Forest Service Manual
National Headquarters (WO)
Washington, DC

Forest Service Manual 5409.13 – Land Acquisition Handbook

Chapter 70 - Condemnation

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Approved by: F. Dale Robertson, Chief

Date approved:

Responsible Staff:

Explanation of changes: Following is an explanation of the changes throughout the directive by section.

This amendment is a reissuance of FSH 5409.13 to conform the format and structure of the Handbook to the requirements of electronic directive issuance.

This amendment makes no substantive changes to the text. The only changes made are those necessary to meet new format requirements or to correct spelling, punctuation, or unit names.

This Handbook is now available electronically in the National Information Center in the same format as the paper copy. Henceforth, amendments to this Handbook will be issued to Forest Service units electronically on a document basis.

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Table of Contents

72 - Procedure Before Filing 4
72.1 - Chief's Prior Approval Requirements 4
72.2 - Negotiations With Landowner 4
72.3 - Assemble Condemnation Package 5
72.31 - Condemnation Report 5
72.31a - Part I - Introduction 8
72.31b - Part II - Facts 8
72.31c - Part III - Addenda 10
72.32 - Declaration of Taking 13
72.33 - Schedules A and B 13
72.34 - Letter From the Secretary to the Attorney General 13
72.35 - Letter of Transmittal 13
72.4 - Action by Forest Supervisor 13
72.5 - Action by Regional Attorney 14
72.6 - Action by Regional Lands Director 15
72.7 - Action by Washington Office 16
72.8 - Action by Office of the Secretary 16
72.9 - Action by Department of Justice 17
73 - Procedure After Filing 17
73.1 - Deposit With Declaration of Taking 17
73.2 - Vesting of Title 17
73.3 - Delivery of Possession 18
73.31 - Possession With Declaration of Taking 18
73.32 - Possession Without Declaration of Taking 18
73.4 - Use of Property After Delivery of Possession 18
73.5 - No Authority To Negotiate With Defendant 19
73.6 - Coordination With U.S. Attorney 19
73.61 - Certificate of Possession 20
73.62 - Continuation of Title Evidence 20
73.7 - Amending Complaint and Declaration of Taking 20
73.8 - Revesting Title in Former Owner 20
74 - Settlement 21
74.1 - Settlement Authority 21
74.11 - Attorney General 21
74.12 - U.S. Attorney 21
74.13 - Regional Forester 22
74.14 - Chief 22
74.2 - Procedure 22
74.21 - Settlement Offer Within Authority of Regional Forester 23
74.22 - Settlement Offer Not Within Authority of Regional Forester 23
74.23 - Settlement Offer Not Within Authority of U.S. Attorney 23
74.3 - Considerations in Approval of Settlement 23

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75 - Trial **24**
75.1 - Trial Aids **24**
75.2 - Testimony **24**
75.21 - Expert Witness **24**
75.22 - Fact Witness **25**
75.3 - Appeal **25**
75.4 - Trial Observer **25**
76 - Closing Cases **25**
76.1 - Payment **25**
76.2 - Final Title Opinion **26**
76.3 - Posting Status Records **26**

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72 - Procedure Before Filing

72.1 - Chief's Prior Approval Requirements

Regional Foresters shall not initiate any condemnation actions, other than for access, without the Chief's approval (FSM 5480.31). Request project approval when anticipating several related condemnation actions using the decision process in FSM 1950. Include in the request for the Chief's approval an environmental assessment report, a draft record of decision document, and the Regional Forester's recommendation. Discuss the appropriate environmental assessment items and include a thorough evaluation of the following:

1. Justification, including evaluation of potential adverse development, development plans for the area, public needs and benefits, and any other basis for the recommendation.

2. Alternatives, including "another site," "no condemnation," and "exchange."

3. Project background, including negotiations.

4. Estimated acquisition project costs and a statement of available and programmed funds.

5. Anticipated public response to the proposed action. Include this analysis in the "Consultation With Others" section of the assessment, and discuss the basis for the evaluation.

6. Documented coordination with other staff units.

The Regional Forester shall draft the record of decision document (FSM 1900) for the Chief's approval.

If a recent environmental statement or project environmental assessment included an analysis of the proposed condemnation actions, a separate assessment report is not necessary for the Chief's approval. Submit the statement with a letter of transmittal addressing any items not in the environmental statement.

After the Chief has approved the record of decision, the Regional Forester initiates negotiations under the threat of condemnation.

72.2 - Negotiations With Landowner

Direct negotiations toward persuading the landowner to convey the needed property or interest to the Government at a certain price. The success of this effort depends greatly on the skill of the negotiator and careful preparation.

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Therefore, when negotiations become stalled, assign another person to the negotiations before recommending condemnation. If condemnation is likely, document each relevant discussion with the landowner by an in-Service memorandum or a followup letter to the landowner.

Although the negotiator should exhaust direct purchase efforts on the basis of an adequate appraisal, do not negotiate beyond a reasonable period of time. Avoid long delays between contacts with the landowner to keep negotiations within a reasonable period of time. If the landowner uses a lawyer for the negotiations, have the landowner designate in writing the attorney as the landowner's representative and conduct all negotiations with the lawyer or in the lawyer's presence.

When it becomes evident that condemnation is probable, begin preparing the condemnation case. Adequately document the negotiations, indicating that the Government offered the landowner the full appraised value, and otherwise comply with P.L. 91-646 and 7 CFR 21. Assemble the various documents that make up the report. Consider the need for an additional appraisal. If a second appraisal results in a higher approved value than the negotiator previously offered the landowner, renew price negotiations on the basis of the new appraisal. There is no need to renew negotiations when the new approved value is lower; however, inform the landowner of this change by letter.

At this point, because of condemnation case preparations and perhaps an additional appraisal, the landowner may be aware that the Government is considering condemnation. If not, tactfully discuss this contingency with the landowner, preferably face-to-face. Present an objective statement of the program's urgency and the Forest Supervisor's responsibility. Notify the landowner in writing by certified letter (return receipt requested) when condemnation is recommended to the Chief. Use the Justice Department's booklet entitled "How and Why the Federal Government Acquires Property for Public Purposes" to answer the landowner's questions and as an aid to further negotiations.

For additional direction on negotiations see chapter 10.

72.3 - Assemble Condemnation Package

72.31 - Condemnation Report

The Regional Forester makes the recommendation to the Chief by submitting a condemnation report in triplicate. Bind the condemnation report in a durable cover that displays the title. Divide the written text into three principal sections-- introduction, facts, and addenda--with various subsections, as necessary for each particular condemnation class (sec. 71.5) Use tabs to identify sections and exhibits.

Before sending the condemnation report to the Chief, acquire the Regional Attorney's legal review.

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Use the following format for all condemnation reports. Before assembling a report check exhibit 01 for subsections to include in the report for each condemnation class.

72.31 - Exhibit 01

Item	Condemnation classes		
	Acquire real property	Take temporary possession	Clear title or enforce option
Part I Introduction			
Title Pages & Approvals	X	X	X
Table of Contents	X	X	X
Part II Facts			
Name and Address of Landowner(s)	X	X	X
Outstanding Rights	X	X	X
Need for the Land or Interest in Land	X	X	
Need for Clearing Title or Enforcing Option			X
Description of the Road	X		
Alternate Locations (R/W)	X		
History of Negotiations	X	X	X
Estate To Be Acquired	X	X	X
Valuation	X	See Sec. 71.52	
Amount in the Deed or Option			X
Date Possession Is Needed	X	X	X
Request for Declaration of Taking	X	See Sec. 71.52	X
National Environmental Policy Act (NEPA)	X	X	X
P.L. 91-646 Compliance	X	X	X

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Item	Condemnation classes		
	Acquire real property	Take temporary possession	Clear title or enforce option
Part III Addenda 1/			
Exhibit I, Title Opinion X	X		X
Exhibit II, Title Evidence X	X	X	X
Exhibit III, Estate To Be Acquired	X	X	X
Exhibit IV, Survey Plat or Map	X		X
Exhibit V, Easement Deed or Option			X
Exhibit VI, Vicinity Map	X	X	X
Exhibit VII, Negotiations	X	X	X
Exhibit VIII, Photographs X	X		X
Exhibit IX - P.L. 91-646 X	X	X	X
Exhibit X - Project Data Statement	X		
Exhibit XI - Other Material (EAR, and so Forth)	X	X	X
Exhibit XII - Appraisal	X	See sec. 71.52	

1/ Number the addenda exhibits consecutively even though no condemnation report uses all of them.

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72.31a - Part I - Introduction

1. Title Page With Approval Signatures. The Forest Supervisor, Regional Director of Lands, Regional Forester (or their acting) approve the condemnation report. Show the appropriate date, title, and signature for each. The Regional Forester's signature on this report constitutes the condemnation recommendation to the Chief.

2. Table of Contents.

72.31b - Part II - Facts

1. Name and Address of Landowner(s) and Others Holding Interests To Be Cleared. List the name and address of each person, company, and so forth, who has or may have an interest to be cleared. Include the name of the county so that unpaid taxes due or that may become due before filing the declaration of taking may be cleared.

2. Outstanding Rights. List all outstanding rights that may affect title to the land; include both recorded and unrecorded rights. Discuss the compatibility of each right with the purpose for which the Forest Service is acquiring the property interest, and discuss the extent to which each interferes with the rights being acquired by the United States. Clear rights that interfere by naming the owners of the rights as defendants in the condemnation action. If the outstanding right does not interfere, the estate is subject to this prior right. When condemnations include existing roads in which the public or another private party may claim rights, document the origin and nature of the rights, consider the effect of these rights, and clear them if necessary.

3. Need for Land or Right-of-Way. Discuss the basic and immediate need for the land or right-of-way. For example, the basic need for a road right-of-way is to provide access to National Forest land to enable proper protection, management, and use of forest resources. The immediate need may be for access to a scheduled timber saleor to permit issuance of bids for a road construction project. When the acquisition involves a road right-of-way, include the approximate amounts of National Forest land and timber that the road is likely to serve.

In condemnation reports for land or scenic easements, discuss which public needs are to be met, how the proposed action is to meet the objectives, and why that action is the best alternative.

When proposing fee title for a right-of-way, use this section to explain why an easement is not adequate.

4. Need for Clearing Title or Enforcing Option. Discuss the reasons for clearing title or enforcing the option by condemnation. In title clearance cases, include a discussion of the curative action or material necessary to clear title, the reasons why curative action is not possible or practical, and the efforts made to waive the defects.

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5. Description of Road. State whether the easement is for an existing road or raw land. Briefly discuss the existing or planned road; that is, standard of road; kind of surface; plans for any reconstruction; facilities the road crosses such as irrigation ditches and fences; important features of the planned project such as right-of-way fencing, cattleguards, and irrigation siphons; height of grade in relation to adjacent land; cuts and fills in relation to road crossings or connections; and so forth.

6. Alternate Locations. This heading applies to rights-of-way acquisitions only. Give the reasons for thesuperiority of the recommended location over alternate locations. Include the detailed route analysis in the addenda with the alternate route map.

This topic is particularly important when the proposed location is adjacent to the landowner's residence or other operating facilities.

7. History of Negotiations. Discuss the extent of negotiations. Briefly discuss in chronological order the significant letters, memorandums, and other items documenting negotiations. In all cases except road and trail easements, include the date of the Chief's approval to negotiate under the threat of condemnation. Point out important details such as:

a. Landowner's reasons for not granting land or partial interest needed.

b. Landowner's reasons for not granting permission to enter upon the property to do the necessary work.

c. Offers made to the landowner.

d. Counteroffers made by the landowner.

State that copies of items documenting negotiations are in the addenda.

8. Estate To Be Acquired. Define the exact estate the Regional Attorney previously prepared. If there is a declaration of taking and appraisal it must be the same estate used in these documents.

9. Valuation. Give the name of the appraiser, the appraiser's affiliation (Forest Service or contract), the date of valuation, and the estimated just compensation. State that the appraisal is part of the addenda.

10. Amount in Deed or Option. Show the amount cited in the deed or option. State that a copy of the document is in the addenda.

11. Date Possession Is Needed. Show the date possession is needed or use the following statement: "Possession is required as soon as possible."

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12. Request for Declaration of Taking. Request the initiation of a condemnation proceeding and the filing of a declaration of taking.

13. National Environmental Policy Act (NEPA). With all requests for condemnation, the Department of Justice requires submission of a statement of the determination that has been made concerning the applicability of NEPA (83 Stat. 852, 42 U.S.C. 4321 et seq.) to the project for which the Government is acquiring property interest. After determining that the project involving the condemnation is not a major Federal action and therefore no environmental statement is necessary, use a statement similar to the following:

> The applicability of the National Environmental Policy Act to this project has been considered. The requirements of the Act have been complied with and it has been determined that an environmental statement as provided for in section 102(c) of the Act is not required. The analysis upon which this determination is based is included in exhibit XI.

If it has been determined that the project involving the condemnation is a major Federal action requiring an environmental statement, use a statement similar to the following:

> The applicability of the National Environmental Policy Act to this project has been considered and the requirements of the act have been complied with. It has been determined that the project for which this (land) (easement) is being acquired is a major Federal action affecting the quality of the environment. A (draft) (final) environmental statement (has been) (is being) prepared as provided for in section 102(c) of the Act. (A copy of the statement is enclosed as exhibit XI).

The principal difficulty in making these determinations is in identifying the project for which the Forest Service is acquiring the lands or interests in lands. FSM 1900 provides direction in defining actions for which environmental statements are necessary.

14. Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (P.L. 91-646). Describe compliance with this law. Refer to specific documents in exhibit VII or place appropriate certificates in exhibit IX.

15. Compliance With Other Laws, Regulations, and Executive Orders. Indicate extent and nature of compliance with other requirements such as floodplain management. Include appropriate documentation in exhibit XI of the addenda.

72.31c - Part III - Addenda

1. Exhibit I - Title Opinion. Exhibit I is the Regional Attorney's written opinion that discusses title exceptions, unrecorded outstanding rights, and names the defendants.

2. Exhibit II - Title Evidence. Exhibit II consists of a condemnation guarantee, preliminary title report, or abstract of title. Whenever possible and available, use

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condemnation guarantees or preliminary title reports. Abstracts are the least desirable (FSM 5462.41c). Include copies of all documents, recorded or unrecorded, that affect title to the land and that are included in the taking. Show condition of record title and provide current names and addresses of all persons who have a record interest in the property.

3. Exhibit III - Estate to be Acquired. Exhibit III is a copy of schedule A used in the condemnation proceeding. State the acreage. Include the length and width(s) in right-of-way descriptions.

When the acquisition is for temporary possession of a limited use, generally describe the parcels of land for the survey party or appraiser.

Use the same description used in the condemnation proceeding.

4. Exhibit IV - Survey Plat or Map. Use the same plat as schedule B in the condemnation proceeding.

5. Exhibit V - Easement Deed or Option. Include a copy of any easement deed or option from the landowner, plus any other attachments, such as a description and plat, as exhibit V.

6. Exhibit VI - Vicinity Map. Include a small-scale forest, ranger district, or transportation map that shows the location of the subject parcel in relation to the general area. The map should show the existing roads and landownership pattern in the immediate vicinity.

7. Exhibit VII - Negotiations. This exhibit includes copies of all correspondence and memorandums that will substantiate the history of negotiations discussed in part II, item 7. Insert in chronological order.

8. Exhibit VIII - Photographs. A few good adequately described photographs help reviewers who have not seen the property. Do not duplicate photographs that are in the appraisal report.

9. Exhibit IX - Documentation of P.L. 91-646 Compliance. Include appropriate documentation referred toin item 14, section II, of the report. Do not duplicate material shown in exhibit VII.

10. Exhibit X - Project Data Statement. The Department of Justice requires a project data statement for all condemnation actions. Use the following format:

(Format of the Project Data Statement to be placed as Exhibit X.)

ADAMS, COY L., ET AL.
#232-17
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Mark Twain National Forest
U.S. v. 55.0 acres, M/L

PROJECT DATA

CONDEMNATION

STATE: Missouri

DISTRICT: Western District

1. Project Name - Eleven Point Wild and Scenic River

2. Project Area - 14,195 acres
3. Cost of Land - $4,906,500

4. Percent of Land Already Acquired - 23%

5. Date Acquisition of Land Commenced - November 2, 1971

6. Number of Tracts Pending in Condemnation - 13

NEPA STATEMENT FILED: None

The applicability of the National Environmental Policy Act (NEPA) to this project has been considered. The requirements of the Act have been complied with, and it has been determined that an environmental statement as provided for in section 102(c) of the Act is not necessary.

Date: April 7, 1977

11. Exhibit XI - Other Material. Include any material pertinent to the case that is not covered in other exhibits such as an environmental statement on the project for which the property is being acquired. If an environmental statement is not necessary, include here the analysis that was the basis of this determination.

12. Exhibit XII - Appraisal. If the appraisal report is large it may be bound separately from the rest of the condemnation report.

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72.32 - Declaration of Taking

If the request for condemnation directs the filing of a declaration of taking, submit the original of that document plus five thin white carbons, one thin salmon carbon, and seven photocopies to the Washington Office, Director of Lands.

The Regional Attorney drafts the declaration of taking (sec. 72.5) in the form requested by the U.S. Attorney.

72.33 - Schedules A and B

Schedule A is a written description of the land or easement the Government is acquiring. Schedule B is a plat or map of the land involved in the taking. Show a tract number on the schedules. Attach these schedules to the declaration of taking.

The U.S. Attorney needs extra copies of these schedules when preparing the complaint. Furnish these schedules (through the Regional Attorney) when the check for deposit in the court is vouchered or at any other time convenient to the U.S Attorney.

72.34 - Letter From the Secretary to the Attorney General

This letter is drafted by the Regional Attorney (sec. 72.5).

Submit the original of the letter along with four thin white carbons (two courtesy copies and two plain thin copies), plus one thin salmon, one yellow file copy, and five photocopies.

72.35 - Letter of Transmittal

In the letter transmitting the condemnation package to the Chief discuss and answer the following questions:

1. Is it contemplated that any other segment of the property or road is likely to be acquired by condemnation?

2. Are there other tracts of land programmed for acquisition by condemnation within the same Federal court jurisdiction in the near future?

3. What is the level and nature of controversy concerning the proposed acquisition project?

72.4 - Action by Forest Supervisor

The request for condemnation usually originates with the Forest Supervisor who submits the case to the Regional Forester. The case preparation involves the following tasks:

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1. In consultation with the Regional Office, develops the exact estate for use in condemnation and the appraisal that is to be the basis for estimating just compensation (sec. 71.6).

2. In consultation with the Regional Office, decides whether another appraisal is necessary and whether it should be a commercial or staff appraisal. Updates the appraisal for use in purchase negotiations if necessary to reflect any differences between the interest intended to be acquired by deed and the interest that is to be condemned.

3. Prepares a written description and plat in the form necessary for condemnation. (See Procedural Guide for the Acquisition of Real Property by Governmental Agencies).

4. Secures a review of the title evidence by the Regional Attorney and takes action to clear exceptions or clarify apparent title interests. In some Regions, the Regional Forester may have the responsibility for obtaining a review of the title evidence. A completed certificate of possession is part of the title evidence.

5. Documents negotiations with the landowner attempting to purchase the needed interests.

6. Prepares the condemnation report (sec. 72.31).

7. After the declaration of taking is signed, the Forest Certifying Officer processes a check payable to the clerk of the appropriate District Court and delivers it to the U.S. Attorney. Ensure the prompt delivery of the check, because the declaration of taking cannot be filed until the U.S. Attorney has the check.

72.5 - Action by Regional Attorney

Prepares condemnation cases in cooperation with the Regional Forester. Ensures that documents are in proper form, that the estate to be taken is properly defined, and that the list of defendants is accurate and complete. The Regional Attorney performs the following general tasks:

1. Confers with the Regional Office or Forest Supervisor's Office about legal case matters. After receiving information about administrative needs, drafts the estate to be taken.

2. Confers with the U.S. Attorney as necessary to ensure timely processing, to clarify questions of law and procedure, and to provide information about special problems or other matters pertaining to the case.

3. If the Forest Service has awarded an appraisal contract, the Forest Service holds a conference with the contract appraiser. In road right-of-way cases, it is much more effective to combine this conference with the on-the-ground conference prescribed in section 72.6, item 5. The Regional Attorney should attend the conference to clarify:

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a. Questions of legal interpretation of the estate being taken.

b. The questions of law inherent in the case.

c. The applicable laws concerning the approaches to value and their application in the subject case.

d. The effect of applicable law and regulations on administration, use, and maintenance of the road, particularly in relation to the landowner's needs and prospective use (applies to road rights-of-way).

If the Regional Attorney has met with the same appraiser on several occasions and sees no need to attend a particular conference, or is unable to attend the conference, the contracting officer's representative (COR) should take notes on any legal questions that need clarification. After reviewing the questions with the Regional Attorney, the COR should get in touch with the appraiser.

4. Reviews the title evidence and decides what action to take to clear infirmities or clarify apparent title interests.

5. Reviews the material comprising the condemnation case for legal adequacy.

6. Drafts the declaration of taking.

7. Drafts the letter from the Secretary of Agriculture to the Attorney General which transmits the case and requests the institution of a condemnation proceeding.

8. Prepares a title opinion for the condemnation report.

72.6 - Action by Regional Lands Director

The Regional Lands Director performs the following tasks:

1. Assists the Forest Supervisor in determining the interests necessary to meet management needs and objectives. Also assists in preparing the condemnation report.

2. Confers with the Regional Attorney on legal matters concerning the case. Informs the Regional Attorney of the administrative needs of the Forest Service so the estate to be taken can be prepared.

3. As necessary, confers with the U.S. Attorney through the Regional Attorney. The Regional Attorney is usually present at these meetings.

4. Secures contracts with commercial appraisers the U.S. Attorney has approved for use in condemnation. Secures the approval of staff appraisers.

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5. After the award of an appraisal contract, as necessary, meets with the appraiser and a forest representative to clarify:

a. The estate and interests to appraise.

b. The facts relevant to the case.

c. The approaches to value and their application in the particular case.

d. The items of information the Forest Service is to furnish or make available.

e. Questions on the appraisal contract.

f. For partial acquisitions, the proposed project and its relation to possible severance damage and offsetting benefits.

6. Reviews the appraisal and obtains clarification and further documentation to make it acceptable for the condemnation proceeding.

7. Reviews the condemnation case after receiving it from the Forest Supervisor, then forwards it to the Regional Attorney for legal review and further processing (sec. 72.5, items 5-8).

8. Assembles and submits the case to the Chief with are commendation to condemn. The Regional Forester is responsible for ensuring that all documents are reviewed, corrected, and assembled to facilitate processing.

9. Identifies and allocates an amount sufficient to cover any potential excess award (FSM 6540 and FSM 6550) and estimated P.L. 91-646 costs.

72.7 - Action by Washington Office

The Washington Office Lands Staff carefully reviews the condemnation report, appraisal, and all documents and prepares the appropriate transmittal documents and a note from the Chief to the Secretary summarizing the facts of the case.

After the declaration of taking is signed, the Washington Office notifies the Region. This notice serves as authorization to process a voucher for the amount of the required deposit (sec. 73.1). Usually the Region receives a certified copy of the declaration of taking within 2 weeks.

72.8 - Action by Office of the Secretary

Final decision on condemnation rests with the Secretary of Agriculture. If, after reviewing the case, the Secretary agrees with the Chief's recommendation, the Secretary or an authorized representative signs the declaration of taking and the letter

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to the Attorney General that requests the filing of the declaration of taking and institution of condemnation proceedings.

72.9 - Action by Department of Justice

After receiving the signed declaration of taking and the case material from the Secretary, the Attorney General sends the case to the U.S. Attorney for the Federal court district in which the property is located. The U.S. Attorney prepares the complaint, order for delivery of possession, and the notice. The judge must sign the order before it is valid. The law (40 U.S.C. 257) requires filing of the proceeding within 30 days after the Attorney General receives the case.

After receiving the deposit check from the Forest Service, the U.S. Attorney files the declaration of taking, complaint, and order for delivery of possession and deposits the check with the court.

73 - Procedure After Filing

73.1 - Deposit With Declaration of Taking

The declaration of taking states the sum of money that the Secretary estimates to be just compensation for the property taken. Deposit of the estimated compensation does not constitute afinal or conclusive settlement with the defendant. The ultimate award in a court trial may be for more or less than the deposit. If more, the Government pays the deficiency, together with interest on the deficiency, from the date of taking to the date of payment (sec. 75.4); if less, the Government receives payment for the overdeposit from the court.

If a case is settled out of court, the Government pays no interest on the deficiency payment.

73.2 - Vesting of Title

A declaration of taking vests title in the United States when the U.S. Attorney files the document and the court receives a deposit for the estimated just compensation (sec. 71.71). The Attorney General then examines the complaint and declaration of taking and issues a title opinion stating that title vested in the United States at the time of filing.

When the Government does not use a declaration of taking, title is acquired after the court enters a judgment that title to the condemned property vests in the United States upon payment of the award. The Attorney General does not issue the title opinion until the judgment has been satisfied by the United States.

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73.3 - Delivery of Possession

Depending on the method used to condemn (sec. 71.1), possession can either followor precede the vesting of title in the United States because the two methods do not transfer title at the same point in the proceeding (sec. 73.2).

73.31 - Possession With Declaration of Taking

The Government acquires the right to possession with the vesting of title. The court then fixes the date the defendant must surrender possession (sec. 71.73). In most cases, the court orders delivery of possession on the date the title is vested. However, the court can delay possession for a reasonable length of time if circumstances warrant.

Section 301 of P.L. 91-646, item (5), requires that a landowner whose property is the principal place of residence receive 90 days written notice of the date the court requires the move. This notice can be made when the landowner is notified that the property has been recommended for acquisition by condemnation. State in the notice that this is the 90-day notice to vacate in accordance with item(5) of section 301 of P.L. 91-646. The landowner is not required to move until the Government deposits just compensation in the court.

Notification may be deferred until filing of the action in court. In this instance, advise the U.S. Attorney that the resident landowner is not required to move until 90 days after the date of filing so the order of possession will beconsistent with the decision. Make this determination before submitting the condemnation action and include it in the letters of recommendation and transmittal.

A period longer than 90 days can be granted. However, any extended period beyond the 90 days may require the collection of a rental fee. Coordinate these actions with the U.S. Attorney.

73.32 - Possession Without Declaration of Taking

When acquiring an easement, do not wait for title to vest before requesting possession of the property. The court usually grants an order for delivery of possession requiring the defendant to surrender possession or control of the property when the United States shows good cause why possession is necessary before completion of the proceeding. In this situation, use the date the United States acquires possession as the date of valuation and the date when interest on the award begins to accrue.

73.4 - Use of Property After Delivery of Possession

Usually the court delivers possession concurrent with the filing of the declaration of taking or shortly thereafter (sec. 73.31). When the court gives the Government possession and notice has been served on all parties, take immediate steps to assert ownership of the interest acquired. Contact the defendant before taking possession so

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there is no misunderstanding. Determine if all the owners, tenants, and others affected by the condemnation action have received appropriate notice.

Whether the landowner files or fails to file an answer challenging the Government's right to take possession (sec. 71.76) does not affect the Government's right to assert ownership immediately upon receiving possession. Ifthe Government's right to take is not upheld, the Government shall compensate the landowner for any damage caused by use of the property as well as the appropriate litigation expenses (P.L. 91-646).

73.5 - No Authority To Negotiate With Defendant

After filing of the complaint, the Department of Justice is responsible for successful completion of the proceeding. The proceedings are not complete until the Attorney Generalissues the final title opinion and until all appeals, briefs, and legal questions pertaining to the caseare settled. Do not negotiate further or discuss compromise with the defendant except at the request of theU.S. Attorney. Refer all inquiries to the U.S. Attorney.

73.6 - Coordination With U.S. Attorney

Condemnation requires close coordination between the Department of Justice, the U.S. Attorney, Regional Forester, and the Regional Attorney. Offer to supply the U.S. Attorney with trial exhibits, names of witnesses and their potential testimony, and so forth, and to set up conferences with appraisers.

When the Government takes possession before trial or after filing of the declaration of taking, update the appraisal that supports the amount deposited with the court and inform the U.S. Attorney that the Forest Service shall update the appraisal after receiving comments regarding any weaknesses or deficiencies.

If the U.S. Attorney does not file a declaration of taking, update the appraisal to the date the court gave possession to the United States or a date shortly before the trial that the U.S. Attorney specifies, whichever date is earlier. See section 71.51, item 2, about the approval of updated appraisals.

If the updated appraisal supports a value considerably in excess of the amount deposited with the court, consider asking the U.S. Attorney to file an amended declaration of taking and deposit the additional amount. However, check with the Washington Office Lands Staff before requesting an amended declaration of taking.

If the U.S. Attorney inspects the property before settlement or trial, plan the inspection so that Forest or Regional personnel have the opportunity to discuss all aspects of the case.

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73.61 - Certificate of Possession

The Regional Forester shall provide the U.S. Attorney with an updated certificate of possession either after vesting of the title in the Government or recording of a lis pendens, whichever occurs first. For instructions about preparing the certificate, see section 53.2 for land purchase and FSM 5462.42b for road rights-of-way. When using a declaration of taking, inspect the property as soon as possible after filing. When the Government does not use a declaration of taking, inspect the property soon after filing of the complaint.

The inspection serves the purpose of discovering possible rights of possession or other interests in the subject property that are not of record. If additional parties are found to have an interest they must be named as defendants in the proceeding.

73.62 - Continuation of Title Evidence

After the Government acquires title, arrange for the continuance of the title evidence to include a search of the records to a date subsequent to the date of lis pendens. Upon receipt of the continued title evidence, deliver it immediately to the U.S. Attorney.

It is not necessary to replace the preliminary title report (or preliminary certificate of title) with a policy of title insurance (or certificate of title) unless the U.S. Attorney requests it. The continued title evidence generally is an updated preliminary report and preferred over abstracts. If using an abstract of title, extend it to show vesting of title in the United States. For instructions on title insurance or title certificate, see section 51 for land purchase and FSM 5462.41 for road rights-of-way.

73.7 - Amending Complaint and Declaration of Taking

The United States may amend the complaint and declaration of taking any time before the trial regarding just compensation, and as many times as it desires. Amendments cannot divest the Government of any already acquired rights or constitute dismissal of the case.

The Regional Attorney prepares the proposed amendments, and the Regional Forester submits them to the Chief with a memorandum discussing the need for the changes. The Secretary or other authorized official signs an amended declaration of taking and sends it to the Department of Justice with the proposed amended complaint for filing.

73.8 - Revesting Title in Former Owner

With the exception of quitclaiming under special authorities, the only way to revest title is by stipulation with the former owner, followed by an appropriate court order or judgment. The Attorney General has authorization to stipulate to exclude any property or any part, or interest, that the United States takes by declaration of taking or other method. The U.S. Attorney and the defendant sign the stipulation.

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The Attorney General must approve any proposed stipulation revesting title before the U.S. Attorney and defendant sign it. The Attorney General shall consult with the Forest Service to obtain agreement before approving the stipulation.

74 - Settlement

The Department of Justice handles settlement negotiations after filing the proceedings.

Although the Department of Justice is responsible for settlement negotiations, it requests Forest Service concurrence before completing settlement.

74.1 - Settlement Authority

74.11 - Attorney General

The Attorney General has final authority to accept or reject offers of settlement in Federal condemnation cases.

74.12 - U.S. Attorney

The U.S. Attorney has authorization to accept or reject a settlement offer when the gross amount does not exceed $100,000 and under the following circumstances:

1. The authorized representative of the Department of Agriculture approves the settlement in writing.

2. The amount of the settlement is compatible with the appraisal(s) upon which the United States would rely in the event of trial, considering probable minimum trial costs and risks.

3. The case does not involve the revestment of land, improvements, or interest in land.

4. The settlement is not likely to adversely influence disposition of other condemnations planned or pending in the judicial district.

If the offer is less than $100,000 and exceeds the amount deposited in court, the U.S. Attorney obtains the recommendation of the Forest Service concerning settlement (sec. 74.2).

Refer to the Department of Justice any settlement offer that exceeds $100,000 or the limitations described above. The Department of Justice secures the Forest Service's recommendation through the Office of the General Counsel.

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74.13 - Regional Forester

Regional Foresters have authority to recommend settlement offers within the following guidelines, in response to requests from the U.S. Attorney. Regional Foresters shall make their recommendations through the Regional Attorney.

The Regional Forester shall review instructions in section 74.3 before an approval is given on a settlement offer. The Regional Forester's settlement authority is limited to the following:

1. Settlements of $100,000 or less, exclusive of Public Law 91-646 benefits.

2. Settlements within the guidelines in FSM 5484.12.

3. Settlements within the following schedule (whichever is the lesser amount):

Appraised Value	Dollars	or	Percent Of Appraised Value
$ 0 - $ 500	$ 1,000		
$ 501 - $ 5,000	$ 7,500		200
$ 5,001 - $ 20,000	$ 25,000		150
$20,001 - $100,000	$100,000		125

The appraised value is the original or updated appraised value or the amount the U.S. Attorney proposes for just compensation, whichever is current at the time the Regional Forester makes a settlement recommendation (sec. 71.51, item 2).

4. Settlements where the offer does not contain a change in the estate or interest to be acquired.

5. Settlements in which the history of cases in the same judicial district has been considered in arriving at a decision to approve the settlement offer.

74.14 - Chief

The Chief acts upon all requests for recommendations on settlement offers that fall outside of the authority limitation of the Regional Foresters.

74.2 - Procedure

When a settlement offer is received, work closely with the U.S. Attorney to obtain prompt evaluation of the offer.

Ensure that all requests from the U.S. Attorney to the Forest Service, including confirmation of informal requests such as telephone calls, asking for Forest Service recommendation on settlement offers are in writing. Make all Forest Service

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recommendations in writing and send two copies of the correspondence to the Chief. Transmit all requests and recommendations through the Regional Attorney.

74.21 - Settlement Offer Within Authority of Regional Forester

When the U.S. Attorney is willing to recommend acceptance of a settlement offer that exceeds the deposit, the Regional Forester submits, through the Regional Attorney, a recommendation to accept or reject the offer along with the reasons for the decision, and sends a copy to the Chief. If the Regional Forester recommends acceptance, the U.S. Attorney settles the case.

If the U.S. Attorney accepts the Regional Forester's recommendation rejecting the settlement offer, the Government rejects the defendant's offer. If the U.S. Attorney believes the offer should receive further consideration, the U.S. Attorney submits it to the Attorney General with a recommendation and notifies the Regional Forester of this action. The Regional Forester notifies the Chief of the submission to the Attorney General including any additional information supporting the prior recommendation to reject the offer. The Attorney General makes the decision whether to accept or reject the settlement offer.

74.22 - Settlement Offer Not Within Authority of Regional Forester

The Regional Forester shall advise the U.S. Attorney through the Regional Attorney of the recommendation. The U.S. Attorney directs all offers requiring action by the Chief through the Department of Justice.

74.23 - Settlement Offer Not Within Authority of U.S. Attorney

The U.S. Attorney submits settlement offers exceeding his authority to the Attorney General with recommendations. The U.S. Attorney informs the Regional Forester of the submission and whether acceptance of the offer was recommended.

74.3 - Considerations in Approval of Settlement

There are no standard formulas for determining a fair and reasonable settlement. Review and judge each case on its own merits. When recommending Forest Service rejection of the defendant's settlement offer, fully explain the reasons for this choice.

Keep the following in mind when reviewing settlement offers:

1. A settlement can be a precedent for subsequent cases. Settlements quickly become known by local residents. One excessive settlement may affect other condemnation settlements and negotiated acquisitions in the areabecause landowners expect to receive as much as their neighbors.

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2. Acceptance of unrealistically high offers is likely to cause an increase in the number of condemnations because landowners know that they can get a better price by forcing the Government to condemn.

3. Settlements negotiated on a set percentage of increase over the appraised value may not be justified in all cases. Avoid pattern or percentage settlements.

4. The risk of a court award substantially above the deposit may be great in a particular case. Ask the U.S. Attorney for a written justification when the recommended settlement is based on such a risk.

75 - Trial

Trial is for the sole purpose of determining just compensation. The U.S. Attorney is responsible for trial proceedings. The Forest Service shall cooperate and assist through the Regional Attorney.

Either a jury, a commission, or the court can try the issue of just compensation and determine the award.

75.1 - Trial Aids

Because the U.S. Attorney often is unfamiliar with the subject, assume the initiative in preparing aids, including photographs of the property (before and after the taking, if appropriate). Furnish exhibits that are accurate, complete, neat, and meet the desired specifications. Make exhibits large enough to be visible in a large courtroom.

75.2 - Testimony

Use of the term testimony here means a statement a witness made under oath in the trial of a case or in a legal proceeding.

A Forest Service employee may serve as an expert witness or a fact witness in a condemnation trial. The U.S. Attorney gives any person who is to testify instructions about testimony, court procedure, and other matters.

75.21 - Expert Witness

The function of an expert witness is to express an opinion. Although the general rule is that opinion evidence is not admissible in court, the opinion of experts is an exception because the matters about which they are called upon to testify are not within the knowledge of all persons of general education or experience. For example, the real estate appraiser is an expert witness because the opinion of value entered as testimony resulted from study, investigation, observation, and experience, and reflects special knowledge and skill. It may be necessary for potential expert witnesses to establish their qualifications to the satisfaction of the court.

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75.22 - Fact Witness

The function of a fact witness, or lay witness, is to report on facts pertaining to the point at issue. For example, a District Ranger may testify about certain administrative actions. A Forest engineer may explain the survey of a property or right-of-way, or discuss certain engineering studies or practices. The engineer may, because of firsthand knowledge and professional background and experience, testify about questions of fact.

The court distinguishes between facts and opinions. Although a fact witness might testify to facts, conclusions from these facts are inadmissible. On the other hand, the expert witness can draw conclusions and render an opinion.

75.3 - Appeal

Either the landowner or the Government can file an appeal in a condemnation case. The United States court of appeals for the circuit in which the property is located will hear the appeal.

The Attorney General decides when to appeal a case, but asks for the recommendation of the Forest Service. The Chief makes the agency recommendation for all awards through the Office of the General Counsel.

75.4 - Trial Observer

It is suggested that a person be assigned as an observer at each condemnation trial. This person should be familiar with court procedures, rules of testimony, and the facts in the case. These observations can aid the Region in preparing for future condemnation trials and aid in decisions about acceptance of the award or an appeal of the decision.

76 - Closing Cases

76.1 - Payment

When either settlement or trial concludes the condemnation proceeding, the court issues a final judgment that specifies the amount of just compensation the Government is to pay. If the award exceeds the amount the Government already deposited with the court, the Government must issue a check to cover the deficiency plus any interest.

If there is no previous deposit, the check shall cover the entire amount plus interest, if any. The Regional Office or the Forest Supervisor shall process and deliver the check to the U.S. Attorney for deposit in the registry of the court.

Promptly after the trial ask the U.S. Attorney through the Regional Attorney for a copy of the judgment. At the same time, reach agreement on the date the check covering the deficiency is to be deposited in order to determine the date for computing interest.

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The Forest Service may make payment as soon as funds are available and the disbursing office has a copy of the judgment and a letter from the Regional Attorney requesting payment of the award. However, it is advisable to delay payment of the award and interest until an appeal decision has been made.

If an award cannot be paid, obligate the award at the time the court issues judgment and add accrued interest. Record accrued interest as an obligation monthly until the judgment is paid.

76.2 - Final Title Opinion

After the court issues the final judgment and the Government has paid any deficiency, the Attorney General examines the title evidence and transcript of record. The Attorney General sends a letter tothe Secretary stating that valid title to the estate isvested in the United States. The letter includes a Schedule A that identifies the proceeding and states the date of the final judgment, the award, the deficiency deposit, and the estate acquired. Upon receipt of copies of the letter the Regional Forester shall close the case file. If the Forest Service used a declaration of taking, the Attorney General would have issued a previous title opinion (sec. 73.2).

In condemnation cases involving fee title, attach the original of the Attorney General's opinion to the certified copy of the judgment for placement in the archives. Have a copy of the opinion certified as a true copy and place it in the title docket.

76.3 - Posting Status Records

Post information about each acquisition in the appropriate status record. Do not close a case until the required tabular record sheet and map are posted in the status records. Post progress records or maps at the same time.

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