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The following file is part of the John E. Kinnison mining collection

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Telefax **WESTERN UNION** Telefax

L TSA289 PD FAX TUCSON ARIZ 26 449P MST
J E KINNISON - STATLER HILTON
16TH & K STS NW WASHDC

WE EXPECT TO BE CLEAR ON TRACT 1 WITH THE BUREAU OF INDIAN AFFAIRS BY SEPTEMBER 25 AND WILL MOVE RIGS INTO THE AREA AROUND THE TWO OUTCROPS PROMPTLY THEREAFTER.

HOLES X201 AND X202 ON THE NORTHWEST EXTENSION OF THE EAST PIMA ORE ZONE HAVE BEEN MAKING SLOW PROGRESS DUE TO BROKEN, LEACHED GROUND, BUT THEY BOTH NOW ARE IN ARKOSE CONTAINING MODERATE DISSEMINATED CHALCOPYRITE.

1968 APR [illegible] PM 8 52

JEAN STOCKER ASARCO TUCSON ARIZONA

(455).

FAX L

201(B2-65)

1270 (1-51)

IN THE

UNITED STATES COURT OF CLAIMS

No. 443-65

AMERICAN SMELTING AND REFINING COMPANY--CONSOLIDATED,
Plaintiff,

v.

THE UNITED STATES OF AMERICA, Defendant.

PLAINTIFF'S AMENDED RESPONSE TO PRETRIAL ORDER NO. 1

(Filed October 30, 1967)

Since the filing of Plaintiff's Response to Pretrial Order No. 1 on September 13, 1966, two claims have been eliminated from the case by administrative refund and the Department of Justice has increased the area and amount involved in the remaining claim. This response restates the facts relating to the issues remaining in the case, including the new claim set up by the Department of Justice, and eliminates the two claims no longer in the case.

(a) Documents To Be Offered In Evidence.

1. Notice of Competitive Sale Exclusive Prospecting Permit With Option To Lease Restricted Indian Lands For Mining San Xavier Indian Reservation dated April 8, 1957.

2. Mineral Prospecting Permit (Exclusive with Option), Contract No. 14-20-450-1519, dated May 17, 1957, signed by the plaintiff and the owners of the allotments in "tract" 1.

3. Mineral Prospecting Permit (Exclusive with Option), Contract No. 14-20-450-1504, dated May 17, 1957, signed by the plaintiff and the owners of the allotments in "tract" 2.

4. Mineral Prospecting Permit (Exclusive with Option), Contract No. 14-20-450-1511, dated May 17, 1957, signed by the plaintiff and the owners of the allotments in "tract" 3.

5. Mining Lease Indian Lands, Lease No. 454-2-60, dated August 31, 1959, for the allotments leased in "tract" 1.

6. Mining Lease Indian Lands, Lease No. 454-3-60, dated August 31, 1959, for the allotments leased in "tract" 2.

7. Abstracts of Title for the allotments in "tracts" 1, 2, and 3, with covering opinion letters.

8. Map showing the location and owners of each allotment in "tracts" 1 and 2 and the location of the drill holes and ore bodies.

9. Schedule of dates of drill holes.

10. Schedule of drill holes and allotments.

11. Schedule of the plaintiff's expenditures with respect to San Xavier lands.

12. Summary Logs, San Xavier Reservation, "tracts" 1, 2, and 3, dated August 29, and September 5, 1967, prepared by John E. Kinnison.

13. Map showing the location and owners of each allotment in "tract" 3.

(b) Statement Of Noncontroverted Facts.

1. The plaintiff is a corporation organized and existing under the laws of the State of New Jersey, and has its principal office at 120 Broadway, New York, New York.

2. The plaintiff's principal business is exploring for and mining, smelting, refining, and selling copper, silver, lead, zinc, and other minerals.

3. The plaintiff and its affiliated companies filed a consolidated Federal income tax return on the accrual basis for the calendar year 1959 and timely paid the income tax liability shown thereon (less two credits) in the amount of $7,626,396.45. Thereafter, the Commissioner of Internal Revenue assessed a deficiency against the plaintiff in the amount of $1,137,835.44 for 1959.

4. On December 2, 1964, the plaintiff paid the $1,137,835.44 deficiency assessed for 1959, plus $321,773.63 interest thereon.

5. The plaintiff timely filed a claim for refund in the amount of $680,513.67 for 1959 and asserted therein that the Commissioner of Internal Revenue erroneously disallowed (1) a loss deduction in the amount of $843,459.72, (2) a percentage depletion deduction in the amount of $194,363.69, and (3) a legal expense deduction in the amount of $6,543.29. The Commissioner of Internal Revenue disallowed the plaintiff's claim for refund for 1959 by statutory notice dated October 26, 1965.

6. The $194,363.69 percentage depletion deduction and $6,543.29 legal expense deduction have been allowed administratively since the filing of the petition. The Department of Justice has increased the amount of the disallowed loss deduction from $843,459.72 to $888,583.60 and has offset the resulting increase in tax and interest against the depletion deduction administrative refund.

7. The plaintiff's claim for the loss deduction presents the question whether the amount deducted, or any part thereof, was an investment in property relinquished and abandoned in 1959 or an investment in property retained. The claim arises under the following circumstances.

(a) In 1957, the plaintiff purchased from individual Indian landowners exclusive prospecting permits on parcels of land located in three contiguous "tracts" in San Xavier Papago Indian Reservation in Pima County, Arizona,

coupled with options to acquire mineral leases on portions of the acreage. The plaintiff paid bonuses totaling $283,000 ($55.27 per acre) for prospecting and option rights in parcels located in "tract" 1, which contained approximately 5,120 acres. The plaintiff paid bonuses totaling $757,002.04 ($146.05 per acre) for prospecting and option rights in parcels located in "tract" 2, which contained approximately 5,183 acres. The plaintiff paid bonuses totaling $26,005 ($5.08 per acre) for prospecting and option rights in parcels located in "tract" 3, which contained approximately 5,120 acres.

(b) The parcels of land located in "tracts" 1, 2, and 3 had been allotted by the United States to individual Indians, and individual allottees owned the land except for one allotment which had been reclassified as tribal land. Under 25 U.S.C. §396, the allottee could lease his land for mining purposes with the approval of the Secretary of Interior. There were 142 individually-owned allotments and one allotment reclassified as tribal land included in the three "tracts". "Tract" 1 included 55 allotments plus 40 acres in allotment #176 and 160 acres in allotment #92. "Tract" 2 included 41 allotments and the allotment reclassified as tribal land plus 40 acres in allotment #176, 80 acres in allotment #92, 200

acres in allotment #86, and 40 acres in allotment #41. "Tract" 3 included 42 allotments plus 80 acres in allotment #86 and 240 acres in allotment #41.

(c) The United States Department of Interior Papago Indian Agency acted as agent for the individual landowners in arranging for the sale of the prospecting and option rights, in the collection and distribution of the bonuses, rents, and royalties, and in certain administrative matters. The Indian Agency acted as agent in arranging the form of the sale only and assumed no responsibility as to securing the prospecting and option rights from the individual landowners.

(d) The plaintiff acquired the prospecting and option rights from each of the individual landowners under three contracts dated May 17, 1957, identical in form except for the amount of bonuses payable to the landowners. In each of the three contracts, the landowners authorized the Commissioner of Indian Affairs or his authorized representative to sign, execute, and deliver on their behalf Modified Form 5-154 mining leases to the extent the plaintiff exercised its options.

(e) In order to obtain the prospecting and option rights, the plaintiff was required to employ attorneys to search the land and other records to ascertain

the name and location of each individual landowner and to spend months in locating and persuading the landowners to sign the contract covering their land. No prospecting or option rights could be obtained on the landowner's land unless he signed the contract granting such rights, except that the Papago Indian Agency signed for minors, incompetents, and undetermined or unlocated heirs of deceased landowners, and the Tribal Chairman of the San Xavier group of Papago Indians signed for one allotment that had been canceled and reclassified as tribal lands. No bonuses were to be paid with respect to allotments for which signatures could not be obtained.

(f) In return for granting the plaintiff the prospecting and associated option rights with respect to his land, each landowner in "tract" 1 was entitled to receive a bonus of $55.27 for each acre owned by him in "tract" 1. Similarly, each landowner in "tract" 2 was entitled to receive a bonus of $146.05 for each acre owned by him in "tract" 2. Each landowner in "tract" 3 was entitled to receive a bonus of $5.08 for each acre owned by him in "tract" 3.

(g) Under the terms of each of the contracts, the plaintiff could prospect on all the acreage owned by the landowners who signed the contract. The

plaintiff could exercise its option under the contracts to take a mineral lease on all or any part of an individual allotment and to take mineral leases on up to 2,560 acres "and such additional acreage as the Secretary may determine as fringe acreage necessary for a successful mining operation" in the aggregate in each of the three "tracts". The plaintiff could exercise its options without payment of additional bonus for the acreage leased.

(h) The plaintiff surveyed, mapped, and conducted geophysical examinations of the land included in the 142 allotments and the allotment reclassified as tribal land and on September 14, 1957, started its diamond drill holes. The purpose of the exploration with respect to each allotment was to determine whether it contained ore in commercial quantities for mining. The two ore bodies located on the allotments subsequently leased were shown by the initial drill holes made in September and October 1957. While continuing diamond drilling in the two ore body areas to ascertain the extent of the deposits and whether they could be mined feasibly, the plaintiff conducted an exploration program on portions of the remainder of the land included in the allotments. No additional ore bodies were discovered.

(i) In 1959, the plaintiff exercised its option rights under its contract with landowners who owned allotments in "tract" 1 to lease 560 acres of the land included in "tract" 1. The mining lease, dated August 31, 1959, covered three complete allotments (240 acres) and 160 acres in allotment #92, 80 acres in allotment #121, and 80 acres in allotment #123. Those landowners whose land was not leased were entitled to receive no payments beyond the $55.27 per acre already paid as a bonus.

(j) In 1959, the plaintiff exercised its option rights under its contract with landowners who owned allotments in "tract" 2 to lease 1,994.37 acres of the land included in "tract" 2. This lease, dated August 31, 1959, covered 15 complete allotments (1,435.49 acres) and 160 acres in allotment #95 reclassified as tribal land, the 80 acre balance of allotment #92, 78.88 acres in allotment #64, 40 acres in allotment #176, and 200 acres in allotment #86. The terms of the lease were identical, except for the names of the landowners whose land was leased and the description of the leased acreage, with the lease taken in the allotments included in "tract" 1. Those landowners whose land was not leased were entitled to receive no payments beyond the $146.05 per acre already paid as a bonus.

(k) In 1959, the plaintiff chose not to take any mineral lease in the land included in "tract" 3.

(l) In 1959, the plaintiff relinquished and abandoned all its mineral rights in 118 complete allotments (12,471.29 acres) and 40 acres in allotment #121, 80 acres in allotment #123, 40 acres in allotment #176, 157.34 acres in allotment #64, and 80 acres in allotment #86. The plaintiff retained its mineral rights in 19 complete allotments (1915.49 acres) and the 160 acres in allotment #95 reclassified as tribal land, 80 acres in allotment #121, 80 acres in allotment #123, 40 acres in allotment #176, 78.88 acres in allotment #64, and 200 acres in allotment #86.

(m) The plaintiff expended $1,658,532.01 with respect to the parcels of land in the three "tracts" prior to the taking of the two mining leases on 2,554.37 acres and the relinquishment and abandonment of its rights in the remaining land. Of these costs, $888,583.60 was allocated by the plaintiff to the 118 allotments and parts of five allotments in which it relinquished and abandoned all of its rights in 1959. The following table sets forth the cost elements comprising the $1,658,532.01 and the parts thereof allocated by the plaintiff to the abandoned properties:

	Total Costs	Plaintiff's Allocation
Bonuses	$1,066,007.04	$743,766.60
Other costs of acquiring prospecting permits and option rights	28,765.87	24,021.83
Surveying and mapping	38,049.73	29,927.64
Geophysical examination	41,339.10	31,652.85
Miscellaneous costs of acquiring permits	227.25	190.20
Direct drilling expense	353,085.29	42,726.70
Indirect expense of drilling	128,183.36	16,297.78
Mining lease costs	2,874.37	- 0 -
	$1,658,532.01	$888,583.60

(n) The $743,766.60 for bonuses is the amount obtained by multiplying the acreage abandoned in each of the "tracts" (4,560 in "tract 1; 3,188.63 in "tract" 2; and 5,120 in "tract" 3) by the acreage bonus payment for the prospecting and option rights on the land in each of these "tracts" ($55.27 for "tract" 1; $146.05 for "tract" 2; and $5.08 for "tract" 3).

(o) The direct drilling expense for the drill holes located on the land abandoned was $42,726.70. The $16,297.78 for indirect expense of drilling was determined by allocating the expense between land abandoned and land retained in proportion to the direct drilling expense. The balance of the exploration costs was allocated between the land abandoned and the land retained on an acreage basis.

If the exploration costs are to be allocated among all the allotments, the plaintiff's manner of doing so is reasonable and also is consistent with its prior practice.

(p) The plaintiff deducted the $888,583.60 as a loss in 1959 under Section 165 of the Internal Revenue Code of 1954.

(q) The Commissioner of Internal Revenue disallowed $832,313.00 of the foregoing deductions, and the Department of Justice has, by offset, increased the amount of deductions disallowed to $888,583.60.

(r) The plaintiff did not aggregate the mineral properties in any of the allotments on the "tracts" for 1959.

(c) Issues Of Fact; Briefs.

The plaintiff believes that substantially all of the facts can be stipulated.

The legal issues involve a loss deduction under Section 165 of the Internal Revenue Code of 1954.

The defendant has disallowed an $888,583.60 loss deduction claimed by the plaintiff for its loss of investment (bonuses and exploration costs) in the properties abandoned in 1959.

The plaintiff contends that there were 143 separate properties and not three as contended by the

Commissioner of Internal Revenue (or one as, judging from its offset claim, the Department of Justice apparently will contend). Of the plaintiff's $1,658,532.01 investment in the 143 separate properties, $888,583.60 was investment in the 118, plus parts of five, separate properties abandoned in 1959. Each property abandoned was individually owned by one or more Indians. The owner of each property had the right, if he chose to do so, to lease his property with the approval of the Secretary of Interior. (25 U.S.C. §396; Barclay v. United States, 166 Ct.Cl. 421 (1964).) The agreements were between the plaintiff and the property owners. No prospecting permit and option rights could be obtained by the plaintiff on an allotment if the allottee refused to sign the agreement granting such rights. The fact that the Papago Indian Agency consolidated these 143 properties into three "tracts" for administrative convenience and acted as agent in handling many of the administrative details does not detract from the separate ownership of the 143 properties.

The plaintiff's adjusted basis of each of the properties for loss and depletion purposes was the adjusted basis determined under Section 1011 of the Internal Revenue Code of 1954. (§§165(b) and 612.) A mineral property is defined by Treas. Reg. §1.614-1(a) as follows:

"General rule. (1) For purposes of subtitle A of the Code [Income Taxes], in the case of mines, wells, and other natural deposits, the term 'property' means each separate interest owned by the taxpayer in each mineral deposit in each separate tract or parcel of land.

* * *

"(5) The provisions of this paragraph may be illustrated by the following examples:

* * *

"Example (2). A taxpayer conducts mining operations on eight tracts of land as a single unit. He acquired his interests in each of the eight tracts from separate owners. Even if each tract of land contains part of the same mineral deposit, the taxpayer owns eight separate mineral interests each of which constitutes a separate property."

* * *

"Example (8). In 1954, taxpayer A simultaneously acquires two contiguous leasehold interests from two separate owners. The same mineral deposit underlies both tracts. Thereafter, taxpayer A owns two separate mineral interests each of which constitutes a separate property."

Thus, it is clear from the Treasury Regulation that each allotment was a separate mineral property.

The plaintiff contends that its investment in the 118, plus parts of five, separate properties abandoned totaled $888,583.60, and that no part thereof should be treated as an investment in the 20, plus parts of five, separate properties retained. The $743,766.60 paid for bonuses on the properties abandoned represent the largest

and clearest specific investment in the abandoned properties. The bonuses were direct investments in specific properties; they were payable to the property owner to acquire the prospecting and option rights on his property, and if the owner refused to grant such rights, the total bonuses payable under the bid were to be reduced proportionately for the acreage in his property. It is apparent that the plaintiff's investment in one property cannot be considered an investment in some other property. See, for example, L. B. Maytag, 32 T.C. 270 (1959), and Oliver Iron Mining Co., 13 T.C. 416 (1949).

Moreover, the statutory scheme for taxation of mineral interests would be frustrated if either the Government or the taxpayer were permitted to shift investments in one property to another property or to use a definition of mineral property inconsistent with that prescribed in Treas. Reg. §1.614-1(a) for non-aggregated property. Of necessity, the mineral interests taxing provisions are interrelated and treat both sides to a mineral transaction in a consistent manner.

The absurdity of the defendant's adding the investment in an allotment abandoned to the basis of an allotment retained by the plaintiff may be illustrated by the established tax treatment of bonuses.

The recipient of a bonus must include the bonus in income and is entitled to a depletion deduction even though production has not commenced. (§1.612-3(a)(1) and (d).) The bonus is included in income by the recipient and depletion is allowed in anticipation of the mineral expected to be produced. If no mineral is produced from his property, the recipient of the bonus must restore the amount of the depletion deduction to income in the year the payor abandons the property. (§1.612-3(a)(2); Louisiana Delta Hardwood Lumber Co., Inc. v. Commissioner, 183 F.2d 189 (5th Cir. 1950).)

The payor of the bonus must exclude the bonus from his depletion base in computing his depletion deduction. (§1.613-2(c)(5)(ii).) Thus, if there is production, the recipient gets depletion on his bonus and the payor excludes that bonus from his depletion base. Under the statutory scheme, if there is no production and the property is abandoned, the recipient restores the amount of the depletion deduction to his income, thus eliminating the deduction, and the payor takes a loss deduction for the bonus. The recipient has paid tax on his income, the payor receives a corresponding deduction, and the transaction is closed.

Under the defendant's erroneous treatment of adding the bonus paid to the owner of abandoned property to the payor's investment in a retained property, the payor is not only denied a loss deduction for its investment in the abandoned property, but also is required to exclude the bonus paid to the owner of the abandoned property in addition to the bonus paid to the owner of the retained property from his (payor's) depletion base on the retained property, although the recipient of the bonus on the abandoned property received no depletion deduction. It is obvious that the bonuses paid to the owners of abandoned properties cannot be added to the bonuses paid the owners of the retained properties without violating the statutory scheme for taxing mineral interests. (Compare Kirby Petroleum Co. v. Commissioner, 326 U.S. 599, 604, 605 (1946).)

If the Indians were exempt from income tax under the general allotment laws, this fact would be irrelevant because exemption from tax is ignored in determining the character of the payment in the hands of the payor. The plaintiff is required to exclude from its depletion base the royalties paid to these Indians under its leases with them. (Murphy Corporation v. United States, 337 F.2d 677 (8th Cir. 1964).) Moreover, the same illustration is applicable if the plaintiff had acquired its rights in the 143 properties from farmers instead of Indians.

The $42,726.70 of direct drilling expenses were incurred for the holes drilled on the abandoned properties. The balance of the exploration costs claimed was allocated to the abandoned properties in accordance with the plaintiff's customary method of allocation. The allotments retained were not retained on the basis of data obtained from exploration of the abandoned properties.

(d) Witnesses.

The plaintiff plans to call John E. Kinnison, a geologist employed by the plaintiff at Tucson, Arizona, to testify on facts concerning the exploration issue. His testimony will cover the exploration work performed by plaintiff on the San Xavier Reservation during the period 1957-1959 and to support the fact that the exploration work on the properties abandoned did not assist in locating or defining the ore bodies on the properties retained. We expect to take Mr. Kinnison's testimony in Washington, D. C. and plaintiff's estimate of trial time for its case-in-chief is one day.

Fred W. Peel
1700 Pennsylvania Avenue, N. W.
Washington, D. C. 20006
Attorney for Plaintiff

Of Counsel:
Clarence T. Kipps, Jr.
Miller & Chevalier
1700 Pennsylvania Avenue, N. W.
Washington, D. C. 20006

Washington
Reservation

9:20 AM Thurs 25th

American.

Pickup at dawn from
office in advance.

Somewhere scenic

J. E. K.

APR 15 1968

Arrive 4:30 PM Via
Dallas

183

APR-12-68
DATE ACCEPTED

HILTON BUSINESS SERVICE

SPECIAL ATTENTION RESERVATION

16 K. St. N.W.

R

CONFIRMED AT Statler Hilton (HOTEL) IN WASH. D.C. (CITY)

FOR ARRIVAL: Apr-25 BY Midnite DEPARTING May 2

RESERVATIONS HELD ONLY UNTIL 6:00 PM UNLESS A LATER ARRIVAL TIME CONFIRMED

ALL ACCOMMODATIONS INCLUDE PRIVATE BATH	NO. PERSONS	RATE	PLAN
Single	1	$18.00 5% TAX	EP

REMARKS:

PREV. ARRIVAL DATE	PREV. ARRIVAL TIME	PREV. DEPARTURE DATE	PREV. ACCOMMODATIONS

REVISION: OK

GUEST CONFIRMATION — PLEASE PRESENT TO ROOM CLERK

RESERVATION FOR

GUEST NAME MR. JOHN KINNISON

COMPANY Miller & Chevalier ATTN Miss Davis

ADDRESS 1700 Penna. Ave. N.W.

CITY - STATE WASHINGTON, D.C.

ACCEPTED AT: HILTON RESERVATION SERVICE WASH OFFICE BY L. MARKS AT 1 A.M. P.M.

HOTEL _____ CITY _____ BY _____ AT _____ A.M. P.M.

SX 4.5.1

J. H. C.

MAR 6 1968

AMERICAN SMELTING AND REFINING COMPANY
Tucson Arizona

February 27, 1968

Mr. Paul A. Barrese
ASARCO - New York

Court of Claims Case
San Xavier Lands

Dear Sir:

This letter is in reference to yours of the 14, in which you transmitted to me a question by Mr. Kipps concerning a possible value of the leased properties in Tracts 1 and 2. The following summarizes the essence of my opinion, which I have already given orally to Mr. Snedden. As to the matter of stipulating whether or not this leased land was equal to or in excess of the $1,658,532.01, I believe the question as it is presently phrased is too broad to be answered by a simple yes or no. However, I believe the most defendable answer provided that a qualification may be set forth would be affirmative.

In any answer to the question of value in the year 1959, the probable value of future mining profits discounted to that same year becomes the only factor on which a judgment may be had. While it is true that a position might be taken that the land as of 1959 had no cash value, inasmuch as there were no scheduled mining plans or related ore reserve compilation, this begs the question. A considerable amount of drilling had been done -- certainly enough so that an opinion or judgment could be formed. While neither of the two copper deposits delineated by the end of 1959 were so rich or large as to obviously form profitable deposits under immediately foreseeable conditions following 1959, both of them were of sufficient size and of sufficient grade to be placed in a marginal category and their prospective value dependant only upon slightly more favorable economic conditions.

Therefore, if I were asked for my opinion in this matter as a witness, and further, if I were allowed to qualify my answer in terms of possible future economic conditions, I would have to answer "yes". I believe that to argue otherwise would lead into a position which could not be defended. The deposits are near the Mission Unit which at that time was scheduled for production, and this also probably added a slight economic advantage for the Mission Unit would operate the San Xavier lands. Further, while an inspection of the drill data reveals a marginal tonnage for the San Xavier North, as well as a grade lower than our Mission Mine will average, plus a high stripping ratio, an increase in the price of copper over the 1959 price might very easily show a profitable outcome.

Further, the brief maintains that two ore deposits were delineated by drilling prior to 1959. To argue, then, that as of 1959 they had little or no value would undercut the argument as given in the brief. Further, management of ASARCO presumably reasoned that there was a possible prospective value, otherwise, the company would not have exercised the lease. Further, I firmly believe that any disseminated copper deposit of this general type -- even if on the small side and by comparison somewhat low grade -- is an asset which has a definite value when drilled as thoroughly as were the two deposits on San Xavier prior to 1959. Since this value can hardly be said to be small, I believe it follows logically that the value of the two deposits, while based on speculation of future economic conditions, was indeed probably equal to or greater than the sum in question.

Very truly yours,

ORIGINAL SIGNED BY
JOHN E. KINNISON

John E. Kinnison

JEK:mc
cc: TASnedden
PABarrese - 1 extra

IN THE UNITED STATES COURT OF CLAIMS

No. 443-65

AMERICAN SMELTING AND REFINING COMPANY—CONSOLIDATED,

Plaintiff

v.

THE UNITED STATES OF AMERICA,

Defendant

DEFENDANT'S SUPPLEMENTAL RESPONSE TO PRETRIAL ORDER NO. 1

In further compliance with pretrial order No. 1 dated May 9, 1966, defendant states that it presently intends to call the following persons as witnesses at the trial of this case:

1. John E. Kinnison, a geologist employed by plaintiff;

2. T. A. Snedden, ~~a former~~ management employee of plaintiff;

3. Roland Parks, an Internal Revenue Service geologist;

4. Joseph Berman, an Internal Revenue Service geologist, and

5. David Caldwell, a former employee of the Indian Bureau, Mineral Section.

It is anticipated that Mr. Kinnison's testimony will relate to the nature of plaintiff's mining operations in the area of the San Xavier Reservation prior to May 1957, the preliminary exploration

work conducted by plaintiff with respect to Reservation lands prior to May 1957, and the purpose and results of the exploration operations thereafter conducted by plaintiff. Mr. Kinnison's selection as a witness is predicated on plaintiff's tentative representation that the testimony of other of plaintiff's geologists who worked on the above matters would not add to Mr. Kinnison's testimony.

It is anticipated that Mr. Snedden's testimony will relate to plaintiff's pre-1957 proposal to lease certain acreage within the San Xavier Reservation, the considerations plaintiff took into account in submitting its bid on the San Xavier Reservation options, and the basis on which plaintiff exercised these options. Again, Mr. Snedden's selection as a witness is predicated on plaintiff's tentative representation that the testimony of other of plaintiff's management officials who also participated in the above matters would not add to Mr. Snedden's testimony.

Messrs. Parks and Berman will testify as expert witnesses to establish that plaintiff's San Xavier mining plans and operations constituted a single integrated project, that certain of plaintiff's outlays which it allocated on an acreage basis for purposes of claiming its loss deduction benefited the entire project or portions of the project that were subsequently leased, and that the mineral value of the lands leased could have been readily calculated in 1959 as being in excess of its total expenditures.

Mr. Caldwell will testify regarding the nature of the Indian Bureau's participation in the transactions in question, including the manner in which the Indian Bureau selected the Reservation lands put up for bid and the reasons for various pertinent provisions in the associated contracts.

Respectfully submitted,

/s/ Mitchell Rogovin
(JK)
MITCHELL ROGOVIN
Assistant Attorney General

GILBERT W. RUBLOFF
Attorney

February 20, 1968

IN THE UNITED STATES COURT OF CLAIMS

No. 443-65

Filed February 8, 1968

AMERICAN SMELTING AND REFINING COMPANY--CONSOLIDATED

v.

THE UNITED STATES

ORDER OF COMMISSIONER PLACING CERTAIN DOCUMENTS UNDER SEAL

Upon consideration of plaintiff's motion to place certain documents under seal, defendant's opposition thereto, and plaintiff's response to defendant's opposition, and after hearing oral argument of counsel thereon, it is this seventh day of February, 1968,

ORDERED as follows:

1. Plaintiff's motion to place documents under seal is allowed, and the Clerk of the Court shall hold the following documents in camera until further order of the commissioner, subject, however, to their being made available as stated in paragraph 2 hereof:

a. February 18, 1957, memorandum for D. J. Pope from L. H. Hart (9 pages).

b. April 23, 1957, letter to L. H. Hart from Kenyon Richard (3 pages).

c. Undated handwritten memorandum apparently based on May 6, 1957, meeting with notations added on or after May 13, 1957 (1 page).

2. The Clerk is authorized to give access to the aforesaid documents to such Internal Revenue Service geologists as may be designated in writing by defendant's counsel as expert witnesses for the defendant in the trial of this action. Counsel for defendant will furnish a copy of such designation to counsel for plaintiff.

3. In the event that said expert witnesses for the defendant shall make personal notes or memoranda from the contents of the aforesaid documents, it is further ordered that, immediately following the taking of their testimony at the trial, said notes or memoranda shall be destroyed by them.

Lloyd Fletcher,
Commissioner.

J. E. K.

AMERICAN SMELTING AND REFINING COMPANY
Tucson Arizona

FEB 05 1968

January 31, 1968

TO: J. H. Courtright

FROM: J. E. Kinnison

Federal income tax, Court of Claims Case, San Xavier Lands

As you know, I am to be a witness for the company in the subject case. I would appreciate it if you could determine answers to the following two questions:

1. Will Mr. Peel have a chance for a short pre-trial conference to brief me on the probable course of my testimony?

2. Am I to be classed as an expert witness?

If this is the case, will council wish to have a dossier pertaining to registration or other evidence of professional competence?

John E. Kinnison

JEK:ir

Received Sunday Ap 28. Not used as better evidence was found available. JEK

Retyped: Tucson, Arizona
April 26, 1968
Requested by: Mr. J. E. Kinnison

September 24, 1957
Mr. L. H. Hart, Chief Geologist
New York Office

DRILLING - SAN XAVIER PROJECT

Dear Sir:

Enclosed is a print of the 1000-scale drilling map on the Reservation. This map shows the results to date of the geophysical work and progress of drilling. This map will be brought up to date and reissued periodically as drilling and geophysical information of interest are developed.

Hole X208S encountered bedrock with chrysocolla in strongly altered arkosic quartzite at a depth of 152 feet. Sulphides, including a fair amount of chalcocite, were penetrated at about 170 feet. Core recovery in bedrock has been poor, and we are now moving the pull-down rig off this location with the intention of eventually deepening the hole with a hydraulic rig.

Hole X209S encountered strongly altered arkose, containing chalcocite-limonite, at a depth of 86 feet. HK casing is being set, and this hole will be drilled to depth with our regular coring procedure. The results of these two holes offer encouragement for the general area around the two outcrops in Tract 1. We expect to be clear on Tract 1 with the Bureau of Indian Affairs by September 25 and will move rigs into the area around the two outcrops promptly thereafter.

Clear to the American Trona Corp. drill holes. - Permit to enter Tract 1 granted Sept 24, 57. Kipapa had drawings on file which

Holes X201 and X202 on the northwest extension of the East Pima ore zone have been making slow progress due to broken, leached ground, but they both now are in arkose containing moderate disseminated chalcopyrite.

Upon closer inspection, the cores in holes X203S, X204S, and X205S represent a variety of volcanic rock types rather than the single unit basalt porphyry. This suggests a series of flows.

Those receiving copies of this map please note the alphabetical designation for north-south coordinate lines, which appear on the south edge of the map. In referring to proposed drill holes this alphabetical designation will be used in conjunction with the east-west survey coordinate lines, the numbers for which appear along the east edge of the map. Thus, the location of the proposed shallow hole east of X209S would be YY-374, and for the proposed location west of X202 would be YY.25-365.25. When a location is drilled, the hole will be given a number in sequence with holes drilled on that tract, as explained in the note on the map.

Our information is that the union voted on September 15 to discontinue the strike. There has been no picket activity since then. Therefore, Joy will operate four deep-hole rigs on a two-shift basis beginning about September 30. Shortly thereafter they will bring in an additional rig. The two rigs drilling shallow holes will continue on a one-shift basis for the time being. Out of the total of seven rigs, one will remain in the East Pima area to drill several fringe and claim-validation locations.

Yours very truly,

KENYON RICHARD

Neither called to testify at trial; both consulted defendants lawyer during trial.

IN THE UNITED STATES COURT OF CLAIMS

No. 443-65

AMERICAN SMELTING and REFINING COMPANY---CONSOLIDATED,

Plaintiff

v.

THE UNITED STATES OF AMERICA,

Defendant

STATEMENT RELATING TO TESTIMONY OF DEFENDANT'S EXPERT WITNESSES SUBMITTED PURSUANT TO TRIAL COMMISSIONER'S PRETRIAL DIRECTIVE

A. The testimony of Roland Parks, Valuation Engineer, Internal Revenue Service, will establish that:

1. The exploratory drill holes were situated in a coordinated pattern.

2. An important consideration affecting the chronological order of the drill holes was the necessity, particularly in the early stages of the program, of obtaining geological data to locate and define the mineral areas.

3. Effectiveness of the drilling program improved as the work progressed.

4. The two ore bodies ultimately located were not defined until the conclusion of the drilling program.

5. The estimated copper content of the two ore bodies calculated in 1959 was in excess of 300 million pounds and had a gross value of almost 100 million dollars.

B. The testimony of Joseph Berman, Valuation Engineer, Internal Revenue Service, will establish that:

1. The copper deposits in the area of the San Xavier Indian Reservation are known as "porphyry copper," which is a large, low-grade, widely disseminated deposit mineable by open-pit methods.

2. In order to locate and define an ore body, knowledge of the geology and mineralogy of a far larger area than that covered by the ore body itself is required.

3. Regional aeromagnetic and gravity surveys and more detailed geophysical surveys furnish indirect evidence of the existence of a major porphyry copper area. However, with this data it is possible to plan a drilling program which will reliably indicate the presence of an economic porphyry copper ore body. Plaintiff's exploration program conducted on the San Xavier Indian Reservation successfully followed this procedure.

4. All of the geophysical work conducted by plaintiff, including drilling, directly contributed to the location and delineation of the two ore bodies found..

Respectfully submitted,

/s/ Mitchell Rogovin
(JK)

MITCHELL ROGOVIN
Assistant Attorney General

GILBERT W. RUBLOFF
Attorney

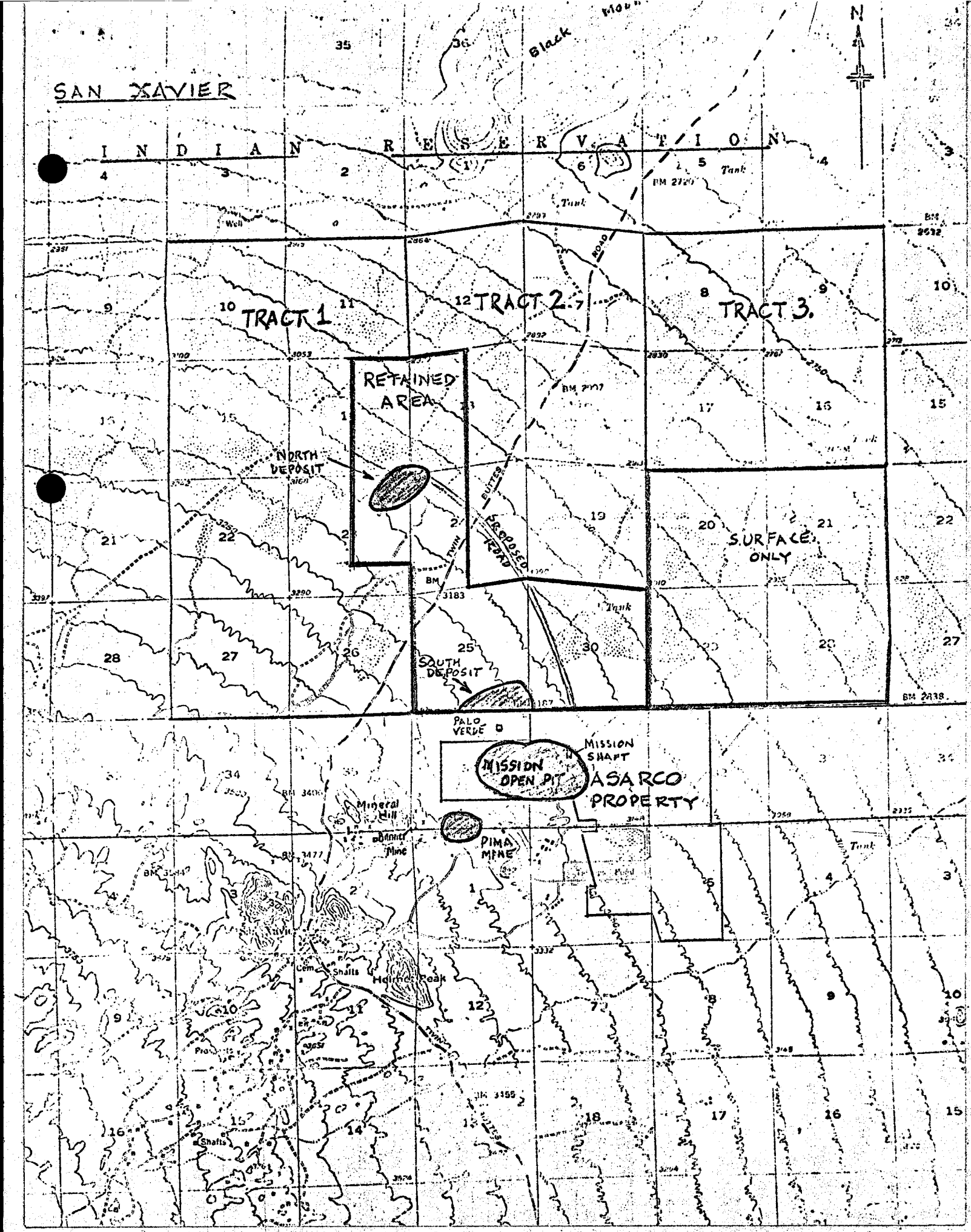
April 18, 1968

DOMESTIC PRICE - ELECTROLYTIC COPPER 1/

CENTS PER LB., F.O.B. REFINERY

	1956		1957		1958		1959	
	1 AMERICAN METAL MARKET	2 E&MJ & MINERAL MKTS.	1	2	1	2	1	2
JAN.	42.87	43.75	35.82	35.53	25.46	25.11	28.82	28.64
FEB.	43.90	44.59	33.05	32.58	24.82	24.40	29.80	29.62
MAR.	45.87	46.73	31.82	31.45	24.82	24.02	30.97	31.03
APR.	45.87	46.16	31.82	31.52	24.82	24.25	31.32	31.30
MAY	45.87	45.53	31.82	31.29	24.82	24.30	31.32	31.16
JUNE	45.87	45.06	30.72	30.33	25.18	24.69	31.32	31.10
JULY	41.59	40.81	29.07	28.69	25.95	25.67	30.44	30.08
AUG.	39.87	39.62	28.46	28.10	26.32	26.09	29.82	29.89
SEPT	39.87	39.60	26.82	26.44	26.32	26.08	30.40	31.02
OCT	39.15	38.62	26.82	26.33	27.40	27.31	30.57	32.58
NOV.	35.87	35.70	26.82	26.34	28.82	28.66	32.20	34.06
DEC.	35.87	35.65	26.82	26.32	28.82	28.58	32.82	33.72
AVERAGE	41.88	41.82	29.99	29.58	26.13	25.76	30.82	31.18

1/ Average monthly quoted prices, Electrolytic Copper, f.o.b. refinery.
Source - U.S.B.M., Minerals Yearbook.


SAN XAVIER
INDIAN RESERVATION
TRACT 1
TRACT 2
TRACT 3
RETAINED AREA
NORTH DEPOSIT
SOUTH DEPOSIT
PROPOSED ROAD
BUTTE
TWIN
SURFACE ONLY
PALO VERDE
MISSION OPEN PIT
MISSION SHAFT
ASARCO PROPERTY
PIMA MINE
Mineral Hill
Hermes Peak
Black
Well
Tank
ROAD
BM 3183
BM 2438

TO: T. A. Snedden

FROM: J. E. Kinnison

San Xavier Lands

Telephone message relayed from Clarence Kipps, April 24, 1968, Government counsel lists the following points as the substance to be covered by their expert witnesses.

ROLAND PARKS

1. The exploration drill holes were located in a coordinated pattern.

2. An important consideration affecting the chronological order of the drill holes was a necessity particularly when the area ___?___ was obtaining geological data to locate and define the mineral areas.

3. Effectiveness of the drill program improved as the work progressed.

4. The two ore bodies ultimately located were not defined until the completion of the drill program.

*5. The estimated copper content of the two ore bodies calculated in 1959 was in excess of 3 million pounds and had a gross value of almost 1 million dollars.

BERMAN

1. The copper deposits in the area of San Xavier Indian Reservation are known as porphyry copper which is a large low-grade widely disseminated deposit mineable by open pit mining.

2. In order to locate and define an ore body, knowledge of geology and mineralogy of a larger area than that covered by the ore body itself is required.

3. Regional aeromagnetics and gravity survey and more detailed geophysics survey furnished indirect evidence of the existance of a major porphyry copper area. However, with this data, it is possible to plan a drilling program which will reliably indicate the presence of an economic porphyry copper ore body. Plaintiff's exploration program conducted on the San Xavier Indian Lands successfully following this proceedure.

* I think intended message was: 300 million pounds,
100 million dollars.

4. All the geophysical work conducted by the plaintiff, including drilling, directly contributed to the location and detection of the two ore bodies found.

John E. Kinnison

JEK:lab
cc: JHCourtright

Talked with Kipps and exchanged corrections of my draft and points to think about.

J. E. K.

APR 16 1968

AMERICAN SMELTING AND REFINING COMPANY
Tucson Arizona

April 16, 1968

TO: J. H. Courtright

FROM: J. E. Kinnison

Probable Schedule,
Tax Case re-San Xavier

April 17, 1968	Phone contact with Washington lawyers.
April 18 & 19	Possible rewrite on parts of testimony.
April 22 - 24	?
April 26	Mr. Snedden and myself leave for Washington.
April 29	Trial begins. Scheduled for 3 days but may be done in 2 days.

leave Ap 25 9ᵉᵉ AM

John E. Kinnison

JEK:lab

March 25th Monday 3 days approx - Pre Trial conference
April 15th exchange Expert witness narrative statements.

Kipps letter to Snedden, of 14 march
Read by phone to me Mon March 18

Kipps & Richter

J. E. K.
MAR 18 1968

March 25, 26, 27 1/2 day Conference
Clarence Kipps, Fred Peel, Paul Boese

Agreed to send narrative draft soon as possible.
Direct testimony myself and Govt expert written
and to be exchanged Ap. 15.

Snedden & I will leave thurs, Ap 25 for Washington
so that all day Friday available for conference, week end
if necessary.

Trial Ap 29 Mon

J. E. K.
MAR 27 1968

DRAFT
March 25, 1968

J. E. K.

MAR 25 1968

Statement of Noncontroverted Facts

1. The plaintiff is a corporation organizaed and existing under the laws of the State of New Jersey, and has its principal office at 120 Broadway, New York, New York.

2. The plaintiff's principal business is exploring for and mining, smelting, refining, and selling copper, silver, lead, zinc, and other minerals.

3. The plaintiff and its affiliated companies filed a consolidated Federal income tax return on the accrual basis for the calendar year 1959 and timely paid the income tax liability shown thereon (less two credits) in the amount of $7,626,396.45. Thereafter, the Commissioner of Internal Revenue assessed a deficiency against the plaintiff in the amount of $1,137,835.44 for 1959.

4. On December 2, 1964, the plaintiff paid the $1,137,835.44 deficiency assessed for 1959, plus $321,773.63 interest thereon.

5. The plaintiff timely filed a claim for refund in the amount of $680,513.67 for 1959 and asserted therein that the Commissioner of Internal Revenue erroneously disallowed (a) a loss deduction in the amount of $843,459.72, (b) a percentage depletion deduction in the amount of $194,363.69, and (c) a legal expense deduction in the amount of $6,543.29. The Commissioner of Internal Revenue disallowed the plaintiff's claim for refund for 1959 by statutory notice dated October 26, 1965.

6. The $194,363.69 percentage depletion deduction issue and $6,543.29 legal expense deeuction issue have been settled administratively since the filing of the petition. The Commissioner has disallowed $843,459.72 of the claimed loss deduction. During this proceeding, the defendant has increased the amount of the disallowed loss deduction to $888,583.60 and has reduced the amount refunded to plaintiff under the depletion issue settlement by the resulting increase in tax and interest.

7. The plaintiff's claim for the loss deduction presents the question whether the amount deducted, or any part thereof, is deductible in 1959 under Section 165 of the 1954 Internal Revenue Code. The claim arises under the following circumstances.

(a) In April, 1957, the United States Department of Interior, Papago Indian Agency, publicly submitted bids for the competitive sale of exclusive prospecting permits with options to lease lands designated in 142 individually-owned allotments and 160 acres of tribal land located in San Xavier Papago Indian Reservation in Pima County, Arizona. A copy of the Notice of Sale is hereby made J.E. 1. For purposes of bidding and leasing, the Department of Interior divided such land into three "tracts." The lands described as "tracts" 1, 2, and 3 by trust patent had been allotted in severalty by the United States to individual Indians under the General Allotment Act of February 8, 1887, 24 Stat. 388 (25 U.S.C. Section 331, et seq.). Under 25 U.S.C., Section 396, the allottee (devisees or heirs) could lease the land designated in his allotment for mining purposes for any term of years as may be advisable by the Secretary of Interior. "Tract" 1 encompassed all the land designated in 55 allotments plus 40 acres in allotment #176 and 160 acres in allotment #92. "Tract" 2 encompassed all the land designated in 41 allotments, 160 acres of tribal

land, 40 acres in allotment #176, 80 acres in allotment #92, 200 acres in allotment #86, and 40 acres in allotment #41. "Tract" 3 encompassed all the land designated in 42 allotments plus 80 acres in allotment #86 and 240 acres in allotment #41.

(b) The plaintiff paid bonuses totaling $283,000 (which amounted to $55.27 per acre) for prospecting and option rights in lands designated in allotments located in "tract" 1, which contained approximately 5,120 acres. The plaintiff paid bonuses totaling $757,002.04 (which amounted to $146.05 per acre) for prospecting and option rights in lands designated in allotments and in the 160 acres of tribal land located in "tract" 2, which contained approximately 5,183 acres. The plaintiff paid bonuses totaling $26,005 (which amounted to $5.08 per acre) for prospecting and option rights in lands designated in allotments located in "tract" 3, which contained approximately 5,120 acres. The bonuses were paid for the opportunity to lease. The Prospecting Permits Exclusive with Options for "tracts" 1, 2 and 3 are hereby made Joint Exhibits 2, 3, and 4, respectively. The bonuses were paid by the plaintiff to the Bureau of Indian Affairs and delivered to the Superintendent of the Papago Agency at Sells, Arizona. In accordance with the Notice of Competitive Sale and applicable regulations (25 CFR 221 (1957 Supp.), now Part 104), the bonuses were deposited and credited to the individual Indian money accounts of the Indian allottees and devisees and heirs of deceased allottees except for the bonus paid with respect to the 160 acres of tribal land which was deposited and credited to the tribal account. The individual Indian money accounts (hereafter referred to as IIM accounts) were internal accounts kept by the Bureau of Indian Affairs. While under the control of the Bureau of Indian Affairs, the IIM accounts belonged to the individual Indians, and they had the right to withdraw the funds from their accounts.

(c) While the Papago Indian Agency did not assume responsibility for obtaining the signatures of the Indian allottees or devisees or heirs of deceased allottees, it fully cooperated with the plaintiff by supplying the names, and to the extent the Agency had such information, the locations of Indian allottees or devisees or heirs of deceased allottees, whose consent was necessary.

(d) The plaintiff acquired the prospecting and option rights under three contracts dated May 17, 1957, identical in form except for the names of the allottees and devisees and heirs of deceased allottees, the description of the lands, and the amounts payable. Under the terms of the contracts, the allottees and the devisees and heirs of deceased allottees were designated as the owners of the lands encompassed in the contracts. In each of the three contracts, the Indian allottees or devisees or heirs of deceased allottees authorized the Commissioner of Indian Affairs or his authorized representative to sign, execute, and deliver on their behalf Modified Form 5-154 mining leases. Under the terms of the leases the Superintendent, Papago Indian Agency, acted "for and on behalf of the Indian landowners as shown on the ownership schedule."

(d) In order to obtain the prospecting and option rights on lands designated in an allotment, the plaintiff was required to employ attorneys to examine United States and other records to ascertain the name and location of the Indian allottees or devisees or heirs of deceased allottees and to spend months in locating and persuading them to sign the contract covering their land. The attorneys' report and opinion letters on the ownership of the allotments are made J.E. __. No prospecting and option rights could be obtained on the land designated in an allottee's or devisee's or heir's allotment unless he signed the contract granting such

rights, except that the Papago Indian Agency signed for minors, incompetents, and undetermined or unlocated devisees or heirs of deceased allottees, and the Tribal Chairman of the San Xavier group of Papago Indians signed for the 160 acres of tribal land. No payments were to be made with respect to lands designated in allotments for which signatures could not be obtained.

(f) In return for granting the plaintiff the prospecting rights and option to lease with respect to the individually-owned allotments, each allottee or devisee or heir of a deceased allottee of land designated in "tract" 1 was entitled to have his proportionate share of the bonus money credited to his IIM account in accordance with the Notice of Competitive Sale and the applicable regulations, at the rate of $55.27 per acre. Similarly, each allottee or devisee or heir of a deceased allottee in "tract" 2 was entitled to have his proportionate share of the bonus money credited to his IIM account in accordance with the Notice of Competitive Sale and applicable regulations, at the rate of $146.05 per acre. Similarly, each allottee or devisee or heir of a deceased allottee in "tract" 3 was entitled to have his proportionate share of bonus money credited to his IIM account in accordance with the Notice of Competitive Sale and the applicable regulations, at the rate of $5.08 for each acre.

(g) Under the terms of each of the contracts, the plaintiff could prospect on all the acreage designated in an allotment if it could obtain the signature of the Indian allottee or the devisees or the heirs of a deceased allottee. Under the terms of each of the contracts the plaintiff could exercise its option to take a preferance mineral lease on not more than 2,560 acres in each "tract" and such additional acreage in each tract or the security determined as fringes acreage necessary for a successful mining operation.

The plaintiff could lease all or any part of the lands designated in an individual allotment. The plaintiff could exercise its options without additional payment for the acreage leased.

(h) The plaintiff surveyed, mapped, and conducted geophysical examinations of the land designated in the 142 allotments and the 160 acres of tribal land and on September 14, 1957, started its diamond drill holes. Attached as Joint Exhibit 5 and made a part hereof is a map of "tracts" 1 and 2 showing the location of the land designated in each allotment and the 160 acres of tribal land, the names of the allottees, or the devisees or heirs of a deceased allottee, for each allotment, the location of the drill holes, and marked in red the location of the two ore bodies. Attached and made a part hereof as Joint Exhibit 6 is a map of "tract" 3 showing the location of the land designated in each allotment, the names of the allottees, or the devisees or heirs of a deceased allottee, and the location of the drill holes. Attached and made a part hereof as Joint Exhibit 7 is a schedule showing the numer and the start and completion date of each drill hole in "tracts" 1, 2, and 3. Summary Logs of drill holes in "tracts" 1, 2, and 3 dated August 29, 1967, and September 5, 1967, are made J.E.___. The purpose of the exploration with respect to each allotment was to determine whether it contained ore in commercial quantities for mining. The two ore bodies located on the lands subsequently leased were shown by the initial drill holes made in September and October, 1957. These ore bodies are outlined in red on Joint Exhibit 5. While plaintiff continued to diamond drill in the two ore body areas to ascertain the exact extent of the deposits and the most economical means to mine, it conducted exploration, ~~but not extensive drilling~~, on land designated in other allotments. No holes were drilled on lands designated in 107 allotments. Attached and

made a part hereof as Joint Exhibit 8 is a schedule listing drill holes and the lands designated in allotments in which they were made. No additional ore bodies were discovered.

(i) In 1959, the plaintiff excercised its option rights under its contract and leased 560 acres of the land designated in "tract" 1. The mining lease, dated August 31, 1959, covered lands designated in three compelte allotments (240 acres) and 160 acres of lands designated in allotment #92, 80 acres of lands designated in allotment #121, and 80 acres of lands designated in allotment #123. Thereafter, all payments under the lease were to the Superintendent, Papago Agency, for credit to the IIM account of each Indian whose allotment covered acreage leased and none was for the account of the Indians whose allotment covered acreage not leased.

(j) In 1959, the plaintiff exercised its option rights under its contract and leased 1,994.37 acres of the land designated in "tract" 2. This lease, dated August 31, 1959, covered lands designated in 15 complete allotments (1,435.49 acres), the 160 acres of tribal land, the 80 acre balance of lands designated in allotment #92, 78.88 acres of lands designated in allotment #64, 40 acres of lands designated in allotment #176, and 200 acres of lands designated in allotment #86. Thereafter, all payments under the lease were to the Superintendent, Papago Agency, for credit to the IIM account of each Indian whose allotment covered acreage leased and none was for the account of the Indians whose allotment covered acreage not leased. The mining leases are hereby made J.E. 9 and 10, repsectively.

(k) In 1959, the plaintiff chose not to take any mineral lease in the land designated in "tract" 3.

(l) The plaintiff retained its mineral rights in lands designated in 19 complete allotments (1,915.49 acres), the 160 acres of tribal land, 80 acres of land designated in allotment #121, 80 acres of land designated in allotment #123, 40 acres of land designated in allotment #176, 78.88 acres of land designated in allotment #64, and 200 acres of land designated in allotment #86. After September 25, 1959, pursuant to the terms of the contracts, the plaintiff no longer had any right, title, or interest in or to the lands (or any minerals therein) in 118 complete allotments (12,471.29 acres) and 40 acres of land designated in allotment #121, 80 acres of land designated in allotment #123, 40 acres of land designated in allotment #176, 157.34 acres of land designated in allotment #64, and 80 acres of land designated in allotment #86.

(m) As shown by the plaintiff's books and records, the plaintiff expended $1,658,532.01 with respect to the lands in the three "tracts" prior to taking mining leases on 2,554.37 acres and the termination of its rights in the remaining lands. A schedule (Bonus and Exploration Expenses) is made J.E. ___. Of these costs, $888,583.60 was allocated by the plaintiff to the lands designated in 118 allotments and parts of five allotments in which it terminated all of its rights in 1959, The following table sets forth the cost elements comprising the $1,658,532.01 and the parts thereof allocated by the plaintiff to the acreage not leased.

		Total Costs	Plaintiff's Allocation to Acreage Not Leased
(1)	Bonuses	$1,066,007.04	$743,766.60
(2)	Other costs of acquiring prospecting permits and option rights	28,765.87	24,021.83
(3)	Surveying and mapping	38,049.73	29,927.64
(4)	Geophysical examination	41,339.10	31,652.85
(5)	Miscellaneous costs of acquiring permits	227.25	190.20
(6)	Direct drilling expense	353,085.29	42,726.70
(7)	Indirect expense of drilling	128,183.36	16,297.78
(8)	Mining lease costs	2,874.37	-0-
		$1,658,532.01	$888,583.60

(n) The amount of the bonuses and exploration expenses were reflected on the plaintiff's books by "tracts" and not by individual allotments.

(o) The $743,766.60 for bonuses (Item 1) was the amount obtained by the plaintiff by multiplying the acreage not leased in each of the "tracts" (4,560 acres in "tract" 1; 3,188.63 acres in "tract" 2; and 5,120 acres in "tract" 3) by a per-acre bonus payment for the prospecting and option rights on the lands in each of these "tracts" ($55.27 per acre for "tract" 1; $146.05 per acre for "tract" 2; and $5.08 per acre for "tract" 3).

(p) The plaintiff's allocation to acreage not leased was determined for items 2, 3, 4 and 5 as follows: The total cost for each item for each "tract" was allocated on a per-acre basis to the acreage in each "tract." The number of acres not leased in each "tract" was then multiplied by the per-acre rate for each "tract."

(q) As shown by the books and records of the plaintiff, the direct drilling expense for the drill holes located on the lands not leased was $42,726.70. The $16,297.78 for indirect expense of

drilling was determined by allocating