

INTERNATIONAL JOINT COMMISSION

---

APPLICATION OF THE  
INTERNATIONAL LUMBER COMPANY FOR  
APPROVAL OF THE OBSTRUCTION OF THE  
WATERS OF THE RAINY RIVER AT  
INTERNATIONAL FALLS,  
MINNESOTA.

---

ORDER AND OPINION

---

APPLICATION FILED AUGUST 28, 1916

DECIDED OCTOBER 8, 1917



WASHINGTON  
GOVERNMENT PRINTING OFFICE

1917

**INTERNATIONAL JOINT COMMISSION.**

**CANADA.**

CHARLES A. MAGRATH, CHAIRMAN.

HENRY A. POWELL, K. C.

P. B. MIGNAULT, K. C.

LAWRENCE J. BURPEE, *Secretary.*

**UNITED STATES.**

OBADIAH GARDNER, CHAIRMAN.

JAMES A. TAWNEY.

R. B. GLENN.

WHITEHEAD KLUTTZ, *Secretary.*

## INTERNATIONAL JOINT COMMISSION.

---

### APPLICATION OF THE INTERNATIONAL LUMBER COMPANY FOR APPROVAL OF THE OBSTRUCTION OF THE WATERS OF THE RAINY RIVER AT INTERNATIONAL FALLS, MINNESOTA.

---

#### ORDER OF APPROVAL.

The above application having come on for final hearing at the city of Minneapolis, in the State of Minnesota, on the 22d, 23d, and 24th days of January, 1917, the commission, after hearing all the parties and carefully considering the application and evidence adduced, as well as the statements of the engineers representing the United States and the Dominion of Canada in respect thereof, finds as follows:

1. That the applicant, International Lumber Company, is a corporation organized under the laws of the State of Minnesota, for the purpose among other things of manufacturing lumber, and it is engaged in the operation of a sawmill at International Falls, Minnesota.

2. For some years the applicant has maintained certain booms and sorting gaps in the Rainy River, at International Falls, the present location of which is shown by a dotted line marked "International Lumber Co.'s existing boom" on the plan accompanying this order of approval and which is made a part hereof. These booms and sorting gaps are used for collecting and storing logs intended for the applicant's mills and also for the pulp and paper mills at International Falls and at Fort Frances, Ontario.

3. The existing booms and sorting gaps of the applicant cross the boundary line between the United States and the Dominion of Canada at three places, and after a survey of the said booms and sorting gaps a new plan was made for the same, and under the requirements of section 10 of the Act, March 3, 1899, chapter 425, volume 30, Statutes at Large of the United States, Rainy River being a navigable water, the applicant, on May 15, 1916, applied to the Secretary of War of the United States for approval of the said plan and for authority to construct or reconstruct in accordance with said plan.

4. As shown on the said new plan, the booms and sorting gaps, approval of the plans of which was requested by the applicant, --

parallel to the international boundary line for a considerable portion of their length, where they are at a distance of 10 feet south of the said boundary line, and lie entirely in the territory of the United States. Opposite the upper part of the booms and sorting gaps of the applicant, and north of the international boundary and in Canadian waters, is the boom of the Shevlin-Clarke Company (Ltd.), a Canadian corporation, the line of which boom is marked, on the plan accompanying this order of approval, by the line in short dashes with the words, "Shevlin-Clarke boom."

5. The Secretary of War, on August 17, 1916, approved, on the recommendation of the Chief of Engineers, the said new plan made as aforesaid, and referred the application to the Secretary of State for submission to this commission for its consideration. The ground of the reference to the commission of the said application, as stated in the letter of the Chief of Engineers to the Secretary of War, dated the 31st of July, 1916, is that "the Rainy River is an international boundary stream and the proposed booms are uses of boundary waters which it is believed require the approval of the International Joint Commission."

6. On August 25, 1916, the Secretary of State transmitted to the commission for its consideration the said application of the applicant, together with the drawings relating thereto, and the correspondence on the subject received from the War Department.

7. The required notices of the application having been given, the said application was opposed by the Dominion of Canada in a statement in response, dated November 15, 1916. This statement in response contains an order in council of the Canadian Government of the same date, which represents that the town of Fort Frances has filed an objection to the grant of the booming rights as set forth in the application on the grounds:

(1) That the proposed boom would seriously encroach on the rights of navigation as at present enjoyed by citizens of Canada and the United States.

(2) That the location of the said boom, for a considerable portion of its length, is within about 10 feet of the international boundary, and therefore the navigable channel of the river would be practically all on the Canadian side, thus greatly increasing the wave action on the Canadian shore caused by motor and other boats and great erosion to the banks would ensue.

(3) That the rights and interests of the citizens of Fort Frances will be seriously prejudiced by encroaching upon the channel of the river, it being fair to assume that industries will be established on the Canadian side of the river, in which case additional wharfage and booming rights would be required, but that the town did not, how-

ever, object to the construction of a boom at a distance of not less than 200 feet south from the international boundary.

The order in council further represented that the district engineer of the Department of Public Works had reported that the boom has already been constructed, and is a distinct obstruction in the river, and that the plan accompanying the application does not correctly show its relative position with regard to the international boundary; that the boom crosses the international boundary at three points and runs along it at other points, confining for its own use about one-half of the river; that navigation is not materially affected at the present time, although the distance between the boom and the boom belonging to the Shevlin-Clarke Company on the Canadian side is but 175 feet at one point and 200 feet at the other; that between the upper end of the boom and the Minnesota shore the river has been filled with logs from the bottom to above the surface for storage purposes, the effect of such blockade on the surface profile or on currents and their action north of the boundary not having been observed, but that with a high water condition and the south half of the river dammed opposite the Shevlin-Clarke Company's mills, the Canadian shore must suffer from under scour.

8. The town of Fort Frances filed with the commission a statement of certain objections it had transmitted to the Minister of Public Works of Canada by letter dated October 25, 1916, the substance of which is given in the statement in response of the Dominion of Canada.

9. The United States filed with the commission a statement dated December 30, 1916, in which it is represented that the application is submitted to the commission with the suggestion that the present and future needs of navigation in the Rainy River be carefully safeguarded in any decision made on the said application. It further pointed out that the effect of the construction of the boom will be to confine the navigation along the boom entirely or almost entirely to the Canadian side of the international waters, and it suggested that the rights to the free use of the waters on the part of citizens of both countries for navigation purposes be carefully preserved.

10. The Shevlin-Clarke Company (Ltd.) also filed with the commission a statement in which it said that it did not believe that it would sustain special damage by the granting of the application; and would be damaged at all only if and as the general public, and particularly the town of Fort Frances, might be damaged. It added that as the United States and the Dominion of Canada, representing the general public, and the town of Fort Frances, representing that community, have become parties to this proceeding, the said company will not suffer if, in the decision on this application, the rights of those so represented are protected.

11. Rainy River and Rainy Lake are boundary waters within the meaning of the preliminary article of the treaty of the 11th of January, 1909, between Great Britain and the United States of America, and the place where the booms and sorting gaps of the applicant have been located is a short distance above the dam between International Falls and Fort Frances. On the north or Canadian side of this part of the river is the town of Fort Frances, Ontario, and on the south or United States side is the town of International Falls, Minnesota. Rainy River is a navigable stream and is used for purposes of navigation as well as for logging and other purposes.

12. The evidence and the plans of record show that the existing boom of the applicant crosses at three places the international boundary as tentatively located. According to the plan approved by the Secretary of War, the boom would skirt the international boundary as so located for about 3,200 feet, running parallel to the same at a distance of 10 feet to the south. The upper portion of the boom, as approved by the Secretary of War, is opposite the boom of the Shevlin-Clarke Company (Ltd.), situated on the north-side of the river, and at its nearest point at a distance of 300 feet from the same. The lower part of the applicant's boom is opposite a part of the town of Fort Frances, and an open space of approximately one-half of the total width of the river separates it from the Canadian shore. There is ample space north of the boom and between it and the Shevlin-Clarke boom for the navigation of the river, but this navigation, opposite the portion of the boom which skirts the boundary, will be practically entirely in Canadian waters.

13. From the facts proved at the hearing on this application it appears that the booms and sorting gaps of the applicant, as approved by the Secretary of War of the United States, with the storage of logs or lumber therein, will affect the natural level and flow of Rainy River on the Canadian side of the boundary, so that the said plan and the said booms and sorting gaps of the applicant and the storage of logs and lumber therein require the approval of this commission under Article III of the treaty of January 11, 1909.

14. The location of the said boom and sorting gaps of the applicant, as approved by the Secretary of War, is shown on the plan accompanying this order of approval by the line marked by the words "International Lumber Co.'s boom as approved by the United States Secretary of War," and is further marked on the said plan by the letters B, C, D, E, F, G, H, J, K, H, L, M, N.

15. The Dominion of Canada and its citizens have the right, subject to the approval of this commission when such approval is required under the terms of the treaty of January 11, 1909, to the full use of the said river on the Canadian side of the international boundary for booming and other purposes, and these rights should be

fully secured by any order of approval granted by this commission on the application of the said applicant.

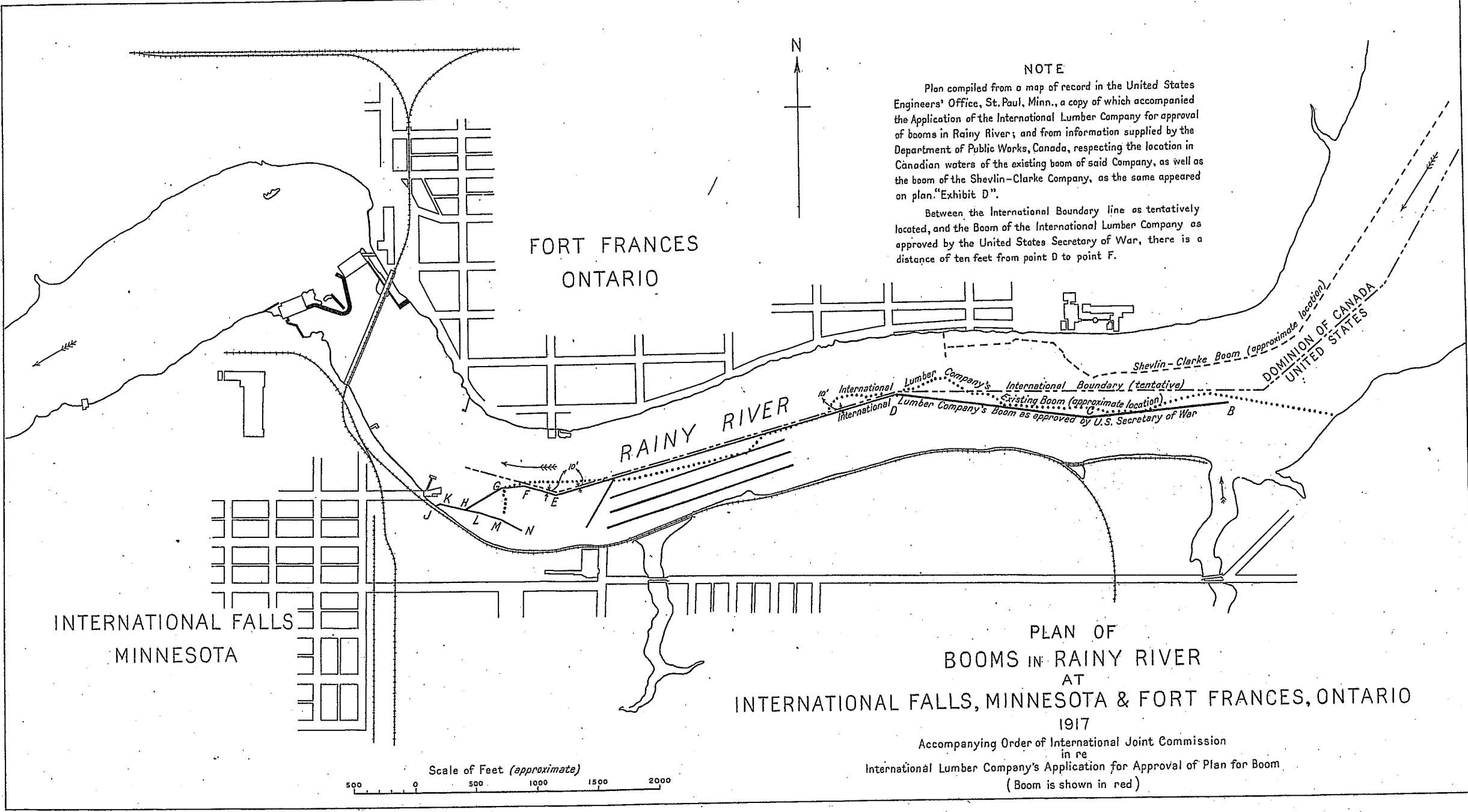
It is therefore ordered that the plan of the booms and sorting gaps of the applicant, as approved by the Secretary of War of the United States, and as fully described in paragraph 14 of this order, be approved subject to the following conditions, to wit:

A. The said applicant shall remove and reconstruct its existing boom along the lines indicated in the approval of the Secretary of War and fully described in paragraph 14 of this order before the 31st day of December, 1919.

B. In case of any duly authorized obstruction on the Canadian side of the river, opposite the said boom and sorting gaps, which would, when completed, be of such extent as to require, in the judgment of the commission, the removal of the said boom and sorting gaps, the company shall remove the same southerly from the boundary to such a distance as the commission may direct, and in case of its refusal or neglect so to do within the time fixed by the commission this order of approval shall thereupon cease to be operative.

Dated at Ottawa, Ontario, October 3, 1917.

C. A. MAGRATH.  
OBADIAH GARDNER.  
HENRY A. POWELL.  
JAMES A. TAWNEY.  
P. B. MIGNAULT.  
R. B. GLENN.



NOTE

Plan compiled from a map of record in the United States Engineers' Office, St. Paul, Minn., a copy of which accompanied the Application of the International Lumber Company for approval of booms in Rainy River; and from information supplied by the Department of Public Works, Canada, respecting the location in Canadian waters of the existing boom of said Company, as well as the boom of the Shevlin-Clarke Company, as the same appeared on plan "Exhibit D".

Between the International Boundary line as tentatively located, and the Boom of the International Lumber Company as approved by the United States Secretary of War, there is a distance of ten feet from point D to point F.

INTERNATIONAL FALLS  
MINNESOTA

FORT FRANCES  
ONTARIO

RAINY RIVER

DOMINION OF CANADA  
UNITED STATES

PLAN OF  
BOOMS IN RAINY RIVER  
AT  
INTERNATIONAL FALLS, MINNESOTA & FORT FRANCES, ONTARIO  
1917

Accompanying Order of International Joint Commission  
in re  
International Lumber Company's Application for Approval of Plan for Boom  
(Boom is shown in red)

Scale of Feet (approximate)  
500 0 500 1000 1500 2000



## INTERNATIONAL JOINT COMMISSION.

---

### APPLICATION OF THE INTERNATIONAL LUMBER COMPANY FOR APPROVAL OF THE OBSTRUCTION OF THE WATERS OF THE RAINY RIVER AT INTERNATIONAL FALLS, MINNESOTA.

---

#### OPINION.

This is an application by the International Lumber Company for the approval of a plan of booms and sorting gaps in the Rainy River at International Falls, Minnesota.

The applicant company is a corporation organized under the laws of the State of Minnesota and carries on business for the purpose, among other things, of manufacturing lumber at International Falls, where it owns and operates a sawmill. For these purposes it has for some years maintained in the Rainy River at International Falls certain booms and sorting gaps. These booms and sorting gaps are used for collecting and storing logs for the applicant's mills, and in their present location cross the international boundary line, as tentatively located, at three places. It appears from the testimony of Mr. E. W. Backus, president of the applicant company, that a boom approved by the United States authorities had existed for some years, but that some of the clusters had been removed and reconstructed farther out in the river beyond the international boundary. This having been ascertained, a new plan was prepared so that the boom should be entirely within the waters of the United States, and this boom was approved on the 17th of August, 1916, by the Secretary of War, who, however, recommended that the application should be referred to the International Joint Commission. The ground of the reference, as stated in the memorandum of the Chief of Engineers to the Secretary of War, dated the 31st of July, 1916, is that "the Rainy River is an international boundary stream and the proposed booms are uses of boundary waters which it is believed require the approval of the International Joint Commission." In a subsequent memorandum, dated the 16th of August, 1916, the Chief of Engineers stated that "the proximity of the booms to the boundary line makes it proper to refer the case to the International Joint Commission. Any objection on the part of Canada will be given consideration by that commission; but no such objection is anticipated,

as the project is one in which citizens of both countries are mutually and beneficially concerned." The Secretary of State, on the 25th of August, 1916, transmitted to the commission for its consideration the application, the accompanying drawings, and the correspondence on the subject from the War Department.

The application, after its transmission, was treated in the same way as applications for the approval of the commission under Articles III and IV of the treaty, and the notices required by the rules of procedure were duly published.

The Dominion of Canada by a statement in response, dated the 15th of November, 1916, opposed the granting of the application. This statement in response contains an order in council of the Canadian Government of the same date, which represents that the town of Fort Frances has filed an objection to the grant of the booming rights as set forth in the application on the grounds: (1) that the proposed boom would seriously encroach on the rights of navigation as at present enjoyed by citizens of Canada and the United States; (2) that the location of the said boom, for a considerable portion of its length, is within about 10 feet of the international boundary, and therefore the navigable channel of the river would be practically all on the Canadian side, thus greatly increasing the wave action on the Canadian shore caused by motor and other boats and great erosion to the banks would ensue; (3) that the rights and interests of the citizens of Fort Frances will be seriously prejudiced by encroaching upon the channel of the river, it being fair to assume that industries will be established on the Canadian side of the river, in which case additional wharfage and booming rights would be required, but that the town did not, however, object to the construction of a boom at a distance of not less than 200 feet south from the international boundary. The order in council further represented that the district engineer of the Department of Public Works had reported that the boom has already been constructed, and is a distinct obstruction in the river, and that the plan accompanying the application does not correctly show its relative position with regard to the international boundary; that the boom crosses the international boundary at three points and runs along it at other points, confining for its own use about one-half of the river; that navigation is not materially affected at the present time, although the distance between the boom and the boom belonging to the Shevlin-Clarke Company on the Canadian side is but 175 feet at one point and 200 feet at the other; that between the upper end of the boom and the Minnesota shore the river has been filled with logs from the bottom to above the surface for storage purposes, the effect of such blockade on the surface profile or on currents and their action north of the boundary not having been observed; but that with a high-water condition and the south half of the river dammed opposite

the Shevlin-Clarke Company's mills, the Canadian shore must suffer from undue scour.

The town of Fort Frances filed with the commission a statement of certain objections it had transmitted to the Minister of Public Works of Canada by letter dated October 25, 1916, the substance of which is given in the statement in response of the Dominion of Canada.

The United States filed with the commission a statement dated December 30, 1916, in which it is represented that the application is submitted to the commission with the suggestion that the present and future needs of navigation in the Rainy River be carefully safeguarded in any decision made on the said application. It further pointed out that the effect of the construction of the boom will be to confine the navigation along the boom entirely or almost entirely to the Canadian side of the international waters, and it suggested that the rights to the free use of the waters on the part of citizens of both countries for navigation purposes be carefully preserved.

The Shevlin-Clarke Company (Ltd.) also filed with the commission a statement in which it said that it did not believe that it would sustain special damage by the granting of the application and would be damaged at all only if, and as the general public, and particularly the town of Fort Frances, might be damaged. It added that as the United States and the Dominion of Canada, representing the general public, and the town of Fort Frances, representing that community, have become parties to this proceeding, the said company will not suffer if, in the decision on this application, the rights of those so represented are protected.

It may be stated at once that the objection of the Canadian Government to the application was chiefly to the booms as presently maintained by the applicant, and which as stated cross the international boundary at three points, whereas the new plan, as approved by the Secretary of War, contemplates the reconstruction of the boom wholly on the United States side of the international boundary. Fear was, however, expressed that confining the navigation of the river to the Canadian side of the boundary would be productive of damage to the Canadian shore. Referring, however, to the statement made by the counsel of the Dominion, Mr. Anderson, (p. 147 of the hearings), it is apparent that what he was mainly concerned with was that in any approval given by the commission the necessities of future navigation should be kept in mind, and that the approval should not be a permanent one, but that if in the future at any time conditions should arise which, in the opinion of the commission require a change it should be open to the commission to direct that change. What Mr. Anderson had in mind was the possibility of Canadian interests desiring to construct a boom on the Canadian side opposite the applicant's boom, and he desired

that in that event it should be open to the commission to order that the applicant's booms should be removed farther away from the boundary line, so that navigation interests might be conserved and the right of Canadian interests to construct a boom on the Canadian side remain unimpaired. The order of approval as adopted by the commission has fully met Mr. Anderson's suggestion.

As above stated, the application is for the approval of a new boom and not for the approval of the booms as they now exist. As shown on the new plan, the booms and sorting gaps, approval of which was requested by the applicant, run parallel to the international boundary line for a considerable portion of their length, where they are at a distance of 10 feet south of the said boundary line, and lie entirely in the territory of the United States. Opposite the upper part of the booms and sorting gaps of the applicant, and north of the international boundary and in Canadian waters, is the boom of the Shelvin-Clarke Company (Ltd.), a Canadian corporation, the line of which boom is marked, on the plan accompanying the order of approval, by the line in short dashes with the words "Shevlin-Clarke boom."

Rainy River and Rainy Lake are boundary waters within the meaning of the preliminary article of the treaty of the 11th of January, 1909, between Great Britain and the United States of America, and the place where the booms and sorting gaps of the applicant have been located is a short distance above the dam between International Falls and Fort Frances. On the north or Canadian side of this part of the river is the town of Fort Frances, Ontario, and on the south or United States side is the town of International Falls, Minnesota. Rainy River is a navigable stream and is used for purposes of navigation as well as for logging and other purposes.

The evidence and the plans of record show that the existing boom of the applicant crosses at three places the international boundary as tentatively located. According to the plans approved by the Secretary of War, the boom would skirt the international boundary as so located for about 3,200 feet, running parallel to the same at a distance of 10 feet to the south. The upper portion of the boom, as approved by the Secretary of War, is opposite the boom of the Shevlin-Clarke Company (Ltd.), situated on the north side of the river, and at its nearest point at a distance of 300 feet from the same. The lower part of the applicant's boom is opposite a part of the town of Fort Frances, and an open space of approximately one-half of the total width of the river separates it from the Canadian shore. There is ample space north of the boom and between it and the Shevlin-Clarke boom for the navigation of the river, but this navigation, opposite the portion of the boom which skirts the boundary, will be practically entirely in Canadian waters.

Some doubts were entertained by members of the commission whether the application sufficiently showed on its face the jurisdiction of the commission to grant an order of approval. It is eminently desirable, if not absolutely essential, that such jurisdiction should be apparent on the face of the application, and, according to the rules of procedure of the commission, any application made to it should clearly state the nature of the order of approval desired. This application was made directly to the Secretary of War and, naturally, perhaps did not describe the nature of the order of approval desired of the commission, for, as Mr. Rockwood, counsel for the applicant, frankly stated, he was in doubt whether the matter was one that should be brought before the commission. But on fully considering the matter the commission finds that it has jurisdiction to consider the application, for, from the facts proved at the hearing on this application, it appears that the booms and sorting gaps of the applicant, as approved by the Secretary of War of the United States, with the storage of logs or lumber therein, will affect the natural level and flow of Rainy River on the Canadian side of the boundary, so that the said plan and the said booms and sorting gaps of the applicant and the storage of logs and lumber therein require the approval of this commission.

Under these circumstances the commission—while calling attention to the obvious necessity of so drafting applications to it as to show jurisdiction on the face of the applications themselves, and also to the rule which requires that applications should set forth as fully as may be necessary for the information of the commission the facts upon which the applications are based and the nature of the order of approval desired—has decided to grant the application of the International Lumber Company on the following conditions, to wit:

1. The said applicant shall remove and reconstruct its existing boom along the lines indicated in the approval of the Secretary of War, and fully described in paragraph 14 of the order of approval, before the 31st day of December, 1919.

2. In case of any duly authorized obstruction on the Canadian side of the river, opposite the said boom and sorting gaps, which would, when completed, be of such extent as to require, in the judgment of the commission, the removal of the said boom and sorting gaps, the company shall remove the same southerly from the boundary to such a distance as the commission may direct, and in case of its refusal or neglect so to do within the time fixed by the commission, the order of approval shall thereupon cease to be operative.

It is clear that the Dominion of Canada and its citizens have the right, subject to the approval of the commission when such approval is required under the terms of the treaty, to the full use of Rainy River on the Canadian side of the international boundary for boom-

ing and other purposes, and these rights are fully safeguarded by the order of approval on the present application.

During the hearing a complaint was made that at times the applicant company had moored sack booms on the outside of the permanent line of cluster piling, thus throwing them out directly in the channel of navigation and impeding the passing of boats in the river. This is a matter which mainly concerns the navigation of the river, and navigation interests as such, independently of any question of the level or flow of boundary waters, are not among the subjects which, under the treaty, come within the scope of the commission's powers. It is obvious, however, that the order of approval now granted by the commission merely covers the booms and sorting gaps described in the order and clearly shown on the map thereto annexed. The approval thus given is no authority for any further obstruction of the river, and if the navigation rights of the citizens of the two countries are interfered with otherwise than by the obstruction now authorized, an appropriate remedy no doubt exists under the laws of both countries. It may, however, be added that it was clearly shown at the hearing that outside of the boom of the applicant company, according to the plan which is now approved, there is ample space for the navigation of the river.

Approval of the application is granted on the above-stated conditions.

Opinion by Mr. Mignault.

○