

## BEFORE THE INDIAN CLAIMS COMMISSION

|                               |   |                 |
|-------------------------------|---|-----------------|
| BOIS FORTE BAND, et al.,      | ) |                 |
|                               | ) |                 |
| Plaintiffs,                   | ) |                 |
|                               | ) |                 |
| v.                            | ) | Docket No. 18-D |
|                               | ) |                 |
| THE UNITED STATES OF AMERICA, | ) |                 |
|                               | ) |                 |
| Defendant.                    | ) |                 |

ADDITIONAL FINDINGS OF FACT

The Commission makes the following Findings of Fact, which are supplemental to the Findings numbered 1 through 11 previously entered herein, 21 Ind. Cl. Comm. 254 (1969):

12. Description of the Land.

The land to be valued is identified as Royce Area 482, a nearly rectangular tract located in northern Minnesota. The date of valuation is April 26, 1866, the date of ratification of the treaty of cession, dated April 7, 1866, 14 Stat. 765. The tract is bounded on the north by the Rainy River and Rainy Lake, which form the Canadian border. On the west is the Big Fork River and on the east is the Vermilion River. The southern boundary is a straight line about 60 miles south of the Canadian border. Excepted from the land to be valued are Royce Areas 483 and 484, reservations physically located within the aforementioned boundaries, but not included in Royce Area 482.

13. Topography.

Royce Area 482 is fairly level, with elevations ranging from approximately 1500 feet in the southern portions of the tract, to 1108

feet at Rainy Lake at the northern border, and 1106 feet at the juncture of the Big Fork and Rainy Rivers in the northwestern portion of the area. The area is drained by innumerable rivers, including the Big Fork, Rainy, Little Fork and Vermilion Rivers. In addition there are many lakes throughout the area. The general pattern of drainage in the area is north to the Namakan and Rainy Lakes, and Rainy River, and thence westward to Lake of the Woods. From there the water flows northward in the Winnipeg River to Lake Winnipeg, the Nelson River and, ultimately, Hudson Bay. There is no drainage southward from the subject area into the Mississippi River system or eastward into Lake Superior.

14. Climate.

The subject area has a four season climate. However, due to its extreme northern location, the growing season is necessarily short, ranging from 120 to 125 days. During the rest of the year the ground is often frozen, prohibiting agricultural activity but facilitating lumbering.

The average annual precipitation ranges from 24 to 28 inches. The primary rainfall is in the months of May, June, July and August, facilitating crop growth in those months. Only an average of 1.5 to 3.5 inches of precipitation falls in the months of December, January and February, lessening the likelihood of a paralyzing snowfall.

15. History Prior to 1866.

The subject area was known to Europeans 200 years before the valuation date of April 26, 1866. The French were the first Europeans to enter Minnesota. Commencing in the 1640's, they came by way of

Lake Superior as explorers, traders, voyagers and missionaries. The French developed the fur trade and searched for minerals, particularly copper. The French controlled the Lake Superior region and the Upper Mississippi Valley until the close of the French and Indian War in 1763, when Canada, which then included the subject land, passed to British sovereignty.

During the British rule no attempt at new settlement was made. The British emphasized fur trade with the Indians, and operated a chain of trading stations which served as major distributing and collection posts. Although British sovereignty over Minnesota east of the Mississippi River terminated in 1783 (8 Stat. 80), the British remained in control and continued their fur trading until about 1816.

In 1787, eastern Minnesota was made part of the Northwest Territory. The limits of the Northwest Territory were diminished as States carved from the Territory were admitted into the Union. Eastern Minnesota successively became part of Indiana Territory (1800-1809), Illinois Territory (1809-1818), Michigan Territory (1818-1836) and Wisconsin Territory (1836-1848). The Territory of Minnesota, including that portion of both Dakotas east of the Missouri River, was established in 1849. Minnesota was admitted as a State in 1858.

#### 16. Population.

There was no substantial white population in the subject area before the valuation date. In 1860 Itasca and St. Louis Counties, of which the subject area was only a part, had a combined population of 457 persons.

In 1870, the population of these counties had increased to 4,657. However, almost all of this growth occurred in southern St. Louis County, outside of the subject area. At the time of the cession, the population of the area consisted mainly of Chippewa Indians, trappers and traders.

Although the subject area had little population at the time of cession, the State of Minnesota, the United States in general, and Canada were all undergoing a period of extremely rapid population growth. Between 1860 and 1865, the population of Minnesota grew from 172,123 to 250,099. By 1870, after the date of cession, the Minnesota population had grown to 439,706.

Canada west of Lake Superior was also beginning a period of rapid growth. The Red River region was developing in Canada as it was in Minnesota and Dakota territory. In 1870 Manitoba Province had a population of 21,800, which included 9,890 Red River half-breeds. The Province of Ontario in 1861 had a population of 1,396,000, which grew to 1,962,000 by 1869.

#### 17. Transportation.

From the earliest times, trappers, fur traders and explorers followed an east-west waterway system across the northern boundary of the subject area. Described by one writer as the "Voyageur's Highway," this route extended from International Falls, in the northwestern corner of the subject area, to Grand Portage on Lake Superior. The Rainy River system (Rainy Lake, Rainy River, Big Fork, Little Fork and Vermilion Rivers) served as a waterway to Canada for timber cut from the area.

Although there were no railroads in the area in 1866, railroads were in operation in parts of Minnesota, and in the planning stage elsewhere in the state. Between 1853 and 1857, the Minnesota territorial legislature chartered 27 railroad companies. In 1857 Congress granted Minnesota 4,500,000 acres of land to aid in the construction of railroads in Minnesota over routes specified in a general way. Those routes provided a primary system of transportation across the southern half of the state and northwesterly to the head of navigation on the Red River. In 1858 the Minnesota legislature granted a \$5 million loan to aid railroad construction.

In the 1860's, development and construction of railroads continued to move forward, particularly after the end of the Civil War. In June 1862, the first railroad was in operation between St. Paul and St. Anthony (Minneapolis). By the end of 1865 there were 210 miles of track in Minnesota, and another 114 miles were built in 1866. In 1866, engineers were making a survey for the Northern Pacific Railroad, a line crossing the state from Lake Superior to the Red River valley. This line was the northernmost railroad then planned for Minnesota.

#### 18. Minerals.

Northeastern Minnesota, including the subject area, had been considered a mineralized area since Europeans first visited the region. La Verendrye, the French explorer, queried the Indians about iron in the region as early as 1734. In 1860, Governor Ramsey spoke of the "magnificent extent" of the mineral

lands and of their copper and iron ores of singular purity. In 1865, iron ore was discovered fifty to sixty feet in thickness near Vermilion Lake.

Almost coinciding with the date of the treaty was the Vermilion Lake Gold Rush of 1865 and 1866. A report of highly promising assays of quartz samples found at Vermilion Lake touched off a rush to that region. By May of 1866 some 300 people were at the lake; mining operations were under way; a small town was started; and a road was cut from Duluth to Vermilion Lake. The gold of the samples was never found in the field, and the rush soon died. An expert who reexamined the Vermilion Lake region in the 1880's was unable to find a trace of gold.

The report of the gold discovery was the motivating force behind the 1866 treaty. The Governor of Minnesota exerted pressure on the United States to remove the Indians from Vermilion Lake and to establish a military post there. In response, the Bois Forte chiefs were brought to Washington, and the 1866 treaty was negotiated with them.

The great Vermilion and Mesabi iron ore ranges, developed in the 1880's and 1890's lay a few miles to the east and south, respectively, of the subject area.

19. Acreage.

Mr. John William Trygg, a professional forester and appraiser, was plaintiffs' expert witness. He computed the total acreage of the subject area to be 2,030,510.28 acres, and determined that there were 142,388.12

acres of water and 1,888,122.16 acres of land. Mr. Trygg based his computations on his review of public land surveys made of the area by the General Land Office. The defendant accepts these figures as correct.

The Commission finds that the total acreage of Royce Area 482 was 2,030,510.28 acres.

20. Land Classifications.

Based on the public land survey data Mr. Trygg, plaintiffs' expert witness, determined the acreages of land classified by the surveyors as prairie, fields, and marsh; bottoms; swamp; and upland forest. The acreages were:

|                           |                   |
|---------------------------|-------------------|
| Prairie, fields and marsh | 1,415.00          |
| Bottoms                   | 4,155.00          |
| Swamp                     | 548,851.31        |
| Upland forest             | 1,333,700.85      |
| Water                     | <u>142,388.12</u> |
| Total                     | 2,030,510.28      |

Using the surveyor's field notes, Mr. Trygg computed that 912,204.90 acres of the upland forest category should be classified as white and Norway pineland. The public land surveyors rated 695,261.95 acres as possessing first or second rate soil. That soil was mainly in the Rainy, Little Fork, and Big Fork River valleys, and most of that land was suitable for cultivation.

Defendant's expert was Bernard C. Meltzer, an experienced real estate appraiser, who classified the lands on the basis of a map of the original cover of Minnesota which had been prepared in 1930 by E. J. Marschner of the United States Department of Agriculture, Office of Agricultural Economics. Mr. Meltzer's computations of the land classifications were:

| <u>Cover</u>            | <u>Acres</u>   |
|-------------------------|----------------|
| River Bottom            | 11,000         |
| Prairie                 | 7,000          |
| Red and White Pine      | 355,000        |
| Jack Pine               | 150,000        |
| Aspen-Birch (Conifer)   | 710,000        |
| Aspen-Birch (Hardwoods) | 66,500         |
| Swamp                   | <u>620,000</u> |
| Total                   | 1,919,500      |

The Commission finds that Royce Area 482 contained 1,333,700.85 acres of forest land; 548,851.31 acres of swamp; 4,155.00 acres of river bottom land; and 1,415.00 acres of prairie, field, and marshland.

#### 21. Timber Resources.

Only white and Norway pine had a commercial value in 1866. Hardwoods would not float, and the aspen, birch, and jack pine became valuable as the wood-pulp industry developed at a much later date.

To determine the quantity of pine acreage in the subject area plaintiffs' expert, Mr. Trygg, collected the township plats for each township in the



subject area and the surveyors' field notes for the public land surveys made between 1881 and 1907. These notes amounted to over 20,000 pages. From the field notes and the plats he computed land classification and forest cover, including pinelands.

Mr. Trygg estimated that as of April 26, 1866, there were 912,205 acres of pinelands in the subject area, averaging approximately 5,000 board feet of lumber per acre of pineland. In addition he estimated that there were approximately 500 board feet of pine timber per acre on the remaining 974,602.26 acres of forested land.

Defendant, relying on the Marshner mapping of the original ground cover, listed only the red (Norway) and white pine acreage of 355,000 acres. Mr. Meltzer did recognize that there were other areas of white and Norway pine. For example, the category Aspen-Birch in transition to conifer had occasional white and Norway pine. However, he considered it was too scattered and too costly to harvest.

The Commission finds that there were a total of 912,205 acres of commercially valuable white and Norway pine in Royce Area 482.

## 22. Timber Markets.

At the date of cession there were no railroads built or planned which would traverse or even pass near the subject area. A prospective purchaser would have to either construct his own railroad to reach the American lumber markets or float cut logs down the Rainy River to the Canadian sawmills on Lake of the Woods. In 1866 that region of Canada west of Lake

Superior was growing, and it represented a future market for pine from Royce Area 482. The pine located on the Canadian banks of the lakes and rivers which empty into the Rainy River tended to be of inferior quality to the pine on the American side of the boundary. As a result much of the lumber sawed by Canadian mills in the later 1800's was from pine cut in Minnesota and Royce Area 482.

23. Agriculture.

Approximately 35 percent of the lands had soil suitable for agriculture. However, some of those lands would have required drainage. The growing season was relatively short, and there was extremely limited accessibility to markets. However, those areas suitable for growing crops would have been especially valuable for subsistence farming and to supply the local population engaged in lumbering and mineral exploration.

24. Public Land Surveys.

At the date of cession none of the land of the subject area had been surveyed. The surveys of northern Minnesota commenced in 1874 and lasted until 1907.

The Government surveyors were required to describe in their field notes the timber, undergrowth, land surface, soil quality and minerals on each section line. They were also to record rivers, creeks, lakes, ponds, prairies, swamps, marshes, groves, hills, bluffs, roads and trails.

The surveyors were also instructed to prepare township plats for each township showing locations of lakes, rivers, streams, swamps, roads, trails, portages, fields, improvements, logging operations, waterfalls, settlements, minerals and other notations.

25. Disposition of Public Land.

At the time of the cession, the law permitted public lands in Minnesota to be acquired by purchase at public auction or "private sale," or by settlement and preemption.

After survey, and after sale was authorized by law, public lands could be sold to the high bidder at public auction sale. If not sold at the public offering, the lands could be purchased at a minimum price of \$1.25 per acre, or \$2.50 per acre for lands in the alternate sections of railroad grants reserved to the Government. Such purchases were termed "private sales."

The Homestead Act was enacted in 1862 (12 Stat. 392). After that auction sales were not generally announced. Sales were held only in connection with preemptions and special tracts, but it was not until 1889 that the "private sale" law was repealed.

The Preemption Act of September 4, 1841 (5 Stat. 455), gave a settler, after six months' settlement, occupation, and improvement made after survey, a preference, or first right, to purchase 160 acres at the minimum price at the time the land was offered for public sale. This preference right was extended to unsurveyed land in Minnesota in 1854, by the Act of August 4, 1854 (10 Stat. 576). Both these statutes were intended to benefit settlers on arable land.

The Timber and Stone Act of June 3, 1878 (20 Stat. 89), was intended to furnish the agricultural settler a wood lot to be used in conjunction

with his homestead. It provided for the sale of not to exceed 160 acres per person at not less than \$2.50 per acre, of surveyed, uninhabited, unimproved, nonmineral public land unfit for cultivation and chiefly valuable for timber and stone. In 1892, the Timber and Stone Act was made applicable to Minnesota. At the time of the 1866 cession and prior to 1892, in Minnesota, no timber could legally be cut from the public domain or public timber land.

26. Plaintiffs' Valuation.

Plaintiffs' expert, Mr. Trygg, concluded that the highest and best use of the subject area was for timber operations plus subsistence farming on about 40 percent of the land. He valued the entire area at \$5,000,000. While he was not specific in detailing the basis for his valuation, it seems clear that Mr. Trygg employed a stumpage value calculation to arrive at his \$5,000,000 figure.

Mr. Trygg considered that the 912,204.90 acres of pineland had an average of 5,000 board feet per acre or a total of 4,561,020,000 board feet of pine. He also concluded that the remaining 974,602.26 acres (not classified as pineland) averaged 500 board feet of pine per acre, or a total volume of slightly over five billion board feet of pine for the entire tract. Mr. Trygg considered that, for the purpose of this valuation, stumpage (the live standing timber growing on a tract of land) represented a measurable quantity of timber as a unit of measure to indicate the value of the land. He reasoned that the land was valuable to the extent that timber enhanced

its value. Therefore, the stumpage prices could, he concluded, serve as an index to indicate the amount that the value of the land was enhanced by its timber resources.

However, Mr. Trygg was unable to find any 1866 stumpage prices for timber in the vicinity of the subject lands. Accordingly, he applied "projections and ratio relationships" to available source data and concluded that the pine timber stumpage estimated to be on the subject lands in 1866 would have had a value of not less than \$1.00 per thousand board feet. Thus he computed a \$5,000,000 figure for the five billion board feet of pine timber and \$5,000,000 for the 1866 fair market value of Royce Area 482.

27. Defendant's Valuation.

Defendant's expert, Mr. Meltzer, valued the subject lands at \$368,000. Since there were no comparable sales upon which to base a valuation, Mr. Meltzer examined the public land sales of Royce Area 482, which took place from 1883 to 1908. From 1883 to 1891 most of the cash sales were for \$1.25 an acre. The median year for sales activity at that price was 1886. The sales after 1891 were for \$2.50 an acre, and he found that 1894 was the "peak" year for sales at that price. From an examination of mortgage interest rates around 1866 he concluded that 10 percent was the most common rate. He therefore discounted the two sales prices at a 10 percent rate from 1891 and 1894 to the 1866 valuation date. The indicated values were 18.57 and 17.33 cents per acre. Thus he concluded 18 cents per acre or \$368,000 was the 1866 fair market value of Royce Area 482.

Mr. Meltzer used another valuation procedure to "cross check" his discounted public sales method. This involved separately valuing each of the eight land classifications which he found for the entire tract. The assigned values for each category resulted in the following totals:

| <u>Classification</u>      | <u>Acres</u>   | <u>Value per Acre</u> | <u>Value for Class</u> |
|----------------------------|----------------|-----------------------|------------------------|
| River Bottom               | 11,000         | \$ .15                | \$ 1,650               |
| Prairie Grasses            | 7,000          | .50                   | 3,500                  |
| Red and White<br>Pine      | 350,000*       | .50                   | 175,000                |
| Jack Pine                  | 155,000*       | .15                   | 23,250                 |
| Aspen-Birch-<br>(Conifer)  | 710,000        | .15                   | 106,500                |
| Aspen-Birch-<br>(Hardwood) | 66,500         | .15                   | 9,975                  |
| Swamp                      | 620,000        | .05                   | 31,000                 |
| Water                      | <u>124,500</u> | .05                   | <u>6,225</u>           |
| Total                      | 2,044,000      |                       | \$357,100              |

This total value of \$357,100 served to verify his valuation of \$368,000 reached by discounting the subsequent public sales to 1866.

28. Highest and Best Use.

The most valuable resource in the subject area was the white and Norway pine forest. The highest and best use for Royce Area 482 on the date of valuation was for its timber, using suitable agricultural land to raise crops for the subsistence of the inhabitants of the area.

29. Fair Market Value.

Based on the foregoing findings of fact and for the reasons set forth in the accompanying opinion, we find that the fair market value of the subject area on April 26, 1866, was \$1,100,000.

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\* In his valuation of these land cover classifications Mr. Meltzer assigned 5,000 fewer acres to the red and white pine classification--adding this acreage to the jack pine classification. See finding 20, supra.

30. Consideration.

The consideration promised the Bois Forte Band in return for Royce Area 482, in addition to the land reserved to them, was described in the Treaty of April 7, 1866 (14 Stat. 765, 2 Kappler 916), as follows:

Article III. In consideration of the foregoing cession and relinquishment, the United States agree to and will perform the stipulations, undertakings, and agreements following, that is to say:

1st. . . . .

2d. The United States will as soon as practicable after the setting apart of the tract of country first above mentioned, erect thereon without expense to said Indians, one blacksmith's shop, to cost not exceeding five hundred dollars; one school-house to cost not exceeding five hundred dollars; and eight houses for their chiefs, to cost not exceeding four hundred dollars each; and a building for an agency house and storehouse for the storage of goods and provisions, to cost not exceeding two thousand dollars.

3d. The United States will expend annually for and in behalf of said Bois Forte band of Chippewas, for and during the term of twenty years from and after the ratification of this treaty, the several sums and for the purposes following, to wit: For the support of one blacksmith and assistant, and for tools, iron, and steel, and other articles necessary for the blacksmith's shop, fifteen hundred dollars; for one school-teacher, and the necessary books and stationery for the school, eight hundred dollars, the chiefs in council to have the privilege of selecting, with the approval of the Secretary of the Interior, the religious denomination to which the said teacher shall belong; for instructions of the said Indians in farming, and the purchase of seeds, tools, & c., for that purpose, eight hundred dollars; and for annuity payments, the sum of eleven thousand dollars, three thousand five hundred dollars of which shall be paid to them in money per capita, one thousand dollars in provisions, ammunition, and tobacco, and six thousand five hundred dollars to be distributed to them in goods and other articles suited to their wants and condition.

Article IV. To enable the chiefs, headmen, and warriors now present to establish their people upon the new reservation,

and to purchase useful articles and presents for their people, the United States agree to pay to them, upon the ratification of this treaty, the sum of fifty thousand dollars, to be expended under the direction of the Secretary of the Interior.

Thus, the stated consideration for the cession was:

Article III (2d)

|                                   |             |
|-----------------------------------|-------------|
| 1 blacksmith shop (not to exceed) | 500         |
| 1 schoolhouse (not to exceed)     | 500         |
| 8 houses                          | 3200        |
| Agency building and storehouse    | <u>2000</u> |
| Total                             | \$6,200     |

Article III (3d)

Annual payments for 20 years totalling \$14,100 per year--  
a total of \$282,000


Article IV

\$50,000 to chiefs, headmen and warriors then present.

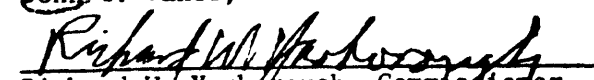
This was a total consideration of \$338,200.

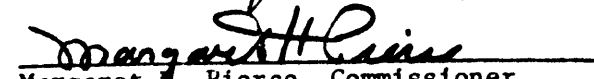
31. Unconscionability.


The total consideration of \$338,200 for land having a fair market value of \$1,100,000 was so grossly inadequate as to render that consideration unconscionable within the meaning of Clause 3, Section 2 of the Indian Claims Commission Act.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret A. Pierce, Commissioner

  
Brantley Blue, Commissioner