



INTERIOR BOARD OF INDIAN APPEALS

Navajo Nation v. Deputy Assistant Secretary - Indian Affairs (Operations)

15 IBIA 179 (05/15/1987)

Also published at 94 Interior Decisions 172

Related Board case:

15 IBIA 81

See:

*Hopi Tribe v. Navajo Nation*, Nos. 92-16488, 92-16510, 92-16839, and 92-16840  
(9th Cir. Jan. 30, 1995)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

NAVAJO NATION

v.

ACTING DEPUTY ASSISTANT SECRETARY--

INDIAN AFFAIRS (OPERATIONS)

IBIA 86-24-A

Decided May 15, 1987

Appeal from a decision of the Acting Deputy Assistant Secretary--Indian Affairs (Operations) determining the rental to be paid by the Navajo Nation to the Hopi Tribe for homesite and farming uses of Hopi partitioned land for the period 1978-1984.

Affirmed as modified.

1. Administrative Procedure: Administrative Review--Board of Indian Appeals: Jurisdiction--Bureau of Indian Affairs: Administrative Appeals: Discretionary Decisions

Where the Acting Deputy Assistant Secretary--Indian Affairs (Operations) has characterized a decision as discretionary, the Board of Indian Appeals has jurisdiction to review the decision to the extent of the legal conclusions reached.

2. Appraisals--Indians: Lands: Fair Rental Value--Indians: Leases and Permits: Rental Rates

The role of the Board of Indian Appeals in reviewing a Bureau of Indian Affairs determination of fair rental value is to determine whether the decision is reasonable; that is, whether it is supported by law and substantial evidence.

3. Appraisals--Indians: Lands: Fair Rental Value--Indians: Leases and Permits: Rental Rates

A Bureau of Indian Affairs determination of fair rental value under 25 U.S.C. § 640d-15 (1982) must be made in accordance with generally accepted principles governing the determination of market value.

4. Appraisals--Indians: Lands: Fair Rental Value--Indians: Leases and Permits: Rental Rates

A Bureau of Indian Affairs determination of fair rental value under 25 U.S.C. § 640d-15 (1982), which is supported by documentation in the administrative record, will not be overturned unless it is shown to be unreasonable.

APPEARANCES: Louis Denetsosie, Esq., Michael P. Upshaw, Esq., and Anthony Aguirre, Esq., Window Rock, Arizona, for appellant; Wayne C. Nordwall, Esq., Office of the Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for appellee; Scott C. Pugsley, Esq., Salt Lake City, Utah, Norton F. Tennille Jr., Esq., Washington, D.C., and Mark H. Boscoe, Esq., Denver, Colorado, for the Hopi Tribe.

#### OPINION BY ACTING CHIEF ADMINISTRATIVE JUDGE VOGT

Appellant Navajo Nation challenges a November 26, 1985, decision of the Acting Deputy Assistant Secretary--Indian Affairs (Operations) which determined that appellant was required to pay the Hopi Tribe \$989,971.50 for homesite

and farming uses, for the period 1978-1984, of lands partitioned to the Hopi Tribe pursuant to the Navajo-Hopi Settlement Act of 1974, as amended, 25 U.S.C. §§ 640d--640d-28 (Settlement Act). 1/ For the reasons discussed below, the Board affirms that decision as modified.

### Background

The Settlement Act established a procedure for the partition of the Navajo-Hopi Joint Use Area, pursuant to which the area has been partitioned. See Sekaquaptewa v. McDonald, 626 F.2d 113 (9th Cir. 1980). Section 16 of the act, 25 U.S.C. § 640d-15, provides:

(a) The Navajo Tribe shall pay to the Hopi Tribe the fair rental value as determined by the Secretary for all use by Navajo individuals of any lands partitioned to the Hopi Tribe pursuant to sections 640d-7 and 640d-2 or 640d-3 of this title subsequent to the date of the partition thereof.

(b) The Hopi Tribe shall pay to the Navajo Tribe the fair rental value as determined by the Secretary for all use by Hopi individuals of any lands partitioned to the Navajo Tribe pursuant to sections 640d-7 and 640d-2 or 640d-3 of this title subsequent to the date of the partition thereof.

Under authority of this provision, Bureau of Indian Affairs (BIA) staff prepared appraisals for various uses of the Hopi partitioned land (HPL) by appellant. 2/

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1/ All references to the United States Code are to the 1982 edition.

2/ Hopi tribal members residing on lands partitioned to appellant moved off those lands shortly after partition.

On November 25, 1985, appellee rendered the decision at issue here, concerning appellant's use of the HPL for homesite and farming purposes for the years 1978 through 1984. Appellee determined that the rental value for appellant's homesite use was \$751,143.45, and the value for farming use was \$238,828.05, making a total for both uses of \$989,971.50. Appellee's value determination adopted appraisal reports prepared by BIA's Chief Appraiser, dated November 22, 1985. Appellee's decision states that it is based on the exercise of discretionary authority and is final for the Department of the Interior.

Appellant's appeal of this decision was received by the Board on January 8, 1986. On January 27, 1986, the Board received a filing from the Hopi Tribe suggesting that the Board lacked jurisdiction over the appeal because of the provisions of 25 CFR 2.19(c)(1) and 43 CFR 4.330(b)(2), 3/ and appellee's statement that her decision was based on the exercise of discretionary authority. On February 4, 1986, the Board issued an order stating that it would consider its jurisdiction over the appeal after receipt of the record and briefing by the parties. 4/

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3/ 25 CFR 2.19(c)(1) provides: "If the decision [of the official exercising the review authority of the Commissioner of Indian Affairs] is based on the exercise of discretionary authority, it shall so state; and a statement shall be included that the decision is final for the Department."

43 CFR 4.330(b) provides in relevant part: "Except as otherwise permitted by the Secretary, the Assistant Secretary for Indian Affairs or the Commissioner of Indian Affairs by special delegation or request, the Board shall not adjudicate: \* \* \* (2) matters decided by the Bureau of Indian Affairs through exercise of its discretionary authority."

4/ Appellee does not challenge the Board's jurisdiction. Appellee's brief states at page 3: "[I]n order to provide a full and adequate hearing to [appellant], the Assistant Secretary--Indian Affairs] concedes, for the purposes of this appeal, that the Board has jurisdiction to review [appellee's] decision."

During a lengthy briefing period, appellant, appellee, and the Hopi Tribe filed briefs and various other pleadings. The Hopi Tribe filed a motion to require appellant to post an appeal bond in the amount of \$989,971.50. The motion was denied by Board order of January 7, 1987 (15 IBIA 81). By order of January 27, 1987, the Board allowed the filing of a supplemental brief by the Hopi Tribe and granted appellee's motion for expedited review. Both appellant and appellee responded to the Hopi Tribe's supplemental brief. Appellee requested the Board to reconsider its decision to allow the Hopi Tribe to file a supplemental brief, on the grounds that the Hopi Tribe attempts therein to raise issues outside the scope of the appeal.

#### Jurisdiction

[1] Appellee's decision states at page 3: "This decision is based on the exercise of discretionary authority and is, pursuant to 25 CFR 2.19(c)(1), final for the Department." In its February 4, 1986, order on jurisdiction, the Board stated:

The Board has held that BIA's characterization of a decision as discretionary constitutes a legal conclusion, subject to Board review. Wray v. Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 146, 91 I.D. 43 (1984); Billings American Indian Council v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 142 (1983). A decision properly characterized as discretionary will, absent extraordinary circumstances such as a referral to the Board, not be reviewed. See 43 CFR 4.330(b)(2); Billings American Indian Council, *supra*; Face v. Acting Assistant Secretary--Indian Affairs, 11 IBIA 35 (1983). A decision improperly characterized as discretionary, however, will be reviewed to the extent of the legal conclusions reached. Wishkeno v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 21, 89 I.D. 655 (1982).

Appellee's decision concludes at page 3 that "the values reached in the attached [BIA appraisal] reports constitute 'fair rental value' as specified by the statute [i.e., 25 U.S.C. § 640d-15]." This conclusion is legal in nature because it holds that the values meet the standard set by the statute. Therefore the Board finds that it has jurisdiction over this appeal because the decision at issue is based, at least in part, on an interpretation of law within the meaning of 25 CFR 2.19(c)(2).

#### Standard of Review

[2] The Board has a well-established standard of review in cases concerning adjustments in rental rates for leases of Indian lands. It has held that its role in such cases is to determine whether the adjustment is reasonable; that is, whether it is supported in law and by substantial evidence. If it is reasonable, the Board will not substitute its judgment for BIA's. It will overturn an adjustment only if it is unreasonable. Gamble v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 15 IBIA 101, 103-04 (1987); Kelly Oil Co. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 15 IBIA 5, 8 (1986); Bien Mur Indian Market Center v. Deputy Assistant Secretary--Indian Affairs (Operations), 14 IBIA 231, 235 (1986); Fort Berthold Land & Livestock Association v. Aberdeen Area Director, 8 IBIA 230, 246-47, 88 I.D. 315, 324 (1981). The burden is on the appellant to show that BIA's action is unreasonable. Fort Berthold Land & Livestock Association, 8 IBIA at 241, 88 I.D. at 321.

The rental adjustment cases concern the determination of "fair annual rental" or "fair annual return." This appeal, similarly, concerns the determination of "fair rental value." Such determinations require the exercise of judgment. Reasonable people, and experts, may differ in their calculation of "fair rental value." See, e.g., Interagency Land Acquisition Conference, Uniform Appraisal Standards for Federal Land Acquisitions 4 (1973).

The Board finds that the standard of review appropriate for this appeal is the standard developed in the rental adjustment cases. The Board's task, therefore, is to determine whether appellee's determination of fair rental value is reasonable or whether appellant has shown, to the contrary, that it is unreasonable.

Appellee's Motion to Reconsider Acceptance of  
Hopi Tribe's Supplemental Brief

Following the Board's order of January 27, 1987, granting the Hopi Tribe's motion to supplement its brief, appellee moved the Board to reconsider its acceptance of the supplemental brief, on the grounds that the Hopi Tribe improperly attempts therein to pursue its own challenge to appellee's decision even though it did not appeal that decision. Recognizing that the brief contains assertions that go beyond the scope of the instant appeal, the Board accepts the brief but considers it only to the extent that it addresses the appeal before the Board. Appellee's motion is therefore denied.

Discussion and Conclusions

Appellant makes three arguments: (1) the Board has jurisdiction over this appeal, (2) appellant is entitled to a hearing at which it may cross-examine BIA's experts, and (3) the BIA appraisal violates appellant's right to a "fair rental value" valuation under 25 U.S.C. § 640d-15(a).

Appellant's first argument has already been addressed.

In its second argument, appellant seeks an evidentiary hearing. The Board may require a hearing where the record indicates a need for further inquiry to resolve a genuine issue of material fact. 43 CFR 4.337(a). However, the Board is an appellate forum, and appeals in which evidentiary hearings are ordered are the exception rather than the rule. Appellant's only stated reason for seeking a hearing is its wish to cross-examine BIA witnesses. The Board finds that appellant has not shown that an evidentiary hearing is needed to resolve a genuine issue of material fact and therefore denies appellant's request.

Appellant's principal argument is that the BIA appraisal is flawed. In support of this argument, it submits an appraisal prepared by Centerfire Property Company (Centerfire) at appellant's request. The Centerfire report reaches valuations for appellant's uses of the HPL which are considerably lower than the BIA valuations.

The Hopi Tribe, which participates in this appeal as an interested party, argues essentially in support of the BIA appraisal. It submits a report prepared by Biber and Company, Inc., which reviews the appraisals prepared by BIA and Centerfire.

[3] All parties appear to agree that "fair rental value," within the meaning of 25 U.S.C. § 640d-15, must be determined by reference to generally accepted principles governing the determination of market value. Under these principles, market value, or fair market value, is based upon the "highest and best use" <sup>5/</sup> of the property. United States v. Benning, 330 F.2d 527, 531 (9th Cir. 1964); United States v. 1,291.83 Acres of Land, 411 F.2d 1081, 1084 (6th Cir. 1969); American Institute of Real Estate Appraisers, The Appraisal of Real Estate 243 (8th ed. 1983). It seems obvious that only by applying principles governing the determination of market value can BIA arrive at a rental value that is fair to both tribes.

[4] The BIA homesite appraisal report, <sup>6/</sup> dated November 22, 1985, estimated rental values for 757 small tracts within the HPL, ranging in size from 1 to 42 acres. These tracts had been identified by BIA staff as occupied

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<sup>5/</sup> "Highest and best use" is defined by BIA's Chief Appraiser as "the most profitable and likely use for a property." Attachment 1 to appellee's brief at 1. Other definitions are (1) "the reasonable and probable use that supports the highest present value, as defined, as of the effective date of the appraisal," and (2) "the use, from among reasonably probable and legal alternate uses, found to be physically possible, appropriately supported, financially feasible, and which results in the highest present land value." American Institute of Real Estate Appraisers, The Appraisal of Rural Property 19 (1983).

<sup>6/</sup> The report is titled Estimated Annual Rental [for] 757 Small Rural Tracts on the Hopi Partitioned Land in Northern Arizona.

by Navajo tribal members. Many of the tracts were vacated during the period 1978-1984, so that in 1984 only 522 tracts were occupied.

Rental values were estimated by reference to sales of small tracts in the area (comparables), because BIA found no evidence of extensive leasing of such tracts but did find there was an active sales market. BIA collected sales data for 250 tracts in the area which were sold between 1977 and 1984. From these, it selected 129 sales which it found to be arm's-length transactions.

The comparables and the HPL tracts were categorized by climatic zone <sup>7/</sup> because BIA found there was a relationship between climate and vegetative cover and the marketability of small rural tracts. BIA also found a relationship between size of the comparables and price per acre, the price per acre being less for larger tracts. Further, it found that prices had increased during the period 1978-1984. BIA homesite appraisal at 7, 13. It found little correlation between price and distance of the comparables from water or paved roads. Adjustments to value were therefore made for climatic zone, size of tract, and date; but not for distance from water, roads, or other amenities. Attachment 1 to appellee's brief at 3-4.

<sup>7/</sup> Three zones were identified, as follows:

"ZONE	Precipitation	Elevation	General Vegetative Cover
One	5 - 8 in	less than 5500 ft	Semi-desert grassland
Two	8 - 12 in	5500 to 6200 ft	Mixed grassland
Three	12 - 15 in	6200 to 7000 ft	Sagebrush grassland"

BIA homesite appraisal at 7.

The highest and best use of the HPL tracts was found to be development for such purposes as homesite and recreational uses. Annual rental was estimated at 10 percent of market value. BIA homesite appraisal at 10-11.

BIA summarized the rental estimates for small tracts on the HPL as follows:

YEAR	COUNT	TOTAL AC	AVE RENT/AC	TOTAL RENTAL
1978	756	1,916	\$56.58	\$108,408.50
1979	756	1,916	\$57.68	\$110,518.30
1980	744	1,878	\$59.30	\$111,361.80
1981	734	1,862	\$60.10	\$111,910.00
1982	683	1,754	\$62.15	\$109,019.80
1983	659	1,710	\$62.35	\$106,611.80
1984	522	1,491	\$62.58	\$ 93,313.25
TOTAL RENTAL FOR 7 YRS (1978-1984)				\$751,143.45

BIA homesite appraisal at 13.

The BIA farmland appraisal report, 8/ also dated November 22, 1985, estimated rental values for 229 farmland tracts within the HPL. The report states that the tracts are small and used to produce commodities for subsistence and religious ceremonies, with very little sold to outside markets. Most are farmed by hand, making production costs very high. BIA found little evidence of cash rentals of such tracts and therefore based its appraisal on an estimate of the rental income that would be produced from a crop-share lease arrangement for Indian corn, one of the main crops produced on the HPL.

8/ Estimated Annual Rental [for] 229 Farmland Tracts on the Hopi Partitioned Land in Northern Arizona.

The appraisal report states that 20-25 percent is the common rental for high-cost crops and that Indian corn is a high-cost crop. Based on a survey of the Hopi farmers who farmed similar tracts, BIA estimated yield at 540 pounds per acre from fields located in the floodplain and 283 pounds per acre from dryland fields. The value of the crop was estimated from prices paid for shelled corn by a woman who processed it into corn meal for sale. Rental was estimated at 20 percent of the value of the crop. Using these figures, BIA estimated the total rental for the 229 tracts for 1978-1984 at \$238,828.04. BIA farmland appraisal report at 1-2.

Appellant advances ten objections to the BIA appraisal, based on the appraisal conducted by its own appraiser, Centerfire. Appellee has responded to each objection.

Objection 1. The BIA appraisal assigns each Navajo homesite a minimum use area of 1 acre, whereas appellant's appraiser, Centerfire, found the typical Navajo homesite to be one-tenth of an acre.

Appellee argues that the Centerfire estimate of one-tenth of an acre indicates that Centerfire counted only the land directly under the structures rather than the land actually in use, and that one-tenth of an acre is an unrealistically small estimate for Navajo homesites, given the lifestyle of the residents. Appellee also argues that, because the Settlement Act requires the Secretary to protect the rights and property of individuals until they have been relocated, 25 U.S.C. § 640d-9(c), it would be unrealistic to expect the Secretary to allow Hopi individuals to use land as close as one-tenth

of an acre to Navajo homes. Appellee further argues that appellant itself has announced a policy that Navajo homesites should be 1 acre. Appellee attaches to her brief a letter of the former Navajo Tribal Chairman, which states at page 5: "The Navajo Nation as a policy matter has determined land use on the Navajo Reservation is best served by one-acre homesites."

Objections 2, 3, 4, 6, and 8. These objections concern alleged double billing, billing for abandoned sites, incorrect identification of uses, and billing for sites located on Navajo partitioned lands. Appellee states that BIA will adjust the billing to correct any such errors identified by appellant and has already adjusted the billing to correct errors which BIA has itself identified.

Objection 5. Agricultural-use lands were assessed a higher annual rental than similar lands were selling for in 1984. Appellee responds that Centerfire offers no data supporting its assertion that similar lands were selling for \$46 per acre. Appellee also argues that any sales were not comparable because of the unique nature of the Navajo and Hopi garden plots.

Objection 7. No value adjustments were made for such characteristics as proximity to water, utilities, and other amenities. Appellee responds that BIA conducted correlation studies through which it discovered that distance from water, roads, and other improvements bore little relation to value but that climate was significant in determining value.

Objection 9. The crop-share estimate of rental for the farmland tracts was based on inadequate data because only one buyer of Indian corn supplied price data. Further, this estimate does not take into account different farming methods and crops grown by Navajo farmers, or the possibility of failed crops in some years.

Appellee responds that the woman who supplied the price data was in the business of selling corn meal made from purchased corn and so was not merely an isolated customer. Appellee also submits affidavits from three BIA employees concerning the sales prices of corn meal and shelled corn, which support the value assigned by BIA.

Appellee further argues that the highest and best use of the farmland tracts was determined to be labor-intensive specialty crops, in particular, Indian corn. It is therefore irrelevant whether Navajo farmers actually use the land for that purpose. Further, the fact that crops may vary from year to year is not relevant.

Objection 10. There are no floodplains on the HPL, for which BIA charged a rate higher than for dry lands.

Appellee explains that the term "floodplain," as used by BIA in the Southwest, does not mean an alluvial floodplain but rather an area with higher than normal rainfall runoff.

In its response to the Hopi Tribe's supplemental brief, appellant continues its objections to the BIA appraisals. With respect to the homesite appraisal, appellant objects to BIA's choice of comparables and argues that BIA failed to make proper adjustments. It again argues that BIA overestimated the acreage occupied by Navajos. <sup>9/</sup> It continues to object to the crop-share method for appraising farmland rental value, stating that cash rentals are more common in the Southwest. Further, it argues that BIA incorrectly used Indian corn as the crop by which rental was estimated, and that BIA overestimated the yield for Indian corn.

The review of appraisals prepared by the Hopi Tribe's appraiser, James R. Biber, states that both BIA and Centerfire employed acceptable appraisal techniques, but that BIA's appraisal is more accurate and better documented. Biber concluded that BIA's crop-share estimates are a better indication of rental value for the HPL farmland tracts than the commercial leases used analyzed by Centerfire. He concluded that BIA's estimate of acreage for the homesites is a more realistic calculation of land in actual use than Centerfire's estimate. Further, he concluded that BIA's choice of 129 sales as comparables for the homesite tracts is superior to Centerfire's choice of 24 sales.

Upon review of the BIA appraisals and appellant's objections thereto, the Board finds that appellant has not established that BIA's appraisals are unreasonable.

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<sup>9/</sup> The Hopi Tribe argues that BIA underestimated the acreage occupied by Navajos. As discussed above, since the Hopi Tribe did not appeal appellee's decision to the Board, its arguments are considered only to the extent they respond to appellant's arguments.

BIA's documentation in support of its homesite appraisal is extensive. Although BIA has made some errors in site identification, a few errors in a project of such magnitude are to be expected, and appellee has indicated willingness to correct errors when found.

Appellant is not persuasive in its argument that BIA erred in assigning a minimum area of 1 acre to the Navajo homesites. Centerfire's estimate of one-tenth of an acre for the typical homesite, an estimate which apparently takes into account only the land underlying structures, is simply not realistic. BIA's estimate is more reasonably calculated to encompass land in actual use and possession of the Navajo tenants.

BIA's use of 129 sales as comparables for the homesite appraisal is likewise reasonable. 10/ On its face, BIA's broader selection would appear more likely to yield accurate results than the sample of 24 sales employed by Centerfire. Although the sales prices of BIA's comparables vary considerably, this fact does not invalidate the comparisons or require elimination of the higher-valued comparables. Wooding v. Portland Area Director, 9 IBIA at 162; (1982); Fort Berthold Land & Livestock Association, *supra*, 8 IBIA at 243, 88 I.D. at 321-22.

BIA made adjustments for the factors which it found, through analysis of the comparables, to bear some relation to prices. These factors were climatic zone, tract size, and date of sale. BIA found little correlation

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10/ The Board has upheld the use of sales data to determine rental value where no comparable rental date is available. Wooding v. Portland Area Director, 9 IBIA 158, 160 (1982).

between price and distance to water or paved roads; therefore, it reasonably chose not to make adjustments for these factors, even if, as appellant argues, these are factors generally considered to be indicators of value. With a large number of comparables to analyze, BIA reasonably made adjustments based on actual correlation of factors rather than on abstract principles.

For the reasons discussed, the Board finds that appellant has not shown that BIA's homesite appraisal is unreasonable.

BIA's documentation in support of its farmland appraisal is less extensive than its documentation for the homesite appraisal, evidently because little information was available. Appellant argues that BIA should have used cash rentals for commercial farming as comparables for purposes of appraising the farm tracts. However, since BIA found little evidence that farm tracts similar to the HPL tracts were leased for cash rental 11/ and no evidence of commercial farming on the HPL, BIA reasonably selected the crop-share method for appraising the farm tracts.

Appellant argues that general appraisal principles preclude the use of Indian corn to estimate income potential because it is a specialty crop. BIA found that Indian corn is one of the main crops grown on the HPL and the only one for which yield data was available. Even though Indian corn may be a specialty crop in general terms, it is evidently a typical crop for the

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11/ The commercial leases analyzed by appellant's appraiser are for considerably larger tracts than the HPL tracts. Most contain several hundred acres. Centerfire report, Volume 2.

HPL. 12/ Under these circumstances, it was reasonable for BIA to select Indian corn as the crop by which to estimate rental. Further, although appellant alleges that BIA overestimated the yield per acre for Indian corn, BIA's data was collected from Hopi farmers who were farming tracts similar to the HPL tracts, whereas appellant's analysis was done using figures for areas removed from the HPL. 13/ BIA reasonably based its yield estimate on local data, and appellant has not shown that the estimate is unreasonable. Further, although more documentation of sales prices for Indian corn would have been desirable, appellant has not refuted the price used by BIA.

For the reasons discussed, the Board finds that appellant has not shown that BIA's farmland appraisal is unreasonable.

Appellee's decision should be modified to the extent necessary to correct errors in site and use identification, as discussed above.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the November 26, 1985,

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12/ It is possible that appellant and BIA refer to different types of corn. The BIA appraisal report includes white, red and blue corn within its term "Indian corn." BIA farmland appraisal report at 2. Appellant's discussion of this issue indicates that it may object only to the inclusion of blue corn in the BIA analysis. Appellant states that Indian white corn is a common crop on the HPL. Appellant's response to the Hopi Tribe's supplemental brief at 12. See also Centerfire report on the Hopi Tribe's supplemental brief at 7-9.

13/ In estimating crop yields, as well as determining typical crops, data from the area of the properties being appraised is the most relevant, See American Society of Farm Managers and Rural Appraisers, Rural Appraisal Manual 19 (5th ed. 1979).

decision of the Acting Deputy Assistant Secretary--Indian Affairs (Operations) is affirmed as modified.

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//original signed  
Anita Vogt  
Acting Chief Administrative Judge

I concur:

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//original signed  
Kathryn A. Lynn  
Administrative Judge