yel-lept, who had visited them the morning of October 18th, 1805. This Chief's village was located approximately opposite the mouth of the Walla Walla River on the north side of the Columbia.

April 28, 1806. The party remained at the chief's village.

April 29, 1806. The expedition crossed the Columbia River and camped about one mile up the Walla Walla River near twelve lodges of Walla Walla Indians. Other lodges of Walla Walla Indians were observed on the opposite bank of the small stream.
26. Traders and trappers next approached the claimed area. The British came by way of the Columbia River and those connected with John Jacob Astor's Pacific Fur Company and other American companies traveled what later became known as the Oregon Trail. This trail crossed Snake River near the mouth of Burnt River and turned north through the Blue Mountains, crossing Powder River, passing through Grand Ronde Valley and running along the Umatilla River to the Columbia River.

During the 1840's the United States sent three exploring parties through this region under the respective leadership of Commander Charles Wilkes, Captain Charles C. Fremont and Governor Isaac I. Stevens. The private explorations of Captain Benjamin Bonneville led him through the region during 1832. Beginning about 1835 a number of missionaries arrived. After 1850 correspondence concerning these three tribes originated with the Department of Indian Affairs and the United States Army. Letters, journals and like instruments originating with these parties as well as with emigrants and settlers, contain pertinent information respecting the Indian tribes in this region. Some are as follows:

**Traders and Trappers**

David Thompson, 1811-1812. Mr. Thompson, a partner of the British Northwest Fur Company, passed down the Columbia River during July, 1811, and returned upstream during August, 1812. He met the Walla Walla chief, Yellepit, five miles below the mouth of Snake River during 1811 and found the Walla Wallas without "weapons of war, rarely a Bow and arrows." Yellepit stated that his tribe had not visited its land in the buffalo country for three years "on account of the hostility of the Snake Indians of the
Straw Tent Tribe." It is agreed by the parties hereto the buffalo country referred to lies in Idaho, east of the area here involved.

Thompson identified Yellepit as the "Chief of all the Shawpatin Tribes." Approximately 32 miles farther down the Columbia River he found Indians of another tribe. On his return trip he said there were 200 lodges of Sahaptin Indians in "their principal village" at the mouth of Snake River. In the first 56 miles up Snake River he noted passing 5 unidentified Indian villages. On August 8, 1811, he wrote in his journal: ** Beginning of course now to see the Blue Mountains between the Shawpatin and the Snake Indians." ** (Def. Ex. 68; Pet. Exs. 100, 533 #2)

Ross Cox, 1811-1817. Ross Cox, with the Northwest Company, journeyed up and down the Columbia River a number of times during and after 1811. In his 1811 journal he described that river and commented on the country along it above the mouth of DesChutes River: "The natives reside solely on the northern side; they have plenty of horses, and are generally friendly." He reported a Walla Walla village was located at the mouth of Walla Walla River and he met a number of Nez Perce Indians at the mouth of Snake River. He said below the Islands near the mouth of Walla Walla River (Pet. Ex. 9):

** * a range of high hills are seen on each side of the (Walla Walla) river, running nearly from S.W. to N.E., and uncovered by any timber: but at an immense distance, in a southeasterly direction a chain of high craggy mountains are visible, from which it is supposed the Walla Walla takes its rise. From their color the Canadians call this chain "Les Montagnes Bleaus."

During 1815 Mr. Cox was attacked by Chimnapum, Yackaman, Sokulk and Walla Walla Indians when he was about halfway between the mouths of Snake and Walla Walla Rivers on the Columbia; the Walla Walla chief, Morning Star came to his assistance, saying the Shoshones had in summer stolen the horses
the Walla Wallas and driven them from the river, in winter burnt their lodges and killed their people until the whites exchanged guns and ammunition with them for their furs, and that they had then "driven the Shoshones from our hunting grounds *** and have regained possession of the lands of our fathers **." Cox commented that the Walla Wallas had banished "the enemy from the banks of the Columbia." He reported the Nez Perce and Walla Walla tribes were "constantly at war with the Shoshones, or Snake Indians, who inhabit the great plains to the southward," that:

The only cause assigned by the Wallah Wallahs for this war is that the Snakes interdict them from hunting the black-tailed deer, which are numerous in their lands, and in retaliation they oppose the latter in their endeavors to catch salmon in the Columbia. They allege that this opposition would cease if the Shoshones abandoned their claim to the exclusive right to hunt the black-tailed deer. As this is a privilege, however, which the latter are not willing to concede, their warfare may be interminable.

During 1817 Cox's journal records traveling with "Shyatogoes" and Walla Wallas along the Columbia River a day's journey above the mouth of John Day River. Cox described the Yackamans (Yakimas) as a numerous tribe inhabiting,

"the lands on the northern banks of the Columbia, from its junction above Lewis River until some distance above a river which flows from the northward, and is called after the name of the tribe." (Pet. Ex. 9)

Alexander Ross, 1811-1824. Alexander Ross, an employee of the Pacific Fur Company, journeyed up the Columbia River during August of 1811. When camped near the mouth of the Umatilla River he wrote in his journal:

This river takes its rise in a long range of blue mountains, which runs nearly east and west, and forms the northern boundary of the great Snake nation.
At the mouth of Walla Walla River he found assembled some 1,500 Walla Walla, Shaw Hapten (Nez Perce) and Cajouses (Cayuse) Indians, the Cayuse, Nez Perce and part of the Walla Walla having guns, and the plains being "literally covered with horses." During 1818 Ross established Fort Nez Perces, later Fort Walla Walla, at the mouth of Walla Walla River for the Northwest Company. He described the plains... around the fort as covered with wild horses, that the view to the south was:

abruptly checked by *** wild and rugged bluffs on either side of the (Walla Walla) water and rendered particularly so by two singular towering rocks *** situated on the east side, and they are skirted in the distance by a chain of the Blue Mountains, lying in the direction of east and west ***.

Ross enumerated the Indian tribes attached to the fort, listing tribes other than the three here represented as residing on the Columbia River above Snake River, the Nez Perce and Palouse as residing on Snake River, and the "You-ma-talla" bands as residing on the Columbia River below the fort, and

about the establishment, the Cayouse and Walla Walla tribes. It is to the two latter that appertain the spot on which the fort is erected, and who are consequently resident in the immediate neighborhood.

He described Snake country as extending from the Rocky Mountains to a line extending south from the west end or spur of the Blue Mountains behind the fort and paralleling the Pacific Ocean, with its northern boundary,

another line running due east from the said spur of the Blue Mountains, and crossing the great south branch, or Lewis (Snake) River, at the Dalles, till it strikes the Rocky Mountains 200 miles north of the three pilot knobs, or the place hereafter named the "Valley of Troubles."

Ross wrote of war expeditions conducted against the Snakes by Walla Walla, Cayuse and Nez Perce Indians during 1811 and later, despite
efforts of the whites to maintain a peace that they might trade with
the Snakes; and reported during 1819 the Snakes attacked the Walla Walla
party within three miles of the fort, following a Nez Perce expedition
to their country.

Subsequently, Ross indicated the Blue Mountains on a map of this
region as running northeastward south of the Columbia River a distance of
about 60 miles at the mouth of John Day River and around 35 miles south-
east at the mouth of Umatilla River; thence east a short distance and
then south along the west side of Snake River, with a spur crossing that
river midway between what appears to be the mouths of Imnaha and Powder
Rivers at a point designated "The Narrows." South of this point and
west of Snake River Ross indicated there were Banatee Bands of Snakes.
The country south of the northeast-southwest mountain range is not repre-
sented on this map. (Def. Exs. 56, 57; Pet. Exs. 65, 66)

Sir George Simpson, 1824-1825. During November, 1824, Simpson
traveled up the Columbia River to inspect the Hudson's Bay Company's posts
as Governor of that Company. During March, 1825, he went upstream again,
stopping a while at Fort Walla Walla where he reported there were Nez
Perce, Cayuse, Walla Walla and other Indian bands. Some distance above
that fort, several hours travel time, he was visited by a band of about
60 Nez Perce Indians. Subsequently he said their country bordered that
of the Snake on the south and in a report by Samuel Black, then in charge
of the fort, it is said they inhabited "part of lower Nez Perces River
(or South Branch) Louis Branch" of the river. Simpson said the Yakima
were opposite Priest's Rapids; and were the only Indians north of the
Columbia River, with a branch of the Walla Walla called Samnepams below them; that Palouse were on the Snake River below the Nez Perce; that Iskayouse country extended from DesChutes River to the Grand Ronde, two days' journey east of the fort. In listing the tribes in this region he located some as follows:

- **Youmatallomi** South side Small River
- **Walla Wallas** South side Walla Walla R.
- **Eya Kimu** north side at Small River
- **Cayouse** Between Walla Walla & Blue Mts.
- **Paloosh** Lewis and Clarkes River

(Pet. Exs. 73, 74; Dkt. 198, Pet. Ex. 46)

Wilson Price Hunt, 1811-1812. During December, 1811, Mr. Hunt led a party of Pacific Fur Company employees along what later became the Oregon Trail. According to those who have traced his route from his journal, he was on Weiser River when he found a number of huts of Chochoni Indians, and engaged three of them to guide his party to the Sciatogas who they said lived "on the westerly side of the mountains and had many horses." His party crossed Snake River near the mouth of the Weiser River, turned north, and on reaching Grand Ronde Valley Mr. Hunt recorded in his daily journal:

> We fortunately found there six huts of Chochonis, who had many horses. ***** they told me that we had yet to sleep three nights before arriving among the Sciatogas, and pointed out to me the gap in the mountains by which we must pass.

After six days travel Hunt's party found a camp of 34 mat lodges of "Sciatogas and Toustchipas" Indians at the junction of McKay Creek and Umatilla River. The previous day they had passed a Snake lodge. The Sciatogas a few days later moved their lodged down the Umatilla River. On the lower Umatilla River Hunt's party saw mat lodges of Akaitchi Indians who he reported lived near the mouth of the Umatilla River on the adjacent bank of the Columbia River and were "better provided with
food than are the Snakes.

Ataitči is a Bannock word meaning "Salmon Eater." Ethnologists have identified the Sciatogas as Cayuse. Identification of Toustchipas is not certain. (Pet. Ex. 96; Def. Ex. 55)

Robert Stuart, 1812. During July, 1812, Robert Stuart, a partner of Pacific Fur Company, traveled up the Columbia River to the mouth of Walla Walla River, thence overland to the Big Flat or Grand Ronde Valley and across Powder River to the mouth of Burnt River. His journal records an attack by Snake Indians on Columbia River Indians in a canoe on that river. He said such animals as elk, deer, beaver and antelope were to be found. An Indian fishing site was located 5 miles up Burnt River but there is no mention of seeing Indians between the Umatilla and Snake Rivers. He said the Umatilla and Walla Walla Rivers took their rise in the mountains bounding the Columbia plains on the southeast, and that the Walla Walla Nation, some 200 in number, resided near the mouth of Walla Walla River. He described Sciatoga (Cayuse) country as being:

bounded on the Southeast by the Big flat (Grand Ronde Valley) on the North by Lewis (Snake) River, on the west by the Columbia, and on the south by the Walamat, (Willamette) ***. (Pet. Ex. 96.)

Peter Skene Ogden, 1824-1826. Mr. Ogden led a number of trapping expeditions through eastern Oregon. His journals report on the morning of November 26, 1825, he was visited near Blalock Island on the Columbia River by two Cayuse chiefs. Going up the main John Day River, eastward, he saw Snake huts on January 14th, 1826, not long abandoned. On the 15th 17th and 19th of January he saw Snake Indians; on January 20th he commented his party was lucky to find any beaver considering the number of Snake
Indians in that quarter. Near Ingle and Beach Creeks on the 23rd he complained his party was near starvation and that "a poorer country does not exist in any part of the World," although he thought it appeared well inhabited by Indians in the summer. His party reached Burnt River February 1st, in a starving condition. Ogden described the country as "lofty mountains on all sides well covered with Snow indeed a more Gloomy Barren looking Country I never yet seen."

The following July Ogden's journal records he was again on the headwaters of John Day River, again complaining of there being little food and few game animals in the country. This time he saw Indian tracks but did not identify the Indians. In his Official Report prepared about this time Mr. Ogden bounded Snake country "on the North by the Columbia Waters."

(Pet. Ex. 33, Dkt. 198)

Nathaniel J. Wyeth, 1832-4. Between 1832 and 1836 Mr. Wyeth represented the Hudson's Bay Company, for which he constructed Fort Hall on the headwaters of Snake River in Idaho. On one of his trips through this country he mentioned in his daily journal that two Cayuse lodges visited his camp on Powder River. He also recorded meeting other Cayuse in Grand Ronde Valley, at which time he found Captain Bonneville camped there. In a report concerning the Indians inhabiting this region, Mr. Wyeth said the valley between the Blue and Cascade Mountains, between the Columbia and the heads of the small streams flowing into it from the south was inhabited by Digger Snake Indians near the heads of those small streams; that Nez Perce, Cayuse and Walla Walla also visited that country. Again, in this report, he referred to Cayuse and Walla Walla Indians as living below
the Blue Mountains, saying the lines of wandering bands have continually
interlocked in the country between the Cascade and Blue Mountains. (Pet.
Ex. 109; Def. Ex. 104, pp. 221, 224) "Below" is down stream to the north.

John Work, 1832. On July 8th, 1832, Work's trappers crossed from
Burnt River to the headwaters of either Middle or North Fork of John Day
River, another branch being not far to the south. (See July 11 entry)
They saw a Snake family spearing salmon on the 9th and on the 10th passed
three other Indian families. Twenty-seven miles downstream the Snakes had
barred the river to catch salmon. On the 16th two Snakes visited his camp
and the men he had sent to "South Fork" observed there a Snake fish weir.
Two days later Work's party reached Pendleton, Oregon, and the following
day arrived at Fort Walla Walla. That fall, during a subsequent trip, Work
met Cayuse and Walla Walla Indians on South Fork of John Day River and was
told by Cayuse on John Day's River the Snakes had killed a trapper on
Burnt River the previous July. (Pet. Ex. 519; Def. Exs. 29, 46, 47)

Captain Benjamin Bonneville, 1832. Captain Bonneville's travels are
reported by one Washington Irving. At Fort Walla Walla he met Nez Perce,
Walla Walla and Cayuse Indians. The Cayuse he said resorted to the head-
waters of Grande Ronde River to pasture horses and to feed upon salmon.
A band in the Wallowa River valley were said to trade with the Hudson's
Bay Company, generally exchanging horses but also beaver skins which were:
not procured by trapping but by a course of internal traffic
with the shy and ignorant Skoskokoes and Too-el-icans, who
keep in distant and unfrequented parts of the country, and
will not venture near the trading houses.

On October 20th he found Shoshone Indians "absolutely thronged" along
the banks of Snake River opposite the headwaters of John Day River. (Pet.
Ex. 36)
Dr. Gairdner, 1835. During 1835 Dr. Gairdner journeyed down the Oregon Trail. Going west across the north end of Grand Ronde Valley he met a camp of Cayuse and Walla Walla Indians "who had come hither to trade in horses with the Snake Indians." (Def. Ex. 30)

John Townsend, 1834. While traveling west on the Oregon Trail during 1834 Townsend met 10 lodges of Snake and Bannock Indians on Snake River above the mouth of Malheur River, a Snake family on Burnt River, Cayuse Indians between Powder River and Grand Ronde Valley, and Cayuse, Nez Perce and other Indians in that valley. At Fort Walla Walla he saw Cayuse and Walla Walla Indians. On a return trip when between Fort Walla Walla and the Blue Mountains, he met two Walla Walla Indians driving a large band of horses who said "the Snakes have crossed the mountains to commence their annual thieving of horses, and they are taking them away to have them secure." (Pet. Ex. 102)

Thomas J. Farnham, 1839-1846. Traveling toward Fort Walla Walla when northwest of the Blue Mountains Mr. Farnham met a Cayuse family returning from a buffalo hunt near Fort Hall, Idaho. He said before Forts Hall and Boise were established in Idaho the Cayuse had rendezvoused at "La Grande Rounde" with Shoshones and "other Indians from the Saptin," to trade horses for furs, buffalo robes, skin tents, etc; that Cayuse occupied the Blue Mountains above the southwest branches of Walla Walla River, and in wintertime a band usually descended to The Dalles of the Columbia; that Walla Wallas lived on both sides the Columbia from the Blue Mountains to The Dalles. (Pet. Ex. 22)
D. Lee and J. H. Frost, 1840. In their publication "Ten Years in Oregon," these parties located the Nez Perce on the headwaters of Walla Walla River and thence eastward across Snake River. They said the Cayuse formerly collected annual tribute from the Indians at The Dalles on the Columbia River but now set their own price for fish they bought there. (Dkt. 198, Pet. Ex. 28, p. 177; Def. Ex. 45)

Major Osborne Cross, 1849. During September, 1849, Major Cross accompanied a troupe from Fort Boise to The Dalles in Oregon. He recorded friendly Indians would not assist in investigating the rumor that gold was available on the headwaters of Powder River "as they would come in contact with hostile Indians who reside in the mountains and immediately in that neighborhood"; that unidentified Indians visited him in Grand Ronde Valley wanting to trade horses for blankets, etc.; on the headwaters of Umatilla River he reported "At nine o'clock in the morning we came to where the Cayuse Indians were located. Their town, which is temporary, consisted of a number of lodges made of mats and bushes, much larger than those made of buffalo skins"; on starting down the Columbia River he "passed on the right bank some thirty lodges of the Walla Walla tribe who had come down to fish. Their lodges in small numbers could be seen during the day." (Pet. Ex. 11)

Joel Palmer, 1845-1855. Mr. Palmer, who was destined to become Governor of Oregon Territory and as Superintendent of Indian Affairs and a treaty commissioner to negotiate the June 9, 1855, treaty of cession, arrived in Oregon during September, 1845, via the Oregon Trail. His diary
records a visit by a Cayuse Chief on the middle fork of Powder River; that some Cayuse and a few Nez Perce Indians were in Grand Ronde Valley; and Walla Walla Indians who were much inferior to the Cayuse were on the Umatilla River and on the Columbia River below the mouth of the Umatilla. Palmer reported the village of the principal chief of the Walla Wallas was 3/4 of a mile up the Walla Walla River during 1846. Traveling east the following day he was joined by a party of Nez Perce.

On July 18, 1853, he officially reported the Nez Perce boundaries weren't well known; that the Walla Walla and Cayuse disputed ownership of a considerable tract; and during January, 1854, he said the Walla Walla lines as described to him by tribal members during 1848, and the Cayuse boundaries and Nez Perce-Cayuse divide as understood by him were as follows (Pet. Exs. 53; 198; 199; Def. Exs. 48; 86):

Walla Walla boundaries:

Commencing on the south side of the Columbia River a short distance above the mouth of the Umatilla, it runs Easterly so as to cross the Walla Walla about ten or twelve miles above Fort Walla Walla, thence northeasterly to the Snake River about twenty or twenty-five miles from its mouth; thence down said river and across the Columbia to a point about twenty miles west of the last named river; thence southwesterly to the mouth of the first stream emptying into the Columbia on the North Side, a little above the mouth of John Day's River.

The Nez Perce-Walla Walla divide:

** * * * Their (Nez Perce) boundaries as I have understood them commence on the South side of Snake river at the boundary of the Walla Walla; thence westerly with that boundary to the Tooshi or Toocannon River, I am not certain which; thence by the stream to the mountains; thence crossing said mountains diagonally, to Snake river about forty miles above the mouth of Salmon river * * * to the boundary of the Paloosies who inhabit the country in the
fork of Snake and Columbia rivers; thence on the boundary of that last named tribe westerly to Snake river ten or twelve miles below the Red Wolf’s ground which is about two miles below the ***. *** It is understood that the Nez Perces and Cayuse claim jointly the Grand Ronde, but neither tribe has, unless recently, made any permanent settlements there. ***

The Cayuse boundaries:

*** Commencing on the left bank of the Columbia River near the mouth of Willow Creek, thence up the river to the boundary of the Walla Wallas near the mouth of the Utila river; thence easterly to the Tooshi or Toocannon (not certain which) the western boundary of the Nez Perces; thence easterly with the boundary of that tribe to the Summit of the Blue Mountains; thence southerly along said range to the headwaters of the northern branch of John Day’s river and thence in a direct line to the mouth of Willow Creek. ***

John McBride, 1846. In his book, "South Pass, 1846," Mr. McBride said when traveling along Powder River a Cayuse Indian from the Whitman Mission had visited him. Between Powder River and Grand Ronde Valley he was passed by several parties of Whitman Mission Cayuse well mounted on fat horses, on their way home to the Umatilla River valley. (Pet. Ex. 47)

L. B. Hastings, 1847. During 1847, when traveling along the Oregon Trail and in Grand Ronde Valley, Mr. Hastings was visited by four Cayuse Indians. He met other Cayuse along the Umatilla River who offered to trade potatoes, peas, corn, etc., for clothing. (Pet. Ex. 33)

Henry J. Coke, 1850. Mr. Coke met two Cayuse Indians in the Grand Ronde Valley during 1850. He saw a Cayuse lodge and a number of Cayuse horses on upper Umatilla River. Above the mouth of John Day River as
he was traveling down the Columbia River he observed a great many Cayuse and other Indians going to or returning from The Dalles. A party of Cayuse Indians and one Snake Indian traveled with him from Snake River, going to Fort Walla Walla. (Pet. Ex. 8)

Mr. Newell, 1849. After residing in Oregon for 21 years, Mr. Newell wrote during 1849 that the Snake or Shoshone inhabited the country west of the Rocky Mountains to the Lewis or Snake River; that Digger Indians were scattered from the headwaters of Snake River to the Grand Round (Grand Ronde Valley); that Cayuse country extended from the foot of the Blue Mountains to within 25 miles of Fort Walla Walla, and the Walla Walla tribe possessed the country on the Columbia River near Fort Walla Walla. (Pet. Ex. 143; Def. Ex. 10)

A. D. Pambrun, 1832-1855. Mr. Pambrun entered Oregon during 1832. His father was in charge of Fort Walla Walla until Pambrun succeeded him there during 1852. When he retired in 1855, he obtained permission of the Cayuse tribe to settle at Walla Walla, Washington. In his reminiscences he commented when he first entered this country "The Grande Ronde valley and the adjacent country, then occupied by the Snakes, was also densely populated." He recorded numerous instances of strife between the Sahaptin and Shoshonean speaking tribes occurring during his period of residence. (Pet. Ex. 54)

Oliver Jennings, 1851. Mr. Jennings kept a journal of a trip from Oregon City east to Salt Lake made in the spring of 1851. He camped with 3 Indians on Umatilla River who were on their way to the The Dalles on the Columbia River; met Cayuse Indians on Grande Ronde River, and
after crossing Burnt River he wrote: "We saw several real wild Indians of the Bannacks tribe called Diggers." On Malheur River he commented about the number of wretched, filthy "Digger" Indians about his camp. (Pet. Ex. 38)

Harvey W. Scott, 1852. Near present LaGrande, Oregon, emigrant Scott during 1852 saw large herds of Nez Perce horses. (Pet. Ex. 71)

**Missionaries**

Samuel Parker, 1835. During 1835 Parker journeyed from Idaho down the Walla Walla and Columbia Rivers. He saw 3 Nez Perce Indian lodges on October 3rd on the upper branch of Walla Walla River, the men hunting deer and the women gathering camas. October 6th he arrived at Fort Walla Walla. October 8th on his way down the Columbia River he saw about 12 lodges of Cayuse Indians at two o'clock and camped on the north bank with a large number of Nez Perce Indians. The following night he camped with some Walla Wallas, and on the 10th he camped with Walla Walla Indians about 10 miles above the mouth of DesChutes River. On a return trip he saw a herd of Walla Walla horses at the mouth of Snake River. In a summary he said the Walla Walla inhabited the country along Walla Walla River and down the Columbia; the Palouse tribe resided along Snake River; Cayuse country included the Grand Ronde Valley; and about 700 Yookoomans (Yakima) were about the confluence of the Columbia and Snake Rivers. (Pet. Ex. 56)

Marcus Whitman and H. H. Spalding, 1835-1847. Whitman established a mission among the Cayuse Indians on Walla Walla River 25 miles east
of Fort Walla Walla. Mr. Spalding started one on Clearwater River among the Nez Perce. Correspondence by these men contain an account of Captain Stewart describing Grand Ronde Valley as "a central location for the Napiersas (Nez Perce) and Kuses (Cayuse)." In 1836, Mr. Spalding said this valley was "in the Chuyos country." During 1840, Mr. Whitman reported Mr. Pambrun had built a house for the Cayuse chief, Young Chief, on the Umatilla River about 30 miles from the Walla Walla mission. (Pet.Ex.104)

F. N. Blanchet. In reporting his missionary travels throughout Washington and Oregon, Mr. Blanchet said the Cayuse lived in two bands, one on Walla Walla River and one on the Umatilla River. (Pet.Ex. 5; 2-D, Dkt.198)

Father DeSmet. (1) On a plat attached to DeSmet's article, the Cayuse and Nez Perce are located between the Umatilla and Walla Walla Rivers. (2) On Pleasanton's map, based upon DeSmet's journals, the Cayuse are located on the upper southern branch of Walla Walla River, the Palouse are north of lower Snake River and the Walla Wallas are on lower Walla Walla River. A Nez Perce plain is north of Walla Walla River. (Pet. Ex. 15, 18; Pet. Ex. 68, Dkt. 198)

Explorations in Oregon Conducted by the Federal Government

Commander Charles Wilkes, 1841-1842. During 1841, Commander Wilkes led an exploring party along the Columbia and Snake Rivers. At the Cayuse Mission on upper Walla Walla River a Mr. Dayton found all but 14 of the Cayuse tribe were away trading at the Grand Ronde Valley where the "Cayuse, Nez Perce and Walla Walla meet to trade with the Snakes or Shoshones, for roots, skin lodges, elk and buffalo meat, in exchange for salmon and horses."
Wilkes said they usually returned home during July and three or four months later went north and east to hunt buffalo which could not then be "found west of the Port Neuf river." He reported the Cayuse resided on Walla Walla River "in close connexion" with a Nez Perce band.

Wilkes' official plat shows the Nez Perce' western boundary as a line extending south along the eastern drainage of Palouse River, across the extreme headwaters of Walla Walla River, across Grande Ronde River just north of Grande Ronde Valley, and then southeastward. Walla Wallas are located in the lower valleys of DesChutes, John Day, Umatilla, Walla Walla and Snake Rivers; Cayuse are on the main John Day River and headwaters of Umatilla and Walla Walla Rivers, extending through Grand Ronde Valley southwestward toward Klamath Marsh. All Powder, Burnt and Malheur Rivers' drainage and the headwaters of Imnaha and Wallowa Rivers, are in Snake or Shoshone country. The parties hereto agree this map is linguistic in nature, and only linguistic boundaries are applicable. A map prepared during 1830 by Jedidiah Smith formed the basis for Wilkes' map. (Pet. Exs. 105, 106, 107, Def. Ex. 75)

Horatio Hale, 1839-1842. The ethnologist with the Wilkes Expedition was Horatio Hale. He officially reported several independent tribes inhabited the country around the mouth of Snake River; the Walla Wallas were on Walla Walla River; the Yakima were on a large stream nearly opposite them; the Cayuse were on upper Walla Walla River "in close connexion with a band of Nez Perce Indians," and the Cayuse made long excursions to the south and east. His plat shows the Shoshone or Snake Indians in the eastern half of Grand Ronde Valley, and the Touchet
River as a divide between the Walla Walla and Cayuse tribes, the Cayuse being given only the extreme limits of Walla Walla drainage. (Pet. Exs. 18, 72, Dkt. 198; Def. Exs. 32, 74; Pet. Ex. 32)

Brevet Captain Charles C. Fremont, 1843. Captain Fremont's expedition traveled from Fort Boise west into this region, and passed north through Grand Ronde Valley and thence down the Walla Walla River. It stopped at Whitman's Mission and at Fort Walla Walla and then went down the Columbia River. His journal records meeting Cayuse Indians near the mouth of Burnt River. They were then returning from a buffalo hunt. He also met several mounted Indians south of Powder River "who belong to the tribes on the Columbia" and "a small town of Nez Perce Indians" when near Whitman's mission on the Walla Walla River. Fremont's 1846 map shows the Blue Mountains extending from south of the DesChutes River northeast to the 46th degree of latitude, at a point southeast of Whitman's mission. (Pet. Ex. 25; Def. Ex. 108)

Charles Preuss. A topographical map prepared by Charles Preuss from Fremont's personal journals, and notes of this expedition, locates the Nez Perce Indians between the Walla Walla and the Snake River, Snake and Indians south of Burnt River; the Blue Mountains extending across Snake River north of Grand Ronde Valley. (Pet. Exs. 23, 24, 25, 26; Def. Ex. 78)

Isaac I. Stevens, 1853-1855 and later. During 1853 and 1854 the Governor of Washington Territory, Isaac I. Stevens, was in charge of an expedition seeking a railroad route west from Minnesota to the Pacific Ocean. Included among his party were his son, Hazard Stevens,
ethnographer George Gibbs, Lieutenants G. K. Warren, Saxton and one John Mullan. Thereafter Hazard Stevens wrote a history of his father's life wherein he stated the Nez Perce, Cayuse, Walla Walla and Umatilla each had definite well known boundaries; that the Nez Perce country included "both banks of the Snake and its tributaries, the Kooskooskia or Clearwater, Salmon, Grand Ronde, Tucannon, etc." that the Walla Wallas inhabited the banks of Walla Walla river, the Umatilla the banks of Umatilla River and a Yakima band called the Palouse were on Palouse River and the north side of Snake River; that these tribes all hunted the buffalo.

Lieutenant Saxton reported finding Nez Perce Indians on Walla Walla River. John Mullan reported the Tucannon River formed the southern Nez Perce and Cayuse boundaries. He established Cantonment Stevens along the Walla Walla River where some Flathead and Nez Perce Indians were then wintering.

Governor Stevens reported the Palouse lived in three bands, each north of Snake River, one at the mouth of Palouse River, one 30 miles downstream and one at the mouth of Snake River. He said Pu-pu-mux-mux, the Walla Walla chief, spoke of planting "my three lodges on the borders of my own country, at the mouth of the Touchet." He said the Walla Walla lived south of the Columbia and on Snake River to a little east of the Palouse.

Ethnologist George Gibbs reported meeting unidentified Indians in the Grande Ronde Valley who had come there to trade, and of observing a "temporary" Cayuse town on upper Umatilla River. In his official report of March 4, 1854, he said the Walla Walla bands were on both sides of
the Columbia River and on Snake River a little east of the Palouse; that the Cayuse owned the country on upper Walla Walla River and from DesChutes River to the east side of the Blue Mountains, with only a small part of their country on upper Walla Walla River being in Washington Territory; that the Walla Walla and Nez Perce owned large bands of horses which roamed over the hills south of the Columbia.

Stevens was responsible for a number of maps of this country. About July 19, 1854, a map was withdrawn from his report because of inaccuracies. In his official report the Topographical Engineer G. K. Warren said most of these maps "have been mostly made from reconnaissances, and but few possess very great accuracy;" that he had scanned every available plat or sketch of this country and selected that which seemed most accurate in preparing his own map of 1858. On it the Palouse are located north of Snake River; the Cayuse are between Snake and Touchet Rivers and below upper Umatilla River; the Walla Wallas are on Willow Creek, and "Scattered Bands" of Indians are south of them. There are also Walla Wallas on Walla Walla River and in the Blue Mountains to the east.

Stevens' April 14, 1854, map of Washington bears Gibbs' names and boundaries of Indian tribes. The Cayuse and Palouse divide with the Nez Perce runs south from Palouse River across Snake River east of Tucannon drainage, thence southward from 10 to 20 miles west of Snake River. A Palouse-Yakima divide bisects the Columbia-Snake River country north of their confluence, and follows the south drainage line of Snake River to the east. The Palouse are thus assigned the valleys of Tucannon and Snake River. A line north and south from the mouth of Touchet River divides the Walla Walla and Cayuse.
Stevens' June 12, 1855, sketch accompanying the report of the May-June, 1855 treaty council, has the Nez Perce boundary running south across Grande Ronde River midway between the mouth of Wallowa River and Grand Ronde Valley. The northern Cayuse-Walla Walla divide runs down the north fork of Tucannon River. The line continues down Snake River and up the Columbia River to Priest's Rapids, and thence south to the Yakima River and southwest to the Columbia River midway between the Umatilla River and Willow Creek. It follows up Willow Creek, along the south boundary of the Umatilla Reservation and goes down a northern branch of Powder River.

Stevens' March 21, 1856, sketch shows similar bounds, except the line up the Columbia River stops some distance south of Priest's Rapids. Both maps show the Nez Perce cession extending along Tucannon River and a line drawn from its mouth north to the fork of Palouse River.

Stevens' April 30, 1857, map extends the line up the Columbia again to Priest's Rapids and from there turns west to the Yakima River, thence south to the Columbia River about 5 miles below the Umatilla River's mouth. It follows the south branch of Willow Creek, runs some distance south of the Umatilla Reservation, and swings northeasterly to go down the main branch of Powder River.

At one time Stevens described the Blue Mountains as bordering the Walla Walla valley and extending westward, the source of the Umatilla, John Day and DesChutes Rivers.

The Emory and Humphreys map of 1854 illustrating the Expedition's Report, shows Palouse Indians north of lower Snake River, Walla Walla
Indians along the Walla Walla River, and Cayuse Indians between Touchet and Snake Rivers. (Pet. Exs. 81, Hazard Stevens; 82, Stevens' Report; 219, Stevens' Report; 11 and 28, Gibbs' Report; 82, Saxton and Mullan Reports; 208, Withdrawal of Stevens' map; 84, Warren's Report; 127, Warren's Map; 87, Stevens' 1854 Map; 88, Stevens' 1855 Map; 90, Stevens' 1856 Map; 91, Stevens' 1857 Map; 84 #2, p. 257, Stevens' Blue Mountains; 85, Emory and Humphreys' Map.)

**Early Histories and Accounts**

George Wilkes' "History of Oregon." This volume contains the journal of an emigrant traveling the Oregon Trail during 1843. The writer saw Cayuse villages, one four days' travel south of Grand Ronde Valley and another on upper Umatilla River. At the latter, the Indians had potatoes, peas, corn and horses for sale. His party met a number of Indians in the Grand Ronde Valley on October 1st. (Pet. Ex. 108)

Armstrong's "Oregon," 1857. The Walla Wallas are said to inhabit the country south of the Columbia River from 20 miles below Fort Walla Walla to some distance above the mouth of Snake River, and some of their hunters are said to go to the buffalo country. The Yakima are said to be along the north bank of the Columbia for 300 miles with the Cayuse south of Walla Walla River, their most prominent location being on its headwaters where "they live in close connection with a band of the Nez-Perces." (Pet. Ex. 2)

J. Quinn Thornton's "Oregon and California in 1848." It is said of the Grand Ronde Valley: "Here, also, the Cayuse, Nez Perces, and
Walla-walla Indians, meet to trade with the Snakes, or Shoshones, for roots, skin lodges, elk and buffalo meat, in exchange for salmon and horses." (Pet. Ex. 101)

Henry Schoolcraft. In his "Indian Tribes of the United States" published during 1851, it is said Shoshonean speaking people are spread from the Sweetwater Mountains to and down Snake River to latitude about 44° 30' - the divide between Burnt and Powder Rivers. (Def. Ex. 104)

Correspondence and reports of Military Personnel and Representatives of the Indian Bureau, and other Officials

Governor Joseph Lane, Oct. 1849. Mr. Lane described the country from the foot of the Blue Mountains to within 25 miles of Fort Walla Walla as being inhabited by Cayuse, the country along the Columbia River near Fort Walla Walla as being possessed by the Walla Wallas. (Pet. Ex. 143)

Superintendent Anson Dart, 1851. Mr. Dart said the Walla Wallas were principally along Walla Walla River, the Cayuse being south and east of them; that the Yakima tribe included a band of Indians located at Priest's Rapids on the Columbia River. He established the Utiila Agency at the present site of Echo, Oregon, within but near the western limits of Cayuse country. (Pet. Exs. 156, 158)

Brevet Major Alvord, 1853-9. Major Alvord said Palouse country extended between the mouths of Salmon and Palouse Rivers; that Cayuse claimed from Willow Creek on the southwest to the Blue Mountains, including Grand Ronde Valley and north to within 15 miles of Fort Walla Walla; the Walla Wallas bordered the Cayuse and occupied land about Fort Walla Walla south of the Columbia River; Bonacks' country extended from the Snake country near Fort Hall down Snake River to the Grand Ronde and
westwardly toward Klamath Lake. (Pet. Ex. 165)

Major G. J. Rains, 1854. While stationed at The Dalles, on April 14, 1854, Major Rains reported to the Adjutant General of the Army the Nez Perce occupied the country between the mouths of Palouse and Salmon Rivers and thence easterly; that Cayuse claimed from Willow Creek to the Blue Mountains and northward to the vicinity of Walla Walla. (Pet. Ex. 205)

Agent R. R. Thompson, 1854. While in charge of the Utilla Agency District, Thompson said about 100 Snakes lived along the south border of his district; that Cayuse lived on the west side of the Blue Mountains and south of the Columbia River. He found the greater portion of the Cayuse and about 60 Nez Perce Indians in Grand Ronde Valley during August, 1854, and Bannacks or Snakes were near Burnt River. Two months after the June, 1855, cession he wrote Superintendent Palmer the Walla Walla chief claimed he had not sold his country north of the "Tusha, East of the Walla Walla, and South and West of the Columbia and Snake Rivers." During August he said a band of Shoshone or Snake Indians resided in the Blue Mountains, southwest of the Grand Ronde. (Pet. Exs. 215, 218, 219, 216, 249, 273; Def. Ex. 50)

Colonel Lawrence Kip, 1855. Colonel Kip attended the 1855 treaty council. He said the Walla Wallas ranged 30 miles up Walla Walla River and on the left bank of the Columbia River. (Def. Ex. 2)

Captain G. O. Heller, July 31, 1855. Having drafted the Haller map during 1854, on July 31, 1855, the Captain reported Snake country reached
from Grand Ronde in the north to Humboldt's River in California and from
the Sierra Nevada and Cascade Range to the buffalo country; that one band
lived on the headwaters of Burnt and Powder Rivers. (Pet. Ex. 520)

Special Indian Agent Nathan Olney, 1855. Agent Olney reported Snake
country extended from the Grand Ronde to the warm springs on DesChutes
River; that Digger Snakes resided about the mouths of Payette and Boise
Rivers east of Snake River, and about the Owyhee, Malheur and Burnt Rivers
west of Snake River. He located Palouse Indians at the mouth of Snake
River. (Def. Ex. 91)

Agent A. P. Dennison, 1857, 1859. Official reports of Agent Dennison
during 1857 and 1859, inclusive, contain the following statement: 1857:
The Walla Wallas possess the country on both sides the Columbia River
between Snake River and Fort Walla Walla; the Umatillas live on Umatilla
River; the Cayuse occupy a portion of Walla Walla valley. Shoshone or
Snakes occupy the country from Burnt River on the east to the DesChutes
River on the west, east of the Blue Mountains and south to California.
1858: The Cayuse have been badly defeated in battle by the Snake; the
Cayuse, Walla Walla and Umatilla tribes occupy the Walla Walla valley.
1859: A Snake band live on the western slope of the Blue Mountains op-
posite Warm Springs Reservation and east of DesChutes River; that they
live "in the headwaters of John Day's River;" on the west slope of the
Blue Mountains, and that Indians from the Warm Springs Reservation killed
two lodges of Snake Indians on John Day River. (Pet. Exs. 339, 357 #3,
361; Def. Exs. 123, 124; Dkt. 198, Pet. Ex. 282)
Agent Craig, 1857. Agent Craig stated the Nez Perce were bounded on the west by the Palouse and Tucannon Rivers. On another occasion he bounded them on the west by the Palouse and Snake Rivers. He placed the Walla Walla on both sides of the Columbia River below Snake River; the Umatilla along Umatilla River and said that the Snake country extended from Burnt River to the DesChutes River. (Pet. Ex. 344; Def. Ex. 15)

Agent A. J. Cain, 1859. According to Agent Cain's report of 1859, the Walla Wallas were upon Columbia River near Fort Walla Walla and the Cayuse tribe lived in Walla Walla valley. (Pet. Ex. 366)

Captain H. D. Wallen, December 10, 1859. Captain Wallen's official report of this date states the Snakes inhabit the valley of Crooked River and adjacent valleys; that their camps are sometimes extended north to the headwaters of John Day's River. (Pet. Ex. 364)

Agent Kirkpatrick, 1862. In an official report concerning the country and Indians in eastern Oregon, Kirkpatrick said only a little of the Snake country outside of the valleys of Powder, Burnt, Malheur, John Day's and Owyhee Rivers, is agricultural; that the Bannack Indians who were generally classed as Snakes, were to the south and that similar Indians were along Snake River. He mentioned having notified the Snakes to stay away from the emigrant roads and the mines, and that the Snakes usually appeared during the months of June and July along Powder River for fishing. (Pet. Ex. 389)

Superintendent of Indian Affairs, J. W. P. Huntington, 1863. On May 3rd, 1863, Huntington said Palmer's reference to the 1855 cession as extending south to the northern boundary of Snake country, meant that boundary line "is probably about 47½° North" Latitude. (Pet. Ex. 392)
Agent Barnhart, 1865. During 1865 Agent Barnhart reported a party of Umatilla Reservation Indians was attacked by hostile Snake Indians within 30 miles of that reservation; that a party of Warm Spring Reservation Indians had been robbed by Snakes when on one of the northern tributaries of John Day River. (Pet. Exs. 404, 407)

Special Indian Agent Turner, 1878. During 1878 Agent Turner referred to Bear Creek, a northern tributary of the main John Day River, as abandoned Paiute country. (Def. Ex. 107, p. 183)

A. R. Robie, 1857. Agent Robie reported on July 31, 1857, that the Lower Yakima resided along the Columbia River from the mouth of the Yakima River down to within 3 miles below The Dalles, and identified them as Wish-ham, Skein and Click-a-hut. (Pet. Ex. 248, Dkt. 198)

27. On the cession date white settlement within the claimed area was confined to its northern sector. Fort Walla Walla which had been established during 1818 as Fort Nez Perce, was a trading post at present Walula, Washington. Near the present site of Walla Walla, Washington, was a trading post established during 1850 by Brooks-Mumford, and the mission St. Rose of Lima, established by the Catholics during 1852 to replace the 1836 Presbyterian mission of Waiilatpu which the Cayuse destroyed during 1849. Wm. McKay had conducted a trading post at present South Pendleton since 1849, and the Umatilla Agency at Echo, Oregon, had existed since 1851. A few former traders were located near the posts.

Prior to 1835 only the Lewis and Clark expedition, traders and trappers are reported within the claimed area. After 1843 there appears
to have been an increasing amount of traffic by emigrants going on to the west. In 1855 the Oregon or Emigrant Trail crossed Snake River near the mouth of Birch Creek, ran north across Burnt, Powder and Grande Ronde Rivers to Grand Ronde Valley where it divided with one branch extending north by two separate routes past St. Rose of Lima to the Coeur d'Alene Mission and the trading post Spokane House. The other branch ran northwest to the Umatilla Agency where it divided with one trail going west to The Dalles and the other southwest to the Sherar's Bridge crossing the Deschutes River. From Fort Walla Walla a trail ran up both banks of the Columbia River; another went east to Walla Walla and another south to the Umatilla Agency. The Lapwai Mission and Craig's Place on the Clearwater River in Idaho were connected with Fort Walla Walla by a trail running along Clearwater and Touchet River valleys.

As late as 1855 there were neither white trails nor settlements south of the immediate vicinity of the Umatilla River, except for the Oregon Trail. (Pet. Ex. 529)

28. The few ethnologists who have worked with Shoshonean speaking Indians in eastern Oregon place the early limits of Snake occupancy farther north than does Dr. Ray. Reports by some of the first white persons traveling through the region also tend to place those limits farther north. From all the evidence before us we find from time immemorial and at the period of their earliest recoverable history that the Snake Indians inhabited and used southeastern Oregon as far north as the northern drainage limits of the North Fork of the John Day River and that they disputed with the Sahaptin tribes the right to use that country lying north of the
North Fork drainage. As explained by the Walla Walla Indians to Ross Cox during 1812, the Snake Indians claimed the exclusive right to hunt the black tailed deer (which were to be found in the Blue Mountains) and the Walla Walla tribe in retaliation attempted to prevent the Snakes obtaining salmon in the Columbia River.

29. The evidence does not disclose how many Snake Indians were involved in their war with the Sahaptins. Whatever their numbers they were stealthy, sly, courageous, and feared by their opponents. Their appearances along the Columbia River during 1805-1806 and 1811 instilled such fear among the Umatilla and Walla Walla Indians and their allies, the Wayampams that these tribes maintained their homes north of that river as we have previously found. During 1818-1819 Snake war parties were reported as far north as Fort Walla Walla (then Fort Nez Perces) at the mouth of the Walla Walla River. By this time the Sahaptin Indians were acquiring a few guns, and in the 1820's were making a united, common, joint effort on their part to prevent the Snakes making any use of the Columbia River or the country that far north. These Sahaptin tribes also began to send their war and subsistence parties farther and farther south into Snake country in order to increase the areas for their common use and benefit. Their penetration into this southern country was retarded by the determined and continuous resistance of the Snakes and their persistence in utilizing the resources of these areas whenever possible even under the war conditions then prevailing. Even after the Walla Walla, Cayuse and Umatilla tribes moved on to the Umatilla Reservation after their 1855 treaty of cession, hostilities continued between these two groups. As late as 1858 battles between the Cayuse and
Snake Indians were reported by the Agent on that reservation (Pet. Ex. 357, p. 264). At no time did they abandon or discontinue their efforts to use their aboriginal territory described above.

30. The Sahaptin tribes were gradually able to penetrate deeper and deeper into the country utilized by these Snake Indians, and to gradually reduce the extent to which the Snakes were able to use this disputed country. The progress of the Sahaptin penetration cannot be accurately assessed because whites did not enter the greater portion of that country until about 1830, and then in so few numbers that there is little documentation of Indian occupancy. More information exists with respect to the eastern sector because the Oregon Trail was opened during 1811 by the Wilson Price Hunt party, and this trail ran north from the mouth of Burnt River along the western side of Snake River and along the Wallow-Grande Ronde River divide to Grand Ronde Valley. There it turned northwest to follow down the Umatilla River and then down the Columbia River. In this southeastern corner of the claimed area the Blue Mountains were extremely difficult to cross, and travelers stayed close to the trail, not venturing any distance into the country to the west.
The journals of only three trappers who did venture into the drainage of John Day River, the memoirs of a former manager of the trading post at Fort Walla Walla, and occasional references by travelers along the Oregon Trail identify the Indians in this sector. Such documents disclose that the Snake Indians were seen in this area but by 1832 the Cayuse were appearing along Powder River, and both the Cayuse and Walla Walla tribes were passing south of the claimed area to hunt along the South Fork of John Day River or in the drainage of Silvies River. Since the early whites coming into this country classed the Umatilla in most instances among either the Walla Walla or the Cayuse, it is very probable the Indians seen in these southern regions were sometimes Umatillas. Other documentary evidence discloses these tribes were also appearing in the country to the west of the claimed area.

31. This documentary evidence discloses, and Dr. Ray acknowledged when testifying before this Commission, that the Snakes were not completely excluded from the country drained by the John Day River, but that they continued to appear within it in small family groups, fishing the streams and foraging for subsistence; that they could do so during the winter months without danger of encountering these Sahaptin tribes from the north, for the regular subsistence cycle of the Sahaptin tribes was such that they spent this period of the year in their winter villages north of the John Day River drainage.

Contrary to Dr. Ray's conclusion that the Umatilla and Cayuse had acquired firm possession of this area by 1810 and that the Snakes recognized
this fact and entered the country only to raid and make such use of enemy territory as was possible, their continuing presence indicates that the Snakes never conceded to the northern invaders the right to exclusively use and occupy this region.

32. However, the Snake usage of this country was not entirely limited to the winter season, as appears from the journals of John Work who observed Snake Indians along John Day River and who had two members of his trapping party murdered by Snake Indians on the headwaters of Burnt River during the month of July, 1832, and from the report of Major Osborne that during September, 1849, friendly Indians would not venture into the headwaters of Powder River because of the "hostile Indians who reside in the mountains and immediately in that neighborhood," and from Captain Wallen's statement during 1859 that the Snake Indians sometimes camped as far north as the headwaters of John Day's River, and from Agent J. M. Kirkpatrick's official report during 1862 that the Snakes came into the valley of Powder River each June and July to fish. Mr. Pambrun did not limit their presence to any season of the year when he stated that in 1832 the headwaters of Grande Ronde River were densely occupied by the Snakes.

While the Sahaptin tribes from the north penetrated south as far as Burnt River, and went beyond the claimed area into the drainage of Silvies River and the South Fork of John Day River prior to the cession date, it appears that the Snake Indians utilized this country in common with them.
Without having excluded the Snakes from the claimed area, it can not be said that these northern invaders enjoyed the exclusive use and occupancy of the country, and that original Indian title could have developed in either one of them.

33. During 1811 "Chochoni" Indians resided along the Weiser River east of Snake River. Other "Chonchoni" Indians with "many horses" were in the Grand Ronde Valley when Wilson Price Hunt's party passed through there during December of that year. In the Blue Mountains north of that valley there were one or more Snake lodges. Across the main ridge of the Blue Mountains, on the headwaters of Umatilla River, there were Sciatoga and other Indians. According to the Indians it was three or four days' travel time between the Chochoni in Grand Ronde Valley to the Sciatoga on the Umatilla; Hunt's party used 6 days for the trip.

The Sciatoga are identified as Cayuse by most people writing of these early people. The possession of many horses, when horses were a scarce commodity among the Snake Indians of southeastern Oregon, identified the Chochoni or Shoshone Indians in Grand Ronde Valley during 1811 as related to the Snake or Shoshone Indians in the country east of the claimed area. Later documents referring to skin lodges and buffalo skins as items obtained in trade with the Snake Indians in Grand Ronde Valley also identify those Indians as related to the Snakes east of this area, for buffalo were not found in Oregon after the 18th century, according to Commander Charles Wilkes who passed through this country during 1841, and Brevet Major Alvord who was in charge of the military forces at The Dalles, Oregon, during the 1850s. (Pet. Ex. 69)
Other documentary evidence originating between 1811 and 1855 discloses that the Cayuse Indians were met in the Grand Ronde Valley more frequently and in greater numbers than any other tribe. They were not the only users of the valley throughout this period however, and there are reports that not only the Cayuse tribe but other tribes as well claimed that valley. Both salmon and camas root, important articles in the diet of these Indians, were found in the Grand Ronde Valley. These foods were of some attraction to the Indians, but the various references to the Cayuse and other Sahaptin tribes met within that valley indicate they were there primarily to trade with the Snake or Shoshone and during the 1840's and 1850's to trade with the emigrants. There were no permanent Indian villages within the Grand Ronde Valley as late as 1854. (Pet.Ex.199)

34. Depredations by the Snake Indians of southeastern Oregon against travelers along the emigrant trails and upon miners and settlers who entered this region the latter part of the 1840's, against the Warm Springs Indian Reservation after its establishment in central Oregon, and general hostilities carried on from time to time between the Snakes and one or another of the Sahaptin tribes, which are recorded as late as 1858, led to a series of military excursions by the United States directed against the Snake or related Indians in southern Oregon, and Idaho, and northern Nevada. The first of these saw one command leave Sacramento Valley and one leave Oregon City during 1849, both going to Fort Hall in Idaho. During 1855 Major Haller led a troop through this country to meet with Shoshone or Snake Indians near Fort Boise; during 1858 a detachment penetrated to Salt Lake, Utah, and returned to Fort Vancouver. In 1860 a
similar expedition penetrated into southeastern Oregon and returned to Fort Vancouver. During 1862 and 1863 several detachments of the Oregon volunteers entered this country, and established military posts. During 1864 Colonel John Drake spent some time in the vicinity of Malheur Lake, seeking to find and destroy Snake Indians.

Indian Agent J. M. Kirkpatrick during 1862 sent word to the Snakes to cease their use of the Powder River, but in an official report to the Superintendent of Indian Affairs in Oregon made by him that year, Agent Kirkpatrick described the "country belonging to and inhabited by the Snake Indians" as including "the Powder, Burnt, Malheur, John Day's and Owyhee River valley." (Pet. Exs. 419, 389; Docket 198, Pet. Ex. 310)

35. These continuing depredations and the continuing danger of Snake attacks upon whites within eastern Oregon led various officials of the Indian Department in Oregon to recommend the negotiation of treaties of peace or cession with the Snakes inhabiting that region. On March 25, 1864, Congress appropriated $20,000 to defray expenses of negotiating such treaties, and under instructions dated June 22, 1864, Superintendent J. W. P. Huntington on August 12, 1865, negotiated a treaty with the Woll-pah-pe Tribe of Snake Indians which tribe he described as a portion of the hostile Snakes. The area ceded by said Indians as described in that treaty lies partially within the area claimed by petitioner on behalf of the Cayuse and Umatilla tribes, being a tract south of the North Fork of John Day River, bounded by the John Day River above its North Fork on the west and the heads of Malheur and Burnt Rivers on the east.
The extent of country actually held by said Indians has never been the subject of judicial determination, but the existence of such Snake Indians as an aboriginal land-holding entity was determined by this Commission in its Docket No. 87, *Northern Paiute Nation et al. v. United States*, decided March 24, 1959, 7 Ind. Cl. Comm. 322, 399. The land held by said entity under original Indian title was not determined at that time because only a non-treaty taking was presented by the pleadings, nor was it affirmatively shown that the petitioners were entitled to represent said aboriginal band known as the Woll-pah-pe Tribe of Snake Indians.

36. During 1941 and 1942 a Mr. Swindell, an attorney with the Bureau of Indian Affairs, Department of the Interior, and the membership of the three tribes here represented, became interested in recording for posterity the usual and accustomed subsistence sites utilized by these tribes prior to going upon the Umatilla Indian Reservation. Each tribe selected important, aged members to represent it. These individuals were driven to places indicated by them and at such places identified them as sites formerly used by certain tribes. This information was then listed on certain cards. Later affidavits were prepared verifying the carded information and the cards and affidavits are presently in the files of the Umatilla Indian Agency and are considered part of what is known as the Swindell Report.

The affidavits recite that affiants are members of a particular tribe, that when that tribe entered the Reservation it was accustomed to using the designated sites, that affiant knew this by reason of having
been at the named site or sites during his childhood or by reason of having been told by his parents or other aged tribal members that they had used such site or sites before going upon the Reservation.

Many such sites are outside of the area presently claimed on behalf of the three tribes here represented, and also outside of the area claimed by petitioner's witness, Dr. Ray, as original title territorial lands of one or another of said tribes. Only a few of the sites which are removed from the vicinity of the Columbia River or the lower Walla Walla River are said to have been exclusively used by one tribe. (Pet. Exs. 98, 99)

37. The affidavits attached to the Swindell Report contain no allegation by members of some one of these three tribes that affiant's particular tribe had the exclusive right to use any one of the sites reported formerly used by it. Nor do they contain any allegation that the site belonged to any other tribe and that members of affiant's tribe used it by permission of the owner tribe. Practically all of the sites within the claimed area and away from the vicinity of the Columbia River or the lower Walla Walla River, were customarily used by more than one of these three tribes, or used by one or more of them in conjunction with other Sahaptin Indians who were involved with these three tribes in the united movement southward against the Snake Indians of southeastern Oregon which began, according to Dr. Ray, about 1750, but which we find to have begun much later.

Documentation originating during the first half of the 19th century frequently contain references to parties of Indians composed of individuals from more than one of these three tribes being encountered in the south-
east corner of the claimed area along or near the Oregon Trail. The record as a whole substantiates Dr. Ray's expressed opinion that the Sahaptin tribes along the Columbia River moved south in a concerted action against the Snake Indians of southeastern Oregon. There is no indication that any one tribe moved south into a definite part of this region and subsequently occupied that sector to the exclusion of all other Indians for along time prior to 1846, so that it acquired original title to such area, and could thereafter as the owner grant permission to other friendly tribes to enter upon and use its territory under a guest-host or permissive use relationship for proper and allowable purposes.

38. The Commission takes judicial notice of a suit which was brought in the Court of Claims by Ambrose Whitefoot and Minnie Whitefoot against the United States to recover compensation for the taking by destruction through inundation of certain fishing rights, and other rights, claimed as the individual property of the plaintiffs in the Columbia River near Celilo Falls in the States of Washington and Oregon, by the construction by the defendant of The Dalles Dam, completed in 1956 (Ambrose Whitefoot and Minnie Whitefoot v. United States, 155 Court of Claims, p. 127, 1961). The plaintiffs are Indians enrolled in the Yakima Nation, a confederation created and granted a reservation by a treaty with the United States entered into June 9, 1855 (12 Stat. 951).

In this treaty certain tribes and bands of Indians ceded to the United States lands which they claimed they held by Indian title and the United States granted to them, or recognized, a certain area as a reservation for the confederated Yakima Nation.
In Article III of the treaty is a provision relating to fishing rights:

"The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory, and of erecting temporary buildings for curing them; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land." (12 Stat. 953)

At about the same time other treaties of cession containing substantially the same provision as Article III were entered into with the Nez Perce, the Confederated tribes of the Umatilla Reservation, and the Tribes of Middle Oregon, commonly referred to as the Warm Springs Indians, and other tribes.

The principal matter determined by the Court of Claims was that individual members of a tribe may have the use of the tribal lands and property but title to such property is in the tribe and the individual rights to use the property depends upon tribal law or custom.

The court called attention to the fact that Congress had passed an appropriation act (67 Stat. 197) for the civil functions of the Army in which it authorized compensation for the loss of the fishing rights in question in that case.

Pursuant to this authority an agreement was reached between the United States and the Yakima Tribe or Nation, on December 17th, 1954, for the payment to the Tribe of some 15 million dollars for all of its fishing privileges as full consideration for the destruction, or
inundation, of these usual and accustomed fishing stations. Payments were made to the tribe under the contract.

The claims of the petitioners were denied and the petition was dismissed. In connection with this matter the Court entered Findings 19 and 20 which we believe are relevant and pertinent to some degree in the instant case:

19. In the course of their efforts to reach some satisfactory adjustment with the various Indian groups, the (Corps of) Engineers determined that the total value of Indian fishing rights that would be lost by construction of the dam, covering a stretch of about ten miles upstream from The Dalles, Oregon, was the sum of $23,274,000, which was based upon a capitalization at three percent of the total value of the fish caught by the Indians in an average year and sold commercially or to tourists or used for subsistence. Later this figure was increased to $26,888,395.32. It was decided to split this sum among the various tribes and the unaffiliated Indians at Celilo Falls on the basis of their official Indian populations enjoying fishing rights there either under the 1855 treaty or by historical usage. Reducing the total value to a unit basis of $3,754.91 per Indian, it was determined that the Yakima Nation should receive $15,019,640, the Umatillas, $4,606,971.06, the Warm Springs, $4,451,784.26, the Nez Perce, $2,800,000, and $3,754.91 each for some 15 or 16 Indian fishermen at Celilo Falls who (1) were unaffiliated with any reservation, (2) depended on the fisheries for a livelihood, (3) had established traditional fishing rights over a period of many years to the satisfaction of the Celilo Fish Committee, and (4) had no determinable rights under the 1855 treaty. The Acts of 1953 (67 Stat. 197) and 1954 (68 Stat. 331) authorized payment not only to tribes but also to the unaffiliated Indians at Celilo Falls who met the tests described above.

20. On December 17, 1954, an agreement was entered into between the United States and the Yakima Nation whereby the latter agreed to subordinate its fishing rights in the Celilo Falls fisheries in return for payment of the sum of $15,019,640. This agreement was approved by both the General Council and the Tribal Council of the Yakima Nation. Similar agreements were entered into with the Nez Perce, the Umatillas and the Warm Springs Indians. (Findings of Fact 19 and 20, slip opinion, pp. 23, 24, Whitefoot v. United States)
Under our general and investigative powers as a judicial tribunal we have secured a certified copy of the contract entered into between the United States and the Confederated Tribes of the Umatilla Indian Reservation, dated the 10th day of March, 1953, and marked it Commission's Exhibit I, Dkt. 264. Since the contract was entered into between all the parties to this case and since each party was given an original or a copy of that original contract, we have not sent copies of Commission's Exhibit I to said parties because it was deemed unnecessary under the circumstances.

The whereas clauses of said contract are as follows:

WHEREAS, under and by virtue of the Flood Control Act of 1950, Title II, Public Law No. 516, 81st Congress, 2d Session, approved May 17, 1950, the Corps of Engineers, Department of the Army, has been authorized to construct The Dalles Dam, Columbia River, Washington and Oregon (hereinafter called "the Project"), and

WHEREAS, the Confederated Tribes have been taking fish since time immemorial at the usual and accustomed fishing stations located within and adjacent to the Project, particularly in the vicinity of Celilo Falls, Columbia River, and since the ceding of their lands along the Columbia to the United States the Confederated Tribes have been and now are taking fish at those usual and accustomed stations, in accordance with the reservation contained in Article I, Treaty of June 9, 1855, 12 Stat. 945, and

WHEREAS, said usual and accustomed fishing stations will be destroyed and inundated by construction of the Project, and

WHEREAS, it is the intent of the Government to compensate the Confederated Tribes for the destruction and inundation of those usual and accustomed stations by the construction, operation, and maintenance of the Project, and to avoid litigation; and the amounts set forth herein are considered just compensation for such destruction or inundation;
39. In our determination of Docket 198, we found in Findings 50 and 51 the following:

50. For a long time prior to the 1855 treaty of cession, the Cascade, Hood River, and Dalles Wasco Indians, the Tenino, Tygh, Wyam, and John Day River Indians, were seven separate land using entities that were formally confederated under the 1855 treaty into the "Confederated Tribes or Bands of Middle Oregon." On March 8, 1859, the effective date of the 1855 treaty of cession, the seven bands or tribes of Indians held Indian title to seven separate but contiguous tracts of land on the south side of the Columbia River and below, which lands are included in an area that can be circumscribed by a line drawn as follows:

Commencing at the junction of the Multnomah-Hood River county lines on the Columbia River, thence southerly along the Multnomah-Hood River county line to the southeast corner of Multnomah County; thence southeast on a line to the town of Maupin in Wasco County; thence northeast on a line across the John Day River to the southeast corner of Township 3 South, Range 20 East in Gilliam County; thence north on a range line between ranges 20 and 21 East to its intersection with the Willamette Base line; thence northeast on a line to the Columbia River passing through the town of Blalock in Gilliam County.

51. The tracts owned individually by the seven bands or tribes of Indians may be separated within the area circumscribed above in the following manner:

Moving from west to east the Commission finds that:

1. The lands of the Cascade Wasco are separated from the Hood River Wasco lands to the east by a line that commences at the intersection of the Waucoma Ridge and Cascade Range, and from this point runs northeast along the summit of the Waucoma Ridge and along the drainage divide between Gorton and Herman Creeks as far as the Columbia River.

2. The Hood River Wasco lands are separated from the Dalles Wasco lands to the east by a line that begins where that part of the line described in Finding 50 as running southeast from the south east corner of Multnomah County to the town of Maupin (hereinafter referred to as the "Maupin line"), intersects the township line between Townships 2 and 3 South, Range 10 East; thence northeast on a line to the northeast corner of Hood River County on the Columbia River.
3. The Dalles Wasco lands are separated from the Tenino lands on the east by a line which begins at the same point of intersection on the "Maupin line" as described above and runs northeast to Big Eddy on the Columbia River.

4. The Tenino lands are separated from the Tygh lands to the south and the Wyam lands to the east by a line that begins at the intersection of the "Maupin line" with the township line between townships 3 and 4 south, Range 12 East, thence northeast to the northeast corner of Township 3 South, Range 14 East, thence north along the range line between ranges 14 and 15 to the Columbia River.

5. The Wyam lands are separated from the Tygh lands to the south and the lands of the John Day River Indians to the east by a line that commences at the northeast corner of Township 3 South, Range 14 East, thence southeasterly across the DesChutes River to the intersection of the DesChutes meridian with that part of the line described in Finding 50 as running northeast from the town of Maupin to the southeast corner of Township 3 South, Range 20 East in Gilliam County, thence north along the DesChutes meridian to its intersection with the Willamette Base line, thence northwest passing thru the town of Rufus in Sherman County to the Columbia River.

6. The lands of the Tygh band of Indians form a diamond shaped tract located on both sides of the DesChutes River in Wasco and Sherman counties between the Tenino and Wyam lan's and the town of Maupin.

And in Finding 52 we held:

The Commission has found that within the area awarded in Finding 50, the seven bands or tribes of Indians, who were parties to the 1855 treaty of cession; occasionally, and for short periods of time, allowed other friendly bands or tribes to use their fishing sites and nearby areas on the Columbia River for such things as trading, gambling, horse racing, and other related activities. Under such circumstances the Commission finds that this temporary "guest" use of these areas was not adverse to or incompatible with the Indian title asserted by the original owners.

The area so described, included part of the area where The Dalles Dam was constructed on the Columbia River by the Army Engineers as an agency of the United States and which was the subject in its contract
with the Umatilla Confederated Tribes which claimed that they had been from time immemorial taking fish at the usual and accustomed fishing stations located within and adjacent to The Dalles Dam project, particularly in the vicinity of Celilo Falls, on the Columbia River. (Comm. Ex. I)

40. On June 15, 1846, when sovereignty of the United States attached to the land in the territories of Washington and Oregon, the maximum limits of any territory held by the Walla Walla, Cayuse or Umatilla tribes of Indians became fixed and could not thereafter be increased in derogation of the interests of the United States.

41. On March 8, 1859, the Umatilla tribe of Indians, the Walla Walla tribe of Indians, and the Cayuse tribe of Indians each held original title to a tract of land which the United States acquired on that date and which tract in each instance is described as set forth following their respective names, to-wit:

The Umatilla Tribe: A tract of land located in the States of Washington and Oregon described as follows, to-wit: Commencing on the Columbia River at the mouth of Juniper Canyon in Oregon; thence up said Canyon and its south fork to the source thereof; thence southwest to a point on the Umatilla River two miles below the townsite of Echo, Oregon; thence down the Umatilla River to the mouth of Butter Creek; thence westerly to the drainage divide between Butter Creek and Willow Creek and thence southerly along said drainage divide to the southern extreme of the drainage of Butter Creek; thence westerly to the southernmost point on the watershed of Rhea Creek; thence down Rhea Creek to its mouth and down Willow Creek to its mouth; thence up the Columbia River to the lower edge of Blalock Island; thence north across the Columbia River to a point ten miles directly north of said River; thence northeasterly to a point north of Umatilla, Oregon, and 10 miles north of the north bank of the Columbia River; thence southeast to the Columbia River opposite the mouth of Juniper Canyon; and thence across said river to the place of beginning.
The Walla Walla Tribe: A tract of land located in the States of Oregon and Washington and described as follows, to-wit: Commencing on the Columbia River at the mouth of Juniper Canyon and running thence up said Canyon and its south fork to the source thereof; thence northeast to the Walla Walla River opposite the mouth of Touchet River; thence up Touchet River to the mouth of Winnett Canyon near Lamar, Washington; thence northwest to a point on Snake River which is twenty-five miles above its mouth; thence down Snake River to its mouth and southwest across Columbia River and along a straight line drawn from the mouth of Snake River to a point which is north of the town of Umatilla, Oregon, and ten miles north of the north bank of the Columbia River; thence southeast to the Columbia River opposite the mouth of Juniper Canyon and thence across the Columbia River to the place of beginning.

The Cayuse Tribe: A tract of land located in the States of Oregon and Washington, described as follows, to-wit: Commencing on the Drainage divide between the Touchet and Snake Rivers at a point where said divide is intersected by a line drawn from the mouth of Winnett Canyon on the Touchet River to a point on Snake River twenty-five miles above its mouth; thence northerly and then east and south along the outer rim of the watershed of the Touchet River, the Walla Walla River and the Umatilla River, and thence westerly along the outer edge of the watershed of the Umatilla River and around the watershed of Butter Creek; thence northerly along the divide between the watershed of Butter Creek and that of Willow Creek to a point on said divide which is west of the mouth of Butter Creek; thence east to the mouth of Butter Creek; thence up the Umatilla River to a point two miles below the townsite of Echo, Oregon; thence along a straight line to the source of the south fork of Juniper Canyon; thence by a straight line to the Walla Walla River opposite the mouth of Touchet River; thence up Touchet River to the mouth of Winnett Canyon; thence along a straight line drawn from the mouth of Winnett Canyon to a point on Snake River which is twenty-five miles above its mouth to a point on said line which is the place of beginning.

42. With respect to the remainder of the overall areas claimed by petitioner and not included in Finding 41, the Commission finds that the evidence is insufficient to establish exclusive use and possession for a long time, or from time immemorial, in any of the three tribes comprising the Confederated Tribes of the Umatilla Indian Reservation at the critical times in this proceeding. There is substantial evidence to the contrary that the three Umatilla tribes, the Wayampam bands, the Nez Perce tribe, the
Snake Indians, sometimes referred to as the Northern Paiutes - an identifiable group of Indians - or the Shoshonean peoples, and other miscellaneous Indians have travelled, gathered, and hunted over said area and have taken fish from its streams; said use was in common with said tribes and bands. The Umatilla tribes and their allies jointly began a campaign of conquest in the 1820's against the Snake Indians, as above described; to acquire the disputed areas, which at said times and for a long period prior thereto were in the possession and use of said Snake Indians.

We also find that the tribes attempting the said conquest and use met with determined resistance; that they did penetrate some parts of the said areas but their progress was very slow, and the war between the rival groups continued unresolved at the date of the Umatilla Treaty with the United States and for a considerable period beyond said date. At no time within the period were the said Snake Indians entirely excluded from the claimed areas.

It is our judgment that the facts found in the instant case are similar to those found in the case of Sac and Fox Tribe of Indians, et al., v. United States, supra, and the court's holdings in that case should apply here.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Chief Commissioner

Commissioner Scott did not participate in the case.