

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

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. (a) Under the authority of the Indian Claims Commission Act of August 13, 1946, 60 Stat. 1049, a petition was timely filed on December 6, 1950, 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. These six reservation tribes, located in Nevada, are sometimes hereinafter referred to as the tribal petitioners.

(b) On August 8, 1951, an amended petition was timely filed in which 17 more individual Indians joined as petitioners. The original and amended petitions set forth a number of causes of action, including claims for the value of certain lands located in Nevada, Idaho, Oregon, and California to which petitioners claim the Northern Paiute Nation and its constituent bands had aboriginal Indian title, which lands are alleged to have been taken at various times between 1865 and 1882 by the United States without payment of any compensation therefor. A hearing was held before the Commission at which only questions relating to these aboriginal title claims were at issue. Thereafter, the Commission by orders dated April 24, 1957, permitted severance from the amended original petition of all claims other than the original title claims and accepted an amended petition in Docket No. 87, which petition had been filed on April 15, 1957, and set forth only the original title claims already heard and which are to be determined in this proceeding. A separate petition setting forth the severed claims was also filed and numbered Docket No. 87-A. Those claims are of no concern here.

2. There are two other separate cases filed with this Commission by other Northern Paiute claimants in which claims are asserted for parts of the area in Oregon claimed by petitioners in Docket 87. These claims are as follows:

(a) In the case of the Snake or Piute Indians of the Former Malheur Reservation in Oregon v. The United States, Docket No. 17, 4 Ind. Cl. Comm. 571, the petitioners in that case asserted a claim of Indian title to a large area of land in southeast Oregon. On December 28, 1956, this Commission found that "the petitioners' ancestors, the Snake or Piute bands or tribe who were parties to the unratified treaty of December 10, 1868, had exclusively occupied and used in Indian fashion from time immemorial * * * the area of land included within the boundaries of the Malheur Reservation in Oregon as it was defined and described in the Executive Order of January 28, 1876 * * *." This land lies within the boundaries of the area in Oregon claimed by petitioners in Docket 87.

(b) In the case of the Klamath and Modoc Tribes and the Yahooskin Band of Snake Indians v. United States, Docket No. 100, the petitioners in that case are asserting on behalf of the Yahooskin Band a claim for the same lands in Oregon as claimed for them in Docket 87, and are doing so independently of their relationship to the Northern Paiute Nation and for a right to such lands as they claim belonged to them exclusively. By an order of this Commission entered May 19, 1955, in Docket Nos. 100 and 87, the claim asserted for and on behalf of the Yahooskin Band in Docket 87 was dismissed and said band was granted the exclusive right to maintain in Docket 100 their claim for the land claimed by them in

Docket 100. Thereafter, by order of the Commission on June 6, 1957, the finality of the previous order of May 1955 was stayed without prejudice to its reinstatement following determination by the Commission of the issues presented in Docket 87.

3. (a) The amended petition filed in Docket 87 on April 15, 1957, alleges, in substance, that at and prior to first white contact and for many years thereafter, the Northern Paiute Nation was divided into various bands but as a result of the acts of the United States "in taking away the ancestral lands of said Nation including the bands thereof," the members thereof were first dispersed and later concentrated on various reservations including those of the tribal petitioners; and, that the individual petitioners and the Northern Paiute Indians enrolled as members of the six petitioning reservation organizations comprise a substantial part of the descendants and members of the Northern Paiute Nation and its various bands who held aboriginal Indian title to the lands here in issue. Each of the tribal petitioners sue in its own right, and jointly with the others, both as successors to the claims of the Northern Paiute Nation and all of its bands and in a representative capacity on behalf of said Nation and bands; and the named individual petitioners are suing as members and representatives of all the members of such Nation and bands. The petitioners allege that by various acts of the defendant their ancestral lands were taken from them without their consent and without compensation.

(b) In petitioners' Requested Finding No. 3 under a heading, "The Issues at Trial," is the statement that "the petitioners have undertaken

to establish (1) the right of these claimants to bring these claims under the Act, (2) the Indian title of these claimants to the lands used and occupied by them at the time of taking by the United States, (3) the manner and date of the taking of these lands * * *, and (4) the boundaries of the claimant's lands taken by the United States."

4. (a) The six tribal petitioners are located on separate reservations in Nevada. The Walker River Paiute 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, and the Fort McDermitt Paiute Shoshone Tribe of the Fort McDermitt Reservation are separate corporations formed under the Indian Reorganization Act of June 18, 1934, 48 Stat. 984. The Paiute Shoshone Tribes of the Fallon Reservation have a business committee elected by their members.

(b) Each of these six reservation organizations have been recognized by the Secretary of the Interior as having the authority to represent its enrolled members. According to the last Census Report made in 1945 of the Indian population in the United States under the jurisdiction of the Office of Indian Affairs by State, Reservation, Tribe, and Residence, the following number of Indians were enrolled on each of these six reservations: at Walker River 437 Paiutes and 38 other Indians; at Pyramid Lake, 563 Paiute and 9 others; at Yerington Reservation, 78 Paiute; in the Reno-Sparks Colony, 154 Paiute, 42 Washoes and 9 others; at Fallon Reservation, 198 Paiute and 97 Shoshone; and at Fort McDermitt, 301 Paiute and 5 others. The present enrollment figures appear to be approximately the same.

(c) The 1945 Census Report also showed 874 other Paiute Indians located in Nevada in 1945. In addition the report showed 1396 Paiutes located in California; 351 in Oregon and 128 in Idaho. These population figures total 4480 Northern Paiute Indians in the four states in 1945. Walter Vorhees, an individual petitioner, testified that "the actual population of Piute people today (1954) may run close to 6,000."

5. The individual petitioners are Northern Paiute Indians, with the possible exception of Earl Frank who has not been identified. Of the individual petitioners, Ocho Winnemucca lives on the Summit Lake Reservation in Nevada and Frank John, whose present residence is not shown, was born in Warner Valley, Oregon. Each of the other fifteen is a member of one of the six tribal petitioners and resides in Nevada.

6. The area claimed by petitioners takes the form of an inverted triangle with its southern tip in Owens Valley, California, and its broad northern base extending from the Cascade Range in Oregon, about the 45th degree of latitude, eastward to Payette Lake in Idaho. The area, approximately 78,000 square miles or 50 million acres, encompasses more than half of Oregon, half of Nevada, a portion in northeast California and a portion in southwestern Idaho. It is about 300 miles wide at its widest point and extends approximately 600 miles north and south.

The claimed land lies mostly in the physiographic province of the Great Basin which is bounded on the west by the Cascade, the Sierra Nevada and other mountain ranges. It is, and was in aboriginal times, an excessively arid area, classified as "steppe" rather than a true "desert."

The small streams in the area flow into landlocked lakes (often brackish, salt, or evaporation pools or swampy sinks), and there is sparse vegetation and animal life. The northern portion of the area did include tributaries of the Columbia River which tributaries were important for salmon while the Owens Valley area in California held an abundant supply of pine nuts and more plentiful game.

7. That portion of the claimed area north of the 42nd parallel, in the present States of Oregon and Idaho, became part of the United States in 1846. Prior to that time it had been claimed by both the United States and Great Britain. The Treaty of June 15, 1846 (9 Stat. 869) gave the territory south of the 49th parallel to the United States, preserving to the Hudson's Bay Company and other British subjects south of the border whatever possessory rights they might have. On August 14, 1848, the United States established the Territory of Oregon (9 Stat. 323), which included the present States of Oregon, Washington and Idaho.

The area south of the 42nd parallel was acquired by the United States on February 2, 1848, from Mexico under the Treaty of Guadalupe Hidalgo (9 Stat. 922), which treaty ceded to the United States the area of what is now California, Nevada, Utah, Arizona, New Mexico and part of Colorado. California was admitted into the Union on September 9, 1850 (9 Stat. 452) and on that same date the Territory of Utah was established (9 Stat. 453). That Territory included the land which later (1864) became the State of Nevada.

8. (a) One of the earliest reports concerning the inhabitants of the claimed area came in 1805 from the Lewis and Clark expedition which

passed down the Columbia River to the mouth of the Deschutes River, where they gathered reports of numerous Snake Indians 12 days travel to the southeast (an area apparently within the claimed territory in the present state of Oregon).

The first recorded white contact with the Indians within the area claimed by petitioners is found in the Journal of Peter Ogden of the Hudson's Bay Company, who reported encounters in 1825 and 1826 with Snakes at the fork of the Deschutes and Crooked Rivers, all along the John Day River, on the Snake River, in the Harney Basin area, on the Silvies River, on Albert, Warner, and Malheur Lakes (all locations in the present State of Oregon) and on the Humboldt River west to Humboldt Lake (in northwestern Nevada) (Pet. Ex. 832; Def. Ex. 36). John Work in his "Journal Covering Snake Country Expedition of 1830-31" also located Snake Indians in the Oregon portion of the claimed territory (Pet. Ex. 921; Def. Ex. 36). Washington Irving wrote of Captain Bonneville's expedition of 1834. Along the Powder River, three miles above its entrance into the Snake River, Captain Bonneville encountered Indians in considerable numbers whom he identified as "that branch of the great Snake tribe called Shoshokoes or Root Diggers, from their subsisting, in a great measure, on the roots of the earth; though they like to catch fish in great quantities, and hunt, in a small way. They are, in general, very poor; destitute of most of the comforts of life, and extremely indolent; but a mild, inoffensive race. They differ, in many respects, from the other branch of the Snake tribe, the Shoshonies, who have horses, are more roving and adventurous, and hunt the buffalo" (Def.

Ex. 21). John Charles Fremont traveling down the Deschutes River in the 1840's recorded meeting a village of Nez Perce Indians and with them a "few Snake Indians of the root-digging species" (Def. Ex. 14). Nathaniel J. Wyeth in January, 1835, found "Snakes" in the region around the junction of the Deschutes and Crooked Rivers (Def. Ex. 52).

(b) There were also early reports of the Indians found to the south of the Oregon section in western Nevada. Jedediah Smith reported on the presence of Indians described as the "most miserable of the human race having nothing to subsist on except grass seed, grasshoppers, etc." Smith's expedition passed through Nevada to the north of Walker Lake and south of the Humboldt River (Def. Ex. 10). Fremont found Indians encamped about Walker Lake in 1845-46 (Def. Ex. 14), and in 1859 Captain J. H. Simpson reported that "Pi-Utes" from Walkers Lake came into his camp to sell salmon trout (Def. Ex. 40). Fremont encountered "Digger" Indians between the Truckee and Carson Rivers. Zenas Leonard reported the killing of some 80 to 100 Indians along the Humboldt River, identified as "Pai-utes or Root Diggers" (Pet. Ex. 852). Edwin Bryant encountered "Diggers" in 1846 above Humboldt Sink (Def. Ex. 7), and James Abbey in the spring of 1850 was visited in the valley of the Carson River by some twenty "Root Digger Indians" (Def. Ex. 1).

(c) There were fewer early reports on the Indians in the Owens Valley area in California at the extreme southern end of the claimed territory. The Journal of Edward M. Kern tells of explorations of the Owens River and Lake area in December, 1845, and January, 1846, where numerous Indians were encountered. They were described as the "most

degraded class, entirely naked, and with scarcely a sufficiency of food to sustain life" (Def. Ex. 25).

(d) In summary it is clear that there were, in various localities throughout most of the claimed area, Indians who were encountered by the earliest white explorers in the area. These Indian inhabitants were variously described as Snakes, Bannocks, Warrucks, Shoshokoes, Diggers, Digger Snakes, Dogs, or Paiutes (Pai-utes). They were described as a wretched lot, living on roots, ants, locusts, grasshoppers and fish, with scarcely any clothing. They were foot Indians and lived, apparently, in small groups in non-permanent shelters made of grass or brush and, it appears, roamed the land without any permanent villages.

9. The early reports of United States military officers and other government agents in the claimed area refer to Indian inhabitation in various localities throughout the claimed territory. The Superintendent of Indian Affairs, Oregon Territory, in 1851, reported that there was a large tribe of Shoshones or Snakes in the southwestern part of Oregon and extending into the Territory of Utah. In 1854 Maj. G. J. Rains reported a band of about 3,000 Snake Indians in Oregon, which band he said was composed of Bannocks (whom he later reported spoke a different language), the Shoshones and Root Diggers.

In his report of September 11, 1854, the Superintendent of Indian Affairs, Oregon, reported that east of the Klamath and Mo-dochs and extending to the eastern limits of the superintendency were the Shoshones, Snakes or Diggers, of which, he reported, little was known. Also in the report of the Commissioner of Indian Affairs for 1854 was a report of R. R. Thompson, Indian Agent, Middle Oregon, in which he stated:

"I would here observe that there appears to be a marked distinction in the habits, manners, and pursuits of the Indians within this agency. They may properly be divided into three classes, viz: the northeastern, the northwestern and the southern. Those on the northeast are the Cayuses, Nez Perces, Flatheads, and those of the Sho-sho-nies known as Mountain Snakes. Those on the northwest are the John Day, Deschustes, Tyich, Wasco and Dog River or Cascade Indians. Those of the south are the Tlameth, and those Sho-sho-nies known as Diggers.

"The Mountain Snake Indians are a branch of the Root Diggers, (who, in the extreme south, are presumed to be the lowest order of the aboriginal race,) and have a common language. They occupy the country on the north and east of Fort Hall /Fort Hall was in Idaho east of the claimed area/ and to the south to include Bear River valley.

* * *

"The third and last division are along the southern border of this agency district, and include a portion of the Digger and Tlameth tribes. The latter inhabit the country along the eastern base of the Cascade and Sierra Nevada mountains, and south to the Great Klameth lake; the Digger country extending to the north of the Snake river. With the exception of the immediate margin of the streams, their country is a barren waste, affording very little vegetation save artemisia, or wild sage. They subsist upon roots and almost every living thing within their reach, not excepting reptiles, crickets, ants, etc. * * *." (Def. Ex. 59)

In a report of August 1, 1857, Indian Agent A. P. Dennison reported from his headquarters in Dalles, Oregon, on the Columbia River, that Mountain Snakes, Bonnacks, and Diggers were three tribes generally known as the Snake Indians. Of them he said:

"The Sho-sho-nies or Snakes, are divided into many different bands, occupying different sections of country. All speak the same language. Of these Indians but very little is known. They are considered an indolent, thieving people, and those known as Diggers are of the lowest degree of the Indian race, living upon all species of insects, and sometimes eating one another. They occupy

the country from Burnt River on the east [near the Idaho-Oregon border] to the Des Chutes river on the west, east of the Blue mountains, and as far south as California." (Def. Ex. 61)

In 1852, J. H. Holeman, Indian Agent, Utah Territory, wrote of a village of about 350 "Pa-Utah" Indians who resided in Carson Valley, Nevada. In 1853, Agent Holeman found two separate bands of "Pi-Utes" residing on the Carson River (Nevada) and in the mountains east and southeast of the River. In a report made in March 1854 Agent Holeman enumerated the various Indian tribes which he said claimed all the land within the Territory of Utah. They were the Shoshonies, Uwinte Utes, Pi-Utes, Timpany Utes, Parvante Utes, Banacks, Awshaws and Sosokos (Pet. Ex. 47).

Superintendent Forney reported on his travels on October 3, 1858, west of Stone Point on the Humboldt River (Nevada) nearly a hundred miles into the "Pey-Ute" country where he learned from straggling "Pey-Utes" that their chief was further down near the Humboldt and, from later reports, that the chief and all his people were at Pyramid Lake. (Def. Ex. 107)

On December 11, 1857, the citizens of Honey Lake Valley entered into an agreement of peace with Win-ne-ma-cha, a chief of the "Pah-Utah" Indians. On January 5, 1858, three sub-agents of the California Superintendent of Indian Affairs, entered into a treaty of peace with Win-ne-ma-cha, chief of the "Smoke Creek Band of Pi-Utahs." (Smoke Creek crosses the California-Nevada line to the northeast of Honey Lake).

J. Dodge, Indian Agent for Carson Valley, reported on January 4, 1859, that the "Py-Ute" nation numbered some 6,000 souls with bands at Smoke Creek near Honey Lake, Carson Valley, and about the Lake and

sinks of Carson and Walker's Rivers, the Truckee River, Pyramid Lake, and lower Mud Lake (Pet. Ex. 113; Def. Ex. 100). Likewise, the Surveyor General for Utah Territory reported in January 25, 1860, that there were a very considerable number of Piutes on both Walker's and Pyramid lakes. There were also reports in 1860 of "Pah-Utes" in the mountains north of the Humboldt; from the Truckee River over to a point north of the Sink of the Humboldt; and between the Sink of the Humboldt and Lassen's Meadows, some 50 miles to the north.

Agent Warren Wasson in a report dated April 20, 1862, told of his trip to the south to quell disturbances about Mono and Owens Lakes in California. At Mono Lake he found the "Pah-Utes of that section congregated and much excited." Later he reported he passed the boundary between the "Pah-Ute" and Owens River Indian country (Pet. Ex. 180).

10. Petitioners' expert anthropologist, Dr. Omer C. Stewart, described the Northern Paiutes as a group of Indians linguistically, culturally and territorially united with smaller units, called bands, within the tribe. These bands were described as being politically autonomous with small population and simple, informal social organization. There was, reported Dr. Stewart, no political authority binding the whole group together. While Dr. Stewart found evidence of the development of influential leaders who covered large areas within the Northern Paiute territory, he said in his study entitled, "The Northern Paiute Bands," published in 1939 in the Anthropological Records of the University of California (Vol. 2, No. 3), "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." In summary 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 established 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."

11. 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 a half a dozen families who were scattered over a wide area of land obtaining their subsistence from seeds and roots. Larger groupings generally occurred only during the winter and the spring seasons. The Northern Paiutes were not, in aboriginal times, politically united and the so-called bands were merely local groups with names derived from the striking or important food of the locality. Dr. Steward did recognize the Northern Paiutes as speaking a mutually intelligible dialect, possessing a basically similar culture and associating with one another more often than with members of other tribes.

12. It is apparent that within the territory claimed in this case there were, in aboriginal days, certain Indians who, as described by the early explorers, government officials and anthropologists, possessed certain distinguishing similarities. Notably they 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, they gradually became known as Paiutes and finally, distinguishing them from the southern branch of the family, as Northern Paiutes. This term Northern Paiute, 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. Their language is described as belonging to the Utah-Aztec family of Indian languages. One branch of this family was the Ute-Chemehuevi speaking peoples who are now classified as Ute and Southern Paiute. Another branch of the family was the Shoshonean which includes the Mono-Paviotso and the Shoshone-Camanche. However, the Shoshonean Indians speaking Mono-Paviotso also includes the Monos west of the Sierra Nevada Mountains and the Fort Hall Bannocks of Idaho, both of which groups were comprised of very different Indians from those described in the territory claimed in this case. As petitioners state in their proposed findings of fact, the Bannocks may have been a part of the Northern Paiutes, but, by the time of the alleged takings in this matter, they had adopted the culture of the plains Indians and were separate and distinct from the Northern Paiute (petitioners' Proposed Finding of Fact No. 14).

Defendant has no trouble identifying those Indians embraced within the term Northern Paiute and defines them in its Proposed Finding of Fact No. 11 as "those portions of the Mono-Paviotso speaking peoples living east of the Sierra Nevadas, who were at the time of white contact, primitive foot Indians. This includes (1) the Indians of Owens Valley, (2) the eastern Monos, (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 southeast part of Oregon."

Other government officials have used the term Northern Paiute to refer to the Indian occupants of this general area. The "Compilation of Material Relating to the Indians of the United States and the Territory of Alaska, Including Certain Laws and Treaties Affecting Such Indians" prepared by the Subcommittee on Indian Affairs of the Committee on Public Lands, House of Representatives, 81st Congress, 2d Session, published June 13, 1950, Serial No. 30, referred to the Paiute as a "subdivision of the Shoshonean stock [which] is in turn divisible into two groups, the northern or Paviotso and the southern or Paiute proper." (Page 36)

Whatever may have been their names or designations in aboriginal times and regardless of their status as a so-called "tribe," "bands" or "nation," the Indians living in most of the territory claimed and their descendants have become known as Northern Paiutes. The Commission finds 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 Indian Claims Commission Act. Accordingly, this Commission has jurisdiction to hear and determine the claim.

by the petitioning members of the Northern Paiute Nation on behalf of all its members.

Having found petitioner "Northern Paiute Nation" to be an "identifiable group" for jurisdictional purposes we shall now turn to an examination of (1) the aboriginal band(s) or group(s) who are now broadly referred to as Northern Paiute and the extent of 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 making our findings with respect to the occupancy of this large territory the Commission will consider first the southernmost area claimed, namely that about Owens Lake in California and continue north through the Nevada areas with their adjoining sections in California and finally the Oregon and southwestern Idaho portion of the claim.

Owens Valley Area

13. (a) This area of Paiute occupation includes the claimed territory in southern Nevada south of Walker Lake and in California from slightly north of Mono Lake south to Owens Lake.

This area, although semi-arid, held greater natural resources to support its Indian inhabitants than did the claimed lands to the north. The area included the eastern slopes of the Sierra Nevada Mountains and the less rugged western slopes of the White and Inyo Mountains. The Sierra-Nevadas were rugged mountains of not under 10,000 feet with peaks surpassing 14,000 feet. The mountains gave rise to many mountain streams which upon reaching the valley joined the Owens River which flowed into saline Owens Lake. The creeks supported wild vegetable foods and fish.

The area also contained rabbits, antelope, deer and mountain sheep. Pine nut plots or groves covered the White and Inyo Mountains between 6000 and 9000 feet.

(b) The record contains meager reports of the early explorers in this area. This land was not on the route of immigrant trains and did not attract settlement until its mineral resources became of interest about 1855. In December, 1845, Edward Kern reported on his explorations down Owens River where he encountered numerous Indians (Def. Ex. 25). A. W. von Schmidt estimated the Indian population in Owens Valley in 1855 at 1,000. Major H. C. Egbert reported in 1870 that there were Indians at Round Valley, Bishop Creek, Big Pine, Independence, George's Creek, Lone Pine and Cerro Gordo, all localities lying along the Owens River (Pet. Ex. 824-A). Capt. J. M. Davidson reported on an expedition into this area in July and August 1859. He described the Indians as Wohopies, living upon the shores of Owens Lake and in the valley of Owens River and upon its numerous tributaries. He stated that the Indians had never been at war with any other tribe or people which, Capt. Davidson said, "would seem to be established by their form of government, for they have no principal Chief or Leader, which warfare would make necessary, but are ruled by the heads of families--a patriarchal mode of government." He also reported that these Indians were living in an almost isolated condition, having but little intercourse with other tribes (Pet. Ex. 824-A).

In reporting on Indian uprisings in the Owens Valley area in 1862, Agent Warren Vasson wrote on April 20, 1862, a report of his visit to the area. He found the "Pah-Utes" of Mono Lake excited over the

disturbance at Owens River and, Agent Wasson reported, they sent one of their tribe who spoke the language of the Owens River Indians. Then leaving that area they travelled south, about noon passing "the boundary between the Pah Ute and Owens River Indian country." Upon his return to "Pah Ute" country, he went to the Walker River Reservation where the "Indians were all glad to see [him] return, said they had been afraid that [he] and the interpreter would be killed by the Owens river Diggers" (Pet. Ex. 180)

In a letter of May 26, 1862, Captain Edwin A. Rowe wrote of the Indian uprisings about Owens River. He met with Indians at Mono Lake including some of those who had engaged in the disturbances at Owens Lake. Those Indians "pretended to have no connection with the Owen River Indians but nevertheless were anxious to convey to me the idea that the 'Owens Rivers' from this time forward desired peace." After leaving Mono Lake, Captain Rowe proceeded to Adobe Valley, some 32 miles east and slightly south of Mono Lake, where the "Indian boundary line runs dividing the 'Pi-Utes' from the 'Owen Rivers'." (Pet. Ex. 184)

Stephen Powers, in October, 1875, visited the Indians in Owens River Valley. He stated that the Paiutes there were locally called Monos, and he described them as "members of the Paiute nation distinctly, though there never was any solidarity or community of feeling in this nation, and the different sections or tribes were sometimes at bitter feud with each other." (Pet. Ex. 888)

(c) One of defendant's expert anthropologists, Dr. Julian H. Steward, testified concerning this area and his previously published

works were introduced into evidence. Dr. Steward was one of the eminent authorities concerning this area having done field research in the area in 1927, 1928 and 1931. On the basis of his studies of the area Dr. Steward reported that the Northern Paiutes of Owens Valley were subdivided into "true composite land-owning bands." He found that each of these "bands" carried on a number of cooperative activities and possessed chiefs. They had not engaged in warfare to any extent except with the white man when formerly independent bands united. Dr. Steward described the Deep Springs and Fish Lake Valleys as "western independent Northern Paiute Villages." Both valleys he described as occupied by small groups of Northern Paiutes who intermarried with each other and Owens Valley Paiutes and who visited those areas for dances and rabbit drives. He found the chieftainship of Deep Springs and Fish Lake Valleys interlocking. There was scant ethnological evidence concerning the Mono Lake area, Dr. Steward spending but a few days in the area. He did however locate a settlement on the southwest shore of Mono Lake at the site of Bridgeport Tom's ranch.

Dr. Steward in his "Ethnography of the Owens Valley Paiute" published in 1933, (Pet. Ex. 901) described the eastern boundary of the line separating the Paiute from the Shoshone as running south from Pilot Mountains, Nevada, through Columbus salt marsh, through Fish Lake Valley (which he says was occupied by both tribes) through Eureka Valley (which he says was uninhabited and seldom visited by either), through the Inyo Mountains, and around the south shore of Owens Lake. However, in Defendant's Exhibit 136, prepared for this case, he said the map in his

1933 report was supplemented and slightly modified in the light of subsequent research and was published in his 1938 report (Pet. Ex. 941-A, Figure 7. facing page 58). On that map he placed the Paiute-Shoshone boundary further to the east of Fish Lake Valley. Dr. Steward wrote a biography on "Panatubiji, an Owens Valley Paiute" (Pet. Ex. 905) an Indian who lived from about 1820 until 1911. It is interesting to note that this aboriginal Paiute occupant of the Owens Valley area apparently felt free to travel about and use the resources of the entire area including Fish Spring Community (where he was born and later became chief), Owens Lake (to hunt deer), Big Pine, Fort Independence, and Deep Springs Lake (to gather pine nuts). He did not go up into the territory of the Paiutes in western Nevada.

The petitioners' expert anthropologist, Dr. Omer C. Stewart, made no detailed study of the Owens Valley and Mono Lake region which had been studied by Dr. Steward and, at the hearing, testified that he accepted all of Dr. Steward's findings concerning that area.

Another eminent anthropologist, Dr. Willard Z. Park, who also testified for the petitioners, studied the Paviotso or Northern Paiute of western Nevada. In his work entitled, "Tribal Distribution in the Great Basin," Dr. Park described the Owens Valley Paiutes as close linguistic and cultural relatives of the western Nevada Paiutes although the latter regarded themselves as an entirely distinct group (Pet. Ex. 884; Def. Ex. 37).

Western Nevada Area

14. (a) This area of alleged Paiute occupation extends from just north of Mono Lake to northern Nevada and includes a small area in California along the western Nevada border.

This portion of the claimed territory has several major internal drainage areas; the Humboldt River and Lake, Truckee River and Pyramid Lake, Carson Lake, and Walker River and Lake. It contained a relatively dense Indian population in aboriginal times and includes the area from which most of the petitioners' ancestors originated.

Along the southern edge of this area there was high terrain separating the Mono Lake region while deserts lay between Walker Lake and Owens Valley. There were practically no geographical boundaries to the east where the Shoshone Indians were located. On the north rather extensive deserts intervened between Pyramid Lake and the Summit Lake area. On the west the Sierra Nevada Mountains rose sharply to divide the Northern Paiute from their neighbors to the west, with the exception of a small area on the eastern slopes of the mountains which was occupied by the Washoe Indians.

(b) In the south portion of the area we find those Paiutes living about Walker Lake and Walker River. This area petitioners' expert anthropologist, Dr. Stewart, assigned to three bands: Agaidokado, to the north; Pakwidokado on the south end of Walker Lake; and Tovusidokado, along the Walker River.

There were early reports of Indians about Walker Lake and Walker River and of the wonderful salmon-trout fish, weighing up to twenty pounds, which could be caught there. The Fremont expedition of 1845-46 found Indians encamped about the lake. In 1859 Captain J. H. Simpson, reported that "Pi-Utes" from Walker's Lake came into his camp to sell or trade salmon-trout (Def. Ex. 40). Major Dodge also reported that the Walker

River and Lake area was one of the principal areas of Paiute occupation. In his report of January 4, 1859, Major Dodge described the "Py-Ute" bands of O-derk-e-o (Tall Man), Pe-tod-se-ka (White Spot), and To-sarke (Grey Head) as the three largest bands which he had seen, numbering 1625, and, Dodge reported, they stayed in the country around the Lake and sinks of Carson and Walker's Rivers. (Pet. Ex. 113; Def. Ex. 100)

On January 25, 1860, the Surveyor General, Utah Territory, S. C. Stambaugh, wrote, "A very considerable number of Indians have settlements on both Walker's and Pyramid lakes. They are of the Tribe called Piutes or Pahutes." (Pet. Ex. 127)

Agent Franklin Campbell in 1866 wrote that one of the five distinct bands, into which he considered the Pi-Ute tribe divided, was made up of the Walker River or Ocki Pi-Utes, numbering 1500 and located in the vicinity of Walker River and Lake and Carson River and upper Lake. He reported the head chief to be Oderie with Joaquin and E-sah-dawh as sub-chiefs. (Pet. Ex. 281; Def. Ex. 66)

Stephen Powers, appointed by the Secretary of the Interior as a special commissioner to collect Indian materials for the Centennial Exhibition of 1876, reported on the Indians on the Walker River Reservation as a branch of the Paiutes called "Ahgyweit" or "Ahgy-tecittah" (trout eaters). As mentioned in Finding 13(b), Powers, while including these Walker River Indians with the Owens River Valley Indians as members of the "Piute" nation, found them to be separated from their neighboring Paiutes to the south and sometimes at bitter feud with each other (Pet. Ex. 888).

Llewellyn L. Loud recorded the Northern Paiute bands as listed by Gilbert Natches, a Northern Paiute informant. The list includes the Agai-tekade "trout-eaters" of Walker Lake (Def. Ex. 30). Isabel T. Kelly also reported that the A'ga itikadu (Fish-eaters) were a Northern Paiute band living about Summit and Walker lakes, Nevada (Def. Ex. 22, Pet. Ex. 847). Willard Z. Park, who found the Paviotso or Northern Paiute of western Nevada grouped in "five main, loosely organized, named, and localized bands," listed the Agai tuked as one of the five groups and stated that they usually wintered on the banks of Walker River close to the point at which it empties into Walker Lake (Pet. Ex. 884; Def. Ex. 37).

Dr. Hodge's, "Handbook of American Indians," lists the Agaihtikara (fish eaters) as a division of the Paviotso living in 1866 in the vicinity of Walker River and Lake and Carson River and Lake, Nevada (Vol. 1, pp. 20, 21).

Defendant's expert, Dr. Steward, identified the Paiutes about Walker Lake as the agai dika, fish eaters. He placed Paiutes to the east in Soda Springs Valley (calling them ozav dika). He described the line dividing the Paiutes from the eastern Shoshone as running from Pilot Mountains, Nevada, south through Columbus salt marsh (Pet. Ex. 901).

(c) To the west and north of Walker Lake is Carson River which rises in the Sierra Nevada mountains of California and flows north and east through Nevada to Carson Lake and Sink. In Zenas Leonard's account of the Walker expedition in 1833 he told of meeting Indians every day, and some days hundreds of them, in the area between Carson Lake and the Sierra Nevadas (Pet. Ex. 852; Def. Ex. 28). Col. Fremont in January,

1844, encountered Digger Indians between the Truckee and Carson Rivers (Def. Ex. 14). James Abbey in the spring of 1850 passed through the valley of the Carson River where his party was visited by some twenty "Root Digger Indians" (Def. Ex. 1). In 1856 Indian Agent Garland Hurt found eighty "Py-utes" at Ragtown on the Carson River and on the next three successive days, as he passed up the Carson River, he encountered other Paiutes totaling 150 (Def. Ex. 60; Pet. Ex. 74). Capt. Simpson reported that his camp in June, 1859, at the head of the outlet from Carson Lake into the sink of Carson, was near some two dozen Paiutes who were drying fish (Def. Ex. 40).

Major Dodge in his January 4, 1859, report located San-Joaquin's band of Py-Utes in the Carson Valley at the forks of the Carson River; Had-Sa-poke's band at Gold Canyon on Carson River; and Wa-he's band at the big bend of the Carson River. He placed O-derk-e-o, Pe-tod-se-ha and To-sarke's bands in the country around the Lake and sinks of Carson as well as Walker River (Pet. Ex. 113; Def. Ex. 100). Agent Wasson in 1862 identified the summit of the Desatoya Mountains to be the boundary between the Shoshone and the Paiute (Def. Ex. 64). Agent Campbell, in 1866, placed the Ocki Pi-Utes in the vicinity of Walker River and Lake and Carson River and upper lake while, he reported, the Toy Pi-Utes occupied territory at lower Carson Lake (Pet. Ex. 281; Def. Ex. 66).

Dr. Stewart placed the Toe do kado band in the Carson Lake and Sink and Carson River area. Kelly stated that the Toitikad (Cat-tail Eaters) lived at Fallon and Yerington. Loud's informant placed Toitekade at Stillwater Slough, north of Carson Lake. Park said that the Toituked

formerly lived along the Carson River but now are to be found at Fallon and Stillwater, Nevada.

(d) North of Carson Sink is Humboldt Lake which is fed by the Humboldt River. The River extends north and eastward into the Shoshone territory. Peter Skene Ogden observed Indian inhabitants along the Humboldt River in 1828 and in the spring of 1829 about Humboldt Lake. Zenas Leonard in reporting on the Walker expedition of 1833-34 described the killing of 32 of some 80 to 100 Indians along the Humboldt River. He described the Indians (footnoted in W. F. Wagner's edition of Leonard's Narrative as Pai-utes or Root Diggers) and their subsistence which consisted of grass seed, frogs, fish and dried flies from Humboldt Lake (Pet. Ex. 852). Edwin Bryant encountered Digger Indians in 1846 at a point identified by Dr. Steward as about 25 miles above Humboldt Sink (Def. Ex. 7). Lt. E. G. Beckwith in his report of 1854 told of Digger Indians who called themselves "Pah-Utahs" in the area of the Sonoma Mountain Range. In his report of September, 1856, to Governor Young, Indian Agent Garland Hurt told of the throngs of Shoshone Indians along the Humboldt River east of Stone-point. Agent Hurt had made a treaty with these Shoshone on August 7, 1855, at which time they had been described as occupying the northern and middle portion of the valley of the Humboldt River. Agent Hurt then recounted his meeting some 200 Py-Utes at the meadows and about the sink of the Humboldt, and, he was told, there were about 400 members of the same tribe camped in the mountains south of the sink (Pet. Ex. 74; Def. Ex. 60). On November 5, 1858, J. Forney, Superintendent of Indian Affairs, Utah Territory, wrote

of his visits with the Indians of the Humboldt. He reported on the presence of Shoshone Indians east of Stoney Point. He continued west of Stoney Point into Pey-Ute country where he learned from "straggling Pey-Utes" along the road, that their chief was further down and near the Humboldt. The dividing line between the Paiutes and Shoshone Indians of the Humboldt Valley was placed by Mr. Forney at "a range of hills about 30 miles west of Story Point . . . and I cannot learn that either encroach upon the others land." (Def. Ex. 107)

Dr. Stewart placed the Kupadokado (ground Squirrel eaters) in the area about Humboldt Lake and Sink. He placed the Shoshone-Paiute boundary across the summit of the Desatoya Mountain north along the summit of the Sonoma Mountains (Pet. Ex. 908). Loud's Northern Paiute informant was born north of Humboldt Lake at Toy. His informant located the Northern Paiute band, Kep a tekade or squirrel eaters at Granite Spring Valley west of Lovelock, Nevada. Loud also listed the sawa-kate band at Winnemucca and the idza'a-teaga-tekade (Coyote-canyon-eaters) near Unionville (Pet. Ex. 854; Def. Ex. 30).

The "Handbook of American Indians" lists the Sawagativa as a Paviotso tribe formerly about Winnemucca, Nevada (Vol. 2, p. 481); the Itsaatiaga, as a Paviotso band formerly living about Unionville, Nevada (Vol. 1, p. 626); and the Laidukatuwiwait as a Paviotso band formerly living about the sink of the Humboldt (Vol. 1, p. 753).

Dr. Stewart found the Humboldt Valley occupied by Shoshone westward approximately to Iron Point, between Battle Mountain and Winnemucca,

where there was an intermixture of Shoshone and Northern Paiute. He listed the country west of the Sonoma and Hot Springs Mountains as occupied by Northern Paiute (Pet. Ex. 941-A; Def. Ex. 42). One of Park's five Northern Paiute bands was the Ha-pudteked, whose members wintered along the banks of the Humboldt River from the Lake to the present site of Winnemucca (Def. Ex. 37).

(e) 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. In January, 1843, Fremont met Indians at Pyramid Lake who spoke "a dialect of the Snake language." At the mouth of the Truckee River, which empties into Pyramid Lake, Fremont encountered parties of Indians, and they crowded into his camp (Def. Ex. 14). Bryant met several Indians on the Truckee River in 1846 (Def. Ex. 7) and Hurt, in 1856 met several parties of Py-utes in the Truckee Valley (Def. Ex. 60). In 1857 Captain William F. Drannan reported that five Indians attacked his party in the area where Wadsworth, Nevada, is now located (Def. Ex. 12). In 1859 Dodge listed the following Pah-utes in this area:

"To-no-yiet (Wowan Helper) band stays below the Big Meadows, Truckee river, and numbers . . . 280

To-Repe's (Lean Man) band stays near the lower crossing of Truckee river, and numbers . . . 360

Ge-nega's (Dancer) band stays at the mouth of Truckee river and numbers 290

Wat-se-que-order's (Four Crows) band stays along the shores of Pyramid lake, and numbers. . . 320

Wun-a-muca's (The Second) band stays around the shores of Lower Mud lake, and numbers . . . 300."

To the west of the Paiutes, Major Dodge located the Wa-sho nation whose country, he reported, extended along the base of the Sierra Nevada Mountains from Honey Lake on the north to the west fork of Walker's River on the south (Pet. Ex. 113; Def. Ex. 100). In 1866, Agent Campbell located the Coo-er-ee band, numbering some 700, in the vicinity of Pyramid Lake (Pet. Ex. 281; Def. Ex. 66).

Dr. Omer Stewart placed the Kuyuidokado (black sucker eaters) band of Northern Paiutes in this area (Pet. Ex. 908). Park included as one of his five main bands of Northern Paiute of western Nevada the Kuyuitukede centered around Pyramid Lake, particularly near the mouth of the Truckee River (Def. Ex. 37). Loud listed the woitsi-tekade band of Northern Paiute living on the Truckee River near Wadsworth and kuyui-tekade band of Pyramid Lake (Def. Ex. 30). Kelly also listed a Northern Paiute band, the Kuyuitikadu living at Pyramid Lake and Nixon, Nevada (Pet. Ex. 847; Def. Ex. 22). The "Handbook of American Indians" lists the Kuyuidika (sucker eaters) as a Paviotso band formerly living near the site of Wadsworth on the Truckee River (Vol. 1, page 743).

(f) To the west of Pyramid Lake is Winnemucca Valley, Nevada, while to the north and west is Honey Lake and Smoke Creek, California. Park reported that the area was occupied by Northern Paiutes known as kamu tuked (rabbit eaters) one of his smaller named groups (Pet. Ex. 884). Stewart placed the Tasiget tuviwarai (between dwellers) in Winnemucca Valley (Pet. Ex. 908). Stewart did not really question the presence of Paiutes in this area and in his oral testimony stated he had no particular dispute with the western boundary of area 17 (the Tasiget tuviwarai) as fixed by Stewart (Tr. 606).

The early reports of Fremont (1843) and Beckwith (1854) do not help in identifying the Indian inhabitants of the Honey Lake and Smoke Creek areas.

Dodge was the first to make specific reference to the area when he wrote that "Wun-a-mucca (The Giver) is the head chief of the Paiute nation. He generally stays on Smoke Creek, near Honey Lake; his family and small band that stay with him number 155." (Def. Ex. 100) On December 11, 1857, "Win ne ma cha", on behalf of the Paiute Indians, entered into a treaty of peace with the citizens of Honey Lake Valley (located to the east of Honey Lake between that Lake and Pyramid Lake) (Pet. Ex. 89). On January 5, 1858, "Winnemacha" also signed a treaty with sub agents of the Superintendent of Indian Affairs for California agreeing to remain at peace with the white people at Honey Lake Valley and vicinity (Pet. Ex. 94). In reporting on this treaty the three sub agents wrote on January 15, 1858, that they had been unable to treat with the Pitt River Indians as they only made their appearance at night. They also referred to previous difficulties with the Wa-sho Tribe (Pet. Ex. 95). First Lieutenant M. T. Carr described Honey Lake Valley in a letter of July 2, 1858, reporting that the white settlers had suffered depredations committed by the Pitt Rivers, the Shushonies and the Utahs, the Paiutes being the only peaceable Indians about the area. He wrote that the Paiutes then lived on Smoke Creek and 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 too (Pet. Ex. 101).

In a letter, dated September 27, 1860, F. W. Lander, Superintendent, Wagon Road Expedition, Sacramento, California, wrote of a meeting with "Pah-Ute" chiefs at which Winnemucca complained that the whites had robbed the tribe of their lands in Honey Lake, Long, Steamboat, and other valleys (Pet. Ex. 150). In a statement of Captain Weatherlow he told of his settlement in Honey Lake Valley in June, 1856, when "the Pah-Ute tribe of Indians occupied the Valley in common with the whites, and were upon the most friendly terms with them." Captain Weatherlow was one of two commissioners appointed by the Governor of the Territory to visit old Winnemucca to demand the suspected Paiute murderers of a white settler. At that time Winnemucca refused to give the order for the surrender and demanded \$16,000 for Honey Lake Valley (Pet. Ex. 153).

Dr. Steward identified the Kamodokado as the Northern Paiute band living in the Smoke Creek area and the Wadadokado band living about Honey Lake (Pet. Ex. 908). Kelly's informants identified the Wadatikadu band about Susanville, California, which, however, is west of the claimed area (Pet. Ex. 947; Def. Ex. 22). Park placed, as one of his five main Northern Paiute of western Nevada bands, the Wadatuked whose members claimed Long Valley and the shores of Honey Lake in California as their winter home (Pet. Ex. 884). However, Long Valley, south of Honey Lake, is not claimed by the petitioners in this case.

The commission finds 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

10 miles of Susanville. The line in this area runs substantially the same as that on petitioners' map (Exhibit 742).

15. To the north and east of Smoke Creek and as far east as the vicinity of Winnemucca, Nevada, and east of Pyramid Lake to within a few miles of the Humboldt River, there was an area which, although claimed by petitioners, has not been shown to have been exclusively used and occupied in aboriginal times by the Northern Paiute. This area includes the Black Rock Desert and similar barren arid areas. It was remote from established routes of travel and is today sparsely populated.

(a) Dr. Stewart, petitioners' expert anthropologist, has located the Kamodokado (jack rabbit eaters) band in an area of 3900 square miles. However, the only specific locations mentioned in his report on this band was Gerlach, Nevada, and Smoke Creek. Smoke Creek, it appears, was to the west in the area reported by Dr. Stewart to be occupied by the Wadadokado and Gerlach was in the south central part of the area above Mud Lake. Dr. Stewart stated himself that his Kamo band was allotted that territory which others did not claim and he reported that most of the area was in two deserts, Smoke Creek and Granite. The Commission finds that the Kamodokado area (number 15 on petitioners' exhibit 942), north of Gerlach and the Mud Lake area, was not exclusively used and occupied in aboriginal times by Northern Paiute Indians.

(b) To the southeast of the so-called Kamodokado Dr. Stewart assigned the Kupadokado band an area of some 3600 square miles. The area of Paviotso or Northern Paiute occupation within this territory is

set forth in our Finding 14(d) dealing with the Humboldt Lake and River area. Dr. Stewart did not offer any evidence of specific areas of Paiute occupation in this Kupadokado area to the west of the Humboldt River. The lower Humboldt River and the marshes of Humboldt Sink were the centers of habitation, as stated by Dr. Stewart. There is not sufficient evidence to believe that the barren area west of Humboldt River and extending to the Pyramid Lake area was exclusively used and occupied by the Northern Paiutes in aboriginal days.

(c) To the north of petitioners' Kupadokado area the extensive Black Rock Desert extends northeast from Mud Lake for some seventy miles. Dr. Stewart recognized that the desert was uninhabited when 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 (Tr. page 315). Although Dr. Stewart has assigned the Sawawaktodo band a large area extending some sixty miles west of Winnemucca, Nevada, the evidence refers to the Sawawaktodo as the band about Winnemucca, not mentioning any other Northern Paiute location in the 3000 square miles assigned to this band. The "Handbook of American Indians" identifies the Sawagativa as a Paviotso tribe formerly about Winnemucca, Nevada (Vol. 2, page 481) while Llewellyn L. Loud listed the Sawa-kate band of Winnemucca Mountain (Def. Ex. 30). The Commission finds that, with the exception of the immediate area around Winnemucca, petitioners' Sawawaktodo band area (numbered 9 on petitioners' exhibit 942) was not exclusively used and occupied by Northern Paiutes in aboriginal days.

(d) To the northeast of his Sawawaktodo area, Dr. Stewart assigned some 2000 square miles to the Yamosopo band of Paradise Valley, Nevada. Dr. Stewart reported that, except for two references by Powers and Powell, no published information was found concerning the existence of this group. His informant Pete Snap, from McDermitt which was outside this so-called Yamosopo area, reported the Yamosopo band to be mixed with Shoshone (Pet. Ex. 908).

The "Handbook of American Indians" lists the Yammostuwiwagaiya as a Mono band formerly living in Paradise Valley, Nevada (Vol. 2, p. 987), citing Powell and Powers. However, Beatrice Blyth in her article in "Tribal Distributions in Eastern Oregon and Adjacent Regions" (Pet. Ex. 890) wrote on page 404, "in the vicinity of Paradise Valley and the railroad to Winnemucca, however, there was a group known as the Paradise Indians, who were half Paiute and half Shoshoni." Defendant's expert, Dr. Steward, also considered that the Indians of Paradise Valley were probably mixed Shoshone and Paiute (Def. Ex. 136).

The Commission finds that the Paradise Valley area was not exclusively used and occupied by Northern Paiute Indians.

Oregon Area

16. In the northern portion of the claimed territory was the area in northwest Nevada along the Oregon border, in south central and eastern Oregon, and in southwest Idaho. The western limit of the claimed area in Oregon extends northwest from the headwaters of the Sprague River to the crest of the Cascade Mountains and from there north along the Cascades to about the 45th degree of latitude. The north boundary extends

east along the 45th degree of latitude to a point some 40 miles east of the Snake River, which River at that point forms the boundary between the States of Oregon and Idaho.

The eastern limits of the area, as originally claimed, extended for some distance into Idaho, as shown on the map, Petitioners' Exhibit 942. However, a large portion of the area was cross-hatched to indicate the territory where Dr. Stewart, petitioners' expert anthropologist, found a dispute over the land which he could not resolve. Petitioners conceded that there was conflicting evidence concerning the Indian occupancy of the cross-hatched area and in their proposed findings of fact stated:

"The line marking the north and east boundary of Northern Paiute land east of the Snake River, if drawn to include within Northern Paiute land only the areas used and occupied by the Northern Paiute bands to the exclusion of other Shoshonean speaking peoples, is as follows: Eastward from the Snake River along the 45th degree of latitude to the foothills of the mountains to the east of Weiser River Valley, thence southward along these foothills in the direction of the present site of Emmett, thence following the same foothills in a more southeasterly direction to pass just north and east of the present site of Boise, from which place the line runs south including the area in the vicinity of Castle Mountain and meeting the Snake River opposite its junction with Castle Creek."

This definition of area excludes the disputed cross-hatched area in Idaho.

(a) In the northwestern portion of this area petitioners place the Hunipitoka or Walpapi band of Northern Paiutes. It was with this band that Superintendent Huntington negotiated a treaty of cession at Sprague River Valley on August 12, 1865. That treaty, signed by eleven chiefs and headmen of the Woll-pah-pe tribe of Snake Indians, provided for a

cession to the United States of all the tribe's right, title, and interest to the country occupied by them, as described in Article II of the treaty, Articles VI through VIII setting forth the consideration agreed to be expended by the United States for the benefit of the Woll-pah-pe tribe of Snake Indians. The treaty was duly ratified on July 5, 1866, and proclaimed by the President on July 10, 1866 (14 Stat. 683). The Walpapi Indians thereafter, pursuant to an agreement in the Treaty, removed to the Klamath Indian Reservation, where, it appears, a number of their descendants presently reside. While no evidence has been introduced concerning the payments made to the Walpapis under the terms of the Treaty, an examination of various appropriation acts reveals that the five \$2,000.00 annual installments provided for by the seventh article of the Treaty were appropriated under Acts of Congress: 14 Stat. 492, 511 (March 2, 1867); 15 Stat. 198, 218-219 (July 27, 1868); 16 Stat. 13, 33 (April 10, 1869); 16 Stat. 335, 356 (July 15, 1870) and 16 Stat. 544, 565 (March 3, 1871). The ten \$1200.00 installments were appropriated by Congress under: 17 Stat. 165, 183 (May 29, 1872); 17 Stat. 437, 456 (Feb. 14, 1873); 18 Stat. 146, 168 (June 22, 1874); 18 Stat. 420, 442 (March 3, 1875); 19 Stat. 176, 193 (August 15, 1876); 19 Stat. 271, 297 (March 3, 1877); 20 Stat. 63, 81 (May 27, 1878); 20 Stat. 295, 310 (Feb. 17, 1879); 21 Stat. 114, 127 (May 11, 1880); and 21 Stat. 485, 497 (March 3, 1881).

The Commission finds that the Walpapi Indians constituted an aboriginal land using entity, existing as such separate and apart from the Northern Paiute or Snake Indians with whom they were and have traditionally associated.

The petitioners in the instant case do not include any individual who purports to be descended from the aboriginal Walpapi band nor have they introduced the testimony of any living descendant of the band. No individual Walpapi or Walpapi tribal organization has entered into a contract retaining the attorneys in this matter or in any way authorized the institution or maintenance of any action before this Commission on their behalf. The Walpapi band and the territory which it allegedly held in aboriginal times are included in this action, it appears, only to the extent that this band might be found by the Commission to have been a constituent part of an aboriginal, land using Northern Paiute entity.

The pleadings indicate and the attorneys for petitioners have stated that the claims before the Commission in this Docket No. 87 are rested upon a non-treaty taking. Any action for an alleged taking of the Walpapi lands should, it seems be rested upon the revision of their treaty of cession on the basis that the amount paid by the United States constituted an unconscionable consideration for the cession of their lands. Such an action would be based upon facts and law distinct and separate from those raised and under consideration in this case. Such an action would come within the provisions of Clause (3) of Section 2 of the Act. The Commission considers the present action to be one brought under Clauses (4) and possibly (5) of Section 2 of the Act.

Having found the Walpapi band to have been a separate and distinct aboriginal land using entity whose claim, if any, against the United States for taking of its lands has not been pleaded in this case, no consideration can be given to this area as claimed by petitioners.

(b) To the south of the Walpapi area is the territory of the Yahuskin band of Northern Paiute or Snake Indians. On October 14, 1864, Superintendent Huntington at Klamath Lake, Oregon, negotiated a treaty with the Klamath and Modoc and the Yahooskin band of Snake Indians for a cession of all their right, title and claim to all the country claimed by them, as set forth in Article I. The treaty was duly ratified on July 2, 1866, and proclaimed by the President on February 17, 1870 (16 Stat. 707). The Yahooskin Band moved on to 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 a treaty of cession of their aboriginally held land and the payment of an unconscionable consideration therefor. For the same reasons as applicable to the Walpapi band this Commission could not consider in this Docket No. 87 a claim by the Yahooskin band for lands ceded by them and for which they were compensated.

Further, this Commission has 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 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.

Accordingly, no consideration can be given in this case to the so-called Yahooskin area of the claimed territory.

(c) To the east of the Yahooskin lands there was a group of Snake 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 Indian Claims Commission 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, no interest in Docket No. 87 action and their aboriginally owned territory having been determined in Docket No. 17, no consideration need now be given to that area.

(d) To the southeast of the Yahooskin lands was an area occupied by Snake or Paiute Indians. In June, 1827, Peter Skene Ogden traveling east from Albert Lake came to some muddy lakes where he found huts supposedly belonging to "Snakes" (Def. Ex. 36). In the area believed to be about Long Valley or Surprise Valley (just south of the present Oregon and Nevada-California border, to the east of the Warner Range) Captain Fremont, in 1843, met Indians who belonged to the "Snake nation" (Def. Ex. 14). In 1854 Capt. Jesse Walker led a company of fighters against the Indians. He reported that:

" . . . learning that the Pi-ute Indians were very hostile, and were stealing stock from immigrants in the vicinity of the Sierra Nevada mountains, on the 1st of October I moved my headquarters to Goose Lake, and on the 3d of October took with me 16 men and proceeded along the immigrant trail to the east side of the Sierra Nevada, and there discovered a large Indian trail, running in a northeasterly direction. I followed this trail about eight miles, when I came in sight of a large band of Indians encamped at the head of what I shall now call Hot Spring valley, which lies on the east side of these mountains . . . We pursued a large band of them north about forty miles, and on the second day came in sight of them, strongly fortified at the south end of Pi-ute Valley. . . . We named it Warner's Rock in honor of the late gallant Captain Warner, of the United States army, who was massacred, with three of his company, at or near this rock, by the Pi-ute Indians in 1849 . . .

"The next day we travelled up Pi-ute Warner valley 20 miles, and discovered several large ranches that had just been abandoned by the Indians, leaving behind them large quantities of fish and the finest grass seed, which they use for food.

* * *

"The Pi-utes in the vicinity of the Sierra Nevada mountains are hostile, brave, and very numerous . . . They are connected with the Snake Indians, and they own one of the finest countries in Oregon." (Def. Ex. 99)

In the official report of the Owyhee reconnaissance made by Lt. Col. C. S. Drew in the summer of 1864, it was reported:

"Among the Snakes, Modoc, upper Pitt River, Klamath, and Piute Indians, Goose Lake Valley, or that portion of it which lies to the northward of the Lake, is neutral ground; neither tribe claiming it especially, but each using it at will for hunting and fishing, and gathering the wild rye for winter food." (Def. Ex. 124)

Petitioners' expert, Dr. Stewart, placed the Kidutokado (woodchuck eaters) band in this area. A detailed report on the Northern Paiute in this territory was made by Isabel T. Kelly in her "Ethnography of the Surprise Valley Paiute," which work was based upon her field work among the Indians in the area in 1930. She identified this band of Northern Paiute as the Gidutikadu or Groundhog-eaters. Her description of the land occupied by this band was substantially the same as that described by Dr. Stewart. Dr. Kelly's informant did not know the name of the band immediately south of the Gidutikad but did know the name of their headman, and her informants were generally familiar with their Oregon neighbors, listing but three bands, the Agaitikadu, Kuyuitikadu, and Toitikadu in the more southerly Nevada areas. Dr. Kelly identified established wintering grounds throughout the area corresponding to area 7 on petitioners' map, Exhibit 942 (Pet. Ex. 847).

Beatrice Blyth Whiting identified the Northern Paiute in the Surprise Valley area as Gididika (Ground Hog Eaters). She described the various bands, who were named for their staple food, as possessing

no real political organization, the names merely designating people who tended to visit the same food gathering locales year after year. Her map placed this band in a smaller area around Warner Lake and to the south across the Nevada border (Pet. Ex. 916).

(e) 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 days.

Dr. Kelly's informants told her of an Agaitikadu (fish eater) band at Summit Lake, Nevada, and the Kwinaduva, Kwinodub (Smoke Indians) in the McDermitt region of Nevada on the Oregon border with the country north of McDermitt uninhabited (Pet. Ex. 847).

Dr. Whiting reported virtually the entire area uninhabited with the exception of the Guinidiba Paiutes about McDermitt (Pet. Ex. 916).

Dr. Hodge, in his "Handbook of American Indians," lists the Agaivamuna as a Paviotso division formerly living at Summit Lake, Nevada (Vol. 1, p. 21) and the Koyuhow as a Paviotso band formerly living about McDermitt, Nevada (Vol. 1, p. 729).

In 1870, Agent Douglas, in his annual report to the Commissioner of Indian Affairs, reported on his meeting at Fort McDermitt with the Quin's River (Nevada) and Steen's Mountain (Oregon) Indians. In his report of his conversations with Pi-Ute Indians at Fort McDermitt, Agent Douglas told of his efforts to persuade the Indians to move down to the Truckee River or Pyramid Lake Reservation, promising them continued government aid and assistance if they would so move and guaranteeing them nothing if they remained about Fort McDermitt. Indian Charlie (Mah-wert, stated

his people wanted to stay at McDermitt. Irs-a-ah-mah was very emphatic in stating that the Quinn River Country was his people's hunting ground and that he would stay and die there. He said if the military post there were broken up he would live on what he did before the whites came to the area. This Paiute Indian replying to Agent Douglas stated, "I was glad when you were coming up here, but I am sorry to hear you ask us Indians to go away from our country to the reservation." (Pet. Ex. 390)

(f) 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. Defendant's Dr. Steward stated that in native times it was sparsely populated by unmounted Northern Paiute (Def. Ex. 136) while petitioners' Dr. Stewart placed the Tagotoka (tuber eaters) band in the area (Pet. Ex. 908). Dr. Whiting places the Tagu Eaters in an area about the Owyhee River and Jordan Valley (Pet. Ex. 916). Dr. Whiting stated that there were no Paiute bands farther to the east (Pet. Ex. 890). Dr. Kelly's informants told her of the Tubuiuitikadu (Berry-eaters) east of Steens Mountain, Oregon (which would appear to be in this Owyhee River region) (Pet. Ex. 847).

Agent Ballard reported in 1866 on a roving band of hostile "Pi Ute" and outlawed Shoshone in the Owyhee country (Def. Ex. 66).

To the west and northwest of the Owyhee River area was the Malheur-Harney Lake region occupied by the Wada Eater band of Snake or Paiute Indians. It is the descendants of this band who brought the action in Docket No. 17 as the Snake or Piute Indians of the former Malheur Reservation in Oregon, all of which is more fully set forth in Finding 16(c).

(g) To the east, southeast, and northeast of the Owyhee River region is a large area included within the territory originally claimed by petitioners. However, petitioners' expert, Dr. Stewart, testified as to his doubt concerning the area and the lack of proof of exclusive occupancy of this territory by petitioners' ancestors. The area is "cross-hatched" on petitioners' map, Exhibit No. 942, indicating petitioners' concession that there was conflicting evidence in the area and that, while Northern Paiute Indians were allegedly in the area, there were probably other Indians also using that land. The Commission finds that this "cross-hatched" area is clearly territory not exclusively used and occupied by the petitioners' ancestors and, in view of the admission by the petitioners that they have not proven their case within this territory, no detailed findings will be made concerning the evidence of Indian occupancy of that land. =

(h) North of the Owyhee River is the area where the Boise, Payette and Weiser Rivers empty into the Snake River. The reports of the early explorers in this area are of little value due to usage of 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 travelled great distances in search of game, furs and trade. The Bannocks, while speaking the Northern Paiute language and in earlier times probably having been a part of the so-called Northern Paiute Nation, are not part of the Northern Paiute Nation represented in this action. They are recognized by petitioners as a people separate and distinct from the Northern Paiute (see petitioners' Proposed Finding of Fact No. 14).

Dr. Whiting placed the Salmon Eater Band (Agaidika) on the Snake River around the Weiser and Payette River mouths and west on each side of Malheur River (Pet. Ex. 916). However, it cannot be definitely shown whether these Salmon Eaters along the Snake River were a portion of the petitioners' Northern Paiute ancestors or were Shoshone Salmon Eaters and therefore belong to the eastern Shoshones, who also used food names for groups of Indians. There is evidence that many of the Indians in this area were mounted, which would not have been true of the Northern Paiute, and that they travelled east to the buffalo country. Dr. Whiting herself states that her Salmon Eaters were placed further east by Dr. Stewart, which would be his Koa aga itoka (salmon eaters) in the cross-hatched area of admittedly non-exclusive Northern Paiute use or occupancy.

Dr. Verne F. Ray placed the Nez Perce Indians in the area east of the Snake River about the Weiser and Payette Rivers, and he placed the Cayuse in that area to the west of the Snake River (Pet. Ex. 890).

Petitioners' expert, Dr. Stewart, in writing of the Koa aga itoka (Salmon Eaters) stated that these Indians occupied a much-disputed and questionable position. After recounting the early references relating to the Indians in this area, he concluded that "although these accounts are not definite, they do show that there is as much historical evidence to unite the Snake River Indians of the Boise area with the Paiute as with the eastern groups." (Pet. Ex. 908)

Defendant's expert, Dr. Stewart, concluded that the historical sources relating to this area may be interpreted to mean that the area was frequented by mounted northern Shoshone and Bannock as well as some

Northern Paiute and western Idaho Shoshone. He further identified the area as a thoroughfare often used by the Bannock, Northern Shoshone, Nez Perce, Cayuse, Wallawalla and other tribes (Def. Ex. 136).

The Commission concludes that the petitioners have failed to prove their entitlement to that area since they did not exclusively use and occupy the area in aboriginal times.

(i) The area north of the Wadatoka Band, while claimed by petitioners in their amended pleadings, was not included in the Northern Paiute territory by petitioners' expert, Dr. Stewart, in his original work on the subject (Pet. Ex. 908). In 1826, Peter Skene Ogden reported encountering "Snake" Indians on the Snake River below the mouth of the Burnt River (which would be near the southeast corner of Petitioners' Area No. 2 or in Area No. 3). However, he reported that these Indians had not long since left the buffalo country (Pet. Ex. 881; Def. Ex. 87). This would make it doubtful that the Snakes referred to by Ogden were of the "Digger" variety. More probably they were Bannocks. In October, 1843, Captain Fremont's party traveling west of the Snake River north from the Malheur River, encountered a party of Cayuse Indians who then traveled with them across the Burnt and Powder River, where the Cayuses traveled on ahead to reach their homes. Then Captain Fremont reported his group was visited by several Indians who belonged to the tribes on the Columbia River. There were no references to Snake or Digger Indians in that area.

Agent Nathan Olney in July, 1855, traveled from The Dalles to Fort Boise. He reported on a band of Bannack Diggers called Wal la lack ah residing on the Burnt River and War-atte-Raws about Lake Sylvia, both

bands being grass seed eaters. However both of these groups may have been Wadatoka (seed eaters), the band represented in Docket No. 17. Certainly, there is nothing to indicate that they were members of petitioners' Patichichi-tika or Elk Eaters.

Dr. Whiting places the Elk Eaters in the general area as that identified by petitioners as area 2 on their exhibit 942 although it does not extend as far north as does the territory claimed by petitioners. However, it is noted that the two bands identified by Dr. Whiting as occupying territory north of the Wadatoka are the Hunibui eaters and the Elk Eaters, whom, she says, Dr. Stewart considered as one and included them with the band called by Dr. Whiting, the Juniper-Deer Eaters. Thus all three of Dr. Whiting's Juniper-Deer Eaters, Hunibui Eaters and Elk Eaters Bands would seem to have been included by Dr. Stewart in his Hunipuitoka or Walpapi Band.

Dr. Verne F. Ray found that "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" (Pet. Ex. 890). Dr. Ray placed Dr. Stewart's Patichichitika of area 2 in the Cayuse Indian territory.

The Commission finds that the Northern Paiutes did not exclusively use and occupy area 2 as defined on petitioners' map, exhibit 942.

17. The Northern Paiutes, in aboriginal times, are described by the anthropological authorities as possessing no political authority which bound the so-called nation together. There were leaders who led the Indians on rabbit or mudhen drives or "antelope shaman" who led the

antelope drives. But these leaders existed primarily for a certain specific activity and in one restricted location. There was no overall "chief" of the Northern Paiutes.

18. The most prominent of the Northern Paiutes, at least from the white man's point of view, was Winnemucca. Dodge, in 1859, referred to Wun-a-muc-a (The Giver) as the head chief of the Nation (Def. Ex. 100). Other government officials also referred to Winnemucca as the chief of the Northern Paiutes. However, the position of Winnemucca was more accurately described by petitioners' expert, Dr. Stewart in his study of the Northern Paiute bands:

"The position attained by Old Winnemucca . . . suggests that the independent Northern Paiute bands were in process of becoming united under one chief. Old Winnemucca's role offers an example of cultural change which was activated by historical contacts with white men. The picture is not entirely clear, but we seem to have here an example of the leader of one band being transformed into a tribal chief by governmental agents desirous of having one authoritative person to deal with, and by an ambitious, educated daughter, Sarah Winnemucca, trying to attain self-aggrandizement by exalting her father . . . Sarah acted as interpreter for most officials who visited the Nevada Indians and was in an excellent position to color the governmental reports . . . white people called Sarah Winnemucca 'Paiute Indian Princess,' although Indians did not credit her with any such distinction. South of Pyramid, Old Winnemucca was never considered more than a leader of the Pyramid Lake band. 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." (Pet. Ex. 908, pp. 129, 130).

19. (a) In summary it appears that the early explorers throughout the claimed territory, while recognizing some general similarities between the Indian inhabitants, found them to be living in separate

definable groups which were divided generally into the Snakes in the northern portion, the Paviotso or Paiute in the central area, and the Mono to the south.

(b) So also the early government agents described the Indians within those certain areas. Captain Davidson described the Owens Valley Indians as living in an almost isolated condition, having little intercourse with other tribes. Agent Wasson and Captain Rowe both described a boundary between the Pah Ute and Owens River Indian country. Stephen Powers found the Owens River Indians to be separated from their northern neighbors with no solidarity or community of feeling between them. The Snakes of Oregon were considered a branch of the Root Diggers in Nevada. The Indians told Agent Douglas at McDermitt that their land was to the north and they never wanted to leave it to go south to a reservation in central Nevada. Agent Rinehart said, of the followers of We-ow-wewa and Paulina, "they are classed as Paiutes, and claim the name, though they were then known as Snakes, and now have very little friendship for the Paiutes of Nevada, regarding them as an inferior race of rabbit hunters." (Def. Ex. 77)

(c) Leading anthropologists who have studied the Northern Paiutes have grouped these Indians into similar divisions. Dr. Willard Z. Park found the western Nevada area to be occupied by five main Paviotso bands, the members of which recognized no boundaries separating the territories of the bands but ranged in search of food to the localities of neighboring groups. But these Paviotso Indians, said Dr. Park, considered themselves as an "entirely distinct group" from the southern Owens Valley

Paiutes as well as the Surprise Valley Paiutes to the north. And Dr. Park states that the Paviotso were even less closely bound to their neighboring Paiutes at Summit Lake and McDermitt.

Similarly, Dr. Steward, who studied the Owens Valley area extensively found the Indian inhabitants there to have characteristics which differentiated them from the Nevada area Paiutes. Dr. Beatrice Blyth Whiting, who studies were in the Oregon portion of the Paiute territory, wrote of the tendency of the Paiutes to wander over a large area hunting and gathering food. She spoke of the Wada Eaters knowing well and having frequent intercourse with seven surrounding bands. However, all of those seven so-called bands were located in the Oregon area and none of the Paviotso groups of Nevada were included in the list.

Ruth Underhill, Associate Supervisor of Indian Education, Office of Indian Affairs, in a pamphlet entitled, "The Paiute Indians of California and Nevada," wrote that the Paiutes were not a nation but "a chance name given by the Whites to a number of Indians who live in the same part of the country and speak the same language. We have been talking about Northern Paiute but the people whom we gather under this name do not, themselves use it, or even understand it." (Pet. Ex. 911, p. 14). She stated that the pamphlet would deal with three groups of Northern Paiutes, the Paiute of Owens Lake and Surprise Valley in California, and the Paviotso, in Nevada.

20. The Commission finds that in aboriginal times the Northern Paiute Indians did not have any overall political organization. They were never recognized, designated or dealt with by government officials as a nation.

land holding entity or nation. The Northern Paiutes did not collectively occupy and use the entire Northern Paiute territory but were rather grouped into certain main divisions, within which localized family groups or bands were free to roam over a large area, staying, however, within certain defined limits. The Northern Paiute Nation did not hold Indian title to any portion of the claimed territory.

21. The Commission finds that there was in the southern portion of the claimed territory an area (referred to in detail in our Finding 13) which had been exclusively occupied and used in Indian fashion from time immemorial by the bands or groups of Northern Paiute Indians who were then generally referred to as the Monos or Piutes of Owens Valley, which area is described as follows:

Commencing at the present town of Olancho, California, (south of Owens Lake), thence to a point about 4 miles east of the present town of Keeler, California, thence north to the crest of the Inyo Mountains and continuing north, northwest along the crest of the Inyo Mountains to a point at $36^{\circ} 50''$ N latitude, $118^{\circ} 00''$ W longitude, thence north, northeast to the present town of Oasis, California, thence north to the present town of Coaldale, Nevada, thence west, northwest to the summit of Potatoe Peak, thence southwest to the summit of Dunderberg Peak, thence southeast to the summit of Mt. Morgan, thence southeast to the commencing point at the present city of Olancho.

22. The Commission further finds that there was an area largely in Nevada, with small areas in California (referred to in detail in our Finding 14) which had been exclusively occupied and used in Indian fashion from time immemorial by the bands or groups of Northern Paiute Indians in Nevada who were aboriginally known as Paviotso or Paiute of western Nevada, which area is described as follows:

Commencing at Pilot Peak, approximately 7 miles east of the present town of Sodaville, Nevada, thence north, northeast to the crest of the Paradise Range of mountains and continuing north along the crest of the Paradise Range, thence north, northeast to the crest of the Destoya Mountains and continuing northeast along the crest of the Destoya Mountains to the $117^{\circ} 30''$ W longitudinal line, thence north to the summit of Mt. Tobin, thence north, northwest to the summit of Sonoma Peak, thence northwest to the present town of Winnemucca, Nevada, thence west, southwest to the present town of Gerlach, Nevada, thence west to a point at an elevation of about 6400 feet about 7 miles north, northwest of the present town of Karlo, California, thence south to the northwest edge of Honey Lake, thence east, northeast along the northern shore of Honey Lake and continuing south along the eastern shore of Honey Lake to the southeast tip of Honey Lake, thence southeast to a point at $40^{\circ} 06''$ N latitude, $119^{\circ} 52''$ W longitude, thence south, southeast along a line to the present town of Silver City, Nevada, to the point where said line intersects with the summit of the Virginia Range at latitude thirty-nine degrees twenty-eight and one-quarter minutes North (Lat. $39^{\circ} 28\text{-}1/4''$ North), thence along said summit in a southerly direction to the point where said summit again intersects the aforesaid line at latitude thirty-nine degrees twenty and two-tenths minutes North (Lat. $39^{\circ} 20.2''$ North), thence southerly along said line to the present town of Silver City, Nevada, thence southeast to the summit of Lyon Peak, thence south, southwesterly along the summit of the Pine Nut Mountains to the summit of Mt. Siegal, thence south, southwest to the summit of Sonora Peak, thence southeast to the summit of Potato Peak, thence east, northeast to the commencing point at Pilot Peak.

23. The Commission further finds that there was an area in northwestern Nevada and southeastern Oregon with a small portion in northeastern California (referred to in detail in our Finding 16) which had been exclusively occupied and used in Indian fashion from time immemorial by bands or groups of Indians who were aboriginally known as Snakes, Digger Snakes or Paiutes, but who are now known as Northern Paiutes. Included among these bands or groups of so-called "Snakes" were certain bands who had, in aboriginal times, developed into land using groups separate and apart from the other "Snake" Indians. These bands were the Walpapi, the Yahooskin, and the Snake or Paiute Indians of the former Malheur Reservation in southeast Oregon who were parties to an unratified treaty of December 10, 1868. These Indians and their claimed territory are specifically removed from this action for reasons previously

detailed in our findings. The remaining bands or groups of these "Snake" or Paiute Indians exclusively occupied and used the territory described as follows:

Commencing at the present town of Fairport, California, on the east shore of Goose Lake, thence south, southeast to the summit of Eagle Peak, thence southeast to the southernmost tip of Lower Lake, thence east, northeast to the summit of Pahute Peak, south of Summit Lake, thence east, northeast to the summit of Santa Rosa Peak, thence north, northeast to the present town of Jordan Valley, Oregon, thence north along the Oregon-Idaho border to the $43^{\circ} 30''$ N parallel, thence northwest to the summit of Freezeout Mountain, thence southwest to a point at $42^{\circ} 53''$ N latitude, 118° W longitude, thence west, southwest to the present town of Blitzen, Oregon, thence northwest to a point at $42^{\circ} 58''$ N latitude, $119^{\circ} 47''$ W longitude, thence south, southwest to the northeasternmost tip of Goose Lake, thence south along the eastern shore of Goose Lake to the starting point at Fairport, California.

24. Petitioners have not included the testimony of any Northern Paiute who can definitely trace his ancestry to a member of the aboriginal group of Paiutes who occupied the Owens Valley area. Perhaps the leading anthropologist with respect to this area was the defendant's witness, Dr. Steward. When he studied the area in 1927, 1928, and 1931 he found many descendants of the original Paiutes in the area. In his "Ethnography of the Owens Valley Paiute" (Pet. Ex. 901) he outlined the population figures for the area as follows:

1855 -	1000	(estimate by von Schmidt)
1863 -	1812	(estimate by military commander which included some Indians from outside the area)
1870 -	1350	(estimate by Egbert which included about 1000 for Owens Valley proper)
1880 -	637	(U. S. Census)
1890 -	850	"
1900 -	940	"
1910 -	792	"
1920 -	632	"
1930 -	736	"
	970	(Indian Service Survey)

Dr. Steward reported the Owens Valley Paiute then living in "camps" at each of the towns. He also listed informants used by him to gather information concerning the aboriginal life of their ancestors.

Dr. Steward's study in the area in 1935 is reported in his "Basin-Plateau Aboriginal Sociopolitical Groups" (Pet. Ex. 941-A) in which he lists numerous informants in the area who were descended from the aboriginal Owens Valley Paiutes. Dr. Steward also wrote a biography of Panatubiji, an Owens Valley Paiute, who lived from about 1820 to 1911 (Pet. Ex. 905). The biographical sketch was based on information gathered as late as 1935 from Panatubiji's grandson, Tom Stone.

The House of Representatives Subcommittee on Indian Affairs of the Committee on Public Land in its "Compilation of Material Relating to the Indians of the United States and the Territory of Alaska, Including Certain Laws and Treaties Affecting Such Indians" published June 13, 1950, listed the Indian Reservations in the Owens Valley area and their populations as follows:

Fort Independence Reservation	69 Paiute in 1950
Indian Ranch Colony	5 Paiute in 1950
Mono County Group	403 Paiute in 1945
Inyo County or Owens Valley Area	773 Paiute in 1945 and 338 in 1950 (This includes Big Pine Colony, Bishop Colony and Lone Pine Colony)

Based on this evidence, the Commission finds that there were, on December 6, 1950, the date of filing of the petition in this action, living descendants of the aboriginal Monos or Paiutes of Owens Valley who were found to have held Indian title to that area described as
Finding of Fact No. 21.

25. Many of the named individual petitioners and the other Northern Paiute Indians who testified in this action presently live in and/or have ancestors who were from the Nevada area found to have been aboriginally occupied by the Paviotso or Paiute of western Nevada. One of the individual petitioners, Rosie Quartz, who was 73 years old when she testified (January 24, 1951), stated that she was born at Schurz, Nevada (near Walker Lake), that her father and mother were both born around Walker Lake, that her grandmother was born on the Walker River Reservation and that her grandfather was born around Topaz (west of Walker Lake and just across the Nevada-California border).

The "Statistical Supplement to the Annual Report of the Commissioner of Indian Affairs," for the fiscal year ending June 30, 1945, lists the Paiute population in western Nevada as:

Fallon Reservation	198	
Fort McDermitt Reservation	301	(this is outside the Paviotso area as described in Finding 22)
Pyramid Lake Reservation	563	
Summit Lake Reservation	46	(this is outside the Paviotso area as described in Finding 22)
Walker River Reservation	437	
Yerington Reservation	78	
Fallon Colony	51	
Lovelock Colony	133	
Reno-Sparks Colony	154	
Winnemucca Colony	31	
Yerington Colony	92	
Non-reservation, Paiute Area	343	

Upon all the evidence of record the Commission finds that there were, on December 6, 1950, the date of filing of the petition in this action,

living descendants of the aboriginal Paviotsos or Paiutes of the western Nevada area, who were found to have held Indian title to that area described in Finding of Fact No. 22.

26. One of the Northern Paiutes who testified for petitioners, Charles Gill, was born at Burns, Oregon. His father and mother were both born in the Harney Valley and his grandfather lived on the Steens Mountains, which were in the Snake or Northern Paiute area of occupation described in Finding of Fact No. 23.

The "Statistical Supplement to the Annual Report of the Commissioner of Indian Affairs," for the fiscal year ending June 30, 1945, lists the Paiute population at the Ft. McDermitt Reservation - 301 and at the Summit Lake Reservation - 46. Both of these reservations were in the northwestern portion of Nevada found, in Finding of Fact No. 23, to be in the area exclusively used and occupied by the Snake or Northern Paiute of the Oregon area. Other Paiutes are included on the Klamath Agency and Reservation (151), the Umatilla Agency and Reservation (145) and the Warm Springs Agency and Reservation (55).

Upon all the evidence of record the Commission finds that there were, on December 6, 1950, the date of filing of the petition in this action, living descendants of the aboriginal Snakes or Paiutes of the Oregon area who were found to have held Indian title to that area described in Finding 23.

27. In aboriginal times the Northern Paiutes in all of their separate areas had, at best, a meager existence. Their lands were among the poorest in this country and the Indian occupants taxed the scanty resources to the limit.

Upon the advent of white settlement in the area, there occurred numerous instances of the aboriginal Indian occupants suffering from starvation. To a great extent this occurred from the white man's use of the natural resources of the area, such as pine nut trees for building and fuel and grass for cattle, which deprived the Indians of two of their main sources of food, i.e., pine nuts and seeds and roots.

Thus by the gradual influx of white settlers, miners and travelers in the various areas and the appropriation of area for the use of the white man, the Indians were deprived of the use and occupancy of the lands which they had occupied from time immemorial.

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. Attempts were made to induce the Indians to remove to reservation areas, and the efforts to remove any Indian interference with the use of the land by whites culminated in several instances in military actions against the Indians. While, in view of the gradual encroachment of the whites, it is not possible to set a precise date of taking of the lands in question, the Commission does find that by the conduct of the white settlers, travelers, miners, together with actions taken by United States military forces and the actions of other agents of the United States, the Indians were deprived of their Indian title to their lands. Thus, without payment of compensation, the United States acquired, controlled, and treated the lands of the various Northern Paiute groups as public lands.

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 area. The Commission will not now make such determination but will leave it either to the parties to agree upon average dates of taking for each area, or, 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.

28. The Commission will, however, fix the date of taking of the areas of land in the present State of California, which includes most of the land described in Finding of Fact No. 21 and small portions of the areas described in Findings of Fact No. 22 and 23. On March 3, 1851, Congress passed (9 Stat. 631) "An Act to Ascertain and Settle the Private Land Claims in the State of California." Under the provisions of this Act all claims to land 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 on March 3, 1853, and in accordance with the provisions of the 1851 Act, passed (10 Stat. 244) legislation entitled an "Act to provide for the survey of the public lands of California and the granting of preemption rights 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).

Therefore, the Commission finds that the California portion of the land aboriginally possessed by the Monos or Paiutes of the Owens Valley area and the California portions of the land aboriginally possessed by the Paviotso or Paiute of the western Nevada area and the Snake or Paiute of the Oregon area were taken by the United States, without payment of compensation, on March 3, 1853.

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner