BEFORE THE INDIAN CLAIMS COMMISSION

SIMON PLAMONDON, ON RELATION OF THE COWLITZ TRIBE OF INDIANS,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 218

Decided: June 25, 1969

Appearances:
Abe W. Weissbrodt and Ruth W. Duhl, Attorneys for Plaintiff. Keith, Winston & Repsold, Lyle Keith and Weissbrodt and Weissbrodt were on the briefs.

Howard G. Campbell, with whom was Mr. Assistant Attorney General Edwin L. Weisl, Jr., Attorneys for Defendant.

OPINION OF THE COMMISSION

Chairman Kuykendall delivered the Opinion of the Commission.

This case is now before the Commission on plaintiff's claim that the United States, without payment of any compensation, took lands within the State of Washington to which the Cowlitz Tribe held Indian title. We have entered findings of fact dealing specifically with the evidence of record respecting the areas of Indian use and occupation during the material period. And, based on that evidence we have concluded that the

plaintiff Cowlitz Tribe did have aboriginal or Indian title to an area of land, albeit lesser than that claimed, which lands were taken from the plaintiff by defendant on March 3, 1855, without payment of compensation therefor.

The earliest recorded observations of the native inhabitants within the claimed area were made by Lewis and Clark during their famed expedition in 1806. While the Lewis and Clark writings do establish the presence of Indians within the general area, the Commission finds it difficult to resolve the confusion of names and positively identify the tribal bands or groups to which the explorers referred. We have entered a rather detailed finding on Lewis and Clark, not because their writings have significantly assisted the Commission in our ultimate determinaton of the plaintiff's Indian title, but rather because the Lewis and Clark Journals constitute one of the few references relied upon by plaintiff to support its expert's opinion as to Cowlitz use and occupancy of the southern portion of the claimed area. That area was the drainage of the Lewis River which plaintiff's expert, Dr. Verne F. Ray, testified was exclusively used and occupied by "Lewis River Cowlitz." In Dr. Ray's opinion Lewis and Clark identified the Indians living on both the Cowlitz and Lewis Rivers as Hul-lu-et-tell which were Cowlitz. However, we can find no other authority for equating Hul-lu-et-tell with Cowlitz and, in fact, even the reference to the Lewis River is not entirely clear. We have

noted, too, that John R. Swanton in The Indian Tribes of North America, published by the Smithsonian Institute, Bureau of American Ethnology, wrote that the Hullooetell reported by Lewis and Clark on the Cowlitz and Lewis River may have been a subdivision of the Skilloot Indians (a division of the Chinookan linguistic family).

In the years following the Lewis and Clark explorations there were a number of reports of other explorers, trappers, missionaries, government officials and others. We have entered findings on their pertinent observations. And we have considered the ethnographic mapings relating to the locations of the aborigines in the area in question. We have considered the writings of eminent anthropologists, ethnologists and historians dealing with the Indian occupants of the area. And of particular importance has been the testimony and reports of the two expert witnesses, Dr. Ray for the plaintiff, and Dr. Carroll Riley for the defendant.

Based on all the evidence presented in this case and the findings of fact entered, we have concluded that the Cowlitz Tribe exclusively used and occupied the area as described in our Finding 15, which might be generally described as the entire drainage of the Cowlitz River and extending to the south to include the Toutle River drainage. The lands along the lower and middle Cowlitz River constituted the main areas of Cowlitz occupation. There is no dispute as to these lands, the defendant agreeing that the plaintiff held Indian title to them.

The defendant, however, disputes the plaintiff's claim to the upper Cowlitz River lands. Admittedly the evidence is not as clear with respect

to the upper reaches of the Cowlitz River. The white contacts in this more remote area were infrequent. But the Commission is satisfied that the plaintiff has supported its claim to the area, and we have concluded that the Cowlitz Tribe did in fact exclusively use and occupy the entire Cowlitz River area as far east as the southern slopes of Mount Rainier.

There are, however, two areas which we have found were not exclusively used and occupied by the plaintiff Indians. One of these is the Lewis River area. Plaintiff's expert, Dr. Ray, identifies the aborigines along Lewis River as "Lewis River Cowlitz." However, virtually all of the contemporary as well as the historical and anthropological reports have identified the aborigines on the Lewis River as belonging to other tribal groups--specifically the Chinook and the Klickitat. As Dr. Ray himself has stated the "Roving Klikitats" started moving into the general area in the first half of the nineteenth century. And the evidence indicates that the Klickitats were not just visitors or travelers passing through. They lived in the area and, as reported by Herbert Beaver, were farming the land in 1836-1838. In Dr. Ray's Handbook he wrote "The 'Roving Klikitats' being very well known, the Lewis River Cowlitz known almost not at all, it became quite customary for the Lewis River country to be called 'Klikitat' country" (Pl. Ex. 161, p. A-10). Explaining that the early writers were confused and used linguistic designations, Dr. Ray equates all references to Klikitat, or Taitnapan, or Sahaptin to "Lewis

River Cowlitz", whenever such references occur in descriptions of the Lewis River Indians. We cannot accept Dr. Ray's view. The overwhelming weight of the evidence indicates that the Lewis River area was used by various Indian groups throughout the first half of the nineteenth century. It could perhaps be described as a transitional area of shifting Indian use. But certainly it was not one of Cowlitz exclusive use and occupation. Near the mouth of the Lewis River the Chinook Indians were often observed. Dr. Ray concedes the area along the Columbia River and at least 5 miles from the mouth of the Lewis River to have been held, prior to the 1830's, by Chinookan-speaking peoples. The Lewis River area has been excluded from the lands to which we have found the plaintiff held Indian title.

The other area which we have found the Cowlitz did not use and occupy was in the northwest, referred to as the Willapa Hills area. The evidence clearly establishes that these lands were not occupied by Cowlitz but rather were the territory of the Athapascan-speaking Indians known as the Kwalhiokwas. Plaintiff's contend that, when the Kwalhiokwas' population declined in the early 1800's the Cowlitz moved in and became "amalgamated" with their neighbors. But even under this theory Dr. Ray found such "amalgamation" was not accomplished until the middle of the nineteenth century which is about the time the Cowlitz lands were taken by defendant. This supposed amalgamation cannot be a basis upon which the Commission could find Cowlitz Indian title to the Willapa Hills area. Further, there

is no evidentiary basis for concluding that such an amalgamation occurred. In fact Dr. Ray is virtually the sole authority for the claim of Cowlitz occupancy of these lands. There is no evidence to support the Cowlitz tribe's claim that it had exclusively used and occupied the Willapa Hills area for a long time prior to the taking of its lands.

There remains only one matter of controversy to be resolved and that concerns the taking of the aboriginal lands of the plaintiff. There was no ratified treaty by which the Cowlitz ceded their aboriginal lands.

Plaintiff contends the lands were taken on:

(1) March 3, 1899 - as to those lands within the Mt. Rainier National Park. This is the date of the act setting aside the National Park.

(2) January 3, 1900 - as to the remaining lands. This is the date of a sale by the Northern Pacific Railroad to the Weyerhaeuser Timber Company involving some 900,000 acres.

Defendant contends the lands were taken as of January 1, 1855, which is a "mid point" between the dates of the Treaty of Medicine Creek (December 26, 1854) and the Treaty of Point Elliott (January 22, 1855).

There have been a number of decisions involving the numerous Indian tribes in the Pacific Northwest. Those cases wherein the Indians signed one of the treaties of cession have not presented any problem. However, like this case there have been other decisions in which the Indian tribes involved did not participate in any treaty.

Typical of one type of situation was the case of the Nooksack Tribe. The lands for which the Nooksack sought compensation were within the boundaries of the area ceded to the United States by the Treaty of January 22, 1855 (12 Stat. 927), referred to as the Point Elliott Treaty. However, the Nooksack were not a party to that treaty and never received any of the consideration paid under it. In fact the Nooksack never made any treaty with the United States. In the Nooksack case the Commission found that "although the lands exclusively used and occupied by that tribe in 1859 were included within the territory ceded by the Point Elliott Treaty, the tribe was not a party to the treaty and has never ceded nor relinquished its original title to the lands. . . ." However, the United States officials considered that the original title to all lands ceded under the treaty had been terminated and extinguished, and the lands were so treated as public lands to be fully disposed of by the United States as it saw fit. By such action on the part of the United States the Nooksack lands were held to have been taken by the United States, without payment of compensation, as of March 8, 1859, the ratification date of the Point Elliott Treaty. Nooksack Tribe of Indians v. United States, 3 Ind. Cl. Comm. 479 (1955).

The Nooksack appealed to the Court of Claims and the date of taking determination was one of the issues on that appeal. In affirming the Commission the Court stated:

> "The appellant tribe urges that since they were not a party to the Point Elliott Treaty of 1855 (12 Stat. 927) their rights remained unimpaired, and there was no taking of their lands until the United States citizens first came into the area as homesteaders in 1890. However, the lands ceded to the Government

> by the Treaty included all of the area involved in this case. In all of the claims of neighboring tribes, the time of taking was established by the Commission in 1859, which was the year of ratification of the Point Elliott Treaty. The United States has continued to regard and to treat all the lands ceded to it by the Treaty as public lands to be fully disposed of by the Government as and when it saw fit to do so. We conclude that the time of taking by the United States of lands claimed by the Tribe, has been correctly determined by the Commission to have been March 8, 1859." (162 C. Cl. 712, 715 (1963), cert. denied 375 U.S. 993.

The date of taking was also determined to have been as of the Point Elliott Treaty ratification date in the case of Muckleshoot Tribe of Indians v. United States, 3 Ind. Cl. Comm. 658 (1955) affirmed by order, Court of Claims dated February 23, 1966, (174 C. Cl. 1283, cert. denied 385 U.S. 847.) The Muckleshoot were also non-treaty Indians.

But the situation in this case is really the same as that involving the Upper Chehalis Tribe. In that case Governor Stevens in February, 1855, commenced treaty negotiations with the Upper and Lower Chehalis, Cowlitz (the plaintiff herein), Lower Chinook, Quinault, and Queets Indians. The Indians were not satisfied with the proposed reservations and no treaty was consummated. We held that the Chehalis' Indian title was "extinguished for all intents and purposes on March 3, 1855, the day on which negotiations looking to a treaty terminated, since from and after that date the United States dealt with such lands as part of the public domain. In this manner, and as of that date, the lands aboriginally occupied by said tribes were taken from them without their consent and without compensating them for such lands." (8 Ind. Cl. Comm. 436, 473 (1960)) The Chehalis were the Cowlitz neighbors to the northwest.

We also found that the lands of the Chinook Indians were taken as of the dates of the unratified treaties at which time "the defendant assumed definite control over the areas of land . . . disregarding the aboriginal rights of said Indians" (6 Ind. Cl. Comm. 177, 207 (1958)). The Chinook are neighboring Indians to the Cowlitz to the southwest.

In this case the lands of the Cowlitz were dealt with by the United States as public lands after the unsuccessful treaty negotiations in 1855. The lands were surveyed and much of the area was settled. We have found, therefore, that the United States deprived the plaintiff Cowlitz Tribe of its original Indian title as of March 3, 1855, without payment of any compensation therefor. Accordingly, plaintiff is entitled to a recovery under the provisions of Clause 4, section 2 of the Indian Claims Commission Act.

This case will now proceed to a determination of the acreage and the fair market value, as of March 3, 1855, of the lands described in Finding 15.

Concurring:

Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner

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Decided: June 25, 1969

FINDINGS OF FACT

The Indian Claims Commission makes the following findings of fact:

1. On August 8, 1951, Simon Plamondon, a member of the Cowlitz Tribe of Indians, filed the petition herein on relation of that tribe.

2. The plaintiff is a tribe of American Indians residing within the territorial limits of the United States, and it has the capacity and authority to bring and maintain the instant action under Section 2 of the Indian Claims Commission Act (25 U.S.C.A. 70a).

3. The instant action is concerned with aboriginal title to a tract of land in the southwestern part of the State of Washington. The area contains the entire drainage of the Cowlitz and Lewis Rivers, and that of several smaller streams. It entails most of present Clark, Cowlitz, and Lewis counties and parts of Skakamia, Pacific, and Thurston counties.

4. The earliest recorded observations of the natives in the claimed area were in the Lewis and Clark journals. In 1806 they recorded that the

"Hull-loo-el-ell" were "on the Cow-e-lis-hee" River and when Lewis and Clark "crossed into the mouth of the Chah-wah-na-hi-ooks River" they recorded that "several tribes of the Hul-lu-et-tell Nation reside on this river." Plaintiff equates Hulooetal with Cowlitz and refer to the Chah-wah-na-hi-ooks as the Sahaptin name for the Lewis River. The only authority which plaintiff can cite for these equations is Dr. Verne F. Ray, its expert witness. The Commission finds the confusions of Lewis and Clark names cannot be so easily resolved. In this regard the Commission has observed that Dr. Ray himself in 1954 noted the numerous puzzles presented by the Lewis and Clark Journals with regard to place and tribal names. In their article The Contributions of Lewis and Clark to Ethnography, Journal of the Washington Academy of Sciences, November, 1954, Dr. Ray and Nancy Oestreich Lurie wrote:

> ". . .This river was the tributary of the Columbia which is now known as the Lewis River of the state of Washington. It was first noted by Clark, who wrote of '. . . a small river which the Indians call Cha wah-na-hi-ooks.' Lewis wrote of the 'Clan-nah-min-na-mun nation.' Clark's term was merely a variant spelling for Tawanahiooks; Lewis's was sufficiently distinctive phonetically to suggest that it was a different word, belonging to the language proper, not jargon. But the Biddle text renders Lewis's words as 'the Towahnahiook nation,' which is to say 'the Snake nation.' Lewis himself identified the river as the 'Cah-wah-na-hi-ooks', that is, 'Snake' river or 'river on which the Snake Indians live'.
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> "We may now accept the following points as being safely established: The river called Multnomah or Mulknoma by the explorers is the modern Willamette; the Towanahiooks is the Deschutes; Clark's River,

> when located in north-central Oregon, is also the Deschutes; the Chawanahiooks is a river flowing south into the Columbia in western Washington. 1/ Towanahiooks and Chawanakiooks are variants of a term, probably from Chinook Jargon, which means 'snake'; the explorers applied the unmodified term not only to the two distinct and distant tributaries of the Columbia but also to the 'Shoshone or Snake' Indians; . . . Chinookan and Salishan peoples lived on the 'Snake River', which is now the Lewis; . . . " (Pl. Ex. 130, pp. 364-365)

5. Following the Lewis and Clark observations there were a number of reports of explorers, trappers, missionaries, government officials and others concerning the Indians in the general area. In his travels in the northwest, 1811-1814, Gabriel Franchere and his group met Indians on the Cowlitz River. Robert Stuart, in 1811, traveled some 260 miles up the Cowlitz River and wrote of bartering with Indians of "Le Cow-lit-sick nation." At the island known today as Bachelor Island (which is near the mouth of the Lewis River) he found Indians of the Cathlapootle (Chinookan) Nation. Alexander Henry in 1813-1814 sent four Iroquis up the Cowlitz River where they saw three villages and many scattered huts of natives.

Alexander Ross, a fur trader for a Jacob Astor company, wrote about his visits to Indian trappers from 1813 to 1821. He referred to the Cowlitz natives along that river. In the summer of 1820 Jedidiah Morse was commissioned by the President to ascertain the "actual state of the Indian tribes in our country." He reported the Cowlitsick "on the Columbia river 62 m. from its mouth; they dwell in 3 villages on the N. creek of it, called the Cowlitsick, 200 yards wide, rapid, boatable 190 miles. . . whole no. of souls - 2,400" (Pl. Ex. 14, p. 368). The 1825

1/ The Lewis River flows east to west into the Columbia.

report of John Scouler referred to "the Kliketat, a scion from the Shahaptans, who now dwell near Mount Ranier, and have advanced toward the falls of the Columbia" (Pl. Ex. 18, p. 225). In 1825 Dr. Scouler traveled in the Columbia River area. He visited a "Kowlitch" village and reported the Indians were preparing for war with the Chinook.

In 1834 D. Lee and J. H. Frost reported the "Cawalitz" on the north side of the Columbia River to the north of the Chenook and Checaldish. Between the Cowlitz and the "Dalls" it was inhabited by scattering bands of Chenooks and Clickatats. John K. Townsend's narrative of his journeys in 1834 told of a "truly fearful" depopulation caused by an epidemic disease throughout the area. He wrote that while encamped on a plain below Warrior's Point (near the mouth of the Lewis River) he was near several large lodges of Kowalitsk Indians. When the Kowalitsks became bothersome, he reported that his camp-keeper, a Klikatat, who "has no great love for Kowalitsk Indians", would "clear the coast." (Pl. Ex. 26, p. 342). The chaplain to the Hudson's Bay Company, Herbert Beaver, in an 1836-1838 report, wrote "nearly two hundred of the Klickatack Tribe of Indians have congregated, for agricultural purposes, on a large plain about fourteen miles distant from the Fort [Vancouver]. . . . They live principally by hunting, and on wild roots, their first attempt at cultivation being made, this year. . ." (Pl. Ex. 28, pp. 58, 59). The described location would be in the Lewis River valley. Lt. Charles Wilkes reported on Cowlitz Indians about the Cowlitz Landing farm of the Puget Sound Agricultural Company. A Catholic Missionary was established there and there are

recorded references to the Cowlitz Indians in that area.

Sir George Simpson, the Governor of the Hudson's Bay Company for North America, wrote in 1841:

> "When I descended the Cowlitz in 1828, there was a large population along its banks; but since then the intermittent fever, which commenced its ravages in the following year, had left but few to mourn for those that fell. During the whole of our day's course, till we came upon a small camp in the evening, the shores were silent and solitary, the deserted villages forming melancholy monuments of the generation that had passed away." (Def. Ex. 31, p. 176)

The artist Paul Kane in 1846 visited Cowlitz farm where he painted the "likeness of Kiscox, the Chief of the Cowlitz Indians, a small tribe of about 200." (Def. Ex. 11, p. 205).

In the Commissioner of Indian Affairs reports, Joseph L. Meek in 1848 listed the Cowlits as numbering 500 and living on the Cowlits River, and in 1849 Joseph Lane, Superintendent of Indian Affairs for the Territory of Oregon, recorded, "The Cowlitz Indians live on the Cowlitz river from its mouth to the settlements. They number about 120, they have a few arms; are well disposed, have a few horses, and live by hunting and fishing." (Def. Ex. 13, p. 174).

6. In May, 1853, the Commissioner of Indian Affairs instructed Isaac I. Stevens, Governor of the Washington Territory, to collect as much information as possible with respect to the number and localities of the Indians within the territory. Governor Stevens had also been appointed to direct an exploration and survey of a northern route for the proposed railroad to the Pacific. One of the members of Governor Stevens' staff

was Dr. George Gibbs. In an ethnological report contained in Governor Stevens' Reports of Explorations and Surveys, Dr. Gibbs wrote:

> "The Cowlitz, likewise a once numerous and powerful tribe, are now insignificant and fast disappearing. The few bands remaining are intermingled with those of the Upper Chihalis. According to the best estimates obtained, the two united are not over one hundred and sixty-five in number, and are scattered in seven parties between the mouth of the Cowlitz and the Satsop.
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> "The Taitinapam, a band of Klikatats already mentioned, living near the head of the Cowlitz, are probably about seventy-five in number." (Pl. Ex. 50, p. 428).

The Cowlitz and Upper Chihalis Tribes are listed as located on the Cowlitz River and the Chihalis, above the Satsop.

Dr. Gibbs in 1856 wrote on the Indians of western Washington:

> "The banks of the Columbia, from the Grand Dalles to its mouth, belong to the two branches of the Tsinuk [Chinook] nation, which meet in the neighborhood of the Kowlitz River, and of which an almost nominal remnant is left; upon the elevated plateau lying south of Mt. Adams and Mt. St. Helens, and upon the southern and western slopes of the latter, are the Klikatat and the Tai-tin-apam; on the Kowlitz, the tribe of that name, once numerous, but now almost extinct; and in the mountains north of the Lower Columbia, between Shoalwater Bay and the heads of the Tsihalis, the tribe of Willopah, (Owhillapsh,) or, as termed by Mr. Hale, Kwalhioqua, now reduced to a handful.
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> "Of the river Indians, and generally of those with whom no treaties have been made, very little is to be added to the observations contained in my former report. In that paper, the Klikatat were treated as belonging to the eastern division of this Territory, to which their original location and affinities attach them. As, however, they are here spoken of as connected with the western division, some explanation is necessary. After the depopulation of

> the Columbia tribes by congestive fever, which took place between 1820 and 1830, many of that tribe made their way down the Kathlaputl (Lewis River), and a part of them settled along the course of that river, while others crossed the Columbia and overran the Willamette Valley, more lately establishing themselves on the Umkwa. Within the last year (1855), they have been ordered by the superintendent of Oregon to return to their former home, and are now chiefly in this part of the Territory. The present generation, for the most part, look upon the Kathlaputl as their proper country, more especially as they are intermarried with the remnant of the original proprietors. No correct census has at any time been made of the Klikatat, but they are estimated at from 300 to 400, exclusive of the Taitinapam.
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> "Of the Willopah (Kwalhiokwa,) or, as they call themselves, Owhillapsh, there are yet, it appears three or four families living on the heads of the Tsihalis River above the forks. According to the account of an old man, from whom the vocabulary was obtained, the Klatskanai, a kindred band, till lately inhabiting the mountains on the southern side of the Columbia, and now also nearly extinct, formerly owned the prairies on the Tsihalis at the mouth of the Skukumchuk, but, on the failure of game, left the country and crossed the river. Both these bands subsisted chiefly by hunting. As before mentioned, they are of the Tahkali stock, though divided by nearly six degrees of latitude from the parent tribe. The fact of these migrations of the Klikatat and Klatskanai within a recent period is important, as indicating the direction in which population has flowed, and the causes inducing this separation of tribes." (Pl. Ex. 60, pp. 164, 171-172)

Hazard Stevens, in a biography of his father Governor Stevens, recorded that there were 1,115 members of the Chinook, Chehalis, and Cowlitz Indians in 1857. During the war of 1855-1856 Lieutenant Pierre Charles, with a force of Cowlitz and Chehalis Indians, scouted up the Cowlitz and Newarkum Rivers and captured a number of the enemy.

7. There are a number of ethnographic maps in evidence which show tribal names and boundaries of the territory occupied by the various

Indian groups in the area. The Alexander Ross map (1821) shows the "Cowlitz Nation" along the Cowlitz River from the great bend to near its mouth. Along the Lewis River appear the words "Cattla-pu-ttle tribe." The Horatio Hale map (1841) indicates a Kawelits territorial boundary including the Cowlitz River extending to Mount Ranier. The Upper Lewis River area and Mount St. Helens are included in the Walawala area. The mouth of the Lewis River and the area along the Columbia River appears as Tshinuk.

The John C. Fremont map (1848) shows the Cou-e-lis-ke across the Cowlitz River area above the great bend, extending from the eastern slopes of the Willapa Mountains to the headwaters of the Cispus River. The word Chinooks extends on both sides of the Columbia River at the mouth of the Lewis River.

The George Gibbs map (1853-1854) indicates the Cowlitz area extending along the Cowlitz River and to the northwest to Mount Rainier. The mid-Lewis River area is designated Taitinapam and the upper Lewis River as Klikatat. The mouth of the Lewis River is in an area lettered Upper Chinook. Governor Stevens map is virtually the same as the Gibbs' map.

The Lt. G. K. Warren map (1858) indicates Cowlitz extending from the great bend of the Cowlitz River west for some 20 miles in an area between the Cowlitz and Toutle Rivers.

A map in 1862 for the report of the Superintendent of Indian Affairs has the Kowilitsk name across the middle courses of the Toutle and Coweman Rivers.

The Franz Boas map is based on information collected by James A. Teit, Franz Boas and Leo J. Frachtenberg. Cowlitz territory is shown

extending from very near the mouth of the Cowlitz River to its sources on the slopes of Mt. Ranier and the Cascades to the south. The ridge of the Cascades forms the entire eastern boundary line, from Mount Rainier to near the Columbia River. The Tinneh are shown on the upper Chehalis River and in the Willapa Mountains.

Dr. Ray drew a map showing tribal boundaries of Sahaptin speaking people which appeared in Melville Jacobs' A Sketch of Northern Sahaptin Grammar (Pl. Ex. 121). On that map the "Mical" are placed near Mount Rainier, the Ta-ipnapam are to the south in the upper Cowlitz River area, and the Klikitats are shown to the south of Mounts St. Helens and Adams. The Chinook are shown along the Columbia River including the lower Lewis River.

The Melville Jacobs' map accompanying Historic Perspectives in Indian Languages in Oregon and Washington (Pl. Ex. 122) places the lower Cowlitz on the lower Cowlitz River to near the Columbia; the upper Cowlitz on the upriver portion of that stream. "Meshal" appears near Mount Rainier and the Kwalhioqua are in the Willapa Mountains. The Klikitat's territory includes most of the Lewis River area.

The W. W. Elmendorf map shows Cowlitz on the middle and lower courses of the Cowlitz River. The Lewis River - Mount St. Helens' area is listed as "Sahaptin Groups." The Upper Chinook are placed along the Columbia River including the mouth of the Lewis River. The Willapa Mountains are designated as the Athabaskan territory.

8. One of the most extensive ethnographic and historical descriptions

of the Cowlitz Indians was that of Edward S. Curtis. In The North American Indian he wrote:

> "The Cowlitz comprised about thirty settlements distributed along Cowlitz river from its junction with the Columbia to a point a few miles east of the Willamette meridian, a distance of forty to fifty miles. Allied by speech and by proximity, the people of these villages were not politically united by a tribal organization. Nevertheless their language contained a collective name for them -- Stlpulimuhkl.
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> "No early writer gives us an adequate estimate of the Cowlitz population before strange diseases began their ravages. Native information must therefore be relied on. From one of the few survivors was obtained, along with a full list of the villages and their location, a careful estimate of the number of houses in each settlement. The result is surprising, indicating a total of four hundred and forty-five houses, or a minimum population of more than six thousand. It is safe to say that prior to about 1830 there were four thousand people on Cowlitz river, though it must be said that a few of the villages near its mouth were partly inhabited by Chinookan people married to Cowlitz. The ethnologist Gibbs, who made his observations in 1853 and later, supposed that the maximum number of Cowlitz and Upper Chehalis was four thousand, but at the time he wrote the Cowlitz were rapidly approaching extinction.
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> The swift depletion of this tribe was due almost wholly to epidemic disease. It is known that between 1820 and 1830 congestive fever worked havoc among the tribes of the lower Columbia. About 1830 measles attacked the Cowlitz with terrible effect, and about 1845 a visitation of cholera resulted in some two hundred deaths. Then quickly followed fever and chills, and the fever-racked natives, throwing themselves into the streams for relief, hastened the end. More than half the people died at this time, declares a woman who survived the attack. Many a house was left empty, or with a single occupant. Then in rapid succession came measles, cholera, fever, and again the measles, and finally a few years later an outbreak of smallpox completed the work and left the Cowlitz little more than a name. Whiskey played but an insignificant role in the extinction of this tribe.

"The Cowlitz never entered into a treaty with the United States, but the remnant was settled on Puyallup reservation." (Pl. Ex. 113, p. 5)

He listed some 29 Cowlitz village locations along the Cowlitz River. He described the Willapa as a small, isolated, Athapascan group which occupied the course of the Willapa River from Willapa, Washington, to its source and the prairies between the headwaters of the Chehalis and Cowlitz Rivers.

The Curtis report described the Chinookan Tribes as occupying the banks of the Columbia River and its tributaries from the rapids at the Dalles to the sea. The exceptions to this territorial occupation were "the vicinity of Klickitat river where some Klickitat had come down from the interior and intermarried with the Chinookans, Lewis river, which also was held by the Klickitat, Cowlitz river, the valley of which was occupied by the Cowlitz, a Salishan tribe, and the sites of Westport and Clatskanie, Oregon, where a band of Athapascans from Willapa River had settled. In all cases these alien tribes were late comers; in other words the Chinookan stock once held unbroken a strip of territory from the ocean to the Dalles of the Columbia in Washington and Oregon." (Pl. Ex. 112, p. 85).

9. The Handbook of American Indians, by Frederick Webb Hodge, records:

"Cowlitz. A Salish tribe formerly on the river of the same name in s. w. Washington. Once numerous and powerful, they were said by Gibbs in 1853 to be insignificant, numbering with the Upper Chehalis, with whom they were mingled, not more than 165. About 1887 there were 127 on Puyallup res., Wash. They are no longer by this name, being evidently officially classed as Chehalis." (Pl. Ex. 142, p. 355)

Hodge's Handbook also describes the Taitinapam as:

> "A small Shahaptian tribe speaking the Klikitat language and formerly living between the headwaters of Lewis and Cowlitz rs. in Skamania co., Wash. They were never officially recognized by the Government and if any survive they have probably been merged in the Klikitat tribe."

and the Klikitat as:

> "A Shahaptian tribe whose former seat was at the headwaters of the Cowlitz, Lewis, White Salmon, and Klickitat rs., n. of Columbia r., in Klickitat and Skamania cos., Wash. Their eastern neighbors were the Yakima, who speak a closely related language, and on the w. they were met by various Salishan and Chinookan tribes. In 1805 Lewis and Clark reported them as wintering on Yakima and Klickitat rs., and estimated their number at about 700. Between 1820 and 1830 the tribes of Willamette valley were visited by an epidemic of fever and greatly reduced in numbers. Taking advantage of their weakness, the Klikitat crossed the Columbia and forced their way as far s. as the valley of the Umpqua. Their occupancy of this territory was temporary, however, and they were speedily compelled to retire to their old seat n. of the Columbia. The Klikitat were always active and enterprising traders, and from their favorable position became widely known as intermediaries between the coast tribes and those living e. of the Cascade range. They joined in the Yakima treaty at Camp Stevens, Wash., June 9, 1855, by which they ceded their lands to the United States. They are now almost wholly on Yakima res., Wash., where they have become so merged with related tribes that an accurate estimate of their number is impossible. Of the groups still recognized on that reservation the Topinish are probably their nearest relatives (Mooney in 14th Rep. B. A. E., 738, 1896) and may be regarded as a branch of the Klikitat, and the Taitinapam, speaking the same tongue, as another minor branch. One of the settlements of the Klikitat was Wiltkun."

10. John R. Swanton in The Indian Tribes of North America located the Cowlitz on "most of the lower and all the middle course of Cowlitz

River." (Pl. Ex. 152, p. 422). He also wrote that the Hullooetell (reported by Lewis and Clark on the Cowlitz and Lewis Rivers) may have been a subdivision of the Skilloot Indians. He listed the Cathlapotle (meaning people of Lewis River) as belonging to the Chinookan linguistic stock and located on the lower part of Lewis River and the southeast side of the Columbia River in Clark County.

11. Dr. Herbert C. Taylor and Dr. Lester L. Hoagland researched the Indian epidemic of the 1830's and their report was published in 1962 (Ethnohistory, Vol. 9, No. 2, Spring 1962). In that paper the Cowlitz were described as,

> ". . . A Salishan-speaking group now known as the Lower Cowlitz, who around 1820 lived on the Cowlitz River, from about the present town of Mossy Rock, Lewis County, Washington, to a few miles above the juncture of the Cowlitz and Columbia rivers. The term specifically does not include the Sahaptin-speaking Taidnapam, now known as Upper Cowlitz, who live on the upper reaches of the Cowlitz River, nor does it include the Chinookan-speaking Skilloot (Kreluit) who lived at the mouth of the Cowlitz River. The Skilloot are subsumed under the term Chinook." (Def. Ex. 33, p. 161)

12. Plaintiff's expert witness was Dr. Verne F. Ray who testified before the Commission and who prepared a special anthropological report Handbook of Cowlitz Indians which was introduced into evidence as plaintiff's Exhibit 161. Dr. Ray testified that the claimed area was occupied by four Indian groups which together constituted the Cowlitz Tribe. They were the (1) Lower Cowlitz, (2) Upper Cowlitz, (3) Lewis River Cowlitz and (4) the Mountain Cowlitz. He considered that the first three subdivisions

has been associated as a tribe since time beyond memory, while the fourth had amalgamated with them during the first quarter of the 19th Century. That fourth group was in Dr. Ray's opinion the occupants of the Willapa Hills and the drainage of the Upper Chehalis River. He reported that area to have been originally occupied by the Athapascan-speaking Indians known as the Kwalhiokwas. That tribe, however, dwindled in the last part of the eighteenth and the early nineteenth centuries. It is Dr. Ray's opinion that they intermarried with Cowlitz and by the middle of the nineteenth century had completed an amalgamation with the Cowlitz.

The third group, the Lewis River Cowlitz, in Dr. Ray's opinion, occupied the Lewis River territory. Although he recognized that this area has generally been ascribed to Chinook (near the Lewis River mouth) and Klikitat or Taitnapam, Dr. Ray found that this was occasioned by linguistic confusion and a lack of knowledge of these Lewis river "Cowlitz". However, Dr. Ray did report in his Handbook that prior to the 1830's Chinookan speaking peoples held a strip of territory along the Columbia River. This strip would have extended inland five miles from the mouth of the Lewis River (or, he computed, about four miles from the Columbia River).

13. Defendant's expert witness was Dr. Carroll Riley, who also testified before the Commission and whose report on the Cowlitz Indians was received in evidence as Defendant's Exhibit 38. He concluded that the Cowlitz Tribe in aboriginal times used and occupied the lower and middle courses of the Cowlitz River. Dr. Riley testified concerning Dr. Ray's "Lewis River Cowlitz" that they were:

> ". . . a group of people speaking either Taitnapan or Klikitat dialects or both . . . Dr. Jacobs who did the ethnological work on the Taitnapan seems to call them Klikitat. They are variously referred to in the earlier documents usually as Klikitat or Taitnapan. At any rate they were Sahaptin speaking peoples. I do not know. I see no evidence whatsoever for considering these Cowlitz. I am in the strongest of disagreement with Dr. Ray--the most emphatic disagreement here. I do not believe these Lewis River people should ever be considered Cowlitz and I do not think on the basis of the evidence that we have here that they were so considered (Tr. 245, 246)."

Dr. Riley also found a rather basic disagreement with Dr. Ray concerning the "Upper Cowlitz" designation. Although Dr. Riley recognized that Upper Cowlitz was a term used in Governor Stevens' time, he felt that the area was really possessed by the Taitnapan.

And Dr. Riley testified that he really did not disagree with Dr. Ray's identity of the Willapa Hills area. Dr. Riley believed the area to have been occupied by Athapascan speaking Indians who were in the process of dying out in the first part of the nineteenth century but he could not agree that those Indians "simply switched over to being Cowlitz."

14. On March 22, 1854, Colonel U. T. Simmons was appointed special Indian Agent for Washington Territory. Governor Isaac Stevens of Washington Territory instructed him to make a tour of the various tribes within his district to prepare the Indians for future negotiations. Acting Commissioner of Indian Affairs Charles E. Mix, on August 30, 1854, notified Governor Stevens that the latter had been designated by the President to conduct treaty negotiations with the Indian tribes in the

Territory of Washington. Mix instructed Stevens to endeavor to unite the numerous bands, and fragments of tribes into tribes and provide for the concentration of one or more of such tribes upon the reservations which may be set apart for their future homes.

In February 1855, Governor Stevens commenced treaty negotiations at a point on the Chehalis River with the Upper and Lower Chehalis, Cowlitz, Lower Chinook, Quinault and Queets Indians. James G. Swan, a settler in the area, who was present at the negotiations later wrote [1857]: "Around the sides of the square were ranged the tents and wigwams of the Indians, each tribe having a space allotted to it. The Coast Indians were placed at the lower part of the camp; first the Chinooks, then the Chehalis, Queniult and Quaitso, Satsop or Satchap, Upper Chehalis, and Cowlitz. These different tribes had sent representatives to the council and there were present about three hundred and fifty of them, and the best of feelings prevailed among them all." (Pl. Ex. 47, pp. 337, 338.) The proposed treaty was drawn and provided that the Indians were to cede all the territory:

> ". . . commencing on the Pacific coast, at the divide of the Quaitso and Hooch Rivers, thence east between the same, along the line of the Quillahyute tribe, to the summit of the coast range; thence south, along the line of the Chemakum and Skokomish tribes, to the forks of the Satsop River; thence southeasterly, along the lands ceded by the Nisqually Indians, to the summit of the Black Hills, and across the same to the banks of the Skookumchuck Creek; thence up said creek to the summit of the Cascade range; south, along the range, to the divide between the waters of the Cowlitz and Cathlapoodl Rivers; thence southwestwardly to the land of the Upper Chenooks, to the Columbia River and down

that river to the sea." (Pl. Ex. 47, pp. 343, 344.)

Governor Stevens proposed to the Indians that they cede their lands and move to a single reservation to be selected for them but the Indians were adamant for reservations in their respective territories. The Upper Chehalis wanted their reservation to include Mound Prairie and Smith's Prairie. The Lower Chehalis desired "three miles above and below 'Wahnoolchie' for a reserve on the Chihalis." Yowannus spoke as head chief of the Upper Chehalis while Tu-leh-uk spoke as head chief of the Lower Chehalis. Chah-lat "a sub chief from the North side of Gray's Harbor" expressed a desire to speak "of his land" which he wanted to retain. Tee-whit of "Satsop and Squatsen" wanted part of his land for a reserve. Later Anannata, "sub chief Upper Chihalis" stated he spoke for the "Cowlitz and Satsop too" and that they would give up all their land for a reserve from "the mouth of Black River down to the lower end of Smith's prairie." Yowannus stated "We have finally settled on a place for these five bands, the Cowlitz, Upper Cowlitz, Upper Chehalis, Satsop, and Mountain Indians (a remnant of the Kwalk wi o quas)." Tu-leh-uk said "We give up all our lands to you but a small piece. We Kwinai-utl speak a different language. All these on this river from Wan ool chie down are willing to go together." Mak-an-hu, "North side of Gray's Bay" stated he wanted the Governor to look out for those north of the Chehalis and "they are willing to give up their lands and go over on the west side with Tu-le-huk. They have four rivers on the Northern side which they give up." The Satsop and Cowlitz expressed a willingness to give up their lands

and go on the reserve asked for by the Upper Chehalis. Mo-te-lis, "a sub chief from north side of Gray's Harbor" claimed to own a large country on the north side of Gray's Harbor and stated he wanted to remain there. Kishkok, Cowlitz chief, said they were willing to move to the Satsop country. Yowannus, Upper Chehalis chief, stated the Governor had given him a paper "on Mr. Ford's recommendation. He gave up all the country that had belonged to him and came down to the Satchel, and wanted the place to extend to a small creek below it, for the five or six bands he had spoken of." Governor Stevens would not accede to the requests of the Indians for the reservations they desired and no treaty was consummated.

In 1857, Special Indian Agent Ford, western District of Washington Territory, wrote that the Upper and Lower Chehalis tribes were within his district. He recommended that a treaty be made with the Indians of his district, and that two reservations be set aside for them. In 1858, Indian Agent U. T. Simmons made a similar request in his annual report.

On May 17, 1864, the Commissioner of Indian Affairs wrote to the Secretary of the Interior with respect to a proposed reservation for the Chehalis Indians. The Commissioner stated in part as follows (I Kapp. 901):

> ". . . It will be seen by Superintendent Hale's letter of July 3, 1862, that the country claimed by these Indians is large, comprising some 1,500 square miles; that they have never been treated with, but that the Government has surveyed the greater part of it without their consent and in the face of their remonstrances; and the choicest portions of their lands have been occupied by the whites without any remuneration to them, and without their consent or having relinquished their claim or right to it. They have been thus

> crowded out and excluded from the use of the lands claimed by them and those which they have heretofore cultivated for their support. This has caused much dissatisfaction and threatens serious trouble, and they manifest a determination not to be forced from what they claim as their country. After various propositions made to them by Superintendent Hale, looking to their removal and joint occupation of other Indian reservations, to all which they strenuously objected, they expressed willingness to relinquish all the lands hitherto claimed by them, provided they shall not be removed, and provided that a sufficient quantity of land shall be retained by them at the mouth of the Black River as a reservation.

Although various officials of the United States continued the effort to make a treaty with the Cowlitz, the Chehalis, and other western Washington tribes, no treaty was ever executed with any of them. Following the unsuccessful end of the treaty negotiations on March 3, 1855, the United States dealt with the lands of these Indians as public lands, thereby depriving these Indian groups, including the plaintiff Cowlitz Indians, of their original Indian title without their consent and without the payment of any compensation therefor.

15. The Commission finds that at the time of the unexecuted treaty of March 3, 1855, and for a long time prior thereto the plaintiff exclusively used and occupied in Indian fashion, and hence had aboriginal title to, the tract bounded and described as follows:

> Beginning at Naches Peak, thence southward to Old Snowy Mountain, thence southwesterly along the divide between upper Cispus River and upper Cowlitz River to the mouth of Adams Creek, thence southwesterly in a straight line to the mouth of the Kalama River, thence northwesterly along the middle channel of the Columbia River to the upriver end of Fisher Island, thence northeasterly and along the divide between Coal Creek and Clark Creek to the divide separating the waters of Tucker and Delameter Creeks from Monahan Creek, thence northwesterly along said divide to

Abernathy Mountain, thence northerly in a straight line to the mouth of Dillenbaugh Creek, on the site of the present town of Chehalis, Washington, thence easterly to the southeast corner of Section 30, Range 1 W., Township 14 N., thence northeasterly to the confluence of Johnson Creek and Skookumchuck River, thence northeasterly to Bald Hill, thence due south to the divide separating the waters of the Nisqually River and the Cowlitz River and thence easterly and northeasterly along said divide to Pinacle Peak, thence northeasterly to the point of beginning.

16. The Commission further finds that the area in the northwest portion of the claimed tract, known as the Willapa Hills area, was occupied in the early 1800's by the Kwalhioqua Indians and that the Cowlitz did not exclusively use and occupy that area prior to the 1855 taking.

The Commission further finds that the Lewis River area in the southern portion of the claimed tract was variously used and occupied by other Indian groups during the 1800's. Therefore, that area was not exclusively used and occupied by Cowlitz Indians.

Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner

BEFORE THE INDIAN CLAIMS COMMISSION

SIMON PLAMONDON, ON RELATION OF THE COWLITZ TRIBE OF INDIANS, Plaintiff,	)	
v.	)	Docket No. 218
THE UNITED STATES OF AMERICA, Defendant.	)	

INTERLOCUTORY ORDER

Upon the findings of fact numbered 1 through 16 and the opinion this date entered herein, the Commission concludes that:

1. The Cowlitz Tribe had aboriginal title to the lands described in finding of fact numbered 15.

2. The defendant deprived the Cowlitz Tribe of its aboriginal title as of March 3, 1855, without the payment of any compensation therefor.

IT IS THEREFORE ORDERED that this case proceed to a determination of the acreage and the fair market value of the lands described in Finding of Fact numbered 15 as of March 3, 1855.

Dated at Washington, D. C., this 25th day of June, 1969.

Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner