

BEFORE THE INDIAN CLAIMS COMMISSION

THE SKAGIT TRIBE OF INDIANS, also known)	
as THE LOWER SKAGIT TRIBE OF INDIANS,)	
also known as WHIDBEY ISLAND SKAGITS,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 294
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: November 13, 1969

Appearances:

Warren J. Gilbert, Frederick W. Post,
Malcolm Steward McLeod, Howard
Bannister, Attorneys for Plaintiff.

Donald R. Marshall and A. Willard
Carlson, with whom was Assistant
Attorney General Clyde O. Martz,
Attorneys for Defendant.

OPINION ON VALUE

Commissioner Vance delivered the Opinion of the Commission.

The Skagit Tribe of Indians has been decreed holder of aborig-
inal title to lands located in the Puget Sound area of Skagit and
Island Counties in the State of Washington which they ceded to the
United States by the Treaty of Point Elliott, ratified on March 8,
1859 (12 Stat. 927). We held ^{*/} that tribe to be entitled to recover

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7 Ind. Cl. Comm. 292, 313 (1959)

the fair market value of said lands on said date, less the consideration paid pursuant to said treaty by the Defendant, should it be determined that such consideration was unconscionable.

The tract involved consists of the central portion of Whidbey Island and a mainland area embracing the mouth of the Skagit River and a triangular shaped area adjacent to the North Fork of the Skagit River converging at a point in the center of Section 35, Township 33 North, Range 4 East of the Washington Meridian. The parties in this case agree, and the Commission has found, that such tract contains a total of 56,300 acres of land.

The Commission has previously determined in Upper Skagit Tribe et. al. v. United States, 13 Ind. Cl. Comm. 583, that the share of Plaintiff tribe in the monetary consideration paid to Plaintiff by the United States pursuant to the Treaty of Point Elliott was \$25,331.50. The issue now before us is whether or not the fair market value of such Skagit lands on the date of cession, March 8, 1859, exceeded the amount of such consideration paid and, if so, whether the difference in value would make such paid consideration so deficient as to be unconscionable under the provisions of the Indian Claims Commission Act (60 Stat. 1049).

Specifically, we must ascertain what a pioneer settler or entrepreneur entering the wilderness that was Puget Sound in 1859 might have been willing and able to pay for lands, most of which up to then had been occupied by Indians who made it and its adjacent waterways provide a subsistence -- Indian style. He could acquire

three types of land: (1) agricultural lands open for cultivation but in limited supply, (2) timberlands with immense potential for lumber, but a negligible existing market, (3) marsh lands (salt or fresh water) unsuitable for most needs of pioneer settlers. There were no known minerals.

The white population of Island County in 1858 was 180, rising to 264 two years later. There are no census figures reported for Skagit County during those years.

The Skagit lands have one of the most uniform marine climates in the United States, with a growing season of 202 days, precipitation ranging from 18.64 inches to 35 inches per year, with temperatures ranging from a mean low of 38.6° to a mean high of 61.1°.

Access to the area then was almost exclusively by water, and vast land areas in the Puget Sound were accessible by water.

More prospective settlers saw Whidbey Island before March 8, 1859 than any other location in the area.

Most of the land was heavily timbered, with more than half of it in Douglas fir, the timber first in demand by settlers and by lumbermen.

The developing economy of the area was concerned primarily with lumber. Some saw mills were operating in 1859, many others sprang up within a few years.

The number of real estate transactions at that time was negligible. The nature of the isolated sales reported lacked elements for comparability, the relevant market conditions are not ascertainable,

no pattern of values was thereby established for the Skagit tract or any other lands in the Puget Sound area. Some other basis for evaluation must be found.

Plaintiff's expert witness, James A. Crutchfield, Jr., a professor of economics, proposed two methods of determining value, one based upon the marketable productivity of the lands, and the other upon the earning capability of the Skagit Indians.

Defendant's expert witness, C. Marc Miller, a qualified and experienced appraiser, utilized a market value approach, taking into consideration all possible factors that would then be apparent to a prospective purchaser, i.e. white settler, entrepreneur, lumberman.

The history of settlement and land acquisition in the Puget Sound area shows that the Skagit lands were initially the most attractive and experienced the greatest activity of any locality in the region. The prospective purchaser in 1859 could see that the Skagit tract had most of the same assets as most other lands in the Puget Sound area in the way of climate, timber land, agricultural potential, waterways for transportation, and other natural resources. But it had additional assets which increased the 1859 market value of the lands. It was most favorably located as far as early settlers were concerned. Its areas most attractive to early settlers -- open agricultural lands and timber adjacent to waterways -- were easily accessible and, therefore, attracted most of the early settlers in the Puget Sound region. Such open lands were scarce in the area.

The Skagit lands on Whidbey Island had good harbor facilities, and the protected Penn Cove waters attracted sea-going vessels. All Skagit lands were conveniently accessible by water, and travel by water was the most common and most important method of transportation in the area at that time. Most of the locations of settlers under existing laws as well as most sales in the Puget Sound area before 1859 occurred on Skagit land. This pattern continued for many years thereafter, with per acre values escalating rapidly.

Contrary to Mr. Miller's contention, the statutory price of government lands at \$1.25 per acre did not become a maximum price. The reported actual, but unclassified, sales before 1859 and for three years thereafter all exceeded that price, going as high as \$7.59 per acre in 1858 and as much as \$7.92 in 1860, presumably, for lands which contained some improvements.

In determining the fair market value of these Skagit lands we have considered the different types of land, the highest and best uses to which each type was adaptable in 1859, the acreage within each land grouping, and the inconclusive reports of isolated sales or transfers relevant to the valuation period. The value of the Skagit tract is the sum total of the values of acreage in each of these categories. This valuation procedure has been held appropriate in the absence of an actual market in The Tlingit and Haida Indians of Alaska et. al. v. United States, 182 Ct. Cl. 130, 389 F. 2d 778

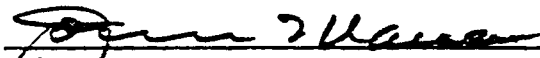
(1968), citing Alcea Band of Tillamooks et. al. v. United States, 115 Ct. Cl. 463, 87 F. Supp. 938 (1950) reversed as to award of interest, 341 U.S. 48 (1951); Citizen Band of Potawatomi Indians of Oklahoma v. United States, 179 Ct. Cl. 473 (1967); United States v. Emigrant New York Indians et. al. 177 Ct. Cl. 263 (1966); Yakima Tribe v. United States, 158 Ct. Cl. 672 (1962).

Taking into consideration all of the factors conducive to an evaluation of the Skagit lands on March 8, 1859, we have determined values for each of the categories of Skagit land found on Whidbey Island and on the mainland, fixing the fair market value of the 56,300 acres of land in the tract at \$100,188.00. In the Upper Skagit case, supra, we determined that the share of the Plaintiff Skagits in the instant case, in terms of the monetary consideration paid by the United States to said tribe pursuant to the Treaty of Point Elliott, was \$25,331.50.


We now hold that payment of that amount for acquisition of a tract of land having a fair market value of \$100,188.00 on the cession date, March 8, 1859, was such a grossly inadequate amount as to make the consideration unconscionable.


Accordingly, the Plaintiff herein is entitled to recover from the United States for lands ceded under the Treaty of Point Elliott the sum of \$74,856.50, being the difference between the 1859 fair market value of their said lands and the consideration previously

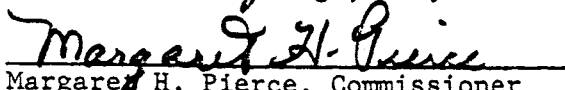
received of \$25,331.50, less such offsets, if any, to which Defendant may be entitled under the provisions of the Indian Claims Commission Act.


John Z. Vance, Commissioner

Concurring:


Jerome K. Kuykendall, Chairman


Richard W. Yarbrough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner