

BEFORE THE INDIAN CLAIMS COMMISSION

GILA RIVER INDIAN COMMUNITY,)	
)	
Plaintiff,)	
)	Docket No. 236-A
v.)	Docket No. 236-B
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: April 28, 1971

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Jurisdiction. The plaintiff, Gila River Indian Community, formerly known as the Gila River Pima-Maricopa Indian Community, is an identifiable group of American Indians consisting of members of the confederated Pima and Maricopa tribes living on the Gila River Indian Reservation, and is recognized by the Secretary of the Interior as having authority to represent such Indians. The plaintiff has the right and capacity under Section 2 of the Indian Claims Commission Act of 1946 (60 Stat. 1049, 1050), to bring and maintain this cause of action for the Pima and Maricopa tribes living on the Gila River Indian Reservation.

2. Land title. Fee title to all of the land in the Gila River Indian Reservation was at all material times held in trust by the defendant for Indian beneficiaries. Such land, if not allotted, was variously denoted as "tribal land", "community land", or "unassigned land". The plaintiff's 1936 Constitution, in force at all material

times, provided in Section 3 of Article IX that:

Community land which is not assigned may be used for communal pasturage or gardens by the various districts or for public purposes of any sort.

While Article V of the plaintiff's⁴ Constitution granted to its Community Council the powers to negotiate with the Federal Government and to prevent the lease of tribal land without tribal consent, and while exercise of these powers was expressly not subject to review by the Secretary of the Interior, the Community Council routinely referred important questions to the entire plaintiff tribe for decision.

3. War Relocation Authority. On March 18, 1942, the President by Executive Order No. 9102 (3 CFR §1123, et seq.) established a War Relocation Authority (hereinafter "WRA"). Its purpose was to conduct the removal, maintenance, supervision, and employment of individuals of Japanese ancestry who resided on the West Coast of the United States. WRA planned that the evacuees would live in agricultural communities, to be known as Relocation Centers. Respecting preferred locations for the proposed Relocation Centers, the WRA determined that (Pl. Ex. 2, Dkt. 236-B, p. 2):

1. All reception centers must be located on public land so that improvements at public expense become public, not private, assets. Any land required for this purpose must remain in public ownership.

* * *

3. Each center must provide work opportunities throughout the year for the available workers to be located there. Work within each area will be of three types -- public works, such as land subjugation, food production, and the production of war goods.

* * *

4. Consideration of plaintiff's land. The WRA determined that the Pima Indian Reservation generally met the quoted criteria and other criteria, and provisionally selected about 7,000 acres of cultivated land, about 6,000 acres of uncultivated but irrigable land, and several hundred acres of non-irrigable land. The suggestion of the Acting Commissioner of Indian Affairs that the WRA select no cultivated land was rejected by WRA as rendering the entire project impossible, even though the Bureau of Indian Affairs had planned that the selected cultivated land would be planted in long-staple cotton in 1943. The reservation superintendent, Mr. A. E. Robinson, agreed that other, non-Indian, land in central Arizona could be used for long-staple cotton. WRA finally decided to negotiate for the lease of these four parcels of the plaintiff's land:

- a. Parcel A: 6,977 acres of land then cultivated.
- b. Parcel B: 8,850 acres of undeveloped land suitable for cultivation if irrigation were available.
- c. Parcel B-1: 850.02 acres of non-irrigable land for Camp Site No. 1.
- d. Parcel C: 446.20 acres of non-irrigable land for Camp Site No. 2.

Docket No. 236-A covers Parcel B; Docket No. 236-B covers Parcels A, B-1, and C.

5. Pre-lease negotiations. The following events and decisions occurred in the early months of 1942:

- a. By April 9, the reservation superintendent and WRA personnel had agreed that since a private prospective lessee could be reasonably

expected to offer \$20.00 per acre per year for a three-year lease for cotton production, \$20.00 per acre per year plus a water charge of \$3.60 per acre per year for 4 acre-feet of water per acre per year would be a suitable payment for the cultivated land for the Relocation Center.

b. On April 16, the Secretary of the Interior, anticipating that the plaintiff Indians would undoubtedly be willing to conclude a satisfactory arrangement, granted the Secretary of War consent to enter immediately upon the reservation and begin construction. Copies of the letter of consent were sent to the reservation superintendent and to the plaintiff via the reservation superintendent.

c. By April 20, the reservation superintendent had supplied WRA with detailed maps showing that "the two camps are extremely well located", and had directed the location of power and telephone lines.

d. By April 21, contracts had been let for wells and others had been let for the detailed plans for sewage, electricity, and water distribution.

e. On April 21, the reservation superintendent and his assistant met with WRA personnel to discuss the utilities and facilities which would be needed by WRA personnel during construction of the Relocation Center.

f. On April 21, the reservation superintendent notified the Governor, Pima-Maricopa Tribal Council, by letter that WRA "had taken over" 6,976 acres of developed land and approximately 9,170

acres of undeveloped land. The superintendent's letter to the plaintiff included these statements (Pl. Ex. 10, Dkt. No. 236-A):

I knew that this land was under discussion by the War Department but I was not permitted to make any statement regarding the matter since up until the time of the arrival of Mr. Taylor there had been no commitment by the War Department as to whether or not they would take this land. This is literally what happened: Neither the Washington Office nor the Sacaton [Arizona] office of the Indian Department had anything to do in the matter. In taking over the land I requested that a certain amount of land be reserved from consideration in the program of caring for the Japanese evacuees but I was told that the War Department had the authority to take over any and all lands they considered necessary to the project. So, in this matter, neither the Indians nor the Indian Office was consulted.

I have had no word whatever from our Washington Office except this afternoon in a long distance telephone conversation with Mr. Woehlke. He stated that the Indian Office had neither approached the War Relocation Authority nor had even suggested this land for use for Japanese, and that they, of course, would not have done so without due consideration being given to the Indians' wishes in the matter. However, now that the War Department has definitely decided to send these Japanese people here, and since there is nothing that either the Indians or the Indian Office can do about it, I would suggest that the Tribal Council not take any action in opposition since such action would be entirely futile and only tend to develop an attitude toward the tribe not to their best interests.

The Army in taking this tract over will pay a rental on all land used and in the near future will submit a contract which will stipulate what this rental shall be. I understand that the rate per acre will conform to the maximum rate per acre paid for land of this type and that the undeveloped area will be put under production on some form of improvement lease and that six months after the close of the war

the Japanese will be returned to their homes and that Indian lands will again be turned over to the tribe.

As I have mentioned in the foregoing part of this letter, there is very little that I know regarding this project. * * *

g. By April 22, the reservation superintendent was preparing five-year leases containing a clause giving WRA the right to remove all improvements and fixtures placed on the land. The superintendent agreed with WRA personnel that one dollar per acre per year would be the maximum for undeveloped non-irrigable land used as building sites.

h. On April 24, the reservation superintendent notified the Commissioner of Indian Affairs that the plaintiff's copy of the letter from the Department of the Interior giving the War Department permission to proceed immediately with construction (item "b" above) had been sent to the plaintiff. Regarding location of the Relocation Center on the plaintiff's reservation, the superintendent explained (Pl. Ex. 11, Dkt. No. 236-A):

Some time ago Col. Higgins called at my office and asked to be shown the south side area which he thought might be suitable for the location of a Japanese evacuee center. I showed him the undeveloped area of the south side which contains approximately 9,170 acres, which, because of its location could be used for this purpose. However, in taking him to the undeveloped area we passed through the 10,271-acre alfalfa tract. Shortly after the trip of Col. Higgins here Mr. Webster and Mr. Zimmer, from the War Relocation Authority Office in San Francisco, together with Mr. Shridall and Mr. A. L. Walker of our Los Angeles Irrigation Office, came out and we again went over the ground at which time they requested

not only the undeveloped area but the greater portion of the developed area as well. * * *

I realize my position in this matter is only in the interest of the Indians and the Indian Service and I am not presuming to go beyond that responsibility. * * * I have talked to the members of the Tribal Council and have prevailed upon them to not offer objection other than a resolution of protest, which they are privileged to make, but that because of the emergency which made this whole project necessary that it was one of the ways in which they were being required to do their bit. The Council is meeting either in a special session next Wednesday or at their regular session, May 6, and the matter will be fully discussed at that time. I understand that their legal advisor, Miss Sarah V. Ross of Phoenix, Arizona, is handling the matter for them and is contacting some of her influential friends in Congress. * * *

i. On April 23, one of the construction contractors suggested to the reservation superintendent that it might prove an incentive to the plaintiff Indians if they were offered jobs in the construction of "the Jap concentration camp". The superintendent responded that "The Indians will be given whatever labor they are capable of performing, I understand."

6. Plaintiff's consideration of Relocation Center. Construction of the Relocation Center on the plaintiff's reservation being well under way, the defendant then moved to secure the plaintiff's agreement to the Relocation Center, preferably on the terms agreed upon between the reservation superintendent and WRA personnel on April 9 (item "a" of Finding 5, supra). In initially withholding approval, the plaintiff Indians' council expressed concern that they had not been previously consulted. The superintendent on April 29 assured the

plaintiff Indians that "if it had been at all possible they would have been consulted." In his report of the April 29 conference, the superintendent expressed gratification that while the Council had passed a resolution opposing the Relocation Center, which resolution was to be taken to the tribal members for their consideration, most of the Indians were more concerned about the \$9.90 per day which the contractor was offering for common labor and the up-to-\$16.50 per day which he was offering for some skilled labor. In forwarding the plaintiff Indians' resolution in opposition to the Relocation Center to the Commissioner of Indian Affairs, the reservation superintendent withheld his approval on the ground that a war emergency existed. The superintendent specifically informed the Commissioner of Indian Affairs that he had not quoted any definite terms to the tribal council, but had merely assured them that the amount of rent which the WRA would pay for the cultivated land would pay the overhead and maintenance for the entire time with possibly a good margin to spare and that the further development of land in this area which had not advanced for many years and probably would not proceed for some time to come "would by this contract be accomplished."

7. Agreement between WRA and Department of the Interior. In August of 1942, a memorandum of understanding respecting placement of the Gila River Relocation Center was negotiated between the Director of the WRA and the Secretary of the Interior. It was agreed that upon the execution of formal land use permits by the Council of

the Gila River Pima-Maricopa Community, the Secretary of the Interior would approve such permits, covering the tribal lands described as Parcels A, B, B-1 and C.

Regarding Parcels B-1 and C, it was understood that the camp site locations would be leased for a term of five years at an annual rate not to exceed one dollar per acre. The WRA would be authorized to remove all camp site improvements and fixtures upon the termination of the permit. The WRA was also to be authorized to construct necessary wells, housing and storage facilities, disposal plants, roads, public utilities, and other facilities on or across the land involved.

Regarding Parcel A, it was understood that the permit should run for a period of three years and that the WRA should pay for the lease at the rate of \$20.00 per full calendar year for each acre and, in addition, should pay to the San Carlos Irrigation Project \$3.60 per acre per annum for operation, maintenance, and water charges for each acre in Parcel A. In return, the Secretary of the Interior would be required to furnish during each crop year four acre-feet of water per acre per year, if that amount of water should be available from the San Carlos project system. If, however, there should be a shortage in any year, an equitable adjustment in rent and water charges would be made.

Regarding Parcel B, it was provided under Item 6 of the Memorandum of Understanding that (Def. Ex. 201, Dkt. 236-A, pp. 5, 6):

6. Development work.

In order to assist in providing useful work for the evacuees and in furthering the completion of the San Carlos Irrigation Project in accordance with plans heretofore made for such completion, the Secretary of the Interior agrees to approve a five-year permit, terminable by the Authority upon six months' notice to the Secretary, authorizing the War Relocation Authority to develop and use lands covered by this memorandum which are not now fully developed and prepared for irrigation, consisting of approximately 8,850 acres (Parcel B on the attached map). Such work will consist of clearing, leveling and bordering the land, manufacturing and installing concrete pipe laterals and irrigation field structures, and all other work incident to the preparation of the lands for irrigation. The following provisions shall be incorporated in this permit:

* * *

- (2) The Authority shall formulate plans with respect to the scheduling of operations and the amount of land in Parcel B which can be effectively and conveniently developed during the period covered by this memorandum.

* * *

- (5) In consideration of the development work that the War Relocation Authority will perform, the Authority shall be entitled to crop all lands so developed during the period authorized by the permit. 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. It is understood that, if the value of such improvements shall not in the judgment of the parties be adequate as such compensation, the War Relocation Authority will pay to the Indians at the time the project is terminated such additional sum as the parties hereto may agree upon to provide such compensation.

The memorandum of understanding also obligated the WRA to construct certain fences, cattle guards, and gates and roads connecting the area highways to the two camp sites.

8. Land use permit terms. The land use permits which the reservation superintendent developed for the plaintiff Indians for Parcel A (Docket No. 236-B) specified an annual rental of \$20.00 per acre plus payment of the annual operation and maintenance water charge of \$3.60 per acre levied by the San Carlos Irrigation Project for 4 acre-feet of water per acre per year delivered to the site, with proportionate reductions in the water charge if a shortage in the basic water supply developed in any year covered by the permit. The land use permit which the reservation superintendent developed for the plaintiff Indians for Parcels B-1 and C (Docket No. 236-B) contained the then standard form of lease which provided in paragraph 8 that all fixtures, additions, alterations, and structures would remain the property of the government; that the government would pay \$1.00 per acre per year for the land; and that the government would have six months after termination to remove all its equipment and improvements. The land use permit which the reservation superintendent developed for the plaintiff Indians for Parcel B (Docket No. 236-A) specified that no cash rental would be paid during the term of the lease since the irrigation work and other improvements which were to be left on the land at the termination of the agreement would be fair and equitable compensation to the lessor, but if at termination the improvements were not deemed adequate compensation, the WRA would

undertake to pay an additional sum to provide adequate compensation.

The use permits for Parcels A and B required full compliance with all applicable provisions of the memorandum of understanding between WRA and the Secretary of the Interior; the use permit for Parcels B-1 and C limited use of the property to matters "in accordance with the memorandum of understanding . . ."

9. Approval of use permits. Although the memorandum of understanding was read and discussed at a Tribal Council meeting September 23, the use permits were not circulated among the plaintiff Indians prior to approval by their council and not all of the members of the Tribal Council saw the permits before a majority of the council members present and voting approved them on October 7, 1942. The then Governor did read the permits before they were approved but he, too, relied more on the representations of the reservation superintendent as to the benefits than on the actual phrasing of the permits. The plaintiff Indians did understand that if they approved the use permits, WRA would definitely pay for Parcel B by subjugating it (i.e., preparing it for irrigation and cultivation) and upon termination of the lease would leave Parcel B in such condition that the plaintiff Indians would be able to cultivate it.

On October 8, 1942, the superintendent reported to the Commissioner of Indian Affairs that (Pl. Ex. 35, Dkt. No. 236-B):

When I again presented the matter yesterday, drawing attention to the loss of rent at the rate of \$387.60 per day [actually, the dollar figure related only to Parcel A, the land then in cultivation], I found a responsive attitude

in all groups except that controlled by David Johnson. When finally put to a vote the result was a tie, but the Constitution of the Tribe provides that in case of tie the governor shall cast his vote to break the same. He presented his vote in favor of the motion for signature [of the use permits] and therefore the resolution carried. So we have all of our permits signed and have five signed copies of each. I thought sure you'd be interested in knowing this.

10. Relocation Center construction. The Gila River Relocation Center was constructed at an estimated cost of approximately \$7,300,000. By June of 1943, there were more than 12,000 evacuees at the Center and the population peaked at more than 14,000. These evacuees were housed in 67 blocks of construction including guard barracks, administration buildings, and warehouses, all with appropriate utilities. The defendant built roads and bridges for the use of the Relocation Center, including 12.5 miles of the Chandler, Butte-Canal Road, at an estimated cost of \$187,657.25, and a number of farm access roads at a total estimated cost of just under \$10,000. Subsequently, at the insistence of the plaintiff, the defendant complied with subparagraph 6(9) of the memorandum of understanding respecting construction of a road from the north boundary of the Gila River Indian Reservation at State Highway No. 87, south to State Highway No. 187 via Camp Site No. 1. The extension of the road from Camp Site No. 1 to State Highway No. 187 was 7.25 miles long and was completed on December 4, 1957, at a cost of \$175,844.19 and incorporated into the Arizona State Highway System as State Route No. 93.

11. Lease termination. On March 17, 1944, WRA advised the

reservation superintendent by letter that (Pl. Ex. 37, Dkt. No. 236-A):

Regarding the subjugation of land near Butte Community, all thought of this was discontinued, with the exception of a few acres [40 acres] necessary for dairy pasture, because we feared great interference from water users under the Coolidge Reservoir. In our opinion public relations would be greatly injured if we attempted to put more land under cultivation at the expense of other water users.

It is with regret that we have been forced to abandon these developments, but under Washington instructions and considering public opinion, we could see no alternative. * * *

The lease for Parcel B was terminated formally on October 7, 1947. Prior to that time, the WRA had spent \$460.00 toward subjugating 40 acres of Parcel B, but the land was not leveled properly and could not be irrigated. The leases for Parcels A, B-1, and C were terminated formally on April 30, 1947.

12. Additional compensation. Although the compensation for Parcel B specified in the memorandum of understanding and in the use permit, namely, subjugation work necessary to cultivate the tract, was not supplied by the defendant, the plaintiff did not make any demand upon the defendant for additional compensation as contemplated in subparagraph 6(5) of the memorandum of understanding (Finding No. 7, supra), and the Secretary of the Interior who was the nonWRA party to the memorandum of understanding made no such demand on behalf of the plaintiff Indians.

13. Payments and contemporary values. The parties stipulated that the defendant paid fully all cash rents for the cultivated land

and camp sites. Although an offer to receive bids from the public for cash rentals of the plaintiff's irrigated lands was made by advertisement, no bids were received; however, in 1942 an arrangement was made by which the plaintiff shared the profits from a cotton permit.

The plaintiff procured the expert opinion of an engineer, Mr. W. S. Gookin, specializing in water development and management under arid climatic and soil conditions to demonstrate a consistent value per acre per year in excess of the \$20 plus the \$3.60 water charge per acre paid by the WRA for Parcel A. This expert predicated his opinion on the assumption that "There is no better soil in Arizona and because of the drainage and type of soil, it will be admirably adapted for the growing of subsistence crops, especially garden stuff." This witness consulted eight individuals and two firms who had, or had had, something to do with farming in Arizona. The survey provided the expert witness with a spectrum of cash rental values from \$20 to \$90 per acre per year for lands not shown to be comparable to Parcel A. Extending these figures to an average of \$50 and a median of \$47.50 per acre, he approximated a figure of \$45 to \$50 per acre per year for vegetables and cotton production, but declined to provide any "firm" figure without far more extensive research.

14. Restoration requirements. Upon termination of the leases for the camp sites (Parcels B-1 and C), WRA began the process of

removing improvements. More than two years later, all of the saleable improvements had been removed, but the reservation superintendent and representatives of the Bureau of Land Management (successor to WRA) were still discussing who, if anyone, would pay the approximately \$120,000 which, it was estimated, would be the cost of removing the remaining debris, principally concrete, which cluttered Parcels B-1 and C. The Bureau of Land Management offered to negotiate a cash settlement in lieu of site restoration, but withdrew the offer when it discovered that neither the use permits nor the underlying memorandum of understanding contained the standard restoration clauses. The Bureau of Land Management concluded that in the absence of an express provision, it would not be lawful to make a settlement in lieu of site restoration by the defendant. The sites were not restored, and no settlement in lieu of restoration was made.

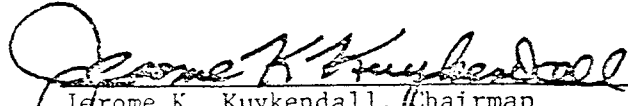
15. Conclusions, Docket No. 236-A. Both the memorandum of understanding and the use permit obligated the defendant to subjugate Parcel B or, in the alternative, to pay adequate compensation at termination of the lease if the subjugation were not consummated. Additionally, it was the understanding of the plaintiff Indians, from the representations of defendant's agents, that Parcel B would be subjugated. As it developed, the defendant decided to refrain from subjugation long before formal termination of the lease, but neither then nor after termination did the defendant pay any "additional compensation" for Parcel B. As a result, the plaintiff did not

receive any consideration for the five-year lease of Parcel B. Having determined that it would not subjugate, the defendant's failure to pay the plaintiff any compensation for the lease of Parcel B was unfair and dishonorable. Accordingly, the plaintiff is entitled to recover the fair market value of Parcel B as it would have been if the defendant had performed the subjugation work, less the fair market value of Parcel B in its raw and unimproved condition, as of the date when the defendant decided not to subjugate.

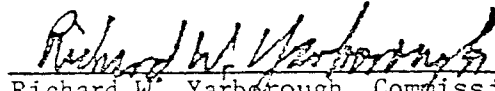
The fence, cattle guard, and road construction improvement were primarily for the defendant's use and benefit for the WRA project. In fact, the improvements were intended to serve the camp sites and irrigated lands. No part of these improvements can be considered as "compensation" for the lease of Parcel B, and the defendant will not be allowed any credit on account of these improvements against the ultimate award in Docket No. 236-A

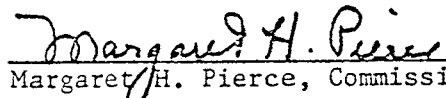
16. Conclusions, Docket No. 236-B. The plaintiff suffered no damage as a consequence of the terms upon which the defendant leased Parcels A, B-1 and C since the terms themselves were not unconscionable, for the evidence does not show other than that the terms were fairly representative of going prices for the time and for the location. However, it was neither fair nor honorable for the defendant not to obligate itself to restore, and to fail to restore, Parcels B-1 and C to their pre-lease condition. As a

consequence of such failure to restore, the plaintiff suffered damages which should be measured by the diminution to the fair market value of those two parcels resulting from the failure to restore.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner