

TITLE 5

**LAND AND NATURAL RESOURCES
DIVISION**

U.S. ATTORNEY'S MANUAL 1970

TITLE 5

LAND AND NATURAL RESOURCES

DIVISION

CONTENTS

	Page
General litigation matters	1
Institution of actions	1
Authorization to institute actions	2
Defense of suits against officers or agents of the U.S.	2
Pollution litigation	2
Defense of condemnation actions against United States.....	3
Submission of pleadings, briefs, and other papers to the De- partment	3
Lis pendens	3
Stipulations	3
Findings of fact and conclusions of law.....	4
Recording judgment	4
Perfecting lien of judgment	4
Compromises	4
Payment of claim or judgment	5
Execution to enforce collection of judgment	5
Costs	6
Direct reference cases	6
Trespasses, damages, and delinquent charges	6
Institution of actions for money only.....	7
Actions in district court; exceptions	7
Correspondence	7
Transmittal of pleadings and other papers.....	7
Compromise, dismissal, or closing of direct-reference cases..	8
Post judgment collection efforts.....	9
Acquisition of land by condemnation	9
Procedure	9
Disposition of small condemnation tracts	10
Major condemnation case program	10
Classification of condemnation cases for administrative purposes..	11
Dismissal or abandonment	12
Lis pendens	12
Procurement of evidence of title	12
Certificates as to parties in possession and mechanics' liens.....	13
Orders of possession	14
Declaration of taking procedure	14
Exclusion of property acquired by declaration of taking.....	15

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

	Page
Options and contracts of sale	16
Settlement policy and guidelines in condemnation cases.....	17
Offers in compromise	17
Authority to settle condemnation cases—Procedure.....	19
Trials	20
Motions for new trials and objections to Commission's awards....	21
Judgments	21
Requests for checks in satisfaction of deficiency judgments.....	22
Disbursement of funds in court	23
Progress of cases	24
Ten-point program for settlement or trial within a year.....	25
Correspondence with Department	26
Transmittal of papers to the Department	26
Transcripts of record	27
Initial transcript	27
Intermediate transcript	27
Final transcript	28
Soldiers' and Sailors' Civil Relief Act.....	28
Termination of temporary use cases	29
Reimbursement in certain cases for expenses and damages incurred in moving	29 30
IBM reports	32
A procedural checklist for the processing of condemnation cases and suggested forms of pleading	32
Procedure from receipt of authorization to commencement of suit.	
Procedure subsequent to commencement of suit	34
Procedure subsequent to answer or appearance.....	38
Procedure for ascertainment of just compensation	40
Procedure for distribution of funds deposited in court.....	47
Acquisition of land by direct purchase	48
Standard procedure	49
Procurement of title evidence	49
Closing of transactions	50
Procedure after closing and vesting of title in United States..	52
Procedure for U.S. Attorneys to follow in handling checks drawn on the Treasury in settlement of lands being acquired by the United States	53
Standards for preparation of title evidence	54
Responsibility for procuring title evidence	55
Acceptable evidence of title	55
Qualifications of abstracters and title companies	56
Form and content of abstracts.....	56
Period of search	57
Records lost or destroyed	59
Wills and probate proceedings	59
Title by descent	60
Foreclosure proceedings	61
Judicial sales and other proceedings	61
Sales by trustees and fiduciaries	61

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

	Page
Search of liens of judgments and decrees of Federal courts..	62
Dedication and vacation of streets and alleys	62
Special assessments	62
Abstracters' certificates	63
Form and contents of certificates of title and title insurance policy	63
Period of search	63
Limitation of liability	63
Plats	64
Corporate sales	64
Determination of heirship	65
Adverse possession	65
Unrecorded title papers	66
Final and continuation title evidence.....	66
Deed to the United States	66
Certificate of possession	68
Appraisals	68
Employment of expert witnesses, appraisers, etc.	68
Appraisal and valuation consultation	70
Appeals	70
Marine resources section	70
Miscellaneous functions	71
Civil or political rights on Government lands	71
Assistance to U.S. Attorneys and field staff	71
Administrative and fiscal instructions	72
Authorizations	72
Preparation and approval of vouchers	73
Division publications	73

June 1, 1970

TITLE 5

LAND AND NATURAL RESOURCES

DIVISION

The functions of the Department assigned to the Land and Natural Resources Division all matters pertaining to: (1) the public domain lands and the Outer Continental Shelf of the United States; (2) other lands and interests in real property owned, leased, or otherwise claimed or controlled, or allegedly impaired or taken, by the United States, its agencies, officers, or contractors, including the acquisition of such lands by condemnation or otherwise; (3) the water and air resources controlled by the United States, without regard to whether the same are in or related to the enumerated lands; and (4) the other natural resources in or related to such lands, water, and air. There are a limited number of exceptions to this general assignment which are spelled out in Section 0.65 of Subpart M of Part 2 to Chapter 1 of Title 28, Code of Federal Regulations. The Division assignment also includes representation of the interests of the United States in all civil litigation in Federal and State courts, and before the Indian Claims Commission, pertaining to Indians, Indian tribes, and Indian affairs, and matters relating to restricted Indian property, real or personal, and the treaty rights of restricted Indians. These assignments are handled by 7 sections; namely, General Litigation, Land Acquisition, Indian Claims, Appraisal, Appellate, Marine Resources, and Administrative. A legislative assistant is responsible for Division legislative matters and special assignments.

GENERAL LITIGATION MATTERS

All pending or contemplated cases, matters, and proceedings in the trial courts (except condemnation proceedings and the defense of Indian tribal claims) are handled by the General Litigation Section.

Institution of Actions

In the absence of specific authorization to the contrary from the Assistant Attorney General, all actions initiated by the Land

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

and Natural Resources Division shall be instituted in the U.S. District Court in the name of the United States.

**Authorization From the Assistant
Attorney General Prior to Institution of Actions**

Litigation may not be instituted without specific authority from the Assistant Attorney General (in an emergency, authority may be requested by telegraph or telephone), except in those matters set out hereinafter in which the U.S. Attorneys are authorized to act on the direct request of certain agencies.

Pollution Litigation

Whenever facts indicating the possibility of suit by the United States by reason of air or water pollution come to the attention of the U.S. Attorney, these facts should be reported to the Land and Natural Resources Division. Pollution litigation, like other litigation of the Land and Natural Resources Division, may not be instituted without specific authority from the Department. When necessary, the Land and Natural Resources Division will coordinate such actions with the Admiralty and Shipping Section of the Civil Division and the Criminal Division.

**Defense of Suits Against Officers or Agents
of the United States**

The Department should be informed at once of the pendency of any action against a Federal official or employee for acts done or to be done in the performance of his official duties. The U.S. Attorney may appear and represent the officer or employee at the latter's request or at the request of his superior, but when time permits, no appearance should be made until instructions from the Department are obtained. If necessary, the request for instructions should be by telephone or telegraph. An action against a Federal officer or employee brought in a State court may be removed to the Federal court (28 U.S.C. 1442). The U.S. Attorney will be instructed immediately as to whether an action in a State court should be removed to the Federal court; before receiving these instructions, he should take no steps in the State court which would prevent removal.

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION**Defense of Condemnation Actions
Against the United States**

By Land and Natural Resources Division Directive No. 9-68, dated August 5, 1968, standardized procedures were established for the processing of condemnation actions against the United States under or purportedly under 28 U.S.C. 2410, as amended November 2, 1966. See 64, Land and Natural Resources Division Source Volume. With respect to all such cases, excepting only those involving Federal tax liens, which are subject to Tax Division instructions, that directive, as modified from time to time, should be consulted.

**Submission of Pleadings, Briefs, and Other Papers
to the Department**

Except in matters where the U.S. Attorney is authorized to act on the direct request of agency involved, concerning which different instructions are hereinafter set forth, two copies of the complaint and two copies of all other papers filed by any party or by the court, including pleadings, orders, proposed findings, judgments, opinions or other instruments of record, briefs, memoranda, and offers in compromise must be promptly forwarded to the Department. (One copy is for inspection and filing in the Department; the other is for transmission to the interested department or agency.) Only when so instructed in specific cases is it necessary that copies of any of the foregoing instruments which are to be filed on behalf of the Government be submitted to the Department before filing the originals.

Lis Pendens

Whenever required by the nature of the case, a notice of the pendency of the action or *lis pendens* shall be filed or recorded among the proper local records, except in those jurisdictions where the law is settled that the commencement of the action is notice to all persons affected.

Stipulations

In no case except direct reference matters shall the U.S. Attorney enter into an agreed statement of facts or a stipulation to abide the result in another case or any stipulation concluding the substantive rights of the United States without specific author-

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

ity from the Assistant Attorney General in charge of the Land and Natural Resources Division.

Findings of Fact and Conclusions of Law

In all actions in the Federal courts, tried upon the merits without a jury, care should be exercised that proper findings of fact and conclusions of law are entered by the court as provided by Rule 52(a), Federal Rules of Civil Procedure.

While the Rule provides requests for findings are not necessary for review, such requests should be filed whenever appropriate or advantageous.

Proper objection should be made to requests for findings of opposing parties. When necessary a motion should be made not later than 10 days after the entry of judgment to amend the findings adopted by the court or to make additional findings in accordance with Rule 52(b).

Recording Judgment

Whenever a judgment affecting the title to real property is recovered by the United States, the necessary recordation should be made promptly.

Perfecting Lien of Judgment

Whenever a judgment for money is recovered by the United States the necessary action shall be taken in accordance with the provisions of local law to perfect and preserve the lien of the judgment upon all property of the judgment debtor in the district in which the judgment has been entered or in any other district where the property of the defendant may be found. See 28 U.S.C. 1962 and 1963, and also *Rhea v. Smith*, 274 U.S. 434.

Compromises

No claim or case may be compromised without specific or delegated authority from the Attorney General, except in certain cases referred directly to the U.S. Attorney by the agency involved, discussed later in this Title.

When a compromise is offered, the U.S. Attorney or field attorney shall require the offerer to reduce the proposal to writing and to submit with it a cashier's or certified check, bank draft, or money order for the amount offered, drawn or endorsed unconditionally to the order of the Treasurer of the United States. Where a large sum is involved a token deposit is acceptable. The

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

U.S. Attorney or field attorney then shall forward to the Department the written offer; his recommendation and the reasons therefor; and a statement of the debtor's financial status.

The recommendation should be guided by the principles that compromise offers cannot be accepted unless (a) there is doubt as to whether judgment can be secured for an amount larger than that offered in compromise, (b) if a judgment has been or can be secured there is doubt as to whether an amount larger than that offered can be collected, or (c) the probable cost of collection exceeds the difference between the amount recoverable

The financial statement need not be forwarded where the offer is recommended for acceptance solely because there is doubt as to whether judgment can be secured for an amount larger than that offered or because the probable cost of collection exceeds the difference between the amount offered and the amount recoverable.

Payment of Claim or Judgment

Except when required by the circumstances of a particular case, no property other than money should be accepted in full or part payment of a claim, compromise, or judgment and in no event shall property other than money be accepted until all incurred court costs are paid. The procedure followed in the collection and transmittal of funds is covered by Department Memorandum No. 207, 2d revision, dated March 10, 1958, and supplements. When property other than money is accepted as payment it should be delivered to the local representative of the interested agency, a receipt taken, and the fact of its acceptance and its estimated value reported to the Department.

Execution to Enforce Collection of Judgment

Whenever necessary to enforce collection of a money judgment, the U.S. Attorney or the field attorney should ascertain such facts as the facilities of his office will permit to determine whether the judgment debtor has property subject to execution and whenever necessary should invoke the aid of the field officer of the agency at whose instance the action originally was instituted. If property subject to execution is found, execution should be issued and a levy made. If no property subject to execution is found, execution should not be issued unless required by local law to perfect or protect the judgment lien or its priority, or unless

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

the U.S. Attorney has reason to believe the issuance of execution will induce voluntary payment. If no distrainable property is found, the Department should be informed of the results of the investigation and the case should be held in abeyance awaiting instructions.

Costs

In no case may payment of costs be waived. Whenever money is accepted as full or partial payment, or in compromise, it must be applied first to court costs.

Direct Reference Cases

Trespasses, Damages, and Delinquent Charges

U.S. Attorneys are authorized to act in matters concerning real property of the United States, including tribal and restricted individual Indian land, not involving new or unusual questions or questions of title or water rights, on behalf of any other department or agency in response to a direct request in writing from an authorized field officer of the department or agency concerned, without prior authorization from the Land and Natural Resources Division in the following described cases:

(1) Actions to recover possession of property from tenants, squatters, trespassers or others, and actions to enjoin trespasses on Federal property;

(2) Actions to recover damages resulting from trespasses when the amount of the claim for actual damage based upon an innocent trespass does not exceed \$5,000. The U.S. Attorneys may seek recovery of amounts exceeding \$5,000: (a) If the actual damages are \$5,000 or less and State statutes permit the recovery of multiple damages, e.g., double or treble, for either a willful or an innocent trespass; (b) if the actual damages are \$5,000 or less, but the action is for conversion to obtain recovery of the enhanced value of property severed and removed in the trespass;

(3) Actions to collect delinquent rentals or damages for use and occupancy of not more than \$5,000;

(4) Actions to collect costs of forest fire suppression and other damages resulting from such fires if the total claim does not exceed \$5,000;

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

(5) Actions to collect delinquent operation and maintenance charges accruing on Indian irrigation projects and Federal reclamation projects of not more than \$5,000;

(6) Actions for breach of contract in timber sale cases where the amount of the claim does not exceed \$5,000.

In each such case, the U.S. Attorney shall assure that a copy of the written request of the authorized field officer has been forwarded to the Land and Natural Resources Division, General Litigation Section, Department of Justice, Washington, D.C. 20530.

Institution of Actions for Money Only

No action for the recovery of money only shall be instituted unless the referring agency supplies satisfactory proof that a judgment if recovered would be collectible.

Actions Are To Be in U.S. District Court; Exceptions

All actions shall be instituted in the Federal Court in the name of the United States except that, where the Federal Court is not in session so that possession cannot be summarily obtained, suit may be instituted in the State court.

Correspondence

Contemporaneous with the transmittal of correspondence from one of the agencies to a U.S. Attorney one copy of the communication shall be forwarded to the Land and Natural Resources Division, General Litigation Section, Washington, D.C.

Contemporaneous with the transmittal of correspondence from a U.S. Attorney to any one of the agencies one copy of the communication shall be forwarded to the Assistant Attorney General, Land and Natural Resources Division, General Litigation Section, Washington, D.C. 20530.

Transmittal of Pleadings and Other Papers

One copy of each pleading and paper filed by any party or by the court shall be promptly forwarded to the Department and two copies shall be forwarded to the local officer of the referring

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

agency (the local officer forwards one copy to his agency in Washington, D.C.).

Compromise, Dismissal, or Closing of Direct-Reference Cases

(1) Subject to the limitations imposed by paragraph (3) of this Section, U.S. Attorneys are authorized to accept or reject offers in compromise in direct-reference cases (and in cases which were not referred directly to the U.S. Attorney but could have been under the authorization above set forth) without the prior approval of the Land and Natural Resources Division if the authorized field officer of the interested agency concurs in writing, except that a U.S. Attorney may accept an offer without the concurrence of the field officer if the acceptance is based solely upon the financial circumstances of the debtor.

(2) A direct-reference matter (and a matter which was not referred directly to the U.S. Attorney but could have been under the authorization above set forth) may be closed without action by the U.S. Attorney or, if filed in court, may be dismissed by him, if the field officer of the interested agency concurs in writing that it is without merit legally or factually. The U.S. Attorney may close a claim without consulting the field officer of the interested agency if the claim is for money only and if he concludes (a) that the cost of collection under the circumstances would exceed the amount of the claim or (b) that the claim is uncollectible.

(3) The U.S. Attorneys are not authorized, without the prior approval of the Land and Natural Resources Division, to act with respect to the dismissal, compromise, or closing of a case, if (a) there is a divergence of views between the U.S. Attorney and the field officer of the referring agency in a case requiring concurrence; (b) subsequent to acceptance of the reference, it becomes apparent that the claim involves a novel point of law, a question of policy, or otherwise constitutes a precedent; (c) for any reason, the compromise of a claim, as a practical matter, will control or adversely affect the disposition of other claims totaling more than the amounts designated as being subject to direct reference. If any of these conditions exist, the matter shall be submitted to the Land and Natural Resources Division for decision.

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION**Post-Judgment Collection Efforts**

The instructions issued by the Civil Division governing action to be taken for the collection of judgments, set forth in Title 3, page 69, inclusive, are applicable to all judgments entered in favor of the United States, and reference is made to them for appropriate guidelines to be followed in collection activities to be undertaken after the entry of judgment in favor of the United States in Land and Natural Resources Division cases. This does not enlarge the authority of U.S. Attorneys to compromise in Land and Natural Resources Division cases beyond the limits stated in Title 5.

ACQUISITION OF LAND BY CONDEMNATION**Condemnation Procedure**

Rule 71A, Federal Rules Civil Procedure, governs the procedure to be followed in all cases for the condemnation of real and personal property under power of eminent domain. All condemnation cases must be prosecuted in strict conformity with this Rule. Rule 71A provides that the general Federal Rules of Civil Procedure shall be applicable to all cases, except as otherwise provided in Rule 71A. There must be, therefore, strict conformity with the general rules, subject to the exception noted. Rule 71A prescribes the form and content of the complaint, the form, content, and method of service of notice to defendants, and the form and content of the answer or appearance of defendants. Forms complying with the rules and approved by the Department are included herein in the Appendix.

The complaint in condemnation must not vary in form or substance from any instruction given by the Department and if there is any variance, the Department must be advised at once of such changes and the reasons therefor (Appendix, Form 4). The Department must be advised of the date of institution of cases.

Service of the notice of condemnation must be made in accordance with Rule 4 (c) and (d) of the Rules. A copy of the complaint need not be served with the notice of condemnation. Personal service of the notice must be made under Rule 71A (d) (3) upon any defendant whose residence is known, who resides within the United States or its territories or insular possessions (Appendix, Form 8). The U.S. Marshal for the district in which the defendants reside should be requested to make personal service upon defend-

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

ants living outside the territorial limits of the court in which the case is pending. A sufficient number of copies of the notice should be furnished the Marshal for service upon defendants, for the return of service pursuant to Rule 4(g), for the Marshal's files and for use by Government counsel in charge of the case. In jurisdictions in which notices are served on defendants immediately after the filing of the case, such notices should be accompanied by a statement showing the amount deposited as estimated just compensation, the procedure to be followed in obtaining disbursement of the funds and other helpful information that will facilitate the disposition of the case.

The same form of notice is used for service by publication as for personal service (Appendix, Form 8). However, to avoid unnecessary expense, the notice should contain only the shortest adequate legal description sufficient for the identification of the property and the names of all defendants served personally should be eliminated from the published notice. The use of lengthy descriptions, particularly by metes and bounds, should be avoided so that costs of publication may be minimized.

For detailed procedures and suggested forms of pleading in these cases see "A Procedural Checklist for the Processing of Condemnation Cases and Suggested Forms of Pleading," p. 32, this Title.

Disposition of Small Condemnation Tracts

For a number of years the large majority of new condemnation cases filed were for the acquisition of tracts of lands of small value. Although efforts have been made to reduce the incidence of condemning small tracts more than one half of all pending tracts involve properties appraised at \$4,000 per tract, or less.

U.S. Attorneys are urged to institute and prosecute small tract programs for the early settlement or trial of these tracts. This will permit early payment to the landowners, reduce costs and interest paid on deficiency awards and permit the careful preparation of cases in which the Government has greater exposure to possible awards involving substantial payments of both principal and interest.

A suggested program for the settlement or trial of condemnation cases is set out at tab XYZ, "I Condemnation Seminar 1962" and is also contained in p. 22, "Land & Natural Resources Division Source Volume."

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

Major Condemnation Case Program

The statistics for pending condemnation cases covering the past 10 years disclose that the tracts having appraised values of \$100,000 or more are relatively few; however, some of these tracts may involve more in value than thousands of small tracts. Major tracts include all tracts involving deposits of estimated compensation of \$100,000 or more and other tracts involving claims for compensation in such amounts and tracts in which significant and complex legal problems may be decided.

To protect the Government's interest it is of the utmost importance that special attention be given to the careful and thorough preparation of these important cases. U.S. Attorneys are urged to review the procedural guide for a major tract case program which is set out at tab W, "I Condemnation Seminar 1962," and is also contained in p. 40, "Land and Natural Resources Division Source Volume."

**Classification of Condemnation Cases for
Administrative Purposes**

Types of cases.—Division attorneys or U.S. Attorneys, as appropriate, shall classify condemnation matters in two categories and shall promptly advise all assigned attorneys of such classification. Category 1 will consist of cases in which there are no actual or anticipated policy questions, peculiar appraisal problems, novel legal questions, or claimed compensation in excess of \$50,000. Category 2 will consist of cases anticipated to fall within the exceptions described above. Division attorneys or U.S. Attorneys, however, may reclassify a case at any time if such becomes necessary or desirable because of changed circumstances.

Category 1 matters.—U.S. Attorneys will have full responsibility for the Category 1 cases, subject only to (i) such assistance on factual or legal matters as they may request of the Department of Justice, and (ii) approval of the Justice Department of any settlement in excess of \$10,000 or, under that amount, (a) when, for any reason, the compromise of a particular claim, as a practical matter, will control or adversely influence the disposition of related claims totaling an amount in excess of \$10,000, or (b) when the revestment under 40 U.S.C. 258f of any land or improvements or any interests in land are involved, except in cases in which the landowner desires to remove buildings, trees and shrubs, crops, or fixtures attached to the realty which are not needed or desired by the Government, provided that the exclusion has

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

been approved by the local representative of the acquiring agency, or (c) when, because a novel issue of law or question of policy is presented, or for any other reason, the offer should receive the attention of the Land and Natural Resources Division of this Department.

In particular, the assigned Assistant U.S. Attorney will not need clearance from the Justice Department for any trial or settlement action that is compatible with the requirements set out on pages 9 and 10 of the "Land Acquisition Program Statement." He should, nonetheless, send copies of court papers to the Department of Justice for information, comment, and suggestion and should cooperate in the reasonable implementation of all suggestions made.

For further information as to the classification of condemnation cases and related matters, see letter dated March 4, 1968, to which is attached "Land Acquisition Program Statement" to U.S. Attorneys, p. 1, "Land and Natural Resources Division Source Volume."

Dismissal or Abandonment

Condemnation cases must not be dismissed as to any of the land included in the instructions to condemn, nor may there be any change as to the interest or estate to be acquired, unless expressly authorized by the Department. Orders of dismissal must be entered without prejudice and without costs. The procedure for dismissal is set forth in Rule 71A (i), F.R.C.P. Instructions for the termination of cases instituted to acquire the temporary use of property are hereinafter set forth (Appendix, Forms 29 and 30).

Lis Pendens

Upon the filing of a complaint in condemnation, a notice of the pendency of the case or *lis pendens* must be recorded among the local land records, or other place as required by local law except in those States where the local law does not authorize notice of Federal proceedings to be so recorded. The Act of August 20, 1958, 72 Stat. 683, adds Section 1964 to Title 28 requiring that such registering, recording, etc., be done in order that constructive notice be given.

Procurement of Evidence of Title

Rule 71A (c) provides that there shall be named as defendants in condemnation cases all persons having or claiming an interest in the property condemned whose names can be ascertained by

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

a reasonably diligent search of the local land records, considering the character and value of the property involved and the interest or estate to be acquired. This requires that evidence of title shall be obtained and examined for a determination of the necessary and proper parties defendant. The Standards for the Preparation of Title Evidence in Land Acquisitions by the United States set forth in this Title must be followed in the procurement of evidence of title. Instructions with respect to the solicitation of bids and the award of contracts for evidence of title are set out in Title 8 under "Contract Service and Forms."

The evidence of title must be continued to a date subsequent to the recordation of the *lis pendens* or a copy of the judgment on the declaration of taking. Based upon the information, if any, disclosed by the continuation of the evidence of title, and the certificate of inspection and possession, any additional parties shown by the continuation to have, or who may claim to have, any interest in the property involved must be joined as defendants in the case and any changes in the naming of necessary and proper parties defendant must be effected. The procedure for adding, dropping, or substituting parties is by motion and order under Rules 21, and 71A (g) and (i) (3) (Appendix, Form 7). An amended complaint need not be filed.

Certificates as to Parties in Possession and Mechanics' Liens

In order to insure the joinder as defendants in the condemnation case of all parties who have, or who may claim to have, any right or interest in the property involved, whether or not such right or interest is disclosed by the evidence of title, the U.S. Attorney or field attorney should obtain a certificate showing (a) whether any party is in actual or constructive possession of all or any part of the land whose rights, if any, are not a matter of record, and (b) whether within the period provided by local law there has been any work or labor performed upon the property or any material furnished in connection with any work upon the property which would entitle anyone to a lien. Generally, the necessary certificate of inspection may be obtained from the local representative of the acquiring agency or the custodian for the Government of the property. The certificate should conform substantially with that set out in the Appendix (Form 2). All or any number of the tracts or parcels of land in a particular case may be included in one certificate of inspection, if more convenient than using a separate certificate for each tract.

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

All parties disclosed by the certificate as to possession and mechanics' liens to have an interest in the property involved must be joined as defendants in the case.

Orders of Possession

U.S. Attorneys and field attorneys must comply promptly with instructions from the Department requiring the entry of an order for the surrender of possession of property to the Government. See forms of motion and order for possession (Appendix, Forms 10 and 11). Notice of the entry of the order and of the date provided therein for the surrender of possession are controlled by Rules 5 and 77(d), F.R.C.P. Service of a copy of the order should be made in possession of the land in accordance with Rule 5(b), or service should be made in the manner and within the time directed by the court in the order.

If the party in possession refuses to surrender possession as provided in the order, application should be made in accordance with Rule 70, F.R.C.P., for a writ of assistance to put the Government in possession. Application for a citation in contempt under Rule 70 should not be made without the prior approval of the Department.

Declaration of Taking Procedure

U.S. Attorneys and field attorneys must comply promptly with instruction from the Department for the filing of a declaration of taking and the deposit of estimated just compensation pursuant to the Declaration of Taking Act (40 U.S.C. 258a-f). Duplicate originals of a dated receipt of the Clerk of the Court for the amount deposited as estimated just compensation should be obtained and transmitted to the Department (Appendix, Form 1). A judgment on the declaration of taking is not required unless specifically requested by the Department. The judgment, if obtained, should contain a finding by the court of the filing of the declaration of taking and the deposit of estimated compensation, the dates thereof, and an adjudication that title to the exact extent of the estate or interest described in the declaration is vested in the United States. The judgment should also contain an order for the surrender of possession if requested by the acquiring agency. Unnecessary recitations should be omitted from the judgment in accordance with Rule 54(a), F.R.C.P. Service of copies of the judgment upon defendants is controlled by Rules 5 and 77(d), *id.* The case must be prosecuted to a speedy conclusion in order

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

to minimize the amount of interest which the Government must pay on the amount of the ultimate award in excess of the deposit.

Under the Declaration of Taking Act and Rules 71A (c) (2) and (j) the court may order that the moneys deposited as estimated compensation, or any part thereof, shall be paid forthwith to the rightful claimant. The purpose of the Declaration of Taking Act is first, to give to the Government title to and possession of the land and to relieve the Government of the burden of interest accruing on the amount of the deposit, and second, and of equal importance, to make funds available for immediate distribution to the former owner in the discretion of the court.

In furtherance of this purpose and in accordance with Rule 71A(j), U.S. Attorneys and field attorneys are required actively to assist landowners and the court as *amici curiae*, in effecting prompt distribution of funds deposited pursuant to the Declaration of Taking Act. Further instructions with respect to distribution will be found under Disbursement of Funds in Court, p. 23 of this Title. No formal objection to the distribution by the court of all or any part of the deposit should be made without prior approval of the Department.

Immediately upon the filing of a declaration of taking and the deposit of estimated compensation, the landowner and other parties interested should be notified by letter, by the U.S. Attorney or field attorney, of the deposit and the amount thereof, that immediate distribution of the funds deposited may be made without prejudice to the right of the landowner to claim a larger amount, and that Government counsel will render assistance in effecting advance distribution. A form of letter with which there should be substantial conformance is included (Appendix, Form 3).

Exclusion of Property Acquired by Declaration of Taking

The Attorney General is authorized in any condemnation case to stipulate in behalf of the United States to exclude any property or any part thereof or interest therein that may have been taken by the United States by declaration of taking (40 U.S.C. 258f) (Appendix, Form 28). The necessity for the exclusion of property acquired by declaration of taking generally occurs in two classes of cases:

(a) Cases in which through inadvertence or otherwise title has been taken to property or some portions thereof or estate or interest therein not desired by the acquiring agency or found subsequently not to be needed for public use;

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

(b) Cases in which the landowner desires to remove buildings, trees and shrubs, crops, or fixtures attached to the realty which are not needed or desired by the Government.

The authority of U.S. Attorneys and field attorneys to enter into stipulations is governed by the nature of the property to be excluded but in the event of any question, specific instructions should be obtained from the Department.

U.S. Attorneys and field attorneys must obtain the prior authorization of the Department for the exclusion of property mentioned above in subparagraph (a). U.S. Attorneys and field attorneys are authorized to enter into stipulations for the exclusion of property of the type mentioned in subparagraph (b) without securing the approval of the Department provided that the exclusion has been approved by the local representative of the acquiring agency. However, if the property of the latter class is of high value, the specific approval of the Department should be obtained.

In all cases in which a stipulation is entered into for the exclusion of property, the stipulation must contain either a provision fixing the amount by which the just compensation, whether already determined or to be determined, shall be reduced by reason of the exclusion, or a provision to the effect that no claim of whatever nature for just compensation will be asserted in the case or otherwise for the property excluded. If, in the opinion of the acquiring agency, the property to be excluded is of no value or the exclusion will result in a savings to the Government by the avoidance of demolition or removal costs, the provisions of this paragraph shall not apply.

A stipulation relating to the class of property mentioned in subparagraph (b) should also contain a provision limiting the time for removal by the owner of the property and providing that if the owner fails to remove the property within the prescribed time, the stipulation shall be of no force and effect.

Options and Contracts of Sale

When the land involved in a condemnation case is the subject of a valid accepted option or contract of sale, executed both by the presumptive owners and by a duly authorized representative of the acquiring agency prior to the institution of the condemnation case, the accepted option or contract is binding upon the signatories thereto in the condemnation case. The accepted option or contract should be pleaded in the complaint in condemnation. The

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

U.S. Attorney or field representative is authorized without the prior approval of the Attorney General to have a judgment entered in the amount of the accepted option or contract provided that (a) the local representative of the acquiring agency has advised in writing that the land has not decreased in value due to any action of the owners since the date of the option or contract, and (b) all special and unusual conditions and requirements of the option or contract, if any, have been performed. It is also necessary that a determination shall have been made that the optionors in the accepted option or the vendors in the contract of sale are the sole and only parties entitled to the just compensation, other than taxing authorities, lienors and encumbrancers whose claims may be satisfied from the award.

The procedure for summary judgments under Rule 56, F.R.C.P., should be utilized in obtaining the entry of consent judgments on options and contracts of sale, but only after the expiration of the time for filing of answers or appearance by defendants.

Settlement Policy and Guidelines in Condemnation Cases

For a complete statement of the policy objectives and guidelines to be observed in negotiating settlement agreements, reference is made to Land and Natural Resources Division Directive No. 7-68, which is set forth in the page 67, Land and Natural Resources Division Source Volume.

Overall settlement for all interests in a tract in a pending condemnation proceeding are much to be preferred over separate settlements for partial interests. As stated in settlement Form USA-156 "offers not including all interests in a tract will be approved only in exceptional cases and should be explained and justified fully."

For a more complete statement of policy as to the acceptance of partial settlements see tab "C", *IV Condemnation Seminar 1966*.

Offers in Compromise

Every offer of compromise in a condemnation case, with the exception of certain offers which involve payments of \$10,000 or less, as hereinafter set out, which the U.S. Attorney or field attorney considers may be recommended for acceptance must be submitted to the Department for consideration and acceptance or rejection. The U.S. Attorney or field attorney shall submit with the offer in compromise his recommendation; the range of the Government's proposed testimony of value in event of trial; the

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

probable range of testimony on behalf of the landowner insofar as known; all available appraisal reports, unless previously furnished to and reviewed in the Department; and a statement of all other factors pertinent to a determination of the advisability of accepting or rejecting the proposed settlement. Whenever feasible, the Department should be advised of the recommendation of the local representative of the acquiring agency with respect to the proposed settlement. This recommendation and information should be submitted on triplicate Forms No. USA 156 (Appendix, Form 24) which forms may be obtained from the Department. See Appendix, Forms 26 and 28, for suggested forms of stipulation and judgment thereon. The forms for offers involving the revestment of property under 40 U.S.C. 258f must include the appraisals of the property to be revested and the appraised value of the interest to be retained by the United States.

In Department of the Army acquisitions, the District Engineers have authority to approve or reject settlements involving payments of \$10,000 or less, or for greater amounts which are not in excess of the fair market value of the land involved as determined by Department of the Army appraisals. In submitting offers in compromise which require the payment of sums in excess of the authority of the District Engineers in cases for the condemnation of land at the request of the Department of the Army, the U.S. Attorney or field attorney should urge the District Engineer promptly to submit his recommendation for acceptance or rejection of the offer to the Office of the Chief of Engineers whose views will be requested by the Department.

The Department of the Navy has authorized its District Public Works Officers to approve or reject proposed settlements of claims not in excess of \$25,000 against the United States in condemnation proceedings. In submitting offers in compromise in Department of the Navy cases exceeding the U.S. Attorney's settlement authority of \$10,000 and not exceeding \$25,000, the recommendation of the local District Public Works Officer should be submitted with the offer. As to settlement offers involving payments in excess of \$25,000, the U.S. Attorney should urge the local District Public Works Officer promptly to forward his recommendation to: Commander, Naval Facilities, Engineering Command, Department of the Navy, Washington, D.C. (Attention: Office of Counsel), whose recommendation will be sought by the Department.

Regional Solicitors of the Department of the Interior have authority to approve or reject settlements involving payments for

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

\$10,000 or less. In submitting offers in compromise in excess of \$10,000 in Department of the Interior cases, the U.S. Attorney should urge the local regional solicitor promptly to forward his recommendation to the Solicitor of the Department of the Interior, whose recommendation will be sought by the Department.

The authority of the above-mentioned field representatives does not relate to settlements which involve the revestment of the title to portions of the lands acquired or interest therein. The field representatives should submit their recommendations as to such offers in the same manner as in settlements involving payment in excess of their delegated authority.

Limited Authority of U.S. Attorneys to Settle Condemnation Cases — Procedure in Such Cases

On November 16, 1964, by Memorandum No. 389, the U.S. Attorneys were authorized to accept or reject offers in compromise of claims against the United States for just compensation in land condemnation proceedings when the gross amount of the proposed settlement does not exceed \$10,000 except that:

1. The settlement must be approved in writing (to be retained in the U.S. Attorney's file) by the authorized field representative of the acquiring agency, unless it does not exceed the amount deposited with the declaration of taking as to the particular tract.

2. The amount of the settlement should be compatible with the sound appraisal(s) upon which the Government would rely as evidence in the event of trial, having due regard for probable minimum trial costs and risks.

3. This delegation of authority does not apply:

(a) When, for any reason, the compromise of a particular claim, as a practical matter, will control or adversely influence the disposition of related claims totaling an amount in excess of \$10,000 or

(b) When the revestment under 40 U.S.C. 258f of any land or improvements or any interest or interests in land are involved, except in cases in which the landowner desires to remove buildings, trees and shrubs, crops, and fixtures attached to the realty which are not needed or desired by the Government provided that the exclusion has been approved by the local representative of the acquiring agency (discussed at page 16, *supra*), or

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

(c) When, because a novel issue of law or question of policy is presented, or for any other reason, the offer should receive the attention of the Land and Natural Resources Division of the Department.

When a settlement has been made consistent with this delegation of authority the procedural functions of completing the matter should be pursued promptly, including the entry of judgment and distribution of the award. However, the U.S. Attorney must immediately forward to the Department a letter or memorandum, signed by him or showing his personal approval, retaining an initialed copy thereof in his file, recording the action taken and adequately stating his reasons thereof. In routine cases, the U.S. Attorney may adopt for this purpose a form such as USA Form No. 155 (Appendix, Form 36). A supply of these may be obtained from the Department.

Obviously this delegation of authority is not to be exercised in matters involving the revestment of an land or improvements, or any interest or interests in land, under 40 U.S.C. 258f.

Trials

Rule 71A(h) provides that any party to a condemnation case may have a trial by a jury on the issue of just compensation by filing a demand therefor unless the court in its discretion orders that, because of the character, location or quantity of the properties to be condemned, or for other reasons in the interest of justice, the issue of just compensation should be determined by a commission of three persons appointed by the court. The Rule further provides that trial of all issues shall otherwise be by the court.

In order to preserve the right to a trial by a jury or a commission, a demand for a jury trial should be filed in all major tract cases and in any other cases when by reason of special circumstances the Department requests such demand or the U.S. Attorney determines that it is in the interest of the United States that a jury trial should be demanded. Major tracts involve an estimate of just compensation in excess of \$100,000, a substantial money risk or a significant unsettled legal problem. (See Tab XYZ, I "Condemnation Seminar, 1962"), and p. 10 and 11 of this Title. Under Rule 38(b) a demand for a jury trial may be endorsed upon a pleading. In the cases referred to above the demand for a trial by jury should be endorsed upon the complaint in condemnation and notice of the demand should be included in the notice of con-

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

demnation (Appendix, Form 5).

As to all pending cases, except those in the major-tract program, U.S. Attorneys are authorized to waive jury trials if, in their discretion, it is in the interest of the United States to do so, except when contrary instructions are issued by the Department as to a particular case. Juries will be waived in cases in the major-tract program only upon instructions from, or with the prior consent of, the Department.

If it is subsequently determined that the use of a commission is advisable, a motion should be made for the appointment of the commission. The motion should set forth the facts justifying the use of the commission. The order of court appointing the commission should include a finding of fact by the court as to the necessity for use of the commission.

Motions for New Trials and Objections to Commission's Awards

If the amount of a jury verdict or the award of a commission appointed by the court under Rule 712 (n) exceeds the valuations testified to by Government witnesses or the amount of the purchase price in an accepted option or contract of sale, the Department must be furnished promptly with a full report of the trial or hearing with specific recommendations for future action, and pending the receipt of instructions from the Department, either a motion for a new trial must be filed in accordance with Rule 59, F.R.C.P., or written objections to the Commission's award must be filed in accordance with Rule 53 (a) (2) *id.* It is extremely important that such motions and objections set out detailed exceptions. Exceptions must be specifically directed to defects, such as failure to disclose how the commission came to its dollar figure, what weight it gave to a particular witness or a particular sale, etc. Most important is explicit detail as to how basic disputes were resolved. In most cases, the dispute turns on a few items, for example, value of bottomland, extent of cultivable acreage, degree of flooding before the taking, or severance damage. Exceptions should demand detail in each such regard. For further information as to the necessity for filing detailed exceptions, see *United States v. Merz*, 376 U.S. 192 (1964); *Morgan v. United States*, 356 F. 2d 17 (C.A. 8, 1966) and "*IV Condemnation Seminar, 1966.*"

Judgments

The U.S. Attorney or field attorney should take care that judgments in condemnation cases include an adjudication of all

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

issues within the jurisdiction of the court. Separate judgments on the several issues in the case should be avoided whenever possible, thus, for example, an order of distribution should be included in a judgment determining compensation. Judgments should not contain recitals of pleadings, reports of commissions, or the record of prior proceedings.

Judgments determining compensation should contain:

- (a) A finding and adjudication of the right of the United States to condemn the property involved for public use;
- (b) An adjudication that title to the exact estate or interest condemned is vested in the United States, if the declaration of taking procedure has been used, or, if not, an adjudication that title to the exact estate or interest will vest in the United States upon payment of the just compensation into the registry of the court;
- (c) Confirmation of the stipulation between the Government and the landowners fixing the amount of just compensation or confirmation of the verdict of the jury or the award of a commission appointed by the court to determine compensation;
- (d) An accurate legal description of the property, which may be by reference to the complaint or declaration of taking;
- (e) Whenever possible, a finding and adjudication of the right of the defendants to distribution of the just compensation;
- (f) Provision for the payment of interest, if any, for which the Government may be legally liable;
- (g) Provision for any refund of moneys deposited into the registry of the court to which the Government may be entitled;
- (h) An adjudication of any other issue not previously ruled upon formally by the court.

Rule 58, F.R.C.P., providing for entry of a judgment by the clerk on jury verdicts, does not apply to condemnation cases because adjudication by the court of deficiency, interest and other matters is required, and in commission-tried cases such a judgment is the final one rather than an order simply overruling exceptions to the report without more. See *United States v. Evans*, 365 F. 2d 95 (C.A. 10, 1966).

Requests for Checks in Satisfaction of Deficiency Judgments

Upon the entry of judgments fixing compensation and ordering the deposits of deficiencies, copies of the judgments should be submitted with the intermediate transcripts as provided in this Title except:

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

(1) In acquisitions for the Bureau of Reclamation of the Department of the Interior and for the Department of the Navy, if the judgments are satisfactory and acceptance of the award has been approved by the local authorized representative of the agency, one certified copy and one plain copy of the judgment should be transmitted to the designated local representative with a request for a check in satisfaction of the deficiency, and two plain copies of the judgment should be transmitted to the Department of Justice.

(2) In acquisitions for the Departments of the Army and Air Force, if the judgment is not in excess of the highest testimony of the valuation witness for the Government or in cases where there are stipulated judgments, one certified copy and two plain copies of the judgment should be transmitted to the local District Engineer with a request for a check in satisfaction of the deficiency, and two plain copies of the judgment should be transmitted to the Department of Justice.

Disbursement of Funds in Court

U.S. Attorneys and field attorneys are required actively to assist landowners and the court, as *amicus curiae*, in effecting prompt distribution of funds deposited into the registry of the court as just compensation. Duplicate conformed copies of all orders of distribution should be promptly transmitted to the Department. Rule 71A(j), F.R.C.P. which relates to distribution, provides that the court and attorneys shall expedite the proceedings for distribution and for the ascertainment and payment of just compensation in cases in which a deposit is made. Government counsel should obtain promptly and furnish to the court all information available as to the state of the title to the property and any liens, taxes, and encumbrances thereon. Government counsel should also assist landowners in the preparation of motions for, and orders of, distribution and affidavits for execution by the claimants in support of motions for distribution. Care should be taken to see that a proper order is entered for the payment of all taxes and assessments due and exigible at the time of vesting of title in the United States. Unless serious doubt exists as to the real ownership of the property Government counsel should not delay distribution of just compensation for any extended period for the procurement of curative material for the elimination of defects of title but should rely upon the condem-

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

nation procedure for that purpose. For application, motion and order to disburse funds, see Appendix, Forms 17, 18, and 19.

No case may be considered closed until:

- (1) All funds have been ordered disbursed;
- (2) The termination of all pending matters, such as motions for new trial, appeals, etc., and in use cases;
- (3) The final term has expired, and
- (4) The question of restoration damages has been adjudicated or otherwise disposed of.

When funds cannot be disbursed because the owner cannot be located, or for other reasons, an order should be sought as promptly as the court will entertain such orders for the refund of the undistributed balance to the Treasury of the United States pursuant to 28 U.S.C. 2042. Action pursuant to this Section becomes a ministerial duty of the Clerk of the Court. Although copies of the order directing the transfer of funds should be furnished the Department, the Clerk of the Court will assume the responsibility for the actual transfer of funds pursuant to the court order. In the event a subsequent order is entered for a redeposit of the moneys for purposes of withdrawal, it will be the duty of the Clerk of the Court to submit the court's order direct to the audit section of the Administrative Office of the U.S. Courts for processing with the Treasury Department. A copy of this order should also be sent to the Department so that the records of the case will be complete. Although the U.S. Attorneys should assist the landowners in filing the motion to redeposit the funds and advise the court with reference thereto, no further action thereon by either the U.S. Attorney or the Department will be required to obtain the redeposit.

Progress of Cases

The Department must be informed promptly by letter of all major steps taken in each case, such as the completion of personal service of notice and of publication of notice, the dates of all trials and hearings and the results thereof; the filing by any defendant of a notice of appeal or a motion for a new trial. It is essential that there shall be strict observance of the foregoing rule.

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION
10-Point Program for Settlement or Trial Within a Year

There follow specific suggestions for a procedural program designed to aid in the accomplishment of our goal under this program:

1. Inspect the property as soon as possible. There is no substitute for thorough knowledge of the property for either settlement negotiations or trial purposes.

2. Promptly request continuation of title evidence to the date of filing declaration of taking or *lis pendens* and if you have difficulty in obtaining such evidence request assistance from the Department.

3. Review agency appraisals within 10 days. Satisfy yourself both as to the adequacy of the appraisal report and of the appraiser to be an effective witness. Appraisal reports must, of course, be updated to reflect valuations as of the date of taking. This will supply trial counsel with current information concerning the case, will enable him to determine whether an additional appraisal is necessary, and will put him in a position to conduct meaningful settlement negotiations or be ready for trial. When further appraisal services are deemed necessary, promptly submit a Form DJ-25 for that purpose. See Directive No. 11-68 in p. 73, "Land and Natural Resources Division Source Volume," for complete and helpful information as to the preparation and reviews of appraisals by personnel of the offices of the U.S. Attorneys, the Land and Natural Resources Division, and the acquiring agencies.

4. Commence serving parties or publishing against them within 30 days of the receipt of the continuation title evidence. Personal service should, of course, be effected whenever possible.

5. Advise the Department of important legal issues within 30 days or as soon as they develop after that time. The Department has, indexed and readily available, many briefs and memoranda of law covering legal issues which have developed in condemnation cases, and the Department is willing to undertake research on other issues; but it must first be informed of the problems which you have encountered before it can be of maximum help to you.

6. Service or publication should be completed within 60 days.

7. There should be a thorough exploration of settlement possibilities within 90 days. A review of pending tracts reflects that approximately 75 percent are within the existing \$10,000 settle-

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

ment authority of U.S. Attorneys with the concurrence of the acquiring agency. Use your settlement authority to the fullest extent possible. Outside of direct purchase, which the acquiring agencies have been urged to accomplish whenever possible, amicable settlement represents the quickest and most satisfactory way for a government to acquire privately owned property.

8. Wherever local practice and the condition of court calendars will permit, a pretrial should be held within 6 months. In addition to resolving preliminary matters such as discovery, objections to the taking, motions, methods of trial, etc., a pretrial setting necessitates an examination of positions and frequently acts as a spur to serious settlement negotiations. A later pretrial, or even pretrials, may prove to be necessary if the case is to be tried on its merits.

9. A review of the pending tracts also reflects that about 64 percent fall within the scope (up to \$4,000 or cases of a truly routine nature) of the small-tract program. The brochure covering this program is to be found under tab W of your "I Condemnation Seminar 1962" ring binder and as set out at p. 22, "Land and Natural Resources Division Source Volume." The program has proved to be an effective means for prompt and satisfactory closing of condemnation cases in many districts. It is commended to you.

10. Trial should be set within a year. If circumstances beyond your control preclude this, then the earliest possible trial setting should be sought.

For a discussion of this 10-point program, see p. 16, "Land and Natural Resources Division Source Volume."

Correspondence With Department

To avoid delays in identifying files, docketing and routing to attorneys in the Division, all letters to the Department with regard to condemnation cases shall contain, either in the heading or in the first paragraph, the current departmental file number, the title and docket number of the case, and the names of the acquiring agency and the project. A carbon copy should be included with the original letter.

Transmittal of Papers to the Department

There shall be transmitted to the Department immediately upon the filing thereof one conformed copy of all papers of whatever nature filed in the case except those papers included in transcripts of the record furnished the Department in accord-

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

ance with the following section. The date of filing should be noted on the copy transmitted to the Department.

Transcripts of Record

The U.S. Attorney or field attorney shall transmit to the Department at the hereinafter designated stages of the case successive partial transcripts which will be combined in the Department at the conclusion of the case into a complete transcript of record. No further or additional transcript is required and no documents included in one transcript need be duplicated in any subsequent transcript.

Initial Transcript

Upon the institution of the case there shall be transmitted to the Department an initial transcript consisting of:

- (a) One certified and one conformed copy of the complaint;
- (b) Two conformed copies of the notice of condemnation;
- (c) If a declaration of taking is filed, duplicate originals of the dated receipt of the Clerk of the Court for the moneys deposited as estimated compensation;
- (d) If a judgment is entered upon a declaration of taking or if an order of possession is obtained, one certified and one conformed copy of the judgment or order;
- (e) One certified and one conformed copy of any order and two conformed copies of any other paper filed in connection with the institution of the case.

Intermediate Transcript

Upon the entry of any judgment determining just compensation (whether for one or more tracts in the case) there shall be transmitted to the Department an intermediate transcript consisting of:

- (a) One certified and three conformed copies of the judgment if the Department is to obtain the deficiency or two uncertified copies of the deficiency judgment together with a copy of the letter of transmittal if the judgment has been transmitted with a request for payment to the local representative of the acquiring agency as authorized on page 22 of this Title;
- (b) One conformed copy of all papers of whatever nature filed

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

in the case to and including the date of entry of the judgment (but excluding copies of papers included in transcripts previously transmitted to the Department and excluding orders of distribution);

(c) Evidence of the recordation of any *lis pendens* recorded among the local land records;

(d) The evidence of title, properly continued as hereinabove provided;

(e) The certificate as to parties in possession and mechanics' liens (Appendix, Form 2).

When an intermediate transcript is transmitted to the Department, the U.S. Attorney or field attorney should state in the letter of transmittal that the transcript constitutes, or when combined with partial transcripts previously transmitted will constitute, a complete transcript of the record of the case to date.

Final Transcript

Upon the entry of a final judgment (whether for one or more tracts in the case) there shall be transmitted to the Department a final transcript consisting of:

(a) One certified and one conformed copy of the final judgment unless copies of the judgment were previously transmitted to the Department with the intermediate transcript as set out in subsection (a) above;

(b) Duplicate originals of the dated receipt of the Clerk of the Court for any moneys deposited pursuant to a judgment determining compensation (Appendix, Form 1);

(c) The evidence of title, properly continued as hereinabove provided, unless needed for use in effecting distribution of just compensation, in which event the evidence of title should be transmitted to the Department upon the completion of distribution;

(d) Evidence of the disposition other than in the case of any outstanding compensable interests disclosed by the evidence of title.

The transmittal letter should explain how any title objections noted in the title evidence have been eliminated or attach any curative data obtained to eliminate such objections.

Soldiers' and Sailors' Civil Relief Act

The Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. June 1, 1970)

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

1178), as amended, is in full force and effect and is applicable to condemnation cases. The U.S. Attorney or field attorney must investigate to determine whether any defendant who has not answered or filed an appearance is in military service with the Armed Forces or is in the Public Health Service on duty with the Armed Forces. If an investigation locally is not productive of the necessary information, the Department should be furnished with a list of the full names and last-known addresses of the defendants who are in default of answer or appearance, so that any available information may be obtained from the military forces. The U.S. Attorney or field attorney must comply strictly with the provisions of the Act (50 U.S.C., App. 520) by filing necessary affidavits and moving for the appointment of an attorney *ad litem*, when required.

Termination of Temporary Use Cases

Upon receipt of instructions from the Department that the temporary use of property is no longer necessary, the U.S. Attorney or field attorney should promptly file a motion for the limitation of the term condemned to the date of termination of the temporary use and the surrender of possession of the property by the Government. Service of the motion and notice should be made in accordance with Rule 5 (b), F.R.C.P. Proper arrangements should be made promptly for a determination of the extent, if any, of the monetary liability of the Government for payment of just compensation by reason of any physical changes of the property resulting solely from the Government's use. Generally, there should be obtained an estimate of the cost of physical restoration, with proper allowance for salvage, and an appraisal reflecting the diminution or enhancement in the fair market value of the property as of the date of termination of the temporary use resulting directly and exclusively from physical changes made by the Government.

The case should be set for trial at the earliest practicable date for the adjudication of all claims of the defendants for restoration.

**Reimbursement in Certain Cases for Expenses and Damages
Incurred in Moving**

Most governmental agencies have authority to reimburse owners and tenants for reasonable moving expenses within the limits of the Acts of Congress authorizing such payments.

The authorizing statutes are permissive and not mandatory.

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

Since the authorized reimbursements are discretionary with the head of the interested agency all inquiries by owners or tenants with respect to such reimbursements should be referred to the local representatives of the acquiring agency.

The authorizing statutes expressly provide that reimbursement to owners and tenants shall be in addition to, but not in duplication of, any payment for the acquisition of land that may otherwise be authorized by law. The authorizing statutes do not change existing substantive law applicable in condemnation cases. No changes in existing practices and procedures in handling condemnation cases and particularly in negotiating for settlements in condemnation cases are required by the authorizing statutes. However, U.S. Attorneys and field attorneys should advise the local representatives of the acquiring agency of any case in which an owner or tenant asserts a claim for expenses and other loss and damage alleged to have been incurred by such owner or tenant as a result of the moving of themselves, their families and possessions because of the acquisition of the land. This requirement for notice to representatives of the acquiring agency is particularly applicable in cases for the condemnation of the temporary use of property wherein claims may be asserted for moving costs under the rule established in *General Motors Company v United States*, 323 U.S. 373.

Representatives of these governmental agencies have been instructed to coordinate their activities under the authorizing statutes with representatives of the Department of Justice to insure that no duplication of payment will result and to advise representatives of the Department of Justice of reimbursements made under the authorizing acts to owners and tenants prior to the determination of just compensation whether by settlement or trial.

IBM Reports

Duplicate copies of IBM listings of all pending condemnation cases and tracts are periodically submitted to the U.S. Attorneys. These listings report the action taken in such cases and the status of the proceedings as to individual tracts as disclosed by the departmental records. U.S. Attorneys should review these reports and promptly post the current status of all such pending cases and tracts as disclosed by their records and files and return a complete copy of the reports to the Administrative Section, Land and Natural Resources Division in order that the departmental records may reflect all recent action taken and to correct any errors in our

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

records. One copy of the listing should be retained by the U.S. Attorney for the use of his staff. It is important that these reports be accurately posted and that no judgments determining compensation be reported thereon unless such judgments relate to all interests in a particular tract.

U. S. ATTORNEYS MANUAL 1970

**A PROCEDURAL CHECKLIST FOR THE
PROCESSING OF CONDEMNATION CASES
AND SUGGESTED FORMS OF PLEADING**

**Procedure from Receipt of Authorization to
Commencement of Suit**

A. When a request is made of the Attorney General by an official of an agency of the Government authorized to acquire land, you will be advised of such request. At that time the following usually will be sent to you:

1. A certified copy of the Government official's letter to the Attorney General requesting the institution of condemnation proceedings, and citing the authority for the taking.

2. A declaration of taking and one copy thereof, to which will be attached a description of the land to be acquired and a map showing the land. In some cases, however, no declaration of taking will be forwarded.

3. A check for the estimated compensation, or instructions indicating how the check may be obtained, in cases where a declaration of taking is to be filed.

4. In takings for the Department of Agriculture, usually options have been obtained, and condemnation is requested in order to eliminate title defects. In such cases usually no declaration of taking will be filed, and the request for condemnation will be accompanied by the option contract and title evidence.

5. Advice as to classification of the case and division of responsibility for the prosecution of the case between the U.S. Attorney and attorneys in the Land and Natural Resources Division. See page 10 of this Title.

6. On occasion the letter of transmittal may contain special instructions which will govern your procedure if at variance with anything contained in this checklist.

B. Upon receipt of a request to institute condemnation proceedings, take this action:

1. Request the following from the local office of the acquiring agency:

(a) A check for the amount of the estimated compensation, in those cases where a declaration of taking has been forwarded

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

to you, if a check was not transmitted with the request to institute the proceedings.

(b) A sufficient number of copies of the property descriptions of the condemned land.

(c) If the description of the estate condemned is lengthy, request a sufficient number of copies of such description. This often is desirable in easement cases.

(d) The description of the estate and of the land condemned, referred to in (b) and (c) above, may be attached as exhibits to and incorporated as a part of the complaint, the notice of condemnation, and other orders and pleadings, where deemed necessary, in order to avoid the necessity of retyping such descriptions, with consequent chance for error. These descriptions usually will be mimeographed upon request to the acquiring agency, and, as a general rule, the number of copies to be requested of each description will be dependent upon the number of tracts to be included in the proceeding and the number of defendants.

(e) Such title evidence as is presently available.

2. Prepare the following documents:

(a) Complaint in condemnation (see Rule 71A(c), F.R.C.P.), Appendix, Form 4.

(b) Clerk's receipt, showing the deposit of estimated compensation, if a declaration of taking is to be filed (Appendix, Form 1).

(c) Motion and order for delivery of possession, if requested by the Department (Appendix, Form 10).

(d) Notices of condemnation for service upon defendants (see Form 28, F.R.C.P. or Appendix, Form 5).

(e) *Lis pendens* notice for recording among the local land records. If more than one county is involved, a separate notice is necessary for each county.

(1) It is better practice to prepare and file for record a *lis pendens notice* in any case. However, local practice in some districts, when a declaration of taking has been filed, is to file in the local land records either a copy of the declaration of taking or a copy of a judgment on declaration of taking. These are permissible alternatives. In no instance should both a *lis pendens* notice and a judgment on declaration of taking be filed.

(2) This step may be omitted, if the State law specifically provides that the filing of the action serves the purpose of a *lis pendens* notice. The important thing is to do whatever is necessary to constitute notice under local law.

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

(f) Form letters to purported owners notifying them of the proceedings and of their right to withdraw the deposit, upon proof of ownership (Appendix, Form 3).

C. Commence the condemnation proceedings by taking the following steps, unless the letter of instructions from the Assistant Attorney General, Land and Natural Resources Division, directs otherwise:

1. File the complaint and the declaration of taking, if one has been furnished.

2. Deposit the check for the estimated just compensation in the registry of the court, in cases where a declaration of taking is filed, and have the clerk execute the clerk's receipt.

3. File a motion for order for delivery of possession, when requested, and present an order for delivery of possession to the court as soon as possible. (Depending upon local practice and the circumstances of a given case, a hearing on such a motion, after notice and service, may be required, especially where the condemned tract is not vacant land) (Appendix Forms 10 and 11).

4. Deliver to the clerk, or hand to the Marshal (depending on local practice), a notice of condemnation for each defendant unless he has exercised a waiver of service (Appendix, Form 16). Two copies of each such notice will be required, one copy for service on the defendant and one copy upon which the Marshal will make his return. Include addresses of the defendants and if no address is had for a known defendant, request a "not found" return if the defendant cannot be located.

5. Record in the local land records the *lis pendens* notice or a copy of the judgment on declaration of taking, as provided in Section 1b 2(e), above.

6. When an order for delivery of possession has been entered, hand two certified copies of such order for each defendant to the Marshal, one for personal service and the other for the Marshal's return.

7. If a declaration of taking has been filed, mail a form letter (B2(f), above) to each defendant.

Procedure subsequent to Commencement of Suit

A. Send one certified and one uncertified copy to the Department of the instruments, which are designated as the initial transcript, p. 27, this Title.

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

B. Forward to the local office of the acquiring agency one copy of each of the documents sent to the Department under A above, or ascertain from such office what copies are desired.

C. Request the local office of the acquiring agency to furnish:

1. Title evidence, properly extended to a date *subsequent* to the time of filing the complaint in condemnation, in those States where such filing constitutes notice; or to the time of recordation or either a *lis pendens* notice, a declaration of taking, or a judgment on declaration of taking. (It should be ascertained in each instance whether the acquiring agency will furnish the title evidence or if your office must procure it.)

2. Appraisal data. (Request the agency to have the data supplemented to the date of taking.)

3. Copies of options, if any, on the land acquired.

4. Any negotiation reports which are available.

5. Certificates as to parties in possession and mechanics' liens claims, dated immediately following the filing of the *lis pendens* notice or the declaration of taking (Appendix, Form 2).

6. Any other evidence deemed necessary, such as engineering surveys, condition reports, restoration estimates, photographs, maps, etc., anticipating to the extent possible your requirements for exhibits to be used at trial.

D. If not furnished by the agency, arrange to procure such title evidence as may be required in the manner provided in pp. 12 and 49 of this Title. If an expenditure of more than \$2,500 is anticipated, bids must be solicited from competent abstracters, lawyers, or title companies in the vicinity, as required in 41 U.S.C. 5, and the Department should be advised, with your recommendation as to which bid should be accepted, and Form mDJ-25 submitted.

E. Upon receipt of the title evidence, duly extended, and certificates as to parties in possession and mechanics' liens:

1. If the description of the property in the title evidence differs from that in the declaration of taking, request that the title evidence be amended or obtain a statement that the land examined by the title examiner is the same as that described in the declaration of taking.

2. Examine the title evidence and such certificates to determine the persons having a possible compensable interest who should be joined as parties defendant.

(a) When joining unknown heirs and devisees of a deceased person, or any other persons having an apparent interest whose

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

names cannot be ascertained, always add "unknown owners" as a party defendant.

(b) Always join the State as a party defendant when you have named as parties defendant heirs in an unprobated estate, who are expected to share in the award. This is to clear inheritance tax liability which must be satisfied.

3. If any parties are found by the title search to have an interest in the property who were not joined in the original complaint, prepare and file a pleading by which they may be joined as parties defendant. This may be accomplished by:

(a) A motion and order to add additional parties (Appendix, Form 7);

(b) A supplemental complaint to add parties; or

(c) An amendment to the complaint to add parties (Appendix, Form 6).

4. Where a party dies or becomes incompetent, move for a hearing on a motion to substitute parties as provided by Rule 71A(g), F.R.C.P., and effect service on the necessary parties. As to transfers of interest, however, see the Anti-Assignment Act, 31 U.S.C. 203, and *United States v. Dow* 357 U.S. 17 (1958).

5. Obtain appropriate service of notice upon additional parties in the same manner as parties named in the original complaint in condemnation.

(a) If constructive service is required:

(1) Prepare certificate for service by publication (Appendix, Form 8), and

(2) Arrange for such publication in the manner provided by Rule 71(d)(3)(ii), F.R.C.P.

(3) Only those not personally served need be named and the notice to be published should contain only the shortest adequate legal description sufficient to identify the property on which personal service was not effected.

(b) When publication has been completed:

(1) Obtain from the publisher the required proof of publication, and

(2) Prepare the certificate of publication and mailing as required by the foregoing Section of the F.R.C.P. on publication (Appendix, Form 9).

(3) When personal service has been completed and publication of constructive service has been commenced a copy of the actual published notice, accompanied by the Marshal's returns of all persons served with summons and a list of those defendants whose

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

appearances have been entered, should be forwarded to the Department.

6. Obtain service upon minors and incompetents in the manner prescribed by the law of the State, secure the appointment of and service upon guardians *ad litem* and obtain the appointment of and service upon attorneys *ad litem* for those in the military service or in the Public Health Service on duty with the Armed Forces.

F. Request a current tax statement from the applicable taxing authorities and a current statement from other lienholders. (Appendix, Forms 13 and 14) and take steps to see that all taxes and assessments which are a lien as of the date of taking are satisfied either by payment out of the deposit or by requiring the landowner to furnish a receipt or other evidence of payment.

G. When it is necessary to retain the services of an independent appraiser or appraisers, the Department should be furnished with the usual Form DJ-25, with executed Form USA-157 attached (Appendix, Form 23) for approval before engaging the services of an independent expert:

1. Such request may either specify that:

(a) The amount to be paid the expert for an appraisal be in a lump sum (however, you should show the estimated number of days required for such appraisal); or

(b) Give the rate per diem and the estimated number of days necessary to prepare the appraisal.

2. Submit a separate Form DJ-25 for each such appraiser which includes his fee for conferences with you in preparation for trial and for testifying at trial, generally on a per diem rate, giving the anticipated number of days required for such purposes. If it is anticipated that such conferences and trial will not occur during the current fiscal year, do not submit a DJ-25 for these services until after the end of the current fiscal year, as funds otherwise will be set aside for such purpose which could be used for other purposes during the fiscal year. The expense must be justified as set out in Appendix, Form 23.

3. If the services of the appraiser will not be utilized, in whole or in part, immediately notify the Department, so obligated funds may be released.

4. When an independent appraiser is to be retained, you should be sure that his appraisal is made before improvements have been removed or the condemned property is otherwise altered.

5. Observe the three point program to insure efficiency in incur-

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

ing appraisal and expert witness expenses. See page 68 this Title.

H. Upon receipt of appraisal data:

1. Examine appraisals carefully.
2. As necessary, arrange for consultations with the appraisers.

Procedure Subsequent to Answer or Appearance

A. If a defendant wishes to raise an objection to the taking, he must answer within 20 days from receipt of notice, unless the time is extended.

B. If a defendant merely wishes to appear in the cause to assure notice of any future action to be taken therein, you may suggest that he file a notice of appearance (Appendix, Form 15).

C. If the answer filed by a defendant contains allegations or contentions which are insufficient as a matter of law, or objections to the taking which are not timely filed (see A, above):

1. File a motion to strike on behalf of the Government.
2. Have such motion set down for an immediate hearing.

D. If the answer filed by a defendant raises the issue of the Government's right to take the property; or a motion is filed by the defendant to dismiss the proceeding or to vacate the declaration of taking or the order for delivery of possession:

1. If time permits, the answer or motion should be sent to the Department for comment before filing a responsive pleading.

2. Otherwise file a motion to strike on behalf of the Government. (N.B.: *Ferman v. Parker*, 348 U.S. 26 (1954); *United States v. Carmack*, 325 U.S. 230 (1946).)

3. In lieu of a motion to strike, you may file a motion for summary judgment and/or judgment on the pleadings as to the right of the Government to condemn the property in question.

4. Have the motion set for a hearing at the earliest possible date.

E. The Department must be notified promptly of the outcome of all hearings and arguments upon such motions, and you should send two uncertified copies of the following instruments to the Department:

1. Answer of the defendant.
2. Motion to strike (or other appropriate motion) if filed on behalf of the United States, and any memorandum of law filed in support thereof.

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

3. Order of the court ruling on such motion.

F. The Department should be informed promptly of any suggestions which either you or the property owners may have concerning modification, alteration, or change of the estate or description of the property to be condemned, but no alteration of the pleadings should be made except upon receipt of appropriate instructions from the Department. (Note, however, page 15, this Title.) See suggested form of stipulation for revestment of title pursuant to 40 U.S.C. 258f (Appendix, Form 28).

G. If a request is received from the Department for the exclusion or dismissal of land from a proceeding:

1. If a declaration of taking has been filed, endeavor to stipulate with the former owners, pursuant to 40 U.S.C. 258f, for the exclusion of such property from the proceeding and the revestment of title thereto in the former owners. The stipulation should provide for the return of the estimated compensation for such revested property to the United States. If the Government had possession of the property for a period of time, the stipulation should fix the amount of compensation for the period of such occupancy, or specifically include a waiver of the right to receive compensation for such temporary use and occupancy. If no agreement is reached, a hearing as to compensation due, if any, will be necessary (Appendix, Form 28).

2. If no declaration of taking has been filed, dismiss the property in question from the proceedings, pursuant to Rule 71A(i), F.R.C.P. (Appendix, Forms 29 and 30).

H. The Department always should be furnished with copies of:

1. Briefs or memoranda of points and authorities filed or submitted at any stage of the proceedings.

(a) Such briefs and memoranda should be sent in advance of arguments, allowing sufficient time for comment.

(b) Should Department memoranda, or briefs, be desired by Government counsel or be required by the court, a specific request must be made therefor.

2. All other orders, including:

(a) Orders for the appointment of guardians *ad litem*.

(b) Pretrial orders.

(c) Orders appointing commissioners.

(d) Instructions proposed or given to juries or commissioners.

(e) Verdicts of juries and awards or reports of commissioners.

(f) Judgments.

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

(g) Motions and orders after judgment, including those for a new trial.

(h) Appeal papers or action of any kind which has been taken respecting appeal.

3. Furnish the Department with a prompt report of the outcome of all hearings and trials, together with your recommendations as to future action.

Procedure for Ascertainment of Just Compensation

A. When service has been completed, the case should be prosecuted to a speedy conclusion in order to reduce the amount of interest on any award in excess of the amount which has been deposited in court. Prompt action should be taken to conclude the case by settlement, either on the basis of an option or a compromise offer, or by having the case set for an early trial on the issue of just compensation.

1. Cases involving lands included in options and contracts of sale accepted by acquiring agencies prior to the institutions of the proceedings should be processed in the manner provided for on page 16 of this Title.

(a) Allow time for the filing of answers or appearances by defendants.

(b) Move for judgment on the basis of the option or sale contract.

2. Negotiations for compromise settlement always should be attempted.

(a) Such negotiations are the responsibility of the U.S. Attorney, but should be undertaken with the cooperation of the local office of the acquiring agency.

(b) Negotiations should be initiated or entered into only after the appraisals have been thoroughly examined and found to be sound.

(1) If evaluations vary greatly, then consultations with your appraisers first should be had to clarify or correct any possible misapplication of the facts or legal principles involved.

(2) If the appraisals are not satisfactory, or vary greatly, you should request reappraisals of the property or request authority to engage additional appraisers.

3. If a settlement offer is received:

(a) Ascertain in writing the views of the local office of the acquiring agency.

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

(b) Formulate your own views of the offer, based upon the compatibility of the amount of the settlement with the sound appraisals upon which the Government would rely as evidence in the event of trial, having due regard for probable minimum trial costs and risks.

(c) If the settlement offer: (1) Does not exceed \$10,000 for all interests in a single tract (or for the interests settled plus outstanding interests in the same tract, on the basis of their appraised value), (2) does not involve revestment of title to land, (3) will not adversely affect other claims, and (4) you and the representative of the acquiring agency both believe that it should be accepted (see p. 19, this Title), proceed as follows:

(1) Draft and have executed a stipulation between the United States and the defendants in question (Appendix, Form 26). The stipulated amount should be inclusive of interest.

(2) Have judgment entered on the stipulation. The judgment should provide for a setoff against the agreed compensation for any improvements or timber removed from the premises under agreement with the former owner. (See recitals to be included in such a judgment, pp. 15 and 16, this Title.) If no deficiency deposit will be required, the judgment should be prepared in 7 copies: 2 for the Department (one certified and one plain), one for your office, one for the acquiring agency, one for the defendant, and the original and one copy for filing.

(3) If a deficiency deposit is required, request a check for such deficiency from the District or Division Engineer in Army, Air Force, AEC or NASA cases, the District Public Works Officer or the Regional Office of the Bureau of Yards and Docks in Navy cases, and the local representative in Bureau of Reclamation cases; a copy of the request together with 2 copies of the judgment should be submitted to the Department. The request is made through the Department in cases instituted on behalf of other agencies. For number of copies to be forwarded, see *infra*, F3 (a) and (b).

(4) Submit a prompt report of the settlement to the Department, using Form USA-155, or furnish such information by letter.

(5) The judgment fixing compensation should direct that distribution be made of the award; if it does not, prepare a motion and order for distribution.

(6) If no Declaration of Taking has been filed, a final judgment should be entered after the judgment fixing compensation has been satisfied by payment, reciting that fact and vesting title in the

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

United States. If a declaration of taking has been filed, the judgment should confirm title in the United States.

(7) Send the Department one certified and one uncertified copy of the stipulation and judgment thereon (additional copies of the judgment, as specified above, if a deficiency deposit is required), together with all title evidence, the certificate of inspection and possession, and the receipt of the clerk (in duplicate). If a final judgment has been entered, as indicated in (6) above, one certified and one plain copy should be furnished the Department.

(d) If the offer of settlement exceeds your delegated authority or the acquiring agency does not concur in the proposed settlement:

(1) Submit the offer to the Department for consideration on Form USA-156.

(2) Advise of your recommendation, with the reasons therefor in detail.

(3) Advise of the recommendation of the local office of the acquiring agency. At the same time you should request the local representative of the acquiring agency immediately to forward his recommendation through proper channels to Washington.

(4) Forward all appraisal reports relating to the tract to the Department at the same time.

(5) Advise what witnesses would be used in the event of trial and the amount of their anticipated testimony.

(6) Advise the probable range of the defendant's testimony of value, if known, or the amount claimed, if known.

(7) Furnish any other information which would be helpful in considering the acceptability of the offer, including any unusual legal or factual issues involved, experience in other trials, whether the Government appraisers have proved to be good witnesses, etc.

(c) If Departmental authorization is received to accept the offer:

(1) Enter into a stipulation with the defendants involved.

(2) Procure any necessary disclaimers, waivers of compensation or other releases needed to clear up title objections, including affidavits of heirship.

(3) Use show-cause procedure to get parties into court on conflicting claims to share in the distribution of the award. The Government has no part in these disputes, but should assist the court and take the initiative in order to expedite closing the case.

(4) Have judgment entered as indicated at 3(c) (2) (5) above.

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

(5) Request a deficiency check, if necessary, as indicated at 3(c) (3) above.

(6) If a final judgment vesting title in the United States is required, it should be entered as indicated at 3(c) (6) above.

(7) Send the closing papers to the Department as in 3(c) (7) above.

B. A trial setting should be delayed only if settlement is imminent. If a settlement agreement appears unlikely, set the case for trial as soon as possible.

1. The Department must be advised, as far in advance thereof as possible, concerning all dates of hearings, trials, or arguments, including continuances thereof.

2. Rule 71A (h), F.R.C.P., authorizes the court when a jury has been demanded to appoint a commission instead of a jury to try the issue of just compensation when certain conditions prevail. (Note that the form of complaint contained in the Appendix contains a request for a jury which may be deleted except in the cases set out in p. 20, this Title. In respect to reference to a commission, except as to tracts included in a small tract program (see p. 22, "Land and Natural Resources Division Source Volume"), and other tracts involving no unusual legal problem or substantial value, the hereinafter set out procedure should be followed:

(a) If a motion for reference to a commission is filed by a defendant or if the court indicates that he is considering the appointment of commissioners, you should immediately notify the Department of this fact, together with your recommendations as to whether objections should be made to the appointment of a commission, and await instructions.

(b) If the court appoints a commission on his own motion, immediately notify the Department and give your recommendation as to whether or not objections should be filed to the order of the court. If possible, no objections should be filed to an order appointing a commission without first obtaining the approval of the Department.

(c) If, in your opinion, a commission should be appointed in a case, notify the Department to that effect and await instructions before requesting the appointment of a commission.

(d) If a commission is appointed submit a request to incur the expense on USA-41 (Appendix, Form 21), accompanied by the order of the court appointing the commission and setting fees for the commissioners.

3. Copies of all trial briefs or memoranda should be sent to the

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

Department sufficiently in advance of trial to permit study and comment.

4. Strict observance should be given to the time limits prescribed by the F.R.C.P. and full compliance should be had with all of the rules applicable to condemnation proceedings.

C. Immediately after hearing or trial, send a detailed report of the trial or hearing to the Department with specific recommendations for future action. If possible, a motion for a new trial should not be filed without the approval of the Department. Pending further instructions, including the advisability of filing objections or a motion for a new trial:

1. If trial has been to a judge or jury, and the award or verdict materially exceeds the Government's testimony:

(a) In proper cases entry of judgment should be delayed, if possible, in order to obtain additional time within which the Department may consider a motion for a new trial.

(b) Within 10 days after entry of judgment, or such additional time as allowed by the court, file a motion for a new trial, unless instructed otherwise, setting forth with particularity all grounds for the motion.

(c) Prepare and file a brief on the motion and arrange for a hearing thereon.

2. If the trial was held before a commission, resulting in an award which materially exceeds the Government's testimony:

(a) When the report of the commission is filed with the Clerk of the Court, submit to the Department a copy of the report and your recommendations as to filing objections and exceptions to the award.

(b) If objections are to be filed they must be filed within 10 days from the date the report is lodged with the Clerk and Rule 6(b), F.R.C.P., requires that they be full and complete and state specifically the grounds therefor; and the objections cannot be amended later to include additional grounds. Thus, an extension should be obtained to give time for consideration by the Department of:

(1) The necessity for obtaining the transcript.

(2) The advisability of filing objections.

(c) If objections are filed, prepare and file a brief in support thereof, and arrange for a hearing.

(d) If the court refuses to extend the time within which to prepare and file adequate objections which appear to be war-

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

anted, prepare and file such objections and immediately advise the Department.

D. If the motion for new trial is denied, or the objections to the report of the commission are overruled, immediately advise the Department and give your recommendations regarding appeal to the court of appeals.

1. Send one certified and one plain copy of the order of the court to the Department.

2. Your recommendation should include a statement of the factual and legal issues involved, the rulings of the court which may be grounds for an appeal, the reasons for your recommendations and the approximate cost of a transcript of the testimony. You also should state the date from which the time for appeal runs.

3. If appeal is recommended, unless otherwise instructed, file a protective notice of appeal just prior to the expiration of the time within which such notice may be filed, but not before then. This is to allow the Department the benefit of the full period of time for appeal to study the case and reach a decision.

4. The Department will advise you whether to order the transcript of testimony.

5. Note the instructions at p. 70, this Title, regarding the handling of appeals.

E. If the motion for new trial is granted or the objections to the award are sustained:

1. Send one certified and one plain copy of the order of the court to the Department.

2. Proceed with a new trial or other action directed by the court as expeditiously as possible.

3. Advise the Department of the results.

F. If the award corresponds to the Government's testimony, or if it is in excess thereof, but is approved by the Department:

1. Prepare a judgment.

2. Have the judgment entered.

3. If a deficiency deposit is necessary, submit the intermediate transcript (pp. 22 and 27, this Title).

Through proper channels:

(a) If the deficiency check is to be supplied by the local office of the acquiring agency:

(1) Send one certified and one plain copy of the judgment to the local representative of the acquiring agency in acquisitions for the Bureau of Reclamation and the Department of the Navy; and

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

one certified and two plain copies of the judgment to the local District or Division Engineer in acquisitions for Army, Air Force, AEC and NASA, with a request for the check.

(2) Immediately send two uncertified copies of the judgment to the Department with a copy of the letter to the agency requesting the check.

(3) Thus, for Department of the Navy and Bureau of Reclamation acquisitions a total of 8 copies of the deficiency judgment will be required. In other cases 9 copies will be required.

(b) If the deficiency check is to be furnished through the Department:

(1) Send one certified copy and three plain copies of the judgment to the Department.

(2) Request that the check be obtained.

(3) Thus, 9 copies of the deficiency judgment will be required. required.

4. At the conclusion of the proceedings the Attorney General prepares an opinion directed to the acquiring agency relating to the title acquired. Therefore, these documents and papers comprising the final transcript (p. 28 this Title) must be transmitted to the Department for examination, approval, and preparation of the title opinion:

(a) One certified and one plain copy of the judgment fixing compensation (unless copies previously were sent to the Department in connection with a deficiency judgment).

(b) Duplicate originals of the dated receipt of the Clerk of the Court for any moneys deposited pursuant to a judgment determining compensation not previously sent to the Department.

(c) Evidence of title, properly extended to show the recordation of a *lis pendens* notice (or the filing of the complaint, in those States in which the settled law specifically provides that the filing of the complaint serves the purpose of a *lis pendens*), or the recordation of a declaration of taking or judgment thereon.

(d) Certificates as to parties in possession and mechanics' lien claims, if any.

(e) All other related papers and curative data pertinent to the proceeding, such as affidavits, deeds, disclaimers, releases, etc., unless other papers transmitted will indicate that the liens and other interests are barred by service of process on the necessary parties.

(f) Evidence that complete distribution has been ordered of all funds which have been deposited in court by the Govern-

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

ment. However, transmittal of the papers enumerated above should not be deferred pending completion of this step.

5. If no declaration of taking has been filed, an order vesting title should be entered following the deposit of the award, and one certified and one plain copy thereof forwarded to the Department. If a declaration of taking has been filed, the judgment should confirm title in the United States.

6. In cases involving a term for years, or other temporary interest in property, at the conclusion of the Government's use and occupancy an appropriate order of termination should be entered covering restoration damages, if any, or finding no further liability on behalf of the Government. (See p. 29, this Title.) One certified and one plain copy of such order should be forwarded to the Department.

Procedure for Distribution of Funds Deposited in Court

A. Prompt distribution of the funds deposited with the declaration of taking and any funds thereafter deposited in court should be made in accordance with the provisions set out on p. 23, this Title. The U.S. Attorney assists the court as *amicus curiae* in effecting prompt distribution of such funds.

1. Obtain promptly and review all information available as to the state of the title to the property and any liens, taxes, and encumbrances thereon.

2. Advise the defendants or their counsel by letter of the fact that funds have been deposited in court, and offer all possible assistance in obtaining the disbursement of such funds:

(a) If the former owner's title is clear and unencumbered all of the funds deposited may be disbursed to him.

(b) If the title is encumbered, sufficient funds should be retained in the registry of the court to pay all liens on the property and to satisfy claims of any third persons whose interest is disclosed by the title evidence.

(c) If additional funds are deposited pursuant to a deficiency judgment, the defendants should be advised when the funds are available for withdrawal.

(d) When funds cannot be disbursed because the owner cannot be located, or for other reasons, an order should be sought immediately requiring the clerk to disburse the undistributed balance to the Treasury of the United States at the expiration of the 5-year period pursuant to 28 U.S.C. 2042. One certified and one un-

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

certified copy of the order should be transmitted to the Department, together with two copies of the certificate of deposit showing the deposit in a Federal depository (Appendix, Form 27).

B. Local procedure:

1. There being no prescribed form of procedure, practice will vary from district to district, depending upon the wishes of the court.

2. Suggested forms for use in processing such disbursements are set out in the Appendix, Forms 17 and 18. By this procedure the landowner makes written application through the U.S. Attorney who makes an appropriate motion to disburse, attaching the defendant's sworn application. The court may enter its order either with or without a formal hearing.

C. After a deposit has been made in the registry of the court and it becomes necessary to have a part or all of it returned to the Government (because of an abandonment of the case or an over-deposit of estimated compensation), the check representing such refund must be made payable to the Treasurer of the United States and forwarded to the Department for distribution to the proper agencies.

ACQUISITION OF LAND BY DIRECT PURCHASE

In discussing the administrative direct purchase procedures of the Land Acquisition Section, it is recognized that in many instances because of varying State laws relating to real property, U.S. Attorneys and field representatives will encounter unique and difficult problems in the examination of titles, preparation of opinions, and consummation of acquisitions.

It is impossible to formulate regulations in anticipation of these unusual questions, since the development of the problem may depend upon countless circumstances including the acceptability of title evidence not strictly in accordance with Department standards; the legal sufficiency of judicial proceedings affecting the title to the land to be acquired; the authority of public and private corporations to acquire and dispose of real property; the legal effect of exceptions, reservations and restrictive covenants in the chain of title; the possible lien of encumbrances, taxes and assessments, including outstanding bond issues of drainage districts, school districts, and irrigation districts.

Specific instructions and assistance in the solution of difficult and complex problems should be requested of the Department whenever the U.S. Attorney or the field representative is convinced

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

that a matter of policy or prolonged legal research is involved or a deviation from standard procedures will effect a substantial saving in time and expense.

The procedure followed by the Land Acquisition Section in approving the validity of a title to lands to be acquired by direct purchase is to perform all or part of the following: (a) procure and approve the abstract or other title evidence; (b) thoroughly examine the title and prepare a preliminary title opinion indicating the objections to, and the requirements for clearing the title; (c) procure or direct the procurement of curative material necessary for the elimination of title defects; (d) actually close the purchase when the acquiring governmental department or agency does not maintain disbursing officers, or when it requests that assistance which involves the elimination of encumbrances and other objections to the title, the preparation of deeds, releases, and other title documents, the delivery of the purchase price, and the supervision of any other matter incident to completing the purchase; and finally, (e) prepare a final opinion for the approval of the Attorney General to the effect that a valid title is vested in the United States.

**Standard Procedure Governing Acquisitions by Purchase
and Donation**

Procurement of Title Evidence

Generally.—Upon receipt by the U.S. Attorney of a letter from the Department enclosing a letter of request from the acquiring agency with a copy of the accepted contract to purchase, and other available data, he should immediately acknowledge receipt of the papers and proceed to procure title evidence at the expense of the acquiring agency in accordance with the instructions contained in the Department's letter and in the form and substance required by the Department (see Standards for the Preparation of Title Evidence in this Title).

Submission of title papers.—When the U.S. Attorney has obtained the abstract, certificate of title, or a commitment from a title insurance company for the issuance of a title insurance policy, he should promptly transmit to the Department the title evidence, any additional data and related papers, together with a copy of the Department's original letter of transmittal and all enclosures forwarded to him thereunder.

Curative material.—Upon receipt by the U.S. Attorney of a letter from the Department requesting curative data or material

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

and enclosing a copy of the option or contract and abstract and other title data, the U.S. Attorney should immediately acknowledge receipt of the letter, and secure the curative data or request the local representative, if any, of the acquiring agency, to obtain such data, advise him as to the adequacy thereof, and forward it to the Department.

Closing of Transactions

The details of the closing of acquisitions necessarily differ according to the number of vendors and interested title claimants, the number and variety of the encumbrances and title objections to be disposed of, and miscellaneous other details which the immediate exigencies of the case may disclose. Ordinarily, representatives of the agency close purchases; however, where no representative is stationed in the area, the U.S. Attorney may be requested to perform this service.

Upon receipt by the U.S. Attorney of a letter from the Department requesting a closing of an acquisition, he should:

(a) Acknowledge the receipt of all title papers, including check and voucher, by number, symbol number and amount—referring to each tract by number, acreage and location.

(b) Review the file relating to the acquisition in order to acquaint himself with the terms and conditions of the sale and to determine whether there are any special conditions to be performed on the part of the vendor and vendee or any objections to the title to be eliminated by agreement or otherwise before title may vest.

(c) Obtain all necessary curative data and determine the character and amount of the outstanding claims lawfully chargeable against the land.

(d) Immediately notify all parties interested of the date and place the transaction will be closed.

(e) Require the abstractor or title company to satisfy him (by an examination of the records covering the period since the date of his last certificate shown in the abstract, or the date of the certificate of title or commitment for title insurance policy) that no adverse change in the title has occurred.

(f) If a change in ownership has occurred during the progress of acquisitions, the attorney should:

(1) Require a continuation of the title evidence to establish the change of ownership.

(2) Transmit the title papers and the original check to the

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

Department of Justice at Washington with the request that a new check be issued in the name of the new owner.

(g) If no adverse change in the status of the title has occurred, he will proceed as follows:

(1) Prepare a closing statement (Appendix, Form 35) covering in detail all charges to be eliminated by payment of money to be deducted from the purchase money check, including all taxes and assessments constituting liens against the property (payment of such taxes, assessments, stamp or transfer taxes must be entirely borne by the vendor), regardless of whether the amount of taxes and assessments have been determined; outstanding judgments, both State and Federal; mortgages, or deeds of trust; amounts reserved under any bond for title affecting the acquired land; and all liens, statutory or otherwise.

(2) Personally make an inspection of the premises to ascertain whether any persons are holding in whole or in part adversely to the United States or its vendor, and whether there are any adverse encroachments on the site; see that any such encroachments are removed unless waived in writing by the acquiring agency, and prepare a certificate of possession (Appendix, Form 11) or procure a certificate of inspection and possession executed by a representative of the acquiring agency (see Standards for the Preparation of Title Evidence, this Title); if any persons are found in possession, secure disclaimers in the form furnished by the Department (Appendix, Form 33).

(3) Obtain release of all liens and encumbrances and see that all taxes and assessments are paid.

(4) In the acquisition of public building sites, secure a bond in the approved form executed by the vendor and by a surety company or two financially responsible individuals guaranteeing the clearance of the site within the time specified in the contract or sale, unless the Government is entitled to all improvements on the site under the terms of the purchase contract.

(5) In acquisitions of public building sites, secure from the Clerk of the Court a certificate setting forth the results of a search of the Federal court records of the division of the district where the land is located for possible bankruptcies of vendors and owners in the chain of title for 15 years prior to the date of the certificate, unless this evidence is included in the title evidence and continuation thereof submitted by the abstractor or title company, or the title insurance binder contains no exception requiring that such a search be made.

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

(h) When the title is satisfactory in all respects, close the transaction, as follows:

(1) Accept and record the deed and record all instruments releasing liens or encumbrances on the property. Unless otherwise provided in the option, recording fees are paid by the vendors.

(2) Obtain the continuation of the title evidence to the date of closing and the recordation of the deed (abstracts of title must include the recorded deed to the United States) or a final certificate of title or title insurance policy similarly dated and showing that valid title has vested in the United States of America.

(3) Satisfy out of the purchase price by certified or cashiers' checks all outstanding charges or encumbrances on the land, or withhold a sufficient amount in such checks from the purchase price to satisfy and discharge them.

(4) Deliver the purchase money check or the balance of the purchase price in a cashier's or certified check to the vendor and receive vendor's receipt for the purchase money.

Advise the Department promptly of any difficulties encountered which delay the closing of a transaction.

If for any reason the purchase money check is held by the U.S. Attorney for more than 30 days, a special report should be made in each case giving the reason for nondelivery.

If for any reason a transaction may not be closed, the U.S. Attorney will return the title evidence and all related papers, together with the purchase money check, to the Department of Justice in Washington, explaining fully the reasons for their return and recommending further action.

Procedure After Closing and Vesting of Title in the United States

Review the continued title evidence and all related papers.

Transmit to the Department of Justice in Washington the final title assembly and all related papers, including the certificate of possession, the vendor's receipt for the purchase money, itemized statement of disbursements signed by the vendor, vendor's surety bond, if any, guaranteeing clearance of the site, and executed and recorded deeds to the United States. If time required for recordation delays return of the recorded deed, transmit a copy of the deed, to be followed subsequently by the original when its recordation is completed.

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

**Procedure for the U.S. Attorneys to Follow in Handling Checks
Drawn on the Treasury of the United States in Settlement of
Lands Being Acquired by the United States**

U.S. Attorneys should maintain at their own expense a safe depository for checks in their possession, and, if necessary to insure safekeeping, rent safe-deposit boxes in which to keep the checks until they are delivered to the vendor.

When it is necessary in making settlement to pay taxes, judgments, mortgages, and other liens out of the proceeds of the check, the attorney handling the settlement should:

(a) Make the settlement at a bank or title company in the presence of the vendor where the check can be endorsed and separate checks drawn, certified, and issued for the liens, the remainder delivered to the vendor in a certified or cashier's check, and proper receipts obtained. Attorneys should not obtain the endorsement of the vendor on the check until the actual closing.

(b) When it is impossible for the vendor to be present in person at a bank or title company when settlement is made, he may designate someone with power of attorney to endorse the check and to act for him.

(c) Avoid the deposit of funds and under no circumstance should the funds be mingled with the funds of the U.S. Attorney. If the funds must be withheld for a period of 60 days or less, a certified or cashier's check, payable to the local U. S. Marshal, should be obtained and deposited with the Marshal for appropriate disbursement.

(d) When it is necessary to withhold a part of the funds to pay taxes or other encumbrances which cannot be paid within 60 days, obtain a certified check drawn payable to the "Treasurer of the United States" and forward such check to this Department for deposit.

(e) Upon the disbursement of funds withheld to pay taxes or other liens, obtain a receipt of payment which must be forwarded to the Department of Justice.

Where a portion of the funds represented by the Treasury check have been disbursed and it is then discovered that closing and final disbursement cannot be effected, obtain a certified check from the vendor for the full amount payable to "United States Attorney, District of"

as a means of safeguarding the funds pending the actual settlement.

Prepare, sign and forward to the Department with the final

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

title assembly the vendor's receipt, an itemized statement or closing statement (Appendix, Form 35) signed by all vendors, disclosing the disbursement of the Treasury check, all payments actually made, the names and addresses of the persons to whom made and any sums withheld for the later payment of taxes or other encumbrances which could not be paid at the actual date of closing.

Checks must be returned to Washington:

(a) When, because of fire loss or other unusual circumstances involving a substantial amount, a reduction is necessary in the amount of consideration to be paid. The related papers must also be returned with the checks for consideration of the extent of the loss and the amount to be deducted from the purchase price.

(b) When, subsequent to the issuance of the Treasury check, a proponent has died or someone else has succeeded to his interest and the acquisition is to be completed with a new vendor or vendors, the abstract and related papers, proof of descent, devise or other evidence of the succession to the title by the new vendor or vendors must be returned with checks for preparation of a supplemental opinion.

(c) In case of the death of the original vendor subsequent to delivery of the deed to the Government but before cashing the Treasury check, with proof of the vendor's death and letters of administration or other evidence establishing the title of the representatives or successors of the deceased vendor.

(d) In the event the U.S. Attorney is unable for any reason to complete a proposed transaction, the Treasury check, the title evidence and related papers should be returned.

When a reduction in a purchase price is necessary because of variance in acreage, or other cause, involving small amounts, and arrangements have been made and permission of the Department obtained by the U.S. Attorney to deduct the proper sum from the consideration to be paid a proponent, a certified check for the amount of the reduction, payable to the Treasurer of the United States, should accompany the final title assembly when submitted to Washington.

**STANDARDS FOR THE PREPARATION OF TITLE
EVIDENCE IN LAND ACQUISITIONS BY
THE UNITED STATES**

The following standards have been prepared for the guidance
June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

of Government departments and agencies, vendors to the United States, attorneys of the Department of Justice, and others having occasion to prepare or procure evidence of title and related papers in all cases of acquisition of land by the United States where the title opinion of the Attorney General may be requested. These standards supersede all previous rules on the subject. Their observance is required unless exception is made in unusual circumstances.

Responsibility for Procuring Evidence of Title

In direct purchase cases it is the duty of the heads of the acquiring agencies to furnish necessary evidence of title to land to be acquired by direct purchase, exchange or donation, the expense of procuring the same to be paid out of the appropriations made for the respective departments (40 U.S.C. 255).

In condemnation proceedings, generally, the necessary evidence of title is made available to the Department by the acquiring agency. In compliance with applicable standards, title evidence conforming to the requirements of the Department should be obtained from approved abstracters or title companies. Contracts for the title evidence should include as a separate item the costs of any necessary continuation of the evidence of title.

Evidence of Title Acceptable to Prudent Attorneys and Title Examiners in the Locality in which the Land is Situated will Ordinarily be Acceptable to the Department

One of the following types of evidence should be obtained after considering local practice, reliability, security, economy, efficiency and speed:

(a) Abstracts of title prepared in accordance with the requirements of these instructions, by approved abstracters, or by qualified and competent abstracters employed by a department or agency of the Government.

(b) Certificate of title (Appendix, Form 31) prepared in accordance with the requirements set forth below concerning form and contents of certificates of title, by approved title corporations in jurisdictions where corporations may legally issue such certificates.

(c) Owners' duplicate certificates of title issued pursuant to satisfactory State systems of title registration similar to the Torrens system.

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

(d) Copies of public title records duly authenticated by their official custodian or certified by an acceptable abstractor.

(e) Title insurance policies (Appendix, Form 34) prepared, in accordance with the requirements set forth in these standards, by acceptable insurance corporations.

(f) Any other satisfactory evidence of title.

Ordinarily one abstract, certificate or policy will be obtained for all interests in each contiguous area of land in the same ownership. Lands will be deemed to be contiguous although portions thereof are separated by roads, railroads or other rights of way, streams, etc. Where oil, gas and mineral interests are not to be acquired, all leases and other instruments relating to such instruments should be omitted from the title evidence pursuant to the contracts therefor.

Objections set out in certificates of title, preliminary binders or reports, and title insurance policies must be clearly stated and contain sufficient information to permit a determination of the nature of the possible outstanding right, claim or interest and the identity of the possible owner or claimant.

Qualifications of Abstractors and Title Companies

All title evidence must be obtained from attorneys, abstractors or title companies approved by the Department for the preparation of such evidence in the jurisdiction in which the lands are situated. To obtain approval, there must be submitted for consideration information as to the experience and training; organization and title plant of any title corporation; system of examining and abstracting title; financial responsibility (if a corporation); and reputation in the community; and whether statutory bonding and other requirements have been complied with.

Individual abstractors must be attorneys at law or professional or official abstractors qualified and authorized by law to prepare and certify to abstracts; have no interest in the land to be acquired; and not be related to the vendors.

Title companies must be qualified and authorized by law to furnish abstracts, certificates of title, or title insurance policies in the State where the land lies; and have either a home office or a well-established branch office located in the State where the land lies.

Form and Content of Abstracts

In some sections of the country, and in many of the large cities,
June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

abstracts are prepared by an incorporated title company or by a professional or official abstracter, not necessarily an attorney. In other sections of the country the abstracts are prepared by an attorney who also obtains curative data and frequently supplements the abstract with a history of the title and his opinion as to its sufficiency. The following requirements are, therefore, subject to modification to adapt them to the type of abstract commonly in use in the locality where the land is situated:

(a) *Form and arrangement.*—The abstract should be printed or typewritten (or consist of photostatic copies of original documents), and the description of the land covered by the abstract should appear on a caption page. Where the descriptions in abstracted items are the same as those contained in the captions, or in preceding instruments, the descriptions should not be recopied, but the abstracters should indicate that the same lands are involved. The various entries should be numbered and appear in the chronological sequence of recording. Affidavits and other papers submitted by the abstracter with the abstract should be numbered or lettered and referred to by such number or letter in the item of the abstract to which they relate.

(b) *Contents, in general.*—The abstract should contain a sufficient summary of the material portions of every recorded instrument, affecting the title to the land described in the caption, to enable the examiner to determine the nature and effect of such instruments. No attempt is made to specify all items which must be shown in the abstract, but the following, which are sometimes omitted, must be shown exactly as they appear in the records: The marital status of all grantors and grantees; the consideration and receipt thereof; the dates of execution, witnesses where necessary, acknowledgment, and recordation of each instrument; and the due date of any unsatisfied mortgages or deeds of trust, the amount of the indebtedness secured thereby; and any reservation, limitations or conditions. Releases of homestead, dower, and other statutory rights should be affirmatively shown. Where titles to separate parcels are derived from a common preceding chain of title, a master abstract should be prepared and supplemented by individual abstracts.

(c) Abstracts containing instruments which do not affect the title or do not refer to or mention the land covered by the abstract are not acceptable and the abstracter is not entitled to receive payment for such extraneous material. Also, abstracts which contain illegible photostats of instruments are not acceptable.

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

Period of Search

For the purpose of this paragraph, title instruments mean any recorded instrument purporting to evidence the transfer of a fee simple title (other than as security for debt), including direct deeds of conveyance, deeds by trustees, referees, guardians, executors, administrators, masters, or sheriffs, wills or decrees of descent, and also decrees, judgments or orders of courts of competent jurisdiction purporting to quiet, confirm, or establish title in fee simple. The period of search, referred to in each of the numbered subparagraphs hereinafter set out, means the number of years of continuous coverage by an abstract of the record beginning with a title instrument recorded at least the required minimum number of years prior to the date of the abstractor's certificate. Regardless of the applicable period of search, all abstracts must contain or be accompanied by proof that the title was originally divested from the sovereign by patent or grant of the land involved. Any mineral or other reservation to the sovereign shall be specifically noted. All instruments antedating the applicable period of search which are disclosed by instrument recorded within the period of search and which contain reservations, exceptions, restrictions, limitations, or other rights or interests or impose conditions or liens possibly outstanding or affecting the title, must be shown. Subject to all the foregoing provisions of this paragraph, the periods of search shall be as follows:

(1) A minimum of 60 years as to all acquisitions (including easements) except those mentioned in the following subparagraphs (2), (3), (4), and (5).

(2) A minimum of 80 years as to all tracts to be acquired for consideration in excess of \$100,000 and as to Federal building sites.

(3) A minimum of 40 years as to low value lands. Low value lands are defined in 40 U.S.C. 255, as amended, as follows:

(a) The average value of the land or interest to be acquired under a single option or contract of sale does not exceed \$10 per acre;

(b) The total value of the land or interests to be acquired under a single option or contract of sale does not exceed \$3,500; and

(c) No money in excess of \$2,500 is to be expended for the construction of buildings, works, or other improvements (except roads, trails, and fire protection improvements) on the land or interest to be acquired.

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

(4) A minimum of 25 years as to the acquisition of easements, to be acquired for considerations in excess of \$100 but not in excess of \$5,000, as follows: For telephone and telegraph lines, electric transmission lines, channel excavation, relocation of utilities such as fire alarm systems, water mains and pipes, pipelines, railroad spurs for temporary use in transporting materials for construction purposes, access and other roads, highways, spoil disposal, intermittent flowage (where the estimated frequency of flooding is not oftener than 5 years), borrow pits, and other uses of the general character and type of those herein specified. Abstracts relating to acquisitions of all other easements must be prepared in accordance with the applicable preceding subparagraphs in the same manner as abstracts relating to fee simple titles.

(5) As to easements to be acquired for consideration of \$100 or less and temporary use or term takings in condemnation proceedings involving the payment of an estimated rental of \$2,500 or less per annum, last owner searches showing the owner under the last deed of record and encumbrances against the title under which the abstracters or title companies assume no liability and without regard to the period of search may be accepted as satisfactory title evidence.

Records Lost or Destroyed

Where title records, for the full periods of search required above, have been lost or destroyed, or are otherwise permanently unavailable, the abstract should begin with the first available record and be supplemented by a certificate of the abstracter as to the fact of the loss or destruction of the records, that no reservations, limitations, encumbrances, or defects in the title are known to the abstracter, and that the beginning point of the abstract is accepted by competent attorneys in the community, and either;

(a) Proof of compliance with requirements of statutory proceedings, if any, to establish titles affected by the loss or destruction of the records; or

(b) Secondary documentary evidence, complying with statutory requirements, which, if offered in a judicial proceeding, would be admissible as evidence of title, and evidence of title by adverse possession as provided in the instructions set out below under Adverse Possession (page 60).

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

Wills and Probate Proceedings

Wills should be reproduced in full. Essential portions of probate proceedings disclosing all material facts of record must be shown, including, for example, the petition, names and ages, and the incompetency, if any, of parties in interest as shown by the record; proof of service of citations; date of approval of bond; issuance of letters testamentary; publication of notices or other action necessary to start the running of any statutes of limitations; ancillary probate of the will in the jurisdiction where the land lies, if the original probate was elsewhere; guardianship proceedings of any parties who are incompetent; and whether estate and inheritance taxes have been paid or releases thereof obtained.

When title has been or is to be conveyed by executor's or administrator's deed, the court orders or other authority of the fiduciary and sufficient portions of the proceedings to demonstrate their regularity must be shown.

If title has been or is to be conveyed by the devisees, the abstract should show whether all specific legacies, debts, and taxes have been paid, and where necessary whether there has been final distribution of the estate, discharge of the executor, and closing of the estate.

Title by Descent

In every instance where title has passed by descent, the abstract should show whether there has been administration on the estate, and in case of administration, the abstract should show sufficient portions of the record of the proceeding to determine whether necessary jurisdictional facts existed and statutory requirements essential to the validity of the proceeding were observed, including service of necessary notices, qualifications of the administrator, and the date of the approval of his bond or other action necessary to start the running of any statutes of limitation.

In all instances where title has been or is to be conveyed by administrator's deed, the abstract should also show sufficient portions of the proceeding for authority to sell and convey and of the facts appearing in the record, to determine whether the proceedings were regular and all statutory requirements essential to the validity of the sale and conveyance were observed.

If there has been administration, but title has been or is to be conveyed by deed of the intestate's heirs as established in the proceeding, the abstract should show the correct names of all persons determined to be heirs as they appear in the proceeding,

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

and should also show whether debts and charges, including all taxes against the estate, have been paid or provided for, and, where necessary, whether there has been final distribution of the estate and discharge of the administrator.

Whether or not there has been administration, if the conveyance to the United States is to be made by the intestate's heirs, and the intestate's heirs have not been established in a judicial proceeding, determination of heirship will be required as hereinafter provided.

Foreclosure Proceedings

In all cases the abstract should disclose sufficient of the mortgage foreclosed to determine the validity and effect of the foreclosure, including the sum secured, description of the premises, conditions of the mortgage, signatures, dates of execution and recording, and the nature of the default.

If the foreclosure is by judicial proceeding, the abstract should show the names of all persons made parties to the foreclosure case and sufficient portions of the record to determine the jurisdiction of the court, the regularity of the proceedings, whether all necessary parties had proper notice, and whether the provisions of the foreclosure statute were adequately observed.

If foreclosure is under a power of sale, the terms of the power, compliance or noncompliance therewith and with applicable statutory provisions, should appear. Partial or installment foreclosures, continuing the balance of the mortgage in effect, must be affirmatively shown.

Sales by Receivers, Execution Sales, Tax Sales, Divorces and Other Judicial Proceedings

The abstract should fully disclose sufficient portions of the record of all sales by receivers, execution sales, tax sales, divorces, and other judicial proceedings affecting the title to the land to be acquired, to determine the legal effect of such sales or proceedings, and whether all statutory requirements have been observed and the time for redemption, appeal, or reopening the matter has expired.

Sales by Trustees and Others in a Fiduciary or Representative Capacity

The abstract should contain all essential parts of trust instruments, powers of attorney, and of the record of any court proceed-

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

ings conferring authority for conveyances in the chain of title by fiduciaries or persons acting in a representative capacity, and show whether the purchaser is relieved of the responsibility for the application of the purchase price. Any conditions or limitations on the authority of a fiduciary or representative, contained in such instruments or proceedings, or in any deed to the trustee, or to the beneficiary or principal for whom such trustee or representative is acting, should be fully set forth and, where possible, the abstract should show whether such conditions have been fulfilled.

Search for Liens of Judgments and Decrees of Federal Courts

Search is required of the Federal court records in all divisions of the district where the land lies for possible liens of judgments and decrees of and cases pending in Federal courts in those States which have not enacted a statute authorizing the judgments and decrees of the U.S. courts to be registered, recorded, docketed, indexed, or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the State (28 U.S.C. 1962).

In those States which have enacted such conformity statutes (in accordance with the provisions of 28 U.S.C. 1962), no search of the Federal court records is necessary for liens of judgments and decrees, unless under State law judgments and decrees of the State courts become liens on the property of the judgment debtor in the county where rendered, upon entry in the court where rendered, in which case research of the Federal court records is necessary if those records are located in the county in which the land is situated.

Dedication and Vacation of Streets and Alleys

Where the land includes street or alley areas, dedicated or vacated, there must be shown all matters of record affecting the ownership of such areas, including the following:

- (a) The complete proceeding had upon such dedication and, if vacated, the vacation proceedings.
- (b) All facts of record bearing on the existence or elimination of prior rights of the public, prescriptive or otherwise, and rights of public utilities, if any.

Special Assessments for Improvements, School Districts, Etc.

Abstracts containing references to assessments for drainage, school, or other special improvement districts, water, paving,

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

sewer and other assessments, should set out, in addition to the current and delinquent assessments, the total benefit assessments and charges against the land, and should contain references to the statutes creating the districts and establishing the liens.

Abstracter's Certificate

A satisfactory certificate of the abstracter must be made a part of the abstract. Generally, certificates will be acceptable if in the form approved by a title association of recognized standing in the State where the land is situated and if the abstracter certifies that he has examined all public records pertaining to the title for the required period of search, and that all matters of record affecting the title are correctly shown in the abstract. In those States where the liability of the abstracter is based upon the contract to search the title, the certificate should contain a statement that the abstract is furnished to the United States of America (or its grantor) and assigns. Otherwise, and generally, the certificate should not be limited to any contracting party, other person or corporation.

Form and Contents of Certificates of Title and Title Insurance Policies

Preliminary reports or binders, when satisfactory in form, of approved title companies based upon a preliminary search and committing such companies to issue final certificates of title or title insurance policies in the approved form, will be accepted, as a basis for preliminary opinions which contemplate further submission of the matter for final approval of title. See Appendix, Form 34.

The certificate of title, title reports and binders must disclose the name of each person in whom title to any interest is vested of record or known to the company. Where the subsurface easements or other interests in the property to be acquired are owned by persons other than the owners of the fee title, the present record ownership of each such outstanding estate or interest and all data of record relating thereto or sufficient portions thereof shall be shown in the certificate of title or report, unless the title company has been instructed to omit data relating to such interests. The addresses of all parties having any interest in the lands must be set out where this information is disclosed by the public records or known to the company.

Schedule "B" of the certificate or report must disclose all essential information on matters affecting the title which are set up in

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

the schedule as exceptions or objections to the title. Schedule "B" shall not set forth exceptions or objections in general terms or by reference to deeds, instruments,, proceedings or other matters of record, without including copies or a sufficient abstract or digest of the instruments or the proceedings or other matters of record creating or imposing the rights, interests, or encumbrances mentioned in Schedule "B," to enable an attorney examining the certificate to determine the nature and extent of such matters and their effect on the validity of the title to the land described in Schedule "A." The names of the persons holding such interests from whom releases must be obtained must be furnished by the company, if known.

Period of Search

In general, certificates of title and title insurance policies based upon a search of all records affecting the title and unqualified as to the period of search are preferred and should be issued. However, as to low value lands and specific types of easements as defined in the instructions relating to abstracts, certificates of title or title insurance policies may be limited to the periods of search prescribed in those instructions provided the certificates or policies contain statements to the effect that the title of the sovereign has been divested, and set forth any reservations which are contained in the patents or grants.

Limitation of Liability

A certificate of title or title insurance policy by one title company for a single acquisition valued at more than 25 percent of the admitted assets (after deducting existing liabilities secured or unsecured and excluding any trust or escrow funds) of the issuing company is not acceptable.

Certificates of title or title insurance policies shall not limit the liability of the title company to a sum less than 50 percent of the reasonable value of the property. As to acquisitions valued at more than \$50,000, the limitation of liability of the issuing title company under the certificate of title or title insurance policy may be limited to 50 percent of the first \$50,000 and 25 percent of that portion of the value in excess of that amount.

Plats

The title evidence should include or be accompanied by a plat or plan, based on a survey by a competent surveyor or engineer,

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

sufficient to enable the examining attorney to locate the land described in the title evidence. Any encroachments or rights-of-way, on or over the land, should be shown or noted on the plat. If the land is described by metes and bounds, or by lands of adjoining owners, abutting streets, ways, etc., its boundaries should be defined on the plat by courses, distances, and monuments, natural or otherwise, and the ownership and contiguous boundaries of adjoining lands and names of abutting streets, ways, etc. When the land is part of a subdivision, a copy of the subdivision plat, or the section thereof in which the land is located, should be submitted. If necessary to identify the land with a U.S. patent or a State grant which is the source of title, a plat of the land being acquired should be superimposed on a copy of the plat of the U.S. survey or State grant. If the land being acquired is part of a larger tract described in an abstract, it should, when necessary for its identification, be shown drawn to a common scale on a map showing the larger tract and any successive diminishing tracts.

Supplemental and Supporting Title Evidence

The closing of transactions is often delayed due to failure to supply necessary supporting title data. Requirements covering some of these items are indicated below.

Sales by Corporations

Private corporations.—The title evidence should contain or be accompanied by sufficient portions of the charters or other records of corporations, conveying to the United States, to determine the power of the corporations to hold and convey real estate and the validity of such conveyances. In jurisdictions where franchise taxes are a lien, or where nonpayment of such taxes or failure to file required reports or statements suspends or terminates a corporation's power to do business or transfer property, the title evidence should also be accompanied by a certificate or statement of the proper State officer showing payment of such taxes and that the corporation is in good standing. A certified copy of the resolution of the proper corporate body, authorizing the conveyance to the United States, is required. In case of conveyances of all or substantially all of the real estate of such a corporation, a certified copy of a resolution authorizing the conveyance, enacted in compliance with pertinent statutory requirements at a meeting of stockholders, is necessary.

Public corporations.—Where the title evidence discloses a public

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

corporation as grantor in the chain of title, or the vendor to the United States is a public corporation, the title evidence should include or be accompanied by sufficient portions of the charter, resolutions, or other source of authority of each such corporation to convey land, and also with evidence of compliance with all statutory requirements necessary to the transfer of a valid title.

Determination of Heirship

When the conveyance to the United States is by the intestate's heirs and there has been no judicial determination of heirship, the fact that the grantors are all the heirs of the deceased must be judicially established where practicable. If such judicial determination is impracticable, proof of heirship must be shown by acceptable affidavits (Appendix, Form 32) of the grantors and, if possible, of two or more disinterested reputable persons having knowledge of the facts.

Adverse Possession

Evidence of adverse possession, when required, must include satisfactory affidavits of possession, which shall contain the following:

- (a) Execution by three or more reputable persons living in the vicinity of the land and having no interest in the sale of the property;
- (b) Identification of the land and a statement of the character, extent, and duration of possession for at least as long as the maximum local statutory period of limitations, prescriptions, or adverse possession, but not less than 22 years; and
- (c) All necessary facts fully set out, together with convincing proof of the establishment of title by adverse possession under local law. The affidavits should not contain mere conclusions of the affiants.

In cases where large tracts of land are being acquired which embrace what formerly were smaller tracts, the affidavits of adverse possession must relate specifically to the component parts of such tracts and contain sufficient facts to establish adverse possession to each such part.

Where two or more grants, patents, or transfers affect the same land, the exact location of the land over which the acts of possession are relied upon must be shown on a map and by the affidavits.

Where the acquiring agency does not contemplate acquisition

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

of the land subject to mineral, or other rights or easements of any kind, appearing in the chain of title, such affidavits must show convincing proof of adverse possession against any and all such rights or interests.

Unrecorded Title Papers

In all cases any unrecorded title papers and copies of resolutions, ordinances, and title opinions containing references to statutes or cases in point relating to the condition of the title or objections thereto with respect to such land, which may be available to the vendor, should accompany the title evidence.

(a) In direct purchases:

(1) Abstracts must be continued to and including the recordation of the deed to the United States and any necessary curative data.

(2) Final certificates of title or title insurance policies must be based on a search of the records from the dates of the preliminary certificate reports or title binders to the date of the recordation of the deed to the United States, which must certify to or guarantee the title of the United States, which was acquired under the deed.

(b) In condemnation cases:

(1) The abstract must be continued to the date of the filing of lis pendens or other notice in the proceedings.

(2) A supplemental certificate of title or continuation title report binder or endorsement based on a search of the records to the date of the filing of notice in the condemnation proceeding must be obtained. No final certificate or policy is required provided the preliminary certificate report or binder does not limit the title company's liability or the company assumes the required financial liability and the certificate, report or binder contains no provision under which the issuing company denies liability for losses if the final certificate or policy is not issued.

Deed to the United States

The deed to the United States should generally adhere to the following requirements:

(a) Be a general warranty deed; however, this requirement may be waived, upon a proper showing, as to conveyances by States, municipal corporations, and fiduciaries and other persons acting solely in a representative capacity.

(b) Disclose the capacity in which any grantor acts who conveys in other than an individual capacity.

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

(c) Show the name of the grantor in the body of the deed and its acknowledgment, be signed by him, exactly as his name appears as grantee in the conveyance to him; and account for any unavoidable difference by a recital identifying the grantor with the grantee in the preceding conveyance.

(d) Disclose the marital status of each grantor.

(e) Recite the true consideration and the receipt thereof.

(f) Convey the land to the United States of America and its assigns.

(g) Contain a proper description of the land.

(h) Convey all the right, title, and interest of the grantor in and to any alleys, streets, ways, strips, or gores abutting or adjoining the land.

(i) Contain no reservations or exceptions not approved by the department or agency of the Government acquiring the land; however, when land is to be conveyed subject to certain rights, such as easements or mineral rights thought to be outstanding in third parties, they must not be *excepted* from the conveyance, but the deed should be framed to convey all the grantor's right, title, and interest subject to the outstanding rights, unless the contract or option expressly provides otherwise.

(j) Refer to the deed(s) to the grantor(s), or other source of grantor's title, by book, page, and place of record, wherever customary or required by statute.

(k) Contain a reference to the name of the agency for which the lands are being acquired. This statement should follow the description of the land and in no instance should it be included in the granting, habendum or warranty provisions of the deed.

(l) Release all rights of homestead, dower, curtesy, and other interests of the grantor's spouse, as required by local law.

(m) Be signed, sealed, attested, and acknowledged by all grantors and their spouses, as required by local law.

(n) If executed by a corporation, be signed in the full and correct name of the corporation by its duly authorized officer or officers, sealed with the corporate seal, attested and acknowledged, as required by local law.

(o) If executed by an attorney in fact, be signed in the name of the principal by the attorney, properly acknowledged by the attorney as the free act and deed of the principal, and be accompanied by the original or a certified copy of the power of attorney and satisfactory proof that the principal was living and the power in force at the time of its exercise.

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

(p) Have affixed sufficient documentary revenue stamps.

Certificate of Possession

There must be submitted, as part of the title evidence, a certificate of possession, based on an inspection and inquiry made in the course of the closing of the purchase or as of the date of taking in condemnation, by a duly authorized employee of the acquiring agency, or by an attorney of the Department of Justice. The certificate of possession must be in form approved by the Department of Justice. The standard form of certificate (Appendix Form 2) should be used in all acquisitions.

The interest or claim of any persons other than the record owners who are occupying or using any part of the lands should be ascertained and if possible disclaimers should be obtained from such persons (Appendix Form No. 28).

APPRAISALS**Employment of Expert Witnesses, Appraisers, Etc.**

The Appraisal Section of the Land and Natural Resources Division assists the personnel of the Land Acquisition, General Litigation, and Indian Claims Sections, as well as U.S. Attorneys and field attorneys and the acquiring agencies, in arranging for the employment of expert witnesses such as appraisers, engineers, hydrologists, etc. who are required to assist the Government in Land and Natural Resources Division matters, in establishing the fair market value of land or property being acquired by the United States, or in defending claims against the United States involving property. The employment of such experts and their compensations, as well as the manner in which the appraisals are to be made and reports are to be prepared, are referred to this Section for review and approval.

The U.S. Attorneys should implement appraisal procedures to minimize duplication and waste in hiring experts by adhering to the following criteria:

1. Secure adequate appraisals from the acquiring agency.
2. Incur an expense only where necessary.
3. Negotiate a fair price for services.

U.S. Attorneys should insist that the acquiring agencies which they represent use only appraisers that have been approved as being acceptable for presentation of expert testimony. These agencies must use appraisers who are adequate for this purpose.

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

Where this is not done waste is incurred, since it will be necessary to expend more money for appraisals of the same property, and the Government is further involved in changing estimates of value in midstream and settlement opportunities are impaired. Where full cooperation is not being received in regard to the employment of experts, the matter should be referred to the Assistant Attorney General, Land and Natural Resources Division, for resolution.

As indicated, appraisal and expert witnesses' services should be secured only when necessary. In this regard the U.S. Attorney should use much the same criteria he would use if contracting for his own property. If agency appraisals are adequate, as they should be, an additional appraisal is not usually needed.

Agency appraisals should be reviewed as soon as the case is received. In this regard, the U.S. Attorney should satisfy himself that he has received all of the appraisals, whether approved or disapproved, from the acquiring agency. Where there is doubt in the U.S. Attorney's mind regarding the adequacy of any appraisal report, or if unusually large sums of money are involved, the appraisal reports should be forwarded to the Appraisal Section for analysis and recommendation. To avoid delay in securing necessary appraisals and property to administer caseloads, settlement should be explored as soon as possible after receipt of a case. Trial readiness is a necessity and adequate appraisals are essential in every instance, but settlement possibilities should be exhausted, where possible, before appraisal expenses are incurred. Where demolition of the improvements is contemplated, or where the land is to be inundated or otherwise changed soon after the filing of condemnation proceedings, it is usually desirable and important immediately to secure any additional necessary appraisal in order that the appraiser may view the property in its original condition.

Where the appraisals secured are far apart in total value, or in elements of value, an attempt should be made by the U.S. Attorney to have the appraisers reconcile their differences. If this attempt fails, and before additional appraisals are secured, all existing appraisals should be forwarded to the Appraisal Section for analysis and recommendation.

Where it is necessary to supplement agency appraisals, it is only on valuable or unusual properties that more than one additional appraisal should be needed. It should be a rare instance where there is need to hire more than one independent appraiser on property valued at less than \$10,000. In any event, the U.S. Attorney must exercise sound discretion in every case.

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

Where experts witnesses' services are necessary, the U.S. Attorney must assure himself that the fee agreed upon is no more than the customary price for such services in the area. Where volume appraisal work is given to an appraiser, the more advantageous fees, which are possible because of the volume, should be secured. In those instances where the U.S. Attorney is uncertain as to the appropriate fee for a given assignment, or where an unusually large fee is involved, the recommendation of the Appraisal Section should be obtained. Sound business judgment must be exercised to make sure that the United States is getting full value at not more than the locally prevailing rates. Witness fees must be on a daily rate basis and per diem rates should be accurately prorated to the fraction earned unless circumstances make this unfair. Wherever possible fees to obtain appraisal reports should be on a daily rate basis rather than a flat fee.

Appraisal and Valuation Consultation

In their role as in-house valuation experts for the Land and Natural Resources Division, the members of the Appraisal Section are, when requested, prepared to confer with the U.S. Attorneys, inspect properties and assist in any case wherein their services are felt to be needed or desirable.

For further assistance in the preparation and review of appraisals by personnel of the office of the U.S. Attorneys, the Land and Natural Resources Division and the acquiring agencies, see Directive No. 11-68, p. 73, "Land and Natural Resources Division Source Volume."

APPEALS

Appeals in Land and Natural Resources Division cases, except for cases handled by the Marine Resources Section, are handled in the Appellate Section of the Division at the seat of Government, including the preparation of records, briefs, and the assignment of cases for argument. Procedure to be followed with respect to Land and Natural Resources Division appeals appears in Title 6, Appeals.

MARINE RESOURCES

The Marine Resources Section, established November 5, 1969, handles all matters except land acquisition, pollution, and legislation, relating to the seabed and natural resources seaward of the

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

coastline, including ascertainment of the coastline (low waterline on the open coast, and lines marking the seaward limit of inland waters such as bays or rivers). This includes cases to determine the extent of the grants involving mineral leasing under the Outer Continental Shelf Lands Act, and other matters affecting rights of the United States in submerged lands or natural resources seaward of the coastline.

Because these cases involve a specialized body of law and require close policy coordination with the Department of State and other federal agencies besides our client in the particular litigation, they are handled or closely supervised at all stages, both trial and appellate, by the Marine Resources Section, which maintains continuing contact with other departments and agencies interested in this field. Any matter of this character should be referred promptly to the Marine Resources Section, and no action should be taken without its concurrence unless immediately necessary to preserve rights of the United States. The Marine Resources Section may also be called on for information, advice, or assistance regarding this subject matter in connection with cases not under its supervision, such as those involving tidelands (the area between high and low waterlines) or beds of inland waters, where the same or related legal principles are often applicable.

MISCELLANEOUS FUNCTIONS

Civil or Political Rights on Government Lands

The Legislative Assistant, Land and Natural Resources Division, is responsible for all legislative matters in the Division, with appropriate assistance provided by Section chiefs as requested by him. He also performs or coordinates the performance of various legal functions of the Division not within the assignment of the several Sections, such as preparation of draft opinions of the Attorney General or legal memorandum related to them, miscellaneous congressional correspondence, and inquiries involving questions of law pertaining to Division activities. He also has such special assignments as are designated from time to time. His principal concern with U.S. Attorneys relates to civil and political rights arising out of the legislative jurisdiction status of Government lands (see Title 2, Offenses on Government Reservations).

Assistance to United States Attorneys and Field Staff

The Land and Natural Resources Division has available excellent

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

facilities of various kinds which should be of considerable help to the U.S. Attorneys and field attorneys of the Division. In addition to a corps of research consultants in the Trial and Briefing Assistance Unit of the Land Acquisition Section who have become experts in the various fields of law, elaborate research files, indexes and digests are currently maintained. Close liaison exists between the attorneys of the Division and officials of the several Government departments and agencies which the Division represents, and the facilities of those agencies are at our disposal. Prompt attention will be given to requests for assistance in any of these matters.

ADMINISTRATIVE AND FISCAL INSTRUCTIONS

The costs of Land and Natural Resources Division cases handled by U.S. Attorneys, with the exception of the employment of expert witnesses, are paid from the appropriation "Salaries and Expenses, U.S. Attorneys and Marshals."

Costs incurred in connection with the employment of expert witnesses include services rendered by appraisers, engineers, mining experts, geologists, etc., the furnishing of reports, preparation for trial and testimony.

The expenses involved in the employment of expert witnesses are paid by the Land and Natural Resources Division from funds disbursed at Washington and such vouchers should be submitted to the Department for payment addressed to the attention of the Administrative Section, Land and Natural Resources Division.

Authorizations

These expenses are not to be incurred without prior authorization from the Land and Natural Resources Division.

In the submission of requests on Form DJ-25 for incurring such expenses, the requests should disclose the rate per day, the approximate number of days needed to perform the services, and the total estimated expenses. The requests should also indicate the approximate date on which the services are to begin. Executed USA Form No. 157 (Appendix, Form 23) should be attached to all Forms DJ-25 and contain full justification for the expenses.

When requests for an appraisal and for expert testimony are combined on the same Form DJ-25 it is necessary to obligate funds to cover such estimated total expense. Thereafter, subsequent developments frequently preclude the need for testimony or the

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

need for such testimony does not arise for several months, thereby requiring a premature obligation of funds. Also, if the period between the appraisal and the need for testimony occurs near the end of a fiscal year it results in the current obligation of an expense which properly should be charged to the succeeding fiscal year.

Therefore, Form DJ-25 for appraisals should be submitted currently as the need arises but the submission of a Form DJ-25 for expert testimony should be deferred until such time as the trial is set or other definite information is obtained that will support the need for such a request.

Requests for the payment of commissioners appointed to try condemnation cases should be submitted on Form USA 41 (Appendix, Form 21).

Preparation and Approval of Vouchers

Vouchers should be prepared on Form DJ-25a in duplicate and supported by two copies of Form DJ-25, authorization to incur the expense. The voucher must show the exact dates of service and the signature of the payee must correspond with his name as it appears at the top of the voucher.

Vouchers covering services rendered on Sundays or legal holidays must include a certificate to the effect that the services were required and actually performed on such dates.

All vouchers in payment for services of expert witnesses must be presented to the U.S. Attorney for his signature in the space provided therefor on the voucher. The U.S. Attorney's signature will constitute his certificate that the services have been satisfactorily performed as authorized, that the amounts charged are just and reasonable and in accordance with the agreement, and are a proper charge against the Government. The U.S. Attorney must not approve vouchers which are unreasonable or which, for any other reason deemed by him to be sufficient, should not be paid.

**LAND AND NATURAL RESOURCES DIVISION
PUBLICATIONS**

1. Standards for the Preparation of Title Evidence in Land Acquisition by the United States (1964).

This publication, the text of which is contained in this Title, sets out the departmental requirements for the preparation of title evidence to lands to be acquired for Federal public purposes, ap-

June 1, 1970

TITLE 5: LAND AND NATURAL RESOURCES DIVISION

proved forms of title evidence and helpful information as to title matters.

2. A Procedural Guide for the Acquisition of Real Property by Governmental Agencies (1968).

The guide was issued to assist Federal agencies in adopting uniform practices and procedures in acquiring lands for public purposes.

3. Federal Eminent Domain (1940).

This is a basic text with authorities relating to the condemnation of property and will be superseded by the "Condemnation Handbook".¹

4. I and II Condemnation Handbook.

These are the first volumes of a series which will contain up-to-date reported authorities as to the many legal problems involved in condemnation actions.

5. I Condemnation Seminar 1962.¹

6. II Condemnation Seminar 1963.¹

7. III Condemnation Seminar 1964.¹

8. IV Condemnation Seminar 1966.

These volumes contain the various papers delivered at condemnation seminars attended by selected U.S. Attorneys and their Assistants. An index of the papers, which includes valuable information, is contained in each of these volumes.

9. Progress, Property, and Just Compensation (1966).

This pamphlet contains information for property owners explaining the right of the Federal agencies to acquire properties for public purposes and the rights of the property owners.

10. Land and Natural Resources Division Journal.

This publication is issued monthly and distributed to U.S. Attorneys, Federal agencies and personnel in the Division and contains current information concerning the activities of the Division and problems in condemnation cases with digests of current decisions.

¹ Copies of these publications should be available in the offices of all U.S. Attorneys. The supply of these publications has been exhausted and no additional printing is presently contemplated.