

BEFORE THE INDIAN CLAIMS COMMISSION

THE LUMMI TRIBE OF INDIANS,)
)
 Petitioner,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 110

Decided: March 2, 1962

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to the findings numbered 1 to 17, inclusive, heretofore made herein:

18. The property upon which this claim is predicated, hereinafter referred to as "the Lummi tract," was acquired by the defendant and ceded by the petitioner pursuant to the terms of the Point Elliott Treaty of January 22, 1855 (12 Stat. 927). This treaty was ratified by the Senate on March 8, 1859 (the date of taking), and proclaimed by the President on April 11, 1859. Hence, the property is to be valued as of March 8, 1859.

The petitioner tribe was one of eleven Indian parties to the above treaty. The consideration expressed therein was set out in Articles VI, XIII, and XIV thereof in terms of gross amounts and services payable gradually to the eleven signatory powers jointly. The actual consideration, if any, paid to the petitioner by the defendant is not determinable upon the present record.

19. The gross area embraced by the boundaries described in Finding No. 16 heretofore made consisted of 107,500 acres which included 22,180

acres of the waters of Bellingham Bay, 320 acres of inland fresh water, and 12,440 acres reserved by the Indians as the original Lummi Reservation under the Point Elliott Treaty. The net land area, excluding the reservation, consisted of the following:

Mainland	25,647 acres
Orcas Island	36,930 acres
Lummi Island	5,273 acres
Shaw Island	<u>4,710</u> acres
Total	72,560 acres

20. The Territory of Oregon was established on August 14, 1848. This territory included the present states of Oregon, Washington and Idaho. The Territory of Washington was created on March 2, 1853, and included the present states of Washington and Idaho. The Territory of Idaho, which established the eastern boundary of the present State of Washington, was created on March 3, 1863. Whatcom County was established in the Territory of Washington in 1854. On the valuation date, all of the lands identified in Finding Nos. 16 and 19 heretofore made were located within what was then Whatcom County, later divided into what is now San Juan, Skagit and Whatcom Counties. Washington was not admitted to the Union as a state until November 11, 1889.

21. The mainland portion of the Lummi tract was bordered on the east by the Nooksack tract, on the north by a strip of Whatcom County lying parallel to the Canadian-United States International Boundary, on the west by the Georgia Strait, and on the south by Lummi Bay, Hale's Passage,

and Bellingham Bay. Lummi Island lay southwest of Hale's Passage; Orcas Island lay west of Lummi Island, across the Georgia Strait; and Shaw Island lay southwest of Orcas Island, across the Harvey Channel. The climate of the area was controlled by the moderating influences of the Pacific Ocean. The winters were mild and the summers cool. There was an abundance of rain, resulting in a damp and fertile climate, except during the relatively dry period of July and August.

22. The mainland portion of the Lummi tract was watered by the Nooksack River which flowed into Bellingham Bay, by the Lummi Fork (of the Nooksack River) which flowed into Lummi Bay, and by a number of small creeks flowing from east to west into Bellingham Bay. The Nooksack River and Lummi Fork had sufficient depth for navigation or the driving of logs, but log jams precluded utilization of the rivers for these purposes prior to, on, and substantially after the valuation date. The lesser creeks watering the Lummi mainland were too shallow for navigation or for the driving of logs.

23. The original cover of the mainland portion of the Lummi tract consisted of a band of heavy, dense timber which, save for a few small openings and valleys, covered the entire area west of the Cascade Mountains. About seven-eighths of this timber was Douglas fir, also known as red fir. The remainder included red cedar and hemlock. The mainland timber on this tract was comparatively accessible, even with the crude lumbering techniques then available, because well over half of the mainland timber acreage was within one and one-half miles of navigable

water and the remaining mainland timber acreage which was not far beyond the one and one-half mile mark was secondarily accessible.

The Lummi mainland was in the area scourged by great fires, some of which occurred prior to the valuation date. Some such fires were set intentionally by Indians and others were attributable to natural causes. Nevertheless, as of the valuation date the Lummi mainland averaged about ten thousand board feet of timber per acre.

The island portions of the Lummi tract had no streams of importance. The islands contained occasional stands of timber which did not equal the mainland growth in density, in quality, or in accessibility. Large portions of the islands were hilly to mountainous. Some of the island areas were arable, but most of the islands were rocky and suitable only for pasturage of sheep.

24. There was a substantial and steadily increasing demand for Puget Sound timber prior to 1861. The first sawmill on Puget Sound was a small, water-powered mill at New Market, near the present city of Olympia, Washington. By 1855, there were twenty-four sawmills in the Puget Sound area. All were constructed along the waters of the Sound or on the banks of rivers whose waters could be utilized in transporting the logs and powering the saws. In the winter of 1852, a mill was built at Whatcom on Bellingham Bay, in the Lummi tract. This was the only sawmill in Whatcom County in 1860. The first sawmill north of Whatcom was built in 1882 on Ten Mile Creek and in 1884 a sawmill was built at Lynden, Washington.

The demand for timber was exhibited by lumbermen in the Puget Sound area who cut timber indiscriminately from a neighbor's land, railroad

land, or the public domain. This demand and the resultant sharp practices led to an effort in 1861 to suppress such activity. The area's leading lumbermen were indicted for such timbering, but the penalties upon conviction were slight. The required \$2.50 per thousand "stumpage fee" for timber cut on government land was opposed by the mill men of Puget Sound who considered it exorbitant. A government agent sent west during the Grant administration found that since 1855 on Puget Sound alone, timber valued at not less than \$40,000,000 had been stolen from the public domain.

25. The Pope and Talbot firm, the Puget Mill Company, was one of the early purchasers of timber tracts. This company was one of the largest sawmill companies with a mill at Port Gamble on the western side of the Sound. Under the Act creating the Washington Territory, two townships of land were allowed for financing the University. The land could be sold for no less than \$1.50 per acre. Pope and Talbot was permitted to select the best of this University land. The records show purchases, at \$1.50 per acre, of 787.75 acres in 1861, 565.50 acres in 1862, and 17,450 acres in 1863. The land thus purchased was choice, accessible timberland which was not more than one and one-half miles from the Sound and within the immediate vicinity of the Port Gamble mill. Pope and Talbot also bought 17,398 acres in 1863 at an undetermined price, using military script. The Puget Mill Company purchased 2,849.75 acres in Island County, located to the south of the subject tract, for about \$1.05 per acre in 1866.

The first large purchase of Washington State timber land was made on January 31, 1900, when the Weyerhaeuser Timber Company bought 900,000

acres of the finest timber land from the Northern Pacific Railroad Company at \$6.00 per acre. None of this land was located in Whatcom County.

26. The Lummi tract was comparatively inaccessible to settlers before and long after the valuation date because of the complete absence of roads or railroads. However, there was some commercial intercourse between the Lummi tract and the remainder of the Puget Sound area, as well as the California markets, by vessels using the navigable waters which bounded the subject tract on the west and south.

In December of 1855, the Washington Territorial Legislature petitioned Congress for a military road from Fort Steilacoom to Bellingham Bay. The proponents pointed out that the Bellingham Bay area could be reached only by water and was without mail service. Fort Bellingham was established in 1856, vacated in the spring of 1860, and officially abandoned in 1868. Whatcom County, which included large areas out of the Lummi tract, had a population of only 352 in 1860 and by 1870 had increased to only 534. The Northern Pacific Railroad to the West Coast was not completed until 1883 and did not reach the Puget Sound area until 1887.

27. Approximately 14% of the mainland portion of the Lummi tract was located in the low, flat, alluvial plains of the Nooksack River and its tributary, and in the narrow valleys of the small creeks. These flats, except where swampy or subject to periodic overflow, were arable. The swampy portions could be reclaimed without diking and without the expenditure of excessive amounts of money or labor.

The early history of the entire Washington Territory and in particular the area under consideration reflects that the use of land for agricultural purposes was almost entirely for the subsistence of the settlers. Raising crops and animals was of only local importance. In 1860, there were only 12 farms containing 2,025 acres in all of Whatcom County. Less than 0.2% of the total area of that county was listed in the 1860 Census as farm land and, of this amount, only 95 acres were listed as improved.

The Fraser River gold rush of 1858 had very little effect upon the settling of the Lummi tract, as most of the would-be miners merely passed through on their way to the strike and return. The following lands of the Lummi tract were bought privately in the 1860-1870 decade:

1861	303.25 acres	0.4%
1862	478.97 acres	0.6%
1863	1,510.04 acres	2.1%
1864	1,558.33 acres	2.2%
1865	754.39 acres	1.0%
1866	1,098.01 acres	1.5%
1867	602.89 acres	0.9%
1868	742.48 acres	1.0%
1869	2,555.65 acres	3.5%

Thus, it can be seen that only about 13% of the available land acres were bought in the above decade. Of the approximately 9,600 acres, about 4,000 were taken without substantial payment and about 5,600 at \$1.25 per acre. Between 1870 and 1880, still less than half the tract's total land acreage passed into private ownership.

28. Settlement of the Lummi tract began around the winter of 1851-1852 when a minor vein of the Bellingham coal mine was discovered. As of the

valuation date, it was known that the Lummi lands included mineral lands, since a second, more productive coal deposit had been discovered in 1853. The coal, which was brown lignite and not anthracite, found a ready market in San Francisco, to which it was freighted by water. The coal mine was sold for \$18,000.00 on or about the valuation date, and was developed and operated profitably until 1878 when it was flooded and abandoned.

In 1852, two persons organized the Whatcom sawmill at Whatcom on Bellingham Bay. This was within the Lummi tract. Ten men and a woman were brought in to install and operate the mill. The first land claim in this area was filed in 1853 under the Donation Act of 1850. That claim, for 129.48 acres, was in the Lummi tract. Fifteen other settlers filed claims during 1853-1854. Until after the valuation date, settlers in the Bellingham Bay area of the Lummi tract were mostly limited to mine and sawmill employees.

29. The highest and best uses of the Lummi tract as a whole were timber and coal production.

30. Upon the basis of the entire record and the facts heretofore and now found, the Commission concludes that the Lummi tract as a whole had a fair market value as of March 8, 1859, of \$52,067.00.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner