

BEFORE THE INDIAN CLAIMS COMMISSION

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

ORDER AMENDING FINDINGS OF FACT

On March 18, 1968, defendant filed a motion for entry of judgment in the above captioned matter; on April 1, 1968, plaintiff responded thereto; and, on April 11, 1968, defendant filed a reply. The matter was orally argued by counsel for the parties on August 8, 1968. The Commission now, being fully advised in the premises, and in compliance with the decision of the Court of Claims, being Appeal No. 4-66, decided December 15, 1967, 181 Ct. Cl. 753, and for the reasons set forth in the opinion this date filed herein, the Commission orders:

(1) That Finding of Fact No. 26, entered on March 2, 1962, (10 Ind. Cl. Comm. 286) be stricken and there be set forth in lieu thereof the following:

26. The Lummi tract was readily accessible for settlers, lumbering and mining operations by the existing and active commercial intercourse by vessels using the navigable waters in the Puget Sound area.

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 352 in 1860 and by 1870 had increased to 534. The Northern Pacific Railroad to the West Coast was not completed until 1883 and did not reach the Puget Sound area until 1887.

(2) That Finding of Fact No. 29, entered on March 2, 1962, be stricken and there be set forth in lieu thereof the following:

29. The highest and best uses of the Lummi tract were for timber and coal production, with those areas of arable land located on the alluvial plains being valuable for farming and other smaller areas possessing value for pasturage.

(3) That Finding of Fact No. 30, entered on March 2, 1962, be stricken and there be set forth in lieu thereof the following:

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 \$90,634.13.

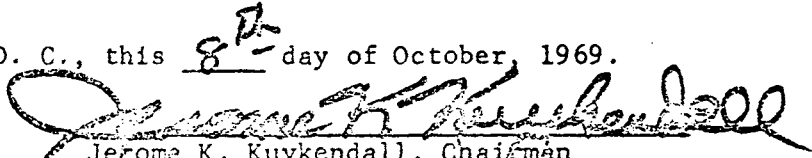
(4) That Finding of Fact No. 34, entered on February 18, 1966 (16 Ind. Cl. Comm. 526), be stricken and there be set forth in lieu thereof the following:

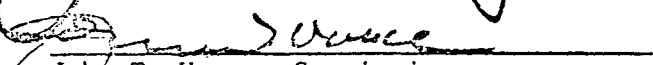
34. In this case the consideration for the cession (\$33,634.13) represents approximately 37% of the fair market value of the Lummi tract (\$90,634.13). There is a difference of \$57,000.00 in the fair market value of the tract and the amount paid for the cession. Accordingly, the lands were worth about 170% more than the consideration which was paid plaintiff. This discrepancy we find to be very gross. Accordingly, the Commission finds that the consideration of \$33,634.13 paid to the plaintiff for the cession of its lands having a fair market value of \$90,634.13 was so grossly inadequate as to make the consideration unconscionable.


(5) That Finding of Fact No. 35, entered on February 18, 1966, be stricken and there be set forth in lieu thereof the following:

35. The plaintiff is entitled, under the provisions of clause (3), section 2 of the Indian Claims Commission Act, to an award in the amount of \$57,000.00, less allowable offsets, if any.


Dated at Washington, D. C., this 8th day of October, 1969.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarbrough, Commissioner


Brantley Blue, Commissioner


Margaret F. Pierce, Commissioner