

BEFORE THE INDIAN CLAIMS COMMISSION

THE CONFEDERATED TRIBES OF THE COLVILLE RESERVATION, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 181
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: March 5, 1959

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact:

43. The Commission has earlier in this Docket determined and bounded the several separate tracts of land that were used and occupied as of July 2, 1872, by the Lakes, Colville, Sampoil-Mespelem, Okanogan, and Methow tribes respectively. By Interlocutory Order dated February 29, 1956, the Commission has adjudged that the United States is liable to each of these tribes for the value of its respective tract less the part thereof that lay within the reservation established for these and other tribes by Executive Order of July 2, 1872. By the terms of the Commission's Interlocutory Order, the amount of the liability of the United States to each of said tribes is to be measured by the value as of July 2, 1872, of the part of its respective tract that lay outside the reservation, less such offsets as may be allowed by law. This trial has been held to determine the value of each of said tracts (hereinafter called the subject tracts) as of July 2, 1872. The matter of offsets is reserved to a later proceeding.

44. The plaintiffs and the defendant have presented to the Commission a substantial quantity of documentary and other evidence. The documentary evidence related to this phase of this proceeding presented by the plaintiffs is contained in Plaintiffs' Exhibits Nos. 535 - 585, that presented by the defendant in Defendant's Exhibits Nos. 27 - 68A. In addition, both plaintiffs and the defendant have presented the report and the testimony of an appraiser. Mr. Ralph W. Watson, a member of the American Institute of Real Estate Appraisers, who has been engaged in general real estate business in and about Spokane, Washington, since 1917 and who has specialized in real estate appraisals since 1923, appeared for the plaintiffs. Mr. C. Marc Miller of Seattle, Washington, who has been in the real estate business since 1923 and has specialized in the handling of farm, ranch and suburban property, appeared for the defendant. Both witnesses qualified as appraisal experts. Mr. Watson's report is contained in Plaintiffs' Exhibit 584, Mr. C. Marc Miller's report is contained in Defendant's Exhibit 59. The plaintiffs had the acreage of the several subject tracts computed by Mr. Bernard F. Locraft, a civil engineer with an office in Washington, D. C.. Mr. Locraft has provided the Commission with the results of his computations in testimony and in a report contained in Plaintiffs' Exhibit 585. Mr. William H. Richards, a civil engineer and formerly the Chief, Branch of Surveys of the Bureau of Land Management in the Department of the Interior, testified on this matter of acreage of the subject tracts for the defendant.

45. By Executive Order of July 2, 1872, a reservation was established for the Lakes, Colville, Sanpoil and Nespelam, Okanogan, Methow and other tribes. This reservation was bounded by the United-States Canadian border

on the north, by the Okanogan River on the west, and by the Columbia River on the east and south. Each of the subject tracts adjoined this reservation either to the east, to the south, or to the west

46. The subject tract that was used and occupied by the Lakes Tribe (hereinafter called the Lakes Tract) and the subject tract that was used and occupied by the Colville Tribe (hereinafter called the Colville Tract) adjoined the reservation to the east and were accordingly bounded on their west sides by the Columbia River. The Lakes Tract was bounded on its north by the United States-Canadian boundary, on its east by the summit of the ridge dividing the watersheds of the Columbia and Pend Oreille rivers, and on its south by a due east-west line from the Columbia River. The Colville Tract, bounded on its east by the summit of the divide between the Columbia and Colville rivers, consisted of the area that drained into the Columbia River, commencing at the north at a point on the river just south of Kettle Falls and ending at the south at a point on the river near the present town of Hunters. Both the Lakes and Colville tracts lie entirely within the present Stevens County in Washington.

47. The subject tract that was used and occupied by the Sanpoil and Nespelam tribes (hereinafter called the Sanpoil-Nespelam Tract) adjoined the reservation to the south and accordingly was bounded on its north by the Columbia River. The south boundary of the Sanpoil-Nespelam Tract was an approximately straight line running east and west at about $47^{\circ} 40'$ latitude, that now passes through the present town of Almira. The east boundary of the Sanpoil-Nespelam Tract intersected this south boundary about fifteen miles west of Davenport and then extended northward in an almost

straight line to the Columbia River at a point about one and one half miles east of the present town of Lincoln. The west boundary of the Sanpoil-Mespelem Tract extended southward from a point on the Columbia River about a mile below Granite Rapids until it crosses the Grand Coulee and intersected the south boundary about two miles east of the Grand Coulee. This Sanpoil-Mespelem Tract lies in the present counties of Lincoln, Grant and Douglas in the State of Washington.

48. The subject tract that was used and occupied by the Okanogan Tribe (hereinafter called the Okanogan Tract) is separated into two non-contiguous parts by land used and occupied by the Okanogan Tribe that lay within the reservation. The northern part of the Okanogan Tract adjoined the reservation to the west and accordingly was bounded on its east by the Okanogan River. The southern part of the Okanogan Tract adjoined the southwest corner of the reservation and accordingly was bounded on its east and north in part by the Okanogan River and in part by the Columbia River. The south and west boundary of the southern part of the Okanogan Tract followed in general the course of the Okanogan and Columbia rivers above the junction of these two rivers and lay in most places a few miles to the south of the Columbia River or to the west of the Okanogan River. Thus, this southern part of the Okanogan Tract consisted of a ribbon of land extended along the south bank of the Columbia River from a mile below Granite Falls to the juncture with the Okanogan River and thence up the west bank of the Okanogan River to a point about eight miles north of Brewster. The northern part of the Okanogan Tract was roughly triangular in shape, having its south corner at the Okanogan River just below the

present town of Malott, its north corner at the Okanogan River just above the present town of Tonasket and its west corner at the junction of Chewock River and Boulder Creek due west of Old Baldy Mountain. The northern part of the Okanogan Tract is contained in the present Okanogan County; the southern part, in the present Douglas County.

49. The subject tract that was used and occupied by the Methow Tribe (hereinafter called the Methow Tract) adjoined the reservation on the west and also adjoined parts of the western boundaries of the northern and southern parts of the Okanogan Tract. Accordingly, its east boundary in its midsection is the Okanogan River. South of this midsection its eastern boundary adjoined the western boundary of the southern part of the Okanogan Tract. North of this midsection, its eastern boundary adjoined the west boundary of the northern part of the Okanogan Tract. The north boundary of the Methow Tract was a due east-west line that now passes through the present town of Twisp. The west boundary of the Methow Tract at its northern end was the divide between the Methow watershed and the Lake Chelan watershed. At its southern end, commencing at the headwaters of Squaw Creek, this western boundary followed down that Creek, down the Methow River, and thence up the Columbia River to the western boundary of the southern part of the Okanogan Tract. The Methow Tract is contained in the present Okanogan County in Washington.

50. The Commission finds the acreage of each tract as determined by defendant's witness to be correct and the amounts are as follows:

Colville Tract	130,590 acres
Lakes Tract	311,305 acres
Sanpoil-Mespelem Tract	513,050 acres
Okanogan Tract	395,152 acres
Methow Tract	379,665 acres

51. The Lakes, Colville, Methow, and northern part of the Okanogan tracts are located in the Okanogan Highlands region of the State of Washington. This is predominantly a mountainous region. Elevations rise to six and seven thousand feet. However, most of the region was heavily glaciated and the mountainous topography subdued and rounded. It is divided by major rivers flowing from north to south, the Columbia, the Sanpoil, the Okanogan and the Methow. Most of this region in 1872 was timbered.

52. The Sanpoil-Mespelem Tract and the southern part of the Okanogan Tract are located in the northern part of the Columbia Plateau region of the State of Washington. This plateau is tilted slightly northward. Its elevation at the higher northern edge is about 2400 feet. Its surface is gently rolling. It occupies the entire area south of the Columbia River in the Big Bend country. Its prominent feature is the Grand Coulee, a glacial river bed that cuts a chasm a thousand feet deep and several miles wide north and south across the plateau. Most of this region in 1872 was open grassland.

53. The Lakes Tract was largely forested land and largely upland mountainous land. Cultivated land is in small isolated patches where small prairie, non-forested areas were cleared, or where some of the more

gentle topography of the glacial till areas of the upland were cleared from forest for agriculture. Small prairie non-forested areas existed in 1872, particularly on the south edge of the tract where the land sloped into the Colville Valley. However, most of the better soils areas were quite heavily forested. There were a number of lakes, streams and creeks of consequence in addition to the Columbia River. Most of these streams and creeks, although flowing through narrow canyons with steep sides in their upper reaches, had also well defined valleys which are now farmed or pastured. The most notable mountain peaks and ranges, of which there were more than twelve, had elevations of 4500 to 7300 feet above sea level. The Columbia River had an elevation above sea level of about 1300 feet at the northern limit of the tract and about 1200 feet at the southern limit.

54. The Colville Tract was essentially a terrace area along the eastern edge of the Columbia River. It reached back from the river to include some of the foothills of the mountainous area to the eastward. Most of the area was forested. Open land existed in isolated patches in the foothills and on some of the terrace systems and in the valleys along the Columbia River and its tributary streams. Within the tract, nine such named streams flowed into the Columbia from the mountainous area to the east. Good pasture land existed throughout most of the subject tract. However, this tract is notable for the close intermingling throughout the area of the various grades of land, good, poor and intermediate.

55. The Sanpoil-Nespelam Tract consisted for the most part of undulating to rolling plateau, elevated more than a thousand feet above the Columbia River. Its northern perimeter, fronting on the river, consisted

of a system of benches, terraces and steep embankments. In this region there was a small amount of timber along the creeks and draws suitable for fence posts, fuel, and cabin logs. On the plateau itself, there were no areas of steep slope. Mostly the soil was deep and supported a heavy growth of grass. In places, however, conspicuously in the eastern part of the area east of the present town of Creston and also in the neighborhood of the Grand Coulee, glacial erosion had left scabland areas of shallow stony soils, "potholes" that became occupied by lakes moderately or highly alkaline, and massive boulders, some the size of haystacks. On most of the plateau, however, few lakes, streams, or other physical features occurred to vary the grassy cover or rolling topography of the area. The Grand Coulee, that cut across the tract from north to south, provided the one outstanding feature that interrupted the plateau uniformity.

56. Most of the south part of the Okanogan Tract was an extension of the northern perimeter of the plateau region. The tract bore little timber other than that suitable for fuel, fence posts and logs for cabins. Its embankment from the plateau to the Columbia River was extremely steep. Along the river, areas of varying width formed nearly level bench lands. Most of the high plateau was open grass. Across the Columbia River and west of the Okanogan, the land was low and almost flat, except for one ridge less than a mile wide and about four miles long which rose about 800 feet above the river level.

57. The northern part of the Okanogan Tract had a diversity of conditions. On the east, adjoining the Okanogan River, a stretch of terraced

and benches afforded some good farm land. Paralleling this valley system and lying to the west of it, lay a range of low hills. On the north, these hills were largely open land; on the south they were largely forested. Still further to the west, the tract was mountainous with high hills and ridges, some timbered and others bald or covered with grass. A few rocky rough mountains occupied a part of this western extremity of the tract, several exceeding 5000 feet in elevation, among these Old Baldy and Clark Peak both close to 7,900 feet above sea level. Throughout most of this tract, there were numerous creeks and lakes, mostly sheltered in canyons and draws.

58. The Methow Tract was in most parts mountainous. The Methow Valley that extended from north to south across the center of the tract contained small areas of bottom land, benches, and terraces, but on the average this valley system was not much over a mile wide. The Methow River was quite swift and narrow, with many characteristics of a mountain stream. To the east and to the west of this valley system, the Methow Tract was mountainous. However, the mountainous area to the east consisted for the most part of gently rolling to steep slopes with no extensive areas of precipitous slopes or rock outcrops. On the west, the topography was more rugged, the slopes steeper, and some rock outcrops and jagged peaks existed. A number of peaks exceeded 8,000 feet in elevation. Both to the east and west of the Methow Valley, some of the ridges or mountains were bald or covered with grass, but mostly the area was timbered. Many creeks drained in the Methow from both sides, some of them being fairly good-size streams.

59. As of 1872, the Lakes, Colville and Methow tracts were predominantly forested land, the Lakes being almost entirely forest, the Colville being more than three-quarters forest, and the Methow being almost two-thirds forest. The Okanogan and Sanpoil-Nespelem tracts were predominantly open and covered with grass, the Sanpoil-Nespelem being almost entirely covered, the Okanogan being approximately two-thirds grass covered. As to the latter, the south part of the Okanogan Tract was almost entirely grass covered, and the north somewhat more than one-half grass covered. Most of the forested areas in 1872 in each of the subject tracts were sufficiently open to have, and did have, good grass grazing lands.

60. The forests were mostly pine, ponderosa pine, white pine, and lodge pole pine. The forest lands of the subject tracts are much below the average of the Northwest generally, both as to stand and as to accessibility. As of 1872 the Colville Tract timber was accessible while much of the timber on the other tracts would not have been considered so. In 1872, there was no demand for the timber in this area, except for local use, and the development of timber operations necessarily awaited transportation and markets. There is no substantial evidence of lumbering operations in the subject tracts for many, many years after the critical date. As of 1872 approximately the following acreages of the Lakes, Okanogan, Methow and Colville tracts were forest covered:

Lakes Tract	311,305 acres
Okanogan Tract	123,431 acres
Methow Tract	162,959 acres
Colville Tract	99,108 acres

As of today the above acreages have been somewhat reduced through lumbering operations and through clearing for agricultural use. A substantial part of the forest region of these tracts is now embraced in the Colville and Okanogan Forest Reserves. The amount of acreage of these four tracts now located within the boundaries of these two national forest areas is as follows:

Lakes Tract	85,524 acres
Colville Tract	99,108 acres
Okanogan Tract	93,099 acres
Methow Tract	205,157 acres

The total acreage of the Methow Tract within the boundaries of the national forest reserve is largely in excess of the total amount of actual forest lands in the tract, even as of 1872. This is because a substantial part of the lands included in the Okanogan National Forest is not timber land but open grazing land. In addition to the availability of the timber lands for grazing purposes these lands were important for the watershed protection they furnished the region.

61. In 1872, the plateau region that constituted most of the Sampoil-Nespelem Tract and a good portion of the southern part of the Okanogan Tract was covered with bunch grass. Bunch grass was early known to afford excellent grazing. Before 1872, its luxuriant growth had come also to be known to be evidence of fertile soil.

62. (a) The appraisers for each party to this action employed soil experts to determine the land capability classes of the tracts of land being evaluated herein. For the Sampoil-Nespelem, Methow and Okanogan

tracts the petitioners' appraiser and the defendant's appraiser employed the same soil expert, Mr. Warren Starr. For petitioners Mr. Starr classified each of the above three named tracts and the Colville and Lakes tracts. Defendant's appraiser employed Mr. Lee Dowd, an employee of the United States Soil Conservation Service to classify the land capabilities of the Lakes and Colville tracts. Mr. Starr classified the five tracts for petitioners using the Standard Soil Capability classifications. Of the eight land capability classes, classes I through IV contained land suited for cultivation, while classes V through VIII contained land not suited for cultivation. Classes V through VII contained, however, land suited for grazing or forestry. Mr. Starr in his work for petitioners included land in the classes I through IV, that is, land classified as suited for cultivation, areas which are at present in forest or range use. As to the Sanpoil-Mespelam, Methow and Okanogan tracts which Mr. Starr classified for defendant's appraiser the soil expert was instructed to classify the land capability of the lands according to present use as cropland. The land capability classifications as interpreted by Mr. Starr for petitioners, including potential use, and for defendant showing present use as croplands are shown below with the figures for the Colville and Lakes tracts of land now in cultivation being based on Mr. Dowd's study.

	<u>Acres Suited For</u>		<u>Now in Cultivation</u>
	<u>Cultivation</u>	<u>Range & Forestry</u>	-
Sanpoil-Mespelam	286,674	205,686	215,625
Methow	91,872	267,960	23,333
Okanogan	190,720	185,436	65,762
Lakes	95,945	198,080	17,672
Colville	64,100	64,100	25,384

Also, precipitation has been shown to increase with increased distance east of the Cascade Range. Throughout most of the area, except at higher altitudes, and in the Lakes and Colville tracts, precipitation is marginal for agriculture. On the plateau in the Sanpoil-Mespelen Tract and in the southern part of the Okanogan Tract, precipitation normally ranges from an annual 9 to 10 inches to 12 to 13 inches. In the Methow Tract and the northern part of the Okanogan Tract similar precipitation occurs at altitudes of about 4,500 feet. To the east, in the Colville and Lakes tracts, average annual precipitation is shown to have been in the neighborhood of 19 inches. The growing season is shown to have averaged at Milbur on the Sanpoil-Mespelen plateau about 100 days, at Colville adjoining the Lakes and Colville tracts about 120 days, at Brewster on the Columbia River near the boundary separating the Methow from the south part of the Okanogan Tract, about 170 days, and at Concorully in Salmon Creek Valley in the north part of the Okanogan Tract, about 130 days. Accordingly, the climate has been shown to be suited to grazing in most locations throughout the subject tracts, to the raising of grain subject, in most areas outside the Lakes and Colville tracts, to use of dry farming methods or irrigation, and, particularly in the Methow and Okanogan tracts, to raising fruit.

6b. Prior to 1872, all of the subject tracts had remained almost entirely free of any white occupancy. Fort Okanogan had been established in 1811. It lay, however, on the east bank of the Okanogan River near the Columbia and accordingly within that part of the Okanogan area reserved to the Indians by the Executive Order of July 2, 1872. Moreover, the land

tracts suitable for livestock operations. Potential use of the timbered areas of each tract for lumber operations was remote. While the whole region in which the tracts were located had been more or less explored for minerals, potential use of any portions of these tracts for mining operations would have been speculative in 1872. As of 1872 there was little, if any, demand for the opening of these lands to settlement. Northeastern Washington, outside of Colville Valley, was sparsely settled. Settlement of that section of the territory necessarily awaited better transportation facilities with reasonable freight rates and markets for the products of the area.

72. A study of the free sales of small tracts of a thousand acres or less in the eastern Washington counties of Walla Walla, Yakima and Klickitat in 1872 and for a few years prior thereto indicates that the average price per acre shown as the consideration paid in these transactions was a little more than \$5.00 per acre. These were sales of selected tracts with improvements for the most part in developed sections of eastern Washington, relatively speaking, which were favorably located with reference to existing markets and transportation as then existed.

73. Taking into consideration the fact that the subject tracts were favorably located along the Columbia River; that prospects of a railroad through Washington Territory were bright in 1872 thus holding out the promise of development, settlers, markets and better transportation to parts of eastern Washington in the reasonably foreseeable future and to the subject tracts in the more distant future; that some of the subject tracts, the Lakes, northern Okanogan and Methow areas, would require

