

BEFORE THE INDIAN CLAIMS COMMISSION

THE SAMISH TRIBE OF INDIANS,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 261
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: July 28, 1971

FINDINGS OF FACT

Pursuant to an Interlocutory Order entered herein on March 11, 1958, the Commission has received testimony and evidence and has considered the arguments of counsel for the parties relating to proof of the acreage of lands to which plaintiff held aboriginal title and of the fair market value thereof as of March 8, 1859, the date of ratification of the Treaty of Point Elliott (12 Stat. 927). The Commission considered the proposed findings of fact and brief only of the defendant, inasmuch as plaintiff has not had benefit of counsel since the expiration of counsel's contract. Based on all of the foregoing, the Commission makes the following additional findings of fact, supplemental to Findings of Fact 1 through 14 previously entered herein (6 Ind. Cl. Comm. 159).

15. The Commission has already determined that the parties had aboriginal title to two parcels of land, Guemes Island in Puget Sound, immediately north of Fidalgo Island, and a small portion of the mainland across Padilla Bay from the island. The subject lands are located in the northern part of Skagit County, Washington.

The parties have stipulated that the records, exhibits and testimony in the case of Skagit Tribe v. United States, 22 Ind. Cl. Comm. 28 (1969), (and nine other Puget Sound cases), shall form part of the record in this docket.

16. In a separate consolidated hearing, the Commission determined that the total consideration paid by the United States to participating tribes in the Point Elliott Treaty was \$286,231.50, which amount included both the monetary consideration and the value of individual allotments. The Commission further calculated the population of the Samish Tribe, 150 Indians, as a percentage of the total membership of the signatory tribes, 3,511 Indians, and concluded that the Samish had received a treaty consideration totalling \$11,245.04. Upper Skagit Tribe v. United States, 13 Ind. Cl. Comm. 583 (1964).

17. The Samish tracts in 1859 were part of Washington Territory. The territory was created in 1853 when it was separated from the Oregon Territory. Prior to 1846 the area had been held by joint occupancy of the United States and England. Statehood for Washington was proclaimed in 1889.

18. The climate of the area is controlled by the moderating influences of the Pacific Ocean, and is favorable for settlement. The winters are mild and the summers are cool. There is an abundance of rain, providing for a damp climate with the exception of a relatively dry period during July and August. The growing season averages about 200 days a year.

19. The Samish lands in 1859 were readily accessible by water, which was the main means of transportation in the area at that time. Roadways played only a minor role in the general development of the area until late in the nineteenth century.

20. The economy of the Puget Sound area in 1859 was centered almost exclusively around the lumber industry, and involved timber most easily accessible from the waterways. The first shipment of piles went to San Francisco in 1850, and 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 over-production, 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. Scrip was available at a heavy discount and was acceptable at face value on the purchase of government land.

Although lumbering supported settlers of the Puget Sound area in 1859, agricultural pursuits were carried on to the extent necessary to supply the local population. Consequently, good farmland adjacent to timberlands experienced the earliest cultivation.

While fishing had not attained the status of an industry, fish and shellfish were a source of food supply, and their potential as a future factor in the region's economy was apparent.

21. Plaintiff alleges that the subject lands total 13,633 acres, as follows:

3,200 acres, delta land,
6,033 acres, island land,
4,400 acres, tidelands.

The government alleges that the subject lands total 9,495 acres, as follows:

6,000 acres, accessible timberland,
3,495 acres, tidal marsh.

On the basis of a thorough review of the record, the Commission finds that the subject lands contain 9,233 acres. We can classify 1,200 acres of the delta land, and virtually all of the island acreage, totalling 6,033 acres, as accessible timberland as of 1859. The remaining dry land, 2,000 acres, can be classified as excellent farmland as of 1859. The adjacent tidelands were abundant in shellfish, and the surrounding waters were teeming with fish.

22. The Commission has previously set the boundaries of the Samish tracts as the shoreline of the Puget Sound. The shoreline is the ordinary high water line. The tidelands are not included in the acreage to be valued but, where the land provides access to shellfish in tidelands or free swimming fish in adjacent waters, the land may be enhanced in value. The value we have placed upon the Samish tracts includes any enhancements by reason of the access to shell fisheries at the time of valuation.

23. The timber on the subject tract was dense forest predominantly of Douglas fir, with some hemlock and cedar, all within 1 1/2 miles of navigable water, and readily accessible at the time of valuation. As of 1859, and for years afterward, lumbermen concentrated production on Douglas fir.

24. There were no known white settlers within the Samish tracts prior to the 1859 valuation date. The closest settlements were about 15 miles north of the Samish tracts at Whatcom, now known as Bellingham, where settlement began around 1853, and to the south on Whidbey Island. In December, 1859, two settlers squatted on Fidalgo Island, one mile south of Guemes Island. In 1864 or 1865 Josiah Larry settled adjacent to the Samish mainland tract. The first settlers on Guemes Island came in 1865 or 1866, and by 1872 there were five settlers. In 1869 several settlers at Edison on the northern edge of the mainland tract had begun working the agricultural lands.

25. There is little, if any, comparable sales data as of 1859 in the record relative to the acquisition of land in the Puget Sound area. Initial purchases of both agricultural and timberland 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), 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 an acre. Sales of timberland were also made by the Board of the University of Washington Commissioners at \$1.50 an acre.

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 an 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 script. From 1875 through the 1880's, Pope and Talbot continued to purchase 160 acre tracts throughout the Puget Sound area at about \$3.12 an acre.

In 1862, the Greenan and Cranney Lumber Company made their initial purchase of timberland when they bought 301 acres in Snohomish County at \$1.50 an acre.

All such purchases involved timberlands located within a mile and a half of waterways. The bulk of early purchases involved Douglas fir trees, but some cedar was included. Use of other species suitable for paper pulp, such as hemlock and white fir, did not commence until after the turn of the century.

In addition to lumbermen, the Puget Sound area attracted those wishing to engage in farming. These farming settlers provided the supplies necessary to sustain the lumbermen and other immigrants.

Whidbey Island, about ten miles to the south of Guemes Island, with 6,000 acres of excellent prairie land, was settled rapidly by farmers from 1859 to 1870.

27. Land sales and transactions prior to the valuation date fail to establish any pattern of land values. The record fails to produce evidence upon which an 1859 fair market value can be established by the customary methods of appraisal based on comparable sales.

Mr. H. B. Nelson, former County Assessor of Skagit County, appeared as an expert witness for the plaintiff. The method he used to value the subject tracts is referred to as "market valuation", based on the commercial value derived from the marketing of products. He computed the stumpage value of timber, and added a per acre value for agricultural potential. Under his method of valuation he arrived at an 1859 assessment for 13,633 acres of \$119,500. His method of valuation has been rejected by the Commission in previous decisions.

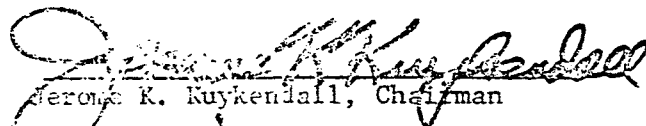
Mr. C. Marc Miller, a qualified and experienced land appraiser, testified as an expert witness for the government. Mr. Miller used a conventional market approach, considering such elements of value as the natural resources of the ceded area, climate, vegetation, soils and topography, and such items as accessibility, transportation facilities, potential markets, population and settlement patterns, and general economic conditions. Mr. Miller assigned an overall 1859 market value of \$1250 for the 9495 acre Samish tracts.

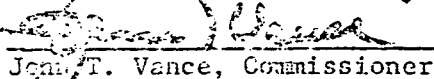
28. The Samish tracts were and are a fertile area, with excellent forest, fine bottom lands adaptable to agricultural purposes, and tidelands

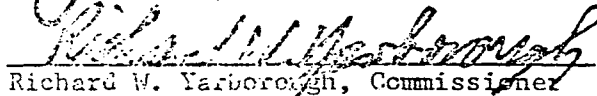
rich in shellfish. The tracts were sufficiently small that they could be readily disposed of, and had ready access to water transportation, as well as to waters rich in fish.

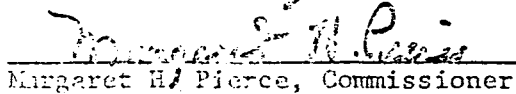
The Commission, therefore, having considered all the evidence of record as well as the record in Docket No. 294, Sagit Tribe v. United States, supra, finds and concludes that as of March 8, 1859, the effective date of the 1855 Treaty of Point Elliott, the ceded area as a whole totalled 9,233 acres, and had a fair market value of \$17,000.

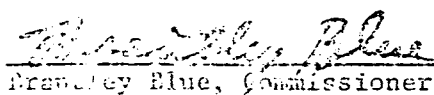
The Commission further finds and concludes that the payment of \$11,245.04 by the defendant to the Samish Tribe under the provisions of the Treaty of Point Elliott of 1855 for lands worth \$17,000 in 1859 constituted unconscionable consideration within the meaning of Clause 3, Section 2 of the Indian Claims Commission Act (60 Stat. 1049, 1050). The plaintiff is entitled to recover from the defendant the sum of \$5,754.96, less gratuitous offsets, if any, which may be allowable under our Act.


 Jerome K. Kuykendall, Chairman


 John T. Vance, Commissioner


 Richard W. Yarborough, Commissioner


 Margaret H. Pierce, Commissioner


 Francisley Blue, Commissioner