

BEFORE THE COMPTROLLER
GENERAL OF THE UNITED
STATES.

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IN THE MATTER OF THE
CLAIM OF F. J. BELCHER,
TRUSTEE FOR THE BENEFIT
OF
ED FLETCHER.

-----000-----

REQUEST FOR REVIEW.

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Charles C. Crouch,
Attorney for Applicant,
661 Spreckels Building,
San Diego, California.

BEFORE THE COMPTROLLER GENERAL OF THE UNITED STATES.

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IN THE MATTER OF THE CLAIM
OF F. J. BELCHER, JR., TRUSTEE
FOR THE BENEFIT OF ED. FLETCHER.

CLAIM NO. 798 624.
REQUEST FOR REVIEW.

To the Honorable,

The Comptroller General,
Treasury Building,
Washington, D. C.

Comes now F. J. Belcher, Jr., trustee for the benefit
of Ed. Fletcher and respectfully represents:

I.

That on or about the 1st day of June, 1917, the undersigned, as trustee for Ed. Fletcher and the various other persons, firms, and corporations who were then the owners in fee of the lands in the Articles of Agreement hereinafter mentioned, as lessor, made and entered into a certain indenture in writing with Wm. G. Gambril, Colonel, Department Quartermaster, Western Department, Quartermaster Corps, U. S. Army, acting for and in behalf of the United States of America, as lessee, wherein and whereby the said F. J. Belcher, Jr., trustee, leased to the United States the lands in the said agreement specifically described for the term of five years from the date thereof for the purpose of establishment and maintenance thereon of an army cantonment and training camp, and such other and further military uses as might thereafter be designated by the Secretary of War or other duly constituted authority of the United States, a copy of which said lease, in so far as the same is material to this matter, is attached

hereto, marked "Exhibit A", and by reference thereto made a part hereof.

II.

That the lands owned by the said Ed. Fletcher, et al., embraced in the said Claim No. 798 624 comprise approximately four thousand (4,000) acres.

III.

Some time in April or May, 1917, the Chamber of Commerce of San Diego were advised that Gen. Hunter Liggett, from San Francisco, and members of his staff, were coming to San Diego to inspect possible sites for an army training camp. The Chamber of Commerce had created an Army Base Committee of which the undersigned was Chairman. The information aforesaid came during the absence of the undersigned, and other members of this committee met Gen. Liggett and made plans to show him the available sites and to explain the possibilities of each. At this time the Government was making strenuous efforts to train great numbers of men in a very short time and Gen. Liggett impressed upon the committeemen the urgency of the situation and the necessity for prompt and patriotic action upon the part of those having the matter in charge and those persons who owned or controlled the land.

After looking over at least three sites Gen. Liggett favored the Linda Vista location and gave the requirements concerning the quantity of land, roads, gas, water, electricity, railroad connections, et cetera. These were all promised, as demanded, although at that time no land was under lease and no provision had been made for the extensions of service above mentioned.

Gen. Liggett asked that these assurances be consolidated into a telegram to him at San Francisco and that he would then recommend the proposition. Such a wire was prepared and sent to him over the signature of the undersigned. Later, this proposition was accepted and we were told to proceed with the utmost expedition. The City, County, San Diego Consolidated Gas & Electric Company and Santa Fe Railway Company all started hurriedly to work. Their undertakings were just well under way when other interests apparently undertook to block the establishment of the Training Camp near San Diego, and have it located elsewhere. A rather bitter controversy developed, which threatened to lose the Training Camp for California entirely, until information was finally sent from Washington that unless the controversy was settled the Training Camp would be sent to Texas; whereupon, the selection of Camp Kearny as a Training Camp site was approved. During the time that elapsed while this decision was in doubt, work had progressed on the several utility connections for the camp site and this courageous procedure upon the part of those interested made possible the completion of the required service within a satisfactory time after the permanent selection of Camp Kearny.

Immediately after the first advice that Gen. Liggett had recommended this site the committee aforesaid took into itself such additional members as were necessary to the investigation of ownership and to the securing of leases upon the needed lands. The Title Companies assisted in disclosing necessary information, leases were carefully prepared and printed, and many prominent men gave their time to the discovery of owners and the obtaining of leases from them. While the undersigned was Chairman and head of the committee, he could not talk to all of the owners

and much of this work was done by others for him and in his name. An individual lease was taken from each owner for the land owned by him and executed to the undersigned, as Lessee, under the title of Trustee. After the needed leases were obtained, one lease for the entire tract was made by the undersigned as Trustee, to the proper officer of the government. The ready and generous response by the persons who undertook the accomplishment of this purpose and by those who owned these lands to the appeal of the government, voiced by Gen. Liggett was and is a tribute to the patriotism of those who made possible the establishment of the army training camp at Camp Kearny.

That at the time the Government of the United States desired the use of the lands referred to in Paragraph II hereof, the said Ed. Fletcher was absent from the City of San Diego, to-wit, in the City of New York, and a telegram was sent by some member of the said committee to the said Ed. Fletcher requesting permission for the execution of a lease to the undersigned as trustee granting to the Government the use of the said lands for five years without compensation. That in response to the said telegram a message was received authorizing the execution of such lease, which said lease was signed accordingly, and the said Ed. Fletcher never had any opportunity to see the terms and conditions of the said lease prior to the execution thereof.

IV.

That the rental in the said lease provided for the entire term therein mentioned was the sum of One Dollar (\$1.00).

V.

That immediately after the execution of the said lease, the Government of the United States entered upon and took exclusive possession of said lands and established thereon an army

cantonment, known as "Camp Kearny", and continued to use and occupy said lands for such purpose until on or about the first day of January, 1919, and has never released to the owners of the said lands its rights under the said lease for the remainder of the term thereof.

VI.

That the said committee in securing authorization from the owners of the said lands for the undersigned to act as their trustee in the execution of the said lease, urged upon such owners their obligations of patriotism and duty to their country to permit such use of their lands by their country in a time of war without rental therefor. But at the time of the execution of the said lease it was not represented to such owners, that any permanent injury or damage to such lands would result from such use.

VII.

That while Camp Kearny was in existence, there were stationed and quartered thereon, at times, as many as 30,000 men, who were being trained in the methods of attack and defense in warfare with the modern implements therefor.

And the said Ed. Fletcher has represented to the undersigned, as such Trustee, that during such training the following injury and damage was done to the said four thousand acres of land, and for which the said Claim No. 798 624 was presented:

(a). Between two and three miles of trenches were constructed.

(b). Approximately a mile of inter-communicating trenches were constructed.

(c). Several miles of roads running in every direction were constructed.

(d). Some twenty or thirty dugouts were built.

(e). Numerous gun emplacements were builded.

(f). Numerous tunnels to protect men from artillery fire were dug.

(g). Numerous dugouts for observation posts were dug.

(h). A complete rifle range was constructed.

(i). One hundred and fifty (15) acres of the said land was shot up with 2 to 4 inch shells and a great many of them did not explode and there will be great danger in attempting to plow the ground.

(j). The fences upon the said lands upon the said lease were torn down.

(k). A small house upon the said lands at the time of the said lease was destroyed.

(l). Over eight hundred (800) acres of the said lands which had been in grain prior to said lease and was good plow land, is now trampled down into a solid mass and in places overgrown with heavy brush and will cost Ten Dollars (\$10.00) an acre to clear.

VIII.

Below are photographs showing the injury to the said lands:



Photograph showing 500 feet of trenches and embankments.



Photograph showing 400 feet of trenches.



Photograph showing depth of trenches.



photograph showing 4,000 feet of trenches.



Photograph showing inter-communicating trenches.



Photograph showing inter-communicating trenches.



Photograph showing observation excavations.



Photograph showing observation excavations
30 ft. wide and 6 ft. deep - camouflaged.



Photograph showing 800 ft. of excavations
and embankments for guns.



Photograph showing 8 ft. embankment.

Photograph showing 6,000 ft. of trenches.



Photograph showing 600 feet of deep trenches,
and embankments and gun emplacements.



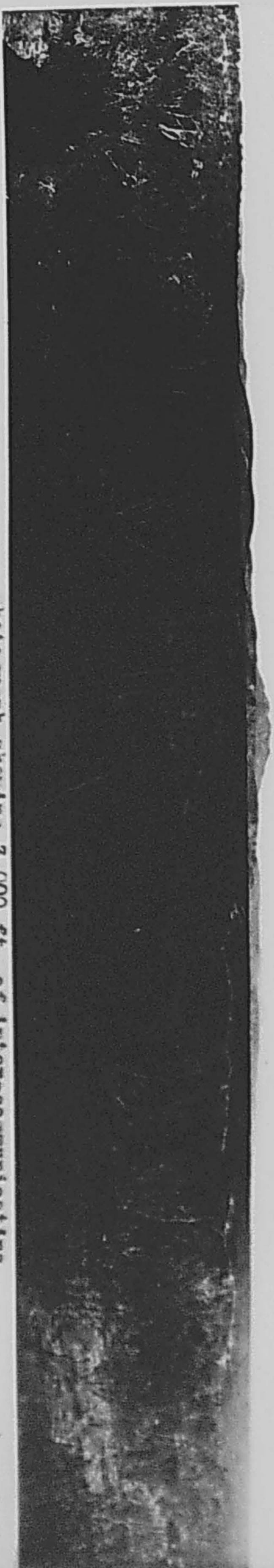
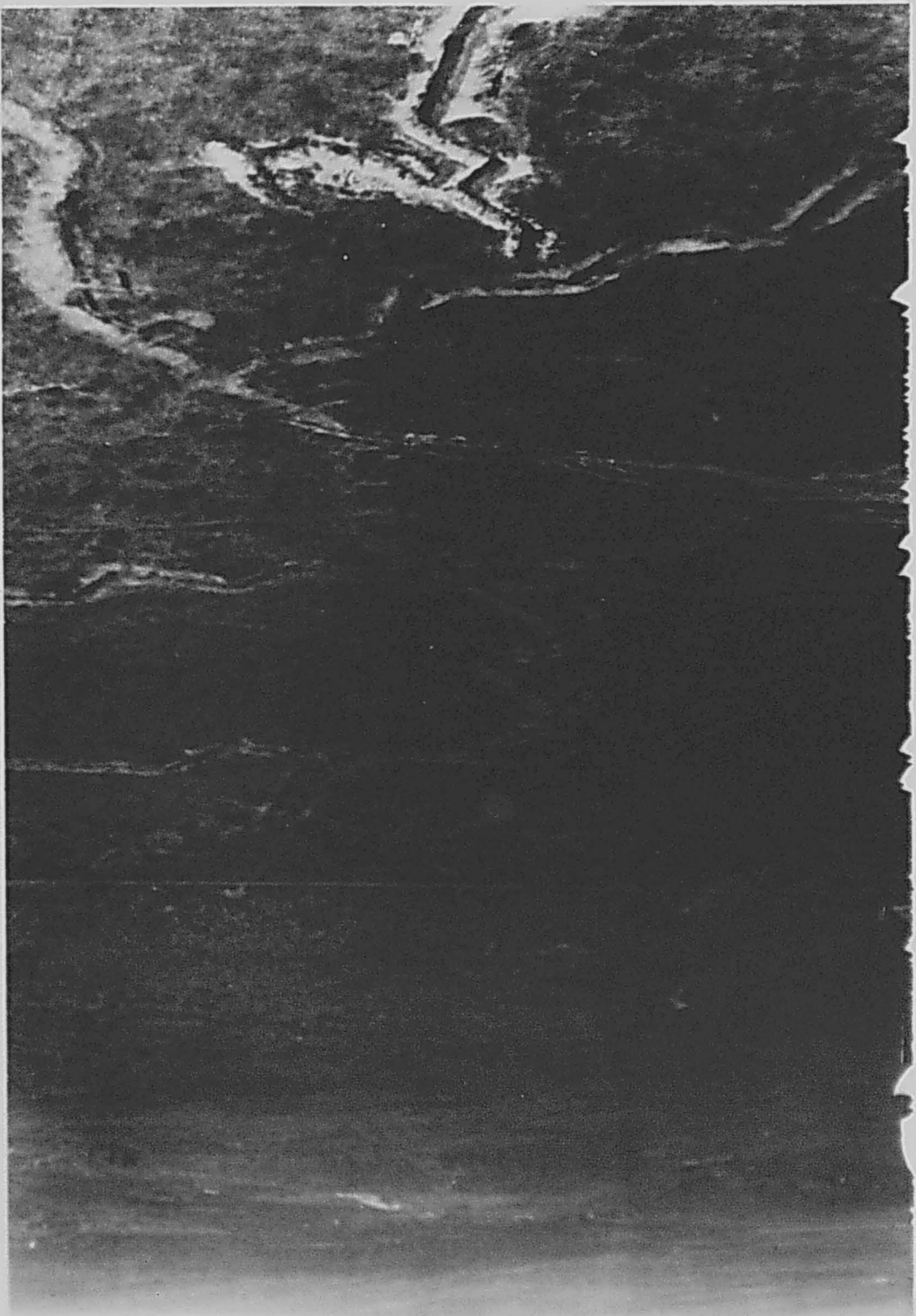


Photo Graph showing 2,000 ft. of inter-communicating
trenches.

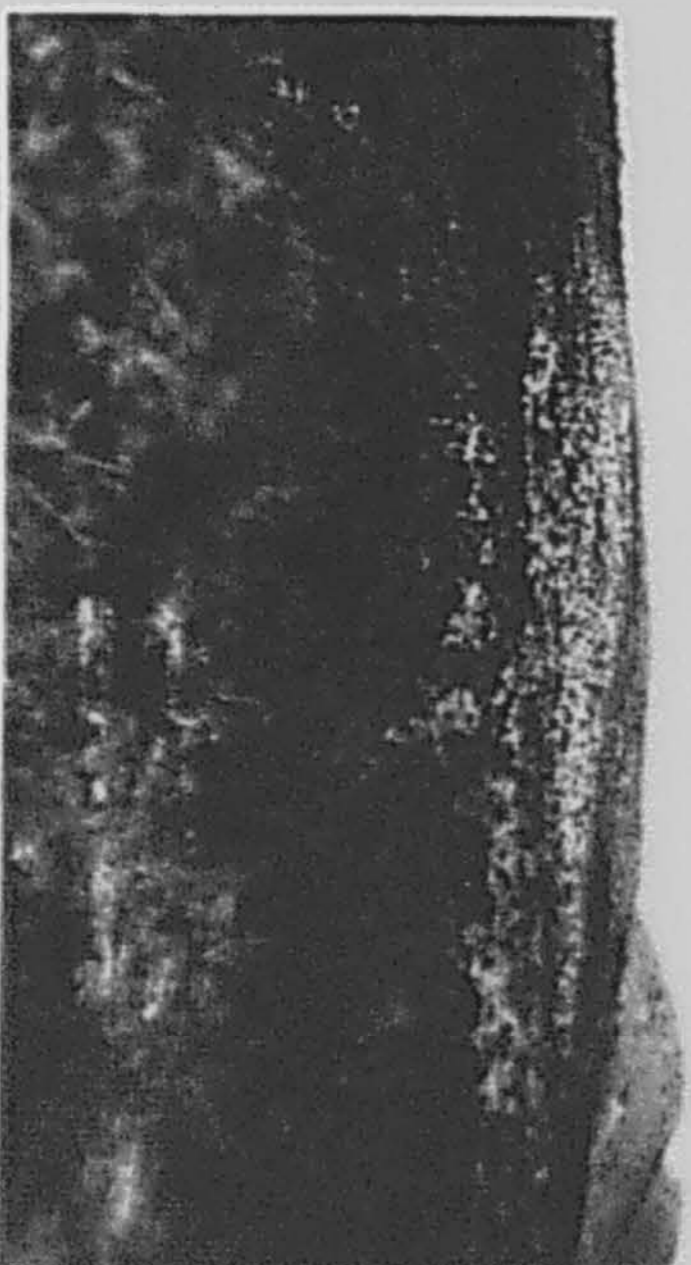


Photo Graph showing 150 acres of land
which was under shell fire filled with
hundreds of exploded and unexploded
shells.



Photograph taken from an aeroplane showing interlocking trenches 5 to 6 feet in depth and several miles in length; photo taken January, 1932, five years after trenches were built.

11(a)

Lt. ...



Photograph taken from an aeroplane showing dugouts
15 to 20 feet in depth also gun pits full of water.
Interlocking trenches shown in distance.

IX.

Attached hereto, marked Exhibit "B", and by reference thereto made a part hereof, is a communication from the said Ed. Fletcher.

X.

Attached hereto, marked Exhibit "C", and by reference thereto made a part hereof, is a communication, dated November 16, 1920, from the President, Camp Kearny Claims Board, to the said Ed. Fletcher, showing that the said Claims Board had found and determined that the cost of restoring these lands to their original condition was estimated at Twenty-one Thousand, Eight Hundred and thirty-eight Dollars (\$21,838.00).

XI.

Attached hereto, marked Exhibit "D", and by reference thereto made a part hereof, is a communication, dated November 22, 1920, from the said Ed. Fletcher to Major Joseph E. Carberry, showing that he was willing to accept the said award.

XII.

Attached hereto, marked Exhibit "E", and by reference thereto made a part hereof, is a communication, dated December 1, 1920, from the President of the Claims Board to the said Ed. Fletcher, inclosing forms for acceptance of said award.

XIII.

Attached hereto, marked Exhibit "F", and by reference thereto made a part hereof, is a communication, dated December 2, 1920, from the said Ed. Fletcher to the President of the Claims Board, transmitting acceptance of the said award.

XIV.

Attached hereto, marked Exhibit "G", and by reference thereto made a part hereof, is a copy of the said acceptance of award, signed by the applicant, so transmitted.

XV.

Attached hereto, marked Exhibit "H", and by reference thereto made a part hereof, is a copy of a communication, dated January 13, 1921, from the President of the said Claims Board to the said Ed. Fletcher, relating to the said matter.

XVI.

Attached hereto, marked Exhibit "I", and by reference thereto made a part hereof, is a communication, dated February 10, 1921, from the said Ed. Fletcher to the President of the said Claims Board, relating to the said matter.

XVII.

Attached hereto, marked Exhibit "J", and by reference thereto made a part hereof, is a letter, dated May 3, 1921, from the President of the said Claims Board to the said Ed. Fletcher, giving further instructions with reference to the presentation of said claim.

XVIII.

Attached hereto, marked Exhibit "K", and by reference thereto made a part hereof, is a communication, dated June 7, 1921, from the President of the said Claims Board to the said Ed. Fletcher, making further suggestions in the said matter.

XIX.

Attached hereto, marked Exhibit "L", and by reference thereto made a part hereof, is a copy of a communication, dated June 7, 1921, from the applicant to the Claims Board, giving the data requested.

XX.

Attached hereto, marked Exhibit "M", and by reference thereto made a part hereof, is a letter, dated September 20,

1921, from the Chief of the Claims Division to Mr. William R. Wheeler of the Army & Navy Club, Washington, D. C., showing that the amount of the award recommended in this case was \$21,838.

XXI.

That thereafter and on the 8th day of October, 1921, the Law Board, War Department Division, disallowed the said claim upon the ground and for the reasons that the land in question was leased to the Government as a camp site and the damages resulting are such as may be expected from such use and the lease makes no provision for payment of any damages to the property from the occupancy and use by the Government, and a notification of disallowance was sent to the undersigned, a copy of which is attached hereto, marked Exhibit "H", and by reference thereto made a part hereof.

XXII.

That on the 20th day of November, 1921, applicant's attorney addressed a telegram to you inquiring whether there was any procedure for a rehearing on appeal and as to how to proceed in the matter, a copy of which telegram is attached hereto, marked Exhibit "O", and by reference thereto made a part hereof.

XXIII.

That thereafter and on the 21st day of November, 1921, the Chief of the War Department Division addressed a letter to applicant's attorney, acknowledging receipt of the said telegram and advising him that if the undersigned, as trustee, would file a Request for Review over his own autographed signature and address the same to the Comptroller General, Treasury Building, Washington, D. C., it would

receive his immediate attention, a copy of which said letter, marked Exhibit "P", is attached hereto and by reference thereto made a part hereof.

WHEREFORE, the undersigned respectfully represents that the said decision No. 798 624 is unjust, unfair, inequitable, and against the law, and he respectfully requests a review thereof, and he attaches hereto, marked Exhibit "Q", a brief of his attorney upon the legality thereof and prays that upon such review the said decision may be vacated and set aside and the said award heretofore made by the Camp Kearny Claims Board may be ratified and affirmed.

Respectfully submitted,

J. J. Belcher, Jr.

Charles C. Crowe
Attorney for Applicant.

THESE ARTICLES OF AGREEMENT, Entered into this first day of June, 1917, between Wm. G. Gambrell, Colonel, Department Quartermaster, Eastern Department, Quartermaster Corps, U. S. Army, for and in behalf of the United States of America (hereinafter designated as lessee), of the first part, and F. J. Belcher, Jr., Trustee, of San Diego, in the County of San Diego, and State of California (hereinafter designated as Lessor), of the second part, WITNESSES:

That the said parties do hereby mutually covenant and agree to and with each other as follows:

1. That the said lessor shall, and by these presents does hereby lease, demise and let to the lessee the following described premises, to have and to hold the same with their appurtenances, unto the lessee, for the term beginning with June 1, 1917, and ending with May 31, 1922 at the rate for the term and upon the conditions named below, viz:

At a rental of the sum of One Dollar (\$1.00) for the entire term of said lease, the receipt whereof is hereby acknowledged.

All that certain real property, etc. (Description Omitted).

2. That the said lessor will warrant and defend to the lessee, its officers and agents, the quiet and peaceable possession and occupancy of the aforesaid premises, and in case of any disturbance, by suit or otherwise, will defend the same free of charge to the Government in or before the proper State or United States courts.

3. That no Member of or Delegate to Congress, or Resident Commissioner, is or shall be admitted to any share or part of this contract or to any benefit which may arise herefrom, but, under the provisions of section 116 of the Act of Congress approved March 4, 1909 (35 Stat. 1088), this stipulation shall not extend, or be construed to extend, to any contract made with an incorporated company for its general benefit.

4. That the lessor hereby stipulates that no part of the money received as rental will be given to the occupant of the above described premises, or to the person for whose benefit or use they were hired, or to anyone for him, nor will any rebate be given on said rental for the benefit of any such person.

5. That the lands and premises hereinbefore described are hereby demised and leased as a part of a tract of land to be used by the Government of the United States of America for the purpose of the establishment and maintenance on said tract of an army cantonment and training camp, and such other and further military uses as may be designated by the Secretary of War or other duly constituted authority of the United States of America.

6. That if during the term of this lease the United States of America shall abandon the use of said land for the purpose aforesaid, then and in that event and upon such abandonment, this lease shall be terminated; provided, however, that no temporary cessation of such uses by the United States of America shall be construed as an abandonment.

7. That upon the expiration of the term of this lease or any sooner termination thereof, the right is reserved to remove or cause to be removed any and all buildings and improvements that may be placed upon said land, either by the United States of America or by any one else on its behalf or for its use.

8. That neither the lessee nor his assigns shall be held to have assumed any other, different or greater liability or responsibility

than is herein expressly provided for.

The following deletion and substitutions were made prior to the execution of the lease: (Detail Omitted)

IN WITNESS WHEREOF the parties aforesaid have hereunto placed their hands the date first hereinbefore written. The officer of the United States whose name is signed below certified that the rate stated in this lease is no in excess of the commercial rental value of the premises named and that said rate is the amount to be actually paid to the lessor for his own use, and that there are no public buildings, quarters or grounds available for use as specified in this lease, and that the rate stipulated in this lease is a fair rental value of reasonably good premises suitable for the purposes stated herein in the locality where situated.

Witnesses:

Michael Radznill

W. B. Whitcomb

WM. G. GAMBRILL, COLONEL, Department
Quartermaster Western Department,
Quartermaster Corps, U. S. Army

F. J. BELCHER, JR., TRUSTEE.

Exhibit A
Copy of Lease

December
Twenty-eighth
1921

"Exhibit B"
Communication from Ed. Fletcher

Mr. F. J. Belcher, Pres.,
First National Bank,
San Diego, California.

Dear Sir:

Pursuant to your request for a statement concerning the damage done by the Government to my lands, which were a part of Camp Kearny, permit me to say:

I was in New York at the time this lease was made, and received a telegram from you asking for authority to lease approximately 5,000 acres for five years free to the Government for a "campsite". In return I wired you, giving you permission to sign such a lease for me, but I never had any opportunity to see the lease before its execution, and did not know the particular terms and conditions thereof.

This land in actual cash cost us in excess of \$125.00 an acre, so you get some idea of the property we lent the government. I never received any consideration, and my understanding is that you have not. They used practically none of our land for camp purposes - possibly five acres; instead of using it for a camp site, they used it for artillery and infantry.

They built between 2 and 3 miles of trenches, several miles of roads running in every direction, nearly a mile of intercommunicating trenches, 20 or 30 dug-outs, numerous emplacements, many tunnels to protect men from artillery fire, many dug-outs for observation posts, a complete small rifle range. They shot up 150 acres of our land with 2 to 4" shells and lots of them did not go off, and there is danger in plowing the ground. Congressman Swing said that the French are sending out experts now to locate duds and it was only a few weeks ago that one of their experts was killed. There is danger to life to farm the land. There are 3 or 4 miles of trails - footpaths. Our fences were torn down as well as a small house. 800 acres which had been in grain and good plow land, is now tramped down into a solid mass, and in places overgrown with heavy brush, which will cost us \$10 an acre to clear again, whereas it would be farmed otherwise.

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We are still unable to go upon the property, and it is as yet in the control of the U. S. Government. In all other cases but mine the Government has been putting the property back in its original condition, and in advertising for bids for the Camp Kearny buildings, the advertisement provided that the ground must be restored to its original condition.

I wrote General Kuhn, asking him to put the ground back into condition, and he agreed to do so and started in on the work, but his organization was ordered elsewhere within a few days thereafter and no further work was done.

I attach to this letter the bids of ^{F. O. Daley and} Riley & Peterson, reputable grading contractors of this city, showing what it will cost to have the ground put back in shape.

These lands are just outside the city limits of San Diego. We are planning to immediately put water upon this tract. Ninety-five percent of the land is cultivable and tillable.

I am simply amazed at the decision of the Comptroller General on a possible technicality, in rejecting the Belcher claim. Justice and equity alone demand that our land either be restored to its proper condition, or the damage as determined by the Army Board of Engineers paid. Under an identical "Belcher" lease, other properties under the control of the government have been restored to their normal condition as near as possible, at the expense of the government, and why should this property not receive the same treatment.

Nearly a year later 1500 or 2000 acres of land, additional, which I control, was necessary for small arms practise, etc., and Major General Strong in a letter asked me for the use of same. In a letter I granted them permission to use the land. The Board of Engineers determined that the damage to this last mentioned property was \$1623.00 and today I received a draft on the U. S. Treasury for that amount, altho I would much have preferred to have had the land put back into its original condition and no payment made.

In the matter of this "Belcher" claim of \$21,838.00 the award of the government engineers, it is impossible for me to believe that the U. S. government on any kind of a technicality is going to do the greatest injustice to men who were patriotic enough to lend to the government for five years free of cost, a half million dollars worth of property for the use of the government, and then be compelled

Page Three/

to spend \$25,000 or \$50,000 in putting that land back into its original condition, owing to the damage done to it by the government by artillery and infantry practice while they were in possession of the property.

During the war I did only what any other American would have done. It was impossible for me to go into the army on account of my age, but I had one son volunteer in aviation. Besides giving of my money and strength in the general war work, I was a member of the District Exemption Board, with jurisdiction over Los Angeles, Orange and San Diego Counties, and devoted most of my time to hearing 4,000 exemption cases on appeal from the decision of the local boards.

After the service I have rendered, I have not yet come to the conclusion that the U. S. Government is so poor that it desires to repudiate its just obligation, and my one desire is that the U. S. Government will put the land back into its original condition. This I would much prefer to any money consideration.

Yours very truly,

ED FLETCHER

San Diego, California,
December 27, 1921.

Colonel Ed Fletcher,
920 Eighth Street,
San Diego, Calif.

Bid of Contractors Riley & Peterson

My dear Colonel Fletcher:

After a personal investigation of the four or five thousand acres which you control and which was a part of the Camp Kearney lease signed by Frank S. Belcher, Trustee, will say it is cut up with several miles of straight and zig-zag trenches from two to four and five feet deep, with a number of excavations fully ten feet deep, with embankments, observation posts, dugouts, light trenches, roads, paths, etc.

I was familiar with this ground before it was included in the Camp Kearney site, and I would not care to take a contract to put this land back in its original condition for less than twenty-three to twenty-four thousand dollars, and under no circumstances, or at any price, would I attempt to remove the duds or unexploded shells at the target range.

Very sincerely yours,

RILEY & PETERSON,

Per. W. F. Riley.

GEORGE R. DALEY
PAVING CONTRACTOR
552 MCNEECE BUILDING

SAN DIEGO, CAL., Jan. 10, 1922.

Colonel Ed. Fletcher,
Fletcher Building,
San Diego, Calif.

*Bid of Contractor
George R. Daley*

Dear Sir:

Pursuant to your request for a bid for restoring to its original condition some four thousand acres of land on Linda Vista Mesa which was formerly a part of Camp Kearney, will say that I hereby offer to do this work for the sum of Twenty-four Thousand Five Hundred Dollars (\$24,500.00).

This does not include filling the trenches, gas pits, tunnels, etc., only to a level. You will understand that after there has been a heavy rain the filling will settle considerably and additional work will have to be done thereafter. However, I will do a good job. I do not care to make any bid for restoring the 150 acres which was torn up by shells as I have been informed that there are some unexploded shells in this land and I am not equipped to locate them and would not want to endanger the lives of my men in such work.

If you prefer I would be willing to do this work on a force account. I have about 100 horses and mules and complete grading equipment which I could put upon this work as soon as the ground has dried out sufficiently. I would make you a real price for this equipment on a per diam basis with an overhead charge of 15%.

Trusting that this bid may receive your favorable consideration, I am

Respectfully yours,

George R. Daley.

Exhibit "C"

HEADQUARTERS U S TROOPS
CAMP KEARNEY, CAL.

November 16th, 1920.

File:

From: The President, Camp Kearney Claims Board.

To: Colonel Ed Fletcher, 920 Eighth Street, San Diego, California.

Subject: Damages.

1. Referring to your letter of October 4, 1920 and previous communications on the same subject, the tracts of land mentioned in that communication have had, as far as the Board is able to determine, no damage done them as result of Government occupation.

2. This does not include, however, the area marked on map as "Lot 41" which has been leased to the Government through Mr. F. J. Belcher, Jr., as Trustee. The cost of restoring this area to its original condition is estimated at \$21,858.00.

3. The area immediately adjacent to that lease is also under your control. It was taken over by the Government under an agreement constituting an implied lease to the Government and the Government is therefore responsible for its restoration, the estimated cost of which will be \$1,623.00.

4. Due to a decision of The Judge Advocate General in San Francisco, it has become necessary to separate those claims which will be placed through Mr. Belcher as Trustee and those placed by any property owner directly. However, if you will indicate your willingness to accept the award in the above mentioned figures immediate steps will be taken to close this matter. It is understood that your proposition of October 4, 1920 was either to have the Government restore the land or present an estimate of the cost of restoration thereof.

JOSEPH E. CARBERRY.

Major, Infantry

JRC:mf

Exhibit "D"

November 22, 1920.

Major Joseph E. Carberry,
Camp Kearny, Calif.

My dear Major:

Answering yours of November 16th, will say I have not had time to personally go over the different areas, but I am willing to accept the \$1623.00 to cover the damage of the area adjacent to lot 41.

In regard to the damages to lot 41, will say that the sum of \$21,838.00 is also satisfactory.

Kindly furnish me with the proper papers in relation thereto.

Thanking you for your promptness in this matter,

I am

Very sincerely yours,

ED FLETCHER

EF/hls

Exhibit "E"

Camp Kearny, Calif.,
December 1st, 1920.

Colonel Ed Fletcher,
920 Eighth Street,
San Diego, California.

My dear Colonel:-

Herewith forms for Acceptance of Award, four (4) copies of each being required.

The form marked "No. 1" is to cover an acceptance of award of \$21,838.00 for damages to Lot 41 and form marked "No. 2" is to cover acceptance in the sum of \$1,623.00 for damages to property outside of Lot 41, authority to use same having been granted in your letter of February 25, 1918 to General F. S. Strong, U.S.A. This property should be described in such manner as to include all lands used by the Government and adjacent to Lot 41. As you will note, the form marked No. 1 should be signed, when completed, by Mr. Belcher and the form marked No. 2 by yourself.

Very truly yours,

Barney L. Moeden,
1st Lt. Q.M.C.,
President, Claims Board.

JEC:MM
Incls.

Exhibit "B"

December
2
1920

Lt. Barney L. Meeden,
President, Claims Board,
Camp Kearny, California.

My dear Lt. Meeden:

I thank you for your kind letter of
December 1st.

Enclosed herewith find claims for
\$21,838.00 in quadruple in favor of Frank J. Belcher,
Jr., Trustee, and also my claim in the sum of
\$1623.00.

Yours very truly,

ED FLETCHER

EF:KLM

Exhibit "C"

RELEASE MADE IN PURSUANCE OF
AWARD.

KNOW ALL MEN BY THESE PRESENTS:

That I, Frank J. Belcher, Jr., Trustee, of the City of
San Diego, County of San Diego, State of California, in considera-
tion of the sum of \$21,838.00, have remise, released and forever
quitclaimed, and by these presents do remise, release and forever
quitclaim the Government of the United States of America, and any
department, division or bureau thereof from all actions, cause and
causes, of actions, judgments, suits, controversies, trespasses,
debt, duties, damage, accounts, reckonings, and demands whatsoever
for or by reason of any matter, cause, or thing whatsoever, and
particularly from any and all liability for damages, arising out of
the use and occupancy of the following described property by the
said Government of the United States in the maintenance of an army
cantonment and training camp or other military uses, under and by
virtue of that certain lease made and entered into on the first
day of June, 1917, by and between Frank J. Belcher, Jr., Trustee,
lessor, and the Government of the United States of America, lessee:

Section twenty (20) Township 15 South Range 2 W. Ex
Mission Rancho Lot 73; the north half of section twenty eight
(28) Ex Mission Rancho lot 73; the north half of section 29
of Ex Mission Rancho lot 73; the east 6 acres, section 19,
township 15, S.R. 2 West, the east 4 acres of the north 1/2
of section 30; all in township 15 South, Range 2 West, of
Ex Mission Lot 73; containing in all one thousand two hundred
and ninety two (1292) acres more or less.

under the terms and in the manner prescribed in and by the Claims
Board, sitting at Camp Kearny, California, on December 1st, 1920,
certified true copy of whose award is attached.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed
my seal this the _____ day of December, 1920.

FRANK J. BELCHER, JR., Trustee (SEAL)

Exhibit "H"

Camp Kearny, Calif.
January 13, 1921

Colonel Edw. Fletcher,
520 -6th Street,
San Diego, Calif.

My dear Colonel Fletcher:-

Request that you inform Mr. Belcher of the necessity of including in his release not only those parcels of land which have been damaged thru the occupancy of the Government, but also give us the statement with regard to those leases, which are now about to be returned to the owners and which in no way has suffered thru the Military operations that were conducted during the last three years.

I am yours very sincerely,

Barney L. Meeden
1st. Lieut. Q.M.C.
Commanding.

BIM-EL

Exhibit "I"

February
Tenth
1921

Lt. Barney L. Meeden,
Claims Board,
Camp Kearny, California.

My dear Lt. Meeden:

Enclosed herewith find Release and three copies in the matter of the claims against the Government for damages, signed by F. J. Belcher, Jr., Trustee.

Will you kindly write me a letter acknowledging receipt of same, the understanding being if finally approved by Washington, the check will be made to F. J. Belcher, Jr., Trustee, with a notation, please, that I be notified when the award is finally approved and check received for the amount.

Yours very truly,

ED FLETCHER

BP:KLM

Exhibit "J"

CAMP KEARNY, CALIF.

May 26, 1921.

File No.: 156
From: The Camp Kearny Claims Board.
To: Mr. Ed Fletcher, 920 Eighth Street, San Diego, California.
Subject: Claim.

1. Attached hereto please find a letter directed to Mr. F. J. Belcher, Jr., setting forth all that is necessary with respect to your damage claim on land leased through Mr. Belcher.

2. It will be necessary for Mr. Belcher to draw up a statement, similar to the one that you submitted last week, and forward same to the Camp Kearny Claims Board. Please call Mr. Belcher's attention to the necessity of repeating the following data:-

Date when damage occurred: 1917 and 1918.
Land on which the damage has been sustained: as described in attached letter.
Approximate cost of restoration: \$25,000.00.
Total amount in cubic yards: 18,500 cubic yards.

3. Any further assistance in the completion of these papers will be gladly furnished upon request.

By authority of President, Camp Kearny Claims Board:

BARNEY L. MENDEN,
1st Lt. Q.M.C.,
Recorder.

EG:msw
1 Incl.
(Letter)

Exhibit "K"

CAMP KEARNY, CALIF.

June 7, 1921.

File No.: 150 (Camp Kearny)
From: Camp Kearny Claims Board, Camp Kearny, Calif.
To: Colonel Ed. Fletcher, 920 Eighth Street, San Diego, Calif.
Subject: Damage Claim.

1. For your information forward herewith one signed copy of the statement of claim of Mr. F. J. Belcher, Jr. as your authorized agent, dated June 7, 1921.

2. Inasmuch as there are some alterations to the draft first prepared in your office, it is suggested that all copies of this first draft be destroyed, so as to avoid confusion.

3. All necessary papers have been assembled in this office today and are forwarded to the Claims Board in Washington for action.

By authority of the President, Camp Kearny Claims Board:

BARNEY L. MENDEN,
1st Lt., Q.M.C.,
Recorder.

BLM/EG
1-encl.

June 7, 1921.

The Camp Kearny Claims Board,
Camp Kearny,
California.

Gentlemen:-

The property described below is within the exterior boundaries of Camp Kearny, and the respective owners thereof are represented by Mr. Ed Fletcher. This property was, through various instruments, leased to me as Trustee in 1917, and by me, as Trustee, leased to the United States Government at that time for the purpose of establishing thereon Camp Kearny.

The United States Government now proposes to abandon Camp Kearny and return the property to its owners. I have no pecuniary interest in any of this property, but, inasmuch as the lease for the property to the Government is signed by me as Trustee, I understand that it is necessary for me to present to you such claims as any of the property owners may have for damages in connection with the occupancy of the property by the Government.

In conformity therewith I desire to present to your Board, in my name as Trustee, the claim as submitted to you on December 1st, 1920 by Mr. Ed Fletcher, for damages sustained through occupancy by the Government of the land described below:

Lease No. 40
May 29, 1917:

An undivided one fourth (1/4th) interest in the East three hundred ninety two (392) acres of the West four hundred forty two and forty hundredths (442.40) of the South four hundred forty eight (448) acres, Section Eighteen (18), Township Fifteen (15) South, Range Two (2) West. The East five hundred sixty (560) acres of the West six hundred thirty two (632) acres of Section Nineteen (19), Township Fifteen (15) South, Range Two (2) West, except the North one hundred (100) acres; the North five hundred thirty nine (539) acres of the East five hundred sixty (560) acres, of the West six hundred thirty two (632) acres of Section Thirty (30), Township Fifteen (15) South, Range Two (2) West, all being in Lot Seventy two (72) Ex-Mission Partition, containing one thousand three hundred ninety one (1391) acres, more or less.

Lease No. 41-A
May 31, 1917:

Entered into by Col. Ed Fletcher, as authorized agent of the Syndicate Land Company. Section Twenty (20), Township Fifteen (15) South, Range Two (2) West, Ex-Mission Rancho Lot Seventy three (73), the North one half (1/2) of Section Twenty nine (29) of Ex-Mission Rancho Lot Seventy three (73).

Lease No. 41
May 31, 1917:

Entered into by Mr. Grover C. Trask, Secretary Army Post Committee, Agent for

Col. Ed Fletcher, authorized Agent for Syndicate Land Company. Section Twenty (20) Township Fifteen (15) South, Range Two (2) West, Ex-Mission Rancho Lot Seventy three (73) (the North one-half (1/2) of Section Twenty eight (28), Ex-Mission Rancho Lot Seventy three (73); the North one-half (1/2) of Section Twenty-nine (29) of Ex-Mission Rancho Lot Seventy three (73); the East Eight (8) acres of Section Nineteen (19), Township Fifteen (15) South, Range Two (2) West; the East Four (4) acres of the North one-half (1/2) of Section Thirty (30), all being in Township Fifteen (15), South, Range Two (2) West of Ex-Mission Rancho Lot Seventy three (73), containing in all one thousand two hundred ninety two (1,292) acres, more or less.

Lease No. 39
May 31, 1917

Entered into by Mr. Grover C. Trask, Secretary Army Post Committee, Agent for Col. Ed Fletcher and Agent for W. G. Filer. The East three hundred ninety two (392) acres of the West four hundred forty two and four tenths (442.4) acres of the South four hundred forty eight (448) acres, Section Eighteen (18), Township Fifteen (15) South, Range Two (2) West, of Ex-Mission Rancho Lot Seventy two (72); the east five hundred sixty (560) acres of the West six hundred thirty two (632) acres of Section Nineteen (19), Township Fifteen (15) South, Range Two (2) West, of Ex-Mission Rancho Lot Seventy two (72), (except the North one hundred (100) acres); the North five hundred thirty nine (539) acres of the East five hundred sixty (560) acres of the West six hundred thirty two (632) acres of Section Thirty (30), Township Fifteen (15) South, Range Two (2) West, in Lot Seventy two (72) Ex-Mission Partition, containing in all one thousand three hundred ninety one (1,391) acres, more or less.

Lease No. 38
May 31, 1917:

Entered into by Mr. Grover C. Trask, Secretary Army Post Committee, and Agent for Col. Ed Fletcher. Public Lot One thousand and two hundred fifteen (1,215) better known as the Jay Tract, containing twelve and one half (12-1/2) acres, more or less, being a partition of the West one half (1/2) of said Public Lot One thousand two hundred fifteen (1,215).

Lease No. 45
June 28, 1917:

Entered into by Colonel Ed Fletcher. (Heathaw). An undivided one half (1/2) interest in Lots Six (6), Nine (9) and Ten (10), Mentanum Tract, in San Diego County California, being a sub-division of part of Lot Seventy three (73), Partition of Rancho Mission of San Diego, California, filed for record as Map seven hundred ten (710) in the office of the County Recorder of San Diego County, California, containing

Fifteen (15) acres.

According to statement of Mr. Fletcher, acting for and on behalf of the owners of the property, the damages consist of excavations to the amount of approximately eighteen thousand five hundred (18,500) cubic yards, and seem to have been made in connection with the use of this ground for an artillery range. The construction of trenches and dugouts was undertaken in the years of 1917 and 1918.

I am also informed by Mr. Fletcher that it is difficult to state just what the cost of levelling the ground would be, but he believes that it will be nearly \$25,000.00, and that this estimate is based on a fair estimate of the cost of labor and material. I have already signed a "release made in pursuance of award" on February 10th 1921, accepting the sum of \$21,838.00, which was forwarded to the Claims Board at Camp Kearney, California.

On information and belief I certify that this claim is just and proper and that payment therefor has not been received.

Respectfully,

F. J. BELCHER, JR.
TRUSTEE

FJB AVL

WAR DEPARTMENT
Office of Chief of Finance
Washington, D. C.

File No. 153 FC (Camp Kearney, Cal.)

September 20, 1921.

Mr. William R. Wheeler,
Army and Navy Club,
Washington, D. C.

Sir:

Referring to your verbal inquiry of this day, I beg to advise you that an award of \$1623.00 covering the "Fletcher claim", has been forwarded to the Finance Officer, San Francisco, Cal., for settlement from that office.

The "Belcher claim", will be forwarded to the Comptroller General for settlement within a day or so. The amount of the award as recommended in this case stands at \$21,838.00.

H. M. LORD,
Chief of Finance, U.S.A.

By: H. S. GOTT.
Chief, Claims Division.

G-t

COPY

AHE-913

CLAIM NO. 798 624

NOTIFICATION OF DISALLOWANCE

THEASURY DEPARTMENT
OFFICE OF AUDITOR FOR THE WAR DEPARTMENT
WASHINGTON, D.C.

F. J. Belcher,
Trustee for the benefit
of Ed. Fletcher,
San Diego, Calif.

Your claim for payment of damages amounting to \$21,838.00 to the property of Ed. Fletcher, held under formal lease by the Government from June 1, 1917 to June 30, 1921 has been examined and DISALLOWED by certificate No. 798 624 dated Oct. 8, 1921, for the following named reasons, viz:

The evidence presented shows the land in question was leased to the Government as a camp site and the damages resulting are such as may be expected from such use and the lease makes no provision for payment of any damages to the property resulting from the occupancy and use by the Government. Said claim is therefore disallowed.

Respectfully,

J. R. McCarl,
Comptroller General.

By W. E. G.

CLASS OF SERVICE DESIRED	
Telegram	
Day Letter	
Night Message	
Night Letter	

Patrons should mark an X opposite the class of service desired; OTHERWISE THE MESSAGE WILL BE TRANSMITTED AS A FULL-RATE TELEGRAM

WESTERN UNION TELEGRAM

NEWCOMB CARLTON, PRESIDENT

GEORGE W. E. ATKINS, FIRST VICE-PRESIDENT

Form 1206

Receiver's No.
Check
Time Filed

Send the following message, subject to the terms on back hereof, which are hereby agreed to

San Diego, Cal. Nov. 00, 1921.

J. R. McCarl,
Comptroller General,
Washington, D. C.

Refer claim covers also eight six two four Belcher trustee for Fletcher, dated October eighth. In those procedure for reducing or appeal and how shall I proceed. Please wire answer.
Charles C. Crouch, attorney.

Charles C. C. Crouch
Phone 65446.

Exhibit O

GENERAL ACCOUNTING
War Department Division

Washington

AHE 913
798624

November 21, 1921.

Mr. Charles C. Crouch,
San Diego,
California.

Sir:

Your telegram addressed to the Comptroller General relative to the claim of F. J. Belcher, trustee for Ed Fletcher, has been referred to this Division for reply.

You are advised that if Mr. Belcher, as trustee, will file a request for review over his own autographed signature and address the same to the Comptroller General, Treasury Building, Washington, D.C., it will receive his immediate attention.

Respectfully,

W. H. BARKSDALE

Chief, War Department Division

by W. E. G.

ms

BEFORE THE COMPTROLLER GENERAL OF THE UNITED STATES.

-----oOo-----

IN THE MATTER OF THE CLAIM
OF F. J. BELCHER, TRUSTEE
FOR THE BENEFIT OF ED. FLETCHER.

CLAIM NO. 798 624.
BRIEF OF ATTORNEY
FOR APPLICANT.

It is submitted that the facts presented in the request of the applicant, F. J. Belcher, for a review of the foregoing matter presents a case where the lessee of real property has during its occupancy committed waste upon the premises for which it is legally liable.

"Waste" has been defined by various courts as follows:

"Waste," or "vastum," is a spoliation or destruction of houses, etc., to the disherison of him that hath the remainder or reversion in fee simple or fee tail. White v. Wagner (Md.) 4 Har. & J. 373, 391, 7 Am. Dec. 674; Davenport vs. Hagoon, 4 Pac. 299, 301, 13 Or. 3, 57 Am. Rep. 1; Sanderson v. Jones, 6 Fla. 430, 480, 491, 63 Am. Dec. 217; Dills v. Hampton, 92 N.C. 565, 570.

"Waste" is defined to be a spoil or destruction in houses, gardens, trees, or other corporeal hereditaments, to the disherison of him that has the remainder or reversion in fee simple; and it is said that whatever is done which tends to the destruction of the inheritance or the impairing of its value is waste. Smith v. Sharpe, 44 N.C. 91, 93, 57 Am. Dec. 574.

Waste is "the destruction or material alteration of any part of a tenement by a tenant for life or years, to the injury of the person entitled to the inheritance." 1 Steph. Comm. 241. "And it may be committed as well by destruction to any part of a tenement. It is waste to alter buildings, or vary in any manner, the permanent erections." 5 Wait, Act. & Def. 239; Tayl. Landl. & T. 348. The injury to the realty must be of a permanent character--some act which does a lasting

injury to the property or tends to destroy its identity; and this may be accomplished by any alteration of the property which is material and of a substantial nature. *Davenport v. Mageon*, 4 Pac. 299, 301, 13 Or. 2, 57 Am. Rep. 1.

Waste, in its simplest definition, is whatever does a lasting damage to the freehold or inheritance. *Beekman v. Van Dolsen*, 18 N.Y. Supp. 376, 377, 63 Hun. 487; *McGregor v. Brown*, 10 N.Y. (6 Seld.) 114, 117.

"Waste" may be defined to be whatever does a lasting damage to the freehold and tends to the permanent loss of the owner, or to destroy or lessen the value of the inheritance. *Eysaman v. Small*, 15 N.Y. Supp. 288, 289, 61 Hun. 618.

It has been held by the Supreme Court of the United States on a case which arose in California that in the absence of some agreement to the contrary, the tenant is responsible for all waste, however, or by whomsoever committed, except it be occasioned by act of God, the public enemy, or the act of the reversioner himself.

Parrott v. Barney, 1 Sawy. 423, 2 Abb. U. S. 197, Fed. Case No. 10,773; affirmed, *Nitro-Glycerine Case*, 82 U. S. (15 Wall.) 524; sub nom. *Parrott v. Wells, Fargo & Co.*, 21 L. Ed. 206.

The author of "Cyc." (Vol. 24, p. 1110) in discussing the subject, "Condition of Premises at Termination of Tenancy" says:

Independently of express covenant, the law imposes upon the lessee an obligation to so treat the premises that no substantial injury be done thereto during his occupancy, and that the property be restored to the landlord at the end of the term unimpaired by the negligence of the tenant.

The author in support of his statement cites the case of *Bryan v. French*, 20 La. Ann. 266, in which it was held that where a person hired a lot of land for the purpose of erecting a stable for horses, he had a right to remove a stone pavement therefrom which was found to be injurious to the horses, but that on the termination of the lease, he was bound to restore the pavement in as good condition as it was before the removal.

In *Cherokee Construction Company v. Harris*, 92 Ark. 260, 122 S.W. 225, 135 A.S.R. 177, the court in considering what a life tenant might do with the premises during his occupancy, says:

"It follows that the life tenant has the right to use and enjoy the premises as he may see fit, provided he commits no injury to the inheritance. He takes the land in the condition in which it was when the estate vested in him, and he is entitled to all the rents and profits that then issued therefrom, and to continue to use and enjoy them to the same extent until the termination of the estate. But such tenant by an original act of his own is not entitled to obtain from the land any profit that would result in an injury to the inheritance. And the widow and minor children do not obtain by the homestead law any greater right in the use and enjoyment of the homestead than this. They have not the right in their use of the homestead to commit waste, and cannot during their occupancy do or permit any act to be done that will prove an injury to the estate of the reversioner. It is urged by the counsel for the appellee that they should have the right to open new mines under the authority of the case of *Russell v. Berry*, 70 Ark. 317, 67 S.W. 864. But it was there only determined that the coal underlying the surface of the earth was land and a part of the homestead; and that therefore the exemption of the homestead extended thereto, so that the coal could not be sold to pay the debts of the decedent. But it was there expressly stated that it was not decided that the widow and children have the right to mine and sell the coal. We therefore hold that during the continuance of the homestead estate of the widow and minor children they do not have the

right, as incident to the homestead estate, to open on the land new mines, and to mine and sell coal therefrom or to lease the same to others for that purpose."

The author of American and English Encyclopaedia of Law (Vol. 28, p. 868), in treating the subject "Waste", says:

"The criterion of waste is, do the acts complained of do a lasting damage to the freehold or inheritance, and tend to the permanent loss of the owner in fee, or to destroy or lessen the value of the inheritance."

In Volume VII of the Decisions of the Comptroller General, p. 767, is found the following:

"Where private property is destroyed by the Government for its own benefit with the assent of the owner, a contract is implied to make compensation for its value."

(Acting Comptroller Mitchell to the Secretary of War, May 29, 1901.)

"By your reference of May 14, 1901, of a communication of the Chief of Engineers, you request a reconsideration of my decision of May 4, 1901, of the question whether you were authorized to pay a bill of \$14.00 for corn destroyed by a surveying party. The facts of the case are stated by the Chief of Engineers as follows:

"Under the provisions of the Emergency River and Harbor Act of June 6, 1900, a survey was made of the east bank of the Mississippi River between the islands near the City of Hickman, Ky., and Slough Landing, Tenn. The expenses of this survey were to be paid from the available balances of appropriations made by Congress for the improvement of the Mississippi River.

As the circumstances required this survey to be made during the summer months, the operations of the surveying party were impeded and the costs of the survey somewhat increased by the height of the vegetation and the growing crops. In one instance it became necessary for the surveyors to enter a

cornfield and cut down and destroy near one acre of corn that was just approaching maturity. An oral agreement was made between the head of the surveying party and Mr. W. H. Young, the owner of the corn, that he should be reimbursed for the corn destroyed. In pursuance of this agreement the survey was permitted to proceed until the work ordered by Congress was accomplished. Mr. Young immediately presented his bill for 40 bushels of corn destroyed at the market price of 35¢ per bushel, amounting to \$14.00."

As the question presented by this case has a wider import that was perceived by me when it was first submitted, I will now consider it as if it were submitted for the first time.

There was no written contract to pay for the corn destroyed, and the oral agreement was void. Therefore the only ground upon which the owner can be entitled to payment is upon an implied contract for the value of the corn destroyed. (5 Compt. Dec. 193; Clark v. United States, 95 U.S. 639, 642.) Moreover, before you would be authorized to make payment of the amount claimed or any part thereof it is necessary that the claim should be liquidated by an agreement with the owner fixing the value of the corn destroyed. (5 Compt. Dec. 775; 6 id. 648).

The foregoing question has been definitely settled in the decisions of this office, but a further question arises in this case which has not heretofore received such consideration, namely, whether the Government is liable upon an implied contract for the value of the property destroyed for its benefit.

It is provided in the fifth amendment to the Constitution of the United States that private property shall not be taken for public use without just compensation. Where property has been so taken, even without any agreement for compensation, an implied contract arises to justly compensate the owner for its value.

The only doubt arising in the present case is whether such a contract arises where property has not actually been taken for public use but has been destroyed for the benefit of the Government. This doubt, however, has been removed by decisions of the court.

In considering a like question arising under a provision substantially the same in the State of Wisconsin, the Supreme Court of the United States said:

"It would be a very curious and unsatisfactory result if, in construing the provisions of statutory law always understood to have been adopted for protection and security to the right of the individual as against the Government and which has received the

commendation of jurists, statesmen, and commentators, as placing the just principles of the common law on that subject beyond the power of ordinary legislation to change or control them, it should be held that if the Government refrains from the absolute conversion of real property to the uses of the public it can destroy its value entirely, can inflict irreparable and permanent injury to any extent, can, in effect, subject it to total destruction without making any compensation, because, in the narrowest sense of the word, it has not been taken for public use. Such construction would pervert the Constitutional provisions into a restriction upon the rights of the citizen, as those rights stood at the common law instead of the Government, and make it an authority for invasion of private rights under the pretext of the public use which had no warrant in the practice of our ancestors. (Pumpelly v. Green Bay Company, 18 Wall, 166, 177.)'

Following this decision it was held in King v. United States (59 Fed. Rep., 9, 12), that where the drainage of the land of the plaintiff was destroyed by a cross-tide dam built by the Government between two islands in the Savannah River for the purpose of raising the natural level of the current of the river and deepening the channel, that such injury was a taking of land for public purpose, for which compensation must be provided. See also Grant v. United States (1 Ct. Cl., 41); and Wiggins v. United States (2 Id., 413).

It may also be remarked that in the case under consideration the property was destroyed in pursuance with an agreement with the owner, and that compensation was contemplated. But had the officers of the Government committed a tort by the forcible destruction of the property, an implied contract to make compensation for it would not have arisen. (Langford v. United States, 101 U.S. 341.)

I am therefore of the opinion that you are authorized to pay the claim presented when liquidated as above."

In Volume IX of the Decisions of the Comptroller General, p. 488, is reported the following:

"I think it may be considered as settled now that the Government may become liable by contract, either expressed or implied, for damages to private property used by it in the same way that an individual may. (United States v. Bestwick, 94 U.S., 55)."

In the above case cited the Supreme Court of the United

States (p. 66) said:

"The United States when they contract with their citizens, are controlled by the same laws that govern the citizens in that behalf. All obligations which would be implied to citizens under the same circumstances will be implied against them."

"THE CONSIDERATION STATED IN THIS LEASE WAS SO NOMINAL THAT NO PRESUMPTION OF ADEQUACY ARISES AND THEREFORE THE CONTRACT SHOULD BE CONSTRUED BY THE PRINCIPLES OF LAW WHICH APPLY TO GRATUITOUS LOANS."

The lease provides for the rental of some four thousand acres of land adjacent to the city limits of the municipality of San Diego "for the term beginning with June 1, 1917, and ending with May 31, 1922," a period of five years. The consideration therefor is mentioned by the following language in the lease:

"At a rental of the sum of One Dollar (\$1.00) for the entire term of said lease, the receipt whereof is hereby acknowledged."

We are familiar with the principle of law that so long as the consideration for the making of a contract is something of real value in the eye of the law, that whether or not the consideration is adequate to the promise is generally immaterial in the absence of fraud.

13 C.J., p. 365.

We submit however that this rule of law is not without its exceptions, and that where it appears on the face of the instrument that the recited consideration is merely nominal, the contract is subject to a different rule of construction in courts of equity. It has been held that where the adequacy is so gross as to shock the conscience and commonsense of all men, it may

amount both at law and in equity to proof of fraud, oppression, and undue influence.

Rogers v. Brightman, 189 Ala. 228, 66 S. 71; Judge v. Wilkins, 19 Ala. 765; Workack v. Rogers, 9 Ga. 60; Kelley v. Caplice, 25 Kan. 474, 33 Am. R. 179; Butler v. Duncan, 47 Mich. 94, 10 N.W. 125, 41 Am. R. 761; Leonard v. Southern Power Co., 155 N.C. 10, 70 S.E. 1061; Mott v. Mitchell, 91 Pa. 114; Birdsong v. Birdsong, 2 Head 603; Clark v. Halpas, 4 De G.F. & J. 401; 65 Eng. Ch. 310, 45 Reprint 1239; Gold Medal Furniture Co. v. Stephenson, 23 Man. 159; Waters v. Donnelly, 9 Ont. 391.

In Great Western Oil Company v. Carpenter, 43 Tex. Civ. A. 229, 95 S.W. 57, it was held that a consideration of \$1.00, recited as paid in an oil and gas lease, and in fact paid, was a mere nominal consideration which was insufficient to support the contract.

In Hume v. U.S., 132 U.S. 406, 10 Sup. Ct. 134, 33 L. Ed. 293, affirming (1886), 21 Ct. Cl. 328, it was held that a contract by plaintiff to furnish the Government with many articles at stipulated prices, among which were shucks at 60 cents per pound, is unenforceable as to that article, where the evidence for the Government showed that shucks were worth \$12.00 to \$25.00 per ton; that it was the custom to buy them by the hundred weight; and that the error occurred by failing to strike out the word "pounds" on the printed form on which plaintiff's proposal was made and to insert "hundred weight" instead, though plaintiff insisted that there was no mistake on his part in making the bid. In this case the opinion was by Mr. Chief Justice Fuller, and the opening paragraph thereof is as follows:

"In his celebrated judgment in Earl of Chesterfield v. Janssen, 2 Vs. 5r. 125, 155, Lord Hardwicke arranged all the forms of fraud recognized by equity in four classes,

the first two of which he gives in these words:

"1. The fraud, which is dolus malus, may be actual, arising from facts and circumstances of imposition; which is the plaintiff's case.

2. It may be apparent from the intrinsic nature and subject of the bargain itself; such as no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other; which are inequitable and unconscionable bargains; and of which even the common law has taken notice."

In Schnell v. Nell, 17 Ind. 29, 79 Am. Dec. 453, the court in considering this principle of law applied to the facts in the case before it, says:

"As it is the mere promise to pay \$600.00 for one cent, even had the portion of that cent due from the plaintiff been tendered, is an unconscionable contract, void, at first blush, upon its face, if it be regarded as an earnest one. Hardesty v. Smith, 3 Ind. 39. The consideration of one cent is, plainly, nominal, and intended to be so."

If we are correct in our conclusion that this contract should be construed as gratuitous on the part of the owner of the land, then it becomes necessary to consider what obligation is required on the part of the of the borrower of the use of real property relative to the treatment thereof. Under the law of California this obligation is definitely fixed by Section 1886 of the Civil Code which reads as follows:

"A borrower for use must use great care for the preservation in safety and in good condition of the thing lent."

It is therefore submitted that the fair and reasonable interpretation of the lease contract should be that it was the

intention of the owners of this property to donate its use to the Government in a time of war without consideration, and that under the circumstances there exists a legal and a moral obligation on the part of the Government to restore the land to its original condition or compensate the owners for the cost thereof. It is further urged that the methods of training soldiers in a camp site for action in the late war was novel and unprecedented and that the damages to the lands in question are not such as might be reasonably expected from their use as a camp site.

We think that the statement of the Supreme Court of the United States in U.S. v. Bestwick (Supra.) that when the United States contracts with their citizens, they are controlled by the same laws that govern the citizens in that behalf, and that all obligations to be implied to citizens under the same circumstances will be implied against them, is a correct statement of a just and salutary principle of law. Here this a contract between private citizens, where the owner of four thousand acres of valuable lands made a present to another of their use for five years for a merely nominal consideration, and the citizen who profited by this generosity, inflicted many thousands of dollars permanent damage to the property, that equity and good conscience would require that the citizen who had been thus favored should restore the property to the condition in which he found it. Governments in matters of dealing with their citizens should set an example of fair dealing and should not endeavor to escape their moral obligations by a resort to super-technicalities.

We believe that the decision of the Law Board is

not supported either by the law or the fundamental equitable principles of honor and justice and that it should be reversed and that these lands should either be restored to their original condition or the owners compensated for the loss by them suffered.

Respectfully submitted,

CHARLES C. CROUCH
Attorney for Applicant.

Ed Fletcher Papers

1870-1955

MSS.81

Box: 67 Folder: 7

Business Records - Land Companies - Miscellaneous land, with various Ed Fletcher companies - Camp Kearny - Claim by F. J. Belcher, Trustee for Fletcher, for damages suffered on Camp Kearny land (owned by Fletcher) during use by trainees in World War I



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