

## BEFORE THE INDIAN CLAIMS COMMISSION

GILA RIVER INDIAN COMMUNITY, )  
 )  
 Plaintiff, )  
 )  
 v. ) Docket Nos. 236-A and 236-B  
 )  
 THE UNITED STATES OF AMERICA, )  
 )  
 Defendant. )

Decided: June 30, 1976

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to the findings 1 through 16 previously entered herein on April 28, 1971, 25 Ind. Cl. Comm. 260.

17. Description of Subject Tracts.

The lands to be valued on the Gila River Indian Reservation involve three distinct tracts previously identified as follows:

(a) Parcel B

Originally Parcel B consisted of 9,170 acres of undeveloped land that was first selected by the War Relocation Authority. However, one of two relocation campsites was subsequently built on this same tract. This "Campsite No. 2" (Parcel B-1) initially contained 320 acres, thus reducing the size of Parcel B to 8,850 acres. Parcel B is identified in both the Memorandum of Understanding and the use permit for this tract as "containing approximately 8,850 acres." Thereafter "Campsite No. 2" was enlarged by 530.02 acres to 850.02

acres, the result being a further reduction of Parcel B to 8,319.98 acres. Further, the presence of buttes on 60 acres of Parcel B reduced the subjugable area to 8259.98 acres. Parcel B is to be valued as if it had been subjugated as of March 17, 1944.

(c) Parcel B-1

Parcel B-1, which is Campsite No. 2, is completely surrounded by Parcel B and includes all but one of the small buttes in the vicinity of the Sacaton Butte complex. The total acreage in Parcel B-1 is 850.02 acres. The diminution in the value of Parcel B-1 for failure to restore to its original condition is to be determined as of April 30, 1947, when the campsite lease was terminated.

(d) Parcel C

Parcel C which is Campsite No. 1, is located about one mile east of Parcel B. It contains 446.20 acres of irrigable land and is situated outside of the San Carlos Irrigation District. The diminution in the value of Parcel C for failure to restore its original condition is to be determined as of April 30, 1947, when the campsite lease was terminated.

18. Climate.

The predominant characteristic of the prevailing climate on the Gila River Indian Reservation is its very sparse rainfall averaging from 7.5 to 9.2 inches per year. The mean annual temperature on the Gila River Indian Reservation is 68.4 degrees. This dry hot desert climate is incapable of supporting more than a minimum vegetation without the aid of irrigation.

19. Soil, Topography and Vegetation.

For the most part, the land on the Gila River Indian Reservation is fairly level but the soil is not of the best quality; its high alkali content being a major problem. Soil testings taken in Parcel B indicate a relatively low alkali content; its soil is therefore good and is irrigable.

Forage on the Gila River Indian Reservation consists primarily of mesquite, salt bush, saltgrass, and some annual grasses and weeds that grow following occasional rainy periods. The vegetation is so sparse that the carrying capacity for cattle grazing on the reservation is only 476 acres per cow, or 1.5 head per section. Far more cattle are grazed in the irrigated fields and along the river bottoms. The Indians on the reservation have utilized most of the range forage themselves rather than leasing to outsiders. Because of the sparse vegetation and limited carrying capacity, range livestock is not a major industry.

20. Water.

With the climatic conditions on the Gila River Indian Reservation being so dry and arid, the availability of water is of prime importance in determining the highest and best use of lands on the Gila River Indian Reservation. Adequate irrigation water is absolutely essential to grow any crops or sustain any type of agricultural activity.

Parcel B's water supply would come primarily from the San Carlos Irrigation Project. San Carlos Irrigation Project water is derived from water stored behind the Coolidge Dam, ground water pumped from

below, and natural or normal flow water. Natural or normal flow water is that water flowing in the Gila River, not stored behind Coolidge Dam, but continuing downstream and into the Ashurst-Hayden Dam for diversion into the San Carlos Irrigation Project. As such, it represents a minimum of 30% of the available water from all sources. The plaintiff tribe enjoys the highest priority, ahead of all others, to the use of natural flow water. Non-Indian project lands receive natural flow water in accordance with the date of priority of the particular farm. See "Gila River Decree," United States v. Gila Valley Irrigation District, Globe Equity 59 (D. Arizona 1935).

Unlike the district (non-Indian) land, all the Indian project land was considered as one water-delivery unit. Therefore, all of the project water to the Indian unit could be used on such acres as were being farmed in any particular year. The Indian acres irrigated and cropped for the years 1935 through 1944 ranged from a low of 24,813 acres in 1935 to a high of 35,322 acres in 1943. As of March 17, 1944, Parcel B was included in the San Carlos Irrigation Project, although not subjugated and farmed.

If Parcel B's 8,319.98 acres were added to those Indian acres irrigated and cropped from the years 1935 through 1943, the total water available per acre would be reduced.

Parcel B, as well as all of the Indian and non-Indian lands could not be cropped without irrigation. In order to feasibly crop the lands, a minimum of four acre feet of water per acre is required for

irrigation for each crop year. The San Carlos Project could not be expected to furnish four acre feet of stored surface water per acre annually and a supplemental supply of water is necessary. This other water source is ground water brought to the land from wells.

Prior to 1944, pump and stored apportioned water was measured at the source and there was an evaporation and seepage loss of approximately 35 percent prior to the water reaching the farm. The pump and stored water was the only water farmers in the district could receive unless they had priority rights to the natural water flow over and above that apportioned. Priority water is not the same for each piece of land in the project and the immemorial priority of Parcel B would make it more valuable acreage than that of nonreservation properties.

#### 21. Agricultural Economy.

Between World War I and World War II, farm prices remained relatively low, hitting a bottom during the depression years of 1931 and 1932 and staying low throughout the 1930's. Cotton, for example, which has always been a major cash crop for Arizona farmers, varied from a low average of 7.30 cents per pound in 1931 to 14.37 cents average for 1936. This is compared to 43 to 51 cent cotton during World War I, and the 20 to 30 cent range through most of the 1920's. Other farm products followed this same trend. In fact, it was not until after World War II that farm prices made any significant rise and this was contrary to the anticipated decline. In 1944, cotton averaged only 21.56 cents per pound in spite of the war economy.

In an effort to stabilize the farm economy, numerous federal programs of different types have been attempted over the years. Price supports were vital in the 1941-1948 period as an incentive for the heavy production needed as a result of the war effort. While prices were climbing, producers had not forgotten the price decline following World War I or the very depressed price situation they had been experiencing for the previous two decades.

It was not until 1950 that any large profits were made in farming. This was due almost entirely to the increased price of cotton, and occurred after the 1944 date of valuation for Parcel B. Apart from cotton, the farmlands on and off the Gila River Indian Reservation over the years have produced more than adequate yields of alfalfa hay, barley, oats, wheat, grain sorghums, as well as a diversified vegetables including lettuce, cabbage, beets, turnips, and carrots.

22. Highest and Best Use of Parcel B.

The economic history of the lowlands of the Gila River Valley has been one of irrigated farming and limited grazing. The earliest practitioners were the ancestors of the present membership of the plaintiff tribe. The Gila River has always been the prime source of water to sustain such agricultural activity, and ever since the first white contact, the resident Indians have been praised for their sophisticated methods of irrigation farming. Gila River Pima-Maricopa Indian Community v. United States, Docket 228, 24 Ind. Cl. Comm. 311 (1970).

As agricultural land the undeveloped acreage in Parcel B could have been used at anytime as grazing land. However, with a poor carrying capacity of less than 1.5 head of cattle per section, the income received from such usage would be severely restricted and of no economic significance. Since Parcel B is fairly level, has good soil, a water supply from the San Carlos Irrigation Project, and is accessible to a market, its highest and best use in an unimproved state, as of March 17, 1944, would be potential farmland. If Parcel B had been subjugated as of March 17, 1944, its highest and best use in an improved state would be irrigated farmland.

As of the 1944 date of valuation, the lack of demand, raw materials, and adequate transportation would have negated such nonagricultural uses as residential, recreational, and industrial development.

23. Plaintiff's Appraiser - L. L. Monsees.

Mr. L. L. Monsees, an appraiser, broker, and realtor in Phoenix, Arizona, was the plaintiff's appraisal witness. Mr. Monsees filed a 13-page appraisal report and also testified in support of his appraisal. In making his appraisal, Mr. Monsees assumed that a purchaser of Parcel B (8,850 acres) in 1944, as a subjugated tract in farmable condition, would be looking for a return on his investment, and would probably take the "income capitalization" approach in determining the extent of his investment. Accordingly, Mr. Monsees relied solely on the income method of appraisal in arriving at the March 17, 1944, fair market values of Parcel B as if subjugated and as raw unimproved desert land.

In determining a 1944 value for Parcel B as subjugated farmland by the income approach, Mr. Monsees utilized the rental value of 9 leases that had been executed by the Gila River Indian Community with non-Indian farmers for lands on plaintiff's irrigated Southside Farm which adjoins Parcel B. One lease was executed in 1943; the other eight cover the years 1949 through 1952. Five of the leases were sharecrop leases; three were net cash rental leases; and one was a combination of sharecrop and cash. According to Mr. Monsees the nine leases show an annual minimal net rental value of \$30.00 per acre for lands comparable to Parcel B. Mr. Monsees then applied this \$30.00 per acre rental figure to the 8,850 acres in Parcel B and arrived at an estimated annual rental income for Parcel B of \$265,500.00. He then used a capitalization rate of 4 1/2%, which he derived from a combination of the 1944 prime bank rate of 1 1/2% plus an additional 3% that Mr. Monsees characterized as the contemporaneous average lending rate to non prime rate borrowers. Under Mr. Monsees income method the 8,850 acres in Parcel B, with an annual net rental value of \$265,500.00 that is capitalized at 4 1/2%, shows a fair market value of \$5,900,000 which is approximately \$667 per acre.

In its raw and undeveloped state, Mr. Monsees assumed a net rental value of \$0.25 per acre as desert grazing land, or \$2,212.50 for the 8,850 acres in Parcel B. Capitalized at 4 1/2%, the fair market value of Parcel B, as raw and unimproved desert grazing land, is \$49,166.66, or approximately \$5.56 per acre.



24. Defendant's Appraiser - Walter D. Armer.

Mr. Walter D. Armer, an appraiser, and a ranch and farm management specialist, from Tucson, Arizona, submitted a 47-page appraisal report and also testified as defendant's expert witness in support of his appraisal of the subject tract. Mr. Armer made separate appraisals of Parcel B and the two campsites, Parcels B-1 and C. In appraising the subject tracts, Mr. Armer rejected the income approach as inapplicable and relied primarily on the market data or comparable sales method, with some utilization of the cost method in confirming the market value of Parcel B as subjugated farmland. As stated by Mr. Armer the purpose of his appraisal was the determination of the fair market value of Parcel B as of March 17, 1944, in its unimproved state and as if it had been subjugated farmland. Mr. Armer also estimated the fair market value of the two campsites, Parcels B-1 and C, as of April 30, 1947, for the purpose of determining the diminution in their market values because of the failure of the United States to restore the sites to their prelease condition.

Defendant's expert appraiser placed in evidence a select group of 39 private and public land sales taken from the land records of Pinal County, Arizona. These land transactions cover the period 1940 through 1951, and involve the sale of both improved and unimproved tracts ranging in size from 40 acres to 1,382 acres, and in price from \$6.25 per acre to \$250.00 per acre. Except for size, these sales involve lands that are comparable to the land in Parcel B with

respect to soil content, topography, climate, access to markets, and the availability of water. All of these sales are reasonably near to Parcel B and represent a valid cross-section of sales activity in the subject area during the period 1937 to 1951.

These 39 sales can be organized into three categories:

(a) Unimproved Desert Acreage Sales

<u>Sale No.</u>	<u>Date</u>	<u>Acreage</u>	<u>Price</u>	<u>Price/Ac.</u>
D 1	1940	640	\$ 4,500	\$ 7.03
D 2	1940	320	5,500	17.19
D 3	1941	160	2,000	12.50
D 4	1941	159	2,000	12.58
D 5	1944	160	1,000	6.25
D 6	1944	160	2,000	12.50
D 7(Resale of D6)	1945	160	2,000	12.50
*D 8(State land)	1947	160	1,600	10.00
*D 9(State land)	1947	160	1,600	10.00
*D 10(State land)	1947	160	1,600	10.00
*D 11(State land)	1947	160	1,600	10.00
D 12	1947	335	3,500	10.45
D 13	1947	<u>160</u>	<u>2,400</u>	<u>15.00</u>
Totals		2,894 acres	\$31,300	or \$10.82 per acre

\* Four quarter sections from the same section were sold on the same day.

(b) Farm Sales Within The San Carlos Irrigation District

<u>Sale No.</u>	<u>Date</u>	<u>Acreage</u>	<u>Price</u>	<u>Price/Ac.</u>
S 1	1937	80	\$ 7,600	\$ 95.00
S 2	1939	40	2,000	50.00
S 3	1940	40	3,600	90.00
S 4	1943	80	10,000	125.00
S 5	1943	80	9,000	112.50
S 6	1944	60	8,000	133.33
S 7	1945	30	6,500	216.67
S 8	1946	300	48,000	160.00
S 9	1946	80	10,000	125.00
S 10	1947	40	5,000	125.00
S 11	1948	80	8,000	100.00
S 12	1949	320	48,000	150.00
S 13	1950	<u>161</u>	<u>23,500</u>	<u>145.96</u>
Totals		1,391 acres	\$189,200	or \$136.02 per acre

(c) Farm Sales With Pump Water

<u>Sale No.</u>	<u>Date</u>	<u>Acreage</u>	<u>Price</u>	<u>Price/Ac.</u>
*P 1	1943	241.92	\$ 13,295	\$ 54.96
P 2	1943	960.00	60,000	62.50
P 3	1944	640.00	46,000	71.88
**P 4(Resale of D1)	1945	640.00	30,000	46.88
P 5(Resale of P3)	1946	640.00	69,000	107.81
P 6	1947	640.00	48,000	75.00
P 7	1949	641.15	43,000	67.07
P 8	1949	640.00	77,500	121.09
P 9	1950	640.00	51,200	80.00
P 10(Resale of P7)	1950	641.15	55,000	85.78
P 11	1951	1,382.00	207,150	149.89
P 12(Resale of P9)	1951	640.00	160,000	250.00
P 13	1951	<u>978.28</u>	<u>135,000</u>	<u>138.00</u>
Totals		9,324.50 acres	\$995,145	or \$106.72 per acre

\* Two tracts - 160 acres farm land, \$76.76 per irrigated acre  
81 acres, desert land, \$12.50 per acre

\*\* Two tracts - 380 acres farm land, \$70.39 per irrigated acre  
260 acres desert land, \$12.50 per acre

In addition to the 13 unimproved desert land sales with farm potential ("D" series), there were numerous tracts of similar land sold by the State of Arizona at less than \$10.00 per acre during the same period. Unimproved desert land in the general area without any farm potential could be utilized only for grazing or possible nonagricultural investment. The value of such nonirrigable desert land in 1947 was roughly \$1.60 per acre. In the 1940's there was virtually no unimproved desert acreage being purchased for any price in the general area of the subject tracts, unless it had some farming potential.

In determining the 1944 fair market value of the unimproved desert acreage of Parcel B as potential farmland under the market data method, Mr. Armer utilized the above comparable sales data and in particular

the 13 "D" series sales of unimproved desert acreage with farmland potential for the years 1940 through 1947, which vary in price from \$6.25 per acre to \$17.19 per acre. Mr. Armer, after analyzing and comparing the "D" series lands with Parcel B for such factors as time, location, access, soil, water, size and topography, concluded that the lands in Parcel B, if available for sale as potential farmland, would have had a 1944 fair market value of \$12.50 per acre, or \$103,999.75 for the 8,319.98 acres in the subject tract.

In arriving at a 1944 fair market value of Parcel B as subjugated farmland under the market data approach, Mr. Armer utilized the 13 "S" series and the 13 "P" series of farmland sales as set forth above. The "S" series of land sales, covering the period 1937 through 1950, are all within the San Carlos Irrigation District and range in price from \$50.00 per acre to \$216.67 per acre. The "P" series of farmland sales are outside the San Carlos Irrigation District, cover the period 1943 to 1951 and range from \$62.50 to \$250.00 per acre. Mr. Armer concluded from his analysis of this comparable farmland sales data that Parcel B, if it had been subjugated as of March 17, 1944, would have had a fair market value of \$125.00 per acre for the 8,259.98 irrigable acres in the subject tract. Excluded from Mr. Armer's calculations was the 60 acre butte in Parcel B that could not be subjugated.

Mr. Armer also employed the cost approach to confirm his market data conclusions with respect to the 1944 fair market value of Parcel B as subjugated farmland. Under the cost approach he added the

estimated cost of subjugating the acreage in Parcel B to the value of the lands in their unimproved state. Improvements needed to properly subjugate comparable unimproved desert acreage with farmland potential would involve additional costs and expenditures for clearing, burning, discing, leveling, installation of a water distribution system, engineering costs, equipment, depreciation, office expenses and so forth. Mr. Armer relied upon several sources in estimating subjugation costs for Parcel B, including a 1937 report detailing the actual costs for the complete subjugation of 16,177 acres on the Gila River Indian Reservation, and two 1942 estimates for Parcel B, one of which was a very detailed estimate involving the installation of a water distribution system for the subject tract. This latter estimate was \$73.87 per acre for subjugating Parcel B. After analyzing all factors, Mr. Armer concluded that subjugation of Parcel B, as of March 1944, would have cost \$75.00 per acre. Adding the improvement value, \$75.00 per acre, to the estimated value of Parcel B as unimproved potential farmland as determined under the market data method, or \$12.50 per acre, leaves a total value of \$87.50 per acre. Mr. Armer noted that the \$37.50 difference between his \$125.00 fair market value conclusions for Parcel B, as subjugated, under the market data method, and the \$87.50 figure under the cost approach, has to be attributed to the value of the water rights to Parcel B. In the market data approach Mr. Armer utilized San Carlos Irrigation District farms which had water rights to the project and which rights were included in the sale of such farmland. In the cost method, desert acreage sales without water were used and the subjugation costs were reconstructed and added thereto.

25. Defendant's Hydrologist - Leonard C. Halpenny.

Mr. Leonard C. Halpenny, a consultant hydrologist from Tucson, Arizona, prepared and submitted a brief report for the defendant on the ground water resources of Parcel B and the two campsites Parcels B-1 and C. Mr. Halpenny also testified in support of his written report.

According to Mr. Halpenny the object of his investigation as set forth in his report was to determine, as of March 17, 1944, how many acres within the subject tracts could have been developed for irrigated agriculture from a water supply obtained by constructing and operating irrigation wells within said tracts. In his investigation Mr. Halpenny relied principally on the results of two ground-water investigations conducted on the Gila River Reservation in 1954 and 1958 by Dr. Heinrich J. Thiele. From the Thiele investigations and other sources Mr. Halpenny concluded that, with the exception of about 200 acres in the northern portion, there was no available groundwater in amounts sufficient for irrigated agriculture under Parcel B as of March 17, 1944. Mr. Halpenny further concluded that other district water sources could supply adequate water to only half of the acreage in Parcel B. With respect to the campsites, Parcel B-1 and Parcel C, Mr. Halpenny concluded that both sites were barren of groundwater.

26. Fair Market Value of Parcel B - March 17, 1944.

(a) Unimproved.

Based upon the foregoing findings of fact, especially such factors as the subject tract's highest and best use as potential farmland, the availability of water, and the comparable sales data,

the Commission finds and concludes that as of March 17, 1944, the 8,259.98 irrigable acres in Parcel B had a fair market value of \$82,599.80, or \$10.00 per acre.

(b) Subjugated

Based upon the foregoing findings of fact, and especially such factors as the availability of water, and the comparable sales data, as well as all the evidence of record, the Commission finds and concludes that, as of March 17, 1944, the fair market value of 8,259.98 acres in Parcel B, if subjugated, would have been \$1,651,996.00 or \$200.00 per acre.

Campsites - Parcel B-1 and Parcel C

27. Highest and Best Use.

(a) Parcel B-1

As previously found, Parcel B-1 which is Campsite #2, is a 850.02 acre tract that is completely surrounded by Parcel B. The terrain is fairly level land in the eastern half where the actual campsite was located. In the central and western portions the land is rocky and steep where several buttes are located. To the north where a sewage farm was located the land is level. Except for the rocky butte areas which are incapable of irrigation, the remainder of the subject area is within the San Carlos Irrigation District. As a unit, the 850.02 acres of Parcel B-1, prior to its conversion into a campsite, could have been best utilized as a combination of potential farmland and grazing land.

(b) Parcel C

Parcel C, which is Campsite #1, is located immediately east of the eastern boundary of Parcel B. It contains 446.20 acres of tribal land all of which is fairly level. The subject campsite is outside of the San Carlos Irrigation District although its northern boundary adjoins the South Side Canal. There is evidence of irrigation ditches having been constructed at the actual campsite, and water could have been pumped out of the South Side Canal. Parcel C is situated in an area of questionable groundwater. Although the availability of water to Parcel C was questionable, the subject campsite has all the other attributes of good soil, climate, and accessibility to markets which would indicate a highest and best use as potential farmland.

28. Defendant's Appraiser - Walter D. Armer.(a) Parcel B-1

In evaluating the 850.02 acres in Parcel B-1, Mr. Armer, defendant's appraiser, divided the subject campsite into two economic units -- a 380.77 acre unit upon which the actual campsite improvements and sewer farm were located and which included all the level land that could be irrigated, and a 469.25 acre unit that included all the unimproved rough, rocky, and steep lands (principally several buttes) incapable of being irrigated. Mr. Armer assigned potential farmland to the 380.77 acre improved unit as its highest and best use, and determined that the 469.25 acre unit had no farm potential and was good only for grazing. Since the 469.25 acre unit had no improvements, it did not



figure in Mr. Armer's calculations with respect to determining the diminution in value of Parcel B-1 as a result of defendant's failure to restore the subject campsite to its prelease condition.

In appraising Parcel B-1, Mr. Armer relied upon the same Market Data method he used in evaluating Parcel B. After analyzing the comparable sales data of record (Finding 24), he concluded that, as of April 30, 1947, the 380.77 acres of potential farmland in Parcel B-1 had a fair market value of \$4,759.63, or \$12.50 per acre. Mr. Armer then proceeded to value the 380.77 acre unit in its post campsite condition -- namely, littered with concrete slabs, partial structures, and other debris. Mr. Armer concluded that, in its post campsite condition, the 380.77 acres had no farmland potential and an almost zero value as grazing land. He then assigned a nominal \$1.00 per acre value, or \$380.77 for the entire unit. Mr. Armer calculated the diminution in value of the 380.77 acres in Parcel B-1 to be \$4,378.86.

(b) Parcel C

As was the case with the 380.77 acres of potential farmland in Parcel B-1, Mr. Armer concluded that the 446.20 acres of tribal land in Parcel C had all the attributes of soil, topography, climate and accessibility to be classified as potential farmland with the exception of an adequate water supply. He noted that the Thiele report shows Parcel C to be in an area of questionable ground water and that the subject campsite is outside of the San Carlos Irrigation District. He also noted, however, that the evidence of irrigation ditches

indicated that the Japanese internees apparently had some limited irrigation in this area during World War II. Despite a possible water problem, Mr. Armer, as of April 30, 1947, valued the 446.20 acres in Parcel C as potential farmland at \$12.50 per acre, or \$5,577.50 for the entire unit.

In determining the diminution in value of Parcel C as a result of the defendant's failure to restore the campsite to its pre-lease condition following its abandonment as a campsite, Mr. Armer calculated that only 226.20 acres in Parcel C were adversely affected by the defendant's failure to remove all the concrete slabs, partial structures, and other debris from the campsite. To this 226.20 acres he assigned a nominal value of \$1.00 per acre or \$226.20 for the entire acreage for the loss of farm and grazing potential. The remaining 220.00 acres he found unaffected by the defendant's failure to restore. Mr. Armer calculated the diminution in value of Parcel C to be \$2,601.30.

29. Fair Market Value - Damages.

(a) Parcel B-1

After analyzing the comparable sales data and all the evidence of record, and after considering such factors as size, location, access to markets, soil, topography, availability of water, and highest and best use, the Commission finds that the 380.77 acres in Parcel B-1, which were adversely affected by the defendant's failure to restore, had a fair market value as of April 30, 1947, of \$10.00 per acre, or \$3,807.70.

The defendant's failure to remove the concrete slabs, partial structures, and other debris from the campsite area upon termination of the relocation center completely destroyed the farmland potential of the 380.70 acres in Parcel B-1 which resulted in a zero dollar post campsite value. The diminution in value of Parcel B-1 resulting from the defendant's failure to restore the subject campsite was \$3,807.70.

(b) Parcel C

After analyzing the comparable sales data and all the evidence of record, and after considering such factors as size, location, access to markets, soil, topography, availability of water, and highest and best use, the Commission finds that the 226.20 acres in Parcel C that were adversely affected by the defendant's failure to restore had a fair market value, as of April 30, 1947, of \$10.00 per acre, or \$2,262.00.

The defendant's failure to remove the concrete slabs, partial structures, and other debris from the campsite area upon termination of the relocation center completely destroyed the farmland potential of the 226.20 acres in Parcel C which resulted in a zero dollar post campsite value. The diminution in value of Parcel C resulting from the defendant's failure to restore the subject campsite was \$2,262.00.

30. Consideration - Payment on the Claim.

The Commission finds that, included in the 1942 memorandum of understanding between the Director of the WRA and the Secretary of

Interior, there were several provisions which were designed not only to provide useful work for the Japanese internees, but were also intended to further ". . . the completion of the San Carlos Irrigation Project in accordance with plans heretofore made for such completion." As the Commission previously found (Finding 10, 25 Ind. Cl. Comm. 250, 272), one of these general provisions (subparagraph 6(9)) obligated the WRA to construct a road from the north boundary of the Gila River Indian Reservation at State Highway 87, south to State Highway 187 via Campsite No. 1 (Parcel C). The 7.25 mile section of this road from Campsite No. 1 to State Highway 187 was completed on December 4, 1947, at a cost of \$175,844.19.

Subparagraph 6(5) of the memorandum of understanding describes the compensation to be paid the plaintiff for the defendant's use of Parcel B as follows:

It is contemplated that the irrigation work and other improvements which will be left on the land at the termination of this agreement will be fair and equitable compensation to the Indians for the use of their land.  
[Commission's Finding 7, 25 Ind. Cl. Comm. 250, 267]

The same theme was echoed by defendant's War Relocation Authority director who acknowledged

Under our Land-Use Permit, the road was contemplated to be partial compensation to the tribe for the use of Gila Center lands. [Def. Ex. 209,10]

The Commission finds that (1) the plaintiff tribe and the Gila River Indian Reservation were major beneficiaries of the newly constructed

road; (2) the newly constructed road, being outside the confines of Parcel B, was not intended to be consideration for the defendant's use of Parcel B; (3) the newly constructed road was intended to be additional compensation from the defendant (insofar as it benefitted the plaintiff tribe) for the use of all those lands and facilities selected by the WRA for the relocation center. Defendant is not entitled to offset the costs of the road as a payment on the claim asserted in Docket 236-A for Parcel B.

#### Conclusions

31. Based upon the foregoing findings of fact and all the evidence of record the Commission concludes that:

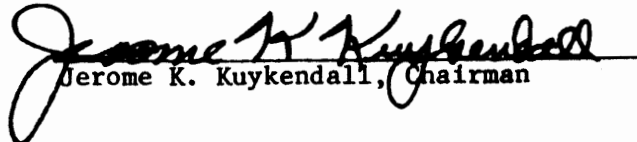
(a) Docket No. 236-A - Parcel B

As a result of the defendant's failure to subjugate or otherwise compensate the plaintiff tribe for the use of the lands in Parcel B, the plaintiff is entitled to recover from the defendant the difference in the fair market value of Parcel B if it had been subjugated as of March 17, 1944, and the fair market value of Parcel B in its unimproved state, or the sum of \$1,569,396.20.

(b) Docket No. 236-B - Parcel B-1 and Parcel C

As a result of the defendant's failure to restore the camp-site areas in Parcel B-1 and Parcel C to their prelease conditions by removing therefrom all concrete slabs, partial structures, and other debris, the plaintiff is entitled to recover from the

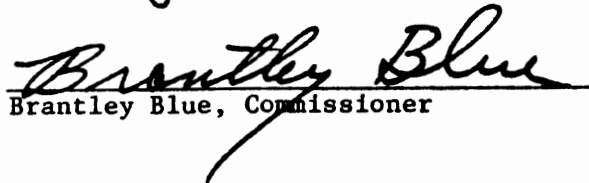
defendant the diminution in value of the subject tracts as of April 30, 1947, or the sum of \$6,069.70.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret A. Pierce, Commissioner

  
Brantley Blue, Commissioner