

BEFORE THE INDIAN CLAIMS COMMISSION

THE NISQUALLY TRIBE OF INDIANS,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 197
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: June 25, 1969

Appearances:

Frederick W. Post, with whom was Malcolm S. McLeod, Attorneys for Plaintiff.

Craig A. Decker, with whom was Mr. Assistant Attorney General Ramsey Clark, Jr., Attorneys for Defendant.

OPINION OF THE COMMISSION

Chairman Kuykendall delivered the opinion for the Commission.

The Nisqually tribe or band of Indians was one of the Indian tribes signatory to the December 2, 1854 Treaty of Medicine Creek (10 Stat. 1132), in which certain lands were ceded, relinquished and conveyed to the United States by those tribes and bands of Indians occupying lands lying around the head of Puget Sound and the adjacent inlets. For the purpose of effecting the cession of one large area, the United States under the 1854 Medicine Creek Treaty dealt with all the several tribes and bands so located as one nation.

Essentially the plaintiff tribe herein is seeking to recover additional compensation from the defendant on the grounds that under the 1854 treaty of

ession the United States paid an unconscionable consideration for the Nisqually lands. Defendant denies that it so treated with the Nisqually Indians in the manner contended. At this stage of the proceedings we are only concerned with the issue of Indian title; that is, whether or not the Nisqually Indians did in fact have a compensable interest in any part of the area ceded under the 1854 Treaty of Medicine Creek.

The Nisqually Tribe of Indians has a present day tribal organization recognized by the Secretary of the Interior as having the authority to represent such tribe. As originally presented to this Commission the claim herein was brought by the Nisqually tribe and five other tribes or bands who were also named in the 1854 Treaty. However, the evidence adduced in this docket has been confined to establishment of a claim belonging exclusively to the Nisqually Tribe, and no attempt has been made to prosecute any other claim or claims in the name of or on behalf of the five other tribes or bands named in the petition. Accordingly they have been dropped as party plaintiffs in this action.

However, by the same token, the fact that other tribes were included in the original petition, and in the absence of any clear indication in the evidence of record that the present day Nisqually tribe is indeed the successor in interest to the Nisqually tribal entity that participated in the 1854 Medicine Creek treaty, the Commission believes that the plaintiff should maintain the action strictly in a representative capacity.

The record in this case is common to the claims asserted in separate dockets before the Commission by three other tribes who participated in the 1854 Medicine Creek Treaty. In two of them, the Steilacoom Tribe of Indians v. United States, 11 Ind. Cl. Comm. 304 (1962), and the Puyallup Tribe of

Indians v. United States, 17 Ind. Cl. Comm. 1 (1966), this Commission found that the Steilacoom and Puyallup plaintiffs had aboriginal title at the time of the 1854 Medicine Creek Treaty to other areas adjacent or near the land described in the claim herein.

Over the years this Commission through a series of cases has gained important knowledge and a keen insight into the way of life and in particular the general subsistence pattern followed by the Puget Sound and the other river-oriented tribes living in the State of Washington. Essentially controlled by environmental factors, these northwest tribes showed striking cultural similarities. As we noted in Snohomish Tribe v. United States, 4 Ind. Cl. Comm. 549, 562 (1956):

"* * * This Commission has previously found that throughout the whole of the Puget Sound area, including the area claimed herein, the economy of the aboriginal occupants was centered on the bays and rivers; that such use as was made of the area away from the immediate vicinity of the village was seasonal and the seasonal uses were confined as far as possible to the closest area; that hunting excursions were infrequent; that there was customary non-exclusive use pattern of lands away from the villages and the streams adjacent thereto; that the Indians of the Sound area had no conception of land boundaries as such but did have a well defined sense of 'use area' with reference to the fishing and berrying places and the area in the immediate vicinity of their villages and that this feeling of exclusive 'use area' did not extend beyond the immediate area of the village; and finally, that non-village areas were open to all who cared to use them."

And of similar import are the following: Nooksack Tribe v. United States, 3 Ind. Cl. Comm. 479, 498 (1955); aff'd 162 Ct. Cl. 712, cert. den. 375 U.S. 993; Lummi Tribe v. United States, 5 Ind. Cl. Comm. 525, 536 (1957) rev'd on other grounds, 181 Ct. Cl. 753 (1967); S'Klallam Tribe v. United States, 5 Ind. Cl. Comm. 680, 689, 704 (1957); Skokomish Tribe v. United States, 6 Ind. Cl. Comm. 135, 156, 157-158 (1958); Samish Tribe v. United States, 6 Ind. Cl.

Comm. 159, 166, 173 (1958); Skagit (Lower) Tribe v. United States, 7 Ind. Cl. Comm. 292, 297-298, 319 (1959); Kikiallus Tribe v. United States, 7 Ind. Cl. Comm. 456, 474 (1959); Upper Skagit Tribe v. United States, 8 Ind. Cl. Comm. 475, 588-589 (1960); Snoqualmie Tribe v. United States, 9 Ind. Cl. Comm. 25, 47-48 (1960), aff'd in part 17 Ct. Cl. 570, and Steilacoom Tribe v. United States, 11 Ind. Cl. Comm. 304, 318 (1962).

The Commission found little of substance in the record of this case that would cause us to view the Nisqually tribal way of life different from the pattern generally followed by other Puget Sound tribes.

From their earliest history the Nisqually Indians have readily been identified as using and occupying the lower reaches of the Nisqually River and its tributaries. Once a fairly sizeable tribe, the Nisqually population had been drastically reduced through the ravages of disease so that by the time of the 1854 Treaty of Medicine Creek, they numbered less than 300 souls. Drawing their sustenance primarily from the Puget Sound waters and nearby streams, the Nisqually Indians established their villages at various locations on both sides of the Nisqually River extending nearly thirty miles upstream. Berrying and root gathering were conducted along the river and on the open prairies in the drainage areas. In most instances, as was the case with the more productive fisheries, the traditional root gathering and berry picking grounds away from the villages were the subject of common usage. The immediate village site still remained the center of political and social activity and the area

of most intensive use. Even though these Indians had acquired horses early in the nineteenth century which enabled them to extend their hunting forays further inland, yet at the time of the signing of the 1854 Treaty they remained predominantly a river-oriented tribe.

From all the evidence and testimony of record in the case, the Commission has concluded that when Governor Stevens negotiated the 1854 Treaty of Medicine Creek, the then Nisqually tribe or band of Indians was a separate and distinct land-owning entity, and as such it had actually been using and occupying for a long time and to the exclusion of the other Puget Sound tribes a part of the area now claimed by the plaintiff tribe herein.

In fixing the boundary lines of the Nisqually aboriginal holdings the Commission has chosen to draw straight lines. It is undoubtedly true that the Nisqually Indians as well as other Puget Sound tribes thought in terms of natural boundaries, but our task, out of necessity reduces itself to a reasonable approximation of the extent of Nisqually aboriginal title as of the effective date of the 1854 Treaty. As this Commission stated in the Nooksack case, supra, and reiterated in Muckleshoot Tribe v. United States, 3 Ind. Cl. Comm. 658, 677 (1955); aff'd. 174 C. Cl. 1283, cert. denied 385 U.S. 847 (1966).

" . . . 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. . .

* * * * *

" . . . 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 of

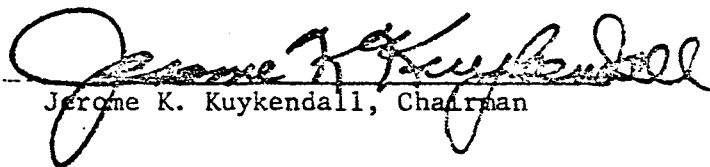
the same information, it becomes necessary to take a common sense approach based upon experience with matters of this nature . . ."

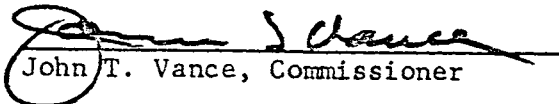
The common sense "approach" in this instance calls for straight lines, a method readily adopted in the past with appellate approval. See Snoqualmie Tribe of Indians v. United States, 178 C. Cl. 570 (1967).

Based upon the record as a whole and for the reasons set forth above, the Commission is of the opinion that as of March 3, 1855, the effective cession date of the 1854 Treaty of Medicine Creek, the Nisqually Tribe or band of Indians held aboriginal title to that area described in Commission's Finding 9.

The determination of such other questions as the exact acreage involved, its fair market value, the amount of lands retained by the Indians, the consideration, if any, paid by the United States for the ceded area, and all other questions bearing upon the defendant's liability to the plaintiff tribe, shall be the subject of further proceedings before the Commission.

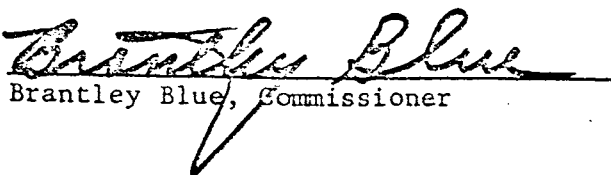
Concurring:


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner