

BEFORE THE INDIAN CLAIMS COMMISSION

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| THE KIKIALLUS TRIBE, |) | |
| Plaintiff, |) | |
| v. |) | Docket No. 263 |
| |) | |
| THE UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendant. |) | |

Decided: March 26, 1971

Appearances:

Frederick W. Post, Attorney for the Plaintiff.

Richard L. Beal, with whom was Mr. Assistant Attorney General Walter Kiechel, Attorneys for the Defendant.

OPINION OF THE COMMISSION

Chairman Kuykendall delivered the opinion of the Commission.

The plaintiff tribe was the aboriginal owner of 8,060 acres of land in the Puget Sound area of the State of Washington. Under the provisions of the Point Elliot Treaty of January 22, 1855 (12 Stat. 927), ratified March 8, 1859, the plaintiff ceded all its lands to the United States for \$5,973.31. The issues now before the Commission are (1) the fair market value of the plaintiff's lands as of March 8, 1859, the effective date of the 1855 Treaty, and (2) did the defendant pay the Kikiallus Tribe an unconscionable consideration which would entitle the plaintiff to additional compensation under Clause 3, Section 2 of the Indian Claims Commission Act (60 Stat. 1049, 1050).

The record in this case is negligible to say the least. However, the parties by agreement, have incorporated into the record by reference the evidence in ten other Puget Sound cases, the most relevant one in our judgment being Docket No. 294, Skagit Tribe of Indians v. United

States, 22 Ind. Cl. Comm 28 (1969), which involved adjacent lands similar to those of the Kikiallus.

The lands ceded by the plaintiff consist of two separate tracts. One of them comprises 4,560 acres on the northern tip of Camano Island in Island County, Washington. The other is a 3,500 acre heart-shaped area abutting Skagit Bay on the mainland in Skagit County, Washington. A stretch of water four to five miles wide separates the two tracts.

In 1859 the economy of Puget Sound was geared to the logging and production of timber. Many sawmills were in operation, and lands which had large stands of accessible merchantable timber were valuable.

The Camano Island tract contained almost 3,900 acres of standing merchantable timber, 50 per cent of which was Douglas fir, 30 per cent hemlock, and the balance white fir and spruce. In 1853, Lawrence Grennan and Thomas Cranney had constructed a sawmill on Camano Island at Utsalady. Census data shows that, for the year 1860, some 6 million board feet of lumber had been processed at the Utsalady mill, and a small settlement of 12 to 15 people had developed at the millsite.

Pope and Talbot, the then largest timber company, made its initial acquisition of timberland in 1861, buying 225 acres of school lands in Snohomish County at \$1.50 per acre. For the next several years Pope and Talbot accumulated an additional 18,803.25 acres of school lands in Kitsap County, as well as some 17,398 acres of public land which it purchased from the government with military scrip at \$1.25 per acre. Pope and Talbot continued to make numerous purchases of select 160 acre tracts throughout the Puget Sound area at an average price of \$3.12 per acre.

The mainland portion of the subject area is about equally divided between open prairie land and saltwater marsh. Most of the soils in the open prairie land were extremely fertile, and with proper drainage could be highly productive agricultural land since the climatic conditions were favorable to agricultural pursuits. Except for cattle grazing, the saltwater marshes were of nominal value, and were unsuitable for agricultural uses without proper diking and desalinization.

As of 1859, only a handful of private land transactions had occurred in the vicinity of the subject lands. The extent of any improvements, if any, on these properties is unknown and these transactions therefore are of questionable comparability. They, however, do throw some light on per acre prices governing the acquisition of private lands during this period, ranging from \$1.87 to \$7.92 per acre.

Dr. James A. Crutchfield, an economics professor, valued separately the two tracts that make up the Kikiallus ceded area. He assigned an 1859 value of \$4.94 to the Camano Island tract and \$1.00 per acre to the mainland. Dr. Crutchfield is the author of two valuation theories which have been found wanting on other occasions, and which we must again reject in the instant case. See Skagit Tribe of Indians v. United States, supra.

Mr. C. Marc Miller, defendant's expert witness, is an experienced land appraiser who followed a more conventional method in valuing the ceded area. In the absence of comparable sales, Mr. Miller adopted a market value approach wherein he considered all those value factors

that a prospective 1859 purchaser of the subject tract would have considered, including such things as natural resources, climate, topography, transportation, accessibility, local and national economic conditions, potential markets, and population and settlement patterns. Mr. Miller concluded that the Kikiallus ceded area was worth only \$0.50 per acre, a figure that the Commission feels is too conservative.

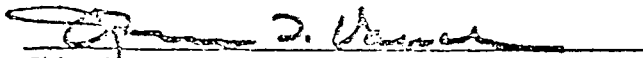
As we view the evidence, the timberlands on Camano Island had a solid value in 1859 that would increase as time went by. They were readily accessible by water, and within easy distance of several sawmills. The open prairie land on the mainland contained much fertile land that was valuable in 1859 for agricultural purposes, but whose potential would not be realized until sometime in the future.

After considering all the evidence in this case, as well as the other cases above mentioned, including particularly the record in Docket No. 294, the Commission is of the opinion that, as of March 8, 1859, the effective date of the 1855 Point Elliot Treaty, the 8,060 acres of land that the plaintiff tribe ceded to the United States had a fair market value of \$12,000, or approximately \$1.49 per acre.

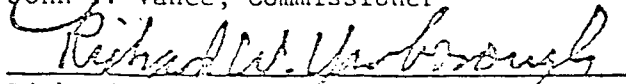
We further conclude that the consideration which plaintiff received for its lands, being less than fifty per cent of the fair value thereof, was unconscionable and that plaintiff should recover additional compensation in the sum of \$6,026.69, less allowable offsets, if any.


Jerome K. Kuykendall, Chairman

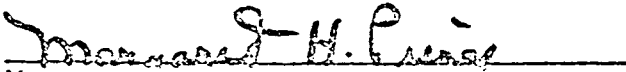
We Concur:



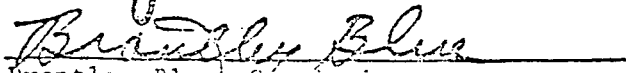
John T. Vance, Commissioner



Richard W. Yarborough, Commissioner



Margaret H. Pierce, Commissioner



Brantley Blue, Commissioner