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another permit, dated April 20, 1918, and filed as Exhibit 9, under which the construction work will be carried out.

It is to be remarked, however, that the dredging of Dodges shoal is now practically completed, as it was the first work started. The piers and ice boom will be put in only if the construction of the submerged weir is authorized, so that when the matter was submitted to the Commission, an important part of the work originally considered by the applicant as constituting part of one project, had been completed.

Considering merely the dredging of a channel 150 feet wide and 20 feet in depth at Dodges shoal, that is to say the work completed under the permit of April 20, 1918, there is no room for doubt that this dredging would affect the natural level and flow of the St. Lawrence river on both sides of the international boundary, which by the terms of Article III of the Treaty is prohibited except when authorized by special agreement between the High Contracting Parties, or first approved by the Commission. Mr. James W. Rickey, chief hydraulic engineer of the Aluminum Company of America, in his evidence before the Commission, admitted that this dredging, without the compensating influence of the submerged weir, would affect the level on the north shore by possibly a couple of inches.

Mr. Koonce, when he came before the Commission at Atlantic City, said that the engineers of the War Department had satisfied themselves that the only part of the work which should be submitted for the approval of the Commission was the submerged weir, and they thought that the dredging at Dodges shoal and the construction of the piers for the ice boom would not affect the levels on the north shore so as to require the approval of the Commission under Article III of the Waterways Treaty. It is obvious, in view of the evidence, that this conclusion was erroneous, and the Commission is of the opinion that the whole of the work, and not merely the part concerning the submerged weir, should have been submitted for the approval of the Commission, as required by Article III of the Treaty. Whether or not the effect on levels of the dredging would be compensated by the construction of the submerged weir—and the approval of the Commission is necessary when merely the flow of boundary waters is affected, even supposing their level remains the same—it certainly seems strange that only the compensating work, and not the dredging requiring this compensation, should have formed the subject of the application to the Commission. Under normal conditions and under the evidence submitted—without the stress of the emergency which confronted the Commission when application was made to it to issue an order of approval, which had to be issued at once to be of any use for the coming winter—it would have been the duty of the Commission under the Treaty to consider the whole work as one project, and to have required the application to be amended accordingly. The attention of the applicant was several times during the hearing called to the requirements of Article III of the Treaty with respect to this dredging, and the Commission is of the opinion, in view of the prohibition of this article, that unless some action be taken by the applicant to meet these requirements, the dredging work cannot be considered to have been done lawfully or in accordance with this provision of the Waterways Treaty, because it admittedly affects the "level" and "flow" of boundary waters.

It may perhaps be further remarked that those in authority in either of the countries should not lightly take upon themselves the responsibility of determining whether a proposed use, obstruction or diversion of boundary waters will or will not affect the level or flow of such waters on the other side. The High Contracting Parties, in the absence of a special agreement between them in respect thereto, have created a tribunal before which all such questions should be brought, and it would not be conducive to that spirit of fairness and of mutual co-operation with which the Treaty should be carried out, for one side to determine in an *ex parte* manner, and without reference to the other side, questions involving the use, obstruction or diversion of these boundary waters now prohibited by the Treaty except as therein provided.