

BEFORE THE INDIAN CLAIMS COMMISSION

THE YAKIMA TRIBE OF INDIANS,)	
)	
Petitioners,)	
)	
vs.)	Docket No. 47
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

AMENDED AND SUPPLEMENTAL FINDINGS OF FACT

Upon the evidence received in this Docket since the Amended Findings of Fact and Interlocutory Order of this Commission were entered on November 6, 1953, the Commission finds that its Finding of Fact No. 28 should be and is hereby superseded and made to read as hereinafter appears; that its Finding of Fact No. 19 should be and is hereby superseded by our Findings hereinafter made insofar as it sets out or refers to the actual acreage contained within any part of Tract C, said Finding of Fact No. 19 to remain in full force in all other respects.

The Commission also makes additional Findings of Fact which are supplemental to its Findings Nos. 1 to 28, as amended:

28. After passage of the Act of December 21, 1904, 33 Stat. 595, previously referred to and before the Pecore Survey officially marked the western boundary of the Yakima reservation along the summit of the Cascade Mountains, the Northern Pacific Railway Company filed mineral indemnity selection claims to 346.44 acres of land in Section 9,

Township 11 North, Range 12 East, belonging to petitioners and lying in the area between the summit of the Cascade Mountains and Spencer's Point (Goat Butte). The Company released said claims on March 28, 1941, and on May 21, 1942, the selections were formally cancelled of record by the General Land Office. No patents were ever issued, and said tracts remain unoccupied reserved land within the boundaries of the Yakima Indian Reservation. (Def. Exs. 58,59) There being no showing that possession is withheld from petitioners or that Indian title has been extinguished, petitioners are not entitled to recover from defendant for a wrongful taking of these lands.

29. The south fork of Ahtanum Creek rises in the northern part of Section 18 in Township 11 North, Range 14 East of the Willamette Meridian and flows thence north into Section 7 and from there north-east and east through Sections 8, 5,4 and 3 to its junction with Reservation Creek in Section 2. Said stream is one link wide at the section line between Sections 18 and 7, fifteen links wide at the boundaries between Sections 7 and 8, and 8 and 5, and eighteen links wide at the section line between Sections 5 and 4. In Section 4, approximately three miles from its source, it receives a tributary stream rising in Section 5, which is one link wide at the line between Sections 5 and 4, and less than one mile in length. This latter tributary rises at a spring near a point called Vessie Corral. (Def. Exs. 50 to 56, inclusive, 2 and 4).

The use of township plats which are based upon the original notes of official surveys filed in the office of the United States

Surveyor General, and which bear notations of acceptance and approval by that official, is more accurate than the use of maps prepared by the Geological Survey, Department of the Interior, prior to an actual survey of the area mapped, both as to acreage computations and topographic representations. Planimeter readings of photostatic copies of such maps with compensating allowance for shrinkage in photostating are accepted as good surveying practices, and such acreage measurements are considered within one-tenth of one degree accurate. (Trans. p. 124-147).

30. According to actual surveys, supplemented where necessary by planimeter readings from township plats which are based upon field notes of official governmental surveys, particularly where reservation boundaries transverse section lines, the acreage between the south fork of Ahtanum Creek and Reservation Creek, east of the line suggested by E. C. Barnard in 1900 as the true boundary of the Yakima Indian Reservation on the north, is 2,930.77 acres; that part of the reservation lying south of the crest of the divide extending by way of Darling Mountain from Reservation Creek westward around the head of the Klickitat River to Spencer's Point, and north of the Campbell-Germond-Long survey line which runs between Reservation Creek and Spencer's Point, contains 15,163.65 acres. There is a total of 18,094.42 acres within the area designated as Tract C, as so bounded. Of this acreage 425.32 acres have never been patented. (Miller, Trans. pp.4, 12; Shadduck Trans. p. 143) Petitioners are entitled to recover for the wrongful taking by the defendant of 17,669.10 acres within Tract C.

CEDAR VALLEY TRACTS:

31(a). The Cascade Mountains extend north and south along the western end of Yakima County. A range running eastward along the Yakima-Klickitat county line is known as the Simcoe Mountain Range. The Yakima Indian Reservation lies between the summit of the Cascade Mountains on the west and the Yakima River on the east, a distance of approximately 80 miles. The western portion is mountainous timberland, and the eastern portion lower rolling agricultural lands. The southern boundary line runs southeast from Mount Adams to a depth of three miles into Klickitat County, and then turns eastward. The 27,647.71 acres known as the Cedar Valley Tracts are located within a twenty-mile square area in the southwest corner of this reservation within Townships 6,7,8, and 9, Ranges 12, 13, 14 and 15. Approximately 15,300 acres of such tracts form an almost solid block in Klickitat County. Those within Yakima County are more scattered, but all tracts lie in the mountainous area between the Simcoe Ridge on the south and the Toppenish Ridge on the north, and all are sufficiently compact to be considered a logging unit for mass operation.

The Cedar Valley Tracts are some 12 miles south and distinctly separated from Tract C, which lies about the headwaters of the Klickitat River and between the south fork of Ahtanum Creek and Reservation Fork, along the northern edge of the reservation. Cedar Valley is separated from the Goldendale Plateau by the Simcoe Ridge and from the level area about Glenwood by the Klickitat River.

(b) The Yakima Indian Reservation is within the timbered area known as the Inland Empire, and Cedar Valley is covered with a stand of merchantable timber of which 80 to 85% is Ponderosa pine and the balance is Douglas fir, larch, spruce and like species.

32. This section of Washington immediately east of the Cascade Mountains did not come within the influence of the white man's civilization until after the Yakima cession of 1855, and the establishment of Fort Simcoe within the boundaries of the newly created Yakima Reservation. Settlers were quickly attracted to the level and rolling valley land along the Yakima River. The fertile soil and early introduction of irrigation in that area led to its rapid development and settlement before interest developed in the rugged lands immediately east of the Cascade Range, which until passage of the Act of December 21, 1904, were treated as part of the public domain. The first settlement within Yakima County occurred in Moxie Valley during 1860, five years before the County was organized by the Washington Territorial government, four years before Klickitat County was organized. By 1870 there were 432 persons residing within Yakima and Kittitas Counties. Yakima County's population reached 13,452 by 1900, 41,709 by 1910 and 77,402 by 1930. Yakima City had 14,802 residents in 1910 and 22,101 by 1930. Klickitat County settled more slowly. The first settlement was made in 1859 near Goldendale. By 1872 the census was between 500 and 600 souls. It reached over 10,000 in 1910 and then declined. In 1930 the census was 9,825 and in 1940 it was 11,357. (Trans. p. 187; Def. Ex. 49, pp. 23-34).

33. The forests of our country were considered a liability by the early piñeers who were usually interested in clearing the land for agricultural use. However, as the available supply of timber about the settlements became limited, there developed a recognition of timber values apart from the land, and speculative investment buying began to exceed purchases for immediate logging operations. Interest shifted from the New England states to the forests about the Great Lakes and then to the south where the bulk of the marketed lumber was produced from 1890 to about 1920. Active investment or speculative interest developed in the northwestern forests around 1890 although the coastal regions produced lumber for Europe and the oriental trade much earlier. Not only did the trees grow down to the water's edge, but the skidding of logs down the western slopes of the Cascades was comparatively easy, and the stand was remarkably heavy, the evergreen forests ranging between 25,000 to 50,000 board feet per acre. (Def. Ex. 49, pp. 53-58)

Commercial lumbering commenced much later within the region east of the Cascades, both because the timber was not so readily accessible and because the stand was much lighter. However some of the best pine stands within the state of Washington are found within Yakima and Klickitat Counties. Roughly one-third of Yakima County is timberland, of which 447,000 acres are within the Yakima Indian Reservation, and Klickitat County has 539,000 acres in timber. The stand within Cedar Valley is much lighter than is normal for that vicinity, due to a defoliation moth or pine butterfly attack in 1893 which killed approximately

3,000 board feet of Ponderosa pine to the acre, and destroyed other trees in corresponding number. In 1904 the stand approximated 13,000 board feet per acre of Ponderosa pine and 3,000 board feet per acre of other mixed species. (Herion, Trans. 6-9, Henze, Trans. 24-27)

34. Lumbering operations within Yakima and Klickitat Counties developed slowly. Only 23 square miles within the whole of Klickitat County was logged by 1900. There were no large operations until the Western Pine Lumber Company (which was acquired in 1922 by the J. Neils Lumber Company) built the Klickitat Mills at Klickitat (later Lyle) on the lower Klickitat River in 1909. (Def. Ex. 49, p. 34). Until as late as 1926 all timberland sales in the County were confined to the southern slope of the Simcoe Range and the areas along the eastern slopes of the Cascades which were readily accessible to the mills at Lyle and White Salmon (Def. Ex. 49, pp. 32-4, 59-60; Trans. pp. 173-5, 188, 201-5).

Lumbering activities progressed even more slowly within Yakima County. According to Buell's "Forest Statistics of Yakima County," sawmills and other wood-using plants were yet few in 1934 and were confined almost entirely to the City of Yakima. Wood operations were even less important. Most of the lumber then being produced within the County was from imported logs (Trans. p. 29). The first commercial operation was by the Cascade Lumber Company which began purchases in 1908, and was the only considerable purchaser of timberland prior to 1918.

35(a). The topography of Cedar Valley consists of high rounded ridges and deep intervening valleys with occasional meadows.

The altitude varies from 3,000 to 4,000

feet with occasional peaks of 5,000 feet and the valleys occasionally drop below 3,000 feet. It is drained by the Klickitat River and its branches. The streams are rapid and small. With the exception of the Columbia River which bounds Klickitat County on the south and is from 30 to 35 miles south of the Yakima Reservation, none of the streams in Yakima or Klickitat Counties is navigable, nor may they be used for "driving" logs (Def. Ex 49, pp. 18-21; Trans. pp. 191-2). There is a plateau about the town of Lucas, the surface of which is cut by small streams. Snow lies upon the ground more than half the year (Trans. p. 184).

(b) The soil is classified by the Soil Conservation Service as Class 6, 7, and 8; that is, ranging from soil suitable for grazing and forestry to that suitable only for wild life, recreational or watershed purposes. Precipitation is light; the growing season lasts about three months, with frosts until mid-June. The forage is chiefly pine grass which has little nutritional value; bunch grass with scattered patches of peavine along the watercourses; weeds and sunflowers. Cattle and sheep are grazed between June 1st and September 30th, but must be winterfed or removed during the winter season. The soil is heavily impregnated with pine resin and will not produce for the first seven years after being cleared.. (Def. Exs. 49, pp. 23, 35-43, 60, 66-7; Trans. pp. 66, 91-2, 171).

(c) Cedar Valley has no mineral deposits and there is no evidence of any scenic, wild life or recreational values to affect its fair market value as of December 21, 1904.

36(a) Cedar Valley was first settled by a group of Baptists who arrived about 1884. They established the town of Lucas. A few years

later about⁴⁰ forty Polish families settled near Vessey Springs. This town was discontinued between 1900 and 1910. In 1900 the census within the valley was 76 and it was estimated at 100 in 1902. Population was most dense between then and 1905, but had dwindled by 50% before 1910, and when the patented lands were acquired by the Vernon Parrish Lumber Company in 1925-6 there were only a few settlers living within the entire valley.

37(a). In 1904 there were a few short, interlacing dirt roads within Cedar Valley but the sole means of ingress or egress was over the old dirt military road to Fort Simcoe which had been constructed in 1855-1856, to service Fort Simcoe, and all supplies moving in Yakima County passed over it until 1884. This road, extending from The Dalles on the Columbia River northeast through Goldendale, over the Simcoe Range and through Cedar Valley eventually reached Yakima. It was unimproved until 1909.

The military road also serviced northern Klickitat County but heavy snows in the Simcoe range blocked passage during the winter season and shortly after its construction it was supplemented in Yakima County by a second dirt road which passed around the eastern end of the Simcoe range.

The residents of Cedar Valley found that 2,000 to 3,500 pounds was a good load for a four-horse team upon these roads. It was a four day trip to White Swan, six days to Yakima city, three days over the Simcoe Ridge to Goldendale, 13 miles south of the Reservation line, and from five to six days haul to The Dalles where until 1909 all freight had to be reloaded for transportation via steamer on the Columbia River to or from the coast.

(b) In 1904 there were no railroads within Cedar Valley. The Northern Pacific Railway Company had constructed a tract in 1884 from The Dalles through the extreme eastern end of the Yakima Indian Reservation to Toppenish, and Yakima, which was the first link between this general area and the Pacific coast. This tract was later extended northwest across the Cascade Mountains to Seattle, passing several miles northeast of Tract C. A tract of the Columbia River and Northern Railroad Company was built in 1903, from Lyle on the Columbia River to Goldendale, terminating 13 miles south of the Yakima Reservation and Cedar Valley. In 1909 this line was connected with a line extending to the Pacific coast.

Only the construction of the Evergreen Highway along the south bank of the Columbia River to Maryhill and thence northward to Goldendale, Yakima, Spokane and Seattle, in the early 1930's has materially improved transportation in this area since 1909 (Def. Ex. 49, pp. 26-43; Trans. pp. 181-4; Pet. Ex. 91 (37)).

38. Telephone and telegraph lines followed the Northern Pacific Railway along the eastern end of the Yakima Reservation and up the valley of the Yakima River. Neither service was available within Cedar Valley in 1904 (Pet. Ex. 52, p.44).

39. Early settlers in Cedar Valley attempted to clear and cultivate the land, and remains of their irrigation projects are yet visible. Their efforts were unsuccessful due to poor soil, a short growing season and severe winters. Only a few head of livestock were raised for want of winter feed. Seven sawmills were built at various points within or about the valley throughout the years, but no more than two were

ever in operation at one time, and practically all the lumber was used locally. However, the settlers were attracted by the timber and streams, and did explore the possibility of commercial lumbering. They tell of four day hauls to The Dalles where they received \$12.50 per thousand for A No. 1 clear pine which sold at the mill in Cedar Valley for \$2.50 per thousand; of four day trips to White Swan with a four-horse team hauling 3,500 board feet, and after 1910 some logs were taken to the mills at Glenwood. (Trans. 183). While prevailing prices for Ponderosa pine from 1900 to 1910 ranged from \$8.00 to \$12.00 per thousand elsewhere, lumber was traded by Cedar Valley residents for anything available which their families could use (Trans. p. 85).

These settlers acquired their land under the general land laws applicable to the public domain. Entries upon 78 tracts in Cedar Valley were made under the Timber and Stone Act of 1878, 20 Stat. 89, and there were 100 entries under the Homestead Act of May 20, 1862, 12 Stat. 392, and amendments. Under these acts minimum prices varied from \$1.25 to \$2.50 per acre for cash entries, or negligible filing fees upon showing of five years' residence and other qualifications, all for tracts of not to exceed 160 acres per person. The record does not disclose the exact cost to the settlers of the patented lands. One tract was patented to the State of Washington under the Act of February 22, 1889, 25 Stat. 176. (Pat. Br. 19; Trans. pp. 87, 177).

40(a). Between 1902 and 1914 ten of the patented tracts in Cedar Valley were sold; all sales were between private individuals, presumably residents of the vicinity, and for prices ranging from

\$3.125 to \$12.50 per acre for eight of the tracts, which amounted to no more than replacement cost of the improvements upon them. (Trans. p.66). Two of the sales conveyed tracts with sawmills upon them and the mills passed with the land. One settler, Ben Knox, stated when leaving the Valley in 1902 he could have acquired 320 acres of the finest timberland there for \$1.00 per acre, but decided against the investment. (Def. Ex. 47, p. 65).

(b) The Vernon Parrish Lumber Company acquired the patented tracts as an investment, the bulk of the purchases being made in 1925 and 1926. Although the deeds recite a consideration of \$1.00 per acre, the prices varied according to the improvements upon each tract, and the consideration was never more than equal to the value of the improvements. (Trans.pp. 90-167).

This purchaser made no attempt to log the land and during 1946 all tracts were sold by the liquidator of that company to the J. Neils Lumber Company which had previously acquired stumpage on the intermingled tribal lands. Having spent "hundreds of thousands" of dollars constructing access highways to Guler, across Klickitat Canyon, and feeder roads throughout the area, logging operations were commenced by the J. Neils Lumber Company in 1952. They are moving the logs to Guler by Deisel-powered trucks and from there by rail to their mills at Klickitat.

41(a). The nearest tract of land to Cedar Valley or Tract C to exchange hands about December 21, 1904, was 2,546.2 acres surrounding a mill at the mouth of Nasty Creek on the Ahtanum Creek, which sold for \$1.00 per acre on November 26, 1906. During 1917 land north of Tract C., with a lower elevation, sold at \$2.00 per acre (Trans.pp.151-3).

(b) A study of over 300 sales by individuals of timberland in Klickitat County, in Township 6, Ranges 12 and 13, was made by defendant's expert witness C. Marc Miller, who testified that the first sale in this township occurred in 1892. Between then and 1904, 9,449 acres exchanged hands at an average price of \$4.08. Following construction of the railroad to Goldendale, and between 1904 and 1909, inclusive, 19,942 acres were sold for an average price of \$6.37 per acre. After a railroad line was constructed along the north bank of the Columbia River in 1909 and provided passage to the coast by rail, and between then and 1916, inclusive, 11,113 acres were sold at an average price of \$9.04 per acre. The average consideration increased to \$15.39 per acre, during the period from 1917-1924, inclusive.

Mr. Miller considered these lands were comparable in quality to the Cedar Valley tracts, and as close to that area as possible, although they were more readily accessible to a railroad and at a lower altitude and hence easier to log. While most of these sales were in tracts of less than 4,000 acres, they included several re-sales of considerable areas. Twenty-eight thousand acres were acquired by the Klickitat White Pine Company between 1902 and 1919 and sold to the Eastern and Western Pine Company during 1919; and between 1906 and 1920 the Hershey Lumber Company acquired some 4,000 acres which it sold in 1920 to the Eastern and Western Pine Company (Trans. 82-5; Trans. 114; Def. Ex. 49, p. 59-60).

(c) In a letter addressed to Mr. Miller on August 11, 1953, Mr. H. O. Holmes, President of J. Neils Lumber Company and formerly with the Western Pine Lumber Company, wrote that prior to 1933 the latter company had confined all its purchases of timberland to land south of Cedar

Valley, in Townships 4 and 5, Ranges 12 and 13, within what he termed was "a reasonable distance from our mill at Klickitat, Washington." He said:

We were not interested at all in timber lands located in the (Yakima) Reservation or in that vicinity, and would have no idea as to the value of these lands at the time we were buying timber for the Klickitat Mill. In fact, I do not believe the lands had any value at that time as there were simply no purchasers.

As I told you over the phone, we were paying about \$15.00 per acre for lands which contained a good stand of timber, and this price did not seem to vary to any great extent until long after the J. Neils Lumber Company acquired our properties. (1922). Later on the Neils Company started to acquire timber further North, and the land in Townships 7 and 8 started to have a value in spite of its isolated location.

Mr. Holmes continued his remarks concerning timberlands and their value, commenting that \$15.00 per acre was not a high price to pay for land within a reasonable distance of a mill in 1909 to 1922; that he had no idea what price a purchaser would have paid for isolated land such as the reservation area between 1884 and 1913; that he believed its value was solely as an investment for a purchaser willing to buy a considerable acreage in a more or less solid block, pay annual taxes and hold it for a future profit. He said there was good demand for Ponderosa pine lumber in 1909; that timber prices in Klickitat and Yakima counties did not seem to show any marked improvement until after 1935.

That lands and timber upon them were recognized as having separate worth is evident from the Act of December 21, 1904, which directed the sale of timber upon some of the Yakima Reservation; however, no stumpage sales were made in this particular area until 1913.

(d) The first commercial lumber operation within Yakima County was begun by the Cascade Lumber Company during 1908 (Trans. p.225),

it having acquired 3,180 acres of timberland in 1907 for \$7.34 per acre on an average. It purchased 11,215 acres during 1908 at an average price of \$4.74 per acre, and 4,845 acres in 1909 for an average of \$7.93 per acre. These lands lay within the drainage of the Yakima and Kittitas rivers, and were some 50 miles east of the Cedar Valley and Tract C areas, near the Northern Pacific Railway Line and the settled area along the valleys of the Yakima River and its drainage (Henze, Trans. p. 57).

41(a) No stumpage sales occurred within Klickitat or Yakima Counties prior to 1913. However, stumpage on the Yakima Reservation, including lands about the Cedar Valley tracts, was appraised by the appraisal Commission of the Yakima Indian Reservation during 1910. The values fixed by this Commission ranged from 50¢ to \$2.25 per thousand board feet for both the Ponderosa pine and other species, depending upon the stand and quality of the timber. In his publication "Indian Forest and Range," Mr. J. P. Kinney, who was then the Assistant Forester in the Indian Forestry Division, Department of the Interior, said he was present on the Yakima Reservation that year, and had been instrumental in delaying a proposed sale of timber upon the reservation lands because he felt it was then impossible for the Indian to realize more than \$2.00 per thousand board feet for Ponderosa pine and possibly 50¢ per thousand board feet for other species (Pet. Exs. 84,94; Def. Ex. 68). His valuation has substantiation in the Commissioner of Indian Affairs' annual report for 1912 which places a lump valuation of \$2.00 per thousand upon all the timber on the Yakima Reservation (Pet. Ex. 90).

(b) Between 1913 and 1918, inclusive, the Cascade Lumber Company purchased 261,558 board feet of stumpage for an average of \$1.13 per thousand, located upon land immediately adjacent to the line of the Northern Pacific Railway Company between Yakima and Seattle. Mr. Miller's investigation into this purchase disclosed that the area involved was grazing land with stringers of timber running along the water streams (Trans. p. 96). The Company later attempted to establish a 1913 valuation of \$2.00 per acre upon its standing timber in Kittitas and Yakima counties, and in a letter addressed to the Commissioner of Internal Revenue on August 19, 1920, the President of that company, Mr. R. E. Slaughter, wrote on behalf of it:

* * we know without question that we have one of the finest stands of Western Pine timber there is anywhere in the Inland Empire or in the entire West. All cruisers who have worked in our timber have pronounced it to be equal if not superior to any other Western Pine in which they had ever worked, as to quality, size and length of body.

The location of our timber is of course exceptionally favorable as it is adjacent to the Kittitas and Yakima valleys which constitute one of the richest agricultural districts in America and which assures a very large local market at all times. Accordingly we feel justified in claiming from a comparative standpoint that our timber should be valued at as much if not more than any other body of Western Pine.

Mr. David T. Mason, senior partner of the firm of Mason, Bruce and Girard of Portland, Oregon, then Chief of the Timber Section of the Bureau of Internal Revenue, and responsible for the assessment, fixed the value of this timber as of 1913 at \$1.75 per thousand board feet. This stand was a part of the timber of the Cascade Lumber Company located about 50 miles northeast of Cedar Valley and readily accessible to a railroad (Def. Ex. 60; Pet. Ex. 83; Trans. p. 57.).

43. As Logging Manager for the J. Neils Lumber Company who are now logging this area, Mr. George Allen Herion prepared an Outline of Procedure for that company in 1946. With the mechanical and motorized facilities then available, Mr. Herion's estimate allows slightly more than 28% of the timber valuation for cost of production of lumber, including therein, however, 12% for profit and risk, and reciting that to log the region miles of railroad track and logging roads would need be built, and a bridge constructed across the Klickitat River. (Pet. Ex. 79). Production expense of the Cascade Lumber Company between 1910 and 1916 reduced their average selling price of \$14.605 to a net of \$2.0341 per thousand board feet of lumber (Def. Ex. 60).

44. The weighted average annual prices for stumpage per thousand and board feet within the Inland Empire are reported in Henry B. Steer's "Stumpage Prices of Privately Owned Timber in the United States" as follows: (Pet. Ex. 88, p. 94)

<u>Date</u>	<u>Ponderosa Pine</u>	<u>Other Sales</u>
1900	\$ 1.00	\$.08
190439
1905	1.1236
191075	1.43
1920	3.05	2.53
1921	1.71	2.38
1922	2.31	2.15
1923	2.46	2.30

The prevailing lumber prices per thousand board feet within the State of Washington during the same period are listed in Henry B. Steer's "Lumber Production in the United States" as follows: (Def. Ex. 49, p. 57)

Date	Ponderosa Pine	Douglas Fir	Spruce	Cedar	Hemlock	Larch	Western Pine
1904	\$ 9.56	\$ 9.64	\$ 9.79	\$ 9.87	\$ 9.60	\$ 9.23	\$
1906	12.71	14.34	14.61	18.66	12.23	11.81	12.38
1910	12.54	12.95	14.14	19.66	12.25	11.81	10.35
1920	37.34	34.94	37.70	36.65	27.90	28.01	22.40
1921	20.53	17.98	20.12	42.27	14.41	12.51	12.96
1922	22.92	18.22	22.19	30.26	18.22	13.86	14.14
1923	29.39	27.26	26.22	44.18	26.00	20.18	20.39

45. Two valuation experts appearing before the Commission differed materially in their conclusions of value, both as to the Cedar Valley and Tract C lands. Mr. Karl D. Henze, testifying for petitioners, was a member of the firm of Mason, Bruce and Gerard, referred to in our Finding No. 42. He did not consider himself especially qualified to appraise grazing land, but thought the Cedar Valley tracts did have a definite value in 1904 for grazing purposes and by drawing upon "valuations and transactions as of the time when similar lands were involved and similar values" were found, he testified this land on December 21, 1904, was worth \$30.00 per acre, which he said represented:

\$ 2.00 per acre for the land
 24.05 per acre for Ponderosa pine, or \$1.85 per thousand
 for a stand of 13,000 board feet per acre

3.00 per acre for an estimated 3,000 board feet of mixed timber

He considered the timber readily accessible, the area excellent logging ground and that there was a definite market for the land in 1904 as the Lake States were being cut out and the pineries in the south were reaching their peak of production. (Trans. 13-24).

Mr. Henze's familiarity with Yakima County lands dated from 1948. He had inspected this land, and his firm has annually checked the timber

accounts of J. Neils Lumber Company since that company acquired the Cedar Valley tracts in 1946. He had not checked county records to ascertain what land transfers had occurred within Yakima or Klickitat Counties on or about the appraisal dates or the considerations paid, or whether commercial lumbering was being carried on within Yakima County in 1904. It is not clear from the record what land transfers were used by him for comparison purposes (Trans. p. 49). Upon cross-examination he referred to a valuation by the Bureau of Internal Revenue of \$1.75 per thousand placed upon timber 90% pine and 10% fir belonging to the Cascade Lumber Company, which he considered more accessible but no more desirable than the Cedar Valley tracts, but he did not know when that company had acquired the timber or the consideration paid. Reference was made to a 900,000 acre purchase on the Pacific coast in 1900 by the Weyerhaeuser Lumber Company for \$6.00 per acre, where Douglas fir ran over 30,000 board feet per acre (Trans. pp. 213-4), and to a Gilchrist purchase of an indefinite acreage some 200 miles away where Ponderosa pine ran 14,000 board feet to the acre, and to timber on the Klamath Indian Reservation some 300 miles away, as comparable timber transactions. The comparability of these lands is not in evidence, and this Commission looked with disfavor upon evidence touching the Gilchrist and Klamath lands due to their great distance from the lands here involved, yet the record clearly suggests they were given weight by Mr. Henze in his evaluation of the instant lands (Trans. 49-53, 57-61).

(b) Mr. Miller, defendant's expert witness, made a most extensive investigation of the settlement and economic development of Yakima and Klickitat counties. Defendant's Exhibit No. 49 has been of material

benefit to this Commission and was readily cited by both defendant and petitioners in their respective briefs, although widely different conclusions have been drawn from the information compiled. Mr. Miller supported his valuation appraisal by reference to information obtained by examination of county records, to more than 300 sales he had abstracted from the county records in Klickitat County (Finding No. 40); to information gleaned from the private records of the Cascade Lumber Company; and a study of prevailing economic conditions, accessibility and quality of available timber, and such other items as influence prospective purchasers and are properly elements of value.

Mr. Miller's conclusion was: so much timber was available within the Northwest in 1904 only the more accessible stands possessed a market value; that no value was attached to the timber on the Cedar Valley tracts because of the acres of more accessible timberlands between them and the nearest markets, and that the tracts would have been attractive only to speculators. He pointed out that stumpage was first purchased within Yakima County nine years later and in Klickitat County in 1918, and he discounted the maximum prices paid by settlers under the Public Land laws, pointing out the early abandonment of practically all these tracts as homesites, and that they had not attracted commercial investors or speculators until 1925 and 1926, and no interest was evidenced in logging them until 1946.

From the history related by surviving pioneer settlers and other research, Mr. Miller concluded these lands had no agricultural worth in 1904, that they had no particular value as grazing or as timber-

lands due to the hundreds of thousands of more accessible areas within the country, and upon consideration of comparable sales, and other features, concluded that on December 21, 1904, they had a nominal value of only 50¢ per acre.

TRACT C.

46. Tract C is located in the northern part of the Yakima Reservation about the headwaters of the Klickitat River and between the South Fork of Ahtanum Creek and Reservation Creek, some 12 miles north of the northernmost of the Cedar Valley tracts. Its topography is extremely rugged and broken. Elevations vary from 4,100 to 7,000 feet with any terrain below 5,000 feet found only in the deep canyons. In the higher areas are found white fir, larch and Douglas fir. The lower areas have some Ponderosa pine, spruce and lodgepole pine of little commercial value (Trans. p. 155; Def. Ex. 49, p. 20). A considerable part of the west and south slopes are nearly barren. There is no evidence that scenic views, minerals, wild life, agricultural possibilities or watershed conservation uses contribute to its value. Portions of the tract are well watered and some natural meadow areas are found. Grazing is carried on within these valleys during July, August and September, the forage being pinegrass, peavine, sunflowers and weeds. The nearest railroad is the Northern Pacific line extending from Yakima to Seattle and passing more than fifteen miles northeast of the area. In 1923 a trail ran through Tract C but there is no county road or highway to or within the tract (Trans. p. 31).

47. Under the Act of July 2, 1864, 13 Stat. 365, the Northern Pacific Railroad Company made application for selection of alternate

sections within it and received patents thereto. In 1923 the State of Washington, acting under authority of the Act of February 22, 1889, 25 Stat. 176, selected the intervening sections and had patents issued to it. The average date of issuance of all patents is January 24, 1923. Of the total area of 18,094.42 acres, the patented land comprises 17,669.10 acres and the Indian title has never been extinguished to 425.32 acres. Petitioners may recover for a taking of 17,669.10 acres in Tract C.

48. From 1923 to 1928 the Northern Pacific Railroad Company rented some of its patented land for rentals varying from $2\frac{1}{4}\text{¢}$ to 5¢ per acre per year. In 1928 it sold the major portion of its holdings in this vicinity for from 50¢ to \$2.50 per acre. Additional sections were disposed of in 1931 within the same price range. The purchaser defaulted and in 1942 a very large unit comprised of land within Tract C and other land adjacent to and north of Tract C which bore a considerable amount of commercial timber, sold for \$2.00 per acre (Def. Ex. 49, p.69; Trans. 153, et seq.).

The State of Washington has sold none of the lands within Tract C which were patented to it (Def. Ex 64).

49. The nearest land to Tract C which has exchanged hands since its patent date is the 2,546.2 acre tract about the mill-site at the mouth of Nasty Creek on Ahtanum Creek, which sold for \$1.00 per acre in 1906 (Finding No. 41(a)). Land immediately north of Tract C with a much more regular contour and much lower altitude, sold in 1917 for \$2.00 per acre (Trans. pp. 152-3; Def. Ex. 49, p. 68).

50. Yakima County has valued the land in Tract C for taxation purposes at \$1.00 per acre since 1923, and has never assessed it as other than grazing land (Trans. p. 109; Def. Ex. 49, p. 67). The timber on it is described as rough, short and limby on the county's 1910 cruise sheets, and there are frequent comments that it is too small to have a commercial value. There are similar remarks upon the 1928 county cruise sheets, together with references to fire damage, unfavorable logging conditions and inaccessibility (Trans. pp. 154-5; Def. Ex. 49, pp. 126-149), although by this late date logging had become mechanized (Trans. p. 185).

A wide variation in the timber stand is reflected on cruise sheets prepared by the State in 1917. Those of alternate sections in Township 12 North, Range 13 East, show no timber at all on Section 20, but 72 board feet of tamarack per acre on Section 28, and 1622 board feet per acre on Section 32, this being the heaviest stand reported and consisting of western pine, hemlock, lodgepole pine, tamarack and spruce (Pet. Ex. 85).

Between 1923 and 1925 the average price in Eastern Washington was \$2.50 to \$3.00 per thousand for pine and from \$1.00 to \$1.50 per thousand board feet for red fir and other species.

51. The best use to which the land in Tract C may be put is summer grazing in conjunction with other land. The grazing season is limited to the months of July, August and September (Trans. p. 154; Def. Ex. 49, p. 70).

52(a). In arriving at his valuation of Tract C, Mr. Henze testified the timber stand was quite uneven upon that land so he discarded existing cruise data and from a forest survey which is not in evidence.

he computed the total board footage of timber upon 19,542.66 acres in and about Tract C. He then assigned a specific value to each type of timber, attributed a value of 50¢ per acre to each acre, and divided the total for land and timber by 19,542.66, and arrived at an appraisal value of \$6.00 per acre. He had examined the land, considered logging conditions were favorable, and testified there was a quite good demand for lodgepole pine in 1923 (Trans. 34, et seq.), that being one of the predominate timber species. If such mathematical computation of value was a proper procedural method, this would still not reflect with certainty a fair market value of the 17,669.10 acres of patented land in Tract C alone, since we have no information of the relative timber stands upon Tract C and upon the excess 1,448.24 acres used by Mr. Henze in his computation.

(b) Mr. Miller thought that Tract C was no more accessible in 1923 than the Cedar Valley tracts had been in 1904; that the timber had but little commercial value; that the best use for this land was grazing. Based upon the rental income it produced, its best use, isolated location and comparable sales data, Mr. Miller placed a value of \$1.00 per acre upon the Tract C lands as of 1923 and 1925.

54. On December 21, 1904, the Cedar Valley tracts of 27,647.71 acres had a fair market value of \$69,119.28, or \$2.50 per acre. On January 24, 1923, the patented lands of 17,669.10 acres in Tract C had a fair market value of \$22,086.38 or \$1.25 per acre. Petitioners are entitled to the present full equivalent of said values as just compensation for the wrongful taking of said lands as of those respective dates.

Such equivalent comprises each of said sums together with an increment measured by interest computed on said \$69,119.28 at the rate of 5% per annum from December 21, 1904, to December 21, 1934, and 4% per annum thereafter until entry of the final award in this docket, plus interest computed on said \$22,086.38 at the rate of 5% per annum from January 24, 1923, to January 24, 1934, and 4% per annum thereafter until entry of the final award in this docket.

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner