

BEFORE THE INDIAN CLAIMS COMMISSION

THE SUQUAMISH TRIBE OF INDIANS,)

Petitioner,)

vs.)

THE UNITED STATES OF AMERICA,)

Defendant.)

Docket No. 132

Decided: July 10, 1959

Appearances:

Frederick W. Post and
Malcolm S. McLeod
Attorneys for Petitioner.

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

OPINION OF THE COMMISSION

Holt, Commissioner, delivered the opinion of the Commission.

By a prior determination (5 Ind. Cl. Comm. 140, 157) this Commission found that petitioner, the Suquamish Tribe, had held Indian title to a certain area of land in what is now the State of Washington and that said title in the Indians had been extinguished by the Treaty of January 22, 1855, 12 Sta. 927, II Kapp. 669, whereby the lands were ceded to the United States. The Commission further held therein that the effective date of said 1855 treaty was March 8, 1859. This proceeding has been held to determine the value of said lands as of March 8, 1859.

The boundaries of the lands found to have been exclusively used and occupied by the Suquamish Indians are fully set forth in Finding 29 of our prior findings of fact (5 Ind. Cl. Comm. 140, 157). Generally speaking the lands, which will hereinafter be referred to as the Suquamish tract, or the subject tract, are located in what is now Kitsap County, Washington, and include all of Bainbridge Island and the eastern portion of the Kitsap peninsula north of South Colby and southwest of Kingston. The subject tract fronts on Puget Sound along its eastern border and its shoreline is deeply indented and much cut up by numerous inlets and bays. There are no streams of any importance in the Suquamish tract. The subject tract, including Bainbridge Island as well as the portion on the Kitsap peninsula, is quite rough and broken in surface topography with numerous hills and ridges rising to 300 and 400 feet. The coastline is in the main precipitous with numerous extensive stretches of perpendicular cliffs fronting on the water. The subject tract, however, especially on Bainbridge Island, did contain some

excellent harbors which were suitable for ships used in the timber industry.

The Suquamish tract as described in Finding 29 of our prior findings of fact consists of a gross area of 88,410 acres. From this total acreage there is a deduction of 1280 acres which represents the acreage reserved to the Indians by the provisions of the 1855 treaty leaving a net acreage to be evaluated of 87,130 acres. The subject tract has been classified as containing 31,412 acres of accessible timberlands, 55,428 acres of inaccessible timberlands and 290 acres of inland waters. The Suquamish tract contained a negligible amount of agricultural lands. According to the 1870 census there were 45 farms in all of Kitsap County consisting of 92 acres of improved acreage and 299 acres unimproved. The parties agree that as of March 8, 1859, the highest and best use of the subject tract was for timber production and that as of that date there were no minerals of any importance known to be present on the tract.

The Puget Sound region was sparsely settled as of 1859. The first American settlers in this region arrived in 1845, and in 1851 they established the first Puget Sound town, Tumwater, about 40 miles south of the Suquamish tract. In 1853 the plat of the town of Seattle, in King County, across the sound from the subject tract was filed and that county had a population in 1860 of 302. There were few whites on the subject tract as of the valuation date. It is estimated that the white population within the subject tract as of 1859 totaled 25 persons mostly engaged in lumbering operations. The population for all of Kitsap County was about 544. The slowness of settlement in the Puget Sound area prior to the 1880's has been attributed to the inaccessibility of

the region and the lack of transportation facilities. As of 1859 all the settlements of western Washington were virtually dependent upon water transportation there being few roads and no railroads. The Northern Pacific Railroad was not completed until 1883 and did not reach the Puget Sound area until 1887.

Timber production was the main industry in the subject tract as of the valuation date. A sawmill was in operation at Port Madison on Bainbridge Island and another in the southern portion of the tract. Early timber operations were crude and for a long period the timber first cut was that along the waters of the Sound and those streams which could be used to drive logs. Timber operators usually selected only the best stands of trees for a distance of only one to two miles inland. Until the coming of the railroad making transportation to the eastern part of the country feasible and profitable and until lumbering operations in the Great Lakes area and in the south diminished, the market for Washington timber was limited to local demand and to far away markets such as California, South America, Hawaii and the Orient. The only means of transporting the lumber at that time was by ship.

The witnesses for the parties agree that as of the valuation date there was no market for the subject tract. Mr. James A. Crutchfield, a professor of economics, appeared as a witness for petitioner. Mr. Crutchfield utilized two methods of valuing the tract and arrived at an opinion of value under each method. In his first approach this witness said the term "market valuation" referred to the values which could be imputed to the lands under commercial utilization of their

marketable products. In applying this method the witness states he followed the procedure outlined in the earlier cases (The Nooksack Tribe v. United States, 6 Ind. Cl. Comm. 578; and Muckleshoot Tribe v. United States, 6 Ind. Cl. Comm. 608). By the first approach he computed what he considered to be the value of the timber on the subject tract based on an average stand of 14,000 board ft. BM per acre valued at an assumed valuation figure of \$1.00 per 1000 BM in 1902 discounted to 1859 at 8%. To this figure was added an additional 15 cents per acre representing his opinion of a residual value of the Suquamish tract for agriculture. Combining the timber value and the agricultural value, Mr. Crutchfield was of the opinion that the lands in the subject tract were worth \$4.91 per acre. This Commission in the Nooksack and Muckleshoot cases, supra, stated that Mr. Crutchfield's opinion could not be given much weight under this approach because "his method of evaluation is not in accordance with legally approved standards but rather involves methods based on conjecture and speculation, which methods have been specifically rejected by the courts and this Commission." For the same reasons the Commission can give little weight to the witness' opinion of value in this case.

Petitioner's witness in his second method of evaluating the land arrived at an opinion based on a "subsistence valuation." By this approach he was of the opinion that the net subsistence value of the Suquamish tract was \$970,000.00. The Commission refused to give any weight to an opinion of value based on such a method in the Nooksack and Muckleshoot cases, supra, and will not do so in this case since the approach is entirely theoretical and is not based upon any judicially

accepted method of evaluating land. Mr. Crutchfield also would increase the valuation by multiplying his appraisal figures by a 2.7 factor, which, he claims, should be allowed to provide equal purchasing power in terms of current dollars. Such a method of increasing the valuation amount was denied in the Nooksack and Muckleshoot cases, supra, and is also herein denied.

Mr. C. Marc Miller, a qualified appraiser, testified as an expert witness on value for defendant. Mr. Miller also prepared a comprehensive appraisal report (Def. Ex. 205-A). Defendant's witness used the market value approach to determine what in his opinion was the fair market value of the subject tract in 1859. Lacking comparable sales this witness testified the fair market value is arrived at by taking into consideration all matters that a hypothetical purchaser and seller would have in mind such as condition of the area, demand, population, and settlement. Mr. Miller classified most of the subject tract as timberland, accessible or inaccessible and a small part as inland water. This witness took into consideration the various elements to be studied in evaluating land such as soil, topography, transportation, climate, markets, demand, settlements and highest and best use of the subject tract for which it was then adaptable or likely to be needed in the reasonably near future. Mr. Miller was of the opinion that the hypothetical prospective purchaser of this tract would realize that only through the resale or use of these lands could he expect to recover his original investment, taxes, fire protection, administrative costs and costs of resale and he would expect to realize interest upon his investment for the period that the

investment remained unliquidated.

Defendant's appraiser felt that a hypothetical prospective purchaser would have noted that approximately 33% of the subject tract, was accessible. The purchaser, according to Mr. Miller, would have expected to dispose of the most desirable land within 20 years, or in an average of 10 years, and dispose of the remaining 67% (the inaccessible and least desirable) within 40 years, or an average of 30 years. Mr. Miller was of the opinion that the fair market value of the Suquamish tract as of March 8, 1859, was \$9,000.00 or approximately 10 cents per acre.

Defendant's expert witness in arriving at his evaluation figure concluded that the hypothetical willing seller and willing buyer would have recognized "that the price at which comparable government lands could be secured would effectively establish a ceiling on the price the buyer could hope to secure from the resale" of the Suquamish lands, that is, \$1.25 per acre. Using this \$1.25 per acre figure as a ceiling Mr. Miller calculated what in his opinion an investor would have paid for the subject tract. While the availability of Government lands and the quantity subject to disposal in the area would be taken into consideration by a prospective purchaser it does not follow that the price set for such Government lands would result in a ceiling which one might expect to apply to all lands in the area. There is evidence in this case of some sales of select timberlands in excess of \$1.25 per acre at or reasonably near the time of valuation.

A prospective purchaser in 1859 would have been aware of the fact that the subject tract fronted on Puget Sound and contained some good

harbors; that along the Sound there was a great amount of other competitive accessible timberland to supply the markets that then existed for the region; and that there was no immediate value for the inaccessible timber. The same prospective purchaser would also have realized that the average stand per acre for this tract would have been considered below the usual run in the region because of the large amount of burned, damaged or decayed timber on the tract. Such a prospective purchaser would also take into consideration that timber operations were being successfully engaged in on the tract supplying the ready markets that then existed for the region.

The Commission based upon the findings of fact herein made and the record as a whole and giving due consideration to the size of the tract, its location, the then accessibility of part of the lands, and the average stand of timber per acre, concludes that the fair market value of the Suquamish tract of 87,130 acres as of March 8, 1859, was \$78,500.00, or at the average rate of approximately \$0.90 per acre.

The case will now proceed to a determination of the consideration paid to the Suquamish Indians, if any, under the provisions of the Treaty of January 22, 1855, supra; whether the consideration so paid, if any, was unconscionable and, if so, what offsets are chargeable against said Indians under the provisions of the Indian Claims Commission Act.

/s/ WM. M. HOLT
Associate Commissioner

I concur:

/s/ EDGAR E. WITT
Chief Commissioner