

BEFORE THE INDIAN CLAIMS COMMISSION

THE YAKIMA TRIBE,)	
)	
Petitioner,)	
)	
v.)	
)	
THE UNITED STATES,)	
)	
Defendant.)	Docket No. 161
)	
THE CONFEDERATED TRIBES OF THE)	
COLVILLE RESERVATION, et al.)	
)	
Intervenor.)	(Petitioner in Docket Nos. 222 and 224)

Decided: July 29, 1963

Appearances:

Paul M. Niebell, Attorney for
Petitioner in Docket No. 161.

Weissbrodt, Weissbrodt & Lifton,
with whom was the firm of Keith,
Winston & Repsold, Attorneys for
the Intervenor.

John D. Sullivan, with whom was
Mr. Assistant Attorney General,
Ramsey Clark,
Attorneys for Defendant.

OPINION OF THE COMMISSION

Holt, Associate Commissioner, delivered the opinion of the Commission

By order of the Commission, dated May 23, 1957, Docket Nos. 161 and
224 were consolidated for the purpose of trial, and it was ordered that
a separate trial be had to first determine:

- (1) Whether the petitioners, or any of them, have authority, under the Indian Claims Commission Act, to present claims for the taking of the area described in paragraph 8 of the petition in Docket No. 224, as amended;
- (2) Whether the petitioner, or any of them, held Indian title to the said area, or any part thereof;
- (3) The date of taking, if any, of the said area, or any part thereof by the defendant.

By order of the Commission, dated November 10, 1960, Docket Nos. 161 and 222 were consolidated for the purpose of trial, and it was ordered that a separate trial should also be had with respect to the questions concerning the authority of the petitioners to present claims, the area, if any, to which petitioners held Indian title, and the date of taking, if any, of any area so held.

Following the hearing with respect to the consolidation involving Docket Nos. 161 and 224, the Commission entered its decision on July 28, 1959. At that time it was found that both petitioners ^{1/} were proper parties to institute the claims before the Indian Claims Commission. The Commission found that neither the petitioner in Docket No. 161 nor the petitioner in Docket No. 224 is the full successor to the Yakima

^{1/} In Docket No. 161 the petitioner is the Yakima Tribe, which is more fully described in its approved contract employing counsel as the Yakima Tribe of the Indians of the Yakima Reservation in the State of Washington. In Docket No. 224 the petitioner is the Confederated Tribes of the Colville Reservation, as the representative of and, in the alternative, as the successor to the claim of the Moses Band, and its constituent tribes (the Columbia, Chelan, Entiat, and Wenatchee). Also named as petitioners are George Friedlander and Peter Dan Moses, as the representatives of the Moses Band and its constituent tribes.

Nation, which nation was party to the Yakima Treaty of June 9, 1855, under the terms of which lands involved in the subject claims were ceded to the United States. Therefore, concluding that both petitioning organizations contained members or descendants of members of the bands or tribes comprising the Yakima Nation, we found that both petitioners were entitled to maintain claims for the taking of land involved in the Yakima Treaty, and by order dated July 28, 1959, petitioners in Docket No. 224 were permitted to intervene as petitioners in Docket No. 161.

On November 28, 1962, the Confederated Tribes of the Colville Reservation moved for leave to intervene in Docket No. 161 as representatives and on behalf of the Columbia, Chelan, Entiat, Wenatchee and Palus tribes, and as representatives and on behalf of the Yakima Nation, and the members and descendants of members thereof. The motion was opposed by the Yakima Tribe, petitioner in Docket No. 161, and this issue was argued before the Commission on January 18, 1963. The Commission is of the opinion that the situation with respect to the action brought by the Confederated Tribes of the Colville Reservation for and on behalf of the members of the Palus Tribe is similar to that involving the action for and on behalf of the Moses Band and its constituent bands or tribes. We do not deem it necessary to reiterate our opinion in great detail since it would follow in general that entered in the previous consideration of Docket Nos. 161 and 224. As we have previously found both the petitioner in Docket No. 161 and the Confederated Tribes of the Colville Reservation include members and descendants of members of the

bands or tribes comprising the Yakima Nation and both petitioners are entitled to their own representation in this action concerning claims for the taking of Royce Area 364. Therefore, we have entered our order allowing the Confederated Tribes of the Colville Reservation in its representative capacity to file its petition in intervention, and that Confederation is a party plaintiff by intervention in Docket No. 161.

At this point we believe it necessary to elaborate on the question of parties and who may properly be entitled to any award which may be forthcoming in this case. In a recent decision the Court of Claims declared as erroneous this Commission's finding that a Wheeler-Howard Act Indian corporation could maintain an action under the Indian Claims Commission Act in a representative capacity on behalf of all the descendants of the aboriginal bands who were parties to treaties under which the claim arose. Minnesota Chippewa Tribe, et al., v. The United States, Appeal No. 11-61, decided April 5, 1963. In that case the petitioning Minnesota Chippewa Tribe was not a party to the treaties. The actual parties to the treaties were the Mississippi bands and the Pillager and Lake Winnibigoshish bands. These aboriginal bands no longer exist as tribal or band entities. The petitioning Minnesota Chippewa Tribe is composed of all Chippewa Indians of Minnesota (except those on the Red Lake Reservation) and as such includes descendants of other Chippewa bands not parties to the treaties involved.' In that case defendant argued before this Commission that the petitioning Minnesota Chippewa Tribe

was not the successor in interest to the claims arising out of the pertinent treaties and that any award which might be rendered should properly go for the benefit of those individuals whose ancestors were members of the aboriginal groups which were parties to the treaties. We agreed with defendant in this matter and so entered our findings and order that the Minnesota Chippewa Tribe was entitled to maintain that action in a representative capacity on behalf of all descendants of those Chippewa Indians who were parties to the pertinent treaties.

The Court of Claims, referring to the fact that this question was no longer in controversy,^{2/} declared that the Minnesota Chippewa Tribe could maintain that action in a representative capacity on behalf of those bands of Chippewas who were parties to the 1855 Treaty. With respect to awards by this Commission the Court stated, "in such proceedings the Indian Claims Commission Act requires that the awards be made, not to individual descendants of tribal members at the time of the taking, but to the tribal entity or entities today" (Minnesota Chippewa Tribe, et al. v. The United States, slip opinion, pp. 11, 12). The Court described that entity as "the Minnesota Chippewa Tribe on behalf of the Mississippi, Pillager, and Lake Winnibigoshish bands."

Following the Court of Claims decision in the Minnesota Chippewa case we have concluded that the petitioners in this case, the Yakima Tribe and the Confederated Tribes of the Colville Reservation, may maintain the

^{2/} On appeal defendant changed its position and joined with petitioners in requesting modification of the Commission's order and findings on this point.

claims in a representative capacity on behalf of the Yakima Nation which was the party to the Treaty of June 9, 1855. Any ultimate award which may result would be to the Yakima Tribe and the Confederated Tribes of the Colville Reservation on behalf of the Yakima Nation as it existed at the time of the Treaty of June 9, 1855.

In the subject case the treaty of cession was executed by the Yakima Nation, a newly formed confederation of 14 separate aboriginal tribes or bands. The confederation, by agreement of the separate tribal groups, had become the successor in interest to the rights of the former separate entities. Thus by the Yakima Treaty the tribal rights to the land to which each separate tribal entity held Indian title were merged, and the Indian title which each of the respective 14 tribal entities had held was ceded to the United States. All those Indians who were members of the 14 tribal entities became members of the newly formed Yakima Nation. It was agreed that the newly formed confederated Yakima Nation would receive the consideration, including the reservation, for the cession with no division of that consideration to be made by reason of membership in any one of the 14 pre-existing tribal entities or by reason of that area which had been previously "owned" by any one of the 14 pre-existing tribal entities or for any other reason.

The United States by the Yakima Treaty acquired the land which the Yakima Nation Indian entities had exclusively used and occupied. If the lands so acquired were ceded for an unconscionable consideration the Indian Claims Commission Act provides that this Commission may enter an

award for the amount necessary to fully compensate the Indians for the value of the lands ceded by them. In this case any judgment would be, in effect, an additional payment for the lands ceded to render the total consideration equal to the fair value of the lands. Any such additional payment should be for the benefit of the Yakima Nation which was created in 1855.

So that there can be no misunderstanding in this case we wish to make it clear that we have concluded that the Yakima Tribe (of the Indians of the Yakima Reservation in the State of Washington) is not synonymous with nor the successor to the Yakima Nation which was created in 1855 and which Nation was wronged by the Treaty of 1855 (if it should be ultimately determined that the cession was made for an unconscionable consideration). That Yakima Nation which was created in 1855 does not exist as an entity today. The Indians who were, in 1855, members of that Nation subsequently became located at and associated with various other Indian reservations and at other localities. Specifically a significant number of Indians who were members of various of the 14 tribes or groups comprising the Yakima Nation became located on the Colville Reservation. Indians from the Chelan, Entiat, Wenatchee, Columbia and Palus tribes in particular became located in large numbers on the Colville Reservation. The Colville Business Council has prepared rolls indicating the affiliation of the various members of the Colville Reservation with the original tribes or bands. That enrollment approved on September 24, 1954, lists 113 Entiat Indians; 253 Wenatchee Indians; 301 Moses Band Indians; and 30 Palouse (Palus) Indians.

The Yakima Tribe of the Yakima Indian Reservation does not purport to represent any of those Entiat, Wenatchee, Moses Band or Palus descendants located on the Colville Reservation. In fact the Yakima Tribe seeks to specifically exclude such Indians from any participation in this case and from participation in any prospective award. This claim is for additional compensation for the taking of the aboriginal lands of the Entiat, Wenatchee, "Moses Band" (Columbia) and Palus Tribes or Bands to which the ancestors of those above noted Colville Reservation Indians belonged. In our view justice cannot be served by allowing the Yakima Tribe to recover additional compensation for a large area to the exclusion of substantial numbers of those Indians whose ancestors comprised the tribal entities which exclusively used and occupied those lands.

Petitioner in Docket No. 161 has argued that Moses and that portion of his people who formerly had rights under the Yakima Treaty voluntarily relinquished those rights under the so-called Moses Agreements of 1879 and 1883. We do not agree. There was no relinquishment of such rights under the Moses Agreements.

While we do not deem it necessary, at this point in the proceedings at least, to consider possible duress as a ground for recovery we are well aware of the difficulties surrounding the execution and ratification of the Yakima Treaty. Realizing that the four northern groups were Salish-speaking Indians, their reluctance to move to a reservation outside their ancestral territory and to join Indians of a completely different language was understandable. The subsequent difficulties could have been expected.

from such a confederation of dissimilar Indians. The Indians did refuse to accept the provisions of the Yakima Treaty, there was a period of hostility, and United States troops were required to subdue the Indians. Only after this subjugation did Congress ratify the Yakima Treaty. Thereafter the United States tried to induce the four Salish-speaking tribes to remove to the Yakima Reservation. The efforts were unsuccessful as only a few individual Chelan, Entiat, Wenatchee and Columbia Indians went onto the Yakima Reservation. Finally after many years of dissatisfaction the United States acted to provide a reservation for the four tribes. By the 1879 Agreement the Indians under Chief Moses agreed to accept a reservation which was, the next day, set apart by Executive Order and known as the Columbia Reservation. After the failure to locate the Indians on that reservation, the 1883 Agreement was made providing for the removal of the "Moses Band" Indians to the Colville Reservation, where most of the Indians did eventually move and where a large number of their descendants reside or are enrolled today.

However, the fact remains that the Indian title rights of the Columbia, Chelan, Entiat and Wenatchee Indians were extinguished by the Yakima Treaty. By that treaty a confederation was formed and a cession of land obtained for a stated consideration. This Commission does not see any necessity nor is it desirable to attempt to treat as if revised all the various provisions of the Yakima Treaty and the subsequent agreements made by the Congress and the Indian parties. We can best correct any injustice to the Indians for the taking of their aboriginal lands by awarding such additional compensation as may be required if it is

established that the total consideration paid was an unconscionable amount for the lands so ceded. This can be accomplished by an award, if one is to be made, in the form as we have indicated for the benefit of the Yakima Nation as it was created by the Yakima Treaty of June 9, 1855.

The subject case involves claims arising from the alleged taking by defendant of the aboriginal lands which had been used and occupied by the Indian tribes which were parties to the Yakima Treaty. The lands ceded by the Yakima Treaty have been described by Charles C. Royce as Royce Area 364, shown on Map 1 of the State of Washington, and will be hereinafter referred to as Royce Area 364. While the claimed area does not include precisely all of the land included within the metes and bounds description of the Yakima Treaty, it also includes certain areas which extend outside the limits of the treaty calls. Specifically, areas claimed on behalf of the Chelan, Columbia, Klikitat and Palus tribes extend outside Royce Area 364.

The claimed area is located in the present State of Washington north of the Columbia River and east of the Cascade Mountains. The United States acquired undisputed sovereignty over this land in 1846. By the Act of August 14, 1848, the area was included within the Territory of Oregon and by the Act of March 2, 1853, the claimed area became part of the Territory of Washington. Both of those territorial acts prohibited any impairment of rights of Indians to land in the respective territory so long as such rights remained unextinguished by treaties between the United States and such Indians.

We have found that each of the tribes which were parties to the Yakima Treaty constituted a separate, distinct, ethnic tribe or group. The separate tribes were at peace with one another and possessed certain similar characteristics and customs. The tribes can be grouped together to include:

A. The Salish speaking tribes:

1. Chelan
2. Entiat
3. Wenatchee
4. Columbia

B. The Sahaptin speaking tribes:

5. Kittitas
6. Yakima
7. Klikitat
8. Wanapam
9. Palus
10. Skeen

C. Chinookan speaking tribe

11. Wishram

We have set forth in our Findings of Fact in some detail our primary or evidentiary findings concerning the use and occupation of the claimed area by the various constituent tribes of the Yakima Nation. Starting with the earliest history of the Indian tribes in Royce Area 364 beginning with the explorers Lewis and Clark, we have made findings concerning the early explorers, trappers, traders and missionaries who reported concerning the Indian occupation of various areas within Royce Area 364. We have also included findings concerning the reports of various government officials including the early United States Indian agents within the subject area. And, finally, we have entered findings concerning the

recorded opinions of various ethnologists who have been concerned with the Indians which were parties to the Yakima Treaty. We will not in this opinion detail all of the various findings which we have made concerning the areas exclusively used and occupied by the respective tribes and bands. However, we shall briefly review the evidence as reflected in our findings.

The reports of the Lewis and Clark expedition served to place various Indian groups along the route traveled by them which was along the Snake River to its junction with the Columbia and from that point along the Columbia River in the extreme southern portion of Royce Area 364. While it appears that many of the bands or groups referred to by Lewis and Clark were probably the ancestors of the Indians who were parties to the Yakima Treaty, we have found it almost impossible to positively correlate many of the Lewis and Clark names with later English equivalents. While there is not agreement among the expert ethnologists, the evidence has served to provide certain information concerning general locations of some Indian bands within the claimed area which bands were the ancestors of those bands which became part of the Yakima Nation. The subsequent reports of various explorers and traders referred to Indian occupation at various points within the ceded area. These reports served to locate in general certain portions of the territory which was occupied by the various Indian tribes and bands during the first half of the 19th century.

In the reports of the government officials and United States Indian agents shortly before the Yakima Treaty we find more definitive descriptions

of the extent of the country which was occupied by the various Indian tribes and bands. In our Finding of Fact No. 34 we have set forth a summary of the findings of George Gibbs concerning the locations of the Indians within Royce Area 364. Gibbs' report and the map which he prepared are entitled to great weight in considering the areas used and occupied by the Indians during the period prior to the execution of the Yakima Treaty. We have set forth in our Finding of Fact No. 36 the findings of Governor Stevens, who was the treaty commissioner at the Yakima Treaty council. His report was, of course, very similar in detail to that of George Gibbs, who had served on Governor Stevens' staff.

In Findings of Fact Nos. 40 through 43 we have entered our evidentiary findings concerning various reports which, although made subsequent to the Yakima Treaty, referred to the prior occupancy of the Indians within Royce Area 364. We have also made our findings concerning the conclusions of the ethnologists and other scholars who have studied the Indians of the claimed area. In our Findings of Fact Nos. 48 and 49 we have dealt in some detail with the evidence presented by the expert witnesses, Dr. Verne F. Ray for petitioners and Stuart Chalfant for defendant.

Based upon all the evidence we have found that there is substantial agreement among all of the experts that the various bands or tribes which occupied Royce Area 364 and which agreed to become consolidated under the newly formed Yakima Nation, used and occupied in aboriginal times separate and distinct areas within the claimed area. We have further concluded that there was general agreement between both Dr. Ray and Mr. Chalfant concerning most of the areas which were exclusively used and occupied

by the respective bands or tribes concerned. However, in several instances we have found that the evidence does not support the conclusions which petitioners and defendant would urge us to follow in our ultimate finding concerning the respective areas of exclusive use and occupation.

Our findings with respect to the area exclusively used and occupied for each of the eleven separate tribes or bands which comprised the Yakima Nation were as follows:

Chelan

Virtually all of the evidence which related to this northernmost group indicates that the Chelan Indians used and occupied the territory within the Lake Chelan drainage system. Mr. Chalfant, while not considering that either the Chelan or Entiat were parties to the Yakima Treaty, did testify that the land used by the Chelan was within the Chelan drainage system. In his village locations for the Chelan Indians, Dr. Ray included one location (Chelan village no. 1) which was in the extreme northernmost location on the Columbia River and which extended to the north beyond the limits of the Yakima Treaty calls. However, Dr. Ray noted that this village may have been occupied by Chelan only since 1870 and in his work published in 1936 Dr. Ray had stated that formerly this was doubtless the site of a Methow village. We have concluded that the evidence does not support a finding that this northernmost area around Dr. Ray's village no. 1 location was exclusively used and occupied in aboriginal times by the Chelan Indians, and it has been excluded from the area described in our Finding of Fact No. 50(a). While Dr. Ray has also included areas to the east of the Columbia River Valley extending to the plateau above the river for each of the Chelan, Entiat, and Wenatchee

tribes, we have found that the evidence does not support his conclusion that these areas were exclusively used and occupied by those tribal groups. We have noted that the village locations for the Chelan Indians were on the west side of the Columbia River and the evidence with respect to the aboriginal occupation of this group has limited the area to the west side of the Columbia River extending along the drainage system of Lake Chelan to the summit of the Cascade Mountains.

Entiat

The Commission has found that there is substantial evidence indicating that the Entiat Indians exclusively used and occupied an area extending from the Columbia River to the Cascade Mountains along the drainage system of the Entiat River and that area is described in our Finding of Fact No. 50(b). We have excluded the area claimed on behalf of the Entiat which lies on the east bank of the Columbia River for substantially the same reasons as we have cited above in the case of the Chelan Indians. The village locations for this group were on the west bank of the Columbia River and the evidence of record indicates that the tribal lands of the Entiat Indians extended from the Columbia River to the west. While Dr. Ray, in his earlier works, had not included the Entiat Tribe as a separate entity because he had not then been convinced that any such separate tribe had existed, his recent work in preparing materials in this case had led him to conclude that the Entiat were in fact a separate tribe unto themselves. His conclusion is well supported by the evidence of record and Mr. Chalfant was in substantial agreement and testified that the Entiat, while consisting of a mixed population, were "a geographic

division or a separate people occupying a geographic area, or the area bounded by the ridges surrounding the Entiat River drainage system."

(Tr. 484)

Wenatchee

There is almost complete agreement between Dr. Ray and Mr. Chalfant concerning the territory used and occupied by the Wenatchee Indians. The area which we have found to have been exclusively used and occupied by the Wenatchee extends from the Columbia River to the Cascade Mountains and includes the drainage systems of the Wenatchee River. We have included a small area to the east of the Columbia River about opposite the town of Wenatchee and extending south to a few miles below Malaga, Washington. All of the village locations which Dr. Ray has identified for the Wenatchees were located on the west side of the Columbia River with the exception of the villages identified as villages nos. 25 and 27. Village location no. 25 was described as a "small summer settlement on the east bank of the Columbia River about one mile below Wagnersburg. Location approximate." From Dr. Ray's description we have concluded that this possible location could not have been a very significant Wenatchee village, it was not permanent, and the location is only approximate. In the absence of any other evidence to substantiate its precise location we have concluded that this location was not within the area exclusively used and occupied by these Indians. Village location no. 27 was located opposite the mouth of the Wenatchee River and is the location of a village described by Gibbs. It is also within an area of Wenatchee occupation as described by Mr. Chalfant and is included within the area described in our Finding of Fact No. 50(c).

While Mr. Chalfant had described an area of use and occupation by the Wenatchee which is virtually identical with the area which the Commission has found was in fact exclusively used and occupied in aboriginal times by these Indians, he has testified that within this area and other areas described by him the use and occupation was not to the exclusion of all other Indian tribes. With respect to the Wenatchee area Mr. Chalfant has indicated a small area of use by the Chelan in the approximate center of the described area as the permanent Wenatchee village site which he has indicated near Leavenworth. The Commission has noted evidence concerning the presence of other Indians in various locations within areas which we have found to have been exclusively used and occupied by a particular Indian tribe or band. Particularly in the case of the Wenatchee village site which was near the present town of Leavenworth the Commission has noted that this village was at the principal fishing grounds of the Wenatchee and that there were, during the fishing season, many visitors from other Indian tribal groups who assembled at this location. However, the Commission is satisfied that this location was well within the territory which was under the exclusive use and occupation of the Wenatchee Tribe and that the Wenatchee Indians themselves built and maintained weirs and would distribute fish to the visiting Indians for their daily needs. Any supplies of fish which were taken back to the visitors' home territory were obtained by bartering with the Wenatchee Indians.' Under such circumstances we believe that the visiting Indians were not using and occupying territory in Indian fashion but were merely present during the height of the fishing

season as visitors and for the purpose of trading and bartering for salmon which the Wenatchee Indians trapped in their weirs. Such presence by other Indians within the territory which was exclusively used and occupied by the Wenatchee Indians is not sufficient to defeat the Indian title of the Wenatchees. Accordingly, we have concluded that the area described in Finding of Fact No. 50(c) was exclusively used and occupied in Indian fashion by the Wenatchee Indians.

Columbia

The area which we have determined was exclusively used and occupied by the Columbia Band extends east of the Columbia River in the flat, semi-arid plateau region. Most of the village locations identified by Dr. Ray were along the western border of the claimed area for this tribe and along a line extending from Moses Lake northward. The area which we have found to have been exclusively used and occupied by the Columbia Band includes the principal village locations. We have excluded an area to the north as well as an area along the eastern portion of the claimed territory for the reason that we do not believe there is substantial evidence to indicate that these Indians exclusively used and occupied these areas. The evidence concerning Indian use and occupation of the extreme eastern portion of the claimed area for the Columbia Indians is meager. This is an area where Dr. Ray stated that the Indians were engaged in digging roots. The area does not include permanent village locations. As Dr. Ray himself recognizes the determination of precise tribal boundaries in such areas are difficult to ascertain. In his 1936 work concerning the native villages and groupings of the Columbia Basin Dr. Ray wrote,

"Boundaries between groups of the Columbia Basin varied greatly in exactitude, as might be anticipated under the conditions outlined above. Almost all villages were located on waterways, resulting in boundaries being most definite at points where streams or rivers cross. The greater the distance from population centers, the more vague the lines of demarcation grew. Thus, far back in hunting territory or far out in desert root digging grounds, boundaries sometimes completely faded out." (Pet. Ex. 568, p. 117)

Mr. Chalfant testified that the aboriginal territory of the Columbia Bands extended to the north in a line along Badger Mountains, south of Waterville, continuing eastward to the vicinity of Coulee City and then turning south to follow the eastern side of the Grand Coulee area and continuing southward to include the Soap Lake area, the Ephrata area, including all of Moses Lake, and then south from the town of Moses Lake to approximately the 47th parallel. We have included this area in our Finding of Fact No. 50(d) extending the eastern boundary approximately to ten miles to the east of Mr. Chalfant's eastern boundary. Most of the early reports concerning the Columbia Indians placed them along the Columbia River in the southwestern portion of the claimed area. Gibbs placed the Columbia Bands which he included under the designation Piquoose or Sin-ka-oo-ish in an area which extended into the plateau country east of the Columbia River extending in an arc slightly to the east of the Grand Coulee. However, his line did not extend as far as the 119th degree of longitude except where it touched it on the southeast. Petitioners have claimed an area which extends some 15 to 20 miles to

the east of the 119th degree of longitude. James Mooney described the country of the Columbia Indians as originally having extended from the Columbia River eastward to the Grand Coulee and down nearly to Crab Creek. Edward Curtis also described the country of the Columbia Bands as extending between the Columbia River and that series of depressions in the earth's crust beginning in the Grand Coulee and continuing in a number of small closed lakes, the lower course of Crab Creek, Moses Lake and the sink of Crab Creek.

We have noted the evidence concerning the gathering of various Indians from neighboring tribes in the Moses Lake region where summer festivals were held. The Indians gathered in that location in July and August for what have been described as annual games of horseracing and other activities. We have concluded that such visits by neighboring Indians were similar to that which occurred in the case of the Wenatchee Tribe, as described above. As was the case with the Wenatchee Indians we believe that the visiting Indians considered that the festival areas around Moses Lake were within the territory which belonged to the Columbia Indians and the attendance of neighboring Indians at such festivals was not a use and occupation of the land in Indian fashion so as to defeat the Indian title of the Columbia Indians. We have concluded that the area described in Finding of Fact No. 50(d) was exclusively used and occupied by the Columbia Indians. We have found that there is not sufficient evidence to establish that the excluded areas to the north, east, and a small area to the south of Crab Creek were exclusively used and occupied in Indian fashion by the Columbia Indians.

Kittitas

This Sahaptin speaking tribe was located immediately south of the Wenatchee. Both Dr. Ray and Mr. Chalfant agreed that the Kittitas Indian occupied the area along the upper Yakima River and its tributaries. This band was closely related to its southern neighbors, the Yakima, and, in fact, was often referred to as the upper Yakima, with the Yakima Tribe to the south being designated as the lower Yakima. Mr. Chalfant was of the opinion that the Kittitas Tribe was an independent, ethnic group of Indians closely related to the Yakima Tribe. He agreed with the village locations set forth by Dr. Ray. Mr. Chalfant testified that he considered there was an area of joint occupancy by the Yakima and Kittitas tribes in the southern portion. Apparently Mr. Chalfant has based his opinion mainly on the fact that Dr. Spier, Mr. Mooney and Mr. Curtis differed slightly with respect to the boundary which separated the Kittitas and the Yakima tribes. We are not satisfied that such divergence of opinion would justify a finding that the area described by Mr. Chalfant was in fact an area of joint use. We believe that there is substantial evidence that the Kittitas exclusively used and occupied in Indian fashion that area of land which we have described in our Finding of Fact No. 50(e).

Yakima

This tribe was located immediately south of the Kittitas Tribe and, as we have described above, was closely related to it. The area used and occupied by the Yakima Indians extended along the courses of the lower Yakima River and its tributaries. A large portion of the Yakima area was set aside by the Yakima treaty as the reservation for the Indians which comprised the Yakima Nation.

As we have mentioned before the Commission does not believe that the evidence indicates that there was any area of joint use and occupation between the Kittitas and the Yakima tribes. We have included within the area found to have been exclusively used and occupied in Indian fashion by the Yakima Tribe an area which includes all of the claimed territory with the exception of an area in the southeast, south of Horse Heaven Hills. We do not find sufficient evidence upon which to base a determination that the Yakima Tribe exclusively used and occupied this area. We have noted Dr. Ray's village location no. 44 which is in the southeastern corner of the claimed area along the Horse Heaven Hills. It was described by him in his 1936 works as a "permanent village and scout location where Bickleton is now situated. Many Wayampams and Umatillas were to be found here" (Pet. Ex. 568, p. 148).

Klikitat

This tribe occupied an area north of the Columbia River including the upper drainage systems of the Klikitat River and the White Salmon River. The village locations listed by Dr. Ray were located in the area south of Mount Adams and in general the area designated by Dr. Ray as used and occupied by this tribe corresponded with that defined by Mr. Chalfant. The Commission has found that the evidence establishes that the Klikitat Tribe exclusively used and occupied in Indian fashion the area described in our Finding of Fact No. 50(g).

Petitioners claim an area in the southwest which extends to the west of the area ceded by the Yakima Treaty. The treaty calls describe the

western boundary of the cession as running from a point midway between the mouths of White Salmon and Wind River along the divide between said rivers to the main ridge of the Cascade Mountains and thence northward along said ridge. Dr. Ray testified that there were actually three principal divides of the Cascade Mountains toward the Columbia River in this area. The highest range and so the one which Dr. Ray stated might properly be considered a continuation of the Cascades was to the west of the line described in the treaty (as shown on petitioner's exhibit 589). The Commission has used the line as described in the treaty. We do not find that evidence supports an extension of the Klikitat area of exclusive use and occupation to the west as claimed by petitioners.

The Commission has noted that there is evidence that neighboring tribes visited locations within the described Klikitat territory. As Dr. Ray noted, the Klikitat had a ceremonial ground at Tahk prairie near Glenwood, where they met with the Yakimas, and had their annual horseracing, gambling, and other festivities. This location is in the approximate center of the area which we have found had been exclusively used and occupied by the Klikitats. This tribe, as well as many other of the tribes which comprised the Yakima Nation, were well known for their trading. As Dr. Gibbs himself reported the Klikitats had such an aptitude for trading that they had "become to the neighboring tribes what the Yankees were to the once Western States, the traveling retailers of notions" (Pet. Ex. 416, p. 403). As we have stated before the Commission does not believe that the visits by Indians of other tribes during annual celebrations or for purposes of trading were such as would lessen the exclusive

use and occupation which the Klikitats maintained over this area. We have also noted in this case considerable evidence concerning the Klikitat movement into areas west of the Cascade Mountains and even extending south of the Columbia River into areas which were generally considered those of other Indian tribes. The Indian agent for the Puget Sound district, E. A. Starling, reported that the Klikitats had inhabited the country east of the Cascade range but in the spring would go into the area west of the mountains to trade and gamble with different tribes. For the same reason which we have found that Indians present in the territory of the Klikitats for the purpose of gambling or trading would not in any way lessen the claim of Indian title by the Klikitat tribes, we also are of the opinion that such entry into the area west of the Cascade Mountains by the Klikitats for the purpose of trading and gambling with different tribes would not in any way provide the Klikitat tribe with a basis for claiming Indian title to those areas.

Wishram

These Indians used and occupied an area along the northern bank of the Columbia River to the south of the Klikitat Tribe. The village locations for the Wishram were close to the river bank and from one to three miles apart extending throughout their territory. The Wishram possessed some of the best fishing locations on the Columbia River and they caught and dried salmon in immense quantities, both for subsistence and trade. They did little hunting and made little use of their territory which extended a few miles inland from the Columbia River. Mr. Chalfant agreed substantially with petitioners' claimed area for the Wishram to

the extent that it extended along the Columbia River. However, Mr. Chalfant felt that the area away from the Columbia was an area of joint utilization with the Klikitat Tribe. The Commission has not found sufficient evidence to conclude that there was this small area of joint use and we have therefore entered our findings that the entire area, as claimed, was exclusively used and occupied in Indian fashion by the Wishram Tribe.

We have noted in particular the evidence concerning the frequent presence of Indians from many tribes who came to the area to trade and attend ceremonies, particularly at the Dalles. The Wishram were recorded to have been exceptionally shrewd traders and their location served as a pivotal point between the coastal Indians and those of the interior. However, the Commission does not believe that the presence of visiting Indians for the purpose of trading and attending ceremonies acted to in any way lessen the validity of the claim of the Wishram Tribe to this territory.

Skeen

This tribe was also located on the north bank of the Columbia River immediately to the east of the Wishram. Their subsistence was very similar to that of the Wishram for they also possessed some of the great fishing spots along the Columbia River. The Commission has concluded that the Skeen exclusively used and occupied an area extending several miles inland from the Columbia River; approximately to the same extent as their neighbors, the Wishram. However, the Commission has found that there is not sufficient evidence to indicate that the Skeen exclusively

used and occupied that area extending farther inland and we have, accordingly, excluded that from the area found to have been exclusively used and occupied by the Skeen Tribe.

The location at the Celilo Falls was one of the great fishing places along the Columbia River where Indians gathered in great numbers during the fishing season and the Skeen Indians engaged in trade with Indians from other tribes. Again we do not believe that these visits of neighboring friendly Indians for the purpose of trade acted to defeat the claim of the Skeen Indians to this area extending along the banks of the Columbia River.

In this regard we have noted several findings of the Court of Claims in Ambrose Whitefoot and Minnie Whitefoot v. The United States, Docket No. 497-57, decided July 19, 1961. In that case, which dealt with fishing rights claimed by individual Indians, the Court in discussing the fishing carried on by the Mid-Columbia Indians (Wish-ham, Skien-pah, and Kah-milt-pah) stated:

* * * Salmon fishing, as well as year-round fishing . . . has been of controlling importance to the Indian way of life, both economic and social. This has been particularly true as to the Mid-Columbia group of Indians whose ancestral grounds and villages bordered both sides of the Columbia River in the vicinity of Celilo Falls, which was the most famous of all the Indian fisheries in the Columbia River complex and the largest concentrated Indian fishery in North America. The bulk of the fish caught were preserved in ways known to the Indians. It was a staple item of their year-round diet. That which was not stored away for subsistence was used for barter with non-Mid-Columbia Indians who visited the Celilo Falls area seasonally to exchange articles needed by the Mid-Columbians. The owner of fish thus bartered retained as his own the articles received in exchange. Thus Celilo Falls was a prominent trading center for the Indians from miles around and was the scene of many

Indian festivities and social events. Each spring with the catching of the first migrating salmon the Indians would hold a semi-religious ceremony known to them as the Feast of the First Salmon. * * * (Slip opinion, p. 11)

* * *

* * * Each of the tribes comprising the Mid-Columbia group owned from ancient times its own fishing grounds, which naturally were in the immediate vicinity of the tribal village or villages. * * * (Slip opinion, p. 13)

* * *

* * * The Mid-Columbia tribes dwelling on either side of the Columbia River at Celilo Falls frequently used each other's tribal fishing grounds in a fraternal manner. There was not much direct use of the Celilo Falls fishing area by non-Mid-Columbia Indians, for such Indians were not familiar with the methods used by the local Indians to catch salmon, but they were permitted to fish if they wished to satisfy their own requirements. On the occasions when non-Mid-Columbia Indians did fish there, they do so only with permission of the tribal chiefs of the Mid-Columbia Indians, and not as a matter of right.

7. The ancient customs of the Mid-Columbia Indians pertaining to the right to use and occupy particular fishing stations in the Celilo Falls area, as described in the preceding finding, were in effect when the Yakima treaty was negotiated in 1855. * * * (Slip opinion, p. 14)

Wanapam

The territory for this tribe was to the east of the Kittitas and Yakima areas and south of the Columbia territory. The village locations of this tribe were all located on the west bank of the Columbia River. These Indians were frequently mentioned in the early literature and invariably have been placed in approximately the same location along the Columbia River. Although Dr. Ray was of the opinion that their territory extended far to the east, the Commission has found there is not sufficient evidence to substantiate this opinion. Accordingly, we have found that

the Wanapam exclusively used and occupied in Indian fashion that area which we have described in Finding of Fact No. 50(h).

Palus

The area used and occupied by the Palus Tribe was located to the east of the Wanapam territory and extended on the north side of the Snake River along the Palouse River. Petitioners claimed a larger area than we have found was exclusively used and occupied in Indian fashion by the Palus Indians. Dr. Ray located 34 village sites for this tribe lying mostly along the Snake River and the Palouse River near its mouth with the Snake River. In Petitioners' Exhibit No. 535, Dr. Ray set forth a brief statement concerning each of the 34 village locations and identified the sources from which he concluded that these were Palus villages. In our Finding of Fact No. 48(i) we have set forth in detail certain of the notations listed by Dr. Ray in his citations of sources. In many instances most if not all of these sources listed by Dr. Ray raise considerable doubt that these village locations were in fact Palus villages. We have noted for example that Dr. Ray has considered that the Lewis and Clark method of mapping villages to show wooden houses in one area and mat lodges in another can be used to determine where the Nez Perce territory ended and the Palus territory began. Dr. Ray testified that the Palus could be distinguished by their characteristic use of wooden houses for winter dwelling. While he stated that the large wooden houses were unknown to any other plateau tribe except down the Columbia near the Cascade Mountains where the plateau Indians came in contact with the coast Indians, Dr. Ray did note that Lewis and Clark reported a few

wooden houses among the Nez Perce. He explained that in the area immediately adjacent to the Palus the Nez Perce had used wooden houses which they had learned to make from the Palus. Therefore this Commission cannot understand how it can be positively stated that the wooden houses noted by Lewis and Clark would necessarily have identified Palus villages when it appears that Nez Perce also used wooden houses in the area immediately adjacent to the Palus. The Commission has also noted that Father DeSmet in his map (Pet. Ex. 529) indicated a large number of "house symbols" for the Palus area below the mouth of the Palouse River. However, Father DeSmet showed a number of house symbols for other Indian tribes including Yakima, Walla Walla, Cayouse, Sinpoil and Spokane.

We have found that the evidence of record establishes that the Palus area of exclusive use and occupation was to the north of the Snake River extending from slightly below the mouth of the Palouse River to a point just east of Almota. The land used and occupied by the Palus extended north to include the Palouse River. In earlier times there was evidence concerning Palus occupation from about the mouth of the Palouse River to the west as far as the mouth of the Snake River. There is likewise evidence indicating Palus use of land areas extending to the east into Idaho. However we have concluded from a careful analysis of all of the evidence that the territory which we have described in our Finding of Fact No. 50(k) was the territory which was exclusively used and occupied in Indian fashion by the Palus and we find that the evidence does not support any conclusion that the Palus exclusively used and occupied the remaining portions of the claimed territory.

A portion of the tract which the Commission has found was exclusively used and occupied by the Palus Tribe includes an area outside the Yakima Treaty calls. A portion of this area was within the lands described in the Nez Perce treaty cession of June 11, 1855. Following the execution of the Yakima Treaty in 1855 there was a period of hostility between the Indians and the United States and United States troops were employed to subdue the Indians. For this reason Congress did not immediately act to ratify the treaty. Finally, on March 8, 1859, after the Indians had been subdued, both the Yakima and Nez Perce treaties were ratified by the Senate. We have found that from and after March 8, 1859, the United States considered and dealt with the entire Palus tract as public lands free of Indian title.

We have found that the United States on March 8, 1859, extinguished the Indian title which the constituent tribes or bands comprising the Yakima Nation held to each of the respective tracts described in our Finding of Fact No. 50.

This case shall now proceed to a determination of the value as of March 8, 1859, of those areas found to have been exclusively used and occupied by the respective tribes or bands comprising the Yakima Nation and the consideration paid by the United States in acquiring such lands.

Wm. M. Holt
Associate Commissioner

We concur:

Arthur V. Watkins
Chief Commissioner

T. Harold Scott
Associate Commissioner