

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

ADDITIONAL FINDINGS OF FACT

The Commission has previously determined that the Squaxin Tribe held Indian title to lands described in finding 9, 21 Ind. Cl. Comm. 295, 307 (1969), which lands were ceded to the United States on March 3, 1855.

The Commission makes the following findings of fact, which are supplemental to the findings numbered 1 through 9, previously entered herein, 21 Ind. Cl. Comm. 295 (1969).

10. Location of Lands to be Valued.

The lands are located in the State of Washington, which was the Territory of Washington at the time the Medicine Creek Treaty was signed in December of 1854 and at the time the treaty was ratified on March 3, 1855 (10 Stat. 1132). The territory became a state in 1889. Washington Territory had been created out of the Territory of Oregon by the Act of March 2, 1853 (10 Stat. 172), seven years after the joint occupancy of the area by England and the United States was ended by the Treaty

of 1846 (9 Stat. 869), and five years after the Territory of Oregon was established on August 14, 1848 (9 Stat. 323).

11. Land Description.

The Squaxin tract, which lies entirely in Mason County, Washington, is triangular in shape, and consists of 21,018 acres of land. There are 7,705 acres of navigable water adjacent to the land and within the triangular area we defined in the first phase of this case. It is located in the extreme southwest portion of the Puget Sound area along Case Inlet, Pickering Passage, and Oakland Bay some 15 miles northerly of the present city of Olympia, in Thurston County. The major portion of this tract is located on the mainland of the Olympic Peninsula, following the shorelines of North Bay and Case Inlet. There are twelve miles of Puget Sound water frontage on Pickering Passage and five miles on Oakland Bay, as well as smaller frontage on Stretch Island, Reach Island, and the northerly ends of Hartstene and Herron Islands. Good water frontage around three islands provided potential methods of transporting logs to mills. Boats operating on Puget Sound furnished transportation to other settlements within reach of water transportation, and to ships in and out of the area.

The terrain of the Squaxin tract is gently rolling, varying in elevation from sea level to 100 or 200 feet. The entire rolling tract has a moderate bank rising from salt water. Pickering Passage intersects the tract and divides the mainland from Hartstene Island.

Two streams drain the Squaxin tract, Deer Creek emptying into Oakland Bay and Sherwood Creek emptying into North Bay. The eastern portions are drained by numerous small streams and creeks draining into Pickering Passage. Spencer Lake and Phillips Lake along the southern boundary drain the areas surrounding them. The location of this tract on or adjacent to shorelines and waterways provided access to fish and shellfish, which were abundant in the area. 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.

12. Climate and Precipitation.

The climate of the Squaxin tract is the mild coastal climate of Puget Sound with cool summers and mild winters. Precipitation ranges from approximately 40 inches to approximately 86 inches per year, or a mean annual rainfall of about 63 inches. Precipitation occurs year round but winter months experience heavy rains; there is a mean annual snowfall of 10.5 inches. The mean temperature is 51°, while the maximum is approximately 62° and minimum is approximately 40°. The highest temperature recorded is 104°, and the lowest is -2°. There is a reasonably long growing season and sufficient moisture for most crops. Agriculture is limited to those crops which do not require high temperatures to mature.

13. Classification of the Land.

Both the plaintiff's and the defendant's appraisers have classified the lands in the Squaxin tract as timberlands, and both

have testified that the highest and best use of the Squaxin lands was for production of timber.

Plaintiff's appraiser classified all the land as high yield timber land.

Defendant's appraiser classified the lands as follows:

Forest land, high yield (accessible to water)	12,870 acres
Forest land, low yield (accessible to water)	2,623 acres
Forest land, high yield (accessible in foreseeable future)	5,325 acres
Forest land, low yield (accessible in foreseeable future)	<u>200 acres</u>
Total	21,018 acres

In the area defendant classified as high yield, Douglas fir was the major timber species, but significant amounts of western red cedar and western hemlock were present, and small amounts of red alder and big leaf maple were also found.

In the area designated by defendant as forest with a low yield, Douglas fir was predominant but minor amounts of western red cedar, western hemlock, and a smaller amount of hardwood were present.

Virtually the entire tract was forest land with high yield. The Commission finds that on March 3, 1855, the highest and best use of the Squaxin lands was for production of timber.

The entire tract of forest land was within 2-1/2 miles of water. Of the 21,018 acres, only 5,525 acres were not within 1-1/2 miles of water transportation.

14. Minerals.

No mineral deposits were known to exist within the area at the date of valuation, and there is no evidence that in 1855 the tract had any potential as mineral bearing land. In adjacent Thurston County there are records showing several leases of coal lands in 1853, but the coal was of inferior quality.

15. General Economic Conditions.

The economy of the Puget Sound region was inextricably tied to the lumber industry. Although in 1855 the timber supply was thought to be virtually endless, labor was limited and processing timber under crude conditions made the lumber itself expensive. Logging technology had not advanced beyond the stage of the axe and ox as of 1855, and the cost of getting logs out of the woods was extremely high. Those areas which could be cut economically were limited. The cost of logging increased in proportion to the distance between the tree and the water or mill site.

In 1853 a sawmill was constructed on Mill Creek, which emptied into Hammersley Inlet south of the Squaxin tract, and was in operation on the valuation date herein. Other sawmills were operating at a site named New Market, now Tumwater, near the present city of Olympia. In September 1852, there were three sawmills in operation in what was to become Washington Territory, and two years later there were 33. In 1855, 24 sawmills operated in the Puget Sound area. The 1860 census of the United States, in its section on manufactured goods, identifies two sawmills in Sawamish (later Mason) County, employing

a total of six men, and producing \$15,000.00 worth of sawed lumber annually. Since the first settlers entered the Squaxin tract in 1861, six years after the valuation date, it is obvious that any industries existing in Mason County prior to that date must have operated outside the boundaries of the Squaxin tract.

Although settlers in western Washington had been quite isolated, by 1853 lumber mills in Puget Sound and southern Washington's coastal regions were proliferating. By 1854, San Francisco, the major market for Puget Sound lumber, had become saturated with northwestern lumber and prices plunged. In 1855, the unfavorable business conditions in California were further fueled by the post gold rush slump. Lumber prices in San Francisco dropped to a very low level.

By January of 1855, Puget Sound lumbermen had begun to search for new markets in such places as South America, Australia, Hawaii, the Phillipines and the Orient. However, the long voyages and high freight rates involved in shipping cargoes to such distant lands cut deeply into profits. Overproduction and stiff competition developed in the lumber market in the second half of the 1850's, partly as the result of many new sawmills being built. In addition, money was scarce, and interest rates were high.

16. Transportation and Access.

Transportation, even in the settled portions of Mason County, was primitive and laborious as late as the 1880's and the whole of Washington was relatively inaccessible because of the absence of a railroad. During these times transportation from the Squaxin tract to other points necessarily was by water.

17. Availability of Public Land.

Prior to 1855, various public land laws had been passed by Congress. The prospective purchaser of lands in this area in 1855 had, under these statutes, several methods by which he could acquire land then in the public domain.

A. Act of April 24, 1820 (3 Stat. 565). Under this act, a minimum of 80 acres of land could be purchased through public sale for \$1.25 per acre, payable in cash only.

B. Graduation Act of 1854 (10 Stat. 574). During the period of 1854 to 1862 it was possible to purchase land that had been available under the Act of April 24, 1820, for less than \$1.25 an acre, with the savings depending upon the length of time the land had been available for acquisition. The existence of the law and resulting cheap price for land in other areas was an important influence upon land prices in Washington Territory.

C. Preemption Act of 1830 (4 Stat. 420, as amended). This law protected the claims of squatters occupying and improving public land by giving them an opportunity to purchase the land before it was offered at auction. The squatters could purchase the land for \$1.25 per acre under the Act of April 24, 1820, supra.

D. 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, of course, the present State of Washington. The act originally provided for grants of 320 acres to single, and 640 acres to married white settlers who had settled on the land claimed prior to December 1, 1850. The act required that the settlers live

on the land for four years, cultivate and improve it for their own use and not as an agent for anyone else, and limited the donations to one per person. Actual proof of a settler's compliance with all the terms of the act was required and a survey had to be completed before a patent could issue.

In 1851, 58 entries were made in Washington Territory under the Donation Act, and in 1852 there were 117 entries.

E. Military Bounty Land Acts and Military Land Warrant Acts (2 Stat. 728 and successor statutes). Bounties, in the form of land warrants, were given to veterans of military service as early as 1847. These were transferable and often were acquired at a discount, sometimes as high as 60 per cent. However, the United States accepted the warrants at face value for payment of land purchased. Land acquired in this manner generally cost approximately 50 cents an acre.

F. University Grants (10 Stat. 306). 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.

All of these acts and the general policy of the Government to provide public land at low cost had some effect on the value of the Squaxin tract.

18. Land Disposals.

There were no disposals of land in the Squaxin tract during the period under consideration. However, the record contains evidence of subsequent transactions which indicate some demand at a later date.

The first sale occurred in 1861, six years after the Treaty of Medicine Creek, when three tracts aggregating 507.80 acres were sold. In 1863 approximately 527.25 acres were sold, and only 34.25 acres were disposed of in 1865. During the years between 1861 and 1869 the Government had succeeded in selling only 2,348.55 acres or 11.17 percent of the Squaxin tract. Slightly more than half of this acreage (i.e., 1,197.30 acres) was purchased under the Act of April 24, 1820, supra, at the stated price of \$1.25 per acre. The remainder was acquired pursuant to the Oregon Donation Act of September 27, 1850, supra, or as Military Grants which required little cash to gain title from the Government.

19. Comparable Sales and Early Lumbering Operations in the Puget Sound Area.

There is a scarcity of evidence of any private sales or acquisitions of land comparable in size, character and location in or close to the year 1855.

In 1861 the Pope and Talbot firm, which was the largest lumber company and one of the early purchasers of timber land, made its first purchase in the Puget Sound area when it acquired 225 acres in Snohomish County from the Board of the University of Washington Commissioners at \$1.50 per acre. The firm continued purchasing lands from 1863 to 1866, acquiring an additional 18,803.25 acres from the same source in Kitsap County, and some 17,398 acres from the United States, using military scrip for both purchases. From 1875 through the 1880's Pope and Talbot purchased 160-acre tracts in the Puget

Sound area at about \$3.12 per acre, all 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.

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

20. Expert Witness--Plaintiff.

Mr. John D. Sanwick, a real estate appraiser and consultant with a Seattle firm, appeared as an expert witness for the plaintiff. He testified that it was his opinion the Squaxin tract had a market value of \$2.40 per acre, which he multiplied by 29,723 acres ^{1/} (the land and water area) to arrive at a total valuation of \$71,300.00. His brief testimony and his appraisal report of two pages offer little more than his own unsupported conclusion to sustain his \$2.40 figure.

Mr. Sanwick prepared a list of transactions involving sales of land situated relatively close to the Squaxin tract in Pierce County and Thurston County. While Mr. Sanwick did not compute any average selling price for these transactions or indicate his conclusions, from the recorded data plaintiff's counsel computed an average price per acre of \$4.18. We have examined the listed transactions and find them to be of little assistance in reaching a determination of the 1855 fair market value of the tract in question. The transactions in Pierce County occurred during the period from October 1857 through

^{1/} The correct land plus water area is 28,723 acres.

June 1860, some two-and-one-half to five years after the valuation date. Included are a number of sales which indicate on their face that improvements or special circumstances were involved, and that the prices do not in any way reflect the value of timberland in the area. For example, there are three listed sales of land near the Hudson Bay Company's warehouse community called Thompson's Land Claim. The transactions were of 160 acres for \$5,000.00 (or \$31.25 per acre); of a 1/3 interest in 160 acres for \$3,000.00 (or \$56.25 per acre); and of 160 acres for \$1,000.00 (or \$6.25 per acre). The elimination of these three transactions from the Pierce County listing would reduce the average price per acre for that county by about \$1.00 per acre. Furthermore, a number of the sales appear to be resales of the same land. Many were resales of land acquired under the Oregon Donation Act, which transactions would have included improvements. Obviously many of the sales were of small tracts in the most desirable locations with improvements thereon.

The Thurston County list covered a period from 1852 to 1857, which would be more relevant to the 1855 valuation date. However, these transactions likewise are of little value as an indication of the fair market value of the Squaxin tract. There are four listed transactions of a 1/3 interest, a 1/6 interest, a 1/6 interest, and a 1/3 interest in a sawmill on four acres at New Market. Three of the transfers show a consideration of \$2,000.00, and the fourth lists

the price as \$3,000.00. Also included are nine sales ranging in size from three acres to 80 acres of portions of the "Sylvester Land Claim", all for an average consideration of \$10.00 per acre.

Plaintiff's counsel has urged that the Commission find a fair market value of \$4.50 per acre, which, multiplied by the 21,018 acres of timberland, would produce a value of \$94,581.00 for the entire tract. However, no evidence is presented which could explain his reasons for or method of arriving at this conclusion. We find that neither the evidence nor counsel's argument supports this amount, which is greater than the value found by plaintiff's own expert.

21. Expert Witnesses--Defendant.

The expert witnesses for the defendant were Messrs. Frank R. Raney and Chase W. Raney, partners in a real estate appraisal firm in Seattle. Their exhaustive appraisal report is in evidence and Frank Raney testified for the defendant. He stated that he considered the fair market value of the Squaxin tract as of March 3, 1855, to be \$16,815.00, or \$0.80 an acre. In arriving at that figure the witness valued the 21,018 acres of forest land at \$0.80 per acre, or \$16,815.00, with the 7,705 acres of salt water considered as enhancing the value of the land but not valued as such and with no value placed on the fishing rights. Mr. Raney's opinion was that these forest lands were valuable because they were all near water and were high producing timberlands. However, he cited the common

practice in those days of cutting the tree at a very high level where it was narrow, which resulted in waste of the tree base which was thick and difficult to saw. This custom produced less than full utilization of timber. In addition, lumber thievery was common, law and order lacking, and Indian hostility present, all of which he considered as lowering the market value.

In arriving at the \$0.80 an acre figure, defendant's Exhibit R-156 purports to show that various government legislation tended to put a \$1.25 ceiling on the price of privately owned land. Defendant noted that a willing, able, and well-informed buyer, on March 3, 1855, would purchase from a willing and well-informed seller knowing that a large portion of the Squaxin tract was accessible timberland with a high yield of lumber, which could be used for building construction or exportation, ideally located on good water frontage for fishing and already existing boats to ship goods in and out of the area, that a sawmill was in operation on Mill Creek, that the tract was close to Olympia for trade and well within reach of Oakland, and that the climate was moderate. However, defendant also noted that some extreme temperatures hit the area, that no indication of improved transportation by water or rail was visible in 1855, that the tract was somewhat isolated from major developments at Steilacoom and Seattle, and that no potential farmlands and very few people were on or near the tract. Defendant believed these disadvantageous factors tended to depress land prices and so arrived at a value of \$0.80 per acre.

22. Monetary Consideration - Treaty of Medicine Creek.

In consideration for the cession by the Indian parties to the Treaty of Medicine Creek, the United States, by Article IV, agreed to pay to the tribes and bands the total sum of \$32,500.00 -- designated amounts to be paid annually and applied for the use and benefit of the Indians under the direction of the President. By Article V the United States agreed to pay the sum of \$3,250.00 to enable the Indians to settle on their reservations. By Article X the United States agreed to establish and maintain, for a period of 20 years, an agricultural and industrial school with instructors, as well as various craftsman shops and a physician. The United States expended \$173,936.85 in fulfilling its obligations under these articles of the treaty.

23. Reservations Established - Treaty of Medicine Creek.

Article II of the Treaty of Medicine Creek provided for the establishment of three reservations for the exclusive use of the nine Indian bands or tribes who were signatories. The reservations were:

- (1) The small island called Klah-che-min, containing slightly more than two sections of land.
- (2) A square tract containing two sections, or 1,280 acres, on Puget Sound, near the mouth of the She-nah-nam Creek.
- (3) A square tract containing two sections, or 1,280 acres, lying on the south side of Commencement Bay.

Article VI of the Treaty provided:

The President may hereafter, when in his opinion the interests of the Territory may require, and the welfare of the said Indians be promoted, remove them from either or all of said reservations to such other suitable place or places within said Territory as he may deem fit

The Island of Klah-che-min, now called the Squaxin Island Reservation, contained 1,494.15 acres. After the ratification of the treaty on March 3, 1855, Governor Stevens concluded that the reservation "near the mouth of She-nah-nam Creek" was neither large enough nor suitably located, and he therefore recommended that its location be changed and that it be enlarged under the authority contained in Article VI of the Treaty of Medicine Creek. The recommendation was approved, and the relocated and enlarged reservation was created by the Executive Order of January 20, 1857 (I Kapp. 920). This reservation, known as the Nisqually Reservation, contained 4,718 acres.

The reservation "lying on the south side of Commencement Bay" and known as the Puyallup Reservation was also enlarged at the same time as the Nisqually Reservation upon Governor Stevens' recommendation (I Kapp. 919-20). Through an error in the survey of the reservation, it was later discovered that a portion thereof had been excluded. To correct this error, the President, on September 6, 1873, ordered that the reservation be extended so as to contain the excluded portion (I Kapp. 922-923). The reservation as thus enlarged contained 18,062 acres.

24. Value of the Three Medicine Creek Treaty Reservations.

In addition to the monetary consideration of \$173,936.85 expended

