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Via facsimile and certified mail

April 3, 2008

Daniel Hu and Kevin Aiman
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Re: U.S. v. 1.04 Acres of Land and Eloisa G. Tamez, et al., B-08-044

Dear Messrs. Aiman and Hu,

We are writing in further response to your letter of March 21 and subsequent email proposing a meeting with Dr. Tamez. We previously communicated with you indicating that neither Dr. Tamez nor her counsel were available on the date suggested in your email. While we remain open to the possibility of a meeting, for the reasons explained below, we question whether the a meeting at this time will be productive in terms of complying with the negotiations requirement of 8 U.S.C. § 1103(b).

Your letter clearly rejects Dr. Tamez's offer of \$100 per day for access to her property. In conjunction with your other correspondence and the government's actions to date, it appears that the government will reject *any* price Dr. Tamez proposes, regardless of how reasonable it may be. As we understand it, the government insists that Dr. Tamez unconditionally accept what you have variously described as "the government's repeated offer to purchase" access for "the sum of \$100.00, and [the] promise[] to pay actual damages. . . ." U.S. Letters of March 11 and March 21. Indeed, government lawyers speaking for the government have separately informed me and one of my co-counsel, Corinna Spencer-Scheurich, that the \$100 price offered by the government is *not* negotiable.

Your March 13 letter states in part that "the United States attempted to negotiate, based on its promise to pay any actual damages, acquisitions of voluntary temporary rights of entry with all landowners, many of whom agreed. That it did so is really not relevant to Dr. Tamez and our current tasking from the Court."

First, we believe that the Court's March 7 Order primarily provides the government with additional time to make a record regarding what, if any, efforts were undertaken prior to the filing of the government's complaint to negotiate with Dr. Tamez regarding a reasonable fixed price for the interest in her property sought by the government. We disagree that your communications with property owners, including Dr. Tamez, prior to the government's filing the condemnation actions are irrelevant given the express language of section 1103(b): "When the Attorney General and the lawful owner of an interest. . . are unable to agree upon a reasonable price, the Attorney General may commence condemnation proceedings. . . ." Judge Hanen's March 7, 2008

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Order ("Order") found that language to mean that bona fide negotiations regarding price are a condition precedent to the filing of a condemnation action. Order at 22.

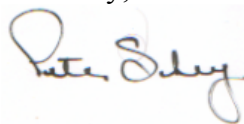
Furthermore, it should be clear that the United States is obligated to pay for any actual damages it causes regardless of a promise to do so in place of good faith negotiations over a reasonable fixed price. *Slattery Co. v. United States*, 231 F.2d 37, 41 (1956). Congress knew this to be true when it enacted § 1103(b). The statute therefore obviously requires that before the government files lawsuits against property owners it do more than offer to pay for actual damages it causes upon property owners' lands.

Your most recent letter disregards our previous requests for whatever guidelines or directives the government is using to negotiate a reasonable fixed price for the property interests it seeks, stating: "On the one hand, you and Dr. Tamez profess an inability to fix a price for the interest sought, while on the other hand you know that \$100 plus the payment of actual damages (if any are caused) is too low ('inadequate')." The interest sued for is an "assignable easement" for "180 days" including "the right of the United States, its agents, contractors, and assigns to enter in, on, over and across the land . . . to survey, make borings, and conduct other investigatory work . . ." Schedule F. It hardly requires an expert to conclude that the government's offer of about 53 cents a day for access to someone's private property is "inadequate." It is not even clear if the government is offering property owners \$100, or simply to place \$100 with the court to charge against future claims of damage.

I wish to make clear that Dr. Tamez's position is based solely upon the requirements of 8 U.S.C. § 1103(b). Your belief that Dr. Tamez is in "fundamental disagreement" with the overall project and as such that "no right of entry is acceptable to Dr. Tamez," is in error. It should be obvious that she is attempting to engage in the type of negotiation that Congress had in mind when it enacted § 1103(b).

Despite several conversations and the exchange of correspondence, it appears that the parties are at an impasse regarding the issue of a reasonable fixed price for the interest the government seeks in Dr. Tamez's land. We do not believe the government has ever engaged in good faith negotiations on this issue. It appears that it is necessary for the Court to determine whether the steps taken by the government amount to a good faith effort to negotiate a reasonable fixed price for the interest that the government seeks in Dr. Tamez's property. It is unclear what purpose will be served by a personal meeting with Dr. Tamez to only discuss issues the government is interested in pertaining to access to her property, while refusing to discuss a reasonable price for that interest.

Sincerely,



Peter Schey
Center for Human Rights and Constitutional Law
Attorneys for Eloisa Tamez