



U.S. Department of Justice

Environment and Natural Resources Division

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ENVIRONMENT AND NATURAL RESOURCES DIVISION

DIRECTIVE No. 2017-07

Title: Delegation of Authority to Initiate, Litigate, Assign and Compromise Land Acquisition Cases

Authority: This Directive is issued pursuant to the authority vested in me as Assistant Attorney General for the Environment and Natural Resources Division (ENRD) by 28 C.F.R. §§ 0.65, 0.65a, 0.160, 0.162, 0.164 and 0.168.

Purpose: This Directive delegates authority to the Chief and Deputy Chief of the Land Acquisition Section to initiate, litigate, assign and compromise condemnation or eminent domain cases. For purposes of this Directive, the terms “condemnation” or “eminent domain” cases refer to cases that are affirmative in nature; it does not include inverse takings matters.

Relationship to Other Directives: This Directive supersedes and revokes Directive No. 2016-07 (Delegation of Authority to Initiate Land Acquisition Cases), Directive No. 1985-06 (Delegation of Authority to Stipulate or Agree to Exclude Property Taken), and Directive No. 1981-02 (Condemnation Case Initiation Review Procedures). Other Division Directives relating to delegation of authority to initiate, litigate and compromise cases are: Directive No. 2016-04 (Delegation of Authority to Initiate, Litigate and Compromise ENRD Civil Cases and to Approve Revisions to Certain Previously Approved Consent Decrees or Settlements); Directive No. 2016-03 (Delegation of Authority to Initiate, Litigate and Compromise EDS and EES Cases); Directive No. 2002-02 (Revocation of Unnecessary, Inactive and Obsolete Directives); Directive No. 1991-34 (Re-Delegation of Authority to Initiate ENRD Claims in Bankruptcy Court); and Directive No. 2016-01 (Notice to Appropriate State Officials of Civil Enforcement Actions Against and Within States).

Effective Date: This Directive shall become effective upon the date of approval by the Associate Attorney General or the Deputy Attorney General.

Action:

- I. **DELEGATION OF AUTHORITY TO THE CHIEF AND DEPUTY CHIEF OF THE LAND ACQUISITION SECTION TO INITIATE, ASSIGN, OR OTHERWISE LITIGATE EMINENT DOMAIN CASES**

- A. In response to a written request to acquire an interest in real property by exercise of eminent domain from an authorized official on behalf of any federal department or agency, the Chief and Deputy Chief of the Land Acquisition Section (“LAS”) are hereby authorized to initiate and litigate such acquisition without prior authorization from the Assistant Attorney General or Deputy Assistant Attorney General, subject to the limitations enumerated, *infra*, in section II. See United States Attorney’s Manual (“USAM”) § 5-15.001. Such condemnation actions are brought in accordance with the authority of the Attorney General as provided in the General Condemnation Act of 1888 (currently codified at 40 U.S.C. § 3113), the Declaration of Taking Act (currently codified at 40 U.S.C. § 3114), and D.C. Code § 16-1352 (Condemnation Proceedings by Attorney General) and include, but are not limited to, the following:
1. Actions to acquire fee or a specified lesser estate in real property, such as an easement, leasehold, right-of-way or mineral interest;
 2. Actions to confirm the United States’ title to real property, or if adjudicated not to be the owner of said property, to acquire the property.
- B. The Chief and Deputy Chief of LAS are hereby authorized to assign condemnation cases to United States Attorneys. The cases should be assigned in accordance with Section 5-15 of the USAM, or any revisions there to:
1. Where the claim does not exceed \$1,000,000 and the case presents no actual or anticipated policy questions, peculiar appraisal problems, and/or novel legal questions, the case is designated Category 1, Field. The United States Attorneys will have full responsibility for such cases, subject to:
 - a. such assistance on tactical or legal matters as may be requested of LAS; and
 - b. approvals of the Department of Justice as provided by the USAM.
 2. Where the claim exceeds \$1,000,000, or where there are actual or anticipated policy questions, peculiar appraisal problems, and/or novel legal questions, the case is designated Category 2. Such cases may be assigned as:
 - a. the full responsibility of LAS;
 - b. the joint responsibility of the United States Attorneys’ Offices and LAS; or
 - c. the full responsibility of the United States Attorneys’ Offices, subject to the consulting and reporting requirements set forth in the USAM.

3. Where a request to acquire an interest in real property by eminent domain is made directly to a United States Attorney's Office, such request shall be forwarded to the Chief of LAS for assessment in accordance with this paragraph I.B.

II. DELEGATION OF AUTHORITY TO THE CHIEF AND DEPUTY CHIEF OF THE LAND ACQUISITION SECTION TO COMPROMISE EMINENT DOMAIN CASES

- A. Subject to the limitations imposed by section III of ENRD Directive 2016-04, the Chief and Deputy Chief of LAS, without prior approval of the Assistant Attorney General or Deputy Assistant Attorney General, are authorized to accept or reject offers in compromise of condemnation proceedings in any case in which:
 1. The gross amount of the proposed settlement does not exceed \$3 million;
 2. The compromise is approved in writing (the written approval to be retained in the LAS files) by the authorized representative of the acquiring agency, if the amount of the compromise exceeds the amount deposited with the declaration of taking as to the particular tract of land involved;
 3. The amount of the compromise is compatible with sound appraisals upon which the United States would rely as evidence in the event of trial, with due regard for probable minimum trial costs and risks; and
 4. The case does not involve a novel issue of condemnation law or question of condemnation practice and policy, or for any other reason, which would necessitate that the settlement offer should receive the attention of the Assistant Attorney General or Deputy Assistant Attorney General.
- B. In response to a written request to exclude or revest any property interest, in whole or in part, taken by the United States by declaration of taking or otherwise, the Chief and Deputy Chief of LAS, without prior approval of the Assistant Attorney General or Deputy Assistant Attorney General, are authorized to stipulate or agree on behalf of the United States to exclude or revest such property, provided that the exclusion or revestment does not raise precedential questions or policy issues. Such exclusion or revestment is in accordance with the authority of the Attorney General as provided in the Act of October 21, 1942, 56 Stat. 797 (currently codified at 40 U.S.C. § 3117). Subject to the limitations imposed by section III of ENRD Directive 2016-04, property may be excluded or revested when:
 1. The exclusion or revestment is requested or approved in writing by an authorized representative of the acquiring agency for which the property was taken; and
 2. In the case of a partial exclusion or revestment in connection with an overall settlement of the case, the combined amount of the monetary payment of compensation and the government's appraised value of the

land to be excluded or revested does not exceed the monetary limitation on the settlement authority of the Chief and Deputy Chief of LAS; or

3. In the case of an exclusion or revestment that is not part of an overall settlement of the case, the government's appraised value of the land to be excluded or revested together with any payment of compensation for possession and/or litigation expenses does not exceed the monetary limitation on the settlement authority of the Chief and Deputy Chief of LAS.

III. LIMITATIONS ON DELEGATION OF AUTHORITY TO INITIATE, ASSIGN, OR OTHERWISE LITIGATE EMINENT DOMAIN CASES

A. The authority to initiate, assign or otherwise litigate condemnation cases described in paragraph I.A. may not be exercised by the Chief or Deputy Chief of LAS without prior approval of the Assistant Attorney General or Deputy Assistant Attorney General in any situation where:

1. A significant question exists as to the legal sufficiency of a statutory authority relied on for the acquisition;
2. The proposed case commits a department or agency to expend funds that Congress has not appropriated and that have not been budgeted for the action in question; or
3. A novel or broad question of law or policy is presented, including, but not limited to, questions or policy related to acquisitions that involve revisionary provisions or defeasible title where title would return to a non-governmental entity.

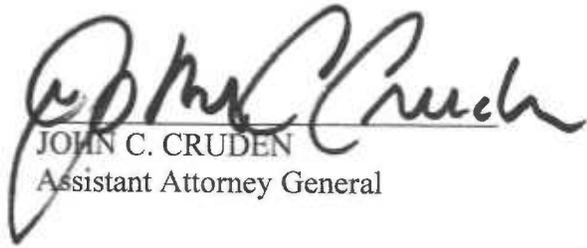
IV. REVOCATION OF DIRECTIVE NOS. 2016-07, 1985-06 and 1981-02

Environment and Natural Resources Division Directive Nos. 2016-07, 1985-06 and 1981-02 are hereby revoked and replaced by this Directive.

V. CONSULTATION AND DISTRIBUTION

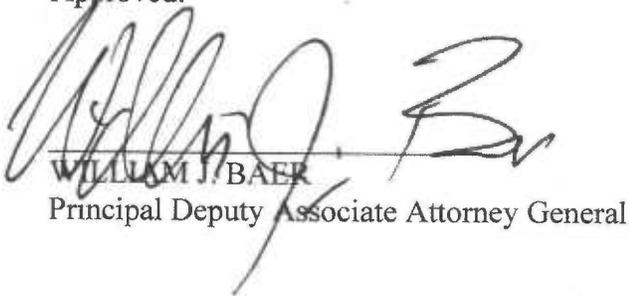
This Directive was developed in consultation with DAAG Bruce S. Gelber and the Chiefs of LAS and the Law and Policy Section (LPS). I hereby direct LPS to distribute this Directive to all Sections and the Executive Office to make available a copy of the original of this Directive to all ENRD attorneys and other employees via user-friendly software technology such that it is indexed, searchable and accessible.

This Directive relates only to internal procedures and management of ENRD. It does not create any right or benefit, substantive or procedural, enforceable at law by any person against the United States, its agencies, officers, or any other person.


JOHN C. CRUDEN
Assistant Attorney General

1/18/17
DATE

Approved:


WILLIAM J. BAER
Principal Deputy Associate Attorney General

1/18/17
DATE