

BEFORE THE INDIAN CLAIMS COMMISSION

THE BLACKFEET AND GROS VENTRE TRIBES)
OF INDIANS, Residing Upon the Blackfeet)
and Fort Belknap Reservations in the)
State of Montana,)

Petitioners,)

v.)

Docket No. 279-B

THE UNITED STATES OF AMERICA,)

Defendant.)

Decided: August 16, 1965

PRELIMINARY STATEMENT

This case came on for hearing on the merits on July 28, 1965. This date had been set by the Commission's order dated December 30, 1964, which was entered upon the petitioners' request, made December 21, 1964, that an additional six months was necessary to complete their preparation for trial.

At the hearing, the petitioners initially moved for an indefinite continuance of the hearing, to which the defendant objected and which the Commission denied.

The petitioners then adduced their evidence consisting of two exhibits and rested their case. The defendant presented its evidence consisting of 14 exhibits and rested.

The Commission, having considered the evidence and being fully advised in the premises, makes the following findings of fact.

FINDINGS OF FACT

1. The petition seeks to recover just compensation in the amount of at least \$225,000, plus interest, for approximately 45,000 acres of

land allegedly included in Glacier National Park due to the erroneous location of the eastern boundary of the Blackfeet cession (Article I of the agreement dated September 26, 1895, ratified by the Act approved June 10, 1896, 29 Stat. 321, 353; 1 Kapp. 604).

2. By Act approved April 15, 1874 (18 Stat. 28, 1 Kapp. 149) the United States established a reservation (Royce Area 565, Mont. 1) in the Territory of Montana,

*** for the use and occupation of the Gros Ventre, Piegan, Blood, Blackfoot, River Crow, and such other Indians as the President may, from time to time, see fit to locate thereon, viz: Commencing at the northwest corner of the Territory of Dakota, being the intersection of the forty-ninth parallel of north latitude and the one hundred and fourth meridian of west longitude; thence south to the south bank of the Missouri River; thence up along the south bank of said river, to a point opposite the mouth of the Maria's River; thence along the main channel of the Maria's River to Birch Creek; thence up the main channel of Birch Creek to its source; thence west to the summit of the main chain of the Rocky Mountains; thence along the summit of the Rocky Mountains to the northern boundary of Montana; thence along said northern boundary to the place of beginning.

3. By Article I of the agreement dated September 26, 1895, ratified by the Act approved June 10, 1896 (29 Stat. 321, 353; 1 Kapp. 604) the Indians of the Blackfeet reservation, so far as here material, relinquished all of their reservation lands lying west of the following described line:

Beginning at a point on the northern boundary of the reservation due north from the summit of Chief Mountain, and running thence south to said summit; thence in a straight line to the most northeasterly point of Flat Top Crag; thence to the most westerly of the mouths of Divide Creek; thence up said creek to a point where a line

drawn from the said northeasterly point of Flat Top Crag to the summit of Divide Mountain intersects Divide Creek; thence to the summit of Divide Mountain; thence in a straight line to the western extremity of the lower Two Medicine Lake; thence in a straight line to a point on the southern line of the right of way of the Great Northern Railway Company four miles west of the western end of the railway bridge across the north fork of the Two Medicine River; ***.

Article VI of the agreement provided:

So soon as this agreement shall have received the approval of Congress the boundary lines described in Article I shall be surveyed and designated by two engineers, one of whom shall be selected by the Indians and one by the Secretary of the Interior; the said boundaries shall at once be marked by monuments, not more than one-half mile apart; the points at the mouth of Divide Creek and the westernmost extremity of the lower Two Medicine Lake, after they have been marked, shall be fixed and remain unchanged, no matter what alterations may hereafter take place in the course of said creek, or in the level of said lake. The expense of said survey should be shared equally between the United States and the tribes occupying this reservation, but the unskilled laborers employed in the work shall be hired from among the Indians residing on this reservation.

Such survey and the marking of the above-described boundary lines shall be begun immediately--not later than ninety days after the approval of this agreement by Congress--and completed as speedily as possible, and the ceded portion of the reservation shall not be thrown open to occupancy by the whites until after the new boundaries of the reservation shall have been established and marked.

4. On June 10, 1896, Congress, in confirming the foregoing agreement (29 Stat. 357, 1 Kapp. 608) provided:

That for the purpose of paying one-half of the expense of making the survey of the boundary line described in article one, as provided by article six of said agreement, there be, and hereby is, appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of two thousand

five hundred dollars, or so much thereof as may be necessary, the same to be immediately available; and the Secretary of the Interior is hereby authorized to use so much of any appropriation heretofore or hereafter made for the benefit of the Indians of the Blackfeet Reservation as may be necessary to pay one-half of the expense of the survey of the said boundary line by the said article six of the agreement to be borne by the Indians.

That upon the filing in the United States local land office for the district in which the lands surrendered by article one of the foregoing agreement are situated, of the approved plat or survey authorized by this section, the lands so surrendered shall be opened to occupation, location, and purchase under the provisions of the mineral-land laws only, subject to the several articles of the foregoing agreement:

5. The report of the Commission which negotiated the 1895 agreement, the entire proceedings of the councils held with the Indians, the full text of the agreement, the Indian signators, the report of the Commissioner of Indian Affairs, and a draft of the bill which became the ratifying act of 1896 are all embodied in Senate Document No. 118, February 12, 1896, 54th Congress, 1st Session, Congressional Document Series No. 3350. It was placed in evidence by both parties (Pet. Ex. 1 and Def. Ex. 12).

6. On June 29, 1896, E. F. Best, Acting Commissioner, General Land Office, addressed specific instructions to "Messrs. William S. Greene and N. E. Jenkins, Joint Commission for survey of Blackfeet Cession" respecting the manner in which the survey should be executed. A copy of the instructions is in evidence as Def. Ex. 5.

7. Before the initial point of the survey (Monument No. 1 on the International Boundary) could be established, William S. Greene fell ill,

suffering from the effects of great altitude. He returned to the Blackfeet Agency and A. F. Dunnington was appointed in his stead (Def. Ex. 2, pp. 3-5).

8. On May 19, 1897, the Secretary of the Interior authorized the Commissioner, G.L.O., to issue supplemental instructions to Henry Meldrum (who had been substituted for Dunnington) and N. E. Jenkins to complete the survey (Def. Ex. 6).

9. On May 19, 1897, the Commissioner, G.L.O., issued supplemental instructions to Messrs. Meldrum and Jenkins "Joint Commission for survey of Blackfeet cession" to continue and complete the survey (Def. Ex. 7).

10. The survey was completed on September 22, 1897. The field notes (Def. Ex. 1) and the plat (Def. Ex. 13) were transmitted to the Commissioner, G.L.O., on January 24, 1898 (Def. Ex. 3). They were approved by the Commissioner on April 6, 1898 (Def. Ex. 4, p. 179; Def. Ex. 13).

11. On April 9, 1898, the Commissioner, G.L.O., sent a copy of the approved plat (Def. Ex. 13) to the Register and Receiver, U. S. Land Office, Kalispell, Montana (Def. Ex. 8), and transmitted a copy of the field notes (Def. Ex. 1) and the plat (Def. Ex. 13) to both the Commissioner of Indian Affairs in Washington (Def. Ex. 9) and to the U. S. Surveyor General, Helena, Montana (Def. Ex. 10). The letters of transmission apprised each of the three recipients that the ceded land "will become subject to entry and disposal at noon on April 15, 1898, under the provisions of the act of June 10, 1896 (29 Stats., 360)."

12. On April 13, 1898, the Register of the U. S. Land Office at Kalispell replied to the Commissioner, G.L.O., acknowledging the receipt

of the plat of the east boundary of the Blackfeet Indian cession approved April 6, 1898 and concluded (Def. Ex. 11):

Pursuant to your direction we will file said plat on the 15th day of April, 1898, at the hour of noon.

Thus, after the hour of noon on April 15, 1898, the United States exercised complete dominion over all land west of the boundary line as surveyed and monumented.

13. By Act approved May 11, 1910 (36 Stat. 354) Congress established "The Glacier National Park" south of the international boundary line in the State of Montana, particularly described by metes and bounds as follows:

Commencing at a point on the international boundary between the United States and the Dominion of Canada at the middle of the Flathead River; thence following southerly along and with the middle of the Flathead River to its confluence with the Middle Fork of the Flathead River; thence following the north bank of said Middle Fork of the Flathead River to where it is crossed by the north boundary of the right of way of the Great Northern Railroad; thence following the said right of way to where it intersects the west boundary of the Blackfeet Indian Reservation; thence northerly along said west boundary to its intersection with the international boundary; thence along said international boundary to the place of beginning, ***.

Thus, the eastern boundary of the park, that is, the described line from the point where the Great Northern Railroad right of way "intersects the west boundary of the Blackfeet Indian Reservation; Plat, Monument No. 8 thence northerly along said west boundary to its intersection with the international boundary," Plat, Monument No. 17 was identical with the eastern boundary line of the cession as jointly surveyed, monumented and platted (Def. Ex. 13).

14. It was the defendant's contention that since the boundary had been surveyed and monumented at joint expense, by a joint commission composed of members selected by each of the parties, and had been acted upon by the parties as their common boundary for more than fifty years, the physical location of the boundary, as monumented, was conclusive and immune from dispute (citing several cases). In view of the Commission's disposition of this action upon other grounds, it is not necessary to decide that contention.

15. Petitioners' Exhibit 2 is a report made to the law firm of Wilkinson, Cragun, Barker and Hawkins by Stanley J. Thill, consulting engineer. The firm had retained him on June 8, 1957, to make a study of the correctness of the 1896-97 surveyed-monumented line. The report, so far as material, reads:

In order to complete the resurvey as rapidly as possible, all our observations to determine the bearings of the boundary lines were solar observations. The observations in the original survey were polaris observations. A polaris observation is more accurate than a solar, however, the difference obtained would not be great enough to effect the results in any one line more than approximately 260 feet. In most cases the results obtained were considerably closer. (p. 1)

* * * * *

In summarizing the results obtained in the resurvey of the boundary line, it can be said that the resurvey was sufficiently accurate to determine that the original survey follows the letter of instruction of June 29, 1896, and is correct, with the exception that between Monument No. 6, Monument No. 7 and Monument No. 8, the line is not a straight line but crosses and re-crosses a straight line between these points. The deviations to the west and east of a straight line, however, seem to balance. This fact is shown on the original plats and original notes of the survey made in 1896. (p. 3)

The Commission finds that since the petitioners' evidence established that the original survey did not deprive the Indians of any land, there is no basis for recovery and that the petition should be dismissed.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner