

BEFORE THE INDIAN CLAIMS COMMISSION

THE S'KLALLAM TRIBE OF INDIANS,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 134
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: October 1, 1970

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to the amended findings numbered 1 to 21, inclusive, heretofore made herein.

22. The Commission has previously decided that the plaintiff herein held aboriginal title to certain lands in what is now the State of Washington, which lands were ceded to the United States by the January 26, 1855 Treaty of Point-No-Point, 12 Stat. 933, and that the United States extinguished plaintiff's Indian title in said land as of March 8, 1859, the date said treaty was ratified. (5 Ind. Cl. Comm. 697, 705)

The lands exclusively used and occupied by the S'Klallam tribe are set out in the Commission's prior decision in Finding No. 19 (5 Ind. Cl. Comm. 680, 689) and will sometimes hereinafter be referred to as the subject land or the S'Klallam tract.

23. The S'Klallam tract is a long narrow strip of land containing 438,430 acres that stretches along the southern shore of the Strait of Juan de Fuca and is bounded by the Hoko River on the west and the

western shore of the Admiralty Inlet 85 miles to the east. The subject land extends 5 to 18 miles south from the shore of the strait into the Olympic Mountains.

The shoreline of the eastern part of the S'Klallam tract is characterized by a narrow band of flat land that extends inland from 50 to 200 feet. Sharp bluffs rise 200 to 400 feet behind the flat areas and create plateaus that increase gradually in elevation to foothills at approximately the 2,000 foot level. South of the foothills there are rugged and precipitous mountain protrusions. The topography of the western part of the subject tract is similar, except that the plateaus generally extend all the way to the coast. Numerous short drainage streams and rivers flow generally north through narrow rocky canyons and empty into the Strait of Juan de Fuca. As of the 1859 valuation date, eighty-five to ninety percent of the subject land was covered by dense forests. Over two-thirds of this forest land was inaccessible for logging because of the mountainous terrain, the high precipitous bluffs along the coast, and the undrivable streams. In 1859, only fir, and to a lesser degree, hemlock and cedar were considered commercially marketable.

24. The prevailing climate within the S'Klallam tract is influenced by the Pacific Ocean and is characterized by mild winters and cool summers. Except for a relatively dry season during July and August, there is an abundance of precipitation in the western and mountain regions that provides a damp climate conducive to vegetation growth. In the northeast coastal region and the Sequim and Chlmacum farming areas the climate is dryer and extensive irrigation is necessary during the growing season.

25. The acreage of actual or potential agricultural land forms an insignificant portion of the S'Klallam tract and was limited to the valleys and inlets of the Dungeness River and Chimakum Creek areas. In 1860, 2.9% of the subject land was suitable for use as farm land. According to the 1860 census, there were only 66 farms, totaling 1054 improved acres and 11,706 unimproved acres. The early history of the entire Washington territory, including the Puget Sound region, indicates the agricultural use of land was almost exclusively for subsistence purposes.

26. As of March 8, 1859, no mineral deposits were known to exist within the S'Klallam tract. There have been no discoveries of minerals or mineral development in the tract to the present time.

27. By Act of Congress, 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 by Act of Congress on March 2, 1853 (10 Stat. 172) and included the present States of Washington and Idaho. The Act of March 3, 1863 (12 Stat. 808) created the Territory of Idaho and established the eastern boundary of the present State of Washington. On November 11, 1889, Washington was admitted to the Union as a state.

28. Early settling of the subject land was retarded by the continuing harassment of the Indians, the physical isolation of the northwest peninsular region and the lack of suitable settlement land.

The threat of Indian attacks increased as the numbers of settlers increased and, in 1855, most of the tribes of the Washington and Oregon territories united in a determined effort to wipe out the settlers. The effect of the Indian war activities is noted by Clarence B. Bagley, in his book, History of Seattle, Vol. 1, at page 75,

"The effect of the Indian war upon the entire Territory of Washington was most disastrous, and especially so in the thinly settled region of the Puget Sound country. It not only retarded settlement, but those already made were in most instances deserted, and for many years thereafter was almost entirely checked. Discouragement and almost despair took possession of all, and many of the timid and irresolute removed to the populous regions of Oregon and California. . ."

The rugged terrain, dense forests and the water masses to the north and east materially curtailed the general settling of the area. Land suitable for developing townsites was limited to the flat coastal strips in the northeast part of the S'Klallam tract. In 1850, a settlement was established at Port Townsend, which in 1852 became the county seat for the small agricultural settlements in the Chimacum valley and at Port Angeles, Dungeness Bay and Sequim Bay. As of 1859 Port Townsend was the only town within the subject land.

Travel was confined to foot trails, the flat shorelines and water transport. As late as 1890 there were few roads and no railroads within the subject land and water transport was predominately used to provide access to the markets of the other Pacific coast and overseas areas.

29. The southern coast of the Strait of Juan de Fuca is a part of the main forest that extends from the Cascade Mountains to the

Pacific Coast, and from Alaska through northern California. Approximately 9/10ths of this area is covered with forest growth. In the Department of the Interior Census Office Report, Forests of North America, (1902) by C. S. Sargent, it is stated that the,

...Washington Territory, west of the summit of the Cascade ranges is covered with the heaviest continuous belt of forest growth in the United States. This forest . . . occupies the entire drift plain surrounding the waters of the Puget Sound. The most valuable and generally distributed timber tree is the red or yellow fir, forming seven-eighths of the forest growth. . . .

In the Washington-Oregon area, the forests were generally regarded as inexhaustible and were in many instances considered a liability. Fires were often set as an aid in clearing the land inasmuch as many of the early settlers were interested in using the land for agriculture and grazing purposes. However, there also existed a recognition of the need for timber for homes and local industries as well as for ship building and export. Commercial operations of any importance did not reach the Oregon-Washington area until about 1890 to 1900, although shipments of timber began on Puget Sound around 1850. The earliest commercial uses made of the vast timber resources were for spars and pilings.

30. The first sawmill on Puget Sound was a small waterpower mill constructed in 1847 at a site named New Market, now Tumwater, near the present city of Olympia, Washington. A mill was built in the S'Klallam tract at Port Ludlow in 1854. By 1860, according to the Census Report, there were 17 sawmills operating in the Puget Sound region, of which two were located in Jefferson County in the eastern portion of the subject land. This number of sawmills represented a decrease from 24 that were operating in 1855, which decrease reflected a depressed market condition in the lumber industry that began about 1858 or 1859. All the sawmills were constructed along the waters of the Sound or on banks of rivers whose waters could be utilized in transporting the logs as well as providing power for the saws.

31. The early lumbering operations were very crude. The logging was done by manpower. Trees were felled by ax, until the early 1880's when the cross-cut saw came into use. The trees were cut into logs of a length which men could handle and were rolled or dragged into the nearest water to be floated to a sawmill. Because of the laborious operation, the timber was cut slowly. The timber first cut was that along the waters of the Sound and those streams which could be used to drive logs. Even as late as 1880 it was reported that the forests along the shores of Puget Sound, the Straits of Juan de Fuca, and

the lower Columbia River had been culled only of the best trees for a distance of only one to two miles inland.

32. As of the 1859 valuation date, land could be acquired in the S'Klallam tract under the Act of April 24, 1820 (3 Stat. 566); the Oregon Donation Act of September 27, 1850 (9 Stat. 496), made applicable to the Washington Territory in 1854 (10 Stat. 305); the Preemption Act, as amended by the Act of March 27, 1854; and the Act of February 11, 1847 (9 Stat. 125), providing for the acquisition of public land by the use of military land bounty warrants. As of March 8, 1859, no government land had been acquired under the provisions of these acts, although a notice of a Donation Land Claim had been filed on 318.75 acres of land at the site of the Port Ludlow sawmill. Between 1860 and 1870, only 9.2% of the land within the S'Klallam tract, representing 40,327 acres had been acquired under these and other federal acts.

33. There is no evidence of timber land sales within the S'Klallam tract prior to 1859. The first sale of timber land in the Puget Sound area occurred in 1861 when Pope and Talbot, the Puget Mill Company, purchased 225 acres of school lands in Snohomish county which is east of the subject tract. In the years that followed Pope and Talbot continued to make numerous purchases of select tracts of choice, accessible timber land throughout the lower Puget Sound area south and east of the S'Klallam tract at prices ranging between \$1.05 and \$3.12 per acre.

34. Mr. John F. Lutz, Jr., and Mr. Gifford P. Owens appeared as appraisers and expert witnesses for the plaintiff, assisted by Mr. Perry O. Donaldson, Mr. Kenneth E. Beil and Mr. Frederick A. Meserve. They determined there was no actual market to which the subject tract could have been exposed on the 1859 date of valuation. They, therefore, determined the value of each of several categories of land within the tract according to its highest and best use. The value of the land in each category was added together to determine the value of the whole.

For the purpose of determining the value of the timberland the value of the standing timber was incorporated in the report. Such value was derived by multiplying the volume of board feet of lumber found in stands of merchantable timber by its market value. The plaintiff's appraisers concluded that the 1859 value of the subject tract to be \$1,530,000.00 for 440,939 acres, or an average value of approximately \$3.47 per acre.

35. The defendant called Mr. C. Marc Miller as an expert witness. He, as did the plaintiff's appraisers, analyzed such factors as the size of the tract, accessibility, economic conditions, population, character and uses of the land, and transportation to determine the effect thereof upon the separate parcels aggregated to value the entirety. In addition, his report discussed the financial aspects a hypothetical

purchaser would have considered, such as investment risks, and holding period to recover investment and profit. It was his conclusion that the fair market of the S'Klallam tract as a whole was, as of March 8, 1859, the sum of \$44,252.60, or slightly in excess of \$0.10 per acre.

36. We find the highest and best use to which the S'Klallam tract was adaptable on March 8, 1859, was for timber production. We therefore value the S'Klallam tract as a whole as timberland on March 8, 1859.

37. Based upon the findings of fact herein set forth and the record as a whole, the Commission finds that the land herein described and referred to as the S'Klallam tract, consisting of 438,430 acres, had an 1859 fair market value of \$440,000.00.

38. The consideration to be given by the defendant to the Indian treaty parties for the lands ceded by them under Article 5 of the 1855 Treaty was the sum of \$60,000.00. In addition, the said 1855 Treaty made available under Article 6, the sum of \$6,000.00 to enable the Indians to move to and settle upon the reservations which was created under Article 2. The said 1855 Treaty did not describe the share of the monetary consideration each tribe was to receive, but provided that such consideration be received for the use and benefit of all the signatory tribes.

The Commission finds that, in the absence of a treaty apportionment of the consideration to each of the Indian signatories, it is proper to allocate the monetary consideration in proportion to the approximate tribal populations on March 8, 1859 the effective date of the treaty.

The decision in Duwamish Indians, et al., v. United States, 79 Ct. Cl. 542 (1934) found the S'Klallam, Chimakum, Skokomish and Toanhooch tribes were the Indians parties to the 1855 Treaty and, at the time thereof, the S'Klallam and Chimakum tribes numbered 875 persons and the other Indian signatories numbered 465 persons. The total population of the participating tribes was 1340 persons and the S'Klallam-Chimakum population represented 65.3% thereof. Applying this percentage to the total treaty consideration of \$66,000.00, that portion allocable to the plaintiff herein is the sum of \$43,098.00.

39. The Commission finds that the total consideration of \$43,098.00 payable to the S'Klallam Tribe of Indians under the provisions of the Treaty of June 25, 1855 for the cession to the United States by said tribe of 438,430 acres of land held by it under Indian title was so grossly inadequate for land having an 1859 fair market value of \$440,000.00 as to make the consideration unconscionable within Section 2(3) of the Indian Claims Commission Act. (60 Stat. 1049, 1050)

40. The evidence of record fails to show the S'Klallam tribe received any of the money provided under Article 6 of the 1855 Treaty. Accordingly, the S'Klallam Tribe is entitled to recover the sum of \$400,820.00, said sum being the difference between the sum of \$440,000.000 and the sum of \$39,180.00 allocated as consideration actually paid to the S'Klallam Tribe under Article 5 of the 1855 Treaty, less any

offsets against such sum as the defendant may be entitled.


Conclusions of Law

Based upon the foregoing findings of fact and all the evidence of record, the Commission concludes as a matter of law:

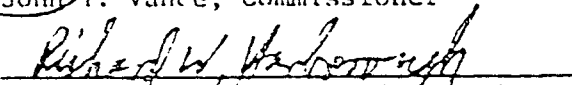
1. The 438,430 acres ceded to the United States by the S'Klallam Tribe of Indians under the 1855 Point-No-Point Treaty, 12 Stat. 933, had a fair market value of \$440,000 as of March 8, 1859, the effective date of said treaty.

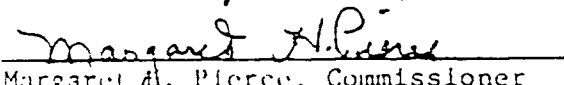
2. The 1855 Treaty consideration allocable to the S'Klallam Tribe was \$43,098.00, which consideration was unconscionable under Section 2(3) of the Indian Claims Commission Act, 60 Stat. 1049, 1050.

3. The S'Klallam Tribe of Indians is entitled to recover from the defendant the difference between the 1859 fair market value of the valued lands, \$440,000.00, and the 1855 Treaty consideration actually received by the plaintiff Tribe, \$39,180.00, or the sum of \$400,820.00, less allowable offsets.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarbrough, Commissioner


Margaret J. Pierce, Commissioner


Brantley Blue, Commissioner

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