BEFORE THE INDIAN CLAIMS COMMISSION

TILLAMOOK TRIBE OF INDIANS, ET AL., )

Plaintiffs, )

v. )

THE UNITED STATES OF AMERICA, ) Docket No. 239

Defendant. )

Decided: November 23, 1955

FINDINGS OF FACT

The Commission makes findings of fact as follows:

1. The claimant, the Confederated Tribes of Siletz Indians, is a duly confederated and organized group of American Indians having a tribal organization and recognized by the Secretary of the Interior of the United States; and such organization has as its membership descendants of various tribes or bands who were party to the 1892 agreement involved in the instant litigation and such organization has the capacity to prosecute this claim.

As such organization is recognized by the defendant as having the capacity to prosecute this claim, and the other Indians and groups named as petitioners having agreed thereto, all petitioners save and except said Confederated Tribes of Siletz Indians will be dismissed from this proceeding.
2. E. L. Crawford, of Salem, Oregon, is the duly authorized attorney for the Confederated Tribes of Siletz Indians under a contract duly approved by the Commissioner of Indian Affairs. E. L. Crawford made an assignment of interest of said contract unto Garland S. Ferguson, III, and Joseph W. Creagh, attorneys of Arlington, Virginia, and said assignment of interest was duly approved by the Commissioner of Indian Affairs.

3. By Executive Order of November 9, 1855, the United States established a reservation for the Indians of Western Oregon which said reservation was thereafter reduced in size by Executive Order of December 21, 1865 and an Act of Congress of March 3, 1875.

4. The reservation as provided in the Act of Congress of March 3, 1875 (18 Stat. 446) includes the area involved in this litigation, the title to which was by said Act of Congress set apart as a permanent reservation for the Indians then occupying the same and to be thereafter located thereon.

Said reservation is described as follows:

Beginning at a point two miles south of the Siletz Agency, thence west to the Pacific Ocean, thence north along said ocean to the mouth of Salmon River, thence due east to the west boundary of the eighth range of townships west of the Willamette Meridian, thence south with said boundary to a point due east of the place of beginning, thence west to the place of beginning.

5. Thereafter claimant Indians were given individual allotments in the reservation area, and certain other lands were set aside for Governmental use, and on October 31, 1892, an agreement was entered into
between the defendant and claimant Indians ratified by defendant by
Act of August 15, 1894 (28 Stat. 286) by the terms of which there was
ceded to defendant all of the unallotted portion (being the land in-
volved herein) of said Siletz reservation with the exception of five
timbered sections reserved as tribal, for a total consideration of
$142,600.00. There was thought to be ceded thereby to the United States
177,563 acres but later records of the Bureau of Land Management have
established that the ceded area actually contained 191,798.80 acres, or
12,958.80 acres more than was originally estimated.

6. Under date of August 22, 1892, the Commissioner of Indian
Affairs issued written instructions to the three Commissioners appointed
to negotiate with the Indians residing on the Siletz Reservation for
the cession of the unallotted reservation lands. These instructions
indicate clearly that no undue pressure was to be used to induce the
Indians to consent to the cession but that it should be pointed out
that the surplus lands in their present state could not bring the Indians
any revenue, while the money which would be paid for their relinquish-
ment, when placed at 5 per cent interest, would give them a considerable
income.

The instructions further specifically stated that if the Indians
were unwilling to cede these lands (except five sections which were to
be reserved for them) the Commissioners should endeavor to obtain a
relinquishment of such part of the surplus lands as they were willing to
cede and that the terms and conditions of sale should then be agreed upon
and should be just and equitable to the Indians and to the Government.
Upon receipt of these instructions the Commissioners proceeded to carry out their assignment. The Indians were called together at the Siletz agency where the Commissioners, through an interpreter, explained the purpose of their visit. A complete record of the proceedings was maintained and submitted with their report to the Secretary of the Interior and Commissioner of Indian Affairs. In their report the Commissioners stated that, in their opinion, these Indians were exceptionally intelligent and capable of taking care of themselves and their property.

7. The report of the Commissioners indicates that upon arriving at the Siletz agency they immediately proceeded to become acquainted with the facts in order to intelligently carry out their assignment. They visited many parts of the reservation and made the acquaintance of as many Indians as possible. They found the country mostly mountainous and timbered with fir and cedar trees and that the most choice and desirable lands had been taken up by allotments to the Indians.

8. The council began on October 17, 1892. The Commissioners explained the purpose of their visit—namely, that they were there to talk to the Indians about selling the unallotted lands of the reservation to the Government.

They advised the Indians that the Government wanted to buy the surplus lands of the reservation and would pay what the lands were worth; that if a sale were made, a part of the money would be deposited at interest to the credit of the Indians and a part paid to them in cash when the agreement was approved or ratified by Congress. They
explained that this was the policy of the Government in all purchases of this kind since it was not considered to be for the best interests of the Indians to pay them the entire purchase price in cash.

The Indians were advised that certain lands would be reserved for them, as a source of timber supply for the homes they might build, or even to sell if that should be their desire; that they understood that the best agricultural lands had already been taken up by the Indians in allotments.

After this preliminary discussion and explanation of their purpose in calling the meeting the Commissioners suggested that the Indians talk the matter over among themselves and agree as to how they would present their case. They were assured that there was no intention to interfere with them in any way; that they (the Commissioners) were not there to urge them to sell or to compel them to sell but were there only to work out a satisfactory agreement all around. The council was adjourned until October 29th.

9. On being recalled on October 29th the Commissioners were addressed by an Indian named Frank Carson who had been selected by the Indians to speak for them. He advised the Commissioners that the Indians were willing to sell the surplus lands if the Government would pay them the entire purchase price in cash. The Commissioners frankly explained that this could not be done since it was contrary to the Government's policy in its dealings with all Indian tribes and that such an arrangement was not for their best interests since there was always the danger that some of them might be taken advantage of
by some unscrupulous person and swindled out of their money and furthermore that Congress would not approve such an arrangement. They were advised that it would be much better for them to have the money deposited for them at interest with certain payments being made to them annually. To use Commissioner Harding's own words: "The Government will not pay down cash in one amount. It is for the benefit of the Indians and to provide an income for them. The Government would not make a purchase in any other way except for the benefit of the Indians; and the Government's experience is that Indians are not accustomed to dealing with the outside world the same as other people are, and if they were to pay the Indians down in cash, the Indians would be liable to be swindled out of it. • • •; but the Government will not buy these lands and pay it in cash, simply for the benefit of the Indians. They are dealing with you just as they would deal with all the Indians all over the country. They will not make an exception of these Indians.

They will treat with them and buy of them just as they buy of others, and provide a fund so that the Indians can have some money every year coming to them; and if you have 5 per cent, that is: 5 per cent on $10,000 is $500, or 5 per cent on $100,000 is $5,000, and so on, would come in every year. The object of the Government is to make an income for the Indians; to provide a safe income for them."

10. Apparently some of the Indians were skeptical or suspicious of the good intentions of the Commissioners. This was mentioned by Commissioner Harding on the very first day of the next council meeting when he said:
"Now I want to say another thing. It has come to my ears in such a way that I cannot but believe it is true, that some of you have had an idea that we were to get some advantage, to cheat the Indians. If any of you have any such an idea, I want to tell you that the Government instructs us particularly that we are here as well to look out for the interests of the Indians as for the interests of the Government. We don't represent anybody else but the Government. We are here to make a fair bargain with the Indians, and not to take advantage of them, or to swindle them. We would be violating the instructions from the Government if we undertook to take advantage of you. We are connected with no outside schemes; we simply represent the Government, and we propose to make a fair, honest bargain with you, to be carried out, and the Government, if we make such a bargain, will carry it out. But, the Government will not make a bargain with you different from what it has made with all the other Indians. They are to pay you sufficient money to ease your present wants, in cash; and then they are to pay you every year a certain income, so that you won't have your money to squander, but will from year to year get the benefit of this fund. * * * The Government has pursued a policy to protect the Indians, recognizing the fact of their inexperience in business, and want of experience and care in dealing with people, until they will be more capable of taking care of their own affairs."

The Indians were still unwilling to agree to a sale except for cash and wanted $1.25 per acre. Their principal reason for insisting upon full cash payment seemed to be that many of them were old and wanted to have the use of the money while they still had time to derive some personal benefit therefrom, although a further reason seemed to be some degree of distrust or lack of faith in the promises being made.

While the Commissioners pointed out that they could not make an agreement providing for full cash payment and that if such an agreement were made and sent to Washington that Congress would not approve it, it was decided to adjourn the council until Saturday, October 29, 1892.

11. During the days intervening between the adjournment of the council October 17 and its reconvening on October 29, the Commissioners
had continued their exploration of the reservation and interviewing the Indians in their settlements. They found the Indians to be intelligent; that many had adopted the white man's manner of life, living in frame houses similar to that of the white man in similar circumstances.

12. The council reconvened at 1 o'clock on the 29th. The Indians objected to Oscar Brown acting as their interpreter whereupon they appointed Pengra Logan and Johnny Williams to act as their interpreters while Oscar Brown served as interpreter for the Commissioners.

The Commissioners again reminded the Indians why they had been sent to meet with them and that two weeks had elapsed since their last meeting. They suggested that if the Indians were ready to sell the unallotted lands a committee should be appointed by them to confer with the Commissioners and arrange to have a proper agreement worked out for the cession of the lands. They suggested that such committee consist of such men "as you may choose"; and that the committee members should be nominated and elected by them (the Indians) one at a time. Whereupon, after further discussion a committee of seven members was chosen.

13. During the negotiations that followed between the Commissioners and the committee of seven representing the Indians, the committee requested $175,000.00 as the selling price for the unallotted lands and demanded that $100.00 of this amount be paid in cash to each Indian and the balance be held in trust by the United States. When the Commissioners would not agree to this, further negotiations were carried on and after lengthy discussion through all of Saturday, the 29th, and Monday morning, the 31st, terms were finally agreed upon.
As indicated by the terms of the agreement the price finally agreed upon was $142,600.00; $100,000.00 was to be deposited at 5 per cent interest in the Treasury of the United States to the credit of the Indians then living and belonging on the reservation and the balance of $42,600.00 to be paid at the rate of $75.00 to each adult or married Indian, as fast as they came of age or married.

After the agreement had been reduced to writing and again explained and discussed it was signed in duplicate by the members of the Commission and by the Indian committee of seven whereupon it was kept open for additional signatures on November 1, 2, 3, and 4.

The agreement was eventually signed by a majority of the Indians. According to the report submitted by the Commissioners, most of the adult Indians who failed to sign were either absent or sick.

The Siletz Reservation, of which the unallotted lands here in question are a part, is located in what is known as the Douglas fir region, which includes those parts of Oregon and Washington west of the Cascade Range. The forests of this region are almost exclusively conifer and Douglas fir is the predominating tree. The reservation is definitely mountainous country, located in the northern part of Lincoln County, Oregon, which (i.e., Lincoln County), according to a survey by the United States Forest Service in 1942, was classified as 92 per cent forest land, 7 per cent grazing land or cultivate pasture land, and the remainder as tideland, sand dune, and resort areas. The entire boundary line of the reservation, in fact, runs over mountains covered with dense forests of fir, hemlock, and cedar timber with a rank undergrowth of
salal, vine maple, salmon brush, thimbleberry and huckleberry depending on the dampness of the climate than the richness of the soil. The creek bottoms have some first rate soil along them but are too narrow to be farmed extensively. Along the Siletz River, the valley averages about twenty chains wide from what is known as the upper farm down to the river.

As indicated above Douglas fir was the predominating tree on these lands with western hemlock next in volume. There was very little land suitable for agriculture and this was particularly true of the unallotted lands since the lands best suited for that purpose had been chosen by the Indians for their allotments. The remainder of the ceded area included lodgepole pine, cedar, spruce, various hardwood, and grazing land.

The timber was mostly of mature growth and would cruise on an average of approximately 65,000 board feet per acre, some cruising over 100,000 board feet per acre. The timber on the ceded lands was approximately the same percentage of sawed timber as found on the average on the reserved sections for the tribe and it would seem to have been approximately the same value at the time.

The Siletz Bay, the Siletz River, Drift Creek, Schooner Creek, and Salmon River are the major streams situated upon the reservation. Said streams are frequented by a substantial run of salmon, occurring through most of the year and including species known as Chinook, Silver-side, Steelhead and calico chum, or dog Salmon. The same constituted a valuable fishery and a cannery was established to exploit the same in 1896. Prior to the agreement of 1892, the defendant, in its capacity as guardian for claimant Indians herein, had exclusive jurisdiction over
fishing activities in their entirety, including the right to exclude any and all persons other than claimants from said fishing and the further right to regulate the same for the benefit of claimants to the exclusion of the regulatory powers and police powers of the State of Oregon.

The reservation area contained a substantial quantity of wild game, and principal animals being deer and elk, the principal fur-bearers being beaver, otter and muskrat, and Siletz Bay and the lower areas were visited by migratory waterfowl. Prior to the agreement of 1892, the defendant, in its capacity as guardian for the claimant Indians herein, had exclusive jurisdiction over the hunting and trapping in the area, including the right to exclude any and all persons other than claimants from hunting upon the reservation and the further right to regulate the same for the benefit of the claimants to the exclusion of the regulatory power and police powers of the State of Oregon.

Of said streams the Siletz River was adapted to logging operations, the Siletz bar and entrance was capable of being used by sea-going tugs for the purpose of removing timber and lumber over said bar. Approximately 12 or 14 miles to the south there is situated the port of Newport which in 1892 was sufficiently improved and developed to permit its use by schooners and other boats adapted to the hauling of lumber and that in 1892 a rail-road extended from Corvallis, approximately 20 miles west, to the town of Yaquina situated on Newport Bay.

15. Under the provisions of the Act ratifying the agreement, any mineral lands were to be disposed of under the laws applicable thereto and the balance of the lands under the town site and homestead laws.
Each settler taking up a claim under the homestead law, however, was required to pay $1.50 per acre in addition to the usual filing fees required on a homestead claim.

16. During the first four and one-half years following the opening of the lands to the public only 1.335 per cent was disposed of by the Government. It appears that this lack of demand was largely due to the requirement that $1.50 per acre be paid in addition to the regular filing fees required under the Homestead Act. This is evidenced by the rapid increase in dispositions after this requirement was withdrawn by the Act of May 17, 1900.

The defendant, by proclamation of the President of the United States on May 16, 1895, opened to homestead entry all of the ceded portion of the reservation lands; the homestead laws then in effect limited each entry to a maximum of 160 acres, required three years' residence, plus a cash payment of $1.50 per acre to secure a patent and perfect title; subsequently the homestead law was amended to permit an entryman to acquire title without payment of $1.50 per acre. Homestead entries could only begin after surveys were made and first of such surveys were not made until 1898.

Said ceded lands were not adapted to agricultural operations but various investors, speculators and others interested in acquiring timber did induce some entries upon said ceded lands for the purpose of acquiring title to the timber thereon; some of such entries were made in violation of the laws of the United States and parties responsible therefor were convicted and punished. The prices actually paid by some
investors, speculators and others to such entries were from $4.50 per acre as shown by the Willard N. Jones Mortgages for $720.00 on 160 acre tracts; and sales at from $9.37 to $27.50 per acre as indicated by sales of homesteads for from $1500.00 to $4400.00.

On September 14, 1904, J. H. Pimple, Acting Commissioner of the General Land Office, writing to the Secretary of the Interior, states that 21 entries (on the ceded lands) made at or near the same date were transferred to one party for from $1500.00 to $4400.00 each, the land being in the same township or at one adjoining. Each such entry was for 160 acres. Simple mathematics indicate that the $1500 for a 160 acre tract is a consideration of $9.37 per acre, and $4400.00 for a 160 acre tract is a consideration of $27.50 per acre.

The Lincoln County Deed Records show 22 transfers from January 11, 1872 to March 8, 1875, totaling 22,019.22 acres of land for a total consideration of $14,872.88, being an average price per acre of $6.90.

On January 26, 1893, W. M. Stone, Commissioner of the General Land Office in writing to the Secretary of the Interior recommended that the lands of the Siletz Reservation involved herein, being densely timbered with good fir and cedar trees, and well watered with rapid running streams which would furnish a good means of getting the timber and lumber out, should be disposed of as timbered lands under the General Land Laws at not less than $2.50 per acre.

One S. A. D. Puter, who with Horace Stevens, wrote the book "Looters of the Public Domain," published in Portland, Oregon in 1908, values the ceded land as being worth more than $8,000,000.00 about 1900.
The eastern part of Lincoln County, Oregon, was within the Oregon California Railway land grant which road was succeeded by the Southern Pacific Railway. Mr. Fuller testified that the United States records showed that the Southern Pacific Railway land grant sales to 1879 average $6.21 per acre.

Mr. Fuller testified that Government records, to which he referred, showed that the United States acquired from the Hudson Bay Company in 1846 approximately 160,000 acres of land for $200,000.00 in gold coin; that these properties were appraised in the year 1854 by Isaac I. Stevens, then Governor of the Territory of Washington, as having a value of $300,000; that the appraisal did not segregate the value of the land from the improvements, but according to assessment records as of that date the improvements constitute only a small part of the total value of the property. These properties were in the Puget Sound area.

In 1954 the timber on one 640 acre section, which had been reserved for the Indians, was sold for $301,000.00

17. The acts of defendant in opening the ceded lands to homestead entry and not otherwise, greatly retarded the sale and development of the timber situated thereon, in that it could only be acquired in 160-acre tracts, and it was most difficult, if not nearly impossible, due to the heavy stand of timber and mountainous nature of the area, for an entryman to comply literally with the homestead laws, and that the way and manner of the disposal of the ceded area made it highly difficult, if not impossible, for an investor, speculator or lumberman to secure a suitable block of timber of sufficient size to justify the
expense of building access roads, camps and other facilities necessary for the logging and exploitation of the same. Despite these incidents, minor logging operations were started in the ceded area almost immediately after it was opened to settlement and the lumbering industry in the ceded area reached a high stage of development during World War I.

18. The topography of the Siletz Reservation did not invite ingress or egress easily. The Salmon River in the north was a violent mountain stream until tides affected it only a short distance inland; then it broadened into a shallow estuary with continuous breaks. The Siletz River, which ran through the approximate center of the reservation, widened into a bay at its mouth, with an entrance 350 yards wide at high tide and about 100 yards at low tide, and a bar over which the waves broke constantly. In 1887 it was estimated to have a depth of six feet at flood and no evidence has been presented to show that this was otherwise in 1892 and 1894.

Three roads served the reservation but these were scarcely more than rough wagon trails. One entered the reservation in the southeast corner whence it followed Rock Creek to its juncture with the Siletz River and continued along the north side of the river to the agency. From here it extended north about 10 miles. Another road connected Toledo with the agency. The third was at the northern end of the reservation along the Salmon River. At the junction of Deer Creek with the Salmon the road continued south and west to the ocean beach at about the present site of Necoma.

All of the roads were very crude wagon roads in 1892 and 1894, being almost impassable in the winter. At that time, in fact, the ocean
beach was the best means for north and south travel, especially at low tide. Even as late as 1904 the Commissioner of Indian Affairs reported:

* * * there are no roads over which the claims may be reached, either with a team or saddle horse, nothing but a few dim foot trails which are only used semi-annually by these claimants in going to and from their respective entries prior to making proof, and except in a few instances never afterward.

19. Although agricultural land was in demand at the time of the cession, the rough, mountainous character of the Siletz lands did not invite settlers to claim such lands for agricultural purposes. As here-inbefore indicated, what few agricultural lands there were on the reservation had been largely taken up by the Indian allotments.

Most of the activity in buying land was in or near the towns of the area with little buying in outlying districts. Benton and Lincoln counties were then very sparsely populated and no great demand for the lands here involved was experienced as is evidenced by their slow rate of disposition after being opened to the public in 1895.

20. In the early days of our history, the forests of our country were generally regarded as inexhaustible and were in many instances considered a liability rather than an asset, since many of the early settlers were interested in the use of the land for agricultural and grazing purposes and the clearing of lands for those purposes was a burdensome and expensive process. That was the attitude of some of the early Oregon settlers where fires were started by them in the forests as an aid in clearing the land.
However, almost from the earliest development of this country the need of timber for homes and local industries as well as for shipbuilding and export was recognized and an early appreciation was had by business interests and others of the value of our timber resources as distinguished from the land itself. From a commercial standpoint the lumber industry in this country had its beginning in Maine, and gradually extended into New York, Pennsylvania, and along the Atlantic seaboard and then into the Great Lakes region about 1850.

Lumbering operations of any importance did not reach the Oregon-Washington area until about 1890 to 1900 although shipments of timber began on Puget Sound in 1849. Heavy stands of timber crowding to the water's edge and anchorage in deep water at almost any spot gave the Sound a decided advantage in cheap production. The Puget Sound lumber trade completely overshadowed that of Oregon just as Oregon's grain trade outclassed that of Washington.

21. In 1892 and 1894 the lumber activity in Oregon nearest the Siletz Reservation was concentrated around Coos Bay, some 75 to 100 miles south, and Astoria on the Columbia, about 100 miles to the north. Here was good water transportation which was a great advantage to the marketing of logs. Siletz Harbor also was then in use.

The principal seaports on the Oregon coast from south to north were Port Orford in Curry County, Coos Bay in Coos County, Yaquina Bay and Siletz Harbor in Lincoln County, and Tillamook Bay in Tillamook County. Only Yaquina Bay, about 10 miles south of the southern boundary
of the reservation and Siletz Harbor were close enough to be of practical use as a shipping point for timber from these lands in 1892 and 1894 if the timber of the reservation could have been cut and transported at a reasonable cost to this harbor.

22. To exploit the forests of Oregon in the coast region, however, great capital resources were needed. The state's coast line provided no bays or river mouths that did not need the improvements only Federal resources could provide. To construct the roads and railroads, trestles and flumes that were essential to logging this terrain required an influx of capital which Oregon locally did not have. From 1890 to roughly 1920, logging was a big business venture in Oregon, but with the coastal area not entering this field on a major scale until shortly after the turn of the century. In fact, it was not until the second decade of the twentieth century that the use of the high-line logging technique first broke the barrier to removing logs from mountain ravines; and the application of the motor truck to the business gave access to lands, such as here involved, which were previously inaccessible and made the small operation possible.

23. The fine harbor and deep water facilities of the Puget Sound area in Washington were directly responsible for the lumber trade in Washington completely overshadowing that of Oregon during the late years of the nineteenth century. In 1889 the Sound had over 400 lumber vessels loading while Portland's lumber loading was negligible. By 1900 Washington mills and logging outfits, in size and production, completely surpassed Oregon. Undoubtedly the principal reason for this greater activity can be attributed to the fact that Washington had the
transportation facilities, harbors and railroads, so essential to the
development of the lumber industry, while Oregon had few deep water sea-
ports and none comparable to Washington's. Washington timber-cutting up
to 1900 was in the vicinity of the Sound, around Gray's Harbor. Furthermore, many of its rivers draining into the Sound were "drivable" for
logs, and after the first years of easy logging when logs could be
skidded directly into the deep waters of bays and inlets, the rivers
facilitated operations. On the other hand, the ill repute of the
Columbia River bar handicapped the development of Oregon's two principal
ports, Astoria and Portland. Although Astoria was located on the edge
of dense forests, after cutting the trees from the edges of the rivers
which emerge in the vicinity, the terrain made further logging unfeasible
until logging railroads, roads, and eventually trucking facilitated
operations.

Railroads were expensive to build, hence slow to come; and the
world demand for lumber up to 1890 was not sufficiently great to in-
vite the exploitation of Oregon's resources at such heavy cost as long
as other areas could produce with less capital investment in transporta-
tion and other essentials for an economic operation. However, the
future demand and exploitation of the timber was foreseeable.

24. What has been said in the finding immediately preceding re-
garding the forests and terrain around Astoria is also applicable to the
lands of the Siletz Reservation except that the latter lands had no deep
water seaport available such as at Astoria. The only river that might
have been used for driving logs was the Siletz and there was some handi-
cap to its use, because of the individual Indian allotments taking up
both sides practically the entire length of its course.

25. In 1892 the Oregon Pacific Railroad, which connected the coast and the Willamette Valley via Toledo and Corvallis, went into bankruptcy. It was the only railroad within 40 miles of the Siletz Reservation and was used as an outlet principally for Willamette Valley wheat which was being shipped to San Francisco. In 1887 and 1888 the railroad was experiencing financial trouble and in 1894 it was sold at public auction to A. B. Hammond for $100,000.00. Hammond opened logging operations in the Cascades east of Corvallis and supplied his trains with lumber from the Cascades which he shipped from Yaquina Bay in Hammond steamers. In 1907 he sold his interests to the Southern Pacific and Yaquina as a harbor was quietly forgotten until World War I when the United States Spruce Corporation moved into the area, built a large mill at Toledo, and logged the region between Newport and Depoe Bay, which includes some of the lands here in controversy.

26. Except for a few saw mills that were operating in scattered areas mainly for local needs, the forests of the northwest coast of Oregon prior to 1900 were practically untouched for commercial use. This was especially true of the Siletz area. This does not mean that there was no lumber activity in this area. In 1884 two mills were cutting lumber at Toledo for the Oregon Pacific Railroad; in 1892 there was also a mill at Yaquina. In 1898 there were only four mills in all of Lincoln County; three of these were in the vicinity of Toledo and the fourth at the agency on the Siletz Reservation. However, the production for Coos Co. in 1890 was 20,153,000 board feet; and there were in the entire
State of Oregon 300 saw mills, involving invested capital of $7,582,835.

Although the mountains of the Coast Range are relatively low, the terrain of this area is rugged, broken by steep ravines, and the forest growth so heavy it was a major job to build even a wagon road. The topography isolated the coastal region from the centers of population, capital, and economic development.

The great wave of migration to the Northwest during the first decade of the twentieth century scarcely touched Lincoln County, the area with which we are concerned. A brief railroad boom had occurred in the 1880's with the building of a line from Corvallis to Yaquina Bay to carry Willamette Valley wheat for shipment to San Francisco by schooner. The valley trade, however, shifted to Portland, the railroad went bankrupt, and shipments from Yaquina Bay dwindled.

In 1900, seven years after its organization in 1893, Lincoln County had 3600 residents; by 1910 they numbered 5600. Most of the new settlers took up homestead claims in heavily timbered areas, cleared a few acres, and enjoyed a meager living. Despite the scramble for timber lands (i.e., between 1900 and 1910), little logging was done in this period.

In the next decade the population of the county increased by only 400. About this time World War I came along and the Federal Government moved into the area through the United States Spruce Corporation to build the saw mill already referred to at Toledo. The mill was operated by this corporation but before it had produced much lumber, the armistice was signed and in 1921 the mill was taken over by C. D. Johnson Lumber Co. It was not until the 1920's that the forest industries began to exploit the abundant timber stands of this area.
27. The absence of adequate roads and the rough terrain of mountains and gorges, plus the immense cost of logging operations upon lands of this nature and the unavailability of adequate transportation to markets limited investment in these lands when they were opened to the public and reduced desirability for homesteading.

Because of the nature of the country, the size of the timber and the stands of timber, special methods of logging had to be pursued, methods not found elsewhere; methods which have since been developed entirely by those pioneering in this region.

In the fog belts of this region the undergrowth was very thick. In many places it presented almost an impenetrable jungle. To yard, load, and transport the logs to a point of manufacture involved heavy investments in logging equipment. Probably in no other logging region is the investment so great as on the Pacific Coast. The nature of this terrain is such that the general method of logging developed over the years (i.e. before the logging truck) was to build a railroad into the timber in such a way as to haul the logs on the ground the shortest possible distance from the cut area to the point of loading on the cars. Railroad construction in such rugged country was difficult, requiring much trestle building, deep cuts, heavy fills, and often excessive grades.

28. An examination of a map of the Siletz Reservation reveals that the five timber sections reserved for the Indians under the provisions of Article IV of the 1892 Agreement, with one exception, were all located in close proximity to the Siletz River and that the lone exception, the Depoe Bay Reserve, was not far from the coast.
29. The Indians were anxious for the Government to sell the five reserved sections and to have the proceeds of sale distributed among them. Action to bring about such a sale was initiated by them as early as 1907 when they petitioned for the sale of this land, pointing out that it was lying dormant and bringing them no income since they were not equipped to handle the timber upon it. This request was investigated by the Government but because of the inaccessibility of the timber, the time was not considered right for sale since no person other than a timber speculator would be interested in purchasing the same. Under such conditions it was believed that a fair price could not be obtained and to sell at that time, therefore, would not be for the best interest of the Indians. For that reason no steps were taken to sell these sections at that time.

30. Pursuant to the authority contained in Section I of the Act of May 13, 1910, the Government offered the reserved timber sections for sale in September 1917. The tracts are so situated as to form four distinct cutting units. All were offered for sale as such units but only one tract was sold. This sold for $70.50 per acre. No further sale was held until August 18, 1924, when the remaining lands were again offered for sale at a minimum price of $1.25 per acre for the land, $1.50 per thousand feet for the fir and spruce, and $1.00 per thousand feet for the cedar and hemlock, but no offers were received at these prices. As the timber on the lands amounted to many thousands of feet per acre, the prices at which they were to be sold amounted to probably $50.00 per acre and more.
31. In 1925 and 1929 the Indians again petitioned the Secretary of the Interior to sell their four remaining timber sections. An investigation was again made but after careful consideration of the information received from the field, the difficulty experienced in previous sales, and the present state of the lumber market, it was decided that the lands should be held until a better market could be found since to sell at that time (1930) would not be in the best interests of the Indians. In 1934 the timber on one 640 acre section, which had been reserved for the Indians, was sold for $301,000.00.

32. The only comparable land sale of a large tract within the vicinity of these lands at or near the time of the cession of the Siletz Reservation was what is now known as the Fayerweather Purchase of 900,000 acres of timber land in what is now the State of Washington, west of the Cascades, at $6.00 per acre in the year 1900.

33. Plaintiffs' witness, Mr. E. O. Fuller, has made an appraisal of the lands in question based upon speculative, theoretical, and improper factors in that he has relied almost entirely upon current values as evidenced by sales in this area occurring between 1940 and 1954. These current sales he has converted to 1894 values by discounting the 1954 dollar value to its value in 1894. He has made six separate appraisals of the various so-called amenities of the lands in question and totalled these appraisals to arrive at his final appraised value. No allowance has been made for any change in economic conditions in the intervening period although harbors have been improved by the army engineers, roads and highways have been built in this area, the state has grown tremendously in population, and the logging truck has come into extensive
use since about 1938 making timber like that on this land more accessible than at the time of the cession.

Such a method for determining the fair market value of these lands in 1892 or 1894 cannot be accepted. The value must be determined for the lands as a unit with all amenities appurtenant thereto. Separate values cannot be placed upon the growing timber, the fish in the streams, the harbors along the coast, the scenery, the logged-off or bare lands, and other subsistence resources as was done by plaintiffs' appraiser. Furthermore, none of the sales in recent years concerning which evidence was introduced by plaintiffs and upon which plaintiffs' appraiser relied, can be made the basis of value in 1892 in the way applied by him.

34. Because the best use for the lands was for use of its timber, its value at the time of the cession must be based primarily on the value of its timber and the realization of this value secured by its sale in large tracts to lumbermen. The sale of the public timber lands in the State of Oregon at a minimum price of $2.50 per acre had been authorized by Act of Congress of date June 3, 1878 (20 Stat. 89) called the Timber and Stone Act.

35. Demand for this land was limited for several reasons (1) the surrounding area was sparsely populated; (2) the rough mountainous terrain made much of the timber inaccessible and impossible to log with the means then available; (3) the nature of this terrain required capital investment if a logging operation was to be carried on and local capital in the required amount was not available (4) competitive lands of the Puget Sound area with the deep water facilities of that area
gave those lands a greater appeal to a prospective purchaser interested in obtaining timber lands in the Northwest; (5) although agricultural lands were desirable there were few such lands included in the surplus lands of this reservation; (6) the limited acreage (160 acres) available for homesteading made it impossible to acquire sufficient acreage necessary for timber exploitation.

36. We find that the value of the ceded lands at the date of cession, October 31, 1892, was $3.00 per acre, or a total of $575,396.00.

37. We further find that the consideration of $142,600.00 paid by the defendant to the plaintiffs for the ceded lands was an unconscionable consideration under the provisions of the Indian Claims Commission Act.

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner