

BEFORE THE INDIAN CLAIMS COMMISSION

THE NORTHERN PAIUTE NATION AND THE )  
 BANDS THEREOF, EX REL. WALTER )  
 VORHEES, AVERY WINNEMUCCA, MARK )  
 JONES, FRANK JOHN, ANDREW DICK, )  
 DEWEY SAMPSON, HASTINGS PANCHO, )  
 WILLIE STEVE, WILLIAM HARDIN, )  
 SULLIVAN THOM, EARL FRANK, WESLEY )  
 KENO, FRANK KAISER, ALBERT ALECK, )  
 HARRY SAMPSON, ANN DOWINGTON, )  
 ROSS HARDIN, OCHO WINNEMUCCA; )  
 THE WALKER RIVER TRIBE OF THE )  
 WALKER RIVER RESERVATION; THE )  
 PYRAMID LAKE TRIBE OF THE PYRAMID )  
 LAKE RESERVATION; THE YERINGTON )  
 PAIUTE TRIBE OF THE YERINGTON )  
 RESERVATION; THE RENO-SPARKS )  
 INDIAN COLONY; THE PAIUTE SHOSHONE )  
 TRIBES OF THE FALLON RESERVATION; )  
 THE FORT McDERMITT PAIUTE SHOSHONE )  
 TRIBE, )

Petitioners,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 87

Decided: March 24, 1959

Appearances:

David Cobb, I. S. Weissbrodt,  
 Jay H. Hoag and Clarence G.  
 Lindquist,  
 Attorneys for Petitioners

Leland L. Yost and Bernard M.  
 Newburg, with whom was Mr.  
 Assistant Attorney General,  
 Perry W. Morton,  
 Attorneys for Defendant.

OPINION OF THE COMMISSION

Holt, Commissioner, delivered the opinion of the Commission.

The petition in Docket No. 87 was originally filed with the Commission in behalf of the Northern Paiute Nation of Indians and its various bands by the Walker River Tribe of the Walker River Reservation; the Pyramid Lake Tribe of the Pyramid Lake Reservation; the Yerington Paiute Tribe of the Yerington Reservation; the Reno-Sparks Indian Colony; the Paiute Shoshone Tribes of the Fallon Reservation; the Fort McDermitt Paiute Shoshone Tribe and by Walter Vorhees as a member of and representative of said Northern Paiute Nation and all its members. A subsequent amendment to the petition added 17 more individual Indians as named petitioners. While the original and amended petitions included a number of causes of action, the Commission has permitted severance from the petitions of all claims other than the original title claims of the Northern Paiute Nation and its constituent bands.

Accordingly, the only cause of action to be considered by the Commission at this time arises from the allegation that at and prior to first white contact the Northern Paiute Nation, which was divided into various bands or groups, exclusively used and occupied a large area of land. The petitioners contend that these lands were taken by the United States without payment of just compensation and by means not conforming to standards of fair and honorable dealings.

It is the position of the petitioners that the Northern Paiute Nation was at the time of the takings and is at the present day a clearly definable and distinct Indian group and that, although in aboriginal times it

was comprised of at least 26 bands, each Northern Paiute band had many strong ties which bound it to all its neighboring Northern Paiute bands. This interrelationship of the bands and the alleged fact that the Northern Paiute Indians spoke the same language, shared a common Indian culture, recognized themselves as belonging to one people, occupied one contiguous area of land, and formed an ethnic group separate and distinct from all other peoples establishes, the petitioners contend, the right of the Northern Paiute Nation to receive compensation for the area of land which it claims was taken by the United States without the payment of compensation.

The defendant contends that the Northern Paiutes were not a united nation nor even a group of localized bands but rather consisted of an indeterminate number of wandering individual families, speaking different dialects of the same language. They allegedly had no political organization, no identity of culture or of language, no mutual recognition of each other and no realization of the territory over which they roamed. The defendant also objects to a recovery in this action for the reason that, assuming that it is established that there was no Northern Paiute Nation holding Indian title to all of the territory occupied by the so-called Northern Paiute Indians, the case necessarily breaks down into the separate actions of a number of separate bands, each asserting a claim to exclusive, aboriginal occupancy of separate definable areas and that, as such, the individual claims of the individual bands are improperly joined in one action brought by the Northern Paiute Nation.

The area claimed by petitioners is approximately 78,000 square miles or 50,000,000 acres extending from Owens Valley, California to about the 45th parallel in the State of Oregon. It is about 300 miles wide at its widest point and extends approximately 600 miles north and south. This area includes more than half of the State of Oregon, the western half of Nevada and small portions in California and southwestern Idaho. This area, which lies largely in the physiographic province of the Great Basin, is bounded on the west by the Sierra Nevada, Cascade and other mountain ranges. It is, and was in aboriginal times, an excessively arid and infertile area. The external boundaries of the claimed area are shown on a composite map marked petitioners' Exhibit 942.

That portion of the claimed territory which is in the present States of Oregon and Idaho was acquired by the United States under the Treaty of June 15, 1846, with Great Britain. The area to the south in Nevada and California was acquired by the United States on February 2, 1848, from Mexico under the Treaty of Guadalupe Hidalgo.

The early reports of white explorers and settlers, as outlined in our Finding of Fact No. 8, told of the Indian occupants in the Oregon portion of the claimed territory generally describing them as Snake Indians who were related to the "Diggers" to the south. The early reports also told of Indian occupants in many locations throughout the claimed area in western Nevada, describing them as "Pi-Utes" or "Root Digger" Indians. Likewise the early reports told of Indian occupation in the southern portion of the area in Owens Valley, California. All of the early reports described

the aboriginal occupants as a wretched lot, living on roots, ants, locusts, grasshoppers and fish. They were foot Indians who lived with scarcely any clothing, in small groups, with no permanent shelters and, it appears, roamed the land without any permanent villages. The Indians were variously described in the early reports as Snakes, Bannocks, Warrucks, Shoshokoes, Diggers, Digger Snakes, Dogs, or Paiutes.

On August 14, 1848, the Territory of Oregon was established, which included the present States of Oregon, Washington, and Idaho. On September 9, 1850, California was admitted into the Union, and on that same date the Territory of Utah was established, which territory included the land which later became the State of Nevada. Thereafter, the United States military officers and other government agents assigned to the area reported on the Indians inhabiting various localities throughout the claimed territory. The government officials in the Oregon territory reported on the presence of Shoshones or Snakes. The government officials in western Nevada wrote of the Paiute Indians in that territory, and there were also reports of the Indians living in the Owens Valley country.

Petitioners' expert anthropologist, Dr. Omer C. Stewart, describes the Northern Paiutes as a group of Indian linguistically, culturally and territorially united with smaller units, called bands, within the tribe. These bands he described as being politically autonomous with small populations and a simple, informal social organization. He found no political authority binding the whole group together, and, while there was, he reported, evidence of the development of influential leaders who covered large areas within the Northern Paiute territory, there was no general

recognized leader who possessed any authority above the local band chief.

In his report of his extensive studies of the Northern Paiutes, entitled

"The Northern Paiute Bands," Dr. Stewart wrote:

Occupying a single physiographic province, speaking similar dialects of one linguistic family, possessing cultures and traditions in common, the Northern Paiute bands, without doubt, formed one tribe. The unity was tenuous, but no indications of internal strife were discovered; on the contrary, hunting grounds were shared, and Old Winnemucca, in the early days of white contact, nearly united the bands under one political leadership. The cultural uniformity of the tribe and its nice adjustment to its environment definitely establish unity, and on this basis I am of the opinion that the Northern Paiute took possession of their entire territory when they first entered the country and have occupied it up to its present limits for a comparatively long time. (Pet. Ex. 908, p. 114)

Dr. Julian H. Steward, an anthropologist who testified for the defendant, described the Northern Paiutes, in aboriginal times, as small groups of rarely more than half a dozen families who were scattered over a wide area of land obtaining their subsistence from seeds and roots, larger groups generally occurring only during the winter and the fishing season. Dr. Steward stated that the Northern Paiutes were not politically united, and the so-called bands were merely local groups with names derived from the important food of the locality. Dr. Steward did recognize the Northern Paiute as speaking a mutually intelligible dialect, possessing a basically similar culture and associating with one another more often than with members of other tribes.

The Commission believes that there were within the territory claimed in this case, in aboriginal days, certain Indians who, as described by the early explorers and settlers, the government officials, and anthropologists, possessed certain distinct similarities. Notably the Indians of the area

spoke the same language, shared a common economic life, and, in general, had a similar Indian culture.

Although in aboriginal times they were variously classed under a variety of names, the Indians gradually became known as Paiutes and finally distinguishing them from the southern branch of the family as Northern Paiutes. This term Northern Paiutes, while not originating in the aboriginal period, has been used for many years to refer to those aborigines living in the Great Basin who spoke Mono-Paviotso. While the Indians speaking Mono-Paviotso also included the Monos west of the Sierra Nevada mountains and the Fort Hall Bannocks of Idaho, both of those groups were comprised of very different Indians from those described in the territory claimed in this case. This, however, presents no problem since petitioners have specifically excluded the Monos west of the Sierra Nevada mountains and the Bannocks from the action brought in this matter.

The defendant has no trouble identifying those Indians embraced within the term Northern Paiutes, defining them in its Proposed Finding of Fact 11 as "those portions of the Mono-Paviotso speaking peoples living east of the Sierra Nevada, who were at the time of white contact, primitive foot Indians. This includes (1) the Indians of Owens Valley (2) the eastern Mono's (3) some Indians in (a) the Honey Lake area and other portions of Northern California, (b) perhaps the southwest portion of Idaho and (c) the southwest part of Oregon." Government officials have also used the term Northern Paiute to refer to the Indian occupants of this general area.

It is apparent that, whatever may have been their status or de-

nation in aboriginal times and regardless of their existence as so-called "tribes", "bands", or "nation", the Indians living in most of the territory claimed and their descendants have become known as Northern Paiutes.

The petitioning Northern Paiute Nation brings this cause of action under Section 2 of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049) which provides that the Commission shall hear and determine certain claims, as enumerated therein, which are brought against the United States "on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska." In conjunction with this jurisdictional provision of the Act we must also consider section 10 which provides that any claim within the provisions of the Act may be presented by any member of an Indian tribe, band, or other identifiable group of Indians as the representative of all its members. (Section 10 further provides for certain limitations on presentation of claims on behalf of Indians who have a tribal organization).

The Commission has concluded that the Northern Paiute Indians are a clearly defined group of American Indians within the meaning of the term "identifiable group" as used in sections 2 and 10 of the Act and, accordingly, this Commission has jurisdiction to hear and determine the claims brought by members of such groups on behalf of all its members.

The defendant maintains that if there never was, in aboriginal times, a Northern Paiute Nation existing as a single group or entity with Indian title to all of the territory occupied by Northern Paiute Indians, then petitioners cannot assert their claim in its present form. Defendant

reasons that the case would, in such event, necessarily be broken down into the separate actions of a number of separate bands each claiming separate areas and that, therefore, the separate causes of action are improperly joined and should be severed and tried individually.

The Commission considers it immaterial, for jurisdictional purposes only, that the Northern Paiute Nation may not have been an aboriginal land using entity but may rather have been composed of numerous, separate bands or groups. The fact that it was, at the time the claim was filed, a group of American Indians capable of clear and unmistakable identification brings the "Northern Paiute Nation" within the term "identifiable group" as used in the Act. (Indians of California v. United States, 122 C. Cls. 348)

Defendant also asserts that the amended petition of April 15, 1957, wherein the causes of action were severed to present in Docket No. 87 only the original title claims of the Northern Paiute Nation and its constituent bands, sought to assert claims on behalf of additional bands and for further areas thereby attempting to plead new causes of action after the expiration of the time within which claims might be filed with the Commission. The Commission is of the opinion that petitioners have, by that amended petition, done no more than sever the claims not presently at issue and better define the territory allegedly used and occupied in aboriginal times by the Northern Paiute Nation so as to conform with the evidence produced at the hearing. Petitioners did not thereby plead any new causes of action.

Having found the Northern Paiute Indians to be an "identifiable

group" for jurisdictional purposes, we must now turn to an examination of (1) the aboriginal band (s) or group(s) who are now broadly referred to as Northern Paiutes and the territory aboriginally possessed by such group or groups, if any, and (2) the existence of members or descendants of members of such group or groups.

In setting forth findings of fact with respect to the aboriginal occupancy of the territory, the Commission has broken the claimed territory into three major areas, the first area including the land in and about Owens Valley; the second area including most of the western Nevada territory with a small portion in California; and the third area in Oregon, southwestern Idaho, the northeast corner of California, and the extreme northwestern portion of Nevada.

#### Owens Valley Area

The Owens Valley area of Paiute aboriginal occupation is primarily in the State of California extending from Owens Lake to slightly north of Mono Lake and including a small area in Nevada south of Walker Lake. The area, although semi-arid, held greater natural resources than did most of the claimed territory to the north. Accordingly, the Owens Valley area land was able to support a more concentrated Indian population.

Since this land was not on the route of the emigrant trains and since it did not attract settlement until its mineral resources became of interest about 1855, there were few reports from early explorers or settlers in the area. Indians were reported to be living along Owens River in 1845, and the Indian population of Owens Valley was estimated at 1,000 in 1855. One of the earliest reports by Capt. J. M. Davidson, in 1859, described the

Indians as having no principal chief or leader but rather a patriarchal form of government and that the Indians were living in an almost isolated condition, having but little intercourse with other tribes. In 1862 Indian Agent Warren Wasson reported the existence of a boundary south of Walker Lake River which separated the "Pah Ute" from the Owens River Indian country. Likewise Captain Edwin A. Rowe, a United States cavalry officer, recognized that the Owen River Indians were separated from their Northern Paiute neighbors and described the Indian boundary line which divided the Paiutes from the Owens River Indians.

In 1875, Stephen Powers, who had been appointed by the Secretary of the Interior as a special commissioner to collect Indian materials for the Centennial Exhibition of 1876, visited the Indians in Owens Valley. He reported that the Indians were Paiutes although they were locally called Monos and he wrote of them as "members of the Piute Nation distinctly, though there never was any solidarity or community feeling in this Nation, and the different sections or tribes were sometimes at bitter feud with each other."

Dr. Julian H. Steward, defendant's expert anthropologist, has done extensive field research in the Owens Valley area and is considered one of the eminent authorities concerning that area. On the basis of his studies Dr. Steward reported that the Northern Paiute of Owens Valley were subdivided into "true composite land-owning bands" and that each of the bands carried on a number of group activities. While he described the Deep Springs and Fish Lake valleys as "western independent bands"

Paiute villages," he described the Northern Paiute in those areas as having intermarried with each other and other Owens Valley Paiutes. He found that the occupants of the various areas visited other areas for dances and rabbit drives. In his biographic sketch on "Panatubiji, an Owens Valley Paiute," Dr. Steward described the life of an aboriginal Paiute occupant of the Owens Valley area. It appears that Panatubiji was free to and did travel about and use the resources of the entire area although there was no reference to Owens Valley Paiutes making use of or even visiting the Paiute territory to the north in Western Nevada.

In considering the aboriginal occupation of the Owens Valley area the Commission has found it significant to note the opinion of another eminent anthropologist, Dr. Willard Z. Park, who made extensive studies of the Paviotso or Northern Paiutes of western Nevada (the area to the north of Owens Valley). Dr. Park described the Owens Valley Paiutes as close linguistic and cultural relatives of western Nevada Paiutes although, he stated, the latter regarded themselves as an entirely distinct group.

#### Western Nevada Area

The western Nevada area of alleged Paiute occupancy extends from just north of Mono Lake, California, to the extreme northwestern part of Nevada including small areas in California along the western Nevada border. It is in this area that we find the greatest concentration of Paiute Indian population in aboriginal times, and it is in this area that most of the petitioning reservation organizations are presently located and from which many of petitioners' ancestors originated.

The southern part of the area is separated from the Mono Lake region

by high terrain, and it is divided from Owens Valley by a desert area. There were practically no geographical boundaries to the east where the Shoshone Indians were located. On the north rather extensive deserts intervened between the Pyramid Lake area and the Summit Lake area. On the west the Sierra Nevada mountains rose sharply to divide the Northern Paiute from their western neighbors, with the exception of a small area on the eastern slope of the mountains which was occupied by the Washoe Indians.

The early reports from the explorers, military officers, Indian agents and settlers told of Paiute occupation around Walker Lake and around the Walker River. Most of the reports described the Paiutes as living in relatively small bands although there is no great consistency in the designation of the specific bands in this area. Major Dodge described three bands in the general area while Agent Campbell placed one band in the area.

Stephen Powers described the Indians living on the Walker River Reservation in 1876 as a branch of the Paiutes called "Ahgyweit" (trout eaters). Anthropologists Loud, Kelly, Park, Steward and Hodge described the Walker Lake area as occupied by Northern Paiutes who were known as Trout Eaters. Dr. Omer C. Stewart placed three Northern Paiute bands in the area.

To the west and north of the Walker River and Lake area was another major internal drainage area along the Carson River, which arises in the Sierra Nevada mountains in California and flows north and east through Nevada to Carson Lake and Sink. Again we find that the early explorers

military officers and Indian agents reported that Indians lived in this area, describing them as "Diggers" or "Root Diggers" or "Py-utes."

Major Dodge in his January 4, 1859, reports described the various bands of Paiutes locating three bands along the Carson River and three bands in the country around Carson Lake and Sink, the latter three being the same three bands which he said also used the land around Walker River. Agent Campbell in 1866 stated that the same Paiute band which lived around Walker River and Lake also used the country along Carson River and upper lake, and he reported another band of Paiutes in the territory at Lower Carson Lake. Petitioners' expert anthropologist, Dr. Stewart, placed the Toe do kado band in this area and anthropologists Kelly, Loud and Park also described the same Paiute band as living in the general area.

North of this area of Paiute occupation is Humboldt Lake which is fed by the Humboldt River, extending north and eastward into Shoshone territory. Indians described as Paiutes or "Root Diggers" were reported by the early explorers and government agents to be living in this area. Dr. Stewart placed the Kupadokado band in the area around Humboldt Lake and Sink. Both Loud and Hodge located Northern Paiute bands in the area. Defendant's Dr. Stewart reported that the Northern Paiutes occupied the country west of the Sonoma and Hot Springs Mountains. Dr. Park listed one of his five Northern Paiute bands as living along the Humboldt River from the Lake to the present site of Winnemucca. As detailed in our Finding of Fact No. 14(d) there were several references describing the boundary which separated the Paiute Indians of this area from their eastern Shoshone neighbors. That eastern boundary is substantially the same as the boundary

of the area claimed by the petitioners in this matter and the anthropologists, including petitioners' anthropologist, Dr. Stewart, and defendant's anthropologist, Dr. Steward, are in substantial agreement as to the extent of the Northern Paiute use and occupancy in this area.

To the west of Carson Lake and Sink and north of Carson River was another center of Indian occupation in the vicinity of Truckee River and Pyramid Lake. The Indians were described by Fremont in 1843 as speaking a dialect of the Snake language, and Bryant, in 1846, and Hurt, in 1856, met Paiutes in the area. Major Dodge listed four Paiute bands in the general area and also reported that members of the Washoe Nation lived to the west along the base of the Sierra Nevada mountains in an area which he described as extending from Honey Lake on the north to the west fork of Walker River on the south. Agent Campbell, in 1866, located a Paiute band of some 700 Indians in the vicinity of Pyramid Lake.

Dr. Stewart placed the Kuyuidokado band of Northern Paiutes in the area, and Dr. Park included the same band as one of his five main western Nevada Northern Paiute bands, which band he found centered around Pyramid Lake and the mouth of the Truckee River. Loud located one Northern Paiute band on the Truckee River and another band around Pyramid Lake. Anthropologists Kelly and Hodge also listed Northern Paiute bands in the area.

To the west of Pyramid Lake is Winnemucca Valley, Nevada, while to the north and west is Honey Lake and Smoke Creek, California. The early reports of explorers in the area are of little help in identifying the Indian inhabitants of the Honey Lake and Smoke Creek areas. Major Dodge wrote that "Wun-a-mucca" was the head chief of the Paiute Nation and that

he and his band of about 155 generally stayed on Smoke Creek, near Honey Lake.

The early settlers in the Honey Lake Valley entered into a treaty of peace in 1857 with "Win ne ma cha" and in 1858 a treaty of peace was also signed between "Winnemacha" and sub-agents of the Superintendent of Indian Affairs for California. However, in reporting on this treaty, the sub-agents made reference to their inability to treat with the Pit River Indians and the Washoe Tribe who were also in the area. It was also reported that Chief "Winnemooke" would not let his people stay in Honey Lake Valley because the other Indians were stealing and, if his people stayed around there, they would be accused of stealing also. In 1856, Capt. Weatherlow told of his settlement in Honey Lake Valley and wrote that the Paiute tribe of Indians then occupied the Valley in common with the whites and were upon the most friendly terms with them. In 1860 Mr. Lander wrote of a meeting with "Pah-Ute" chiefs at which Winnemucca complained that the tribe had been robbed of their lands in Honey Lake, Long, Steamboat and other valleys.

Dr. Stewart identified the Kamodokado as the Northern Paiute band living in the Smoke Creek area and the Wadadokado band living about Honey Lake. There were some differences of opinion between anthropologists Kelly and Park as to the extent of the territory occupied by the Northern Paiutes in this area. However, the petitioners have excluded most of the disputed area from the territory claimed by them in this action. The Commission has concluded that the Northern Paiute area of exclusive use and occupancy included Honey Lake Valley to the eastern shore of the Lake and

the area to the north of Honey Lake extending west to within about ten miles of Susanville. It seems clear from the evidence that the Northern Paiutes of the area had their ancestral homeland in and about Honey Lake Valley and that the white settlements in the area caused the Paiutes to withdraw and resulted in raiding parties from Indian tribes to the west who preyed on the white settlements.

In the area north and east of Smoke Creek and extending as far east as the vicinity of Winnemucca, Nevada, and in the area east of Pyramid Lake to within a few miles of the Humboldt River, there was land which was extremely barren including the Black Rock Desert and similar arid areas. The land was remote from established routes of travel and is today sparsely populated. This area, as detailed in our Finding of Fact No. 15, has not been shown to have been exclusively used and occupied in aboriginal times by Northern Paiute Indians. Even the materials prepared by Dr. Stewart, petitioners' expert anthropologist, indicate the weakness of petitioners' claim in this area. In his Kamodokado area Dr. Stewart only referred to Paiute occupation in the vicinity of Gerlach, Nevada, just north of Mud Lake, and he stated that that territory was allotted to the Kamodokados because it had not been claimed by any other band. Similarly the area west of the Humboldt Lake and River area was reported by Dr. Stewart to be occupied by the Kupadokado band although he gave no evidence of specific areas of Paiute use or occupation in that area west of Humboldt. Dr. Stewart reported that the extensive Black Rock Desert was occupied by Northern Paiutes although, at the same time, he testified that the Sawawaktodo band was aware that their country went to the desert and

on the other side of the desert were the other people. While Dr. Stewart recited evidence of Paiute occupation around the present town of Winnemucca, Nevada, he failed to offer any evidence upon which to base a conclusion that his Sawawaktodo band occupied the area extending to the west of Winnemucca. Dr. Stewart included Paradise Valley as a Northern Paiute area occupied by the Yamosopo band although he could offer little information concerning the aboriginal existence of this group and his Northern Paiute informant reported that band to be mixed with Shoshone.

Other anthropologists have indicated that most of this barren area was unoccupied or, in the case of Paradise Valley, that it was an area of joint use and occupancy. Dr. Blyth reported the occupants of Paradise Valley to be half Paiute and half Shoshone and defendant's expert, Dr. Steward, also considered those Indians to be a mixture of Shoshone and Paiute. Accordingly, the Commission has concluded that the area referred to in Finding of Fact No. 15 was not exclusively used and occupied in aboriginal times by Northern Paiute Indians.

#### Oregon Area

In the northern portion of the claimed territory is the land along the northwestern Nevada border, with a small area in California, in south central and eastern Oregon, and in southwest Idaho. This area extends east and west from the Cascade Mountains to approximately 40 miles east of the Snake River and from just south of the Oregon-Nevada border north to the 45<sup>o</sup> of latitude.

To the east the area extends into the southwestern portion of Idaho and is shown on petitioners' map (Pet. Ex. 942) as a cross-hatched area, which indicates that Dr. Stewart, petitioners' expert anthropologist, found

a dispute over the land which he could not resolve. Since petitioners have conceded that there was conflicting evidence concerning the Indian occupancy of the cross-hatched area and have submitted a proposed finding to exclude that territory, the Commission has accepted petitioners' concession of the lack of proof of exclusive Northern Paiute use and occupancy of the area and more detailed consideration of the cross-hatched area is unnecessary.

In the extreme northwestern portion of the claimed area petitioners place the Hunipitoka or Walpapi band of Northern Paiutes. It was with this band that Superintendent Huntington negotiated a treaty of cession on August 12, 1865 (14 Stat. 683). Under the terms of the treaty, signed by eleven chiefs and headmen of the "Woll-pah-pe tribe of Snake Indians", there was a cession to the United States of all the tribe's right, title and interest to the country occupied by them. The treaty further provided for certain considerations agreed to be expended by the United States for the benefit of the Walpapi Tribe of Snake Indians. Thereafter, the Walpapi Indians removed to the Klamath Indian Reservation and by subsequent statutes the stipulated consideration was appropriated for the Indians.

The Commission has found that the Walpapi Indians constituted an aboriginal land using entity, existing as such, separate and apart from the Northern Paiute of Snake Indians with whom they were and have been generally associated.

The claims now before this Commission are rested upon a non-treaty taking of the petitioners' ancestral lands. As petitioners state in their brief at page 74, they are, "seeking to establish that the United States,

by means that did not conform with standards of fair and honorable dealings and without payment of any compensation, deprived their ancestors of their Indian title to their aboriginal homeland." (Emphasis supplied) The question of the nature of petitioners' claim in this action was under consideration in connection with the dispute arising in Docket No. 100, filed, among others, by another band of Northern Paiute Indians, the Yahooskin band. At that time petitioners stated in its "Motion for Clarification of Order Dated May 19, 1955," that "the claims of the Yahooskin band for the said land that have been presented to the Commission in Docket No. 100 are rested upon facts and law distinct and separate from the claims of the Yahooskin band for the same land that have been presented to the Commission in Docket No. 87. In Docket No. 87 these claims are rested upon a taking without treaty and without payment of compensation. In Docket No. 100, these claims are rested upon a treaty and upon payment of unconscionable consideration." (Emphasis supplied)

The Commission agrees with petitioners' interpretation of the cause of action which they have pleaded in this Docket No. 87. Like their neighboring Yahooskin band, the Walpapi were treated with and compensated for the cession of their claimed lands. Therefore, any action for an alleged taking by the United States of the Walpapi land should, it seems be rested upon the revision of their treaty of cession upon the basis that the amount paid by the United States constituted an unconscionable consideration for the cession of the lands to which they allegedly held Indian title. Such an action would, by petitioners' own admission, be based upon facts and

law distinct and separate from those pleaded in Docket No. 87.

It would appear then that petitioners have included the so-called Walpapi area only to the extent that the Walpapi band might be found by the Commission to have been a constituent part of an aboriginal land using Northern Paiute entity. Accordingly, having found the Walpapi band to have been a separate and distinct land using entity whose claim, if any, against the United States for taking of its ancestral lands has not been pleaded in this case, no consideration can be given to this area in the claim presented by petitioners in this Docket No. 87.

South of the Walpapi area is the territory assigned by petitioners to the "Yahuskin" Band of Northern Paiutes. On October 14, 1864, Superintendent Huntington negotiated a treaty of cession with the Klamath and Modoc and Yahooskin Band of Snake Indians, which treaty was duly ratified on July 2, 1866 (16 Stat. 707). The Yahooskin band moved onto the Klamath Reservation, near Klamath Lake on the southern border of Oregon, where their descendants have lived to the present day.

In the case of the Klamath and Modoc Tribes and the Yahooskin Band of Snake Indians v. The United States, Docket No. 100, a claim has been presented on behalf of the descendants of the Yahooskin Band of Snake Indians with whom that treaty was made. The claim is based on an alleged taking by treaty of cession of their aboriginally held land and the payment of an unconscionable consideration therefor. While it appears that the petitioners in this Docket No. 87 have not pleaded any cause of action to include the alleged taking of the Yahooskin lands for an unconscionable consideration, the claim with respect to this area is not disposed of on this

ground since this Commission has already, by order entered May 19, 1955, in this Docket No. 87 and Docket No. 100, dismissed the claim asserted for and on behalf of the Yahooskin band in Docket No. 87 upon a finding that said band was entitled, under section 10 of the Indian Claims Commission Act, to be accorded the exclusive privilege of representing the descendants of the Yahooskin band in their claim before this Commission. Thereafter, by order of the Commission on June 6, 1957, the finality of the order of May 19, 1955, was stayed without prejudice to its later reinstatement following final determination by the Commission of the claims presented in this Docket No. 87. The purpose of this stay was to toll the time for appeal to the Court of Claims of the decision of the Commission in its order of May 19, 1955, in order that petitioners might be able, if they so desire, to make a single appeal to the Court of Claims in the matter of this Docket No. 87. The Commission will not at this time vacate its order staying the finality of the order of May 19, 1955, since the order to be made pursuant to this decision will be interlocutory.

For the reason stated above no consideration can be given in this Docket No. 87 to the so-called Yahooskin area of the claimed territory.

To the east of the Yahooskin area there was a group of Snake or Piute Indians described by several anthropologists, including petitioners' expert, Dr. Stewart, as the Wada Eaters or Wadatoka. The descendants of the Indians in that area brought an action before this Commission as the "Snake or Piute Indians of the Former Malheur Reservation in Oregon," Docket No. 17. In our opinion of December 28, 1956 (4 Ind. Cl. Com. 571a) we found that the petitioners' ancestors, who were parties to an unratified treaty

of December 10, 1868, had exclusively occupied and used in Indian fashion from time immemorial the area of land included within the former Malheur Reservation in Oregon. Accordingly, that group of Northern Paiute Indians identified as the Snake or Piute Indians of the Former Malheur Reservation who represented those Northern Paiute Indians descended from the parties to the unratified treaty of December 10, 1868, having been found to be the descendants of an aboriginal land using entity and having brought their own action independent of this action, have no interest in Docket No. 87, and their aboriginally owned territory having been determined in Docket No. 17, no consideration need now be given to that area.

To the southeast of the Yahooskin lands was an area occupied by Snake or Paiute Indians. The early explorers and military officers reported the area east of Lake Albert and Goose Lake in Warner Valley and around Warner Lakes and to the south in Surprise Valley and Long Valley to be occupied by Snake or Pi-ute Indians.

Petitioners' expert, Dr. Stewart, placed the Kidutokado band in the area and Dr. Kelly, who did very extensive work in that territory, placed the Gidutikadu band of Northern Paiutes in the area. Her description of the limits of the land occupied by this band was substantially the same as that described by Dr. Stewart. Dr. Whiting, whose studies were more concerned with the Wadatoka band of Northern Paiutes, placed a Northern Paiute band in the Surprise Valley area but limited the extent of their occupation to a smaller area around Warner Lake and to the south across the Nevada border.

To the east of this area there was a stretch of barren or near barren land

which, although sparsely populated, did contain areas of Indian occupation in aboriginal times. Paiute Indians were reported by anthropologists to have lived in aboriginal times at Summit Lake, Nevada. Anthropologists Kelly, Whiting, Hodge and Stewart reported Paiutes living in the McDermitt region of Nevada on the Oregon border.

In 1870, Agent Douglas reported on his meeting at Fort McDermitt with 140 Quinn's River (Nevada) and Steens Mountain (Oregon) Indians. Agent Douglas was trying to persuade the Indians living in that area to move down to the Truckee River or Pyramid Lake Reservation promising continued government aid and subsistence if they would so move and guaranteeing them nothing if they remained about Fort McDermitt. The Indians indicated that the country around Steens Mountains and Quinn River was their territory, and they emphatically refused to go away from their lands to the Paiute Reservation in Nevada.

In the southeast corner of Oregon extending to the north is the Owyhee River area, another section of sparse population, today as well as in aboriginal times. Both Dr. Steward and Dr. Stewart stated that Northern Paiute Indians lived in the area in aboriginal times. Dr. Whiting reported that the Tagu Eaters lived in the area about Owyhee River and Jordan Valley but that there were no Paiute bands farther to the east. Dr. Kelly's informant told her of Paiute Indians living east of Steens Mountains, which would apparently be in the Owyhee River region.

To the west and northwest of the Owyhee River area was the Malheur-Harney Lake region occupied by the Wada Eaters Bands of Snake or Piute Indians, referred to above as the petitioners in Docket No. 17.

To the east, southeast, and northeast of the Owyhee River region is the large area which was cross-hatched by petitioners on their map, Exhibit No. 942. As we have previously mentioned this cross-hatched area represented that territory which petitioners recognize as not exclusively used and occupied by the Northern Paiutes and that area has been excluded from further consideration by the Commission.

North of the Owyhee River is a large area concerning which there appears considerable doubt concerning the identity of the Indians who reportedly occupied and used the area. The early explorers used the term Snake and the term Bannock to describe both the foot Indians who lived on roots, crickets, rodents, small game and fish as well as the horse people who possessed many traits of the plains Indians and traveled great distances in search of game, furs and trade. The Bannocks are specifically excluded from the scope of this claim because they were clearly a people separate and distinct from the Northern Paiute Indians with whom we are now concerned.

The anthropologists also indicated a lack of agreement among themselves concerning the identity of the Indians found in the area in aboriginal times. Dr. Stewart, petitioners' expert anthropologist, stated that his Koa agaitoka band which he placed along the Snake River at the mouths of the Owyhee, Boise and Malheur Rivers and Weiser Creek has occupied a much disputed and questionable position. Dr. Stewart found that, although the accounts of the early explorers in the area were not definite, they would show that there was as much historical evidence to unite the Snake River Indians of the Boise area with the Paiute as with the eastern groups. Dr. Stewart

concluded that the area was frequented by mounted northern Shoshone and Bannocks as well as some Northern Paiute and western Idaho Shoshone and that the area was a thoroughfare often used by the Bannocks, northern Shoshone, Nez Perce, Cayuse, Walla Walla and other tribes.

The Commission has therefore concluded that the petitioners have failed to prove their entitlement to that area since it cannot be shown that they exclusively used and occupied the area in aboriginal times.

The area north of the Wadatoka band cannot be included within any Northern Paiute territory since it appears that that area was also outside the territory exclusively used and occupied by the Northern Paiutes. There were early reports placing "Snake" Indians in the area, but the "Snakes" were described as buffalo hunters, indicating that they were different Indians from the Digger type of "Snakes" included within the Northern Paiute designation. There were also reports of Cayuse Indians in the area.

Dr. Stewart did not include the area in his original study of the Northern Paiute bands, although he has included it in this action as territory occupied by so-called Pa-tichichii-tika band of Northern Paiutes. Dr. Verne F. Ray placed the Cayuse Indians in the area.

Having thus reviewed the material evidence relating to the aboriginal use and occupancy of the claimed area and having excluded those areas wherein there is no proof that Northern Paiute Indians exclusively used and occupied the land claimed, we now turn to the question of the group or groups which constituted the land using entity or entities in the area found to have been occupied by the so-called Northern Paiutes.

We have found from the evidence that there was no overall chief or political authority over all the Northern Paiute Indians in aboriginal times. The most influential Northern Paiute in the late aboriginal period was Winnemucca, but he never had authority over all Northern Paiutes. As Dr. Stewart stated, "Prior to the arrival of the white people, bands united for special hunting, fishing, dancing, pinon-nut gathering, rarely for war; but no one was generally recognized as possessing any authority above the local band chief. It seems that the Northern Paiute were ripe to become politically united; this, however, never happened."

The early explorers as well as the government agents and military officers reported various areas to be occupied by Indians who lived in separate and distinct groups. There was no recognition of any overall Northern Paiute entity which used and occupied the entire area from Owens Valley to central Oregon. In general the Oregon area was considered to be territory exclusively used and occupied by Snakes, the Nevada area by Paviotso or Paiute, and the Owens Valley area by Monos or Paiutes. There was some realization that all these Indians possessed certain general similarities but certainly it was never felt that they occupied this expansive territory in common or that they, as a group or entity, had collective rights to the land.

The historical accounts indicate that many of the smaller groups or "bands" of Northern Paiutes had strong feelings regarding their traditional homelands. There were groups who expressed this attachment to certain areas which constituted their territory where they had for many years used and occupied the land in Indian fashion. These Indians emphatically

rejected offers of settlement in neighboring Northern Paiute territory since it wasn't their land. As we found in the case of The Snake or Piute Indians of the former Malheur Reservation in Oregon v. United States, Docket No. 17, 4 Indian Claims Commission 571a at 596, the government selected a tract for the Malheur reservation because it was "the area recognized by military officers and officials of the Interior Department dealing with Indians in southeast Oregon as the established home country of the bands of Snake or Piute Indians who were parties to the unratified treaty of December 10, 1868, and was the only area where those bands were willing to live. . . other bands of Snake or Piutes inhabiting other areas in southeast Oregon and adjacent areas in Nevada and Idaho were brought to the reservation to reside but most of them refused to reside there permanently and returned to the lands formerly occupied by them. There were also some bands of non-treaty Snake or Piute Indians in southeast Oregon who refused to leave the territory they considered as their home . . . " (emphasis supplied)

The anthropologists also have recognized this lack of any collective use and occupancy of the area by the Northern Paiute Indians. At best petitioners' expert, Dr. Stewart, calls the Northern Paiute bands a tribe whose unity was tenuous but who, he felt, shared the area in common as a tribal territory. However, it is quite evident that the scholarly works of this eminent anthropologist were based, as is the case with most anthropological studies, upon many diverse factors and considerations some of which are of little importance to a consideration of original Indian title, which is the issue confronting the Commission in this case. Dr.

Stewart has placed great weight on the fact the Northern Paiutes were one linguistic family, that they had common cultures and traditions and that they did not engage in internal strife. As a step in reaching his conclusion that this linguistic entity had aboriginal possession of the vast, contiguous territory assigned by him to the Northern Paiutes, Dr. Stewart has arbitrarily assigned extensive areas of land to certain of his Northern Paiute bands without recitation of any affirmative evidence that the members of the band occupied or ever even ventured into the area. He even divided areas between bands while explaining that one band's territory extended to the edge of the desert and the other's territory began on the other side of the desert. He assigned a large area to one band on the basis that no one else claimed it. He placed one Northern Paiute band in an area of 2000 square miles even though the only informant who could remember the band as distinct told Dr. Stewart that the area was mixed with Shoshone and shared a part of the hunting area with them. He assigned his largest area to a Northern Paiute band while stating there was as much historical evidence to unite the band with the Paiutes as with the eastern groups.

Any determination of Indian title to an area of land must be based on affirmative evidence establishing actual exclusive use and occupancy of the area from time immemorial. Constructive possession is not sufficient to establish Indian title. The law in this regard is clear and well settled. See Quapaw Tribe v. United States, 1 Indian Claims Commission 469; United States v. Santa Fe Pacific R. Co., 314 U. S. 339; Cramer v. United States 261 U. S. 219; Assiniboine Indian Tribe v. United States, 77 C. Cls.

346; Wichita Indians v. United States 89 C. Cls. 378.

The other anthropologists whose works have been submitted by both parties in this case differ with Dr. Stewart on the question of the unity and common sharing by the Northern Paiutes of their aboriginally held lands.

Dr. Stewart, whose studies of the Owens Valley are ~~are~~ uncontradicted as to their substance (although petitioners do differ with some of his conclusions), we found the Northern Paiute of Owens Valley were subdivided into true composite land owning bands, each of which had a strong community feeling and a number of cooperative activities. In contrast he reported the Nevada Paiutes to be no more than small groups of wandering families with none of the stability which characterized the Owens Valley Indians.

Dr. Park, whose studies centered on the western Nevada area, found that five main Paviotso bands occupied most of the claimed territory in western Nevada. While describing the Paviotso as close linguistic and cultural relatives of the Surprise Valley and Owens Valley Paiute, Dr. Park stated that the Paviotso regarded themselves as an entirely distinct group.

Dr. Whiting, who studied the Oregon area, particularly the Wada Eaters of the Malheur-Harney Lake region, limited the list of those Northern Paiute bands with whom the Wada Eaters had frequent intercourse to seven bands in the Oregon area, excluding completely the Nevada area Paiutes.

Further the status of the aboriginal Northern Paiutes and the geography of their lands make it doubtful that they could have collectively used

and occupied the entire territory. The aboriginal Northern Paiutes were foot Indians who devoted virtually all their time to scouring the land for food. Vast areas of barren, unproductive desert land or rugged mountain country separated many of the more fertile localities in their territory. The area extended for some 600 miles from Owens Lake, California to central Oregon.

Based on our findings that the Northern Paiutes, in aboriginal times, were completely lacking in any overall political organization with no overall chief, that they were never recognized, designated or dealt with by government officials as a single land using entity or nation, and that they did not collectively use the entire Northern Paiute territory, the Commission has found that the Northern Paiute Nation was not an aboriginal land using entity.

Petitioners have argued that we should follow our decisions in the Nooksack Tribe of Indians v. United States, 3 Indian Claims Commission 479 and Muckleshoot Tribe of Indians v. United States, 3 Indian Claims Commission, 658, in finding that the Northern Paiute Nation held Indian title to the entire territory. They would place the so-called bands of which they say there were at least 26 and probably more in the position of the autonomous, separate villages of the Puget Sound Nooksack and Muckleshoot Indians. Petitioners then urge that ties of kinship, culture, and language bound the Northern Paiutes into one single land holding entity. We cannot agree that the facts in this case warrant the treatment of the Northern Paiute Nation in the same fashion as we did the Nooksack and Muckleshoot Indians. The latter tribes were small tribes (Muckleshoot from 50 to

130 members and Nooksack approximately 450 members) of fish eating Indians whose land using activities were limited to small areas of occasional hunting or berry picking. Their life centered on the bays and rivers. The areas found to have been exclusively used and occupied by the tribes were small and compact (the Muckleshoot area contained 101,620 acres, the Nooksack area contained 80,590 acres and both tracts were but 12 miles long at their extremes). The Nooksack and Muckleshoot Indians were recognized, designated and dealt with by government officials as tribal entities with collective rights to their aboriginally held lands.

This case, involving a vast area of 50,000,000 acres, 600 miles long, allegedly occupied by a "Nation" of from 6,000 to 10,000 Indians who were constantly exploiting the meager resources of their lands, who were never recognized, designated or dealt with by government officials as a tribal land using entity and who did not collectively use the territory, is clearly distinguishable from the Nooksack and Muckleshoot cases, as they might be applied to the overall territory. However, the decisions in the Nooksack and Muckleshoot cases do have a definite application to smaller areas which were collectively used by groups of Northern Paiutes, as will be hereinafter discussed.

It must also be remembered that the factors to be considered in determining the land using entity are not the same as those involved in the question of whether petitioners constitute an identifiable group for jurisdictional purposes. One of the purposes of the Indian Claims Commission Act was to enlarge the category of groups who might present and

prosecute claims, for Congress intended that all tribes, bands, or groups of American Indians should have their day in court and have their claims adjudicated. For jurisdictional purposes it is sufficient that the petitioners were, at the time the petition was filed, a group of American Indians which was capable of identification regardless of their status in aboriginal times as separate bands or villages. Indians of California v. United States, 122 C. Cls. 348. As the Court of Claims stated in that decision, at page 359, "In view of the obvious purpose which Congress intended to accomplish by the passage of the Indian Claims Commission Act, as disclosed by its history, it is our opinion that the provisions relating to the jurisdiction and authority of the Commission to hear and determine claims presented, should be liberally construed" (emphasis supplied.) But the Court in clear and unmistakable language pointed out that such liberality related only to the jurisdiction and authority to hear claims. It said, at page 356, "For jurisdictional purposes, which relate only to the authority to entertain the petition and to hear and determine claims the merits and the nature of the proof that will be required to establish the claims are not involved" (emphasis supplied).

So while the petitioning Northern Paiute Indians constituted, at the time the petition was filed, an identifiable group for jurisdictional purposes, the proof in this case has failed to establish a Northern Paiute Nation as the aboriginal land holding entity under the well established law concerning Indian title.

Since this action was also brought for and on behalf of all the land using groups of Northern Paiute Indians, we now turn to the consideration

of those groups.

The first such aboriginal land using group was composed of those Northern Paiutes who were in aboriginal times generally referred to as Monos or Paiute of Owens Valley and who had exclusively used and occupied in Indian fashion from time immemorial that portion of the claimed territory described in Finding of Fact No. 21. The evidence, as detailed in our findings of fact, establishes that this group of Northern Paiutes collectively used and occupied their lands in a condition which was separate, distinct and isolated from their neighboring Northern Paiutes in Nevada. The evidence has affirmatively established that the Owens Valley Paiutes used and occupied the localities throughout the described area, and they were recognized and designated by various government officials as a group of Indians who existed in their own territory separate and apart from the other Northern Paiutes.

The second group of aboriginal land using Northern Paiute Indians was the Paviotso or Paiute who occupied the area in western Nevada, with small portions in California, as described in detail in our Finding of Fact No. 22. This group of Northern Paiute Indians collectively used and occupied the entire area described in Finding of Fact No. 22 and seldom ventured into the lands belonging to their southern neighbors, the Paiutes of Owens Valley, or their northern neighbors from whom they were separated by extensive desert and waste land. The Paviotso or Paiute of the western Nevada area regarded themselves as a group separate and distinct from both the Owens Valley Indians and the Paiutes or Snakes to the north. While the Indians in this area were comprised of small individual families who were to a certain extent organized into various

bands or groups, they did enjoy a common use of the entire area. They were recognized and designated by government officials as a separate entity or group of Paiute Indians.

To the north of the area occupied by the Paviotso or Paiutes of western Nevada was the area along the northwestern Nevada border and in southwestern Oregon, with a small portion in California, which had been exclusively used and occupied in Indian fashion from time immemorial by groups of Northern Paiute Indians who were, in aboriginal times, generally referred to as Snakes, Digger Snakes or Paiutes. Included among these groups of so-called Snakes were certain bands who had, in later aboriginal times, developed into land using groups existing separate and apart from the other "Snake" Indians in the area. These bands, whose status as separate and distinct aboriginal land using entities has previously been discussed, were the Walpapi, the Yahooskin, and the Snake or Piute Indians of the former Malheur Reservation. These groups and their territory have been specifically removed from the scope of this action for reasons which have already been detailed.

The evidence has established that the remaining bands or groups of "Snake" or Paiute Indians exclusively used and occupied in Indian fashion that portion of the claimed territory described in our Finding of Fact No. 23. Those "Snake" Indians used and occupied all of the described lands in common. They existed separate and apart from the Paviotso or Paiute Indians to the south and were so recognized and designated by government officials.

As previously stated the Commission has rejected petitioners' argument that our decisions in the Nooksack and Muckleshoot cases should

control in considering the question of the holding of Indian title to the entire area by the Northern Paiute Nation. However, with respect to the smaller areas in Owens Valley, western Nevada and Oregon we find that the evidence supports a determination of Indian title as was done in the Nooksack and Muckleshoot cases. The three Northern Paiute areas were occupied by groups of Indians who, while lacking any political unity, did have the similarities of language and culture generally possessed by all Northern Paiutes and, in addition, did collectively use and occupy their respective areas and were recognized and designated by the early government officials as sharing the described areas in a common use of the land.

The Commission sees no merit to defendant's argument that because there may have been a feeling of individual or family ownership of the pine nut trees, such areas must be excluded from any award. The aborigines' concept of "ownership" is immaterial to our determination of Indian title. If, as we have found, the Indians had exclusively used and occupied in Indian fashion a definite area from time immemorial, it matters not what legal concept the Indians may have had concerning their use and occupancy of the land.

Having thus determined the aboriginal land using entities whom the petitioners have represented in this action, we must consider the existence of members or descendants of members of each of the groups, for it is well established that in cases of this type which rely on proof of ownership of specific areas by specific aboriginal tribes, bands, or groups, it must be shown that there are living members or descendants of members

who could participate in an award made on behalf of such groups. (See Peoria Tribe of Indians of Oklahoma v. United States, 4 Ind. Cl. Comm. 223).

With respect to the first group, that is the Monos or Paiutes of Owens Valley, petitioners have not included the testimony of any Northern Paiute who can definitely trace his ancestry to a member of that aboriginal group. However, the Commission has been able, from other evidence of record and documents not included in this record, to establish the existence, on the date the petition was filed in this matter, of descendants of the Paiutes of Owens Valley. The evidence, as outlined in our Finding of Fact No. 24, recorded the population figures for the Owens Valley area from 1855 until 1950. The works of Dr. Steward have identified as late as 1927, 1928, 1931 and 1935, existence of living descendants of the original Paiutes in the area.

The latest available figures compiled in the years 1945 and 1950 list at least 815 Paiutes living on various reservations or Indian colonies in the Owens Valley area.

Many of the named individual petitioners and a number of other Northern Paiute Indians who testified in this action presently live in the Nevada area and have ancestors who were members of the aboriginal Paviotso or Paiute group of western Nevada. Evidence of the existence of living descendants of the aborigines in this area and statistics concerning the present Paiute population in the area is contained in our Finding of Fact No. 25.

One of the Northern Paiutes who testified in this case, Charles Gill, is descended from Northern Paiute Indians who were members of

the aboriginal Snake or Piute Indian group of the Oregon area. The figures with respect to the present Paiute population in this area is set forth in our Finding of Fact No. 26.

Accordingly, the Commission has found that there were, on the date the petition was filed in this matter, living descendants of the aboriginal members of each of the aboriginal land using entities described in our Findings of Fact Nos. 21, 22, and 23.

In aboriginal times the Northern Paiutes in the various areas had, at best, a meager existence. Since they lived on land which was among the poorest in this country, it was necessary for them to use the scanty resources to the limit. As white settlers and travelers moved into and across the area they brought cattle which ate grass thereby destroying many of the seeds and roots upon which the aboriginal Indians fed, and the white men cut pine nut trees for building and fuel thereby destroying one of the main sources of their food. Thus, by the gradual influx of white settlers, miners and travelers in various areas throughout the entire Northern Paiute territory, the Indians were deprived of many of the means by which they had exclusively used and occupied the area in their Indian fashion. There were numerous reports of starvation and great suffering by the aborigines as a result of the increasing encroachment of the whites upon their lands. There were also in some sections military actions taken by the United States to suppress Indian uprisings and to force the Northern Paiutes from their lands and onto various reservations where they could not interfere with the white man's use of the land. The government agents in the area were constantly

striving to promote peaceful relationships between the Indians and the white settlers who had moved onto their lands. Thus, without the payment of compensation, the United States acquired, controlled and treated the lands of the various Northern Paiute groups as public lands.

The defendant argues that the Indians by their removal from certain areas of their territory to reservations or white communities voluntarily abandoned any Indian title which they might have held. The Commission sees no merit to this contention. When, by reason of the depletion of their food sources by white settlers, the Indians were faced with starvation, removal to reservations or white settlements where they might receive supplies does not constitute a voluntary abandonment of their Indian title to their lands. Nor does the fact that not all the Northern Paiutes took to the warpath to resist the white encroachments or resisted to the point of necessitating their removal from some areas by military force mean that they relinquished or abandoned their Indian title.

Because of the gradual influx of whites in the area at varying dates, it is not possible to set a precise date of taking of the lands in question. In view of the fact that the Commission has divided the claimed territory into three areas each exclusively used and occupied by a separate and distinct aboriginal Northern Paiute group, the question of the dates of taking must necessarily be considered for each such area. The Commission will not now make such determinations but will leave this question either to the parties to agree upon average dates of taking for each area, or, in the absence of such agreement and upon further briefing of this question in the light of this decision, the Commission will fix average dates of taking for each of the described areas.

The Commission has, however, fixed the date of taking of those areas included in the present State of California. On March 3, 1851, Congress passed (9 Stat. 631) an action under which it was provided that all claims to land in the State of California had to be presented to commissioners within two years for confirmation, and, at the end of that time, all lands the claims to which had not been presented were to be deemed to be held and considered part of the public domain of the United States. Two years later, Congress passed an Act, on March 3, 1853 (10 Stat. 244) providing that from that date the public lands of California were to be surveyed and preemption rights were granted to settlers. From that date, March 3, 1853, the United States for all intents and purposes treated the lands of the Northern Paiutes in California as public lands and so considered said lands to be public lands. (The Mohave Tribe v. The United States, Dockets 283 and 295, consolidated, decided March 19, 1959, 7 Indian Claims Commission 219).

The Commission concludes that the petitioners have the right to maintain this action for an on behalf of all descendants of the Northern Paiute Nation. The Commission further concludes that those land using entities described in Findings of Fact Nos. 21, 22, and 23, namely the Monos or Paiutes of Owens Valley, the Paviotso or Paiutes of western Nevada, and the "Snake" or Paiutes of the Oregon area, which entities were constituent parts of the present so-called Northern Paiute Nation, held Indian title to the respective areas of land described in Findings of Fact Nos. 21, 22, and 23, and that said Indian title was acquired by the United States from the three aforementioned land using Northern

Paiute entities without the payment of compensation therefor, and thereby entitling the aforementioned land using Northern Paiute entities to recover under Section 2, Clause (4) of the Indian Claims Commission Act. The case shall now proceed to a determination of the dates of acquisition of those portions of the three land areas outside the present State of California, the acreage of each of the three areas involved, the value of each of the three areas on the dates they were acquired by the United States without payment of compensation, and the amount of offsets, including money or property given to or funds expended gratuitously for the three land using entities, allowable under the Indian Claims Commission Act.

Wm. M. Holt  
Associate Commissioner

We concur:

Edgar E. Witt  
Chief Commissioner

Louis J. O'Marr  
Associate Commissioner