IN THE UNITED STATES COURT OF FEDERAL CLAIMS
(No. 94-1C, No. 94-10004C, No. 94-10009C, No. 94-10013C, No. 94-10029C, No. 98-39C, No. 98-3911C, and No. 98-3912C) (consolidated)

(Filed: September 30, 2005)

CIENEGA GARDENS, *et al.*,	)
Plaintiffs,	)
v.	)
UNITED STATES,	)
Defendant.	)
CHANCELLOR MANOR, *et al*,	)
Plaintiffs,	)
v.	)
UNITED STATES,	)
Defendant.	)

ORDER FOR ENTRY OF FINAL JUDGMENT

Subsequent to a 22-day trial, on August 29, 2005, this court entered an opinion and order finding facts and resolving issues of law and of mixed law and fact in these eight consolidated temporary takings cases. *Cienega Gardens v. United States*, __ Fed. Cl. __, 2005 WL 2082851 (Aug. 29, 2005). At the conclusion of that opinion, the court requested that plaintiffs prepare and submit calculations of the amount of just compensation due each plaintiff on a discounted-dollar basis as of the end date of the pertinent temporary-taking period or the projected date of final judgment, September 30, 2005, whichever date was earlier. Those calculations were to be made using the discount rate and other parameters specified by the court in its opinion.

The plaintiffs duly prepared and submitted those calculations on September 15, 2005, as requested, and the government submitted the results of its review of, and commentary on, those calculations on September 26, 2005, also as requested. The calculations made on behalf of the *Chancellor Manor* set of plaintiffs raised questions, and the court held a hearing on September 28, 2005, to address those questions and to settle the form of the final judgment to be entered in this proceeding. It is now appropriate to direct the entry of a final judgment in these consolidated cases.

Pursuant to Rule 54(b) of the Rules of the Court of Federal Claims ("RCFC"), the court directs entry of a final judgment as to plaintiffs' temporary taking claims as follows:

Plaintiff	End date, *i.e.*, the end of temporary-takings period or September 30, 2005, whichever is earlier	Amount of just compensation due as of the end date
Cienega Gardens	Oct. 10, 2002	$ 7,219,000
Del Amo Gardens	Sept. 30, 2005	5,008,814
Las Lomas Gardens	Sept. 30, 2005	13,017,377
Blossom Hill Apts.	Feb. 17, 1997	2,801,347
Skyline View Gardens	Feb. 17, 1997	2,228,032
Chancellor Manor	Sept. 30, 2005	9,662,788
Oak Grove Towers	Mar. 1, 1997	668,373
Gateway Investors (Rivergate)	Mar. 1, 1997	875,594

There is no dispute over the calculations for the *Cienega Gardens*-related plaintiffs. However, in setting the amounts of just compensation due the three *Chancellor Manor*-related plaintiffs, the court has adopted the corrections prepared by Dr. Hamm and submitted by the government rather than the calculations prepared by Dr. Karvel and proffered by the *Chancellor Manor*-related plaintiffs. The corrections prepared by Dr. Hamm are necessary to reflect the evidence of record in the case and to implement the court's decision of August 29, 2005. As the court noted at the hearing held on September 28, 2005, the calculations prepared by Dr. Karvel for the *Chancellor Manor*-related plaintiffs diverge in important respects from the evidence and the court's decision. The court accepted the model used by Dr. Peiser to calculate the just compensation due to the *Cienega Gardens*-related plaintiffs, but it did not accept the model

employed by Dr. Karvel for the *Chancellor Manor*-related plaintiffs in all respects. The corrections prepared by the government as reflected in Dr. Hamm's calculations rectify and eliminate the divergence between Dr. Karvel's most recent calculations and the evidence and testimony given effect by the court's decision.

The objections to Dr. Hamm's corrections presented by the *Chancellor Manor*-related plaintiffs at the hearing on September 28, 2005, are unavailing. All but one of these objections reflect a misapprehension of the court's findings and conclusions. The evidence at trial in these consolidated cases applies across the board to each of the eight plaintiffs in these consolidated cases, as does the court's opinion and order, excepting, of course, where specific findings and conclusions are made respecting a particular plaintiff's circumstances. Most of the objections by the *Chancellor Manor*-related plaintiffs amount to efforts to enshrine differences in approach, and there are no grounds for such a divergence between the sets of plaintiffs in this case.

The one objection by the *Chancellor Manor*-related plaintiffs that has a different basis relates to the cost of servicing an equity loan in the market scenario for Chancellor Manor itself. The evidence adduced at trial reflects an imputed amount of an equity loan for this scenario but not the terms of such a loan. The loan in the but-for market scenario for the Chancellor Manor property would have an annual servicing cost that would reflect the terms of the loan, but Dr. Karvel appears to have omitted servicing costs for the market scenario, which result is inappropriate. The absence of evidence respecting terms for an equity loan in the but-for market scenario regarding Chancellor Manor does not support a complete omission of servicing costs. Terms can be derived from other evidence in the case, *i.e.*, results for other properties plus sources of data acknowledged by witnesses as reliable. Dr. Hamm has taken up that task and one of his corrections reflects the results of that effort. The *Chancellor Manor*-related plaintiffs have not responded by referring to other evidence but rather by making claims that the burden rests with the government and it is now too late to draw inferences from the circumstantial evidence in the record. This posture is mistaken. The burden of proof rests with the plaintiffs, and Chancellor Manor as plaintiff has not met its burden of showing that omission of loan servicing costs is appropriate. The government's position is accepted on this matter because it constitutes the best application of the facts established through the evidence adduced at trial.

Two other topics must be addressed. First, the judgment is being issued pursuant to RCFC 54(b). The court expressly and explicitly determines that there is no just reason for delay in entering a final judgment regarding just compensation. These cases have been pending for many years, and they have been actively litigated either before this court or before the court of appeals for nearly all of this time. Three separate decisions have already been rendered by the court of appeals in the *Cienega Gardens*-related cases, and it is virtually certain that an appeal will again be taken. Apart from just compensation, the only remaining claim to be addressed concerning these plaintiffs relates to an award of fees and expenses under Section 304(c) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. § 4654(c). The issues associated with this further claim are and will be complicated, both as a matter of fact and as a matter of law. They will require significant time and effort on the part of counsel and of

the court. As discussed at the hearing held on September 28, 2005, it would be prudent and more efficient to address those issues after the results of an appeal are known. Thus, final judgment is being entered now on just compensation under Rule 54(b). Future proceedings can address the claims for fees and costs.

Second, as stated in the court's opinion and order of August 29, 2005, the court awards interest as an element of just compensation. That interest is payable at a rate that reflects the annual averages of the daily yields of ten-year Treasury STRIPS. The interest shall be compounded annually. The interest shall be paid on the amount of the just compensation due each plaintiff as of the end of the pertinent temporary-takings period, or as of September 30, 2005, whichever is earlier, and from that end-date to the date the plaintiffs, and each of them, actually receive payment from the United States.

The Clerk shall enter final judgment in these consolidated cases pursuant to RCFC 54(b) for the eight plaintiffs and against the United States, as specified above.

It is so **ORDERED**.

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Charles F. Lettow
Judge