

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

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The plaintiff herein is the Nisqually Tribe of Indians, an organized tribe whose membership is comprised of those Indians associated with the Nisqually Reservation in the State of Washington. As such, it has been recognized by the Secretary of Interior as having the exclusive authority to bring and maintain law suits in its own behalf. However, the record in this docket fails to show that the plaintiff tribe is the successor in interest to the Nisqually tribe or band of Indians that was signatory to the December 2, 1854 Treaty of Medicine Creek under which the present claim arose. Therefore, under the provisions of the Indian Claims Commission Act (60 Stat. 1049), the plaintiff tribe is entitled to bring and maintain the present claim only in a representative capacity, for and on behalf of the 1854 treaty entity.

2. By virtue of the Act of August 14, 1848 (9 Stat. 323) Congress created the Territory of Oregon and made all laws affecting United States lands applicable to those within the Oregon Territory. The Act

specifically provided that nothing contained herein "shall be construed to impair the rights of persons or property now pertaining to Indians in said Territory so long as such rights remain unextinguished by treaty between the United States and such Indians . . ."

By the Act of March 2, 1853 (10 Stat. 172) the Congress created the Territory of Washington out of the north half of the Oregon Territory, and all laws enacted by the Congress regarding the Oregon Territory not inconsistent with the 1853 Act were to be continued in force in the Washington Territory.

3. The Nisqually tribe or band of Indians was one of the parties to the 1854 Treaty of Medicine Creek (10 Stat. 1132) negotiated by Governor Isaac Stevens with "chiefs, headmen, and delegates of the Nisqually, Puyallup, Steilacoom, Squawksin, S'Homamish, Steh-chass, T'Peeksin, Squi-aitl and Sa-heh-wamish tribes and bands of Indians occupying the lands lying round the head of Puget Sound and the adjacent inlets, who, for the purpose of this treaty, are to be regarded as one nation, on behalf of said tribes and bands, and duly authorized by them."

Under the terms and provisions of Article I of this treaty "the said tribes and bands of Indians hereby cede, relinquish, and convey to the United States, all their right, title, and interest in and to the lands and country occupied by them, bounded and described as follows, to wit:

". . . Commencing at the point on the eastern side of Admiralty Inlet, known as Point Pully, about midway between Commencement and Elliott bays; thence running in a south-easterly direction, following the divide between the waters

of the Puyallup and Dwamish, or White rivers, to the summit of the Cascade Mountains; thence southerly, along the summit of said range, to a point opposite the main source of the Skookum Chuck Creek; thence to and down said creek, to the coal mine; thence northwesterly, to the summit of the Black Hills; thence northerly, to the upper forks of the Satsop River; thence northeasterly, through the portage known as Wilkes's Portage, to Point Southworth, on the western side of Admiralty Inlet; thence around the foot of Vashon's Island, easterly and southeasterly, to the place of beginning."

In consideration for such cession, the United States Government agreed inter alia to reserve for the use and occupancy of the tribes and bands party to the treaty certain tracts of land described in Article II of the Treaty, secure certain fishing rights and grazing rights to the Indians along with other residents of the area as set out in Article III, to pay certain sums of money set out in Articles IV and V, and to generally promote the welfare of the Indians.

The tribes and bands signatory to the treaty acknowledged dependence upon the government of the United States, and promised inter alia friendship to all citizens.

The treaty was ratified by the Senate of the United States on March 3, 1855, and proclaimed by the President on April 10, 1855.

4. Early explorers found Indians whom they called Nisqually and who spoke Squale or Nisqually at the southern tip of Puget Sound and along the streams flowing into the Sound from the south, including the Nisqually River and its tributaries.

The term "Nisqually" has been restricted in reference to tribal existence to the peoples who resided on or about the Nisqually River

(Speir, 1936, pp. 32-36). However, Gibbs divided the Nisqually-speaking peoples into three groups: (1) the Nisqually, (2) the Puyallup, and (3) the tribelets around the southeastern inlets of the Sound above the mouth of the Nisqually River.

In 1851, Anson Dart incorporated into his Census a list of various identifiable groups prepared by the Indian Agent for the area. This list included the Puyallup as well as the Nisqually.

5. The Nisqually were capable of uniting for action although they were divided into several identifiable bands or groups who occupied villages for a distance of about thirty miles along both sides of the Nisqually River. They were consistently referred to as a "Tribe" by historians and explorers as well as by the United States Government in the Treaty of Medicine Creek, and their chief, Leschi, recognized as their leader, had authority to sign the 1854 treaty for the Nisqually Indians.

6. The Nisqually-speaking peoples were said to number about 3500 at the time of first discovery. However, the estimates of explorers who visited the area at a later date show a greatly diminished number, which diminution was occasioned by a series of epidemics of fatal diseases contracted subsequent to initial contacts with the white man.

A population breakdown of Puget Sound tribes 1838-39 attributes a total Nisqually tribal population of 258. In 1844 Farnham reported 200 Nisqually. The Hudson's Bay Company report to the House of Commons in 1848 and 1849, prepared by the Colonial office in Vancouver Island, set the population of the 13 tribes (meaning all Nisqually-speaking peoples)

at 4,014 and described them as situated on the Nisqually River and Puget Sound. The total population of the Nisqually Tribe of Indians as of the date of the Treaty of Medicine Creek ranged between 250 and 300 persons.

7. While the name of the plaintiff was derived from the Nisqually River along which it lived, the name was applied generally to all of the population of the drainage area including McAllister Creek.

The Nisqually villages were located on both sides of the Nisqually River and its tributaries. Those villages located near the mouth of the Nisqually River were characterized by salt water Indian habits with their inhabitants relying heavily on the products of the sea for sustenance, plus such incidental hunting as was needed to maintain their relatively simple economy and existence. Conversely, the residents of those villages further inland and away from the Nisqually River placed greater emphasis on hunting, root digging and gathering wild berries. Because they had acquired horses, the Nisqually did obtain some degree of tribal mobility beyond that enjoyed by most river-oriented tribes. In no sense, however, could the Nisqually be characterized as "horse Indians" as the term might apply to those Indians of the plains.

8. Of great assistance to the Commission in determining the extent and degree of Nisqually tribal use and occupancy of lands within the claimed area was the expert testimony and the accompanying reports of Dr. Herbert C. Taylor, Jr., for the plaintiff tribe, and Dr. Carrol L. Riley for the defendant. Both experts centered Nisqually use and occupancy

of the claimed area on and along the Nisqually River, but their differences in delineating the overall area of Nisqually use and occupancy rests for the most part on the intensity of Nisqually land usage away from the village sites. From their testimony, as well as the testimony of the Indian informants, and from the historical and other documentary evidence, the Commission reached several basic conclusions:

(a) The term "Nisqually" when used in the linguistic sense includes many more tribes and bands than when restricted to the Nisqually tribe proper. When used in relation to the Nisqually Tribe proper and with reference to the 1854 treaty entity, then these Indians are closely associated with that area within the lower portions of the Nisqually River. Any alleged Nisqually tribal use of the upper portions of the Nisqually River was shared with neighboring tribes.

(b) The local village was primarily the center of Nisqually social and political activity. The village and its environs made up the area of most intensive Nisqually use of both land and water resources. Such selected activity as root gathering and the harvesting of wild berries was pursued in common with other tribes in traditional areas away from the immediate village sites. In like manner we find that the fisheries at the mouth of the Nisqually River and around the nearby isles in the Puget Sound were also the subject of common exploitation. The record herein shows no traditional hunting areas belonging exclusively to the Nisqually Indians. There is evidence that some old Nisqually village sites once

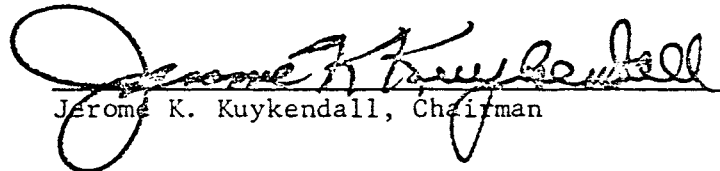
stood at such modern town locations as Hillcrest, Rainier, Roy, Elbe and Eatonville, which towns for the most part are located within ten to fifteen miles of the Nisqually River.

9. Based upon the preceding findings of fact and all the evidence of record, the Commission finds and concludes that as of March 3, 1855, the effective date of the 1854 Treaty of Medicine Creek, and within that area ceded to the United States under the provisions of that treaty and which area is described in Finding 3, supra, the Nisqually Tribe of Indians had aboriginal title to the following bounded area, and no other.

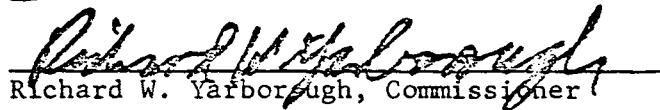
"Beginning at a point on the southeastern shore of Puget Sound one-half mile west of Nisqually Head where McAllister Creek flows into Puget Sound, then in a southerly direction on a line to the town of Rainier, thence continuing on a line southeasterly to Bald Hill, thence on a line in the same general direction to the town of Mineral, thence northward crossing the Nisqually River to the town of Elbe, thence northwesterly on a line to the town of Eatonville, thence continuing on a line in the same direction to the town of Roy, thence continuing on the same northwesterly direction to a point on the shore of the Puget Sound one mile east of the mouth of the Nisqually River (where it flows into the Puget Sound), thence in a westerly direction following the shore line across the mouth of the Nisqually River to the point of beginning.

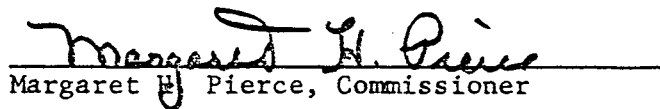
10. The Commission also finds and concludes that the other tribes or bands originally designated as petitioners in the petition, to wit, the S'Homamish, Stehchass, T'Peeksin, Squiatl, and Sa-heh-wamish, were never at any time, either before or after the 1854 Treaty of Medicine Creek, a part of the Nisqually Tribe of Indians, and further, that none of the parties herein has sought to prosecute or have adjudicated in this docket

y treaty rights or other possible claims that might belong either individually or collectively in the above named tribes or bands.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner