

## 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-R |
|                                      | ) |                 |
| THE UNITED STATES OF AMERICA,        | ) |                 |
|                                      | ) |                 |
| Defendant.                           | ) |                 |

Decided: December 26, 1973

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to the findings 1 through 6 entered herein on November 19, 1969, 22 Ind. Cl. Comm. 85.

7. Location of Land.

The land to be valued is located entirely within what is now Chippewa County in the Upper Peninsula of the State of Michigan. On the date of valuation, March 2, 1821, the Upper Peninsula was a part of Michigan Territory. Congress established the territory in 1818, three years after the end of the War of 1812. The territory became a state in 1837.

The land is a 10,240 acre strip one mile deep and 16 miles long. It extends southerly from the Falls of St. Mary's down the west side of the St. Mary's River to a point opposite Neebish Island approximately two and one-half miles below the mouth of the Charlotte River, a tributary of the St. Mary's River.

The St. Mary's River was the natural water link between Lake Superior and the lower Great Lakes. The Falls of St. Mary's were

located abreast of what is now the city of Sault Ste. Marie, Michigan.

8. Historical Background.

Long before the coming of white men in the mid-17th century, the land to be valued was important to the Indians. They maintained a permanent encampment there, as 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.

At the time of valuation, white and Indian residents around the falls were engaged in such activities as fishing, operating trading posts, buying and selling furs, and operating the portage. Some engaged in farming nearby. In early summer voyageurs, traders, trappers, and Indians came from wintering places as far distant as the Arctic Circle to sell furs and to obtain supplies for the next trapping season. In winter little activity took place around the falls since the water routes to and from it were frozen.

Immediately after the cession, the ceded land became a part of Michilimachinac County. A U.S. District Court was established at Sault Ste. Marie in 1823, and in 1826 the village became the county seat of newly formed Chippewa County.

9. Strategic Significance of the Area.

The United States recognized the international strategic significance

of the area around the falls and effected the cession for that reason. Control of the straits connecting Lake Superior with the lower lakes meant control of the Nation's interest in the entire Northwest. All lake traffic through the area stopped at the impasse of the rapids for the laborious portage around the falls to and from Lake Superior. The village of Sault Ste. Marie was the crossroads and meeting place for explorers, fur traders, and Indians.

In 1820 it was decided that a military outpost should be established there. In 1822 Fort Brady was built, and in 1823 an Indian agency, with jurisdiction over the entire Northwest, opened near the fort.

#### 10. Population.

Population growth was slow in the Upper Peninsula region between 1810 and 1820. In 1820 the white population was less than 2 persons per square mile. Michilimachinac County, embracing nearly all of the Upper Peninsula, including the land in the cession, had only 819 people at the time.

On the valuation date, the village of Sault Ste. Marie had only about 25 permanent white residents. Nevertheless, the village had about 15 to 20 buildings. The permanent population increased with the building of Fort Brady. By 1826, five years after the valuation date, 152 whites lived in the village, and by 1830 there were 623 permanent residents.

In 1821 there was no record of any population in the lower 14 square miles of the tract. There was no stable population in this area until after the public land sales began in 1848.

### 11. Climate and Precipitation.

The winters were rigorous and the summers were short and comparatively mild. January temperatures averaged from 14<sup>o</sup> to 22<sup>o</sup> while July temperatures averaged from 74<sup>o</sup> to 76<sup>o</sup>. The annual mean temperature was about 40<sup>o</sup>.

The annual precipitation was about 30 inches, and the average snow fall was about 90 inches. The period between killing frosts was about 140 days.

### 12. Topography, Soils.

Most of the land was poorly drained and sloped gently to a sandy bank along the St. Mary's River. The tract was crossed by several creeks and one river, the Charlotte.

The soil, comprised largely of glacial drift, consisted of various types of sandy loams intersticed with smaller acreages of silty clay loams, muck, peat and stony phases, silt, sand, as well as other types of loam. Most of the land was moderately fertile.

At the date of valuation, the tract supported a good growth of native vegetation which included forests of mixed conifers and swamp hardwoods, with smaller amounts of thicketlike mixed hardwoods, black spruce, cedar, tamarack, and pine.

### 13. Timber.

The timber had little commercial value at the time of valuation. However, it was valuable for local use as firewood, building material

and corduroy for roads. A pristine forest was an expensive and difficult obstruction to the use of the land for agriculture.

14. Highest and Best Use.

On March 2, 1821, the upper two square miles of the area had a highest and best use as a townsite. The existing village area had already been adapted to townsite uses. Expansion of this area was inevitable.

The balance of the tract, amounting to 8,690 acres, had a highest and best use for agriculture. With efficient drainage the loamy soils in this area were capable of producing fair yields of hay, oats, barley, and potatoes. The area was also suitable for pasture land.

15. Plaintiffs' Valuation.

Plaintiffs contended that the ceded area included only four miles of frontage on the St. Mary's River and extended farther inland to include a total of sixteen square miles, encompassing what is now much of the city of Sault Ste. Marie.

Plaintiffs did not present any expert opinion on the value of the ceded lands. Plaintiffs' expert was an historian, Mr. Robert Warner, who prepared a report dealing with the historical aspects of the area. Based on this report and relying on documentary evidence presented by defendant, plaintiffs' counsel has proposed a valuation of \$512,000.

The primary basis for counsel's contention is a sale of land on the outskirts of Detroit. In 1815 Governor Lewis Cass purchased a 500 acre farm including a farmhouse thereon for \$12,000 which was an average price per acre of \$24.00. Detroit, located in the southeastern part of

of Michigan, had a population of 850 in 1816. Plaintiffs have also cited some 1825 advertised prices ranging from \$16.00 to \$40.00 per acre for some 2,000 acres of land located on the turnpike road six miles west of Detroit. Contending that the lands in this case were more valuable than the land in Detroit which Governor Cass purchased in 1815, plaintiffs' counsel has placed an average value per acre of \$50.00 on the subject area.

16. Defendant's Valuation.

Defendant's expert appraiser, Mr. Gordon E. Elmquist, filed an extensive and informative report prepared by him, with the assistance of Dr. E. G. Booth, an associate appraiser in Mr. Elmquist's firm. He concluded that the subject area had a fair market value of \$8,000 in 1821.

Mr. Elmquist weighed a number of pertinent factors which he felt had a bearing on the value of the land. Some of these were the land's geology and topography, its physical location and size, the climate, soils, transportation facilities, communications, and its present and potential use for agriculture, lumbering, and other commercial activities. He also considered sales of other tracts of land but concluded that none of them were comparable to Area 112 insofar as time, character of land, location, size and other economic conditions were concerned.

Mr. Elmquist divided the cession into two categories for purposes of his valuation. One area was a 200 acre strip about a quarter mile wide extending from the falls down the St. Mary's River a little more

than a mile. He found that the highest and best use of this strip was for commercial enterprises and community development. He considered that this area possessed good potential for the construction of a fur trading post or fort, the encampment of Indians and traders, and for providing transportation and other services necessary for community development. He valued this 200 acre strip at \$4,000 or \$20.00 per acre.

Mr. Elmquist's other category represented the balance of the area lying below the falls. Those 10,040 acres were usable for agricultural purposes. However, he was of the opinion that most of that land was either low and wet or both or had second and third class soils. He concluded that there would have been little demand for such land and therefore valued it at \$4,016 or 40 cents per acre.

17. Consideration and Offsets.

The consideration given plaintiffs' ancestors for the land ceded by the 1820 treaty included no cash and consisted only of goods of nominal value. Defendant claims no credit therefor.

Gratuitous offsets were determined and credit given defendant therefor in our decision in Bay Mills Indian Community v. United States, Dockets 18-E and 58, 26 Ind. Cl. Comm. 538 (1971). Defendant has stated that it has no claim for gratuitous offsets in this case.

18. Conclusions.

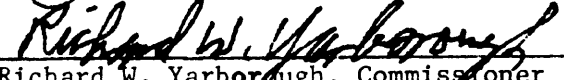
- A. The fair market value of Area 112 on March 2, 1821, was \$15,000.
- B. The payment of a nominal consideration by the defendant for a tract of land worth \$15,000 was unconscionable within the meaning of Clause 3, Section 2 of the Indian Claims Commission Act.

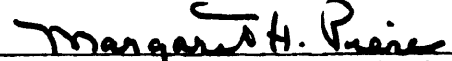
C. Defendant has no offsets to assert in this case.

D. The plaintiffs, for and on behalf of the Sault Ste. Marie Band of Chippewa Indians, are entitled to recover the sum of \$15,000 in full satisfaction of all claims asserted under Docket 18-R.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner