

BEFORE THE INDIAN CLAIMS COMMISSION

THE S'KLALLAM TRIBE OF INDIANS,)
)
Plaintiff,)
)
v.) Docket No. 134
)
THE UNITED STATES OF AMERICA,)
)
Defendant.)

Decided: November 5, 1976

ADDITIONAL FINDINGS OF FACT

The Commission finds the following facts, which are supplemental to findings of fact numbered 1 through 40 previously entered herein:

41. Pleadings. On August 16, 1972, defendant filed its amended answer claiming offsets for the acquisition of land at a cost of \$73,701.45, and for goods and provisions furnished in the amount of \$4,771.51. A copy of the General Accounting Office supplemental report, defendant's Exhibit G-1, dealing with these gratuitous expenditures had been filed on February 3, 1971. In its proposed findings of fact and brief filed on October 6, 1975, the defendant, concluding that it was unable to establish that expenditures for clothing, household equipment, supplies and provisions were for the benefit of plaintiff, declined to pursue any claim for these gratuities. We find that these expenditures which the defendant declines to claim are properly excludable and should not be allowed as offsets.

42. Land Purchased In Trust For The S'Klallam Tribe. In 1936 and 1937, pursuant to Section 5 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 984, the United States gratuitously purchased for the benefit of the plaintiff tribe 16 parcels of land consisting of 1,604.44 acres at a cost of \$73,701.45. All but one parcel was located in the area which

the Commission had previously determined to have been aboriginally owned and thereafter ceded by plaintiff to the United States under the 1855 Treaty of Point-No-Point, 12 Stat.933. These fifteen parcels, consisting of 372.74 acres and located near the mouth of the Lower Elwha River, west of Port Angeles, Washington were reacquired by the United States at a total cost of \$58,701.54. For the sake of convenience they will be collectively referred to hereinafter as "the Lower Elwha Tract". The parcel located outside of the plaintiff's aboriginal land consisting of 1,231.70 acres was acquired by the United States in 1936 for \$15,000. This tract is located across a small inlet from Port Gamble, Washington, approximately three miles from the S'Klallam aboriginal area, and hereinafter will be referred to as "the Port Gamble Tract".

43. Course of Dealings. The entire course of dealings and conduct between the United States and the plaintiff tribe during the period of time pertinent herein, does not in good conscience preclude the defendant from claiming and receiving credit for all allowable offsets against any award herein.

44. The Lower Elwha Tract. The result of the defendant's 1936 and 1937 reacquisition of lands within "the Lower Elwha Tract" for the benefit of the plaintiff tribe simply was that, after a period of 77 or 78 years, the United States has returned to the S'Klallam Tribe certain lands which it had originally acquired from these Indians under the 1855 Treaty of Point-No-Point. Since the plaintiff tribe was in effect deprived of the

beneficial use of these lands for 77 or 78 years, the value of such loss of use to the Indians far exceeds the value of the defendant's claimed offset.

45. The Port Gamble Tract. In 1937, the United States gratuitously expended \$15,000 to purchase for the benefit of the plaintiff tribe 1,231.7 acres in "the Port Gamble Tract".

46. Conclusion


In summation, the Commission finds and concludes as a matter of law that:


(a) the defendant's claimed offset of \$58,701.54 that was expended by the United States in 1936 and 1937 for the purchase of the lands within "the Lower Elwha Tract" will be disallowed.


(a) the defendant's claimed offset of \$15,000 for the purchase in 1937 of the lands within "the Port Gamble Tract" will be allowed.

From the interlocutory award \$400,820.00 previously entered herein (23 Ind. Cl. Comm. 510), there will be deducted \$15,000, and the plaintiff will be entitled to a final award in the amount of \$385,820.00.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret A. Pierce, Commissioner


Brantley Blue, Commissioner