

BEFORE THE INDIAN CLAIMS COMMISSION

THE NISQUALLY TRIBE OF INDIANS,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 197
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: February 7, 1973

ADDITIONAL FINDINGS OF FACT

The Commission has previously determined that the Nisqually Tribe held Indian title to lands described in Finding 9, 21 Ind. Cl. Comm. 173, 185 (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 10, previously entered herein, 21 Ind. Cl. Comm. 173 (1969).

11. 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. 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).

12. Land Description.

The Nisqually tract, which lies in Pierce, Thurston, and Lewis Counties, in the State of Washington, has an irregular shape and contains 152,500 acres. This area, running from a narrow opening on Puget Sound, up the lower reaches of the Nisqually River in a roughly southeasterly direction to the town of Mineral, is approximately ten miles wide and approximately thirty-five miles long at its longest and widest points. Elevations vary greatly within the tract, ranging from sea level at the mouth of the Nisqually River to 2,600 feet in the southeastern portion.

The entire tract is drained by the Nisqually River, which flows from what is now Alder Lake (an artificial lake built about 1930) at the junction of the county lines of Pierce, Thurston and Lewis Counties in a generally northwesterly direction to its outlet just east of Nisqually Reach on Puget Sound. Seven creeks and one river empty into the Nisqually River. Ten natural lakes dot the tract. There are broad expanses of mud flats and swampland at the mouth of the Nisqually on Puget Sound.

The lower or northerly 20 miles of the Nisqually tract is generally rolling land, except for several level and treeless prairies. In the southern and eastern part of the tract, the land becomes hilly, with narrow valleys containing small amounts of bottom land with high hills or bluffs rising sharply from the creek bottoms. Much of this area contains

gravel and rocks on the surface and is fairly well covered by brush and trees. There are some valleys and prairies. The southwestern portion of the tract is rough country and consists largely of mountains which rise as high as 2,600 feet.

13. Climate and Precipitation.

The northern portion of the Nisqually tract enjoys the mild, moist coastal climate common to the Puget Sound region, while the southeastern portion, rising into the mountains, has a harsher, more rigorous climate.

Rain and snowfall average 52 and 10 inches, respectively, in the northern part of the tract. Summer temperatures range generally between 50° and 65°, dropping between 38° and 50° in the wintertime.

The southeastern portion of the tract has an average 44 inch snowfall with rainfall from 56 to as much as 117 inches annually.

Although there is ample moisture for agriculture, only crops which do not require high temperatures can grow to maturity.

14. Classification of the Land.

Both parties have classified most of the land as timberland and the remainder as prairie and bottom land. Defendant's appraiser classified the tract as follows:

Prairie (near navigation)	27,300 acres
Potential agricultural land (bottom land)	11,590 acres
Forest (accessible in foreseeable future)	112,850 acres
Tidal flats	<u>760</u> acres
Total	152,500 acres

While plaintiff's expert placed more acreage in the timber category, and consequently less as prairie land, plaintiff's counsel has agreed that the classifications made by defendant's expert are correct.

The Commission finds that on March 3, 1855, approximately three-fourths of the area had a highest and best use for the production of timber and the remaining one-fourth was prairie and bottom land with a highest and best use for agricultural pursuits.

15. Prairie and Agricultural Land.

The prairie in the central and northern portions of the tract had slight slopes with only a few fir trees scattered through it and was favorably situated near navigable waters. There were bottom lands on the nearly level terrain along the Nisqually River and in closed depressions of the adjoining uplands. About half of the bottom land was of good quality and highly suited for cultivation. The remaining half was of poorer quality, being subject to damage by river overflow, and could not be cultivated without artificial drainage.

The prairie and bottom land was the choicest of all the land in the tract. There was a limited amount of such land in the Puget Sound area and it had a substantially higher value than other types of land.

16. Forest Land.

Most of the tract was forested. Douglas fir was the major timber species, but there was some western red cedar, western hemlock, and red alder growing in the area. The most heavily forested portion of the tract was the uplands which extended from approximately eight to 40 miles from Puget Sound. The topography of this area was rolling with slopes which ranged from six to fifteen percent, but with some as steep as twenty-five percent. There was some level forest land, but most of it was of comparatively poor quality. Most of the steepest forest land was in the southern portion of the tract.

While some of the forested land was quite distant from Puget Sound and the Nisqually River, it was apparent that it probably would be marketable within the foreseeable future. Those areas which were along the lower reaches of the Nisqually River and Puget Sound were immediately accessible and therefore contributed a greater value per acre. The timbered lands along the upper reaches of the Nisqually River, while of higher yield, obviously would not be logged for some time after 1855 and consequently it had a lower market value.

17. Minerals.

Coal of an inferior quality was the only mineral deposit known to exist near the tract at the date of valuation. The records of Thurston County disclose three leases of coal lands in 1853. There is no evidence that the Nisqually tract was thought to have any potential for mineral production as of the valuation date.

18. 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 in which the timber 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.

The first sawmill on Puget Sound was a small waterpower mill at a site named New Market, now Aumwater, 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 first steam powered sawmill was Yesler's mill which was built in what is now Seattle in the winter of 1852-53. It had a capacity of 10,000 to 15,000 board feet per day and became the main industry in Seattle. For years it furnished employment for local inhabitants.

The only millsite in the subject area in the early days was that of James McAllister. It was near the mouth of the Nisqually River, where he had a small upright mill. Some of the lumber produced here was shipped to San Francisco. McAllister and other mill owners used shingles as legal tender to pay their bills at Fort Nisqually, located

north of the Nisqually tract. The books at Fort Nisqually indicated that the McAllister mill furnished the company with 220,000 shingles, and that he received \$10.00 per thousand for 35,500 of them.

By 1854, San Francisco, the major market for Puget Sound lumber, had become saturated with northwestern lumber and prices fell. 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 1855, Puget Sound lumbermen were shipping to new markets in such places as South America, Australia, Hawaii, the Phillipines and the Orient. However, the long voyages and resultant high cost of 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 the new sawmills which had been built. In addition, money was scarce and interest rates were high. This crisis did not hit the settlers of the Nisqually tract as hard as it did those in other parts of the Puget Sound area, because they, (those living at the southern end of the Sound), had other means of livelihood and consequently were not so dependent on the lumber industry.

This tract provided immediate access to fish and shellfish which were abundant and had fed the Indians of the area for centuries. While fishing had not attained the status of an industry, fish and shellfish were a major source of food supply, and their potential as a future factor in the region's economy was apparent.

Agriculture necessarily had its place in the lives of the early white settlers. They farmed the land primarily to survive. Those portions of the Puget Sound region with fertile soil were ideally suited to producing crops such as wheat, barley, oats and some orchard and garden products. Grasses in the Puget Sound valleys were sufficient to sustain sheep and cattle.

19. Transportation and Access.

Transportation, even in the settled portions of the tract, was primitive and remained so as late as the 1880's. There did exist a trail from Olympia to the Nisqually River where there was a ferry which enabled one to proceed to Fort Nisqually. The Nisqually River, which runs through the area, could not be navigated by anything much larger than a canoe. In addition, the tract had only a narrow frontage on Puget Sound. Areas away from the navigable waterways in western Washington were relatively inaccessible in 1855 because of the absence of inland transportation facilities, such as railroads and highways.

20. 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 566). 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, for less than \$1.25 an acre, land that had been available under the Act of April 24, 1820, with the price 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. The Oregon Donation Act of September 27, 1850 (9 Stat. 496), enabled settlers to acquire a right to land in Oregon Territory, which included 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 percent. 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 Nisqually tract.

21. Land Disposals.

Only a small portion of the land in the Nisqually tract had passed from the public domain into private ownership prior to March 3, 1855. As of that date, more than 99.5 percent of the land was still owned by the defendant.

Settlement and land disposals increased during the decade following 1855, and nearly 3,000 acres were acquired under the Oregon Donation Act of September 27, 1850, supra, during that period. A slightly smaller amount was sold for cash at the stated price of \$1.25 per acre, and still lesser amounts were claimed under the Homestead Act and bought

with military scrip. In the period between 1865 and 1870 less than 1,000 acres were claimed under the Oregon Donation Act of September 27, 1850, supra, while approximately 2,500 acres were sold under the Act of April 24, 1820, supra.

Thus, up to 1870, some 15 years following the date of valuation, only 4,461.81 acres had been disposed of under the Oregon Donation Act. In addition, 1,264.63 acres had been claimed under the Homestead Act, 480 acres acquired under the Military Scrip Act, and 4,640.26 acres had been sold for cash under the Act of April 24, 1820, supra. This amounted to 14.239 percent of the total acreage of the tract.

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

There is a scarcity of evidence of any private sales 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 timberland in the Puget Sound region, made its first purchase in that 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

