

## 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

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The Swinomish Tribe of Indians, the plaintiff herein, is an identifiable group of American Indians, and as such is authorized to maintain this action in its own behalf under section 2 of the Indian Claims Commission Act, 60 Stat. 1049, 1050.
2. Plaintiff alleges that it had exclusive aboriginal use, occupancy and possession of the lands that are situated in what is now known as Skagit and Island Counties in the State of Washington and are more particularly described as follows:

Beginning at the most Northwesterly point of Whidbey Island being in Township 34 North, Range 1 E.W.M.; thence in a Northeasterly direction in a straight line across the entrance to Deception Pass and on across Fidalgo Island and Fidalgo Bay to the Northern most tip of Marches Point being in Section 28, Township 35 North, Range 2 E.W.M.; thence in a Northeasterly direction to the Northwest corner of Section 19, Township 35 North, Range 3 E.W.M.; thence in a Southwesterly direction to the Southwest corner of Section 33, Township 34 North, Range 3 E.W.M.; thence in a Southwesterly direction to the Southeast point of Goat Island in Township 33 North, Range 2 E.W.M.;

thence around Goat Island and in a North-westerly direction to the North east tip of Whidbey Island, also called Hoypus Point in Township 34 North, Range 2 E.W.M.; thence in a Southwesterly direction through Deception Pass to a point of beginning; Skagit and Island Counties, Washington.

The area claimed includes parts of northern Whidbey Island and all the islands in Similk Bay and northern Skagit Bay namely; Hope, Skagit, Kiket, Goat, and Ika islands as well as Smith Island off the west coast of Whidbey Island and Hat Island in Padilla Bay.

3. In August of 1854 Governor Isaac I. Stevens of the Territory of Washington, who had been urging upon the Government the necessity of making treaties with the Indian tribes west of the Cascade Mountains, was directed to unite these numerous bands and fragmented Indian tribes which were located on the Puget Sound islands and on the eastern shore of the Sound. Stevens estimated these tribes to be forty in number with a population of 2223.

On January 22, 1855, Governor Stevens entered into a treaty at Point Elliott in the Washington Territory with the chiefs, head-men and delegates of these Puget Sound Indians. The Preamble to this treaty specifically identified and named twenty-two such tribes, including the plaintiff tribe, as parties to said treaty. See Duwamish Indians v. United States, 79 Ct. Cl. 530 (1934)

4. The 1855 Point Elliott Treaty included within its cession boundaries the areas to which the plaintiff asserts aboriginal title

(Article I). By Article 6 of the 1855 Treaty, the United States agreed to pay the several tribes and bands the sum of \$150,000 to be expended over a twenty-year period under the direction of the President of the United States. The United States further agreed to spend \$15,000 for the removal and settlement of Indians upon reservations (Article 13), and to establish and support certain schools and instructors, and to furnish other aid (Article 14). The 1855 Treaty, according to Article 15, was to be obligatory on the contracting parties "as soon as the same shall be ratified by the President and Senate of the United States." It was ratified on March 8, 1859 and proclaimed on April 11, 1859.

5. The first historical contacts with the Indians of the Puget Sound area date as early as 1752 with Spanish and Mexican explorations, and 1792 with the important voyages of George Vancouver. The most significant pretreaty accounts of the Sound Indians from an ethnological view point appear in historical reports around 1850. At the time of initial white contacts, several thousand Indians were living in the general area of Puget Sound. Epidemics which were believed to have occurred around 1800 seriously reduced the population and in some areas, estimates of the decimation ran as high as 80 percent. Early accounts tended to include the Swinomish Indians with the Skagit Indians. This was particularly true in the 1854 reports of George Gibbs. It appears, however, that Gibbs was indicating a dialectal group rather than a political entity, and so grouped them for administrative purposes under "Skagit".

6. One of the earliest accounts identifying both ethnographically

and geographically the Swinomish Indians as a separate entity or tribal group was made by Agent E. A. Starling who reported 60 Swinomish (Squa-na-mish) living near the Kickuallis River (probably part of the Skagit River in the southern end of the claimed area). In 1853 Lt. De Floyd Jones, an officer at Fort Steilacoom made reference to about 200 Swinomish (Swin-amish) living near what is now Swinomish Slough north of the area investigated by Starling. General Kautz, in 1853, also noted Swinomish Indians inhabiting the country around Swinomish Slough on the mainland. Governor Stevens' report (1854) which follows substantially that of George Gibbs, grouped three tribes numbering 300, including the Swinomish living along the northern end of Whidbey Island. Gibbs' expanded report of 1854 placed the Swinomish on Fidalgo Island as well.

7. Posttreaty ethnological accounts appear almost equally divided as to the proper classification and division of the Swinomish Indians. Gibbs' 1877 report places them under "Skagit"; Costello in 1895 called the Swinomish one of the smaller tribes of the area; and Dr. Leslie Spier treats the Swinomish separately. Myron Eells, a missionary writing in 1887, follows Gibbs closely except in the area of northern Whidbey Island which he calls "Swinomish". While Edward Curtis in his "North American Indians" Vol. 9, published in 1913, seems to include Swinomish with the Skagit, he nevertheless noted that the term Skagit included a number of bands not politically connected. As far as language is concerned, Dr. Carroll Riley, defendant's ethnologist, testified that the Swinomish used a

distinctive dialect which was not used outside the claimed areas suggesting a decided degree of cultural cohesiveness.

8. In 1855, and in aboriginal times, each of the Swinomish villages, while not totally autonomous in a political sense, enjoyed a certain degree of independence one from the other. Each village appears to have been made up of a number of families with a leader whose position was determined by his material wealth and standing in the village, but with no strong central designation as a chief with complete control of all the villages. Between the villages there were ties of kinship. These villages were more or less contiguous, and the inhabitants shared a common culture and dialect different from that of adjacent groups or tribes. The prevalent social contacts with distant peoples came through ceremonial feasts referred to as "potlatches". These ceremonial outings were designed to give an individual a certain social prerogative.

Plaintiff's expert witness, Sally Snyder, on the basis of historical documentation, field work, and informants, has identified approximately 19 Swinomish villages and fishing camps, and 9 temporary camp sites. Dr. Riley for the defendant has identified approximately 10 sites, two of which he states were permanent villages. The principal permanent villages appear to have been located on Fidalgo Island in the vicinity of Swinomish Slough and on the shores of Similk Bay. Both experts have located a Swinomish village in Dugwalla Bay on Whidbey Island, but do not agree as to its status, i.e., whether permanent or temporary.

9. The Commission has previously found in a number of other cases that, throughout the whole Puget Sound area, including the area claimed herein, the economy of the aboriginal occupants was centered in the numerous bays and rivers of the sound. Fish and other water life formed the basic subsistence, with berries and some game to supplement the diet. It was unnecessary to go far beyond the village areas, and such use that was made of outside areas was seasonal. However, neighboring groups, while sharing open waterways, did not violate fishing camps containing nets and traps without the permission of the owner. Both witnesses identified joint use areas shared with other groups. Miss Snyder, for example, included Fidalgo Bay, all of Kasario Straits and most of Padilla Bay. Deception Pass appears to have been a principal access route for a number of tribes from the south end of the Sound to the Straits of Juan de Fuca. Doubtful areas which plaintiff's witness could not assign exclusively to the Swinomish included Smith Island on the western tip of Deception Pass, Hat Island in Padilla Bay, and the west coast of Fidalgo Island. According to Dr. Riley, the intensive areas utilized by the Swinomish extended through Swinomish Slough on the mainland, the north fork of the Skagit River in the southeastern portion of the claimed area, the beaches of Skagit, Dugualla, and Similk Bays, and the beaches along the northern end of Whidbey Island. The Swinomish villages identified by Miss Snyder are located for the most part within the areas named by defendant's witness. Miss Snyder has also included areas traditionally used by the Swinomish for spiritual and religious purposes, in the vicinity of Lake Campbell on Fidalgo Island.

10. While the parties appear to be in substantial agreement as to the general use area, there are serious differences as to the intensity of Swinomish land usage away from extended village sites, and as to whether or not a particular site consisted of a temporary camp or a permanent village. From the testimony of the expert witnesses, as well as the testimony of the Indian informants, and from the historical and other documentary evidence, the Commission has reached several basic conclusions:

(a) The Swinomish Tribe of Indians numbered between 150 and 200 persons in 1855;

(b) As was common throughout Puget Sound, the economy of the Swinomish Indians was principally marine oriented, said Indians depending on fish and other marine life for their subsistence, while supplementing that with roots, berries, and potato patches. Hunting was done on a limited scale, and in areas extending from village and established camp sites;


(c) The Swinomish Indians did use and occupy exclusively definite sections of the Puget Sound land areas and the extent of such use and occupancy was determined by their subsistence and spiritual needs. So-called temporary villages, camps or fishing sites may have had seasonal use but were nevertheless considered by other Indian groups to be owned by the Swinomish. While the concept of boundary may have been unknown to the aboriginal groups, the traditional subsistence areas used by a particular tribe were not violated.

## CONCLUSION

11. Based upon the preceding findings of fact and all the evidence of record, the Commission finds and concludes that as of March 8, 1859, the effective date of the Point Elliott Treaty, and within the area ceded to the United States under that treaty, the Swinomish Tribe of Indians had aboriginal title to the following bounded area, and no other:

Commencing at a point on the northeast coast of Whidbey Island on the north shore of Dugualia Bay where said Bay joins Skagit Bay, westward along the north shoreline of Dugualia Bay to the most inland point; thence in a straight line due west to West Beach on the western shoreline of Whidbey Island; thence northward along the west shoreline of Whidbey Island to West Point; thence in a straight line across Deception Pass to Lighthouse Point; thence northeasterly to the peak of Mt. Erie; thence to the southwestern most point on Fidalgo Bay; thence due east to a point due south of March Point; thence to March Point; thence to the west shore of Indian Slough at its mouth; thence to the head of Indian Slough; thence southwestwardly in a straight line to the headwaters of Sullivan Slough at Pleasant Ridge; thence southeastwardly in a straight line to the northernmost point of Ika Island; thence south around the shore of Ika Island to its southernmost tip; thence in a straight line west to the point of beginning, including all islands and reefs within said boundaries.

  
 Jerome K. Kuykendall, Chairman

  
 John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

  
 Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner