

tracts aboriginally held by petitioners, which were located without the boundaries of the Executive Order Reservation of July 2, 1872, were acquired by the United States on July 2, 1872, without the payment of compensation to the respective tribes and that the United States is liable to petitioners for the value of said lands as of that date (4 Ind. Cl. Comm. 151).

The subject tracts adjoin the executive order reservation on the east, south and west. The Colville Tract is a narrow area of land lying east of the Columbia River from just below Kettle Falls in the north to near the present town of Hunters in the south. Its east boundary is the summit of the divide between the Columbia and Colville rivers. This tract contained 130,590 acres of land. North and east of the Colville area is located the Lakes Tract which is bounded on its north by the United States-Canadian boundary, on the west by the Columbia River and on the east by the summit of the ridge dividing the watersheds of the Columbia and Pend Oreille rivers. The acreage of the Lakes Tract has been determined to be 311,305 acres.

South of the Columbia River the Sanpoil-Nespelem Tract is found in the present counties of Lincoln, Grant and Douglas. Part of the Okanogan area, herein called the southern Okanogan Tract, adjoined the Sanpoil-Nespelem area to the west. The northern Okanogan Tract is located west of the Okanogan River from just below the present town of Malott in the south to a little above the town of Tonasket in the north. The Sanpoil-Nespelem Tract contained 513,050 acres and the Okanogan Tract, north and south parts inclusive, a total of 395,152 acres. The Methow Tract of

379,665 acres is located west of the Okanogan River and northwest of the Columbia with the Methow River flowing through it in about its center as far north as the town of Twisp. The southern Okanogan area is located in the present Douglas County while the northern Okanogan Tract and the Methow Tract are contained in the present Okanogan County.

The subject tracts are located in two geographical divisions of the State of Washington. The Lakes, Colville, northern portion of the Okanogan and the Methow tracts are a part of the Okanogan Highlands, a predominately mountainous region which is principally a forest area but also containing a substantial amount of open grazing lands. Elevations in this geographical area rise to six and seven thousand feet. The Sampoil-Nespelem and the southern part of the Okanogan Tract are in the northern portion of the Columbia Plateau region of the State where it makes contact with the Okanogan Highlands. The plateau occupies the entire area south of the Columbia River in the Big Bend country. The plateau is tilted slightly northward and its elevation at the northern edge is 2400 feet. The surface generally is gently rolling. A prominent feature of the area 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. The northern part of these tracts contains the breaks and terraces of the Okanogan River and are mostly range land today while the southern portion is now agricultural land. In 1872 most of this region was open-grassland.

Washington Territory was organized in 1853 and formerly embraced lands in the present States of Washington, Idaho, Montana and Wyoming. By 1872 it had been reduced to its present size and contained 44,796,160

acres. Over 26,000,000 of this acreage was located in the territory east of the Cascade Mountains. According to the 1870 United States Census the population of Washington Territory was 23,955. The population of eastern Washington at that time was reported as 6852 persons of whom 5300 lived in Walla Walla Valley while the population of northeastern Washington wherein the subject tracts are located was said to be 791 persons and most of these were in the Colville Valley.

The center of population in eastern Washington was Walla Walla in 1872. Walla Walla Valley was favorably located on the Oregon Trail and the Mullan Road ran northward from Fort Walla Walla along the eastern boundary of the present State of Washington. By 1872 there was good river transportation by steamboat from the West Coast to Wallula, Washington, just west of Walla Walla but freight rates were high. A short and very local railroad line was being constructed between Wallula and Walla Walla while another short stretch served as a portage at The Dalles on the Columbia. There was also a primitive wagon road from Wallula to Colville Valley. As of 1872 it appeared reasonably certain that the Northern Pacific Railroad Company would construct a railroad through the Territory of Washington. The line was being built from Lake Superior to the West Coast and the railroad's location map in 1872 showed the line passing through eastern Washington some 50 to 60 miles south of the nearest of the subject tracts.

One issue raised by the parties to this action should be briefly reviewed before discussing the valuations of the respective tracts. All of the tracts have either the Columbia or Okanogan rivers adjoining them as

one of their boundaries. Petitioners' experts in computing the acreages of the subject tracts included the land under the water of the rivers to mid-stream. The addition of the water area increases the total acreage of the several tracts by 17,229 acres. The Commission has excluded the water area and has accepted the computation of the acreage for the several tracts as set forth by defendant (Finding 50) for several reasons. The land under water would not be saleable. As with the waste lands involved in the subject tracts which had little or no value, and had no value applied to them by petitioners' appraiser (see Pet. Proposed Fdg. 43), the water area would similarly be considered in an appraisal approach where the standard to be applied is the fair market value of the lands and an average price per acre is set for a given tract taking into consideration all the factors pertaining to value. In any event it is not possible to tell from the record in what land classification petitioners' experts included the water area. Apparently the lands under water are not classed as waste lands. The water area for the Colville Tract would have totaled 4,560 acres but petitioners' figures of land classification show no waste land for this tract but only land suitable for cultivation or grazing and forest and the Sampoil-Nespelem acreage includes no waste land while the land under water which petitioners would include totals 4,158 acres (Pet. Prop. Fdg. 43 and footnote 10 to Pet. Prop. Fdg. 8). It is true, however, that the fact that these several tracts were favorably located with parts of each located on the rivers enhanced their value and this fact has been taken into consideration in arriving at the valuations of the tracts (Fdg. 73).

The parties to this action presented the written reports and testimony of qualified appraisers as to the value of the subject tracts in 1872. The appraisers considered the usual factors pertaining to value in this type of case such as population, soil, transportation, climate and all of these factors gathered from the wealth of material contained in their reports have been the source of many of the findings of fact herein made in the case. Petitioners' appraiser was Mr. Ralph W. Watson who has been engaged in general real estate business in and about Spokane, Washington, since 1917. Mr. C. Marc Miller of Seattle, Washington, who has specialized in the handling of farm, ranch and suburban property, appeared as expert witness for defendant.

The appraisers for the respective parties agree that the yardstick to be used in this case is the fair market value of the subject tracts as of July 2, 1872. Mr. Watson and Mr. Miller also agree that the comparative or market data approach is the one to be applied in this valuation. These appraisers also agree that not only the highest and best uses of the areas under consideration as of 1872 are important but that potential uses of the tracts must be taken into account. These expert witnesses also believed that the hypothetical purchaser in 1872 would be interested in buying these tracts for the purpose of resale with a view to making a profit. Mr. Watson and Mr. Miller both concluded that the highest and best use for which the subject tracts were most suited in 1872 was for stock raising.

One of the main differences of opinion between the appraisers is to be found in what they thought of the potential uses to which the several tracts might be put. The agricultural potential of the tracts is the main

source of difference in this respect. For determining the land capability classes of the several areas being evaluated both appraisers called upon the same soil expert, Mr. Warren Starr. For petitioners, Mr. Starr classified each of the subject tracts while for defendant this expert only classified the Sanpoil-Nespelem, Methow and Cranogan areas. Another soil expert, Mr. Lee Dowd, classified the land capability of the Colville and Lakes tracts for defendant. Mr. Starr classified the tracts for petitioner using the standard soil classifications which include eight classes. Petitioners' soil expert included in classes I through IV, that is, land suited for cultivation, all land so suited even if it is still in forest or range use. In his work for defendant, Mr. Starr was instructed to report only on lands now in cropland. A comparison of the two studies shows a great increase in agricultural lands if lands now in forest and range are included in those classes suited for cultivation. It appears doubtful whether potential agricultural use of lands now in forest or range should be considered agricultural lands in this case with the increment to value thus attaching to them. As previously stated Mr. Lee Dowd made the land capability classification of the Colville and Lakes tracts for defendant. Mr. Dowd, also a soil expert, did not limit his classification of crop land to only what is now in cultivation as far as these two tracts are concerned. Mr. Dowd's findings as to land capability, however, are far different than those made by Mr. Starr. As to the Lakes Tract, Mr. Dowd classified 25,510 acres as suitable for cultivation while petitioners' soil expert estimated 95,943 acres and for the Colville Tract defendant's soil expert allowed 29,602 acres suitable for cultivation and

Mr. Starr figures about 64,100 acres. The difference is due, according to Mr. Starr, to a different interpretation of the standard classifications in their application to areas presently in range and forest use. Taking into consideration the differences between the soil experts and the strong probability that a purchaser in 1872 would not have considered much of the land in forest as agricultural land, the Commission has accordingly made due allowance for the difference in arriving at the separate values of the subject tracts.

As previously stated, the appraisers agree that the hypothetical purchaser in 1872 of the several tracts would be purchasing with the view of resale after subdividing the areas into smaller parcels. Mr. Watson and Mr. Miller both took into consideration the sales of small tracts of a thousand acres or less. Some 1000 free sales in Washington and Oregon counties were studied by Mr. Watson to determine the resale or small tract value of the lands in the subject tracts. From this study petitioners' appraiser concluded that as of 1872 the fair market value of the types of land bought and sold by early settlers in the area under consideration averaged \$5.00 per acre when sold to individual buyers in open market sales in tracts of less than a thousand acres. Mr. Watson did not consider the lands involved in these free sales to be improved lands or if they were he was of the opinion the improvements were small. Mr. Miller, on the other hand, was of the opinion that the consideration paid in these open market sales of small tracts was almost solely for the improvements upon the lands. Many of these sales considered by Mr. Watson were west of the Cascades closer to centers of population and markets while those in

Washington east of the Cascades were in Walla Walla, Yakima and Klickitat counties favorably located to transportation and existing markets. Undoubtedly, these small tracts were improved lands for the most part but they are important to show there was some demand in southeastern Washington at or about the valuation date and that the average price per acre in these transactions was about \$5.00.

As previously stated, the Methow, Lakes and Colville tracts and the northern Okanogan Tract are in the geographical division known as the Okanogan Highlands of eastern Washington. This is a predominately mountainous region and these tracts as of 1872 were principally forested lands. While the highest and best use of these tracts in 1872 was for stock raising since these timbered areas also contained grazing land both appraisers took into consideration the potential use of the tracts for timber operations. 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. The potential use of any of these tracts for timber operations as of 1872 was remote. A purchaser of these tracts would have known that the exploitation of this resource would await a demand for the timber of this region, transportation into the areas by branch lines after the anticipated construction of a railroad into Washington Territory, reasonable freight rates, and he would have further realized that with the exception of the Colville Tract the timber of much of the other tracts would not have been considered accessible in 1872. While the fact that these lands had a potential use as timber lands, although remote,

must be given consideration it is difficult to speculate upon any substantial increment to the valuation because of this, especially in view of the absence of proof of any comparable sales of timber lands in or near the subject tracts at or reasonably near the date of valuation. The same reasoning must also apply to a consideration of the potential use of the areas for mineral development. While miners had prospected extensively along the rivers and creeks within the subject tracts beginning in the 1850's, the peak of this mining activity had passed before 1872 and no record has been shown of any mining claims or mining settlements being worked or occupied in 1872 within any of the subject tracts. While a prospective purchaser would have considered timber operations as a potential but remote use, he undoubtedly would have considered any potential use for mining development highly speculative.

The several tracts were favorably located along the Columbia River which would supply water for those lands which would need irrigation and some transportation. Other rivers and streams in the tracts also furnished water which would be necessary for cattle raising, and possible timber operations. As of 1872 it was reasonable to anticipate the construction in a few years of a railroad into Washington Territory but at some distance from the several tracts. It would be reasonable to assume that the coming of a railroad would bring settlers, settlements and markets to eastern Washington. A prospective purchaser, however, would realize that large acreages of public domain were available to settlers in small tracts under the Preemption Law and the Homestead Law, not only in eastern Washington but in the adjoining territory. With the coming of increased settlement,

however, the purchaser would also realize that in subdividing the large tracts he would have the advantage of being able to sell acreage in large enough quantity to make it more attractive to the settlers for ranch purposes.

The Commission concludes that the fair market value of the several tracts as of July 2, 1872, is as follows:

Colville Tract	\$111,000.00
Sanpoil-Wespelen Tract	\$436,000.00
Okanogan Tract	\$237,000.00
Methow Tract	\$152,000.00
Lakes Tract	\$125,000.00

The petitioners are entitled to recover from the United States for and on behalf of the descendants of the Colville, Sanpoil-Wespelen, Okanogan, Methow, and Lakes Tribes the respective sums set forth above, less such offsets, if any, that the United States may be entitled under the provisions of the Indian Claims Commission Act.

Louis J. O'Marr
Associate Commissioner

We concur:

Edgar E. Witt
Chief Commissioner

Wm. K. Holt
Associate Commissioner