

27. The Muckleshoot tract is located in the southwestern part of King County in the present State of Washington. The northwest corner of the tract is the center of the town of Kent, which is approximately $1\frac{1}{4}$ miles southeast of Seattle and slightly over $\frac{1}{2}$ miles east of the waters of Puget Sound. The northern line of the tract extends west for about $17\frac{1}{2}$ miles to Kangley, and from there the boundary runs slightly to the west of south for about $11\frac{1}{2}$ miles to the White River. The boundary then extends northwest along the White River to Auburn and from there 5 miles north to Kent.

The White River forms the south boundary of the tract and the Green River cuts through the center of the land from east to west. The elevation of the Muckleshoot tract varies from 50 to 1807 feet. Most of the land is level to undulating, with about 11.5% classified as rough, precipitous land. The Green River flows rapidly through the middle of the tract falling from an elevation of 858 feet on the east boundary to an elevation of 90 feet near Auburn, a distance of 16 miles. About 4% of the soil is rich and productive, occurring mainly along the narrow river valleys.

The climate of the area is controlled by the moderating influences of the Pacific Ocean. The winters are mild and the summers cool. There is an abundance of rain, providing for a damp climate during the entire year with the exception of a relatively dry period during July and August.

28. The slowness of settlement of the Puget Sound area prior to the 1880's can be attributed to its physical inaccessibility and the lack of transportation facilities. As of 1859 all the communities of western

Washington were virtually dependent upon water transportation. There were few roads and no railroads in the area. The construction of railroads west of the Mississippi was delayed until sufficient funds were available, which funds generally were derived from the sale of lands granted the railroad. The first transcontinental rail service was to California in 1869. The Northern Pacific Railroad to the West Coast was completed in 1883 and did not reach the Puget Sound area until 1887.

29. By Act of Congress the Territory of Oregon was established on August 14, 1848 (9 Stat. 323). This territory included the present States of Oregon, Washington and Idaho. The Territory of Washington was created by the Act of Congress of March 2, 1853 (10 Stat. 172) and included the present States of Washington and Idaho. The Act of March 3, 1863 (12 Stat. 808) created the Territory of Idaho and established the eastern boundary of the present State of Washington. On November 11, 1889, Washington was admitted to the Union as a state.

30. The first American settlers arrived in the Puget Sound area in 1845, and in 1851 they established the first Puget Sound town, Tumwater, about 40 miles southwest of the Muckleshoot tract. The first white settler in the Muckleshoot tract filed his claim in the fall of 1853. Also in that year northern Thurston County became King County and the plat of the town of Seattle was filed. In 1853 a special census listed 170 inhabitants in King County and the census of 1860 showed only 302 people in King County. The first settlement within the Muckleshoot tract was established by 1874 at the present site of Auburn.

Aburn (then Slaughter) was laid out in 1886, and other early towns in the area were Enumclaw in 1885 and Kent in 1887 when the railroad was built through the White River Valley.

Timber

31. The Puget Sound area lies in a band of heavy timber which covers virtually the entire area west of the Cascade Mountains. In fact, reports indicate that nearly 9/10ths of Washington's timber is in that area. The Douglas fir forms about 7/8ths of the forest growth. There is also valuable timber such as red cedar and hemlock. In 1899, Henry Gannett, Chief of the Division of Geography and Forestry for the Department of the Interior, reported that "with the exception of the redwoods of California, the forests of Washington are the densest, heaviest, and most continuous in the United States. Except for a fewairie openings, and except where removed by fire or the ax, they cover the country as a thick mantle from high up on the Cascade Range westward to the shore of the Pacific." He reported on King County:

This country is in the middle of the State north and south, and extends from the crest of the Cascade Range westward to the shores of Puget Sound. Much of the eastern part of the county lies high up in the Cascade Range, and contains little timber of present merchantable value. Aside from this and a few trifling areas of prairie, the county was originally heavily forested, but the forests have been largely removed by fire or the ax. The latter has taken the timber from Vashon and Maury islands, from the shores of Puget Sound, and of lakes Washington and Sammamish, and from a broad belt along the line of the Northern Pacific Railroad, together with other smaller areas in the interior of the county. Fires have done a vast amount of damage in various parts of the county, mainly in its central portion, although the mountainous regions have not been neglected by it. Indeed, fully one-half of the area formerly covered with merchantable timber has been devastated by fire.

32. Virtually all reports concerning the early life in the settlement of the Puget Sound area refer to forest fires in the area. While it is not possible, from the available evidence, to ascertain the dates of any such fires in the Muckleshoot tract, it appears that fires did much damage to the forests of the area, even prior to the arrival of white settlers. There are reports of the Indians setting great broadcast fires to keep down undergrowth so they could see the game, and to improve the growth of berry patches. There were reports of great forest fires throughout the Cascades in 1849, of a large fire in the territory in 1855 and again in 1857. The Muckleshoot area General Land Office surveys, which were made in the 1870's, 1880's and 1890's, contain frequent references to burned out areas. Township 20 North, Range 6 East, surveyed in 1872, which is in the southeast corner of the Muckleshoot tract, was described by the surveyor:

The only important body of good timber is found along the bank of White River, fires having swept the rest of the township of its large trees.

Of Township 20 North, Range 5 East, which lies along the southwest boundary of the Muckleshoot land, the surveyor reported in 1872:

A very large portion of the heavy timber, Fir and Cedar, has been destroyed by fire, probably some 25 or 30 years ago, and in place thereof a young growth of fir has sprung up very dense and difficult to get through.

Township 21 North, Range 6 East, was surveyed from 1874 to 1882 and is located in the center of the Muckleshoot tract. The surveyor described the timber in this township as follows:

This plateau has been covered with a dense growth of large timber which has been killed by fire, and has since fallen, covering the ground in many places to the depth of 10 to 15 feet.

A young growth of fir timber now about 20 years old, has grown up among the fallen trees.

33. The Green River which flows through the center of the Muckle-shoot tract was a rapidly flowing stream and not suitable for driving logs. A portion of the White River was drivable below the mouth of the Green River. The surveyor of Township 21 North, Range 5 East, reported in 1867:

The River [White River] is navigable for steamers of light draft below the mouth of Green River. Above that point it is very rapid. There has been a quantity of timber taken out of the river to the Sound for lumber and vast quantities yet remain.

34. In the early days of our colonial history, the forests 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 agriculture 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-Washington settlers where fires were started by them in the forests as an aid in clearing the land. However, there also existed a recognition of the need for timber for homes and local industries as well as for shipbuilding and export. From a commercial standpoint the lumber industry in this country had its beginning in Maine, and gradually extended along the Atlantic seaboard and then into the Great Lakes region in 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 around 1850. The earliest commercial uses made of the vast timber resources were for spars and pilings. The huge trees were cut by the settlers and dragged to the waters' edge to be sold and loaded on ships for transportation to the world markets.

35. The first sawmill on Puget Sound was a small waterpower mill at a site named New Market, now Tunwater, near the present city of Olympia, Washington. In September 1852, there were three sawmills in operation in what became Washington Territory. Two years later there were thirty-three sawmills in operation in Washington Territory. In 1855 there were twenty-four sawmills in the Puget Sound area. All the sawmills were constructed along the waters of the Sound or on the banks of rivers whose waters could be utilized in transporting the logs as well as providing power for the saws. The first steam plant sawmill was Yesler's mill built in present Seattle in the winter of 1852-3. It had a capacity of 10,000 to 15,000 board feet per day and became the main industry in Seattle and for years furnished employment for the local inhabitants. That mill was about 20 miles from the Muckleshoot tract. The mill in Seattle was the only one in King County in 1860. A mill was started in 1890 at Eddyville about half a mile from the middle of the north boundary of the Muckleshoot tract. In 1893 another sawmill was started in the same area at Lake Wilderness. In 1896, the White River mill was constructed three miles east of Enumclaw, just east of the Muckleshoot tract.

36. The early lumbering operations were very crude. The logging was done by manpower. Trees were felled by ax, which was used until the early 1880's when the cross-cut saw came into use. The trees were cut into logs of a length which men could handle and were rolled or dragged to the nearest water to be floated to a sawmill. Because of the laborious operation, the timber was cut slowly. The timber first cut was that along the waters of the Sound and those streams which could be used to drive logs. Even as late as 1880 it was reported that the forests along the shores of Puget Sound, the Strait of Juan de Fuca, and the lower Columbia River had been culled only of the best trees for a distance of only one to two miles inland. In the Department of Interior's Census Office Report on the Forests of North America, by Charles S. Sargent (1884) it is reported:

The methods adopted by the lumbermen of western Washington territory are wasteful in the extreme. Loggers cut only timber growing within a mile or a mile and a half of shores accessible to good booming or shipping points or which will yield not less than 30,000 feet of lumber to the acre. Only trees are cut which will produce at least three logs 24 feet long, with a minimum diameter of 30 inches. Trees are cut not less than 12 and often 20 feet from the ground, in order that the labor of cutting through the thick bark and enlarged base may be avoided, while 40 or 50 feet of the top of the tree are entirely wasted.

37. In keeping with the early settlers' attitude toward the liability of seemingly inexhaustible forests and his desire to clear land, was the feeling of the lumberman who cared little whether the timber he took legally belonged to him or not. Timber was cut indiscriminately from a neighbor's land, railroad land, or the public domain. It has been reported that Puget Sound was the center of wholesale timber stealing. In

1861 measures were taken to suppress this illegal activity and the areas leading lumbermen from Port Gamble, Port Madison, and Seabeck (all lumbering centers on the shores of the southern part of Puget Sound) were indicted. The usual penalty upon a finding of guilty was payment for the land upon which the timber was cut plus a jail sentence of "an hour of jolly communion" with the court, the prosecution and the defense.

In an effort to prevent spoliation of public timber a charge of \$2.50 a thousand was made for timber cut on government land. This "stumpage fee" was opposed by mill men of Puget Sound, who felt the price was exorbitant since the land, if surveyed, could be offered for sale at \$1.25 per acre. An agent sent west during the Grant administration found that since 1855 on Puget Sound alone timber to the value of not less than \$40,000,000 had been stolen from the government. During this period a common term in the Pacific Northwest was "round forty." A settler would acquire 40 to 160 acres of land; then he would cut not only the timber on his own land but on the surrounding land on all four sides. Before he was through cutting, he would have cut from 160 to 640 acres of timber from this government land in addition to his own 40 to 160 acres.

Agriculture

38. The Muckleshoot tract contained some fertile land, mostly along the river valleys. But the productive soil accounted for only about 4% of the land. Most of the tract was so heavily timbered as to prohibit clearing since the cost was estimated at from \$50.00 to \$300.00 per acre.

The 1860 census listed 366,156 acres in the Washington Territory as farmland. This compared with 2,060,539 acres of farmland in Oregon Territory. In 1860 there were only 73 farms containing 12,894 acres in King County. Less than 1% of the total area of King County was listed as farmland in the 1860 census. The early history of the entire Washington Territory and in particular the Puget Sound area indicates that the use of land for agricultural purposes was almost exclusively for the subsistence of the settlers.

39. Under the Oregon Donation Act of September 27, 1850 (9 Stat. 496) settlers were able to acquire a right to land in the Oregon Territory, which included the present State of Washington. The Act originally provided for grants of 320 acres to single, and 640 acres to married, white settlers who had settled on the land claimed prior to December 1, 1850. The Act required that the settlers live on the land for four years, cultivate and improve it for their own use and not as agent for anyone else; that no town lots, mineral lands or lands reserved for public purposes could be selected. The act limited the donations to one per person. Actual proof of a settler's compliance with all the terms of the act was required before a patent could issue, and no patent could issue until the land was surveyed by the government surveyor.

In 1851, 58 entries were made in the Washington Territory under the Donation Act, and in 1852 there were 117 entries. The Preemption Act of September 4, 1841, was made applicable to Washington in 1854. Under the Preemption Act, any person who did not own land in the Territory or who was not the proprietor of 320 acres of land in any other State or Territory,

might secure 160 acres of public land at \$1.25 per acre provided the land was surveyed, the Indian title extinguished, actual settlement made with a dwelling erected, and the settler living on the land. In 1859 the total acreage taken in the Washington Territory under the Donation and Preemption Acts totaled 11,277 and this increased in 1860 to 17,974 acres. The total number of donation certificates and acres of land granted in Washington and Oregon was:

Oregon -- 7,317 certificates; 2,563,757.02 acres

Washington -- 985 certificates; 290,215.35 acres

The Homestead Act was enacted May 20, 1862 (12 Stat. 392) permitting settlers to acquire farms of 160 acres (or 80 acres on land selling for \$2.50 per acre) free except for a nominal filing fee. The Act required cultivation, improvements and five years' actual occupancy. However, any person claiming under the Act could secure title before the expiration of the five years by the payment of the minimum price of the land selected (\$1.25 or \$2.50 per acre).

Public land could also be acquired by the location of military land bounty warrants, under the Act of February 11, 1847 (9 Stat. 125), and of agricultural college scrips, under the Act of July 2, 1862 (12 Stat. 503).

The Timber and Stone Act of 1878 (20 Stat. 89) permitted the sale of timber lands in quantities not exceeding 160 acres per person and at a minimum price of \$2.50 per acre.

The rate at which land in the Muckleshoot tract passed from federal to private ownerships was as follows:

<u>10- Year Period</u>	<u>Acreage</u>	<u>Percent of Total</u>
1850 - 1859	2,101	2.1
1860 - 1869	410	.4
1870 - 1879	5,333	5.2
1880 - 1889	26,660	26.2
1890 - 1899	49,890	49.1
After 1899	7,980	7.8
Lakes & Rivers	1,183	1.2
Indian land	2,703	2.7
School land	<u>5,360</u>	<u>5.3</u>
	101,620	100.0

40. There is no evidence of any sales of land comparable in size, character or location to the Muckleshoot tract prior to 1859. There were, however, several sales which were similar in certain respects to the land involved in this case. The Pope and Talbot firm, the Puget Mill Company, was one of the early purchasers of tracts of timber land. This company was one of the largest sawmill companies with a mill at Port Gamble on the western side of the Sound. Under the Act creating the Washington Territory, two townships of land were allowed for financing the University. The land could be sold for not less than \$1.50 per acre. Pope and Talbot were permitted to select the best of this University land and the records show purchases of 787.75 acres in 1861; 565.50 acres in 1862; and 17,450 acres in 1863, all at a purchase price of \$1.50 per acre. The land so purchased was choice, accessible timberland, not more than a mile to a mile and a half from the shoreline of the Sound and within the immediate vicinity of the Port Gamble mill. Pope and Talbot also utilized military scrip to acquire 17,398 acres in 1863 but the exact price paid cannot be determined. The Puget Mill Company purchased 2,849.75 acres in Island County for about \$1.05 per acre in 1866.

The first sale by the Northern Pacific Railroad Company was in December, 1872, when it sold 24.69 acres north of Kalama on the Columbia River at a price of \$5.00 per acre. The first sale of more than 200 acres was in May of 1874. That involved a tract of 590.36 acres on the Nisqually Plains which sold for \$3.15 per acre. From July 1, 1883, until June 30, 1884, the railroad sold a total of 147,450.49 acres in Washington for \$4.70 per acre.

The first large purchase of Washington timber land was made on January 31, 1900, when the famous Weyerhaeuser Timber Company purchased 900,000 acres of the finest Washington timber land from the Northern Pacific for a price of \$6.00 per acre. Of the 900,000 acres so purchased 116,602.02 were located in King County.

The claimants' expert appraiser does not refer to a single land sale in his report on the value of the Muckleshoot tract.

41. The claimant called one witness, James A. Crutchfield, to testify as an expert appraiser. The only exhibit introduced by the claimant in the hearing on valuation was Mr. Crutchfield's appraisal report.

Mr. Crutchfield is an economist holding Bachelor's, Master's and Doctor's degrees in economics. He is employed as a Professor of Economics at the University of Washington. He testified that he had worked for 18 months on a regular basis and at intervals with Larry Smith & Co., real estate consultants. He was also employed from 1943 to 1945 as a district economist for the Office of Price Administration and was employed from 1951 to 1952 as regional economist for the Office of Price Stabilization. Mr. Crutchfield testified that his work for Larry Smith & Co. involved

some valuation of specific properties and valuation of alternative uses of property to see in which the income would be higher. On cross examination Mr. Crutchfield testified that Larry Smith & Co. had never appraised tracts of land in the thousands of acres and he stated that he did not hold himself out as an expert appraiser of lands on a contract basis.

Mr. Crutchfield evaluated the Muckleshoot land by two alternative methods.

(a) The first method used to determine value was on the basis of the actual commercial use which land might have. Mr. Crutchfield determined that the primary commercial use for the Muckleshoot area would be from the prospective yield of the merchantable timber. He then "assumed" that the timber in the Muckleshoot area would have averaged 14,300 feet BM per acre in 1859. He then took a valuation figure of \$14.30 per acre as of 1902 and discounting that figure at 8% computed a value of \$2.09 per acre as of 1859. Mr. Crutchfield further found that a small portion of the Muckleshoot land would be usable for agriculture, and for such usage he added 15 cents per acre for the entire tract. This results in an average of \$2.24 per acre valuation. No value was assigned for mineral resources.

(b) The second method of evaluation used by Mr. Crutchfield was the "subsistence valuation." Mr. Crutchfield, in his report, states that Indians in Washington were employed at money wages of \$0.50 to \$1.25 a day. Taking an average rate of \$1.00 a day, Mr. Crutchfield considered that an Indian in 1859 could have earned from \$150 to \$300 per year. Taking the lower (\$150) figure and multiplying it times 130

(the reported total population of the Muckleshoot tribe in 1859), Mr. Crutchfield arrived at a figure which he claims the Muckleshoot Indians could have made had they worked for the white man rather than in making their own subsistence from the land. Since it appears the Muckleshoot Indians preferred their own way of life to employment at this annual income, Mr. Crutchfield submits that the land must have been worth at least that annual income figure. At a capitalization rate of 6% he computed the value of the Muckleshoot land to be \$325,000 from which sum he deducted 10% or \$32,500, representing the value of the fishing rights retained by the Indians. This leaves the sum of \$292,500, or about \$2.88 per acre, which he considers was the value of the Muckleshoot lands as of 1859 under Indian usage.

Mr. Crutchfield then multiplied the figures arrived at by both valuation methods by 2.7, which is, he maintains, the value by which the dollar has depreciated since 1859 on the basis of the index of wholesale prices of the Bureau of Labor Statistics.

42. The defendant submitted voluminous documentary evidence bearing on the valuation of the Muckleshoot land, including an exhaustive appraisal report by Mr. Vern A. Englehorn, who also testified for the defendant as an expert appraiser. Mr. Englehorn is a partner in the ownership of Western Farm Management Company, which he reports is the largest farm and ranch management and appraisal service in the western half of the United States. He has had extensive and varied experience in land appraisal. Mr. Englehorn appraised the land on the basis of its fair

market value in 1859 taking into consideration that its highest and best use was timber production and considering its size, accessibility, surrounding sales, and other factors which would be involved in its utilization or resale. Mr. Englehorn, based on all the facts outlined in his report, was of the opinion that the Muckleshoot area had only a nominal fair market value not exceeding \$10,000, or a little over 9 cents an acre, as of March 8, 1859.

43. Upon the basis of the record and the facts as found above, the Commission finds that the Muckleshoot tract, consisting of 101,620 acres, had a fair market value as of March 8, 1859, of \$0.85 per acre or \$86,377.00.

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner