

December 10, 1952.

This cause was consolidated with Docket 198, Confederated Tribes of Warm
 Springs Reservation, only for purposes of hearing and will be decided as separate
 cases, Docket Number 198 and 264, respectively.

3. Petitioner has legal capacity to sue.

Defendant admits that the petitioner brings this action as the "tribal
 organization recognized by the Secretary of Interior as having authority to
 represent the Confederated Tribes of the Walla Walla, Cayuse, and Umatilla
 Indians, party to the Treaty of June 9, 1855", 12 Stat. 949, II Kapp. 694.
 Answer to amended petition, p. 2, par. 4(a)).

4. Ceded Lands claimed in Claim One.

The lands claimed by petitioner in Claim One are the lands the Walla
 Walla, Cayuse and Umatilla Tribes ceded to the United States in the Treaty
 of June 9, 1855, more particularly described in the Treaty 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
 Percés 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 the
 Powder River) to the source of Powder River; thence to the head-
 waters 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 the Umatilla River;
 thence northerly to a point on the Yakama River, called Tohmah-
 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: ***

The lands thus ceded now include Walla Walla County and portions of
 Columbia and Benton Counties, State of Washington. In Oregon, the ceded
 lands include almost all of Umatilla and Union Counties, and portions of

Morrow, Baker, Grant and Gilliam Counties (see Map, Pet. Ex. 521; Royce Cession 362).

The Treaty description did not delineate what portions of the ceded lands were claimed or occupied, respectively, by the Walla Walla, Cayuse, and Umatilla tribes. The preamble to the Treaty of June 9, 1855 (12 Stat. 949) recites that the treaty parties are:

*** the United States, and the undersigned chiefs, headmen, and delegates of the Walla-Walla, Cayuses, and Umatilla tribes, and bands of Indians, occupying lands partly in Washington and partly in Oregon Territories, and who, for the purposes of this treaty, are to be regarded as one nation acting for and in behalf of their respective bands and tribes, they being duly authorized thereto; it being understood that Superintendent I. I. Stevens assumes to treat with that portion of the above named bands and tribes residing within the Territory of Washington, and Superintendent Palmer with those residing within Oregon.

5. Aboriginally the Three Tribes represented by Petitioner had a Common Culture and Language.

The Walla Wallas, Cayuses, and Umatilla in aboriginal times were of the Plateau culture and of the same basic Sahaptin language stock (Ray, Tr. pp. 530, 594, 610; Def. Ex.18, pp. 9 and 23-27 Suphan Report). Early white observers sometimes confused the Walla Wallas with the Umatillas, and the Cayuse with the Nez Perce (Ray, Tr. 611-612). These three tribes (Walla Walla, Umatilla and Cayuse) "are so intermarried and occupy country so near each other that their interest are in common." (Ltr. of Aug. 1, 1857, by Agent A. P. Dennison, Pet. Ex. 339).

6. Tribal Organization.

Defendant's expert, Mr. Robert Suphan, reported the Walla Walla, Cayuse and Umatilla each were "ethnic unities" (Def. Ex. 18, p. 34). They are identifiable as tribal entities (Pet. Ex. 63, p. 10). In the main, their

14. Cession Treaty of 1855 did not
Constitute "Recognized Title."

The Treaty of 1855 recites:

*** Indians cede to the United States all and every part of the country claimed by them *** (Underscoring supplied; Art. I, 12 Stat. 945; 2 Kapp. 694)

There is no substantial evidence of facts or circumstances in the record to establish a "recognized title" by the United States of petitioner tribes' claims to lands ceded by them to the United States in said treaty.

15. In addition to the lands ceded by petitioner's antecedents to the United States for which compensation is claimed in petitioner's "Claim One," petitioner alleges Indian title (aboriginal use and occupancy) to lands located in the State of Oregon, which lands are contiguous to the west boundaries of the lands ceded by the Treaty of June 9, 1855. Petitioner denominates the latter as "Claim Four." Said lands are described in the amended petition as follows:

Commencing at a point on the boundary line of the lands ceded by the Walla Walla, Cayuse and Umatilla Tribes in the Treaty of June 9, 1855, at the mouth of Powder River; thence southerly up the Snake River to the confluence of the Snake and Malheur Rivers; thence southwesterly up the Malheur River to the confluence of Malheur River and Willow Creek, the latter being a tributary of Malheur River; thence northwesterly to the divide separating the waters of said Willow Creek and Bully Creek; thence northwesterly along said divide to the summit of Ironside Mountain, which is a point on the crest of the Blue Mountains; thence westerly along said summit to Spanish Peak; thence northerly along the divide separating the waters of Birch Creek and Cottonwood Creek to the confluence of Mountain Creek and John Day River; thence northerly along the nearest escarpment on the west side of the John Day River to the confluence of the John Day River and the North Fork of John Day River; thence northerly, easterly, and northwesterly along the divide separating the waters of the John Day River and the North Fork of the John Day River and Willow Creek, the latter being a tributary of the Columbia River, to the point on said divide nearest the Columbia

River; thence northerly to the Columbia River; thence northeasterly up the Columbia River to its confluence with the last-mentioned Willow Creek, the same being a point on the boundary of the lands ceded by the Umatilla, Walla Walla, and Cayuse Tribes in the Treaty of June 9, 1855; thence southeasterly, and easterly, along the boundary of said cession to the point of beginning, all the foregoing description being shown as a red line on petitioner's exhibit 521 herein.

Petitioner subdivides the above described lands, as contained in

claim Four of its amended petition, into three parcels:

Parcel "A": That portion located in the drainage of and along the west side of Willow Creek.

Parcel "B": That portion located in the drainage of John Day River, including its three forks.

Parcel "C": That portion located in the drainage of Burnt River and Willow Creek (South).

16. Evidence of Aboriginal Usage of
Parcel "A" Insufficient.

The petitioner cites Peter Murdock's map (Pet. Ex. 61, p. 396, fig. 2; Pet. Brf, p. 99) as evidence of historical and documentary nature in support of Dr. Verne F. Ray's conclusion that Parcel "A" is within the aboriginal boundaries of the Umatilla Tribe. It is noted said map does not show the principal river, the Umatilla, used and occupied by the tribe of the same name. We are unable to so interpret the Murdock map as urged by petitioner.

Parcel "A" was included in the cession by the Wayampum Indians in the Treaty of June 25, 1855 (12 Stat. 963, II Kapp. 714) and was not included in petitioner tribes' cession treaty of the same year.

The Suphan map (Def. Ex. 18A) drawn from the Swindell Survey Party records and from "historical and ethnological sources" omits reference to any aboriginal village sites, camp sites, or subsistence areas in Parcel "A".

17. Parcel "B". Evidence Shows Non-Exclusive Use.

The forks of the Upper John Day River and other portions of the area south of the Blue Mountains were non-exclusively used by Snake, Umatilla, and Cayuse Indians.

David Thompson reported in 1811 that the south part of the Blue Mountains was abandoned by Walla Wallas because of hostility with the Straw Tent Tribe. This fact was related earlier by Lewis and Clark (Def. Ex. 18, p. 64; Fdgs. 12a, 12f, above).

Wilson Price Hunt, in December 1811, reported "six huts of Chochomis" in the valley of the Grande Ronde in or near the Blue Mountains (Def. Ex. 18, p. 64; Fdg. 12b, above.)

Alexander Ross (1811-1824) reported the Blue Mountains "forms the northern boundary of the Great Snake Nation" (Pet. Ex. 65, p. 167; Def. Ex. 18, p. 65; Fdg. 12d, above).

Peter Ogden reported Northern Paiutes on the main John Day in 1826 (Def. Ex. 18, p. 65; Elliott, 1909, p. 350.)

John Work reported Paiutes near present John Day, Oregon, in 1831, and in 1832 reported a family of Mountain Snakes on the Middle Fork of John Day near present Bates, Oregon, and also signs of Paiutes on the Silvies River in 1832. (Def. Ex. 18, p. 66; Lewis & Phillip, p. 171).

Petitioner's claims to both Parcel "B" and Parcel "C" of Claim 4 to extra cession lands raises the question of the aboriginal southern boundary of the Umatilla and Cayuse. On the nature of evidence supporting same petitioner's expert testified as follows (Tr. 669-670):

(Mr. Luce) Q. 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 Paiute existed?

(Dr. Ray) A. Quite impossible.

(Mr. Luce) Q. 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 Paiute?

(Dr. Ray) A. Ethnological field work devoted to what we speak of as the reconstruction of history.

(Commissioner O'Marr) That means information you obtained from informants?

(The Witness) That's right.

(Mr. Luce) Q. Have any other ethnologists expressed a like opinion?

(Dr. Ray) A. Yes, they have. Professor A. L. Kroeber, for one.

Dr. Ray drew the Umatilla-Cayuse southern boundary, extended to the Shoshonean people's northern boundary, above (north of) the forks of the John Day River in the Blue Mountains "in the 18th century and earlier." (Pet. Ex. 61, map, p. 386). In a publication two years earlier, 1936, Dr. Ray drew the Umatilla boundary encompassing the drainage of most, if not all, of the Upper John Day River (Pet. Ex. 59, map, p. 103). Dr. Ray testified, "Paiute presence on the John Day River, itself, on the course that is shown here, extreme south, was on the same basis as it was farther to the north; that is, a raid and enemy attempt at utilization when they could get away with it." (Tr. pp. 568-569).

Suphan's Report included the accounts of modern ethnologists Omar C. Stewart and Beatrice Blyth that the Humpuitoka or Walpapi Band of Northern

Paiute range just south of the Blue Mountains in the John Day River country from about Burnt Ranch on the west to the Blue Mountains along the North Fork of the John Day. Blyth reported some informants related the presence of Elk Eaters near present sites of Prairie City and Baker, Oregon (Def. Ex. 18, p. 67).

The government's representatives in treaty times affirmatively stated the Cayuse aboriginal country extended "to the Blue Mountains." (Pet. Ex. 165, p. 11, report of Brevet Major Benjamin Alvord; Def. Ex. 86, p. 2, and 1854 ltr. rpt. of Supt. Joel Palmer).

18. Evidence of Aboriginal Usage of Parcel "C" Insufficient.

In support of the opinions expressed by Dr. Verne F. Ray that Cayuse Indians occupied Parcel "C" we are referred to a number of exhibits (Pet. Ex. 61, p. 406, fig. 3; Pet. Ex. 95, Map I; Pet. Ex. 94, Map I; Pet. Ex. 93, p. 447, fig. 29) among other evidence cited by petitioner (Pet. Br., p. 137). We have examined said exhibits and conclude that the most that can be determined from them is that this evidence contains no indication that any tribe "other than Cayuse" resided in Parcel "C". But we do not find a reasonable inference from the reports of treaty times that Cayuse exclusively occupied Parcel "C" or any portion of same.

In Beatrice Blythe's map (Pet. Ex. 61, p. 396, fig. 2) the approximate western half of Parcel "C" is marked "Elk Eaters", a band of the Northern Paiute.

The literature and journals of early writers on the Oregon Trail (Wilkes Journal, Pet. Ex. 108, p. 55; Blythe's ltr. to Spalding, Pet.

76, p. 26; Jennings, Pet. Ex. 38, pp. 51-52; Alexander Ross, Pet. Ex. 3, p. 167, and Pet. Ex. 67; John C. Fremont, Pet. Ex. 23; Indian Agent J. A. Thompson, Pet. Ex. 215, pp. 198-199, and Pet. Ex. 216, p. 216; Capt. Allen's Wagon Rd. Exped., Pet. Ex. 364, pp. 448, 449) seem to establish that Snake Indians were seen in Parcel "C" more often, and usually in larger numbers than Cayuse Indians. In all events, we conclude that even if it be assumed or inferred that the Cayuse occupied Willow Creek (south) and Burnt River (and the weight of evidence does not support such inference), that the several references above cited often mention the presence of Snake Indians and establishes that Parcel "C" was not exclusively used by the Cayuse. Certainly they did not exclude their unfriendly neighbors, the Snakes, from repeated unauthorized trespasses on such claimed southern areas of the Cayuse.

Suphan's map of subsistence areas, village and camp sites (Pet. Ex. 11A) indicates no Cayuse Indians used Willow Creek (south) or Burnt River or any other portion of Parcel "C".

Parcel "C" also falls within "the limits of the country claimed by the Shoshonees or Snake Indians; thence southerly (westerly) along that boundary being the waters of the Powder River); thence to headwaters of Willow Creek" according to the cession treaty executed by the antecedent tribes of petitioner (12 Stat. 945; II Kapp. 694).

19. Aboriginal Village Bands of Umatilla, Cayuse, and Walla Walla

a. Umatilla Villages.

Defendant's expert, Mr. Robert Suphan, reported the Umatilla permanent villages were situated along the shores of the Columbia River from about the

Gilliam-Morrow county line in Oregon upstream to the mouth of the Umatilla River with two village sites on the lower course of the Umatilla. From west to east Suphan listed Umatilla Villages as follows:

1. Quas-qui, on the Washington shore 1/2 mile west of Alderdale, Washington.
2. Tee-ow-tush-wa-ta, on the Washington side opposite Thanksgiving Island and across from Boulder, Oregon.
3. Auk Kuk Pa, at Alderdale, Washington
4. Snim asho, one mile east of Boulder, Oregon
5. Slapee-hus, on the Washington shore, north and west of Castle Rock, Oregon.
6. Wulth quas pa, one mile below Castle Rock on the Washington shore.
7. Yep-po-lue-sha, on the Washington side of Blalock Island.
8. So-luc-a, north of Umatilla, Oregon, on the Washington side of the Columbia River.
9. Tko'pa, at Echo, Oregon.
10. Unnamed village, at Hermiston, Oregon

Ray, in the 1936 publication of his "Native Villages and Groupings of the Columbia Basin," (Def. Ex. 51, pp. 150-151), listed six Umatilla villages:

1. i'matilam ("lots of rocks"), both sides of the mouth of the Umatilla river ***.
2. tuq'woyo'pa ("Tule place"), a spring and summer camp on the south side of the Columbia between Umatilla and Cold Springs ***.

3. Xu'lulupa ("rapids in the river"), summer fishing camp on the north side of the Columbia river about three miles above the present Mottinger ***.

4. ama'ama'pa ("island"), on Blalock island ***.

5. ta'ksasam ("elbow in the river"), a temporary camp on the north side of the Columbia near the present site of the village of Roosevelt.

6. K'ami'lpu ("opening through the canyon where the light penetrates"), village on the north side of the Columbia at the mouth of Rock Creek ***.

Dr. Ray's map "Tribal Territories and Village Locations" (Pet. Ex. 51) shows some nineteen dots (Umatilla sites) extending far to the south of the above named villages, in the Columbia Basin, to the South Fork of John Day River (Tr. 634-647), but omits Paiute or Snake sites.

b. Cayuse Bands.

The Cayuse bands listed by Suphan (Def. Ex. 18, pp. 57-58) and Dr. Ray (Def. Ex. 51, pp. 151-152) were:

1. The Butter Creek Band, kimi'lehicpu, also called ehetma'pu, or lower Cayuse.
2. The Pilot Rock Band, wi-lu'-npu, an Oregon band.
3. The McKay Creek Band, ha'utmipu.
4. Village near Cayuse, Oregon, nixya'wi ("a spring of water").
5. The Gibbon-Umatilla Band, mequicnime pu.
6. The Cottonwood Creek Band, qapqapi'tspu, the Thorn Hollow-Cottonwood Creek band.

7. The Milton-Freewater Band, imtsa'mapu.

8. The Cayuse band of the region of the Walla Walla River, pa'cxapu, at and about present site of Walla Walla, Washington.

Dr. Ray by Roman numerals locates the above described bands on his map (Pet. Ex. 524) in the same order as above listed but omits description of "7. Milton-Freewater band" of Cayuse (ray, Pet. Ex. 524; Pet. Ex. 59; Tr. 636), or of Snake sites on the Powder, Burnt, and John Day Rivers.

c. Walla Walla Villages.

Suphan reported "Permanent sites of the Walla Walla were few in number, located on the Columbia near the entrance of the Walla Walla River." (Def. Ex. 18, p. 47).

Dr. Verne F. Ray's aforementioned map of village locations (Pet. Ex. 524) shows fifty-one numbered dots representing locations of Walla Walla sites, apparently both camps and villages, but omits Yakima use stations or sites on the Yakima River or in the Horse Heaven Hills.

Wallula was a principal village, later the site of "Fort Walla Walla" (Tr. 549; 632).

20. The Commission finds, based on the findings of fact, herein made and the record as a whole, that the Umatilla, Walla Walla, and Cayuse Tribes of American Indians exclusively used and occupied, and each of said tribes had, on the date of defendant's liability, Indian title to a separate tract of land, bounded and described as follows:

(NOTE: - Reference is made to the map marked "Petitioner's Exhibit No. 521" for the location of the following described boundary lines).

A. Aboriginal Boundaries of the Walla Walla Tribe.

Commencing at the mouth of Juniper Canyon on the south bank of the Columbia River a short distance above the mouth of

the Umatilla River; thence easterly along the course of Juniper Canyon to the head of its North Fork; thence north-easterly in a straight line to the confluence of the Tucannon and Snake Rivers; thence down the Snake River to its mouth; thence southwesterly in a straight line, to the present town of Horse Heaven, Washington; thence southeasterly in a straight line to the place of beginning.

B. Aboriginal Boundaries of the Cayuse Tribe.

Commencing at the mouth of Juniper Canyon on the south bank of the Columbia River; thence easterly and northeasterly, along the above described Walla Walla boundary, to the confluence of the Tucannon and Snake Rivers; thence up the Tucannon River to the town of Marengo, Washington; thence south, southwest to Langdon Lake; thence south, southeast to Mount Fanny; thence west to the mouth of Fly Creek on the Grande Ronde River; thence northwest to the headwaters of Willow Creek at Heppener, Oregon; thence north to the confluence of the North and South Forks of Butter Creek; thence down Butter Creek to its confluence with the Umatilla River; thence up the Umatilla River to Echo, Oregon; thence northeasterly to the place of beginning.

C. Aboriginal Boundaries of the Umatilla Tribe.

Commencing at the mouth of Willow Creek; thence north-easterly in a straight line to the town of Horse Heaven, Washington; thence southeasterly in a straight line to the mouth of Juniper Canyon on the south bank of the Columbia River; thence southwesterly in a straight line to Echo, Oregon; thence down the Umatilla River to the mouth of Butter Creek; thence up Butter Creek to the confluence of its north and south forks; thence southerly, in a straight line, to Heppener, Oregon; thence down Willow Creek to place of beginning.

21. The Commission finds that the effective date of the Treaty of

June 9, 1855, by which the Umatilla, Cayuse, and Walla Walla Tribes, acting as "one nation," and party to said treaty, ceded their claims and rights of Indian title to the tracts of land as same are described in Finding 20, is March 8, 1859, namely, the date the treaty was ratified by the U. S. Senate; that said ratification date also is hereby found to be the effective date of the taking of all lands in the Territories of Washington and Oregon as same are described in above Finding 20.

The case will now proceed to a determination of the acreage involved, the value of the lands as of March 8, 1859, and the issue of whether the consideration paid was unconscionable, leaving to a further proceeding any other issues, including that of offsets, if any.

s/ EDGAR E. WITT
Chief Commissioner

s/ WM. M. HOLT
Associate Commissioner