

CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION
SHOAL WATER BAY INDIAN TRIBE
TREATY RELATIONS WITH THE UNITED STATES

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Introduction

The people of the Shoalwater Bay Indian Tribe and the people of the Confederated Tribes of the Chehalis Reservation are similar to neighboring Indians in western Washington in their aboriginal heritage. Their ancestors were native to the area. The native economies were based on fishing. Anadromous species, including salmon, steelhead, sturgeon, and lampreys were an important part of native subsistence.

The membership of the Shoalwater Bay Indian Tribe is derived largely from Lower Chinook and Lower Chehalis people who were resident in the Grays Harbor--Shoalwater Bay--Lower Columbia region in 1866 when the Shoalwater Bay Indian Reservation was set aside by Executive Order. Their ancestors fished both in the marine waters and in the rivers and streams of this part of the coast.

The membership of the Confederated Tribes of the Chehalis Reservation is derived largely from Upper Chehalis and neighboring people who were living along the Chehalis River and tributary streams in 1864 when the Chehalis Reservation was set aside by Secretarial Order. These people were primarily river fishermen. Their major fisheries were located in the Chehalis River drainage system.

The Shoalwater Bay Indian Tribe and the Confederated Tribes of the Chehalis Reservation are federally recognized Indian tribes. Neither tribe is signatory to a treaty which has been ratified by the United States. The situation of these two tribes is unique in western Washington and results from the particular history of United States relationships with the ancestors of these people in the 1850s.

The policy of the United States in the mid-nineteenth century was to make treaties with all of the Indians in the Pacific Northwest for the cession of their lands and to secure to them certain lands as Indian reservations. Ancestors of the Shoalwater Bay Indian Tribe signed treaties with the United States in 1851, but the treaties were not ratified by the United States.

Ancestors of both the Shoalwater Bay Indian Tribe and the Confederated Tribes of the Chehalis Reservation participated in treaty negotiations with the United States in 1855, but that treaty council terminated without a treaty having been concluded.

The Quinault were also participants at the same 1855 treaty council. Subsequently, the United States negotiated a treaty with the Quinault. The intention appears to have been to conclude a treaty with the remaining parties to the aborted 1855 treaty council, but this never happened. The remaining parties included the Lower Chinook, Lower Chehalis, and Upper Chehalis groups -- ancestors of the present day Shoalwater Bay Indian Tribe and Confederated Tribes of the Chehalis Reservation.

The failure to conclude treaty negotiations with these people after the aborted treaty council appears to have been caused by the disrupted state of affairs after the outbreak of the Indian wars of 1855-56. The same events prevented Governor Stevens from meeting with and negotiating treaties with a number of Indian tribes and bands in the eastern part of Washington. Comparison of the history of United States relations with Indian tribes in that area provides context for understanding the history of treaty relations with the Shoalwater Bay Indian Tribe and the Confederated Tribes of the Chehalis Reservation.

The United States initially attempted to locate the Lower Chinook, Lower Chehalis, and Upper Chehalis on reservations in the territory of other Indians. Failing this, the two executive order reservations were created for them. Later, members of the Shoalwater Bay Indian Tribe and the Confederated Tribes of the Chehalis Reservation were permitted to take allotments on the Quinault Reservation.

The history of the United States relations with the Kalispel Indians in eastern Washington has some similarities and some differences to those of the Shoalwater Bay Indian Tribe and the Confederated Tribes of the Chehalis Reservation. These are briefly compared.

1. The Background of the Unratified Dart Treaties.

In 1851 Anson Dart, representing the United States, negotiated a series of treaties with bands of Chinook and other Indians at Tansey Point, on the lower Columbia River. Information about these treaties and surrounding events is essential to an informed understanding of the subsequent history of United States relations with the people who became members of the Shoalwater Bay and Chehalis Indian Reservation communities.

Influence of Dart Treaties on U.S. Treaty Policy in Washington Territory

The Dart treaties were not ratified by the Senate, but information transmitted by Dart to the Commissioner of Indian Affairs concerning the Indians party to these treaties appears to have influenced later instructions to Governor Isaac I. Stevens with respect to treaty negotiations he was to undertake in Washington Territory.

Dart reported that he had made treaties with ten bands of Chinook Indians. He described these as remnants of a once populous and powerful people in the Lower Columbia River region whose numbers were rapidly decreasing through ravages of disease and liquor. The Indians did not want to leave their homes. The Dart treaties provided these bands with small reservations in their respective territories.

In 1854 Isaac I. Stevens was instructed to make treaties with the Indians in Washington Territory. He was directed to attempt to combine smaller bands and "fragments of tribes" into larger confederations in order to reduce both the number of treaties to be negotiated and the number of reservations.

Dart Treaties and Indian Expectations of a Reservation at Shoalwater Bay

As an alternative to the small reservations provided for the several Chinook bands as described above, Dart had made provision in the Treaty with the Wheelapa Band of Chinook Indians for a large general reservation encompassing Shoalwater Bay and environs. This large area was to be set aside as an Indian reservation in the event that the Shoalwater Bay people and their surrounding neighbors would all agree to relinquish claims to other lands and come to reside at the Shoalwater Bay reserve.

Chinook Indians who had signed the unratified Dart treaties in 1851 were called to negotiate treaties with Stevens in 1855 at the Chehalis River Council. Neighboring Indians who had not been included in the treaty council at Tansey Point, but who had been expected to share in the Shoalwater Bay Reservation were among the treaty negotiators at Chehalis River.

These Indians, both those who had participated at Tansey Point and those who had been advised of the proposed reservation, brought to the Chehalis River treaty council expectations and understandings stemming from the Dart treaties which had been negotiated in 1851.

Ancestors of the present Shoalwater Bay Indian Tribe declined to sign a treaty with Governor Stevens in 1855 at the Chehalis River treaty council because they wanted a reservation at Shoalwater Bay.

When Dart had engrossed the large general reservation in the 1851 treaty, he reported that there was not a single white resident at Shoalwater Bay. By 1855 there were a number of white men established there engaged in exporting oysters and cranberries to markets in Oregon and California. In 1855 the Indians doubtless realized that the large reservation for their exclusive use which had been proposed by Dart was no longer a viable possibility, but they were determined to have some land reserved to them in this area.

George Gibbs , Robert Shortess, Anson Dart and the Shoalwater Bay Indian Reserve

George Gibbs (a member of Stevens treaty commission in 1854-55) had originally suggested Shoalwater Bay and the surrounding area as an Indian reservation for people of the coastal region in 1850. In a letter to the Secretary of the Interior Gibbs also wrote about the nature of the country and about Indian reliance on fisheries. His letter is discussed below.

Gibbs was not a member of the Dart treaty council at Tansey Point, but he was a friend of Robert Shortess who assisted in the Dart treaty preparations. Shortess also participated at the August 1851 Tansey Point council. Several months before the Tansey Point council, Shortess recommended to Dart that Shoalwater Bay and environs would be an appropriate place for a general reservation for Chinook Indians of the Lower Columbia River region. As noted, the suggested reservation was incorporated as a provision in one of the Dart treaties.

In 1850 and 1851 Gibbs and Shortess shared other information concerning the Lower Columbia River Indian populations. This information formed part of the working knowledge which Gibbs conveyed to Stevens and the other commissioners in 1854-1855 and which he brought to the 1855 Chehalis River council as a member of the Stevens treaty commission in western Washington.

George Gibbs' letter to the Secretary of the Interior, 25 June 1850

On June 5, 1850 Congress passed an Act authorizing the Negotiation of Treaties with the Indian Tribes in the Territory of Oregon, for the Extinguishment of their Claims to Lands lying west of the Cascade Mountains. George Gibbs had been resident in Oregon (at Astoria) for the previous six months. He sent a long letter to the Secretary of the Interior containing information about the country and recommendations concerning the Indians. Among other things, Gibbs noted that apart from the Willamette Valley where most of the whites were settled, there were prairie tracts of agricultural land along the Cowlitz and Chehalis rivers and in the Puget Sound district. Generally, he reported that agricultural lands were of small extent, capable of supporting only a few families, and that white settlers were beginning to oust Indians from these sites.

The consequence has been that the native inhabitants even thinned as they are by disease and death, have become more and more crowded, and as the emigrants naturally select for the purposes of settlement or speculation the most eligible sites, with little enough regard to the necessities of the savage, the results have already become disastrous to the latter.

In considering the necessities of these people it is to be remembered especially, that western Oregon affords but little game, and that the fur trade is substantially extinct here. It is emphatically a fishing country and its original inhabitants, depend, now as of old upon the produce of the waters.

(Gibbs to Secretary of Interior, 25 June 1850)

Gibbs alleged that unless the federal government extended protection and care to the Indians, they would be extinct in a few years. He noted that insufficient pay was offered to attract suitable Indian agents and that "Straggling remnants of Indian tribes in such a territory as Oregon are therefore likely to

receive but little notice." Gibbs suggested that these Indians be brought together on a general reservation apart from the whites.

In one way this labor may be lightened and a more strict attention secured, and that is by bringing the scattered tribes west of the Cascade mountains and nearest Columbia river into one reservation, appointing a subagent to remain among them and suffering no other whites to reside there but such as are married to Indian women and considered of proper character are allowed by the governor to do so in security that they will not sell liquor or otherwise violate the laws.

The tract of land which I would point out as suitable for a reservation, considering both the welfare of the natives and the rights which the emigrants may be considered to have acquired is that lying on the north side of the Columbia & south of the Chikeles or Tsihalis river and between the Cowlitz & the Pacific. It comprehends a space of about fifty miles square, affords good salmon grounds on the Columbia and a sufficient amount of prairie on the coast to support their animals and raise their vegetables and is moreover less liable to intrusion than the lands on the south side of the river. This is more particularly the case now, than formerly, for the channel at present altogether used across the bar of the Columbia, upon which the report of the officers of the Coast Survey now here, will be conclusive is on the south side of the river.

(Gibbs to Secretary of Interior, 25 June 1850)

Gibbs described the few whites who were present in the district proposed for an Indian reservation and concluded that no other district in Oregon so suitable for the Indians could be found where less dislocation would accrue to white settlers.

He then suggested the Indians who should be located on the reservation, giving estimates of their numbers. Gibbs listed these Indians living on the south side of the Columbia River: Clatsops, Cathlamets, Tlaskani, and Tillamooks. Those living on the north side of the Columbia included: Chinooks, Cowlitz, Quinalts, Chehalis, Clallams and others between the Chehalis and Puget Sound. Altogether their numbers were estimated to be somewhere between 930 to 1145.

Finally, Gibbs proposed Robert Shortess for appointment as Indian agent in the event that the government should decide to establish the reservation.

Gibbs' recommendations are cited here as evidence of his state of knowledge concerning Indian matters in the area at that date and the kind of information available to the Interior Department at the time. Gibbs advised the Secretary that his knowledge of Columbia River Indians from the Cascade Mountains to the coast was based on observation and on information from old settlers. Although he did not mention this to the Secretary, Gibbs had visited neither the coast north of the Columbia River nor Puget Sound at the time this letter was written.

Six months later Anson Dart had been assigned the task of making treaties with the Chinook and other bands around the Lower Columbia River and Robert Shortess, sub-Indian agent, had made a census of some of these people for Dart in preparation for the treaty negotiations. A copy of Shortess' Chinook census (in Gibbs' handwriting and dated January 1851) shows that it was an actual count with named individuals. It appears that it probably was reasonably accurate, at least as to the groups of people encompassed.

Shortess' report to Dart transmitting the census also includes information on subsistence activities and suggests that the Indians be concentrated on a reservation north of the Columbia encompassing Shoalwater Bay and including the principal Chinook fisheries.

I herewith forward to you a statement of the census recently taken by myself of the Chinook and Clatsop tribes of Indians, in this district, including such numbers of it as are known to reside elsewhere. These lists, though not absolutely correct, are as much so as can be made under the circumstances and approximate very nearly to the actual numbers.

The total number of the Chinooks as you will perceive, is, one hundred and seventy one, of which are of the full blood 99, of half breeds 36, and of slaves 36.

. . . . Of Whe-lap-pas on the river of that name, running into Shoalwater bay, about ten, under Sker-lak-us and Pe-e-us, as heads-men. This band is connected in language & habits with the Klats-ke-nais on this side of the river, both being hunting Indians, in opposition to the Chinooks & Clatsops who are fishing tribes. And finally of the Cowlitz on the river of that name, about fifty, as is supposed including half breeds.

. . . . Their subsistence is almost wholly derived from their fisheries, with the exception of the two bands above mentioned. They use however the usual wild roots of the country, and a few of them raise potatoes & fowls.

It is my opinion that if brought together upon a reservation, secluded from the influence of the whites, and affording all means of pasturage and agriculture that they can be materially improved in character and condition. The advantages of removing them would enure entirely to the benefit of the Indians themselves, as to the whites, they are a benefit instead of an annoyance; being employed as fishermen, boatmen, and in other services.

The tract that I would recommend for a reservation is that lying on the north side of the Columbia, and west of the Wah-kia-kum village, running as far north as the Chickells. This tract includes the Weh-lap-pa prairie, lying on the river of that name which runs into Shoalwater Bay, a point well calculated for cultivation and grazing and it would secure to them the principal fisheries occupied by the Chinooks.

(Shortess to Dart, 5 February 1851)

Of the treaties made by Dart at Tansey Point, we are concerned primarily with two: that made with the "Wheelappa Band of Chinook" and that made with the "Lower Band of Chinook." The first of these was concluded with one of the last survivors of the Athabaskan enclave which held the headwaters of the Willapa River and representatives of the Chinook speakers who occupied the lower reaches of the river. The "Lower Band" of Chinook was used by Dart to denominate those Chinook bands which occupied Shoalwater Bay and the streams draining into it as well as those on the Lower Columbia.

Dart's understanding was that he had purchased all of the lands of the various "tribes and bands" of Indians surrounding Willapa Bay and extending up the Columbia River for about 60 miles from its mouth. In reporting on these treaties to Commissioner of Indian Affairs, Lea, Dart remarked:

The lower band of Chinook Indians, which is the largest of that tribe; have their head-quarters at what is called Chinook point on the Columbia; and occupy at present, the country on the north side of that river directly opposite that of the Clatsops. As late as the year 1820, this point was the rendezvous of the most powerful nation upon the Pacific coast, now wasted to a few over three hundred souls.

. . . .

The next treaty I would speak of in detail is the one concluded with the remnant bands of Wheelappas and Quillequeguas. The only males living of which tribes, are the two signers to the treaty. There are however several females -- women and children yet living.

The tract of country purchased of them is situated on what is known as "Shoal-water Bay" upon the Pacific having about twenty miles of coast and running back inland about forty miles -- bounded on the north by the country owned by the Chehales Indians -- on the east by the Cowlitz band, -- and on the south by the lower band of Chinooks. This purchase is known to embrace a tract equal in fertility of soil and quality of timber, to any portion of Oregon. It has extensive and beautiful groves of the Fir and Cedar, with small Prairies interspersed; there are also large tracts of what is called hard wood bottoms. The surface is gently undulating and mill streams and fine brooks abound throughout the purchase.

You will perceive that this tract is set apart as an Indian country or reserve provided all the neighbouring bands shall, within one year consent to occupy it and give up their temporary rights of possession. This was not done at the request of the Indians, but to gratify a large number of our own people who believed these small bands on, and adjacent to the Coast should suitable provision be made could be persuaded to live together as one band or tribe. But in my opinion there is not the least prospect that a single band will leave their present homes in which case the country will be open for settlement within one year, -- at the present time there is not a white man residing upon the purchase.

(Dart to Lea, 7 November 1851)

Dart reported that the Shoalwater Bay reservation was urged by white settlers. It should not be inferred from this that the Indians were unconcerned about continued rights to resources at Shoalwater Bay. The record shows that they secured guarantees in the Treaty with the Lower Chinook that white men would not be permitted to interfere with their rights to fisheries and cranberries. Both of these were important resources at Shoalwater Bay. The most extensive cranberry marsh in the region was located on the peninsula at Shoalwater Bay in the territory of Chief Nahcotta, one of the signers of the Lower Chinook Treaty. Article 2 of that treaty provides:

The said Lower Band of Chinook Indians, reserve the privilege of occupying the grounds they now occupy for the

purpose of building, fishing and grazing their stock, with the right to cut timber for their own building purposes and for fuel. Also the right to pick cranberries on the marshes, and the right to cultivate as much land as they wish for their own purposes. No white man shall be allowed to interfere with their rights, and it is hereby agreed, that a white man by the name of Washington Hall, shall be removed from the land above ceded. The reservations in this Article, shall continue during the lives of the Indians who sign this treaty.

Indian concerns to secure rights to the fisheries on the Naselle River flowing into Shoalwater Bay and the right to take cranberries is reported on other occasions (Tappan to Stevens, 18 January 1855) and again at the Chehalis River Council (Record of Proceedings, 28 February 1855). At the Chehalis River council the necessity of securing these resources was asserted by Nahcotta and Moos-moos. Both of these men are signatories to the 1851 Lower Chinook Treaty.

Indian concern to protect rights in these resources as evidenced in the Lower Chinook Treaty antedates the arrival of white settlement at Shoalwater Bay and subsequent efforts to displace the Indians. Efforts to protect Indian rights in fisheries and cranberries at Shoalwater Bay anticipated later events, but failed to accomplish their objective.

The Dart treaties were not ratified and the attempted protections were of no effect. The Indians continued to occupy their villages at Shoalwater Bay and to rely on the fisheries and other foods available in the bay and surrounding area. However, their tenure of village sites and fishing locations became increasingly uncertain as settlement proceeded and the treaties were not implemented.

In 1853 the old Oregon Territory was divided. Isaac Stevens was appointed Governor and Superintendent of Indian Affairs of the newly constituted Washington Territory. The Indians north of the Columbia River were now under a new jurisdiction. In 1854 Congress appropriated funds for making treaties with the Indians of Washington Territory and Governor Stevens was authorized to make treaties in order to extinguish Indian title to all the lands of the Territory.

In rapid succession Stevens concluded four treaties with all the Indians in Washington Territory west of the Cascades except for the people of the lower Columbia and the rest of the southwestern district north to the Makah. Stevens intended to extinguish Indian title to all the remaining lands of western Washington at the Chehalis River treaty council.

Stevens did not succeed in concluding a treaty at that council. The failure to ratify the Dart treaties had undermined Indian confidence in the intentions of the government. The Chinook had signed treaties in good faith and then waited for years as further encroachments were made on their lands and resources, but no word or money came from Washington.

These were the only Indians in Washington Territory with whom prior treaty arrangements had been made. None of the rest had been called to a treaty council before Washington became a Territory. Nevertheless, many had heard about the treaties with the Chinook and other Indians in Oregon and California made in 1850-1854 which had been signed by the Indians and then were never heard of again.

When Governor Stevens sent William Tappan, Indian agent for the southern district of Washington, to prepare the Indians of the Lower Columbia for treaty negotiations, a Chinook chief produced a copy of the Dart treaty which he had signed. Tappan made a copy of it for Stevens. (Tappan to Stevens, 18 January 1855)

2. The Failed Chehalis River Treaty Negotiations.

Preparations for the Chehalis River Treaty Council

Stevens' instructions were to treat with all the Indians in Washington Territory, but to make as few treaties as possible and as few reservations as feasible. To achieve these objectives he was to attempt to combine bands and "fragments of tribes" into tribes and concentrate one or more of these tribes on a given reservation. (Mix to Stevens, 30 August 1854)

In preparation for the treaty making, Stevens had solicited information about the Indians from residents in the Territory and from others who were supposed to be knowledgeable. Some of the information provided was unreliable. For example, estimates of Indian population often proved to be much under the actual numbers. Generalizations about Indian character, society, and political organization could and did vary widely. The proper weight to be placed on conflicting assessments in such cases can not be resolved by reference to the training or professional credentials of an observer. These have never been a guarantee either of perceptiveness or objectivity. Descriptions of Indian fishing gear, food preservation techniques, and other aspects of material culture tended to be more reliable than accounts of Indian social organization or political affairs.

Individuals sometimes volunteered information. James Swan, who lived at Shoalwater Bay and who wanted a job as an Indian agent, provided Stevens with unsolicited information about the Indians of Shoalwater Bay and the Lower Columbia. At Stevens' invitation Swan was an observer at the Chehalis River council.

Stevens frequently solicited information and suggestions from his Indian agents, but he did not always act on such advice. In the same way, Stevens conferred with others regarding treaty negotiations, but ignored their proposals when he preferred his own. In the case of the Chehalis River Council, Stevens ignored the counsel of his fellow commissioners and of his local Indian agent.

The Treaty Commission

Stevens organized a treaty commission to assist him in carrying out the negotiations with the Indians. The members of the commission were James Doty,

George Gibbs, Frank Shaw, Michael T. Simmons, and H.A. Goldsborough. Simmons, Shaw, and Goldsborough were settlers at Puget Sound.

Doty was sent east of the mountains to arrange treaty councils with the tribes in the interior. He did not participate in the Chehalis River council nor in the Treaty of Olympia.

Gibbs, a lawyer and amateur ethnologist, had assisted treaty commissions in Oregon and California in 1851 and 1852. Gibbs and Simmons were the commission members most conversant with Indian affairs in the southwestern district of Washington. In 1850 and 1851 Gibbs had collected information about the Indians of the Lower Columbia region. In 1853 he had visited Shoalwater Bay. In 1854 Simmons had explored the coast from Gray's Harbor north to Queets River.

The commissioners met in Olympia, 10 December 1854 to plan a programme of the treaties which would be offered to the Indians. One of the first matters considered was how many reservations would be required in the several districts. With respect to the southwestern part of Washington it was thought that probably four reserves would be required.

Cowlitz & Upper Chihalis
Two Villages

Chinooks & Lower Chihalis
One on North side Gray's Harbor

Qui-ni-ithl
One on the River

(Record of Proceedings, 10 Dec. 1854)

Had this plan been followed, it is likely that most, if not all the participants at the Chehalis River council would have signed a treaty and their descendants would be treaty beneficiaries today. For reasons which are unclear, Stevens ignored the proposed reservations set out in the commission proceedings cited above. Nine days later he wrote to Wm H. Tappan, Indian agent for the southern district giving his own views:

. . . It has suggested itself to me that all the Salt Water Indians of your district could be united with the Coast Indians south of Cape Flattery in a reservation North of Greys Harbor, say on the Quinaiutl River and the remaining Indians either be placed in a single reservation on the

Columbia River, or taken from the River altogether and united with the Yakimas.

These views you will thoroughly test and report by letter fully the arrangements which in your judgment can be made to extinguish the Indian title.

(Stevens to Tappan, 19 December 1854)

Indian Agent Tappan's Reports on the Southwestern District

Stevens had ample forewarning that his proposal was unacceptable to the Chinook of the Lower Columbia and Shoalwater Bay areas and was generally regarded with disfavor by the Indians of southwestern Washington. Stevens had instructed W.H. Tappan, Indian agent for the southern district, to canvass Indian views about removal to a location north of Gray's Harbor, perhaps at Quinault River. (Stevens to Tappan, 19 December 1854)

In January 1855 Tappan reported that the Indians in the southwestern district were opposed to moving to a reservation at Quinault. They were not on good terms with the Indians to the north and they did not want to remove far from their own homes. The Lower Chinook spoke about the Naselle River at Shoalwater Bay and their reliance on fish and cranberries.

At Chenook I found the Indians sullen and not willing to talk to the purpose. Among themselves they conversed freely but always in their original language. finding that nothing could be done with jargon alone I engaged an interpreter who spoke their language freely and proceeded to Shoalwater for the purpose of an expression from them first. After much delay occasioned by severe storms which prevented travel upon the bay and kept the Indians within doors, I succeeded in getting them together. They were willing to dispose of their lands if they could get a reserve that suited them. They obstinately refused to go to the north. they would be affraid to live there. the Indians were not friendly and food would be scarce. The Quiniuth they objected to as being a small river not larger than the Cowlitz and incapable of supporting more than now live there. When Greys harbor was proposed, they replied "what shall we eat?" In short they were not willing to go so far from home into a strange land. We are (said they) but few and in a little time there will be none of us. we are willing to sell our land and move away from the white people as far as the Kenebec Narcelle River and will only ask for a little piece of land where we can raise a few potatoes and be allowed to fish at Chenook and gather cranberries in their

season. The Narcelle (or Kenebec) is a small river emptying into Shoalwater bay from the East opposite the southern extremity of Long Island. There is but one settler there and it is 16 or 18 miles from Bruceville and about half that distance from Chenook. Upon my return to Chenook I found the Indians willing to go to the Nacelle river but not to the north. A prominent man gave notice that when they were all together he would name a place. he would not say where it was till then. The ballance of the people appeared to be indifferent upon the subject but did object to the Narcelle as they did to the north. The old chief Squemarkqoua would not think of leaving his present home. he says with truth that he would not live but a year or two and his land is of no use to the white people. he is in nobody's way.

I think they will only consent to the vicinity of the Nacelle or to the neighborhood of Squemarkqoua where they will be removed five or six miles away from the settlers in land valueless to the settler. this place is six or eight miles below Cathalmette.

(Tappan to Stevens, 18 January 1855)

Tappan had also advised Stevens that the Indians were reluctant to attend a treaty council. They said they had been promised pay for their lands before and nothing had come of it. Tappan called attention to the need for protecting Indian access to fishing stations. He wrote in part:

As treaties are about to be made with the Indians of the Territory, for the purchase of their lands, I will in accordance with your desire make a few suggestions relative to the reservations which in my opinion the welfare of the Indians of the Southern district require for their preservation.

The Indians of the Chehalis River should have the use of the fisheries at the mouth and all that they at present use up the river. As they have but a very few horses and do not cultivate the land I should not deem it necessary to make any further reservation as the large amount of land which must of necessity remain unoccupied for many years will answer all their purposes.

Those at Shoalwater Bay should have free access to the clam and oyster banks and to the fisheries of the Chehalis and Columbia rivers.

The Chehalis should have a portion of the beach set apart for their exclusive use or should be allowed to fish in common with the whites which perhaps would be better as it often becomes necessary to move their landings in conse-

quence of the beach becoming obstructed, or as is often the case, it becomes "worn out." The little bands above should be protected in like manner.

(Tappan to Stevens, Annual Report for 1854)

Stevens arrived at the Chehalis River council on notice that the Indians were dissatisfied with the failure to pay them for their lands and concerned about being evicted from their homes and fisheries.

The Indian Parties at the Chehalis River Council

All the Indians of western Washington of which the commission had knowledge, except for the Upper Chinook and part of the Klikitat who were not invited to treat there, were supposed to be invited to the Chehalis River treaty council. Among those represented were the Quinault, Queets, Lower Chehalis, Upper Chehalis, Satsop, Lower Chinook, Wakiakum, Cowlitz, and Kwaliokwa. These people spoke languages belonging to three separate language families: Coast Salish, Chinook, and Dene (Athapaskan).

At the treaty ground Gibbs discovered that there was another people living on the coast between the Quinault and the Makah. These were the Quileute, of whose existence the commission had been unaware. They spoke a language of yet another family, Chemakuan. (Gibbs Journal, 26 February 1855; Proceedings 20 February 1855)

At the Chehalis River council Stevens had hoped to conclude a treaty with all the remaining people in western Washington (except for the Upper Chinook and Klikitat). Discovery of the existence of the Quileute meant that a separate treaty would have to be made with them before title could be extinguished to all the land west of the Cascades. It was decided that they would be summoned to Olympia to sign a treaty there. (Gibbs Journal, 26 February 1855).

Later, when it was found that only the Quinault and Queets were willing to sign the treaty offered at the Chehalis River council, plans to summon the Quileute to Olympia were altered. A prepared treaty ready for signature was taken to the Quinault River in June 1855 to be signed there by the Quinault, Queets, Quileute, and Hoh.

Some of the Chinook who Stevens had intended to meet at the Chehalis River council did not arrive. (Proceedings, 20 February 1855; Swan 1857:327-328).

The Impasse at the Chehalis River Council

The council appears to have begun reasonably well, despite any doubts the Indians may have had regarding the government's intentions. Swan, whom Stevens had invited to observe the proceedings, has left some brief notes describing the mood of the Indians at the outset.

. . . . Rude tables, laid in open air, and a huge frame-work of poles, from which hung carcasses of beef, mutton, deer, elk, and salmon, with a cloud of wild geese, ducks, and other small game, gave evidence that the austerities of Lent were not to form any part of our services.

Around the sides of the square were ranged the tents and wigwams of the Indians, each tribe having a space allotted to it. The Coast Indians were placed at the lower part of the camp; first the Chenooks, then the Chehalis, Quieniult and Quaitso, Satsop or Satchap, Upper Chehalis, and Cowlitz. These different tribes had sent representatives to the council, and there were present about three hundred and fifty of them, and the best feelings prevailed among all.

(Swan 1857:337-338)

The Coast Indians referred to above included the Chinook, the Lower Chehalis, the Quinault and Queets. The Satsop, Upper Chehalis and Cowlitz lived away from the coast along the rivers. Stevens' failure to give due attention to the differences between the coastal and upriver people was to prove disastrous to the objectives of the council.

Stevens opened the proceedings by explaining that the government wanted to buy their land, provide homes for them where the whites would not encroach upon them, secure their fisheries, and provide them with other benefits. He asked them to sign a treaty which provided that they would all live on one reservation to be located somewhere north of Grays Harbor and south of the Makah country. Neither the location of the reservation nor its size were described.

Initially, the Indians were evidently under the impression that the reservation was a proposal offered for discussion. They responded by describing the locations of their fisheries and explaining which lands they wished to reserve. Only the Quinault appeared to be satisfied with the location of the reserve. This presumably was because it was in their own country.

Taholah, head chief of the Quinault, described the lands the Quinault intended to keep for themselves, and lands they were willing to sell:

He wants his country. His children lived there and wanted food. He wanted them to get it there, did not want to leave it. The river he did not want to sell near the salt water, nor the sand beach mouth, but that part above the mountains and off the river he would sell.

(Proceedings, 27 February 1855)

Tu-leh-uk, head chief of the Lower Chehalis, wanted two reserves, one for a river fishery and one on the south shore of Grays Harbor. He spoke of drying salmon from the river fishery, pasturing his horses on the tide flats on the harbor, as well as getting cranberries on the marshland. He mentioned his ownership of salvage rights on the sea beach -- the right to whales and wrecks.

. . . I want to take and dry salmon and not be driven off. I want three miles above and below Wah nool chie for a reserve on the Chihalis. This river was all mine. While looking for food on it, and fishing I do not want to be driven off. I want the river for a fishery and down below (Chihalis) for a reserve. There was grass there for my horses. I want the beach. Everything that comes ashore is mine. (Whales and wrecks.) I want the privilege of the berries (cranberry marsh).

(Proceedings, 27 February 1855)

Nah-kot-ti and Moos-moos, Lower Chinook chiefs, talked about their seasonal movements to take salmon, their cranberry marsh, and their beach rights. They agreed to share the fisheries at Chenook on the Columbia with the whites.

He wanted to put his house on the Nasal River. (Shoalwater Bay). Where his dead were buried. In summer he wanted to go to Wap-a-loo-chie (a stream emptying into Baker's Bay) to dry salmon and then return to the Nasal to put in his potatoes. He did not want settlers to come to his land. The Bostons should take salmon as before at Chinook. When anything came ashore on the weather beach, whales or anything, they wanted one half. Wanted to fish in Shoalwater Bay as before, as also to take oysters. Was willing to have the whites take winter salmon also, but did not wish them to live on their reserve. They wanted also to get cranberries and sell to the whites.

(Proceedings, 27 February 1855)

Chah-lat, a chief from the north side of Grays Harbor, wanted to reserve a small creek where his people took salmon, a tide prairie for their horses, a small place on the inside shore for their houses, and he wanted to retain his salvage rights along the ocean shore.

. . . They wanted to build their houses on North Point, and there was a small creek they wanted to fish in. When whales came ashore, they wanted them. It was their food. That point was their only place for fishing. There was a tide prairie there for their horses. If they go to Shoalwater Bay they don't stay long. As soon as they have done working for the whites anywhere they go back. Formerly when they went to Shoalwater Bay the Americans (some of them) treated them badly, beat them and knocked them over. That little creek was the only place he cared for, as he always got his salmon there and he liked the place. On the in shore he wanted only a small place for the house, but wanted a scope on the beach where things floated up of which he got a good deal.

(Proceedings, 27 February 1855)

Kah-kow-en, the old chief of the Lower Chehalis, referred to his ownership of beach rights in this way:

. The sea beach was his country.

(Proceedings, 28 February 1855)

Without exception, chiefs from every one of the coastal groups expressed unwillingness to surrender beach rights. From the Makah at Cape Flattery to the Chinook at the Columbia River, property rights in stretches of ocean coastline were claimed by individual chiefs. Anything of value which came into the inshore waters, or drifted ashore, or was found on the beach, belonged to the chief who owned that stretch of coast. While the chief was said to be the owner, it may be that he held the rights as custodian for the group. There is some evidence to suggest that cranberry marshes were held by a similar tenure.

Resistance to leaving their territories was related in part to the fact that these valuable property rights were not movable.

Spokesmen for the upriver groups wanted to reserve stretches along the rivers where their fisheries were located, and natural prairies where camass grew. This is a starchy root which was a valued native food.

Despite attempts by the Indian spokesmen at the council to convince Stevens that they could not all live together, he refused to retreat from his proposition that they should all move to one reservation somewhere north of Gray's Harbor. Over the course of several sessions, the Indians made extensive compro-

mises. All of the upriver or inland people agreed to share one reserve to be located at the junction of Black and Chehalis rivers. The reservation they proposed was in Upper Chehalis territory. The Upper Cowlitz, Cowlitz, Kwailioquas, Satsop, and Upper Chehalis said that they agreed to this rather than go to the coast.

A number of bands from the Wynoochee river down to Grays Harbor, including some from the north side of Grays Harbor agreed to give up their lands and join with the Lower Chehalis on the south side of Grays Harbor.

The Chinook continued to insist on remaining at Shoalwater Bay.

The Quinault insisted on remaining in their country.

Finding that only the Quinault were willing sign the treaty, Stevens abruptly terminated the council. He announced that no treaty had been made and that he would not call upon them again to conclude a treaty.

It is unclear why Stevens was so inflexible on the reservation issue at the Chehalis River council. His own treaty commissioners had proposed four reserves for these people. His agent Tappan had amply informed him of the Indian views and had advised Stevens that the single reservation proposal was not feasible.

After the considerable concessions of the Indians, Stevens could easily have resolved the impasse by permitting several temporary reservations. This was how he had proceeded with the treaties on Puget Sound. Each of the treaties contains a clause permitting the President to remove the Indians to another location or to consolidate other friendly Indians with them.

The Treaty of Medicine Creek provides three reservations for the Indians at the head of Puget Sound. In his letter transmitting that treaty to the Commissioner of Indian Affairs, Stevens said that he had found it necessary to agree to the several reserves in order to secure agreement to the treaty. He noted that the clause permitting consolidation of friendly Indians would permit a reduction in the number of the reserves at a later time. (Stevens to Manypenny, 30 December 1854)

In negotiating the Treaty of Point Elliott, Stevens had found it necessary to agree to four small reservations. The treaty also provided for a large general reservation. Again, the clause permitting consolidation of friendly Indians was seen as a means of eventually reducing the number of smaller reserves by moving people to the general reservation.

Stevens' refusal to agree to several reservations at the Chehalis River council was seen as an error in judgment by Swan, who wrote:

. . . The Indians from the interior did not want to go on a reservation with the Coast or Canoe Indians.

The governor certainly erred in judgment in attempting to place these five different tribes on the same reservation.
(Swan 1857:345-346)

In announcing to the Indians at the Chehalis River council that there had been no treaty and that he would not call on them again to treat, Stevens appears to have exceeded his authority. He had been instructed to negotiate treaties. The Quinault had signed the treaty that was offered there.

When he returned to Olympia and before leaving to enter into treaty negotiations with Indians in eastern Washington, Stevens caused a treaty to be engrossed for the Quinault and Quileute. He also made arrangements for treating again with the remaining parties to the Chehalis River council.

3. The negotiation and implementation of the Treaty of Olympia.

The Treaty with the Quinault (12 Stats. 971) was signed at the Quinault River July 1, 1855 by representatives of the Indians and by Indian agent Michael Simmons and other witnesses for the United States. It was signed January 25, 1856 in Olympia by Governor Stevens, hence its alternate name, the Treaty of Olympia. The record of the treaty council at Quinault River has not been found, although it was purportedly sent to Stevens by Simmons.

Information about the Treaty and interpretation of Stevens' intentions can be drawn from at least two kinds of records. First, there are later statements by Indians who were present at the treaty council as to their understandings of what they were told and what they thought had been agreed. Second, there are contemporaneous writings of Governor Stevens which shed light on his intentions and expectations. While these may be open to more than one interpretation, they provide clues to understanding his intentions regarding the Quinault treaty and the anticipated arrangements with the other parties to the Chehalis River council.

The Chehalis River Treaty and the Treaty with the Quinault

In preparing a new treaty to be signed by the Quinault and Quileute, certain changes had to be made in the language of the treaty which had been prepared for the Chehalis River council. The preamble had to be rewritten to reflect the addition of the Quileute and Hoh as parties and names of those not party to this treaty had to be dropped. In similar fashion, alterations were needed in describing the land that was ceded by the Indians and the amount of money which was to be paid by the United States.

Two additional changes were made in the Treaty of Olympia. Both relate to the provision regarding the land to be reserved to the Indians. The first of these permits the establishment under the treaty of more than one reservation. Instead of providing for "a tract of land", the new language reads "a tract or tracts of land".

The second change is in the description of where the reservations are to be located. The original language read "on the Coast of the Pacific between Gray's Harbor and Cape Flattery". The altered language reads "within the Territory of Washington".

Article 2. of the treaty which was signed by the Quinault at the Chehalis River council, but which was not signed by the other parties is given below:

There shall however be reserved for the use and occupation of the said Tribes and Bands a tract of land on the Coast of the Pacific between Gray's Harbor and Cape Flattery, sufficient for their wants, to be selected by the President of the United States, . . .

Article 2. of the Treaty with the Quinault which was signed by the Quinault and Quileute at Quinault River is given here:

There shall however be reserved for the use and occupation of the tribes and bands aforesaid, a tract or tracts of land sufficient for their wants within the Territory of Washington, to be selected by the President of the United States, . . .

The alteration providing the possibility for the establishment of more than one reservation is clearly a retreat from the position taken by Stevens at the Chehalis River council. It seems likely that this language was inserted in order to avoid a second failure to conclude a treaty in the event that the Quileute resisted removal to the Quinault reservation.

In fact, the Quileute and Hoh did refuse to leave their home territories and eventually separate reservations were provided for them at the Quileute and Hoh rivers. They said that they had not been informed at the Quinault River council that they would have to move to Quinault territory.

The change in language which describes the location of the reserved lands as within the Territory of Washington appears to be designed to provide a wider scope than the earlier language. This is more difficult to assess. The earlier language would have served to encompass any location within the lands ceded under this treaty.

Arrangements to Treat with the Remaining Parties to the Chehalis River Council

Correspondence and instructions relating to the negotiation of the Treaty with the Quinault make reference to future treaty negotiations with the remaining parties to the Chehalis River (Gray's Harbor) council. It appears that Stevens had planned to meet with delegates of these bands in Olympia in the fall.

Stevens addressed a letter to Simmons giving him instructions for negotiating treaties with the remaining tribes of his district. The paper on which it was written was either torn or has disintegrated, but the remaining portion is sufficient to disclose the meaning. The following excerpt contains my reconstruction of partially missing words.

I herewith give instructions for negotiating Treaties with the remaining Tribes of your district.

The programme of the Treaty herewith enclosed is precisely like that of the Grey's Harbor Council, with the exception that the reservations are left entirely to the discretion of the President, and provision is made for the coming in of several Tribes at different times. You will inform the Quiniults and Qui-ley-yuts that they will remain in their country for the present, the upper Chehalis that they may be incorporated with one of the Tribes at the Head of the Sound should they desire it, and the Cowlitz Indians that they may be joined with the Upper Chehalis. The Chinooks, Shoalwater Bay and Lower Chehalis may be informed that their reservation will be selected so as to provide them with fishery & potatoe grounds.

You will just get the signatures of the Qui-nai-ults and Qui-ley-yuts, and the remaining Tribes will be treated with in Olympia. . . .

(Stevens to Simmons, 3 May 1855)

In the above and in other correspondence, Stevens refers to the council held in February 1855 as the Grey's Harbor Council. This is the same council which I refer to as the Chehalis River council.

The letter quoted above shows that Stevens told Simmons to tell the Indians that they would be treated with in Olympia. This is reflected in other Stevens letters as well.

However, it appears that Stevens also entertained the idea that he might not be able to conclude treaties with all of the remaining parties to the Chehalis River council. He reported this possibility to the Commissioner of Indian Affairs, suggesting that Congressional action might be necessary in that event.

. . . I apprehend no difficulty except with the Lower Chehalis and Lower Chinooks numbering 350. These can be disposed of by Congress ordering their removal and making the necessary appropriation.

(Stevens to Manypenny, 17 July 1855)

No such Congressional action was ever taken. Instead, after failing to induce the Indians who had not been treated with to remove to other reservations, separate reservations were established for them.

4. The establishment and expansion of the Quinault Reservation.

In the fall of 1855 armed conflict erupted and the ratification of the Stevens treaties was delayed until 1859. Until the treaties were ratified, nothing could be done about establishing the reservations which were authorized under the treaties.

In 1859 after the treaties had been ratified, and before any surveys were made, Simmons discussed with Geary, Superintendent of Indian Affairs for Oregon and Washington Territories, the need to publish notices in the newspaper in an effort to prevent encroachment of white settlers on lands intended to be reserved for the Indians. Notice of the Quinault Reservation was duly published in the Olympia newspaper.

NOTICE

Is hereby given to the public that the tracts of land herewith described will be reserved by the government for the use and benefit of the Indian tribes of Washington Territory.

.....
Also, about six sections of land on the Pacific coast, commencing at Point Granville, and running eastwardly say two miles, then north to the Quinoith river, then down said river to the mouth, then southerly to the place of beginning.
(Pioneer and Democrat, 16 December 1859)

The provisional survey of the Quinault Reservation made by A.C. Smith in 1862 shows the northern boundary as a straight line, rather than the river boundary described in the 1859 newspaper notice. (Smith, Provisional Survey of the Quinault Reservation, 1862)

In 1872 Superintendent Milroy recommended that the reservation be enlarged. His report discussed the tribes and bands for whom the reservation had been established, the understandings of the Quileute concerning the Treaty of Olympia, the resources of the reservation, reasons why it should be enlarged, and the benefits to be derived from his proposed enlargement. His recommendation to enlarge the reservation was adopted. The following excerpts from his report are helpful in understanding the reasons for the executive order which was issued the following year.

QUINAIELT AGENCY

The treaty with the Indians to whom the Quinaielt reservation is assigned was concluded in July, 1855, and in January, 1856, and ratified in March, 1859. . . .

The reservation set apart out of this tract for the use of four tribes, viz, the Quilahutes, Hohs, Quits, and Quinaielts, about 600 in all, contains about 42,000 acres, and is located on the Pacific coast from about half a mile north of the Quinaielt River to a point ten miles south of that river and about six miles back from the coast. The most valuable part of this reservation, and in fact the only part that has value, is that portion of the Quinaielt River that is in it, which is about four miles, including its mouth. This river, besides furnishing an inexhaustible supply of the finest salmon on the whole Pacific coast, has strips of about 200 acres of bottom land which, though heavily timbered, could, with labor, industry, energy, and time, be brought under cultivation. There is a prairie of something over 100 acres on the reservation a few miles back from the coast, which, though too wet for cultivation, might be made valuable for grazing purposes. The timber on the reservation and along the coast from Gray's Harbor to the reservation over which I passed is generally spruce and hemlock, which, though often large in circumference, is mostly low and knotty, and therefore not of much value for lumbering purposes.

. . .

But one of the four tribes that have been made parties to the Quinaielt treaty is on the reservation. The Quiliutes, Hohs, and Quits reside at different points and distances on the coast north of the reservation, and say they never agreed to sell their country, nor did they, to their knowledge, sign any treaty disposing of their right to it. That they were present at the time the treaty with them is alleged to have been made, but that the paper that they signed was explained to them to be an agreement to keep the peace with the citizens of the United States, and to accord them the same rights to come into their country and trade for furs, &c., as had been previously accorded to the Hudson Bay Company, and that the presents and payments in goods that they then received, and have been since receiving, were believed by them to be in consideration of their observation of that agreement. They therefore refuse to leave their homes and localities in which they then and still reside, and move on the reservation which they (the Quiliutes, Hohs, and Quits) regard as the homes and property of the Quinaielts.

....

All the tribes made parties to this treaty, together with the remnants of the Chehalis, Humptulups, Shoalwater Bay, and Chinook tribes residing along this coast south of the reservation to the mouth of the Columbia River, and the Makah tribe, residing at Cape Flattery, north, are emphatically fish-eaters, and draw their subsistence almost wholly from the water, and therefore have but little taste or desire for agricultural or land productions.

....

As the land north and west of this reservation, for many miles, has no attractions for white settlers, and as the Quilihutes, Hohs, and Quits do not reside on the reservation, and refuse to come on to it as at present constituted, and as there is but a small amount of agricultural and pasture lands on the reservation, I recommend that it be enlarged as follows: Commencing at the northwest corner of the reservation at tide-water, on the ocean-beach, thence north with the tide-water of said beach to half a mile north of the Queetshee River, thence easterly with the course of said river three miles, thence southeasterly to the northwest point of Quinaielt Lake, thence easterly and southerly around the east shore of said lake to the most southerly end of the same, thence southwesterly in a direct line to the northeast corner of the present reservation. The reservation thus enlarged would afford two more fisheries on the Pacific coast, and perhaps several others around Lake Quinaielt, and would afford occasional patches of agricultural and grazing lands, and upon it should be collected not only the three tribes named, but also all the other tribes and bands of fish-eating Indians on the Pacific coast, from the south side of the Neah Bay reservation to the mouth of the Columbia River; all of whom could find room and homes on this enlarged reservation,

(Milroy to Walker, 1 October 1872)

The view expressed by Milroy that the only resources of value on the reservation were the fisheries and bottom lands and that the timber was of little worth were apparently generally held.

The Quinault Reservation was duly enlarged by executive order of 4 November 1873. The executive order extends the reservation to the north so as to take in Queets River and Lake Quinault fisheries as recommended by Milroy. The executive order also enlarges the tribes for which the reservation is set apart.

Milroy's report and the executive order both speak of tribes and bands that might be accommodated on the enlarged reservation. This language is susceptible to varying interpretations. The following information is offered to provide context for assessing the intent of the government with respect to the enlargement of the Quinault Reservation in 1873.

First, there were at that time only three reservations set apart in southwestern Washington -- the Quinault, Chehalis, and Shoalwater Bay reservations. The separate reservations for the Quileute and Hoh were not established until later.

Second, in addition to the three reservation communities, there were small bands of Indians who had not removed to any one of the reservations. There were several such communities residing at Gray's Harbor, at Shoalwater Bay, and on the Columbia and Cowlitz rivers.

The annual report for 1872 of the Commissioner of Indian Affairs made reference to these communities. It appears that the writer was unaware that the Shoalwater Bay location was an Indian reservation.

Chehalis and others, remnants of tribes, and parties to no treaty with the Government.-- These Indians number about 600, and have a reservation of 4,322 acres in the eastern part of the Territory, set apart for them by Executive order of July 8, 1864. A considerable portion of the land in this reservation is excellent for agricultural purposes, and quite extensive crops are being raised by the Indians of the Chehalis tribe. None of the other tribes for whom the reservation was intended reside upon it, declining to do so for the reason that they do not recognize it as their own, and fear to prejudice their claims to other lands by so doing.

All these Indians have horses and cattle in abundance. They are industrious, and being good field-hands, those of them who do not farm on their own account, find ready employment from the surrounding farmers, their services always commanding the highest wages. Having no treaty relations with the Government, no direct appropriations are made for their benefit. They, however, receive some assistance from the general incidental fund of the Territory. The Indians herein referred to as not living upon the reservation, are of the Cowlitz, Chinook, Shoalwater Bay, and Humboldt tribes. They profess to desire a home at the mouth of the Humboldt and Chinoose Rivers, where they originated.

(Commissioner of Indian Affairs, Annual Report 1872, p. 62)

The reference to "Humboldt" in the printed annual report quoted above is an error. Clearly "Humptulips" is what is intended.

These communities continued to remain in their home territories, but their tenure was threatened as settlers and land speculators began to claim the lands occupied by these Indians and as conflicts arose between newcomers and natives.

In 1871 settlers at Chehalis River and at Gray's Harbor petitioned to have the Indians of Chehalis County removed to a reservation. (Citizens to McKenney, 7 November 1871)

In 1873 there was no way for Indians to acquire legal title to land deemed to be part of the public domain. Indians were not eligible to acquire land under the federal land laws which required that the applicant either be an American citizen or declare his intention to become one. In 1873 Indians in Washington Territory were not deemed to be citizens of the United States. Aside from special Congressional act, there was no way for a native Indian to acquire such citizenship.

The problem was addressed in 1875 when the first Indian Homestead Act was passed. This extended to Indians the capability of taking homesteads under terms similar to those available to all others under the General Homestead Act of 1862.

The passage of federal legislation in 1875 reflects concern about the situation of non-reservation Indian communities across the nation. In Washington Territory a large part of the Indian population did not reside on land set aside as an Indian reservation. Milroy was concerned about their increasingly precarious situation.

Finally, it should be noted that allotment of Indian reservations in Washington Territory had not been initiated at this date and did not begin until over a decade later.

Allotment on the Quinault Reservation did not start until 1905. The first allotting agent was instructed to provide applications to Indians of tribes named in the Treaty of Olympia and in the 1873 executive order and tribes reported to be resident on the reservation. (Larrabee to Archer, 8 June 1905)

These instructions were modified soon afterward to limit eligibility for allotment to Indians who did not have rights on another reservation. (Larrabee to Archer, 31 October 1905)

As a result of this, legislation was introduced in 1910 to provide for allotments of surplus lands to Hohs, Quileutes, and Ozette Indians. (Senate Bill 5269, 13 January 1910)

Subsequently an amendment was introduced principally to provide for allotment to Clallam and Squaxin Island Indians. (Ballinger to Burke, 20 February 1911)

The bill with the amendments suggested by Secretary of the Interior, Ballinger, was enacted. (Act of March 4, 1911)

Still later the courts decided in the Halbert case that under the 1911 Act Chehalis, Chinook and Cowlitz Indians were also eligible to be allotted at Quinault.

In summary, the Quinault Reservation was established under the Treaty of Olympia for the Quinault, Queets, Quileute, and Hoh. It was enlarged in 1873 to accommodate in addition to the above four, "other tribes of fish-eating Indians on the Pacific coast." In 1905 allotment of lands to individuals and families began on the Quinault Reservation. As a result of legislation and litigation individuals belonging to a number of western Washington tribes and bands became eligible to receive allotments of land on the reservation.

Initially, the people resident on the Quinault Reservation were mainly people who had been living there before the reservation was established. Over the years due in part to the history noted above, the present reservation community has come to include people from each of the several groups whose members were allotted at Quinault.

5. The background to the establishment of the Chehalis Reservation.

Stevens' plans to treat with the remaining parties to the Chehalis River treaty council on his return to Olympia had left the Indians and local settlers and agents anticipating that treaties would be concluded and reservations established for these people. The need to conclude treaties and provide reservations for these Indians was frequently noted, but no action was taken. (For example, Stevens to Mason, 29 August 1855; Stevens to Simmons, 30 August 1855; Pomeroy to Stevens, n.d.; Stevens to Manypenny, 13 February 1857)

At the Chehalis River council the upriver Indians had designated the confluence of the Black and Chehalis rivers as the locality they wanted for their reservation. The site provided agricultural lands and fishing grounds. Sidney Ford, who had lived in the Upper Chehalis area since 1846, was Indian Agent for the Chehalis and Coast District. In October 1856 Ford reported that both the Upper and Lower Chehalis were anxious to make a treaty and have land reserved for them.

The Upper and Lower Chehalis Tribes of Indians are now anxious to make a treaty.

They wish to become permanently settled, to have their reservation set apart and of moving on to it. They seem desirous of living more like the whites, of cultivating lands and raising stock. . . .

A locality can be selected where there is an abundance of good farming lands, plenty of timber, and natural meadows more than sufficient to supply all their Stock for years to come. The Chehalis River traverses their country from East to West affording not only fine fishing grounds, but also with its numerous springs and branches, an ample supply of water for all farming purposes . . .

(Ford to Simmons, 10 October 1856)

In his report for the following month, Ford advised that the salmon had not arrived in the Chehalis River in their usual numbers and that the Indians had been unable to cure a sufficient supply for winter stores. He referred again to the Indian anxiety about treaties, mentioning in this report the Cowlitz in addition to the Upper and Lower Chehalis.

This month is usually a very good one for fishing, the salmon coming up the Chihalis river and its tributaries in large quantities. This year however but a small proportion of the usual amount have appeared in those streams, and in consequence the Indians have laid up but a small amount of any salmon for the winter, and they will of course be dependent mainly for subsistence upon the provisions which I shall issue them and the roots and berries they have provided.

I frequently receive visits at this place from the Lower Chehalis Indians to whom I generally distribute small quantities of provisions and other presents. These together with the Upper Chihalis and Cowlitz Indians are very anxious that a Treaty should be made with them: this subject always forms an important topic in the frequent "talks" they have with me.

(Ford to Stevens, 30 November 1856)

The following June Agent Ford wrote to the Superintendent of Indian Affairs for Oregon and Washington Territories urging that treaties be concluded with the Indians of his district without delay and that two reservations be established, one for the Coast people and one at the confluence of the Black and Chehalis rivers for the interior people. Ford reported at some length about the injustice to both Indians and settlers which resulted from the delay in extinguishing Indian title and establishing reservations.

At the present time the relations between the Indians of my charge and the whites are those of peace and friendship. How long these may last depends entirely upon how long the government neglects to treat with these Indians in reference to lands upon which they have always lived, which they have always regarded as their own, but which are gradually and steadily being appropriated by settlers, and from which the Indians are gradually and steadily being driven off by the enclosures of civilization. I cannot too strongly represent to you the necessity for making treaties with all the Indians of my district. . . .

. . . Having emigrated to the Territory at the express invitation of the general government, is it not asking too much that the settler, with his wife and family, unacquainted with Indians and Indian habits, shall be compelled to settle upon lands to which the Indian title is not extinct, and which are occupied in common by whites and Indians?

. . . A treaty at present could be made without difficulty with all the Indians of my charge, and its stipulations would be faithfully observed by the Indians.

. . .
A treaty, therefore, should be made with all the Indians of this district without delay. Let two good reservations be set off, and the execution of the treaty stipulations entered upon in good faith, and all will be right.

. . . At present, and for a number of years to come, there should be at least two reservations for the Indians of this district: one upon the coast north of Gray's Harbor for the coast Indians, and one on the Chihalis, at the mouth of Black River, for the Indians of the interior. The Indians of the coast cannot be concentrated upon a reservation along with those belonging to rivers and the interior. This is owing to the fact that their customs, habits, and modes of obtaining subsistence, are entirely and widely different. Also, old animosities and hatreds which have subsisted from time immemorial between them would seem to forbid, for years to come, the hope of a reconciliation which would eventuate in their living harmoniously together.

(Ford to Nesmith, 30 June 1857)

Despite repeated complaints on the part of settlers and Indians and reports such as the above, no action was taken regarding either the negotiation of treaties or the setting aside of reservations.

Congress had united the two Superintendencies and Washington Territory Indian Affairs were being administered by Nesmith who was in Salem, Oregon. Stevens was at this time busy travelling about the country in his campaign to be delegate to Congress from Washington Territory. He was anxious to go to Washington, and among other things, to expedite ratification of the treaties made in 1855. Stevens apparently had decided to do nothing about making further treaties until receiving instructions to do so.

A settler by the name of Pomeroy had written to Stevens regarding the need to conclude treaties with the Chehalis and Cowlitz and to reserve land for them. He recommended the section of country lying between the Newaukum and Skookumchuck rivers as a traditional meeting place of those people and because it provided salmon fisheries, camass, range land, and hunting grounds.

. . . Your object is to put the Gehalis & Cowlitz Indians upon one reserve. This is right, but the Cowlitz Indians will never

consent to come down the Gehalis neither will the Gehalis ever consent to move to the Cowlitz. A middle ground will be the one to commpromize the two parties. now the question where is that middle ground that will satisfy both these parties. The section of country laying between the Newaukem river & the Skookum Chuck is the old halfway ground where these Indians for years immemorial have met in their hunting & fishing excursions. here is their cammass ground here too is the best range for their horses to be found in the country. here is the Salmon fisheries here to is the hill & mountain hunting range.

These Indians have (been) told time and time again for the last 10 or 12 years that a treaty would be made with them. Year after year has passed & still no treaty. Now Sir these treaties are much the better for the Indians and the settlers. The settlers are anxious for the treaty to be made as soon as possible. There is much dissatisfaction among the Indians on account of the great delay on treating with them. They accuse the whites of falshood and deception for these delays.

(word not in original)

(Pomeroy to Stevens, n.d.)

Stevens advised Pomeroy that he would not make any more treaties until he received instructions to do so.

. . . I have perused your letter carefully and feel much obliged to you for the valuable suggestions which it contains. I will state however that I shall make no more Treaties with Indians until I receive instructions so to do from the proper Department at Washington City.

As soon as such instructions are received, and it becomes my duty to treat with the Cowlitz and Chihalis Indians, your letter will receive due consideration.

(Stevens to Pomeroy, 31 January 1857)

The reference to awaiting instructions may relate to the fact that Stevens had recently received instructions placing his expenditures for the Washington Superintendency under severe constraints.

Shortly after the correspondence with Pomeroy, Stevens advised the Commissioner of Indian Affairs that Agent Ford recommended that a treaty be made with the Indians of his district.

Special Agent Ford has charge of the Western District consisting of the Cowlitz, Upper Chehalis, Lower Chehalis, Quinoitl and Kwillehyoot Tribes of Indians.

He made a trip down the Chehalis River in October to visit the Indians living on its banks, and speaks generally of his Indians as being well disposed. In his report for November he adverts to the desire of his Indians to make a Treaty and recommends it in connection with placing them on reservations as the most effectual remedy to prevent the injurious consequences of whisky drinking.

(Stevens to Manypenny, 13 February 1857)

In his report for the final quarter of the year, Simmons remarked that the salmon runs on the Chehalis River had been far better than those of rivers on the Sound.

. . . the Chehalis Indians, both upper and lower, are in a much better condition than the Indians on the Sound. Special Agent Ford, under whose charge they are, reports to me that during the present quarter he did not find it necessary to distribute food or property of any kind among them. The Chehalis river, as you are aware, runs into the ocean at Gray's Harbor, and has, unlike the rivers that empty into the Sound, received its usual fine run of Salmon.

(Simmons to Nesmith, 31 December 1857)

In 1859 after the Stevens' treaties had finally been ratified and action was being taken to establish the reservations authorized under those treaties, it was decided to protect land later to be reserved formally for the Chehalis Indians. Simmons placed a notice in the Olympia newspaper advising the public that certain lands were to be set apart by the government as Indian reservations. In the same notice which described the location of the Quinault reservation, the location of a reservation on the Chehalis river was described. (Pioneer and Democrat, 16 December 1859)

The lands to be reserved encompassed a large area in the Chehalis river valley. A small part of this, the portion at the juncture of the Black and Chehalis rivers, was later set aside as the Chehalis Indian Reservation.

In his report concerning the newspaper notice, Simmons referred to earlier discussion of this with Geary, who had replaced Nesmith as Superintendent of the combined Oregon and Washington Superintendency. Lands at the Black and Chehalis rivers by this time had several white claimants. Simmons was of the opinion that only one claim would need to be purchased by the government.

. . . I have this day handed to the editor of the Pioneer and Democrat and requested him to publish in his next issue a notice to the effect that the lands which I will hereafter describe to you have been reserved for the use and benefit of the Indian tribes of this Territory. This is in accordance with the views expressed by you when I had the honor of conversing with you upon the subject and is I think a necessary precaution to prevent squatters from taking possession of the lands designed for the Indians before the department is ready to go on improving them particularly as some of the land I propose to retain, is not mentioned in the treaties.

. . .
For the Chehalis Indians who have not been treated with I propose to set aside a tract of land bounded as follows. . .
(Simmons to Geary, 13 December 1859)

In his annual report for the following year, Simmons commented on his selection of the locality for the Chehalis Reservation and the unsuitability of the Chehalis Reservation for the Chinooks and Lower Chehalis.

The Upper and Lower Chehalis, the Cowlitz and Chinook Indians, numbering between seven and eight hundred, are not parties to the existing treaties, and are certainly entitled to the care of government. They are in the immediate neighborhood of the settlements, living in most instances on the land of white settlers. I have selected a piece of ground adapted to their wants, and upon which I think it will be advisable to settle the Cowlitz and Upper Chehalis tribes. The Chinooks and Lower Chehalis should be located somewhere near the seashore, as their previous habits and mode of living render such a location necessary.

As no treaty funds are applicable to the uses of these bands, it is necessary that they should be provided for when the annual appropriation for contingent purposes is made, and an addition should be made to that appropriation sufficient to enable the superintendent to locate them on a tract of land where they cannot be disturbed, and to assist them to gain their own subsistence.

(Simmons to Geary, 1 July 1860)

The reports of excellent runs of salmon in the Chehalis River and its tributaries coupled with the statement that the Chehalis Reservation was site was selected because it was adapted to the wants of the Indians mandates a conclusion that the choice of location was in part because of the proximity of good fishing grounds.

The failure of the government to secure the Chehalis Reservation to the Indians led to conflicts between the Indians and settlers. In June 1862 Hale, Superintendent of Indian Affairs for Washington Territory, met with the Indians in council at the reservation to attempt to resolve the conflicts. Hale's report led to the secretarial order which established the reservation two years later. Hale reported:

. . . For various reasons they would not treat with Gov. Stevens and one of the most important for their dissent was that he wished to connect them in the Treaty with other Tribes, which they had been and still are unfriendly. . . . The tract of land claimed by them is quite large, embracing the entire valley of the upper Chehalis. . .

I proposed to have them removed to the Nisqually Reservation and to be connected with the Indians under the Treaty of Medicine Creek, having first obtained the consent of the Nisquallys to such an arrangement. . . . The Chehalis will not hear of such a proposition. They say they will never leave their lands, where their fathers lived and where they are buried: -- they too will live and die there. They are however willing to enter into a Treaty and cede their lands provided they shall not be removed, and that a sufficiency shall be retained at the mouth of Black River as a Reservation, embracing about 4 sections of land. . . . I have taken the precaution to notify the Register of the Land Office to reserve the same from entry by settlers until further advised.

. . . .

I would therefore respectfully urge upon your consideration, the importance of early and immediate action in these cases and ask that you would give to me the necessary authority and instructions to Treat with these Indians, so that difficulty otherwise inevitable may be avoided; even in the least degree and the honor and credit of the Government be sustained in promptly rectifying the injustice under which these Indians have so long lived, and under which they are rapidly wasting away.

(Hale to Dole, 3 July 1862)

Instead of the treaty which the Indians and the Superintendent requested, the Secretarial Order of 8 July 1864 set apart a reservation for the Chehalis Indians. The fact that the reservation was not established under a treaty caused difficulties which required another executive order to be issued in 1886. The subsequent history of that executive order is addressed in a later section.

6. Establishment of the Shoalwater Bay Reservation.

The Shoalwater Bay Reservation, sometimes called the Georgetown Reservation, was established as an Indian Reservation by executive order of 22 September 1866.

The Executive Order states that the land, roughly one-half square mile, is set apart for Indian purposes.

The letter from the Superintendent of Indian Affairs transmitting the request that an Indian reservation be established follows:

I herewith inclose a letter from Giles Ford Esqr together with a map showing the situation of the land referred to by him as the tract desired by the Indians on Shoalwater Bay. These Indians said to consist of some 30 or 40 families have always lived upon the beach and subsisted themselves upon fish, clams, oysters, and sea animals. They are unwilling to abandon their former habits of life and turn their attention to agriculture. They desire a place upon the shore where they can fix their homes, without being exposed to be supplanted and driven off by white men. This tract which they have selected is a sand beach yielding some grass for the pasturage of their horses but of little value for cultivation. And it is my judgment that reserving it for the use of the Indians would work no injury to white men, but would have a tendency to promote peace between them and the Indians and would secure the contentment and well being of the latter. I therefore beg leave respectfully to recommend that the tract of land selected by Mr. Ford and designated upon the inclosed map be reserved for the use of the Indians.

(Waterman to Smith, 1 June 1866)

The above letter from Superintendent Waterman makes it clear that the site selected by the Indians for a reservation is unsuited to agriculture, yielding only grass for pasturing the Indians' horses. It is also reported that the site was selected by the Indians themselves. It appears that the primary values of the site are to provide a home where the Indians cannot be encroached upon or driven off by others, and a place where beach and sea food is accessible.

Waterman refers to an enclosed letter by Giles Ford. Ford's letter is quite explicit that the Indians' choice was based on accessibility of good hunting, fishing, and grazing grounds. He wrote:

I have visited Shoalwater Bay and examined the Spot that the Indians wish reserved for them: being situated in close proximity to good fishing, hunting, and grazing grounds. And I would recommend that it be immediately reserved from Sale.

(Ford to Waterman, 2 May 1866)

It appears an inescapable conclusion that the Indians and the United States both intended the location to afford the Indians an opportunity to procure the kinds of food they traditionally ate which were accessible in this area.

In aboriginal times or early historic times there were three villages in the immediate area, all thought to be winter villages. The Indians who lived here in the mid-nineteenth century were evidently part Lower Chinook and also some Lower Chehalis. (Ray 1938:41)

The site was too small to provide allotments in the usual sense. However, the Indians of the reservation paid a surveyor to survey the reservation into house lots. The lot lines were drawn from the back hills to the sea. This resulted in lots which were long and narrow, but each lot faced the shore.

In 1881 Agent Oliver Wood gave the Indian "owners" of these lots papers to show their right of occupancy. Names of the original lot owners taken from the maps themselves or from associated papers permit the identification of individuals who must have been among the first residents of the place when it became an Indian reservation. (Wood to Whom it May Concern, 12 November 1881)

Among these are some of the Lower Chinook chiefs who signed the 1851 treaty with the Lower Chinook. Others are immediate heirs of those men. As an example, an 1881 writing by Oliver Wood states that Hoks Witi or Hox, an Indian of the Shoalwater Bay Reservation is owner of Lot No. 21. According to statements taken in 1906 by Dr. McChesney, Catherine George (then remarried and living at Bay Center across the bay) was the widow of Huckswelt (Tom Hawks)

Catherine George, of Bay Center, Wash., being duly sworn, deposes and says that she is about 78 years of age and belongs to the Wheelapa band of Chinook Indians.

My maiden name was Catherine Was-se-quah. I have been married twice: first time to Tom Hawks, or Huckswelt, a Lower Chinook Indian chief, who was alive in 1851 and one of the signers of the treaty of that year. He died about twenty years ago, aged about 60 years, and left surviving him,

(Adams 1969, p. 28)

The testimony of several of the older people who gave depositions to Dr. McChesney in 1906, or who testified in the Lower Chinook case against the United States in 1902 reveals a wealth of information on genealogical connections of Chinook with Chehalis and other neighboring people. There was certainly a major presence of Chinook signers to 1851 treaties (or their immediate family members) living at the Shoalwater Bay Indian reservation in the 1870s and later.

We are fortunate in having three census rolls taken in 1878 which show the names of heads of families. These rolls are labelled "Indians Belonging to the Shoalwater Bay Reservation," "Indians Belonging to the Chehalis Reservation," and "Lower Chehalis and Gray's Harbor Indians." The rolls were made by R.H. Milroy and probably are accurate. Undoubtedly there were people who did not get recorded on the rolls. They are useful, however, in tracing the connections of people alive today back to male ancestors in 1878.

The available records, including annual rolls kept for each reservation, show several things. At Shoalwater Bay there was a very stable core population. Some people moved away for a while, across the bay to Bay Center, for example, but returned to the Shoalwater Bay Reservation after a time, or from time to time.

The turn of the century depositions and statements by elderly and knowledgeable people provide information not only on genealogical connections, tribal or band affiliation, but also on seasonal rounds to harvest various resources in the waters and lands around Shoalwater Bay. Much of this information can be corroborated from other sources.

The record shows that the people living at Shoalwater Bay took winter salmon from the streams draining into the bay, fished in the bay itself, and also in the outside waters on the ocean side.

As noted above, the Shoalwater Bay Reservation was too small to afford allotments of any size and not all the people belonging to the reservation could be allotted there. By about 1908 or so, most of the people of the Shoalwater Bay Reservation had allotments at the Quinault Reservation.

7. Subsequent executive orders: Chehalis Reservation

We noted earlier that because the Chehalis Indian Reservation was established by a Secretarial Order, rather than under authority of a treaty, there were problems later. The only one of these which need be addressed here relates to the inability to provide family land holdings or family farms on the Chehalis Reserve. In the mid 1880s when allotment began on some of the other reservations in the area, allotting was done under authority of the treaties. Each of the Stevens treaties contained a clause which provided for eventual allotment of family holdings to people who belonged to and were resident on the reservation.

At Chehalis there was no authority under which the reservation could be allotted to individual families. There was no treaty. The General Allotment Act, or Dawes Act, had not yet passed. The Dawes Act was preceded by about a decade of efforts to pass some kind of general law which would provide for allotment of reservation lands, but they all failed to pass through the Congress.

In 1885 Edwin Eells, then Agent in charge of the Nisqually and Skokomish Agency which at that time included Chehalis, devised another plan out of desperation. He conceived the idea of a second executive order rescinding the reservation status. The idea was to restore the land to the public domain, so that the Chehalis Indians could then immediately enter upon the land as individual homesteaders under the homestead laws. Eells broached the idea to the Commissioner of Indian Affairs:

To give a more particular description of them: The Chehalis Indians live on a reservation situated on the Chehalis River, about 25 miles inland. This reservation was set aside by executive order and is not a treaty reservation. As a consequence, the Government is not under any treaty obligation to give patents to the Indians living thereon. The lands have been allotted to them in severalty, and they have small farms, but there is no way for them to get patents as the other Indians can. During the last session a bill was introduced into Congress authorizing the President to give them patents for their homes, but it failed to pass and probably always will. For this reason I have suggested to the Department that the executive order be so changed that the Indians residing thereon be allowed to take the lands they occupy under the Indian homestead laws. If this could be done they would then be secured in the quiet and peaceable possession of their homes.

(Eells to Atkins, 20 August 1885)

This plan was taken up and resulted in the Executive Order 1 October 1886 which restored all the land of the Chehalis Reservation to the public domain. About 40 individual homesteads were then taken up. Comparison of the names of the original homesteaders at Chehalis permits tracing of genealogies back to the 1878 roll for members of the Chehalis community.

The October 1, 1886 Executive Order simultaneously set apart 480 acres of the land for the use and occupation of the Chehalis Indians. This land was not allotted as homesteads.

The purposes of the Executive Order of 1 October 1886 were (1) to enable Indians of the Chehalis Reservation to use existing law to secure trust patents to individual allotments of land within the reservation boundaries, and (2) to immediately restore to its former status about 480 acres of the reserved land not taken up as individual family homesteads.

There are 56 named individuals listed on the May 31, 1878 list of "Indians belonging to the Chehalis Ind. Reservation." Of these all were heads of families except for six single or widowed individuals. The total population reflected on this roll comprised 205 men, women and children. At least nineteen of the people named on the 1878 roll received patents to land on the reservation as a result of the Executive Order of 1886. Of the remaining 37 people named on the 1878 Chehalis Reservation roll, it is likely that some died during the years prior to the time they might have been able to receive patents.

A decade elapsed between the 1878 roll and the earliest patents which were issued in 1888. Some of the individuals named on the 1878 roll did not receive patents until later. Others did not receive patents at the Chehalis Reservation at any time. Some people who did not have lands at the Chehalis Reservation were later allotted at Quinault.

The first patents for lands at the Chehalis Reservation were issued in 1888 subsequent to the Executive Order of 1886. The first patents were issued under authority of the Indian Homestead Act of 1881. That Act was found not to be applicable and in lieu patents were issued under authority of the Indian Homestead Act of July 4, 1884. Most of the subsequent patents issued for lands on the Chehalis Reservation were issued under authority of the 1884 law.

The Executive Order of 1 October 1886 was issued to enable Indians resident on the reservation to use existing legislation to secure individual family land holdings. As a consequence of the 1886 Executive Order all but 480 acres of the lands reserved for the Chehalis were covered by trust patents issued to the Indian residents.

Two subsequent executive orders were issued in order to enable allotments to be made from part of the lands comprised in the unallotted 480 acres. These two executive orders, issued in 1908 and 1909 respectively, restored lands to the public domain in order to provide for their allotment to individual Indians. The executive order dated November 23, 1908 provided for land to be allotted to Ada McKay. The executive order dated November 11, 1909 provided for land to be allotted to Perry Yukton. The language of the two executive orders is identical except for the description of the respective parcels of land and names of allottees.

One of the purposes of the 1864 Executive Order was to secure to the Chehalis Indians lands from which they could not be evicted by encroaching settlement. The Executive Orders of 1886, 1908, and 1909 were issued in order to secure by trust patent Indian family holdings within the reservation boundaries. I have seen nothing in the documentary record to suggest any intent on the part of the United States to terminate or diminish the Chehalis Reservation.

8. **Similarities and differences in development of U.S./Indian relations on other Pacific Northwest reservations.**

A major difference in U.S./Indian relations on Pacific Northwest reservations depends upon whether or not a reservation community has treaty status. The practical importance of the treaty relationship has varied over the years. We noted earlier how the lack of treaty authority to allot lands complicated the establishment of family holdings on the Chehalis Reservation. Currently treaty status distinguishes those reservation communities which enjoy treaty fishing rights from those which do not.

Some reservation communities in Washington are not treaty tribes because their ancestors were never given the opportunity to participate in a treaty council. That history is not discussed here.

Our interest here is to discover why some treaty councils resulted in treaties which were signed by the participants, while other treaty negotiations failed. The Chehalis River Council was the first treaty council in Washington Territory which resulted in failure to conclude a treaty, but it was not the only one. We briefly review subsequent councils in order to identify factors which may have contributed to treaty acceptance and treaty rejection.

The impasse at the Chehalis River Council appears to have led Stevens to modify his tactics regarding reservations in dealing with Indian resistance at subsequent councils and with respect to the language used in subsequent treaties.

As noted earlier, the language of the Quinault Treaty referring to land to be reserved was altered from "a tract" to "a tract or tracts." The location of the land to be reserved was still undefined and was left to the selection of the President, but the possibility of there being more than one reservation was engrossed in the treaty. As we will see, a few months later the language of the Flathead Treaty also was altered in order to provide the possibility for more than one reservation.

The Chehalis River Council was followed by the Walla Walla Council in June 1855. At this council Stevens initially announced two reservations. One was to be in Yakima country and the other in Nez Perce territory. Stevens planned to locate the Cayuse, Walla Walla, and Umatilla along with the Nez Perce on the Nez

Perce Reservation. Faced with Indian resistance, Stevens compromised. At the Walla Walla Council he made a third treaty which provided a separate reservation for the Cayuse, Umatilla, and Walla Walla.

At the Flathead Council which was held the following month, Stevens had intended to confederate the Flathead, Kootenay, Upper Pend d'Oreilles, and Lower Pend d'Oreilles (Kalispel) as one nation on a single reservation.

The Lower Pend d'Oreilles (hereinafter Kalispel) did not attend the council and were met with separately in March 1856. The Kalispel Council and its results are discussed later in this section.

At the July 1855 Flathead Council the chiefs representing the three Indian parties present did not resist particularly the idea of one reservation, but each preferred a reservation in his own territory. Finally, the Indians held out for two locations. Stevens compromised by adding a separate article to the treaty which contemplated possible inclusion of additional lands to be reserved in the second location. (Treaty with Flathead, 1855, Article XI.)

Stevens had insisted at the Chehalis River Council that the Indians had to leave it to the President to decide where the single reservation would be located. He responded quite differently to the chiefs at the Flathead Council:

Gov S. continued after a short pause. My children, Victor has made his proposition, Alexander and Michelle have made theirs. We will make a treaty for them. Both tracts shall be surveyed; if the mission is the best land Victor shall live there. If this valley is the best land Victor shall stay here. Alexander and Michelle may stay at the mission. I cannot say that the President will think it good. **The President will think it very strange Alexander and Michelle are not willing to leave it to him. I will however sign the treaty with them.** If the president thinks it good then we shall carry it out - if he thinks it not good then we shall not carry it out. I am now ready to sign.
(emphasis added) (Flathead Council Minutes, 16 June 1855)

The Flathead Treaty was duly signed by Stevens and by the three head chiefs.

This is quite a contrast to the position taken by Stevens at the Chehalis River Council. There the Quinault had been willing to sign because the reservation was to be in their country. The others had resisted despite Stevens' insistence that

they must leave it to the President to choose the place. At Chehalis River Stevens said there could be no treaty unless the Indians were willing to leave it to the President. In his final speech before breaking up the council Stevens said:

Governor Stevens. "We have now been here a week. I have heard you all. Only one band the Kwinautl have hearts like mine, but the paper is nothing without all sign. The Kwinautl alone leave it to the Great Father. There can therefore be no Treaty"

The record clearly shows that the Flathead, Kootenay, and Upper Pend Oreilles were provided an opportunity to become treaty signers under conditions which were not offered to the Chehalis and Shoalwater Bay people. The position with respect to the Lower Pend Oreille (hereinafter Kalispel) is more comparable to that of the parties to the Chehalis River Council.

The Kalispel had not attended the Flathead Treaty Council. Enroute back to Olympia from the Blackfeet Council, Stevens left a separate treaty for the Kalispel with Indian agent Lansdale. Among his instructions, Lansdale was directed:

8. It having been found impracticable to collect the Lower Pend d'Oreilles at this point, and for the reasons given in your report of Nov 8th I leave with you the programme of a treaty to be entered into with them, should circumstances render it advisable a sale of all their lands, their consolidation with the Flathead Nation, and their living permanently on the Flathead River Reservation are desired. 40000 dollars and the participation of the various privileges secured to the Flathead nation, is in my judgment an adequate compensation.

These provisions are contained in the Programme of the Treaty which accompanies this.

Should it meet the approval of the Lower Pend d'Oreilles you are instructed to procure the signatures to it, to have the signatures properly witnessed, and to return the same to me for my signature, with a full report of your conferences with them. The Treaty should be in triplicate. Should the Lower Pend d'Oreilles object, it will then become a subject of future action.

(Stevens to Lansdale, 10 November 1855)

Lansdale duly met with Head Chief Victor and his band of Kalispels the following March at the Flathead Reservation. The Kalispel Council shares several features with the Chehalis River Council. At both councils, the Indian parties came prepared to treat with the United States for the sale of their lands. At both councils, Indians attempted to negotiate for a reservation in their own territory. In both instances the Indians attempted to reach a compromise, but the representative of the United States would not alter the terms decided on by the commission prior to meeting with the Indians. Both councils ended in failure to conclude a treaty.

At the Kalispel Council Lansdale, like Stevens at Chehalis River, abruptly broke off the council while the Indians were attempting to negotiate. In both cases, the United States later provided the reservations which had been the sole obstacle to the Indians signing the treaty.

The Treaty Council with the Kalispel, March 24, 1856

Having noted the similarities between the Chehalis River and Kalispel councils, it is appropriate to note differences between these two councils. The first difference is that Stevens was not present at the Kalispel council. As in the case of the Quinault River treaty, Stevens delegated an Indian agent to secure Indian consent and signatures to a treaty which had been written previously. This is important because, as the Kalispel noted at the council, they were unable to discuss or negotiate changes in the treaty with Stevens.

While it is true that for Stevens at the Chehalis River council the reservation issue was non-negotiable, the Kalispel likely were aware that he had made some concessions regarding reservations at the Walla Walla Council and at the Flathead Council. The Kalispel concern that Stevens' absence placed them at a disadvantage may have merit.

There is a second difference. The treaty prepared for the Kalispel Indians provided that they were to be confederated with other Indians on the Flathead Reservation. It also provided that the constituent groups would become one nation with Victor, the head chief of the Flathead tribe, as head chief of the nation. This was incorporated in the treaty concluded July 16, 1855 with the

Flathead, Upper Pend d'Oreilles, and Kootenay Indians. Stevens had explained at the July treaty council that the Lower Pend d'Oreilles were to be a part of this nation and the Kalispel almost certainly were advised of this prior to meeting in council with Lansdale. In contrast to the parties to the Chehalis River Council, the Kalispel were forewarned in some detail about Stevens' intentions.

The Kalispel Indians would not agree to remove to the Flathead Reservation. They wanted a reservation in their own country.

The Kalispel council was held at St. Ignatius mission on the Flathead Reservation, 24 March 1856. The following excerpts of the council minutes are taken from the report sent to Stevens by R.H. Lansdale, Indian agent for the Flathead Nation, under date of 31 March 1856.

Lansdale explained to the Indians that he represented the President of the United States and Governor Isaac I. Stevens at the council and that the purpose of the meeting was to treat with them for the purchase of their lands by the United States.

"That you will sell and convey to the president all your rights in lands below and that you agree to be united and made one with the Flathead Nation, and that you be removed to and settle upon the Flathead reservation, which reservation is secured to the Flathead nation by the treaty made last summer by Governor Stevens at the Bitter Root; and that you are to remove to the reservation within one year from the time the treaty is approved by the president."

The other provisions of the Flathead Treaty are similar to those in the other Stevens treaties and were not objected to by the Kalispel. The only provision to which they objected was the proposal that they remove to the Flathead Reservation. The Kalispel were willing to sell their lands south of Clarke's Fork to the United States, but they wanted to keep the land north of the river for themselves.

Both Victor, chief of the Lower Pend d'Oreilles, and his brother Simon, spoke to the same effect. Agent Lansdale replied that he was not authorized to alter the terms of the treaty.

Victor: I want only a small spot; a big spot I give. The big chief calls us his children; he ought to have pity on his children: The big chief is mistaken, he ought to give us a small spot of our native country. We want to be able to return. The price is good.

Simon, (brother to Victor): In all things we wish to do what the big father tells us: we do not want to go against his will. But we would wish if he had pity on us to give us a small spot where we might return in safety. We call our country a safe country; -- we have no enemy there."

Agent Lansdale assured the Indians there was nothing in the treaty to prevent them going down the river to hunt, fish, travel and trade, dig camas, and graze their horses. They replied that they understood this, but that they were speaking about a place in their own territory for their exclusive use. The Indians then inquired if the treaty terms were non-negotiable.

Victor: Has the chief said that if we speak we should not be listened to? That he should pay no attention to what we say.

Agent: I have been directed to put down all you say, whether you agree to the treaty, or not.

Victor: We wish that the great father should be made acquainted with our wishes. If our chief sees what we have said, and if he could allow what we desire, it is well. If he does not approve of it, then we will not be content.

Matthew: If the governor himself had been present, we could easily arrange by giving one half of our lands; but it does not do well to do it only by letter, for now our chief does not know what to decide. . . .

After discussion of other matters, and further reassurances from the Indian agent that signing the treaty would be in the Indian interest, Lansdale closed his report of the council with these words:

. . . . Think over it tonight, and tomorrow we will have another talk.

Upon a private consultation with Victor on the morning of the 25th, I found that his people had talked the treaty propositions over at night, and a majority still adhering to their first resolution not to sell without a reservation be allowed them upon their own lands, I concluded it was unnecessary to call the people together, but dismissed all hope of their agreeing to the treaty.

(Lansdale to Stevens, 31 March 1856)

Stevens did not conclude negotiations with the Kalispel, but these Indians were later provided with a reservation in their territory. Executive Order 1904 of 23 March 1914 withdrew 4,629.27 acres from the public domain and set it apart as a reservation for the Kalispel Indians. This occurred almost to the day 58 years after the council with Agent Lansdale.

Attempts to Consolidate the Kalispel on Reservations with other Indians

Between the initial treaty meeting with the Kalispel in 1856 and the Executive Order establishing the Kalispel Reservation in 1914, there were a number of attempts to consolidate the Kalispel with Indians on other reservations.

The initial executive order defining the Colville Reservation set out the Indians for whom the reservation was intended. The executive order of April 8, 1872 lists the following bands of Indians, not party to any treaty: Methow, Okanagan, San Poel, Lake, Colville, Calispel, Spokane, Coeur d'Alene and other "scattering bands." The attempted consolidation did not prove feasible and later the Coeur d'Alene, Spokane, and Kalispel were given reservations of their own. The Coeur d'Alene Reservation was created by executive orders in 1867 and 1873. In 1881 an executive order was issued legally establishing the Spokane Reservation.

On April 15, 1887 the Northwest Indian Commission representing the United States opened a council with the Kalispel tribe at Sand Point, Idaho. The commissioners informed the Indians that they wanted them to relinquish any claim they had to their traditional territory and to remove either to the Colville Reservation, the Coeur d'Alene Reservation or the Jocko (Flathead) Reservation.

Chief Victor and his son Marcellin who had replaced Victor as head chief expressed reluctance to leave their lands. Victor insisted on a reservation in Kalispel country. The commissioners explained that they had no power to set aside a reservation. Marcellin refused to sign the agreement. Chief Michael agreed that he and his people would remove and signed the agreement. Although the agreement was never ratified, Chief Michael and his people moved to the Flathead Reservation and remained there. The others remained in the Kalispel Valley.

In 1889 an agreement was made with the Coeur d'Alene to the effect that "the tribe or band of Indians known as Calespels, now residing in the Calespel Valley, Washington Territory, and any other bands of non-reservation Indians now

belonging to the Colville Indian Agency, may be removed to the Coeur d'Alene Reservation by the United States, on such terms as may be mutually agreed on by the United States and any such tribes or bands."

Finally, in 1914, the Kalispel Reservation was created for the Kalispel who had remained in the Kalispel valley.

The similarities between the history of United States relations with the Indians of the Chehalis, Shoalwater Bay, and Kalispel reservations as they relate to treaty status are these: (1) each of these tribes or bands refused to sign treaties because they wanted a reservation in or near their traditional territory, (2) in each instance the United States representative terminated the treaty council without concluding a treaty, (3) agents of the United States continued to attempt to persuade these people to remove to some other reservation, and (4) eventually the United States provided the reservations which were originally requested at the aborted treaty sessions, but the Indians were not subsequently regarded as beneficiaries of the treaties which they had failed to sign.

The differences are that the Shoalwater Bay and Chehalis reservations were conceded by the United States within a decade of the initial treaty council. In the case of the Kalispel, it took 58 years for the United States to provide the reservation which the Kalispel had asked for at the initial treaty council. Also, in the case of the Kalispel, one chief with his people finally did consent to remove to the Flathead Reservation. (Other Kalispel may have settled on the Colville and Coeur d'Alene reservations. I have not investigated this.) The relevant point for consideration here is that Victor's band refused to leave Kalispel country and eventually they were given a reservation there.

Ironically, many of the Indian bands that signed Stevens treaties in western Washington never moved to the reservations established under those treaties. The Stevens treaties were negotiated with imperfect knowledge of the actual numbers of Indians. It was soon discovered that the populations had been badly underestimated and the reservations were too small to accommodate and support the Indians for whom they were intended. Further, it proved unfeasible to remove people to environments drastically different from those to which they were accustomed.

The United States intended the Klallam to move from their homes on the Strait of Juan de Fuca to the Skokomish Reservation at Hood Canal. The upriver Nooksack, Upper Skagit, Sauk-Suiattle, and Muckleshoot were expected by the United States to move to salt water reservations. Few members of these groups did so. All of these groups were subsequently provided separate reservations in their own territories. The Quileute, Hoh, and Queets were expected by the United States to move to the original Quinault Reservation. The Quinault Reservation was eventually enlarged to encompass the Queets village site and river fisheries. Separate reservations in their traditional territories were established for the Quileute and Hoh.

Those people who signed treaties and later had reservations established in their own lands are recognized to have treaty rights. Those people who did not sign treaties because they insisted on reservations in or near their traditional territories are not recognized to have treaty rights.

Rights of Kalispel on Flathead Reservation

The status of the Kalispel on the Flathead Reservation provides a parallel to the Quinault Reservation and its allottees. The two reservations were established under nearly contemporaneous Stevens treaties. The Quinault Treaty was concluded July 1, 1855 and the Flathead Treaty was negotiated July 16, 1855. Both treaties were proclaimed by the President April 9, 1859. Both treaties provided that other friendly Indians could be consolidated with the Indians signatory to the treaty under which the reservation was established. It was expected at the time that these treaties were made that any other Indians to be consolidated would also be members of tribes or bands which had been included in a treaty.

As we have seen, the United States had intended to consolidate on each of these two reservations tribes and bands which, contrary to expectations, did not become signatories to a treaty. The aborted Chehalis River council and the failure to meet later with the Shoalwater Bay and Chehalis Indians resulted in those people not being signatory to a treaty. Subsequently they were deemed eligible to be allotted at the Quinault Reservation. The aborted Kalispel council and the failure to resume negotiations with those people resulted in the Kalispel not being

signatory to a treaty. Subsequently a portion of the Kalispel moved to the Flathead Reservation and those resident Kalispel were later deemed eligible to receive allotments and certain other benefits there.

Allotment at the Quinault Reservation began about 1905. The Flathead Allotment Act was passed in 1904. The nearly contemporaneous history of the establishment of the two reservations, of the two aborted councils, and of the initiation of allotment on the two reservations coupled with the allotment of people who were of those tribes and bands with whom treaty arrangements were not concluded make a comparison of similarities and differences in United States relations with the non-treaty signers at Quinault and Flathead appropriate.

Treaty language respecting consolidation of Indians

The language used in the Quinault Treaty is virtually the same as that used in all the western Washington treaties.

Article 6. The President may hereafter, when in his opinion the interests of the Territory shall require, and the welfare of the said Indians be promoted by it, remove them from said reservation or reservations to such other suitable place or places within said Territory as he may deem fit, on remunerating them for their improvements and the expenses of their removal, or may consolidate them with other friendly tribes or bands, in which latter case the annuities payable to the consolidated tribes respectively, shall also be consolidated;

(Treaty with the Quinault, 12 Stats. 971)

This language is similar to that in Article 6 of the Treaty with the Nisqually, 10 Stat 1132; Article 7 of the Treaty with the Duwamish, 10 Stat. 927; Article 7 of the Treaty with the S'Klallam, 12 Stats. 933; and Article 7 of the Treaty with the Makah, 12 Stat. 939. This language was also included at Article 6 of the treaty which was offered at the Chehalis River council.

The reference to consolidation of annuities in the above language makes it clear that it was intended that the tribes and bands to be consolidated would consist of treaty Indians. Only treaty Indians received annuities. The policy of the government was to pay the annuities, where possible, in goods which were useful to the people rather than in per capita distributions. This, I believe, explains the reference to consolidating the annuities.

The language in the Flathead Treaty provides that:

Article 2. There is, however, reserved from the lands above ceded, for the use and occupation of the said confederated tribes, and as a general Indian reservation, upon which may be placed other friendly tribes and bands of Indians in the Territory of Washington who may agree to be consolidated with the tribes parties to this treaty, under the common designation of the Flathead Nation, with Victor, head chief of the Flathead tribe, as the head chief of the nation, the tract of land included within the following boundaries, to wit:

.....

There is no language about consolidation of annuities, perhaps because the provision consolidating all of the people into one nation obviated the need for such phrasing.

The Kalispel who later moved to the Flathead Reservation, but who were not treaty-signers, are separately singled out and identified as eligible for certain benefits under the Flathead Allotment Act of 1904. This Act provided for survey of the reservation, allotment of lands to eligible Indians, and sale of lands not allotted.

Sec. 2. That so soon as all of the lands embraced within said Flathead Indian Reservation shall have been surveyed, the Commissioner of Indian Affairs shall cause allotments of the same to be made to all persons having tribal rights with said confederated tribes of Flatheads, Kootenais, Upper Pend d'Oreille, and such other Indians and persons holding tribal relations as may rightfully belong on said Flathead Indian Reservation, **including the Lower Pend d'Oreille or Kalispel Indians now on the reservation**, under the provisions of the allotment laws of the United States.

(emphasis added)

Section 9 of the Act provided that after the remaining unallotted lands had been appraised, they should be opened to settlement and entry by proclamation of the President. Kalispel resident on the Flathead Reservation were specifically identified as eligible to share in the proceeds from the sale of these lands.

Sec. 13. The proceeds received from the sale of lands One-half shall be expended from time to time by the Secretary of the Interior as he may deem advisable for the benefit of the said Indians and such persons having tribal rights on the reservation, **including the Lower Pend d'Oreille**

or Kalispel thereon at the time that this act shall take effect, . . .

(emphasis added)

The allotment history at the Flathead and Quinault reservations has both similarities and differences. At Quinault allotment began under the General Allotment Act and the allotting agent was instructed to allot members of those tribes understood to be on the reservation. Later, in 1911, Congress passed a special allotment act for the Quinault Reservation. The Quinault Allotment Act provided that after allotment of eligible reservation residents, the surplus lands of the reservation were to be allotted to other designated Indians who chose to take an allotment at Quinault rather than at a reservation which was set aside for them.

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