

-2-

IT IS ORDERED that this case proceed for the purpose of determining the acreage of the above described tract of land, exclusive of the Ponca Indian reservation, the value thereof on March 12, 1858, and the amount of consideration paid by the defendant for said land.

Dated at Washington, D. C., this 26th day of July, 1963.

Arthur V. Watkins
Chief Commissioner

Wm. H. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner

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.)	
)	(Petitioner in Docket
Intervenor.)	Nos. 222 and 224)

0002326

Decided: July 29, 1963

ADDITIONAL FINDINGS OF FACT

Introduction

In our decision of July 28, 1959, entered with respect to the petitioners in Dockets Nos. 161 and 224, the Commission found that both petitioners were proper parties to institute the claims before the Indian Claims Commission. We found that the Yakima Treaty of June 9, 1855 (12 Stat. 951), ratified on March 8, 1859, merged the confederated tribes or bands named in the preamble to the treaty into the newly formed Yakima Nation and that the Confederated Yakima Nation became the successor in interest to the formerly separate tribal entities and all the rights of the former separate tribal entities were merged as of March 8, 1859. 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 Nation as it was created and existed pursuant to the Yakima Treaty. Concluding that both petitioning organizations contained members

or descendants of members of the band or tribes comprising the Yakima Nation, we found that both petitioners were entitled to maintain claims for the taking of the lands involved in the Yakima Treaty, and by order dated July 28, 1959, petitioner in Docket No. 224 was permitted to intervene as a petitioner in Docket No. 161.

The Commission makes the following findings of fact which are supplemental to the findings numbered 1 through 18 heretofore made herein (7 Ind. Cl. Comm. 794):

19. The petitioner in Docket No. 222 is the Confederated Tribes of the Colville Reservation as the representative of the Palus Band, or in the alternative as the successor to the claims of the Palus Band, and two named individuals, as the representatives of the Palus Band. The Commission finds that the named petitioner in Docket No. 222 may properly maintain claims before this Commission in its representative capacity on behalf of the Palus Band or Tribe. The Commission further finds that petitioner in Docket No. 222 should be allowed to intervene in the action brought by petitioner in Docket No. 161, and we have so ordered.

20. 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 1855 Yakima Treaty. The lands alleged to have been so held were, for the most part, within the area ceded by the Yakima Treaty, as described in Article I. The ceded area is described by Charles C. Royce in his compilation of Indian land cessions as Royce Area 364, shown on Map I of the State of Washington. The petitioners do

not claim all of the land included within the Yakima Treaty cession. However, the claims also include lands which extend beyond the limits of the area ceded by the Yakima Treaty. Specifically, the areas claimed on behalf of the Chelan, Columbia, Kllickitat and Palus Tribes include land 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 by the Treaty of June 15, 1846, with Great Britain. By the Act of August 14, 1848 (9 Stat. 323) the area was included within the Territory of Oregon, and by the Act of March 2, 1853 (10 Stat. 172) the claimed area became part of the Territory of Washington. Both the Oregon and Washington Territorial Acts prohibited any impairment of the rights of Indians to land in the respective territories so long as such rights remained unextinguished by treaty between the United States and such Indians.

21. Each of the tribes included within the Yakima Treaty was a separate, distinct, ethnic tribe or group. The separate tribes were at peace with one another and possessed certain similar characteristics and customs. However, 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

0002827

7. Klikitat
8. Wanapam
9. Palus
10. Skeen

C. Chinookan speaking tribe:

11. Wishram

Lewis and Clark

22. The history of the Indian tribes in Royce Area 364 began with the explorers Lewis and Clark. In October, 1805, they started down the upper Clearwater River in canoes and then traveled through the southern portion of the subject area down the Snake River to its junction with the Columbia River. Along the Snake River they noted numerous Indian villages and commented on a number of fishing sites along the river, including a fishing site on the Snake River at the mouth of Drewyers (Palouse) River. One sketch revealed the name Pal-lace at this site which might signify the ancestral Palus group. On the map of the expedition prepared in 1807 by William Clark, the "Paluos" Indians are indicated in the area north of the Snake (Lewis) River to the west of the Palouse (Drewyers) River. There were notations in the Journals indicating that most of the Indians were out on hunting expeditions at that time (the autumn season). On some of their maps Lewis and Clark used symbols to distinguish the wooden houses from the tipi or mat covered houses. Dr. Verne F. Ray, petitioner's expert anthropologist, considered that this information separated Palus Indians, who used wooden houses, from the neighboring tribes which used tipi or mat houses. However, the Commission has also noted that Dr. Ray testified that Lewis and Clark reported a "few wooden houses among the

Nez Perce but only in the area immediately adjacent to the Palus, and the Nez Perce did learn to make these houses from the Palus" (Tr. 734, 735). The Commission also has noted that Dr. Ray, in his report on the Palus, referred to Father De Smet's map (Pet. Ex. 529) and the fact that he indicated a large number of "house symbols" for the Palus area below the mouth of the Palouse River (Pet. Ex. 544, p. 30). Father De Smet's map shows a number of house symbols for other Indian tribes including Yakima, Walla Walla, Cayouse, Sinpoil and Spokane. When they reached the intersection of the Snake and Columbia rivers, Lewis and Clark took a side trip up the Columbia River as far as the mouth of the Yakima River and commented on numerous Indians with mat lodges and immense quantities of dried fish. While there is not agreement among the expert ethnologists concerning the correlation of the names used by Lewis and Clark with the tribes and bands identified with the Yakima Nation, there are a number of instances in which the band names used by Lewis and Clark have been variously identified with later bands which became part of the Yakima Nation. For example, Dr. Verne F. Ray and others in their work entitled, Tribal Distribution in Eastern Oregon and Adjacent Regions, appearing in the American Anthropologist, published in 1938, identified the following Lewis and Clark names with the English equivalent for tribes involved in the Yakima cession:

0002828

<u>Lewis and Clark name</u>	<u>English equivalent</u>	<u>Location in 1805-1806</u>
Wah-how-pum	Klikitat	North of the Columbia from Klikitat R. to Alderdale
Pal-lace	Palus	Palouse R. (Drewyers R.)
Wa-ner-po	Wanapam	Priests Rapids-White Bluffs region
Tapteel, Tapteel	Yakima	Yakima River
Shan-Wap-pom	Kittitas	Headwaters of the Klikitat and Yakima R.
Wah-na-a-chee	Wenatchi	Wenatchee River

(Pet. Ex. #30, page 389)

In several instances Dr. Ray noted that the Lewis and Clark names which he has identified with particular English equivalents have been identified by other ethnologists with different Indian bands. While scholars have not been able to agree on a positive identification of many of the Indian names used by Lewis and Clark, the Commission finds that the evidence relating to the Lewis and Clark expedition does provide information concerning the general location of a number of Indian bands within the claimed area and some of the names which were used by Lewis and Clark do in several instances appear to identify Indian bands which were the ancestors of those bands which became part of the Yakima Nation.

Hunt and Stuart

23. On the map prepared by Hunt and Stuart as of 1811, 1812 and 1813, the designation Seloutpallah (Palus) is placed to the north of the Snake River extending west of the Palouse River to the Columbia River. (Pet. Ex. 527).

David Thompson

24. During the summer of 1811 David Thompson, a fur trader, traveled down the Columbia River from Fort Colville to its mouth. To the north of the subject area Thompson stopped at the mouth of the Methow River where he reported that there was a village of Indians called Smeathhowe (Methow) on the right bank of the Columbia River. Their knowledge of the Columbia River extended no further downstream "than to the next village." (Pet. Ex. 443, page 481) The first Indians that Thompson met within the subject area were near Rock Island Rapids, near the present town of Hammond where there was a large Indian village of about 120 families who were Salish-speaking people. Dr. Ray reported that this was the largest winter village of the Columbia or Rock Island or Isle de Pierre Indians. Upon leaving this village Thompson left the village of the Salish-speaking peoples and entered the territory of the Sahaptin Indians where he reported on a village below Crab Creek in the vicinity of Priest's Rapids. In his narrative Thompson wrote "these people are altogether distinct from those we have seen, and are of the Shawpatin, or as it is sometimes pronounced, Sararpatin nation, of which there are several tribes" (Pet. Ex. 443, p. 486).

Alexander Ross

25. In the same summer of 1811 Alexander Ross, a fur trader for a Jacob Astor company, traveled up the Columbia River and established a trading post at the mouth of the Okanogan River which became known as Fort Okanogan.

0002829

At the long narrows on the Columbia he reported:

The main camp of the Indians is situated at the head of the narrows, and may contain, during the salmon season, 3,000 souls, or more; but the constant inhabitants of the place do not exceed 100 persons, and are called *Wam-pams*; the rest are all foreigners from different tribes throughout the country, who resort hither, not for the purpose of catching salmon, but chiefly for gambling and speculation; for trade and traffic, not in fish, but in other articles; the Indians of the plains seldom eat fish, and those of the sea-coast sell, but never buy fish. Fish is their own staple commodity. The articles of traffic brought to this place by the Indians of the interior are generally horses, buffalo-robes, and native tobacco, which they exchange with the natives of the sea-coast and other tribes, for the bright beads and other trinkets. But the natives of the coast seldom come up thus far. Now all these articles generally change hands through gambling, which alone draws so many vagabonds together at this place; because they are always sure to live well here, whereas no other place on the Columbia could support so many people together. The long narrows, therefore, is the great emporium or mart of the Columbia, and the general theatre of gambling and roguery.

We saw great quantities of fish everywhere; but what were they among so many: we could scarcely get a score of salmon to buy. For every fisherman there are fifty Indians, and all the fish caught are generally devoured on the spot; so that the natives of the place can seldom lay up their winter stock until the gambling season is over, and their troublesome visitors gone. All the gamblers, horse-stealers, and other outcasts throughout the country, for hundreds of miles round, make this place their great rendezvous during summer. * * * (Pac. Ex. 553, pp. 127, 130)

Turning northward on the Columbia he passed the mouth of the Yakima River and camped at Priest's Rapids where there were a large group of Indians identified by Ross as Ska-moy-num-naks which may have been a Sahaplin group. About 30 miles above Priest's Rapids Ross found a tribe of Indians identified as Ke-wauh-toh-nem-achs. Dr. Kay correlates these Indians with the Columbia, Rock Island or Lolo de Fleuve Tribe. Mr. Chalfant,

defendant's expert witness, considered this group as belonging to the

later-known Columbia or Slinkuse. Ross included this band as one of the

Okanagan divisions. As defined by Ross the Okanagan was comprised of a

linguistic group of Salish Indians with twelve groups, which inhabited

"a very large tract of country, the boundary of which may be said to

commence at the Priest's Rapids on the south; from thence embracing a

space of upwards of one hundred miles in breadth, it runs almost due north

until it reaches the She Whaps, making a distance of more than five

hundred miles in length; within this line the nation branches out into

twelve tribes, under different names. . . . These tribes, beginning at

the southern boundary and taking each according to its locality, may be

classified as follows: . . . Ke-wauh-toh-nem-achs (Columbia); Piss-cows

(Pisquous or Wenatchee); . . . Tsill-ane (Chelan); Incl-ctook (Enclat)

. . ." (Pac. Ex. 432, pp. 289, 290). On his map drawn in 1821 and revised

finally in 1849, Ross located the Columbia Indians (Ke-wauh-toh-nem-achs)

in an area west of the Columbia River just south of the Piss cows

(Pisquous or Wenatchee). He placed the Piss cows at two locations on the

Wenatchee River, the Incl-ctook (Enclat) on the Enclat River and the Tsill-

ane (Chelan) on the Chelan River. On the south branch of the Snake River

he reported the tribes to be the Falls to Passas (Falus), Shaw-ha-ap-tan

or Nez Perces proper, Pa-luck and Co-sis-pa.

Ross Cox

26. The fur trader Ross Cox was in the subject area in 1814 and 1815. In a later account of his experiences he reported that the Yackamans

(Yakimas) were a numerous tribe inhabiting "the lands on the northern banks of the Columbia, from its junction above Lewis River until some distance above a river which flows from the northward, and is called after the name of the tribe" (Def. Ex. 21, p. 229). Cox's location of the Yakima Tribe along the Columbia River is outside the area claimed in this case.

Hudson's Bay Company Reports

27. George Simpson, the governor of the Hudson's Bay Company for North America, made trips through the subject area in 1824-1825 and in 1829. He found the Indian population on the banks of the Columbia River greater than in any other part of North America that he had visited. They spent the greatest part of the year catching and drying fish, leaving the fishing spots from October to December to gather roots in the interior. They were "generally bold and warlike as regards each other and extremely jealous of any encroachments on each others territories or privileges. . ." (Pet. Ex. 555, p. 94). Simpson listed the names of the different tribes inhabiting the banks of the Columbia River from the Cascades portage to the Rocky Mountains, in 1824-1825. The list includes:

- Necutamechs - north side below Dalles
- Wascopam - north side opposite Dalles
- Yampam (Skaen) - north side opposite Chutes
- Eya Kimu - north side at Small River
- Nasputsemacks - north side at Eyakima River
- Ispipichimacks - " " " " "
- Scam nam-nacks - " " " " "

- Iscamoomacks (Wanapam) - north side at Priest's Rapids
- Incomicanatook (Columbia) - north side above Priest's Rapids
- Piscowes (Wenatchee) - north side on River same name
- Intiatook (Entiat) - north side above River same name
- Tsillani (Chelan) - north side on River same name
- Paloosh (Palus) - Lewis and Clarkes River

(Pet. Ex. 555, pp. 168-169)

Another report from Fort Nez Perces stated that five different tribes of Indians frequented that establishment. The Nez Perce and Palus were reported to have resided on the "lower part of the South Branch as far as the Forks of the Lewis's or Salmon River and up that River and Red Bears River for some distance say the Paloush reside on the lower part near the Columbia of the South Branch" (Pet. Ex. 2A). Another report placed the Palus in the area toward the junction of Lewis and Clark's River with the Columbia.

Rev. Samuel Parker

28. Rev. Samuel Parker traveled along the Columbia River during the years from 1835 through 1837. He reported that "south of the Long Rapids, and to the confluence of Lewis' [Snake] river with the Columbia, are the Yookoomans [Yakimas]. . . numbering about seven hundred" (Pet. Ex. 577, p. 304). This territorial description of the Yakima Tribe extending to the confluence of the Snake and Columbia Rivers is outside the territory claimed in the subject case.

0002831

Wilkes Expedition

29. In the summer of 1841, the United States Exploring Expedition under the command of Charles Wilkes visited the Columbia. Lt. Johnson, leading one exploring party, traveled north through Yakima territory. At the mouth of the Wenatchee River on the west bank of the Columbia River he found enclosed fields of potatoes cultivated by the Indians. At the mouth of the Entiat River he found a village of 20 people who maintained a fishing station on the opposite (or east) bank of the Columbia River.

Horatio Hale, an ethnologist and philologist with the expedition, summarized the data gained on Indian tribes. Under the heading of "Piskwaus or Piscous" he wrote:

This name properly belongs to the tribe who live on the small river which falls into the Columbia on the west side, about forty miles below Fort Okanagan. But it is here extended to all the tribes as far down as the "Priest's Rapids," who speak the same dialect with the first named. (Det. Ex. 65, p. 32)

Hale recorded that one of the two Indians from whom he obtained his information on the Columbia River Indians in the area was Chief Sakatatl-kunsum, or the Half-Sun, chief of the Sinakianish (Sinkiuse) "who live on the eastern bank of the Columbia opposite the Piskwaus." Hale also wrote:

The territory bordering on the Columbia for some distance above and below the junction of Lewis River, is in the possession of several independent bands of Indians, who all speak one language, though with some difference of dialect. The Wallavillas, properly so called, are on a small stream which falls into the Columbia near Fort Nez-perces. The Yakemas are on a large stream nearly opposite. The Paloose

tribe has a stream called after it, which empties into Lewis River; and the Kikkitats wander in the wooded country about Mount St. Helens. These, with other minor bands, are supposed, by the missionaries, to number in all, twenty-two hundred souls.

They resemble the Sahaptin, to whom they are allied by language, but are of a less hardy and active temperament. This proceeds, no doubt, from their mode of life, which is very similar to that of the Salish. Their principal food is the salmon, which they take chiefly in the months of August and September. At this season they assemble in great numbers about the Falls of the Columbia, which form the most important fishing station of Oregon. At this time, also, they trade with the Chinooks, who visit the Falls for the same purpose. (Det. Ex. 506, p. 213)

Father DeSmet

30. On his map, dated August, 1839, Father DeSmet placed the "Palouse Indians" to the north of the Snake River, east of the mouth of the Palouse River. He also indicated Nez Perce Indians to the north of the Snake River and east of the Palouse River. The Nez Perce location appears to be approximately at the location of Almota (Det. Exs. 529, 530).

John Wyld

31. In 1843, the Queen's geographer, John Wyld, showed the "Selloatpallah" (Palus) north of the Snake River in the area west of the Palouse River (Det. Ex. 531).

Reports of U. S. Indian Agents

32. In 1849, Joseph Lane, Superintendent of Indian Affairs for the Territory of Oregon, reported that the Tilhalluvit Indians lived about the Dalles on the north side of the Columbia River; the Yakimas lived on Yakama River, between the Dalles of the Columbia and the coast; the Kikkitats, who were related to the Yakimas, occupied the country north of the Columbia in the vicinity of Mount St. Helens; and the Pisquose lived on the river of that name.

0002532

In 1851 Lane's successor, Anton Dart, reported that the Klikitats claimed a "district of country" north of the Columbia; the Palus occupied a "district of country" north of the Nez Perces, and spoke the Walla Walla language (Sahaptin); the Yakimas, including the band at Priest's rapids, "own the tract of country" drained by the Yakima River and spoke the Walla Walla language.

In 1852 E. A. Starling, the Indian Agent for Puget Sound District, reported the Klikitats 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.

In 1853 Joel Palmer, Superintendent of Indian Affairs for Oregon Territory, reported the Klikitats to be roaming through the Willamette and Umpqua Valleys for a few years past. He recommended that they be removed to their proper country north of the Columbia. In 1854 he described the Palus as inhabiting the country in the fork of the Snake and Columbia Rivers.

33. By the Act of March 3, 1853, (10 Stat. 226) the President was authorized to enter into negotiations with Indian tribes west of the States of Missouri and Iowa to extinguish the title of such tribes to their lands. In May, 1853, the Commissioner of Indian Affairs instructed Isaac L. 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. Stevens made several long trips

into the area between 1853 and 1855. He had a large staff which included Dr. George Gibbs, who was a member of Captain George B. McClellan's party, and James Doty.

In August, 1853, Capt. McClellan and Dr. Gibbs explored the trails through Klikitat Pass, near Mounts St. Helens and Adams. At the highest part of the route they met a large number of Klikitats engaged in gathering berries and on their descent to the plains, the party met many Yakimas. Capt. McClellan held a council with Chief Kamaiakan. At Ahtanum Mission the party reported that the Yakimas were raising fine potatoes, melons and squashes. Members of the party also explored Nachez Pass and Dr. Gibbs explored the Yakima River to its mouth. The party explored the sources of the Yakima and Klikitat country and found a large band of Indians under Owhi, Kamaiakan's brother, camped nearby.

In October, 1854, James Doty traveling up the Yakima River found an extensive fish weir at Nachez, which he reported to be the best fishery on the Yakima River. A. W. Tinkham, another member of the exploration party, made several trips along the course of the Yakima River in January and February of 1854 where he found Yakimas in winter camps scattered along the river.

34. George Gibbs in his report to Capt. McClellan, dated March 4, 1854, wrote concerning the Klikitats and Yakimas who lived on the north side of the Columbia River. He found that the Klikitats inhabited the valleys lying between Mounts St. Helens and Adams but that they had spread over districts belonging to other tribes with a band of them being located as far south as the Umpqua.

0002833

Dr. Gibbs reported that the Yakimas occupied the country drained by the Yakima River and were divided into two principal bands, each made up of a number of villages and very closely connected. One principal band were on the Wenass River and main branch above the fork. Kamalakān and his brother, Sūlo and Sha-wa-wat were the chiefs of the first band while To-sh-gas and Oo-hat were the chiefs of the second branch. Kamalakān possessed the greatest influence and none of the other chiefs undertook any matter of importance without first consulting him. The Yakimas had gardens which were situated in the little valleys running up toward the mountains and were fenced around to exclude animals. They occupied the country around the northern or main branch of the Yakima River, operated fisheries at the Dalles, and also had fisheries in the Yakima River. On the main fork the Indians lived as far as lake Kitchelus.

Gibbs reported meeting We-ni-nah, a sub-chief living at the village of skin opposite the mouth of the Des Chutes River. His party then passed the mountains between the Yakima country and the Pisuouse. He identified the Pisuouse as a tribe of Salish or Flathead Nation. The country of the Pisuouse, lying immediately north of that of the Yakimas, included the Indians on the Columbia between Priest's and Ross Rapids, on the Pisuouse or Wlunashapam River, the En-te-at-kwi, Chelan Lake and Methow or Bantier River. However, he noted that the name of Pisuouse properly referred to a single locality on the river known to the Yakimas as Wlunashapam. He found that the Pisuouse themselves had so much intercourse with the Yakimas they had almost lost their nationality.

The bands were formerly all united under the principal chief, Stal-koo-sum.

Gibbs prepared maps of the area upon which he located the country occupied by the various bands and tribes. On the map which he locates the country Exhibit 453 he located the Klikitats in the general area as claimed by petitioners to the north of the Columbia River in the region of Mounts St. Helens and Adams. To the east and northeast he located the Yakima along the Yakima River and its tributaries. To the north of the Yakimas in the area of the headwaters of the Yakima River and to the northwest he located the Pshawwappam. To the north of that tribe he indicated a large area belonging to the Pisuouse or Sin-ka-oo-lsh, which area included the entire watersheds, to the ridge of the cascades, of the Chelan, Entiat and Wenatchi rivers. The Pisuouse or Sin-ka-oo-lsh country also extended into the plateau country east of the Columbia River extending in an arc slightly to the east of the Grand Coulee. The line did not extend to the 119th degree of longitude except where it touched it on the southeast. The southern boundary extended to the neighborhood of Priest's Rapids on the Columbia River. Gibbs also noted the Palouse Indians living in the general area claimed by the petitioning Palus Indians, although Gibbs' area extended even farther to the west including the whole lower valley of the Snake River to the Palouse River, which area is outside the Palus tract as claimed by the petitioners.

35. In August, 1853, the Secretary of the Interior instructed the Commissioner of Indian Affairs to obtain all the information necessary to the preparation of full and detailed instructions as to the terms and

00023334

conditions of the treaties to be made with the Indian tribes. The written instructions to Governor Stevens directing him to negotiate treaties with the Indian tribes of Washington Territory provided that treaties were to be made with all the tribes and fragments of tribes within the territory by which the United States would extinguish their claim of title to all the land within the territory, excepting such reservations as might be necessary for their occupancy in the future. He was instructed to endeavor to unite the numerous bands and fragments of tribes into tribes and to provide for the concentration of one or more of such tribes upon the reservation which would be set apart for their future homes.

36. On September 16, 1854, Governor Stevens made a lengthy and detailed report to the Commissioner of Indian Affairs in which he described the areas occupied by the various Indian tribes within the subject area. That report, which was very similar in detail to the report of George Gibbs, identified the areas occupied by the various Indians as follows:

* * *

The Indians on the line of the route of the exploration are the * * * west of the mountains, * * * Palouses, * * * Klikitats, Yakamas, Pisqueuse * * *.

* * *

Palouses.

The Palouse number 100 lodges, and about 500 people, and are in three bands: one at the mouth of the Pelouse river of 40 lodges, under Que-lap-tip, head chief, and Slow-yatts-se, second chief; the second band, of 12 lodges, under So-el, on

the north bank of Snake river, thirty miles below the mouth of the Pelouse; and the third band at the mouth of Snake river, of 50 lodges, under Til-ka-icks.

The Walla-Walla Nation

Under this term are embraced a number of bands living usually on the south side of the Columbia, and on the Snake river, to a little east of the Pelouse; as also the Klik-a-tats and Ya-ka-mas, north of the former. * * *

* * *

* * * The tribes of the Klik-a-tats and Yakamas inhabit properly the valleys lying between Mounts St. Helens and Adams; * but they have spread over districts belonging to other tribes, and a band of them is now located as far south as the Umpqua. Their nomadic habits render a census very difficult, though their number is not large. Dr. Dart stated them at 492, since when there has been certainly a great decrease. The number of the two principal bands, as obtained during the summer, was at Chequoss 138, and at the Kamas plain 84. These must have constituted the chief part, as it was the season of berries when they congregated there. Including all others within the Territory, the total does not probably exceed 300. In this, however, are not reckoned the 'Tai-kie-a-pain,' a band said to live apart in the country lying on the western side of the mountains, between the heads of Cathlapootl and Cowlitz, and which probably did not enter into the former estimate. But little is known of them, and their numbers are undoubtedly small. * * *

* * *

* * * The Yakamas occupy the country drained by the river of that name. They are divided into two principal bands, each made up of a number of villages and very closely connected; the one owning the country on the Nahchess and lower Yakama; the other upon the Wenass and main branch above the forks. * * *

* * *

The Pisqueuse

The country of the Pisqueuse lies immediately north of that of the Yakamas, * * *. Under this appellation are here included the Indians on the Columbia, between the

0002535

Priests' and Ross's rapids, on the Pisuouse or Win-atsh-a-pam river, the En-te-at-keon, Che-laun lake, and the Mit-haw or Barrier river. The name of Pisuouse, however, properly refers to a single locality on the river, known to the Yakimas as Win-atsh-a-pam. (Pot. Ex. 485, pp. 27, 32-47)

37. We have in our Finding of Fact No. 5 set forth in part the written instructions to Governor Stevens concerning the negotiation of treaties with the Indian tribes of the Washington Territory. And in our Finding of Fact No. 7 we have set forth the facts concerning the participation by the chiefs of the various tribes involved in the Yakima Treaty. Of the fourteen tribes which were named in the treaty as parties, three, namely the Klinquit, Li-ay-was, and Shyiks, cannot be identified today. The Indians who signed the treaty have been identified as follows:

Kamaiakun was the acknowledged head chief of all of the Indian tribes, bands and groups that were parties to the Yakima Treaty, and signed said treaty for and on behalf of all of said tribes, bands and groups. He was also the Chief of the aboriginal Yakima Tribe, and was of Yakima-Palus ancestry.

Skloom was the brother of Kamaiakun, and was also of Yakima-Palus ancestry.

Owhi was a brother of Kamaiakun, and chief of the Kittitas, or Upper Yakima, and was of mixed ancestry, including Palus.

Te-cole-kun was Chief of the Wenatchee, and represented the Pisuouse group, which included the Wenatchee, Columbia, Entiat and Chelan at the Yakima Treaty negotiations.

La-Hoom was a chief at Entiat, and represented the Pisuouse group at the Yakima Treaty negotiations.

He-ni-nock was chief of the Skeen.

Ellt Palmer was a chief of the Skeen.

Wish-och-knipts was a chief of the Skeen.

Koo-lat-toose was chief of the Palus.

Shee-ah-cotte was a chief of the Skeen or Wishram.

Tuck-quille was a chief of the Skeen.

Kalooas was a chief of the Wishram.

Scha-noo-a was a chief of the Wishram.

91a-kish was a chief of the Wishram.

38. On June 14, 1855, Governor Stevens wrote to the Commissioner of Indian Affairs transmitting the executed Yakima Treaty and the map of the ceded area. The letter from Governor Stevens stated that:

I have the honor herewith to enclose a Treaty, which I concluded on Saturday June 9th with the Tribes constituting the Yakama Nation and a copy of the official proceedings duly certified to by the Secretary.

By the treaty sixteen thousand nine hundred and twenty square miles of Territory have been ceded to the United States, and one thousand two hundred and thirty three square miles held in the two reservations provided for in the Treaty. The population of the Nation is estimated at two thousand souls as per following table, though it is believed that a careful census will show a larger number. It may run up to nearly Twenty five hundred.

Estimated population of the Yakama Nation.

Pischouse	254	Estimate	
Yakamas	500	"	
Palouses	500	"	
Band opposite to and above mouth of John Day's river	60	actually enumerated	
Band opposite to and above mouth of John Day's river	100	"	"
Band opposite to and above Dalles	370	"	"

0002536

Band opposite to and above mouth of Deschutes River	120 estimate	
Clicktats on Klikitat river	50	"
Band on White Salmon river	<u>36</u>	"
	2,000	"

* * It is a questionable matter whether the tribes could all have been consolidated in a council held in their own country, and though the negotiations were protracted, the presence of the principal chiefs of the nation and especially the great authority of Kam-ai-a-kun the head Chief, exerted a powerful influence in promoting the general result.

The concurrence of the several tribes in establishing the Nation is universal, * * *.

* * *

A map of the country ceded and of the reservations accompanies this report. (Pat. Ex. 476, pp. 26-27)

19. In transmitting the Yakima Treaty to the Secretary of the Interior for transmission to the President and the Senate for ratification, the Commissioner of Indian Affairs, in his communication dated July 9, 1856, stated that under the provisions of the treaty the various tribes listed therein had agreed to be confederated to one nation, to be called the "Yakima Nation."

As we have previously found (Findings of Fact Nos. 9 and 10) the Yakima Treaty was ratified on March 8, 1859, and thereby the confederated tribes or bands as named in the preamble to the treaty became merged into the newly formed Yakima Nation. The confederated Yakima Nation thus became the successor in interest to the formerly separate tribal entities and all of the rights of former separate tribal entities which were merged

as of March 8, 1859. By the terms of the Yakima treaty the confederated tribes and bands ceded, relinquished and conveyed to the United States all their right, title and interest in and to the lands occupied and claimed by them as described in Article I. Thus the United States on March 8, 1859, the effective date of the Yakima Treaty, extinguished the Indian title of all the tribes, bands, or groups within the area described.

A. N. Armstrong

40. A. N. Armstrong, for three years a government surveyor in Oregon, wrote an account concerning Indian occupation of the territories of Oregon and Washington, which was published in 1857. In his report, Mr. Armstrong noted that the "Clicketats" inhabited that portion of the country on the north side of the Columbia River, east of the Cascade Mountains, around Mts. Ranier and St. Helens. The Yakimas were reported to have inhabited the region of country lying east of the Klikatats and north of the Columbia River, from the Dalles to the Cascade Mountains and extending to the west for a distance of 150 miles and up the Columbia River a distance of 300 miles.

A. R. Robie

41. A. R. Robie, Special United States Indian Agent for the Yakima district, in a report, dated July 31, 1857, stated that the Yakimas occupied the country drained by the Yakima River. He reported the Yakimas to be divided into two principal bands: the Upper Yakima upon the Wenass River and main branch of the Yakima above the forks, and the Lower Yakima upon the Yakima and its tributaries, below the forks and along the Columbia, from the mouth of the Yakima to a point three miles below the

0002837

Dalles. Along the northern bank of the Columbia River he identified the Wish-hams, Click-a-hut and Skien. Their populations had been greatly reduced in 1854 by smallpox epidemics. He stated that the Wish-hams, Click-a-huts, and Skiens claimed that portion of the district lying along the Columbia River from the mouth of the Yakima River to a point three miles below the Dalles.

Hazard Stevens

42. Hazard Stevens, the son of Governor Stevens, accompanied his father on the railroad exploration and was present at the Walla Walla Treaty Council. In describing all of the Indian tribes of the Upper Columbia area, Stevens wrote "Each tribe possessed its own country, clearly defined by well-known natural boundaries, within whose limits their wanderings were restrained, save when they 'went to buffalo,' or attended some grand council or horse-race with a neighboring tribe." (Pet. Ex. 438), p. 16) In writing a biography of his father he reported that the Palus lived on the Palouse River, on the north side of the Snake and east of the Columbia.

A. J. Splawn

43. A. J. Splawn was one of the best informed early settlers having spent the greater part of his life in the central part of the present State of Washington. He moved to Klilkitat Valley in 1860 and went to Yakima County in 1861 where he was actively engaged in the cattle business for 15 years. In his book Ka-mi-akin, Last Hero of the Yakimas he recorded the information which he had gathered from his years of close personal contact with the Indians within the subject area. His writings were relied

upon by the expert witnesses of both defendant and petitioners. Dr. Ray testified that Splawn was "perhaps better acquainted personally with the Indians than any other man of the time" (Tr. 794).

The Commission finds that Mr. Splawn's writings concerning the areas of occupation of the various Indian tribes and bands within the claimed area substantiate and confirm much of the earlier recorded observations. In summary Mr. Splawn described the areas of occupation to include:

Chelan - along the Columbia River from about 10 miles below the mouth of the Methow to a few miles above Entiat and around Lake Chelan.

We-nat-sha (sometimes called Pisquas) - were originally Salishan but had become intermarried with the Kittitas band and later joined Moses on the Colville Reservation.

Ko-wah-chins or Sinkuise (called Isle de Pierre (Rock Islands)) - originally occupied the east and north bank of the Columbia from Lacostum (Saddle Mountain), now Beverly, north to a point a few miles below the mouth of the We-nat-sha. The Ko-wah-chins were in the Treaty of 1855, but refused to go on the Simcoe (Yakima) reservation but later were located on the Colville Reservation.

Wi-nah-pams or Sokulks were Sha-hap-tam Indians and occupied both banks of the Columbia from a short distance above the mouth of the Yakima River to Saddle Mountain. Splawn wrote that this band belonged to the Simcoe (Yakima) reservation

but refused to move onto it, preferring to die where their bones might rest in the sand hills beside their ancestors.

Palouse once owned the whole Palouse basin, and were strung along the mouth of Palouse River up to the mouth of Alpowa Creek. While they were included in the treaty of 1855, Splawn wrote that they did not go onto any reservation for many years but finally moved onto the Nez Perce Reservation.

Fisch-Gan-wap-pams were called E-Yakimas by the Salish tribes to the north. This tribe originally occupied the Kittitas valley, the headwater and lakes of the Yakima River. Splawn then named various small bands which belonged to the Simcoe (Yakima) Reservation but the greater number had disappeared because of death and intermarriage.

Elikitats had, about 1835, descended from the Simcoe Mountains in eastern Washington to the Cowlitz River on the lower Columbia making war upon the Chinook, and then, in 1841, they had turned their attention to the Willamette Valley.

James Mooney

44. James Mooney, an ethnologist with the Bureau of American Ethnology, in connection with an article on the Ghost Dance Religion, published in 1896, wrote a synopsis of the several tribes along the Columbia River and in the subject area. In describing the country occupied by the Methow (a tribe residing north of the claimed area) he included the basins of the Methow, Chelan, and Entiat Rivers. He stated that the

Methows were closely connected with the Piskwaus and Isle de Pierre. He described the Isle de Pierre or Columbia or Sinkiuse as originally having occupied the country in Washington from the Columbia eastward to the Grand Coulee down nearly to Crab Creek. The Wanapum or Sokulk were reported to be closely connected linguistically and politically with the Yakima, Palus and Nez Perce. They ranged along both banks of the Columbia from above Crab Creek down to the mouth of Snake River. The village where their chief Smohalla resided was on the west bank of the Columbia at the foot of Priest's Rapids. Mooney wrote that the Palus owned the whole basin of the Palus River in Washington and Idaho and extended also along the north bank of Snake River to its junction with the Columbia River. Their four villages were described as Almotu, on the north bank of Snake River, about 30 miles above the mouth of Palus River; Palus, on the north bank of Snake River just below the junction of the Palus; Ta-sawiks, on the north bank of Snake River about 15 miles above its mouth; and Kasi-spa or Cosispa at Ainsworth in the junction of the Snake and Columbia. The Piskwaus or Winatshipum lived along the Wenatchee River. He then described some six smaller bands connected with the Piskwaus which lived along the upper Yakima River at Ellensburg; about Boston Creek and Kahchass Lake, at the head of Yakima River; along the Yakima River just above Ellensburg; along the Yakima River opposite the entrance of Selah Creek; about Saddle Mountain on the east side of the Columbia above Priest's Rapids; and at a place called Kittitas on the east bank of the Columbia about Bishop's Rock and Milk Creek, below Wenatchee River.

Mooney described the Yakima as the most important tribe of the Shahaptin stock next to the Nez Perce, and reported that they occupied the country of Natchess and middle Yakima rivers. He described the Atanum-lemas as a small tribe on Atahnam Creek in Yakima County. The Klikatat were reported to have formerly occupied the southern slopes of Mt. Adams and Mt. Helens in the country of the Klikatat and Lewis Rivers. Mooney wrote that, about sixty years previous to his study, the Klikatat had crossed the Columbia and overrun the Willamet country, even penetrating as far south as the Umpqua, but that they afterward withdrew again to their proper country. He listed the Qapnish-lemas or Topinish as a small tribe on the Topinish River in Yakima County, Washington. The Chamnapum was a tribe which occupied the bend of the Columbia below the Yakima River together with the country on the lower Yakima. The Pishquitpah, identified by Lewis and Clark, resided on the Muscleshell Rapids and on the north side of the Columbia to the commencement of the high country, wintering on the borders of the Yakima River. Mooney identified this band as probably identical with the Pisko band of the Yakima. The Kkawasi or Kowassayee were a small tribe formerly occupying a village by the same name on the north bank of the Columbia about opposite the mouth of the Umatilla River. The Uchichol was another small tribe living on the north bank of the Columbia. The Skinpa or Skien was a small tribe which formerly had a village on the north bank of the Columbia at the falls opposite Celilo. The Tapanash or Enceshur had a village on the north bank of the Columbia about opposite the mouth of the DesChutes River and a little above Celilo. The Tlaqlutt or

Wushqum or Wlshram lived along the north bank of the Columbia River from Tenino about six miles above the Dalles down to the neighborhood of White Salmon River, and that their territory was the great fishing and trading resort for the tribes of that section.

James Teit

45. James Teit, working under the direction of Dr. Franz Boas, spent a few days in 1908 among the Columbia Indians on the Colville Reservation. He was primarily concerned with the collecting of a vocabulary of their language and information concerning their former tribal territories. Teit divided what he called the middle Columbia Salish group into two tribes, the Columbia and the Wenatchi. He described four divisions or bands of the Columbia group and stated that they occupied the Columbia River valley on both sides, from probably some little distance below the mouth of the Wenatchee River (about Cabinet Rapids), south to a little below Priest's Rapids and in former days down to near the Dalles, and all the adjoining plateau east of the river, from the confines of the Sanpoil, south along the borders of the Spokane, to the Palus country near the Snake River, and possibly in former days the boundaries of the Nez Perce.

He divided the Wenatchi into three bands, the Methow (a band located north of the subject area), the Chelan, and the Wenatchi proper. He also described what was probably a fourth division or band which lived south of the Wenatchee Mountains, on the north Yakima, with headquarters around Ellensburg or possibly farther to the south. He described the

0002540

country occupied by the Wenatchi as including the Columbia River valley immediately above the Columbia Salish, north to about half way between the mouths of the Methow and Okanagon rivers, and embracing all the country on the west side of the Columbia to the Cascades and a little beyond in some places, from the boundaries of the Thompson Tribe in the north to the Yakima in the south and probably in early times to the Columbia Band occupying the country east of the Balles adjoining the Upper Chinook.

Both Dr. Ray and Mr. Challant testified that many of Teit's conclusions have been refuted, especially his migration theory which placed Columbia Indians on the lower Columbia River.

With respect to the eastern boundary Teit also wrote:

The exact ancient boundaries between the Spokane and Columbia are rather vague. The Coeur d'Alene do not seem to know of any time when Columbia boundaries touched theirs. Some of them say that at one time parties of Columbia came close to their borders on the southwest, and occasionally parties of the two tribes met; that at this time parties of Spokane seldom came south of Cheney or Sprague, but in later days, perhaps after the advent of the horse, they went as far as Ritzville, and sometimes Colfax. Spokane are also said to have camped on Cow Creek, and their parties often went right to the mouth. Colfax was considered to be in Palous country, at least, in later days, but was to some extent within both Coeur d'Alene and Nez Perce spheres of influence. It seems not improbable that at one time the narrow strip of Palous country above the mouth of the Palouse was neutral ground, the contiguous tribes of Columbia, Spokane, Coeur d'Alene, and Nez Perce each making use to some extent of the part lying nearest to them. This neutral strip, and previous decimation of the Columbia population by disease, would make the expansion of the Yakima or Palous in this direction very easy. (Pat. Ex. 441, pp. 103, 104)

In discussing population of the Columbia group Teit wrote that it appeared that all or part of those Indians were included in the Yakima

Treaty. However, most of them refused to recognize the treaty as binding on them, because it was made without their consent, and thus very few of them went on the Yakima Reservation. They were mostly on the Colville Reservation, especially those who had resided on the east side of the Columbia River.

Edward S. Curtis

46. Edward S. Curtis, under the patronage of J. Pierpont Morgan, wrote a series of twenty volumes describing the Indians of the United States and Alaska. In the seventh volume, published in 1911, Curtis included a description of the Indian tribes within the subject area. His information for the publication had been gathered from Indians on both the Colville and Yakima reservations.

Curtis stated:

At the time of the earliest explorations in the Pacific Northwest the watershed of the Yakima river in south-central Washington, from its mouth to the vicinity of Kittitas creek, was held by small bands of Shabaptian stock. They were very loosely bound together, and in their speech were, and are, many dialectic differences. Yet they fell into several geographical divisions, within which there was a certain degree of cohesiveness, the component bands occupying their respective territories to the exclusion of others, but regarding themselves as closely related.

* * * Below the Salishan tribes that occupied the headwaters of Yakima river were the bands known to them as the Yakima, extending as far as Union Gap, just east of the mouth of Atanum creek. If they had a collective term for themselves, it is not now known what it was. From Union Gap to the lower reaches of the river were the Thapnish, living principally on Toppenish creek; and about the mouth of Yakima river were the Chamnapam. The application of the term Yakima was early extended to include all the bands of the Yakima valley, and it will be so used here. Each band of these divisions controlled the valley, or some

particular portion of the valley, of one of the small lateral streams. This locality was regarded as their home, but was occupied, as a rule, only in winter; for during the remainder of the year they were semi-nomadic. In the early spring they repaired to the fisheries in the larger river, and fishing, hunting, and root-digging continued until midsummer, when they moved into the mountains to gather berries. As autumn approached they returned to the valleys for the late fishing, which continued until cold weather forced them into winter quarters. (Pat. Ex. 551, pp. 3-4)

Curtis reported that a group of bands which he called the Sinkiuse were geographically associated in the region 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. These Indians, he stated, were variously known as the Columbias, the Isle de Pierre (referring to Rock Island in the Columbia River below the mouth of the Wenatchee), Moses Band, and Sinkiuse. Curtis identified seven bands within this group and identified each with a separate village site on the Columbia between the mouth of Crab Creek, on the south, and a site a short distance above the mouth of the Wenatchee on the north.

Curtis wrote that the Wenatchee were a group of small tribes whose territory extended from Lake Chehalis to the Wenatchee River. Within this group he enumerated six bands which were located as follows:

- (1) At the outlet of Lake Chehalis,
- (2) Along Entiat Creek,
- (3) On the Columbia River between Entiat Creek and Wenatchee River,
- (4) At the mouth of the Wenatchee River,

- (5) Higher up on the Wenatchee, and
- (6) At the forks of the Wenatchee, where the town of Leavenworth now stands.

Curtis also stated that the Indians on the upper Yakima River and on the Kittitas were closely related to the Wenatchee but not included among them.

Curtis stated that the Wishram were located on the north side of the Columbia River opposite the Dalles. Curtis also stated that the Pel-loat-tal-lah referred to by Lewis and Clark were the Palus, who "by all tribal traditions, never lived else where than on Snake River, about the mouth of Palouse River and eastward." (Pat. Ex. 503, p. 5)

Leslie Spier and Edward Sapir

47. Dr. Leslie Spier in 1930 published a work entitled Wishram Ethnography. Edward Sapir had visited the area in 1905 gathering linguistic information which he turned over to Spier. Spier then made ethnographic investigations in the area in 1924 and 1925. The Wishram were described as a small tribe which originally occupied the north bank of the Columbia River about the Dalles. The extent of occupation was described as roughly from White Salmon River to Ten Mile Rapids above the Dalles. Their permanent settlement was directly on the river, but they hunted and sought plants on the higher country directly back from the river to the watershed, that is, on the southern slopes of Mt. Adams and the so-called Klukitac Mountains. Spier reported that it was possible that the White Salmon Indians, who occupied the vicinity of the river of that name, and who spoke the Wishram language, may not have been properly classed as Wishram. Thus the Wishram may have

0002542

occupied a river frontage of about thirty-five miles, which was the distance from White Salmon River to Ten Mile Rapids or it may have been restricted to only about 15 miles.

Dr. Verne F. Ray

48. Dr. Verne F. Ray, an expert anthropologist, testified for petitioners in this case. Dr. Ray has done extensive work in the plateau area of northwestern America, which area includes Royce Area 364. His study of the petitioner Indians and their neighboring tribes was commenced in 1923 and has continued to the present. Dr. Ray's study of these Indians has included field work in 1928 and 1937 involving Indian informants from all of the tribes involved as well as study and evaluation of the documentary material and ethno-historical records relating to the Indians within the claimed area.

In his testimony before the Commission Dr. Ray described his findings relating to the village locations and economic uses and activities of each of the separate land using entities within the subject area. In summary his conclusions with respect to each of these tribes or groups were as follows:

(a) Chelan, Entiat and Wenatchee

The village locations for these Salish speaking tribes were located generally along the Columbia River and along Lake Chelan and the Entiat and Wenatchee Rivers respectively. The locations were indicated on a map designated as Petitioners' Exhibit No. 492(a) and described in Petitioners' Exhibit No. 493. Most of the village sites were permanent abodes.

There were 20 village locations listed for the Chelan Tribe. In describing the Chelan village number 1 (the northernmost location on the Columbia River) Dr. Ray stated "this village may have been occupied by Chelan only since 1870 or so" (Pet. Ex. 493, p. 1). In his work published in 1936 Dr. Ray described this village as the "home of a 'renegade band' of Chelan numbering fifty or 100. Formerly this was doubtless the site of a Methow village, but was left unoccupied with the early rapid dwindling of that people" (Pet. Ex. 568, pp. 141-142).

There were four village sites listed by Dr. Ray for the Entiat Tribe. Three were located on the Columbia River and one a short distance up the Entiat River. In his earlier work Dr. Ray had not included an Entiat Tribe because, as he stated, he was not convinced that any such separate tribe had existed. However, in preparing material for this case he encountered a large number of documents not previously used by him which clearly indicated to him that the "Entiat were not just a part of the Chelan Tribe, as I had before assumed, but that they were indeed a separate tribe unto themselves" (Tr. 301).

The Wenatchee area included fifteen village sites on Dr. Ray's map. Seven of the sites were located along both banks of the Columbia River with the remainder located along the Wenatchee River and its tributaries.

The areas which Dr. Ray found were occupied by the Chelan, Entiat, and Wenatchee Tribes were similar in topography and climate and offered similar economic resources which were exploited in similar manner by the respective tribes. Each area contained a stretch of the Columbia River valley, extending on the east bank of the river to the plateau above the

0002843

river. To the west the territory extended up the river or river and lake valleys. The three areas were relatively parallel to each other extending westward to the peaks of the Cascade Range.

The spring and fall seasons were mostly spent near the various fishing stations. Other seasons were devoted to gathering roots and berries and hunting for game. The higher mountain elevations supplied them with large game such as deer, elk, bear, mountain goats and sheep while the lower areas supplied smaller game such as rabbits. They found ducks, geese and turkey in the low regions.

The fishing, principally salmon, was the principal activity of these tribes. All had fishing sites within their respective territories. However, the best fishery was in the Wenatchee territory at the forks of the Wenatchee River and Icicle Creek. Weirs were used to trap the salmon during the large salmon runs. This spot was a gathering place for the Indians and many members of the Chelan and Entiat Tribes as well as those from the Columbia and Kittitas Tribes would congregate at the site. Dr. Ray reported that the Wenatchee themselves built and maintained the weirs but fish would be distributed by the Wenatchee to the visiting Indians for their daily needs. There was bartering for supplies of the fish to be taken back to the visitors' home territory.

(b) Columbia

The Columbia Tribe, although also Salish speaking and with a basic culture relatively similar to that of the Chelan, Entiat and Wenatchee, occupied a much different tribal area. Dr. Ray listed 44 village sites. About one-half the sites were near the western border of the claimed

area for this tribe. Another substantial portion formed an irregular line from Moses Lake northward to near the northern boundary. The remaining seven villages were summer camps in the northwestern section of the Columbia claimed area. Only a few village locations, on the Columbia River, were occupied through all seasons. Many other sites on the Columbia River were occupied only in the winter. Several of the village sites in the Moses Lake region were headquarters for summer festivals. Indians gathered there in July and August for their annual games, horse racing and other activities.

The area claimed for the Columbia Tribe included a stretch of the Columbia River watershed in the southwest. Most of the area was in the flat, semi-arid plateau region elevated about 1500 to 2000 feet above the Columbia River. It was covered generally with bunch grass and included small basin-like lakes and streams, many of them alkaline and not suited to man or horse.

Fishing was not of great importance to the Columbia Indians, their few fishing sites not possessing the excellence of their western neighbors. Likewise hunting was not as important as with the Chelan, Entiat and Wenatchee Tribes. Most of their subsistence was obtained from the roots, berries, deer and antelope and other small game found over the plateau region. The Columbia Indians had many horses in aboriginal times and used them in traveling over their territory.

South of the four Salish speaking tribes were the Sahaptin speaking tribes -- the Kittitas, Yakima, Klikitat, Wanapan, Palus, and Skeen -- and one Chinookan speaking tribe, the Wishram.

0002844

(c) Klittitas

The village locations for this tribe, as well as for all the Sahaptin speaking tribes, were taken from Dr. Ray's 1936 publication (Pet. Ex. 568) and plotted on the map, petitioners' exhibit number 590. The 12 village locations were along the upper reaches of the Yakima River and its tributaries to the head of Lake Cle Elum.

The territory claimed for this tribe was of fairly high elevations. The Klittitas depended for subsistence largely upon game from the mountains, root digging in the southernmost portion and fishing along the Yakima River and its tributaries.

(d) Yakima

Dr. Ray plotted 41 village locations for this tribe. He did not use those village locations numbered 1 through 3 which he had listed in his 1936 study (Pet. Ex. 568), which locations were to the east of the area claimed for the Yakima Tribe. The villages were located along the courses of the lower Yakima River and its tributary streams. A number of the locations were fairly high up in the mountains.

The Yakimas used the high mountain areas to provide them with elk, deer and bear as well as berries. They dug roots in the plateau area found in the lower levels in the northeastern and southern portions of the territory. The Yakima River provided excellent fishing locations, and it was reported that the Yakimas also raised potatoes, melons, squashes and a little barley and Indian corn.

(e) Klikitat

There were fifteen village locations noted by Dr. Ray in the territory claimed for the Klikitat. These villages were scattered in

the southern portion of the claimed area below Mt. Adams. Dr. Ray did not include on his map the village location No. 1 listed in his 1936 work since, apparently, it was located outside the Klikitat claimed area opposite the town of Lyle on the Columbia River in the territory listed as Wishram.

The territory claimed for the Klikitat was mountainous in character with prairie in the lower regions. They depended largely on large game for their subsistence as well as salmon which ascended the rivers which flowed from their territory to the Columbia River. Roots and berries were also gathered in the prairie area in the central and southern portions of the territory.

It was also reported that the Klikitat depended to a large extent on trade for articles which their country did not supply. Dr. Gibbs reported that the Klikitat had an aptitude for trading and 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). The Klikitats had ceremonial grounds at Tahk prairie near Glenwood, where they met with the Yakimas, and had their annual horse racing, gambling and other festivities.

(f) Wishram

The village locations located by Dr. Ray on his map were taken from Lewis and Clark. The seven permanent villages were described by Dr. Ray as having been located close to the river bank from one to three miles apart extending throughout their territory.

The Wishram economy was based primarily upon fishing, particularly the salmon. The Wishram had some of the best fishing locations on the

0002845

river and they caught and dried salmon in immense quantities, both for subsistence and trade. Indians from tribes some distance away came to the Dalles to trade and attend ceremonies. Deer were found in the western portions of the territory claimed for the Wishram and small game was hunted throughout the entire area.

(2) Skeen

To the east of the Wishram along the Columbia River was the Skeen Tribe. Dr. Ray located six villages along the north bank of the Columbia River citing the authority for such location the reports of the Lewis and Clark expedition which located the Skeen villages (designated by Lewis and Clark as Eneeshure) in the area of Celilo Falls, or the Great Falls as it was then called.

These Indians were quite similar to the Wishram. They depended primarily upon fish for their subsistence and trade. Celilo Falls was one of the great fishing places along the Columbia River where Indians gathered in great numbers during the fishing season. There was no appreciable number of large game in that territory, but there was small game which they occasionally hunted.

(1) Wanapam

The territory claimed for this tribe was to the east of the Kittitas and Yakima areas and south of the Columbia territory. Dr. Ray located five villages for this tribe all on the west bank of the Columbia River. The village locations were near Priest's Rapids, the home of the religious leader, Smohallah.

The territory claimed for this tribe extended far to the east. With the exception of the Columbia River in the western portion of their territory, the Wanapam area was dry, treeless, relatively level, and covered with grasses. This tribe caught great quantities of salmon in the Columbia River and used the area to the west of the Columbia to hunt antelope. The area extending to the east supplied them with roots as well as small game.

In his earlier studies Dr. Ray had designated the eastern portion of the territory claimed for the Wanapam as the location of the "Wauyukma." However, he testified that this designation was in error and he is of the opinion that the entire area was occupied by the Wanapam. "Wauyukma" was, in Dr. Ray's opinion, a village location rather than a tribal area designation.

(1) Palus

The territory claimed for the Palus Tribe was immediately to the east of the Wanapam territory. Dr. Ray has noted 34 village locations for this tribe most of them lying along the Snake River and the Palus River near its mouth with the Snake River. In Petitioner's Exhibit No. 535, Dr. Ray has set forth the 34 village locations with a brief statement concerning the type of village and its use together with the sources from which he has obtained these village locations.

The Commission has noted that the village locations in the eastern part of the claimed area along the Snake River and also those few locations to the south of the Snake River contained source citations which raise

0002546

doubts concerning the identification of the village sites as Palus.

For example:

Village location 27, which is identified by the name Alpowa, is reported by Dr. Ray to have been "a Palus village of a few houses located at the mouth of Alpowa Creek." This location is in the extreme southeastern corner of the territory claimed for the Palus. Included in the citations given by Dr. Ray as his sources for this listing are the following:

1. Lewis and Clark map (Pet. Ex. 526, part 1) -- Lewis and Clark noted an Indian village at this location with a distinguishing symbol which represented a wooden house as distinguished from their symbol designating "straw and mat lodges." Lewis and Clark did not identify the Indian tribe or group to which this village belonged.

2. Lewis and Clark (Pet. Ex. 509, pp. 107-108) -- This source indicates that Lewis and Clark reported the presence of an Indian village at this location without identifying the Indians who occupied it.

3. Doty (Pet. Ex. 504) -- This exhibit describes various trails and distances in the general area. In his "itinerary of routes from 'Whitman's Station' in the Walla Walla Valley to 'Craig's' in the Nez Perce country, the Camp d'Alene Mission and Spokane Prairie at Antoine Plantes" James Doty wrote:

Continuing down the Al-pah-hah, reach its junction with Snake River at Al-pow-ow-ow or Red Wolf's Ground . . . there is a Nez Perce Village of 25 Lodges and they have some thirty acres under cultivation principally in Corn. (Pet. Ex. 504, p. 2)

Doty does not refer to any Palus village at this location.

4. Curtis (Pet. Ex. 503, p. 158) - In his section dealing with the Nez Perce Indians, Curtis listed "the former settlements of the Nez Perces, carefully compiled data furnished by a number of their oldest and best informed representatives." Included among the villages listed in the section entitled, "Snake River from Tucanon Creek to the Clearwater," was the village Alpowih or Alpowaima, located at the mouth of Alpowa Creek with the notation that "this band was the most powerful of the Nez Perces of lower Snake River."

5. Spliden (Pet. Ex. 517, p. 175) - In his work concerning the Nez Perce Indians there is a listing of the names for a number of the bands of geographical divisions of the Nez Perces with each group containing at least one important permanent village and a number of temporary fishing camps. Included in his list of the most important divisions was Alpowema which he listed as a band on Alpha (Alpowa) Creek.

6. Dr. Ray's own ethnographic field research.

Village location 26. Proceeding down the Snake River the next village location, numbered 26, has no name identification and is merely listed as a "large Indian house" which Dr. Ray obtained from Lewis and Clark. As with the previous village location cited above, Lewis and Clark merely noted the presence of an Indian cabin without identifying the tribe or band of Indians to whom it belonged. There is no other source listed for this village location.

Village location 25 is listed as Kelaishun, which is located on the south side of the Snake River. The only source which is cited for this location is Curtis who included this village location in his description of Nez Perce settlements (Pet. Ex. 503, p. 158).

0002847

Village location 24 is identified as Wlkiapa and located on the north side of the Snake River opposite the previous village location. Dr. Ray reported that it was the largest of the Palus villages on the upper Snake River and was the primary base for exploiting the hunting and root and berry ground of the area. The first two citations for this location are Lewis and Clark, who reported two Indian huts at this location, mapping them with two symbols for wooden houses and labeling them cabins. Lewis and Clark did not identify the Indian tribe or band which occupied this village. The next citation is Curtis, who again listed this village as a Nez Perce settlement. The next citation is Spinden who listed this location as a Nez Perce band (Pet. Ex. 517, p. 173). The final citation is Dr. Ray's ethnographic field research.

Village locations numbered 21, 22 and 23, also along the Snake River, similarly cite Curtis who in each instance listed the village as a Nez Perce location.

Village locations 19 and 18 were listed by Curtis and Spinden as being Nez Perce; village location 17 was listed by Curtis as being Nez Perce; village location 13 was listed by both Curtis and Spinden as being Nez Perce; village location 12 was listed by Curtis as being Nez Perce; village location 11 was listed by both Curtis and Spinden as being Nez Perce; and village No. 8 was listed by Curtis as being Nez Perce.

Village location No. 32 on the Tucannon River was reported by Curtis and Spinden to have been a Nez Perce location. The one isolated village numbered 31 in the extreme northeastern portion of the tract does not

have any source citation and was reported by Dr. Ray to have been an approximate location of this somewhat isolated Palus village. In his testimony, in responding to a question concerning the date for the location of village No. 31, Dr. Ray replied:

The village numbered 31 was occupied in 1855 and post-1855 times . . . (Tr. 889)

Dr. Ray has explained in detail the fact that the Palus culture set that tribe apart from all of its neighbors. The main feature which, in Dr. Ray's opinion, distinguished the Palus was their characteristic use of wooden houses for winter dwelling. 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. However, Dr. Ray did note that Lewis and Clark had reported a few wooden houses among the Nez Perce but, he explained, only in the area immediately adjacent to the Palus, and that the Nez Perce learned to make these houses from the Palus (Tr. 734, 735).

The Palus territory was part of a high plateau of rather level terrain, cut by many streams. The Palus and Snake Rivers flowed through the territory in deep gorges and the precipitous falls of those rivers provided winter protection for the Palus. The areas away from the village locations were exploited for gathering roots, berries, and in hunting for subsistence. The Palus territory provided game, both large and small, throughout the entire area. Salmon fishing was one of the important sources of subsistence for the Palus. The mouth of the Palus River had long been noted as an outstanding fishing location.

0002548

Dr. Ray's anthropological field work in this region was commenced in 1923 and he worked with informants from all of the petitioner tribes. His first tentative findings on tribal boundaries were published in 1936 and, they were further refined by field studies as set forth in a publication in 1938. In general Dr. Ray's conclusions, which were made before the passage of the Indian Claims Commission Act, were arrived at from his work with informants and independent of the ethno-historical records, which have lately been reviewed by him. Dr. Ray stated that his conclusion was based on research which he had done over the years in the 1930's, supplemented by subsequent research and later studies of all of the available primary sources of material, with special emphasis or meaning upon such well-informed authorities as Lewis and Clark, Alexander Ross, I. I. Stevens and, in particular, George Gibbs. Dr. Ray placed a great emphasis on George Gibbs because he was working on the question of tribal locations. The tribal maps which Gibbs prepared in 1853 and 1854, just prior to the treaty, were ethnological maps showing tribal boundary lines and, in Dr. Ray's opinion, those tribal boundary lines were entitled to a very great deal of weight and such weight was given them by Dr. Ray in arriving at his ultimate conclusions.

Stuart Chalfant

19. Stuart Chalfant testified for the defendant as an expert ethnologist. He also submitted reports concerning his survey of the anthropological and historical material relating to the Indian tribes located within the subject area and his conclusions to be drawn therefrom.

(a) With respect to the four Salish-speaking tribes in the northern part of the claimed area, Mr. Chalfant concluded that the Wenatchee were represented at the treaty council and were a party to the Yakima Treaty. He concluded that the term Wenatchee could be applied to that single group of Indians which resided in the Wenatchee Valley or it could be applied to the Methow, Chelan, Entiat and Wenatchee bands. He concluded that the Wenatchee were in fact the Wenatcheepam named in the treaty and that the Pisuose named in the treaty referred not only to the Wenatchee, but to the other Pisuose bands. Chalfant noted that historians and ethnologists had tended to exclude the Entiat as a separate tribal group, including them as a part of either the Chelan or the Wenatchee group. The Entiat, he stated, had a mixed population of Wenatchee, Entiat or Chelan Indians and therefore existed as a "mixed population, which, nonetheless, can be looked upon as a geographic division or as a separate people occupying a geographic area, or the area bounded by the ridges surrounding the Entiat River drainage system." (Tr. 484) While Mr. Chalfant noted that there was very little relating to the early history of the Wenatchee, Columbia, Entiat, and Chelan tribes, he testified that "what meager references we do find go to confirm the existence of these several tribal groups in the area as far back as the historical records go. In other words, there is nothing in the historical records to show that these areas were occupied at a former time by groups other than the Salish groups, and they do at times--the historical records do--confirm the location of specific bands and village sites . . ." (Tr. 491)

Mr. Chalfant presented a map of that portion of Royce Area 364 claimed by the Salish tribes (Def. Ex. 67) together with acetate overlays, one of which was Defendant's Exhibit No. 67-G on which he outlined the territory which he considered was used and occupied by the Wenatchee and the Columbia tribes. He also located permanent village sites, temporary village sites, and early historical village sites. With respect to the territories which he outlined Chalfant testified that "[I have not intended to represent a boundary in the sense of territorial ownership that would imply exclusive ownership, that is, exclusive use and occupancy, on the part of the resident group; rather, these lines represent the maximum area for which there is total agreement in the framework of the anthropological and historical literature on these people for the area that the aboriginal Columbia on the one hand and the aboriginal Wenatchee on the other had occupied and utilized." (Tr. 548) Chalfant did not include areas for either the Chelan or Entiat for the reason that he did not believe that they were parties to the Yakima Treaty. However, he testified that the land used by both of those tribes was to the north with the Entiat using and occupying the territory within the Entiat River drainage and the Chelan using and occupying the territory within the Chelan drainage system.

The Wenatchee area of occupation includes the drainage system of the Wenatchee River, extending to the west to the Cascade Mountain range, to the north to the range line between the Entiat and Wenatchee River, to the south to the Wenatchee mountain range dividing the drainage of the Wenatchee River from the upper Yakima River, and to the east to the

Columbia River. The area does include a small section east of the Columbia River in the vicinity of Malaga, an area extending from approximately opposite the present town of Wenatchee down to a few miles below Malaga.

The area of occupation for the Columbia Tribe includes all of the Columbia bands, except a single band named by Curtis at Crab Creek. The area, as described by Chalfant, lies east of the Columbia River. The northern line is along the Badger Mountains south of Waterville continuing eastward to the vicinity of Coulee City and then turning south a few miles to the southwest of Coulee City 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 due south from the town of Moses Lake to approximately the 47th parallel and from that point running southwestwardly to the Columbia River to the area just north of the town of Beverly.

Although Chalfant has clearly indicated that the territories which he has described for both the Wenatchee and Columbia tribes were used and occupied by the respective tribes, he has also testified that in certain areas the use and occupation was not to the exclusion of all other Indian tribes.

On the acetate overlay (Def. Ex. 67-F) Mr. Chalfant has indicated the areas of use by alien groups. With respect to the Wenatchee area he has indicated a small area of use by the Chelan in the approximate center of the described area at the permanent Wenatchee village site which he has indicated near Leavenworth. He has also indicated an area

0002850

of Wanapam use in the southeastern portion extending mostly to the south outside the described Wenatchee area. With respect to the area used and occupied by the Columbia Tribe Chalfant has indicated an area of Wanapam use in the central-eastern portion of the Columbia tract in the Ephrata area, and in the extreme southeasterly portion in the Moses Lake area. He has also indicated use by the Sanpoil and Nespelem along the north-easterly boundary of the Columbia area and has indicated an area of use by the Okanagon along the northern boundary.

With respect to the remaining tribes which were parties to the Yakima Treaty, located to the south of the Salish-speaking tribes, Mr. Chalfant testified concerning each of said tribes as follows:

(b) Kittitas

Chalfant concluded that the Kittitas Tribe was an independent ethnic group of Indians closely related to the Yakima Tribe. He agreed with the village locations as set forth by Dr. Ray in his writings in 1936 as well as the locations described by Gibbs and Gov. Stevens. On the map identified as Def. Ex. 27 Mr. Chalfant has indicated the areas which he concluded were used and occupied by the respective Yakima Treaty tribes. The Kittitas area as outlined by Chalfant included the upper drainage of the Yakima River and conformed in general to the area mapped by Dr. Ray as Kittitas territory with the exception of an area in the southern portion which Chalfant concluded was an area of joint occupancy by the Yakima and Kittitas tribes. The area of such joint use and occupancy is indicated on the map by orange cross hatching. Chalfant testified that, "After reviewing the materials that I have researched

over the several years that I have worked on this case, and with careful consideration of the several sources of conflicting material, it is my own opinion that it can be clearly stated that the Kittitas exclusively occupied that portion of the territory indicated on my map (Def. Ex. 27) north of the orange section and entirely enclosed in green . . . and it includes the upper Yakima River Valley from Umpatum northwestward to include all of its tributaries to the Cascade Mountains and to the divide between the Yakima and the Wenatchee Rivers." (Tr. 314)

(c) Yakima

Mr. Chalfant testified that in the early literature a distinction was not made between the Kittitas and the Yakima tribes, they usually being referred to either as Chinmahpum or by some other term relating specifically to Indians of the Yakima River valley. In later history, however, differentiation between the two tribes became quite clear. Politically the Yakima were quite similar to the Kittitas in their local autonomy on village level but with a tendency toward tribal organization. They had a sense of territorial rights in certain village areas and a common area of utilization for the banding together during the season to fulfill their areas' economic needs. The area of use and occupation by the Yakima Tribe, as indicated on Defendant's Exhibit 27, conformed in most respects with the area described by Dr. Ray with the exception of an area of joint Kittitas-Yakima use along the northern boundary, which area is indicated on the map by orange cross hatching. The area of Yakima occupation included the lower Yakima River valley from Selah, south to Prosser and westward along the western tributaries of the Yakima River to include the American River drainage.

0002551

(d) Klikitat

Chalfant found that the Klikitat Tribe was a rather small group of Indians which was well known and rather mobile and had a tendency towards a division into a western and eastern division of the tribe. Chalfant testified that the indications were that Klikitats moved considerably to the west and at one time extended into the Willamette valley south of the Columbia River. He concluded that the Yakima Treaty cession dealt with the territory occupied by the eastern portion of the Klikitat Tribe, east of the Cascade Mountains and was not intended to include that area west of the Cascades. The western Klikitat Tribe was divided into a group known as the Taidnatam and the west Klikitat. Mr. Chalfant has indicated areas for both of these groups on Defendant's Exhibit No. 27 but he testified that the areas fell outside the cession territory and in his opinion would not in any way be considered as part of the aboriginal group that Gov. Stevens dealt with in the Yakima Treaty. Chalfant concluded that the Klikitat Tribe which was the aboriginal tribe of Indians which were a party to the Yakima Treaty used and occupied an area indicated on Defendant's Exhibit No. 27 which included the upper drainage systems of the Klikitat River and the White Salmon River. He also testified that the Klikitat did make use of the area south of the designated Klikitat territory all the way to the Columbia River, although that area of use was in common with Indians from other separate tribal groups. Therefore, Chalfant included an area south of the Klikitat territory along the northern portion of the Columbia River which he found to be used by several Indian groups and which area he has indicated by orange cross hatching.

(e) Wishram

Mr. Chalfant identified the Wishram, Chinookan-speaking Indians, as a tribal group which had been located from earliest white contact about their important fishing station at the Dalles. He stated that the Wishram were exceptionally shrewd traders and their location served as a pivotal point between the coastal peoples and the peoples of the interior. He identified the territory used and occupied by the Wishram on Defendant's Exhibit No. 27 and included a small area north of the Columbia River from a point a few miles below the mouth of White Salmon River eastwardly to a point a few miles below the town of Wishram. The area immediately north of the Wishram territory was cross hatched to indicate the "secondary utilization" of this area by the Klikitat.

(f) Skeen

Chalfant found that this tribe of Indians, occupying the area north of the Columbia River to the east of the Wishram, was comprised of Indians which had been variously identified, often mistakenly, in historical writings. Chalfant concluded that there were sufficient references in the historical literature to identify the Skeen Indians as a village of the Sahaptin Indians, who were identified in the Yakima Treaty as Skeenpah. He located them in a small area on the north bank of the Columbia River just above the town of Wishram.

Other Groups(g) The Ochechote

The Ochechote group of Indians was found by Chalfant to have been very similar to the Skeen and were identified as one of the named

0002852

tribes in the Yakima Treaty. He located them immediately east of the Skeen Tribe on the north bank of the Columbia River extending as far east as Cliffs.

To the east Chalfant located two groups of Indians, identified as the Eneoshun and Waiyampun. Although he stated that they might have been related to the Skeen or might assume to be included under the name Skeen, they were not specifically identified as parties to the Yakima Treaty, and he therefore designated an area for them on Defendant's Exhibit No. 27 indicating that they were "non-treaty" Indians.

Chalfant also identified a group known as the Kowassayee Indians, who were parties to the Yakima Treaty, but concerning whom there was no specific information as to their territorial holdings or as to the extent of this group of Indians. Chalfant assumed that they were extinct although he had some information that this band or village had been located on the north shore of the Columbia River opposite the mouth of the Umatilla River. The area so located by Chalfant is outside the claimed area.

(b) Wanapam

Chalfant identified this tribe of Sahaptin Indians as a small tribe related ethnically and linguistically to the Yakima and Kittitas tribes. They occupied a territory which was adjacent to the east to the Kittitas and Yakima. Their village locations were located on both shores of the Columbia River extending from approximately the mouth of Crab Creek or the present site of Beverly southward to Arrowsmith. Chalfant identified an area which was, in his opinion, used and occupied by the Wanapam which included the bend of the Columbia River at Priest's Rapids and the White Bluff area.

(1) Palus

Chalfant testified that the Palus were members of the Sahaptin group of Indians being closely affiliated to the Walla Walla and Wanapam and showing slight divergence from the Yakima. Historically they were generally reported to have occupied two major areas, one at the mouth of the Palouse River on the Snake River and the other at the mouth of the Snake River on the Columbia River. With respect to the village locations which have been identified at various times in history Chalfant concluded that only one, that at the mouth of the Palouse River, could be positively identified as the Palus band which was a party to the Yakima Treaty. Chalfant testified that the Palus Tribe ranged over a large territory utilizing many areas in common with neighboring Indian tribes. However he concluded that the range of Palus permanent occupation extended from approximately 10 miles below the mouth of the Palouse River on the Snake, up through the Palouse River valley itself at least as far as Almoto on the east and perhaps as far as Wawawai.

50. Upon the foregoing findings of fact and upon all the evidence the Commission finds that the various constituent tribes comprising the confederated Yakima Nation each held Indian title, through exclusive use and occupation in Indian fashion, to areas of land described, respectively, as follows:

(a) Chelan

Beginning at a point where the main Sawtooth Ridge abuts and adjoins the Cascade Mountains, said Ridge being the divide between the waters of the Methow River on the north and the Stehekin River and Lake Chelan on the south, thence south-easterly along said Sawtooth Ridge to the Columbia River,

0002853

thence southerly along the Columbia River to its intersection with a line running along the main ridge of the Chelan Mountains, which ridge separates the waters of Lake Chelan and the Entiat River, thence northwesterly along the main divide of the Chelan Mountains to its junction with the main divide of the Cascade Mountains, thence northerly and easterly to the point of beginning.

(b) Entiat

Beginning at the point where the main ridge of the Chelan Mountains abuts and adjoins the main ridge of the Entiat Mountains, thence southeasterly along the main divide of the Chelan Mountains, which ridge separates the waters of Lake Chelan and the Entiat River to the Columbia River, thence southerly along the Columbia River to its intersection with a line running along the main ridge of the Entiat Mountains, which ridge separates the waters of the Entiat River and the Wenatchee River, thence northwesterly along the main ridge of the Entiat Mountains to the point of beginning.

(c) Wenatchee

Beginning at the point where the main range of the Chelan Mountains abut and adjoin the main range of the Cascade Mountains, thence easterly along the ridge of said Chelan Mountains to the point of junction with the main ridge of the Entiat Mountains, thence southeasterly along said ridge of the Entiat Mountains to the Columbia River, thence southerly along the Columbia River to its intersection with a line running along the divide which separates the waters of Stemilt Creek from the waters of Colockum Creek and thence southwesterly along said divide to the main ridge of the Wenatchee Mountains, thence northwesterly along said ridge to the junction with the main ridge of the Cascade Mountains, thence northerly along the main Cascade ridge to the point of beginning.

(d) Columbia

Beginning on the Columbia River at Rock Island, Washington, thence northerly along the divide which separates the waters of the Columbia River on the west from the waters of Beaver Creek on the east to the head of Beaver Creek, thence north-easterly to Waterville, Washington, thence easterly to the Coulee City, Washington, thence southerly to Othello, Washington, thence westerly along the line of 46° 50' north latitude to its intersection with Crab Creek, thence westerly along Crab Creek to the Columbia River, thence northerly

along the Columbia River to a point east of the eastern extremity of the ridge of Ryegrass Mountain, thence west to said extremity, thence westerly along said ridge to the westerly extremity thereof, thence westerly along the ridge which separates the waters of Middle Canyon and Ryegrass Coulee to the highest point between the source of the waters of Middle Canyon Creek and the source of the waters of Ryegrass Coulee, thence northerly along the divide which separates the waters of the Yakima River on the west from the Columbia River on the east to Whiskey Dick Mountain and continuing northerly to Colockum Pass, thence northeasterly along the ridge separating the waters of Stemilt Creek and Colockum Creek to the point of beginning.

(e) Kittitas

Beginning at the point where the main ridge of the Wenatchee Mountains abuts and adjoins the main ridge of the Cascade Mountains, thence southeasterly along said ridge of the Wenatchee Mountains to Colockum Pass, thence southerly along the ridge which divides the waters of the Yakima River and the Columbia River to Whiskey Dick Mountain and continuing southerly along said divide to the summit of the Boylston Mountains, thence easterly along the ridge of Boylston Mountains to the summit at the eastern extremity of said mountains, thence southerly to the intersection with the ridge of the Saddle Mountains, thence easterly along the ridge of Saddle Mountains to the highest point in said mountains, thence southerly along the divide which separates the waters of Squaw Creek on the west and Hanson Creek and Alkali Canyon on the east to the abutment of said divide with Umtanum Ridge, thence northwesterly along said ridge to the junction with Manastask Ridge, thence northwesterly along the ridge which divides the waters of the Naches River and the Yakima River to the summit of the Cascade Mountains, thence northerly along the main ridge of the Cascade Mountains to the point of beginning.

(f) Yakima

Beginning at a point on the main crest of the Cascade Mountains which is the commencement of the ridge which separates the waters of the Yakima River and the Naches River, thence southeasterly along said ridge to the junction with Manastask Ridge, thence southeasterly to a point which is the northwest extremity of Umtanum Ridge, thence southwesterly along said ridge to the commencement of the divide which separates the headwaters of Selah Creek and Cold Creek, thence

0002854

southerly along said divide to the summit of Yakima Ridge, thence southerly along the ridge which passes immediately east of the Mackintosh-Douglas Ranch to the intersection with the Rattlesnake Hills at approximately $46^{\circ}30'$ latitude, $128^{\circ}29'$ longitude, thence easterly along the Rattlesnake Hills to the eastern extremity thereof, thence southerly to the intersection of Corral Canyon and Sunnyside Canal, thence southerly across the Yakima River to the highest point on the escarpment southeast of Chandler, Washington, thence southwesterly to Davis Ranch thence southwesterly to the town of Bickleton, Washington, thence westerly to the summit of Grayback Mountain, thence westerly along the main ridge of Grayback Mountain to the Klikitat River, thence northerly along the Klikitat River to its source, thence northwesterly along the ridge of Goat Rocks to Old Snowy Mountain on the main ridge of the Cascade Mountains, thence northerly along said ridge of the Cascade Mountains to the point of beginning.

(g) Klikitat

Beginning at the summit of Old Snowy Mountain on the main ridge of the Cascade Mountains, thence southeasterly along the ridge of Goat Rocks to the source of the Klikitat River, thence southerly along the Klikitat River channel to the main ridge of Grayback Mountains, thence southerly along the ridge which separates the waters of Dry Canyon Creek and the main Klikitat River to Klikitat Creek, thence southerly across Klikitat Creek to the intersection of $119^{\circ}59'$ longitude and $45^{\circ}42'30''$ latitude, thence westerly five and one-half miles to the summit of a peak of 3210 foot elevation, thence northwesterly to a point on the Klikitat River which is one mile below Pitt, Washington, thence northwesterly to Appleton, Washington, thence northwesterly to the divide which separates the waters of the White Salmon River on the northwest and the waters of the Columbia River on the southeast, thence southwesterly along said divide to a point on the White Salmon River which is one-half mile south of the mouth of Little Buck Creek, thence westerly to the summit of Underwood Mountain, thence northwesterly to the summit of Hawk Butte, thence northerly along the divide which separates the waters of the Wind River on the west and the White Salmon River on the east to the main ridge of the Cascade Mountains, thence northerly along said ridge to the point of beginning.

(h) Wishram

Beginning on the Columbia River at mid-channel opposite the mouth of the White Salmon River, thence northerly along the channel of the White Salmon River to a point one-half

mile south of the mouth of Little Rock Creek, thence north-easterly along the divide which separates the waters of Rattlesnake Creek on the north and Catherine and Major Creeks on the south to the headwaters of Major Creek, thence easterly to Appleton, Washington, thence southeasterly to a point on the Klikitat River which is one mile below Pitt, Washington, thence southeasterly to a peak of 3210 feet elevation which is situated five and one-half miles north of Spearfish Station, Washington, thence to a point five and one-half miles east, thence southerly to a point on the Columbia River which is one-third mile west of $121^{\circ}00'$ longitude, thence westerly along the Columbia River to the point of beginning.

(i) Skeen

Beginning at a point on the Columbia River one-third mile west of $121^{\circ}00'$ longitude, thence northerly to Swale Creek, thence northeasterly along Swale Creek until it crosses the northern boundary of Township 3 North, thence easterly along the northern boundary of Township 3 North to $120^{\circ}30'$ longitude thence southerly to the Columbia River thence westerly along the Columbia River to the point of beginning.

(j) Wanapam

Beginning at a point on the Columbia River one and one-half miles south of the mouth of Crab Creek, thence easterly to the main ridge of Saddle Mountains, thence easterly along said ridge to $119^{\circ}30'$ longitude, thence southerly to the Columbia River, thence along the Columbia River to the point where the boundary of Grant and Franklin Counties touches the Columbia River, thence southwesterly across the Columbia River to the westerly extremity of the ridge of Gable Mountain, thence southerly to the point on the ridge of the southeasterly spur of the Rattlesnake Hills where $119^{\circ}36'$ longitude crosses said ridge, thence westerly along said ridge to the intersection with $120^{\circ}8'$ longitude, thence northerly along the ridge which passes immediately east of the Mackintosh-Douglas Ranch to the summit of Yakima Ridge, thence northerly along the divide which separates the waters of the head of Selah Creek and the head of Cold Creek to the summit of Umtanum Ridge, thence northwesterly along said ridge to the point of abutment with the divide which separates the waters of Squaw Creek on the west and Hanson and Alkali Creeks on the east to the highest point in the Saddle Mountains, thence westerly to the intersection with the ridge of the Boylston Mountains, thence northerly along said ridge to the summit of the eastern extremity of the main ridge of the Boylston Mountains,

0002355

ence westerly along said main ridge to the highest point of the Boylston Mountains, thence northeasterly to the highest point between the waters of the waters of Middle Canyon and along the divide which separates the waters of said canyon and said coule to the ridge of Ryegrass Mountain, thence southeasterly along said ridge to the eastern extremity thereof, thence east to the Columbia River, thence southerly along the midchannel of said river to the point of beginning.

(k) Palus

beginning at the westernmost point of Kahlotus Lake, thence northerly to the divide separating the waters of Katsusnake Canyon on Sand Hills Coulee, thence northeasterly along said divide to the source of the southernmost branch of the waters of Katsusnake Canyon, thence northeasterly to the mouth of Rock Creek, thence northeasterly to Lancaster, Washington, thence easterly to Scopoe, Washington, thence southerly to Kawanah, Washington, thence westerly along the Snake River to a point opposite Devils Canyon, thence northwesterly along said canyon to the place of beginning.

51. The Commission finds that it has not been established by substantial evidence that any of the constituent tribes or groups comprising the Yakima Nation exclusively used and occupied the remaining portions of the claimed areas.

52. The tract which the Commission has found was exclusively used and occupied by the Palus includes an area outside the Yakima Treaty calla, and part of this area was included within lands described in the Nez Perce Treaty session (dated June 11, 1855, ratified on March 8, 1859, 12 Stat. 937). A portion of the area was not included within either the Yakima or the Nez Perce Treaty session.

Following the execution of the Yakima Treaty there was a period of hostility between the Indians and the United States. The Indians refused white intrusion into their lands, and United States troops

were employed to subdue the Indians. The Yakima treaty provided in Article Eleven that the treaty "shall be obligatory" upon the parties when ratified by the President and Senate of the United States. Finally on March 8, 1859, both the Yakima and Nez Perce Treaties were ratified by the Senate.

From and after March 8, 1859, the United States considered and dealt with the entire Palus tract as public lands free of Indian title.

53. Accordingly, the Commission finds that the United States on March 8, 1859, extinguished the Indian title which the constituent tribes or groups comprising the Yakima Nation held to each of the respective tracts described in Finding of Fact No. 50.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner

00028556

BEFORE THE INDIAN CLAIMS COMMISSION

THE YAKIMA TRIBE,)
 Petitioner,)
 v.)
 THE UNITED STATES,)
 Defendant.)
 Docket No. 161)
 (Petitioner in Docket)
 Nos. 222 and 224)

Decided: July 29, 1963

Appearances:

Paul M. Nisbell, Attorney for
 Petitioner in Docket No. 161.
 Meltsbrodt, Meltsbrodt & Lilton,
 with whom was the firm of Ketch,
 Winston & Reppold, 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:

0002357

(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 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 consolidated Tribes
 of the Colville Reservation, as the representative of and, in the alter-
 native, as the successor to the claim of the Moses Band, and its consti-
 tuent tribes (the Columbia, Chelan, Entiat, and Wenatchee). Also named
 as petitioners are George Fritlander and Peter Dan Moses, as the repre-
 sentatives 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

0002558

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, reverting to the fact that this question was no longer in controversy, 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

0002359

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 proceeding, 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

0002360

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.

0002861

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. Klilkitat
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

0002062

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

0002863

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 Cheilan 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 Cheilan

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 Cheilan 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 work, 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 con-

cluded 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).

0002864

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,

0002663

"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.

0002566

Kittitas

This Sahaplin speaking tribe was located immediately south of the

Mountchee. Both Dr. Ray and Mr. Chalfant agreed that the Kittitas Indians 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. Honey 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(c).

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 course 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 Blackton is now situated. Many Wayampams and Umatillas were to be found here" (Pec. 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

0002367

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 Klickitat 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 Klickitat territory. As Dr. Ray noted, the Klickitat had a ceremonial ground at Tahk prairie near Glenwood, where they met with the Yakimas, and had their annual horse racing, 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 Klickitans. 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 Klickitans 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 Klickitans maintained over this area. We have also noted in this case considerable evidence concerning the Klickitat 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 Klickitans 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 Klickitans for the purpose of gambling or trading would not in any way lessen the claim of Indian title by the Klickitat tribes, we also are of the opinion that such entry into the area west of the Cascade Mountains by the Klickitans for the purpose of trading and gambling with different tribes would not in any way provide the Klickitat 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 Klickitat 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 Klilikat 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

0002569

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. 11)

* * *

* * * 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(1) we have set forth in detail certain of the notations listed by Dr. Ray in his citations of sources. In many instances must it 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

0002870

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 (Det. 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. N. Holt
Associate Commissioner

We concur:

Arthur V. Watkins
Chief Commissioner

T. Harold Scott
Associate Commissioner

0002871

BEFORE THE INDIAN CLAIMS COMMISSION

THE YAKIMA TRIBE,

Petitioner,

v.

THE UNITED STATES,

Defendant.

THE CONFEDERATED TRIBES OF THE
COLVILLE RESERVATION, et al.,

Intervenor.

Docket No. 161

(Petitioner in Docket
Nos. 222 and 224)INTERLOCUTORY ORDER

Upon the Findings of Fact (Nos. 1 through 18), Opinion and Interlocutory Order entered July 28, 1959, and the Findings of Fact (Nos. 19 through 53) and Opinion this day filed herein, all of which are hereby made a part of this order, the Commission finds and concludes as a matter of law and fact:

1. That the petitioner and intervenor have the right to maintain this cause of action in a representative capacity for the benefit of the Yakima Nation as it was created by the Treaty of June 9, 1855;
2. That the Treaty of June 9, 1855, merged the tribes or bands named in the preamble thereof into the newly formed Yakima Nation and the said Yakima Nation became the successor in interest to the formerly separate tribal entities;
3. That prior to the confederation of the tribes or bands into the Yakima Nation each of the said tribes or bands held Indian title, through exclusive use and occupation in Indian fashion, to areas of land described in Finding of Fact No. 50;
4. 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;
5. That the constituent tribes or bands comprising the Yakima Nation did not exclusively use and occupy the remaining portions of the claimed area.

-2-

IT IS THEREFORE ORDERED that the case proceed for the purpose of determining the acreage of the lands involved; the market value thereof as of March 8, 1859; and the consideration paid.

Dated at Washington, D. C., this 29th day of July, 1963.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner

0002872

BEFORE THE INDIAN CLAIMS COMMISSION

THE CONFEDERATED TRIBES OF THE)
 UMATILLA INDIAN RESERVATION)
)
 Petitioner,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 264

Decided: September 28 1964

FINDINGS OF FACT

The Commission previously entered Findings of Fact in the above Docket on June 10, 1960. Thereafter hearing was had upon the petitioner's motion for a rehearing and upon consideration thereof the Commission finds that the additional evidence offered by the petitioner at said hearing is such that, if received, it would not in any way affect the final determination in this matter. Therefore the motion for rehearing is denied, but the Commission finds upon reconsideration of the entire record that its previous Findings of Fact, Opinion, and Interlocutory Order of June 10th, 1960, should be vacated. An order to this effect being entered, there is for determination herein the issue of title and matters pertinent thereto under Claims One and Four of the Amended Petition.

The Commission now enters the following Findings of Fact:

Representation

1. Following the execution of the treaty of June 9, 1855, 12 Stat. 945, II Kappler 694, the members of the former tribes of Walla Walla, Cayuse and Umatilla Indians located upon the Umatilla Indian Reservation in eastern Oregon. During November 1949, the then residents on that reservation adopted a Constitution and By-Laws and thereby created the petitioner organization. Said Constitution and By-Laws were thereafter duly approved by the Secretary of the Interior. Under such Constitution petitioner's membership is divided into two classes, those who have an interest in treaty rights and those who do not.

Petitioner is entitled to prosecute this action in a representative capacity on behalf of the three separate treaty entities of 1855 and the confederation created by the treaty of June 9, 1855, but it is not the full successor in interest to said treaty entities or the confederation.

2. The area involved herein lies in northeastern Oregon and southeastern Washington. The tract involved in Claim One is that land ceded by the treaty of June 9, 1855, 12 Stat. 945, which is identified as Area No. 362 on Royce's Maps of Oregon and Washington appearing in Volume 18 of the Reports of the Bureau of American Ethnology. Those tracts involved in Claim Four are smaller tracts adjacent to the subject tract of Claim One. Petitioner claims recognized title or, in the alternative, original title to the land described in Claim One and original title to each of the tracts involved in Claim Four.

Most of the land so claimed by petitioner lies within the Blue Mountains of Washington and Oregon. From between Asotin and Dayton,

0002573

Washington, this range extends southwest to near Prineville, Oregon. A second extension runs south along the west side of Snake River. The Umatilla River, Butter Creek, and Willow Creek each rise in these mountains along the southwestern-northeastern line, and flow northerly through a hilly area and across a plain into the Columbia River. The three main branches of the John Day River each rise in eastern Oregon and run westerly, south of the above streams, where they converge at the western limits of the claimed area. Some distance farther west this river turns abruptly north in its course to the Columbia River.

A spur of the Blue Mountains running east and west a few miles south of the main branch of the John Day River and the Willow Creek of the Malheur River, forms the southern boundary of the claimed area. Another east and west spur runs north of the main John Day River and south of Burnt River. Yet another spur, known as the Wallowa Mountains, extends southerly between the Grande Ronde River and its tributaries, the Wallowa and Minam Rivers, and passes north of Powder River. The eastern boundary of the claimed area runs along a subsidiary range east of and closely paralleling the Minam River.

It is frequently impossible because of these several spurs to determine the exact locality being referred to in many of the documentary references in the record wherein the Blue Mountains are mentioned, particularly those referring to the "east" or "west" side of said mountains.

Early travelers along the Columbia River referred to the southwest-northeast range or spur in which rise the Umatilla River and Butter and Willow Creeks as the Blue Mountains.

Recognized Title

3. By Article 1 of the Treaty of June 9, 1855, the confederated tribes and bands of the Walla Walla, Cayuse and Umatilla Indians ceded to the United States "all their right, title, and claim to all and every part of the country claimed by them," and bounded as follows:

Commencing at the mouth of the Tocannon River, in Washington Territory, running thence up said river to its source; thence easterly along the summit of the Blue Mountains, and on the southern boundaries of the purchase made of the Nez Perces Indians, and easterly along that boundary to the western limits of the country claimed by the Shoshonees or Snake Indians; thence southerly along that boundary (being the waters of Powder River) to the source of Powder River, thence to the headwaters of Willow Creek, thence down Willow Creek to the Columbia River, thence up the channel of the Columbia River to the lower end of a large island below the mouth of Umatilla River, thence northerly to a point on the Yakama River, called Tomah-luke, thence to Le Lac, thence to the White Banks on the Columbia below Priest's Rapids, thence down the Columbia River to the junction of the Columbia and Snake Rivers, thence up the Snake River to the place of beginning: * *

Article 1 also provided:

That, so much of the country described above as is contained in the following boundaries shall be set apart as a residence for said Indians, which tract for the purposes contemplated shall be held and regarded as an Indian reservation; to wit: Commencing in the middle of the channel of Umatilla River opposite the mouth of Wild Horse Creek, thence up the middle of the channel of said creek to its source, thence southerly to a point in the Blue Mountains, known as Lee's Encampment, thence in a line to the headwaters of Howtome Creek, thence west to the divide between Howtome and Birch Creeks, thence northerly along said divide to a point due west of the southwest corner of William C. McKay's land-claim, thence east along his line to his southeast corner, thence in a line to the place of beginning; * *

0002874

* * That the exclusive right of taking fish in the streams running through and bordering said reservation is hereby secured to said Indians, and at all other usual and accustomed stations in common with citizens of the United States, and of erecting suitable buildings for curing the same; the privilege of hunting, gathering roots and berries and pasturing their stock on unclaimed lands in common with citizens, is also secured to them. And provided, also, That if any band or bands of Indians, residing in and claiming any portion or portions of the country described in this article, shall not accede to the terms of this treaty, then the bands becoming parties hereunto agree to reserve such part of the several and other payments herein named, as a consideration for the entire country described as aforesaid, as shall be in the proportion that their aggregate number may have to the whole number of Indians residing in and claiming the entire country aforesaid, as consideration and payment in full for the tracts in said country claimed by them.

Said treaty was ratified March 8, 1859. It became effective on that date.

4. As part of the consideration for said cession, the United States agreed to spend certain sums each year for a period of twenty years "for the use and benefit of the confederated bands herein named." The chief of the Walla Walla tribe, Pu-pu-mux-mux, was given permission to build and operate a post near the mouth of Yakima River for a limited number of years.

5. On June 9, 1855, the Walla Walla, Cayuse and Umatilla Indians were three separate independent tribes. Each were of the Plateau culture and of basic Sahaptin linguistic stock. Each tribe practiced the Plateau concept of village autonomy. Each had adopted many traits of the Plains culture by the 19th century. Each tribe lived in winter villages. Each village had a local council composed of heads of families and noted

warriors. One man was recognized as a "spokesman" but he held no more authority than any other council member. By 1805 each of the three tribes possessed a sense of political unity under one chief and several subordinate chiefs or sub-chiefs.

The Walla Walla and Umatilla tribes could understand each other, but neither understood the Cayuse language. The Cayuse did not understand the Walla Walla or the Umatilla tongues, but they spoke the Nez Perce language which was partially intelligible to both the Walla Walla and the Umatilla tribes. By 1850 the Cayuse had adopted the Nez Perce language for ordinary usage.

6. South of the Walla Walla, Cayuse and Umatilla Indians during the latter part of the 18th century and the first part of the 19th century were Shoshonean speaking Indians who are usually referred to as Snakes or as Digger Snakes, and occasionally as Palutes. For convenience we shall refer to them as Snake Indians, although they seem to have been identified by ethnologists as a part of that division of American Indians known as Northern Palute. East of these Snakes were other Shoshonean speaking Indians with whom they were friendly. North of these latter Indians and east of the Walla Walla and Cayuse tribes were Nez Perce Indians. To the north of the Nez Perce and the Cayuse Indians were the Palus or Palouse Indians, and to the northwest of the Walla Walla tribe was the Yakima tribe. West of the Umatilla tribe there were bands of Wayampam Indians. The last four Indian entities spoke Sahaptin dialects.

0002375

These various Sahaptin dialect speaking tribes and bands were friendly with each other, but a traditional enmity existed between the Snake Indians of southern Oregon and the Sahaptin speaking Indians to the north of them.

7. Oregon Territory originally embraced all the present states of Washington and Oregon, together with other lands. The Organic Act of June 5, 1850, 9 Stat. 437, which extended to that territory all applicable provisions of the Indian Intercourse Act of June 30, 1834, 4 Stat. 729 and the Law for the Provisional Government of Oregon adopted July 26, 1854, each preserved to the Indians their rights of person and property. The right thus preserved was that of permissive occupancy of the land utilized by said Indians. Neither of these acts nor any act subsequently adopted by Congress concerning the territory embraced in the original Territories of Oregon and Washington recognized in its Indian occupants any interest in the soil other than this right of permissive occupancy which is known as original Indian title.

8. The extinguishment of Indian title to land west of the Cascade Range of Mountains in Oregon Territory and the relocation of the Indians in that region among those residing east of the Cascade Mountains was authorized by Congress on June 5, 1850, 9 Stat. 437, and on September 30, 1850, 9 Stat. 544, 555. By the Donation Act of September 27, 1850, 9 Stat. 496, Congress authorized the survey of that country west of the Cascade Mountains and provided for grants of 640 acres of land each to actual settlers, subject to certain conditions. When Washington Territory was carved out of northern Oregon Territory and established on March 2, 1853,

10 Stat. 172, all laws effective in Oregon Territory were extended over it. On July 17, 1854, 10 Stat. 305, the Pre-emption Act of September 4, 1841, 5 Stat. 453, was extended to all land not claimed, entered, or reserved by the Donation Act of 1850, which Act had been extended on February 14, 1853, 10 Stat. 158, to December of 1855. At the same time provision was made for the public sale of all land west of the Cascade Mountains which was not then settled or reserved for public use.

The increasing amount of white traffic along the Columbia River and the trails to the coast, a widespread belief among the whites that the Donation Act of 1850 applied to all land in the Territories of Oregon and Washington whether original title had been extinguished to it or not, and the developing settlement at The Dalles, east of the Cascade Range, and rumors reaching the Indians residing east of that range that the Government intended to relocate among them the Indians from west of the Cascade Range, all led to increasing dissatisfaction among the Indian tribes east of the Cascade Range in these two territories. To preserve the peace and quiet of the frontier, Congress appropriated funds on July 31, 1854, 10 Stat. 315, to finance the negotiation of treaties of cession with the Indians east of the Cascade Range in these territories.

9. Upon the establishment of the Territory of Washington, it had become necessary for the respective Governors and Superintendents of Indian Affairs in the Territories of Washington and Oregon to ascertain which tribes and bands of Indians resided in their respective jurisdictions. Official correspondence between these parties discloses that prior to

0002876

... treaty date of June 9, 1855, it was understood by them that the
... territories; that

14 Ind. Cl. Comm. 14

24

about 10 miles from the Blue Mountains, at which place the Cayuse camp was usually found, thence to the Grand Ronde Valley where they had met the "greater portion" of the Cayuse tribe and some 60 Nez Perce Indians, and thence through Snake country to Forts Boise and Hall in Idaho. Thompson reported that he had held councils with the Bannock Snakes at Fort Boise, and he described the divisions of Snake or Shoshone Indians and gave their general locale. Major Haller also made an official report of this expedition.

13. During 1853 and 1854 Governor Stevens was in charge of a federal exploring and survey party engaged in seeking a railroad route through this region and to the Pacific coast. His official map accompanying his final report was withdrawn about July 19, 1854, because it reflected known errors in recent maps and compounded all of those known to exist on maps of 1850. Thereafter the Governor sent one James Doty up the Columbia River and into Washington Territory to contact the Indians there and arrange for their attendance at a joint council with Indians of Oregon Territory, and to select a site for such a council. Agent R. R. Thompson was instructed by Governor Palmer to arrange with the Oregon Indians for their attendance at this same council.

The council convened at Walla Walla, Washington, on May 20, 1855. On June 9, 1855, the treaty commissioners on behalf of the United States entered into a treaty with the chiefs, headmen and delegates of the Walla Walla, Cayuse and Umatilla Tribes and bands acting for and on behalf of their respective tribes and bands, which entities were by that treaty confederated into a single entity or unit. The treaty was transmitted

11. By letter dated August 15, 1854, the Commissioner of Indian Affairs instructed Superintendent Joel Palmer to negotiate treaties of

14 Ind. Cl. Comm. 14

25

to the Secretary of the Interior on July 9, 1856, and to the President of the United States on July 29, 1856. It was ratified March 8, 1859, and became effective upon that date.

During the council of 1855, other treaties of cession were negotiated with other tribes and bands of Indians.

14. On June 12, 1855, Governor Stevens prepared a plat of the area ceded by the Walla Walla, Cayuse, and Umatilla Indians and of the proposed reservation. Neither Governor Stevens nor Governor Palmer had previously submitted skeleton maps of their respective Indian superintendencies showing the location of the tribes and bands of Indians residing therein. According to the official minutes of the treaty council, the only investigation made during that council into the territorial claims of the tribes and bands represented at that council was to request the Nez Perce Chief, Lawyer, to prepare a map of the country claimed by his tribe. No contact had been had with the Snake Indians to ascertain what territory in eastern Oregon was claimed by them.

15. The object of said treaty was the extinguishment of any and all claim by said Indians in or to the land within the Territories of Washington and Oregon, to confederate the Indian entities signatory thereto into one permanent entity, and to designate a tract within the ceded area for use by the confederation as an Indian Reservation.

There is no evidence of record that the United States granted recognized title to the Confederated tribes and bands of the Walla Walla, Cayuse and Umatilla Indians.

about 10 miles from the Blue Mountains, at which place the Cayuse camp was usually found, thence to the Grand Ronde Valley where they had met the "greater portion" of the Cayuse tribe and some 60 Nez Perce Indians, and thence through Snake country to Forts Boise and Hall in Idaho. Thompson reported that he had held councils with the Bannock Snakes at Fort Boise, and he described the divisions of Snake or Shoshone Indians and gave their general locale. Major Haller also made an official report of this expedition.

13. During 1853 and 1854 Governor Stevens was in charge of a federal exploring and survey party engaged in seeking a railroad route through this region and to the Pacific coast. His official map accompanying his final report was withdrawn about July 19, 1854, because it reflected known errors in recent maps and compounded all of those known to exist on maps of 1850. Thereafter the Governor sent one James Doty up the Columbia River and into Washington Territory to contact the Indians there and arrange for their attendance at a joint council with Indians of Oregon Territory, and to select a site for such a council. Agent R. R. Thompson was instructed by Governor Palmer to arrange with the Oregon Indians for their attendance at this same council.

The council convened at Walla Walla, Washington, on May 20, 1855. On June 9, 1855, the treaty commissioners on behalf of the United States entered into a treaty with the chiefs, headmen and delegates of the Walla Walla, Cayuse and Umatilla Tribes and bands acting for and on behalf of their respective tribes and bands, which entities were by that treaty confederated into a single entity or unit. The treaty was transmitted

to the Secretary of the Interior on July 9, 1856, and to the President of the United States on July 29, 1856. It was ratified March 8, 1859, and became effective upon that date.

During the council of 1855, other treaties of cession were negotiated with other tribes and bands of Indians.

14. On June 12, 1855, Governor Stevens prepared a plat of the area ceded by the Walla Walla, Cayuse, and Umatilla Indians and of the proposed reservation. Neither Governor Stevens nor Governor Palmer had previously submitted skeleton maps of their respective Indian superintendencies showing the location of the tribes and bands of Indians residing therein. According to the official minutes of the treaty council, the only investigation made during that council into the territorial claims of the tribes and bands represented at that council was to request the Nez Perce Chief, Lawyer, to prepare a map of the country claimed by his tribe. No contact had been had with the Snake Indians to ascertain what territory in eastern Oregon was claimed by them.

15. The object of said treaty was the extinguishment of any and all claim by said Indians in or to the land within the Territories of Washington and Oregon, to confederate the Indian entities signatory thereto into one permanent entity, and to designate a tract within the ceded area for use by the confederation as an Indian Reservation.

There is no evidence of record that the United States granted recognized title to the Confederated tribes and bands of the Walla Walla, Cayuse and Umatilla Indians.

0002878

16. During June, 1855, the Umatilla tribe numbered 200 souls. At that time the Walla Walla tribe numbered 800 souls, and the Cayuse tribe numbered 500 souls. In earlier times these numbers were somewhat larger.

Indian Title

17. In pre-historic times the staple food of the Walla Walla, Cayuse and Umatilla tribes was salmon, although they obtained many other species of fish from the Columbia River. After acquiring horses these tribes adopted a fishing, hunting and root-gathering subsistence cycle, and by the early 19th century the Cayuse and to a lesser degree the Walla Walla and Umatilla Indians were engaging in hunting activities, going east of the Snake River to buffalo country near Fort Hall and even farther to the east. By the 19th century the Umatilla and Walla Walla occupied permanent wintering villages along the Columbia and Umatilla or Walla Walla Rivers, with the Cayuse wintering not far to the east and southeast. These villages were also used as more or less permanent residences when the tribes were not traveling on their gathering, hunting, and fishing expeditions. Such sites were chosen with a view to avoiding the deep snows in the mountains and for some shelter from the elements, for available fuel and in order that the tribes might conveniently take advantage of the early salmon runs in the spring when the chinook, blueback, and silver salmon migrate up the Columbia River to spawn in the headwaters of its tributaries.

The annual runs of these several species of salmon controlled the subsistence cycle of these tribes. These runs began about the first of May and again in October. The Indians were familiar with the various places

where the salmon could be found in greatest abundance probably beginning with the Columbia River as far down stream as The Dalles and Celilo Falls where their fishing began, and as the fish moved up stream the Indians followed to the headwaters of the tributary streams, principally the Walla Walla and Umatilla Rivers which were encompassed in the territory they claimed they used by right of Indian title. The men fished and hunted game while the women dug roots, gathered berries and pounded and dried the fish and game for winter food. As autumn approached they returned to their winter villages for the late summer run of the salmon, taking with them the food they had accumulated for the winter. There they remained until the following spring when the cycle began again. Hunting trips to the buffalo country to the east were made annually by some members of the tribes to obtain buffalo meat and hides and were of varying duration.

Local winter groups consisted of related families within each tribe dwelling in lodges of mats and rushes. During the "summer" months there was an intermingling of the families not only within the separate tribes but among the three tribes during their summer migrations. The "summer"* groups were fluid in composition and heterogeneous in character, and the territory they visited was not owned or claimed by any one tribe, but was used in common by all three tribes and other friendly tribes.

18. Claims of villages out on headwaters of streams in the Blue Mountain and other areas where the summer groups went on their gathering,

*"Summer" includes also the period in the spring and fall when the Indians were away from their winter villages on subsistence activities.

actually camping areas rather than villages. Webster's dictionary defines a village as "any small aggregation of houses in the country, in general less in number than in a town or city and more than in a hamlet." There is no evidence in the record that dwellings of any kind existed in any of these areas on anything resembling a permanent basis; in fact no dwellings even in the Indian version of a dwelling are mentioned in the evidence. The only places where lodges are described are in the areas where these Indians lived throughout the winter season which in one sense were their permanent villages. Their life during the summer season seemed to be one round of camp spots after another.

19. During the early decades of the 19th century Walla Walla, Cayuse, and Umatilla tribal members had a large number of horses owned by individual Indians, which as a matter of necessity roamed at large. Those owned by Cayuse Indians were especially numerous. For example, it is claimed that one Indian owned more than 2,000. Other Indians had large bands and since there were no fences the horses ranged over the grazing areas at will. This situation came about naturally as the horses increased in numbers, and fit into the common use of areas adjacent to and south of the areas in which the Umatillas, the Walla Wallas and the Cayuse Indians had their permanent villages, each as a separate and independent entity. With the additional areas being taken from the Snakes, there was enough range for all, not only for the grazing of horses, but for subsistence purposes. Allied tribes such as the Nez Perce, Wayampam, and others were taking part in the drives against the Snakes, used the invaded territory frequently and without leave from anyone. Only their ancient enemy

to the south, the Snakes, were not welcome to use the territory.

With respect to this situation Dr. Ray testified under questioning by petitioner's counsel as follows:

Q. Did the members of these three tribes ever go upon each other's lands?

A. Yes, they did.

Q. Did the members of these tribes ever go upon lands occupied by other tribes?

A. Yes. Upon the lands of all of their neighbors.

Q. When one of these three tribes was on the land of some other tribe, were they there, so far as you have been able to find out, as a matter of right?

A. No. They were there as a matter of privilege, the privilege being given by the tribes upon whose lands they were going.

Q. And when members of other tribes came upon the lands of one of these three tribes, have you been able to discover whether they did so as a matter of right?

A. Yes, I have been able to discover, and they did so as a matter of privilege in the same fashion as that described in reverse.

(Tr. Vol. 5, p. 631)

This situation in which Dr. Ray is of the opinion that these numerous agreements and understandings were arrived at between friendly tribes of Indians with respect to the ownership and permissive use of these lands is indeed complicated. To have such a situation under the circumstances would require a degree of sophistication on the part of these Indians which would seem to be over and beyond their known capacity and their way of living at any time prior to the influx of white settlers in eastern Oregon who brought in the white man's idea of land ownership. Besides, there was

0002860

room for all friendly tribes without anyone having to make an issue of specific tribal ownership in the areas used in common.

That this so called "permissive use" involved subsistence activities of the "visiting" Indians is made clear in the last question and answer.

Q. Have you found any instances in which the Northern Paiute were given the privilege of coming upon the Cayuse and Walla Walla lands and exploiting the economic resources to be found there?

A. I have never found such an example.
(Tr. Vol. 5, p. 631)

So we find that during the critical periods in this case, these areas which were used year after year by the intermingled Umatilla, Walla Walla, Cayuse, and friendly neighboring tribes for the exploiting of economic resources, were not used and occupied exclusively by the Umatilla, Walla Walla, or Cayuse tribes, or by any one of them, so that Indian title could come into being or be maintained. No "permissive use" agreements existed.

20. South of the Umatillas, Walla Wallas, and Cayuse tribes were Shoshonean speaking peoples generally referred to in this proceeding and in Docket 198 as the Snake Indians. In this general classification were the Northern Paiutes, the "Digger" Snakes and the Shoshones.

In Docket 87 we found part of them, at least, to be an identifiable group of American Indians entitled to file claims against the United States under the Indian Claims Commission Act as a group because they were not an organized tribe or band.

In fact there were thousands of Snakes or Paiutes scattered over eastern Oregon, western Idaho, Nevada and a few in Utah and northern California. Scattered groups of these Indians occupied and used in their wanderings

much of eastern Oregon in aboriginal times immediately south of the Columbia River. Their subsistence practices were governed largely by the nature of the country in which they were living from the Cascade mountains eastward to the near vicinity of the Snake River in Idaho. They were fierce fighters, largely of the guerrilla type, moving stealthily through the areas where they were seeking their subsistence. When in areas where there was an abundance of fish such as the salmon, and deer, elk, bear, and smaller game animals, together with edible roots, nuts and berries, their subsistence was very much like that of their northern neighbors, the Sahaptins. They were not along the south bank of the Columbia when Lewis and Clark and other explorers and trappers went up and down that river, but were not very far away from it. The explorers, particularly Lewis and Clark, heard of them although they did not see them. That they were not far away was attested by the Sahaptins who in 1805 and 1806 had their dwellings on the north bank of the Columbia because of their fear of the Snake Indians with whom they were at war. The Snakes were evidently powerful in their way, and were feared by the Columbia River Indians. There was intense enmity between the two groups and as a result they were almost continually at war. The fighting between the Sahaptin Indians and the Snakes over the possession of the areas to the south is referred to by practically all of the anthropologists, historians, travelers and writers dealing with the history of southeastern Oregon. That the Snakes occupied much of the area south of and near the southern banks of the Columbia River in aboriginal times is attested by those who tell of the efforts of the Sahaptins to expell them from these areas. They were

heartily disliked by the Sahaptins who regarded them as "savages" largely, it was said, because of their wandering way of life and the types of food such as dried insects, which these Indians in their need, as they were deprived of more productive areas, were forced to eat as a matter of survival. Little was learned by early white explorers and settlers about these Shoshonean peoples and what was learned came largely from their ancient enemies who were living along the trade and travel routes to the Pacific Northwest, such as the Columbia River and the later Oregon Trail.

In addition to continuous warfare over territory, which was largely inspired by the comparative subsistence values of the lands near the Columbia River and those farther to the south in eastern Oregon, there were at least two other rather minor reasons for this long term hostility between these linguistic groups. First, the Sahaptins considered their horses an evidence of wealth, and the Snakes, who did not have so many horses, used them for food as well as beasts of burden, and also preyed upon the herds of the Sahaptin tribes. And secondly, at least during the early decades of the 19th century, the Sahaptin tribes made slaves of any Snakes they were able to capture during their expeditions against these less fortunate people. They also sold some of these captured Snakes as slaves to other Indians.

Statements of Ethnologists, Anthropologists, etc.

21. James M. Teit, a shepherd who married a Thompson River Indian woman and became interested in Indian history, gathered certain data

concerning the tribes in eastern Washington and Oregon which was edited and published during 1928 by one Professor Franz Boaz. Teit's theory that Shoshonean people moved northward through eastern Oregon about the middle of the 18th century, driving a Salish speaking people into northern Washington and a Sahaptin speaking people north of the Columbia River, was adopted by Joel V. Berreman and by Dr. Leslie Spier, each of whom were attempting to assemble the available data concerning the Indians in this region without benefit of personal field work in the area. Neither of them considered it possible to fix definite territorial limits as of any period for the Indians within the subject area, and Dr. Spier decided that it was doubtful whether the early people in Washington ever thought in terms of boundaries. Teit believed that this northern movement reached its height between 1800 and 1820 or 1830; Berreman believed it did so between 1800 and 1820; Spier placed it at 1800 to 1830.

Other scientists claim that the Sahaptin people moved south against the Shoshonean speaking people in central and eastern Oregon. Among those advancing this claim are Doctors Omer C. Stewart, James Mooney, John R. Swanton, George Peter Murdock, and the two present expert witnesses, Dr. Vorne F. Ray and Robert Suphan. With the possible exception of John R. Swanton, each of these parties did some field work among the Indians concerned in this movement. When such movement began, when it reached its height, and when stability was restored among the several tribes in eastern Oregon and southeastern Washington are matters of disagreement among the scientists.

0002882

Dr. Julian H. Steward's field work among Northern Paiutes and the Shoshones east of them was fairly contemporary with Dr. Ray's earlier research. Dr. Steward lived among these Shoshonean speaking Indians from 1918 to 1921. Articles concerning them were published by him during 1938, 1939, and 1940. His 1939 informants and, in his opinion, early explorers, considered the Blue Mountains the northern boundary of Snake or Paiute territory. His last publication contains a plat showing this boundary as a line running near the North Fork of John Day River and thence east similar to the line first fixed by Dr. Stewart. (Pet. Exs. 51, Dkt. 198; 93 p. 447)

Dr. Omer C. Stewart did field work among the Northern Paiute during 1936 and subsequently. In his 1939 publication he said their northern limits ran along John Day River and its North Fork, thence south along the Blue Mountains to their terminus, and thence easterly around that range to Snake River. Later he platted the location of these Indians by bands, the northern line following North Fork of John Day River, then dropping south to the headwaters of North Fork of Malheur River; thence southeast to near the 44° of latitude, and then slightly north of east to strike Snake River opposite the mouth of Welser River. (Pet. Exs. 94, 95)

Dr. Stewart later altered this line, extending it from the northern bend of the North Fork of John Day River east to Snake River, passing north of Pine Creek. See the Opinion of this Commission rendered March 24, 1959, in Docket No. 87, Northern Paiute Bands, et al., v. United States, 7 Ind. Cl. Comm. 322, pp. 406, 399.

Dr. Beatrice Blythe Whiting has located certain bands of Paiute Indians for the period 1840-1850. She said a Hunipuitika band around Canyon City Creek, the town of John Day and in John Day River Valley, hunted west as far as Dayville, wintered as far north as Waterman, and had camps as far east as Baker, Oregon.

During 1844 Haratio Hale drew a linguistic map based on information obtained of traders at Fort Walla Walla and Cayuse missionaries. During 1885 and 1931 J. W. Powell and Melville Jacobs published linguistic maps. Hales's Nez Perce western line runs south along the east side of Palouse River around the headwaters of Walla Walla River and across Grande Ronde River near the upper end of Grand Ronde Valley. His Walla Walla-Cayuse divide follows Touchet River, crosses the Walla Walla, Umatilla and John Day Rivers a short distance above their mouths (Tr. p. 666). Snake or Shoshone are in the east half of Grand Ronde Valley. Jacobs indicated the Umatilla were entirely south of Columbia River, the Cayuse south of the Washington-Oregon line, and the Shoshonean north line ran west in the vicinity of the Blue Mountain spur north of Powder River, following it westward and swinging southwest across John Day River near the mouth of its North Fork. He located Wanapam north and west of the Columbia River from Priest's Rapids to below Umatilla River, and east of the Columbia River from the mouth of Walla Walla River to White Bluffs; Wauyukma on Snake River opposite Palouse River; and Walla Walla on both sides of Walla Walla and lower Snake Rivers, east of the Columbia River.

Dr. James Mooney did research during 1892. He and Cora DuBois who published during 1938, were interested in religion, but they did report the location of some tribes. DuBois' Cayuse are located between Butter

0002883

Creek and Grand Ronde headwaters; her Umatilla are on lower Umatilla River, and upper John Day River; her Walla Walla are on Walla Walla River and on Columbia River to above the mouth of Snake River. She placed the Wanapam on the north bank of Columbia River below Snake River, and on both sides of the Columbia above Snake River, and also on the lower Yakima River.

Dr. James Mooney equated some of Lewis and Clark's Indian names with those of present day. He said the Wanapam were also Sokuks and ranged both banks of the Columbia River from Crab Creek to Snake River; their Chamnapam occupied the bend of the Columbia River below Yakima River and the lower Yakima River; that their Pishquitpah were probably the Pisko band of Yakima; their Kowwassayee were a Tenino band residing opposite the mouth of Umatilla River which joined in the Yakima treaty of 1855; that their Chopunnish were Nez Perce, but that the Yelatpo band of Chopunnish was Cayuse, and the Cayuse occupied the heads of the Walla Walla, Umatilla and Grande Ronde Rivers. He located a tribe not equated by anyone with one of these three tribes on the north side of Snake River in three villages between its mouth and that of Palouse River with a fourth village on Palouse River, and placed the Walla Walla on the east bank of the Columbia River below the mouth of Snake River, and on lower Walla Walla River.

Dr. Edward S. Curtis was in this region during 1907. He placed the Cayuse-Nez Perce divide along Tucannon River, located Walla Wallas on the

Walla Walla River and the adjacent bank of the Columbia River south of Snake River; placed Chamnapam about the mouth of Yakima River and included them with the Yakima Tribe; located Umatillas in Umatilla River valley and the country about its mouth south of the Columbia River; and said the Cayuse ranged near the Blue Mountains from the head of Touchet River to that of John Day River, including the Grand Ronde Valley.

Dr. Herbert Spinden worked among the Nez Perce during 1907-1908 and reported that tribe ranged west to the Blue Mountains between latitude 45 and 47 degrees, that it occupied only part of the area it controlled, that its territory extended along Snake River west to near the mouth of Tucannon River and it divided the Grande Ronde Valley with the Umatilla Tribe, that it may have included the Palouse tribe which inhabited Palouse River valley and controlled the lower Snake River.

Dr. George Murdock, whose research in 1935 was among the Indians residing west of these tribes here represented, said the John Day River Wayampam Indians adjoined the Umatillas near Arlington; that the John Day Indians seem to have always used the middle reaches of John Day River to some extent but that they admitted the country belonged to the Palute (Snake), and by 1855 the Palute had been expelled almost as far south as the great bend of that river (east of the claimed land); that the pressure against the Snakes there was at its height between 1810 or 1820 and 1855.

Joel Berreman considered the Snake-Nez Perce divide ran along the divide between Pina Creek and Powder River on the south and the Grande Ronde on the north. John Swanton, writing during 1953, reported the Palute had

been pushed out of Powder River valley and upper John Day River in the 19th century, but described Cayuse country as including the headwaters of Walla Walla, Umatilla and Grande Ronde Rivers, extending from the Blue Mountains to DesChutes River. He said the Chamnapum were part of the Palouse tribe and assigned the Palouse land on both sides of the Columbia River above the mouth of Snake River and the country north of Snake River.

In many instances boundaries appear to have been fixed without ascertaining claims of adjoining Indian entities. Nor can one be certain from a perusal of these exhibits just what date is intended to be reflected in each, or how long exclusive occupancy if it existed at all, had existed within the various regions assigned to these different tribes.

Expert Witnesses - Dr. Ray and Mr. Suphan

22. Dr. Verne F. Ray, petitioner's expert witness, holds a Doctor of Philosophy degree from Yale University. He majored in anthropology and teaches that subject at the University of Washington. He has published a number of articles based upon field work among the Indians in the Columbia River Basin performed between 1928 and 1938. During 1953 and 1954 in preparation for his testimony in this case, he did literary research and additional field work among the Yakima, Umatilla, Walla Walla and Cayuse tribes. He has never, except casually, worked with the Snake or Northern Paiute Indians next south of these Sahaptin tribes.

Dr. Ray testified in his opinion that about 1750 the Walla Walla, Cayuse and Umatilla and other Sahaptin speaking Indians began a concerted "drive" against the Snake or Northern Paiute south of them; that by 1790 the Snakes had been expelled from the territory here involved; that by 1810 the Cayuse and Umatilla tribes were in firm possession

of the southern portion of the claimed area and held it under original title until the cession of June 9, 1855; that the territorial boundaries of these three tribes had been quite precise and definite.

(a) Dr. Ray's first article was published during 1936, and based upon informant material secured between 1928 and 1934 (Tr. pp. 48-50). It dealt strictly with aboriginal conditions as they existed around 1850. In it he said:

*** 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. * * * But during the gathering of this material every group in the basin was visited and the maps were first drawn in the presence of informants as information was given, bit by bit, including village locations as well as lines of boundary. This procedure permitted a degree of accuracy and completeness which could not have been achieved through reconstruction from notes. (Pet. Ex. 59, p. 117)

On the accompanying sketch the Sahaptin-Shoshonean divide apparently follows the course of John Day River and then runs down Powder River. The Umatilla tribe is located on both sides of the Columbia River, its west boundary extending south from the Columbia River between the mouths of John Day and DesChutes Rivers. The Grand Ronde Valley is in Cayuse territory; the Yakima are along Yakima River and on both banks of the Columbia River above the mouth of Snake River, and the Walla Walla occupy both banks of Snake River up to within a few miles of Palouse River and both banks of Columbia River opposite Walla Walla River and below the mouth of Snake River.

Dr. Ray wrote precision in boundary lines should not be taken to be more than a reflection of ethnic unity; the hunting territory of one

Group might be quite open to another even though the bounds were highly

specific. He listed six Umatilla sites, one on Blalock Island, three in

Washington of which one was 3 miles above Hottinger, one near Roosevelt,

and one at the mouth of Rock Creek. The remaining two were in Oregon,

one between Umatilla and Cold Springs, and the other at the mouth of

Umatilla River. He located seven Cayuse bands: one on Butter Creek, one

at Pilot Rock, one on McKay Creek, one near Cayuse, Oregon, one on the

Gibbon-Umatilla River, one on Cottonwood Creek, and one near the Walla

Walla River. He listed no sites for the Walla Walla. Those for the

Yakima included one at Pasco, one opposite Richland, and one occupying

both banks of Yakima River where Klona now stands, each of these being

within the area presently claimed on behalf of the Walla Walla. He placed

Manamam along both banks of the Columbia River in the White Bluffs area.

(b) A second article, "Tribal Distribution in Eastern Oregon and

Adjacent Regions," was published during 1938, based upon field work com-

pleted around 1935, and including a few weeks' work with the Wayampam

Indians living next west of the tribes here represented. Dr. Ray wrote:

"Distribution at the Middle of the Nineteenth Century.

The Umatilla * * * occupied both banks of the Columbia River from

below the vicinity of Rock Creek (Washington) to a point a few miles

of the Yakima. In Oregon a much greater area was held, reaching

south to the John Day River. Beyond lay the Palute. The eastern

and western boundaries were less definite due to greater inter-

course with neighboring tribes. Rock Creek * * * furnished an approx-

imate western boundary but Umatilla families sometimes camped as

far west as the John Day River; reciprocally, the Wayampam or

Tentno enjoyed free movement eastward to Willow Creek. Even on

the Columbia River, where lines of demarcation were usually very

definite, several villages were jointly occupied by Umatilla and

Tentno /Wayampam/.

On the east the Umatilla-Cayuse division was equally vague except

on the lower Umatilla River and near Ukiah. Both banks of the

Umatilla River below the mouth of Butter Creek, and the north side

for several miles above, belonged to the Umatilla; but all of

Butter Creek was held by the Cayuse. In the gathering grounds to

the south the Umatilla occupied the Ukiah region, whereas the

nearly Lehman hot springs belonged to the Cayuse. Village loca-

tion largely determined these distinctions; * * * * *

The irregular southern boundaries of the Umatilla and Cayuse were

not arbitrary but conformed to topographical conditions. The

Umatilla utilized the entire drainage area of the North Fork of

the John Day River; the Cayuse used the slopes draining into the

Umatilla and Powder Rivers.

Walla Walla /Walla Walla/ * * * territory adjoined that of the Umatilla

at the bend of the Columbia, but these groups did not intermingl-

edly. In consequence, the line dividing them was quite definite.

* * * In addition to a short segment of the Columbia, the Walla

occupied both sides of the Snake River from the mouth to Lyons

Ferry.

The habitat of the Cayuse (Waiilatpu) did not touch the Columbia

at any point and bordered on the Snake for only a very short dis-

tance at the northernmost extreme, near Starbuck. * * * much of

the area lay within the Blue Mountains. A number of drainage

systems were occupied, including those of the Walla Walla, the

Umatilla, the Upper Grande Ronde, Powder, and Burnt Rivers, and

the Willow Creek branch of the Willhuitt River. On the northeast

the Tucuman River formed the boundary; on the northwest a seg-

ment of the Touchet River served likewise.

* * * Intercourse was extensive with the Nez Perce but the line

of demarcation remained well defined. The southern boundary lay

in relatively unoccupied country. Territory to the south was

held by the Palute and Bannock, with whom relations were at all

times strained. * * * * *

"Distribution in the Eighteenth Century

*** Throughout the span of traditional history the Umatilla

had been bounded on the south by the range of hills spreading

westward from Ukiah, the Cayuse by the Grande Ronde-Powder River

divide, and the Nez Perce by the Mallova and Seven Devils Moun-

tains. * * * (Pec. Ex. 61, bracketed material supplied)

Dr. Ray's plan shows a Umatilla-Wayampam divide extending south

from the Columbia River between Willow Creek and John Day River, crossing

the North Fork of John Day River near its mouth. He wrote he had arbi-

trarily divided the land used by these two entities between them. He platted a Sahaptin-Shoshonean divide along John Day River and thence south-east to the Malheur River, and down that river to Snake River. An 18th century Shoshonean-Sahaptin divide runs east and west between the John Day and Powder River drainage on the south and that of Willow Creek and the Umatilla and Grande Ronde Rivers on the north, extending east across the Snake River in the vicinity of the mouth of Pine Creek. The Yakima are shown along both banks of the Columbia River above the mouth of Snake River.

In a footnote at page 385 of this article, Dr. Ray wrote that a complete catalogue of Umatilla, Walla Walla, Cayuse and Palouse villages had been obtained, having reference, he testified, to his 1936 list, which he said was complete for the scientific purposes of that paper. At the time of trial he presented a much more numerous list of village sites (Tr. pp. 692-5, 699). The sites on this last list are places to which the Indians regularly returned. Lack of permanent occupancy, permanent structures and in addition, the manner of use, do not seem to have been elements of consideration.

In this article Dr. Ray also said:

Tribal territories * * * had persisted without material change in Washington and northernmost Oregon from time immemorial. But not so in the southern extensions of the area: Sahaptin peoples had acquired these regions only after the opening of the nineteenth century. Formerly Shoshonean peoples had occupied all of the upper drainage for the John Day River, all of the Powder River, and all of the Weiser and Payette River basin and the territory to the south * * *

On his map referred to above, the Shoshonean-Sahaptin divide line running from west to east was far enough north of the North Fork of the John Day River to include in Snake country all the upper drainage of the John Day River, and the Powder, Weiser and Payette River basin. He also showed the areas the Umatillas and Cayuse had acquired in the 19th century south of their 18th century southern boundary.

Dr. Ray also wrote Lewis and Clark's "Chopunnish" included Nez Perce, Cayuse and other Sahaptin Indians; he was uncertain whether their Fish-quit-pah were Umatilla or Cayuse. He wrote the Walla Walla had both sides of the Columbia River below the mouth of Snake River; that Sahaptin tribes never questioned the right of the Snakes to territory occupied by them during the 18th century; that neither of the parties attempted to wrest territory from the other; that "the Shoshoneans often pushed as far north as the Columbia River, forcing the Umatilla sometimes to take temporary refuge on Bialock Island or the north bank of the river"; that they never remained long and never established permanent homes, and that the balance of power was very even until after the turn of the century (18th into the 19th), when it began to shift to the Sahaptins; that this was undoubtedly due in part to acquisition of the horse and introduction of new weapons by the whites. That motives for territorial expansion were introduced at the same time, i.e., encroachments by the whites and depletion of game near the river, and after several decisive battles in Shoshonean territory the Shoshoneans were pushed farther and farther south. This added economic security but resulted in no vital change in habitat and economy for the Sahaptins. He mentioned Lewis and Clark's reports of Shoshonean tribes being on the South Fork of Snake River and on Weiser, Powder, Payette, Malheur and Boise Rivers. In spring and summer they were along the Clearwater, in fall and winter on the Missouri River. He thought less credible their location of the "Shoshone (or Snake Indians)" in fall and winter on the Multnomah and "in spring and summer on the heads of the To-War-ne-ki-ooks (DesChutes), La Page (John Day), You-ma-tol-am (Umatilla) and Wal-lar-wal-lar (Walla Walla) rivers, ***" He stated the

Lewis and Clark material disclosed the Shoshoneans in 1805 were at least as far south as the earlier boundary he had fixed for them, except, perhaps in the region of the Blue Mountains.

(c) During 1937 Dr. Ray wrote the thesis for his Doctor's degree, which was published in 1939. He then wrote Cayuse and Umatilla boundaries were highly specific. He failed to mention the Walla Walla, and on a plat illustrating areas of language, religion or like traits, the area usually assigned the Walla Walla tribe appears to be divided between the Umatilla and Palouse tribes.

(d) During 1936 Dr. Ray worked on a culture element study. During 1937 this was extended to the Umatilla and Wayampam Indians. His report appears as Chapter XXII of "Culture Element Distribution" and describes the Umatillas as "itinerant raiders; causing war," having a tribal organization under one chief and sub-chiefs, recognizing tribal territorial and individual property rights.

(e) Since the commencement of this suit and his employment, Dr. Ray has conducted field studies and has done research work concerning the Cayuse, Walla Walla and Umatilla tribes specifically on fishing stations, subsistence areas and other issues involved.

(f) Dr. Ray wrote in his first publication (Pet. Ex. 59, p. 101):

Most important is the notorious unreliability of native verbal traditions when they refer to history a few generations or more removed. Such data, through weighing, balancing and comparing, may prove of value for a theoretical discussion or a hypothetical reconstruction, but is of little worth for a purely factual paper.

Dr. Ray testified that it is "quite impossible" from historical materials to determine the southern limits of the land the Cayuse and Umatilla held under original title; that one must have informant information; that his Shoshonean-Sahaptin division line on his 1938 publication approximates his 1850 line in his 1936 publication when considered with respect to the mouth of Weiser River (Trans. pp. 698-9); and that during the 19th century the Snake or Paiute Indians were within the region north of his Shoshonean-Sahaptin divide on the south rim of the watershed of John Day River, but that the economic cycle of the Umatilla and Cayuse tribes caused them to winter in the northern portion of the areas he now assigns to them and that:

The northern Paiute, being immediately to the south and engaging whenever they could in small raids into Cayuse and Umatilla territory, sometimes did cross the mountains and get into the actual valley of the John Day River. In fact, they often went even further than that on their raids. But in the wintertime, when none of the Cayuse or Umatilla were in this region, they sometimes actually camped on the John Day River, so that is what led my informants to say that the Paiute were people who were to be found there, and the determination of the boundary as I have shown it here rests upon further information to this effect.

That Paiute presence on the John Day River, itself, on the course that is shown here, extreme south, was on the same basis exactly that it was further to the north; that is, a raid and enemy attempts at utilization when they could get away with it. (Tr. p. 568)

He explained these northern tribes considered the Snakes were "savage not entitled to the same treatment accorded to other neighbors, and that the Snakes provoked this attitude because the (Trans. pp. 628-630):

*** nature of the Paiute culture was such that a wandering way of life was characteristic, and in this wandering way of life the small groups of Paiutes penetrated into whatever area they could where they thought they would be able to get something to eat or something to use in their meager culture.

They certainly from time immemorial had attempted to penetrate into the Cayuse and Umatilla lands. Even when the Cayuse and Umatilla were further to the north. And, in turn, then the Cayuse and Umatilla would have to be on the alert and aggressive toward them or else they would soon find that their country in the south was coming to be occupied by these people.

One of the reasons that the Paiute could be partially successful was that they were in this region in the wintertime, whereas the yearly round of activities of the Cayuse and Umatilla took them up further to the north in the wintertime, and there was less danger then for the Paiute.

I do not say that this is the whole explanation. The Cayuse were an aggressive people. * * *

Mr. Luce: Was there any relationship between these people obtaining -- I mean by "these people" the Umatilla and Cayuse, particularly -- obtaining the horse in this drive to the south?

Witness: Yes, there was. We do not know precisely what the history of relationship between these two people was prior to the acquisition of the horse. But it may be safely assumed that with the coming of the horse they were put in a position to move aggressively against the Northern Paiute because the Northern Paiute did not get horses at least in anything to compare with the number that were possessed by the Cayuse and secondarily by the Umatilla.

Mr. Robert Suphan testified for the defendant. He specialized in anthropology at Columbia University, but has not submitted a thesis for his Doctorate. During 1954 he spent six months in historical research followed by three months in field work among the residents of the Umatilla Reservation and three additional months working with residents on the Warm Springs Reservation, all preparatory to testifying in these consolidated cases.

Mr. Suphan placed much reliance upon the publications of Dr. Ray, the Swindell report of 1941 and its accompanying affidavits, and took into consideration material found in the private files of Mr. Swindell following his demise. He prepared a report of his work and conclusions which appears as Defendant's Exhibit No. 18. He testified he had taken care to advise the Indians he interviewed that he represented the Department of Justice and that while he had not interviewed Walla Walla Indians he had found the Walla Walla history common knowledge among the Indians on the Umatilla Reservation. However, he stated in his report his informants had been quite vague concerning usage of the lower Snake and Yakima River valleys as well as the White Bluffs region along the Columbia River, areas Dr. Ray claims were held by the Walla Walla under aboriginal Indian title.

Mr. Suphan considered the area here involved reflected the post-1730 Plains influence which accompanied the introduction of the horse in Washington and Oregon. He wrote the socio-political organization of the Cayuse, Walla Walla and Umatilla Indians was the same; that they were each ethnic entities, composed of members of several villages or local groups; that each local group was politically autonomous with its own chief and council whose authority was limited to that group, there being nothing to unite the several groups into a tribal structure. He wrote his informants had said personal rights were recognized in property made by and/or used in work by individual Indians but village sites were communal property and the nearby fishing sites belonged to the villages as a unit, although they were open to use by all friendly people regardless of ethnic affiliation.

0002889

However, no claim was made to areas beyond the immediate neighborhood of the village, his informants agreeing these were open to whatever friendly people might care to use them. By means of direct statement and through the medium of stories of the old days he ascertained from his informants that there had been no concept of boundaries or trespass among them and ethnographic material to the contrary, was attributed either to misinformation or confusion with conditions prevailing during reservation times.

Mr. Suphan concluded from informant information that in aboriginal times the local groups, composed of extended families, dwelt during the winter months in earth or mat lodges clustered in villages along the Columbia, Walla Walla and Umatilla Rivers in spots affording a nearby supply of fish, roots and wood as well as some shelter from the elements; that their composition was fluid, but the village sites were always within the same general locale. In spring and summer family groups moved out in quest of roots, fish, berries and game, joining other village groups within the larger ethnic unit, but that there were also inter-ethnic aggregations, the heterogeneous groups tending to regroup continually until the families returned to their winter villages.

In his report Mr. Suphan commented concerning a statement by Dr. Ray in his 1939 publication to the effect that there was tribal unity and that leadership among these people rested "more or less (on) arbitrary principles of achievement, with particular emphasis upon war records," saying his Umatilla, Cayuse, and also Nez Perce, informants had emphatically and unequivocally denied this. He discussed the Swindell report, saying

his informants had confirmed that virtually every area exploited by the Umatilla was shared with members of at least one other group, that they verified the sites listed as being used by the Walla Walla and said such visits occurred at least once yearly. That the Cayuse were divided into seven or eight local groups, wintering in areas which correspond to those designated as band locations by Dr. Ray. He concluded "they did not utilize any of their accustomed subsistence areas to the exclusion of other peoples; more commonly, several other Indian groups exploited each spot with the Cayuse."

In respect to the Grand Ronde Valley, Mr. Suphan testified it was his understanding that use of that valley by the Nez Perce was a yearly thing "just as the movement of the Cayuse and Walla Walla, and Umatilla was into the mountains, and that this movement of the Nez Perce was of the same nature -- that is to say, it was part of the summer rounds or at least part of the summer rounds of some of the families among the Nez Perce."

In summation, Mr. Suphan reported he found at least during the early decades of the 19th century the Snakes harassed the Sahaptins from their camps scattered through the Blue Mountains and the Grand Ronde Valley. That by the 1830's and 1840's the Sahaptins had expanded south into the Grand Ronde River valley, undoubtedly a result of having obtained arms and ammunition from trading posts along the Columbia River; that they continued to push yet farther south, but although they used subsistence areas south of the Blue Mountains during the last decades prior to reservation life, the John Day (river) country was jointly exploited not only among the several Sahaptin peoples but with the Snakes as well from about 1820-1830 on.

From further information obtained after the filing of this docket it appears that the two expert witnesses have arrived at entirely divergent views concerning the political structure of these three tribes, their concept of boundaries and trespass, the date the Sahaptin people began a southern expansion of subsistence areas, and whether the Snakes had been excluded from the claimed area.

Documentary Data

23. Historical data concerning the tribes in eastern Oregon begins with the journals of members of the federal expedition of 1804-1806 led by Captains Meriwether Lewis and William Clark. That party traveled down the Clearwater, Snake and Columbia Rivers during the late fall of 1805 and the following spring returned up the Columbia River to the mouth of Walla Walla River, and then went overland to strike Snake River near the mouth of Clearwater River. Lewis and Clark were especially trained, and instructed to obtain detailed data respecting the Indian tribes in the country through which they passed, and gather other information. First hand reports of the topography, and identity and location of the Indians they saw or were able to learn about, appear in the daily journals of these two men and of others with that expedition.

The following information has been extracted from those journals as pertinent to this action and we adopt it as fact:

October 16 to October 18, 1805: From October 16 to 1:00 PM on October 18, 1805, the party camped at the mouth of Snake River. There were three different nations represented among the Indians they met there. One "call themselves Sokuik" and the Chim-na-pum were said to reside on the westerly fork "which mouths a few miles above" (that is, on the Yakima River.) (Pet. Ex. 27, Dkt. 264; Def. Ex. 40)

October 19, 1805: Having camped overnight a few miles below the mouth of Walla Walla River, and having been visited that morning by the "1st Chief of all the tribes in this Quarter," the party camped this evening below the mouth of Umatilla River and opposite 24 lodges of Fish-quit-pas whose language differed from that spoken by the nations at the mouth of Snake River. (Pet. Ex. 27, Dkt. 264; Def. Ex. 40)

October 21, 1805: After passing the mouth of John Day River, Clark wrote in his journal: (Bracketed material supplied)

"The probable reason of the Indians residing on the Star^d /north/ Side of this as well as the waters of Lewis's River is their fear of the Snake Indians who reside, as they natives say on a great river to the South, and are at war with those tribes, one of the Old Chiefs who accompanies us pointed out a place on the Lar^d /south/ Side where they had a great battle, not many years ago, in which many were killed on both sides, * * *." (Def. Ex. 40, p. 145)

October 22, 1805: The party passed the mouth of DesChutes River, which they recorded had "no Indian name that we could find out except 'the River on which the Snake Indians live,'" and Clark wrote:

"*** The principal Chiefs of the bands residing about this Place is out hunting in the mountains to the S.W. no Indians reside on the S.W. side of this river for fear (as we were informed) of the Snake Indians, who are at war with the tribes on this river. they represent the Snake Indians as being very numerous, and residing in a great number of villages on Towornahooks /DesChutes/ River which falls in six miles above on the Lar^d (south) Side and it reaches a great ways, *** they inform that *** they go to war to their first villages in 12 days, the Course they pointed is S.E. or to the S. of S.E. ***" (Def. Ex. 40, p. 149)

October 25, 1805: Having arrived below The Dalles, Clark wrote:

" *** here we met with our two old chiefs who had been to a village below to smoke a friendly pipe and at this place they met the Chief & party from the village above on his return from hunting all of whom were then crossing over their horses *** he /the Chief/ gave us some meat of which he had but little and informed us he in his route met with a war party of Snake Indians from the great river of the S.E. which falls in a few miles above and had a fight. ***" (Pet. Ex. 29, Dkt. 198, p. 158)

October 26, 1806: While encamped on Mill Creek, Clark wrote:

"* * * The Indians had lately lived in Lodges on the Lar^d Side at the falls * * *."

"* * * Those Indians are at war with the Snake Indians on the river which falls in a few miles above this and have lately had a battle with them, their loss I cannot learn." (Pet. Ex. 29, Dkt. 198, p. 161)

In a second draft, he wrote in more detail:

"The nations in the vicinity of this place is at War with the Snake Indians who they say are numerous and live on the river we passed above the falls on the same side on which we have encamped, and, the nearest town is about four days march they pointed nearly S.E. and informed that they had a battle with those Ind^s lately, their loss I could not ascertain." (Pet. Ex. 29, Dkt. 198, p. 163)

October 29, 1805: When near the mouth of the Klickitat River, Clark wrote in his journal in a first draft:

"* * * The Indians are afraid to hunt or to be on the Lar^d Side of this Columbia river for fear of the Snake Ind^s who reside on a fork of this river which falls in above the falls. * * *"

A few miles further downstream he commented on seeing four houses in a timbered bottom on the south side of the River. In his second and more detailed draft, Clark mentioned arriving at the home of a chief he had met at the "long narrows" and visited with him:

"* * * The Chief * * * Showed us 14 fingers (different fingers not little or middle fingers) which he said was the fingers of his enemies which he had taken in war, and pointed to S. E. from which direction I concluded they were Snake Indians, * * *"

When about six miles below Sepulchar Island, and about the mouth of Hood River, Clark mentioned passing four houses on the Lar^d (south) side of the Columbia River, saying:

"* * * these are the first houses which we have seen on the South Side of the Columbia River, (and the access to those difficult) for fear of the approach of their common enemies the Snake Indians, * * *" (Pet. Ex. 29, Dkt. 198, pp. 169-171)

Confirmation appears in the Joseph Whitehouse journal under this same date:

* * * Saw 2 or 3 Camps on the Lar^d [south] Side, which was the first we saw on that Side of the Col^d R. * * * (Pet. Ex. 29C, Dkt. 198, p. 182)

During the return trip up the Columbia River, and on April 14, 1806, when near the mouth of White Salmon River, Lewis wrote:

"* * * some of them informed us that they had lately returned from a war excursion against the snake Indians who inhabit the upper part of the Multnomah river to the S.E. of them, they call them To-wan-nah-hi-ooks. that they had been fortunate in their expedition and had taken from their enemies most of the horses which we saw in their possession. * * *" (Def. Ex. 41 p. 280)

On the same date Clark wrote:

"* * * Some of them informed us that they had latterly returned from the war excursion against the Snake Indians who inhabit the upper part of the Multnomah river to the S.E. of them they call them To-wan-nah-hi-ooks. that they had been fortunate in the expedition and had taken from their enemies most of the horses which we saw in their possession. * * *" (Def. Ex. 41, p. 282)

On April 20, 1806, when near Celilo Falls, Clark wrote:

"* * * The principal village of the Enasher nation is immediately below the falls of the N. Side. one other village of the same nation above the falls on the opposite side and one other a few miles above on the North Side. * * * I procured a sketch of the Columbia and its branches of those people in which they made the river which falls into the Columbia immediately above the falls on the South Side [DasChutes] to branch out into 3 branches one of which they make head in N^W Jefferson, one in mount Hood and the other in the S. W. range of mountains, and does not water that extensive country we have heretofore calculated on. a great portion of the Columbia and Lewis's [Snake] river and between the same and the waters of California must be watered by the Multnomah river * * *" (Def. Ex. 41, pp. 307-308)

On April 23, 1806, the party camped near the mouth of Rock Creek (Washington) at a village of Wah-how-pum Indians. On the 24th they found 5 Met-cow-we lodges 12 miles above the Wah-how-pum village, and passed others downstream. A "Chopunnish" (Nez Perce) family accompanied the expedition. On the 25th, 11 miles above the Met-cow-we village they reached a Fish-quit-pah village of 52 mat lodges containing about 700 souls. Four miles above they passed 5 lodges

0002892

14 Ind. Cl. Comm. 14

56

25. Based upon the maps and journals of members of the Lewis and Clark Expedition, and other evidence including the topography of the country through which flow the Columbia and lower Snake Rivers, of which we take judicial notice, our factual interpretation of the Lewis and Clark journals is as follows:

Between October 10 and 16, 1805, the expedition traveled from the mouth of Clearwater River down Snake River to the Columbia River. Bands of the "Chopunnish" nation were observed residing along the Snake River.

From October 16 to October 18, 1805, the expedition camped at the mouth of Snake River where they were visited by Sokulk from a village "a little above," and by Chim-na-pum Indians. A third unidentified tribe was represented among the Indians gathered at this point.

October 18, 1805. The expedition passed the mouth of Walla Walla River and encamped near the Washington-Oregon State line, a short distance below the camp of the Walla Walla chief, Yel-lept.

October 19, 1805. Having failed to observe the mouth of the Umatilla River, the expedition passed it and encamped about eight miles below where about 100 Indians of the Fish-quit-pah Nation visited them. They were unable to understand the language of the Fish-quit-pah.

October 20, 1805. The expedition passed the mouth of Willow Creek.

October 21, 1805. The expedition passed the mouth of John Day River. All the Indians along the Snake River and this far down the Columbia River were observed to have their homes on the north side of the rivers. This, the expedition members were told, was due to their fear of attack by the Snake Indians who lived to the south and with whom these Indians were at war.

October 29, 1805. When near the mouth of Hood River, the expedition members for the first time observed permanent Indian homes located on the south side of the Columbia River. These were homes of Wasco Indians. (Emphasis supplied)

14 Ind. Cl. Comm. 14

57

The expedition continued down the Columbia River and wintered on the Pacific Coast. During April, 1806, they returned up the Columbia River.

April 21, 1806. The party traveled along the north bank of the Columbia River with 10 horses and two canoes.

April 22, 1806. At a distance of 8 to 12 miles up the Columbia River above the mouth of DesChutes River, the expedition found villages of the Eneshur Indian Nation located on the north bank of the Columbia River.

April 23, 1806. Near Rock Creek, at "Rock Rapids," the expedition reached a Wah-how-pum Indian village, having passed a few Wah-how-pum lodges a few miles below.

April 24, 1806. At distances of 4 to 6 miles above the Wah-how-pum village, the expedition passed lodges of the Met-cow-we Indians, and at 12 miles arrived at a Met-cow-we village. The party then disposed of its canoes and proceeded overland along the north bank of the Columbia River. (The Met-cow-we band was a part of the Wah-how-pum Nation. *Pet. Ex. 29, p. 115, Dkt. 198*)

April 25, 1806. At 11 miles above the Met-cow-we village the party arrived at a Fish-quit-pah village of 51 mat lodges, containing about 700 people. Four miles farther upstream they arrived at a Walla Walla camp. Both villages are along the north bank of the Columbia River.

April 26, 1806. The expedition traveled 28 miles and camped on the north bank of the Columbia River below the mouth of Umatilla River, a mile below a Walla Walla Indian village and seven miles above their camp of October 19, 1805, on the opposite bank of the Columbia River. (The October 19th, 1805, campsite had been opposite a Fish-quit-pah Indian village.)

April 27, 1806. The expedition traveled 31 miles and camped at the village of the Walla Walla Chief, Yel-lept, who had visited them the morning of October 18th, 1805. This Chief's village was located approximately opposite the mouth of the Walla Walla River on the north side of the Columbia.

April 28, 1806. The party remained at the chief's village.

April 29, 1806. The expedition crossed the Columbia River and camped about one mile up the Walla Walla River near twelve lodges of Walla Walla Indians. Other lodges of Walla Walla Indians were observed on the opposite bank of the small stream.

25. Based upon the maps and journals of members of the Lewis and Clark Expedition, and other evidence including the topography of the country through which flow the Columbia and lower Snake Rivers, of which we take judicial notice, our factual interpretation of the Lewis and Clark journals is as follows:

Between October 10 and 16, 1805, the expedition traveled from the mouth of Clearwater River down Snake River to the Columbia River. Bands of the "Chopunnish" nation were observed residing along the Snake River.

From October 16 to October 18, 1805, the expedition camped at the mouth of Snake River where they were visited by Sokulk from a village "a little above," and by Chim-na-pum Indians. A third unidentified tribe was represented among the Indians gathered at this point.

October 18, 1805. The expedition passed the mouth of Walla Walla River and encamped near the Washington-Oregon State line, a short distance below the camp of the Walla Walla chief, Yel-lept.

October 19, 1805. Having failed to observe the mouth of the Umatilla River, the expedition passed it and encamped about eight miles below where about 100 Indians of the Pish-quit-pah Nation visited them. They were unable to understand the language of the Pish-quit-pah.

October 20, 1805. The expedition passed the mouth of Willow Creek.

October 21, 1805. The expedition passed the mouth of John Day River. All the Indians along the Snake River and this far down the Columbia River were observed to have their homes on the north side of the rivers. This, the expedition members were told, was due to their fear of attack by the Snake Indians who lived to the south and with whom these Indians were at war.

October 29, 1805. When near the mouth of Hood River, the expedition members for the first time observed permanent Indian homes located on the south side of the Columbia River. These were homes of Wasco Indians. (Emphasis supplied)

The expedition continued down the Columbia River and wintered on the Pacific Coast. During April, 1806, they returned up the Columbia River.

April 21, 1806. The party traveled along the north bank of the Columbia River with 10 horses and two canoes.

April 22, 1806. At a distance of 8 to 12 miles up the Columbia River above the mouth of DesChutes River, the expedition found villages of the Enesbur Indian Nation located on the north bank of the Columbia River.

April 23, 1806. Near Rock Creek, at "Rock Rapids," the expedition reached a Wah-how-pum Indian village, having passed a few Wah-how-pum lodges a few miles below.

April 24, 1806. At distances of 4 to 6 miles above the Wah-how-pum village, the expedition passed lodges of the Met-cow-we Indians, and at 12 miles arrived at a Met-cow-we village. The party then disposed of its canoes and proceeded overland along the north bank of the Columbia River. (The Met-cow-we band was a part of the Wah-how-pum Nation. *Put. Ex. 29, p. 115, Dkt. 198*)

April 25, 1806. At 11 miles above the Met-cow-we village the party arrived at a Pish-quit-pah village of 51 mat lodges, containing about 700 people. Four miles farther upstream they arrived at a Walla Walla camp. Both villages are along the north bank of the Columbia River.

April 26, 1806. The expedition traveled 28 miles and camped on the north bank of the Columbia River below the mouth of Umatilla River, a mile below a Walla Walla Indian village and seven miles above their camp of October 19, 1805, on the opposite bank of the Columbia River. (The October 19th, 1805, campsite had been opposite a Pish-quit-pah Indian village.)

April 27, 1806. The expedition traveled 31 miles and camped at the village of the Walla Walla Chief, Yel-lept, who had visited them the morning of October 18th, 1805. This Chief's village was located approximately opposite the mouth of the Walla Walla River on the north side of the Columbia.

April 28, 1806. The party remained at the chief's village.

April 29, 1806. The expedition crossed the Columbia River and camped about one mile up the Walla Walla River near twelve lodges of Walla Walla Indians. Other lodges of Walla Walla Indians were observed on the opposite bank of the small stream.

26. Traders and trappers next approached the claimed area. The British came by way of the Columbia River and those connected with John Jacob Astor's Pacific Fur Company and other American companies traveled what later became known as the Oregon Trail. This trail crossed Snake River near the mouth of Burnt River and turned north through the Blue Mountains, crossing Powder River, passing through Grand Ronde Valley and running along the Umatilla River to the Columbia River.

During the 1840's the United States sent three exploring parties through this region under the respective leadership of Commander Charles Wilkes, Captain Charles C. Fremont and Governor Isaac I. Stevens. The private explorations of Captain Benjamin Bonneville led him through the region during 1832. Beginning about 1835 a number of missionaries arrived. After 1850 correspondence concerning these three tribes originated with the Department of Indian Affairs and the United States Army. Letters, journals and like instruments originating with these parties as well as with emigrants and settlers, contain pertinent information respecting the Indian tribes in this region. Some are as follows:

Traders and Trappers

David Thompson, 1811-1812. Mr. Thompson, a partner of the British Northwest Fur Company, passed down the Columbia River during July, 1811, and returned upstream during August, 1812. He met the Walla Walla chief, Yellepit, five miles below the mouth of Snake River during 1811 and found the Walla Wallas without "weapons of war, rarely a Bow and arrows." Yellepit stated that his tribe had not visited its land in the buffalo country for three years "on account of the hostility of the Snake Indians of the

Straw Tent Tribe." It is agreed by the parties hereto the buffalo country referred to lies in Idaho, east of the area here involved.

Thompson identified Yellepit as the "Chief of all the Shawpatin Tribes." Approximately 32 miles farther down the Columbia River he found Indians of another tribe. On his return trip he said there were 200 lodges of Sahaptin Indians in "their principal village" at the mouth of Snake River. In the first 56 miles up Snake River he noted passing 5 unidentified Indian villages. On August 8, 1811, he wrote in his journal: * * * Beginning of course now to see the Blue Mountains between the Shawpatin and the Snake Indians." * * * (Def. Ex. 68; Pet. Exs. 100, 533 #2)

Ross Cox, 1811-1817. Ross Cox, with the Northwest Company, journeyed up and down the Columbia River a number of times during and after 1811. In his 1811 journal he described that river and commented on the country along it above the mouth of DesChutes River: "The natives reside solely on the northern side; they have plenty of horses, and are generally friendly." He reported a Walla Walla village was located at the mouth of Walla Walla River and he met a number of Nez Perce Indians at the mouth of Snake River. He said below the Islands near the mouth of Walla Walla River (Pet. Ex. 9):

* * * a range of high hills are seen on each side of the (Walla Walla) river, running nearly from S.W. to N.E., and uncovered by any timber: but at an immense distance, in a southeasterly direction a chain of high craggy mountains are visible, from which it is supposed the Walla Walla takes its rise. From their color the Canadians call this chain "Les Montagnes Bleues."

During 1815 Mr. Cox was attacked by Chinnapum, Yackaman, Sokulk and Walla Walla Indians when he was about halfway between the mouths of Snake and Walla Walla Rivers on the Columbia; the Walla Walla chief, Morning Star came to his assistance, saying the Shoshones had in summer stolen the horses

At the mouth of Walla Walla River he found assembled some 1,500 Walla Walla, Shaw Hapten (Nez Perce) and Cajouses (Cayuse) Indians, the Cayuse, Nez Perce and part of the Walla Walla having guns, and the plains being "literally covered with horses." During 1818 Ross established Fort Nez Perces, later Fort Walla Walla, at the mouth of Walla Walla River for the Northwest Company. He described the plains around the fort as covered with wild horses, that the view to the south was:

abruptly checked by *** wild and rugged bluffs on either side of the (Walla Walla) water and rendered particularly so by two singular towering rocks *** situated on the east side, and they are skirted in the distance by a chain of the Blue Mountains, lying in the direction of east and west ***.

Ross enumerated the Indian tribes attached to the fort, listing tribes other than the three here represented as residing on the Columbia River above Snake River, the Nez Perce and Rajouse as residing on Snake River, and the "You-ma-talia" bands as residing on the Columbia River below the fort, and

about the establishment, the Cayuse and Walla Walla tribes. It is to the two latter that appertain the spot on which the fort is erected, and who are consequently resident in the immediate neighborhood.

He described Snake country as extending from the Rocky Mountains to a line extending south from the west end or spur of the Blue Mountains behind the fort and paralleling the Pacific Ocean, with its northern boundary, any,

another line running due east from the said spur of the Blue Mountains, and crossing the great south branch, or Lewis (Snake) River, at the Dalles, till it strikes the Rocky Mountains 200 miles north of the three pilot knobs, or the place hereafter named the "Valley of Troubles."

Ross wrote of war expeditions conducted against the Snakes by Walla Walla, Cayuse and Nez Perce Indians during 1811 and later, despite

of the Walla Walla and driven them from the river, in winter burnt their lodges and killed their people until the whites exchanged guns and ammunition with them for their furs, and that they had then "driven the Shoshone from our hunting grounds *** and have regained possession of the lands of our fathers ***." Cox commented that the Walla Walla had banished "the enemy from the banks of the Columbia." He reported the Nez Perce and Walla Walla tribes were "constantly at war with the Shoshones, or Snake Indians, who inhabit the great plains to the southward," that:

The only cause assigned by the Walla Walla for this war is that the Snakes intercept them from hunting the black-tailed deer, which are numerous in their lands, and in retaliation they oppose the latter in their endeavors to catch salmon in the Columbia. They allege that this opposition would cease if the Shoshones abandoned their claim to the exclusive right to hunt the black-tailed deer. As this is a privilege, however, which the latter are not willing to concede, their warfare may be interminable.

During 1817 Cox's journal records traveling with "Shayatoes" and Walla Walla along the Columbia River a day's journey above the mouth of John Day River. Cox described the Yackamans (Yakimas) as a numerous tribe inhabiting,

"the lands on the northern banks of the Columbia, from its junction above Lewis River until some distance above a river which flows from the northward, and is called after the name of the tribe." (Doc. Ex. 9)

Alexander Ross, 1811-1824. Alexander Ross, an employee of the

Pacific Fur Company, journeyed up the Columbia River during August of 1811. When camped near the mouth of the Umatilla River he wrote in his

Journal:

This river takes its rise in a long range of blue mountains, which runs nearly east and west, and forms the northern boundary of the great Snake nation.

efforts of the whites to maintain a peace that they might trade with the Snakes; and reported during 1819 the Snakes attacked the Walla Walla party within three miles of the fort, following a Nez Perce expedition to their country.

Subsequently, Ross indicated the Blue Mountains on a map of this region as running northeastward south of the Columbia River a distance of about 60 miles at the mouth of John Day River and around 35 miles south-east at the mouth of Umatilla River; thence east a short distance and then south along the west side of Snake River, with a spur crossing that river midway between what appears to be the mouths of Imnaha and Powder Rivers at a point designated "The Narrows." South of this point and west of Snake River Ross indicated there were Banatee Bands of Snakes. The country south of the northeast-southwest mountain range is not represented on this map. (Def. Exs. 56, 57; Pet. Exs. 65, 66)

Sir George Simpson, 1824-1825. During November, 1824, Simpson traveled up the Columbia River to inspect the Hudson's Bay Company's posts as Governor of that Company. During March, 1825, he went upstream again, stopping a while at Fort Walla Walla where he reported there were Nez Perce, Cayuse, Walla Walla and other Indian bands. Some distance above that fort, several hours travel time, he was visited by a band of about 60 Nez Perce Indians. Subsequently he said their country bordered that of the Snake on the south and in a report by Samuel Black, then in charge of the fort, it is said they inhabited "part of lower Nez Percos River (or South Branch) Louis Branch" of the river. Simpson said the Yakima were opposite Priest's Rapids; and were the only Indians north of the

Columbia River, with a branch of the Walla Walla called Samnepams below them; that Palouse were on the Snake River below the Nez Perce; that Iskayouse country extended from DesChutes River to the Grand Ronde, two days' journey east of the fort. In listing the tribes in this region he located some as follows:

Youmatallomi	South side Small River
Walla Wallas	South side Walla Walla R.
Eya Kimu	north side at Small River
Cayouse	Between Walla Walla & Blue Mts.
Paloosh	Lewis and Clarkes River
(Pet. Exs. 73, 74; Dkt. 198, Pet. Ex. 46)	

Wilson Price Hunt, 1811-1812. During December, 1811, Mr. Hunt led a party of Pacific Fur Company employees along what later became the Oregon Trail. According to those who have traced his route from his journal, he was on Weiser River when he found a number of huts of Chochoini Indians, and engaged three of them to guide his party to the Sciatoegas who they said lived "on the westerly side of the mountains and had many horses." His party crossed Snake River near the mouth of the Weiser River, turned north, and on reaching Grand Ronde Valley Mr. Hunt recorded in his daily journal:

We fortunately found there six huts of Chochoina, who had many horses. * * * they told me that we had yet to sleep three nights before arriving among the Sciatoegas, and pointed out to me the gap in the mountains by which we must pass.

After six days travel Hunt's party found a camp of 36 mat lodges of "Sciatoegas and Toustchipas" Indians at the junction of McKay Creek and Umatilla River. The previous day they had passed a Snake lodge. The Sciatoegas a few days later moved their lodges down the Umatilla River. On the lower Umatilla River Hunt's party saw mat lodges of Akaitchi Indians who he reported lived near the mouth of the Umatilla River on the adjacent bank of the Columbia River and were "better provided with

food than are the Snakes.

Ataitchi is a Bannock word meaning "Salmon Eater." Ethnologists have identified the Sciatogas as Cayuse. Identification of Toustchipas is not certain. (Pet. Ex. 96; Def. Ex. 55)

Robert Stuart, 1812. During July, 1812, Robert Stuart, a partner of Pacific Fur Company, traveled up the Columbia River to the mouth of Walla Walla River, thence overland to the Big Flat or Grand Ronde Valley and across Powder River to the mouth of Burnt River. His journal records an attack by Snake Indians on Columbia River Indians in a canoe on that river. He said such animals as elk, deer, beaver and antelope were to be found. An Indian fishing site was located 5 miles up Burnt River but there is no mention of seeing Indians between the Umatilla and Snake Rivers. He said the Umatilla and Walla Walla Rivers took their rise in the mountains bounding the Columbia plains on the southeast, and that the Walla Walla Nation, some 200 in number, resided near the mouth of Walla Walla River. He described Sciatoga (Cayuse) country as being:

bounded on the Southeast by the Big flat (Grand Ronde Valley) on the North by Lewis (Snake) River, on the west by the Columbia, and on the south by the Walamat, (Willamette) ***. (Pet. Ex. 96.)

Peter Skene Ogden, 1824-1826. Mr. Ogden led a number of trapping expeditions through eastern Oregon. His journals report on the morning of November 26, 1825, he was visited near Blalock Island on the Columbia River by two Cayuse chiefs. Going up the main John Day River, eastward, he saw Snake huts on January 14th, 1826, not long abandoned. On the 15th and 19th of January he saw Snake Indians; on January 20th he commented his party was lucky to find any beaver considering the number of Snake

Indians in that quarter. Near Ingle and Beach Creeks on the 23rd he complained his party was near starvation and that "a poorer country does not exist in any part of the World," although he thought it appeared well inhabited by Indians in the summer. His party reached Burnt River February 1st, in a starving condition. Ogden described the country as "lofty mountains on all sides well covered with Snow indeed a more Gloomy Barren looking Country I never yet seen."

The following July Ogden's journal records he was again on the headwaters of John Day River, again complaining of there being little food and few game animals in the country. This time he saw Indian tracks but did not identify the Indians. In his Official Report prepared about this time Mr. Ogden bounded Snake country "on the North by the Columbia Waters." (Pet. Ex. 33, Dkt. 198)

Nathaniel J. Wyeth, 1832-4. Between 1832 and 1836 Mr. Wyeth represented the Hudson's Bay Company, for which he constructed Fort Hall on the headwaters of Snake River in Idaho. On one of his trips through this country he mentioned in his daily journal that ^{members of} two Cayuse lodges visited his camp on Powder River. He also recorded meeting other Cayuse in Grand Ronde Valley, at which time he found Captain Bonneville camped there. In a report concerning the Indians inhabiting this region, Mr. Wyeth said the valley between the Blue and Cascade Mountains, between the Columbia and the heads of the small streams flowing into it from the south was inhabited by Digger Snake Indians near the heads of those small streams; that Nez Perce, Cayuse and Walla Wallas also visited that country. Again, in this report, he referred to Cayuse and Walla Walla Indians as living below

the Blue Mountains, saying the lines of wandering bands have continually interlocked in the country between the Cascade and Blue Mountains. (Pet. Ex. 109; Def. Ex. 104, pp. 221, 224) "Below" is down stream to the north.

John Work, 1832. On July 8th, 1832, Work's trappers crossed from Burnt River to the headwaters of either Middle or North Fork of John Day River, another branch being not far to the south. (See July 11 entry) They saw a Snake family spearing salmon on the 9th and on the 10th passed three other Indian families. Twenty-seven miles downstream the Snakes had barred the river to catch salmon. On the 16th two Snakes visited his camp and the men he had sent to "South Fork" observed there a Snake fish wier. Two days later Work's party reached Pendleton, Oregon, and the following day arrived at Fort Walla Walla. That fall, during a subsequent trip, Work met Cayuse and Walla Walla Indians on South Fork of John Day River and was told by Cayuse on John Day's River the Snakes had killed a trapper on Burnt River the previous July. (Pet. Ex. 519; Def. Exs. 29, 46, 47)

Captain Benjamin Bonneville, 1832. Captain Bonneville's travels are reported by one Washington Irving. At Fort Walla Walla he met Nez Perce, Walla Walla and Cayuse Indians. The Cayuse he said resorted to the headwaters of Grande Ronda River to pasture horses and to feed upon salmon. A band in the Wallowa River valley were said to trade with the Hudson's Bay Company, generally exchanging horses but also beaver skins which were:

not procured by trapping but by a course of internal traffic with the shy and ignorant Skoskokoes and Too-el-icans, who keep in distant and unfrequented parts of the country, and will not venture near the trading houses.

On October 20th he found Shoshone Indians "absolutely thronged" along the banks of Snake River opposite the headwaters of John Day River. (Pet. Ex. 36)

Dr. Gairdner, 1835. During 1835 Dr. Gairdner journeyed down the Oregon Trail. Going west across the north end of Grand Ronde Valley he met a camp of Cayuse and Walla Walla Indians "who had come hither to trade in horses with the Snake Indians." (Def. Ex. 30)

John Townsend, 1834. While traveling west on the Oregon Trail during 1834 Townsend met 10 lodges of Snake and Bannock Indians on Snake River above the mouth of Malheur River, a Snake family on Burnt River, Cayuse Indians between Powder River and Grand Ronde Valley, and Cayuse, Nez Perce and other Indians in that valley. At Fort Walla Walla he saw Cayuse and Walla Walla Indians. On a return trip when between Fort Walla Walla and the Blue Mountains, he met two Walla Walla Indians driving a large band of horses who said "the Snakes have crossed the mountains to commence their annual thieving of horses, and they are taking them away to have them secure." (Pet. Ex. 102)

Thomas J. Farnham, 1839-1846. Traveling toward Fort Walla Walla when northwest of the Blue Mountains Mr. Farnham met a Cayuse family returning from a buffalo hunt near Fort Hall, Idaho. He said before Forts Hall and Boise were established in Idaho the Cayuse had rendezvoused at "La Grande Ronde" with Shoshones and "other Indians from the Saptin," to trade horses for furs, buffalo robes, skin tents, etc; that Cayuse occupied the Blue Mountains above the southwest branches of Walla Walla River, and in wintertime a band usually descended to The Dalles of the Columbia; that Walla Wallas lived on both sides the Columbia from the Blue Mountains to The Dalles. (Pet. Ex. 22)

D. Lee and J. H. Frost, 1840. In their publication "Ten Years in Oregon," these parties located the Nez Perce on the headwaters of Walla Walla River and thence eastward across Snake River. They said the Cayuse formerly collected annual tribute from the Indians at The Dalles on the Columbia River but now set their own price for fish they bought there. (Dkt. 198, Pet. Ex. 28, p. 177; Def. Ex. 45)

Major Osborne Cross, 1849. During September, 1849, Major Cross accompanied a troupe from Fort Boise to The Dalles in Oregon. He recorded friendly Indians would not assist in investigating the rumor that gold was available on the headwaters of Powder River "as they would come in contact with hostile Indians who reside in the mountains and immediately in that neighborhood"; that unidentified Indians visited him in Grand Ronde Valley wanting to trade horses for blankets, etc.; on the headwaters of Umatilla River he reported "At nine o'clock in the morning we came to where the Cayuse Indians were located. Their town, which is temporary, consisted of a number of lodges made of mats and bushes, much larger than those made of buffalo skins"; on starting down the Columbia River he "passed on the right bank some thirty lodges of the Walla Walla tribe who had come down to fish. Their lodges in small numbers could be seen during the day." (Pet. Ex. 11)

Joel Palmer, 1845-1855. Mr. Palmer, who was destined to become Governor of Oregon Territory and as Superintendent of Indian Affairs and a treaty commissioner to negotiate the June 9, 1855, treaty of cession, arrived in Oregon during September, 1845, via the Oregon Trail. His diary

records a visit by a Cayuse Chief on the middle fork of Powder River; that some Cayuse and a few Nez Perce Indians were in Grand Ronde Valley; and Walla Walla Indians who were much inferior to the Cayuse were on the Umatilla River and on the Columbia River below the mouth of the Umatilla. Palmer reported the village of the principal chief of the Walla Wallas was 3/4 of a mile up the Walla Walla River during 1846. Traveling east the following day he was joined by a party of Nez Perce.

On July 18, 1853, he officially reported the Nez Perce boundaries weren't well known; that the Walla Walla and Cayuse disputed ownership of a considerable tract; and during January, 1854, he said the Walla Walla lines as described to him by tribal members during 1848, and the Cayuse boundaries and Nez Perce-Cayuse divide as understood by him were as follows (Pet. Exs. 53; 198; 199; Def. Exs. 48; 86):

Walla Walla boundaries:

Commencing on the south side of the Columbia River a short distance above the mouth of the Umatilla, it runs easterly so as to cross the Walla Walla about ten or twelve miles above Fort Walla Walla, thence northeasterly to the Snake River about twenty or twenty-five miles from its mouth; thence down said river and across the Columbia to a point about twenty miles west of the last named river; thence southwesterly to the mouth of the first stream emptying into the Columbia on the North Side, a little above the mouth of John Day's River.

The Nez Perce-Walla Walla divide:

* * * Their (Nez Perce) boundaries as I have understood them commence on the South side of Snake river at the boundary of the Walla Walla; thence westerly with that boundary to the Tooshi or Toocannou River, I am not certain which; thence by the stream to the mountains; thence crossing said mountains diagonally, to Snake river about forty miles above the mouth of Salmon river * * * to the boundary of the Palooosies who inhabit the country in the

fork of Snake and Columbia rivers; thence on the boundary of that last named tribe westerly to Snake river ten or twelve miles below the Red Wolf's ground which is about two miles below the * * *. * * * It is understood that the Nez Percés and Cayuse claim jointly the Grand Ronde, but neither tribe has, unless recently, made any permanent settlements there. * * *

The Cayuse boundaries:

* * * Commencing on the left bank of the Columbia River near the mouth of Willow Creek, thence up the river to the boundary of the Walla Wallas near the mouth of the Utilia river; thence easterly to the Tooshi or Toocannon (not certain which) the western boundary of the Nez Percés; thence easterly with the boundary of that tribe to the Summit of the Blue Mountains; thence southerly along said range to the headwaters of the northern branch of John Day's river and thence in a direct line to the mouth of Willow Creek. * * *

John McBride, 1846. In his book, "South Pass, 1846," Mr. McBride said when traveling along Powder River a Cayuse Indian from the Whitman Mission had visited him. Between Powder River and Grand Ronde Valley he was passed by several parties of Whitman Mission Cayuse well mounted on fat horses, on their way home to the Umatilla River valley. (Pet. Ex. 47)

L. B. Hastings, 1847. During 1847, when traveling along the Oregon Trail and in Grand Ronde Valley, Mr. Hastings was visited by four Cayuse Indians. He met other Cayuse along the Umatilla River who offered to trade potatoes, peas, corn, etc., for clothing. (Pet. Ex. 33)

Henry J. Coko, 1850. Mr. Coko met two Cayuse Indians in the Grand Ronde Valley during 1850. He saw a Cayuse lodge and a number of Cayuse horses on upper Umatilla River. Above the mouth of John Day River as

he was traveling down the Columbia River he observed a great many Cayuse and other Indians going to or returning from The Dalles. A party of Cayuse Indians and one Snake Indian traveled with him from Snake River, going to Fort Walla Walla. (Pet. Ex. 8)

Mr. Newell, 1849. After residing in Oregon for 21 years, Mr. Newell wrote during 1849 that the Snake or Shoshone inhabited the country west of the Rocky Mountains to the Lewis or Snake River; that Digger Indians were scattered from the headwaters of Snake River to the Grand Round (Grand Ronde Valley); that Cayuse country extended from the foot of the Blue Mountains to within 25 miles of Fort Walla Walla, and the Walla Walla tribe possessed the country on the Columbia River near Fort Walla Walla. (Pet. Ex. 143; Def. Ex. 10)

A. D. Pambrun, 1832-1855. Mr. Pambrun entered Oregon during 1832. His father was in charge of Fort Walla Walla until Pambrun succeeded him there during 1852. When he retired in 1855, he obtained permission of the Cayuse tribe to settle at Walla Walla, Washington. In his reminiscences he commented when he first entered this country "The Grande Ronde valley and the adjacent country, then occupied by the Snakes, was also densely populated." He recorded numerous instances of strife between the Saliaptin and Shoshonean speaking tribes occurring during his period of residence. (Pet. Ex. 54)

Oliver Jennings, 1851. Mr. Jennings kept a journal of a trip from Oregon City east to Salt Lake made in the spring of 1851. He camped with 3 Indians on Umatilla River who were on their way to the The Dalles on the Columbia River; met Cayuse Indians on Grande Ronde River, and

of Fort Walla Walla. Mr. Spalding started one on Clearwater River among the Nez Percé. Correspondence by these men contain an account of Captain Seware describing Grand Ronde Valley as "a central location for the Naptieras (Nez Percé) and Kuses (Cayuse)." In 1836, Mr. Spalding said this valley was "in the Chuyos country." During 1840, Mr. Whitman reported Mr. Hamrun had built a house for the Cayuse chief, Young Chief, on the Umatilla River about 30 miles from the Walla Walla mission. (Pec. Ex. 104) F. N. Blanchet. In reporting his missionary travels throughout Washington and Oregon, Mr. Blanchet said the Cayuse lived in two bands, one on Walla Walla River and one on the Umatilla River. (Pec. Ex. 5; 2-D, Dec. 198) Father Desmet. (1) On a plate attached to Desmet's article, the Cayuse and Nez Percé are located between the Umatilla and Walla Walla Rivers. (2) On Pigganott's map, based upon Desmet's journals, the Cayuse are located on the upper southern branch of Walla Walla River, the Palouse are north of lower Snake River and the Walla Wallas are on lower Walla Walla River. A Nez Percé plain is north of Walla Walla River. (Pec. Ex. 15, 18; Pec. Ex. 68, Dec. 198)

Explorations in Oregon Conducted by the Federal Government

Commander Charles Wilkes, 1841-1842. During 1841, Commander Wilkes led an exploring party along the Columbia and Snake Rivers. At the Cayuse Mission on upper Walla Walla River a Mr. Dayton found all but 14 of the Cayuse tribe were away trading at the Grand Ronde Valley where the "Cayuse, Nez Percé and Walla Walla meet to trade with the Shakes or Shoshones, for roots, skin lodges, elk and buffalo meat, in exchange for salmon and horses."

after crossing Burnt River he wrote: "He saw several real wild Indians of the Bannacks tribe called Diggers." On Malheur River he commented about the number of wretched, filthy "Digger" Indians about his camp. (Pec. Ex. 38)

Harvey W. Scott, 1852. Near present Lagrande, Oregon, emigrant Scott during 1852 saw large herds of Nez Percé horses. (Pec. Ex. 71)

Missionaries

Samuel Parker, 1835. During 1835 Parker journeyed from Idaho down the Walla Walla and Columbia Rivers. He saw 3 Nez Percé Indian lodges on October 3rd on the upper branch of Walla Walla River, the men hunting deer and the women gathering camas. October 6th he arrived at Fort Walla Walla. October 8th on his way down the Columbia River he saw about 12 lodges of Cayuse Indians at two o'clock and camped on the north bank with a large number of Nez Percé Indians. The following night he camped with some Walla Wallas, and on the 10th he camped with Walla Walla Indians about 10 miles above the mouth of Deschutes River. On a return trip he saw a herd of Walla Walla horses at the mouth of Snake River. In a summary he said the Walla Walla inhabited the country along Walla Walla River and down the Columbia; the Palouse tribe resided along Snake River; Cayuse country included the Grand Ronde Valley; and about 700 Yookoomans (Yakima) were about the confluence of the Columbia and Snake Rivers. (Pec. Ex. 56)

Marcus Whitman and H. H. Spalding, 1835-1847. Whitman established a mission among the Cayuse Indians on Walla Walla River 25 miles east

Wilkes said they usually returned home during July and three or four months later went north and east to hunt buffalo which could not then be "found west of the Fort Neuf river." He reported the Cayuse resided on Walla Walla River "in close connexion" with a Nez Perce band. Wilkes' official plat shows the Nez Perce' western boundary as a line extending south along the eastern drainage of Palouse River, across the extreme headwaters of Walla Walla River, across Grande Ronde River just north of Grande Ronde Valley, and then southeastward. Walla Walla are located in the lower valleys of Deschutes, John Day, Umatilla, Walla Walla and Snake Rivers; Cayuse are on the main John Day River and headwaters of Umatilla and Walla Walla Rivers, extending through Grand Ronde Valley southward toward Klamath Marsh. All Powder, Burnt and Malheur Rivers' drainage and the headwaters of Imnaha and Kallawa Rivers, are in Snake or Shoshone country. The parties hereto agree this map is linguistic etc in nature, and only linguistic boundaries are applicable. A map prepared during 1830 by Jedidah Smith formed the basis for Wilkes' map. (Pec. Exs. 105, 106, 107, Def. Ex. 75)

Horatio Hale, 1839-1842. The ethnologist with the Wilkes Expedition was Horatio Hale. He officially reported several independent tribes inhabited the country around the mouth of Snake River; the Walla Wallas were on Walla Walla River; the Yakima were on a large stream nearly opposite them; the Cayuse were on upper Walla Walla River "in close connexion with a band of Nez Perce Indians," and the Cayuse made long excursions to the south and east. His plat shows the Shoshone or Snake Indians in the eastern half of Grand Ronde Valley, and the Touchet

Dravec Captain Charles C. Fremont, 1843. Captain Fremont's expedition traveled from Fort Boise west into this region, and passed north through Grand Ronde Valley and thence down the Walla Walla River. It stopped at Whitman's Mission and at Fort Walla Walla and then went down the Columbia River. His journal records meeting Cayuse Indians near the mouth of Burnt River. They were then returning from a buffalo hunt. He also met several mounted Indians south of Powder River "who belong to the tribes on the Columbia" and "a small town of Nez Perce Indians" when near Whitman's mission on the Walla Walla River. Fremont's 1846 map shows the Blue Mountains extending from south of the Deschutes River northeast to the 46th degree of latitude, as a point southeast of Whitman's mission. (Pec. Ex. 25; Def. Ex. 108)

Charles Preuss. A topographical map prepared by Charles Preuss from Fremont's personal journals, and notes of this expedition, locates the Nez Perce Indians between the Walla Walla and the Snake River, Snake and Indians south of Burnt River; the Blue Mountains extending across Snake River north of Grand Ronde Valley. (Pec. Exs. 23, 24, 25, 26; Def. Ex. 79) Isaac I. Stevens, 1853-1855 and later. During 1853 and 1854 the Governor of Washington Territory, Isaac I. Stevens, was in charge of an expedition seeking a railroad route west from Minnesota to the Pacific Ocean. Included among his party were his son, Hazard Stevens,

ethnographer George Gibbs, Lieutenants G. K. Warren, Saxton and one John Mullan. Thereafter Hazard Stevens wrote a history of his father's life wherein he stated the Nez Perce, Cayuse, Walla Walla and Umatilla each had definite well known boundaries; that the Nez Perce country included "both banks of the Snake and its tributaries, the Kooskooskia or Clearwater, Salmon, Grand Ronde, Tucannon, etc." that the Walla Wallas inhabited the banks of Walla Walla river, the Umatilla the banks of Umatilla River and a Yakima band called the Palouse were on Palouse River and the north side of Snake River; that these tribes all hunted the buffalo.

Lieutenant Saxton reported finding Nez Perce Indians on Walla Walla River. John Mullan reported the Tucannon River formed the southern Nez Perce and Cayuse boundaries. He established Cantonment Stevens along the Walla Walla River where some Flathead and Nez Perce Indians were then wintering.

Governor Stevens reported the Palouse lived in three bands, each north of Snake River, one at the mouth of Palouse River, one 30 miles downstream and one at the mouth of Snake River. He said Pu-pu-mux-mux, the Walla Walla chief, spoke of planting "my three lodges on the borders of my own country, at the mouth of the Touchet." He said the Walla Walla lived south of the Columbia and on Snake River to a little east of the Palouse.

Ethnologist George Gibbs reported meeting unidentified Indians in the Grande Ronde Valley who had come there to trade, and of observing a "temporary" Cayuse town on upper Umatilla River. In his official report of March 4, 1854, he said the Walla Walla bands were on both sides of

the Columbia River and on Snake River a little east of the Palouse; that the Cayuse owned the country on upper Walla Walla River and from DesChutes River to the east side of the Blue Mountains, with only a small part of their country on upper Walla Walla River being in Washington Territory; that the Walla Walla and Nez Perce owned large bands of horses which roamed over the hills south of the Columbia.

Stevens was responsible for a number of maps of this country. About July 19, 1854, a map was withdrawn from his report because of inaccuracies. In his official report the Topographical Engineer G. K. Warren said most of these maps "have been mostly made from reconnaissances, and but few possess very great accuracy;" that he had scanned every available plat or sketch of this country and selected that which seemed most accurate in preparing his own map of 1858. On it the Palouse are located north of Snake River; the Cayuse are between Snake and Touchet Rivers and below upper Umatilla River; the Walla Wallas are on Willow Creek, and "Scattered Bands" of Indians are south of them. There are also Walla Wallas on Walla Walla River and in the Blue Mountains to the east.

Stevens' April 14, 1854, map of Washington bears Gibbs' names and boundaries of Indian tribes. The Cayuse and Palouse divide with the Nez Perce runs south from Palouse River across Snake River east of Tucannon drainage, thence southward from 10 to 20 miles west of Snake River. A Palouse-Yakima divide bisects the Columbia-Snake River country north of their confluence, and follows the south drainage line of Snake River to the east. The Palouse are thus assigned the valleys of Tucannon and Snake Rivers. A line north and south from the mouth of Touchet River divides the Walla Walla and Cayuse.

Stevens' June 12, 1855, sketch accompanying the report of the May-June, 1855 treaty council, has the Nez Perce boundary running south across Grande Ronde River midway between the mouth of Wallowa River and Grand Ronde Valley. The northern Cayuse-Walla Walla divide runs down the north fork of Tucannon River. The line continues down Snake River and up the Columbia River to Priest's Rapids, and thence south to the Yakima River and southwest to the Columbia River midway between the Umatilla River and Willow Creek. It follows up Willow Creek, along the south boundary of the Umatilla Reservation and goes down a northern branch of Powder River.

Stevens' March 21, 1856, sketch shows similar bounds, except the line up the Columbia River stops some distance south of Priest's Rapids. Both maps show the Nez Perce cession extending along Tucannon River and a line drawn from its mouth north to the fork of Palouse River.

Stevens' April 30, 1857, map extends the line up the Columbia again to Priest's Rapids and from there turns west to the Yakima River, thence south to the Columbia River about 5 miles below the Umatilla River's mouth. It follows the south branch of Willow Creek, runs some distance south of the Umatilla Reservation, and swings northeasterly to go down the main branch of Powder River.

At one time Stevens described the Blue Mountains as bordering the Walla Walla valley and extending westward, the source of the Umatilla, John Day and DesChutes Rivers.

The Emory and Humphreys map of 1854 illustrating the Expedition's Report, shows Palouse Indians north of Lower Snake River, Walla Walla

Indians along the Walla Walla River, and Cayuse Indians between Touchet and Snake Rivers. (Pat. Exs. 81, Hazard Stevens; 82, Stevens' Report; 219, Stevens' Report; 11 and 28, Gibbs' Report; 82, Saxton and Mullan Reports; 208, Withdrawal of Stevens' map; 84, Warren's Report; 127, Warren's Map; 87, Stevens' 1854 Map; 88, Stevens' 1855 Map; 90, Stevens' 1856 Map; 91, Stevens' 1857 Map; 84 #2, p. 257, Stevens' Blue Mountains; 85, Emory and Humphreys' Map.)

Early Histories and Accounts

George Wilkes' "History of Oregon." This volume contains the Journal of an emigrant traveling the Oregon Trail during 1843. The writer saw Cayuse villages, one four days' travel south of Grand Ronde Valley and another on upper Umatilla River. At the latter, the Indians had potatoes, peas, corn and horses for sale. His party met a number of Indians in the Grand Ronde Valley on October 1st. (Pat. Ex. 108)

Armstrong's "Oregon," 1857. The Walla Wallas are said to inhabit the country south of the Columbia River from 20 miles below Fort Walla Walla to some distance above the mouth of Snake River, and some of their hunters are said to go to the buffalo country. The Yakima are said to be along the north bank of the Columbia for 300 miles with the Cayuse south of Walla Walla River, their most prominent location being on its headwaters where "they live in close connection with a band of the Nez-Perces." (Pat. Ex. 2)

J. Quinn Thornton's "Oregon and California in 1843." It is said of the Grand Ronde Valley: "Here, also, the Cayuse, Nez Perces, and

Walla-walla Indians, meet to trade with the Snakes, or Shoshones, for roots, skin lodges, elk and buffalo meat, in exchange for salmon and horses." (Pet. Ex. 101)

Henry Schoolcraft. In his "Indian Tribes of the United States" published during 1851, it is said Shoshonean speaking people are spread from the Sweetwater Mountains to and down Snake River to latitude about 44° 30' - the divide between Burnt and Powder Rivers. (Def. Ex. 104)

Correspondence and reports of Military Personnel and Representatives of the Indian Bureau, and other Officials

Governor Joseph Lane, Oct. 1849. Mr. Lane described the country from the foot of the Blue Mountains to within 25 miles of Fort Walla Walla as being inhabited by Cayuse, the country along the Columbia River near Fort Walla Walla as being possessed by the Walla Wallas. (Pet. Ex. 143)

Superintendent Anson Dart, 1851. Mr. Dart said the Walla Wallas were principally along Walla Walla River, the Cayuse being south and east of them; that the Yakima tribe included a band of Indians located at Priest's Rapids on the Columbia River. He established the Uvilla Agency at the present site of Echo, Oregon, within but near the western limits of Cayuse country. (Pet. Exs. 156, 158)

Brevet Major Alvord, 1853-9. Major Alvord said Palouse country extended between the mouths of Salmon and Palouse Rivers; that Cayuse claimed from Willow Creek on the southwest to the Blue Mountains, including Grand Ronde Valley and north to within 15 miles of Fort Walla Walla; the Walla Wallas bordered the Cayuse and occupied land about Fort Walla Walla south of the Columbia River; Bonacks' country extended from the Snake country near Fort Hall down Snake River to the Grand Ronde and

westwardly toward Klamath Lake. (Pet. Ex. 165)

Major G. J. Rains, 1854. While stationed at The Dalles, on April 14, 1854, Major Rains reported to the Adjutant General of the Army the Nez Perce occupied the country between the mouths of Palouse and Salmon Rivers and thence easterly; that Cayuse claimed from Willow Creek to the Blue Mountains and northward to the vicinity of Walla Walla. (Pet. Ex. 205)

Agent R. R. Thompson, 1854. While in charge of the Uvilla Agency District, Thompson said about 100 Snakes lived along the south border of his district; that Cayuse lived on the west side of the Blue Mountains and south of the Columbia River. He found the greater portion of the Cayuse and about 60 Nez Perce Indians in Grand Ronde Valley during August, 1854, and Bonacks or Snakes were near Burnt River. Two months after the June, 1855, session he wrote Superintendent Palmer the Walla Walla chief claimed he had not sold his country north of the "Tusha, East of the Walla Walla, and South and West of the Columbia and Snake Rivers." During August he said a band of Shoshone or Snake Indians resided in the Blue Mountains, southwest of the Grand Ronde. (Pet. Exs. 215, 218, 219, 216, 249, 273; Def. Ex. 50)

Colonel Lawrence Kip, 1855. Colonel Kip attended the 1855 treaty council. He said the Walla Wallas ranged 30 miles up Walla Walla River and on the left bank of the Columbia River. (Def. Ex. 2)

Captain G. O. Haller, July 31, 1855. Having drafted the Haller map during 1854, on July 31, 1855, the Captain reported Snake country reached

0002000

from Grand Ronde in the north to Humboldt's River in California and from the Sierra Nevada and Cascade Range to the buffalo country; that one band lived on the headwaters of Burnt and Powder Rivers. (Pet. Ex. 520)

Special Indian Agent Nathan Olney, 1855. Agent Olney reported Snake country extended from the Grand Ronde to the warm springs on DesChutes River; that Digger Snakes resided about the mouths of Payette and Boise Rivers east of Snake River, and about the Owyhee, Malheur and Burnt Rivers west of Snake River. He located Palouse Indians at the mouth of Snake River. (Def. Ex. 91)

Agent A. P. Donnison, 1857, 1859. Official reports of Agent Dennison during 1857 and 1859, inclusive, contain the following statement: 1857: The Walla Wallas possess the country on both sides the Columbia River between Snake River and Fort Walla Walla; the Umatillas live on Umatilla River; the Cayuse occupy a portion of Walla Walla valley. Shoshone or Snakes occupy the country from Burnt River on the east to the DesChutes River on the west, east of the Blue Mountains and south to California. 1858: The Cayuse have been badly defeated in battle by the Snake; the Cayuse, Walla Walla and Umatilla tribes occupy the Walla Walla valley. 1859: A Snake band live on the western slope of the Blue Mountains opposite Warm Springs Reservation and east of DesChutes River; that they live "in the headwaters of John Day's River;" on the west slope of the Blue Mountains, and that Indians from the Warm Springs Reservation killed two lodges of Snake Indians on John Day River. (Pet. Exs. 339, 357 #3, 361; Def. Exs. 123, 124; Dkt. 198, Pet. Ex. 282)

Agent Craig, 1857. Agent Craig stated the Nez Perce were bounded on the west by the Palouse and Tucannon Rivers. On another occasion he bounded them on the west by the Palouse and Snake Rivers. He placed the Walla Walla on both sides of the Columbia River below Snake River; the Umatilla along Umatilla River and said that the Snake country extended from Burnt River to the DesChutes River. (Pet. Ex. 344; Def. Ex. 15)

Agent A. J. Cain, 1859. According to Agent Cain's report of 1859, the Walla Wallas were upon Columbia River near Fort Walla Walla and the Cayuse tribe lived in Walla Walla valley. (Pet. Ex. 366)

Captain H. D. Wallen, December 10, 1859. Captain Wallen's official report of this date states the Snakes inhabit the valley of Crooked River and adjacent valleys; that their camps are sometimes extended north to the headwaters of John Day's River. (Pet. Ex. 364)

Agent Kirkpatrick, 1862. In an official report concerning the country and Indians in eastern Oregon, Kirkpatrick said only a little of the Snake country outside of the valleys of Powder, Burnt, Malheur, John Day's and Owyhee Rivers, is agricultural; that the Bannack Indians who were generally classed as Snakes, were to the south and that similar Indians were along Snake River. He mentioned having notified the Snakes to stay away from the emigrant roads and the mines, and that the Snakes usually appeared during the months of June and July along Powder River for fishing. (Pet. Ex. 389)

Superintendent of Indian Affairs, J. W. P. Huntington, 1863. On May 3rd, 1863, Huntington said Palmer's reference to the 1855 cession as extending south to the northern boundary of Snake country, meant that boundary line "is probably about 47 $\frac{1}{2}$ ^o North" latitude. (Pet. Ex. 392)

Agent Barnhart, 1865. During 1865 Agent Barnhart reported a party of Umatilla Reservation Indians was attacked by hostile Snake Indians within 30 miles of that reservation; that a party of Warm Spring Reservation Indians had been robbed by Snakes when on one of the northern tributaries of John Day River. (Pet. Exs. 404, 407)

Special Indian Agent Turner, 1878. During 1878 Agent Turner referred to Bear Creek, a northern tributary of the main John Day River, as abandoned Paiute country. (Def. Ex. 107, p. 183)

A. R. Robie, 1857. Agent Robie reported on July 31, 1857, that the Lower Yakima resided along the Columbia River from the mouth of the Yakima River down to within 3 miles below The Dalles, and identified them as Wish-ham, Skein and Click-a-hut. (Pet. Ex. 248, Dkt. 198)

27. On the cession date white settlement within the claimed area was confined to its northern sector. Fort Walla Walla which had been established during 1818 as Fort Nez Perce, was a trading post at present Walula, Washington. Near the present site of Walla Walla, Washington, was a trading post established during 1850 by Brooks-Mumford, and the mission St. Rosa of Lima, established by the Catholics during 1852 to replace the 1836 Presbyterian mission of Wailatpu which the Cayuse destroyed during 1849. Wm. McKay had conducted a trading post at present South Pendleton since 1849, and the Umatilla Agency at Echo, Oregon, had existed since 1851. A few former traders were located near the posts.

Prior to 1835 only the Lewis and Clark expedition, traders and trappers are reported within the claimed area. After 1843 there appears

to have been an increasing amount of traffic by emigrants going on to the west. In 1855 the Oregon or Emigrant Trail crossed Snake River near the mouth of Birch Creek, ran north across Burnt, Powder and Grande Ronde Rivers to Grand Ronde Valley where it divided with one branch extending north by two separate routes past St. Rose of Lima to the Coeur d'Alene Mission and the trading post Spokane House. The other branch ran northwest to the Umatilla Agency where it divided with one trail going west to The Dalles and the other southwest to the Sherar's Bridge crossing the DesChutes River. From Fort Walla Walla a trail ran up both banks of the Columbia River; another went east to Walla Walla and another south to the Umatilla Agency. The Lapwai Mission and Craig's Place on the Clearwater River in Idaho were connected with Fort Walla Walla by a trail running along Clearwater and Touchet River valleys.

As late as 1855 there were neither white trails nor settlements south of the immediate vicinity of the Umatilla River, except for the Oregon Trail. (Pet. Ex. 529)

28. The few ethnologists who have worked with Shoshonean speaking Indians in eastern Oregon place the early limits of Snake occupancy farther north than does Dr. Ray. Reports by some of the first white persons traveling through the region also tend to place those limits farther north. From all the evidence before us we find from time immemorial and at the period of their earliest recoverable history that the Snake Indians inhabited and used southeastern Oregon as far north as the northern drainage limits of the North Fork of the John Day River and that they disputed with the Sahaptin tribes the right to use that country lying north of the

North Fork drainage. As explained by the Walla Walla Indians to Ross Cox during 1812, the Snake Indians claimed the exclusive right to hunt the black tailed deer (which were to be found in the Blue Mountains) and the Walla Walla tribe in retaliation attempted to prevent the Snakes obtaining salmon in the Columbia River.

29. The evidence does not disclose how many Snake Indians were involved in their war with the Sahaptins. Whatever their numbers they were stealthy, sly, courageous, and feared by their opponents. Their appearances along the Columbia River during 1805-1806 and 1811 instilled such fear among the Umatilla and Walla Walla Indians and their allies, the Wayampams that these tribes maintained their homes north of that river as we have previously found. During 1818-1819 Snake war parties were reported as far north as Fort Walla Walla (then Fort Nez Percés) at the mouth of the Walla Walla River. By this time the Sahaptin Indians were acquiring a few guns, and in the 1820's were making a united, common, joint effort on their part to prevent the Snakes making any use of the Columbia River or the country that far north. These Sahaptin tribes also began to send their war and subsistence parties farther and farther south into Snake country in order to increase the areas for their common use and benefit. Their penetration into this southern country was retarded by the determined and continuous resistance of the Snakes and their persistence in utilizing the resources of these areas whenever possible even under the war conditions then prevailing. Even after the Walla Walla, Cayuse and Umatilla tribes moved on to the Umatilla Reservation after their 1855 treaty of cession, hostilities continued between these two groups. As late as 1858 battles between the Cayuse and

Snake Indians were reported by the Agent on that reservation (Pet. Ex. 357, p. 264). At no time did they abandon or discontinue their efforts to use their aboriginal territory described above.

30. The Sahaptin tribes were gradually able to penetrate deeper and deeper into the country utilized by these Snake Indians, and to gradually reduce the extent to which the Snakes were able to use this disputed country. The progress of the Sahaptin penetration cannot be accurately assessed because whites did not enter the greater portion of that country until about 1830, and then in so few numbers that there is little documentation of Indian occupancy. More information exists with respect to the eastern sector because the Oregon Trail was opened during 1811 by the Wilson Price Hunt party, and this trail ran north from the mouth of Burnt River along the western side of Snake River and along the Wallow-Grande Ronde River divide to Grand Ronde Valley. There it turned northwest to follow down the Umatilla River and then down the Columbia River. In this southeastern corner of the claimed area the Blue Mountains were extremely difficult to cross, and travelers stayed close to the trail, not venturing any distance into the country to the west.

0002909

this fact and entered the country only to raid and make such use of enemy territory as was possible, their continuing presence indicates that the Snakes never conceded to the northern invaders the right to exclusively use and occupy this region.

32. However, the Snake usage of this country was not entirely limited to the winter season, as appears from the journals of John Work

who observed Snake Indians along John Day River and who had two members of his trapping party murdered by Snake Indians on the headwaters of

Burnt River during the month of July, 1832, and from the report of Major

Osborne that during September, 1849, friendly Indians would not venture

into the headwaters of Powder River because of the "hostile Indians who

reside in the mountains and immediately in that neighborhood," and from

Captain Wallen's statement during 1859 that the Snake Indians sometimes

camped as far north as the headwaters of John Day's River, and from

Agent J. M. Kirkpatrick's official report during 1862 that the Snakes

came into the valley of Powder River each June and July to fish. Mr.

Famburn did not limit their presence to any season of the year when he

stated that in 1832 the headwaters of Grande Ronde River were densely

occupied by the Snakes.

While the Sahaptin tribes from the north penetrated south as far as

Burnt River, and went beyond the claimed area into the drainage of Silver

River and the South Fork of John Day River prior to the cessation date, it

appears that the Snake Indians utilized this country in common with them.

The journals of only three trappers who did venture into the drainage of John Day River, the memoirs of a former manager of the trading

post at Fort Walla Walla, and occasional references by travelers along

the Oregon Trail identify the Indians in this sector. Such documents

disclose that the Snake Indians were seen in this area but by 1832 the

Cayuse were appearing along Powder River, and both the Cayuse and Walla

Walla tribes were passing south of the claimed area to hunt along the

South Fork of John Day River or in the drainage of Silver River. Since

the early whites coming into this country classed the Umatilla in most

instances among either the Walla Walla or the Cayuse, it is very probable

the Indians seen in these southern regions were sometimes Umatillas.

Other documentary evidence discloses these tribes were also appearing

in the country to the west of the claimed area.

31. This documentary evidence discloses, and Dr. Ray acknowledged

when testifying before this Commission, that the Snakes were not completely

excluded from the country drained by the John Day River, but that they

continued to appear within it in small family groups, fishing the streams

and foraging for subsistence; that they could do so during the winter

months without danger of encountering these Sahaptin tribes from the north,

for the regular subsistence cycle of the Sahaptin tribes was such that

they spent this period of the year in their winter villages north of the

John Day River drainage.

Contrary to Dr. Ray's conclusion that the Umatilla and Cayuse had ac-

quired firm possession of this area by 1810 and that the Snakes recognized

Without having excluded the Snakes from the claimed area, it can not be said that these northern invaders enjoyed the exclusive use and occupancy of the country, and that original Indian title could have developed in either one of them.

33. During 1811 "Chochoni" Indians resided along the Weiser River east of Snake River. Other "Chonchoni" Indians with "many horses" were in the Grand Ronde Valley when Wilson Price Hunt's party passed through there during December of that year. In the Blue Mountains north of that valley there were one or more Snake lodges. Across the main ridge of the Blue Mountains, on the headwaters of Umatilla River, there were Sciatoga and other Indians. According to the Indians it was three or four days' travel time between the Chochoni in Grand Ronde Valley to the Sciatoga on the Umatilla; Hunt's party used 6 days for the trip.

The Sciatoga are identified as Cayuse by most people writing of these early people. The possession of many horses, when horses were a scarce commodity among the Snake Indians of southeastern Oregon, identified the Chochoni or Shoshone Indians in Grand Ronde Valley during 1811 as related to the Snake or Shoshone Indians in the country east of the claimed area. Later documents referring to skin lodges and buffalo skins as items obtained in trade with the Snake Indians in Grand Ronde Valley also identify those Indians as related to the Snakes east of this area, for buffalo were not found in Oregon after the 18th century, according to Commander Charles Wilkes who passed through this country during 1841, and Brevet Major Alvord who was in charge of the military forces at The Dalles, Oregon, during the 1850s. (Pat. Ex. 69)

Other documentary evidence originating between 1811 and 1855 discloses that the Cayuse Indians were met in the Grand Ronde Valley more frequently and in greater numbers than any other tribe. They were not the only users of the valley throughout this period however, and there are reports that not only the Cayuse tribe but other tribes as well claimed that valley. Both salmon and camas root, important articles in the diet of these Indians, were found in the Grand Ronde Valley. These foods were of some attraction to the Indians, but the various references to the Cayuse and other Sahaptin tribes met within that Valley indicate they were there primarily to trade with the Snake or Shoshone and during the 1840's and 1850's to trade with the emigrants. There were no permanent Indian villages within the Grand Ronde Valley as late as 1854. (Pat. Ex. 199)

34. Depredations by the Snake Indians of southeastern Oregon against travelers along the emigrant trails and upon miners and settlers who entered this region the latter part of the 1840's, against the Warm Springs Indian Reservation after its establishment in central Oregon, and general hostilities carried on from time to time between the Snakes and one or another of the Schaptin tribes, which are recorded as late as 1858, led to a series of military excursions by the United States directed against the Snake or related Indians in southern Oregon, and Idaho, and northern Nevada. The first of these saw one command leave Sacramento Valley and one leave Oregon City during 1849, both going to Fort Hall in Idaho. During 1855 Major Haller led a troop through this country to meet with Shoshone or Snake Indians near Fort Boise; during 1858 a detachment penetrated to Salt Lake, Utah, and returned to Fort Vancouver. In 1860 a

The extent of country actually held by said Indians has never been the subject of judicial determination, but the existence of such Snake Indians as an aboriginal land-holding entity was determined by this Commission in its Docket No. 87, Northern Palouse Nation et al. v. United States, decided March 26, 1959, 7 Ind. Cl. Comm. 322, 399. The land held by said entity under original Indian title was not determined at that time because only a non-treaty caking was presented by the pleadings, nor was it affirmatively shown that the petitioners were entitled to represent said aboriginal band known as the Woll-pah-pe Tribe of Snake Indians.

36. During 1941 and 1942 a Mr. Swindell, an attorney with the Bureau of Indian Affairs, Department of the Interior, and the membership of the three tribes here represented, became interested in recording for posterity the usual and accustomed subsistence sites utilized by these tribes prior to going upon the Umatilla Indian Reservation. Each tribe selected important, good members to represent it. These individuals were drawn to places indicated by them and at such places identified them as sites formerly used by certain tribes. This information was then listed on certain cards. Later affidavits were prepared verifying the carded information and the cards and affidavits are presently in the files of the Umatilla Indian Agency and are considered part of what is known as the Swindell Report.

The affidavits recite that affiances are members of a particular tribe, that when that tribe entered the Reservation it was accustomed to using the designated sites, that affiance knew this by reason of having

similar expedition penetrated into southeastern Oregon and returned to Fort Vancouver. During 1862 and 1863 several detachments of the Oregon volunteers entered this country, and established military posts. During 1864 Colonel John Drake spent some time in the vicinity of Malheur Lake, seeking to find and destroy Snake Indians.

Indian Agent J. M. Kirkpatrick during 1862 sent word to the Snakes to cease their use of the Powder River, but in an official report to the Superintendent of Indian Affairs in Oregon made by him that year, Agent Kirkpatrick described the "country belonging to and inhabited by the Snake Indians" as including "the Powder, Burnt, Malheur, John Day's and Owyhee River valley." (Pec. Exs. 419, 389; Docket 198, Pec. Ex. 310)

35. These continuing depredations and the continuing danger of Snake attacks upon whites within eastern Oregon led various officials of the Indian Department in Oregon to recommend the negotiation of treaties of peace or cessation with the Snakes inhabiting that region. On March 25, 1864, Congress appropriated \$20,000 to defray expenses of negotiating such treaties, and under instructions dated June 22, 1864, Superintendent J. M. P. Huntington on August 12, 1865, negotiated a treaty with the Woll-pah-pe Tribe of Snake Indians which tribe he described as a portion of the hostile Snakes. The area ceded by said Indians as described in that treaty lies partially within the area claimed by petitioner on behalf of the Cayuse and Umatilla tribes, being a tract south of the North Fork of the John Day River, bounded by the John Day River above the North Fork on the west and the heads of Malheur and Burnt Rivers on the east.

been at the named site or sites during his childhood or by reason of having been told by his parents or other aged tribal members that they had used such site or sites before going upon the Reservation.

Many such sites are outside of the area presently claimed on behalf of the three tribes here represented, and also outside of the area claimed by petitioner's witness, Dr. Ray, as original title territorial lands of one or another of said tribes. Only a few of the sites which are removed from the vicinity of the Columbia River or the lower Walla Walla River are said to have been exclusively used by one tribe. (Pet. Exs. 98, 99)

37. The affidavits attached to the Swindell Report contain no allegation by members of some one of these three tribes that affiant's particular tribe had the exclusive right to use any one of the sites reported formerly used by it. Nor do they contain any allegation that the site belonged to any other tribe and that members of affiant's tribe used it by permission of the owner tribe. Practically all of the sites within the claimed area and away from the vicinity of the Columbia River or the lower Walla Walla River, were customarily used by more than one of these three tribes, or used by one or more of them in conjunction with other Sahaptin Indians who were involved with these three tribes in the united movement southward against the Snake Indians of southeastern Oregon which began, according to Dr. Ray, about 1750, but which we find to have begun much later.

Documentation originating during the first half of the 19th century frequently contain references to parties of Indians composed of individuals from more than one of these three tribes being encountered in the south-

east corner of the claimed area along or near the Oregon Trail. The record as a whole substantiates Dr. Ray's expressed opinion that the Sahaptin tribes along the Columbia River moved south in a concerted action against the Snake Indians of southeastern Oregon. There is no indication that any one tribe moved south into a definite part of this region and subsequently occupied that sector to the exclusion of all other Indians for along time prior to 1846, so that it acquired original title to such area, and could thereafter as the owner grant permission to other friendly tribes to enter upon and use its territory under a guest-host or permissive use relationship for proper and allowable purposes.

38. The Commission takes judicial notice of a suit which was brought in the Court of Claims by Ambrose Whitefoot and Minnie Whitefoot against the United States to recover compensation for the taking by destruction through inundation of certain fishing rights, and other rights, claimed as the individual property of the plaintiffs in the Columbia River near Colilo Falls in the States of Washington and Oregon, by the construction by the defendant of the Dalles Dam, completed in 1956 (Ambrose Whitefoot and Minnie Whitefoot v. United States, 155 Court of Claims, p. 127, 1961). The plaintiffs are Indians enrolled in the Yakima Nation, a confederation created and granted a reservation by a treaty with the United States entered into June 9, 1855 (12 Stat. 951).

In this treaty certain tribes and bands of Indians ceded to the United States lands which they claimed they held by Indian title and the United States granted to them, or recognized, a certain area as a reservation for the confederated Yakima Nation.

0002913

In Article III of the treaty is a provision relating to

rights:

"The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory, and of erecting temporary buildings for curing them; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land." (12 Stat. 953)

At about the same time other treaties of cession containing sub-

stantially the same provision as Article III were entered into with the

Nez Percé, the Confederated tribes of the Umatilla Reservation, and the

Tribes of Middle Oregon, commonly referred to as the Warm Springs Indians,

and other tribes.

The principal matter determined by the Court of Claims was that

individual members of a tribe may have the use of the tribal lands and

property but title to such property is in the tribe and the individual

rights to use the property depends upon tribal law or custom.

The court called attention to the fact that Congress had passed an

appropriation act (67 Stat. 197) for the civil functions of the Army in

which it authorized compensation for the loss of the fishing rights in

question in that case.

Pursuant to this authority an agreement was reached between the

United States and the Yakima Tribe or Nation, on December 17th, 1954,

for the payment to the Tribe of some 15 million dollars for all of its

fishing privileges as full consideration for the destruction, or

were made

The claims of the petitioners

missed. In connection with this matter the Court entered

and 20 which we believe are relevant and pertinent to some degree in the

Instant case:

19. In the course of their efforts to reach some satis-

factory adjustment with the various Indian groups, the Corps

(of Engineers determined that the total value of Indian fish-

ing rights that would be lost by construction of the dam,

covering a stretch of about ten miles upstream from The Dalles,

Oregon, was the sum of \$23,274,000, which was based upon a

capitalization at three percent of the total value of the

fish caught by the Indians in an average year and sold com-

mercially or to courts or used for subsistence. Later the

figure was increased to \$26,888,395.32. It was decided to

apportion this sum among the various tribes and the unaffiliated

Indians at Collio Falls on the basis of their official Indian

populations enjoying fishing rights there either under the

1855 treaty or by historical usage. Reducing the total value

to a unit basis of \$3,754.91 per Indian, it was determined that

the Yakima Nation should receive \$15,019,640, the Umatillas,

\$4,606,971.05, the Warm Springs, \$4,451,786.26, the Nez Percé,

\$2,800,000, and \$3,754.91 each for some 15 or 16 Indian fisher-

men at Collio Falls who (1) were unaffiliated with any reser-

vation, (2) depended on the fisheries for a livelihood, (3)

had established traditional fishing rights over a period of

many years to the satisfaction of the Collio Fish Committee,

and (4) had no determinable rights under the 1855 treaty. The

Acts of 1953 (67 Stat. 197) and 1954 (68 Stat. 331) authorized In-

payment not only to tribes but also to the unaffiliated In-

dians at Collio Falls who met the tests described above.

20. On December 17, 1954, an agreement was entered into between the United States and the Yakima Nation whereby the latter agreed to subordinate its fishing rights in the Collio Falls fisheries in return for payment of the sum of \$15,019,640. This agreement was approved by both the General Council and the Tribal Council of the Yakima Nation. Similar agreements were entered into with the Nez Percé, the Umatillas and the Warm Springs Indians. (Findings of Fact 19 and 20, slip opinion, pp. 23, 24, Wittcoff v. United States)

0002914

97

3. The Dalles Wasco lands are separated from the Tenino lands on the east by a line which begins at the same point of intersection on the "Maupin line" as described above and runs northeast to Big Eddy on the Columbia River.

4. The Tenino lands are separated from the Tygh lands to the south and the Wyam lands to the east by a line that begins at the intersection of the "Maupin line" with the township line between townships 3 and 4 south, Range 12 East, thence northeast to the northeast corner of Township 3 South, Range 14 East, thence north along the range line between ranges 14 and 15 to the Columbia River.

5. The Wyam lands are separated from the Tygh lands to the south and the lands of the John Day River Indians to the east by a line that commences at the northeast corner of Township 3 South, Range 14 East, thence southeast across the DesChutes River to the intersection of the DesChutes meridian with that part of the line described in Finding 50 as running northeast from the town of Maupin to the south east corner of Township 3 South, Range 20 East in Gilliam County, thence north along the Deschutes meridian to its intersection with the Willamette Base line, thence northwest passing thru the town of Rufus in Sherman County to the Columbia River.

6. The lands of the Tygh band of Indians form a diamond shaped tract located on both sides of the DesChutes River in Wasco and Sherman counties between the Tenino and Wyam lands and the town of Maupin.

And in Finding 52 we held:

The Commission has found that within the area awarded in Finding 50, the seven bands or tribes of Indians, who were parties to the 1855 Treaty of Cession; occasionally, and for short periods of time, allowed other friendly bands or tribes to use their fishing sites and nearby areas on the Columbia River for such things as trading, gambling, horse racing, and other related activities. Under such circumstances the Commission finds that this temporary "guest" use of these areas was not adverse to or incompatible with the Indian title asserted by the original owners.

The area so described, included part of the area where The Dalles Dam was constructed on the Columbia River by the Army Engineers as an agency of the United States and which was the subject in its contract

with the Umatilla Confederated Tribes which claimed that they had been from time immemorial taking fish at the usual and accustomed fishing stations located within and adjacent to The Dalles Dam project, particularly in the vicinity of Celilo Falls, on the Columbia River. (Comm. Ex. I)

40. On June 15, 1846, when sovereignty of the United States attached to the land in the territories of Washington and Oregon, the maximum limits of any territory held by the Walla Walla, Cayuse or Umatilla tribes of Indians became fixed and could not thereafter be increased in derogation of the interests of the United States.

41. On March 8, 1859, the Umatilla tribe of Indians, the Walla Walla tribe of Indians, and the Cayuse tribe of Indians each held original title to a tract of land which the United States acquired on that date and which tract in each instance is described as set forth following their respective names, to-wit:

The Umatilla Tribe: A tract of land located in the States of Washington and Oregon described as follows, to-wit: Commencing on the Columbia River at the mouth of Juniper Canyon in Oregon; thence up said Canyon and its south fork to the source thereof; thence southwest to a point on the Umatilla River two miles below the townsite of Echo, Oregon; thence down the Umatilla River to the mouth of Butter Creek; thence westerly to the drainage divide between Butter Creek and Willow Creek and thence southerly along said drainage divide to the southern extreme of the drainage of Butter Creek; thence westerly to the southernmost point on the watershed of Rhea Creek; thence down Rhea Creek to its mouth and down Willow Creek to its mouth; thence up the Columbia River to the lower edge of Blalock Island; thence north across the Columbia River to a point ten miles directly north of said River; thence northwesterly to a point north of Umatilla, Oregon, and 10 miles north of the north bank of the Columbia River; thence southeast to the Columbia River opposite the mouth of Juniper Canyon; and thence across said river to the place of beginning.

0002915

The Walla Walla Tribe: A tract of land located in the States of Oregon and Washington and described as follows, to-wit: Commencing on the Columbia River at the mouth of Juniper Canyon and running thence up said Canyon and its south fork to the source thereof; thence northeast to the Walla Walla River opposite the mouth of Touchet River; thence up Touchet River to the mouth of Winnett Canyon near Lamar, Washington; thence northwest to a point on Snake River which is twenty-five miles above its mouth; thence down Snake River to its mouth and southwest across Columbia River and along a straight line drawn from the mouth of Snake River to a point which is north of the town of Umatilla, Oregon, and ten miles north of the north bank of the Columbia River; thence southeast to the Columbia River opposite the mouth of Juniper Canyon and thence across the Columbia River to the place of beginning.

The Cayuse Tribe: A tract of land located in the States of Oregon and Washington, described as follows, to-wit: Commencing on the Drainage divide between the Touchet and Snake Rivers at a point where said divide is intersected by a line drawn from the mouth of Winnett Canyon on the Touchet River to a point on Snake River twenty-five miles above its mouth; thence northerly and then east and south along the outer rim of the watershed of the Touchet River, the Walla Walla River and the Umatilla River, and thence westerly along the outer edge of the watershed of the Umatilla River to and around the watershed of Butter Creek; thence northerly along the divide between the watershed of Butter Creek and that of Willow Creek to a point on said divide which is west of the mouth of Butter Creek; thence east to the mouth of Butter Creek; thence up the Umatilla River to a point two miles below the town-site of Echo, Oregon; thence along a straight line to the source of the south fork of Juniper Canyon; thence by a straight line to the Walla Walla River opposite the mouth of Touchet River; thence up Touchet River to the mouth of Winnett Canyon; thence along a straight line drawn from the mouth of Winnett Canyon to a point on Snake River which is twenty-five miles above its mouth to a point on said line which is the place of beginning.

42. With respect to the remainder of the overall areas claimed by petitioner and not included in Finding 41, the Commission finds that the evidence is insufficient to establish exclusive use and possession for a long time, or from time immemorial, in any of the three tribes comprising the Confederated Tribes of the Umatilla Indian Reservation at the critical times in this proceeding. There is substantial evidence to the contrary that the three Umatilla tribes, the Wayampam bands, the Nez Perce tribe, the

Snake Indians, sometimes referred to as the Northern Paiutes - an identifiable group of Indians - or the Shoshonean peoples, and other miscellaneous Indians have travelled, gathered, and hunted over said area and have taken fish from its streams; said use was in common with said tribes and bands. The Umatilla tribes and their allies jointly began a campaign of conquest in the 1820's against the Snake Indians, as above described; to acquire the disputed areas, which at said times and for a long period prior thereto were in the possession and use of said Snake Indians.

We also find that the tribes attempting the said conquest and use met with determined resistance; that they did penetrate some parts of the said areas but their progress was very slow, and the war between the rival groups continued unresolved at the date of the Umatilla Treaty with the United States and for a considerable period beyond said date. At no time within the period were the said Snake Indians entirely excluded from the claimed areas.

It is our judgment that the facts found in the instant case are similar to those found in the case of Sac and Fox Tribe of Indians, et al., v. United States, supra, and the court's holdings in that case should apply here.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Chief Commissioner

Commissioner Scott did not participate in the case.

0002916

defined recognition separate ethnic groups of Indians known as
Matta, Matta, Gaysee, and Matta Indians existed during 1855. (Def.
Req. Pkg. 3) The record sufficiently establishes such groups were
actually tribes of Indians and we have so found. We have also found
that the June 9, 1855, treaty considered those separate tribes into
one entity. The supporting evidence includes the separate instructions
found to the two treaty commissioners that they separate treaties of
cession and cede as many bands and fragments of tribes as of the
discovery, and create as few Indian reservations as possible for them.
Correspondence by the commissioners and the contract witnesses show they
adhered to follow these directions (Def. Ex. 250; 277 #2)

It is evident from the treaty terms that the consideration was in-
tended to satisfy the actual negotiations. One reservation was provided
for all Indians coming under the treaty; reservations were to be created and
land grants and reserves furnished for the benefit of one single entity.
The consideration was "for the use and benefit of the confederated tribes"
in that entity. There is no provision for division of the consideration
either on a tribal basis, on the basis of membership of any separate tribe
or with regard to the separate interests being ceded by each separate tribe.
While the treaty provided for a band or bands of land to be bound by
it, the agreed consideration is to be "severed" (severed) upon the
ratio of the membership of that band or bands to the number of all
Indians coming under the treaty rather than with regard to the membership
of the particular tribe to which such band or bands belong, or with
regard to the persons being ceded by the tribe to which such band or bands
belong and that should be stated clearly.

to be stated clearly. It is not affirmatively shown that percentage of
to particular membership depends upon a census roll taken 70 years
in any treaty tribes. (Def. Ex. 699)

membership by the General Council, but this last group acquires no increased
people having blood of the confederated tribes are approved for
have been approved for membership by the General Council, and to such
born to an ancestor (but if only one parent is enrolled, the child must
corrected within 5 years; all children of a female Indian blood
created Tribes of the Matta Indian Reservation, or as that roll might stand
to persons whose names are on a July 5, 1855, census roll of the confeder-
ated Tribes of the Matta Indian Reservation, or as that roll might stand
under Article 4 of the Constitution particular membership is limited
tion and by laws subsequently approved by the Secretary of Interior.
adult residents on the Matta Indian Reservation adopted a constitu-
tion. It is an organization created November 4, 1919, when the then
rest to the treaty articles of the confederation created by the 1855

We have found, however, that particular is not a successor in interest
was effected by the treaty of June 9, 1855.

terms. So we conclude a continuing confederation was intended to be and
provision is made for dissolution of the confederation after such a
the purposes of the treaty could not be immediately fulfilled. Yet no
Since the consideration was payable over a term of years, it is evident

to be are:
*** tribes, and bands of Indians, occupying lands partly in
Washington and partly in Oregon Territory, and who, for
the purposes of this treaty, are to be regarded as one nation

Furthermore, the treaty preamble provides the articles obligatory

0002918

the members of the treaty entities or of the confederation created by the treaty may have departed the reservation in the interim. Further, petitioner's membership falls into two classes. One class may participate in this action which arises, if a cause of action exists at all, under the treaty of June 9, 1855. The second class cannot participate in the action or any possible recovery even though its members are also related by blood ties to the 1855 treaty entities and the 1855 treaty confederation, no matter how close that relationship may be. Any recovery on a cause of action under the 1855 treaty should be on behalf of the entities then existing. We have concluded petitioner may present this action only in a representative capacity on behalf of those entities.

Recognized Title

Our Finding No. 15 that the defendant has never recognized title to the ceded area to be in either of the treaty tribes rests upon the following:

Petitioner presents a "Chronology of Relevant Acts of Congress" in its Requested Finding No. 19. Those we find pertinent are set out in our Findings Nos. 7 and 8. In our opinion neither of these acts nor the record as a whole establishes recognized title, for such recognition results only from Congressional action accompanied by an intent to do so. Such intent is not apparent here. Hynes v. Green, 117 U. S. 36, 101, 93 L. Ed. 1231. The Supreme Court also said in Pawnee-Neon Indians v. United States, 343 U. S. 272, 278, 99 L. Ed. 114:

"There is no particular form for congressional recognition of Indian right of permanent occupancy. It may be established in a variety of ways but there must be the definite intention by congressional action or authority to accord legal rights, not merely permissive occupation."

This "permissive occupation" is what these tribes held, and what was reserved to them by the various Acts listed by petitioner. There was no intent to grant additional or legal rights, but only to preserve the right of permissive occupation which is known as Indian or original title and exists without any governmental action of creation. Miami Tribe of Oklahoma v. United States, Docket 253, at als., 5 Ind. Cls. Comm. 198, 212.

We have found no evidence of congressional intent to recognize title in this instance. The June 9, 1855, treaty was negotiated by authority of the Appropriation Act of July 31, 1854, 10 Stat. 315. That act appropriated two separate funds, one for "expenses of negotiating treaties with, and making presents of goods and provisions to, the Indian tribes in the Territory of Oregon," and the other for "expenses of negotiating treaties with, and making presents of goods and provisions to, Indian tribes in the territory of Washington." In neither instance is there an expression of an intent to recognize title. The council minutes contain no discussion of territorial claims. Indians residing west south of these parties were never contacted to learn their territorial claims. The treaty provided the signatory Indian entities ceded "all right, title, and claim to all and every part of the country claimed." It is in effect equivalent to a quit claim deed. Subsequent ratification of a treaty so worded, executed under such circumstances, is not recognition of title.

The Treaty Negotiations

But petitioner claims we must find original title existed in these three tribes to all land described in the 1855 treaty because its north, east and west lines were known while Texumpson Indians living west were

but some sections have no names and the one apparently assigned to the "Tiamath" Indians overlaps areas assigned to others. No mention is made of the Waiia Waiia tribe, yet it was well known at the time. So we think it evident that Major Haller did not intend to set out firm boundaries for the various tribes and bands but was merely indicating their general location. The Superintendent of Indian Affairs must have so interpreted the map too, having been appointed to negotiate treaties of cession with Indians in this region and told to furnish a map showing their locations. Superintendent Palmer within three weeks of receiving the Haller map directed Agent Thompson to contact the Indians within his Agency and obtain this and other information concerning them. (Pec. Exs. 77, Dec. 198; 211, 219, 218 #1 and #2)

Here, the minutes of the treaty council do not indicate any investigation was made into the territorial boundaries of these tribes other than that a map of Nez Perce claimed country was obtained from a chief of that tribe. Among the other tribes from whom cessions were obtained during this council was the Yakima tribe, and on October 9, 1855, Superintendent Palmer wrote the Commissioner of Indian Affairs that part of the interest among the Indians was due to the Yakima having included in their cession, land owned by the Kitchikan tribe (Pec. Ex. 252), which suggests no investigation was made of the boundary between these tribes. Superintendent Palmer was aware that a dispute existed between the Cayuse and Waiia Waiia concerning a cove of land (Pec. Ex. 141) but the minutes do not reflect any investigation to learn where these divisions lie now. Nor does it appear that the Nez Perce were consulted respecting their western limits

0002920

14 Ind. Cl. Comm. 14

present; because the Yakima tribe ceded adjacent land to the north in a separate treaty executed the same day (12 Stat. 951); because the Nez Perce chief, Lawyer, sketched the country claimed by that tribe prior to the execution of this treaty, because the Nez Perce tribe ceded adjacent land on the next two days later (12 Stat. 957); because petitioner claims for these tribes a common boundary with the Snake Indians to the south; and, finally, because the tribes accepting this council with these various tribes and bands were familiar with their respective territorial claims. (McC. Prop. Rpt. No. 13) This, in effect, is a claim that certain specific acts more or less involving parties representing defendant, occurring reasonably near the time of execution of this treaty of cession, constitute a recognition of title when followed by ratification of the treaty. Unless a specific intent to recognize title has been shown, a treaty of cession operates as a quiet claim. Thompson v. U. S., 1 Ind. Cl. Comm. 669, 688. Since we do not agree with petitioner's contention, we shall briefly review some of the evidence before us which we think substantiates our position.

First, the Haller map of 1855 relied upon by petitioner was submitted by Agent R. K. Thompson before he had visited all of the Indian tribes in the region. He said Major Haller had taken pains to ascertain the topography depicted on this map. There is, however, geographical errors which indicate the map was not made with any care, about much of this region. Further, Haller appears to have attempted to divide the country into sections by means of broken lines. Within most of these sections he then printed the names of various tribes or bands of Indians, sections he then printed the names of various tribes or bands of Indians, sections he then printed the names of various tribes or bands of Indians,

although there were Mayanm Indians at this council. Certainly no effort was made to ascertain the whereabouts of the claimed northern limits of the Snake Indians, or to arrive at an agreed line between them and these northern tribes who were their traditional enemies, even though it was known that Snake Indians were in the country southwest of Grand Ronde Valley. (Pac. Exs. 219, p. 4; 273) Superintendent Palmer's complete indifference to tribal limits is reflected in his report transmitting the session treaty of June 25, 1855, executed by the Wasco and Mayanm Indians west of these tribes, wherein he wrote that this later session might conflict with that obtained of the Cayuse but no objection should be made thereto because Indian boundaries were not well defined and the government was acquiring all of the country. (Pac. Ex. 263) An examination of the treaty description in this Mayanm treaty will disclose that the session included approximately two-thirds of the tract claimed in the instant case. From these facts we think it is evident the statement in Article I of the June 9, 1855, treaty, that these three tribes ceded "all their rights, title and claim to all and every part of the country claimed by them" was arbitrarily chosen because precise boundaries were not known. So we have found that this treaty does not purport to outline an exact area of original title. Had it done so, petitioner would then have no grounds for the claim here, because claim here sets out additional, but not alternative claims to other areas under original title.

Original of Indian Title

Since the errors involved in claims one and four are conspicuous, the evidence on original title will be discussed in though only one case of land was involved.

Population

We are asked to determine the population of these three tribes undoubtedly because, largely for economic reasons, there is usually some relationship between a tribe's membership and the area it uses. Writing on this matter during 1855, the ethnologist J. M. Powell said he found nothing "in the accounts of any of the early visitors to the Columbia Valley to authorize the belief that the population there was a very large one." Decision was very severe in the early 19th century, but we doubt that it exceeded 50%. This loss seems to have been more than offset by these three tribes increasing their use of the horse for transportation of man and food, for by 1855 they were carrying a greater distance than ever before in their subsistence activities. Evidence of their membership at that date supports our finding No. 10. Such evidence is:

Agent N. A. Thompson who in 1856 was in charge of the Uteia District which encompassed all of the involved land (Pac. Ex. 218), gave the Uteia population as 200 and the Cayuse population as 600. (Pac. Ex. 87) Agent A. P. Donelson said on August 1, 1857, the Hamatilla numbered 200, the Cayuse 500 and the Walla Walla 300. (Pac. Ex. 119) In their agreed estimate of the number of Indians to be treated with, the 1855 treaty commissioners listed 500 Cayuse, 300 Walla Walla and Hamatilla combined. (Pac. Ex. 217) About spending nearly two weeks at the council grounds with these tribes these two commissioners, who were the respective Superintendence of Indian Affairs within their respective, listed the Hamatilla at 200, the Cayuse at 500 and the Walla Walla at 300 (Pac. Ex. 277). These figures were reported in the report of Commissioner Stevens dated February 13,

1858 (Part. Ex. 35). Later Agents on the Umatilla Reservation placed the

population of these three tribes much lower, but not all of the tribal mem-

bership was then on that reservation, so we accept the 1855 report of the

creary commissioners as a more nearly accurate reflection of the population

of these three tribes (Part. Exs. 441, 446, 447, 388, 389(5), 417).

It may be said before we proceed to a discussion of the evidence bearing

on the question of original title, that the parties hereto are agreed that

at one time the Snake Indians used and possessed much of the claimed area;

that around a date upon which the parties do not agree, these Sahaptin

tribes to the north and their Sahaptin neighbors, began a concerted movement

of conquest southward. The date at which this conquest occurred, the manner

in which these tribes settled both the territory formerly occupied by them

as well as that to the south into which they expanded, and whether they

ever excluded the Snakes from this latter territory, or, if they did ex-

clude the Snakes then the date by which such exclusion became complete,

are matters of dispute. Indian title comes into being only through the

exclusive use and possession of a definable area for a required period of

time. With this general background, let us consider the evidence before

us.

The Issue of Exclusive Control: The From Time Immemorial Doctrine as Applied to Indian Title

Defendant says the only land holding units within the claimed area

were ethnic groups which held possession of limited areas about their

village quarters; that the balance of the claimed area was used in common

by these groups and that some portions of it were also used by Koyupian

Indians to the west and Nez Perce Indians to the east, while the Snake

Indians used the southern part of

prevented the development of original title in any one of

groups but the land in the immediate vicinity of the village

belonged to the respective villages.

To support its claim that the Walla Walla, Umatilla and Cayuse were

each tribes, that each tribe had a well developed sense of land ownership

and that each tribe held a part of the claimed area under original Indian

title, petitioner relies upon the testimony of Dr. Verne F. Ray. Dr. Ray

has a Ph.D. degree in philosophy, and majored in anthropology, a subject

which he now teaches at the University of Washington. It is his opinion

that the three tribes occupied the country north of Bowler and north fork of John Day

Rivers (see pp. 23-6); that they then participated with neighboring

Sahaptin speaking Indians to the east and west in a northern movement

against the Snake Indians and by 1790 they had expelled the Snakes from

the claimed area; that after 1810 they finally held the Snakes beyond the

area. Dr. Ray attempts to explain away all evidence of other tribes

(fishing, hunting, or gathering in the area he has assigned to one tribe by

saying they did so on a guest-house or permanent basis, and apparently

considered this was so whether the presence of other Indians was sporadic,

cyclic or fairly constant, and regardless of the purpose for which they

entered or used the area and the fact that there were other tribes

participated in the conquest of much of this same territory. In this

manner he would avoid the adverse effect of evidence of exploitation and

use by more than one tribe, which usually indicates a common use area and

to prevent original title coming into existence.

We shall not repeat the discussion of this point which appears in our Warm Springs opinion (Dec. 198). The anthropological interpretation of the phrase "from time immemorial" was given by the petitioner's witness, Dr. Kay, when testifying before this Commission as an expert witness on behalf of the petitioner in our Consolidated Docket Nos. 222 and 226, Consolidated Tribes of the Gwiltche Reservation, et al., v. United States, (Tr. pp. 264, 265; Dec. 222, 1 Ind. Cl. Comm. 131). He there said "from time immemorial" meant from that time beyond which the memory does not serve, which is "so far as the anthropologist is concerned in his attempt to arrive at scientifically valid generalizations, only as far back as, in a sense, the data on the hand, etc." This, he contended, "would carry one back at least four or five generations," and in some instances it might "cover mother and three or four generations," since he also testified there that one generation is considered to be a term of 20 years for people in this general region; this observation is based on a period of from 30 to 100 years or more of continuous settlement and occupancy in order to show original title over "time immemorial" according to the anthropological viewpoint.

We are convinced that the period of settlement and occupancy necessary to develop an original title claim in a general title is fixed at any specific number of years. The state of evolution of the Indians when first contacted by the whites, whether they were sedentary or nomadic, fish-starch, hunter, agriculturally or a general people, and the nature of their use of the land involved, whether or not other Indians had been driven from the land by them and whether or not other Indians

The difficulty with this position is that to prove original title the petitioner must establish certain basic facts: first, that at some period an Indian entity held exclusive use and possession of a specific tract continuously for "a long time" or "from time immemorial" as it is sometimes described, so that within such period original title developed in that entity; secondly, that this title was perfected in such entity before sovereignty of the United States attached to the land involved; and, thirdly, that such title was not lost or abandoned prior to the date of alleged extinguishment by defendant. Lova Telle v. United States, 6 Ind. Cl. Comm. 604, 502; Clina Telle v. United States, 11 Ind. Cl. Comm. 733, 338. Of course petitioner must also establish its identity as such Indian entity or its right of representation.

That the period of exclusive use and occupancy must have been for "a long time" as expressed by the Court of Claims in Lova Telle v. United States, 6 Ind. Cl. Comm. 604, 502, decided April 5, 1963, or "from time immemorial" seems well established. Wickel, Law of Nations, (1933 ed.) 363, 27; Shup, II, p. 109; Plante and Hilda Indians v. United States, 127 Cl. Cl. 115; United Ex. v. United States, 115 Cl. Cl. 119, 36 Ind. Cl. Comm. 100; and see our opinion, Dec. 198, Consolidated Tribes of the Warm Springs Reservation v. United States, 12 Ind. Cl. Comm. 100, issued October 10, 1961.

* These phrases seem to have been used interchangeably by the Congress, the Supreme Court, and the Court of Claims at various times. Apparently they have the same meaning, locally speaking.

claimed territory; but usually toward intervention, forcible ejection from lands, and fear of death and tribal destruction do not indicate abandonment.

And in In re and Fox Tribe of Indians of Oklahoma, et al., v. United States, ___ Ct. Cl., ___, Appeal No. 1-01, decided April 5, 1963, the

Court of Claims had this to say:

The status of aboriginal ownership is not accorded to tribes at the very instant they first dominate a particular territory but only after exclusive use and occupancy "for a long time." (11p Opn. p. 14)

Having in mind the claims of the parties, the fact that much of

this claimed area was once used and occupied by the Snake or Northern Paiute of southwestern Oregon, that United States' sovereignty to the areas reached June 15, 1869, and that the burden is on petitioner to establish by substantial evidence that each of these tribes had acquired Indian title to a definite parcel within the claimed area by June 15, 1869, and that such original title must rest upon evidence of exclusive use and occupancy "for a long time" or "from time immemorial," we turn to a further consideration of the evidence and our reasons for the adoption of findings we have made.

We have made extensive recitals of evidence in our findings concerning

the use and occupancy of this territory largely on a matter of convenience in the consideration of this important question of Indian title. * Our

task has been made more than ordinarily difficult by the claims of the petitioner that each of the three component tribes gave permission to each

* Recitals of evidence in findings should ordinarily not be made but should be cited in the opinion which, under the Indian Claims Commission Act, should contain reasons for the adoption of the findings presented. (60 Stat. 1049)

other as well as to other friendly Indian tribes to use their lands and that under this grant of permission the lands were used in common by the three tribes as well as with other neighboring tribes without either destroying Indian title or preventing it from coming into existence. This arrangement implies agreements between the tribes as to the ownership of specific lands which were used in common.

The Expert Witnesses

Petitioner's expert witness, Dr. Verna F. Kay, began work among the Indians of the Columbia River Basin as an undergraduate during 1928.

Based upon field work between then and 1936 (Tr. pp. 48-50), the doctor has written several articles on the Indians in that basin, including the three tribes here represented. Relevant comments found in his publications appear in our findings at page 80, 22. Dr. Kay relied heavily upon informant data, his 1936 article being based entirely upon it.

Since his last publication, and between 1937 and 1936, the doctor did quite a bit of field work among the Indians on the Buntilla Indian

Reservation. As a result of that and documentary research, all material data being in evidence before us, the doctor made three material changes in the boundaries he formerly assigned these tribes. The area he

certified they held under original title is outlined in red on Petitioner's Exhibit No. 521. However, petitioner has omitted from the claim of title a large tract south of White Bluffs and Kahlacua,

Washington, to the fork of the Snake and Columbia Rivers, and a tract north of the Columbia River near Hook Creek in Washington, both included by Dr. Kay in his areas of original title. (Tr. p. 506 et seq.)

Snake River. On the 1938 plac his 18th century line runs east and west north of the Powder River and all John Day River Drainage in this claimed area, and the 19th century line runs up the main John Day River and thence southeast to the Malheur River, and down that stream to Snake River.

For the reasons hereinafter set forth we have concluded that the 1938 lines advanced by Dr. Ray more nearly reflect the documentary data than does the line advocated by him during the hearings upon these consolidated dockets; that the weight of the evidence in that the Snakes once occupied the country a considerable distance north of the north fork of John Day River, and that they were disputing the use of the country north of that river and along the Columbia River with the Shoshone when the Shoshone began their southern "drive";

against the Snake or Shoshone Indians of southern Oregon.

Defendant's witness, Mr. Robert Sophan, spent six months in scientific research and three months in field work among residents of the Umatilla Reservation during 1956. He also spent three months working with Indians on the Warm Springs Indian Reservation in central Oregon. He expressed the opinion that the tribes represented here were such ethnic units composed of village groups or bands which annually occupied winter sites in the same general locality, but intermingled in family and hereditary groups during the summer; that these groups met for sports, gambling and social activities at which time they occasionally discussed matters of common interest, but that they had no over-all political organization or chief. He thought comment concerning them in the village from

The boundary formerly fixed for the Walla Walla tribe has now been moved by Dr. Ray from east to west of Benton City and Kiona, Washington, to cross the Yakima river five miles west of the point called for in the 1855 treaty (Trans. p. 558). Because topographical maps of today are more accurate, the Doctor asserted, his present line crosses the Columbia River below the White Bluffs, runs west several miles and then south paralleling the Columbia River nearly as far as the mouth of Snake River. It then turns westerly along the southern base of Horse Heaven Hills to the eastern limit of Rock Creek (Washington) drainage, where it turns south to the Columbia River near Arlington, Oregon (Trans. p. 567). Easterly from the White Bluffs the boundary line extends west Kalama, Washington, to Snake River.

Dr. Ray asserted he has moved the divide between the Umatilla and Cayuse on the north and the Shoshone or Snake on the south from the John Day River to the southern rim of the drainage of the main John Day River; that he considered his informant whom he relied upon for his 1938 line to have been "very conservative" in excluding the drainage of that river from the area claimed by these tribes (Trans. pp. 507-8). He said during the 18th century the Umatilla and Cayuse were north of the Snake boundary shown on the plac in his 1936 article, and that this boundary corresponds with the one shown on the plac in his 1938 article. As we read these plac, and note the streams which in some instances are identified, the line on the 1938 plac runs up John Day River and then northeast to Powder River and down to co

must be considered in relation to the contemporary documentary evidence before us, because in his 1936 publication the Doctor stated that native verbal traditions, when referring to history a few generations removed were notoriously unreliable and of little worth for a purely factual paper such as is necessary in the instant case.

In her "Ethnohistory" published during 1956, the ethnologist Dr. Emile Mielier-Vogelin said:

By 1945 the possibility of doing "memory ethnographies" of so-called aboriginal North American Indian cultures was generally recognized as a thing of the past. Even ethnographers concerned with western North American Indian tribes perforce had to admit this.

However, Dr. Kay considered it "quite impossible" to determine the southern limit of the Cayuse and Umatilla lands without the use of "informant data." He recalled:

Questions: Speaking generally of the area in the southern portions of the Cayuse and Umatilla territories, is it possible, in your opinion, with only historical materials to determine where the southern line between the Cayuse and Umatilla and the future extended?

Answer: Quite impossible.

Questions: What methods, from an ethnological viewpoint, must be used in an endeavor to locate the point where the Umatilla and Cayuse came into contact with their neighbors to the south, the Palatka?

Answer: Ethnological field work devoted to what we speak of as the reconstruction of history.

Comments of Rivers: That means information you obtained from informants?

Answer: That's right. (Tr. p. 669)

0002927

that the villages owned the nearby fisheries, although such fisheries were open to use by any friendly Indian without regard to ethnic affiliation. He believed that only concept of land ownership applied to the winner areas and the land in the immediate vicinity of such areas; that our-lying country was open to exploitation by any one who was not an enemy. (Trans. pp. 734-6; 740-6; Det. Ex. 18, pp. 25-27)

Mr. Suphan was of the opinion that the Walla Walla, Cayuse and Umatilla tribes expanded southward about 1820, but that they never completely excluded the Snake Indians, and that after about 1820-1830 the Snake and these tribes exploited in common the country drained by the John Day River and on south of that drainage.

Mr. Suphan placed Umatilla villages along the lower Umatilla River and on both banks of the Columbia River from the mouth of the Umatilla River west beyond Alderlie, Washington. He said their fisheries extended along the Columbia River from Alderlie to where the Washington-Oregon State line leaves the river, and up the Umatilla River to Echo.

Oregon; that the Walla Walla had villages on Walla Walla River and their fisheries extended for two miles up that river; that other fisheries were opposite the mouth of Walla Walla River along the west bank of the Columbia River, and that they extended along the east or southern bank of the Columbia River from the Washington-Oregon State line to the mouth of Snake River. His Cayuse winner areas correspond to the Cayuse band locations reported in Dr. Kay's 1936 publication. (Det. Ex. 18) He said all other areas mentioned by these three tribes were common-use areas. So, both the experts have relied heavily upon informant data, and both have examined the historical material. We are satisfied that their testimony

0002925

Indians. Lewis and Clark were traveling down the Columbia River in canoes and used nautical terms in indicating the north and south banks. According to Webster's dictionary "Starboard" is "that side of a vessel on the right hand of a person who stands on board facing the bow; opposite to port; (formerly larboard)." "Larboard" is defined as "the left hand side of a ship to one on board facing forward the bow; opposed to starboard." Aside from the definition of the terms used, the protection afforded by a large river like the Columbia would be available only to those seeking its protection maintained their villages on the opposite bank from the enemy. So putting the river between them and the enemy would be very important. As far as we can find, Dr. Ray did not challenge the explorers' statement about the Indians residing on the north side of that river at that time. Just where the Indians were living in 1805 and 1806 is important to this case because one of the important issues is the timing of the defendant's drive to the north against the Snakes or Shoshonians.

Both of the other cases also took into consideration, and Mr. Saphan placed much reliance upon a 1912 report by one Edward O. Swinell, an attorney with the Department of Interior, Bureau of Indian Affairs, who was interested in preserving a record of the pre-1870s mail and accustomed fishing sites and other subsistence sites of several tribes of aged found in this general region. Mr. Swinell attempted to preserve the aged mussels, shells, kalia kalia or geyser Indians to be driven through the claimed area. Each such party was accompanied by an interpreter and each identified fishing sites, camp sites, berry and hunting grounds used, they said.

Both of the expert witnesses took into consideration the journals kept by members of the Lewis and Clark Expedition of 1804-1806, and we have found from those journals that as the expedition went westward down the Columbia that river flowed long or through the claimed areas of the petitioners in these consolidated Block Nos. 198 and 264, and Indian villages were found in 1805 to be located on the north side of that river. In that connection we note the defendant's expert witness, Mr. Saphan, in his report reads (Det. Ex. 13, p. 67):

At the time of their journey along the Columbia, Lewis and Clark report that the Indians living along the south bank of the Columbia from the junction of the Snake westward (our Subpart) were fearful of attacks by Snake Indians. Counsel for the defendant in his proposed finding 22 adopts the language of Mr. Saphan as quoted above. Turning to the Lewis and Clark journals we quote the specific language used October 21, 1806, referred to above (Det. Ex. 10, p. 17) which he claimed supports Mr. Saphan's conclusion:

The probable reason of the Indians residing on the Star Side of this as well as the areas of Lewis's River is their fear of the Snake Indians who reside, as they natives say on a great river to the south, and are at war with those tribes; one of the old chiefs who is mentioned as pointed out a place on the Star Side where they had a great battle, not many years ago, in which many were killed on both sides. (Emphasis supplied)

So it appears that the defendant's claim seems to have been in error when he said Lewis and Clark reported that the Indians "living along the south bank of the Columbia from the junction of the Snake westward were fearful of attacks by the Snake Indians." What the explorers did say was that the "Indians residing on the Star Side" were fearful of the Snake

Defendant's Evidence

14 Ind. Cl. Comm. 14

Each site is identified as located on a card, the tribes frequenting it were listed, and the card filed with the Umatilla Agency. (Rec. Ex. 99; Det. Ex. 105) Mr. Swindell then prepared affidavits which were interpreted to these same elderly Indians who executed them. The affidavits give the affiant's age, tribe, and degree of Indian blood which was usually 100%. Each affiant stated she or he personally knew the designated sites had been used before 1855 by having been there during her or his childhood, or from having been told by her or his parents or by other aged Indians that they had used those sites.

The information obtained was intended to form a permanent and official record. The circumstances surrounding the preservation was such that no added benefits would result from misrepresentation as to the number of tribes using any site. It was sufficient if but one tribe had done so. Neither Mr. Swindell nor the persons accompanying these Indians on these trips and carrying the information given by them, were retained in anthropology or similar fields, but we believe this data which in most instances reflects personal knowledge and concerns incidents participated in by the affiant personally, has some probative value, even though these people were not experts. Swindell v. U. S., 36 Ct. Cl. 117. It appears by some 12 years the field work performed by Dr. Ray since his last publication and upon which he relies for substantiation of the affiant's statements has been completed since these affidavits were filed in 1938 publication. It is 12 years earlier in time to the data sovereignty reached, and much earlier the date when United States extended Indian title to those lands (March 4, 1855).

14 Ind. Cl. Comm. 14

When preparing a map of subsistence sites, Dr. Ray included some of the sites listed on the Swindell cards. The Ray map fails to reflect all of the information detailed on the cards because he credited each site to the tribe of the Indians identifying it, and there are very few of the cards listing sites said to have been used by only one tribe. It is noteworthy, also, that none of the affiant's seem to have claimed ownership of the sites or a right to exclusive use on behalf of any one of these three tribes, particularly since there are also included affidavits by members of the Yakima tribe concerning sites used by that tribe prior to 1855 which affidavits set up claims of tribal ownership and the affiant's recall the conditions whereby others were permitted in the area. While Dr. Ray appears to have given no consideration to the significance of this type of information detailed on these cards, it most seems to have considered it indicative of past use; i.e. Swindell has added to the list of such sites set out in his report, Swindell's Exhibit No. 13, other sites which are supported wholly by data found in Mr. Swindell's personal files following his death. We do not know why Mr. Swindell did not include that data in his report, or place it with the cards in the Umatilla Agency. While the evidentiary value would probably have been enhanced thereby, these pertinent sites do not affect our ultimate conclusions herein.

Some of the Swindell sites are located south or east of the claimed area. From other evidence before us, we deem it quite unlikely that either of these tribes, the Walla Walla, Cayuse or Umatilla, penetrated with any degree of regularity or for a considerable period prior to 1855, to

0002929

far south as some of these sites. Others are said to have been used by more than one tribe but are within areas where a single tribe's concentration of wintering sites seems to indicate the second tribe was there as a guest of the first one for purposes which would not be incompatible with exclusive use and possession. (See Contested Titles of the Warm Springs Reservation in Oregon v. United States, supra, 483 U.S. 710)

This same situation, however, did not prevail in the territory away from such wintering sites, where several tribes appeared as a matter of right and individuals from different tribes gathered and hunted in mixed groupings year after year without interruption for subsistence purposes. When considered with other documentary evidence, the information contained in the Swindell report and affidavits as a whole, convinces us that it cannot be relied upon in showing exclusive occupancy of any specific area for a long time prior to 1860 or the date of the treaty, but that it does indicate common usage of much of the claimed area by the three tribes of the Umatilla group and other friendly tribes. Other documentary evidence tending to establish such common use areas has been detailed to some extent in our findings of fact, and will be referred to in our discussion of the several boundaries or potential estate areas held by these three tribes.

The Umatilla Boundaries

We have expounded in detail in ascertaining the Umatilla-Umatilla division line from the Columbia River to the more upstream Umatilla village was near Fort Stevens, Oregon, while the Umatilla had villages a few miles below the mouth of Umatilla River. Juniper Canyon, between these sites, has been adopted as a proper division in this area.

The eastern limit of Umatilla occupancy on the Umatilla River is clearly indicated by correspondence originating during 1851 which locates the Umatilla Agency at Echo, Oregon, and places the Cayuse boundary line immediately below it. Nor is it difficult to ascertain the western extent of that area along the Columbia River which the Umatilla tribe exclusively used and occupied.

The Umatilla tribe was first mentioned by name in 1825 when Sir George Simpson located it on the south bank of the "Roundbottom" River. Lewis and Clark, however, had noted a dissimilarity between the language spoken by the natives near the mouth of this river and that spoken up-stream during 1805, and the presence of a tribe near the mouth of Umatilla River which differed from both the Umatilla and the Shosone was noted by David Thompson and Wilson Price Hunt during 1811 and 1812. The latter map of 1856 placed the Umatilla in the vicinity of Hopper Creek, with the John Day-Willow Creek drainage divide as their western limit. Both Doctors James Mooney and Edward S. Curtis, the first scientists to work among the Indians in this region, confined them to the Umatilla River valley and the adjacent bank of the Columbia River, and Dr. George Mudgett whose research was conducted during 1915 among Nez-Percian Indians next west of the Umatilla, placed the division line near Astoria, a short distance west of Willow Creek.

Dr. Kay stated in his 1938 article that the Umatilla camped as far west as John Day River and John Day River Nez-Percian Indians came east as far west as Willow Creek, which indicates that was an area used in common and therefore neither had limit in title to the government either called

to recognize the Umatilla as separate tribe when writing Governor Stevens during January, 1856. The Willow Creek was used by him as a division line between the Cayuse and the Waiyampam bands at that time. The treaty negotiated with the Waiyampam on June 25, 1855, by Governor Palmer and that negotiated with the Umatilla and other tribes on June 9, 1855, by Governors Palmer and Stevens each described Willow Creek as the Waiyampam-Umatilla divide. Maps in evidence, including one prepared by treaty commissioner Stevens on June 12, 1855, shows the western boundary of the cession running to Willow Creek. We think that creek is simply supported by the evidence before us as the western limit of the country south of the Columbia River which partitioner has established the Umatilla tribe held under our title; we think the record establishes that it had villages and that it lies north of that river around the middle of the 17th century when it had been used and occupied for a long time, and we have found a not well defined boundary which we believe geographically bounds the area the tribe may be said to have exclusively used and occupied under original title in 1855.

While the Swinford report and affidavits indicate there were sites within the area we have assigned to the Umatilla which were also used at times by the Cayuse tribes, these sites are at or near winter villages of the Umatilla and the appearance of the Cayuse near such sites was, we think, simply an invasion of the Umatilla for a limited period which did not involve subsistence activities.

We find much uncertainty in equating early names of Indians along the Columbia River with present day entities. Lewis and Clark met a tribe on the north bank of the Columbia near the mouth of Willow Creek whose name has never been equated with the Umatilla. Immediately upstream they found other village Indians which Dr. Mooney said were probably Yakima and Dr. Kay considers either Cayuse or Umatilla. Mooney's uncertain identification based upon field work among the Yakima and the Palouse (Palus) Indians during 1894, engenders little credence for certainly his informants should have been able to identify their tribal members. Dr. John Swanton placed a Tentoo (Waiyampam) village nearly opposite the mouth of Umatilla River but it does not appear he was ever in this vicinity and the source of his information is not apparent. Lewis and Clark on April 25 and 26, 1806, reported Waiyampam Indians along the Columbia River downstream from the mouth of Umatilla River. As they made no mention at this time of the discontinuity between the Waiyampam language and that spoken by Indians they met near the mouth of Umatilla River during the fall of 1805, their reference to Waiyampam Indians during 1806 seems to place that tribe on the north bank of the Columbia in this vicinity during 1806. Governor Palmer entirely overlooked the Umatilla tribe when giving Indian boundaries in this vicinity during January of 1856. There is evidence in the record, such as the George Simpson's 1825 report, and Agent A. B. Dennison's 1857 report, which confine the Umatilla tribe to the valley of Umatilla River or to that valley and the adjacent bank of the Columbia River (see, Ex. 77, Det. Ex. 15). However, the

0002931

Lewis and Clark Journals by reference to the Columbia River tribes maintaining homes north of that river for fear of the Snakes, suggest an earlier residence for the Umatilla north of that river. The Swindell affidavits locate pre-1855 Umatilla camping and fishing sites along the northern bank. Both of the expert witnesses concede the Umatilla used this area. We have concluded that it can be said the customary habitat of the Umatilla tribe throughout the 19th century was along the lower Umatilla River and adjacent bank of the Columbia River near the mouth of the Umatilla River; that the northern bank of the Columbia River was utilized for the purpose of fishing and camping during the catching and preservation of the fish. We have noted no documentary support for Dr. Ray's expressed belief that the Umatilla exclusively used and occupied and held original title to the land north as far as the Horse Heaven Hills. So we have drawn our northern line of the Umatilla original title area within a reasonable distance of the north bank of the Columbia River.

Walla Walla Boundaries

The next section of the outer limits of the area held by these three tribes is that comprising the northern limits of the Walla Walla tribe. We find the position of the petitioner in excluding from the claimed tract that land lying between the Snake and Columbia River which Dr. Ray includes within the original title lands of the Walla Walla tribe, is well justified by the record (Tr. 3, 506). According to Patrick Gass, a member of the Lewis and Clark expedition, there were three separate tribes in the vicinity of the confluence of these rivers during 1805 (Pet. Ex. 27, p. 152). In an Estimate of Indian Tribes and Nations, accompanying

the Lewis and Clark Journals, their location of the tribes is such that this confluence is the point of separation between the Walla Walla tribe and tribes farther north (Dkt. 198, Pet. Ex. 29, p. 114). Ross Cox during 1814 (Pet. Ex. 9, Vol. I, p. 321, Vol. II, p. 2; Dkt. No. 198, Pet. Ex. 5), Alexander Ross during 1818 (Pet. Ex. 65), and Samuel Parker during the 1830's (Pet. Ex. 56, 57) also noted this fact. The Governor of Oregon during 1854 stated a tribe other than these three occupied all that region, and he ran the Walla Walla's boundary west from the mouth of Snake River, stating it was so described to him by tribal members during 1843 (Def. Ex. 96). The Pleasanton map of 1859 illustrating the travels of Father Desmet (Pet. Ex. 13) and the Emory and Humphreys map illustrating the official report of the Stevens Exploring Party of 1853-4 each place the Walla Walla tribe along the Walla Walla River (Pet. Ex. 45). But most convincing is the official report of the Stevens Expedition wherein another tribe is located along the north bank of Snake River and special emphasis is given to their occupancy of the region through the remark that they lived in three bands, each occupying separate villages north of Snake River at specifically designated sites between its mouth and that of Palouse River (Pet. Ex. 32). This information is duplicated in other documents in evidence. Nor was this tract included in the territory ceded in the 1855 treaty.

Much the same evidence supports our conclusion that it has not been shown the Walla Walla exclusively occupied land on the north or western side of the Columbia River above the mouth of Snake River. Again we are confronted with disagreement among scientists as to the identity of the Indian entities Lewis and Clark found in the area. Whether after this time

0002932

17a Ind. Cl. Comm. 14

Piquanton map based upon the journals of Father Desmet (Pec. Exs. 15, p. 991; 18), and reports by Horatio Hale, the ethnologist with the Wilkes expedition of 1841 (Pec. Ex. 12); by Brevec Major Alvord who was stationed at the Dalles (Pec. Ex. 383, Dkt. 198; Pec. Ex. 165); and Colonel Lawrence Kip who attended the 1855 treaty council (Dct. Ex. 2). Although the Waila Waila are shown opposite and north of the mouth of Snake River on the Stevens' maps of 1854 to 1857 inclusive (Pec. Exs. 87-91) and the 1855 session the encompasses land there; Hazard Stevens, a member of the Stevens Expedition and the Governor's son, reported the Waila Waila inhabited the banks of Waila Waila River (Pec. Ex. 81); the copographical engineer G. K. Warren located the tribe along that river with a second grouping along Willow Creek on his official map (Pec. Ex. 127); and the Emory and Humphreys map illustrating the official report of the Stevens Expedition shows the Waila Waila tribe along the Waila Waila River (Pec. Ex. 89).

It was not until the first pre-measure's request during the 1855 treaty council for permission to run a trading post across the river where his cattle then grazed, and that the treaty gave permission for the operation of a post for a limited period near the mouth of Yakima River. This practice also may have been selected by the parties for any number of reasons, including a desire to separate the post from that of the tribes located at Fort Waila Waila. However, if the chief's horses were then grazing near the Yakima River rather than opposite the mouth of the Waila Waila River, that circumstance, the request and the gratification, do not offset other evidence that the Waila Waila did not habitually use that land north of the mouth of Snake River.

17a Ind. Cl. Comm. 14

white contact with these people there occurred a natural drawing together into lower entities or whether a greater familiarity with them resulted in a recognition of an overall unity formerly overlooked, it is evident from the documentary evidence before us that the Waila Waila tribe resided near Fort Waila Waila and along the Waila Waila River and did not exclusively use the occupy land north of the mouth of Snake River. Alexander Ross located them about the Fort and along the Waila Waila River during 1818 and he had been engaged in the fur trade in this region for a number of years and while he was in charge of the trading post at the Fort, Ross located the Yakima tribe along the north bank of the Columbia River above the mouth of Snake River about 1811, and in 1823, after the Hudson's Bay Company had acquired Fort Waila Waila and Sir George Simpson, a director of that company, had spent some time there, he described the Yakima tribe as residing opposite Peter's Rapids, with the Stungam below them, but he expressly stated that the Yakima were the same Indians residing on the north side of the Columbia River. He continued the Waila Waila to "south side Waila Waila River" in one report and in another time he said the Waila Waila tribes extended from near the Fort to the falls of the Columbia River. Of particular pertinence, however, in the January, 1855, report by Governor Pitman that during the Waila Waila Indians claimed a definite trace which did not extend north of the mouth of Snake River.

Yet other evidence confirms this tribe to the valley of the Waila Waila River or to that valley and the south side of the Columbia River. This includes Attorney General Parker's report (Pec. Ex. 56-72); the

With respect to Dr. Ray's testimony that the Walla Walla owned the land in the fork of Snake and Columbia Rivers and along the west bank of the Columbia River up to White Bluffs, we note he testified on behalf of the Mayampam bands to the west in Docket No. 198 consolidated; for the Nez Perce tribe to the east in Docket No. 175; and for the Yakima Nation to the northwest in Docket No. 161. From a cursory examination of the records and the Commission's Findings and Opinions in these cases it appears Dr. Ray found by one area he thought was not exclusively occupied by one tribe or within which joint usage occurred without a claimant tribe having gained permission to another to enter upon its land. The tract not assigned to any one tribe is a strip between the Columbia and Yakima Rivers from the crest of Horse Heaven Hills to their southern base. Otherwise Dr. Ray has testified to common "back-to-back" division lines between not only these friendly Sahaptin tribes, but also between them and their traditional enemies to the south, the Snake or Northern Plateau Indians.

We do agree with Dr. Ray that the original title territory of the Walla Walla tribe extended up Walla Walla River to the mouth of Touchet River. Chief Pu-pu-mux-mux, during 1848, claimed that that point was on the borders of his country, and it is also about the same distance upstream from Fort Walla Walla as Governor Palmer specified when he described the country claimed by the Walla Walla tribe during 1848. From there the Walla Walla Indians said their line ran northeasterly to Snake River about 25 miles above its mouth. In view of the evidence of Cayuse and Nez Perce Indians occupying the country along the headwaters

of the Walla Walla River, we are of the opinion the boundary in this sector described by the Walla Walla during 1848 should prevail. This leaves to that tribe the lower drainage of Walla Walla River, and both banks of the Columbia River below the mouth of Snake River, and coincides with comments by early missionaries, traders, agents and others; the expressed opinions of such ethnologists as Hale, Hodge, Curtis and DuBois; and makes due allowance for the Walla Walla village opposite the mouth of Walla Walla River where Lewis and Clark visited during 1806.

Cayuse Boundaries

The evidence respecting the northern and eastern boundaries of the Cayuse does not support aboriginal title in that tribe beyond the drainage of the Touchet and Walla Walla Rivers. In his 1936 and 1938 articles and in his testimony Dr. Ray ran their boundary line up the Touchet River for a short distance, thence north to Snake River a short distance below the mouth of Tucuman River and then up the Snake and southern branch of the Tucuman River. He located Cayuse sites on the headwaters of the Touchet and on Tucuman River but gave no occupancy dates. According to his testimony such sites could be only places where individual Indians customarily returned. There needed to be no permanent habitations such as constituted the usual village.

Dr. Saphin restricted the Cayuse to the north and northeast to an indefinite area about the vicinity of Walla Walla, Washington, near where he located a Cayuse winter village and Dr. Ray placed a Cayuse Band. Both men relied principally upon informant statements.

Contemporaneous statements in the record respecting the northern Cayuse line include Governor Palmer's report on July 13, 1841, that

0002934

probably most of the Cayuse land was in Oregon, and his subsequent report of January, 1854, that the Nez Perce-Cayuse line ran west to Touchet or Tucannon Rivers from the Walla Walla border south of Snake River and thence by that stream to the mountains and across them to Snake River 50 miles above the mouth of Salmon River (which is roughly east of Encampment, Oregon). An attempt to plot this line discloses that the Governor mistakenly directed a western rather than an eastern course from Snake River, at the same time, a southeasterly course is necessary to reach his point of termination. Certainly he did not intend the line to run northerly, for, from its starting point at Touchet and Tucannon drainage to the south or southeast, so the Governor's line extends west from either, then toward the mouth of Tucannon River. An attempt to connect the description of the territory assigned the Walla Walla with that assigned the Cayuse makes it clear the Cayuse-Nez Perce line ran far south of the mouth of Tucannon River.

It is true the Tucannon River for its full length appears as the Nez Perce-Cayuse divide on all of the Stevens maps of 1854-1857, and it is so named in the 1855 treaty. Lieutenant Mallin of Stevens' exploring party of 1854-5 to be credited to, an old Agency (1857). However, Stevens' son, Howard Stevens, later stated that river was in Nez Perce country, and that the Nez Perce occupied both banks of the Snake, Tucannon, and Grande Ronde Rivers. George Gibbs, the ethnologist with that expedition and the report concerned with native occupancy, said the Cayuse were south of and between the Nez Perce and Walla Walla, their country extending from Touchet River westerly across the line

mountains, but with very little of it in Washington Territory. This is compatible with the 1841 report of the ethnologist with the Wilkes Expedition, Horatio Hale, whose information was obtained from traders, trappers, and missionaries familiar with this country and who said Nez Perce occupied both sides of Snake River east of Palouse River, which would include the mouth of the Tucannon River. Wilkes' official map gave the Nez Perce the extreme headwaters of Walla Walla River.

There is sufficient documentation of Nez Perce being west of Tucannon River and ethnological evidence confining the Cayuse on the north and east to Walla Walla River drainage, that it cannot be said geologically has borne the burden or proving Cayuse exclusive use and occupancy as far east as the Tucannon River. See the writings of DeW. Edward S. Curtis, Cora Dubois, Frederick Hoxby, John R. Swanton, and H. J. Splendon. However, it is uncertain whether Splendon's western Nez Perce line at the mouth of Tucannon River was one of occupancy or control since he said they controlled a greater area than they occupied.

Early travelers along the Columbia report the Nez Perce Indians were along that river, above and below the mouth of Snake River, even before Fort Walla Walla was established at the mouth of Walla Walla River. Dr. Lee and J. H. Ford located them on the headwaters of Walla Walla River in 1840; Fort Palmer met them along that river during 1851; Samuel Parker did so during 1851; Pleasonton's map, based upon the journals of Father Desmet, shows a Nez Perce plain in the region east of the Columbia River and north of Walla Walla drainage. Horatio Hale, the ethnologist with the Wilkes party and heretofore referred to, said Cayuse on upper Walla

Grande Ronde, the headwaters of Touchet and the Tucannon Rivers. We have no doubt the Cayuse did use each of these areas at various times, but the question before us is whether they held such areas under original title which requires an exclusive use and occupancy "for a long time." There is substantial evidence that they did not do so.

Southern Expansion Issue

In our findings we have set forth our conclusions on the issue of aboriginal title and included specific findings on the so-called "southern expansion" issue, which involves the southern boundary of the Umatilla and Cayuse tribes with which we are concerned in this proceeding. Our reasons for adopting these findings and how they affect the over-all question of aboriginal title follow:

By way of background it should be recalled that a group of students and observers studied and wrote during the 1930's on the subject of

Tribal Distribution of Indians in Eastern Oregon. A dispute had arisen between these authorities as to whether the Shoshonean (including the

Northern Plateau or Snake) Indians had driven the Shoshonean north to the Columbia River in east central Oregon and beyond, or whether the Salpeltin

Indians had driven the Shoshonean Indians southward from an area south of the Columbia River which they had occupied in aboriginal times. Dr.

Joel T. Hartman, among others, advanced the first thesis. It brought immediate reaction from other anthropologists. Dr. Kay was one of those

in opposition. In a paper published in the American Anthropologist magazine in September 1938, Dr. Kay set forth his contrary view in some

length. (Bull. Bur. of Geol.) These views we shall now consider.

0002936

Walla River lived in "close connection with a band of Nez Percé"; Fremont was a small Nez Percé town during 1863 near Whitman's Cayuse Mission; Major Kains in 1856 located the Nez Percé east of Palouse River along Snake River, which would place them on the mouth of the Tucannon River, and he said the Cayuse were south of the Walla Walla. A Nez Percé band is reported on the Walla Walla River in Armstrong's History, "Oregon."

In view of such evidence, we have concluded exclusive use and occupancy by the Cayuse tribe is not reported beyond the drainage of the Touchet and Walla Walla Rivers.

There is little doubt that the Cayuse did exclusively use and occupy from time immemorial or "for a long time" the upper drainage of the Umatilla River and the northern drainage of the Walla Walla Rivers. It also

appears from the available reports and attached affidavits that the Walla Walla traveled up the south fork of the Walla Walla River and crossed the drainage divide into the headwaters of Wenaha River. The location of

a Cayuse site in this region, however, seems to indicate the passage of the Walla Walla tribe across the divide, and such use of the country as

they may have made within the proximity of their site was of the permissive use type not inconsistent with aboriginal title in another tribe, as we

have used it elsewhere in this case and in Docker 198 a companion case. Accordingly, we have drawn our boundary for the area to which we think

settlement has established our title on behalf of the Cayuse tribe along the drainage divide between the Walla Walla and Umatilla Rivers and those streams east of these rivers.

In fixing such boundary, we do not overlook the request of the Cayuse chief during the 1850's and Council for a reservation on the

At the outset we call attention to the fact that there is a sharp conflict between the evidence in which Dr. Ray bases his 1938 conclusions and his later opinion which he gave at the hearings in this case with respect to when the expansion to the south began and ended and what it accomplished. This is a very important item in this case. We shall now review the evidence which shows that conflict, and other issues involved.

In his paper Dr. Ray first states his conclusions with respect to the location of the Umatilla, Uila Waila and Cayuse tribes in the middle of the 19th century, next to the 18th century, and lastly in the 1805-1806 period. He follows his conclusions with a statement of evidence of tribal movements upon which he attempts to sustain his conclusions. Our discussion will follow the order in which Dr. Ray considers these items. The following quotes are from Dr. Ray's 1938 article, Def. Ex. 52, pp. 105-107. The underlining has been supplied.

DISTRIBUTION AT THE MIDDLE OF THE NINETEENTH CENTURY

The Umatilla was occupied both banks of the Columbia River from the vicinity of Red Creek (Washington) to a point a few miles below the mouth of the Uila Waila River. North of the Columbia the territory extended to the Horse Heaven Hills, southern boundary of the Kalama. In Oregon a much greater area was held, reaching south to the John Day River beyond the Blue Mountains. The eastern and western boundaries were first defined by the nearest intercourses with neighboring tribes. Red Creek (Oregon) furnished an approximate western boundary but that the Umatilla sometimes camped as far west as the John Day River; especially, the Mayhew-Long tribes, which extended to Willow Creek. Upon the Columbia River a sharp line of demarcation was usually very definite, where there was no intercession between Umatilla and non-Umatilla groups (emphasis supplied).

Umatilla - Cayuse

On the case the Umatilla-Cayuse division was equally vague except on the lower Umatilla River and near Uila. Both banks of the Umatilla River below the mouth of Hatter Creek, and the north side for several miles above, belonged to the Umatilla; but all of Hatter Creek was held by the Cayuse. In the gathering grounds to the south the Umatilla occupied the Uila region, whereas the near by Uila hot springs belonged to the Cayuse. Village location largely depended on these distinctions, though of mixed composition. The tribal affiliation of each of these villages was quite definite.

The irregular southern boundaries of the Umatilla and Cayuse were not arbitrary but conformed to topographical conditions. The Umatilla utilized the entire drainage area of the Hatter fork of the John Day River; the Cayuse used the slopes draining into the Umatilla and Powder Rivers.

Uila Waila

Uila Waila (now Uila Waila was "Uila River," name of the largest village near mouth of Uila Waila River) certainly added that of the Umatilla to the band of the Columbia, but these groups did not intermingling freely. * * *

Cayuse Location

The history of the Cayuse was did not touch the Columbia at any point and bordered on the north for only a very short distance in the northern extreme, near Starbuck. A portion of this territory consisted of bare rolling hills, but much of the rest lay within the horse mountains. A number of drainage systems were occupied, including those of the Uila Waila, the Umatilla, the Upper Grand Ronde, Powder, and Hatter Rivers, and the Willow Creek branch of the Uila River. On the north-east the Uila River formed the boundary; on the north-west a segment of the Hatter River served the same purpose. Cayuse villages were spread over the whole of the area but were not often located along the boundary. Intercession was extensive with the Nez Perce but the line of demarcation remained well defined. The southern boundary lay in relatively unoccupied country. Territory to the south was held by the Uila and Hatter, with whom relations were at all times friendly. (See pp. 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000)

0002937

DISTRIBUTION IN THE EIGHTEENTH CENTURY (1700 hundreds)

Tribal territories outlined above had perished without material change in Washington and northern Oregon, from time immemorial. But not so in the southern regions only after the opening of the nineteenth century. Formerly Shoshonean peoples had occupied all of the upper drainage of the John Day River, all of the Powder River, and all of the Neiver and Payette River basins and the territory to the south. Through the span of traditional history the Umatilla had been founded on the south by the range of hills spreading westward from Ukiah, the Cayuse by the Grande Ronde Powder River divide, and the Nez Perce by the Mallova and Seven Devils Mountains. During this period the eastern, western, and northern boundaries were essentially the same as in more recent times. A separate map for each period is therefore unnecessary; the earlier distribution may be indicated by a modified southern boundary.

DISTRIBUTION IN 1805-1806

The journals and maps of Lewis and Clark furnish a basis for determining tribal locations for the years 1805-1806. The explorers not only recorded native distributions along the route of travel, but obtained information from native informants concerning more distant peoples. *** As much of this data as is pertinent is summarized in tabular form:

Tribe	Location in 1805 - 1806
Umatilla	North side of Columbia from mouth of Great In River
Umatilla	South to near mouth of Umatilla
Cayuse	Asotin (Nez-perce) R., (between Snake and Grande Ronde)
Cayuse	North bank of Columbia from Alderdale to mouth of Umatilla

Shoshonean tribes are distributed as residing, on the S. fork of Lewis (Snake) River and on the Nemo (Neizer), Mallova (Payette), Shuah-pelliamo (South fork, Payette), Shecomskink (Malheur), Ellamoonmullama (Sticker), and the Cop cop pahark (Nolae) river branches of the John Day River. (Also) in Spring and Summer on the West fork of Lewis River (Clearwater) a branch of the Columbia, and stretch and fall on the N. product.

A further statement is less credible since it would bring the Shoshoneans north of the Blue Mountains:

Sho-Sho-ne (or Snake Indians) residing in Winter and fall on the Mallova river. Southerly of the S. M. Mountains, and in Spring and summer on the heads of the To-wat-ne-hi-ooks (Beschucces), La Fage (John Day), You-ma-cal-am (Umatilla), and Mal-lar-wal-lar (Walla Walla) rivers, and more abundantly at the falls of the Towatnehook, for the purpose of fishing.

perhaps "the heads" of these rivers merely means the mountain Highlands. But the reference to the Mallova (Willamette) River is given more difficult to accept since it lies well to the west of the Cascade Mountains. *** (See remainder of paragraph for comments on rivers.)

EVIDENCE OF TRIBAL MOVEMENTS

(Under this heading, Dr. Ray details the evidence which he claims

supports his conclusions.)

Sahaplin informants declare that from time immemorial conflict has existed with the Shoshoneans. The Teno and the Umatilla were allied against the Paluse and Hancock, and Cayuse against the Paluse and Hancock, and the Cayuse and Nez Perce against the Hancock and Shoshone. But the Sahaplin tribes never questioned the title of the enemy to the territory occupied in the eighteenth century. Neither side ever attempted to seize territory from the other. The trading parties carried away goods property, but the main object of warfare was the attainment of glory. A main principle opportunity to take his share was through valor in warfare. Among the Umatilla, Cayuse, and Nez Perce, as well as the typical Plains pattern of connecting camp was found and a type of chieftainship was awarded on that basis. In these contests the Shoshone often pushed as far north as the Columbia River, forcing the Umatilla sometimes to take temporary refuge on Hllock Island or the north bank of the river. But the invaders never remained long, and in no case established permanent camps. Any attempt would doubtless have resulted in failure, for the balance of power was at all times very even and the Sahaplin were on home ground.

After the cession of the country this balance began to shift in favor of the northwestern. The migration of the horse and the introduction of new weapons the which were undoubtedly contributing factors. The latter must have been available to the invaders along the Columbia as the route in such greater

00029338

quantities than to their more isolated enemies. At the same time motives were introduced for territorial expansion. The encroachments of the whites and the depletion of game near the river may be mentioned. Several decisive battles were fought in Shoshonean territory in which the Sahaptins were the victors. Thereafter the Shoshoneans were pushed farther and farther southward and finally held beyond the boundary indicated above for the twelfth century.

The territory thus acquired was valuable for hunting and gathering but less suitable for permanent settlements. Its control added economic security and widened the span between the large Sahaptin village and the enemy. No vital change in habits and economy was involved, as would have been the case if Shoshoneans had attempted to settle the Columbia Valley.

Then follows this conclusion from Dr. Kay:

The tribal movements thus indicated are in no sense momentous, but they are in exactly the opposite direction to those reported by James A. Tate and accepted and amplified by Carl V. Peterson, etc.

Analysis of Dr. Kay's evidence under the sub-title of "Evidence of Tribal Movement" in support of his conclusions in the 1918 article reveal that they are based largely on what tribal informants told him. He breaks that statement down to claimed factual points listed below. It shows some substantial contradictions and important inconsistencies when compared with his oral testimony on the same subject matter. For example of comparison we insert after each pertinent point, which we are underscoring, short quotes from the transcript of his testimony in this case respecting the same subject matter and add our own comments when deemed necessary. We proceed then with the comparison.

1. From time immemorial conflict had existed between the Sahaptin and Shoshonean people. (Dr. Kay's "Evidence of Tribal Movement.")

Tr. Vol. 2, Mar. 19, 1958, Dr. Kay, p. 151:
There was a traditional enmity between the Koyampan and their Sahaptin neighbors, and the Snake Indians, that went back further than they could remember.

Tr. Vol. 5, Mar. 21, 1958, Dr. Kay, p. 615:
The second point, of course, is that they (Umatilla, Waiia Waiia, and Cayuse) were always friendly, and that they were concerned with operations against a common enemy, the Paiute, the Paiute, the northern Paiute to the south.

2. In this conflict the Tontno (Tuwamom) and Umatilla were allied

against the Paiute (Snake).

Tr. Vol. 5, Mar. 21, 1958, Dr. Kay, p. 624:

"The movement was a concerted one in which the Koyampan, as well as the Sahaptin-speaking neighbors that we are now discussing, were at the same time moving southward.

3. Umatilla and Cayuse were allied against the Paiute and Banook.

Tr. Vol. 5, Mar. 21, 1958, Dr. Kay, pp. 614-615:

The relationships among the three (Cayuse, Waiia Waiia, and Umatilla), then, were in no way impeded by any dialectical barrier."

Tr. Vol. 5, Mar. 21, 1958, Dr. Kay, p. 616:

"There was a very close friendship and cooperation against the northern Paiute, and a cooperation against the whites."

Comment: Identification of the divisions of Northern Paiute, Snake

or Shoshone Indians against which the separate tribes of Sahaptins were

allied does not appear in the transcript except on page 196; Dr. Kay, "To

the south of the Koyampan along the whole length of the southern boundary

were the Northern Paiute, who are often spoken of as the Snake Indians.

These Northern Paiute, were also to be found farther to the east, south of

the Blue Mountains, and beyond the territory of the Koyampan."

4. Cayuse and Nez Perce were allied against the Bannock and the Shoshone (Snake) Indians.

Comment: No direct statement on this point is found in Dr. Ray's testimony. An inference of common interests may be drawn from references

to intermingling of Cayuse and Nez Perce (see p. 915). Nez Perce and

Walla Walla cooperation against the Shakes is reported by Cox, Rec. Ex. 9.

5. But the Sahaplin tribe never questioned the right of the enemy to territory occupied in the 17th century (the seven-year hundreds).

Matche side ever attempted to wrest territory from the other.

Tr. Vol. 2, Sec. 18, 19; Dr. Ray, p. 151: They (the Kayampum and their Sahaplin neighbors) had in the course of time pushed the Snake Indians farther and farther southward. ***

Tr. Vol. 5, Mar. 21, 1958, p. 623: Q. Dr. Ray, between the years 1750 and 1800, was there a movement of the Wallilla or Cayuse in one direction or the other?

A. Yes, there was. The movement was to the southward. That is to say, the southern boundary and the southern area of movement of these peoples moved southward. The northern boundary was not changed in any way and the northern area of village location and settlement was not changed.

Comment: This is a flat contradiction to statements in his 1938 article, wherein it was said no one questioned territory used in the 18th century and no attempt was made to "wrest" territory from each other.

Tr. Vol. 5, Mar. 21, 1958, pp. 569-570: Q. It then goes on to say that the opinions and conclusions set forth in "Tribal Dislocation in Northern Oregon," in 1938, concerning the original habitat and culture of these three tribes are substantially correct.

A. Yes, it is.

Tr. Vol. 5, Mar. 21, 1958, Dr. Ray, p. 628: They (the Shakes) certainly from the time immemorial had attempted to penetrate into the Cayuse and Umatilla lands.

Even when the Cayuse and Umatilla were further to the north. And, in turn, then the Cayuse and Umatilla would have to be on the alert and aggressive toward them or else they soon would find that their country in the south was coming to be occupied by these people.

See comments to point 3 above.

Tr. Vol. 6, Mar. 24, 1958, p. 690: Q. But *** the conclusions reported in your '38 paper are substantially the views that you now hold, isn't that right?

A. Yes, if you are referring to the '38. ***

Comment: Dr. Ray's testimony on point "5" is in complete disagreement with the evidence on which he based his conclusions in his 1938 article.

He testified in effect that the Sahaplins not only questioned the right of the Shakes to territory occupied in 1750 to 1800, but that they started a movement of conquest against them and "wrested" additional territory to the south from the Snake Indians during this period, and that the Shakes used every opportunity during this period to occupy and wrest territory possessed by the Sahaplin tribes. This contradicts the statement that Matche side ever attempted to wrest territory from the other.

6. Matche side ever attempted to wrest territory from the other.

Comment: No reference to such activity has been found in the transcript.

In Rec. Ex. 67, p. 122, is a reference to trophies of war, those identified being "mangled prisoners, and bloody scalps." Amputated "fingers" are so referred to in the Lewis and Clark journals. There are other references to Shakes being taken and held as slaves.

7. The main object of the article is the statement of "Clay"

to Shakes being taken and held as slaves.

to Shakes being taken and held as slaves.

to Shakes being taken and held as slaves.

to Shakes being taken and held as slaves.

to Shakes being taken and held as slaves.

to Shakes being taken and held as slaves.

to Shakes being taken and held as slaves.

0002940

(a) Indian warriors (among the Sahaptin tribes and their allies) had an opportunity to raise their tribal status through valor in warfare. (b) Among the Umatilla, Cayuse and Nez Perce, counting scalps was important and chieftainships were awarded on that basis.

Comment: No mention appears in Dr. Ray's oral testimony of tribal status being affected by warfare. Motivations inferred by the testimony in the transcript are the following: (a) an attitude of superiority toward the Snakes, (b) economics; that the Snakes fought to get food, and (c) a religious concept that particular tribes were destined to occupy the land.

4. Attitude. (Tr. Vol. 5, Mar. 21, 1958, pp. 627-629)
 Commissioner O'Mear: What is the significance of the southern movement of these groups, Doctor?

The Witness (Dr. Ray): The significance here, Commissioner O'Mear, is the same as it was with the Hiyampun. Although these were plains peoples, they basically had pacifistic ideals, they felt that peace was desirable, there was a blind spot on their part so far as the people to the south were concerned, the northern Paiute. The attitude they had toward them was very much the same as that which is expressed in our word "savage." These people to the south were savages, and they were not deserving of the kind of treatment that was to be accorded with civilized peoples like their neighbors to the Sahaptin area and to the north.

They undoubtedly were provoked into this to a considerable degree because the culture of the Paiute culture was such that a wandering way of life was characteristic, and in this wandering way of life the small groups of Paiutes penetrated into whatever area they could where they thought they would be able to get something to eat or something to use in their meager culture.

They certainly from time immemorial had attempted to penetrate into the Cayuse and Umatilla lands. Even when the Cayuse and Umatilla were further to the north. And, in turn, then the Cayuse and Umatilla would have to be on the alert and aggressive toward them or else they soon would find that their country in the south was coming to be occupied by these people.

One of the reasons that in the future could be partially successful was that they were in this position in the winter time, whereas the

yearly round of activities of the Cayuse and Umatilla took them up further to the north in the wintertime, and there was less danger then for the Paiute.

I do not say that this is the whole explanation. The Cayuse were an aggressive people. ***

Comment: The Cayuse were also greedy but they never were able to complete the conquest of the lands of the Snakes, because, according to Dr. Ray's statement, these people used the area at least half of the time each year - "in the wintertime."

b. Economics. See paragraph 2 under "a. Attitude;" next above.

The East-West Blue Mountains were rich in game, and this sector was apparently occupied by the Snakes prior to and after the beginning of the southern movement against them. The country to the south of the claimed area was semi-arid, poor in resources, and the Snakes had great need of the areas to the north which the Sahaptins coveted.

c. Religion. (Tr. Vol. 5, Mar. 21, 1958, Dr. Ray, p. 626)

This notion of "our lands" is illustrated in many different ways. One of the most impressive is perhaps *** religious in character. *** It is the idea that the world came into being in a supernatural fashion, and that it is, therefore, sacred in all respects and that there were certain tribes of people who were to be the proper people on any and all parts of it.

3. In these contexts the Shoshoneans (Snakes) often pushed as far north as the Columbia River, forcing the Umatilla to take refuge on Blalock Island or the north bank of the River. The invaders never remained long and in no case established permanent camps. Any attempt would doubtless have resulted in failure for the balance of power was at all times very even, and the Sahaptins were on home ground.

0002941

Tr. Vol. 5, Mar. 21, 1958, Dr. Ray, pp. 568-569.

The Northern Paiute, during immediately to the south and engaging whenever they could in small raids into Cayuse and Lemhi territory, sometimes did cross the mountains and get into the actual valley of the John Day River. In fact, they often were even further than that on their raids. But in the meantime, when none of the change of Lemhi were in this region, they sometimes actually camped on the John Day River so that is what led my informant to name to say that the Paiute were people who were to be found there, Kay

That Paiute presence on the John Day River, itself on the course that is shown here, extreme south, was on the same basis exactly that it was further to the north; that is, a raid and enemy attempt at retaliation when they could get away with it.

Dr. Ray, p. 292.

Yes I don't think that it was later than 1810, and I would had got a firm hold on the country. That does not mean that there were not raids that the Paiute made up into this family held territory. In fact, there were raids made by the Paiute to the reservation times at (Mesa Springs), and even up to the Columbia River.

Comments: Lewis and Clark confirm the fact that Sahaptin Indians along the Columbia between its junction with the Snake and the capita below the Dalles to the west, were living on the north side of the Columbia because of their fear of the Snake which they were at war and this would include the Blalock Island area. But Dr. Ray does not mention the "Blalock" incident in his book any given later (than 1938).

7. After the turn of the century (into the 19th century) the balance of power began to shift in favor of the northwestern. The acquisition of new weapons by the whites was undoubtedly contributing factor. The support weapons were available to residents along the Columbia River of trade route in such greater quantities than to the more isolated areas. (Footnotes added)

Tr. Vol. 3, Mar. 19, 1958, Dr. Ray, pp. 290-292:

But this movement, this pressure that was exerted by the Sahaptin tribes of that area against the Shoshone Indian tribes, more specifically the Northern Paiute, who are sometimes called the Snake Indians, that pressure reached its height, as far as I can reconstruct the historical picture, about 1790.

This does not mean that they necessarily had gained in 1790 the kind of control which I would call firm and unquestioned control and which would give them exclusive utilization of that territory. I think it must have taken a few years after that.

Comments: Lewis and Clark were told by the Indians on the Columbia in 1805 that they were living on the north side of the river because of their fear of the Snake Indians with whom they were at war. They also found them there in 1806 when the explorers were on their return trip up the Columbia (Det. Ex. 10, pp. 155-159).

So if "the balance of power began to shift in favor of the northern-ers" (the Sahaptins) it must have been sometime after 1806.

Tr. Vol. 5, Mar. 21, 1958, p. 310:

Q. Was there any relationship between these people obtaining - I mean by "these people" the Lemhi and Cayuse particularly - operating the horse in their drive to the mouth?

A. (Dr. Ray) - Yes, there was. We do not know precisely what the history of relationship between these two people was prior to the acquisition of the horse. But it may be safely assumed that with the coming of the horse they were put in a position to move aggressively against the Northern Paiute because the Northern Paiute did not get horses at least in anything to compare with the number that were possessed by the Cayuse and secondarily by the Lemhi.

Tr. Vol. 1, Mar. 17, 1958, Dr. Ray, p. 40:

*** The Waywamp, along with other tribes of the area of the Plateau, especially the southern Plateau, had obtained horses at an early date, long before the coming of the white man, and they had begun to control their culture on the basis of the possession of the horse part is soon as they got them.

Comment: Horses:

If Dr. Ray was right in his 1938 study and article, the possession of horses at an early date didn't make much difference in the balance of power because the drive south started sometime after 1806.

Firearms:

Lewis and Clark found no firearms among the Sahaptins on the Columbia River in 1805 nor did they do so when they returned up the river during 1806. Five or six years later David Thompson (Def. Ex. 68) failed to report firearms among them when he went up the Columbia and Alexander Ross found only part of the natives were armed in 1811 (Def. Ex. 66). So it must have been well into the 1800's before the Sahaptins had the white man's superior weapons in sufficient number to increase their military effectiveness.

So it is a safe conclusion that the Sahaptins did not have firearms from 1750 to 1810 and possibly later. The evidence is all to the contrary.

10. At the same time native weapons introduced for ceremonial expansion. The effectiveness of the whites and depletion of game near the coast may be mentioned. Several selective battles were fought in the Shoshone territory in which the Indians were the victors. There are the Shoshones were pushed west and farther south and finally held beyond the boundary indicated above for the nineteenth century.

Comment: As to the encroachment of the whites, we have found white settlers did not come into middle Oregon to make homes in any considerable number until the 1860's; that early travelers passed along the Oregon trail, or, less frequently, down the Stumbla River to canoe, to the

Pacific Coast where they established homes. It was the demand for land near the Columbia River trade route which brought about the negotiations for cessions east of the Cascades in the 1850's and thereafter. Settlers could not see land until after the Indians had been put on reservations. The above statement by Dr. Ray strongly supports in our view his 1938 thesis that the movement southward of the Sahaptins began sometime in the early part of the 19th century, or to put it in another way, "after the turn of the century." In Bocket No. 198 we found the Wiyam movement of conquest against the Snake Indians began sometime in the 1820's and extended up to the signing of the 1855 treaty with the defendant. Dr. Ray certified this was a concerted movement with the Umatilla, Cayuse and other Indian tribes in the Inasane case. Dr. Peter Haddock, a noted anthropologist and former head of Yale University's department of anthropology, made a study of the Wiyam bands during 1916. In an article published in the American Anthropologist in 1918, he said their southern and southeastern expansion "reached its height in the years between 1810 or 1820 and 1855" (Def. Ex. 52, p. 401). This does not agree with Dr. Ray's testimony that the Sahaptin movement occurred during the 18th century but it is strong corroboration of Ray's statement in the paragraph entitled "Distribution in the Eighteenth Century" in his 1938 article wherein he wrote:

Tribal territories as outlined above had persisted without material change, in Washington and northernmost Oregon, from about 1600 in the north to the southern extensions of the time immemorial, but not so in the southern extensions of the coast. There is nothing that reported there, and only after the opening of the great northwest, formerly, the Indian in

0002943

people had occupied all of the upper drainage for the main
Day River, all of the lower River, and all of the Helzer and
Payette River basin and the territory to the south (Def. Ex.
52, p. 188). (Underlining supplied)

Thus, Dr. Ray strongly concludes in 1918, after extensive invest-
gations, that the movement outward began (not ended) after the begin-
ning of the 19th century; that "Sahaptin peoples had required those
regions only after the opening of the nineteenth century."

However, in his testimony on the same subject matter he says the
movement began in 1750, reached its climax in 1790, and became finally
fixed in 1810; meaning, we believe, that it resulted in acquiring a large
traced of land from the Snake Indians, to which the Sahaptins would now
have Indian title. We have been unable to find any significant evidence
in the record which gives substantial support to Dr. Ray's contradictory
claim made in his sworn testimony on this matter. We have already

pointed out substantial evidence supporting his 1918 thesis, but on the
question of timing and acquiring a large area by conquest there is addi-
tional evidence, and facts and circumstances of which we may take judicial
notice, all of which is worthy of consideration in resolving this question:
Economic and Food. The record shows that the Columbia River, in-
cluding the lower reaches of tributaries draining into it from the north,
were heavy producers of salmon and numerous other species of fish. In
addition to these river valleys there were large areas of grassy plains
which provided forage for large numbers of Indian horses and much wild game;
timber, nuts, berries, and other edible vegetation were plentiful. These
conditions existed on all parts of the river in this case; also, the Columbia

River furnished a great water highway for
tribes living along its course and the river valleys adjoining. Much
commerce, Indian fashion, prevailed during the periods under considera-
tion. While explorers, trappers, and traders also made use of the river
as a highway in their operations. Under these conditions the area was
considered one of the most prosperous regions in the northwest. In such
an environment there was little need for large expansion to the south to
supply the needs of the small Indian population such as the Umatilla,
Walla Walla and Cayuse tribes had in the critical days in this case.

In direct contrast were the areas further south which are in con-
trovery in this case. Beyond the summit of the Blue Mountains to the
south the country became progressively more arid and very much less
attractive from the standpoint of economic and living conditions. There
were less fish, less game, and lower woods, nuts and berries. Frequently,
the Snake Indians, who had to rely on it for a major part of their sub-
sistence as they were driven southward by their enemies, the Sahaptins,
were reduced to the necessity of eating insects to keep alive.

Thus, if there was economic motivation - we believe there was - for
either defending land possessed, or acquiring new territory by conquest,
the motivation would be much stronger among the Snake Indians who were
in great need, than among their enemies to the north, who in the common
under consideration were much better off. We are convinced that this
economic imbalance between the two peoples was one of the underlying
causes of the almost perpetual war between them. In their constant
fighting, during the critical period in this case, the Ray in his 1918

000294A

It would be unrealistic in our judgment to suggest that they had any

knowledge at that time of the basic requirements needed to establish

such title. On the whole these observers' statements tend to support

our findings that there were no villages of Sahaptin Indians in the area

south of the southern borders of areas we have awarded to the petitioner,

but that in the 1840's, 1850's and at the treaty date, 1855, Umatilla,

Walla Walla, and Cayuse Indians, as well as Northern Paluces, Nez Perce,

Snake, Shoshonans, and Bannacks, were sometimes seen in, and were using

the disputed areas in common.

Commissioner's
With respect to Finding 41 and specifically the land area awarded

to the Cayuse tribe as of March 8, 1859, we present additional observa-

tions and reasons for its adoption:

We do not follow on its southern border the entire line to the east

as stated in the 1938 article of Dr. Kay. We follow substantially Kay's

southern line to the northwestern drainage of the Grand Ronde River and

thence generally northwesterly along the northwestern limits of the

Grande Ronde watershed to the Touchet River. The real problem in this

matter is principally the northern boundary. In addition to the general

evidence and reasons already presented the following statement of ex-

plorers, officials, traders, travelers, historians, etc., support our

determination with respect to the Cayuse tribe's aboriginal land holdings:

Wilson Price Hunt - In 1811 Mr. Hunt found 6 hats of Chochoons in

Grand Ronde Valley, and passed a Snake lodge between there and the mouth

of McKay Creek on the Umatilla (Comm'n. 14, p. 63).

0002945

article concludes that the Sahaptin Indians were the aggressors, who

deliberately set out to acquire lands held by the Snake Indians.

Although the Snakes (or Choshonean people) were generally disliked

and held in contempt by the Sahaptin neighbors, they were effective fight-

ers, as is evidenced by the fact that the drive against them was a concerted

one made by the Klamocs and Wapwapa to the west, the Umatillas, Walla

Walla and Cayuse in the center, and the Nez Perce and other miscellaneous

groups to the north and east. Even with this large army of force against

them, Dr. Kay claims it took 60 years to conquer and finally hold the areas

in question from which he is claimed the Snake Indian inhabitants were driven.

In arriving at our conclusions we have not overlooked the testimony

of a considerable number of explorers, trappers, settlers, officials,

historians, writers, and others who traveled through the claimed area via

the Columbia River or the Oregon Trail in the late 1840's and in greater

numbers in the 1850's and whose names and statements we have not dis-

gussed up to this point in this opinion. We have summarized their ob-

servations in our Findings 23 and 26.

We call attention to the fact that there people for the most part

did not come into the claimed area until the late 1840's, 1850's, and

some in the 1860's and later. They reported what they saw and heard with

respect to Indians they encountered on these journeys. Many of these

statements were very accurate and correct in nature. There is no evidence

in making these statements that they were attempting to indicate or

describe the land holdings claimed by these Indians based on Indian title.

Ogden's official report of about 1826 describes Snake country as bounded "on the north by the Columbia waters." (Comm'rs, Pgs. p. 64).

Mathaniel Myerch about 1834 said Bigger Snakes inhabited the country on the heads of the small streams flowing into the Columbia (Comm'rs, Pgs. p. 65).

John Work during the summer of 1832 saw Snakes along either the Middle or North fork of John Day River (Comm'rs, Pgs. p. 66).

Dr. Gairdner in 1835 met Cayuse and Walla Walla Indians in the northern part of Grande Ronde Valley "who had come hither to trade in horses with the Snake Indians." (Comm'rs, Pgs. p. 67).

John Townsend, 1836, met a Snake family on Burnt River, and on a return trip from Fort Walla Walla to the Blue Mountains, he met Walla Walla Indians driving a large band of horses who said "the Snakes have crossed the mountains to commence their annual stealing of horses, xxx" (Comm'rs, Pgs. p. 67).

Major Osborne Cross, 1840, claimed friendly Indians would not assault in investigating rumors of depredations on the headwaters of Powder River "as they would come in contact with hostile Indians who reside in the mountains and immediately in their neighbor hood." (Comm'rs, Pgs. p. 68).

Mr. Newell, 1869, stated "Bigger Snakes were scattered from the headwaters of Snake River to the Grande Ronde Valley, and that Cayuse country laid between the foot of the Blue Mountains and 25 miles of Fort Walla Walla." (Comm'rs, Pgs. p. 71).

A. D. Embury who remained when he entered the country in 1832, "The Grande Ronde Valley and the adjacent country, then occupied by the Snakes, was also densely populated." (Comm'rs, Pgs. p. 71).

Oliver Jennings, 1851, "saw several real wild Indians of the Panacks tribe called Diggers" at Burnt River (Comm'rs, Pgs. p. 71).

Cmdr. Charles Milkes' employe, Dayton, reported "Cayuse, Nez Perce and Walla Walla meet to trade with the Snakes or Shoshones" in Grande Ronde Valley. Milkes' 1841 official plat showed all the drainage area of Powder, Burnt, and Malheur Rivers and the headwaters of Imnaha and Malheur Rivers to be in Snake or Shoshone country (Comm'rs, Pgs. p. 74).

Horatio Hale, ethnologist with Milkes' expedition, showed on his official plat the eastern half of Grande Ronde Valley as Shoshone country (Comm'rs, Pgs. p. 74).

J. Quinn Thornton, 1858, said the Cayuse, Nez Perce, and Walla Walla met the Snakes in Grande Ronde Valley for trading purposes (Comm'rs, Pgs. p. 79).

Bever Major Alford said Banack Snake country extended from near Fort Hall (Idaho) down Snake River to the Grand Ronde and westwardly toward Klamath Lake (Comm'rs, Pgs. p. 80).

Major Katus stated the Cayuse claimed from Willow Creek to the Blue Mountains and northward to near Walla Walla (Comm'rs, Pgs. p. 81).

Agent R. R. Thompson in 1857 found remnants of Snakes near Burnt River, and reported a band of Shoshone or Snake Indians resided in the Blue Mountains northwest of the Grand Ronde (Comm'rs, Pgs. p. 81).

Special Agent Nathan Olney in 1857 reported Snakes were about the mouths of Payette and Boise Rivers east of Snake River and on the Myhee, Malheur, and Burnt Rivers west of Snake River (Comm'rs, Pgs. p. 82).

Agent A. P. Donahon stated that the Snake country extended from Burnt River to Bendigo, River, that a band lived in 1857 on the western

We have now reviewed the documentary and expert or opinion evidence and shall conclude with a few additional comments:

Dr. Ray testifies that he spent some additional time, after his employment in this case, doing historical and field research. His field work had to do mostly with the locations of villages in the claimed area. As we have pointed out previously, the winter villages of the three tribes were in the northern part of their land areas generally along the Columbia, Umatilla, and Walla Walla Rivers and in those villages the Indians lived in either permanent or semi-permanent dwellings. Villages in the areas the south were without dwellings and ordinarily would be classified as camp areas. We believe it is significant that in his Exhibit 526 (map) and its accompanying typewritten list of villages there are no dates except in one instance, as to when these villages were established and the periods when they were used. The one date was 1870 when the village was last occupied. There is no evidence in the record as a result of Dr. Ray's historical and field research, after his employment, which would justify a departure from his conclusions in his 1938 article published in the American Anthropologist magazine, with respect to the aboriginal areas held by the Umatilla, Walla Walla and Cayuse tribes in the 18th century, or the northernmost areas held by the Snake (or Northern Shoshone) during the said century. Nor is there any evidence which would contradict his statement that it was "after the opening of the nineteenth century" when the Salapain peoples had accepted these regions. There is nothing in our judgment in that evidence which in any way would be inconsistent with or contradict our findings as to when the area to require the treaty held by

slope of the Blue Mountains opposite the Warm Springs Reservation, and "in the headwaters of John Day River." (Comm' 3, Edg., p. 32)

Capt. R. D. Wallen, 1859, said Snake camps sometimes extended north to the headwaters of John Day River (Comm' 1, Edg., p. 81).

Agent Ketchum, 1862, said only a little Snake country outside the villages of Bowdoy, Junc, Malheur, John Day's, and Owyhee Rivers, was recognized, and that the Snake usually appeared during June and July along Powder River (Comm' 3, Edg., p. 83).

Agent Harmer, 1863, said Snake robbed some Warm Springs Indians when they were on one of the northern tributaries of John Day River (Comm' 3, Edg., p. 83).

Levy and Clark reported "the-shone (or Snake Indians) residing in Warm Springs and all on the little Warm River, northwest of the N. W. Mountain, and far west, and a few on the heads of the Co-wine-ne-hi-ooks (Bendone), La Day (John Day), Don-na-cot-um (Umatilla), and Wal-lar-wa-lie (Walla Walla) rivers, and more boundedly in the falls of the Co-wine-ne-hi-ooks" (Comm' 1, Edg., p. 55)

The statement of Levy and Clark places the "the-shone (or Snake Indians)" in the area just west of the head of the Bendone, the John Day and the Walla Walla, and more boundedly in the falls of the Bendone, for the purpose of the treaty. The other notes to note are that these Indians normally did not hold or other Indians of the location of the treaty, and that they had been lately near the Columbia River on a site from the Bendone on the way to the John Day in the center and the Umatilla on the way. These locations correspond roughly with those shown on other maps.

0002994

14 Ind. Cl. Comm. 14
the Shaker began and the changes in the use of the territory which resulted from that drive.

It is helpful to keep in mind the basic requirements of Indian title. In the Sic and Foy case, supra, it was held that "aboriginal title must rest on actual, exclusive, and continuous use and occupation for a long time prior to the loss of the property ***. Each of the components must be shown by adequate proof." We have found in this case that with respect to the claimed territory which we excluded from the award to the petitioner, none of the components of original title were present. We found that the Umarella group, including their allies, did penetrate into the said area so that by treaty time (1817) the area was being used by numerous groups including the Shaker Indians at various times; but it was not occupied and used exclusively by any one tribe, band or group. And that mixed-use situation had existed during a relatively short period; too short in fact, under all the circumstances to equate to the requirement "for a long time" or "from time immemorial."

So, in such a situation even though it might be argued that all other components of Indian title were present (a conclusion the evidence does not support) the petitioner would nevertheless fail because the occupancy did not exist "for a long time" prior to the alleged loss of the property.

The issue has had considerable attention in the instant case and in the companion case, The Contra Costa Tribe of the Warm Springs Reservation in Oregon, v. United States, D. No. 198. In this docket we upheld the claim of the Wasco and Maympan lands that they had properly permitted various Indian bands, tribes, and groups to use for short periods of time

their lands along the south bank of the Columbia for purposes of trading, recreation - such as horse racing and gambling - and matters of similar nature, without impairing their claims to aboriginal title. We upheld such so-called "permissive use" as proper and allowable. Based on the evidence there was no doubt that the Warm Springs bands had aboriginal title to the areas awarded to them by the Commission at the time when such permissive use was allowed. Also, the principal purpose of this permissive use was not for subsistence to be obtained from the land and its resources by these guest Indians. It was a guest-host relationship for limited periods and purposes only. Also, in that case the Commission, in effect, rejected the claim of the Maympan bands that the tribes and bands who had participated with them in the southern drive against the Shakers, and used the lands thus occupied for subsistence purposes during that drive and later in common with other friendly Indians, were there and acting under permissive use of the disputed lands. In fact, we held that no aboriginal title in the Maympan band or any of these bands could come into existence under the circumstances involved and basic in that situation. They could not grant permission to use that which they did not have Indian title to, and they could not acquire exclusive use and possession by a joint attempt at conquest. No permissive use of the allowable kind could be given by an Indian title to the lands in question. This seems to be clear.

The facts in the instant proceeding are very similar to those in the Warm Springs case. With the exception of the Wasco bands, the bands and tribes in both cases were Shoshone Indians who were friendly to each

0002948

other and had common enemies in the Shoshonean identifiable group generally known as the Snakes, but sometimes referred to as the Northern Palutes or Shoshonean peoples.

We have found that each of the Umatilla, Walla Walla and Cayuse tribes had Indian title on the critical dates involved to a specified tract of land. It also appears these tribes were friendly neighbors, and at times mingled in each others' aboriginal areas for various activities for temporary periods of time. But each tribe was definitely independent and had a concept of ownership of its own villages and dwellings and nearby supporting areas from the very earliest times - times during which their use and occupation developed into Indian title. We also take notice of the fact that when these people acquired horses in considerable numbers they were allowed to range together. This was so as a matter of necessity because there were no fences between the areas owned by them, and since horses knew no boundaries, the three areas became to a certain extent a common grazing area. Thus, this situation together with others helped to modify reasonably, but did not extinguish aboriginal title. All the above activities, we have found, came sometime after these tribes had acquired original title to these specific areas, and under the circumstances such activities could not be said to be an abandonment of Indian title held by each of them to a specific area.

We have found that in the 1860's the three tribes of the Umatilla group joined with the Waiyampum Indians to the west and the Nez Perce group to the east and other miscellaneous Indians in a concerted and joint movement to drive the Snake Indians out of the territory occupied and used by

them at that time. We have detailed elsewhere the approximate northern line of this Snake group which separated them from their Sahaptin neighbors to the north. The drive proceeded slowly and by sovereignty time (June 15, 1846), and treaty time (Umatilla Treaty, June 1855), they had not succeeded in acquiring exclusive possession and use of the lands they were seeking to conquer. There had been a penetration of the area, but the fighting continued and the Snakes were not eliminated. But the petitioner claims that these allied groups did succeed by 1810 in securing firm possession of the disputed lands and to answer the claim that it was not possible to acquire exclusive possession and use in a joint drive under all the circumstances surrounding it, Dr. Ray gave it as his opinion that the assisting allies were in and upon and used the disputed areas by permission of each of the Umatilla tribes and were not there as a matter of right. * As we held in the Warm Springs case, exclusive use and possession could not be acquired in this fashion.

Umatilla Tribes and Others Claim Fishing Rights at Celilo Falls Area

Our reasons for entering Findings 18 and 19 follow:

Nowhere in the testimony or documentary evidence in Dockets 198 or 264 can we find anything on which to base a claim that the three tribes of the Umatilla federation had or claimed a mere right in the lands and waters making up this famous fishery. Nevertheless, such a claim was successfully made when the construction of The Dalles Dam was proposed by the defendant, and the Umatilla federation was paid \$4,000,000 to subordinate their

* See Finding 10. An examination of Dr. Ray's statement indicates it was his opinion only. The defendant cannot show evidence on which his opinion was founded or justified.

0002949

claimed "immemorial" usage rights to the construction and operation of the project.

Dr. Ray, who described in considerable detail the yearly subsistence program of the Umatilla, Wai Wai, and Cayuse Indians did not include the annual taking of fish in the Dalles-Gelilo fishery. But in consolidated Docket 198 he did castly cite the Columbia River Indians and many others, including the Umatilla group, did visit this famous area for the purpose of cradling, gambling, and horse racing, and similar activities, as the guests of the Masco and Kaysman, aboriginal owners, and that such use of the area was a permissive use. We agreed with Dr. Ray's statement in our findings in Docket 198.

It is hardly necessary to point out that the taking of fish at the Gelilo Falls areas by the Umatilla group, under claim of right, would reduce somewhat the economic necessity of expansion to the south against the Snake Indians into the headwaters of the Umatilla, John Day, Grande Ronde Rivers, and smaller streams to insure the food supply of these Indians. It would have been much easier to insure this supply in great quantity at the Gelilo Falls areas, and the same continued in fishing at the Gelilo Falls areas plus the annual buffalo hunt to the Rocky Mountain to the east and beyond would have materially reduced the time available for their expansion into the northern area and the exploitation of its resources, which the Umatilla claimed they had taken from the Snake Indians to the south. At any rate, these findings show the making of a claim and its satisfaction which we believe had some degree of relevance in the instant case and in that of Docket 197, and which will be taken up later in some consideration

In the matter of liability and value when Dockets 198 and 266 are heard on those issues. We also believe there is sufficient substantial evidence in the record to support our findings in the instant case even if no consideration should be given to the Umatilla claim of fishing rights at the Gelilo Falls areas based on "immemorial" usage of Indian title. Indian title to the respective tracts of lands belonging to the Umatilla, Wai Wai, and Cayuse Tribes as described in Commissioner's Finding 41, was extinguished by the United States for a consideration on March 8, 1859, the effective date of the Treaty of June 9, 1855 (12 Stat. 965). This case shall now proceed to a determination of the average of the lands ceded above, their value as of March 8, 1859, the amount of the consideration paid by the United States to the confederated tribes for their lands, and all other matters bearing upon the question of the liability of the United States to those Indians represented by the petitioner herein.

Arthur V. Watkins
Chief Commissioner

I concur:

Mr. M. Holt
Associate Commissioner

Commissioner Scott did not participate in the case.

MEMORANDUM FOR THE COMMISSIONER OF THE BUREAU OF INDIAN AFFAIRS,
AND OTHER MEMBERS RELATIVE TO SCOTTS-FOLIOTON
ORGANIZATION AND LAND USE

Re: The Confederated Tribes of the Umatilla
Reservation of Oregon v. The United States
of America.

Before the Indian Claims Commission

Docket No. 264

submitted by:

Robert J. Suphan

0002951

I N D E X

	<u>Page</u>
Introduction - Sources	1
The Natural Area	6
The Cultural Area	9
Socio-political Organization	12
Subsistence	23
Property - Boundaries	25
The Umatilla	36
The Walla Walla	47
The Cayuse	57
The Northern Paiute	63
Appendix A: List of Subsistence Areas	A-1
Appendix B: Informants	B-1
Sources Consulted	B-2

0002952

INTRODUCTION - SOURCES

This ethnological report is concerned primarily with several related aspects, namely the socio-political organization and land-use pattern, of the Umatilla, Cayuse, and Walla Walla Indians of eastern Oregon and Washington. It is based upon both pertinent historical material and upon field investigation carried out at the Umatilla Indian Reservation in Oregon.

Geographically, we will be concerned here with the country now part of eastern Oregon and Washington, including the Columbia River valley from the vicinity of the John Day River (Sherman Co.) east and north to Priest Rapids; plateau lands bordering the Columbia so as to include the lower Yakima River on the north and the drainage of the John Day to the south, and the Blue and Wallowa mountain ranges. While not all the Indian groups within eastern Oregon and Washington are expressly dealt with in this report, a proper understanding of those Indians with whom we are here concerned necessitates a knowledge of neighboring cultures. While true of any such study, it is all the more applicable here due to the roving nature of the subsistence quest among these Indians; the emphasis upon trade, and the alliances which were at times formed between the several ethnic groups - all these factors working to produce a great and continual interaction among these Indians in aboriginal days. Hence in addition to the Umatilla,

0002953

Walla Walla, and Cayuse the neighboring Sahaptin peoples such as the Tenino, Yakima, Palus, Nez Perce, etc., and those Shoshoneans who were a factor in the region have all been considered in the preparation of this report.

Historical data analyzed for this report includes the narratives and journals of those explorers, fur traders, missionaries, pioneers, and other adventurers who left records of their encounters with the Indians of this sector in pre-reservation days. There are, however, two shortcomings in nearly all of these accounts as they apply to this study - one is a lack of precision in setting down data on the Indians, the second is a lacuna in early accounts of the John Day-Deschutes drainage area. The first of these is of course due to the fact that but few of these men were interested in the Indian per se; consequently their reports contain many cursory remarks or generalizations too sweeping to be of great value in such a study, for it is seldom that Indian camps or villages, especially those away from the Columbia, are placed with accuracy or the Indians' occupation there given. Nor are the inhabitants of these sites always identified with care, for the rather ambiguous "Walla Walla" or a variant of it - a term loosely used for many Sahaptin peoples in the early sources - is liberally used in these historical materials; likewise "Sciatoaga" is frequently met, apparently a generic term that at some times was applied to the Umatilla, Walla Walla, and Cayuse in toto, while at

0002954

other times it seems to apply solely to the Cayuse Indians. The second limitation implicit in these records is a product of the pattern of exploration, settlement, and wagon-train routes of early Oregon, which in turn depended upon the geographical and climatic conditions east of the Cascades. That is to say, from the time of Lewis and Clark until well after the reservation period had begun (1855) the Columbia River served as the highway for those bound westward for the fertile Willamette valley or the coast, and for those fur traders and trappers who were moving eastward to the Snake and Okanogan river regions from their posts west of the Cascades. These adventurers clung to the main river course, shunning the arid lands which border it on either side and which were comparatively useless to whites at that period of history. And so while we have quite full accounts of native life along the Columbia, the barren central plateau goes virtually unnoticed.

Fortunately there are several exceptions which do help us form some picture, however thin, of aboriginal life in this John Day-Deschutes sector. Earliest in time are the journals of Peter Skene Ogden of Hudson's Bay Co., who trapped through the valleys of these two rivers as well as the Harney-Malheur lake district in 1825-29, John Work, also of that company, covered much of the same territory in the years 1831-33, while Nathaniel J. Wyeth travelled along the Deschutes in 1834-35, both men leaving journals

of their trips. A decade later John C. Fremont travelled up the Deschutes en route to California, setting forth his experiences in two publications, while Lieut. Abott of the Pacific railroad surveys descended that river in 1855. References to Indians in all these reports by these men are few, comments on their activities fewer; nor is it always possible to be certain of the precise location of incidences inasmuch as place names did not as yet exist in this region. Yet since they are the sole accounts of the sector prior to 1855 they must serve continually in this historical reconstruction.

As regards the region about the great bend of the Columbia River, that is east of the Umatilla River and about the junction with the Snake, we are more fortunate. The establishment of Fort Nez Perce (near present town of Wallula, Wash.) in 1818 by Alexander Ross and that of the Whitman mission 25 miles east of the Fort at Waiilatpu in 1836 resulted in the country about the Umatilla, Walla Walla, and lower Snake rivers becoming well known and well represented in early documents. Here was a center of fur trading and missionary activity, as well as a stopping place for many immigrant trains arriving over the Oregon Trail by way of Powder River, the Grande Ronde valley, and the Blue Mountains. Few who came to Oregon in the early days by the overland route failed to pass through this region while many have left their impressions in records of one sort or another.

0002956

Ethnographic material for this report was derived from data published by Curtis, Jacobs, Mooney, Murdock, Ray, Spinden, J. H. Steward, O. C. Stewart and others on the Umatilla, Walla Walla, Cayuse and their neighbors. In order to augment and clarify the picture obtained from both historical and ethnographical publications the writer conducted a field investigation at the Umatilla Indian Reservation during which time Umatilla, Cayuse, and Nez perce informants were interviewed. While at the Umatilla agency the writer also had access to written materials stemming from a series of survey trips undertaken in 1941 by a party of elderly Umatilla, Cayuse, and Walla Walla Indians, whose purpose was to visit and identify subsistence areas utilized by their forefathers in pre-reservation days. These records contain the name, precise location, and use to which each such spot was put, as well as naming those Indian groups which customarily exploited it. This material is incorporated into the text of this paper, while a complete list of these areas is given in Appendix A.

Lastly, the files of Edward G. Swindell at the Portland regional office of the Bureau of Indian Affairs contained statements from elderly Indians relative to our particular problem; these have of course also been weighed in the preparation of this paper.

THE NATURAL AREA

Eastward of the Cascade range which, by serving as a barrier to the moisture laden winds of the Pacific, divides the states of Oregon and Washington into eastern dry and western humid sections, lies a basaltic plateau of arid or semi-arid condition. This plateau is a portion of the greater physiographic province known as the Columbia Plateau which, with its Canadian extension, stretches northward to take in the Fraser River drainage in British Columbia. To the east and southeast it includes most of the Snake River drainage, the Owyhee River, and the Harney-Malheur lake district, while to the southwest its extremity is probably about the head of the Deschutes River. Much of the surface of this gently rolling plateau is furrowed by the canyons of such rivers as the Columbia, the Deschutes, the John Day, the Umatilla, and the Yakima, as well as those of their tributaries. Above the plateau, whose average elevation is about 3500 feet, rise numerous buttes while in northeastern Oregon and southeastern Washington the Blue and Wallowa mountains attain an elevation of some 9000-10000 feet.

Given the scanty precipitation, as little as eight or nine inches annually in some places and averaging perhaps twenty inches overall, eastern Oregon and Washington is basically a steppe or desert country. The lower Yakima River, the entire Columbia valley from

Mosier, Oregon, eastward to the Snake River and south so as to include the junction of the Deschutes and Crooked rivers as well as the John Day River to about the town of Mt. Vernon is in what Bailey designates as the Upper Sonoran Life Zone (p. 12 - 19).

Plant cover characteristic of this region is sagebrush, bitterbrush, bunch grass, greasewood, prairie clover, and wild sunflowers, while small stands of junipers dot the dry slopes and plateau surfaces; canyon floors and river bottoms are greener with willows, oaks, cottonwoods, wild currants and serviceberries. Fauna includes such small mammals as several species of rodents, the desert fox, and the spotted skunk, while the zone is also the winter range of the antelope, mountain sheep, and mule deer.

Ringed this desert-like terrain is a Transition Zone (Bailey, p. 20) taking in the slopes of the Blue, Wallowa, and Cascade mountains from about 1000-3500 feet. Here the sagebrush gives way to grasses while among the forests of yellow pine, birch, willows, and ponderosa pine are broad upland meadows which figured prominently in the native economy. Still higher on the mountain sides the forests of pines, white fir, aspen, poplar, and mountain maple become heavier as the underbrush of berry bushes increases. Native to these higher levels are the Rocky Mountain elk, several species of deer, mountain sheep, beaver, and various rodents.

In summation, this area is largely one of vast expanses - of flat, dry, stony plateau cut by river canyons and dotted with sage and juniper. On the foothills of the Blue, Wallowa, and Cascade ranges the grasses begin to predominate and open forests dotted with meadows appear. At still higher elevations the forests become denser, yet they are never dark and impenetrable as those on the coast of Oregon tend to be. Innumerable rushing streams interlace these mountains providing fishing and avenues of travel through the mountains for modern man just as they did for the Indians.

0062960

THE CULTURE AREA

The Umatilla, Walla Walla, and Cayuse Indians are all speakers of Sahaptin languages (Jacobs, 1931), and are reckoned as of the Plateau culture area (Kroeber, 1939, p. 55; Ray, 1939). In extent this Plateau area includes peoples of both the Columbia and Fraser river drainages, thereby encompassing Athabaskan and Salishan speakers as well as other Sahaptins.

This is an area which has failed to set itself off by the development of any distinctive culture of its own - it is primarily a region of absences and low intensity culture (Kroeber, 1939, p. 55; Spinden, p. 270). This is especially evident when the Plateau is viewed against the neighboring Plains and Northwest-coast culture areas, both of which were flowering so exuberantly and colorfully when white contact occurred. Rather, what we find here is a series of sub-areas reflecting varying degrees of influence from the Plains on the east or the Northwest-coast on the west.

Historically, Kroeber sees the Plateau as "the area in which the Northwest Coast culture is likely to have had some of its beginning and which at any rate still forms its hinterland" (1939, p. 55). Presumably he has in mind such widespread features as a tendency to local political autonomy at the village level, subsistence adjustments such as the development and elaboration of

0002961

fishing gear, stone pestles, and basketry techniques. In later times, after the Northwest-coast culture had become crystallized into its diagnostic patterns, other cultural items undoubtedly flowed back upstream along the Columbia and Fraser - items such as slavery, art motives, an emphasis on wealth and rank - which have been noted on the western fringe of the Plateau (Ray, 1939; Spinden).

As for the Plains influence along the eastern front of the Plateau culture area, although some undoubtedly managed to get across the Rockies prior to the introduction of the horse in Washington and Oregon (about 1730 according to Haines [pp. 435-36]); it must have been insignificant due to the difficulties of contact across the mountains. Virtually all the cultural traits found on the Plateau which are traceable to a Plains source are intimately bound up with the horse, and hence post-1730. On the time, the route, and the effect of this late but extensive borrowing Kroeber writes as follows, his "Middle Columbia" including all Sahaptins:

It was the Middle Columbia, with its prevalence of open country, that finally proved most receptive to Plains influence. Of the more special luxury manifestations of Plains culture, like the coup system, the societies, the Sun dance, only fragments got over the Rockies; material adaptations like the tepee, the parfleche, and floral bead designs were largely accepted, and almost made the Middle Columbia culture over. The consequence was an unusually sharp cleavage at The Dalles, where alone Pacific Coast and Plains culture traits met in a conspicuous non-conformity.

0002962

It must be remembered, however, that this is true of Plains horse culture, probably not of the old culture of the Plains. In 1600 and 1700 the Middle Columbia was still a true transition area, an intermediate low-level zone. By 1800 the Plains influence had begun to come in; most of it probably fell within the nineteenth century; it continued operative in some degree after the beginning of Caucasian settlement; and at the base of the Cascades a little of it turned and flowed southward into a corner of the Basin area in northeastern Oregon, to the Klamath-Modoc and Achomawi. To what respective degree this late Plains influence reached the Sahaptin of the Middle Columbia through the Salishan tribes of the Pend d'Oreille branch of the Columbia, or through the Shoshonean Lemhi and Bannock of the Snake drainage, is not clear. It evidently did not come through the Great Basin Shoshoneans actually in contact with Plains tribes, such as the Ute and Shoshone, else the effects would presumably have been passed on also to their westerly kinsmen the Western Shoshone and Northern and Southern Paiute which was not what occurred. (1939, pp. 56-7.)

Plateau culture as found among the Umatilla, Walla Walla, and Cayuse was then, at least in many material respects, a quite faithful duplicate of the Plains culture associated with the Indians east of the Rockies - the Crow and the Blackfeet for example. Here, as on the Plains, clothing was of dressed and tailored deer or elk skin - shirts, leggings, moccasins - highly decorated with quills, beads, paint, fringes, bits of bone and copper, and sea shells, over which robes of buffalo hides were worn (Thwaites, 3, p. 105; Rollins, 1939b, p. 302; Ross, 1849, p. 127; Parker, p. 228). Dwellings were typically mat lodges, but the tipi was used as well. As among their eastern neighbors the possession of the horse gave them a great mobility

enabling them to make large circuits throughout eastern Oregon and Washington in quest of subsistence, and even across the Rockies to hunt buffalo along the Missouri in true Plains fashion. On the non-material side of Plateau life, the glorification of war honors for the individual as a means of increasing social status, and the existence of councils on the local group and inter-local group levels derive from the Plains.

Socio-political Organization

During the winter months the Umatilla, Cayuse, and Walla Walla Indians clustered in villages or bands along the Columbia, Walla Walla, and Umatilla rivers in such spots as afforded them a nearby supply of fish, roots, and wood as well as some shelter from the elements. These local groups were composed of extended families dwelling in earth or mat lodges. There was no class or caste stratification among these Indians such as is known along the Northwest coast. Residence was perhaps predominately patrilocal although local group composition seems to have been quite fluid for a man might readily change his affiliation. While the winter village or band sites tended to remain constant over many seasons, changes in natural conditions (such as the exhausting of the available wood supply) would cause the settlement site to be moved; the new site selected would be in the same general locale.

culture, one religion and language, and like values; such are ethnic or social groupings, not political (1939, p. 9). It is to these ethnic units that collective terms such as Umatilla, Cayuse, and Walla Walla pertain as used by our informants. They are not to be taken as reflecting a political condition, but are, in "esprit de corps", a feeling of constituting "a people" through possession of a common dialect, common culture, and occupation of a particular area.

Subsistence

The Umatilla, Cayuse, and Walla Walla like all the Indians in the region of the Snake-Columbia junction depended upon fish, roots, berries, and game for their subsistence. Leading a semi-nomadic life, they were frequently on the move from camp to camp following the runs of salmon up the various streams, and visiting prairies and mountain slopes as the roots and berries ripened. Hale writes of these annual migrations as follows:

The mode of life of the Oregon Indians, especially those of the interior, is so peculiar that it is difficult to determine how it should be characterized. They have no fixed habitations, and yet they are not, properly speaking, a wandering people. Nearly every month of the year they change their place of residence - but the same month of every year finds them regularly in the same place (1846, p. 200).

Prior to the reservation period and up until the construction of dams for agricultural and industrial purposes, large runs of salmon and other fish into the principal streams and their tributaries provided these Indians with a regular, dependable, and inexhaustible food supply. In addition to the Columbia these streams included the Umatilla, Walla Walla, Snake, Grande Ronde, Wenaha, Minam, and John Day rivers together with many lesser streams and creeks. Depending upon local conditions these fish were taken by a wide variety of nets, hooks, spears, traps, and dams. With the beginning of the spring run fishing was centered along the Columbia and lower Umatilla and Walla Walla rivers. Then in June and July, as the fish moved into the tributaries and up to the headwaters in the mountains, the Indians followed for they were well acquainted with the course of these migrations and when the fish might be expected to reach certain spots. From early summer to October parties of various size and composition would be found camped along the mountain streams; the men would fish and hunt the deer, elk, antelope, and mountain goat, while the women dried the fish, picked berries, and gathered roots. Several weeks would be spent in one such camp or area where several hundred pounds of salmon would be dried per family. As previously indicated on pages 12-13 of this report, local group composition was quite fluid during these summer treks as families broke off from one

0002966

group to join another headed for a spot that they wished to visit. As a consequence of this mobility, as well as the lack of a concept of boundaries and trespass, Indians found exploiting in any one particular area might represent several ethnic groups, as in the Grande Ronde valley where Umatilla, Cayuse, Walla Walla, and Nez Perce Indians all habitually fished, hunted, and gathered.

In addition to the serious business of acquiring a food store for the winter months ahead, the summer and fall was also a time for amusement and visiting, productive areas such as that about Wallowa Lake being an annual rendezvous for the Umatilla, Cayuse, Walla Walla, and Nez Perce. Here sporting contests, gambling, and reunions with relatives brought together large numbers each year. Another favorite spot for these congregations was Tat-win, near where Dayton, Washington now stands.

With the coming of winter the Indians wandered back down from the mountains with their supplies to winter quarters on or closer to the Columbia River.

Property-Boundaries

Among the Cayuse, Umatilla, and Walla Walla property was both individual and communal. Personal rights were asserted and recognized over implements made by and/or used in work by the

individual; here are included such items as nets, spears, bow and arrow, baskets, mortars and pestles, horses, and clothing. As communal property may be mentioned the village site itself, and the fishing sites that pertained to the village membership as a whole.

Apparently individual claims to ownership of these fishing sites was not typical of the Plateau cultures with which we are here concerned. Both Ray (1942) and informants in the field indicate an absence of individual rights; these sites were said to "belong" to the village as a unit. However, such sites were also open to use by all friendly people regardless of ethnic affiliations, and since both historical and ethnographical material frequently cites Indians of more than one ethnic group sharing a site it is evident that this form of "ownership" was more formal than economically functional. In practice, it appears that a fishing site is spoken of as pertaining to a particular group simply because it is those people who tend to use it most frequently due to convenience, not because of any exclusive claim to it.

No claim of any sort was made to economically important areas beyond the immediate neighborhood of the village. Neither hunting areas, root-digging grounds, berry patches, or fishing sites in the mountains and valleys were claimed by

0002968

individuals or groups. All informants agreed that these were never said to "belong" to any person or unit, but that they were entirely open to exploitation by whatever friendly people might care to use them. Reference to the accompanying maps will show this statement to reflect actual practice.

As for the presence of a concept of trespass among these Indians and the existence of boundary lines, Ray has written:

Boundaries between groups of the Columbia Basin varied greatly in exactitude . . . Almost all villages were located on waterways, resulting in boundaries being most definite at points where streams or rivers were crossed. The greater the distance from population centers, the more vague the lines of demarkation grew. Thus, far back in hunting territory or far out in desert root digging grounds, boundaries sometimes completely faded out . . . the hunting territory of one group might be quite open to use by another even though the bounds be highly specific (1936, pp. 117-19).

At other times there are strict application of the concept of trespass on group lands:

Among Plateau groups recognizing tribal organization there is a tendency toward this rigidity of restriction. The Kutenai and Coeur d'Alene refuse foreigners the use of their territory, but it must be remembered that all constituent villages have common rights. The Kalispel show only a tendency toward tribal organization, but they require that a visitor from the outside obtain the permission of a chief before hunting within their boundaries. The Yakima carry this notion even further. They insist that such permission be obtained and definitely limit the period of the permit. When

the time is elapsed they provide safe convoy for the visitor as far as the Yakima boundary; beyond that point he is upon his own responsibility. Of interest here is the further Yakima practice of stationing scouts at strategic points along the boundary, in the interests of the group as a whole. Thus the lines of demarkation are highly specific here even though the circumscribed area encloses the autonomous villages rather than a tribally united people. The adjacent Umatilla and Cayuse tribes treat the Yakima with similar normal hospitality, but give no quarter to their traditional enemies on the south, the Shoshoneans. These southern Plateau groups, together with the Nez Perce and Flathead, maintain tribal or ethnic boundaries on all sides that are quite as specific as the village boundaries on the rivers farther north . . . (1939, p. 17).

In his publications Ray delineates such boundaries in the text and upon maps.

Based upon a reading of many historical sources, the data contained in ethnological literature, and interviews with informants, the writer of this paper must disagree with this picture. Rather, it would seem that concepts of trespass and boundaries were foreign to these cultures. The journals and narratives of virtually all early travellers in eastern Oregon and Washington are replete with references to mixed groups of Indians occupying and exploiting jointly some particular part of the territory. This was especially true for the region about the junctions of the Columbia, Snake, and Yakima rivers; to quote but one source, Alexander Ross, writing as of 1811 and 1815:

0062970

At the mouth of the Walla-Walla a large band of Indians were encamped . . . The tribes assembled were the Walla-Wallas, the Shaw Haptens, and the Cajouses; forming altogether about fifteen hundred souls (1849, pp. 126-27).

At the junction of the two great branches of the Columbia, the country around is open and very pleasant, and seems to be a great resort, or general rendezvous, for the Indians on all important occasions (1849, p. 129).

The Cayouses, the Nez Percés, and other warlike tribes, assemble every spring in the Eyakemas to lay in a stock of the favorite Kamass and Pelua, or sweet potatoes, held in high estimation as articles of food among the natives. There also the Indians hold their councils, and settle the affairs of peace or war for the year; it is therefore the great rendezvous where thousands meet . . . (1855, p. 19).

Ross Cox, who accompanied Alexander Ross, lists those Indians at the mouth of the Walla Walla River as Chimnapun, Yackaman, Sokulk, and Wallah Wallah (p. 14). Another area in which joint camps were noted is the valley of the Grande Ronde River, of which Dr. Gairdner wrote in 1835:

At noon we reach the camp of the Rayouse and Walla-walla Indians who had come hither to trade in horses with the Snake Indians. It consisted of twelve large mat lodges, covered with boughs, each about 50 feet long . . . more than a thousand horses were running about, and the Indians galloping to and fro.

We rode to see Indian women digging kamoss, about 5 miles S.W. of the camp, in a swamp at the foot of the hills. It is very laborious work; each woman before midday, having dug up two large bags, of more than a bushel each (90 lbs.) (p. 253).

Joel Palmer in 1845 likewise mentions a mixed camp in the Grande Ronde valley - of Nez Perce and Cayuse (p. 108).

In addition to these joint camps, one frequently finds mention of a particular group of Indians exploiting in areas well outside their alleged boundaries. Thus in the journals of Ogden, Wyeth, and Fremont hunting and trapping parties of Nez Perce, Cayuse, and Walla Walla are mentioned as far west as the Deschutes River region (Elliott, 1909, pp. 339, 343-44; 1910a, p. 210; Wyeth, 1899, p. 247; Fremont, 1846, pp. 201-02).

More recent writings of historians and ethnologists confirm this intermingling and disregard for boundary lines. In an article entitled "Some Early History of the Touchet Valley", Judge C. F. Miller writes:

A careful search of the early histories of the coast, and even Indian traditions indicate that prior to that date /1806/ this /Columbia Co. Wash./ was Indian country, pure and simple, settled by no particular tribe, but claimed jointly by the Walla Wallas, Cayuses, and Umatillas, the Tucanon being the dividing line between them and the Nez Percés. This was the summer meeting place of the different tribes surrounding us. Here the old Indian trails, or the Nez Perce trails, as they are usually called, cross the Touchet, leading from the Nez Percés on the east, the Palouses on the north, the Yakimas on the west, and the Umatillas, Walla Walla and Cayuse Indians on the southwest. They met here on common ground, pastured their horses on the grassy hillsides and in the fertile valley of the Touchet and the Patit, raced their ponies

during the day, and gambled at the stick game by the light of the campfire during the evening hours (United States Works Progress Administration, vol. 2, p. 136).

Spinden, on the Nez Perce Indians, also reflects the tendency toward common usage of land areas in this region:

The large camas meadows near Moscow, Grangeville, and in the Wallowa valley were also common property, indeed these may even be called inter-tribal property, since the former was frequently visited by the Faloos and the latter by the Cayuse Indians (p. 245).

Leslie Spier's study of the peoples and culture patterns of this area leads him to conclude that: "It is probable that the Cayuse range overlapped considerably with that of the Walula" (Walla Walla) (p. 18).

That not only did the Indians of northeastern Oregon share available subsistence areas, but that the concept of boundary and trespass was unknown in the aboriginal culture was amply and unequivocally confirmed by informants both in direct statement and through the medium of stories of the old days. Other ethnographic material alleging the existence of boundaries was specifically denied by all informants who attribute it to either misinformation or a confusion with conditions during reservation times. Thus a Cayuse informant said she was well aware of the Yakima enforcing a boundary line as given by Ray (quote on pp. 27-28 this report), but that this was their Reservation line, which they were guarding against attacks

0002973

of Indians - probably Shoshoneans - who were not as yet settled on a reservation of their own; such a procedure was unknown in pre-reservation times. Moreover, the list of some 120 Umatilla, Cayuse, and Walla Walla subsistence areas obtained from the record of 1941 survey party (see p. 5 and Appendix A) shows the prevalence of this practice of sharing sites, and hence inferentially supports the informants. Of the 120 sites only 19 are given as exploited solely by but one of these three Indian groups, while of the 19, 8 were located at or about the mouth of the Walla Walla. Nez Perce, Palus, Warm Springs (Tenino), and Columbia River Indians (often synonymous with Warm Springs, but includes also Indians from Washington about Celilo falls and east) are other Indian groups which are frequently listed as among those sharing an area.

At this juncture it may also be said that boundaries as expressed in the treaties made with the Indians should in no way be considered to reflect existing boundaries or to imply their existence at all. The interest of the agents of the United States was to acquire title to all the land; the simplest and most expeditious way to accomplish this was to divide the country in question into block areas and to treat with the various Indians for each such area, regardless of whether or not they exerted any real claim to it. That this was the method

0002974

and view of the agents can be seen from Joel Palmer's report on the Wasco treaty, wherein he notes that the eastern boundary of this purchase may conflict with that of the Cayuse along upper Willow Creek and the Blue Mts.; he continues:

This however, can be no objection to the ratification of the treaty as the boundaries of the Indians are not very well defined, and the Indian country is included in the purchase to the Western boundary of the Snake Country.

It is again shown in his instructions to R. B. Thompson, Indian Agent, in a letter written before the negotiations leading to the Wasco treaty of 1855 began:

You will proceed without delay to the Dalles of the Columbia and collect all the Indians inhabiting the country between Willow Creek and the Cascade falls, and between the Columbia River and the 44th parallel of North Latitude . . .

Here Palmer has outlined the boundaries that appear in the Wasco Treaty even before the Indians are consulted. It is clear that the boundaries as expressed in the treaty are those desired by and pre-determined by Palmer, and not reflective of the land actually used by the Indians as determined in council.

Lastly, we may quote Edward G. Swindell, Jr., associate attorney for the Department of the Interior who conducted a study of subsistence areas formerly utilized by Indians of Washington and Oregon; of our three groups, he writes:

All three of the tribes appear to have jointly utilized some of the numerous fishing places located in their respective domains as is evidenced by their respective affidavits. In this connection it should be borne in mind that there were no territorial lines of demarkation between the territories claimed by the three tribes and further that it was customary for them to meet at various places during their summer travels for the purpose of trading and social intercourse (p. 292).

Feeling then that boundary lines as given on maps or as delineated in texts violate the facts of aboriginal life in this part of the world in that they infer the existence of tribal unities, an exclusive exploitation of the territory so indicated, and that the Indians themselves thought in terms of boundaries, the maps accompanying this text show only the location of subsistence sites used by these Indians and their neighbors with no attempt at constructing boundaries.

Summing up for this chapter, the principal points made were:

1. The Umatilla, Walla Walla, and Cayuse Indians were ethnic unities, each composed of members of several villages or local groups.
2. Each local group was politically autonomous with its own council and chief whose authority was limited to that group.
3. There was no paramount chief in either peace or war, nor any other institution that united the respective local groups

in a tribal structure.

4. Fishing sites close to a village "belonged" to that village; however all friendly people might use it.

5. All other subsistence areas were unclaimed - they belonged to no group. Such were jointly shared by the Umatilla, Cayuse, and Walla Walla Indians, as well as with their neighbors.

6. Concepts of boundaries and trespass were unknown among the Cayuse, Umatilla, and Walla Walla Indians.

0002977

THE WALLA WALLA

The Walla Walla Indians, or Walula as they called themselves, spoke a distinct Sahaptin dialect said to have been closely related to that of the Nez Perce (Hodge, 2, p. 900).

Permanent sites of the Walla Walla were few in number, located on the Columbia near the entrance of the Walla Walla River. In 1806, Lewis and Clark arrived at one such village of 15 mat lodges situated on the west bank of the Columbia opposite this river junction (Thwaites, 4, p. 328), and on crossing the Columbia here found a second of 12 lodges at the mouth of the Walla Walla River (Thwaites, 4, p. 337). While there is a plentitude of passages in later historical sources concerning the Walla Walla Indians none adds anything to the observations of Lewis and Clark that is of value to this report insofar as indicating village sites is concerned.

Ethnologist James Mooney confirms the existence of this village on the west bank from data obtained from the Yakima, stating that:

A small band of the same tribe /Walla Walla/, known to the Yakima as Walula-pun, formerly lived on the west bank of the Columbia opposite the present Wallula (p. 744).

Both of these villages mentioned by Lewis and Clark are apparently subsumed under the name Kghien Pa in the survey party list (Appendix A); this was said to have been a large permanent village situated

below the junction of the Walla Walla and Columbia rivers on the east bank, with additional settlement across the Columbia in Benton County, Washington. Another village, or perhaps an extension of Kghien Pa, was situated at the former site of the town of Wallula before the construction of McNary Dam caused that town to be moved eastward (informant; Spier, p. 18 quoting Gilbert). All permanent residences of the Walla Walla Indians were then concentrated on both sides of the mouth of the Walla Walla River and directly across the Columbia.

Fishing sites considered to "belong" to the Walla Walla Indians were along the Columbia on the east bank from a point about where the Oregon-Washington state line intersects the river upstream to the Snake River junction; the only known point on the west bank in this region was directly across from the entrance of the Walla Walla River. On that river fishing areas extended upstream about two miles. In keeping with general native practice these were not exclusively used however for the Cayuse fished at at least one, while the site at the Snake junction was fished by the Palus and Upper Columbia River (Wanapum) as well. Lewis and Clark noted this same practice of inter-group use in 1806 and after describing a fish weir on the lower Walla Walla River, write:

. . . these Walla Wallas as well as those beyond the Columbia appear to depend on this fish wear for their subsistence (Thwaites, 4, p. 337).

0002979

Indeed, historical sources give the impression that the entire country lying south of the Snake and north of the Walla Walla was well frequented by all Indians in the neighborhood. Thus Lewis and Clark found "great crowds of Indians" composed of three nations (Thwaites, 3, p. 118) at the Snake-Columbia junction, while Ross (1849, p. 129) found their numbers "immense" and writes:

At the junction of the two great branches of the Columbia the country around is open and very pleasant, and seems to be a great resort, or general rendezvous, for the Indians on all important occasions.

On another occasion he found Cayuse and Nez Perce camped here (1855, 1, p. 19). At the Walla Walla River in 1811 Ross found the Walla Walla, Cayuse, and Nez Perce forming a camp of some 1500 persons (1849, p. 127) while Cox reports that the Chinmapun, Yackazan, Sokulk, and Walla Walla were present (2, p. 14).

As for Ray's contention that "the Walula occupied both sides of the Snake River from the mouth to Lyons Ferry" (1938, p. 387), we could find no supporting evidence either in the field or in historical sources. It would seem significant that in contrast to the numerous subsistence areas given by the elderly Indians of the survey party along the Columbia and in the mountainous regions that none whatever are indicated above the mouth of the Snake River; queried on this point, those who had

gone on the trips could only say that no one had had sufficient knowledge of the region. All informants seemed vague in their knowledge of this portion of the Snake River, two saying that perhaps the Palus Indians were there. James Mooney's statement on this sector is worth quoting at length:

The Palus owned the whole basin of the Palouse river in Washington and Idaho, and extended also along the north bank of Snake river to its junction with the Columbia. They were, and are, closely connected with the Wanapum and the Nez Perces. Palus, the name by which the tribe is commonly known, is properly the name of Standing Rock at the junction of Palouse and Snake rivers They have four villages: Almotu, on the north bank of Snake river in Washington, about 30 miles above the mouth of Palouse river; Palus, on the north bank of Snake river just below the junction of the Palouse; Ta'sawiks, on the north bank of Snake River about 15 miles above its mouth; and Kasi'spa or Cosispa . . . at Ainsworth in the junction of the Snake and Columbia. This last village has a slight difference in dialect and is sometimes regarded as belonging to the Wanapum (p. 735).

From the Lewis and Clark journals one might receive the impression that the Walla Walla Indians inhabited the lower course of the Yakima River as well, for the explorers write that in winter those Indians "pass over to the waters of the Tapteel [Yakima] river" (Thwaites, 6, p. 115). However, all available evidence seems to indicate that while they may indeed have shared village sites and subsistence areas through that sector

0002981

on occasion - as would only be expected in this culture area - the lower Yakima and the Columbia River above the junction was primarily inhabited and utilized by other Indian peoples.

Along the lower Yakima, from about Grandview eastward, were a Sahaptin people who have been called the Chinnahpum; Lewis and Clark themselves assign them the lower Yakima:

Chim-nah-pum on the N.W. side of the Columbia both above and below the entrance of Lewis's river [Snake] and on the Tapteel R. [Yakima] which falls into the Columbia 15M. above Lewis's R (Thwaites, 6, p. 115).

They were, says Mooney (p. 739):

A tribe which occupied the bend of the Columbia below Yakima river, together with the country on the lower Yakima, chiefly in the present Yakima county, Washington. They are the Chinnahpum of Lewis and Clark and speak a dialect of the language of Palus and Wanapum.

Although this ethnologist obviously considers them distinct from the Walla Walla Indians, he indicates that they may at one time have jointly occupied the Walla Walla village opposite Wallula or maintained one close to it.

More conventionally these Chinnahpum have come to be subsumed under the generic name of Yakima; thus Curtis, although noting that Yakima informants of 1907 gave Chinnahpum as people residing at the mouth of the Yakima and distinct from

themselves, writes:

The application of the term Yakima was early extended to include all the bands of the Yakima valley (7, p. 4).

Reflecting this usage, Ray's listing of Yakima villages included those along the lower Yakima River as well as two situated on the Columbia. These are:

1. ta'ptat, on both sides of the Yakima River where Prosser, Washington now stands.
2. One at the present site of Kiona, Washington on the Yakima River.
3. tana'xalu, a large permanent village on the Columbia opposite Richland, Washington.
4. k²u'sis, located where Pasco, Washington now stands. It was claimed by the Yakima but its population included many Walla Walla and some Umatillas. It was important for trading and fishing.

This is Mooney's Palus village of Kasi'spa (see quote on page 50).

Along the Columbia above the Yakima River junction were the Wanapam Indians, commonly spoken of as the White Bluffs or Priest Rapids Indians. These were Lewis and Clark's Sokulk who were

. . . on the Columbia above the entrance of Lewis's river as high up as the entrance of Clark's river [the Columbia above the Okanogan River] (Thwaites, 6, p. 115).

Ross, in 1811, says the Indians at Priest Rapids were the Ska-moy-num-acks (1849, p. 289). James Mooney, who identifies these Indians with Lewis and Clark's Sokulks, calls them Wa'napum and describes their habitat as follows:

The Wa'napum range along both banks of the Columbia in Washington, from above Crab creek down to the mouth of Snake river. Their village . . . is on the west bank of the Columbia at the foot of Priest rapids, in the Yakima country. It is called P'na, signifying 'a fish weir', and is a great rendezvous for neighboring tribes during the salmon fishing season (p. 735).

This is Ray's Wanapam village "p'mna" (1936, p. 151) at the same spot; "the Wanapam now living there claim always to have held it" (1936, p. 123).

From the foregoing historical and ethnological material it may be concluded that while the Walla Walla - as well as the Umatilla, Nez Perce, and Cayuse - undoubtedly did visit and exploit spots along the lower course of the Yakima and the Columbia above that junction, the region was dotted with villages and camps pertaining to other-Indian peoples. It was these other ethnic groups, the Yakima (or Chinmahpum) and the Wanapam (White Bluffs or Priest Rapids Indians) that primarily utilized this land. Walla Walla, Cayuse, and Umatilla Indians came into this region primarily to trade and to participate in the inter-ethnic rendezvous so common on the

Plateau; whatever exploitation of the natural resources they engaged in was decidedly secondary to that of the Yakima and Wanapam, as well as secondary to their own utilization of the land east of the Columbia and south of the Snake.

Information concerning this sector - that is, the lower Yakima River and the White Bluffs-Priest Rapids region - supports this picture of the Umatilla, Walla Walla, and Cayuse having relatively little interest here. Informants became quite vague - perhaps purposely so - and had virtually no comments to make regarding these lands in contrast to the intimate knowledge and ready discussion of areas now in Oregon. The sole information obtained from informants may be summed up as follows:

1. Prosser, Washington was once the site of a falls famous for its fishing - "a little Celilo" - at which the Umatilla occasionally fished.
(This is the site of Ray's Yakima village ta'p'at; see p. 52).
2. The White Bluffs Indians (the Wanapam) were not the same ethnic group as those with which we are here concerned; they spoke a distinct dialect. The Walla Walla and Cayuse visited them to trade.

Further information on the occupation and utilization of this region is contained in Swindell's report wherein the falls at Prosser and the White Bluffs sector are discussed in affidavits made by elderly Yakima and White Bluffs (Wanapam) Indians.

0002985

From these we learn that the village at White Bluffs was called Tah-koot, as were its inhabitants; that these Indians had two fishing spots, one, Wy-yow-na close to the village at White Bluffs, and a second, Wan-a-wish, at the Horn Rapids irrigation dam site on the lower Yakima River. Both of these camps were said to be seasonally occupied and utilized solely by the White Bluffs (Wanapam) Indians; others came here to visit and trade but did not fish. Regarding the site at Frosser, or Top-tut, it was the Indians residing along the Yakima and its tributaries who utilized it, trading with those who came to visit (Swindell, pp. 248-88).

Turning now away from the main river course a brief indication of Walla Walla land use in the mountainous regions of northeastern Oregon may be given here. Owing to the numerous accustomed fishing, hunting, and gathering spots as given by the survey party list, and as independently cited by informants, we will only indicate in this text the streams and valleys along which they were situated; the precise location of these is given in the Appendix A and plotted on the map, the latter presenting a far more graphic and less confusing picture than could be given in a text.

Inland, the Walla Walla moved up both forks of the Walla Walla River and over into the country about the forks

of the Wenaha River; subsistence spots along both these streams were used in conjunction with the Cayuse. In the Grande Ronde valley they journeyed to sites about the present location of the towns of Hilgard and La Grande to which the Umatilla, Nez Perce, and Cayuse also resorted. On the Minam River they exploited in a region about opposite Cove, Oregon. Farther eastward they ascended the Wallowa River to favored subsistence areas near where the towns of Minam, Wallowa, Lostine, Enterprise, and Joseph now stand, and at Wallowa Lake; the Umatilla, Cayuse, and Nez Perce were present at all of these. As in the case of the Umatilla Indians it is impossible to say with what frequency any one such spot was visited; informants allege that each would be visited at least once yearly by some members of the Walla Walla.

0002987

SOURCES CONSULTED

AA American Anthropologist
AA-M American Anthropological Association - Memoirs
AES - P American Ethnological Society - Publication
BAE - B Bureau of American Ethnology - Bulletin
BAE - AR Bureau of American Ethnology - Annual Report
CNAE Contributions to North American Ethnology
EWT Early Western Travels 1748-1846
GSA General Series in Anthropology
JAFL Journal of American Folk-Lore
JRGS Journal of the Royal Geographical Society
OHQ Oregon Historical Society Quarterly
PNQ Pacific Northwest Quarterly
UC-AR University of California - Anthropological Records
UC-PAAE University of California - Publications in American
Archaeology and Ethnology
UW-PA University of Washington - Publication in Anthropology

0002988

- Abbott, - Lieut, 1855 "Narrative and Itinerary of Lieut. Abbott", Reports of Explorations and Surveys to Ascertain the Most Practicable and Economical Route for a Railroad . . . in 1854-55 6, H.R. Ex. Doc. 91, 33d Cong., 2d sess.
- Annual Reports of the Commissioner of Indian Affairs
- Applegate, Jesse 1934 Recollections of My Boyhood
- Bailey, Vernon 1936 "The Mammals and Life Zones of Oregon", North American Fauna, No. 55, U.S. Dept. of Agriculture, Bureau of Biological Survey
- Berreman, Joel V. 1937 "Tribal Distributions in Oregon", AAA-M, 47
- Blyth, Beatrice 1938 "Northern Paiute Bands of Oregon", AA, 40, pp. 402-05
- Coues, E. ed. 1897 "The Manuscript Journals of Alexander Henry and David Thompson", New Light on the Early History of the Greater Northwest, 3 vols.
- Cox, Ross 1831 Adventures on the Columbia River, 2 vols.
- Curtis, E. S. 1911 The North American Indian, vols. 7-8
- De Smet, P. J. 1906 "Oregon Missions and Travels Over the Rocky Mountains in 1845-46", EWT, 30, ed R. G. Thwaites
- Dunn, John 1846 History of the Oregon Territory and British North-American Fur Trade
- Ecological Society of America 1926 The Naturalist's Guide to the Americas

- Elliott, T. C. 1909 "Journal of Peter Skene Ogden: Snake Expedition 1825-26", OHQ, 10, pp. 329-65
- 1910a "Journal of Peter Skene Ogden: Snake Expedition 1826-27", OHQ, 11, pp. 201-22
- 1910b "Journal of Peter Skene Ogden: Snake Expedition 1827-28", OHQ, 11, pp. 355-79
- 1913 "Journal of John Work's Snake Country Expedition of 1830-31", OHQ, 14, pp. 280-314
- Farrham, Thomas J. 1905 "Travels in the Great Western Prairies, the Anahuac and Rocky Mountains, and in the Oregon Country", EWT, 6, ed. R. G. Thwaites
- Farrard, L. 1921 "Notes on the Nez Perce Indians", AA, 23, pp. 244-46
- Franchere, G 1904 "Narrative of a Voyage to the Northwest Coast of America in the Years 1811, 1812, 1813 and 1814", EWT, vol. 6, ed. R. G. Thwaites
- Fremont, John C. 1846 Narrative of the Exploring Expedition to the Rocky Mountains in the Year 1842 and to Oregon and North California in the Years 1843-44
- 1887 Memoirs of My Life
- Gairdner, -- 1841 "Notes on the Geography of the Columbia River" JRGS, 11, pp. 250-59
- Gass, Patrick 1904 Cass's Journal of the Lewis and Clark Expedition.
- Gatschet, Albert S. 1877 "Indian Languages of the Pacific States and Territories", Magazine of American History, 1, pp. 145-71

- Gibbs, George 1854 "Report on the Indian Tribes of the Territory of Washington", Reports of Explorations and Surveys . . . for a Railroad . . . in 1854-55, 1, H.R. Ex. Doc. 91, 33d Cong., 2d sess.
- Haines, Francis 1938 "The Northward Spread of Horses Among the Plains Indians", AA, pp. 429-37
- Hale, Horatio 1846 "Ethnography and Philology", U.S. Exploring Expedition During the Years 1838-42, vol. 7
1848 "Indians of North-West America", Transactions of the American Ethnological Society, pp. 1-130
- Harris, Jack 1938 "Western Shoshoni", AA, 40, pp. 407-10
- Hines, Gustavus 1851 Oregon: Its History, Condition, and Prospects
- Hodge, F. W. ed. 1910 "Handbook of American Indians North of Mexico", BAE-B, 30, 2 vols.
- Hulbert, A. B. ed. 1934 "The Call of the Columbia" (Wyeth's Journal of 1832) Overland to the Pacific, vol. 4
- Hunter, John 1824 Memoirs of a Captivity Among the Indians of North America
- Jacobs, Melville 1931 "A Sketch of Northern Sahaptin Grammar", UW-PA, 4, pp. 85-292
1937 "Historic Perspective in Indian Languages of Oregon and Washington", PNQ, 28, pp. 55-74
- Kane, Paul 1856 "Notes of Travel Among the Walla-Walla Indians", Canadian Journal, n.s. No. 5, pp. 417-24
1859 Wanderings of an Artist Among the Indians of North America

Kelley, Isabel T.	1938	"Northern Paiute Tales", <u>JAFI</u> , 51, pp. 363-438
Kroeber, A. L.	1925	"Handbook of the Indians of California", <u>BAE-B</u> , No. 78
	1939	"Cultural and Natural Areas of Native North America", <u>UC-PAAE</u> , vol. 38
Lee, D. and J. H. Frost	1844	<u>Ten Years in Oregon</u>
Lewis, W. S. and P. C. Phillips	1923	<u>The Journal of John Work</u>
Lord, J. K.	1866	<u>The Naturalist in Vancouver Island and British Columbia</u> , 2 vols.
Maloney, Alice B.	1945	<u>Fur Brigade to the Bonaventura. John Work's California Expedition: 1832-33</u>
Minto, John	1900	"The Number and Condition of the Native Race in Oregon When First Seen by White Men", <u>OHQ</u> , 1, pp. 296- 315
	1901	"Reminiscences of Experiences on the Oregon Trail", <u>OHQ</u> , 2, pp. 209-54
Mooney, James	1896	"The Ghost Dance Religion", <u>BAE-AR</u> , No. 14
Murdock, Geo. P.	1938	"Notes on the Tenino, Molala, Paiute of Oregon", <u>AA</u> , 40, pp. 395-402
Palmer, Joel	1855	<u>Proceedings of the Wasco Council</u>
Palmer, Joel	1906	"Journal of Travels Over the Rocky Mountains to the Mouth of the Columbia River 1845-46", <u>EWT</u> , vol. 30, ed. R. G. Thwaites
Parker, Samuel	1842	<u>Journal of an Exploring Tour Beyond the Rocky Mountains</u>

- Powell, J. W. 1885-86 "Indian Linguistic Families of America", BAE-AR, No. 7
- Publications of the Champlain Society
1947 Simpson's 1828 Journey to the Columbia
- Ray, Verne F. 1936 "Native Villages and Groupings of the Columbia Basin", PNQ, 27, pp. 99-152
1938 "Tribal Distributions in North-eastern Oregon", AA, 40, pp. 384-95
1939 "Cultural Relations in the Plateau of Northwestern America", Publications of the F. W. Hodge Anniversary Fund, vol. 3
1942 "Culture Element Distribution: XYII Plateau", UC-AR, 8, No. 2
- Rollins, P. A. ed. 1935a "Robert Stuart's Narrative 1812-13", The Discovery of the Oregon Trail
1935b "Wilson Price Hunt's Diary Narrating His Overland Trip Westward to Astoria in 1811-12", The Discovery of the Oregon Trail
- Ross, Alexander 1849 The Adventures of the First Settlers on the Oregon or Columbia River
1855 The Fur Hunters of the Far West, 2 vols.
- Spier, Leslie 1936 "Tribal Distribution in Washington", GSA, No. 3, pp. 5-43
- Spinden, Herbert J. 1908 "The Nez Perce Indians", AAA-M, 2, pp. 165-274
- Steward, Julian H. 1937 "Linguistic Distributions and Political Groups of the Great Basin Shoshoneans", AA, 39, pp. 625-34
1939 "Some Observations on Shoshonean Distributions", AA, 41, pp. 261-65

- Stewart, Omer C. 1938 "Northern Paiute", AA, 40,
pp. 405-07
- 1939 "The Northern Paiute Bands",
UC-AR, 2, No. 2
- 1941 "Culture Element Distribution:
XIV Northern Paiute", UC-AR,
vol 5
- Swindell, E. G. Jr. 1942 Report on Source, Nature and
Extent of the Fishing, Hunting
and Miscellaneous Related Rights
of Certain Indian Tribes in
Washington and Oregon Together
with Affidavits Showing Location
of a Number of Usual and Accustomed
Fishing Grounds and Stations, U.S.
Dept. of Interior, Office of Indian
Affairs, Div. of Forestry and
Grazing.
- Thwaites, R. G. ed. 1905 Original Journals of the Lewis
and Clark Expedition 1804-05
- Teit, James 1928 "The Middle Columbia Salish",
UW-PA, 2, pp. 83-128
- Townsend, John K. 1839 Narrative of a Journey Across
the Rocky Mountains to the
Columbia River
- Tyrrell, J. B. ed. 1916 "David Thompson's Narrative 1781-
1812", Publications of the
Champlain Society
- Underhill, Ruth 1953 Red Man's America
- United States Works Progress
Administration, Washington
State 1937 Told By the Pioneers, 2 vols.
- Williams, Joseph 1921 Narrative of a Tour From the
State of Indiana to the Oregon
Territory in the Years 1841-2

0002994

- Wyeth, Nathaniel J. 1851 "Indian Tribes of the South
Pass of the Rocky Mountains;
the Salt Lake Basin; The
Valley of the Great Saaptin
or Lewis's River, and The
Pacific Coasts of Oregon".
Historical and Statistical
Information Respecting the
History, Condition and Pros-
pects of the Indian Tribes of
the United States, vol. 1, pp.
204-28, ed. H. R. Schoolcraft
- 1899 "The Correspondence and
Journals of Captain Nathaniel
J. Wyeth 1831-6", Sources of
the History of Oregon, vol. 1.
pts. 3-6