BEFORE THE INDIAN CLAIMS COMMISSION

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

Decided: May 7, 1965

Appearances:

Donald C. Gormley and Charles A. Hobbs, Attorneys for Petitioner.

Walter J. Muir, with whom was Mr. Assistant Attorney General J. Edward Williams, Attorneys for the Defendant.

OPINION ON PETITIONER'S MOTION TO MODIFY COMMISSION'S FINDINGS AND ORDER

PER CURIAM:

On October 5, 1962, the petitioner renewed its prior motion to modify the Commission's Findings and Interlocutory Order of June 30, 1960, in the above case. We had denied the earlier motion to modify on March 14, 1961, but allowed the petitioner to reopen the record for taking additional evidence.

Petitioner's motion to modify the findings is intended to upset our ultimate finding in this case whereby we denied the claim asserted on behalf of the Skykomish Indians as set forth in the amended

complaint. 1/ Petitioner now claims that with the addition of certain "new" evidence the entire record in this case supports an inference that the aboriginal Skykomish Tribe has been absorbed by the Snoqualmie Tribe, the petitioner herein, and consequently the Snoqualmie Indians should be entitled to recover on the Skykomish claim. While we think the additional evidence fails to support petitioner's contentions, there are more cogent reasons upon which petitioner's motion should be denied.

The Commission has undertaken a careful review of the entire record in this case, and we have concluded that the end result of our initial decision was correct, that is, that the Skykomish claim should be denied, and that the Snoqualmie petitioner should proceed with the evaluation of that area found to have been aboriginally owned by the Snoqualmie Tribe and ceded by it to the United States under the Point Elliott Treaty of January 22, 1855 (12 Stat. 927).

However, the Commission feels that its findings of fact, as well as certain language in the opinion and interlocutory order, stand in need of modification in order to correct what we now consider obvious error.

1/ 9 Ind. Cl. Comm. 25; 39-40, Finding 16 (June 30, 1960):
"The proof in this case wholly fails to establish the present day existence of any 'identifiable tribe, band, or group' of Skykomish Indians, or any descendant or successor thereof. Moreover, the preponderance of the evidence shows that the historic tribe or village band of Skykomish Indians were not a sub-group of the Snoqualmie Tribe, but to the contrary were in treaty times a separate land-using entity. Therefore, this Commission finds and concludes that the United States is not liable for the taking of the Skykomish aboriginal lands as defined in paragraph B of Finding 14 above."

In its original petition the Snoqualmie Tribe claimed that, by virtue of the Point Elliott Treaty of January 22, 1855, it ceded to the United States for an unconscionable consideration certain aboriginally owned lands that were situated within the larger area described in the treaty. The Snoqualmie Tribe was only one of a group of several bands or tribes that ceded land interests under this 1855 treaty. The particular area alleged to have been aboriginally owned by the Snoqualmie Tribe is identified in its petition as:

> . . . that certain portion of the above described land and territory around and including the Snoqualmie river (sometimes spelled Snoqualmuke or Snoqualmick) and the watershed thereof from its headwaters to its mouth.

The area claimed embraces approximately 436,774 acres.

When the Snoqualmie hearing commenced on September 12, 1958, counsel for the petitioner advised the Commission that he intended to file a motion to amend the original Snoqualmie petition to conform with the evidence so as to include the claim of the Skykomish Tribe of Indians for an additional area of land which adjoined the Snoqualmie tract. 2/ There was no mention of any Skykomish Indians or a Skykomish claim in the Snoqualmie petition, nor had there ever been a tribal claim of any sort filed before this Commission by or on behalf of the Skykomish Indians or the Skykomish Tribe. The justification put forward by the Snoqualmie counsel for the proposed amendment to bring in a new party petitioner, who would then assert a claim to a new area some seven years after the

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2/ This additional area of land claimed on behalf of the Skykomish Indians approximates some 538,048 acres and exceeds the Snoqualmie claim area by over 100,000 acres. Both areas are clearly delineated as separate but adjacent tracts on a map introduced into evidence as Petitioner's Exhibit 1. (See also Commission's Finding 5, 9 Ind. Cl. Comm. 25, 29)

statutory cutoff date of August 13, 1951, is bottomed on the proposition that the Skykomish Indians were in fact at the time of the 1855 Point Elliott Treaty a subtribe or constituent part of the Snoqualmie Indians. This was the hypothesis advanced by petitioner's counsel at trial when he stated it in the following manner:

> Chief Commissioner Witt: As originally filed here, the Skykomish are not mentioned in this Docket 93, are they?
>
> Mr. Gormley: That is correct. They are not.
>
> Chief Commissioner Witt: Did you sue originally only then for this lower portion below this dotted line, or what did you sue for in your original petition?
>
> Mr. Gormley: The original petition is only for the drainage of the Snoqualmie River, and not the Skykomish.
>
> Chief Commissioner Witt: That is the southern portion?
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> The Witness: Yes, sir.
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> Chief Commissioner Witt: And you are now planning to undertake to amend your petition and add another group in the northern half of that land, north of that dotted line, which heretofore you have not included?
>
> Mr. Gormley: Yes, in effect.
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> Chief Commissioner Witt: Is it claimed that these lands are owned by separate groups?
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> Mr. Gormley: Well, Your Honor, we could go back into that. Actually, as the good doctor knows, a couple of days ago the evidence on that was a conflicting thing, and you so found in your Snohomish case, Docket 125, when you decided it. There have been very competent authorities over the years, anthropologists, who have classified the Skykomish as merely a subdivision of Snoqualmie. We felt, and Dr. Collins, felt, it was only fair to the Commission that you see the relationship of these people one to another, and decide as to whether the Skykomish should have a right to recover as a part really of the Snoqualmie. That is really what we are putting up to you. 3/

3/ Tr. Sept. 12, 1958, pp. 11-12)

After the close of this hearing the petitioner, Snoqualmie Tribe of Indians, filed a written motion on October 12, 1958, asking the Commission to amend the original petition to indicate that the Snoqualmie Tribe was now bringing the cause of action on its own behalf as well as "on relation of the Skykomish Tribe of Indians." In addition a new area was to be added wherein title to the same was asserted to be either in "the Snoqualmie and Skykomish Tribes of Indians, or the Snoqualmie Tribe of Indians only." Over the defendant's objection, the Commission granted petitioner's motion on October 13, 1958. On October 17, 1958, the petitioner filed an amended petition incorporating the amendments authorized under the Commission's order of October 13th.

In its proposed findings of fact and brief, the petitioner strongly adhered to its position that the Skykomish Indians were at treaty times a constituent part of the Snoqualmie Tribe, and suggested to the Commission that it make the following finding of fact:

> 6. Skykomish subgroup. Although the Skykomish Indinas are sometimes mentioned as an independent group, several experts have classified them as a Snoqualmie subgroup. The Commission finds that at the time of the treaty the Skykomish Indians were a constituent part of the Snoqualmie tribe. 4/ (Emphasis supplied.)

In our decision of June 30, 1960, the Commission concluded that the United States was not liable on the Skykomish claim and therefore ;it should be denied. We specifically found that at the time of the 1855 Point Elliott Treaty there was an aboriginal tribe or band of Skykomish Indians who were a separate land owning entity, owning a separate tract of land that it ceded under the aforesaid treaty.

4/ Pet. Pro. Fdgs. of Fact and Brief, p. 5, August 3, 1959.

Nevertheless the United States was not to be held liable on a claim for Skykomish lands because as stated in our Finding 16:

> The proof in this case wholly fails to establish any identifiable tribe, band, or group of Skykomish Indians, or any descendant or successor thereof 5/

After reviewing all the evidence in this case in light of petitioner's motion, the Commission is firmly convinced that its initial decision denying the Skykomish claim was correct. What disturbs the Commission now is that some of our reasons in support thereof were clearly erroneous. It is also unfortunate that our initial decision fostered further and unnecessary proceedings in this litigation.

Let us now look at some of our findings. Apart from finding that there no longer exists any Skykomish tribe, band, or successor thereto, or even descendants of members of the aboriginal tribe (although petitioner takes issue on this point), the Commission also found in Finding 16 that:

> Moreover the preponderance of the evidence shows that the historic tribe or village band of Skykomish Indians were not a subgroup of the Snoqualmie Tribe, but to the contrary were in treaty times a separate land using entity. 6/

However, the Commission made a preliminary finding that the petitioner, the Snoqualmie tribe:

> . . . Is duly authorized to present this on behalf of and for the benefit of the respective descendants of the two separate land using entities known in aboriginal times as the Snoqualmie Tribe and the Skykomish Tribe . . . 7/

5/ Supra.
6/ Ibid.
7/ Commission's Finding 8, 9 Ind. Cl. Comm. 25, 30.

In view of the theory upon which petitioner sought to bring in the Skykomish claim, to wit, that the Skykomish Indians were a constituent part of the Snoqualmie tribe, it is difficult to reconcile the above findings. In fact, it is downright impossible unless petitioner has some new theory upon which it could represent Skykomish Indians in presenting their tribal claims. When the Commission found as a matter of fact that the Skykomish band or tribe was never a constituent part of the Snoqualmie tribe, but rather that the Skykomish band or tribe was a separate and independent land-owning entity that ceded its own interests under the 1855 Point Elliott Treaty, it is obvious then that there does not exist that privity between the tribes, or such a community of interest in the subject matter of the original petition which would entitle the Snoqualmie petitioner to bring a suit for the Skykomish lands either on its own behalf or in a representative capacity on behalf of the aboriginal Skykomish tribe.

Assuming for the sake of argument that petitioner has such representative rights, then the Skykomish aboriginal claim still stands as an original law suit, but one filed more than seven years after the statutory cutoff date. 8/ One having representative rights enjoys no greater substantive rights than he whom he represents. Such being the case, we fail

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8/ C. 959, § 12, 60 Stat. 1052
"The Commission shall receive claims for a period of five years after August 13, 1946, and no claim existing before such date but not presented within such period may thereafter be submitted to any court or administrative agency for consideration, nor will such claim thereafter be entertained by the Congress."

to see under what circumstances tha amended claim for the Skykomish lands, being new matter, can escape the jurisdictional consequences of the statutory prohibition. 9/ Certainly if the Skykomish tribe existed today it could not have brought an original lawsuit under our Act as late as 1958.

Since the Indian Claims Commission Act is special legislation that confers a special jurisdiction under which the United States has consented to be sued, its substantive limits cannot be enlarged by implication, by the consent of the parties, or by the liberal use of available procedural devices. Nevertheless, petitioner seeks to avoid all of these matters of substance by invoking the procedural device of "relating back", citing rule 13(c) of the Commission's General Rules of Procedure. 10/ It argues that the Skykomish aboriginal claim arises out of the same transaction, namely the Point Elliott Treaty, and since the petitioner cited the Point Elliott Treaty in its original petition, this was sufficient notice to the defendant that it could be sued not only on the Snoqualmie claim, but for any claim arising out of this same treaty which the Skykomish might wish to bring, and even if said claim should be filed at any time after the five year limitation.

9/ That section 12 of our Act is primarily jurisdictional seems beyond dispute. That Congress sought to bar forever tribal claims not presented within the prescribed 5-year period is borne out by its suggested policy that such tribal claims would not thereafter be entertained by Congress. C.f. United States v. Seminole Nation 299, U.S. 417; Delaware Tribe of Indians v. United States, 84, C. Cls. 535.

10/ "Petitioner's Supplemental Memorandum on Relation Back of Amendment Adding Party Petitioners." p. 7, Feb. 15, 1961.

> ". . .
> (c) Relation back of amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading." (25 CFR § 503.13(c))

Petitioner would go still further by contending that,

> ". . . In the Skykomish situation defendant not only was charged with notice that it was being held accountable by the Snoqualmie, a somewhat related tribe, under a certain transaction, namely, the Point Elliott Treaty, it also had that same notice as the result of timely claims by almost every other tribe who were parties to the treaty. The Commission can take judicial notice of these claims on its docket. Duwamish #109; Kikiallus #263; Upper Skagit #92; Lower Skagit #294; Suquamish #132; Swinomish #233; Samish #261; and Snohomish #125." 11/

Thus the petitioner would charge the defendant with adequate notice of a potential Skykomish claim simply because the other Point Elliott Treaty participants have filed their own claims. We think petitioner's contentions in this regard to be wholly untenable.

The language in the original petition in Docket No. 93 sets out only the claim of the Snoqualmie tribe of Indians and nothing more. Under this original petition, the Snoqualmie tribe claimed aboriginal title to ". . . a certain portion of that certain land and territory contained within the present continental borders of the United States of America . . ." (Emphasis supplied). There then follows the description in Article I of the Point Elliott Treaty which encompasses all the lands and country occupied by the treaty participants. The petition then states,

> "That more particularly, on January 22, 1855, petitioner and the members of petitioner tribe held and owned that certain portion of the above described land and territory (the aforementioned description in Article 1 of the 1855 treaty) around and including the Snoqualmie River . . . and the watershed thereof from its headwaters to its mouth."

11/ "Petitioner's Supplemental Memorandum on Relation Back of Amendment Adding Party Petitioners." p. 7, Feb. 15, 1961.

and further,

> "*** That by the terms of said treaty, the petitioner ceded, relinquished, and conveyed to the United States all its separate tribal rights, titles, and interests in and to its said lands." 12/ (Parenthetical material and underscoring added.)

We find nothing in the language of the original petition that would justify petitioners request to amend on the basis of "relation back." To approve such a procedure would be a flagrant attempt to avoid the obvious consequences of the limitation on the right to bring a new tribal claim after the expiration of the prescribed 5-year period for filing original law suits before this Commission. The Skykomish Tribe, if it existed today, certainly could not file an original law suit at this late date. How then could the Commission condone the filing of an original law suit on behalf of the Skykomish Tribe by a petitioner that has no legal, ancestral, or equitable right to represent a tribe which no longer exists. That the Skykomish Tribe went out of existence sometime after the 1855 Point Elliott Treaty without leaving any known successor in interest or other identifiable group having some legal, equitable, or beneficial ownership of its tribal interests, is the simplest explanation of why no Skykomish claim has ever been filed.

Following our 1960 decision, the Commission reopened the record of this case on petitioner's motion in order to receive additional evidence in the form of depositions of certain Snoqualmie Indians, and membership applications executed in affidavit form by ten Snoqualmie Indians pursuant to the Indian Reorganization Act of 1939. 13/ From this "new" evidence the petitioner argues that,

12/ Paragraphs 4, 5, Original petition in "The Snoqualmie Tribe of Indians v. United States", Docket 93.

13/ Pet. Exs. 48, 90-99.

> "There is now compelling and uncontradicted evidence in the record showing that there are presently existing members or descendants of members of the aboriginal Skykomish Tribe. The evidence supports the inference that the Skykomish Tribe has been absorbed into the Snoqualmie Tribe." 14/

First of all, since it has been well established by uncontraverted evidence the Skykomish Tribe no longer exists today, there can of course be no "existing members" of the aboriginal Skykomish Tribe. From these depositions the Snoqualmie membership applications it appears that among the present membership of the Snoqualmie Tribe there are twelve or so Snoqualmie Indians who claim through their progenitors various amounts or traces of Skykomish blood. However, it is also shown that on the same basis these Snoqualmie deponents and affiants have blood connections with quite a few other northwest coast tribes, several of which exist today while others are extinct. Among them can be noted the following: Skagit, Skokomish, Snohomish, Swinomish, Stillaguamish, Suiattle, Chelan, Shalawh-kid, Duwamish, La Connor, Sodock, Wenatchee, Pilchuck and Yakima. Such multiple blood ties are not uncommon within the memberships of many north-west coast tribes. The present secretary of the Snoqualmie tribe acknowledged that she knew of situations where members of other tribes undoubtedly could claim some degree of Skykomish blood. 15/

From this "new" evidence, the petitioner has asked the Commission to infer that the Snoqualmie Tribe absorbed the Skykomish Tribe and thus succeeded to its tribal interests. As the Commission views this "new" evidence in its most favorable light, it shows simply that there are twelve or so members of the organized Snoqualmie Tribe of Indians who have always

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14/ Petitioner's "Motion To Modify Commission's Findings and Order", Oct. 5, 1962.

15/ Deposition of Judie Moses, July 10, 1961, pp. 56-76.

consider themselves to be bona fide Snoqualmie Indians even from birth; who to some degree have blood connections with Indians of other tribes including the defunct Skykomish Tribe; and who, as enrolled Snoqualmie Indians enjoy the present benefits of Snoqualmie tribal membership while owning no allegiance to any other organized or unorganized group of Indians.

It should be noted that the Snoqualmie petitioner is not the first Point Elliott Treaty participant to claim the Skykomish Indians as their own. In Docket No. 125, The Snohomish Tribe of Indians v. United States, 4 Ind. Cl. Comm. 549, this Commission heard testimony, including expert testimony that the Skykomish were part and parcel of the Snohomish Tribe, they being joined together, culturally, linguistically and socially (there being intermarriage between members of these two tribes). 16/ Based upon all the evidence in that case the Commission concluded that at the time of the 1855 Point Elliott Treaty, the Snohomish and Skykomish tribes were in fact separate entities. However, we have no doubt that among the present

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16/ The testimony adduced at the Snohomish hearing was certainly more catagorical than that which was offered in support of Snoqualmie claims of a Skykomish interest. F. M. Elwell, Snohomish tribal chairman, testified that the Skykomish were a part of the Snohomish and occupied the Skykomish River area; and further that, "I don't think there was any difference. They spoke the same language. They were the same people . . . but they were a portion of the Snohomish tribe that made their homes upon the river because they liked the upper river." (Tr. June 10, 1952, pp. 18, 19, Dkt. 125). The Snohomish expert witness, C. E. Tweddell, concluded from his studies and field work that the Skykomish were a part of the Snohomish. He stated that, "All of the informants . . . agreed that Snohomish and Skykomish were all one people; the same language, the same customs, the same interests." (Tr. Aug. 10-11, 1953, p. 98, Dkt. 125)

membership of the Snohomish tribe there could be demonstrated some Skykomish blood ties similar to that presented by the petitioner herein in its "new" evidence. 17/

17/ In the Peoria case suit was brought by the Peoria Tribe of Indians of Oklahoma on behalf of the Wea Nation or Tribe of Indians. The claims asserted therein arose under the Treaty of October 2, 1818 (7 Stat. 186) between the "Wea Tribe of Indians" and the United States, under which the former ceded to the latter all right, title, and interest to lands in Indiana, Ohio, and Illinois. By virtue of the Treaty of May 30, 1854, (10 Stat. 1082) four tribes, the Wea, Piankeshaw, Kaskaskia, and Peoria, united themselves into a single tribe, and was so recognized thereafter by the United States as the Confederated Tribe of Peoria, Kaskaskia, Wea, and Piankeshaw Indians. Following the removal of the Confederated or United tribe to a reservation in Oklahoma, under the provision of the Treaty of February 23, 1867, the tribe eventually became known as the Peoria Tribe. In 1940 this Peoria Tribe incorporated under the provisions of the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967) as the Peoria Tribe of Indians of Oklahoma (Peoria Tribe of Indians of Oklahoma et al., v. United States, 4 Ind. Cl. Comm. 239). In the Peoria case the Commission specifically found the Wea tribe to be a constituent part of the Peoria Tribe of Indians of Oklahoma. Thus, when the Peoria Tribe was able to prove to the satisfaction of the Commission, that among its present membership there were living descendants of the Wea tribe, this was sufficient to enable the Peoria Tribe to bring and maintain its original law suit for and on behalf of the Wea tribe. The Snoqualmie petitioner now claims that the Peoria situation is similar to that presently before us in Docket No. 93, since the Snoqualmie petitioner under its amended complaint now has brought suit for and on behalf of the Skykomish Tribe, and can also claim among its present membership living descendants of the aboriginal Skykomish Tribe. Apart from the fact that the Snoqualmie petitioner never brought suit for the Skykomish Tribe in its original petition, the Peoria situation is not the same, and the rule of the case inapplicable. In the Peoria case we specifically found the Wea Tribe, by reason of the aforesaid treaty provisions and other evidence, to be a constituent part of the Peoria Tribe, the entity that brought the original suit, but in the instant docket, we have found the opposite to be true with respect to relationship between the Snoqualmie petitioner and the Skykomish Tribe; namely, that they were at the time of the 1855 Point Elliott Treaty separate, independent landowning entities; that sometime therafter the Skykomish Tribe ceased to exist as a tribe; and, that there is no evidence supporting any inference that the Snoqualmie Tribe absorbed the Skykomish Tribe and succeeded to tribal interest of the latter.

In its initial decision, the Commission found that at the time of the 1855 Point Elliott Treaty, the Snoqualmie and Skykomish Tribes were two independent tribal entities who occupied different but adjoining areas of land, and that sometime thereafter the Skykomish disappeared as a tribal entity. Its demise as a tribe remains as much a mystery today as it ever was. Even with the benefit of petitioner's "new" evidence, there is still no proof in the record, be it historical, anthropological or ethnological, that throws any real light on whatever happened to the Skykomish Tribe and its membership upon its dissolution as a tribe. Without this knowledge and the accompanying proof, it is impossible under our Act for the Commission to determine the ownership of any Skykomish tribal claim or claims arising under the provisions of the 1855 Point Elliott Treaty. The inference suggested by the petitioner, that the Snoqualmie Tribe has absorbed the Skykomish tribe and has succeeded to its tribal interests, is not warranted on the record before us.

In carrying out our views expressed herein, the Commission will first enter an order denying the petitioner's motion to amend the Commission's findings as requested, and upon its own motion, and without changing the substance of its ultimate findings and conclusions with respect to the Snoqualmie and Skykomish claims, the Commission will undertake to amend its findings of fact previously entered herein as

well as certain language in the opinion and interlocutory order.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

Commissioner Scott dissents,
see dissenting opinion of this
date.