

BEFORE THE INDIAN CLAIMS COMMISSION

BAY MILLS INDIAN COMMUNITY, SAULT)	
STE. MARIE BANDS, Arthur W. LaBlanc,)	
Daniel Edwards and John L. Boucher,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 18-F
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: October 24, 1974

Appearances:

Rodney J. Edwards, Attorney for
Plaintiffs.

Craig A. Decker, with whom was
Assistant Attorney General Kent
Frizzell, Attorneys for Defendant.

OPINION OF THE COMMISSION

Kuykendall, Chairman, delivered the opinion of the Commission.

In this case plaintiffs, on behalf of the Sault Ste. Marie Band of Chippewas, seek additional compensation, under Clause 3, Section 2 of the Indian Claims Commission Act, 60 Stat. 1049, 1050, for certain rights which were ceded to the United States by the Treaty of August 2, 1855, 11 Stat. 631. The Commission has previously determined that, under the terms of three treaties,^{1/} the Chippewas of Sault Ste. Marie

^{1/} Treaties of June 16, 1820, 17 Stat. 206; March 28, 1836, 7 Stat. 491; and July 31, 1855, 11 Stat. 621.

were accorded the right of fishing at the falls of St. Mary's, and a place of encampment convenient to the fishing grounds. There was no metes and bounds description of the encampment grounds. However, the public survey of 1845 defined its boundaries. By the Treaty of August 2, 1855, the Chippewas of Sault Ste. Marie ceded the fishing rights and the encampment to the United States. The treaty became effective upon its ratification, which was on April 15, 1856, and that is the date of valuation of the rights involved. See 22 Ind. Cl. Comm. 79 (1969).

In consideration for the cession the United States agreed to appoint a commissioner to visit the fishery and place of encampment and value the Indians' interest therein, which sum would then be paid to the Indians. The Commissioner of Indian Affairs, George W. Manypenny, was appointed to make the appraisal, and his valuation of \$17,475.00 was the basis for the payment of that amount to the Indians. In deciding this case the Commission must determine whether the consideration paid was unconscionable within the meaning of the Indian Claims Commission Act. 60 Stat. 1049.

The encampment, as surveyed, consisted of a 36.4 acre strip of land slightly less than a mile long situated on the south bank of the St. Mary's River on the northern edge of the Upper Peninsula of Michigan. It varied in width from about a 100 feet at its western end above the fall on the said river, to about 600 feet at its eastern end below the falls. The encampment was located within the village of Sault Ste. Marie, Michigan, and was bordered on the east by the downtown area of the village, on the south by Portage Street and sparsely settled inland village property, and on the north and west by the river.

The general area around the village was first settled by the French about 1750 when they were developing the fur trade in the Northwest. The village became an entrepot for the fur trade. The first real impetus for growth after the United States took sovereignty in 1815 was the founding of Fort Brady in 1822. The United States built the fort because of the strategic significance of the area around the falls. Control of the area was vital to protection of American interests in the entire Northwest.

Although a United States District Court existed at Sault Ste. Marie as early as 1823, the village was not incorporated until 1849. The general area remained sparsely settled for some time thereafter although by 1856 the village had become a growing town and a commercial center.

The St. Mary's River was the natural water link which connected Lake Superior with the lower Great Lakes. However, the Falls of St. Mary's, with its attendant rapids, was an obstacle to shipping. As early as 1837 the State of Michigan investigated the possibility of constructing a canal at the falls, and during the ensuing years several efforts were made to accomplish this.

None of the attempts succeeded until Michigan began a project in 1852 with the help of Congress. By the Act of August 26, 1852, 10 Stat. 35, Congress granted Michigan the right of locating a canal through lands termed in the act as "public lands, known as the military reservation at the Falls at St. Mary's River in said State." The Act, while not mentioning the Indian encampment, required that the canal be located along a line of survey

which had already been made and which in fact passed through the encampment. To finance the construction the United States granted 750,000 acres of public land to the State of Michigan.

On February 5, 1853, Michigan accepted the grant and authorized its Governor to appoint Commissioners to prepare plans, contract for the canal, and supervise construction. The Commissioners let a contract for the canal to certain individuals, who then assigned it to a private New York company, the Ste. Marie's Falls Ship Canal Co. The company broke ground on June 4, 1853, and on April 19, 1855, water was let into the canal. On May 31, 1855, the locks and canal were turned over to the superintendent appointed by the state, and it was opened for public use in June 1855.

The canal divided the encampment ground into three non-contiguous parcels of land consisting of an 8.7 acre triangular tract at the eastern end, a 9.1 acre strip at the western end, and a .7 acre lot about midway along the shoreline on the falls side. In our valuation we ignore this peculiar configuration and value the land as a single 36.4 acre tract as it existed before the canal was dug. We do, however, consider the enhancement which resulted from the coming of the canal.

In reaching our determination, we have given careful consideration to all of the contentions and opinions advanced by the parties. The parties disagree as to the factors to be considered in reaching fair market value. Plaintiffs contend, among other things, that the value of the canal improvements was indicative of the fair market value. Defendant

objects to this, arguing that plaintiffs are asking for the value of the improvements themselves and that the weight of authority does not permit this. We agree with defendant.

The general rule is that when the Government, under its power of eminent domain, takes property upon which it has already constructed improvements, it is not required to pay more than the value of the land without improvements. Searl v. School District No. 2, 133 U.S. 553 (1890); Anderson-Tulley Co. v. United States, 189 F.2d 192 (1951); Bibb County, Georgia v. United States, 249 F.2d 228 (1957). The principles which govern the decisions in these cases apply equally to the situation in this case. As the court stated in Bibb County, Georgia, supra:

. . . . When the United States or other governmental body has constructed improvements upon land not owned by it but of which it is in possession under circumstances such as this case presents, and brings proceedings to condemn the fee of the land, the equitable principle which condemns unjust enrichment prevents the value of these premises becoming a windfall to the owner of the land in the guise of fair compensation. [249 F.2d at 230]

Plaintiffs argue that the cited cases are not in point because the United States did not construct the canal. Rather, they contend, this is a case involving a private company which trespassed on the Indian reservation to build the canal. But such is not the fact. The United States and the State of Michigan, two sovereigns, were materially involved in the canal project. In the 1852 act, supra, Congress granted the right of way upon which the canal was to be constructed, specifying its location along a line of survey which had been made by the United States Army Topographical Service not later than 1839. The act also defined the widths, depths of water, dimensions of the locks, and provided the cost of the construction.

The canal was, by the terms of the act, to be a "public highway." The actual construction was undertaken by the State of Michigan. It planned the project, and contracted for and supervised its construction. Under these circumstances we see no basis for plaintiffs' contention.

Adherence to the stated rule is proper and equitable in this case since, in reality, by the 1852 act the Indians' rights to the reservation were extinguished as to that part of the encampment grounds included within the canal right of way. As the Supreme Court stated in Spalding v. Chandler, 160 U.S. 394 (1896), a case involving a parcel of land once a part of the encampment grounds:

. . . . Whatever the reason, however, for the omission to make mention of the Indian reserve, the power existed in Congress to invade the sanctity of the reservation and disregard the guarantee contained in the treaty of 1820, even against the consent of the Indians, party to that treaty, and as the requirement of the grant necessarily demanded the possession of the portion of the reserve through which the canal was to pass, the effect of that act was to extinguish so much of the Indian reserve as was embraced in the grant to the State for canal purposes.
[p. 406-7, emphasis added.]

In its statement, which was dictum in the Spalding case, the Court was expounding established law concerning the circumstances wherein the United States could grant lands which had previously been reserved to Indians. The Indians' rights to reservation lands cannot be disturbed in instances when Congressional grants have not indicated, either in express terms or by the uses to which the lands are to be applied, an intent to change the

possession of the lands. Missouri, Kansas & Texas Railway v. Roberts, 152 U.S. 114, 117 (1894). Thus grants to railroads of alternate sections of land on each side of a road were not effective as to any such lands within an Indian reservation since Congress had not indicated an intention to change the possession of the land and there was no designation of any use which required delivery of possession. Leavenworth, Lawrence, and Galveston Railroad Company v. United States, 92 U. S. 733 (1875). However, when the Congressional grant was for works of internal improvement and the designated use to which the land was to be applied required possession of the land (as was the situation with the ship canal in the instant case), the grant was absolute. It covered both the fee and the possession and thus extinguished the Indians' reservation title.

Thus on the law and the facts in this case there is no basis for the plaintiffs' trespass argument. The Indians cannot contend that they had any proprietary interest in the canal, and they cannot include its value as the measure of value in their claim for compensation for the taking of their reservation.

Plaintiffs cite Tlingit and Haida v. United States, 182 Ct. Cl. 130, 389 F.2d 778 (1968), as authority for their asserted method of valuation in this case. They quote the Court of Claims statement, on page 147:

. . . the fact that the value had been increased up to that date [date of taking] because of white settlers, etc., makes no difference. We are concerned with

what the Indians owned at the taking date and what it was reasonably worth at that time.

We believe that the Tlingit case and the quoted statement apply to the method of valuation in the instant case, and that our determination herein is in accord with it. In that case the court did not include the value of improvements themselves in townsite valuations. The court did, however, acknowledge that townsite land had become more valuable because of the improvements made thereon by the settlers, and the Indians should be compensated for the enhanced value of the land as a townsite, notwithstanding the fact that the increase in value was a result of and through the efforts of the settlers--not the Indians.

Thus in the instant case the Indians are entitled to the enhanced value of their encampment grounds occasioned by the improved transportation brought about by the construction of a canal at Sault Ste. Marie and the attendant prospects for increased commerce and development of the town. But they are not entitled to recover the value of the canal itself.

Initially it was also plaintiffs' view that the records of certain adjudications of Sault Ste. Marie private land claims in the 1850's were important to the issues in this case. At the 1972 valuation hearing before this Commission, plaintiffs' counsel moved for time within which to present additional evidence of value which included value determinations from these adjudications. In arguing for the requested time plaintiffs' counsel stated:

* * * *

And the commissioner[s] appointed to examine these claims were required to receive and consider testimony and take it down [in] writing in order that they may determine the value exclusive [of] improvements and also to determine the improvements to the [tr]acts of lands upon which these claims are being asserted.

Now, this was just at the time and prior to the treaty where we have got this evidence of a concerted effort to determine values of these lands.

* * * *

So we have an appraisal of the entire village of Sault Ste. Marie just preceding this treaty, which has not been put in evidence by the defendant. And I submit it is. [Tr. 5, 6 - Hearing April 24, 1972.]

Plaintiffs were granted the requested extension of time and at the subsequent hearing presented, along with other evidence, ^{2/} a copy of a survey known as the Whelpley Survey Map showing information from the results of the mentioned adjudications. The exhibit contains for each adjudication the claimant's name, acreage of the claim, the then present value less improvements, and the assessment. [Pl. Ex. V-5]

However, plaintiffs did not propose any findings based on the adjudications. In fact, plaintiffs objected to defendant's proposals based on certain of these adjudications, and argued that the determinations were not evidence of 1856 land values, but rather represented values as of the 1821 period. Such is not the case, as will be seen.

^{2/} Plaintiffs also introduced as Exhibit 47 copies of the deed abstracts for all private claims which were adjacent to and surrounded the Indians' reserve. However, the abstract copies submitted are not legible, a fact which the Commission noted in its order of February 28, 1974, which afforded the plaintiffs an opportunity to submit a legible copy thereof. Unfortunately the second copy of Exhibit 47, furnished by plaintiffs on March 29, 1974, is no more legible than the first. However, we have noted that plaintiffs did not refer to the exhibit in their proposed findings and brief, and there is no indication that they rely on any information in the deed records in support of their proposed valuation in this case.

Plaintiffs also cited certain transactions in Grand Rapids and Detroit, Michigan, as relevant evidence of the market value of the subject area. The source of the evidence to which plaintiffs refer is a footnote by the editor of an 1836 diary whose work was published in 1959 by the Michigan Historical Commission. Commenting on a reference to land prices in Michigan, the editor noted:

Other accounts indicate that lots in Grand Rapids in 1836 sold for as much as \$50 per foot frontage, or \$2,500 for a fifty-foot lot. Between 1836 and 1939 Lucius Lyon and Charles Hobart Carroll sold 145 lots for a total of \$106,156.89. [The Michigan Land Rush in 1836. Michigan History, Vol. XLIII, March 1959, Michigan Historical Commission; Def. Ex. 43, p. 12.]

Plaintiffs suggest that these front footage prices be applied in this case by totaling the subject tract's following footages:

Canal	5,844 feet
St. Mary's River	4,388 feet
Portage Street	<u>3,699</u> feet
Total	13,931 feet

However, there is no way to relate the cited footage values to any lot size or corresponding acreage figure. It is obvious that there was not sufficient depth of the subject lands to have permitted use of all the land if sold as lots with close to 14 thousand front feet. It is, however, interesting to observe that the diary entry, to which the editor referred, mentioned that an 80-acre lot at the Rapids of Grand River sold in 1836 for \$40,000.00. This average per acre price of \$500.00 is only \$20.00, or about 4 percent, more than the \$480.00 per acre price which the Government paid for the Indians' lands in this case.

Plaintiffs also refer to a purchase by Governor Cass in 1815 of a 500 acre farm near Detroit, Michigan. Reportedly the farm was worth an estimated \$500,000.00 in 1836. That land cannot be considered comparable to the subject area. The farm included a house, and was located partly within the town limits of Detroit, which had an 1837 population of 8,273. Detroit itself was located far to the south of Sault Ste. Marie and much closer to the nation's population and trade centers.

While plaintiffs' counsel has proposed findings indicating possible valuation procedures utilizing front footage prices and sales in Grand Rapids and Detroit, he has not relied on them in reaching plaintiffs' proposed valuation. In the final analysis the \$4,000,000.00 figure contended for by plaintiffs represents counsel's view of the value of the completed canal (three times its construction cost or \$3,000,000.00) plus an additional \$1,000,000.00 for "other commercial uses in connection with the transportation route, utilization of the water power of the abutting St. Mary's River Falls and rapids, and the village of Sault Ste. Marie development", as well as the "perpetual continuation of fishing rights for commercial and subsistence consumption." (Plaintiffs' Proposed Findings filed November 3, 1972, p. 29.)

Counsel did not establish any basis for these valuation figures. He merely proposed that the Commission find that the Sault Ste. Marie

canal cost \$999,802.46.^{3/} Without considering any other factors it is then urged that the Commission conclude:

The value of the completed, successfully operating Sault Ste Marie Canal that was constructed almost entirely through the Sault Ste Marie Band of Chippewa Indians' Reservation at a construction cost of about one million dollars was reasonably worth on date of valuation of April 15, 1856 about three times its construction cost, or the sum of three million dollars.

To this sum is added an additional one million dollars without any indication of the evidence relied upon for this figure. There is no explanation of the method used to reach such a value or the reasons therefor. We can find no basis in the record for plaintiffs' proposed valuation, and, as we have indicated previously, there is no basis in law for including the 1856 value of the Sault Ste. Marie canal.

Defendant's expert witness was Mr. Gordon E. Elmquist, an expert real estate appraiser, who testified that, in his opinion, the subject area had an 1856 fair market value of \$500.00 per acre. In reaching this conclusion he considered the sale in the 1830's of an 80-acre lot at Grand Rapids, Michigan, for \$40,000.00 or \$500.00 per acre. He noted that Grand Rapids then had a larger population than did Sault Ste. Marie in 1856. Mr. Elmquist also relied on his experience, observations, and unspecified appraisals which he has made of other lands. He also testified that his appraisal included the value of fishing and power rights. In the absence of any detail of the methods which he used and the other unspecified appraisals upon which he relied, we are unable to accord much weight to Mr. Elmquist's conclusion. We note also that he

^{3/} This included expenses of \$86,000.00 for selection of lands, which expenses were not related to construction cost.

did not examine, and therefore gave no weight to, the appraisal values shown in Commission Exhibit 1, infra.

Defendant's counsel has, however, analyzed some of plaintiffs' Whepley map information and, in defendant's proposed finding 12, tabulated some 41 of the adjudications which were adjacent to the encampment and down the St. Mary's River even below Fort Brady, some distance downriver. Those claims embraced 346 acres and were appraised at \$10,979.00, which averaged about \$32.00 per acre. In our view the 41 determinations which defendant selected included land which was not comparable to the Indians' reserve, and the computed average per acre value of \$32.00 is far below the actual 1836 value of the encampment ground.

Defendant also presented as evidence the 1856 Manypenny appraisal, mentioned earlier herein. Defendant considers it a generous view of value but relies on it, as well as Mr. Elmquist's testimony, to deny recovery to plaintiffs.

The Manypenny appraisal, as mentioned earlier herein, was made pursuant to the 1855 treaty of cession. Mr. Manypenny's report of October 14, 1856, in evidence as Defendant's Exhibit 28 (64), shows that he visited the area personally from October 1 until October 4 of that year; that he made a careful examination of the area; that he consulted with the leaders of the Indians concerning their view on value; that he considered the opinions of the Indians and many of the whites concerning value; that he excluded water power; and that he valued

the tract as it originally was, a place of encampment and a fishery. The record contains no evidence of fraud or impropriety in Commissioner Manypenny's appraisal. We think that the appraisal was a fair contemporary determination of the 1856 market value of the rights ceded.

In reaching our conclusion, however, we have placed primary reliance on the information in Commission Exhibit 1. This exhibit includes copies of proceedings relating to 69 land claim adjudications that took place in the village of Sault Ste. Marie around the time of the cession. These adjudications were made under the authority of the Act of September 26, 1850, 9 Stat. 469. The value information in the 69 adjudications coincides with that shown on the Whelpley map, mentioned above.

The 1850 act marked the culmination of a long standing conflict between the defendant and certain private land claimants, some of whose titles predated defendant's sovereignty. An earlier act, passed by Congress in 1823, directed the Commissioners of the Michigan Land Claims Office to investigate a number of the private land claims in the area which seemed to be encroaching on the Fort Brady military reservation. By 1825 the situation regarding private land claims became so confused that the Land Commissioners were advised to abstain from confirming any more claims, and were requested to make a special report to Congress for its consideration. Eventually, Congress enacted the 1850 act, supra, which provided the procedure for settling the land claims. Pursuant to this act the town was surveyed in 1853 and 1854. The map of that survey, known as the Whelpley map (mentioned above), is in evidence.

The Commission has examined the records of the adjudications under the 1850 act, which are presently located in the National Archives. Because we believe that certain of the value determinations made therein are material to the issues of this case we have included copies of pertinent adjudications in the record of this case as Commission Exhibit 1.^{4/}

The records of the adjudications reveal that the registers and receivers of the land office at Sault Ste. Marie, in accordance with the 1850 act, determined the validity of each claim, fixed its boundaries according to the public survey, and made determinations as to the then present value, exclusive of improvements, of all of the lots involved. Each claim was supported by sworn testimony relating among other things to title, possession, and value without improvements. Copies of recorded deeds were made a part of each record. The preliminary adjudications were made between December 1852 and December 1853. Final adjudications were made during 1854 and 1855.

It appears that each claim was decided on its merits, and that there is every indication that the adjudications were arrived at judiciously, fairly, and upon all available evidence. It is logical to assume that the registers and receivers of the land office at Sault Ste. Marie were the men most familiar with current land values in the area, and in each case they clearly exercised their own independent judgments.

^{4/} A summary of adjudications chosen is attached to this decision as an appendix.

The selection of adjudications in Commission Exhibit 1 shows a value per acre for the preliminary determinations ranging from a low of \$4.22 to a high of \$2,666.67. For the final determinations the range of values was from \$28.83 to \$3,000.00. The preliminary determinations for all 69 adjudications in the exhibit encompassed 88.31 acres for a total valuation (without improvements) of \$11,991.00, or an average per acre value of \$135.78. The final determinations included 86.9475 acres ^{5/} and the values totaled \$13,494.00, for an average per acre value of \$155.20.

Much of the acreage included in the 69 adjudications extended quite far inland and therefore was not comparable to the lands in the encampment. For example, the lands described in the adjudications for lots five and six which contained 10.60 and 12.3675 acres, respectively, adjoined the upper (west) end of the encampment grounds, but extended a considerable distance inland and for that reason were less valuable. They were respectively appraised at \$37.74 and \$36.39 per acre. The inclusion of tracts such as these results in a substantially lower overall value. If these two adjudications were eliminated from the final determinations of the 69 adjudications which we have analyzed, the average value would be raised from \$155.20 to \$197.64 per acre. We have, therefore, eliminated such adjudications from our comparisons.

The evidence shows that the encampment was located adjacent to the best developed commercial area of Sault Ste. Marie. The eastern half of the reserve which was next to the developed area would have had a value comparable to the values of lots in the commercial area. We have

^{5/} There is a slight variance between total acreage figures because some of the final determinations as to acreage differed from the preliminary adjudications.

therefore ascertained from Commission Exhibit 1 the adjudicated values of certain lands in the downtown business area of Sault Ste. Marie extending from the waterfront docks to Portage Street, comprising four blocks.

These parcels are described in adjudicated claims 60-61, 64-66, 68-80, and 82-84, inclusive. The preliminary determinations of value in this area averaged \$754.78 and the final determinations averaged \$723.95 per acre.

The remaining half of the Indians' reserve would have had a value comparable to those Sault Ste. Marie lots which adjoined the reservation but were outside the developed commercial area. We have selected certain lots between Portage and Ridge Streets as being representative. Ten lots chosen did not adjoin the encampment itself but were adjacent to the best developed commercial area. Our selection has excluded lots extending so far inland that they were not comparable. The lots chosen for this analysis involve adjudicated claims 9-17, 19-22, 25-27, and 34-37, inclusive, in Commission Exhibit 1. The preliminary adjudications for these lots averaged \$89.17 per acre and the final determinations averaged \$115.42 per acre.

Applying these average figures to the reservation acreage produced the following results:

<u>Acreage</u>	<u>Preliminary Determinations</u>	<u>Final Determinations</u>
18.2 acres (com- mercial area)	@ \$754.78/a = \$13,737.00	@ \$723.95/a = \$13,175.89
18.2 acres (non- commercial town lots)	@ \$ 89.14/a = \$ 1,622.89	@ \$115.42/a = \$ 2,100.64
Total 36.4 acres	\$15,359.89 (\$422/acre)	\$15,276.53 (\$419/acre)

There are other factors pertaining to these land claim adjudications which we have considered. The determinations were made several years prior to the 1856 valuation date, and land values unquestionably were higher in 1856. However, the four block commercial area which we have analyzed was more favorably located than the adjacent half of the Indians' encampment ground. The developed business area was located immediately down river from the falls and rapids where there were docks and waterfront warehouses, whereas almost all of the Indians' reserve fronted the rapids and falls, where development of docks and related facilities would be impractical. Furthermore, the valuation of the four block commercial area included only the value of seven acres of privately owned lots and disregarded the fact that there were over one and a half acres of streets. We believe, however, that any adjustment for these countervailing factors would substantially offset each other.

There is no evidence concerning any value attributable to the right to fish. Obviously, it was not an exclusive right, for there were many other locations along the river which provided access to fishing in the river or in the falls, and the plaintiff Indians were not the only ones who fished in the waters adjoining the encampment. We are unable to assign any separate value for the "fishing rights".

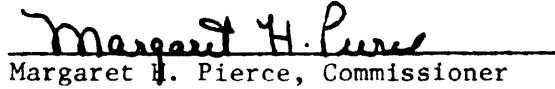
Based on the evidence of record and for the reasons set forth herein, the Commission concludes that the April 15, 1856, fair market value of the rights ceded by the plaintiffs was \$15,400.00. The Sault Ste. Marie

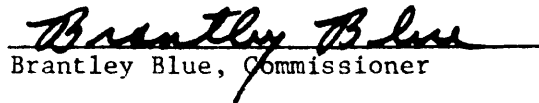
Band of Chippewas, having been paid the sum of \$17,475.00, were fully compensated for the land and fishing rights ceded under the 1855 treaty. Accordingly, the claim herein must be dismissed, and such an order will be entered.


Jerome K. Kuykendall, Chairman

We concur:


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner

APPENDIX: Summary of the Lands Claims Determinations
in Commission Exhibit 1.

Claim No.	Claimant	Preliminary Determinations			Final Determinations				
		Dates	Values	Acreages	Values Per Acre	Dates	Values	Acreages ^{1/}	Values Per Acre
4	Richardson	12-22-52	\$ 108	5.50	\$ 19.64	3-12-55	\$ 200	5.22	\$ 38.31
5	Bacon	3- 9-53	51	12.09	4.22	"	400	10.605	37.74
6	Wood	12-22-52	260	14.16	18.36	"	450	12.3675	36.39
7	Stafford	12-21-52	72	2.91	24.74	"	100	2.69	37.17
8	Spalding, W., et al.	12-27-52	24	.83	28.92	"	24	.8325	28.83
9	Woods	12-24-52	176	3.35	52.54	"	175	2.3225	75.35
10	Hosking	1-11-53	52	.35	148.75	"	60	.345	173.91
11	Trelease, et al.	12-23-52	72	1.21	59.50	"	100	1.2275	81.47
12	Peck	12-29-52	36	.53	67.92	"	48	.555	86.49
13	Brown	1- 5-53	40	.67	59.70	"	65	.6575	98.86
14	Witto	1- 5-53	60	.66	90.91	"	64	.655	97.71
15	Hackland	12-29-52	36	.65	55.38	"	60	.6525	91.94
16	Charbonneau	1- 7-53	60	.81	74.07	"	75	.8375	89.55
17	Boneau	1- 3-53	60	.81	74.07	"	75	.84	89.29
18	Barbeau	12-24-53	216	3.62	59.67	"	400	6.4625	61.90
19	Hosking	12-31-52	72	.72	100.00	"	88	1.2725	69.16
20	Lalonde	12-24-52	32	.33	96.97	"	44	.3275	134.35
21	Mineclia	1- 3-53	56	.79	79.89	"	88	.7225	121.80
22	Garnoe	12-29-52	120	1.81	66.30	"	200	1.92	104.17
23	Boneau	12-30-52	172	2.67	64.42	"	260	2.9525	88.06
24	Garnoe	12-23-52	104	3.98	26.13	"	140	3.00	46.67
25	Barbeau	12-27-52	96	.55	174.55	"	96	.55	174.55
26	Lavigne	1-29-53	48	.34	141.18	"	60	.3375	177.78
27	Boisvier	12-30-52	100	.86	116.28	"	148	.865	171.10
28	Lobrarario	12-29-52	320	9.04	35.40	"	320	9.23	34.67
29	Fisher	1-29-53	40	.30	133.33	"	56	.29	193.10
30	Paul	1- 4-53	24	.15	160.00	"	40	.1525	262.30
31	Hassel	12-22-53	24	.14	171.43	"	36	.14	257.14
32	Ashman	12- 9-52	16	.48	33.33	"	40	.4275	93.57
33	Spalding, J.	1-10-53	124	1.46	84.93	"	160	1.9075	83.88
34	McKnight	1- 8-53	92	.70	131.43	"	100	.6625	150.94

Claim No.	Claimant	Preliminary Determinations				Final Determinations			
		Dates	Values	Acreages	Values Per Acre	Dates	Values	Acreages ^{1/}	Values Per Acre
35	Spalding, W.	12-28-52	\$ 120	.94	\$ 127.66	3-12-55	\$ 120	.975	\$ 123.08
36	Barbeau	12-21-52	24	.10	240.00	"	32	.1075	279.67
37	Trampe, L.	12-25-52	100	.22	454.55	"	100	.225	444.44
38	Trampe, L. (2nd)	1- 1-53	64	.07	914.29	"	60	.07	857.14
39	Payne	12-18-52	48	.06	800.00	"	40	.065	640.00
40	Ladebouche	"	60	.14	428.57	"	80	.1325	603.77
41	American Fur Co.	3-25-53	1,752	5.74	305.23	"	1,800	5.695	316.07
50	Spalding, W., et al.	3-24-53	---	---	---	8- 8-54	300	.6625	452.83
51	Dodge	1-31-53	340	.16	2,125.00	3-13-55	350	.1625	2,153.85
52	Dickens	1-24-53	176	.14	1,257.14	"	200	.155	1,290.32
53	Wood	3-12-53	808	.80	1,010.00	3-29-55	600	.20	3,000.00
54	Harris	1-31-53	128	.05	2,560.00	3-30-55	120	.04	3,000.00
55	Dubay	3-12-53	(Rejected)	---	---	none	120	.04	3,000.00
60	Spalding, J.	1-22-53	276	.17	1,623.53	3-29-55	280	.165	1,696.97
61	Hopkins	3-29-53	---	---	---	"	120	.0575	2,086.96
62	Johnston	12-29-53	96	.20	480.00	3-13-55	60	.045	1,333.33
63	Roussain	12-21-52	60	.19	315.79	"	60	.1225	495.87
64	Dougherty	12-17-52	72	.18	400.00	"	80	.1875	426.67
65	Jones	2-28-53	132	.19	694.74	"	140	.19	736.84
66	Artault	3-24-53	---	---	---	3-14-55	160	.115	1,391.30
67	McKnight	3-22-53	---	---	---	"	(Rejected)	---	---
68	Saunders	1-28-53	600	.77	779.22	"	600	.7975	752.35
69	Cornwall	1-20-53	240	.20	1,200.00	"	280	.175	1,600.00
70	Spalding	1-12-53	224	.14	1,600.00	3-30-55	300	.1475	2,033.90
71	Crean	1- 7-53	144	.10	1,440.00	3-14-55	100	.10	1,000.00
72	Possain	12-23-52	56	.09	622.22	"	60	.09	666.67
73	Paul	12-30-52	76	.16	475.00	"	80	.1325	603.77
74	Manancon	12-23-52	76	.16	475.00	"	80	.1525	492.31
75	Barbeau	1-19-53	1,000	1.30	769.23	"	1,000	1.165	858.37
76	Fowles	1-12-53	312	.62	503.23	"	300	.465	645.16
77	Taylor	1-29-53	300	.59	508.47	"	300	.6575	456.27
78	Pendill	1-31-53	400	.61	655.74	"	400	1.18	338.98
79	McKnight	2-11-53	600	.44	1,363.64	3-15-55	100	.115	869.57
80	Artault	1-27-53	120	.12	1,000.00	"	60	.025	2,400.00
81	"	1-29-53	160	.06	2,666.67	"	(Rejected)	---	---

Claim No.	Claimant	Preliminary Determinations				Final Determinations			
		Dates	Values	Acreages	Values Per Acre	Dates	Values	Acreages ^{1/}	Values Per Acre
82	Artault	1-10-53	\$ 200	.09	\$2,222.22	3-15-55	\$ 280	.0975	\$2,871.79
83	Ermatinger	12-14-52	344	.72	477.78	3-14-55	400	.72	555.56
84	Barbeau	12-29-52	<u>120</u>	<u>.32</u>	375.00	"	<u>160</u>	<u>.4775</u>	336.84
Totals			\$11,991	88.31			\$13,494	86.9475	
Average Value per Acre			\$ 135.78				\$ 155.20		

^{1/} Where acreages in the Commission Exhibit 1 were either missing, illegible, or at variance with those shown in the map schedule on the first page of the Whelpley survey map (Plaintiffs' Exhibit V-5), the acreages shown on the map schedule are used. Acreages for claims 53, 54, and 55, missing from both the Commission Exhibit 1 and Plaintiffs' Exhibit V-5, were computed from measurements for those claims shown on the map itself.

Commissioner Vance dissenting:

George Manypenny, the Commissioner of Indian Affairs, had been dispatched northward by the sovereign to determine the value of the 36.4 acres ceded by the Indians to the government on August 2, 1855.

True to his forebear who had bequeathed him his remarkable name he determined that the land was worth \$17,475.00.

Commissioner George W. Manypenny informed the Acting Secretary of Interior of his finding in a brief seven paragraph letter dated October 14, 1856. The letter is set forth in the main in finding 17 of the findings of fact supporting the majority opinion.

In the first paragraph of the letter George Manypenny recites that he was acting in obedience to the requirements of his letter of appointment under date of August 11, 1856 in which the President of the United States directed him to view the premises and determine the value of the interest of the Indians "to the Fishery and place of encampment . . . at the Falls of St. Mary's River . . . which were surrendered to the United States . . . on the second day of August, 1855."

George Manypenny did not linger at his assignment. "I have the honor to state," he wrote, "that I visited the said Fishery and place of encampment on the first, and remained there until the fourth instant." In the tradition established for succeeding generations of junketeers he had stayed hard by the site of his assignment for less than four days!

George Manypenny concluded his appraisal in the seven paragraph letter to the Acting Secretary of the Interior in which he noted that:

The Indians and many of the white at the Sault Ste Marie, place a much higher value on the rights secured under the treaty of 1820, and surrendered by the Indians, than I have awarded them. They had become habituated to talk about its value for several years, and had no doubt mingled the water power into it as one principal element. I have awarded all that I believe it to be worth.

That ended the matter for ninety years.

Then Congress created the Indian Claims Commission to hear and determine claims against the United States on behalf of Indian tribes. The Bay Mills Indian Community filed a claim on behalf of the Sault Ste. Marie Band of Chippewas seeking additional compensation for the 36.4 acres so casually appraised by George W. Manypenny.

Now, almost a hundred and eighteen years after the date of cession, the majority has used several thousand words to justify a conclusion that George Manypenny's appraisal was too high by \$2,075.00!

This conclusion flies in the face of the fact that the land occupied by the Indians was the only place a canal could be constructed and that this fact had been generally known since 1837.

This conclusion flies in the face of the statement in the majority opinion that "control of the area was vital to protection of American interests in the entire northwest."

This conclusion flies in the face of the cursory observation of George W. Manypenny that the Indians and many of the whites placed a much higher value on the Indians' treaty rights than he awarded them.

George W. Manypenny simply did his duty as he saw it. Although he did not describe the basis for his finding, the majority have given

him a latter day assist. Spiraling back down the staircase of history one can certainly find a rationale to defend his finding. But in my view such a rationale is wrong.

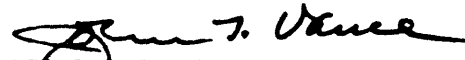
In the case of the Mohave Indians v. United States, Dockets 283 and 295, 23 Ind. Cl. Comm. 87 (1970), the Commission unanimously recognized the right of tribes to water power. And in so holding quoted approvingly from Otoe and Missouri Tribe of Indians v. United States, 131 Ct. Cl. 593, 633-34, 131 F. Supp. 265, 290 (1955), cert. denied, 350 U. S. 848 (1955):

. . . This method of valuation takes into consideration whatever sales of neighboring lands are of record. It considers the natural resources of the land ceded, including its climate, vegetation, including timber, game and wildlife, mineral resources and whether they are of economic value at the time of cession, or merely of potential value, water power, its then or potential use, markets and transportation--considering the ready markets at that time and the potential market.
(Emphasis added)

The Commission concluded that "Congress, in passing the Indian Claims Commission Act intended to compensate tribes beyond the constitutional minimum by, inter alia, including as an element of value added to land by reason of its accessibility to navigable waters."

The Indian Claims Commission is an expression of the conscience of America. Created by a Congress sensitive to the wrongs of the past the Indian Claims Commission was designed as a remedy to Indian tribes

damaged by acts of the government. In this opinion the majority have departed from that grand design.

A handwritten signature in cursive script, appearing to read "John I. Vance".

John I. Vance, Commissioner