

BEFORE THE INDIAN CLAIMS COMMISSION

THE STEILACOOM TRIBE OF INDIANS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 208
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: September 21, 1962

FINDINGS OF FACT

The Commission makes the following Findings of Fact:

1. At the first hearing in this case in Seattle, Washington, the following stipulation was entered into by the parties through counsel and was approved by this Commission:

Where there shall be first a determination of the matter of the Steilacoom Tribe of Indians versus the United States of America, Docket No. 208, the question whether the Claimants under the law and facts to be adduced, had, at the time of the alleged wrongful acts by the Defendant, aboriginal or Indian title, within the meaning of the act, to the lands described in the petition, or any part thereof, and if so, whether the Defendant, unlawfully deprived the Claimant thereof, postponing until after such determination, should such determination be favorable to Claimant, proof as to the value thereof, or as to any other question of fact raised by the Pleadings not heretofore determined by the Commission.

It was further ordered that said stipulation would apply in each of the Medicine Creek Treaty (10 Stat. 1132) cases. These cases being the following ones: The Nisqually, et al., Tribes of Indians, Docket No. 197; The Puyallup Tribe of Indians, Docket No. 203; The Steilacoom Tribe of Indians, Docket No. 208, and the

Squaxin Tribe of Indians, Docket No. 206.

2. It was also stipulated that there would be but one record for the above mentioned four cases; that for the purpose of this trial the Tribes involved would be known as the Medicine Creek Tribes and that the exhibits would be referred to as Medicine Creek Exhibits and be numbered consecutively, all in accordance with a previous stipulation that these four cases be consolidated for the purpose of trial, proper separation of the record to be handled by counsel in Briefs and Findings. It was also stipulated that the qualification of the expert witnesses as given in previous hearings be incorporated in this record, with qualification as to the Medicine Creek Tribes being the only subject of interrogation in these cases.

3. The history of the territory lying west of the Rocky Mountains was one of dispute between the United States and Great Britain as to sovereignty and Government.

The matter was agreed upon with regard to the border from Lake of the Woods to the Rocky Mountains in the Convention between the two countries, signed on October 20, 1818 (8 Stat. 248-350). This convention agreed that the territory west of the Rocky Mountains would be free and open for a period of ten years until October 20, 1828, to the vessels, citizens and subjects of the two powers. It was agreed that there was to be no prejudice to any claim which the two high contracting parties might have to any part of the area west of the Rocky Mountains. The only object of the convention

was to prevent disputes between the parties.

The third article of the Convention of October 20, 1818, which declared the area west of the Rocky Mountains to be free and open for a period of ten years, was extended indefinitely by the Convention of August 6, 1827. It was provided that the extension could be terminated by either party upon notice of twelve months given after October 20, 1828.

4. The question of sovereignty and government of the area on the northwest coast west of the Rocky Mountains was finally settled between the United States and Great Britain by the Treaty between the parties which was proclaimed on August 5, 1846.

Under this Treaty, among other things, the boundary was agreed upon as being the forty-ninth parallel of north latitude.

Articles III and IV of the Treaty provided as follows:

Article III

In the future appropriation of the territory south of the forty-ninth parallel of north latitude, as provided in the first article of this treaty, the possessory rights of the Hudson's Bay Company, and of all British subjects who may be already in the occupation of land or other property lawfully acquired within the said territory, shall be respected.

Article IV

The farms, lands, and other property of every description, belonging to the Puget's Sound Agricultural Company, on the north side of the Columbia River, shall be confirmed to the said company. In case, however, the situation of those farms and lands should be considered by the United States to be of public and political importance, and the United States Government should signify a desire to obtain possession of the whole, or of any part thereof, the property so required shall be transferred to the said government, at a proper valuation, to be agreed upon between the parties.

5. What is familiarly known as the Hudson's Bay Company was originally chartered by King Charles of England on May 2, 1670, as Prince Rupert's Company. By the terms of the charter this company was given the monopoly of trade in all the lands, rivers, and straits which they might discover through Hudson's Strait. This area eventually came to embrace the whole watershed of Hudson's Strait and Bay.

The company was given governmental rights which included the power to legislate for the territory and to administer justice in both civil and criminal cases. They were given military authority, the right to build fortifications, and to defend them, and to choose and commission officers.

In 1787 the North West Company was formed for the purpose of trade in the area controlled by the Hudson's Bay Company. This was an independent company without royal charter and there soon developed open warfare between the two companies. These differences were finally settled by a merger of the companies in 1821. The Hudson's Bay Company took over the assets of the North West Company and in addition was granted exclusive trading rights for twenty-one years in that part of Canada lying between Rupert's Land and the Rocky Mountains and sole British trade rights in the Oregon Country. The Company reorganized and divided the country into four departments, the Montreal or Eastern department, the Southern, the Northern, and the Columbia District, the latter created in 1824.

The Columbia District, which included the Oregon Country, was

bounded on the east by the Rocky Mountains, on the west by the Pacific Ocean, on the south by Alta California, and on the north by New Caledonia, whose sovereignty was disputed with Russia.

6. The Puget's Sound Agricultural Company was originally conceived by Dr. John McLaughlin, who was in charge of the Columbia District for Hudson's Bay Company, as a joint stock company separate and apart from the Hudson's Bay Company. However, it was finally organized by Hudson's Bay Company on February 27, 1839, as a subsidiary. There were two farms established, one at Cowlitz and one at Nisqually, both in what is now the State of Washington. The Cowlitz farm was to be for agricultural products while the Nisqually farm was to raise cattle and sheep. The Puget's Sound Agricultural Company was granted a deed of settlement dated December 23, 1840, by Great Britain. This gave the company legal power to own and operate a business and to indemnify the agents acting in the management. The Hudson's Bay Company then transferred to the Puget's Sound Agricultural Company the farms at Cowlitz and Nisqually. A part of the area concerned in this case was a part of the Puget's Sound Agricultural Company farm at Nisqually. -

The Oregon Donation Act of September 27, 1850 (9 Stat. 496) under which American citizens could acquire as much as 640 acres of land, led to difficulties between the settlers and the Puget's Sound Agricultural Company. The company took steps to protect their property by publishing notices of the extent of their land and warning the people not to settle thereon.

As a consequence of Indian trouble in 1849, the United States established Fort Steilacoom about six miles north of Fort Nisqually. Dr. William F. Tolmie, who was in charge of the Puget's Sound Agricultural Company, demanded and received the sum of \$600.00 for fifteen years as rental for the Fort Steilacoom area, claiming that the land belonged to the Puget's Sound Agricultural Company under the terms of the Treaty of 1846 between Great Britain and America.

7. On July 1, 1863, the United States and Great Britain entered into a treaty for the settlement of the claims of the Hudson's Bay Company and the Puget's Sound Agricultural Company as provided for in Articles Three and Four of the Treaty of August 5, 1846.

Under this treaty each country agreed to appoint a commissioner and provided for an arbitrator. The Commissioners held hearings over a period of years and on September 10, 1869, entered a final award in favor of the Hudson's Bay Company and the Puget's Sound Agricultural Company. The two companies then executed deeds to the United States releasing all possessory rights and claims and the land was placed in the public domain for settlement by the citizens of the United States.

8. By Act of August 14, 1848 (9 Stat. 323), Congress created the Territory of Oregon and made all laws of the United States applicable to Oregon Territory. In Section one of the Act it was provided that nothing therein contained "shall be construed to impair the rights of persons or property now pertaining to the

Indians in said territory so long as such rights remain unextinguished by treaty between the United States and such Indians
* * *."

By an Act dated June 5, 1850 (9 Stat. 437), Congress authorized the negotiation of treaties with the Indian tribes in the Territory of Oregon for the extinguishing of their claims to lands lying west of the Cascade Mountains.

By the Act of March 2, 1853 (10 Stat. 172), Congress organized the Territory of Washington out of the north half of Oregon Territory, and by Section 12 of said Act provision was made that all laws of Congress relating to Oregon Territory, not inconsistent with said 1853 Act, were continued in force in the newly created Washington Territory.

9. The Steilacoom Tribe of Indians, petitioners herein, is an identifiable group of American Indians within the meaning of the Indian Claims Commission Act of 1946, as amended (60 Stat. 1049; 25 U. S. C. A. 70(a)), and as such is entitled to maintain this cause of action. Petitioner has a tribal organization recognized by the Secretary of the Interior as having authority to represent said tribe and claim is made by and on behalf of the descendants of the members of the Steilacoom Indians who, it is alleged, exclusively used and occupied from time immemorial an area of land located west of the summit of the Cascade Range of Mountains on the eastern shore of the southern end of Puget's Sound in the State of Washington.

10. The area alleged to have been exclusively used and occupied aboriginally by the Steilacoom Indians lies within a larger area which is described in the petition as follows: Commencing at the point on the eastern side of Admiralty Inlet known as Point Pulley, about midway between Commencement and Elliott Bays; thence running in a southeasterly direction following the divide between the waters of the Puyallup and Duwamish or White Rivers, to the summit of the Cascade Mountains; thence southerly along the summit of said range to a point opposite the main source of the Skookum Chuck Creek; thence to and down said creek to the coal mine; thence northwesterly to the summit of the Black Hills; thence northeasterly through the portage known as Wilkes Portage to Point Southworth, on the western side of Admiralty Inlet; thence around the foot of Vashon's Island, easterly and southeasterly to the point of beginning.

While the above description lacks one call as used in the boundary description of the Treaty of Medicine Creek (10 Stat. 1132) it is apparent that it was intended to set forth that description in its entirety.

11. The Steilacoom Tribe or band was one of the parties to the above mentioned Treaty of Medicine Creek which was negotiated by Governor Isaac I. Stevens, the first Governor of the Territory of Washington and ex officio Superintendent of Indian Affairs for the territory, on December 26, 1854 (10 Stat. 1132). This Treaty states in its preamble as follows: "Articles of agreement and

convention made and concluded on the She-nah-nam, or Medicine Creek, in the Territory of Washington, this twenty-sixth day of December, in the year one thousand eight hundred and fifty-four, by Isaac I. Stevens, Governor and Superintendent of Indian Affairs of the said Territory, on the part of the United States, and the undersigned chiefs, head-men, and delegates of the Nisqually, Puyallup, Steilacoom, Squawskin, S'Homanish, Steh-chass, T'Peeksin Squi-aitl, and Sa-heh-wamish tribes and bands of Indians, occupying the lands lying round the head of Puget's Sound and the adjacent inlets, who, for the purpose of this treaty, are to be regarded as one nation, on behalf of said tribes and bands, and duly authorized by them."

The treaty then included the description of the area to be ceded, which is mentioned in Finding 10 above, and among other provisions stated that the treaty would be binding when it had been ratified by the President and the Senate of the United States. The treaty was ratified by the Senate on March 3, 1855.

History

12. Intensive exploration of the northwest began with the expedition of Juan Perez from Mexico in 1774. Perez reached the Queen Charlotte Islands before turning southward. The next year another Spaniard, Haceta, discovered the mouth of the Columbia River and Bodegaz Quadra reached Alaska. In 1776 Captain Cook, while searching for a northwest passage, touched at Nootka Sound. The next major trip, three years later, in 1779 was that of Arteaga, who explored as far as the western side of Hinchinbrook Island.

Discovery of the Straits of Juan de Fuca was probably made by the fur trader Barclay in 1878; but the straits were also visited by Meares in 1788, Martinez in 1789, and by an American fur trader named Gray in 1790. In that year Quimper and Lopez de Haro, sent from the Spanish base at Nootka, sailed as far as the San Juan Archipelago and, in the succeeding two years, Spanish parties under Eliza, then Galiano and Valdes, also visited this region.

The most important British exploration of the Puget Sound area was the voyage of Vancouver in 1792. He visited and charted the Sound, then sailed northward through the San Juan Islands and the Straits of Georgia, finally circumnavigating the Island that bears his name.

After the first rush of exploration there was no immediate move to colonize coastal Washington. Traders continued to visit the region, exchanging trade goods with the Indians for furs. In 1832 this fur trading activity was systemized by the establishment of a Hudson's Bay Company post at Nisqually in the upper sound, a kind of way station between the Frazier and Columbia River headquarters of the company. The Puget Sound was also thoroughly explored and mapped by an American naval expedition under Wilkes in 1841.

13. The aborigines who lived in a village on Steilacoom (Chambers) Creek between Nisqually Flats and Commencement Bay have been called Steilacoom Indians. They had contacts with the Puyallup River residents as well as with the Nisqually River Indians and

some writers have aligned them with either the Nisqually or Puyallup River Indians.

The Southern Puget Sound Indians were initially contacted by the white man as early as 1792 during Vancouver's voyages. However, nothing other than passing mention of these people appears in the historical literature before the establishment of Fort Vancouver by the Hudson's Bay Company in 1824 and the subsequent founding of Fort Nisqually in 1832 near the mouth of the Nisqually River. Frequent reference to the Steilacoom is found in the writings of Dr. W. F. Tolme and Dr. John McLaughlin (Factor and Chief Factor of the Hudson's Bay Company, respectively). During the late 1830's, a number of explorers, early tourists and Government inspection teams (British, French and American) investigated the area. As a result of these investigations there has been compiled a large list of descriptions and censuses. The most carefully done census of them all was one by Sir James Douglas, a factor of the Hudson's Bay Company. It was taken in 1838-39 in the Fort Nisqually District which included the area under consideration. This census fails to mention the Steilacoom and it is assumed that they were placed with the Nisqually Indians.

The Steilacoom were mentioned by a number of early writers. Jones, an officer at Fort Steilacoom, noted the Indians of that area. They were called, he said, the Steil-a-gua-mish and numbered 175. Their home territory was in the vicinity of the Steilacoom River. This report was in 1853.

Both Stevens and Schoolcraft (probably in imitation) listed the Steila-coom-amish who lived along Steilacoom Creek. The population of this group was given at 25. Stevens' report was dated 1854.

14. In addition to census reports, some of the early writers and a great many later historians have given summary descriptions of tribal distribution. The publication in 1877 by George Gibbs of the results of his 1854-55 study of the Indians of the area showed Steilacoom Indians as a part of the Nisqually and classified them as horse Indians. J. A. Costello, in his 1895 publication, The Siwash, showed the presence of Steilacoom Indians along Steilacoom Creek. Barry, in 1927, published a breakdown of the Salishan-speaking groups on the geographical basis of present day county lines and the Steilacoom were listed as being along Steilacoom Creek in Pierce County. Curtis, in The North American Indian, published in 1913, listed the Steilacoom as being on the shore of Puget's Sound near the site of Steilacoom, Washington.

All of the historical sources mention the Nisqually and assign them to a particular geographical area. Most use the term Nisqually as a group designation and also as a term applicable to the whole southern Puget's Sound area. Some of these sources mention numerous bands in this southern Puget Sound area, such as the S'Hotlemamish and the Steil-aku-mam-ish while in others the bands are not listed or are vaguely subsumed under the general term 'Nisqually.

Ethnography

15. One of the better known ethnological works on the Indians of Puget Sound is that done by Haeberlin and Gunther. They mention only the Puyallup and the Nisqually as southern Puget Sound groups. This does not mean that the Steilacoom did not exist but only that they were considered as a part of one of the larger groups.

Leslie Speir in Tribal Distribution in Washington covered the area of the southern Puget Sound Groups. He appears to accept Gibb's grouping of Nisqually, Puyallup and including the triblets on the southwestern Sound as a part of the Nisqually. The only mention made of the Steilacoom as such is the statement taken by him from Curtis to the effect that the Steilacoom were on the Sound in the vicinity of Steilacoom.

Marian Smith published a work titled The Puyallup-Nisqually in 1940. This was an ethnographic study of the Southern Puget Sound Nisqually speaking people of whom the Steilacoom were a part. As a part of this work there was listed Southern Puget Sound Indian villages the locations of which she obtained from informants. Dr. Herbert C. Taylor, Jr., the petitioners' expert witness, checked the sites supposedly occupied by the Steilacoom in an archaeological survey. He concluded from the evidence obtained that the village site located by Marian Smith as being south of Steilacoom (Chambers) Creek was in fact occupied only briefly and in historic times. Further investigation north of Steilacoom Creek showed a large

village site and this site was later confirmed through historical records and an informant who still recalled this as the village site of the Steilacoom Indians. (Pet. Ex. M.C. 3)

The Handbook of American Indians, pt. 2, p. 636, contains a very brief comment to the effect that the Steilacoom were a band of Salish on Steilacoom Creek and were closely related to the Nisqually.

Dr. John R. Swanton, in his Indian Tribes of North America, lists Steilacoom as a village or subdivision under Puyallup, locating it as "Steilacoom, on Steilacoom Creek and the neighboring beach, the main village on the present site of Steilacoom."

16. Defendant's expert witness, Dr. Carroll L. Riley, placed the Steilacoom Indians at the village on or near the mouth of Steilacoom or Chambers Creek prior to and subsequent to the Medicine Creek Treaty. (10 Stat. 1132) He further placed their subsistence area through the area of Anderson, McNeil and Fox Islands, through the lower Nisqually River drainage and in the region around Steilacoom Creek and Sequallitchew Creek which lies to the south of Steilacoom Creek. (Tr. Aug. 26, 27, 1954, p. 248)

According to the report submitted by Dr. Riley, the Steilacoom informants gave only the village at Steilacoom as the home of the Indians in early days. The main settlement, called tch tel cab was along lower Steilacoom (Chambers) Creek, on the north side of the Creek. (Def. Ex. 1)

Dr. Riley found the Steilacoom to have been a distinct ethnic

group which was more closely associated with the Nisqually than with the Puyallup, particularly in the orientation of their economic life. They were also an autonomous political unit. (Tr. Aug. 26, 27, 1954, p. 250, 251)

17. The Indians of the Puget Sound area conformed to the pattern set forth in previous cases in this general area. The political and land holding unit was the autonomous village. The villages were predominantly exogamous and were for the most part patrilocal, at least in the north. These Units were the foci for winter social and economic activities. In the summer individual families drifted away to join other families from other villages with whom they had kinship or friendship ties.

Economically the Steilacoom were primarily sea oriented. They placed little emphasis upon hunting because they did not become horse Indians to the same extent or as early as the Nisqually proper, who were classed as horse Indians by Gibbs. (Pet. Ex. M. C. 1-A, pp. 233 and 245) Such hunting as was done by the Steilacoom was in areas which were used by other groups who occupied the general territory. (Pet. Ex. M. C. 1-A, p. 248; Tr., Aug. 26 & 27, 1954, p. 121) The fisheries along the sound islands, Anderson, Fox and McNeil, as well as the mouth of Nisqually River, were used in common with other groups in the general vicinity. (Pet. Ex. M. C. 1-A, pp. 304, 305; Tr. June 16, 1952, p. 45)

18. It is estimated that from one-half to three-fourths of the Puget Sound Indians, including the Steilacoom, were wiped out

as a result of the epidemics which swept the general area in the late 18th and early 19th centuries. (Pet. Ex. M.C. A-1, pp. 348-351) By 1854 the effect of these epidemics was to leave more land than there were Indians to use it. As noted in Finding No. 5, Stevens and Schoolcraft reported only 25 Steilacoom Indians in 1854.

19. Based upon the evidence as set forth in the foregoing findings, it is the opinion of this Commission that the Steilacoom Indians were an identifiable band of Indians who exclusively used and occupied the following described area of land contiguous to their village on Steilacoom (Chambers) Creek in the present state of Washington on December 26, 1855, the date of the treaty of Medicine Creek and long prior thereto, and that the United States acquired said land on March 3, 1855, the date of ratification of said treaty:

Beginning at a point along the eastern shore of Puget Sound opposite Gibson Point on Fox Island, and known as Sunset Beach; thence in a due southeast direction for a distance of two (2) miles; thence in a southwesterly direction, following the east shore line of Puget Sound at a distance of two (2) miles therefrom, to a point on the south bank of Sequelichew Creek, two miles distant from the mouth thereof; thence along the south bank of said Creek to the mouth thereof; thence along the east shoreline of Puget Sound in a northeasterly direction to the place of beginning.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner