

BEFORE THE INDIAN CLAIMS COMMISSION

MAKAH INDIAN TRIBE,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 60-A
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: May 20, 1970

FINDINGS OF FACT

1. Capacity. ^{1/} The Makah Indian Tribe, plaintiff herein, was incorporated in 1937 under the provisions of the Wheeler-Howard Act (48 Stat. 984), and is the successor in interest to the Makah Tribe of Indians that negotiated the Makah Treaty of January 31, 1855 (12 Stat. 939), which was ratified on March 8, 1859 and which is also known as the Treaty of Neah Bay. As owner of the claim asserted herein, the Makah Indian Tribe has the right and capacity under the Indian Claims Commission Act (60 Stat. 1049) to bring and maintain this action in its own behalf.

2. History. The Makah Indians were known as Cape Flattery Indians and lived in the extreme northwest section of Washington State around Cape Flattery and the southern shore of the Strait of Juan de

^{1/} The findings made by the Commission in Docket No. 60, Makah Indian Tribe v. U.S., 7 Ind. Cl. Comm. 477, are incorporated herein by reference.

Fuca. They came from Vancouver Island about 500 years ago. The earliest contact that white people had with the Makah is recorded as being in the late 1700's when explorers came to Neah Bay and Cape Flattery. Historical writings about them include comments by George Gibbs, who was Secretary to the Treaty Commission of Governor Isaac Stevens and James Swan, who spent about ten years with the Makah in the late 1860's and taught at their Reservation at Neah Bay. In the early 1800's their population was about 2,000 but smallpox cut down their ranks so that by the time of the Treaty in 1855 they probably numbered about 500.

3. Treaty Terms. Under the provisions of the 1855 Makah treaty the plaintiff tribe ceded to the United States for "thirty thousand dollars" a tract of land located in the extreme Northwest part of the State of Washington that lies northwest and adjacent to lands belonging to the Quileute Indians and those lands ceded by the S'Kallam tribe of Indians under the Treaty of January 26, 1855 (12 Stat. 933). The Makah lands that were ceded under the 1855 Treaty are identified as Royce Area 355. The 1855 Treaty also reserved out of the ceded area, for the permanent use and occupancy of the Makah Indians, a smaller tract at the tip of Cape Flattery, Royce Area 356. The exact terms of the Treaty are as follows:

Article I. The said tribe hereby cedes, relinquishes, and conveys to the United States all their right, title, and interest in and to the lands and country occupied by it, bounded and described as follows, viz:
Commencing at the mouth of the Oke-ho River, on the Straits of Fuca; thence running westwardly

with said straits to Cape Classett or Flattery; thence southwardly along the coast to Osett, or the Lower Cape Flattery; thence eastwardly along the line of lands occupied by the Kwedeh-tut or Kwill-oh-yute tribe of Indians, to the summit of the coast-range of mountains, and thence northwardly along the line of lands lately ceded to the United States by the S'Klallam tribe to the place of beginning, including all the islands lying off the same on the straits and coast.

Article II. There is, however, reserved for the present use and occupation of the said tribe the following tract of land, viz: Commencing on the beach at the mouth of a small brook running into Neah Bay next to the site of the old Spanish fort; thence along the shore round Cape Classett or Flattery, to the mouth of another small stream running into the bay on the south side of said cape, a little above the Waatch village; thence following said brook to its source; thence in a straight line to the source of the first-mentioned brook, and thence following the same down to the place of beginning, which said tract shall be set apart, and so far as necessary surveyed and marked out for their exclusive use; . . .

* * *

Article V. In consideration of the above cession the United States agree to pay to the said tribe the sum of thirty-thousand dollars, . . .

4. Makah Villages. At the time of the 1855 Treaty, the major Makah settlements within the claimed area were at Baada Point, Neah Bay, Waatch Point, Tsues and Ozette. There were other settlements also, the furthest east being at the mouth of the Hoko River on the Strait of Juan de Fuca. The Indians at the Ozette Village engaged in a variety of activities with the Makah who resided in the villages in the vicinity of Cape Flattery, including whaling and battle. They all spoke the same language and were very close socially, with a

great deal of intermarriage occurring between the Makah around Cape Flattery and the Indians at Ozette. Chiefs from the Ozette villages were among the Makah chiefs who participated in the negotiations of the Treaty of 1855. The Indians at Ozette moved up to the Makah community at Neah Bay in the 1860's and were assimilated.

5. Subsistence. The Makah were a sea-oriented people and enjoyed a reputation as whalers and fisherman. Because they favored a maritime economy, seventy-five to ninety percent of the Tribe's subsistence in 1855 came from the sea rather than land based mammals or vegetation. Some land based animals such as elk, deer and bear could be found a short distance in the interior and elk and deer could be taken along the beaches. The wood the Makah used for canoes and houses also was available on or near the coast.

6. Use of the Interior. Visits into the interior were made to the Lake Ozette vicinity for hunting and berry picking. Yellow and red cedar for boats and homes could be found on the shores of Lake Ozette. The evidence of the Tribe's use of land for any great distance beyond Lake Ozette is tenuous. The area was so heavily wooded that it was extremely difficult to traverse.

7. Area of Indian Title. Based upon all the evidence of record, the Commission finds and concludes that, as of March 8, 1859, the effective date of the 1855 Makah Treaty of cession, the Makah Indian Tribe held Indian title to the following tract of land:

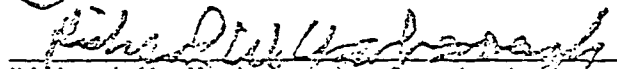
Beginning at the mouth of the Hoko River on the north, moving westerly along the coast of the Strait of Juan de Fuca, around Cape Flattery, south down the Pacific Coast to Sand Point, thence due east to Lake Ozette and around its northern shoreline to the mouth of Big River, thence ascending the Big River northeasterly to a point due west of the present Old Royal, thence due east through Old Royal to the Hoko River, thence northeasterly following the Hoko River to the place of beginning.



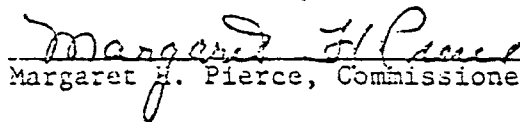
Jerome K. Kuykendall, Chairman



John T. Vance, Commissioner



Richard W. Yarbrough, Commissioner



Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner