

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

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to findings 1 through 5 entered herein on November 19, 1969, 22 Ind. Cl. Comm. 79.

6. Location of Land and Physical Characteristics.

The land to be valued is located in Sault Ste. Marie, Michigan, and consists of a narrow strip of land, slightly less than a mile long, extending along the south bank of the falls of the St. Mary's River. The tract contains 36.4 acres and varies in width from about 100 feet at its westerly end (above the falls) to about 600 feet at its easterly end (below the falls). 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. Prior to the cession of the encampment ground by the Treaty of August 2, 1855, 11 Stat. 631, the tract had been divided by a canal which reduced the land area to three noncontiguous parcels consisting of an 8.7 acre triangular tract at the easterly end of the encampment

ground; a 9.1 acre strip of land at the westerly end; and a .7 acre lot about midway in the encampment ground on the falls side. The canal right of way took up the remaining 17.9 acres of the encampment ground.

7. Historical Background.

Long before the coming of the white man in the middle of the 18th century, this land was important to the Indians. They maintained a permanent encampment there, and the fish taken at the falls and in the rapids were their main source of food.

The French began developing what became a thriving fur trade in the Northwest around 1750. This brought the first permanent white settlers to the area who served the fur trappers and voyageurs whose main trading routes converged at the portage near the falls.

The United States recognized the strategic significance of the area; control of the strait connecting Lake Superior with the lower Great Lakes meant control of the Nation's interest in the entire Northwest. To protect its interests the United States determined that a military reservation would be located at Sault Ste. Marie, and in 1820, pursuant to the Treaty of June 16, 1820, 17 Stat. at 206, the Government removed the Indians from the area around the falls, except for a place of encampment convenient to the Indians' fishing ground. The boundaries of the encampment, as later defined in the public survey of 1845, embraced 36.4 acres. The area became part of Michilimachinac County, and in 1823 a U. S. District Court was established at Sault Ste. Marie. The village was incorporated by the Michigan legislature on April 2, 1849, and by 1856 it was a growing town and commercial center for what was then a sparsely settled section of the country.

8. The Sault Ste. Marie Canal.

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 the project. None of the attempts were successful until 1852 when Congress granted lands to the State of Michigan for the purpose of locating a ship canal. The Act of August 26, 1852, 10 Stat. 35, reads as foli :

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and is hereby, granted to said State, the right of locating a canal through the public lands, known as the military reservation at the Falls at St. Mary's River in said State; and that four hundred feet of land in width extending along the line of such canal be, and the same is hereby granted, to be used by said State, or under the authority thereof for the construction and convenience of such canal, and the appurtenances thereto, and the use thereof is hereby vested in said State forever, for the purposes aforesaid, and no other: Provided, That in locating the line of said canal through said military reservation, the same shall be located on the line of the survey heretofore made for that purpose, or such other route between the waters above and below said falls, as under the approval of the Secretary of War may be selected. And provided further, That said canal shall be at least one hundred feet wide, with a depth of water twelve feet, and the locks shall be at least two hundred and fifty feet long, and sixty feet wide.

Sec. 2. And be it further enacted, That there be, and hereby is granted to the said State of Michigan, for the purpose of aiding said State in constructing and completing said canal, seven hundred and fifty thousand acres of public lands, to be selected in subdivisions, agreeably to the United States surveys, by an agent or agents to be appointed by the Governor of said State, subject to the approval of the Secretary of the Interior, from any lands within said State, subject to private entry.

Sec. 3. And be it further enacted, That the said lands hereby granted, shall be subject to the disposal of the

Legislature of said State for the purposes aforesaid and no other; and the said canal shall be, and remain a public highway for the use of the Government of the United States, free from toll or other charge upon the vessels of said government engaged in the public service, or upon vessels employed by said government in the transportation of any property or troops of the United States.

Sec. 4. And be it further enacted, That if the said canal shall not be commenced within three and completed within ten years, the said State of Michigan shall be bound to pay to the United States, the amount which may be received upon the sale of any part of said lands by said State not less than one dollar and twenty-five cents per acre, the title to the purchasers under said State remaining valid.

Sec. 5. And be it further enacted, That the Legislature of said State shall cause to be kept, an accurate account of the sales and net proceeds of the lands hereby granted and of all expenditures in the construction, repairs, and operating of said canal, and of the earnings thereof, and shall return a statement of the same annually to the Secretary of the Interior; and whenever said State shall be fully reimbursed for all advances made for the construction, repairs, and operating of said canal, with legal interest on all advances, until the reimbursement of the same, or upon payment by the United States, of any balance of such advances over such receipts from said lands and canal, with such interest, the said State shall be allowed to tax for the use of said canal, only such tolls as shall be sufficient to pay all necessary expenses for the care, charge, and repairs of the same.

Sec. 6. And be it further enacted, That before it shall be competent for said State to dispose of any of the lands to be selected as aforesaid, the route of said canal shall be established as aforesaid, and a plat or plats thereof shall be filed in the office of the War Department, and a duplicate thereof, in the office of the Commissioner of the General Land-Office.

On February 5, 1853, the Michigan legislature accepted the grant and authorized the Governor to appoint Commissioners who would prepare

plans, contract for the canal, and supervise its construction. The Commissioners entered into contract with a group of individuals headed by Joseph P. Fairbanks and Erastus Corning. That contract was then assigned to a private New York company, the Ste. Marie's Falls Ship Canal Co., of which Corning was president. As consideration for the construction of the canal, the state gave the company the right to select the 750,000 acres which had been donated by the Federal Government for that purpose as provided by section 2 of the 1852 act. The canal was constructed along the line of survey which previously had been made by the United States Army Topographical Service. Construction was completed, and the locks were opened for public use in 1855. The cost of the canal construction was \$913,802.46. In addition, the Ste. Marie's Falls Ship Canal Co. spent \$86,000.00 in selecting the lands granted to it as payment for the construction.

9. Cession under the 1855 Treaty.

The Treaty of August 2, 1855, supra, with the Chippewa Indians of Sault Ste. Marie provided:

Article 1. The said Chippewa Indians surrender to the United States the right of fishing at the falls of St. Mary's, and of encampment, convenient to the fishing-ground, secured to them by the treaty of June 16, 1820.

Article 2. The United States will appoint a commissioner who shall, within six months after the ratification of this treaty, personally visit and examine the said fishery and place of encampment, and determine the value of the interest of the Indians therein as the same originally existed. His award shall be reported to the President, and shall be final and conclusive, and the amount awarded shall be paid to said Indians, as annuities are paid, and shall be received by them in full satisfaction for the right hereby surrendered: Provided, That one-third of said award shall, if the Indians desire it, be paid to such of their half-breed relations as they may indicate.

It also provided that it would be binding on the contracting parties upon its ratification, and it was ratified on April 15, 1856.

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.

10. Private Land Claims in Sault Ste. Marie.

Although not acquired under the Government's public land laws, much of the land in the Sault Ste. Marie area had been claimed by private citizens. By the Act of September 26, 1850, 9 Stat. 469, Congress provided a procedure for examination and settlement of these claims. The 1850 act provided in part as follows:

. . . . That the register and receiver of the land office at the Sault Ste. Marie be, and they are hereby, authorized to examine and report upon claims to lots at the Sault Ste. Marie, in township forty-seven north, of ranges one east and one west, in Michigan, according to the provisions hereinafter contained, and pursuant to such instructions as may be given by the commissioner of the general land office.

Sec. 2. . . . That the said commissioner shall cause the register and receiver to be furnished with a map, on a large scale, of the lines of the public surveys at the Sault Ste. Marie, and it shall be the duty of the Secretary of War to direct the proper military officer, on the application of the register and receiver, to designate, or cause to be designated, upon the map aforesaid, the position and the extent of lots necessary for military purpose, as also the position and the extent of any other lot or lots, which may be required for other public purposes, and also the position and extent of the Indian agency tract, and of the Indian reserve.

Sec. 3. . . . That in the case of any persons, or the legal representatives of any person or persons, who are the present bona fide claimants, under the original claims, which are entered in book number seven of the report of the Board of

Commissioners, under the act of Congress approved twenty-first of February, eighteen hundred and twenty-three, entitled "An Act to revive and continue in force certain acts for the adjustment of land claims in the Territory of Michigan," it shall and may be lawful for such person, within one year from the passage of this act, to present a sworn notice, in writing, to the register and receiver, setting forth the nature of his claim, with the front and depth necessary to embrace his settlement and improvements, and its position and limits, as accurately as practicable, on the public surveys; also the length of time it has been settled by the present claimant, and the estimated value at the time his right originated, and the estimated value at the present time, exclusive of the improvements; and it shall be the duty of the register and receiver to receive and consider testimony, which may be presented in each case, and to call for such further testimony as they may deem necessary, in order to enable them to determine the precise nature of each claim or title, and ascertain under whom the same originated, and to fix its position and extent on the public surveys, and its present value, exclusive of improvements, and also to ascertain the value of the improvements, and further to ascertain whether it interferes with any adverse claim, and the extent of, and nature of, such interference; and for the purposes aforesaid, the register and receiver are hereby authorized each to administer oaths, or affirmations, and it shall also be the duty of those officers to record all notices and testimony in support of each claim; and for administering oaths they shall be allowed a fee of twelve-and-a-half cents, and a like sum for every hundred words of testimony which they may record, to be paid by the claimants, and equally divided between the officers aforesaid.

* * * *

Sec. 6. . . . That in the aforesaid abstracts, the register and receiver shall designate the number of each claim, name of present and of original claimant, area, present value of the lot, exclusive of improvements, and the amount, which, in their opinion, it would be just to require as a payment for the same to the government; and the said officers shall designate on the aforesaid map of the public surveys the location of each claim as near as it can be ascertained from the testimony, with the estimated actual value, and the assessment thereon of the sum which, in their judgment, should be paid for the same to the government.

Pursuant to this act, the register and the receiver proceeded with the adjudication of the private land claims. The record of those proceedings and the determinations are in the National Archives.^{*/} Each determination is supported by sworn testimony relating to the title and value of the property involved. Testimony was received from each claimant as well as other witnesses. All recorded deeds were made a part of the record and considered by the register and the receiver.

Portions of the record of these proceedings are material to the issues now before this Commission. Because of that fact, on February 28, 1974, we issued an order which admitted copies of that material as evidence herein and caused such documents to be marked as Commission Exhibit 1. A summary of this evidence is appended to our opinion.

11. Land Claims Included in Commission Exhibit 1.

The land claims included in Commission Exhibit 1, 69 in number, involve land adjoining or in the immediate vicinity of the encampment grounds and the business area of Sault Ste. Marie. The preliminary determinations of these claims were made between December 1852 and December 1853, encompassed 88.31 acres, and found the total value, without improvements, to be \$11,991.00. This is an average value of \$135.78 per acre. The final determinations were made during 1854 and 1855. In

^{*/} The record is in the Records of Bureau of Land Management, National Archives Building, Record Group 49, Private Land Claims, Division D, Volumes 163 and 164, Michigan.

some instances claims which had been approved preliminarily were rejected or the decisions thereon were modified. Quite often the values were changed and in one instance a claim which had been rejected was approved. The final determinations involved 86.9475 acres, and a total value of \$13,494.00, which represented an average value of \$155.20 per acre, was placed thereon.

12. Land Claims in The Commercial Area of Sault Ste. Marie.

The land claims with the highest value were those located in the highly developed commercial area of Sault Ste. Marie. That four block area, adjacent to the east end of the encampment grounds, included waterfront docks on the St. Mary's River and extended two blocks inland to Portage Street. A summary of the adjudications of these claims is as follows:

| Claim No. | Claimant | Preliminary Determinations | | Final Determinations | |
|--------------|--------------|-------------------------------|----------|-------------------------|----------|
| | | Values | Acreages | Values | Acreages |
| 60 | Spalding, J. | \$ 276 | .17 | \$ 280 | .165 |
| 61 | Hopkins | --- | --- | 120 | .0575 |
| 62 | Johnston | 96 | .20 | 60 | .045 |
| 63 | Roussain | 60 | .19 | 60 | .1225 |
| 64 | Dougherty | 72 | .18 | 80 | .1875 |
| 65 | Jones | 132 | .19 | 140 | .19 |
| 66 | Artault | --- | --- | 160 | .115 |
| 68 | Saunders | 600 | .77 | 600 | .7975 |
| 69 | Cornwall | 240 | .20 | 280 | .175 |
| 70 | Spalding | 224 | .14 | 300 | .1475 |
| 71 | Crean | 144 | .10 | 100 | .10 |
| 72 | Possain | 56 | .09 | 60 | .09 |
| 73 | Paul | 76 | .16 | 80 | .1325 |
| 74 | Menancon | 76 | .16 | 80 | .1625 |
| 75 | Barbeau | 1,000 | 1.30 | 1,000 | 1.165 |

(continued)

| Claim No. | Claimant | Preliminary Determinations | | Final Determinations | |
|------------------|------------|-------------------------------|----------|-------------------------|----------|
| | | Values | Acreages | Values | Acreages |
| 76 | Fowles | \$ 312 | .62 | \$ 300 | .465 |
| 77 | Taylor | 300 | .59 | 300 | .6575 |
| 78 | Pendill | 400 | .61 | 400 | 1.18 |
| 79 | McKnight | 600 | .44 | 100 | .115 |
| 80 | Artault | 120 | .12 | 60 | .025 |
| 81 | " | 160 | .06 | (rejected) | ---- |
| 82 | " | 200 | .09 | 230 | .0975 |
| 83 | Ermatinger | 344 | .72 | 400 | .72 |
| 84 | Barbeau | 120 | .33 | 160 | .4775 |
| Totals | | \$5,608 | 7.43 | \$5,350 | 7.39 |
| Average per Acre | | \$ 754.78 | | \$ 723.95 | |

The land included in the 24 private land claims comprised approximately seven and one-half acres. The area of the adjacent streets was slightly more than one and one-half acres. If this acreage were considered in the analysis, the average value of the four block area would be reduced approximately 17 per cent.

13. Land Claims Adjacent to the Reservation and Adjacent to the Commercial Area of Sault Ste. Marie.

Lands which adjoined the encampment grounds but were outside the commercial area were quite comparable to lands in the western half of the encampment grounds. We have selected certain lots between Portage and Ridge Streets as being representative. In addition we have chosen ten other comparable lots which did not adjoin the encampment itself but were adjacent to the commercial area. A summary of the adjudications of all these claims is as follows:

| Claim No. | Claimant | Preliminary Determinations | | Final Determinations | |
|--------------|------------------|-------------------------------|----------|-------------------------|----------|
| | | Values | Acreages | Values | Acreages |
| 9 | Woods | \$ 176 | 3.35 | \$ 175 | 2.3225 |
| 10 | Hosking | 52 | .35 | 60 | .345 |
| 11 | Trelease, et al. | 72 | 1.21 | 100 | 1.2275 |
| 12 | Peck | 36 | .53 | 48 | .555 |
| 13 | Brown | 40 | .67 | 65 | .6575 |
| 14 | Witto | 60 | .66 | 64 | .655 |
| 15 | Hackland | 36 | .65 | 60 | .6525 |
| 16 | Charbonneau | 60 | .81 | 75 | .8375 |
| 17 | Boneau | 60 | .81 | 75 | .84 |
| 19 | Hosking | 72 | .72 | 88 | 1.2725 |
| 20 | Lalonde | 32 | .33 | 44 | .3275 |
| 21 | Mineclia | 56 | .79 | 88 | .7225 |
| 22 | Garnoe | 120 | 1.81 | 200 | 1.92 |
| 25 | Barbeau | 96 | .55 | 96 | .55 |
| 26 | Lavigne | 48 | .34 | 60 | .3375 |
| 27 | Boisvier | 100 | .86 | 148 | .865 |
| 29 | Fisher | 40 | .30 | 56 | .29 |
| 30 | Paul | 24 | .15 | 40 | .1525 |
| 31 | Hassel | 24 | .14 | 36 | .14 |
| 32 | Ashman | 16 | .46 | 40 | .4275 |
| 34 | McKnight | 92 | .70 | 100 | .6625 |
| 35 | Spalding, W. | 120 | .94 | 120 | .975 |
| 36 | Barbeau | 24 | .10 | 32 | .1075 |
| 37 | Trampe, L. | 100 | .22 | 100 | .225 |
| | Totals | \$1,566 | 17.45 | \$1,970 | 17.0675 |
| | Average per Acre | \$ 89.17 | | \$ 115.42 | |

14. Highest and Best Use.

The 36.4 acre encampment ground had a highest and best use as a part of the town of Sault Ste. Marie. The eastern half was most valuable for a commercial area similar to the then existing business area of the town. The western half was valuable as a residential area.

15. Value of the Encampment Ground.

Based on the findings entered herein and for the reasons set forth in our opinion the Commission finds that the April 15, 1856, fair market value of the 36.4 acre encampment ground was \$15,400.00.

16. Fishing Rights.

The encampment ground was ideally situated for reaching the best fishing grounds in the Sault Ste. Marie area, and the great variety of fish which the Indians took from the rapids and falls provided a substantial part of their subsistence and constituted the principal item in their economy. Henry Schoolcraft, who visited Sault Ste. Marie in 1820 stated that the Indians subsisted wholly upon the whitefish which were so numerous at the rapids that a ". . . skillful fisherman, in autumn, will take five hundred in two hours. This fishery is of great moment to the surrounding Indians, whom it supplies with a large proportion of their winter's provision which they prepared by smoking or salting." Pl. Ex. V-34, p. 133. Governor Cass likewise referred to the supply of fish as abundant and inexhaustible. He noted that fish represented a considerable part of the food of all Indians on the frontier and that if deprived of this means of support, they would perish.

However, the fishing rights were not exclusive. The plaintiff Indians were not the only ones who fished in the waters adjoining the encampment. Nor did the encampment afford exclusive access to the fishing grounds since there were many other points from which the fishing areas could be reached. We find that there is no separate value attributable to the "fishing rights."

17. Valuation by Commissioner Manypenny.

Pursuant to the provisions of Article 2 of the 1855 treaty, supra, Commissioner of Indian Affairs George W. Manypenny was appointed to value the Indians' encampment grounds and fishery. His valuation was \$17,475.00. Commissioner Manypenny's report was in the form of a letter, dated October 14, 1856, to the Acting Secretary of the Interior. It reads in part:

In obedience to the requirements of the letter of appointment of the 11th of August 1856, by which the President of the United States constituted me a Commissioner to determine upon actual view of the premises, the value of the interest of the Chippewa Indians of the Sault Ste. Marie, in the State of Michigan, to the Fishery and place of encampment of said Indians, at the Falls of St. Mary's River, aforesaid -- (the Sault Ste. Marie) -- which were surrendered to the United States, by the first article of an agreement concluded at the City of Detroit, on the 2nd Day of August 1855. I have the honor to state, that I visited the said Fishery and place of encampment on the first, and remained there until the fourth instant. That during that time I made a careful examination of the said Fishery and encampment, ascertaining from a personal inspection of the same and from two several Councils with the leading Indians, the usefulness thereof to them, with a view to determine the value of the interest they had therein, as the same originally existed.

The right which they surrendered by the agreement of August 2nd 1855 was to use the language of the treaty of June 16, 1820, "a perpetual right of fishing at the Fall of St. Mary's and also a place of Encampment."

* * * *

I do not regard the water power at the point as belonging to, and therefore it is not taken into view in the valuation which I have placed upon the interest of the Indians, they being confined to the value of a

perpetual right of fishing at the Falls, and a place of Encampment, whatever that value may be.

In my opinion the interest of the Indians therein as the same originally existed is wor [sic] the sum of Seventeen thousand four hundred and seventy five dollars, and I do hereby award to the said Indians that sum, and report the same as the amount to be paid by the United States to them for and in full acquittance and discharge for the interests surrendered.

* * * *

The Indians and many of the white at the Sault Ste. Marie, place a much higher value on the rights secured under the treay 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. [Defendant's Exhibit 28.]

18. Plaintiffs' Valuation.

Plaintiffs contend that the value of the rights ceded by the 1856 treaty, supra, was \$4,000,000.00. This figure had been proposed by plaintiffs' counsel and is discussed in detail in our opinion.

Plaintiffs' expert was an historian, Mr. Robert Warner, who prepared a report dealing with historical aspects of the area. Plaintiffs did not present any expert opinion on the value issue.

19. Defendant's Valuation.

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 a reported sale in the 1830's of an 80

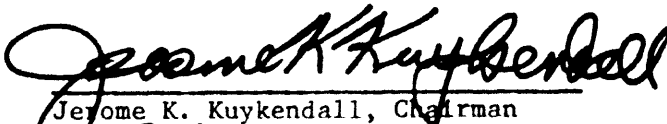
acre lot at Grand Rapids, Michigan, for \$40,000.00 or \$500.00 per acre. He considered the fact that in the 1830's Grand Rapids had more inhabitants than Sault Ste. Marie had in 1856. Mr. Elmquist also relied on his experience, observation, and other appraisals which he has made of rural lands.

20. Consideration.

Commissioner Manypenny's appraisal of \$17,475.00 was submitted to the Congress. By the Act of March 3, 1857, 11 Stat. 169, 172, that sum was appropriated, and the entire amount was paid, per capita, to the Chippewa Indians of Sault Ste. Marie and certain half-breed relations as selected in a council of the Indians on October 8, 1857.

21. Conclusion.

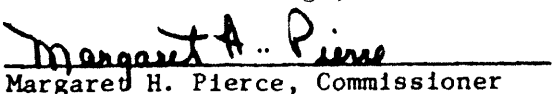
The April 15, 1856, fair market value of the rights ceded by the 1855 treaty was \$15,400.00. Therefore the appraisal by Commissioner Manypenny of \$17,475.00 and the payment of that amount to the Chippewa Indians of Sault Ste. Marie fully compensated them for the 1855 cession of their encampment ground and fishing rights. Accordingly, the claim herein must be dismissed.



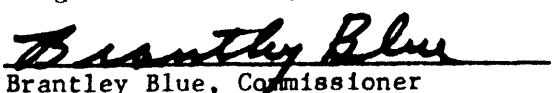
Jerome K. Kuykendall, Chairman



Richard W. Yarborough, Commissioner



Margaret H. Pierce, Commissioner



Brantley Blue, Commissioner