

BEFORE THE INDIAN CLAIMS COMMISSION

THE SWINOMISH TRIBE OF INDIANS,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 233
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: November 18, 1971

Appearances:
Frederick W. Post, Attorney for
the Plaintiff.

Craig A. Decker, with whom was
Mr. Assistant Attorney General
Shiro Kashiwa, Attorneys for
the Defendant.

OPINION OF THE COMMISSION

Chairman Kuykendall delivered the opinion of the Commission.

The plaintiff tribe in the instant case claims that its ancestors held aboriginal title to certain land and water areas located in the Puget Sound region of the State of Washington and more fully described in our Finding No. 2 herein; that this area was ceded to the United States under the 1855 Treaty of Point Elliott, 12 Stat. 927; that the United States paid an unconscionable consideration therefor; and that the plaintiff is entitled to the difference between the amount paid and the fair market value of the land. Defendant denies that the plaintiff has the right to sue herein or that it treated with the Swinomish Indians in the manner contended. This stage of the proceedings

involves the issue of plaintiff's capacity to bring suit and the issue whether or not the Swinomish Indians did in fact have a compensable interest in any part of the area ceded under the 1855 Treaty of Point Elliott as of March 8, 1859, the effective date of said treaty.

From all the evidence and testimony of record in this case, the Commission has found and concluded that the plaintiff is an identifiable group of American Indians within the meaning of the Indian Claims Commission Act, 60 Stat. 1049, 1950, and, as such, is entitled to maintain this cause of action. Since the first white contacts after 1800 with the native inhabitants of the Puget Sound area, historical sources have referred to the Swinomish (Squa-na-mish) Indians as being located on part of Fidalgo Island and on the northern tip of Whidbey Island. With some minor difference in the spelling of the name of plaintiff tribe, the pretreaty reports of priests, explorers, government men such as Kautz, Gibbs, Jones, and Starling, and others mentioned the Swinomish as living on Fidalgo Island and the adjacent areas. The Government, beginning especially with Governor Isaac Stevens who negotiated the 1855 Point Elliott Treaty, has treated officially with the Swinomish Indians. Their name appears in the preamble to the 1855 Treaty and three leaders identified as Swinomish are signatories to the 1855 Treaty.

In a series of cases over the years the Commission has gained important knowledge and a keen insight into the way of life and general subsistence or economic patterns followed by the Puget Sound Indians.

Essentially controlled by environmental factors, these tribes showed striking cultural similarities. See e.g., Nooksack Tribe v. United States, Docket 46, 3 Ind. Cl. Comm. 479, 498 (1955), aff'd, 162 Ct. Cl. 712 (1963), cert. den., 375 U.S. 993 (1964); Lummi Tribe v. United States, Docket 110, 5 Ind. Cl. Comm. 525, 536 (1957), rev'd on other grounds, 181 Ct. Cl. 753 (1967); S'Kokomish Tribe v. United States, Docket 296, 6 Ind. Cl. Comm. 135, 156 (1958); Samish Tribe v. United States, Docket 261, 6 Ind. Cl. Comm. 159, 166, 173 (1958); Snoqualmie Tribe v. United States, Docket 93, 9 Ind. Cl. Comm. 25 (1960), aff'd in part, rev'd in part, 178 Ct. Cl. 570 (1967); and Steilacoom Tribe v. United States, Docket 208, 11 Ind. Cl. Comm. 304 (1962).

The Commission has found little in the record of this case that would cause us to view the Swinomish tribal way of life different from the pattern generally followed by other Puget Sound tribes. The Swinomish spoke a distinctive dialect not generally known outside of their claimed area; they were marine-oriented Indians and about 70 percent of their subsistence came from fish and other marine life; they maintained permanent villages during the winter months and roamed within reasonable distances of these villages on a seasonal basis to outlying fishing and camping sites of varying degrees of permanency; and they recognized chiefs or leaders whose authority was generally limited to village areas but was sufficient to maintain order and harmony with their own kind, especially in matters dealing with fishing, hunting and gathering. While their limited hunting forays often carried them further inland and away from village sites, at the time of the 1855 Point Elliott Treaty

they were predominantly a water-oriented tribe. Clearly, however, no one village was able to supply all the needs of the people such as food, clothing, and building and heating materials.

In determining the aboriginal boundaries of the territory exclusively used and occupied by the plaintiff tribe, the Commission has been guided by a rule of reason. In other words, absolute accuracy is not essential so long as the record supports a determination of a reasonable area of use and occupancy. See e.g., Upper Chehalis Tribe v. United States, 140 Ct. Cl. 192, 155 F. Supp. 226 (1957), rev'g, Docket 237, 4 Ind. Cl. Comm. 301 (1956)); Snoqualmie Tribe of Indians v. United States, 178 Ct. Cl. 570 (1967) (aff'g in part, rev'g in part, Docket 93, 15 Ind. Cl. Comm. 267 (1965)).

The expert witnesses for both parties, Dr. Carrol L. Riley for the defendant, and Miss Sally Snyder for the plaintiff, are in substantial agreement as to the general area occupied and used by the plaintiff tribe. This area, as defined by the defendant, includes the beach areas of Skagit, Dugwalla, and Similk Bays, the areas around Swinomish Slough and Fidalgo Island, the north fork of the Skagit River, and the beaches along the north end of Whidbey Island. The differences between the parties arise with respect to the number of villages occupied by plaintiff tribe at treaty time and the intensity or extent of exclusive use made of the areas surrounding the villages. Miss Snyder has identified through archeological diggings, historical accounts, field work, and informants, some twenty villages of a more or less permanent nature and nine temporary camp sites. Dr. Riley, following essentially the same method but over a shorter period of time, has located ten Swinomish sites, two or three of which he denotes permanent. With respect to the

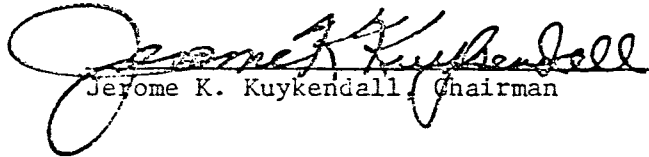
recurring question of the permanency of a particular village or camp site, the Commission views the matter in this case as not being of great significance. The evidence indicates that temporary fishing or camp sites, while used only seasonally, were considered to be traditionally owned by Swinomish Indians even though they may have been used permissively by non-Swinomish fishermen or hunters.

On the basis of all the evidence of record the Commission finds that the plaintiff tribe aboriginally lived in the area of Swinomish Slough, along the shores of Similk Bay and the upper reaches of Skagit Bay, the northernmost section of Whidbey Island above Dugwalla Bay, and the eastern sections of Fidalgo Island. The evidence, however, does not support a finding of exclusive use of several areas claimed by plaintiff. These areas include all of Hat Island in Padilla Bay, Deception Island, Smith Island off the western tip of Deception Pass, and the Swanton area on the western shore of Whidbey Island. The evidence supports a finding that these areas were jointly used or held in common with other tribes and groups. As to plaintiff's claim on the mainland, the weight of evidence points to a use area somewhat smaller and not as far inland as claimed.

From all the evidence of record, including the testimony of the respective expert witnesses, and Indian informants, and for the reasons set forth above, the Commission has concluded that as of March 8, 1859, the effective date of the 1855 Treaty of Point Elliott, the then Swinomish Tribe or band of Indians was a separate and distinct land-owning

entity, and held aboriginal title to that area described in the Commission's Finding No. 11.

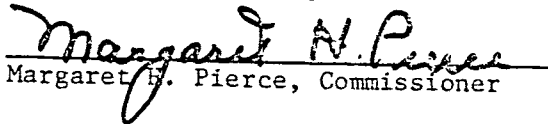
The determination of such other questions as the exact acreage involved, its fair market value, the amount of lands retained by the Indians, the consideration, if any, paid by the United States to plaintiff tribe for the ceded area, and all other questions bearing upon the defendant's liability to the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


Jerome K. Kuykendall, Chairman

We Concur:


John T. Vance, Commissioner

Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner