

BEFORE THE INDIAN CLAIMS COMMISSION

THE NOOKSACK TRIBE OF INDIANS
ON RELATION OF JOSEPH LOUIS,
CHAIRMAN OF THE GENERAL COUNCIL,

Claimant,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 46

Decided: October 20, 1958

Appearances:

Frederick W. Post, with whom
was Kenneth J. Selander,
Attorneys for Claimant.

Ralph A. Barney and Donald R.
Marshall, with whom was Mr.
Assistant Attorney General
Perry W. Morton, Attorneys for
Defendant.

OPINION OF THE COMMISSION

Holt, Associate Commissioner, delivered the opinion of the Commission.

By decision of the Commission filed July 17, 1958, it was determined that the claimant Indians were entitled under Clause 4 of Section 2 of the Indian Claims Commission Act to an award in the sum of \$52,383.50, less such offsets as may be allowable under the Indian Claims Commission Act.

On August 11, 1958, the defendant, pursuant to Section 33 of the General Rules of Procedure of the Commission, filed a motion for a

rehearing in this cause of action, setting forth in said motion the grounds upon which it alleged the Commission had erred. On August 18, 1958, the claimant likewise filed a motion for rehearing setting forth therein the grounds upon which it alleged the Commission had erred. On October 9, 1958, the defendant filed a supplemental motion for rehearing setting forth an additional ground in support of its motion.

The Commission has considered the motions of both parties and the oral arguments heard before it on October 6, 1958, and has determined that the motions for rehearing should be denied. However, the Commission wishes to set forth its opinion with respect to one of the alleged grounds of error urged by the defendant, namely that it was error as a matter of fact and of law to hold that claimant is entitled to recover \$0.65 per acre for 2,733 acres covered by water, most of which is under the Nooksack River. It is deemed important to comment briefly on this contention only because it represents a position not previously contended by the defendant and therefore not specifically referred to in our decision.

In this case both parties, at the outset of the hearing on value, agreed that the acreage of the Nooksack tract, found to be held by the claimant under original Indian title, was 80,590 acres, and the defendant's own expert appraised the Nooksack tract as a unit of approximately 80,590 acres. The Commission likewise valued the tract as a unit recognizing, of course, that the tract included the Nooksack River Bed (Finding of Fact No. 18, 6 Ind. Cl. Comm. 578) and that the river bed and gravel bars accounted for approximately 8.4% of the area (see Opinion, 6 Ind. Cl. Comm. 598). The Commission recognized that the submerged

lands, included in the 80,590 acre tract, were not salable as such, and, accordingly, the river bed and gravel bar areas would reduce the average per acre value of the entire unit which, as we found, was primarily valuable for its timber. At the same time the presence of the Nooksack River flowing through the tract greatly enhanced the value of the adjoining timber lands since it provided the possible means for transporting the logs to saw mills and the finished products to outside markets, when the timber became marketable. All large tracts of land contain areas of greater or less value, and the plus and minus factors must be taken into consideration in all cases in arriving at an average per acre value for the entire tract.

In the instant case the result would have been the same if, as the government urges, the Commission deducted the 2,733 acres of submerged land from the total acreage since its unsalability, while not specifically mentioned in the decision, was in fact considered in arriving at our average per acre valuation of \$0.65 per acre for the entire tract. The exclusion of the unsalable area from the acreage to be valued would have only resulted in a higher per acre value on the remaining salable acreage.

Wm. M. Holt
Associate Commissioner

We concur:

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner