

UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON 25, D. C.

B-139543-O.M.

JUNE 10, 1959

CLAIMS DIVISION

IN REPLY PLEASE QUOTE

DIRECT - I (Mines)

PA-2 1890223 thru
Z 1890330-EC-2

APR 29 1959

RELEASED

The Comptroller General

Herewith are eight claims totaling more than \$131,000.00, covering alleged damages to claimants' lands in an area known as California-Arizona Maneuver Area, used by the Department of the Army for artillery and bombing ranges during the period from April 1942, through April 1946, without formal authorization of the land owners.

By letter dated February 9, 1959, this Division returned the claims to the Department of the Army for such further administrative action as was deemed appropriate. It was stated in the letter that the claims represent damages to property and fall within the principles of law announced in your letter dated December 19, 1958, B-137765, to the Secretary of the Army. In view of 1st Indorsement, dated April 3, 1959, from the Office, Chief of Engineers, requesting reconsideration of the claims by our Office, they were returned by the Office, Chief of Finance, by 2nd Indorsement of April 9, 1959.

The record discloses that at the end of troop training in 1946, the Government posted road signs warning of the possible dangerous condition of the area due to the presence of unexploded shells. In August 1953, and September 1954, affidavits of officers of the Corps of Engineers were recorded in the official records of San Bernardino County, California, stating that the parcels of land described therein were considered to be dangerous for any purpose involving the use of said lands below the surface. Owners of the affected parcels were advised of the recordations, resulting in the filing of the instant claims during 1955. Subsequently, the lands were reinspected, and on July 25, 1956, an affidavit was recorded, giving notice that certain portions of the land were no longer considered to be contaminated and were usable for any purpose to which they were suited. The lands covered by the claims were included in their entirety in those areas which were reinspected in 1956. By letters dated August 17, 1956, claimants herein were furnished copies of the latter affidavit and advised of its recording.

The Claims Officer, Corps of Engineers, concluded that existence of damages from land contamination as disclosed in the danger signs and the affidavits recorded in August 1953, and September 1954, was negated by the affidavit recorded on July 25, 1956. However, it was determined that the claims are cognizable under AR 25-405; that the claimants have a right to recover for use and occupancy of their lands under implied rental contracts; and that payment is due the claimants for "real" use and occupancy of their property by the Government from April 1942, through April 1946, and for constructive use and occupancy from April 1946 through August 17, 1956, the interval from the end of troop training and the posting of warning signs to the mailing of the affidavit to the claimants. The Government's appraisals of fair value for use and occupancy of the lands is based on the payment of taxes, plus the grazing rental rate per acre charged by the State of California for similar lands, computed from the date each claimant acquired title to its lands through August 17, 1956. The amounts recommended for use and occupancy are shown in the Zucker file, Z 1890223.

It was stated in letter of this Division to the Department of the Army that it appeared the actions of the Government [with respect to the instant cases] imposed a temporary injury, if any, in the nature of consequential damages or tort and that, accordingly, we had no jurisdiction to allow or disallow the claims in question. See B-137765, supra; B-135208, February 27, 1958; B-134854, January 29, 1958; and B-127766, January 29, 1957.

In requesting reconsideration of the claims, the Chief, Management and Disposal Division, Real Estate, Office, Chief of Engineers, states that your decision B-137765 determined that crop damage was in the nature of a tort over which our Office had no jurisdiction; that the claims are based on the permanent taking of part of the use and value of land for consideration on an implied contractual obligation to pay for use and occupancy of land; and that the claims officer's report denies the permanent taking but affirms Government use and occupancy.

In view of the position taken by the Corps of Engineers, the matter is submitted for your consideration and instructions.

It is to be noted that the claims were first received in our Office on May 15, 1958. Therefore, if it is determined that they are for use and occupancy and are proper for handling by our Office, it will be necessary to recompute the amounts to be paid in view of the act of October 9, 1940, 54 Stat. 1061.

K. L. GAYLOR

Chief, Payment Claims Branch

Enclosures
c/eh

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Indorsement

Director, Claims Division

The Fifth Amendment to the Constitution provides that private property shall not be taken for public use without just compensation. An implied contract to make payment therefor has been held to arise from such a taking. United States v. Great Falls Manufacturing Co., 112 U. S. 645; United States v. Lynch, 185 U. S. 445. Also, the Government is liable under an implied contract regardless of whether the taking is under a common law or a statutory power. Langford v. United States, 101 U. S. 341; Tempel v. United States, 248 U. S. 121.

It is well established that the accounting officers have jurisdiction to settle claims arising under implied contracts for the fair value of property or services supplied the Government. 5 Comp. Dec. 588; 8 id. 526. The accounting officers do not lose jurisdiction over such a claim merely because its settlement requires the determination of the fair value of the property supplied the Government. B-49692-O.M., May 17, 1945; 21 Comp. Dec. 134. Therefore, where the legal liability of the United States to make just compensation for the "taking" of private property is established, we have held that we do have jurisdiction to settle claims therefor in the nature of unliquidated damages, although such claims will be allowed only where the evidence of record enables a substantially accurate determination to be made of the amount due. B-44476-O.M., October 18, 1944; B-13567-O.M., December 4, 1940; B-79080, October 12, 1948; B-73036-O.M., August 19, 1948; B-92683-O.M., March 15, 1950.

It is evident that the Government action in these cases for the period during which it actually used and occupied the properties from April 1942 through April 1946 and for the remaining period through August 17, 1956, during which by posting warning signs and recording affidavits it continued demarcation thereof constituted a "taking" of private property for public use. On such a basis the General Accounting Office has jurisdiction to settle the claims in question. B-126962, December 7, 1956; B-42117, July 5, 1944. The claimants have a right to recover as administratively recommended under implied rental contracts. Settlements should issue accordingly, subject to the provisions of 31 U. S. C. 71a.

JOSEPH CAMPBELL

Comptroller General
of the United States

Attachments