

BEFORE THE INDIAN CLAIMS COMMISSION

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

Decided: March 26, 1971

FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to findings of fact 1 through 12 previously entered herein on April 13, 1959 (7 Ind. Cl. Comm. 456).

13. The Commission has already determined that the plaintiff, the Kikiallus Tribe of Indians, had aboriginal title to two parcels of land that the parties have stipulated as containing 8,060 acres. One parcel of 3,500 acres is located along the south fork of the Skagit River on the mainland adjoining Puget Sound in what is now Skagit County, Washington. The other parcel of land contains 4,560 acres and is located in the northern portion of Camano Island in what is now Island County, Washington.

The parties have stipulated that the records, exhibits and testimony in the case of Skagit Tribe of Indians v. United States, 22 Ind. Cl. Comm. 28 (1969), (and nine other Puget Sound cases), shall form part of the record in this docket. (Deposition of James E. Crutchfield, November 9, 1959, p. 2.)

14. Plaintiff was one of twenty-three tribal signatories to the Point Elliot Treaty, executed on January 22, 1855, but not ratified by the

United States Senate until March 8, 1859 (12 Stat. 927). Pursuant to Article I of the 1855 Treaty, the plaintiff ceded and relinquished title to its land to the United States. The date of the ratification of the 1855 Treaty is the valuation date for purposes of determining the fair market value of the plaintiff's land.

15. In a separate consolidated hearing, the Commission determined that the total consideration paid by the United States to participating tribes in the Point Elliot Treaty was \$286,231.50, which amount included both the monetary consideration and the value of individual allotments. The Commission further concluded that the population of the Kikiallus Tribe, at the time of the 1855 Treaty, represented 2.1% of the total membership of the signatory tribes, and that members of the Kikiallus Tribe had received 1.8% of the allotments. Accordingly, the Commission found that the plaintiff had received a treaty consideration totaling \$5,973.31 (Upper Skagit Tribe of Indians v. United States, 13 Ind. Cl. Comm. 583 (1964)).

16. The Congress established the Territory of Oregon on August 14, 1848 (9 Stat. 323), which territory included the present States of Oregon, Washington and Idaho. Thereafter the Territory of Washington was created by an Act of Congress approved 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 State of Washington. The State of Washington was admitted into the Union on November 11, 1889 (26 Stat. 1552).

17. The Kikiallus tract on the northern end of Camano Island lies almost due east and within 2 to 6 miles of Whidbey Island, the central portion of which had belonged to the Lower Skagit Tribe of Indians.

Camano Island was shaped by glaciers that once moved across the Puget Sound area. A ridge extends the length of Camano Island, and its northeastern corner has gently undulating relief, resembling a plateau. The width of Camano Island varies from 2 to 3 miles. The field notes on the survey of the Kikiallus tract in 1859 describe hills and bluffs in the northwestern part of the island which are 25 to 150 feet high. The area around Livingston Bay contains marshes and swamps. There are no streams in the tract.

The soils of the Camano Island tract originated largely from glacial drift, which consists of sand, gravel, and some clay, which in some places is mixed with stones and boulders. With the exception of the soils in the small open prairies, the soils are low in fertility and not well suited for agricultural use. There is a small area consisting of salt water marsh.

The 4,560 acres in this tract can be classified as follows:

Open prairie	325 acres
Saltwater marsh	340 acres
Accessible commercial timberland . . .	<u>3895</u> acres
	4,560 acres

18. That portion of the Kikiallus tract on the mainland in Skagit County, which is about 4 miles to the north and northeast of Camano Island,

is cut up by the Skagit River and by sloughs. None of the land has an elevation of more than a few feet above sea level. About half the tract is tidal marsh, and the balance is a low, flat prairie rising slightly above sea level. A greater portion of the low prairie land is extremely fertile, and with proper drainage it could be highly productive for agricultural purposes. Except for cattle grazing, the saltwater marsh could not be used as agricultural land without proper diking and desalinization.

The 3,500 acres of the mainland tract can be classified as follows:

Open prairie	1,885 acres
Saltwater marsh	<u>1,615</u> acres
	3,500

19. The two tracts enjoy a similar climate, influenced by winds from the Pacific Ocean. Records kept by the United States Weather Bureau at Coupeville in the central part of Whidbey Island and at nearby Everett on the mainland (Snohomish County) show moderate temperatures averaging about 50° F. for the year, and rainfall averaging between 30 and 35 inches annually with most of the precipitation falling in the winter months. The growing season averages about 200 days.

20. In 1859 the Kikiallus lands, like other lands in the Puget Sound area, were readily accessible by water. Roadways played only a minor role in the general development of the area until the advent of railroads late in the nineteenth century.

21. In 1858 the population of Island County, which then consisted of Whidbey Island, Camano Island, and most of the present Snohomish County, was 180 persons exclusive of Indians. The population in 1860 was 294. The only white population in the ceded area in 1859 was the small settlement of 12 to 15 persons at Utsalady in northern Camano Island where the Grennan and Cranney Sawmill had been built in 1853. In 1859 there were no settlers on the mainland portion of the ceded area.

22. The economy of the Puget Sound area in 1859 was centered almost exclusively around the lumber industry. In 1853 sawmills had been opened, or were under construction, at Seattle, Bellingham, Port Gamble, Fort Ludlow, and at Utsalady on the northern part of Camano Island. San Francisco was the principal market for lumber, but additional markets were developed in Hawaii, Tahiti, China, Australia, and Chile. In 1859, due to overproduction, undercapitalization, and a general economic depression, the Puget Sound mills began to curtail production. This was a period when money was in short supply, and interest rates were extremely high, running at times as much as 4% per month on chattels and 1 1/2% per month on real property. Script was available at a heavy discount and was acceptable at face value on the purchase of Government land. The first bank in the Territory of Washington was not opened until 1869.

23. The only industry in the ceded area in 1859 was the sawmill at Utsalady on Camano Island. The northern part of Camano Island was

covered by a medium dense forest that was estimated to contain between 11,000 and 13,000 board feet of lumber. About 50% of the standing timber was Douglas fir, about 30% was hemlock, and the balance was white fir and spruce. The timber content of Camano Island compares favorably with that found on nearby Whidbey Island. A census report shows that, for the year 1860, some 6 million board feet of lumber had been processed at the Utsalady mill.

24. As of 1859, there is little if any comparable sales data in the record relative to the acquisition of land in the Puget Sound area. Initial purchases of both agricultural and timber land were made under the various federal land statutes such as the Cash Sales Act of April 24, 1820 (3 Stat. 566), the Preemption Act of September 4, 1841 (5 Stat. 453), as amended by the Act of July 17, 1854 (10 Stat. 305), the Military Bounty and Land Warrant Act of February 11, 1847 (9 Stat. 125), the Donation Land Act of September 27, 1850 (9 Stat. 496), and the Graduation Act of August 4, 1854 (10 Stat. 574). Beginning in 1862, land could be acquired under the provisions of the Homestead Act of May 20, 1862 (12 Stat. 392). Sales of any magnitude in the Territory of Washington involving timberland were usually accomplished under the Cash Sales Act, supra, at \$1.25 per acre. Sales of timberland were also made by the Board of the University of Washington Commissioners at \$1.50 per acre.

25. No lands in the Kikiallus ceded area had been acquired as of 1859 under any of the federal land laws. No claims for the Kikiallus lands were made until 1865 when 110 acres were claimed under the 1862

Homestead Act. Apparently Grennan and Cranney began the construction of their sawmill in 1853 under squatters' rights. A mortgage on the land, sawmill, stores, warehouses, dwellings, and other property, recorded in May 1859, describes the land as a preemption claim to an unsurveyed 160 acre tract.

26. In 1861, Pope and Talbot, the largest lumber company in the area, made its first purchase of Puget Sound timberland when it acquired 225 acres in Snohomish County from the Board of University of Washington Commissioners at \$1.50 per acre. For the next three years Pope and Talbot acquired an additional 18,803.25 acres from the same source in Kitsap County, and some 17,398 acres from the United States with military scrip. From 1875 through the 1880's, Pope and Talbot continued to purchase 160 acre tracts throughout the Puget Sound area at about \$3.12 per acre.

In 1862, Grennan and Cranney made their initial purchase of timberland when they bought 301 acres in Snohomish County at \$1.50 per acre.

27. As of March 8, 1859, there were only 13 private transactions involving agricultural or potentially agricultural lands in Island County. There were 5 sales in King County, and a few in Thurston and Pierce Counties. Most of the sales were of open agricultural lands in the prairie regions on Budd Inlet, or in the open prairie region of Whidbey Island. The amount of improvements made on any of these lands is unknown. Whether the original owners of these agricultural lands acquired their title under the Donation Land Act, supra, the Preemption Act, supra, or the 1862 Homestead Act, supra, they were required to make minimum improvements.

There follows a summary of these few sales with the average price per acre for each year shown:

Sales Before March 8, 1859

<u>Date</u>	<u>Number of Sales</u>	<u>Total Acreage</u>	<u>Total Consideration</u>	<u>Average Price Per Acre</u>
1854	2	320	\$ 700.00	\$2.19
1855	1	160	300.00	1.875
1856	2	480	3,000.00	6.25
1857	none	---	---	---
1858	6	1,120	8,500.00	7.59
1859	2	293	1,300.00	4.44

After March 8, 1859

1859	4	340	1,450.00	4.26
1860	3	200	1,583.00	7.92
1861	3	740	5,700.00	7.70
1862	4	941	3,241.59	3.44

Public lands within the ceded area, that were acquired prior to 1870, were largely the open lands on the northern part of Camano Island. In all, 1,071.1 acres were acquired under the 1862 Homestead Act, supra, and under the Cash Sales Act, supra. Little interest was shown in the open lands of the mainland tract until the 1870's.

28. James A. Crutchfield, an economics professor, appeared as an expert witness for the plaintiff tribe. Dr. Crutchfield valued separately the two tracts that make up the Kikiallus ceded area, and applied the same methods that he utilized when he appeared as a witness in the case of Skagit Tribe of Indians v. United States, supra. He valued the timber lands on the Camano Island tract at \$4.94 per acre, and the agricultural lands on the mainland at \$1.00 per acre. Dr. Crutchfield employs both a "market valuation", which is a commercial value derived from the

marketing of products, and a "subsistence value", which is based upon the potential earning capacity of each Indian multiplied by the number of Indians in the plaintiff tribe. Dr. Crutchfield's valuation methods have been uniformly rejected by the Commission in other cases. The Commission rejects them here.

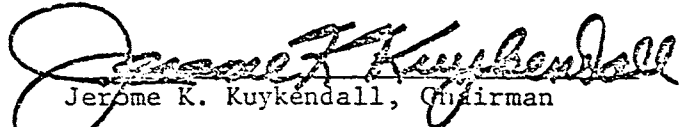
29. Mr. C. Marc Miller, a qualified and experienced land appraiser, testified as an expert witness for the defendant. In the absence of a comparable sales market in 1859 for the subject lands, Mr. Miller employed a conventional market value approach, wherein he considered such elements of value as the natural resources of the ceded area, including climate, vegetation, minerals, soils, and topography, and such items as accessibility, transportation facilities, potential markets, population and settlement patterns, and general economic conditions. Mr. Miller assigned an overall 1859 market value of \$4,160, or approximately \$0.50 per acre, to the 8,060 acres in the ceded area. He valued the accessible timberland at \$0.40 per acre, the "open, potentially agricultural lands" at \$1.00 per acre, and the saltwater marsh at \$0.20 per acre.

Conclusion

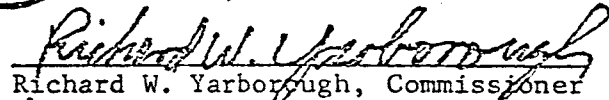
30. The Commission, having considered all the evidence of record as well as the record in Docket No. 294, Skagit Tribe of Indians v. United States, supra, finds and concludes that, as of March 8, 1859, the effective date of the 1855 Point Elliot Treaty, supra, (1) that part of the ceded area on Camano Island was best utilized for timber production, while the mainland portion could best be utilized for agricultural and

grazing purposes, and (2) the 8,060 acres of the ceded area as a whole had a fair market value of \$12,000, or approximately \$1.49 per acre.

The Commission further finds and concludes that the payment of \$5,973.31 by the United States to the Kikiallus Tribe under the provisions of the 1855 Point Elliot Treaty for lands worth \$12,000 in 1859 constituted unconscionable consideration within the meaning of Clause 3, Section 2 of the Indian Claims Commission Act (60 Stat. 1049, 1050). The plaintiff is entitled to recover from the defendant the sum of \$6,026.69, less gratuitous offsets, if any, which may be allowable under our Act.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarbrough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner