

INDIAN TRIBES TO PRESENT CLAIMS TO COURT OF CLAIMS

APRIL 15, 1926.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. KNUTSON, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany H. R. 9270]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 9270) authorizing certain Indian tribes and bands, or any of them, residing in the State of Washington to present their claims to the Court of Claims, having considered the same, report thereon with a recommendation that it do pass without amendment.

This is a jurisdictional bill, and if enacted into law will enable the Colville and Okanogan Indians, as now known and designated, of Washington to bring suit in the Court of Claims for the purpose of establishing certain claims which have arisen out of alleged failures of the United States to extinguish the original possessory rights of these Indians to land in the northeastern part of the State of Washington, or to compensate these Indians for the right and property they have been deprived of.

The Okanogan, San Poil (or San Poil), Nespelem, Colville, and Lake Indian Tribes or Bands of the State of Washington from time immemorial inhabited and had recognized, undisputed and exclusive possessory rights over the lands in the State of Washington, and the fishing and hunting rights and privileges within the limits described in H. R. 9270.

This Government has never extinguished such possessory Indian titles, except by express consent of the tribal bands expressed by formal treaty or agreement of relinquishment.

Through oversight and neglect of the Government the original possessory rights of the Indians named in H. R. 9270 have never been extinguished. In 1853, after the organization of Washington Territory, and under the administration of Gov. Isaac I. Stevens, who was also superintendent of Indian Affairs for said Territory, the

original Indian possessory title to all lands within the new Territory was recognized and Governor Stevens recommended, and himself negotiated, treaties with most of the Indian tribes within the Territory.

It was Governor Stevens's announced plan and intention to negotiate treaties with the tribes named in this bill, and in 1855 a council was called for that purpose, but the outbreak of the Yakima Indian war required the governor's attention and the council adjourned without accomplishment. Governor Stevens recognized this Indian possessory title in his records, in his maps, and in his speeches, and in the treaties actually negotiated with other tribes. Various intervening causes, such as the Indian wars, the gold mining excitements, and later the outbreak of the Civil War, thereafter diverted the attention of the Government from such negotiations and prevented the consummation of a formal treaty agreement promised these Indians.

In December, 1855, Governor Stevens as Indian commissioner to these Indians said, "I, your friend, say that your lands will not be taken away from you. * * * It is my business as your friend to protect you in your lands and rights and I shall do so as well as I can. * * * Your rights are your rights and you shall not be deprived of them." Subsequent Indian commissioners, agents, and representatives of the Government for the next 30 years repeatedly called the attention of the Government to the unextinguished and outstanding rights, and to the injustice being done to these Indians, and they, in turn, proposed, recommended, discussed, and negotiated tentative agreements with the Indians, but nothing was ever done toward extinguishing this recognized outstanding Indian title and right.

These Indians never fought the whites. No agreement was ever made to extinguish their rights. They were simply crowded off their lands by pioneer settlers who had no respect for an Indian or Indian rights, backed by the coercion of Government troops and the commands of Indian agents and were tolerated only when they had been crowded onto a dry, wooded, and mountainous section of their country that the whites did not then want, and whence it was physically impossible to force them to further pilgrimage. There they still wait for the justice and protection promised them by Stevens.

In 1790 George Washington announced the general Indian policy, ever since supposed to have been the guiding principal of our relations with the Indians: "The General Government will never consent to your being defrauded, but will protect you in your just rights."

No agreement has ever been made with these tribes, no compensation has ever been paid them for what was taken from them.

A similar bill for the relief of these Indians passed branches of the Sixty-eighth Congress, but met a "pocket veto." It was suggested that the original bill was too sweeping and general in its terms to enable the Government to know the exact basis of the recovery sought, and the character and extent of the claims to be urged. The bill was redrafted by counsel with the view of meeting those objections by specifying the exact nature, extent, and approximate amount of the claims asserted.

These long-standing claims have been a source of irritation and deep-seated resentment against the Government on the part of the Indians, and from the standpoint of the progress of the Indians it would seem highly desirable that they be settled as soon as possible.

Furthermore, many of the Indians most familiar with the facts on which these claims are based are getting old, and if their evidence is to be procured the right to sue must be granted them, as without a jurisdictional bill the claimants are unable to preserve and perpetuate such testimony.

The continued neglect to adjust these claims can not be charged to the Indians, and their equities in the premises entitled them to submit their claims to the Court of Claims.

Some of these tribes at least appear to have received and accepted little if anything in the way of gratuities from the Government. A number of similar bills for the relief of other Indian tribes, granting them the right to present their claims to the Court of Claims, were enacted by the last Congress and some similar bills are pending in the present Congress. Unless the tribes mentioned in H. R. 9270 are to be singled out and discriminated against they appear entitled to the relief asked for in H. R. 9270, notwithstanding the adverse report thereon of the Secretary of the Interior.

The report of the Secretary of the Interior is attached hereto and made a part of this report.

Hon. SCOTT LEAVITT,
Chairman Committee on Indian Affairs,
House of Representatives.

MY DEAR MR. LEAVITT: Reference is made to your letters of December 16, 1925, and February 13, 1926, respectively, transmitting for report a copy each of H. R. 3855 and 9270, authorizing certain tribes and bands, or any of them residing in the State of Washington, to present their claims to the Court of Claims.

The purpose of these bills is to have the court mentioned adjudicate the claims against the Government of the bands and tribes of Indians residing on the Colville Indian Reservation, Wash. The bills are similar except that No. 9270 contains a definite description of the lands for which compensation is asked.

These claims arose, as hereinafter recited, partly under the treaty of the Yakima Nation of June 9, 1855 (12 Stat. 951), and under certain Executive orders and records of the Indian Bureau. They are for approximately 4,538,144 acres of land in the northeastern part of Washington and for hunting and fishing rights claimed by the Indians of which they have been deprived, as alleged, without their consent or compensation therefor.

As formulated by their attorney in letter of February 5, 1926, these claims are, briefly:

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| 1. Okanogan and Methow Tribes, for lands lying west of the Okanogan River from the international boundary line south to the Columbia River and west to the summit of the Cascades, estimated----- | Acres
1, 800, 000 |
| 2. Okanogan and Sanpoil Tribes, including the Nespelem Band—for lands south of the Columbia River and north of the lands of the Yakima Tribe as fixed by treaty therewith of June 9, 1855 (12 Stat. 951), estimated----- | 500, 000 |
| 3. Sanpoil Tribe, including the Nespelem Band—lands lying north of the Columbia River and east of the Okanogan River and partly within the Colville Indian Reservation, estimated as containing----- | 1, 000, 000 |

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4. Colville and Lake Tribes—lands lying east of the Columbia River and north of the Spokane River and bounded on the east by the summit of the Kalispell Mountains, estimated-----	Acres 1, 238, 144
Total-----	4, 538, 144
At not to exceed \$1.25 per acre-----	\$5, 672, 680
5. All of said tribes and bands—hunting and grazing rights within their claimed territory, supra, and also hunting rights in the “common hunting grounds” under the treaty with the Black-foot Nation of Oct. 17, 1855 (11 Stat. 657)-----	1, 000, 000
6. All of said tribes and bands—fishing rights in “their old fishing grounds”-----	1, 000, 000
Total amount of claims-----	7, 672, 680

The foregoing claims are discussed as follows:

1. The lands west of the Okanogan, embraced in this count, are stated in “Indian Land Cessions in the United States, Land Records, Indian Office, Royce,” which was compiled by the Bureau of Ethnology in conjunction with a clerk of this department, pages 856, 857:

“Territory originally claimed by these Indians * * *. No treaty was ever made with these Indians for the extinguishment of their territorial rights. The United States simply took possession of their country, except such portions as have been set apart by Executive order for their occupancy.”

The records show that in 1855 Gov. I. I. Stevens, of Washington Territory, and ex officio superintendent of Indian Affairs, furnished a map showing the various Indian tribes in the said Territory and the respective lands occupied by them. This map shows the lands in question as claimed by the Colville and Okanogan Tribes.

In a report dated October 1, 1871, John A. Simms, United States Indian agent, submitted a map showing the lands under consideration as still in possession of the claimants.

By Executive order of April 19, 1879, about two-thirds of these lands (northern part) were set aside as the Columbia Reservation for Chief Moses and his people, who were said to belong to the Nez Perce Tribe.

By Executive order of March 6, 1880, the southern part of the territory claimed as No. 1 was added to the Columbia Reservation.

By Executive order of February 23, 1883, a strip of country 15 miles in width along the entire northern portion of the reservation was restored to the public domain, there having been an inrush of whites to these lands for mining purposes. Following a protest from Moses and his people, an agreement was made with him and with Chiefs Tonasket and Lot, of the Colville Reservation, by which certain benefits were provided for the parties thereto, and Moses and his people were allowed to remove to the Colville Reservation upon their relinquishment of all claims to the Columbia reserve. This resulted in restoring about 3,000,000 acres of land to the public domain. This agreement of July 7, 1883, was ratified and confirmed by the act of July 4, 1884 (23 Stat. 79), and Moses and his people subsequently removed to the Colville Reservation, where they were provided with homes and other tribal benefits.

The attorney for the claimants says that possibly the agreement mentioned, which provided in part that Chief Moses, who “relinquished all claim upon the Government for any land situated elsewhere,” might be a defense by the United States against the claim for lands under count No. 1.

2. The boundary of these lands lying south of the Columbia River is partly defined by the Yakima treaty of June 9, 1855. (12 Stat. 951.) By Executive order of November 8, 1873, these lands were set aside as a reservation for the Coeur d’Alene and other bands without the consent of or compensation to the claimant Indians.

3. Claim is made by the attorney for only about two-thirds of the lands east of the Okanogan and north of the Columbia to the international boundary line, which are shown by Indian Office records as then occupied by the claimants. All of the lands within the boundaries described were withdrawn and set aside by Executive order of July 2, 1872, for these Indians. Under the provisions of the act of August 19, 1890 (26 Stat. 355), an agreement was made May 9, 1891, with these Indians by which they ceded the north half of their (Colville) reservation for the sum of \$1,500,000. Congress declined to ratify the agreement and by act of July 1, 1892 (27 Stat. 62), provided for the opening

of the northern part of the reserve, containing approximately 1,500,000 acres, the Indians residing thereon to receive allotments of land. By act of June 21, 1906 (34 Stat. 377), Congress recognized the claims of the Indians to compensation for the lands so taken and appropriated \$1,500,000 in settlement, which was paid pro rata to the Indians.

The records show that these Indians have received allotments and other benefits on the diminished Colville Reservation, and that they have also received various gratuities from the Government.

4. Lands lying east of the Columbia River and north of the Spokane River. Approximately the west half of this tract is included in item No. 4 of the claims formulated by the attorney.

By Executive order of April 9, 1872, there was set aside from this territory as a reservation for these Indians about 2,300,000 acres of land. Subsequently, by Executive order of July 2, 1872, this tract was restored to the public domain and other land (the present Colville Reservation) was assigned the Indians.

In report dated October 20, 1873, H. R. Milroy, superintendent of Indian affairs, Washington Territory, explained the change of reservations, as follows: " * * * But without consulting their (the claimant Indians) interests or wishes, and even without their knowledge, the Government being deceived as to the true state of affairs, was induced to change the reservation by Executive order of July 6 (2), 1872." (Annual Report of Indian Office, 1873, p. 294.)

5. The claim for hunting and grazing rights alleged to have been reserved by the Blackfoot treaty of 1855 evidently refers to article 3 of the treaty of October 17, 1855 (11 Stat. 657), which provides that the country therein described in the southwestern corner of what is now Montana shall be "a common hunting ground for 99 years, where all the nations, tribes, and bands of Indians parties to the treaty, may enjoy equal and uninterrupted privileges of hunting, fishing, and gathering fruit, grazing animals, curing meat, and dressing robes. * * * *Provided*, That the western Indians, parties to this treaty, may hunt on the trail leading down the Muscle Shell to the Yellowstone; the Muscle Shell River being the boundary separating the Blackfoot from the Crow Territory."

This treaty in the preamble recites that the "following nations and tribes of Indians who occupy for the purposes of hunting the territory on the upper Missouri and Yellowstone Rivers, and who have permanent homes, as follows: East of the Rocky Mountains, the Blackfoot Nation, consisting of the Piegan, Blood, Blackfoot, and Gros Ventres Tribes of Indians. West of the Rocky Mountains, the Flathead Nation, consisting of the Flathead, Upper Pend d'Oreille, and Kootenay Tribes of Indians, and the Nez Perce Tribe of Indians."

From a careful reading of the Blackfoot treaty of October 17, 1855, it is not believed that the "western Indians" embrace or include any of the tribes or bands on the Colville Reservation now claiming reimbursement for hunting rights in the "common hunting grounds" mentioned therein.

6. Fishing rights for which the Indians claim compensation and of which they have been deprived as alleged within the territory in question, and not included in the "common hunting grounds," supra.

As shown by the records, and as set out above, these Indians have been provided with reservation lands on the Colville Reservation which they have accepted, and have also been furnished benefits by the Government, including gratuities.

It would require considerable search of our records to ascertain just what amount should be properly charged by the Government as set-offs for moneys appropriated and expended for these Indians, including gratuities, and would take considerable time to obtain an accounting from the General Accounting Office as to moneys appropriated for the relief, etc., of Indians in Washington in which the claimants have shared. It is believed that approximately 50 per cent of the amounts claimed would be offset by moneys appropriated, including gratuities that have been paid to and used for these Indians.

It is recommended that these bills do not receive your favorable consideration. The Director of the Bureau of the Budget has advised that the proposed legislation in H. R. 9270 is in conflict with the financial program of the President.

Very truly yours,

HUBERT WORK.

