

BEFORE THE INDIAN CLAIMS COMMISSION

SWINOMISH TRIBAL COMMUNITY,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 293
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant)	

Decided: June 25, 1971

FINDINGS OF FACT

Introductory Statement

This case is before the Commission on completion of a review of the case by the Commission's Investigation Division. The investigation was undertaken at the order of the Commission, owing to plaintiff's lack of representation by counsel, and following a motion by defendant to dismiss the case for lack of prosecution.

The claims of the Swinomish Tribal Community, plaintiff in this case, in paragraphs IV through XVIII of the petition, alleged a taking of lands held under original Indian title. Defendant allegedly took the lands by the 1855 Treaty of Point Elliott, 12 Stat. 927. However, claims for taking of the same lands have been presented by petitions before the Indian Claims Commission by several other tribal organizations. Since the plaintiff Indians were adequately represented in other dockets as to the taking of these lands, the claims in paragraphs IV through XVIII were stricken by the Commission on May 19, 1955, in consideration of a motion by defendant and without objection by plaintiff.

The remaining substantive paragraph of plaintiff's petition, paragraph XIX, states a claim based on a loss of rights in the treaty reservation, and was left standing. The claim alleges in essence that the reservation was not as extensive as plaintiff was led to believe by representations made on behalf of defendant, with a resultant loss of property and fishing rights with a total claimed value of \$6,000,000.

The Commission makes the following findings of fact, pertinent to the claim in paragraph XIX of plaintiff's petition:

1. The Swinomish Tribal Community is a corporation established in accord with Section 17 of the Indian Reorganization Act, 25 U.S.C. §477 (1964), representing the Indians on the Swinomish Reservation, on Fidalgo Island in Puget Sound, in the State of Washington.
2. The Swinomish Reservation was established pursuant to Article II of the Treaty of Point Elliott of 1855, 12 Stat. 927, for the use of certain of the tribes which were party to the treaty. The reservation was subsequently enlarged by the Executive Order of September 9, 1873, I Kappler 925. The addition was 59.73 acres, and the total reservation as enlarged was 7,448.8 acres. Duwamish Indians v. United States, 79 Ct. Cl. 530, 549 (1934).
3. Hearings in this case were held in Seattle, Washington, on June 9, 1952. By stipulation between the parties, the hearing was directed toward the questions of the capacity of the plaintiff to sue, and of aboriginal possession. Nothing has been entered in the record by counsel for plaintiff subsequent to the 1952 hearing.

On April 19, 1957, the Bureau of Indian Affairs withdrew its conditional approval of the attorney contract between the plaintiff and its counsel. No subsequent contract has been negotiated and approved by the Bureau of Indian Affairs. Although the tribe has continued to retain a tribal attorney, it has not been represented by a claims attorney since 1957.

4. It appearing to the Commission that plaintiff was without legal counsel on April 22, 1970, the case was referred by the Commission to the Investigation Division, in accordance with section 13(b) of the Indian Claims Commission Act. An investigative report was prepared for the Commission by Dr. Herbert C. Taylor, Jr., Professor of Anthropology, Western Washington State College, Bellingham, Washington. Dr. Taylor is a qualified and experienced ethnologist who has appeared before this Commission as an expert witness for other northwest Indian tribes in the prosecution of their claims. See Chinook Tribe v. United States, 6 Ind. Cl. Comm. 177 (1958), Chehalis Tribe v. United States, 7 Ind. Cl. Comm. 301 (1956), Tillamook Tribe v. United States, 3 Ind. Cl. Comm. 526 (1955). He has also appeared and testified as an expert witness in behalf of other Indian Tribes in both the state and federal courts. Dr. Taylor, at the request of the Commission's Investigation Division conducted an extensive search in an effort to uncover evidence that would support the plaintiff's claim herein. His report of March 6, 1971, discusses the identity and composition of the Indians of the Swinomish Tribal Community, and describes his search for evidence bearing on plaintiff's claim that the Swinomish

Reservation established was smaller than that which was promised during the treaty negotiations, this being the only claim remaining in the case.

5. At present there are approximately 600 persons enrolled in the Swinomish Tribal Community. Indians in the Swinomish Tribal Community are chiefly from the Kikiallus, the Suquamish, the Samish, the Upper and Lower Skagit, and the Swinomish Tribes. No one tribe predominates.

6. On February 19, 1964, the Swinomish Indian Senate, the governing body of the Tribal Community, passed unanimously "Resolution No. 154" in which the Council asked that the claims under Paragraph XIX of plaintiff's petition be dropped, and that the docket be dismissed. The text of the resolution is as follows:

RESOLUTION NO. 154

A RESOLUTION of the Swinomish Indian Senate authorizing the Indian Claims Commission to dismiss claim of Swinomish Indian Tribal Community vs. United States of America, Docket No. 293.

WHEREAS the Swinomish Indian Tribal Community filed in Docket No. 293, before the Indian Claims Commission of the United States, a claim against the United States setting forth claims that were also set forth by the separate tribal organizations of the Kikiallus, Swinomish, Samish, and Skagit, also known as the Lower Skagit or Whidbey Island Skagit, tribes of Indians and these claims having heretofore been stricken by the Indian Claims Commission as the same were presented by the separate tribal organizations, and

WHEREAS there remained only the claim of the Swinomish Indian Tribal Community that the boundaries of the Swinomish Indian Reservation as established, encompassed a lesser area than that which was represented at the time of the Treaty, and

WHEREAS Petitioner is unable to present any evidence of representations made to the effect that the area of the Reservation should have been greater, and

IT APPEARING that it is not desirable to press the claim further;

NOW, THEREFORE, it is hereby resolved by the Senate of the Swinomish Indian Reservation, pursuant to Article VI, Section 1(f) of the Constitution and By-Laws, that the Indian Claims Commission be requested to dismiss the claim of the Swinomish Indian Tribal Community vs. The United States, Docket No. 293.

PASSED this 11th day of February, 1964.

ATTEST:

/s/ Laura Wilbur
LAURA WILBUR
Secretary

/s/ Dewey Mitchell
DEWEY MITCHELL, Chairman
Swinomish Indian Senate

C E R T I F I C A T I O N

The undersigned Chairman and Secretary of the Swinomish Indian Senate hereby certify that at a meeting of the Swinomish Indian Senate held at LaConner, Washington, on the 11th day of February, 1964, at which time a quorum was present, the foregoing RESOLUTION was adopted by a vote of seven (7) for and zero (0) against.

/s/ Dewey Mitchell
DEWEY MITCHELL, Chairman

/s/ Laura Wilbur
LAURA WILBUR, Secretary

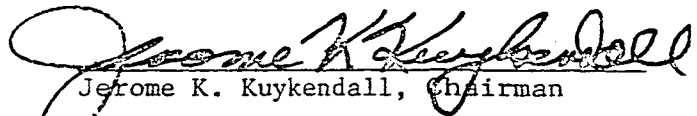
SWINOMISH INDIAN SENATE

The Bureau of Indian Affairs refused to approve plaintiff's resolution, as adopted, because the Swinomish Tribal Community was without a claims counsel. The resolution was not brought to the attention of the Indian Claims Commission.

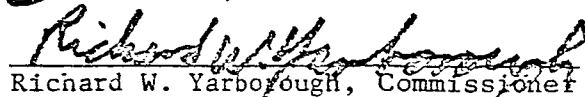
7. Consistent with the recital of the plaintiff's resolution no evidence has been discovered to support the allegation that more land was promised by defendant for the Swinomish Reservation than was in fact

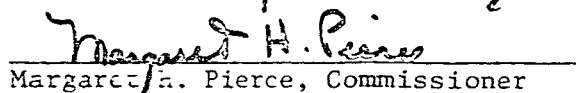
given. Article II of the Treaty of Point Elliott of 1855, supra, simply describes the land as "the peninsula at the southeastern end of Perry's [Fidalgo] Island." Dr. Taylor reported that his investigation was unable to establish, either through ethnographic information or through a search of the historical records, that the defendant made any promises for a larger reservation than that which was actually created. Dr. Taylor interviewed several of the older and more knowledgeable members of the Swinomish Tribal Community, and searched unsuccessfully for documentary evidence in support of the claim in the Everett office of the Bureau of Indian Affairs, the University of Washington library and the National Archives.

8. In conclusion, the Commission has determined, on the basis of the extensive review undertaken through the Investigation Division of the Commission, that there is no evidence to support the remaining claim in Docket No. 293, and that therefore said claim should be dismissed with prejudice.


 Jerome K. Kuykendall, Chairman


 John T. Vance, Commissioner


 Richard W. Yarborough, Commissioner


 Margaret H. Pierce, Commissioner


 Brantley Blue, Commissioner