

BEFORE THE INDIAN CLAIMS COMMISSION

THE LUMMI TRIBE OF INDIANS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 110
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: March 2, 1962

Appearances:

Frederick W. Post, Attorney
for Petitioner.

Frederick C. Ward, Jr., with
whom was Mr. Assistant Attorney
General Ramsey Clark,
Attorneys for Defendant.

OPINION OF THE COMMISSION

Holt, Associate Commissioner, delivered the opinion of the Commission.

This case is before the Commission for determination of the value, in 1859, of the tracts of land described in Finding of Fact No. 16 heretofore made.

By its decision rendered on October 30, 1957 (5 Ind. Cl. Comm. 525), the Commission found that the tracts of land described in Finding No. 16 were taken by the defendant on March 8, 1859; that the land was to be valued as of that date; and that the retained rights of the petitioner in such lands, the consideration paid, and the value of the lands would be made the subjects of further proceedings. Hearings were held on August 12 and 13, 1959. The parties have filed their respective proposed findings

and briefs in support thereof. The petitioner did not file objections to the defendant's proposed findings or a reply brief, although such objections and brief are permitted by the Rules of the Commission.

The acreage contained within the exterior boundaries of the property described in Finding No. 16 (hereinafter referred to as "the Lummi tract") was computed by the Cadastral Engineer, Bureau of Land Management, Department of Interior, at the request of the Department of Justice. The parties have stipulated to the accuracy of the computations of the Department of Interior. These computations are that the gross acreage of the Lummi tract (Finding No. 16) embraced 107,500 surface acres, and that this gross figure included 22,180 acres of the waters of Bellingham Bay, 320 acres of inland fresh water, and 12,440 acres reserved to the Indians as the original Lummi Reservation under the Point Elliott Treaty of January 22, 1855.

The defendant contends that the lands covered by identifiable bodies of water should not be valued specifically and that the lands reserved by the Indians should not be included in the valuation. Hence, the defendant computes the net land area to be valued as 72,560 acres. The petitioner has not objected to this position in so many words; however, petitioner's mathematical computations disclose that all 107,500 acres must be valued at the petitioner's figure of \$2.78 per acre to reach the petitioner's proposed total valuation of \$298,850.00.

In accordance with the position set out in the Supplementary Opinion dated October 20, 1958, in Nooksack Tribe v. United States, Docket No. 46 (6 Ind. Cl. Comm. 681), and in the opinion dated March 5, 1959, in The

Confederated Tribes of the Colville Reservation v. United States, Docket No. 181 (7 Ind. Cl. Comm. 187, at p. 212), the lands covered by identifiable bodies of water will not be valued separately. As noted in the opinion first cited, *supra*, inclusion or exclusion of submerged acreage merely lowers or raises the per acre average without changing the award. Hence, it is actually immaterial whether the water acreage is deemed "excluded" or "included" inasmuch as the valuation is of the entire tract as a whole and not of each individual acre separately. The waters are always considered to the extent that they enhance the land value. The land reserved by the Indians will not be included in the land to be valued, since the defendant did not purport to acquire it.

The parties have stipulated that the evidence in each of the Puget Sound cases, and particularly the Nooksack case which involved land adjacent to the Lummi tract, may be used in the disposition of the case at bar.

The consideration which may have been paid for the Lummi tract was discussed at length by the Court of Claims in The Duwamish, et al, Indians v. United States, 79 C. Cls. 530 (1934) at pages 580-584. The Lummi Tribe of Indians was a signatory power to the Point Elliott Treaty of January 22, 1855 (12 Stat. 927), which was ratified by the Senate on March 8, 1859, and proclaimed by the President on April 11, 1859. Article VI of that Treaty (12 Stat. 927, at p. 928) provided:

"Article VI. In consideration of the above cession, the United States agree to pay to the said tribes and bands the sum of one hundred and fifty thousand dollars, in the following manner--that is to say: For the first year after the ratification hereof, fifteen thousand dollars; for

the next two years, twelve thousand dollars each year; for the next three years, ten thousand dollars each year; for the next four years, seven thousand five hundred dollars each year; for the next five years, six thousand dollars each year; and for the last five years, four thousand two hundred and fifty dollars each year. All which said sums of money shall be applied to the use and benefit of the said Indians under the direction of the President of the United States, who may from time to time determine at his discretion upon what beneficial objects to expend the same; and the Superintendent of Indian Affairs, or other proper officer, shall each year inform the President of the wishes of said Indians in respect thereto."

It may be noted parenthetically that while the gross sum of \$150,000.00 was expressed, the several amounts total \$150,250.00. Article XIII of the Treaty (12 Stat. 927, at p. 929) provided:

"Article XIII. To enable the said Indians to remove to and settle upon their aforesaid reservations, and to clear, fence, and break up a sufficient quantity of land for cultivation, the United States further agree to pay the sum of fifteen thousand dollars to be laid out and expended under the direction of the President and in such manner as he shall approve."

Article XIV of the Treaty (*id.*) contained provisions for a school and shops, and for the employment of suitable persons in connection therewith. The last sentence of Article XIV contained these commitments:

". . . the expenses of said school, shops, persons employed, and medical attendance to be defrayed by the United States, and not deducted from the annuities."

Each of the eleven treaty tribes claimed one-eleventh of the treaty consideration (79 C. Cls. 530, p. 580). No evidence concerning the consideration actually paid, if any, or the value of such paid consideration has been adduced. On the basis of the present record, the quantum of consideration cannot be determined. Accordingly, the parties will be required to submit evidence of the value of the consideration at a future date. In this

connection, the parties will comply with recent decisions of the Court of Claims holding that the value of the consideration is to be computed by determining the "treaty date value" of the right to receive future payments. The Crow Tribe of Indians v. United States, 284 F. 2d 361 (C. Cls. 1960), cert. den. 366 U.S. 924 (1961), and cases there cited.

The acreage of the Lummi tract included the following bodies of land:

Mainland	25,647 acres
Orcas Island	36,930 acres
Lummi Island	5,273 acres
Shaw Island	4,710 acres

The mainland portion of the Lummi tract was bordered on the east by the Nooksack tract, on the north by a line 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. The mainland was watered by the Nooksack River which flowed into Bellingham Bay, the Lummi Fork (of the Nooksack River) which flowed into Lummi Bay, and a number of small creeks flowing from east to west into Bellingham Bay. The Nooksack River was of navigable size, but massive log jams precluded the use of boats or the driving of logs before, on, and after the valuation date. Likewise, the Lummi Fork was sufficiently deep for navigation but log jams precluded the use of boats or the driving of logs. The lesser creeks watering the mainland were too shallow for navigation or the driving of logs.

The island portion of the Lummi tract consisted of Lummi Island (southwest of Hale's Passage), Orcas Island (west of Lummi Island across the Georgia Strait), and Shaw Island (southwest of Orcas Island). These islands had no streams of importance to lumbering.

The mainland tract lay in a band of heavy timber which virtually covered the entire area west of the Cascade Mountains. About seven-eighths of the timber was Douglas fir, also known as red fir. Other valuable timber in the area included red cedar and hemlock. In 1899, Henry Gannett, Chief of the Division of Geography and Forestry for the Department of Interior, reported that ". . . with the exception of the redwoods of California, the forests of Washington are the densest, heaviest, and most continuous in the United States. Except for a few prairie openings, and except where removed by fire or the ax, they cover the country as a thick mantle from high up on the Cascade Range westward to the shore of the Pacific."

The Lummi tract, being immediately west of the Nooksack tract, was embraced by the mantle of valuable timber described above. The Lummi timber was comparatively accessible, even with the crude lumbering techniques then available because so much of these timberlands fronted upon the navigable waters of Bellingham Bay, Lummi Bay, and the Georgia Strait. The defendant's expert witness asserted that of the 25,647 land acres comprising the mainland, 14,462 timbered acres (about 20% of the total land of the tract) were completely accessible, being within one and one-half miles of usable water; 7,185 timbered acres were next accessible, being beyond one and one-half miles from usable water; and the remaining 4,000 acres were potential agricultural land. Henry Gannett's *Forests of Washington* (1902) contains the estimate that the western mainland then would produce about 3,000 board feet per acre, but the defendant concedes that the estimate was not indicative of the well-timbered areas

of the mainland portion of the Lummi tract in 1859, and that the original timber stand was dense and of good quality. The expert witnesses for both parties agreed that the mainland averaged ten thousand board feet per acre.

Reports concerning the early life in the settlement of the Puget Sound area refer to forest fires in that area. While it is not possible, from the available evidence, to determine the dates of any such fires in the Lummi tract, it appears that the fires did damage to the forests of the area, even prior to the arrival of white settlers. There are reports of the Indians setting great broadcast fires to keep down undergrowth so they could see the game, and to improve the growth of berry patches. There were reports of great fires throughout the Cascades in 1849, 1855, and 1857. The comments of the Surveyor General relative to the lands in the Lummi tract, partly surveyed in 1859, disclose appreciable fire damage, e.g.:

Township 38 North, Range 1 East

- Sections 25-26: Old open burn. Land nearly level.
Soil 2d rate. Timber: fir and cedar killed by fire.
- Section 1: Swamp covered with dense growth of flag, willow and hardhack. Water in pools. Burnt ridge of timber.
- Section 13: Land rolling burn. Soil 1st rate.
Timber: fir and cedar mostly killed by fire.

Township 38 North, Range 2 East

- Section 18: Land rolling. Soil 2d rate.
Timber: fir, cedar and maple, killed by fire. Ground covered with dead brush.

Township 39 North, Range 2 East

Sections 33-34: Burnt lands. Cedars 36",
124", 20", maple 18" dia.
Land rolling. Timber killed
by fire.

The timber on the island portions of the Lummi tract averaged an appreciably less desirable quality than that found on the mainland, and was less dense. The timber on the lower central portion of Orcas Island was heavier and of better quality than that found on the remainder of that island or on the other islands. The Surveyor General pointed out that large portions of each of the three islands were suitable only for sheep pasturage.

The mainland portion of the Lummi tract lay in the Puget Sound Basin and was wholly within Whatcom County, State of Washington. The Soil Survey of Whatcom County contains the following information:

"This basin area consists of extensive alluvial flats and low, smooth, glacial and post-glacial fluvial or marine terraces, low, rolling glacial ground-moraine plains flanking these flats and terraces and occasional frontal recessional moraines of more pronounced relief . . .

"Some of the lower hills have been scoured by glaciation and tertiary and Paleozoic sedimentary rocks are exposed. Glacial drift mantles most of the hills, however, and the drift plains run onto the mountain sides and extend as embayments into valley passes."

Approximately 14% of the mainland portion of the Lummi tract was located in the low flat alluvial plain of the Nooksack River and in the narrow valleys of the small creeks. The balance of the mainland was rolling to hilly, with hills and ridges rising 200 to 300 feet. The stream valleys were arable and, according to the field notes of the Surveyor General,

there were patches of land suitable for agriculture scattered through the Lummi mainland tract. Much of the stream valley areas were swampy or subject to periodic overflow, and these areas produced excellent grass. The defendant's expert witness on evaluation, C. Marc Miller, testified variously that "Most of the rest of the swamp area was susceptible of reclamation without the expenditure of excessive amounts of labor or money;" that ". . . the reclamation of these lands would necessitate a considerable outlay in labor or money . . ."; or that ". . . a very considerable outlay in labor or money would have been required to reclaim this swamp area . . ." Since this expert witness consistently presents the view that the swampy areas could be reclaimed without diking by clearing the channels of the streams draining the area and by digging drainage ditches, his first view, "Without the expenditures of excessive amounts of labor or money," seems the most plausible.

As previously noted, the island portions of the Lummi tract contained timber stands of varying quality and much land that, according to the Surveyor General, was suitable only for sheep pasturage. The United States Department of Agriculture, in its reconnaissance soil survey of the western part of the Puget Sound basin, stated:

"The greater proportion of the upland on both San Juan and Orcas Island is rough and broken with extensive areas of rock outcrop along the steeper slopes. Small gently rolling areas of broad, shallow valleys and basins occur at frequent intervals between the rocky hills and ridges, while small plateaus or bench lands, which could be used for agricultural purposes, are found scattered throughout the rough and hilly sections . . . The most mountainous sections of the islands are found in the northeastern part of Orcas Island, where Mount Constitution, within less than a mile from the coast, rises to an elevation of 2,400 feet . . ."

The Surveyor General described Township 36 North, Range 1 West (Orcas Island) as:

"This township is hilly and mountainous, but contains some pieces of first rate land. Six or seven settlers. The hill land is good range for sheep, of which there are many on the Island." (Def. Ex. D)

The Reconnaissance Soil Survey (supra) does not deal specifically with the topography of Shaw Island, but it does contain this information:

". . . but the other smaller islands of the group including Shaw Island consist mainly of rocky hills and ridges with only a small percentage of level agricultural land."

All of Lummi Island except the extreme northern tip is in Township 37 North, Range 1 East. In his 1859 survey of this township, the Surveyor General commented:

"A portion of Lummi Island lies in this township but it is unfit for cultivation, being rocky and mountainous."

As to the northern tip, the Surveyor General's comments were "land rolling" and "land level." On the whole, it appears that these three islands would have supported a large amount of grazing and some agriculture, and would have furnished timber for on-the-spot consumption, but would not have generated a commercial lumbering venture without the use of the mainland timber.

Coal was discovered in 1851 or 1852 on Bellingham Bay at the site of the present city of Bellingham. While this deposit was a seam, soon exhausted and abandoned around 1858, Hewitt and Brown discovered a second coal deposit nearby in 1853. This coal, brown lignite and not anthracite, was mined from beneath Bellingham Bay. The mine was described by one historian as follows:

"On the Pacific slope, so lacking in developed coal measures, any deposit of this kind was important. The canny Captain Roeder was quite aware of this, hence he promptly employed one Perry Dunfield to mine an experimental shipment of 60 tons. This was shipped to coal-hungry San Francisco in the schooner William Allen and the surveying steamer Active. Brown, one of the discoverers, accompanied the shipment carrying Captain Roeder's power of attorney to sell the mine."

The mine was sold during the valuation year, 1859, shortly after this first load was shipped to San Francisco for \$18,000.00. The purchasers expended a large sum of money in 1859 in sinking an adequate slope on the vein and in constructing a wharf, coal bunkers, and a tramway from the mine to the bunkers. Thereafter, a large quantity of coal was shipped to San Francisco until 1878, when the mine was flooded and abandoned.

The Surveyor General reported in 1874 that a limestone quarry existed on Orcas Island which had been in operation "many years," but the record does not support the conclusion that the limestone lands were recognized as such on the valuation date.

The climate of the area is controlled by the moderating influences of the Pacific Ocean. The winters are mild and the summers cool. There is an abundance of rain, resulting in a damp climate, except during the relatively dry period of July and August. Despite the desirable climate, the Puget Sound area was settled slowly, and the first white settler arrived at the Lummi tract only around 1851 or 1852 (Def. Ex. A, p. 20). The slowness of settlement is attributable to inaccessibility, due to lack of transportation, other than by water. As of 1859, all of the communities of western Washington were utterly dependent upon water transportation,

there being neither roads nor railroads in the area. The Northern Pacific Railroad to the West Coast was completed in 1883 and did not reach the Puget Sound area until 1887.

The Territory of Oregon was established on August 14, 1848 (9 Stat. 323). This territory included the present states of Oregon, Washington and Idaho. The Territory of Washington was created on March 2, 1853 (10 Stat. 172), 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 (12 Stat. 808). Washington was not admitted to the Union as a state until November 11, 1889.

The first settlers reached Bellingham Bay in 1852. The first claim in this area under the Donation Act of 1850 was filed in 1853. That claim, for 129.48 acres, was in the Lummi tract. Fifteen other settlers filed claims during 1853-1854. Whatcom County was established in 1854. It included the area now divided among Whatcom, Skagit, and San Juan counties. In 1860, the population of the Washington Territory was 11,934 and of Whatcom County, 352. The 1870 census credited Whatcom County with a population of 534.

There was a sharply divided attitude in the Washington Territory respecting the apparently inexhaustible timber supply. Some persons, interested in agriculture, regarded the stands of timber as a liability to be removed before the land could be cultivated. Others recognized the need for timber for homes and local industries as well as for shipbuilding and export. Shipments of timber began in the Puget Sound area around 1850, but lumbering operations of importance to other portions of the United

States except the West Coast did not reach the Washington Territory until the last decade of the 19th Century. The earliest commercial usages made of the area's timber were for spars and pilings.

The first sawmill on Puget Sound was a small water-powered mill at New Market, now Tumwater, 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 1852-1853, a mill was built at Whatcom, Bellingham Bay, in the Lummi tract. Its capacity was 5,000 board feet per day during high water, but it was inactive in the summer when the water power failed. 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. A sawmill which furnished much of the lumber used to build the city of Bellingham was built in 1889.

Prior to 1861, a substantial and steadily increasing 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 were evidenced by the fact that in 1861, measures were taken to suppress such activity and the area's leading lumbermen from Port Gamble, Port Madison, and Seabeck (all lumbering centers on the shores of the southern portion of Puget Sound) were indicted. The penalties upon conviction were slight. In an effort to prevent spoilation of public timber, a charge of \$2.50 per thousand was made for timber cut on government land. This "stumpage fee" was opposed by mill men

of Puget Sound who felt that the price was exorbitant since the land, if surveyed, could be offered for sale at \$1.25 per acre. An 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 Government.

As noted above, Whatcom County was settled very slowly and, according to the 1870 census, its population about that time was only 534 souls. In 1860, there were only 12 farms containing 2,025 acres in all of Whatcom County (except the San Juan islands). Less than 0.2% of the total area of Whatcom County was listed as farmland in the 1860 census and, of this amount, only 95 acres were listed as improved. The early history of the entire Washington Territory and in particular the Puget Sound area reflects that the use of land for agricultural purposes was almost entirely for the subsistence of the settlers.

Settlement of the Lummi tract began around 1851 or 1852 before a second, productive coal deposit was developed. It accounted for the activity of several workmen brought into the area. In 1852, two individuals settled and organized the Whatcom sawmill, mentioned above. Ten men and one woman were brought in to install and operate the mill. Until after 1859, settlers in the Bellingham Bay area of the Lummi tract were mostly limited to mine and sawmill employees, some of whom took land claims.

In December of 1855, the Washington Territorial Legislature petitioned Congress for a military road from Fort Steilacoom (near the present site of Olympia) to Bellingham Bay. The proponents pointed out that the

Bellingham Bay area could be reached only by water and was without mail service. In 1856, Fort Bellingham was established about three and one-half miles northwest of the mouth of Whatcom Creek. A garrison was maintained until the spring of 1860 when the post was vacated, and the fort was abandoned officially in 1868. The Fraser River gold rush of 1858 had very little effect upon settlement of the Bellingham Bay area. Most of the would-be miners merely passed through on their way to the gold fields and upon their return. In 1861, a school was built and a three-months' term taught. In 1873, the Whatcom mill was burned and never rebuilt, and in 1878 the coal mine was closed and abandoned after flooding. A decline in the community was described by one historian as follows:

"Five families alone remained on the Schome side after the mine closing. All told there were not more than a dozen families around the bay . . .

"The population . . . in 1878-1880 dwindled to about 20 persons."

Consistent with the generally slow development of the Lummi tract, the land passed from public to private ownership sluggishly. The first lands of the tract passing into private ownership were 303.25 acres acquired under the Donation Land Claims Act in 1861. In 1862 another 401.42 acres passed under that Act and an additional 77.55 acres under the Homestead Act. Of course, transactions under these acts are not indicative of the value of the lands since the land was free under the Donation Act and could be had for only the payment of a nominal filing fee under the Homestead Act. The defendant's expert witness on valuation

analyzed the Lummi tract land transactions. That analysis disclosed that through 1860, no tract of land was taken into private ownership; that in the decade from 1860 to 1870, only about 9,600 acres (about 13% of the tract) passed into private ownership as shown in Finding 27 and that in the following decade (1870-1880) still less than half the tract had passed into private ownership, i.e., 33,600 acres equalling about 45% of the net land areas. Statistics derived from the records of the General Land Office at Washington, D. C., disclosed that of the Lummi tract acreage which passed into private ownership in the 1860-1870 decade, about 4,000 acres were taken without payment and about 5,600 acres for \$1.25 per acre. It was not until 1884 that the first 77 acres passed into private ownership under the Timber and Stone Act at \$2.50 per acre.

There is no evidence of any sale of land comparable in size, characteristics, or location to the Lummi tract up to 1859. Sales in the Puget Sound area which are informative were too remote in location or in point of time to be conclusive. The Pope & 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 not less than \$1.50 per acre. Pope & 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, not more than one or one and one-half miles from the Sound, and

within the immediate vicinity of the Port Gamble mill. Pope & Talbot also utilized military script to acquire 17,398 acres in 1863 at an undetermined price. The Puget Mill Company purchased 2,849.75 acres in Island County 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. While indicative of the potential value of portions of the Lummi tract, the sales hereinbefore described cannot be deemed controlling in a determination as to the value, in 1859, of the timber lands of the Lummi tract.

The petitioner's expert witness on valuation, Dr. James A. Crutchfield, testified in the Snohomish, Duwamish, Suquamish, Nooksack, and Muckleshoot cases. The defendant has renewed its motion to strike the report and testimony of Dr. Crutchfield (Def. Br., p. 5). Inasmuch as the objections to the testimony go to the issues of weight and sufficiency, and not to the question of admissibility, the decision overruling the defendant's motion to strike is affirmed. Concerning the weight to be accorded Dr. Crutchfield's report and testimony, it may be noted that his appraisal methods and approaches were rejected after extensive analysis in the prior cases in which he appeared. In the case at bar, Dr. Crutchfield's valuation is rejected in toto for the reasons set out in the Commission's opinion in the Nooksack valuation decision (6 Ind. Cl. Comm. 599-602).

The tract must be valued by data which would have been considered by a well-informed prospective buyer dealing with an equally well-informed

seller of the Lummi tract on March 8, 1859. The criteria were outlined by the Court of Claims in Otoe and Missouri Tribe of Indians v. United States, 131 C. Cls. 593 (1955), cert. den. 350 U.S. 848 (1955). The Court stated (131 C. Cls. 593, at page 633) that the factors to be considered in the absence of evidence of actual market value include "the natural resources of the land ceded, including its climate, vegetation, including timber, game, and wildlife, mineral resources, and whether they are of economic value at the time of cession or merely of potential value, water power, its then or potential use, markets, and transportation--considering the ready markets at that time and the potential market."

The defendant's expert witness on valuation, Mr. C. Marc Miller, presented an exhaustive analysis and testified concerning his views of the value of the Lummi tract to a prospective buyer on March 8, 1859. Mr. Miller's report contains extensive material which has been helpful to this Commission. Mr. Miller's appraisal appears to be based upon the size of the tract, its dissimilar physical characteristics, the topography, accessibility, surrounding sales, population, mineral assets, and factors which would be involved in resale. However, the Commission is unable to agree with all of Mr. Miller's conclusions, including his ultimate conclusion that the value to a prospective buyer on the valuation date would have been \$17,550.00 for the entire tract, or about \$0.242 per land acre.

Considering the factors outlined above and giving appropriate weight to all of the evidence in the record, the highest and best uses for the Lummi tract as a whole would have been for lumbering and limited coal.

mining. Those portions of the subject area adaptable for agricultural purposes and those areas on the islands suitable only for grazing sheep would have added a nominal value to the tract only to the extent that they would be utilized to supply subsistence.

It is the conclusion of this Commission that the Lummi tract, taken as a whole, had a fair market value of \$52,067.00 on March 8, 1859.

The parties are directed to submit evidence relative to the commuted value of the paid consideration, if any, in the same proceedings that the Commission receives evidence concerning such gratuitous offsets as may be allowable under the Indian Claims Commission Act. An order to this effect shall be entered.

Wm. M. Holt
Associate Commissioner

We concur:

Arthur V. Watkins
Chief Commissioner

T. Harold Scott
Associate Commissioner