

# Before the Indian Claims Commission

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No. 222

THE CONFEDERATED TRIBES OF THE COLVILLE RESERVATION, AS THE REPRESENTATIVE OF THE PALOUSE BAND; CLEVELAND KAMIAKIN AND CHARLEY WILLIAMS, AS THE REPRESENTATIVES OF THE PALOUSE BAND; THE CONFEDERATED TRIBES OF THE COLVILLE RESERVATION, AS SUCCESSOR TO THE CLAIMS OF THE PALOUSE BAND, PETITIONERS

v.

THE UNITED STATES OF AMERICA, RESPONDENT

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## ANSWER

Comes now the defendant by its Assistant Attorney General and for its answer to the petition herein alleges:

### First Defense

1. That the petition fails to state a claim upon which relief can be granted.

### Second Defense

2. Answering paragraph 1, defendant admits that the petition is filed under and pursuant to the Act of August 13, 1946 (60 Stat. 1049). Defendant denies that the petition states facts which constitute a taking



under the Fifth Amendment to the Constitution of the United States.

3. (a) Answering paragraph 2, defendant admits that the petitioner, Confederated Tribes of the Colville Reservation, is an organization recognized by the Secretary of the Interior as having authority to represent the Indians located on the Colville Reservation for certain purposes. Defendant alleges that said Confederation is not an Indian tribe, band or other identifiable group of American Indians within the meaning of Section 2 of the Act of August 13, 1946 (60 Stat. 1049), nor is said Confederation a tribal organization within the meaning of Section 10 of said act.

(b) Defendant alleges that it is unable to determine whether the "Palouse Band" is at present an Indian tribe, band or other identifiable group of American Indians within the meaning of the Act of August 13, 1946, and therefore puts petitioners to the proof thereof.

4. Answering paragraph 3, defendant alleges it does not have sufficient information as to whether Cleveland Kamiakin and Charley Williams are members of the "Palouse Band" and therefore puts petitioners to the proof thereof.

5. Answering paragraph 4, defendant denies that the Confederated Tribes of the Colville Reservation has succeeded to the claims, if any, of the "Palouse Band."

6. Defendant admits paragraphs 5 and 6.

7. Answering paragraph 7, defendant denies that the "Palouse Band" of Indians from time immemorial, or during any time material herein, either singly or in common with other Indians, occupied, possessed or

owned all or any clearly definable part of the lands referred to therein to the exclusion of all other Indians or tribes.

8. Defendant denies paragraph 8.

9. Answering paragraph 9, defendant admits the passage of the Act of August 14, 1848 (9 Stat. 323) establishing the Territory of Oregon and admits the correctness of the quotation therefrom. Defendant denies that the "Palouse Band" of Indians at any time established or owned aboriginal or Indian title or any other interest in lands within said Oregon Territory.

10. Answering paragraph 10, defendant admits the passage of the Act of March 2, 1853 (10 Stat. 172) establishing the Territory of Washington, and admits the correctness of the quotation therefrom. Defendant denies that the "Palouse Band" of Indians at any time established or owned aboriginal or Indian title or any other interest in the lands within the said Washington Territory.

11. Answering paragraph 11, defendant admits the passage of the Act of March 3, 1863 (12 Stat. 808), establishing the Territory of Idaho and admits the correctness of the quotation therefrom. Defendant denies that the "Palouse Band" of Indians at any time established or owned aboriginal or Indian title or any other interest in the lands within the said Idaho Territory.

12. Defendant admits paragraph 12, with the exception of the implication therein that the "Palouse Band" of Indians owned title or other interest in any of the lands referred to.

13. Defendant denies paragraph 13.



14. Defendant admits paragraph 14, with the exception of the implication therein that the "Palouse Band" or any other Indians owned title or other interest in any of the lands referred to.

15. Answering paragraph 15, defendant admits that the "Palouse Band" of Indians was a party to the Treaty of June 9, 1855 (12 Stat. 951) and for the purposes of said treaty was recognized as a member of the "Yakima Nation" referred to therein. Defendant further alleges that the "Palouse Band" was given the privilege of sharing in all benefits provided for in said treaty and that some of the members of the said "Palouse Band" did accept such benefits. Defendant alleges that other members of said "Palouse Band" refused to accept any of the benefits so provided or to move upon the reservation set out therein. Defendant alleges that those of the "Palouse Band" who refused to participate in the said treaty benefits later moved to the Colville Reservation and shared the benefits provided by defendant for the Indians living upon said Colville Reservation. Defendant denies that the relationship of guardian and ward existed between said "Palouse Band" and defendant during any time material herein.

16. Defendant denies paragraph 16.

17. Answering paragraph 17, defendant alleges that it does not have sufficient information as to the allegations contained therein and therefore denies same.

18. Answering paragraph 18, defendant admits that during 1855, agents of defendant held a treaty council at Walla Walla with various tribes or bands of the

Territory of Washington including the "Palouse Band" and for the purposes of such council and the Treaty of June 9, 1855, which was entered into at said council, the tribes signatory to such treaty were considered as one nation under the name "Yakima." All other allegations of paragraph 18 are denied.

19. Answering paragraph 19, defendant admits that on June 9, 1855, a treaty was entered into between defendant and various tribes or bands of Indians including the "Palouse Band", and that for the purposes of such treaty all of the tribes included therein were considered as one nation under the name of "Yakima". All other allegations of paragraph 19 are denied.

20. Defendant denies paragraph 20.

21. Answering paragraph 21, defendant admits that said Treaty of June 9, 1855, was ratified and proclaimed in the year 1859. All other allegations of paragraph 21 are denied.

22. Answering paragraph 22, defendant admits that in the Treaty of June 9, 1855, the "Palouse Band" ceded its claimed interest in all lands in Washington and Idaho Territories. All other allegations of paragraph 22 are denied.

23. Answering paragraph 23, defendant alleges that the "Palouse Band" did consent to the Treaty of June 9, 1855. Defendant admits that some of the members of the "Palouse Band" thereafter refused to accept any of the benefits provided for in said treaty and also refused to move to the reservation provided for therein. All other allegations of paragraph 23 are denied.



24. Answering paragraph 24, defendant admits that part of the "Palouse Band" would not and did not move to the reservation provided for in the Treaty of June 9, 1855. All other allegations of paragraph 24 are denied.

25. Defendant denies paragraph 25.

26. Defendant denies paragraphs 26 through 34.

27. Answering paragraph 35, defendant admits that for the purposes of the Treaty of June 9, 1855, it recognized the "Palouse Band" as part of the "Yakima Nation" and that by said treaty certain lands were reserved for the use and occupancy of the "Yakima Nation." Defendant alleges that part of the "Palouse Band" refused to accept any of the benefits arising out of said treaty. All other allegations of paragraph 35 are denied.

28. Answering paragraph 36, defendant alleges that pursuant to said Treaty of June 9, 1855, and subsequent acts, the tribes who were recognized therein as a part of the "Yakima Nation" quitclaimed or ceded to defendant part of their claimed interest in the lands involved. All other allegations of paragraph 36 are denied.

29. Answering paragraphs 37 and 38, defendant denies that any time material herein a fiduciary relationship existed between defendant and said "Palouse Band". All other allegations of paragraphs 37 and 38 are admitted.

30. Defendant denies paragraphs 39 through 43.

### Third Defense

31. Defendant alleges that by engaging in hostilities and committing depredations against the United States the said "Palouse Band" forfeited all rights to benefits to which said Indians might otherwise be entitled.

### Fourth Defense

32. Defendant alleges that if the "Palouse Band" did own aboriginal or Indian title to any lands (which defendant denies), the interest so owned did not include subsurface or timber rights and the value of such interest did not exceed the value of the lands which it received from defendant.

### Fifth Defense

33. Defendant further alleges that from time to time, although under no obligation to do so, it has spent large sums of public money for support maintenance and education of said "Palouse Band". That in addition to the above items the defendant has from time to time, although under no obligation to do so, expended on behalf of said "Palouse Band" various sums of money out of gratuity appropriations, the exact amount of which is not known to defendant at this time and which will be subsequently set out by an amendment hereto under Rule 12 if it shall be determined that the defendant is liable to the petitioners in any amount.

34. The defendant, while at all times asserting that petitioners are entitled to recover nothing under the claims as set forth in the petition, further alleges that if any sum should be found due by this Commission in



favor of the petitioners, said petitioners are not entitled to any interest thereon.

WHEREFORE, defendant having answered the petition, prays that same be dismissed and that petitioners recover nothing from the defendant.

WM. AMORY UNDERHILL,  
*Assistant Attorney General.*

JOHN D. SULLIVAN,  
*Attorney,*  
*Room 2617, Department of Justice,*  
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I hereby certify that on the — day of —, 1951, fifteen (15) copies of the above and foregoing answer to petition were mailed to the attorney for the petitioners, I. S. Weissbrodt, 1822 Jefferson Place, N. W., Washington 6, D. C.

JOHN D. SULLIVAN,  
*Attorney.*