BEFORE THE INDIAN CLAIMS COMMISSION

THE SQUAXIN TRIBE OF INDIANS, Plaintiff,	)	
v.	)	Docket No. 206
THE UNITED STATES OF AMERICA, Defendant.	)	

Decided: December 8, 1972

Appearances:

Frederick W. Post,
Attorney for the Plaintiff.

Joseph S. Davies, Jr., with whom was Assistant Attorney General Shiro Kashiwa, Attorneys for the Defendant.

OPINION OF THE COMMISSION

Chairman Kuykendall delivered the opinion of the Commission.

The plaintiff tribe in the instant case claims that the consideration paid by the defendant for its aboriginal lands, located in the State of Washington, was unconscionable within the meaning of Clause 3, Section 2 of the Indian Claims Commission Act (60 Stat. 1049, 1050).

The Squaxin Tribe was one of nine Indian tribes which ceded lands to the United States by the Treaty of Medicine Creek (10 Stat. 1132), which was ratified on March 3, 1855. On June 30, 1969, the Commission

entered its decision that as of the time of the ratification of the Treaty of Medicine Creek, supra, the Squaxin Tribe of Indians had aboriginal title to a specific area of land in the lower Puget Sound region described in finding 9, Squaxin Tribe v. United States, 21 Ind. Cl. Comm. 295, 307 (1969). The Commission ordered that the case proceed to a determination as to the exact acreage contained within that area, its fair market value as of March 3, 1855, the consideration, if any, paid by the United States to the Squaxin Tribe or Band of Indians for the ceded lands, and all other questions bearing upon the defendant's liability to plaintiff herein. Pursuant to the Commission's order of June 25, 1969, a hearing was held in Seattle, Washington, on April 13 and 14, 1971, on all of these issues.

The subject tract lies entirely in Mason County, Washington, and is roughly shaped like a right triangle, beginning at the town of Allyn on North Bay at the head of Case Inlet, then southwesterly on a line to the town of Bayshore on the western shore of Oakland Bay, then southeasterly on a line crossing Hartstene Island, Case Inlet and Herron Island to the town of Herron on the mainland, then northerly on a line back to the town of Allyn.

The evidence as outlined in our findings of fact, discloses that the land area of 21,018 acres was gently rolling and mostly covered by high yield timber. Pickering Passage intersects the tract and divides the mainland from Hartstene Island. Virtually all

transportation was upon water, which accounted for 7,705 acres. The climate was moderate, and there was an abundance of rainfall. There were no known minerals within the region.

The economy of the Puget Sound region was inextricably tied to the lumber industry. Although in 1855 the lumber supply was thought to be virtually endless, labor was limited and the difficulty of processing timber under crude conditions made the lumber itself expensive. Since the first settlers entered the Squaxin tract in 1861, six years after the valuation date, it is reasonable to conclude that most industries in Mason County prior to 1861, including lumbering and sawmills, started outside the boundaries of the tract. Newly arrived settlers supported their families by sawmilling, storekeeping, logging, and shipping.

Prior to 1855 Congress passed public land laws to dispose of the territory or property of the United States, including land in the present State of Washington. A prospective purchaser of lands in this area in 1855 had, under various statutes, several methods by which he could acquire land then in the public domain. The Act of April 24, 1820 (3 Stat. 566), offered a minimum of 80 acres of land for $1.25 per acre payable in cash only. Between the years 1854 and 1862 it was possible to purchase land that had been available under this act for less then $1.25 per acre through the Graduation Act of 1854 (10 Stat. 574). Under this act purchasers received a discount in the price of land depending upon the length of time the land had been available for acquisition.

The Preemption Act of 1830 (4 Stat. 420, as amended) was enacted to protect the claims of squatters occupying and improving public land by giving them an opportunity to purchase the land prior to public auction. The squatters could purchase the land for $1.25 per acre under the Act of April 24, 1820, supra. Under the Oregon Donation Act of September 27, 1850 (9 Stat. 496), settlers were able to acquire a right to land in the Oregon Territory, which included the present State of Washington. The act provided for grants to white settlers who had settled on the claimed land prior to December 1, 1850, and who had lived there for four years and improved the land for their own use. After a settler proved compliance with the terms of the act and the government surveyed the land, a patent would be issued in the name of the settler.

Bounties in the form of land warrants, were given to veterans of military service as early as 1847 pursuant to the Military Bounty Land Acts and Military Land Warrant Acts (2 Stat. 728, and successor statutes). These military bounties and land warrants were transferable and often acquired at discounts up to 60%. The United States, however, accepted the warrants at face value for payment of land purchased. In 1854 the Territory of Washington was granted 46,080 acres of land for university purposes. In 1861 the territorial legislature authorized sale of this land for $1.50 per acre.

As of March 3, 1855, there had been no sales or acquisitions of land comparable in size, location, or character to the Squaxin tract. During the fifteen-year period subsequent to the valuation date, only

slightly more than one-tenth of the land in the Squaxin tract (or 2,348.55 acres) was acquired from the United States by individuals or firms, with the first sale of land occurring in 1861 when three tracts totaling 507.80 acres were sold. More than half of the acreage acquired (1,197.30 acres) was purchased for $1.25 per acre under the Act of April 24, 1820, supra, with the remainder acquired pursuant to the Oregon Donation Act, supra, or as military grants. Both parties' witnesses reported isolated instances of sales close to the valuation date, acknowledging that they could not be viewed as comparable for our evaluation purposes, but rather indicated the scarcity of land transactions at the time.

The Pope and Talbot firm which was the largest lumber company and one of the early purchasers of timberland in the Puget Sound area made its first purchase in 1861 at $1.50 per acre. It continued purchasing some lands from 1863 to 1866, using military scrip, which made the cost less than the listed $1.25 per acre. From 1875 through the 1880's Pope and Talbot purchased numerous 160-acre tracts in the Puget Sound area at about $3.12 per acre, many of which involved timberlands located within a mile-and-a-half of waterways. The bulk of the lands involved in these early purchases had Douglas fir and some cedar trees growing on them.

The transactions shown in the report appended to the report of plaintiff's expert, Mr. John D. Sanwick, are of little assistance in reaching a determination of the Squaxin tract's fair market value. As indicated in finding 20, many sales of small acreages, which were in choice locations and included improvements or involved special situations,

were listed. Many of the sales occurred a number of years after the valuation date and the list contained a number of resales.

Mr. Sanwick concluded that the timber on the Squaxin tract, all of which was easily accessible, was the principal element of value. His opinion was that the tract had a value of $2.40 per acre, which he multiplied by both the land and water acreage to reach a total of $71,335.00 for the entire area. He did not detail his reasons for or method of arriving at this conclusion. We find that his $2.40 per acre valuation is not supported by the evidence in this case.

Plaintiff contends for a figure of $4.50. We find that neither the evidence nor the argument of plaintiff's counsel supports this amount, which is greater than the value found by plaintiff's own expert.

The defendant's appraisers, Messrs. Frank R. Raney and Chase W. Raney, arrived at a figure of $0.80 per acre, which for reasons hereinafter enumerated, we find to be too low. The government was selling some land of this character for approximately $1.25 per acre, but this figure was often the peak asking price. It is true that timber waste and lumber thievery, absence of law and order, and the lack of developed industries tended to depress land sales. However, the Squaxin tract was high yield forest land. There was considerable water frontage providing potential methods of transporting logs to mills and for fishing. Boats plied to many other settlements, including Olympia and Oakland. There was no scarcity of Douglas fir, a sawmill was in operation, and there was plenty of lumber for exportation. The climate was moderate. Since it was possible to purchase land for less than $1.25 per acre, our ultimate fair market

value figure must be adjusted downward somewhat from the government's price to take into account this possibility and the previously mentioned negative factors.

After considering all of the evidence of record, and having made its findings of fact therefrom, the Commission finds and concludes that on March 3, 1855, the effective date of the Treaty of Medicine Creek, the ceded area had a fair market value of $25,000.00, or an average of about $1.19 per acre.

The monetary consideration paid by the defendant pursuant to the provisions of the Treaty of Medicine Creek was $173,936.85, which sum was paid to the nine Indian tribes and bands who signed the treaty. In addition, the treaty provided for the establishment of three reservations for the exclusive use of the Indians. The reservations were a small island called Klah-che-min (now known as Squaxin Island), two sections on Puget Sound near the mouth of the She-nah-nam Creek (now known as Nisqually Reservation), and two sections on the south side of Commencement Bay (now known as the Puyallup Reservation).

The Squaxin Island Reservation contained 1,494.15 acres. The other two reservations were subsequently enlarged by the President pursuant to authority given him by Article VI of the Treaty of Medicine Creek. The Nisqually Reservation ultimately contained 4,718 acres while the Puyallup Reservation was enlarged to 18,062 acres. The three reservations were created for the use and benefit of the nine tribes and bands which signed the Treaty of Medicine Creek, and the United States is entitled to a

credit for the value of the reservation land, which was part of the consideration given for the cession.

The defendant claims that the value of the three reservations was $19,005.00. Finding this value to be supported by the evidence, we have added this sum to the monetary consideration to arrive at a total consideration paid of $192,941.85.

The Squaxin Island Reservation is located about three miles south of the Squaxin tract. The entire 1,494.15 acres were forested giving the island a highest and best use for timber production. Defendant's expert appraiser, Mr. Raney, testified that it had a fair market value of about 85 cents per acre, or a total of $1,270.00.

The Nisqually Reservation is located on the Nisqually River about four miles from Puget Sound. It contained about 3,500 acres of prairie land, which Mr. Raney valued at $1.50 per acre; 950 acres of bottom land, valued by Mr. Raney at 50 cents per acre; and 267 acres of forest land, which Mr. Raney valued at 40 cents per acre. The resulting total value of $5,825.00 represents an average value of about $1.24 per acre.

The Puyallup Reservation was located on the south side of Commencement Bay and along the Puyallup River. It contained about 7,500 acres of bottom land and peat areas, which Mr. Raney valued at $1.00 per acre. Approximately 8,821 acres were forest lands, which he valued at 50 cents an acre. The remaining 1,740 acres were tidal flats, which Mr. Raney considered had no value. The resulting total value of $11,910.00 represents an average value of about 66 cents per acre.

The plaintiff did not present any evidence concerning the fair market

value of the reservation lands. We have concluded that the valuations which Mr. Raney placed upon the three reservations and the evidence in this case support the defendant's claim that it is entitled to a credit of $19,005.00 for the three reservations.

In addition to the value of the three Medicine Creek Treaty Reservations, the United States contends that it is entitled to an additional credit of $1,410.00, representing the fair market value of the Muckleshoot Reservation. However, we have concluded that the Muckleshoot Reservation was not created pursuant to the provisions of the Treaty of Medicine Creek and that it was not part of the consideration paid for the cession under that treaty. When it was recommended that the Nisqually and Puyallup Reservations be enlarged, it was also recommended that a new reservation be established on Muckleshoot Prairie. The recommendation was approved by President Pierce on January 20, 1857 (I Kapp. 919). On April 9, 1874, President Grant by Executive order delimited a described acreage and "set apart" the same "as the Muckleshoot Indian Reservation, for the exclusive use of the Indians in that locality, the same being supplemental to the action of the Department approved by the President January 20, 1857." (I Kapp. 918-19).

Shortly after its establishment, Indians from various tribes were placed upon the Muckleshoot Reservation. However, no Indians who were members of the tribes or bands that signed the Treaty of Medicine Creek were placed upon that reservation. With the exception of the Muckleshoot Tribe (which was not a party to any treaty with the United States), all of the Indians placed upon the reservation were parties to the January 2,

1855, Treaty of Point Elliott (12 Stat. 927). See Duwamish Indians v. United States, 79 Ct. Cl. 530, 555-56, 603-04 (1934). The establishment of the Muckleshoot Reservation was in keeping with the wording and intent of the Treaty of Point Elliott which, like the Treaty of Medicine Creek, contained a provision authorizing the President to remove the Indians from either or all of the special reservations created in that treaty to a general reservation, or to such other suitable place within the territory as he might deem fit.

We have noted that the defendant in asserting offsets in the claim of the Muckleshoot Tribe, Docket No. 98, alleged that it was entitled to an offset against the Muckleshoot award based upon the value of the Muckleshoot Reservation, which had been set apart for the benefit of those Indians "pursuant to the Point Elliott Treaty or the Point-No-Point Treaty" (Amended Answer, Docket No. 98, filed July 1, 1960, p. 12). It further appears that the value of the Muckleshoot Reservation was considered by the parties when they agreed on a compromise settlement of the offsets in the Muckleshoot case. Muckleshoot Tribe v. United States, Docket 98, 12 Ind. Cl. Comm. 743, 753 (1963), affirmed, 174 Ct. Cl. 1283, cert. denied, 385 U.S. 847 (1966).

Under the circumstances we see no basis for concluding that the Muckleshoot Reservation was part of the consideration for the cession under the Treaty of Medicine Creek. Accordingly, the reservation cannot be considered as an offset against any claim arising under the Treaty of Medicine Creek.

All nine of the Indian tribes and bands which signed the Treaty

of Medicine Creek shared the monetary consideration paid by the defendant and benefited from the three reservations created by the treaty. The total value of that consideration was $192,941.85. The Squaxin share of the consideration is based on the proportion which their population bore to the total population of the nine participating tribes.

Both parties accept George Gibbs' population estimates for 1854 and agree that plaintiff tribe had a population of 40 in December of that year, and accept that number as the population of the tribe on March 3, 1855. They disagree, however, as to the total population of all the tribes which were signatory parties to the treaty. Plaintiff alleges this figure to be 1,200 while the defendant indicates that 566 is the correct estimate.

The plaintiff's source for the 1,200 population estimate is a map and letter dated April 30, 1857, to the Commissioner of Indian Affairs, Honorable George W. Manypenny, from Governor Isaac Stevens, the map bearing the label "Map of the Indian Nations and Tribes of the Territory of Washington," and a "tabular statement of the Indians west of the Cascada Mountains showing tribes, population, parties to several treaties, reservations provided for in the treaties and temporary encampments."

The map and tabulation names three tribes, the Qnaksn-amish, Nisqually, and Puyallup as signatories to the Treaty of Medicine Creek, which is only a partial listing of the signatories, and also lists their population as 1,200 on December 26, 1854. No population

breakdown is given by tribes, nor is any information given which would provide a reasonable estimate of the respective populations. Furthermore, the western district of Washington Territory was much larger than the area involved in the Medicine Creek Treaty, and the population of that area would be much greater than the population of the nine signatory tribes.

Dr. George Gibbs' estimate, in tabular form, shows the total Indian population to be 7,559, and gives a breakdown by tribe and population. This tabulation, defendant's exhibit R-151, is relied on by both parties as supplying the figure of 40 to represent the Squaxin tribal population. The Commission believes Dr. Gibbs' tabulation to be the best evidence available of the population of the Medicine Creek Treaty signatories. In view of the fact that both parties rely to a great extent on Dr. George Gibbs, we have determined to use, with one exception, the population estimates as compiled by Dr. Gibbs.

Dr. Gibbs did not include an estimate of the population of the T'Peekskin who were a party to the treaty. We find it reasonable to accept the defendant's estimate of 30 as the population of this small tribe. Thus, Dr. Gibbs' estimate of the population of eight of the tribes plus the estimate of 30 for the T'Peekskin produce the

following tabulation:

Tribe	No. of Indians	Percent of All Indians
Nisqually	184	40.89%
Puyallup	50	11.11%
Squaxin	40	8.89%
Steilacoom	25	5.56%
S'Homanish	33	7.33%
Steh chass	20	4.44%
Squi-aitl	45	10.00%
T'Peekskin	30	6.67%
Sa-Hah-Wamish	23	5.11%
	450	100.00%

Since the Squaxin Tribe was 8.89% of the total population of the 450 members of all the signatory tribes, its share of the consideration of $192,941.85 paid to the Indian tribes for the land ceded under the treaty was $17,152.53. Thus the Squaxin Tribe received $7,847.47 less than the fair market value of its land. The tribe was paid only about 69% of the true value of its lands, which was a discrepancy of about 46% of the amount paid. We conclude that the payment of $17,152.53 as consideration for the cession of lands worth $25,000.00 was unconscionable within the meaning of Clause 3, Section 2 of the Indian Claims Commission Act.

The plaintiff is entitled to recover $7,847.47 less gratuitous offsets, if any, allowable under Section 2 of the Indian Claims Commission Act.

Jerome K. Kuykendall, Chairman

We Concur:

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner