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BEFORE THE  
**Indian Claims Commission**

No. 222

THE CONFEDERATED TRIBES OF THE COLVILLE RESERVA-  
TION, 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 RESERVA-  
TION, as successor to the claims of the PALOUSE  
BAND,

*Petitioners,*

v.

THE UNITED STATES OF AMERICA,

*Respondent.*

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**PETITION**

By JAMES E. CURRY  
519 East Capitol Street  
Washington, D. C.

LYLE KEITH  
1121 Paulsen Building  
Spokane, Washington

I. S. WEISSBRODT  
1822 Jefferson Place, N.W.  
Washington, D. C.

*Attorneys for Petitioner*

DAVID COBB  
1822 Jefferson Place N. W.  
Washington, D. C.

ABE W. WEISSBRODT  
1822 Jefferson Place N. W.  
Washington, D. C.

*Of Counsel*



BEFORE THE

## Indian Claims Commission

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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

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*Petitioners,*

v.

THE UNITED STATES OF AMERICA,

*Respondent.*

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### PETITION

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#### Jurisdiction and Parties

1. This action arises under the Act of August 13, 1946 (60 Stat. 1049) and the Fifth Amendment to the Constitution of the United States.

2. Petitioner, the Confederated Tribes of the Colville Reservation, (hereinafter referred to as the "Confederated Tribes"), is a tribal organization existing at the Colville Reservation in the State of



Washington. The Palouse Band is a tribe, band or identifiable group of Indians residing on the said Colville Reservation and said Confederated Tribes is recognized by the Secretary of the Interior as having authority to represent such tribe, band or group and is thereby accorded the exclusive privilege of representing said Palouse Band in asserting the claims herein.

3. Petitioners, Cleveland Kamiakin and Charley Williams, are members of the Palouse Band. In the event that the Confederated Tribes is found not to be accorded the exclusive privilege of representing the Palouse Band herein, no tribal organization exists, recognized by the Secretary of Interior as having authority to represent such tribe, band, or group, in which event petitioners, Cleveland Kamiakin and Charley Williams, bring the claims asserted herein as the representatives of all the members of the Palouse Band.

4. If the members of the Palouse Band are found now merged with and a part of the Confederated Tribes so as not to be now an identifiable group, the petitioner, Confederated Tribes, has succeeded to the claims of the Palouse Band and accordingly files this petition to assert such claims as successor to the Palouse Band.

5. The undersigned attorneys have been duly selected and authorized by the petitioners herein to bring this petition. The designation of said attorneys by the petitioner, the Confederated Tribes, to bring the claims herein asserted has been approved in accordance with the law and regulations governing employment of tribal attorneys.

6. None of the claims set forth herein has been acted upon previously by Congress or by any department of the Government or in any judicial proceeding. None of the claims, or any part thereof, is included in any suit pending in the Court of Claims or in the Supreme Court of the United States.

#### Original Title of the Palouse Band

7. At the time of the advent of the first white men into its lands, and from time immemorial, the Palouse Band exclusively occupied certain lands situated in the States of Washington and Idaho. The Palouse Band lived upon every part of these lands as far back as human habitation upon these lands has been traced. In their search for sustenance, the members of the Palouse Band roamed over and used every portion of these lands to the exclusion of other Indian tribes and no Indians other than members of the Palouse Band ever entered upon these lands except temporarily for friendly intercourse with the Palouse Band or upon occasional raiding parties. From these early times until deprived of these lands by the acts of the Respondent hereinafter described, the Palouse Band asserted its exclusive dominion and control over all these lands. Said lands are situated in the southeastern part of Washington and the western part of Idaho and include that tract of land identified on a map appearing on page 42 of a publication entitled "Tribal Distribution in Washington", by Leslie Spier, which is Number 3 of the General Series in Anthropology, George Banta Publishing Company, Menasha, Wisconsin, and adjoining tracts on the north and west.



**Recognition by Respondent of Title of the Palouse Band to its Lands.**

8. By various acts of the Respondent, as well as acts of the President and officials and agents of the Respondent, including the acts set forth herein, the Respondent recognized that the Palouse Band owned, occupied, possessed and used said lands and that the Palouse Band was entitled to own, occupy, use and possess said lands.

9. By an Act of August 14, 1848 (9 Stat. 323), the Respondent established the Territorial Government of Oregon. The lands of the Palouse Band were included within the said Territory of Oregon. The Act of August 14, 1848, provided in part as follows:

"... Provided, That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians. . . ."

10. By an Act of March 2, 1853 (10 Stat. 172), the Respondent established the Territorial Government of Washington. A portion of the territory of Oregon, within which lay the lands of the Palouse Band, was placed within the said Territory of Washington. The Act of March 2, 1853, provided in part as follows:

"... Provided, That nothing in this act contained shall be construed to affect the authority of the government of the United States to make any regulation respecting the Indians of said Territory, their lands, property, or other rights,

by treaty, law, or otherwise, which would have been competent to the government to make if this Act had never been passed. . . ."

11. By an Act of March 3, 1863 (12 Stat. 808), the Respondent established the Territorial Government of Idaho. Part of the lands of the Palouse Band was placed within the said Territory of Idaho. The Act of March 3, 1863 provided in part as follows:

"... Provided, further, That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, . . . but all such territory shall be excepted out of the boundaries, and constitute no part of the Territory of Idaho, until such tribe shall signify their assent to the President of the United States to be included within said Territory, . . ."

12. In or about 1854, the Respondent authorized its representatives to enter into negotiations with the Indian tribes or bands in Washington Territory, including the Palouse Band, for the purpose of obtaining a cession to the Respondent of part of the lands of the Palouse Band. During the months of April, May and June, 1855, the agents of the Respondent held a treaty council at Walla Walla with the chiefs and headmen of the Indian tribes or bands in the Territories of Washington and Idaho, including the chiefs and headmen of the Palouse Band.

13. Respondent, through its agents during the course of these council meetings and thereafter assured the Palouse Band that Respondent recognized its right to use and occupy exclusively all the lands described in this petition.



14. Respondent did conclude a proposed treaty with a number of tribes or bands including the Palouse Band under date of June 9, 1855 (12 Stat. 951). Said treaty recited that all of said tribes or bands, including the Palouse Band, "for the purpose of this treaty, are to be considered as one nation, under the name of 'Yakama' . . ." Under the terms of the said treaty, the said tribes or bands, including the Palouse Band, agreed to cede part of their lands, including all the lands of the Palouse Band in the Territory of Washington, to the Respondent. Under said treaty, the Respondent agreed to protect and preserve the remaining unceded part of the lands of the said tribes or bands as a reservation for said Indians, including the Palouse Band and the members thereof. The lands included within said reservation are described in the said treaty as follows:

"Commencing at the Yakama River, at the mouth of the Attah-nam River; thence westerly along said Attah-nam River to the forks; thence along the southern tributary to the Cascade Mountains; thence southerly along the main ridge of said mountains, passing south and east of Mount Adams, to the spur whence flows the waters of the Klickitat and Pisco Rivers; thence down said spur to the divide between the waters of said rivers; thence along said divide to the divide separating the waters of the Satass River from those flowing into the Columbia River; thence along said divide to the main Yakama, eight miles below the mouth of the Satass River; and thence up the Yakama River to the place of beginning."

Said reservation lands established by said treaty are identified on a map included in the volume of the Smithsonian Institution, entitled Indian Land Cessions in the United States, compiled by Charles C.

Royce, said area and map being area numbered 365 on the map of Washington 1.

#### **Fiduciary Obligations of the Respondent**

15. Beginning with the aforesaid Act of August 14, 1848, and in accordance with other statutes, treaties and executive acts promulgated from time to time thereafter, the Respondent undertook to exercise and has exercised in respect to the lands and other property of the Palouse Band the powers of a guardian and trustee in possession. Pursuant to the aforesaid treaty of June 9, 1855, the Respondent determined to regard and did regard the Palouse Band, and the members thereof, as a part of the "Yakama Nation" and beginning with that said treaty has exercised and now is exercising in respect to all the lands, funds and other property of the said Yakama Nation, and of each tribe, band, group or member thereof, the powers of a guardian and trustee in possession. By the terms of said treaty, the Respondent created and recognized the Palouse Band and each member thereof as a member of, part of, and belonging to the Yakama Nation and, as such, at all times thereafter as having an interest in, right to, and claim upon a pro rata share in all the lands, funds, and other property of the Yakama Nation.

#### **Unlawful Taking of the Lands and Other Property of Palouse Band**

16. By various acts of the Respondent, including those set forth hereinafter in this petition, by various legislative and executive acts and acts of officials and agents of Respondent including the opening of lands of the Palouse Band to homesteading, settlement and



preemption, by various acts of making sales, conveyances, leases, grants and other dispositions of the lands and other property of the Palouse Band, and by various acts of taking of physical possession, the Respondent assumed and took ownership, control and possession of the lands and other property of the Palouse Band. Such lands, including appurtenances thereto and products thereof, and valuable mineral, timber, fishing, water and hunting rights were taken by the Respondent from the Palouse Band without its consent and without compensation to the great damage of the Palouse Band.

A. *The So-called Treaty of June 11, 1855—Taking of the Lands of the Palouse Band in Washington Territory.*

17. From time immemorial, the Palouse Band was a tribe, band or identifiable group of Indians bound together by a common language, common customs, common leadership, and exclusively occupying and using in common the lands described in this petition. At the time of the Lewis-Clark expedition, the Palouse Band numbered approximately 1600 Indians. The Palouse Band had no relationship in common with and seldom, if ever, had any intercourse with the Yakima Tribe.

18. During April, May and June of 1855, agents of the Respondent held a treaty council at Walla Walla with most of the Indian tribes or bands of the Territory of Washington, including the Palouse Band. Although the Palouse Band and certain other tribes or bands, had no relationship in common with the Yakima Tribe, the agents of the Respondent, over the protests of the Palouse Band and said other tribes or

bands, determined to treat the Palouse Band and the said other tribes or bands as part of a so-called Yakama Nation, which said Yakama Nation had never before in fact existed and was a pure fictitious Nation devised and created by the agents of the Respondent.

19. The agents of the Respondent then concluded a proposed treaty with the fictitious Yakama Nation whereby the said fictitious Yakama Nation purported to cede to the Respondent certain lands, including all the lands of the Palouse Band, situated in the Territory of Washington. The chiefs and headmen of the Palouse Band did not consent to join the fictitious Yakama Nation or to recognize the authority of any other chiefs or headmen to cede or otherwise deal with the lands of the Palouse Band. Said chiefs or headmen of the Palouse Band did not agree to a cession of their lands to the Respondent.

20. The chiefs and headmen of the fictitious Yakama Nation were opposed to any cession of lands to the Respondent. For many weeks the Respondent's agents were unsuccessful in their efforts to obtain cessions of any parts of the lands of the independent tribes or bands which were treated fictitiously by the agents of the Respondent as a unified Yakama Nation. Finally certain of said chiefs or headmen were persuaded against their will and were coerced into signing a proposed treaty on June 9, 1855.

21. Shortly after the conclusion of the treaty council at Walla Walla in 1855, and long before the ratification of the said proposed treaty, concluded at that council, the said chiefs advised the Respondent's agents that they had not signed the so-called treaty



of their own free will and did not regard themselves bound by their consent to the so-called treaty and thereby revoked their consent. The Respondent's agents wrongfully advised the said chiefs that the Respondent would enforce the terms of the so-called treaty by force, even though the same had not been ratified, and thus incited and impelled the chiefs of the Yakima Tribe to warlike actions and thereby brought about the so-called Yakima war. Years after the conclusion of said Yakima War, and without again obtaining the consent of the chiefs of the Yakima Nation to the terms of the so-called treaty of June 9, 1855, and without again obtaining any consent of the Palouse Tribe to said Treaty, Respondent ratified and proclaimed the said treaty in the year 1859.

22. The tract of land described in the so-called treaty of June 9, 1855 as ceded to the Respondent, included all the lands of the Palouse Band lying within the territory of Washington. Said tract of land was valuable mining, agricultural, fishing and hunting land, known at that time by the Respondent to be of exceptional value far in excess of the compensation provided by the terms of said treaty as the sole and full payment to be made by the Respondent for the said lands.

23. Because the Palouse Band did not consent to the said so-called Treaty of June 9, 1855, and because the Palouse Band did not recognize the authority of the fictitious Yakama Nation to cede or otherwise deal with the lands of the Palouse Band by treaty or otherwise, and because the Palouse Band regarded the terms of the so-called treaty as unfair and unequitable, the Palouse Band refused to accept and the Respondent has not paid to the Palouse Band or any member

thereof any part of the consideration provided for in the said so-called treaty.

#### *B. Taking of the Lands of the Palouse Band in Idaho Territory.*

24. After the conclusion of the so-called treaty of June 9, 1855, the Respondent wrongfully demanded and insisted that the Palouse Band move to the reservation set apart in that so-called treaty for the fictitious Yakama Nation. The Palouse Band did not agree to move and would not and did not move to said reservation which wrongfully had been set apart for other Indian tribes or bands having no relationship in common with and being strangers to the Palouse Band. Whereupon, the Respondent wrongfully drove the Palouse Band from all its lands, including the lands lying within the boundaries of Idaho Territory.

25. The Respondent wrongfully deprived the Palouse Band of its lands lying within the boundaries of Idaho Territory without extinguishing the title of the Palouse Bands to the said lands. The Respondent never paid to the Palouse Band or any member thereof any compensation for the said lands of the Palouse Band lying within the boundaries of Idaho Territory.

#### **Trespasses on the Lands of the Palouse Band and the Conversion of its Property**

##### *A. Minerals and Metals.*

26. Miners unlawfully went within the lands of the Palouse Band to prospect upon said lands. Shortly thereafter, said miners discovered valuable mineral and metal deposits on said lands and unlawfully car-



ried off said deposits and other products from the lands. Said trespasses were committed with the knowledge and consent of the Respondent and its agents and in breach of the Respondent's fiduciary obligations to the Palouse Band. The Respondent did not prevent or prohibit said miners from trespassing upon said lands or from mining and removing its properties and made no effort to do so. This said unlawful prospecting and mining and the unlawful removal of the mineral, metal deposits and other products from these lands continued without abatement and in increased volume for many years. During these years, minerals and metals of great value, the true value to be established by the proof, were in this manner unlawfully removed from these Indian lands.

27. The Respondent was grossly negligent in the performance of its duties of a guardian or trustee in possession in that it did not take the steps which it could have taken and was under a duty to take to safeguard the rights of the Palouse Band to royalties or other compensation for the minerals, metals and other products unlawfully removed from these Indian lands. Respondent made no charge for the taking of these said minerals, metals and other products from the lands of the Palouse Band, or, if any charge was made, failed to credit to the Palouse Band any proceeds from the taking of said minerals, metals and other products.

28. The Respondent with knowledge that said minerals, metals and other products had been unlawfully taken and removed from the lands of the Palouse Band purchased a part of said minerals, metals and other products from the trespassers and converted the

said products to its own use, without providing any compensation therefor to the Palouse Band and without obtaining any consent or agreement of the Palouse Band.

29. By furnishing a market to said trespassers for the minerals, metals and other products unlawfully taken and removed from the lands of the Palouse Band, Respondent encouraged the said trespassers unlawfully to continue to take and remove the said products from the lands of the Palouse Band.

#### *B. Railroad Lands.*

30. Railroad companies unlawfully went within the lands of the Palouse Band to survey said lands for railroad purposes. Shortly thereafter, said railroad companies did build their railroads through the lands of the Palouse Band. Said trespasses were committed with the knowledge and consent of the Respondent and its agents and in breach of the Respondent's fiduciary obligations to the Palouse Band. The Respondent did not prevent or prohibit said railroad companies from trespassing upon said lands or from building their railroads through said lands.

31. The Respondent was grossly negligent in the performance of its duties of a guardian or trustee in possession in that it did not take the steps which it could have taken and was under a duty to take to safeguard the rights of the Palouse Band to compensation for the said taking of its lands and other property and its rights and interests therein. Respondent made no charge for the taking, or, if any charge was made, failed to credit to the Palouse Band any proceeds from the said taking.



C. *Other Trespasses.*

32. During these same years, other trespassers, unlawfully came upon the lands of the Palouse Band and unlawfully made settlements within said lands and unlawfully used said lands and unlawfully used other property of the Palouse Band. These unlawful actions were undertaken with the knowledge and the consent of the Respondent and its agents and over the protests of the Palouse Band and in violation of Respondent's fiduciary obligations to said Palouse Band, and without affording to the Palouse Band any compensation for said use of its lands and other property.

33. The Respondent, by its official acts, encouraged said trespassers unlawfully to come upon the said lands and unlawfully to make settlement thereon or unlawfully use said lands and other property by performing wrongfully the functions of a sovereign on behalf of said trespassers, and failed to obtain for the Palouse Band any benefit from or compensation for these uses of its lands and other property.

34. The Respondent was grossly negligent in the performance of its duties of a guardian or trustee in possession in that it did not take the steps which it could have taken and was under a duty to take to safeguard the rights of the Palouse Band to damages for the unlawful trespasses on its lands, and the unlawful taking of its other property and to compensation for or other benefits from the use of its lands and other property.

**Pro-Rata Share of the Palouse Band in the Trust Lands, Funds and Properties of the "Yakima Nation"**

35. Pursuant to the treaty of June 9, 1855, the Respondent created and recognized the Palouse Band, and the members thereof, as part of the "Yakama Nation" and reserved certain lands for the use and occupancy of the said Yakama Nation and beginning with that said treaty has exercised and now is exercising in respect to all the lands, funds and other property of the said Yakama Nation and of each tribe, group or member thereof, the powers of a guardian and trustee in possession. By the terms of said treaty, Respondent created and recognized the Palouse Band and each member thereof as a member of, part of, and belonging to the Yakama Nation and, as such, at all times thereafter, as having an interest in, right to and claim upon a **pro rata share in all the lands, funds and other property of the Yakama Nation.**

A. *Land Cession Funds.*

36. Pursuant to the said treaty of June 9, 1855, and to subsequent Acts, the Respondent purchased part of the lands of the Yakama Nation. The Respondent has managed and administered the funds and other compensation paid for said lands as guardian of and trustee for the Yakama Nation and each constituent tribe or band thereof and each member thereof.

B. *Increments from the Trust Lands and Properties.*

37. From time to time, the Respondent sold, leased, issued grazing permits for, and otherwise permitted uses of, and removal of resources from, the lands



and properties of the Yakama Nation. The Respondent has received and held the rents, royalties and other compensation therefor, as guardian of and trustee for the Yakama Nation and each constituent tribe or band thereof and each member thereof.

C. *Allotments of Land.*

38. From time to time, the Respondent agreed and undertook to survey the lands of the Yakama Nation and to make allotments thereof to the members thereof. The Respondent has managed and administered said survey and allotments as guardian of and trustee for the Yakama Nation, and each constituent tribe or band thereof and each member thereof.

**Claims for Relief**

39. The petitioners, herein, realleging each and all the facts and circumstances set forth above as far as relevant in support of each claim, assert each of the following claims for relief separately and alternatively.

A. *Unlawful Taking of the Lands and Other Property of the Palouse Band.*

40. Respondent, in violation of the Constitution, laws and treaties of the United States; or, in breach of law or equity, including breaches actionable in tort; or, pursuant to treaties which should be revised on the ground of fraud or duress or unconscionable consideration or mistake; or, without the payment of compensation agreed to by the Palouse Band; or, otherwise under circumstances not amounting to fair and honorable dealings: unlawfully took from the Palouse band all the lands which the Palouse Band

held by original Indian title as well as other property of the Palouse Band, or to which lands the Respondent recognized the title of the Palouse Band.

B. *Unlawful Trespasses on the Lands of the Palouse Band and Conversion of Its Property.*

41. Respondent, in violation of law and in breach of its fiduciary obligations as guardian and trustee in possession, failed to protect the Palouse Band from trespasses on its lands and the unlawful use, the taking and destruction of its properties; converted the properties of the Palouse Band to Respondent's own use; failed to safeguard the rights of the Palouse Band to damages or other compensation for the said unlawful trespasses on its lands and the unlawful use, taking and destruction of its properties; and encouraged, aided, and abetted said trespasses. Said violations of law and breaches of fiduciary obligations by Respondent included, but not by way of limitation, the following:

- (a) it failed to protect the Palouse Band from trespasses on its lands and from the taking of its properties and the use of its lands and properties;
- (b) it failed to safeguard the rights of the Palouse Band to damages or compensation for unlawful trespasses on, or use of, its lands, or the taking or use of its properties;
- (c) it failed to safeguard the rights of the Palouse Band to royalties or other compensation for the unlawful mining and removal of the minerals, metals and other products from its lands;
- (d) it converted minerals, metals and other products unlawfully mined and removed from the lands of the Palouse Band to its own use;



(e) it encouraged the said unlawful trespasses upon and the unlawful mining and removal of the minerals, metals and other products from the lands of the Palouse Band by purchasing the said minerals, metals and other products from the trespassers;

(f) it failed to safeguard the rights of the Palouse Band to compensation for the taking and use of its lands by the Railroad Companies;

(g) it encouraged said Railroad Companies unlawfully to take said lands by granting charters, franchises, rights of way or other privileges to said Railroad Companies.

C. *Unlawful Withholding of the Pro Rata Share of the Palouse Band in the Trust Properties.*

42. Respondent, in violation of law and in breach of its fiduciary obligations, wrongfully has refused to pay and has never paid to the Palouse Band or any of the members thereof, its pro rata share in the trust funds and properties of the Yakama Nation.

43. Respondent in violation of law and in breach of its fiduciary obligations, wrongfully has refused to and has never made any allotments of lands of the Yakama Nation to the Palouse Band or any of the members thereof.

**Prayer for Relief**

44. WHEREFORE, with respect to each of the above claims the petitioners separately and alternatively pray:

A. For a determination that Respondent is obligated to make payment by way of compensation or damages, as the case may be, together with interest;

B. For a determination of the reasonable amount of such compensation or damages, together with interest;

C. For an order directing the Respondent to render a full and complete accounting with respect to the said trust properties;

D. For a determination that Respondent shall pay to the Palouse Band such an amount as is revealed by such an accounting to be due and unpaid, together with interest;

E. For a determination that Respondent is liable to the Palouse Band and the members thereof in damages for any breach of its fiduciary obligations, together with interest.

That judgment be entered in favor of the petitioners.

BY JAMES E. CURRY  
519 East Capitol Street  
Washington, D. C.

LYLE KEITH  
1121 Paulsen Building  
Spokane, Washington  
I. S. WEISSBRODT  
1822 Jefferson Place N. W.  
Washington 6, D. C.

*Attorneys for Petitioners*

DAVID COBB  
1822 Jefferson Place N. W.  
Washington 6, D. C.

ABE W. WEISSBRODT  
1822 Jefferson Place N. W.  
Washington 6, D. C.  
*Of Counsel*



## AFFIDAVIT

CITY OF WASHINGTON )  
 ) SS:  
 DISTRICT OF COLUMBIA )

I. S. WEISSBRODT, being first duly sworn, deposes and says: that he is one of the attorneys for the petitioners herein and is authorized to represent said petitioners herein; that he has read the foregoing petition herein subscribed and that he believes the facts stated therein are true to the best of his knowledge, information and belief.

I. S. WEISSBRODT

Subscribed and sworn to before me, a Notary Public in and for the District of Columbia, this 25th day of July, 1951.

ELEANOR DOWNING

(SEAL)

*Notary Public.*