

BEFORE THE INDIAN CLAIMS COMMISSION

THE SNOHOMISH TRIBE OF INDIANS,)	
)	
Petitioner,)	
)	
vs.)	Docket No. 125
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: July 23, 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 (4 Ind. Cl. Comm. 549) this Commission found that petitioner, The Snohomish 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 Stat. 927, II Kap. 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 Snohomish Indians are fully set forth in Finding 17, as amended, of our prior findings of fact (4 Ind. Cl. Comm. 549). Said lands, which will hereinafter be referred to as the Snohomish tract or the subject tract, are located in Snohomish and Island Counties in what is now the State of Washington. Generally speaking, the subject tract consists of the southern parts of Whidby and Camano Islands, all of Gedney (Hat) Island, and an irregular shaped piece of land on the mainland in Snohomish County fronting on Puget Sound stretching from Mukilteo in a northerly direction to Warm Beach. The mainland portion of the tract fronting on Puget Sound is deeply indented in its western or coastal border by the waters of Port Gardner. This part of the tract is drained by the Snohomish and Pilchuck Rivers. At least 20% of the mainland area lies in the low broad valley of the Snohomish River and the narrow, entrenched valley of the Pilchuck River. There were good soils but fairly extensive swamp and marshy lands along the Snohomish River which later were diked and drained to be made cultivable. The Snohomish River was navigable. The portion of the tract located on Camano and Whidby Islands were for the most part forested regions and the land was high, rolling, and hilly with the shore line banks being abrupt. Gedney Island contained good soil.

The Snohomish tract as described in Finding 17, as amended, in our prior findings of fact consists of a gross area of 164,265 acres of land. Within the subject tract, however, is located the Tulalip, or as sometimes called the Snohomish, Reservation set apart by Article 3

of the 1855 treaty, supra, containing 24,320 acres. From the award, if any, which may later be made in this case there will be deducted from the gross value of the tract, the value of the acreage within the reservation in which petitioner's interest may be shown based on the ratio of the average population of Snohomish Indians on said reservation to the average of the total Indian population thereon.

The subject tract has been classified as containing 12,153 acres of bottom or potential agricultural land; 56,467 acres of accessible timberland; 65,790 acres of inaccessible timberland; 24,830 acres of marsh, overflow or swampland; and 5,025 acres of inland waters. A considerable amount of the marsh or overflow land would be considered potential agricultural lands which would require draining or diking. The subject tract primarily, however, was a forested area containing on the average 12,000 board feet of timber per acre on the accessible timberlands and 11,000 board feet per acre on the inaccessible timberlands. The highest and best use of the subject tract as of March 8, 1859, was for timber production. As of the valuation 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, near the present site of Olympia. In 1853 the plat of the town of Seattle, in King County, not far south of the subject tract, was filed and that county in 1860 had a population of 302. Whidby Island was one of the first Puget Sound areas to attract any noticeable early settlement and many of the

settlers during 1850 to 1855 who reached the Puget Sound region found their way to the island. These early settlers concentrated for the most part in the prairie area around Penn Cove to the north of the part of the subject tract on the island. Island County in 1858 was said to have a population of 180 mostly on Whidby Island. Some 40 whites are said to have been located within the mainland portion of the subject tract by 1861 principally around Tulalip Bay. 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.

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 13,500 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 30 cents per acre representing his opinion of a residual value of the Snohomish 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 \$3.70 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 Snohomish tract was \$660,000.00. 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, a small amount as potential agricultural land 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 50% of the subject tract, was accessible or desirable lands. 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 50% (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 Snohomish tract less the reservation as of March 8, 1859, was \$16,200.00 or approximately 12 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 Snohomish 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.

In 1859 a prospective purchaser of the subject tract would have taken into consideration the accessibility of some 56,467 acres of timberland upon the tract, the favorable location of the tract with its island lands and the mainland portion fronting on the Sound and the navigability of the Snohomish River. Such a purchaser would also have been aware of the potential agricultural lands within the tract. With respect to the timber he would have realized 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 timberlands.

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 including timberland and potential agricultural land, and the average stand per acre, concludes that the fair market value of the Snohomish tract of 164,265 acres as of March 8, 1859, was \$180,700.00, or at the average rate of \$1.10 per acre.

The parties hereto having submitted no evidence as to the consideration paid to the Snohomish Indians under the provisions of the Treaty of January 22, 1855, the case will now proceed to a determination of the consideration so paid, if any; whether the consideration that may be shown was unconscionable; the interest retained by the Snohomish Indians in the Tulalip Reservation located within the tract; and, if necessary, what offsets are properly chargeable against the Snohomish Indians under the provisions of the Indian Claims Commission Act.

Wm. M. Holt

Associate Commissioner

I concur:

Edgar E. Witt

Chief Commissioner