

BEFORE THE INDIAN CLAIMS COMMISSION

THE PUYALLUP TRIBE OF INDIANS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 203
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: Apr 25 1966

Appearances:

Frederick W. Post and  
Malcolm S. McLeod, attorneys  
for Petitioner.

Craig A. Decker, with whom was  
Mr. Assistant Attorney General,  
Edwin L. Weisl, Jr., attorneys  
for the Defendant.

OPINION OF THE COMMISSION

Watkins, Chief Commissioner delivered the opinion of the Commission.

Since this Commission has made findings in considerable detail in this case, there seems to be no need to paraphrase them in this opinion, except as it shall be necessary to give our reasons for the adoption of said findings as is required by the Indian Claims Commission Act of August 13, 1946, Sec. 19(3).

We have found that the petitioner herein, the Puyallup Tribe of Indians, is an identifiable group of American Indians within the meaning of the Indian Claims Commission Act and as such is entitled to bring and maintain this action. This finding is based on the fact that a review of the evidence shows that the Puyallup tribe did sign the Medicine

Creek Treaty of December 26, 1854 (10 Stat. 1132), and that said tribe did act as an identifiable group of American Indians within the meaning of the Indian Claims Commission Act. This same kind of question was presented in Steilacoom v. United States, 11 Ind. Cl. Comm. 304, wherein the Commission held that the petitioning tribe had a right to bring and maintain an action before this Commission.

Petitioner offered evidence from three different sources to maintain its position that it had exclusive use and occupancy of the area claimed from time immemorial to the date of the ratification of the Treaty of Medicine Creek on March 3, 1855. These sources were:

1. Indian informants Jerry Meeker, a member of the Puyallup Tribal Council; Frank Wrolson, Chairman of the Tribal Council; Joseph McKay and Mrs. Dora Reed, Puyallup Indians.
2. Expert testimony of witness Herbert Taylor, ethnologist.
3. Expert testimony of witness Dr. Arthur C. Ballard, anthropologist.

The Defendant offered as its expert witness Dr. Carroll L. Riley.

As set forth in our Finding 3, petitioner and defendant stipulated that the qualifications of the expert witnesses as given in previous hearings be incorporated in this record.

The Indian testimony consisted of statements made as to identity of the claimants and boundaries (Pet. Fdg. p. 19). The Indian informants stated that the Puyallups resided along the Puyallup River. Jerry Meeker stated, "\*\*\* what you call the real Puyallups, they lived right north of the Puyallup River, \*\*\*. All those Indians at South Prairie,

they called them 'Swabsh'". (Tr. 1952; p. 18) South Prairie was some 15 miles up and to the north of the Puyallup River. The other Indian informants confirmed Mr. Meeker's testimony that in most of the areas such as Stuck River, the Camas grounds, Muck Creek and on the Islands of Puget Sound there was much joint use by the Indian tribes such as the Nisqually and Squaxin. Mr. Meeker's statements on this point may be found in the 1952 Transcript, pp. 4, 7, 8, 19-20, 28, 37, 39, 51, 53-56, 58 and 60. The Nisqually Indians lived immediately south of Puyallup along the Nisqually River.

Petitioner's expert witness, Dr. Herbert C. Taylor's testimony was first given in the form of a deposition, taken June 16, 17, and 18, 1954 (Cl. M.C. 1-A). On August 26 and 27 of 1954, Dr. Taylor testified at a hearing before the Indian Claims Commission. The evidence contained in the deposition and the testimony given at the hearing may be summarized as follows: The Puyallups and Nisqually shared berry picking grounds (Pet. Ex. M.C. 1-A, p. 521); they also shared areas around Mt. Rainier (Tr. 1954, p. 92); both the Puyallup and Nisqually identified the upper Nisqually and upper Puyallup as areas in which they hunted and fished (Pet. Ex. M.C. 1-A, p. 197); and on pages 103 and 163 of Exhibit M.C. 1-A there appears these very significant statements by Dr. Taylor:

I think that there is a considerable relationship between the tribal area and tribal boundary. And that in this case where between the Puyallup and the Nisqually, the Steilacoom,-- Squaxin-Sahehwabc there is very little in the way of natural boundaries. And it was indeed a real highway. In the sense that the southern Puget Sound salt water was a highway for all of these bands and tribes it was inevitable that they speak the same language and have very much the same culture.

They (the Southern Puget Sound tribes) fished and clammed and gathered mussels and gathered native oysters in all of the inlets, that is to say Hammersley Inlet, Totten Inlet, Oyster Bay, Skookum Inlet, Budd Inlet and Mud Bay. They also fished for clams in the waters of, adjacent to Squaxin and Hartstene Islands in Peale Passage and in Case Inlet.

\* \* \* \* \*

They also occasionally went as far up as Anderson and McNeil and Vashon Islands. This I know primarily from ethnological sources.

In regard to petitioner's contention that a portion of the Islands of Puget Sound were used exclusively by the petitioner, there appears this statement by their expert witnesses:

\*\*\* There is no doubt in my mind that a great deal of the fishing area, the clamming area and so forth along the sea coast and more specifically on the islands of southern Puget Sound were held in common. (M. C. 1-A, p. 452)

And on the same point Dr. Taylor further stated when questioned by

Mr. Marshall:

Q. Coming now, Doctor, to the boundaries which you have fixed on your map, M.C. - 2, the boundaries to the south and to the west of the Puyallup area.

A. Yes, sir. The westward boundary of course is quite simple. The Sound. (M.C. 1-A, p. 222)

\* \* \* \* \*

Q. Would you list those islands again that were used by the Puyallup, Doctor?

A. -- the reason for not showing the Puyallup as owning or permanently occupying Anderson Island, Fox Island, Vashon Island, and the --

Mr. Marshall: And McNeil Island?

A. And McNeil Island, and the coast immediately opposite Point Defiance on the western peninsula, is not certainly because they did not use it. They did use it. But because other tribes used it as well. (M.C. 1-A, pp. 222-223)

And on the issue of the inland boundaries, Dr. Taylor makes this statement:

\*\*\* Of course the distance that they (the Puyallups) ranged inland was very naturally fixed by topographic barriers. As a matter of fact you cannot go more than 25 miles inland in any direction from southern Puget Sound without getting rather remarkable natural barriers, the Black Hills to the southwest, the Cascades to the east and the Olympics to the west. Actually in most cases it is not 25 miles. It is more a matter of only five or ten miles. I do not believe that my delineation of tribal boundaries in any instance goes as much as 20 miles inland. (M.C. 1-A, pp. 111-112)

However, to show there was some exclusive use of the interior Puyallup country by the petitioner, Dr. Taylor stated:

Some of our ethnological sources, such as Marion Smith, mentioned villages of the Puyallup in the Interior of the Puyallup country.

Another statement made by Dr. Taylor which showed that the petitioner Indians were not mountainous people appears on page 105 of the 1954 transcript wherein he states:

That's right. They just wouldn't go into that type of rugged country. They would go up to the edge of course, but not up it.

In Dr. Taylor's report he indicated that the following tribes of Indians were found in parts of the area claimed by the Puyallups: T'Kawkwamish, Stukabsh (Stuck), Nisqually, Tsaqwequabc, and possibly the Niskap. (Taylor's report, pp. 27; 28, 39, 44-45, 47, and 52).

Petitioners presented Dr. Arthur C. Ballard as their second expert witness. Dr. Ballard's testimony was not as lengthy or as detailed, as Dr. Taylor's testimony, but it did corroborate the evidence given by Dr. Taylor. For example, on page 96 of the 1952 transcript, Dr. Ballard in answer to the questions, "Where are the real Puyallups located?" and "What do they call the real Puyallups?", stated the following:

Well, probably in the lower part of the river, and on the Coast. I don't know, -- the real Puyallup. As I say, I have been unable to get the right derivation of the word Puyallup. Perhaps it didn't occur to me earlier in the researches.

Dr. Ballard also stated that he agreed with Dr. Marion Smith that various groups of Indians had common grounds for gathering vegetable products (Tr. 1952, p. 96). However, the most important point of Dr. Ballard's testimony consisted of his marking on Petitioner's Exhibit No. 1 the more important Puyallup village sites on the Puyallup River (Tr. 1952, pp. 55-78). Defendant offered no conflicting testimony as to these village sites on the Puyallup River, other than to show there was not exclusive use and occupancy by the petitioner on the islands of Puget Sound, nor was there exclusive use and occupancy in the middle and upper reaches of the Puyallup River.

Defendant offered as its expert witness Dr. Carroll L. Riley, ethnologist who testified and who prepared a report on ethnological field investigation of Puget Sound Indians. This report was offered and accepted as Defendant's Exhibit 1. Dr. Riley testified in part that there was considerable contact over the passes of the Cascade

mountains (Tr. 1954, pp. 219-221); that there seemed to be some movement of Shaptin-speaking people into the upper reaches of the Puyallup and Nisqually rivers; and that he was in agreement with Dr. Taylor that Anderson, Squaxin, McNeil, and Vashon Islands were used or occupied by many different Indian groups (Tr. 1954, pp. 208-209). Dr. Riley's report (Def. Ex. 1) contained the following statements:

The early reports \*\*\* indicate that the name Puyallup probably applied originally only to the group of Indians who lived near the mouth of the Puyallup River. \*\*\* (p. II-1)

\* \* \* \* \*

Stevens' estimates of 1854 included several distinct groups. The Puyallup-a-mish lived at the mouth of the Puyallup River, the T-qua-qua-mish at the head of the river, and the S'Hotle-ma-mish on Carr Inlet. The S'Ho-ma-mish of Vashon Island, however were listed as a sub-group of the Suquamish. (p. II-2)

\* \* \* \* \*

Gibbs, in his 1877 ethnological report, mentioned the Puyallupamish, T'Kawgwamish, and S'Homamish, "River and Sound Indians", along the Puyallup River and on Vashon Island. The Puyallup proper were the Indians around the mouth of the river; the other two groups were on the upper river and on Vashon Island, respectively.

Eells lists the same groups as Gibbs and adds a few details:

The Puyallup proper lived about the mouth of the River, the T'Kaw-Kaw-mish, on its upper branches and S'ho-mamish on Vashon \*\*\*. (P. II-3)

On the point of the amount of food needed for the population, both petitioner and defendant agree that there was an abundance. Dr. Riley stated:

\*\*\* Villagers from the area fished in the Puyallup and Nisqually Rivers. They also fished Commencement Bay and along East Passage to about Point Pully. There were berrying along the valleys of the Puyallup and Nisqually River systems. They clammed and gathered berries and roots on Vashon Island, Fox Island, and in the Gig Harbor area. They also utilized the area around Commencement Bay extensively. They did not employ reef-nets but used gill nets in the river and had traps at various tributaries of the Puyallup. They speared fish in the upper river and trolled in Commencement Bay and around Vashon Island. One report had the Puyallup River villagers traveling as far up Colvos Passage (on summer gathering trips) as Olalla. (pp. II-13, -14)

There was more land than the people (Indians) actually needed in 1850 because of the disease \*\*\*.

The population decline cited by Dr. Riley and myself amounts to considerably more than 50% of the total population in this area between 1820 and 1850. (Tr. M.C. 1-A, pp. 378-380)

Dr. Riley stated in his testimony that:

Because of the terrific abundance of food in relation to the small \*\*\* population \*\*\* it would have been foolish \*\*\* to have fought over areas outside of the immediate subsistence areas. (Tr. 1954, p. 178)

Both defendant and petitioner agreed that there had been tremendous loss of population because of epidemics. This factor has been noted in other northwest Indian cases notably The Steilacoom v. United States, 15 Ind. Cl. Comm. 304, and The Stillaguamish v. United States, 15 Ind. Cl. Comm. 1, and the loss of population of petitioner's ancestors is also discussed in our Findings of Fact 14 and 15. In said findings the Commission held that by the middle of the 1850's the population of the Puyallup was approximately 50 persons. This figure was named as a result of a census taken under the orders of Isaac Stevens, Governor of



the Washington Territory. This loss of population is certainly a factor to be considered in the amount of land used by petitioner.

The issue of dispossession has been thoroughly discussed in our Finding No. 6 and there is no need to repeat it in this opinion, other than to state that there was no dispossession as a result of Great Britain's activity.

The pattern of life of the petitioner's ancestors conforms to the generally accepted conditions of Indian life as it existed along the shores and rivers of the Northwest Pacific Coast and Puget Sound. The primary political and land holding unit was the village. The Commission has so held in The Steilacoom Tribe v. United States, supra.

The Commission holds that this same pattern of Indian life applied to the petitioner Indians' ancestors.

From the evidence and testimony referred to above there seems to be no doubt that the petitioner did not have exclusive use and occupancy of the island areas in Puget Sound nor did it have exclusive use and occupancy as to land in the upper parts of the Puyallup River, nor as to land that lay at any great distance from the Puyallup River, however, the same evidence and testimony does show exclusive use and occupancy by the petitioner as to its village sites at the mouth of the Puyallup River and as to its villages that lay from the mouth of the river to approximately 10 to 15 miles upstream. This exclusive use and occupancy would include a reasonable amount of land on each side of the river. As

the Commission stated in The Steilacoom v. United States, supra, the facts cited above are typical of the history of the northwestern groups with regard to the mode of subsistence, area occupied, joint use of subsistence areas, and political structure. The inclusion of this group in the Medicine Creek treaty (10 Stat. 1132) is also typical of the course pursued by Governor Stevens in carrying out the orders of Congress to negotiate treaties with all of the Indians in the area for the purpose of taking cessions of their land. See among other cases, The Nooksack Tribe v. United States, 1 Ind. Cl. Comm. 333; Muckleshoot Tribe v. United States, 2 Ind. Cl. Comm. 424; Snohomish Tribe v. United States, 4 Ind. Cl. Comm. 549; Duwamish Tribe v. United States, 5 Ind. Cl. Comm. 132; and Sugquamish Tribe v. United States, 5 Ind. Cl. Comm. 140.

From the evidence and testimony cited above, it is the Commission's opinion that when Governor Stevens executed the Treaty of Medicine Creek, he found the Puyallup Indians living within a portion of the area claimed by them and they were parties to the treaty.

As was stated in the Stillaguamish case, supra, we have the same difficult problem in this case that existed in the Nooksack and Muckleshoot cases, supra, of defining the area to which the Stillaguamish tribe had Indian title, and since the general situation in these cases was very similar to that of the instant case, we have taken the same approach used in those cases and used also in Snake or Piute Indians v. United States. The last cited case was approved on appeal by the Court of Claims (125 C. Cls. 241-254). In reviewing the above cases the

Court of Claims in Upper Chehalis, et al v. United States, (140 C. Cls. 196-197) approved our approach in the Nooksack, Muckleshoot, and Piute cases. In that case the Court made this statement:

On the matter of defining the area used and occupied exclusively by the village Indians, the Commission stated in the Nooksack case and repeated in the Muckleshoot case, at page 677, as follows:

It is perhaps not required that the boundary lines be as accurately defined as a surveyor would like them but some general boundary lines of the occupied territory must be shown, and it must be shown that the occupant had the possession to the exclusion of other tribes; constructive possession is not sufficient.

\* \* \* \* \*

\*\*\* it is extremely difficult to establish facts after the lapse of time involved in matters of Indian litigation. In attempting to establish boundaries and occupancy on the basis of fragmentary facts and often uninformed opinions and the work of ethnologists who must of necessity base their conclusions upon much the same information, it becomes necessary to take a common sense approach based upon experience with matters of this nature. \*\*\* Snake or Piute Indians v. United States, 125 C. Cls. 241, 254: \*\*\*

We are of the opinion that the approach of the Commission to the problems in the Nooksack and Muckleshoot cases was a sound and reasonable one, and that the problems in the instant case, being nearly identical, would seem to be amenable to a similar approach.

The common sense view point indicates that the petitioner was settled at the mouth and a short distance upstream on the Puyallup River. The Commission therefore holds that the evidence presented in the findings and opinion herein lead the Commission to the conclusion that the

ancestors of the petitioner exclusively used and occupied the area described in Finding 16 at the date of the ratification of the Treaty of Medicine Creek on March 3, 1855, and had so exclusively used and occupied said area from time immemorial or for a long time prior thereto.

The questions as to consideration, exact acreage, value, possible setoffs, and to any other questions as may remain undecided herein will be decided at future hearings wherein evidence as to these questions may be introduced. This is in accordance with the terms of the stipulation as set forth in our Finding 3.

Arthur V. Watkins  
Chief Commissioner

We concur:

Wm. M. Holt  
Associate Commissioner

T. Harold Scott  
Associate Commissioner