

## BEFORE THE INDIAN CLAIMS COMMISSION

SIMON PLAMANDON, ON RELATION OF	)	
THE COWLITZ TRIBE OF INDIANS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 218
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: June 23, 1971

AMENDMENTS TO AND ADDITIONAL FINDINGS OF FACT

The Commission makes the following amendments to the findings of fact numbered 1 to 16, inclusive, made heretofore on the 25th day of June 1969 (21 Ind. Cl. Comm. 143, 152):

The language in Finding 14 beginning with the words "In 1857, Special Indian Agent Ford, western District of Washington Territory . . .", on page 169 of Volume 21 of the opinions of this Commission, and continuing to the end of that finding is stricken.

In Finding 15, the words, "at the time of the unexecuted treaty of March 3, 1855," are stricken and in lieu thereof are substituted "at the time it was deprived of its lands." Finding 15 is redesignated as Finding 20.

In Finding 16 the words, "prior to the 1855 taking," are stricken. Finding 16 is redesignated as Finding 21.

The Commission makes the following findings of fact which are supplemental to the findings entered herein on the 25th day of June 1969.

15. On July 17, 1855, subsequent to the abortive treaty council, Governor Stevens reported to Commissioner of Indian Affairs George

Manypenny that 1600 Indians west of the Cascade Mountains had not yet been treated with, but that he intended to hold further councils with them in the fall of 1855. Governor Stevens stated that he anticipated no difficulty in obtaining treaties with these Indians "except north of the Lower Chehalis and Lower Chinooks numbering 350." Pl. Ex. 58: National Archives, Microfilm Publication, Microcopy No. 5, Roll No. 1, Washington Superintendency of Indian Affairs, Copies and Drafts of Letters Sent March 21, 1853-March 31, 1856. He suggested that the latter Indians could be best dealt with by a congressional mandate ordering their removal.

During the fall of 1855 widespread hostilities between Indians and white settlers and military units erupted in Washington Territory. Although this Indian war was fought mainly with tribes located east of the Cascade Mountains, the Cowlitz and Upper Chehalis Indians were gathered onto temporary "reservations" to prevent them from becoming involved in the conflict. Apparently, because of this war, Governor Stevens was forced to abandon his plans to hold treaty councils in 1855 with the remaining non-treaty Indians west of the Cascades. On October 10, 1856, Sidney S. Ford, agent for the Upper Chehalis Tribe, reported that earlier in the year he had moved the Cowlitz to the temporary reservation occupied by the Chehalis. Agent Ford stated that the Upper and Lower Chehalis Tribes were now anxious to enter into a treaty and permanently settle upon their reservation. In a letter dated November 30, 1856, Agent Ford informed Governor Stevens that the Cowlitz, as well as the Upper and Lower Chehalis, desired to enter into a treaty with the United States.

In their annual reports for 1857, two agents recommended to J. W. Nesmith, the newly appointed Superintendent for Oregon and Washington, that the Chehalis and Cowlitz be treated with. M. T. Simmons, agent for the Puget Sound District, reported that these Indians were quite uneasy over not having been dealt with. Simmons stated that he considered it to be "an imperative necessity" that these tribes be settled with. Agent Ford reported that the Cowlitz and Chehalis were being driven off their lands by white settlers. He stated that only his repeated promise that the Government would soon deal with them had kept these Indians peaceful. Ford also made it clear that he considered a treaty with these Indians to be imperative.

In his annual report for 1859, Superintendent of Indian Affairs Edward R. Geary recommended that treaties be entered into with the remaining non-treaty Indians in Oregon and Washington. He suggested that the Cowlitz and Upper Chehalis Tribes be moved onto the reservation already occupied by the tribes party to the Treaty of Medicine Creek of December 26, 1854 (10 Stat. 1132). In 1861, Indian Agent W. B. Gosnell reported that the Upper Chehalis and the Cowlitz still wished to treat with the United States. He stated that a tract of land at the confluence of the Chehalis and Black Rivers had been selected as a possible reservation for these two tribes. Commissioner of Indian Affairs, William P. Dole, in his 1861 Annual Report indicated that the Cowlitz and Upper Chehalis were now willing to come under the protection of the United States and stated that the Chehalis-Black River tract was a suitable reservation for these two tribes.

In 1862 Agent A. R. Elder reported that 230 Indians were now dwelling on the "Chehalis Reservation." Apparently, all of these Indians were of the Chehalis Tribes, as Elder stated that he was unable to convince any of the Cowlitz to move to the "reservation." Elder stated that "[t]he Cowlitz Indians are very few in number, and prefer living among the whites in their vicinity, who furnish them with employment upon their farms. Force would have to be resorted to to make them live upon the reservation." Pl. Ex. 69: Report of the Secretary of the Interior 589 (1862). Elder's report indicates that the "reservation" upon which the Chehalis were living was not formally established and that a white settler claimed title to the land. In the 1862 report of Superintendent C. H. Hale there appears a request that treaties be entered into with the Chehalis, Cowlitz and other tribes. In his estimate of expenses for Fiscal Year 1863, Superintendent Hale included a request for \$7500.00 for the expenses of holding a treaty council with these tribes. There is no indication in the record that this request was approved. Furthermore, an examination by the Commission's Investigation Division of the records of the Office of Indian Affairs in the National Archives indicated that Superintendent Hale's request was neither formally approved nor rejected. In his annual report for 1863, Superintendent Hale stated that despite his lack of instructions he had already moved the Chehalis Indians to the "reservation" at the mouth of Black River. In 1864 this action of Superintendent Hale was confirmed when at the request of Commissioner of Indian Affairs Dole, the Secretary of the Interior approved the purchase

of the tract of land at the mouth of the Black River as a reservation for the Chehalis.

In his annual report for 1867, Superintendent of Indian Affairs T. J. McKenny reminded the Commissioner that the Chehalis, Cowlitz, Chinooks, and Shoalwater Bay Indians were still not parties to a treaty. The report indicates that the lands of these tribes had already been taken for settlement. McKenny concluded,

Since the government seems adverse to increasing the number of reservations. . . I would therefore recommend the enlarging of the Chehalis and the concentration of all these tribes thereon, notwithstanding their great aversion to leaving their homes and burying-grounds of their ancestors. (Pl. Ex. 76: Report of the Secretary of the Interior 32 (1867)).

In his 1868 report McKenny indicated that he had called all of the non-treaty tribes to the Chehalis Reservation for the purpose of distributing presents. Although the Cowlitz did arrive at the reservation, they refused to accept any goods or provisions from the government for fear that such acceptance would be interpreted as a surrender of their lands. The Cowlitz insisted that they would accept nothing from the United States until they were given a reservation on their ancestral lands.

In the annual report for 1872 of Superintendent R. H. Milroy there is a review of the status of the Chehalis Reservation. Milroy indicated that this reservation was set aside for the non-treaty Indians of Southwest Washington among which he lists the Cowlitz. The report indicates that these tribes once controlled more than two million acres of land which the government took "without treaty, purchase, or contract,

or right of any kind, save that which is governed by might." Pl. Ex. 83: Report of the Secretary of the Interior 719 (1872). After several years of protest by the tribes, the report continues, the then Superintendent Geary set aside the Black River tract for their joint use and possession. Milroy stated that the Cowlitz had never recognized the Chehalis Reservation as their home and had refused to move onto it.

16. By Act of September 27, 1850, the Congress created the office of Surveyor General for the Territory of Oregon, 9 Stat. 496. In Section 3 of this Act, the Surveyor General was instructed as follows: "he shall also cause to be surveyed, in townships and sections, in the usual manner, and in accordance with the laws of the United States which may be in force, the district of country lying between the summit of the Cascade Mountains and the Pacific Ocean, and south and north of the Columbia River." Id. at 497. The lands of the Cowlitz Tribe were located within this district. Surveying in Oregon Territory began soon after the passage of the Act and the earliest surveys on Cowlitz lands occurred in 1853. Of the 94 full or partial townships in the Cowlitz aboriginal lands, two had their first survey in 1853, two in 1854, two in 1855, two in 1856, two in 1857, three in 1858, and four in 1859. No further surveying was done before 1868. The 1850 Act also provided for the donation of land by the United States to qualified persons who were or would become settled in Oregon Territory.

Section 7 of the Act of February 14, 1853, provides,

That from and after the first of April, eighteen hundred and fifty-five, all public lands within the limits of the townships surveyed or to be surveyed in said [Oregon] Territory, west of the Cascade mountains, which shall not have

been claimed under the provisions of the fourth and fifth sections of the Act of which this is amendatory, or reserved for public uses by law, or order of the President, and excepting also mineral lands, shall be subject to public sale and private entry as other public lands of the United States. (10 Stat. 158, 159)

The lands of the Cowlitz Tribe were located within the area covered by this Act.

On March 2, 1853, Congress passed an Act establishing the government of the Territory of Washington. Section 12 of this act provided that all applicable legislation which had been enacted with respect to the Territory of Oregon would continue in force in the Territory of Washington.

17. On March 20, 1863, a proclamation was issued under the signature of President Lincoln which directed that certain public lands in Washington Territory be sold. Commission Ex. 1: National Archives; General Land Office, Record Group No. 49, Sales of Land, March 22, 1849-May 11, 1869, Proclamation No. 693. Some of the townships which were to be advertised for sale were within the lands of the Cowlitz Tribe. Specifically, all or part of the following townships were to be offered for sale: Townships 8 and 13 North, Range 3 West; Townships 7, 8, 9, 10, 11, 12, 13 and 14 North, Range 2 West; Townships 7, 9, 10, 11, 12 and 13 North, Range 1 West; and Township 12 North, Range 1 East. All of the townships

located within Cowlitz lands which had been surveyed as of the date of the proclamation were offered for sale by the proclamation.

18. In the appropriations act for the Office of Indian Affairs for Fiscal Year 1862, Congress appropriated \$50,000 "[f]or defraying the expenses of the removal and subsistence of Indians in Oregon and Washington Territory, (not parties to any treaty,) and for pay of necessary employees." Act of March 2, 1861 (12 Stat. 221, 237). Identical appropriations appeared in the acts for Fiscal Year 1863 (12 Stat. 512, 528), Fiscal Year 1864 (12 Stat. 774, 791), Fiscal Year 1865 (13 Stat. 161, 179), Fiscal Year 1866 (13 Stat. 541, 558), Fiscal Year 1867 (14 Stat. 255, 279), and Fiscal Year 1868 (14 Stat. 492, 513-14). In the act for Fiscal Year 1869 the appropriation was reduced to \$20,000 (15 Stat. 198, 221), and in the act for Fiscal Year 1870 separate appropriations were made for the Washington and Oregon Superintendencies (16 Stat. 13, 37). Beginning with the act for Fiscal Year 1871, separate appropriations were not made for removal and subsistence expenses, but rather all funds were included in a single appropriation for the general expenses of the Washington Superintendency (16 Stat. 335, 357-58).

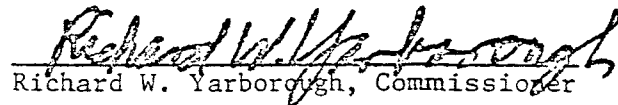
19. The United States never executed a treaty or agreement of cession with the Cowlitz Tribe. Following the Presidential Proclamation of March 20, 1863, the United States exercised sufficient

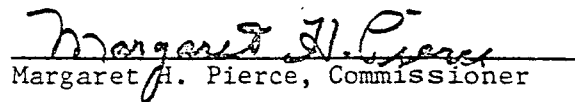


dominion and control over the lands of the Cowlitz Tribe so as to deprive the plaintiff of its aboriginal Indian title without its consent and without the payment of any consideration therefor.

  
Jerome K. Kuykendall, Chairman

  
John I. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner