

Ten Million Acres Ceded, Reservation Established

It is a common misunderstanding that reservations were "given" to Indians. But Indian tribes paid dearly for the land reserved for them in treaties.

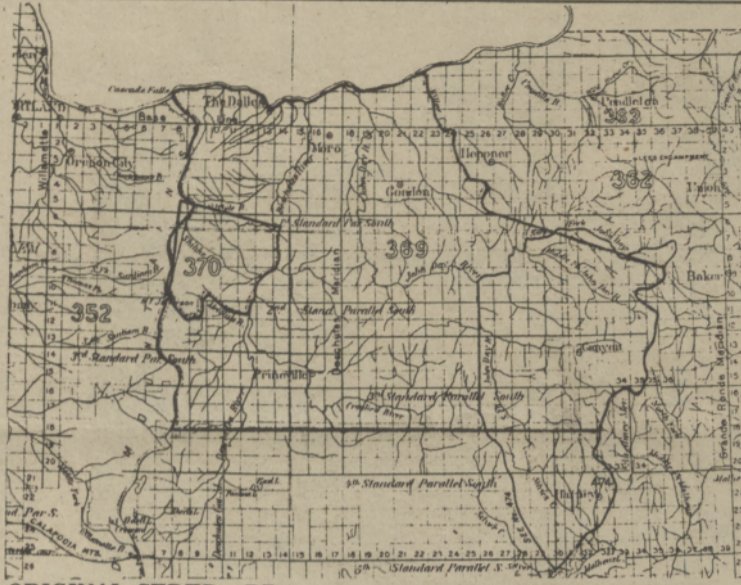
The price they paid was often the sacrifice of millions of acres of "claimed" lands — lands that felt more like home than the plots selected for them by representatives of the federal government. This was the case in middle Oregon in 1855. Ten million acres of land abounding in fish, roots, berries and game were exchanged for \$150,000 in cash, goods and services, a reserved area of 639,000 acres, and the right to hunt and fish in accustomed places.

It was done in only three days, and the boundary disputes and land claims that have arisen in the 120 years since the treaty was signed could have been predicted. Although not under duress, the chiefs of the Walla-Walla and Wasco bands signed reluctantly, clearly voicing objections throughout the treaty council. But they, along with the Indian agents, saw no other solution to the conflicts between natives and newcomers but for the tribes to "live aside from the whites," as Kuck-up admitted.

The haste with which the treaty was drawn up and signed almost guaranteed later disputes. But far from being a dated or useless document, the 1855 treaty has provided a springboard for negotiations and settlements in the years since. The signatures may not have indicated total accord, but they created a mutual commitment between two parties where only antagonism existed before.

The claimed land

A substantial portion of Oregon's interior was "claimed" by the bands and tribes that depended on the Columbia River. It was on the slopes of the Cascades that they found their berries, on the dry flat lands that the roots



ORIGINAL CEDED AREA AND PRESENT-DAY RESERVATION

thrived, and most anywhere that deer could be hunted.

Since "claiming" was not the traditional way in which Indian people viewed the land, it is uncertain how the ten million acres came to be claimed, with boundaries drawn. Although the area supposedly described to officials by local Indians had no set boundaries and wasn't used exclusively, it was mapped out with title assigned to the "tribes of middle Oregon."

The fact that some of the Walla Walla and Wasco territory overlapped with that claimed by tribes to the east and south did not seem to matter at the time, but settlement disputes today have grown out of that ambiguity.

The treaty extinguished all "right, title, and claim" of the Indians to ten million acres extending from the Columbia River south to the 44th parallel and from the summit of the Cascades east to the summit of the Blue Mountains (see map and detailed description in Article 1).

Within those boundary lines was a plot of land — six percent

of the original claimed area — that was reserved for the Indians' exclusive use.

Just compensation for the ceded land has since been claimed under the 1946 Indian Claims Act (see separate story).

The reservation

Based on what the Indian treaty delegates had to say about the proposed site of their reservation, the 639,672 acres at the foot of Mt. Jefferson and bounded by the Metolius and Deschutes Rivers were probably the least used of the claimed lands.

Explorers who crossed the reservation site before 1855 made note of temporary Indian camps but found no permanent settlements. A well-known trail through the reservation north to south and many southern Oregon Indians had fleeting acquaintance with the hot springs, Indian Head Canyon and other locales when they were trekking to and from the Columbia.

As Mark, of the Dalles band of the Wascoes, commented: "The place that you have mentioned I have not seen. There is no Indians nor whites there yet, and that is the reason I say I know nothing about that country. If there were whites and Indians there then I would think it was good country. . . I am afraid of that country."

Mark went on to say that he and his people would prefer to have the Tigh (now Tygh Valley). Many others reiterated this desire, while some wanted to retain land east of the Deschutes River. Sym-tus-tus was one chief who stressed the value of reserving rights to the off-reservation fisheries and berry and root grounds.

General Joel Palmer quickly pointed out the inadvisability of making reservations "here, there and all over" as had been done in the Willamette Valley. In fact the President had directed the Indian agents to consolidate the Indians rather than allow separate, scattered reservations.

Palmer did, however, make provision for the tribes' selection of another, more suitable location for the reservation. As spelled out in Article 1, three representatives from each band might join the superintendent of Indian Affairs or a agent to examine alternate sites before removal and before any improvements were begun. To anyone's knowledge, this privilege was never exercised.

Removal

Settlement of the largely unfamiliar area was to be accomp-

TREATY WITH THE TRIBES OF MIDDLE OREGON, 1855

ARTICLE 1. The above-named confederated bands of Indians cede to the United States all their right, title, and claim to all and every part of the country claimed by them, included in the following boundaries, to wit:

Commencing in the middle of the Columbia River, at the Cascade Falls, and running thence southerly to the summit of the Cascade Mountains; thence along said summit to the forty-fourth parallel of north latitude; thence east on that parallel to the summit of the Blue Mountains, or the western boundary of the Sho-sho-ne or Snake country; thence northerly along that summit to a point due east from the headwaters of Willow Creek; thence west to the headwaters of said creek; thence down said stream to its junction with the Columbia River; and thence down the channel of the Columbia River to the place of beginning. Provided, however, that so much of the country described above as is contained in the following boundaries, shall, until otherwise directed by the President of the United States, be set apart as a residence for said Indians, which tract for the purposes contemplated shall be held and regarded as an Indian reservation, to wit:

Commencing in the middle of the channel of the De Chutes River opposite the eastern termination of a range of high lands usually known as the Mutton Mountains; thence westerly to the summit of said range, along the divide to its connection with the Cascade Mountains; thence to the summit of said mountains; thence southerly to Mount Jefferson; thence down the main branch of De Chutes River; heading in this peak, to its junction with De Chutes River; and thence down the middle of the channel of said river to the place of beginning. All of which tract shall be set apart, and, so far as necessary, surveyed and marked out for their exclusive use; or shall any white person be permitted to reside upon the same without the concurrent permission of the agent and superintendent.

The said bands and tribes agree to remove to and settle upon the same within one year after the ratification of this treaty, without any additional expense to the United States other than is provided for by this treaty; and, until the expiration of the time specified, the said bands shall be permitted to occupy and reside upon the tracts now possessed by them, guaranteeing to all white citizens the right to enter upon and occupy as settlers any lands not included in said reservation, and not actually inclosed by said Indians. Provided, however, That prior to the removal of said Indians to said reservation, and before any improvements contemplated by this treaty shall have been commenced, that if the three principal bands, to wit: The Wascopum, Taih or Upper De Chutes, and the Lower De Chutes bands of Walla Wallas shall express in council, a desire that some other reservation may be selected for them, that the three bands named may select each three persons their respective bands, who with the superintendent of Indian affairs or agent, as may by him be directed, shall proceed to examine, and if another location can be selected, better suited to the condition and wants of said Indians, that is unoccupied by the whites, and upon which the board of commissioners thus selected may agree, the same shall be declared a reservation for said Indians, instead of the tract named in this treaty.

(Article I to be continued)

A Claim that Keeps Shrinking

For years it was one step forward — two steps backward, but finally in 1973 the Tribes were awarded a monetary settlement for a portion of the original land claim ceded in the 1855 treaty. And even then it was not an event people wanted to cheer about: 8.6 million acres had been pared from the original claim and the settlement money was tied up until a distribution plan was accepted.

The ceded land claim was one of several grievances lodged by the Tribes — the others concerning the McQuinn Strip and the 1965 treaty. The McQuinn Strip was restored to the reservation in 1972 and the 1865 treaty died when U.S. v. Oregon was decided in the Indians' favor in 1969.

In 1946 the Indian Claims Act made it possible for the Tribes to "sue" the federal government for inadequately compensating them for 10 million acres of ceded land. A claim was filed in 1951.

In 1966 the Claims Commission decided that only 1.6 million acres of the claim had been used exclusively by the Walla Wallas and Wascoes. The exact location of the reduced acreage was moved around in subsequent years until 1968 when it was established along the Columbia River from the Cascades to

Arlington and south to Condon — a valuable piece of realty.

Phase II of the claim procedure began in 1970 and concerned the value of the land. Two years later the 1855 market value of the land was set at a little over \$1 an acre, for a total value of nearly \$1.7 million.

Phase III centered on the offsets, or those monetary benefits received by the Tribes from the federal government over the years. The sums actually paid under the treaty and the value of the reserved land were subtracted from the assessed value of the claim and a settlement was made out of court for \$1,225,000.

This to many tribal members was an insult, and a one-in-three minority voted against the settlement in the 1973 referendum. But it passed and the Claims Commission gave their approval.

Congress appropriated the funds but a tribal member's lawsuit challenging the settlement distribution plan (Gold v. Confederated Tribes and Secretary of Interior) has held up the payment. Until it is decided whether the Department of Interior can prevent enrolled members who have participated in other claims from receiving a share of the Warm Springs settlement, the money will sit in D.C., decreasing in value as time goes on.

The McQuinn Strip: Ownership but not exclusive use

In September 1972 President Nixon signed a bill that ended 101 years of hard-fought battles to bring 61,360 acres of government lands into the Warm Springs Reservation — land that had rightfully belonged to the Tribes all along. An additional 17,251 acres of patented, privately-owned land was also brought within the reservation boundaries.

Because of the extent of private settlement and development and the presence of U.S. Forest Service facilities within the McQuinn Strip, a unique cooperative use system was established by the 1972 act.

The act specifies that:

- The acres of national forest included in the McQuinn Strip will still be used to compute counties' share of revenues.
- Commercial timber will continue to be sold by oral auction until 1992 when the Tribes will take control.
- Existing livestock grazing permits will be honored until 1992.
- Pacific Crest Trail right of way continues to be held by the Secretary of Agriculture.
- All lakes are open to public fishing.
- State game laws will be enforced under a cooperative agreement between the Tribes and the Oregon State Game Commission for ten years and may be renewed for another ten at the commission's option.
- U.S. Forest Service may use without charge but with responsibility of maintenance, all fire lookout stations and the land and improvements at Bear Springs Ranger Station.
- All public campgrounds and roads shall be managed and maintained by the Tribes.
- The Tribes will place an adequate livestock fence at the northern boundary. If owners wish to fence fee patent lands, the Tribes will pay for half the fencing.
- The Water Right Agreement of 1971 between the Tribes and Juniper Flat District Improvement Company applies to McQuinn lands.
- The Tribes can make rules and regulations and enter into contracts to carry out provisions of the act.