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BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Federal Land Acquisitions By Condemnation -- Opportunities To Reduce Delays And Costs

The Federal Government's many land acquisition programs have brought about a large backlog of court cases in which the Government seeks to acquire by condemnation private land for public use. Such action is generally taken when a landowner is unwilling to sell at the Government's offered price or when the Government cannot acquire clear title without a judicial determination.

Land values involved in condemnation cases are in the hundreds of millions of dollars. Court awards or settlements often substantially exceed Government appraisals, and acquisition costs are increased by high administrative costs and long delays in court.

This report recognizes efforts of the Department of Justice to reduce the caseload. It also recognizes that the condemnation of real property is a complex process. However, it points out opportunities for Justice and land acquisition agencies to expedite cases and reduce costs. It also points out ways to obtain fair and speedy trials and improve the treatment of landowners.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

This report recommends management improvements by Federal agencies in the acquisition of private lands by condemnation. Also, the report recommends to the Congress an amendment to the Declaration of Taking Act and to the Judicial Conference of the United States a revision in the Federal Rules of Civil Procedure.

Copies of this report are being sent to the Director, Office of Management and Budget, and the heads of agencies responsible for land acquisitions.

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

FEDERAL LAND ACQUISITIONS BY CONDEMNATION--OPPORTUNITIES TO REDUCE DELAYS AND COSTS

D I G E S T

The Federal Government has a backlog of over 20,000 court cases in which it seeks to acquire by condemnation private land for public use. At the close of fiscal year 1978, the land in question was appraised at $481 million. Actual acquisition costs probably will be much higher because of administrative costs, awards or settlements in excess of Government appraisals, and long delays in court.

The large caseload arises from the many sizable land acquisition programs for such public purposes as recreation, environmental and wildlife protection, civil and military public works, and various other programs authorized by the Congress. One large National Park Service land preservation project alone accounted for over 10,000 cases pending in September 1979. Condemnation action is generally needed when a landowner is unwilling to sell at the Government's offered price or when the Government cannot acquire clear title without judicial determination.

Sharply rising real estate prices and administrative expenses make it particularly desirable to expedite acquisitions, although the condemnation of real property is a complex process that cannot be easily simplified.

Another report issued by GAO in December 1979 points out that agencies of the Departments of Agriculture and the Interior have followed practices leading to the acquisition of more land than is essential for achieving project objectives (the protection of natural resources of national significance). These agencies could have used other land protection strategies instead of full-title

acquisitions. The recommendations in the 1979 report were intended to reduce the volume of future land acquisitions and, together with the recommendations in this report, should help reduce the backlog of condemnation cases.

DEPARTMENT OF JUSTICE CASELOAD REDUCTION PLAN

To reduce the increasing caseload and long delays in the disposition of cases--some have taken up to 4 years--Justice is implementing a plan that will help overcome staff shortages and other management problems. (See ch. 2.) The plan includes developing a computerized caseload tracking system. Since some of Justice's client agencies already have sophisticated information systems, while others lack systematic data on the status of their acquisitions, GAO recommends that Justice coordinate the development of its proposed system with client agencies and provide for an exchange of data needed for effective caseload management.

ESTABLISHING TITLE EVIDENCE

The Department of Justice requires Federal agencies to establish evidence of title to the desired property so that ownership and other claims against the property are known and compensation is paid to the proper parties. Obtaining this information in a timely manner often is difficult, and delays have hampered the processing and closing of condemnation cases. Some agency officials have expressed concern over the effort and money spent by the Government and questioned the need to buy commercial title insurance for most properties. (See ch. 3.)

The limited availability of title companies to do the Government's work, and restrictive State laws or local practices that sometimes require the Government to buy more protection against title defects than it considers necessary, make it desirable

to explore the feasibility of alternative and less costly procedures. The low loss ratio in title insurance and the Government's general policy to act as self-insurer may allow it to assume a greater risk in lieu of title insurance.

GAO recommends that Justice change certain sections of its standards for preparing title evidence and arrange for a Government-wide study, in cooperation with other Federal agencies experienced in land acquisitions, to determine the most expeditious and economical ways of obtaining needed title evidence.

STRENGTHENING PROPERTY APPRAISALS

To convince the court in a condemnation proceeding that the Government's valuation of the land represents "just compensation," in contrast with the owner's higher claim, the Government must provide for

--adequately supported appraisal reports prepared by qualified appraisers;

--a competent administrative agency review to affirm the acceptability of the reports;

--timely updating for developments up to the date of taking or date of trial, whichever is earlier; and

--persuasive testimony in court.

GAO found that Government-wide uniform appraisal standards and individual agency manuals of instructions provided generally adequate guidelines. However, some weaknesses existed in Government appraisal practices, and GAO recommends that Justice and the land acquisition agencies emphasize to their staffs the need to overcome these weaknesses. (See ch. 4.)

SETTLEMENT INSTEAD OF LITIGATION

The law prescribes a uniform Federal policy to encourage and expedite the acquisition

of real property by agreements with owners to avoid litigation and relieve congestion in the courts. In 1978 the Department of Justice emphasized the need for greater flexibility on the part of acquisition agencies in approving settlements with owners. Also, it requested that agencies thoroughly review all acquisitions valued at $10,000 or less before referring the cases to Justice for condemnation. (See ch. 5.)

Although Federal agencies have made the majority of their acquisitions by negotiated purchase and not by condemnation, GAO found that agencies could improve their chances of reaching agreement with owners by more realistically weighing owners' counteroffers against the high costs of litigation.

To GAO's knowledge, the U.S. Army Corps of Engineers is the only agency which has developed systematic procedures to recognize costs of litigation during negotiations, but its guidelines to negotiators need elaboration and assistance from the Department of Justice. GAO recommends that all land acquisition agencies establish such procedures and that Justice assist them in making reliable estimates of litigation costs.

WAYS TO OBTAIN FAIR AND SPEEDY TRIALS

The Department of Justice has been much concerned with Government efforts to obtain fair and speedy adjudication by the courts. Increased use of a court-appointed commission or a U.S. magistrate may help to meet this objective. (See ch. 6.)

To help assure the appointment of competent, unbiased commissioners, GAO recommends that the Judicial Conference of the United States initiate a change in the rules for judicial procedures in condemnation cases by strengthening the position of the parties regarding the selection of court-appointed commission

members. GAO also recommends that Justice instruct its attorneys to request trial by magistrates, in conformity with legislation enacted by the 96th Congress which authorizes the referral to magistrates of civil cases regardless of complexity or amount at issue.

IMPROVING TREATMENT OF LANDOWNERS

While GAO observed Federal agencies' efforts to comply with the statutory requirement for uniform and equitable treatment of landowners, it also learned of various complaints by landowners who either did not fully understand condemnation procedures or claimed they were not fairly treated. Landowners have complained about inadequate information on their rights in the acquisition process, lack of courtesy by Government personnel, and delays in acquisitions; also, lack of funds has delayed negotiations with, or payments to, landowners. (See ch. 7.)

GAO recommends that Federal agencies seek better communications with owners and more considerate treatment, especially of small owners who find it difficult to cope with the complexities of the acquisition process. Also, agencies should properly plan acquisition projects so that they have available, or can make timely requests for, adequate funds to acquire designated lands expeditiously, avoiding uncertainty and inconvenience to landowners.

INTEREST ON DEFICIENCY AWARDS

The Declaration of Taking Act (40 U.S.C. 258a) allows interest on the amount by which the compensation awarded by the court exceeds the compensation deposited by the Government at the time of taking the property. The interest covers the period from the date of taking until the deficiency is paid into the court. The 6-percent rate, established in 1931 when the act was passed, is no longer in line with economic conditions when landowners can invest their money at considerably higher rates. (See ch. 7.)

GAO recommends that the Congress amend the act by allowing landowners a more equitable rate, corresponding to prevailing market conditions. This goal could be accomplished by tying the rate to the average yield on outstanding marketable obligations of the U.S. Treasury during the period for which interest is payable. Or, fixing the rate could be left to judicial determination as part of the award of just compensation for the property taken by the Government.

AGENCY COMMENTS

GAO received comments from the Departments of Justice, the Army, Agriculture, and the Interior which generally agreed with the report and the recommendations. The agencies stated that the recommendations were constructive, thoughtful, and objective. They offered certain clarifying comments and mentioned actions being taken that would meet the objectives of GAO's report. These comments are recognized in the appropriate report chapters.

The Administrative Office of the United States Courts advised that GAO's recommendation to amend the rules of civil procedures would be referred to appropriate committees of the Judicial Conference of the United States for study and eventual report to the Conference.

Contents

CHAPTER 1

INTRODUCTION

The Federal Government carries out many sizable land acquisition programs which involve the exercise of "eminent domain." These programs seek to acquire by condemnation private property needed for recreation, environmental and wildlife protection, water resource projects, other civil and military public works, and various other programs authorized by the Congress. Federal condemnation actions may seek fee title (full ownership rights) or more limited rights to land, such as easements (certain rights to use, or impose restrictions on the use of, private land) or leaseholds.

The Government's sovereign power of eminent domain is recognized in the Fifth Amendment to the U.S. Constitution which provides that no private property for public use shall be taken without "just compensation." The general statutory provisions regulating how condemnation proceedings shall be instituted are codified in the General Condemnation Act (40 U.S.C. 257) and the Declaration of Taking Act (40 U.S.C. 258a). These provisions apply to all Federal agencies having authority, either in their organic acts or in special authorizing legislation, to acquire land by condemnation. 1/ The rules of litigation before a U.S. District Court between the Federal Government and the landowner are set forth in Rule 71A of the Federal Rules of Civil Procedure (28 U.S.C. Appendix). The Department of Justice institutes and tries the condemnation cases for most Federal agencies. Exceptions are the Tennessee Valley Authority and the U.S. Postal Service, which have statutory authority to institute their own actions in U.S. District Courts (16 U.S.C. 831X and 39 U.S.C. 401).

Condemnation action is generally needed when a landowner is unwilling to sell at the Government's offered price or when the Government cannot acquire clear title to the property without judicial determination. Acquisition by condemnation is a means of last resort. To avoid litigation and relieve congestion in the courts, Federal agencies are required by law (Public Law 91-646 (42 U.S.C. 4651)), to the greatest extent practicable, to make every reasonable effort to acquire expeditiously real property by negotiation.

1/The legislative authority of the agencies covered in this report is set forth in appendix I.

A brief outline of the typical procedure the Federal Government follows in prosecuting a condemnation case and a flow chart depicting the procedure are presented in appendix II.

MAGNITUDE OF FEDERAL CONDEMNATION ACTIONS

The number of condemnation cases instituted by the Federal Government has greatly increased in recent years, largely because of accelerating land acquisition programs for recreation and protection of environmental values. The Department of Justice reported over 18,400 cases (representing tracts of land condemned by Federal agencies) pending at the close of fiscal year 1978, compared with a caseload of about 10,750 tracts at the end of 1973. The appraised value of the tract load increased from $111 million in 1973 to $481 million in 1978. The caseload reported by Justice at September 30, 1979, totaled 21,230 tracts.

In fiscal year 1978, agencies referred to Justice for condemnation about 7,300 tracts valued at $376 million. In fiscal year 1979, Justice received condemnation requests for about 7,800 tracts valued at $97 million. The Government's actual acquisition costs probably will be much higher because of administrative expenses and awards or settlements in excess of Government appraisals. Compensation claimed by landowners is in the billions of dollars.

The Interior Department's National Park Service and the Army Corps of Engineers account for most condemnation actions. The Park Service acquires land for newly authorized parks and other scenic or environmentally valuable areas or for additions to existing areas. The Corps acquires land for water resource projects (civil works) as well as for military projects; it also processes condemnation actions for certain other agencies, including the Air Force (such as airfields) and the Department of Energy (such as storage and transmission facilities for the strategic petroleum reserve). The Department of the Navy processes its own land acquisitions (for airfields, gunnery ranges, etc.) for referral to Justice.

Other agencies in the Department of the Interior carrying out land acquisition programs are the Water and Power Resources Service 1/ (for irrigation projects in the Western

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1/Formerly the Bureau of Reclamation, renamed by Secretarial Directive, Nov. 6, 1979.

States) and the Fish and Wildlife Service (for wildlife preserves). Also, the Forest Service, Department of Agriculture, acquires land needed for the management and protection of existing units of the National Forest System and for newly designated areas. (These and other Federal agencies having need for land condemnation are listed in app. III.) For the last several years, Justice has also processed condemnations by the Washington Metropolitan Area Transit Authority for the Metro subway system.

For the agencies mentioned above, statistics showing the caseload and the estimated land values involved in these various acquisition programs are not readily available. The need for current information on the status of the caseload, as well as actions now underway at Justice to improve its data base, are discussed in chapter 2.

In view of the increasing caseload referred to the Department of Justice and long delays in the disposition of many cases, in March 1978 Justice drew up a Caseload Reduction Plan which identified various causes of delays and proposed remedies to overcome recognized problems and bottlenecks. The plan, if fully implemented, should help expedite the disposition of cases.

The condemnation of real estate is a complex operation which cannot be easily simplified. Nevertheless, the large volume of condemnation cases, the inflationary trend of real estate prices, and the costly administrative effort make it desirable to take all possible steps to minimize delays and reduce costs.

SCOPE OF REVIEW

We reviewed condemnation procedures at the Department of Justice and at headquarters of the National Park Service, Fish and Wildlife Service, Water and Power Resources Service, Forest Service, Army Corps of Engineers, and Department of the Navy. We also visited selected field offices of the National Park Service, the Water and Power Resources Service, and the Corps of Engineers and reviewed practices followed for specific land acquisition projects under the responsibility of these offices. Pertinent data on three major acquisition projects is presented in appendix IV.

Our review was directed to acquisition programs where the Federal Government acquires title to the land through proceedings in Federal courts. We did not cover land acquisitions by State or local governments, or other public or private organizations, although financed by the Federal

Government. These land acquisitions (such as for highways, airports, mass transit, and urban renewal) involve the application of State laws and are tried in State courts.

During our inquiries at the several land acquisition agencies, we examined documentation on about 100 individual condemnation cases, including cases closed during the last 5 years and others still pending in court. Because of the magnitude of the total caseload referred to Justice at any one time and the decentralized processing and documentation of cases by the various agencies, we found it impracticable to select cases representative of all the different Federal acquisition programs. We believe, however, that the cases we examined illustrate various problems with which the Federal Government must cope in its land condemnation actions.

Our inquiries at the selected land acquisition agencies, the Department of Justice, and some U.S. Attorneys' offices showed opportunities for several actions that might improve the Government's position in court, facilitate the disposition of cases, and lower costs:

--Exploring alternative procedures for establishing title evidence.

--Strengthening property appraisals.

--Settling cases with landowners instead of going to trial.

--Seeking ways to obtain fair and speedy trials in court.

--Improving communications with and treatment of landowners. (See chs. 3 through 7.)

This report does not deal with the broader question of the need for the Federal Government to carry out the large acquisition programs which give rise to the many condemnation actions and the need to acquire specific tracts of land. Another GAO report 1/ discusses this aspect with regard to land acquisition policies and practices of the Departments of Agriculture and the Interior. The December 1979 report points out that, under practices followed by the National Park, the Fish and Wildlife, and the Forest Services,

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1/"The Federal Drive To Acquire Private Lands Should Be Reassessed" (CED-80-14, Dec. 14, 1979).

lands were acquired that were not essential to achieving project objectives and before planning how the lands were to be used and managed. The 1979 report shows that these agencies overlooked viable, alternative land protection strategies--instead of fee acquisitions--in the form of easements, arrangements for local zoning, or available Federal regulatory controls. That report includes recommendations to the Secretaries of Agriculture and the Interior to make changes in their land acquisition policies which should reduce the volume of the agencies' future acquisitions and, together with the recommendations in this report, help reduce the backlog of condemnation cases.

CHAPTER 2

EFFORTS TO CONTROL AND REDUCE CASELOAD

In March 1978 the Department of Justice's Land and Natural Resources Division drew up a Caseload Reduction Plan to help reduce the increasing workload of condemnation cases referred to Justice and pending in court or awaiting closing action. The plan highlighted a need for increased staff both in the Land Acquisition Section and in U.S. Attorneys' offices--which share the responsibility for prosecuting condemnation cases--as well as a need for more effective management of available resources.

A year later, progress had been made in overcoming some of the identified problems and achieving a faster pace in closing cases. But major problem areas remain, including limited staff resources. With a continuing increase in new condemnation actions sought by Federal agencies, the number of pending cases has risen to an all-time high in fiscal year 1979.

HEAVY CASELOAD

The following table shows the trend of the caseload (in numbers of tracts being condemned) for the last 4 years.

Fiscal year	Referred to Justice	Closed	Pending at yearend
1976	7,030	2,647	14,780
1977	5,728	2,472	a/17,998
1978	7,292	6,855	18,435
1979	7,865	5,070	21,230

a/Reflects a downward adjustment of 38 cases.

Justice's Caseload Reduction Plan emphasized the urgency of remedial action because of the large amount of money involved in these condemnation cases and the added cost to the Government caused by delays in their disposition. Some of the cases have taken up to 4 years to be closed. Considering the volume and appraised value of tracts in condemnation at the time the plan was prepared--16,835 tracts valued at $332 million, with landowners claiming $1.2 billion--Justice estimated that each year's delay in processing these cases

through the courts would cost the Government an additional $31 million because of escalating land values.

A detailed analysis reported in March 1978 of each judicial district's caseload showed 21 districts with significant backlogs. Two of these districts were responsible for thousands of cases; 15 other districts had over one hundred cases. A similar analysis in April 1979 showed 1 district with over 9,600 cases and 35 districts with more than 100 open cases each. Justice reported similar caseload data at the close of fiscal year 1979.

The heavy caseload in some districts is due principally to large-scale acquisition projects carried out in their geographical areas by the National Park Service, the Corps of Engineers, or the Navy. Following is illustrative data obtained from Justice statistics at the close of fiscal years 1978 and 1979.

	Cases pending at close of	
	1978	1979
National Park Service:		
Big Cyprus National Preserve, Florida	7,177	10,091
Big Thicket National Preserve, Texas	321	452
Indiana Dunes National Lake Shore	364	434
Corps of Engineers:		
Truman Dam, Missouri	642	531
Department of the Navy:		
Chocolate Mountain Gunnery Range, California	not significant	1,377

LIMITED STAFF RESOURCES

Justice identified as a major problem the understaffing in U.S. Attorneys' offices and the Land Acquisition Section. The equivalent of only 37 full-time Assistant U.S. Attorneys had been assigned to condemnation cases, most of them on a part-time basis. The plan proposed the allocation of an additional 32 attorneys to the districts having the largest case backlogs. The plan also asked for six attorneys

working on a regional basis, each assigned to a group of adjacent districts.

For the Land Acquisition Section, which must try the cases not handled by U.S. Attorneys as well as monitor the progress of all cases in litigation, the plan called for an increase in staff (including attorneys and paralegal and support personnel) from 51 to 71 positions. Ten additional attorneys were to be borrowed from client agencies.

The following table summarizes the staffing requirements outlined in the plan.

	Available staff	Additional staff needed	Total
Assistant U.S. Attorneys:			
In districts	37	32	69
On a regional basis	-	6	6
Land acquisition section:			
Attorneys	32	5	37
Paralegal personnel	-	5	5
Support personnel	19	10	29
Borrowed personnel	-	10	10
Total	88	68	156

A year after preparation of the plan, the staffing situation at Justice had improved but remained critical because the plan's goals were only partially met while the caseload had increased.

Between June 1978 and March 1979, the Executive Office for U.S. Attorneys, at the Land and Natural Resources Division's request, appointed five full-time and three part-time Special Assistant U.S. Attorneys for 1-year terms to work exclusively on condemnation cases. In April 1979, 117 Assistant U.S. Attorneys devoted some time to condemnation cases throughout the 95 judicial districts. Justice considers their efforts equivalent to 51 work-years. This number falls 18 staff-years short of the target established by the March 1978 plan.

In response to an amended budget request for fiscal year 1979, Justice received congressional authority for 25 additional positions, primarily for work on land acquisitions. However, the Office of Management and Budget did not permit Justice to fill these positions. Only later in fiscal year 1979 was the Land Acquisition Section able to increase its staff to 61 persons (as of May 25, 1979), still 10 positions short of the target. Senate Judiciary Committee hearings on Justice's Authorization Act for fiscal year 1980 brought out the imperative need for more adequate resources. The committee's report (S. Rept. 96-173, May 15, 1979) put the minimum additional staff needed at 28 persons, including 15 attorneys. The committee stated that such an increase would be "one of the most cost-conscious actions Congress could take."

The proposal in Justice's Caseload Reduction Plan to borrow attorneys from client agencies could not be followed because of the agencies' own limited resources and questions raised as to their legal authority to lend personnel. Some agencies, however, informally agreed to assist Justice attorneys as much as possible in processing cases on the larger acquisition projects.

As a result of its authorization and appropriation hearings for fiscal year 1980, Justice received increased appropriations for 20 additional positions to carry out land acquisition activities. With these staff increases, the Land and Natural Resources Division considers its attorney strength sufficient but needs additional support personnel and depends on proper support from the U.S. Attorneys' offices in order to adequately handle the workload of condemnation cases in the foreseeable future.

IMPROVEMENTS IN MANAGEMENT OF CONDEMNATION CASES

The plan called for several improvements in the use of available resources to speed up case dispositions. Principal proposals were to

- --establish a small-tract program to expedite the acquisition of low-value tracts (those appraised at $40,000 or less), which constitute the bulk of pending cases;

- --change Government policies permitting settlement of cases above appraised value instead of going through litigation;

--remove the backlog of cases which have been adjudicated in court but are awaiting final closing action by the Attorney General;

--restructure the Land Acquisition Section according to functions rather than judicial districts; and

--develop a computerized information system for more effective management of the caseload to replace manually maintained records.

Small-tract program

This program called for assigning teams of attorneys to expedite acquisition of low-value tracts in those districts with significant backlogs. Concentration on these cases was expected to significantly lower the pending caseload and free other staff to handle the more important, higher value tracts. Although only 13 percent of the caseload, high-value tracts represented over 95 percent of the Government's potential monetary liability.

Justice officials informed us that such assignments have since been made on an ad hoc basis for certain major land acquisition projects (such as the Big Cyprus National Preserve in Florida and the Navy's Chocolate Mountain Aerial Gunnery Range in California); but staff limitations did not permit assigning teams to all judicial districts with a large number of pending small-tract acquisitions.

Since the acquisition of a large volume of small-tract cases seems to be a continuing problem 1/ and their litigation often involves efforts and delays similar to those of larger properties, the more promising method of disposition may be settlement with the landowner. Settlement is the subject of another proposal in Justice's March 1978 plan.

1/In Sept. 1979 small-value tracts represented 84 percent of all cases pending in court, only slightly less than the 87 percent in Feb. 1978.

Settlement with owners

To permit settlements with owners at amounts higher than the Government's appraisal but less than the expected judicial award, the plan proposed greater flexibility for acquisition agencies and Justice in approving such settlements. The Attorney General subsequently approved the following increases in settlement authority for the several authorization levels in Justice:

	From	To
U.S. Attorneys	$ 40,000	$100,000
Chief, Land Acquisition Section	75,000	200,000
Deputy Assistant Attorney General	100,000	250,000
Assistant Attorney General	250,000	500,000
Associate Attorney General		over $500,000

With respect to agency policies approving settlements with owners, Justice sought to encourage a more realistic approach to negotiating settlements, particularly in view of historically high court awards in certain judicial districts. Our review showed that agencies often did not follow a sufficiently flexible policy, and our observations in this matter are presented in chapter 5.

Final closing action

In February 1978 a backlog existed of about 2,900 cases which had been adjudicated in court but could not be closed for lack of a final opinion by the Attorney General that the proceedings were properly conducted and good title was vested in the Government. The delay in closing was generally caused by delay in receiving from the land acquisition agency or the U.S. Attorney certain required documentation of title evidence and/or the distribution of the award to the landowner and any other entitled parties. Special staff efforts were needed to secure these documents.

Our observations of past and present agency condemnation procedures showed that obtaining updated title evidence--documenting the ownership and any other interests

in or claims against the property to be acquired--is a continuing problem. (See ch. 3.) We did not determine whether progress had been made in a more expeditious transfer of documents between U.S. Attorneys' offices and the Land Acquisition Section. Officials of the Land and Natural Resources Division, however, informed us that the goals of the March 1978 plan had not yet been reached and that the Assistant Attorney General would order a followup of such cases waiting for a final opinion and determine what further action was needed. Justice's caseload statistics for September 1979 showed some 1,900 cases in this category (out of 21,230 open cases), but the age of these cases was not shown.

Restructuring of Land Acquisition Section

As proposed in the plan, Justice reorganized the Section into units having specific program functions, such as disposition of small tracts, unique major cases, litigation of major cases, legal research, and administrative functions. We were informed that appropriate changes had been made but that further reassignments would be ordered if considered desirable.

Computerized information system

In September 1978 Justice's Land and Natural Resources Division contracted for a study to determine the requirements of a computerized docket tracking system. The study was completed in April 1979, and a contract to develop and implement the system was signed in August 1979. The system, expected to be in operation on a pilot basis in about 1 year, is to give priority to data needed for land acquisition cases.

In the past, the Division has maintained manually a record of all cases referred to it, disposed of, or pending, including identification of each tract to be condemned, the attorney and the district to which assigned, the amount of appraisal or deposit in court, and other relevant data. Quick and easy access to this data has not been possible under the manual system. Also, other pertinent information has not been available, such as a case analysis by agency or program or periodic comparisons between appraisals and final awards or settlements.

The planned computerized system is intended to permit more effective caseload management and tracking and easy data retrieval. As a special feature the system will assign a weight factor to each case, according to its complexity, to help determine staff and time requirements.

Acquisition agencies also need better caseload data

The need for up-to-date information on the status of condemnation cases is not confined to Justice but also applies to the acquisition agencies. While the Corps of Engineers and the National Park Service maintain their own computerized systems on land acquisitions, other agencies do not have readily available data on pending cases and past transactions and could benefit from exchanging information with Justice.

The Corps and Park Service have developed sophisticated management information systems to keep track of the progress made in successive steps of the land acquisition process for each individual tract--obtaining and updating appraisal and title evidence, filing for condemnation, achieving settlement or award, and making the required deposit in court for just compensation. This information is used principally by field offices carrying out acquisition programs, but pertinent data also can be abstracted and summarized in various ways for use by headquarters management.

Other agencies included in our review kept informal records of acquisitions on a decentralized basis, and special efforts were needed to present project or agencywide data on pending cases when needed by higher level management. In the Department of the Interior, in contrast with the National Park Service's computerized information system, the Fish and Wildlife Service and the Water and Power Resources Service maintain no formal acquisition records. Although these two agencies have a smaller volume of acquisitions, a more systematic approach to controlling pending cases would help agency management take timely followup action and assist Justice in carrying out its functions. The same observation applies to the Forest Service and the Department of the Navy, which also do not maintain formal, agencywide case records.

Justice, in developing its computerized system, may find the prior experiences of the Corps and the National Park Service beneficial and may be able to use some of the data developed by these agencies in its own system. Moreover, Justice may want to exchange information with all its client agencies, furnishing them data pertinent to their acquisition programs as well as requesting supplementary data from the agencies (for example, updating title evidence, a bottleneck in many condemnation cases that requires attention by both Justice and the acquisition agency).

CONCLUSIONS

Justice's Caseload Reduction Plan was a useful and timely step toward achieving better control over the mounting workload of condemnation cases. Focusing on how to overcome major problems contributing to the long delays in case dispositions, especially understaffing in the Department, it has highlighted a critical situation and already brought some relief. Continuing congressional interest may enable Justice to make further improvements in fiscal year 1980, such as more adequate staffing and installation of a computerized information system.

While the proposed remedial steps are sound, the overall goal--to shorten the average processing time for condemnation cases to 1 year--may be overly optimistic. Some actions needed to speed up cases are beyond Justice's control because they depend on cooperation of the client agencies and the working of the judicial system. Subsequent chapters of this report deal with some of these problems and possible remedies.

On the basis of our observations regarding implementation of the Caseload Reduction Plan, since some of the plan's proposals had not been fully implemented or their status was not entirely clear, we proposed that Justice take stock of what further actions are needed to deal with problems impeding the processing of condemnation cases and update the March 1978 plan accordingly. Justice officials informed us in September 1979 that the Assistant Attorney General for Land and Natural Resources has ordered such a followup and action plan and that this work was currently in process.

To obtain maximum benefit from the computerized caseload information system now being developed and to avoid possible duplication of effort, we believe that (1) Justice should seek the cooperation of its client agencies, considering their information capabilities and needs, and (2) land acquisition agencies should determine and coordinate with Justice their respective information needs.

RECOMMENDATIONS TO THE ATTORNEY GENERAL AND HEADS OF LAND ACQUISITION AGENCIES

We recommend that, to the extent feasible,

--the Attorney General provide for coordinating the computerized caseload tracking system with Justice's client agencies to facilitate the exchange of information needed by Justice and the agencies and

--the heads of land acquisition agencies review their needs for current data on the status of condemnation cases and coordinate the needed data with the computerized caseload tracking system being developed by the Department of Justice.

AGENCY COMMENTS

Justice agreed that coordination of its computerized caseload tracking system with the client agencies would be desirable to facilitate the exchange of needed information. Justice, however, pointed out several obstacles, such as the high cost of installing individual computer terminals for data access by acquisition agencies and of converting thousands of old cases and data into computer-compatible form. Also, Justice mentioned its limited personnel and funds and the initially very limited scope of the computerized system which would be operating only as a pilot program and not until late in 1980.

The land acquisition agencies of the Department of the Interior strongly support a standardized information system. The Forest Service, however, questions the benefit it would obtain from a computerized system because of the small number of its condemnation cases, and it does not want to generate a disproportionate workload by establishing such a system.

The Corps of Engineers expressed willingness to share the expertise gained in its own information system on land acquisitions with other agencies or the Department of Justice.

Our recommendation seeks to encourage consultation among Justice and its client agencies and an understanding of their mutual information needs. An integrated Government-wide system may not be feasible because of varying volume of cases and agency needs. We believe each agency should develop an information system best suited to its needs but making full use of the data developed by other agencies and avoiding possible duplication.

CHAPTER 3

NEED TO EXPLORE ALTERNATIVE PROCEDURES FOR OBTAINING EVIDENCE OF TITLE

An important step in the Government's land acquisition process is establishing evidence of title to the desired property. The Government needs this information to ascertain ownership of and other claims against the property and to assure that compensation is paid to the proper parties. Obtaining this information as required by the Department of Justice and in a timely manner often has been a difficult task for the land acquisition agencies; delays have hampered the processing and closing of condemnation cases.

Also, questions have been raised about the Government's need to purchase commercial title insurance for most properties. We believe it would be in the Government's interest to explore the feasibility of adopting alternative and less costly procedures that would expedite Federal land acquisition programs.

WHAT EVIDENCE IS NEEDED

Establishing title evidence involves searching title records and related documents and obtaining a professional opinion on ownership rights, based on the search and other appropriate inquiries. Obtaining adequate title evidence is the responsibility of the acquisition agencies, which must satisfy the "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States," a Department of Justice booklet issued in 1970. The Department is the final authority to determine what is acceptable evidence for Federal land acquisitions and needed in a particular condemnation case.

The standards call for title evidence "acceptable to prudent attorneys and title examiners in the locality in which the land is situated." The three most commonly accepted types of evidence described in the standards are (1) abstracts of title, (2) certificates of title, and (3) title insurance policies. Use of any one of these documents will generally depend not only on local law and practices but also on the availability of abstract and/or title companies and the costs of performing these services.

Abstracts of title can be voluminous documents and require an expert attorney to provide an opinion on the sufficiency of title and curative data that may be needed. Therefore, Federal agencies prefer to obtain certificates of title or title insurance policies. Both provide for financial liability of the title company within limitations set forth in the standards and in the instrument executed by the company. The certificate of title provides a lesser degree of liability essentially limited to the adequacy of the title search, whereas the title policy insures the Government against any defect in title.

The standards list two other types of acceptable title evidence: owners' duplicate certificates of title and copies of public title records duly authenticated or certified. However, agency officials told us these are rarely used.

In addition to the methods cited, the standards permit "any other satisfactory evidence of title." The standards contain no elaboration, and it is under this authority that we believe Justice and the acquisition agencies need to identify alternative ways of obtaining needed title evidence when the commonly used methods are found to be too time consuming or costly.

DIFFICULTIES IN ACCOMPLISHING TIMELY SEARCH

The Government has had trouble finding title companies which can provide the title evidence when needed. The number of title companies available to do the Government's work is limited in some, especially rural, areas where the large companies do not maintain offices. Moreover, a large-scale Government acquisition project involving hundreds or thousands of tracts imposes a heavy workload within a limited time frame. This burden cannot be readily handled by small companies and can also create problems for large companies, whose business tends to be seasonal.

For example, for the Harry S. Truman Dam and Reservoir project in Missouri, the Corps of Engineers solicited a representative number of title companies, but only a few responded. Corps officials explained that major title companies do not bid on work in rural areas in Missouri. Since the land record books are maintained by date of transaction and not by legal description (that is, location), local abstract companies must be used because they are the only ones having up-to-date title information readily available by tract. These companies, in turn, will contract with one

of the major title companies for issuance of title insurance. In one county, the Corps experienced delays of up to 2 years when the abstracter under contract died and a replacement had to be found to complete the work. In another county, abstract work took a year or more although the Corps needed the title data within 60 days of placing its order.

Another example of long delays in obtaining title evidence is a national park acquisition project in Maryland. Here, the Park Service's regional office contracted with a large title company in Washington, D.C., which had no local offices in the Maryland counties where the titles had to be searched. The title company had trouble staffing the work in Maryland, and Park Service personnel had to assist in the task. In this case, the contract was awarded to the D.C. company as the low bidder, and Park Service officials stated that a local company probably could not have handled the entire project involving some 1,300 tracts. However, the work could possibly have been divided among the several counties, or title companies could have been solicited in Baltimore rather than in Washington.

Officials of the National Park Service and other acquisition agencies with whom we discussed problems in procuring title services agreed that only those companies should be selected which have authorized representatives in the county where title searches must be conducted. For example, in 1975, before contracting for title services for its largest ongoing project, the Big Cypress Preserve in Florida, the Park Service gave prospective bidders the option to bid on a variety of services separately or jointly for each of the three counties where the desired properties were located. The Service received bids from 12 companies; it accepted low bids for furnishing title insurance in one county and certificates of title in the other two counties.

Although the response to this solicitation can be considered quite satisfactory, problems developed in obtaining timely performance under the contracts. One contract had to be amended in 1977 to obtain faster and better quality title and closing services. Amendments included approval of higher fees and participation of Park Service personnel in handling closing documents. In another contract, the Park Service had to bring to the contractor's attention delays in the delivery of preliminary title evidence as well as of final title evidence and closing services. These problems, which hurt relations with landowners, continued into 1979. They were attributed, in part, to the fact that the

title company did not maintain an office at the county seat as required by the contract.

An example of the difficulty of obtaining responsive bids for title services on large acquisition projects is the National Park Service's experience regarding the addition to the Redwood National Park (approved by Public Law 95-250, Mar. 27, 1978). This legislation authorized adding to the existing park 48,000 acres of private land by legislative taking. Preparing for the court case that would determine the amount of just compensation to be paid the former landowners, the Park Service requested bids for title insurance from the three title companies doing business in the county. The Service received only one bid, which it considered unresponsive because the bid did not accept the reduced liability formula established by the Department of Justice for insurance coverage. The Service estimated the cost of title insurance, based on the full acquisition price of the land, would approach $750,000, with escrow services costing an additional $150,000. Consequently, Justice decided to undertake the title work with its own staff attorneys at a cost expected to be between $50,000 and $100,000.

An essential part of title companies' services is updating the title to the date of bringing condemnation action in court and, subsequently, to date of closing. Accordingly, the Standards provide that contracts for title evidence should include as a separate item the costs of any necessary continuation of the evidence of title.

Some of the projects we reviewed were hampered by delays in updating title evidence. The U.S. Attorney for western Missouri informed the Corps in 1975 that titles, especially on large-value tracts for the Truman Dam project, needed updating. He was reluctant to file condemnation action when the title was "stale"--that is, not adjusted for events since the preliminary title search. Our discussions at the U.S. Attorney's office in March 1979 confirmed that the Corps should have obtained an "intermediate" title before filing action in court but rarely had done so. Also, the Corps has been slow in obtaining "final" title evidence after judgment by the court. These delays, however, were beyond the Corps' control because it was dependent on the title company's cooperation. Corps headquarters officials told us that they had developed a substitute procedure for updating title evidence by using the Corps' own and some of Justice's attorneys.

The limited availability of title companies to do Government work in a timely manner raises a question as to whether the Government could develop alternative procedures to obtain necessary title evidence. Agency officials suggested to us several procedures to expedite handling of acquisition programs.

--Using Government personnel--resorted to in some exceptional cases in the past--could be expanded but would require properly trained staff at acquisition agencies and/or Justice. Staff shortages had been a limiting factor in the past. Also, the Government should not do work which the title companies are paid to perform.

--Reducing requirements for an acceptable title search. Justice's standards prescribe going back a minimum of 60 years for most title evidence, with longer or shorter periods specified for properties of higher or lower value, respectively. Model State marketable title acts generally require title search for a 40-year period.

--Accepting, in cases where no special complications exist, a "last owner" or "last mortgage" search; for example, evidence of title could be established by a prior valid search and title policy for the last owner of record or by the last mortgage recorded against the property.

--Allowing "action to quiet title" 1/ by an owner willing to sell to the Government but holding a clouded title. This action would have to be initiated by the owner, and the Government would have to pay the owner's costs.

We have not reviewed and cannot judge the feasibility of these or other alternatives to establish title evidence but mention them as possible avenues that may be considered as part of a study which we are recommending in this chapter.

With respect to the alternative of using Government personnel instead of contract services, National Park Service officials expressed the belief that, if a corps of its

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1/In this procedure an advertisement is placed in local newspapers to locate persons claiming an interest in the land. If no response is received within a specified period, the court will adjudicate clear title to the land.

own abstracters, title examiners, closing attorneys, and paralegal personnel had been recruited and trained when the Service first got involved in its extensive land acquisition program, the Government could have saved much money and handled the acquisitions at many projects more expeditiously.

IS TITLE INSURANCE NECESSARY?

Some agency officials responsible for land acquisition mentioned to us their concern about the amount of time and moneys the Government was spending to obtain title evidence. They questioned whether the Government should obtain a title certificate or a title insurance policy in most cases. They also pointed out that, although Justice has specified limits of liability which a title company should assume, in some cases the Government obtained liability in excess of such limits for the full acquisition value of the land, resulting in unwarranted cost.

The cost of title services incurred by the Government is substantial. The National Park Service spent about $1.4 million in fiscal year 1979. The Corps of Engineers incurred about $1.5 million in fiscal year 1978. The cost of title insurance included in these amounts is not readily determinable. Not considering the costs incurred by all other Federal agencies engaged in land acquisitions but using the approximate percentage determined in a 1973 Corps study, the cost attributable to title insurance for these two agencies would range between $580,000 and $725,000.

The question of whether the Government obtains commensurate value by paying a title company to assume liability for defective titles or whether the Government could assume the risk as a self-insurer, was posed in October 1972 by the then Chairman, Subcommittee on Conservation and Natural Resources, House Committee on Government Operations. The Corps of Engineers responded in June 1973 by favoring continuation of the present system of obtaining title evidence.

The Corps' response pointed out that the use of insured certificates of title and title insurance policies provided the Government much more than the stated amount of insurance: namely, the search and legal opinion. Self-insurance would not eliminate the need for obtaining these services; it would eliminate only the cost of insurance, which constitutes about 20 to 25 percent of the total cost. According to the Corps, if the Government undertook to search and examine titles with its own staff, it might incur higher costs than by contracting. Regarding title companies assuming insurance liability in excess of that required by Justice's standards, the Corps noted that some companies

refused to issue certificates or policies for less than full value. Also some States require that insurance must cover the full purchase price.

Although the Corps sought to justify the present system of obtaining title insurance, a staff paper prepared at the time of the congressional inquiry acknowledged the merits of some experimenting with uninsured title certificates obtained from an attorney or title company. On the premise that the Government could economically take the risk of such self-insurance, if the attorney or company were carefully selected, the paper proposed a pilot project in one Corps district to see if such a system is feasible. The paper also mentioned the possibility of using self-insurance for certain properties, such as low-value easements and fee acquisitions. It also pointed out that more diligent efforts could be made to keep insurance within the limits set by Justice's standards.

Another factor to consider is that the loss ratio in this type of insurance has been rather low (4 to 5 percent, according to the Corps' staff paper). We were told that the acquisition agencies rarely found it necessary to seek recovery from an abstract or title company. Neither Justice nor the agencies maintain records from which claims can be readily identified. But information obtained from knowledgeable agency officials in our 1972 study 1/ of Federal procurement practices for title insurance, and in our latest review, showed that few claims have been made against title companies for defects in Government land titles.

Federal agencies have attempted to limit the scope of commercial title insurance and reduce its cost, but their attempts have often been unsuccessful. Agencies generally seek to obtain certificates of title, which are less expensive than title insurance policies. Also, they seek to limit the amount of insurance. Justice's standards provide that coverage shall not be less than 50 percent of the first $50,000 and 25 percent of the additional acquisition value of the land. If title insurance is kept at these minimum amounts, the Government assumes the risk for the remaining value and the cost of commercial coverage is reduced. In some cases,

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1/Letter report to the Attorney General, B-176942, Nov. 22, 1972.

the fact that the Standards require minimum amounts of coverage but do not encourage that these amounts not be exceeded may be an incentive to title companies as well as to Federal agencies to contract for 100-percent coverage. In some jurisdictions, however, title companies offer only title insurance policies for the full value of the property.

A case in point is the aforementioned experience of the National Park Service. It received only one bid for title services in the Redwood National Park area, at full value of the property. Also, when contracting for title services at the Big Cypress project, the Park Service had to agree to full-value title insurance; specifying insurance limitations for the many categories of properties included in the contracts was considered impracticable.

In contracting for title work at the Big Cypress project in Florida, however, the National Park Service accepted a low bid for title insurance rather than for certificates of title. For one of the counties the title company offered an overall policy for all 7,500 tracts as an alternative to issuing separate policies for each tract. Since State of Florida insurance rates apply to separate policies but not to the overall policy, the company was able to offer a lower price for its services.

We are not aware of the extent, if any, to which overall title insurance policies have been available to and used by the Government. Possibly, a wider use of this approach could offer worthwhile economies and should be explored by Federal land acquisition agencies.

In view of the restrictive provisions of some State laws and/or restrictive local practices, the Government must now buy title insurance exceeding the coverage required in Justice's standards. Considering the very low loss ratio which has prevailed in the title insurance industry and the Government's general policy of assuming the risks of loss or damage to Government-owned property, the question may well be asked whether the Government should not buy less commercial title insurance and assume a greater amount of the risk.

The risk the Government would assume by self-insurance would be mitigated by certain statutes of limitations governing claims against the Government.

--Pursuant to 28 U.S.C. 2401, a civil action against the United States is barred unless the complaint is filed within 6 years after the right-of-action first accrues.

--Pursuant to 28 U.S.C. 2501, the time for filing suit in the Court of Claims is similarly barred after a 6-year period.

--Pursuant to 28 U.S.C. 2409a, a civil action to adjudicate a disputed title to real property in which the United States claims an interest shall be barred unless commenced within 12 years from the date upon which it accrues.

CONCLUSIONS

Justice's standards suggest that (1) when title difficulties cannot be readily resolved, the cost of title evidence or insurance is unnecessarily expensive and (2) when unreasonable delays are foreseen or incurred in securing title evidence, Justice's Land and Natural Resources Division should be consulted. We believe that such difficulties have occurred with enough frequency to merit Justice's overall attention rather than action on a case-by-case basis.

These problems could be diminished by supplementing the published standards to identify, under the category of "any other satisfactory evidence of title," acceptable, less costly alternatives to the commonly used methods of obtaining abstracts, certificates, or insurance policies. Also, to minimize the cost of commercial title insurance, the standards could be changed to encourage use of minimum amounts of coverage in appropriate cases instead of merely stating them as minimum requirements or, conversely, to specify maximum amounts of coverage.

In addition, in view of the questions raised by agency officials regarding the possibility of simplifying present procedures and reducing their costs, we believe that a Government-wide study would be desirable to critically review the present and possible alternative procedures and identify those which would be most suitable in various jurisdictions and under varying circumstances.

Fundamental to this review would be a determination of whether the Government needs the same safeguards as private parties seeking to acquire real estate--a premise on which Justice's 1970 standards for preparing title evidence seem to be based.

We believe that the Department of Justice, having ultimate responsibility for the Government acquiring good and valid title to real estate, would be the appropriate agency to spearhead the proposed study and carry it out in cooperation with the Corps of Engineers, the National Park Service, and other Federal agencies most experienced in land acquisition.

RECOMMENDATIONS TO THE ATTORNEY GENERAL

We recommend that the Attorney General

--supplement the published standards for preparing title evidence in land acquisitions by identifying acceptable alternative procedures that would expedite obtaining, or lower the costs of, needed title services, and by encouraging minimum coverage of title insurance in appropriate cases and

--arrange for a Government-wide study of the most desirable procedures for obtaining title evidence needed in Federal land acquisition programs so that present procedures can be modified, if appropriate, and needed title services can be obtained expeditiously and economically.

The study should include, in particular, the following inquiries:

--To what extent State laws and local practices affect title services available to the Government and what steps the Government can take to encourage desirable modifications.

--Under what conditions abstract and title companies would be more willing to provide, at reasonable cost, the services specifically needed by the Government.

--Whether land acquisition agencies can be provided with more specific guidance to determine when to contract for abstracts, certificates of title, title insurance, or other acceptable title services or to use the agencies' own personnel.

--To what extent and at what cost acquisition agencies and/or the Department of Justice would have to recruit and train personnel if the Government were to undertake its own title work.

--Based on answers obtained to the above inquiries, the feasibility of the Government assuming a greater part of the risk for the adequacy of title evidence obtained and thus limiting the cost of commercial title insurance under present procedures.

AGENCY COMMENTS

Justice generally agreed with our recommendations and stated that the proposed Government-wide study would be a useful means to resolve the problems discussed in this chapter.

The Army, on behalf of the Department of Defense, concurred with our recommendation for a study of acceptable alternative methods to obtain needed title services and offered its cooperation in such a study.

The National Park Service and the Forest Service pointed out that they found the services of title companies to be a useful and cost-efficient method of obtaining the needed level of title evidence. They are concerned over the possibly higher costs the Government would incur if it had to use its own personnel. But Interior's Water and Power Resources Service saw merit in studying alternatives to obtaining title insurance.

We believe the proposed study should explore the question of when it is in the Government's interest to use the title services generally obtained in the past and when to resort to alternative methods.

CHAPTER 4

STRENGTHENING PROPERTY APPRAISALS

Sound and properly supported appraisals of the properties to be acquired are important in condemnation cases to convince the court that the Government is offering owners fair value and that the owners' higher claims go beyond what constitutes just compensation. Our prior reviews of Government appraisal procedures 1/ and observations in this review indicated general compliance by Federal agencies with recognized appraisal standards. We noted several problem areas, however, where Federal agencies should seek to improve Government appraisals.

COMPLEXITY OF APPRAISAL PROCESS

The preparation (by Government staff) or procurement (by contract with outside experts) of high-quality appraisal reports is a difficult and costly task: large numbers of tracts must be acquired for many Government projects; a great variety of local conditions affects the value of individual tracts; and an extensive body of Federal law governs the proper interpretation of "just compensation." The appraisal of real property may involve complicated valuation problems, such as (1) when the land contains valuable mineral deposits or other natural resources or has potential for commercial development or subdivision, (2) when the appraisal requires determination of severance damages to parts of the property not taken by the Government, or (3) when it concerns the valuation of various types of easements (such as scenic easements for recreation projects, flowage easements for water resource projects, or rights-of-way for access to Federal lands).

The possibility for a wide range of professional opinion often exists in a given case, and Government appraisers must be careful to present a defensible position in court.

1/"Policies and Practices for Acquiring Land at Three Missouri Water Resources Projects" (RED-75-386, June 26, 1975) and "Private Land Acquisition in National Parks: Improvements Needed" (CED-76-144, Sept. 20, 1976).

Federal agencies responsible for land acquisition programs must employ qualified appraisers who can appraise properties according to professional standards or must procure competent services by contract and also evaluate the work of other staff or contract appraisers. Agencies generally seek to employ persons who either have demonstrated their qualifications by membership in a professional organization, such as the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, or similar association, or have acquired needed skills through qualifying training or experience in real estate or land management. Agencies also train their own staffs on the job and send them to appropriate training courses.

PROBLEM AREAS

Our review indicated a number of problem areas where Federal agencies should seek improvements in their appraisal practices.

--Strengthening administrative reviews of appraisals.

--Timely updating of appraisals.

--Marshalling convincing testimony in court.

--Determining adequacy of staff appraisers' grade levels.

Strengthening administrative reviews

Reviews are required for all appraisals, whether made by staff or contract appraisers, as set forth in the Government-wide standards and the agencies' own manuals of instructions. However, such reviews have not always been of the highest quality.

Our 1976 report on private land acquisitions in national parks and a 1977 study by the House Appropriations Committee's investigation staff 1/ were critical of the National Park Service's appraisal review procedures. Our report pointed out that appraisal reviewers should make a better record of their inquiries, particularly on matters of major importance to judging the appraisal report's adequacy.

1/Report dated Oct. 18, 1977, published in record of hearings on appropriations for the Department of the Interior for fiscal year 1979, pt. 6, pp. 263 to 367.

The Committee's staff report found that appraisal reviews needed to be more adequately documented and should include, as a minimum, comments on (1) the property's estimated value and how it was arrived at, (2) the appraisal's strengths and weaknesses, (3) any contacts with the appraiser, and (4) approval or rejection of the appraisal.

Our latest review confirmed the need for some agencies to emphasize the importance of adequate appraisal reviews in condemnation proceedings where the Government must have reliable appraisals to successfully support its position in court. We noted the following instances of weakness in review procedures.

At one National Park Service acquisition project, reviews lacked thoroughness and expressed approval in general "boiler plate" language instead of highlighting favorable or unfavorable features of the appraisal report. For one tract, the review failed to recognize the need for an expert opinion on a mineral deposit. Such an opinion was omitted in the first appraisal and subsequently obtained at additional cost in a reappraisal and in a second appraisal by another contractor. Following is pertinent data on this tract's acquisition.

Chesapeake & Ohio (C & O) Canal National Historical Park, Tract 66-101

	Appraised value
Original appraisal in 1973	$ 7,000
Update in 1976 after condemnation	12,400
Reappraisal in January 1978 (cost $1,000) to recognize mineral expert's opinion	21,000
Second appraisal in January 1978 by another contractor (cost $5,500)	23,500

The Government subsequently acquired tract 66-101 by agreement (stipulation) with the owner for $40,000. The inadequate initial appraisal may well have contributed to the long delay in arriving at a settlement in this case:

Unsuccessful negotiations	August 1973-February 1974
Condemnation filed in court	October 1975
Settlement approved in court	August 1978

In one Water and Power Resources Service regional office, a staff appraiser "reviewed" some of his own appraisals; his appraisals went without the required review at the regional level because this official was the region's designated supervisory appraiser. We were informed, however, that the Service's chief appraiser (located at the Engineering and Research Center in Denver, Colorado) reviews appraisal reports for all acquisitions going to condemnation before the condemnation papers are submitted to Interior's Regional Solicitor for filing with the Department of Justice.

At the Service, we also noted that appraisals were reviewed using only a questionnaire. The review did not include a written critique supporting approval or rejection of the appraisal report.

At a number of agencies, reviewers did not always insist on full support for the appraiser's conclusion. Some reports using the market approach for valuing properties did not explain specifically how the value of the property in question was derived from comparable sales transactions cited in the report. The reviewers apparently accepted the reports without insisting on adequate support--which would be crucial if the case went to trial.

Our discussions with agencies' appraisal officials and with the Chief Appraiser of Justice's Land and Natural Resources Division indicated that the uniform appraisal standards, supplemented by individual agency manuals of instructions, provide generally adequate guidelines and directives to ensure reliable reviews. The problem essentially is one of compliance with these directives.

Our discussions revealed that, in response to the cited House Appropriations Committee staff study, the National Park Service had strengthened its review procedures, including appointment of a full-time field reviewer 1/ and institution of second reviews on a sampling basis. Because of the large volume of tracts requiring appraisal, the Park Service uses for most projects contract appraisers and concentrates the work of its own staff (about 38 positions in

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1/This position became vacant in mid-1979 because the position's approved grade level was too low to retain the incumbent, who accepted a higher grade position at another Federal agency.

fiscal year 1979) on the review function, as recommended by the staff study.

The Park Service cleared its revised review procedures with Justice's Chief Appraiser, who concurred with them. However, one Park Service policy appears to be vulnerable and needs to be strengthened--the policy of delegating to acquisition offices (the Service's lowest field level) the authority to review appraisals of tracts valued up to $250,000. This policy precludes the benefits of a regional office review by more experienced staff, except for a prescribed sample of 10 percent of such tracts. A lower ceiling of delegation would be desirable, in line with Corps of Engineers and Navy policies which require higher level reviews for appraisals of $100,000 and over.

Park Service officials explained that the $250,000 limit was established because of staff limitations. Considering the record of prior weaknesses in appraisal reviews, we believe that a shift in resources may be needed for this important function to assure adequate participation by regional office staff for higher value tracts; an alternative might possibly be to enhance the sample review beyond the present 10 percent.

Updating appraisals

Frequently it becomes necessary to update appraisals because of the lapse of time since tracts were first appraised. In some cases, the agency must obtain a reappraisal or second appraisal if the first one is found to be deficient or the valuation involves complex or controversial issues. Sometimes, Justice's attorney or the Assistant U.S. Attorney handling a case will insist on such additional steps. Both updated appraisals and reappraisals may entail problems of timeliness and added costs. Contracts with appraisal firms can provide for updates within stated time periods, but long delays in the acquisition process may require additional contractual arrangements at added cost.

On two projects we reviewed, we noted repeated updating of appraisals necessitated by protracted and unsuccessful negotiations with the landowners while real estate prices in the area were accelerating. Both projects were hampered by insufficient project funds which, we were told, precluded the agencies from going ahead with the intended acquisitions. Here are three examples from the Tocks Island (TIL)/Delaware Water Gap (DWG) project:

DWG Tract 11909

	Appraised value	
First appraisal, April 1974	$ 75,000	
Update, October 1974	132,000	
Update, July 1975	127,000	
Condemnation, February 1976	127,000	(deposit in court)
Update, May 1976 (as of 2/76)	143,700	
Settlement by stipulation, October 1977	152,000	

The Assistant U.S. Attorney commented that the original appraisal had been unrealistically low because it had been based on sales which did not reflect the current upswing in the real estate market.

DWG Tract 7101

	Appraised value	
Initial appraisal, January 1971	$ 63,000	
Update, January 1972	73,000	
Update, April 1974 (two appraisals)	80,000	
Update, December 1974	85,000	
Update, July and October 1975	92,000	and 92,500
Condemnation, May 1976	92,500	(deposit in court)
Update, December 1976 (as of 5/76)	97,000	
Government offer, May 1978	120,000	
Proposed settlement, May 1979	128,000	

TIL Tract 8302

	Appraised value
Initial appraisal, January 1968	$125,000
Update, April 1968	160,000
Update, February 1970	234,000
Update, September 1971 (two appraisals)	275,000 and 305,000
Update, October 1977	415,000
Condemnation, June 1978	415,000 (deposit in court)
Settlement with landowner, March 1979	460,000

The acquisition file for tract 8302 shows that, besides owner resistance and lack of project funds, uncertainty over the relocation of a highway contributed to the delay in acquisition.

In the case of the Tocks Island/Delaware Water Gap project, the costs of updating appraisals were increased by the Corps' interpretation of a Justice Department requirement that property with a fair value of $50,000 or more should have two approved appraisals. The Corps sought to keep the two appraisals current in order to negotiate with the landowner. The requirement for two appraisals had been agreed to between Justice and the Corps in 1970 for all such cases coming to trial to strengthen the Government's position in court; it was not intended to be used for negotiation purposes. 1/

An example of an update and a reappraisal for the Chesapeake & Ohio Canal National Historical Park project was presented earlier in this chapter. Another delayed acquisition requiring two updated appraisals is shown below:

1/Because of the inflation in real estate prices, Justice has now made the requirement applicable to tracts valued at $100,000 or more.

C & O Canal Tract 08-115

	Appraised value
Initial appraisal, April 1972	$ 5,075
Update, June 1973	11,425
Update, March 1978	12,000
Condemnation scheduled as of September 1979 but not yet filed because of shortage of funds	

For this tract the 1973 updated appraisal reflects a subsequent land improvement by the owner. A declaration of taking in 1972 might have enabled the Government to acquire the property at or near the lower value.

In the case of an easement acquired for the C & O Canal project, the Park Service obtained an updated appraisal which, however, was found excessive and disregarded by the trial attorney because it ignored local zoning restrictions. Appraisal data on this acquisition follows.

C & O Canal Tract 40-102

	Appraised value
Initial appraisal, June 1974	$2,600
Update, February 1977	9,600
Settlement by stipulation with owner, September 1978	4,800

We recognize that in the two aforementioned projects special circumstances contributed to longer than usual delays. In many other projects, however, the Government encountered various obstacles to the expeditious acquisition of individual tracts and must obtain updated appraisals to keep up with changes in property values--a specific requirement in the Uniform Appraisal Standards, section B-4, page 39. In all such cases, discretion must be used as to when and how often updates should be ordered. Substantial costs may result from repeated updates, especially when someone other than the original contractor has to be employed.

Marshaling convincing testimony in court

We have previously cited the importance of presenting the most convincing evidence in court to support the Government's valuation rather than the landowner's generally much higher claim. While we noted conscientious efforts by Justice and the acquisition agencies to provide sound evidence, we observed some areas where it may be possible to strengthen the Government's position.

In the opinion of one Assistant U.S. Attorney who has handled large-scale condemnation cases for the Corps of Engineers, the testimony of staff appraisers in court has been less effective than that of contract appraisers. Some staff appraisers have required hours of preparation before the trial yet could not recall in court essential data supporting their appraisals. Also, the attorney pointed out that a court may consider staff appraisers less objective or impartial than contract appraisers. He therefore believed that, except for low-value tracts, contract appraisers should preferably be employed if subsequent court testimony is expected.

Whether acquisition agencies use staff or contract appraisers depends on their staff resources and workload requirements. Agencies with relatively small staffs, like the National Park Service or the Navy, contract for most appraisals and concentrate their staff work on making administrative reviews. 1/ Agencies with larger staffs, like the Corps, the Forest Service, and the Fish and Wildlife Service, make staff appraisals for many of their acquisitions and employ contract appraisals for others. For some large-value tracts or complex property valuations, agencies may use both a staff and an outside appraiser.

Agency regulations emphasize, and agency officials in charge of acquisition programs should be aware of, the need to carefully select appraisers because of the subsequent court testimony they may have to provide. Agencies generally select contract appraisers in consultation with the Department of Justice and/or an Assistant U.S. Attorney. Similar procedures do not apply to the selection of staff appraisers, and closer coordination with the trial attorney would be desirable when deciding on their use for court testimony.

1/An exception is the Big Cyprus project for which the Park Service employed mostly staff appraisers because of the large number of tracts with similar valuation.

Justice and acquisition agency officials have pointed out that, regardless of the Government's testimony, the courts often seem to make awards somewhere at a midpoint between the Government's and the landowner's valuation. Also, the extent to which awards tend to exceed Government appraisals varies greatly among judicial districts and may depend on whether a jury, a commission, or a judge determines the amount of just compensation.

The Government faces a difficult situation when it seeks to obtain a judgment in line with its appraisal. Special continuing efforts are needed to improve the Government's position by marshaling the best available testimony. What specific steps are needed, of course, depends on the circumstances of each case. For example, one Forest Service regional office, on the basis of prior experience in acquisitions under the Wild and Scenic Rivers Act, made the following suggestions in a memorandum to the Chief of the Service in 1976:

--Instead of using only one appraisal witness, when the owner introduces two or three, use two appraisers, especially in cases where the spread between the Government's and the landowner's valuation is substantial.

--Use special witnesses to support the Government's claim of conditions which lessen the value of a tract; for example, an engineer and a hydrologist can testify to flooding, or a local contractor can testify that a tract is too steep for development.

Justice officials commented that the above recommended practices were standard practice followed by the Department of Justice. While there may have been instances of deviation, they were believed to be few.

A recent condemnation case decided in the Eastern District of Kentucky (Civil Action No. 76-124, filed Nov. 3, 1978) illustrates how important it is for Government appraisal witnesses to present convincing testimony.

The court found that both the landowner and the Government had failed to establish their theories of value. The court was not convinced that the Government had adequately considered the value of the coal land involved. The judge did not accept as comparable the actual sales used by the Government appraisers in arriving at a value of the land at issue. The court's award was within the range of the Government's valuation (that is, 25 percent above the amount)

only because the landowner had not been able to substantiate his claimed compensation. The owner's appeal against this award is presently pending.

The need for convincing evidence to support Government appraisals of land containing natural resources is further illustrated by a Forest Service acquisition for which the court awarded an amount grossly in excess of the Service's appraisal.

In August 1972 the Service condemned a 147-acre tract for a recreation area in the Ozark National Forest. A Government appraiser valued the tract, which contains a rock quarry, at $23,000. In June 1978 the court awarded $127,688, including $67,688 as compensation to the holder of a lease to quarry rock from the condemned land. The latter amount represented additional cost which the leaseholder claimed to have suffered because he had to use another quarry to fulfill a pending highway construction contract. The Government sought to show that the leaseholder's claim was for consequential damages (noncompensable loss) but was unable to convince the court. The court's finding was based in part on a Government witness' testimony, which seemed to accept the leaseholder's contention that the value of the leasehold was $67,688.

We discussed with Justice officials the need for additional guidelines on the use of staff or contract appraisers. The officials said that existing directives in the "Guide for Acquisition of Real Property" should be adequate because they call for consultation with the U.S. Attorney in the selection of appraisers. Also, the guide includes a special directive (no. 11-68) concerning the preparation and review of appraisal evidence of trial in condemnation cases. This directive deals with several problems experienced in previous cases and presents remedial actions, including the participation of land acquisition attorneys in selecting agency appraisers, to facilitate the use of agency staff or contract appraisals at trial.

Our discussions indicated, however, that a renewed emphasis on these directives by the Department of Justice would be useful to assure careful selection of appraisal witnesses.

Questions raised on grade levels of staff appraisers

Agency and Justice officials believe that the Government needs more well-qualified appraisers but that Civil Service grade level limitations, resulting from a very conservative application of appraisers' classification standards, have

made it difficult to promote and retain experienced staff who otherwise will seek better paid positions elsewhere. These officials believe that a larger number of Government appraisers should have membership credentials in one of the professional organizations and be eligible for promotion to higher grade levels (beyond GS-12) than now allowed. The officials believe that such upgrading would be justified because of the educational requirements of such membership and the high qualifications needed to (1) evaluate the work of contract appraisers who generally have very competent personnel with the best credentials and (2) detect flaws and the possible need for adjustments in contract appraisals.

According to agency officials, in fiscal year 1979 contract appraisers' fees ranged from about $200 to $500 a day, depending on the location of the property and the extent of expertise required. Much of the Government appraisers' work involves complex appraisal problems and may cover properties valued in the hundreds of thousands or millions of dollars.

Agency officials pointed out, however, and officials of the Office of Personnel Management agreed, that the value of the property should not be the decisive factor for the degree of skill and experience needed by the appraiser because tracts of lesser value may be more difficult to appraise than high-value tracts. One characteristic in the occupational standards for appraisers (code GS-1171, Appraising and Assessing Series, approved by the Civil Service Commission in June 1972), which lists high dollar amounts as one of the factors to judge the difficulty of appraisals--property values of $500,000 for GS-11 grades and million dollar values for GS-12 grades--seems unrealistic insofar as most Federal land acquisitions are concerned. Agency officials believe that this criterion as well as the emphasis on the number of employees to be supervised--not relevant for reviewers of appraisal work done under contract--have limited the approval of appraiser positions at grade levels GS-13 and above. The highest grade now approved for Government appraisers is GS-15.

The need for greater flexibility in assigning grade levels is illustrated by the National Park Service's experience in filling the recently created position of an agencywide field reviewer. The position officially was classified as GS-13, whereas the Land Acquisition Division had requested a GS-14 classification. Consequently, the Service found it difficult to attract the quality of appraiser the position demands.

The number of Government appraisers who are members of professional organizations is rather small. At the close of fiscal year 1979, the Corps of Engineers' Chief Appraiser told us that, of the Corps' appraisal staff of about 180, not more than about 10 percent held membership in the top professional organizations. Similarly, the Forest Service's 90 to 100 employees assigned to appraisal work included about 10 members of professional organizations. The National Park Service counted four professional memberships among the 34 staff appraisers.

The scope of our review did not include an assessment of the occupational standard for appraisers, and we have no basis for judging its adequacy for the purpose of filling positions for Government appraisers. In view of questions raised by agency officials responsible for land acquisitions, however, agency management should review and reevaluate their staff appraisers' classification standards and position descriptions.

CONCLUSIONS

To convince the court in a condemnation proceeding that the Government's valuation of the land it seeks to acquire represents just compensation, the acquisition agencies must provide an adequately supported appraisal report prepared by a qualified appraiser, a competent review by the acquisition agency to affirm the report's acceptability, timely updating for developments up to the declaration of taking (or the date of trial if a declaration is not filed) and, as directed by the trial attorney, persuasive testimony in court.

The Uniform Appraisal Standards and individual agency manuals of instructions provide Federal agencies with generally adequate guidelines, and the agencies whose activities were included in this review had, for the most part, complied with these requirements. The Government is engaged in a massive effort, with its own manpower and the services of experts under contract, to appraise thousands of properties aggregating hundreds of millions of dollars a year.

Although the Government's land valuation cannot be expected to prevail in every condemnation case, opportunities exist for strengthening the Government's position by improving appraisal practices in several respects. While our review identified certain areas discussed in this chapter, there may be others not covered in our limited review of Government real estate appraisals.

RECOMMENDATIONS TO THE ATTORNEY GENERAL AND HEADS OF LAND ACQUISITION AGENCIES

We recommend that the Attorney General and the heads of Federal land acquisition agencies emphasize to their staffs:

--The importance of making high-quality administrative reviews of appraisal reports in compliance with Government-wide standards and agency directives.

--The need for timely updating of appraisals or reappraisals for the purpose of negotiating with the landowner or for trial in court, but avoiding repeated and costly updates or reappraisals.

--The need for carefully selecting staff or contract appraisers best qualified to testify in court and for using special expert witnesses who can strengthen the Government's case.

--The need for reviewing classification standards and position descriptions for the grade levels of professional staff appraisers and determining whether adjustments are needed to attract and retain qualified personnel.

RECOMMENDATION TO THE SECRETARY OF THE INTERIOR

We also recommend to the Secretary of the Interior that the National Park Service strengthen its appraisal report reviews by lowering the dollar ceiling (now $250,000) up to which regional offices can delegate the review function to their field offices. As an alternative, in view of its limited staff, the Service should consider enlarging the sample review performed by regional offices.

AGENCY COMMENTS

Justice stated that the above recommendations are all useful means for enabling the Government to present convincing evidence in court that the Government is offering fair value to the landowners. Justice suggested that we address these recommendations to the heads of land acquisition agencies rather than the Attorney General (our draft report addressed the Attorney General only). Because of the joint responsibility for adequate appraisals of land to be acquired by the Government, we are making our recommendations to both the Attorney General and the heads of agencies.

Justice pointed out the importance of sound and properly supported appraisals for the purpose of negotiating with landowners in the first place, before action is taken to

condemn the land. Justice believes that, if an agency has sound and realistic appraisals during the initial negotiations, many more properties could be purchased, thus reducing the number of properties to be condemned.

In the experience of the Department of Justice, the properties that go to condemnation are usually the hardest ones to appraise. To properly deal with these cases, the Department reemphasizes the suggestion in its procedural guide for the acquisition of real property that

> "* * * where any tract presents unusual and complicated valuation * * * problems, there should be coordination among the acquiring agency, the United States Attorney and * * * the Department of Justice * * * prior to abandonment of efforts to acquire the tract by direct purchase."

Interior's agencies agreed that the single most important element of a Federal land acquisition is the appraisal and, although Government-wide uniform appraisal standards are adequate, the appraisal product can be improved greatly through increased agencywide monitoring.

The Forest Service advised it is presently operating in accordance with the first three recommendations and it supports the fourth recommendation.

The Army agreed that our comments on appraisals are appropriate and pertinent.

The National Park Service disagreed with our recommendation to lower the dollar ceiling for the authority of field offices to review appraisal reports. The amount had been increased because of personnel limitations in the regional offices (which would have to carry a heavier workload) and the extensive experience of review appraisers in the field offices. We have been aware of the Park Service's position. However, considering the record of prior weaknesses in appraisal reviews, we have retained our recommendation to the Secretary of the Interior with the alternative suggestion to enlarge the sample review performed by regional offices beyond the present 10 percent.

CHAPTER 5

INCREASING EFFORTS TO SETTLE WITH LANDOWNERS

In many cases it is advantageous for the Government to settle with landowners rather than go to trial. Settlement calls for flexibility and judgment on the part of Government representatives when negotiating acquisitions at prices above appraised property values. It also requires a realistic estimate of the cost of going to trial which must be weighed against the landowner's counteroffer, especially in the acquisition of low-value tracts (that is, tracts valued at $10,000 or less). Although Federal agencies have made far more of their acquisitions by purchase than by condemnation, we believe greater efforts can be made to reach settlements and avoid litigation.

NEED FOR FLEXIBILITY IN NEGOTIATING

The Department of Justice emphasized in its Caseload Reduction Plan (see ch. 2) the need for greater flexibility on the part of acquisition agencies in approving settlements with owners, particularly in view of historically high court awards in certain judicial districts. In August 1978 the Assistant Attorney General, Land and Natural Resources Division, requested client agencies to thoroughly review all acquisitions valued at $10,000 or less before forwarding the cases to Justice for condemnation. He called attention to the large number of agency requests for condemnation of low-value tracts; the workload imposed on Justice, the U.S. Attorney, and the courts; the cost of processing condemnations in this low-value category (averaging $3,000 a case); and awards generally exceeding Government valuations by about 30 percent or more.

In response, the agencies pointed out their continuing efforts to purchase rather than condemn but cited certain obstacles to negotiating with owners who claim compensation in excess of Government appraisals. Following are some of their comments.

--The Forest Service stressed the very low volume of its condemnation cases (averaging only 36 cases a year versus 1,410 purchases). The Service is reluctant to compromise future negotiations by high payments to some owners in a project area. Also, higher settlement prices may be unfair to owners who have sold at the Government's offered prices.

--The National Park Service pointed out that only about 15 percent of its acquisitions were condemnations because of disagreement over price, and only 5 percent had gone to trial (the majority are settled by mutual agreement of the parties). These statistics do not include the Big Cyprus project in Florida, which is the largest acquisition ever undertaken. This project includes many thousands of small tracts that were acquired by their present owners at excessive prices as a result of high-pressure sales campaigns. Allowing these owners a price greatly in excess of current market value would make the costs of the entire project prohibitive.

--The Corps of Engineers pointed out the continuing need to condemn tracts to obtain clear title and to obtain those tracts where the owners' counteroffers are so out of line that acceptance would be prohibitive. However, the Corps will cooperate with Justice to reduce the number of low-value tracts being condemned.

--The Fish and Wildlife Service specifically instructed its regional offices to consider condemnation costs and the probability of higher court awards when negotiating direct purchases of tracts valued at $10,000 or less.

Our review confirmed that Federal agencies acquire the majority of properties by purchase. Condemnations generally accounted for about 10 to 20 percent of acquisitions, although some agencies had lower percentages. For the projects we reviewed, the percentages of tracts acquired by condemnation were as follows:

Project	Percent
Harry S. Truman Dam	20
Tocks Island Lake/ Delaware Water Gap	17
Arkansas-Fryingpan	11
C & O Canal	10

Many cases filed for condemnation were settled by stipulation with the landowner and did not go to trial. For the Truman Dam, about 40 percent were so settled; for the Tocks Island/Delaware Water Gap, about 90 percent were

settled; and for the C & O Canal, 75 percent were settled without trial.

As brought out in the National Park Service's response to Justice, the Big Cyprus project called for a larger percentage of condemnations. The Service reported at the close of fiscal year 1979 that about 11,400 tracts had been condemned, representing 28 percent of the 40,400 tracts acquired as of that date.

In our discussions with several Government trial attorneys, we learned that agencies could have made greater efforts to settle with landowners instead of going to trial. Justice's representative in Denver, Colorado, who monitors cases in the western judicial districts, believed agencies could settle more cases if they made better offers, especially for low-value tracts. The Assistant U.S. Attorney handling condemnations in the Middle District of Pennsylvania thought that some cases could have been settled by negotiation but that the number of such cases was not excessive.

One of the obstacles to successful negotiations had been the low offers made by agency representatives, limited to about 10 or 15 percent more than the Government appraisal; the owners had expected much higher prices. For example:

--Tract 11909 in the Delaware Water Gap project was appraised in 1974 at $75,000 and the negotiator offered, successively, $80,000 and $85,000. Subsequent developments in this case are set forth on page 32.

--Tract 10809, also in the Delaware Water Gap project, was appraised in 1973 at $20,100, and the negotiator offered $22,000 while the owner asked for more than $40,000. After condemnation in 1974, the property was appraised at $36,200, and in 1976 the Government settled by stipulation for $39,000.

--Tract 8302 in the Tocks Island project (previously cited in ch. 4) was appraised in a 1970 update at $234,000. In June 1971 the negotiator offered $267,000 while the owner was willing to settle for $300,000. Updated appraisals in September 1971 were for $275,000 and $305,000. After the property was condemned in 1978, settlement was reached by stipulation for $460,000.

--Tract 76-174-NN, being acquired to establish a compatible land use zone at Langley Air Force Base, Virginia, was appraised in November 1975 at $6,900. The negotiator offered up to $8,000 while the owner wanted $10,000. After the case went to condemnation, a settlement was reached in 1977 for $14,520.

Although a reasonable period of negotiation must be allowed before going to condemnation, protracted negotiations such as occurred in the case of the Delaware Water Gap project do not benefit the Government in times of rapidly rising real estate prices. In some cases, the urgency of Government control of the land does not permit much negotiating time. Thus, the Fish and Wildlife Service, to protect one of the Nation's most important bald eagle roosting areas, condemned a 240-acre tract of timberland in Oregon in May 1978, only days after it had unsuccessfully sought the owner's agreement to sell at the appraised value of $200,000. Similarly, the Corps of Engineers, charged with the acquisition of storage areas for the strategic petroleum reserve, allowed little time for negotiations because prompt access to the caverns was needed to test their suitability for storage:

Bayou Chactow Salt Domes (La.):
Negotiations in March 1977
Condemnation in April 1977
Appraised value, $14,097,126
Case still pending (Feb. 1980)

Bryan Mound (Tex.):
Negotiations in February/March 1977
Condemnation in April 1977
Appraised value, $13,165,670
Case still pending (Feb. 1980)

Using hindsight, the following acquisitions for the Truman Dam may be cited as illustrations where settlements on the basis of landowners' counteroffers would have been advantageous considering the higher values later requested by the owners in court.

Tract	Government appraisal	Owner's counteroffer		Testimony in court			Court award	
		Date	Amount	Date	Govt.	Owner	Date	Amount
3002E a/	$ 2,500	7/75	$ 5,400	4/78	$ 1,800	$10,900	7/78	$ 8,300
6205/6205E	700	11/74	3,000	11/77	1,000	15,600	5/78	11,800
12801E	5,800	7/75	10,000	4/78	7,450	20,050	9/78	17,500
12944	57,550	9/75	78,090	11/77	b/57,000	97,700	3/78	90,200
13610E	15,000	12/74	19,500	8/77	b/15,000	46,500	5/78	33,500

a/"E" designates easement.

b/In these two cases, the Government in its testimony reduced the value of tract 12944 to $33,400 and of tract 13610E to $10,900, giving effect to special circumstances not previously considered in its appraisals.

The above acquisitions are part of a number of cases examined which went to trial and resulted in awards averaging about 80 percent more than Government appraisals at the time declarations of taking were filed. Considering the inflationary trend of real estate prices and the general experience that owners will increase their claims for compensation when the case goes to court, the advantage of settling with the owners on reasonable terms during the negotiation stage is apparent.

Agency officials pointed out that accepting counteroffers much higher than Government appraisals may set a bad precedent for subsequent negotiations and establish a floor for other acquisitions. While this is a valid consideration that must be taken into account, the agencies must also consider the Government's administrative cost of litigation as well as any trend toward court awards that substantially exceed Government appraisals, particularly in long drawn-out acquisition programs such as the Truman Dam and the Delaware River project. For the aforementioned five cases, the Corps' negotiator had projected the following costs of going to trial which, if added to the Corps' appraisal amounts, narrowed the gap between the two parties' respective valuations. Apparently these costs were not fully considered in the decisions to seek litigation.

Tract	Projected cost of trial	Projected deficiency award	Corps appraisal	Total projected cost	Owner's counter-offer
3002E	$1,350	$ 1,325	$ 2,500	$ 5,175	$ 5,400
6205/ 6205E	500	360	700	1,560	3,000
12801E	1,700	3,075	5,800	10,575	10,000
12944	3,500	30,500	57,550	91,550	78,090
13610E	2,800	7,800	15,000	25,600	19,500

NEED FOR GUIDANCE IN ESTIMATING COSTS OF TRIAL

The only agency to systematically require its negotiators to estimate trial costs has been the Corps of Engineers. But lacking specific guidelines for computing these costs, the Corps' estimates have not always been a reliable basis for determining whether to settle with the landowner or seek litigation. Insofar as we could determine, other Federal agencies have not directed their land acquisition staffs to compute such costs, except for the Forest Service which, however, did not have formalized instructions. As previously mentioned, the Fish and Wildlife Service agreed, in response to the Assistant Attorney General's request in August 1978, to consider such costs in the future.

The Corps of Engineers has included in its instructions for real estate acquisition general guidelines to its negotiators to recognize "built-in" trial costs as well as "liability risks" of such proceedings.

--Built-in costs include such items as salaries and travel expenses of all Government personnel participating in trial preparation, pretrial hearings, and the actual trial; witness' fees of contract appraisers employed by the Corps and Justice; and costs of preparing trial documents and exhibits.

--Liability risks are the amount of anticipated award over and above the appraised value, considering probable testimony on behalf of the Government and the landowner as well as the history of condemnation awards in the Federal court jurisdiction in which

the lands are located and the amount of interest payable by the Government on a deficiency judgment.

Although Corps instructions pinpoint the most important cost elements of going to trial, they do not give specific guidance as to how these should be determined. Additional guidance would be desirable regarding how to estimate the various built-in costs (salaries, travel, witness' fees, etc.), how to determine the length of time for which services will be needed, and other cost projections. Also, the costs include not only the Corps' own but also those incurred by Justice and the U.S. Attorneys' offices. Without guidance from Justice, Corps negotiators cannot reliably estimate these costs. We observed that for some projects the negotiators had arrived at estimates according to the circumstances of each case, while on other projects they used rounded estimates. Some of the estimates, especially for low-value tracts, appear understated, considering the average cost of $3,000 a case cited by the Assistant Attorney General for tracts valued at $10,000 and under and the fact that the cost of processing such cases will not vary in proportion to the value of the tract.

For the Truman Dam, the negotiation files for some low-value acquisitions show estimated trial costs of less than $2,000 or even $1,000. For other tracts the estimates ranged generally around $3,000, though some were higher. An Assistant U.S. Attorney estimated the cost of trying a case for the Truman Dam at $5,000. The estimates of deficiency judgments based on an average percentage for all cases so far decided by the court also appear understated because, on a percentage basis, awards for low-value tracts often far exceed those for higher value tracts.

For the Delaware Water Gap project, Corps negotiators generally used round amounts of $3,200 or $3,500 a case; in some cases, they used an estimate "dependent on the number of trial days, exclusive of U.S. Attorney's cost." Some of these estimates did not provide a reliable basis for deciding whether to settle or litigate.

Another apparent understatement we noted, and which we believe is open to question, was an estimate of $600 for other trial costs (in addition to appraisal fees of $5,000) in the case of a 1976 Air Force project to acquire compatible air zones for Andrews Air Force Base, appraised by the Government at $1.15 million.

CONCLUSIONS

Federal law requires heads of Federal agencies to make every reasonable effort to acquire expeditiously real property by negotiation. Public Law 91-646 prescribes a uniform real property acquisition policy "to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation, and relieve congestion in the courts."

Once condemnation action has been filed in court, it may still be to the Government's advantage to seek a settlement rather than go to trial. The United States Attorneys' Manual includes condemnation guidelines suggested by the United States Judicial Conference, which set forth a 10-point program for settlement or dismissal within 1 year and contains the following point 7:

> "There should be a thorough exploration of settlement possibilities within 90 days * * *. 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." (5-3.912, Jan. 1977.)

To reduce the pending caseload, courts sometimes have urged the litigating parties to settle instead of insisting on trial. Thus, in the U.S. District Court for Western Missouri, the judge made the Corps of Engineers and the landowners get together and attempt to settle some of the many small-value tracts for the Truman Dam. Of 100 tracts, the parties were able to settle 70, the remaining 30 being referred to a magistrate 1/ appointed by the judge. The Assistant U.S. Attorney handling condemnations in this district thought that the Government had saved about $5,000 on each case settled in this manner.

We believe acquisition agencies can improve their chances of successfully negotiating with landowners by allowing greater flexibility in considering owners'

1/These are full-time or part-time judicial officers who perform various judicial duties for district judges.

counteroffers as compared with the costs of litigation. Settlement is particularly relevant for tracts valued at $10,000 or less, where the cost of trial--including the Government's administrative cost as well as the probability of a higher award--are proportionately more significant than for higher valued tracts.

The Corps has recognized the need for considering the costs of litigation when determining whether to continue negotiations or to request condemnation; but its guidelines to negotiators need to be more specific and to include cost information from the Department of Justice so that reliable cost estimates can be made. Other agencies have developed no systematic procedures for recognizing litigation cost. We believe that they should adopt procedures similar to the Corps', but with the refinements suggested in this report. Justice's "Procedural Guide for Acquisition of Real Estate by Government Agencies" specifically calls for "maximum efforts * * * to settle land acquisition disputes prior to condemnation at a figure that will fairly reflect fair market value, trial costs, and reasonable trial risks."

We are aware that agencies are reluctant to accept owners' counteroffers higher than Government appraisals because of the possibility of setting precedents for subsequent negotiations with other owners. However, the Government's experience in some jurisdictions where awards are consistently in excess of its appraisals and the sizable costs of litigation should make it a desirable strategy to seek early settlement of as many cases as possible, especially for the large number of low-value tracts. No overall formula can be established as to when and at what amounts cases should be settled, but this decision must be made using the best available judgment in the particular circumstances and considering the effect on other acquisitions in the same project.

Justice officials agreed that client agencies need information on the costs incurred by Justice and U.S. Attorneys' offices in condemnation cases for the purpose of making reliable cost estimates. They said that such cost data would become readily available when a proposed computerized information system is put into operation. Since this system will not be operational until late in 1980 or 1981, they agreed that, in order not to delay unduly the information needed by the acquisition agencies, Justice and the U.S. Attorneys' offices could furnish their best possible cost estimates based on past experience.

RECOMMENDATIONS TO THE HEADS OF LAND ACQUISITION AGENCIES AND THE ATTORNEY GENERAL

We recommend that

--the heads of Federal land acquisition agencies use greater flexibility in determining whether to accept landowners' counteroffers or proceed with litigation, giving proper recognition to the estimated costs of trial, and

--the Attorney General assist client agencies in establishing guidelines for making reliable estimates of the costs of litigating condemnation cases.

AGENCY COMMENTS

Justice agreed with our recommendations but believed we should address the first one (our draft report addressed both to the Attorney General) directly to the land acquisition agencies in view of Justice's considerable efforts to persuade the agencies to use greater flexibility in their negotiations. We have redirected the first recommendation as suggested.

Interior advised that most of its agencies currently consider the expense of trial when negotiating with landowners and prior to requesting condemnation. Interior stressed the desirability of considering the amount of $10,000 (cited by Justice as a criterion for low-value tracts for which the agencies should seek settlement rather than condemnation) as a guide and not as a mandatory limit.

The Forest Service pointed out that it already considers trial costs and risks when evaluating counteroffers; however, it needs more current and accurate information on all trial costs. The Service has considered issuing guidelines but believes specific standards for settlement in excess of appraised values must not work to the Government's disadvantage in the negotiating process.

The Army advised us of general agreement by the Corps of Engineers, which recognizes the need for flexibility, especially in small-value cases. While considering costs and risks of trial, the Corps wants to treat landowners evenhandedly and not reward those who hold out. The Corps also agrees, as discussed in chapter 4, that protracted negotiations do not benefit the Government and that negotiations, once begun, must be completed promptly.

CHAPTER 6

SEEKING WAYS TO OBTAIN FAIR AND SPEEDY TRIALS

In our review of Government procedures for bringing condemnation cases to trial, we observed certain problems and difficulties which impeded Government efforts to obtain fair and expeditious adjudication by the courts. There are two methods of trial which, if more widely used, could expedite the disposition of condemnation cases: (1) the use of court-appointed commissions and (2) referral to U.S. magistrates. We believe that the use of commissions could be made more acceptable to the Government and the landowner if, under the Federal Rules of Civil Procedure, they were given some safeguards in the appointment of the commission members. We also believe that Justice could seek wider use of magistrates in accordance with the recent enactment of the Federal Magistrate Act of 1979.

DELAYS IN TRIALS

The disposition of condemnation cases, from the filing in court until final adjudication, has generally taken anywhere from 1 to 4 years, depending on conditions in the judicial districts where the case is tried. In a period of rising real estate prices, long delays in adjudication tend to increase the Government's cost of acquisition, and both parties to the litigation experience inconvenience and uncertainty. As discussed in chapter 2, the Department of Justice has attributed a high price to delays in condemnations--its latest estimate presented in April 1979 congressional hearings was $40 million a year.

The crowded docket of many district courts, the precedence of criminal over civil cases, and the low priority of condemnation cases in some districts have been mentioned as contributing to long delays. The shortage and turnover of Assistant U.S. Attorneys in some districts also have been cited as problems delaying trial and closing of cases.

Under Rule 71A of the Federal Rules of Civil Procedure, trials in a U.S. district court can be by jury, a commission appointed by the court, or a judge. Either party can request a jury trial, but the judge can instead appoint a commission if he or she determines it to be appropriate under the circumstances. The only issue that can be referred to a jury or commission is that of just compensation. Trial of all other issues, factual or legal, shall be by the court.

TRIAL BY COMMISSION

Rule 71A provides that the court may appoint, because of the character, location, or quantity of the property to be condemned, or for other reasons in the interest of justice, a commission of three persons to determine the issue of just compensation. The judge appoints the members of the commission and issues instructions to guide the commission in its hearings and determination of fair value. Courts have often referred condemnation cases to a commission because of the heavy workload of other cases to which they must give priority. Use of a commission allows earlier hearings of condemnation cases and lightens the burden of the judge, whose principal task becomes the approval or rejection of the commission's recommended awards.

From the Government's viewpoint, the advantages of a commission trial include:

--More rapidly moving the Government's caseload.

--Familiarity gained by the commission with the real estate market of the project area since the commission will hear cases for an entire project.

--Greater ease by Government trial attorneys in arranging a suitable schedule for the cases in their respective districts.

A major disadvantage of commission hearings is that the litigating parties have no voice in selecting the commission members. The procedures used in the jury selection process are not required in the selection of a commission.

Because of the trend, noted in many commission trials, toward recommending awards substantially above the Government's testimony of fair value, the Government has a special interest in the appointment of unbiased, competent commissioners. The Government's position in this regard would be greatly strengthened if it had some measure of participation in the appointment of commission members. Of course, similar rights would have to be granted to the landowner. Both parties could be given the right to object to the court's appointees for valid cause, or to propose for the court's consideration candidates to be appointed as commission members. A change of this nature would require an amendment of Rule 71A, which would have to be adopted by the Supreme Court and reported by the Chief Justice to the Congress (28 U.S.C. 2072).

The Department of Justice, in commenting on this proposed amendment, suggested as a preferable solution an amendment that would more clearly define the qualifications of court-appointed commission members. For example, these qualifications could require that the commission members have no connection with, nor conflict of interest regarding, the condemned property and the litigating parties.

The Department believed that providing for the parties' right to object to the court's appointees may create as great a burden on the objecting party as the present appeal process. Also, the Department believed that the right to propose candidates for commission appointment may create an appearance of bias.

We agree with Justice's concern about possible bias which could be introduced by the parties when proposing appointees. However, the right of litigating parties to object for valid cause is firmly established in the jury selection process and should not impose an undue burden on the parties in the selection of a commission. We believe there is merit in Justice's suggestion to have Rule 71A define the qualifications of commission members, and we are including this proposal in our recommendation to the Judicial Conference.

TRIAL BY MAGISTRATES

The trial of condemnation cases by U.S. magistrates, recently authorized by the Department of Justice but used so far only to a very limited extent, appears to be a promising way to expedite the disposition of such cases and merits further encouragement.

In recent years moves have been made to relieve the heavy workload of U.S. district judges by referring cases for trial before U.S. magistrates. The Department of Justice issued a revised policy in October 1977 (28 C.F.R. 50.11, as amended, 42 F.R. 55470) encouraging attorneys in charge of litigation on behalf of the United States to consent to referral of cases to Federal magistrates whenever doing so would be in the litigating interests of the United States. The attorney, in making this determination, should consider such factors as the complexity of the matter, the relief sought, the amount involved, the importance and nature of the issues raised, and the likelihood that referral to the magistrate would expedite resolution of the litigation. In February 1978 Justice's Land and Natural Resources Division clarified this policy by stating

that it should be applied to nonmajor condemnation cases, authorizing trial by a magistrate with or without a jury.

The authorization permits referral of condemnation cases to a magistrate where the claimed compensation is not in excess of $50,000 and no policy question or peculiar appraisal problems or novel legal questions are involved. The authorization is made with the proviso that all parties consent to the referral. Inasmuch as the constitutional guarantee of a jury trial does not apply to condemnation cases, magistrates may hold trials with or without a jury, provided the parties consent. The procedure of trial before a magistrate may be used in all judicial districts where qualified magistrates are available. The Land and Natural Resources Division considers the use of magistrates extremely helpful because it can offset to some extent the inability to obtain court time in many districts.

Justice officials informed us in June 1979 that this new mode of trial had been used in only four districts. Very few cases had been tried by magistrates because of a number of obstacles, such as judges' reluctance to approve such referrals, lack of consent by the landowner, and/or unavailability of magistrate time.

Legislation enacted by the 96th Congress may be expected to help promote wider use of magistrates. The Federal Magistrate Act of 1979 (Public Law 96-82, approved Oct. 10, 1979), authorizes full-time magistrates, when specially designated by the district court or courts they serve, to handle any civil case as long as the parties to the case agree. The act also allows part-time magistrates to exercise such jurisdiction if the parties specifically consent in writing and a full-time magistrate is not reasonably available. Magistrates are specifically allowed to conduct jury trials when requested and to order entry of judgment in the cases they hear. The law grants a right to appeal from the magistrate's judgment directly to the court of appeals for the circuit in which the magistrate functions or, if the parties consent, to the district court, with a further review by the court of appeals permitted.

The legislative report by the Senate Judiciary Committee (No. 96-74, Apr. 24, 1979) explains that imaginative use of magistrates' services can help the judicial system cope with a mounting queue of civil cases pushed to the back of the docket. Therefore, the Magistrate Act seeks the increased use of magistrates to improve access to justice on a district-by-district basis. Giving magistrates the

authority to try and finally decide civil cases regardless of complexity and amount of recovery sought, the legislation codifies and replaces the experimental practice of such authority under previous law. However, the report stresses that voluntary consent of the parties is required before any civil action may be referred to a magistrate.

The cited legislation should enable the Government in the future to seek trial by magistrates in a much larger number of condemnation cases, regardless of the amount of compensation involved. However, consent of the landowner would still be required and, if refused, would preclude trial by magistrate. Government attorneys will have to make special efforts to persuade landowners of the mutual advantage of a speedier trial, with the alternative of a lengthy waiting period to have the case heard; also the Government can remind the owner of his protection under the new procedure, which provides for the right of a jury trial and appeal to the district court and/or the circuit court.

RECOMMENDATIONS TO THE JUDICIAL CONFERENCE OF THE UNITED STATES AND THE ATTORNEY GENERAL

We recommend that the Judicial Conference of the United States initiate action to amend Rule 71A of the Federal Rules of Civil Procedure to (1) provide for the right of the parties to a condemnation proceeding to object for valid cause to the selection of members of a court-appointed commission or (2) include a statement defining the required qualifications of court-appointed commission members.

We also recommend that the Attorney General modify the prior authorization of attorneys in charge of condemnation cases to request, or consent to, the referral of cases to Federal magistrates--presently limited to nonmajor cases--in consonance with the recent legislation which seeks to promote speedier disposition of all civil cases.

AGENCY COMMENTS

Justice agreed that the disposition of cases can be speeded up by encouraging more commission hearings and more trials by magistrates. Justice's comments on our recommendation to amend Rule 71A with respect to the appointment of commission members are included in a preceding section, and we have modified our recommendation accordingly.

The Administrative Office of the United States Courts pointed out that Rule 71A does not now preclude the court

from consulting the parties and considering their proposals for the appointment of members to a commission. Under the present rule, however, such consultation is discretionary, and the court might not solicit nor welcome suggestions as to who should serve as a commission member. We believe the amended rule would strengthen the rights of the parties.

The Administrative Office further advised that our recommendation to amend the rule would be referred to the Judicial Conference Committee on Rules of Practice and Procedure and its Advisory Committee on Civil Rules for study and eventual report to the Conference.

Regarding the use of magistrates, the Administrative Office of the United States Courts questioned whether we intended to provide for the referral of condemnation cases to magistrates without the consent of the parties. Such provision would be contrary to the express provisions and the legislative history of the 1979 act, which does not favor the assignment of specific categories of cases to magistrates and considers the consent of the parties an essential element to ensure the constitutionality of the law.

Our recommendation does not suggest dispensing with the consent of the parties but seeks to encourage wider use of magistrates as an accepted mode of trial in consonance with the provisions of the new law.

The Department of the Army concurred with our recommendations, with the reservation that magistrates generally should be used for low-value cases and the Government should have the right to petition for removal if the magistrate can be shown to be prejudiced. We note, however, that the new law authorizes referral to magistrates regardless of complexity and amount at issue. Also, referral to a magistrate requires consent of the parties, who are entitled to the same objections as in a trial by the district judge.

CHAPTER 7

IMPROVING TREATMENT OF LANDOWNERS

The Congress has provided for uniform and equitable treatment of landowners whose land is acquired by the Federal Government through the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646). While we observed Federal agencies' efforts to comply with these statutory safeguards and deal fairly with landowners, various complaints came to our attention from landowners who either did not fully understand condemnation procedures or claimed they were not treated fairly.

The Government could establish better communications with, and provide more considerate treatment of, landowners--especially owners of small tracts who find it difficult to cope with the complexities of the acquisition process. Also, agencies need to properly plan their acquisitions so that they have, or can make timely requests for, adequate funds to acquire designated lands expeditiously so as not to cause uncertainty and inconvenience to landowners.

Owners whose land has been taken by declaration of taking and whom the courts have awarded just compensation in excess of the amounts determined by the Government and deposited with the court are entitled to interest on the amount of the deficiency. But the rate of interest fixed by law is not in line with present-day economic conditions, and amendatory legislation appears to be needed to fairly compensate landowners for the time they must wait until they receive full payment for their land.

SAFEGUARDS UNDER PUBLIC LAW 91-646

The act provides for uniform relocation assistance to persons displaced as a result of Federal programs as well as for uniform and equitable land acquisition policies by Federal agencies.

To promote public confidence in Federal land acquisition practices, the act requires heads of Federal agencies to, among other things, (1) make every reasonable effort to acquire real property expeditiously by negotiation (previously discussed in ch. 5), (2) appraise the property before the start of negotiations, giving the owner an opportunity to accompany the appraiser during the inspection, and (3) make a prompt offer to acquire the property for the full amount established as just compensation. The act further

requires that an owner be furnished a written statement of, and summary of the basis for, this amount.

The act protects the owner against surrender of possession before receipt of the purchase price, the amount deposited in court with a declaration of taking, or the condemnation award. The owner shall have at least 90 days' notice before being required to move, and a replacement dwelling shall be provided when available. If acquisition leaves an uneconomic remnant, the Government must offer to acquire the entire property. The act provides for Government payment of replacement housing costs up to $15,000 and of moving costs.

Our March 1978 report 1/ to the Congress pointed out that Federal agencies had made substantial progress in carrying out the act but that (1) some displaced persons had suffered inequities because of limitations in relocation benefits provided by the act and (2) Federal agencies had not achieved desirable coordination and uniform treatment of displaced owners or tenants. Our report recommended that the Congress enact appropriate amendments to Public Law 91-646. Recent informal contacts with Federal agencies indicated that the conditions described in our 1978 report have remained essentially unchanged. A bill introduced in the 96th Congress (S. 1108) to improve the administration of the act was strongly endorsed by the Comptroller General in a statement before the Senate Subcommittee on Intergovernmental Relations, Committee on Governmental Affairs, on September 5, 1979.

Our review did not include the manner in which Federal agencies have furnished relocation assistance in land acquisition programs. We were concerned, however, whether agencies had complied with the 1970 act's required land acquisition policies and what efforts they had made to find out whether or not landowners were satisfied with the treatment received.

NEED FOR IMPROVED COMMUNICATIONS WITH LANDOWNERS

Complaints from landowners affected by Federal land acquisition programs indicate a special need for Federal agencies to adequately inform individual landowners of the

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1/"Changes Needed in the Relocation Act To Achieve More Uniform Treatment of Persons Displaced by Federal Programs" (GGD-78-6, Mar. 8, 1978).

procedures involved in the acquisition of their properties and to maintain as amicable a relationship as possible.

Government agencies have furnished landowners with a variety of pamphlets, some applicable Government-wide and others prepared by individual agencies for their specific programs. These pamphlets, which deal with acquisition procedures as well as relocation assistance, are intended to answer various questions a landowner may have. However, many small owners go through a painful experience when their land is taken, and they depend on the understanding attitude of and sympathetic treatment by the Government's representative (appraiser, negotiator, relocation specialist, etc.).

Several landowners whose complaints came to our attention stated that they had not been adequately informed about important facts affecting their rights. For example:

--On a Corps of Engineers reservoir project in eastern Kentucky, several owners did not understand why they were not permitted to mine the coal on their land before the Government took it, while other owners in the area could proceed with mining. The compensation offered by the Corps depended on whether the land had been mined.

--On the same reservoir project, one owner alleged inadequate information on the extent and limitations of available relocation assistance.

--Responses to Corps questionnaires sent to former landowners on the Truman reservoir project in Missouri included comments that the negotiator had not provided adequate information on the condemnation process and that relocation benefits had not been adequately explained.

Also, a congressional committee studying a major Bureau of Reclamation project in North Dakota 1/ reported in 1976 that a principal complaint by landowners was that the Bureau did not adequately advise property owners of their rights under Public Law 91-646.

1/Review of Garrison Diversion Unit, North Dakota, 28th report of House Committee on Government Operations, July 2, 1976, H. Rept. 94-1335.

As the congressional committee study pointed out, a certain amount of resentment and criticism can be expected from those who must relinquish their property and homes for a higher public need. Also, landowners often express their dissatisfaction with the amount of compensation offered by the Government. However, because of the widespread criticism of Federal land acquisition methods, the committee study made a number of recommendations, in addition to action planned by the Bureau, to improve the treatment of landowners. One of the committee's recommendations was for developing a "landowner's bill of rights" to be presented to and discussed with affected landowners before starting the acquisition process.

In response to the committee's recommendation, the Water and Power Resources Service (formerly the Bureau of Reclamation) pointed out that it had provided to landowners and the general public a wealth of information, including certain informative booklets and detailed data such as maps. The Service said it believed it had complied with the intent of the committee's recommendations and that preparation of a landowner's bill of rights was not necessary.

A questionnaire is an effective device for a Federal agency to determine the landowners' reactions and degree of satisfaction or dissatisfaction after an acquisition program has gotten underway. The Corps of Engineers' Kansas City district office has used three sets of questionnaires to solicit landowners' comments on the treatment they received regarding (1) appraisal of their property, (2) negotiations, and (3) relocation assistance. We noted that some of the responses received from persons whose land was taken for the Truman Dam contained critical comments, although many contained favorable comments, some with qualifications. The landowners made the following complaints:

--Appraisal without participation of the landowner.

--Lack of courtesy.

--Delays in acquisition.

--Inadequate compensation offered.

--Inadequate information.

Corps district officials told us that they had discussed some of these matters with the owners and found that complaints were not always justified. Also, district officials claimed that the majority of responses received

under a continuing program of soliciting landowners' reactions had been favorable.

In 1977-78 similar complaints were communicated to a Member of Congress by landowners displaced in a Corps reservoir project in Kentucky. In addition, landowners in Kentucky and in other projects have expressed resentment over the threat of condemnation conveyed to them by the Government's negotiators if they did not accept the Government's offer of compensation. As discussed in chapter 5, negotiators generally offered only small increases above their initial offers, which fell far short of owners' expectations. The threat of condemnation was also mentioned as one of the grievances listed by a protective association of National Park inholders (those who own land within park boundaries) during 1978 hearings on proposed changes in National Park acquisition policies. The Service's revised policy, (44 F.R. 24790, Apr. 26, 1979) should help ameliorate the position of inholders by clarifying criteria for acquisition and providing for development of a land acquisition plan with public participation, as well as review procedures for proposed condemnation actions.

Insofar as we could ascertain, the Corps does not have an agencywide policy of sending out questionnaires similar to those used by the Corps' Kansas City district; nor did other Federal agencies included in our review seek out landowners' reactions. Regional officials of the National Park Service told us that they considered followup questionnaires unnecessary in view of the small number of landowners' complaints received.

We believe followup questionnaires provide several benefits. The agency may be able to take corrective action in response to some complaints and can provide oral or written explanations in other cases. In addition, by sending out questionnaires, the agency demonstrates its general concern over the treatment of displaced owners and may gain valuable information on how to improve its practices in future acquisitions.

CONCLUSION

Recognizing the inconvenience and upset suffered by persons whose land is taken by the Government, and in the spirit of Public Law 91-646, land acquisition agencies should seek the best possible relationship with all affected landowners. Although agencies generally are expending much effort to treat landowners fairly, they can improve the relationship by providing timely information on the acquisition process, tailored to specific needs of each landowner. This action

can be taken in the early planning stages of an acquisition project through a device like the landowner's bill of rights, recommended by the House Committee on Government Operations, or the development of a land acquisition plan with public participation as set forth in the National Park Service's revised acquisition policy statement of April 1979. These efforts can be fortified after the project is underway by use of followup questionnaires which seek out landowners' satisfaction or dissatisfaction.

RECOMMENDATION TO HEADS OF LAND ACQUISITION AGENCIES

We recommend that the heads of Federal land acquisition agencies require staffs charged with land acquisition responsibilities to seek improved communications with landowners by (1) assuring that landowners are adequately informed of their rights at the beginning of an acquisition project and (2) ascertaining their views about the treatment they received after a project is underway.

AGENCY COMMENTS

Justice agreed that our recommendation is warranted. The Army also agreed, stating that its policy is to treat landowners with courtesy and respect at all times. The Corps of Engineers has been conducting a series of negotiators' seminars to stress these points; however, the Corps believed that in this sensitive area of acquiring private land, there always will be some adverse reaction, no matter how fairly the landowner is treated.

Interior's Water and Power Resources Service emphasized the planning phase as a primary ingredient in the acquisition process and believed that preacquisition planning would result, among other things, in fewer landowner complaints and increased compliance with the spirit and intent of Public Law 91-646.

SHORTAGE OF FUNDS TO PAY FOR ACQUISITIONS

On some projects, a source of irritation to landowners and a hindrance to officials seeking expeditious land acquisition has been a shortage of funds to pay for the properties needed. Such fund shortages can delay successful negotiations with landowners, expeditious filing of condemnation suits, or prompt payment of condemnation awards. We noted the following situations.

--Acquisitions for the Tocks Island and Delaware Water Gap projects, being handled as one undertaking by the Corps of Engineers, were hampered by the need to use two funding sources and by lack of continuity in the respective appropriations. These conditions led to long delays in negotiations with landowners and in filing condemnation actions. Also, some judgment awards could not be paid promptly.

--The C & O Canal project ran short of money because acquisition costs were higher than anticipated and exceeded appropriations before the Park Service was able to obtain a needed congressional increase in the authorized project ceiling.

--For six tracts condemned by the Fish and Wildlife Service in 1974 as an addition to the Seedskadee National Wildlife Refuge in Wyoming, the deficiency award of $673,432 plus interest of about $150,000 could not be paid promptly after the award had been affirmed by the appeals court in April 1977. This situation occurred because the Bureau of Reclamation--which was responsible for the displacement of wildlife habitat in this area--did not have funds available for fish and wildlife mitigation. Only after the landowner had complained to the congressional representative did the Department of the Interior and the Office of Management and Budget work out with the appropriation committees a reprograming of reclamation appropriations so that the deficiency could be paid in October 1977.

Further data on the above situations follows.

Tocks Island/Delaware Water Gap

The two sources of funding for this acquisition program--public works appropriations for the Corps project and Land and Water Conservation Fund appropriations for the National Park Service project--became available in amounts varying greatly from year to year. According to Corps officials, the flow of funds did not permit them to carry out an orderly acquisition program. Also, the two funding sources were not always available at the same time for certain "split ownership" properties lying in both agencies' jurisdictions. Since fiscal year 1975 the Corps has received no further appropriations for the reservoir project except for a restudy of the project to meet legal obligations (such as deficiency judgments) and to fund hardship acquisitions. Additional background information is presented in appendix IV.

In retrospect, it may be concluded that, to assure an orderly acquisition program, joint acquisition responsibility should have been accompanied by a joint funding arrangement, and the two agencies should have planned their acquisitions more realistically, considering local real estate market conditions and available funding. With the indefinite deferment of the reservoir construction and enactment of the National Parks and Recreation Act of 1978, all lands previously acquired by the Corps were transferred to the jurisdiction of the National Park Service. The two former projects, in fact, have become one, and remaining acquisitions will be financed only from funds made available to the Park Service.

C & O Canal

The authorizing legislation (Public Law 91-664, Jan. 8, 1971) established a ceiling of $20.4 million for total project acquisitions. By December 1977 this ceiling was reached after appropriations for fiscal years 1971 through 1975 had been exhausted, and a sum of $900,000 had to be held in reserve for projected land acquisitions by the State of Maryland. The Park Service requested an additional appropriation of $7.9 million for fiscal year 1979, but no action could be taken on this request pending an increase in the authorized ceiling. The ceiling was increased by the National Park and Recreation Act of 1978 (Public Law 95-625, Nov. 10, 1978)--too late for action to be taken on the requested fiscal year 1979 appropriation. As a result, the amount appropriated for 1979 was reduced to $1 million.

The funding problems might have been avoided if the National Park Service had requested a more timely increase in the project ceiling, when the trend of increased real estate prices in the C & O Canal area became apparent, instead of delaying the request and including it in the much more complex omnibus park legislation being considered by the 95th Congress in 1978.

Park Service officials pointed out that a 1977 amendment to the Land and Water Conservation Fund Act of 1965 would provide relief in situations like that of the C & O Canal project. This amendment (Public Law 95-42, June 10, 1977) authorizes the use of funds appropriated for National Park System recreation areas in excess of statutory ceilings, provided the ceiling is exceeded by not more than 10 percent or $1 million, whichever is greater. Also, starting in fiscal year 1978, the Park Service has been receiving a special line item appropriation from the Land and Water Conservation Fund for "deficiencies."

While these legislative provisions may allow the Park Service to finance deficiencies in its smaller acquisition programs, officials pointed out that in larger projects involving multimillion dollar acquisitions, funding deficiencies may still occur which cannot be readily covered. In these cases, the Service will either have to take up the matter promptly with the appropriate congressional committees or discontinue condemnation action.

Seedskadee Wildlife Refuge

The Bureau of Reclamation agreed to fund this acquisition pursuant to section 8 of the Colorado River Storage Project Act (43 U.S.C. 620g), which provides for mitigating fish and wildlife losses. The Bureau received a separate line item appropriation for recreation and fish and wildlife facilities in connection with its appropriation for the Upper Colorado River Storage Project. This appropriation did not have enough funds to pay the deficiency award when it was affirmed by the appeals court in April 1977. As a result, and because the Bureau's fiscal year 1978 appropriation request did not provide for the deficiency award, the Regional Director of the Fish and Wildlife Service informed the landowner's attorney that the earliest date when payment could be expected was October 1, 1978, the start of fiscal year 1979. Following the attorney's protest, the Service's Director advised that he hoped a supplemental appropriation would be available by the end of calendar year 1977.

Following the congressional inquiry, however, the Bureau was able to reprogram fiscal year 1978 funds and pay the deficiency in full. In retrospect, the question arises as to why either fiscal year 1976 or 1977 funds for wildlife mitigation were not reserved after the district court rendered its deficiency judgment in June 1975 and while the case was on appeal.

CONCLUSION

Although special circumstances may have contributed to fund shortages, the cited cases indicate a need for land acquisition agencies to carefully review and periodically update estimated land costs. We were informed that agencies such as the National Park Service prepare land costs estimates on which to base authorization and appropriation requests to the Congress by using the best information available at the time and some flexibility allowing for higher costs when the project gets underway. We were also told that agencies cannot anticipate all changes

affecting land values and, if additional funding requests become necessary, the legislative process presents problems of proper timing so that funds will always be available when needed.

We believe, however, that by recognizing patterns of rising real estate prices and the added costs involved in condemnation proceedings, agencies should be alert to the need for adequate funding throughout their planned acquisition projects. They should properly time their funding requests so that negotiations with landowners and condemnation procedures in court are not hampered by a shortage of funds. In the event that the legislative process will not provide additional funds when needed, agencies should seek authority to reprogram funds.

The assurance of adequate funding seems to be implied in the agency's request for condemnation, which recites the applicable appropriation legislation and a statement that the ultimate price of the land is expected to be within the limits prescribed by law.

RECOMMENDATION TO HEADS OF LAND ACQUISITION AGENCIES

We recommend that the heads of Federal land acquisition agencies require that the estimated costs of land acquisition projects be periodically updated so that requests for additional funding can be made in a timely manner and that their agencies promptly seek reprograming authority from the Office of Management and Budget and the appropriations committees of the Congress when timely additional funding cannot be obtained.

AGENCY COMMENTS

Justice agreed that our recommendation is warranted. It believed that updates of estimated costs would also help provide a more reliable basis for determining whether the Government should negotiate a settlement or proceed with litigation in particular cases.

The Army agreed that the acquisition agency should plan its program so that funds are available when needed but pointed out that on occasion such planning is not within the agency's control because of congressional action.

Interior's Water and Power Resources Service believed that adequate preacquisition planning would result, among other benefits, in proper funding arrangements.

RATE OF INTEREST ON DEFICIENCY AWARDS NEEDS UPDATING

The Declaration of Taking Act (40 U.S.C. 258a) allows payment of interest to the owner at the rate of 6 percent per annum on deficiency awards for the period from the date of the Government's deposit under a declaration of taking until the deficiency is paid into the court. This interest rate, established in 1931 when the act was passed, is no longer in line with today's economic conditions when landowners can invest their money at short-term rates in excess of 10 percent.

The inadequacy of the 6-percent rate has been recognized in a decision by the Court of Appeals for the Ninth Circuit, which held that under certain circumstances the Fifth Amendment requires a higher rate (United States v. Blankinship, 543 F. 2d 1272 (9th Cir., 1976)). The court concluded that the 6-percent statutory rate operates as a minimum but not as a ceiling on the rate of allowable interest. It did not fix a substitute rate but ordered the trial court, which had earlier allowed rates of 3.5 and 8 percent, to obtain evidence on the rate at which the landowner could have invested the money awarded by the court. The appeals court suggested that the owner could have invested the money in a marketable public debt security issued by the U.S. Treasury having a duration from the date of taking the property to the date of depositing the deficiency, together with interest, into the registry of the court. In accordance with this instruction, the trial court found that Treasury securities for 2-1/2 years returned 6.78 percent but, weighing this yield against shorter term Treasury securities, held that the defendants were entitled to interest at 7.75 percent.

According to the Department of Justice, the Ninth Circuit Court of Appeals is the only circuit court allowing interest at a rate higher than the statutory 6 percent, although from time to time defendants have been contending that 6 percent is inadequate within the meaning of the Fifth Amendment. The Department, however, has held to the statutory rate in most instances.

Justice has pointed out, and we recognize, that the Ninth Circuit based its decision allowing interest at a rate higher than the statutory 6 percent on the consideration that interest for delayed payment is an element of constitutionally mandated just compensation. In other words, the court considered the determination of interest a judicial and not a legislative question. However,

obviously the court's decision was motivated by the consideration that 6 percent was no longer a fair rate in that case.

We believe, in fairness to landowners, that the statutory rate can no longer be considered adequate under today's inflationary, high-interest-rate conditions. The Ninth Circuit's reasoning is persuasive in considering as a measure for adequate compensation the rate of return an investor in U.S. Treasury obligations would obtain for a comparable period. Use of a flexible rate, such as one tied to prevailing yields of U.S. Treasury obligations, seems to be fairer than a rate fixed by statute, which can be lower or higher than prevailing rates. As an alternative, and following the position taken by the Ninth Circuit, allowance of interest on the deficiency in the Government's deposit could be made subject to judicial determination as part of the award of just compensation by the court. Under these conditions, the court would determine the appropriate rate of interest for each condemnation case.

Adjustments of interest rates on deficiency awards would be in consonance with the President's program to reform the Federal civil justice system, transmitted to the 96th Congress in February 1979 (H. Doc. No. 96-59, Feb. 27, 1979). One of the program's points was the allowance of equitable interest on claims and judgments. The President's message pointed out that current Federal law permits unrealistically low interest, whereas equitable interest may be essential to truly compensate a litigant.

RECOMMENDATION TO THE CONGRESS

We recommend that the Congress amend the Declaration of Taking Act (40 U.S.C. 258) to allow interest on amounts finally awarded in excess of the amount deposited into the court that will compensate landowners in a more equitable manner than the rate of 6 percent per annum now authorized by the statute.

This amendment could be accomplished by allowing interest at a rate equivalent to the average yield on marketable public debt obligations of the U.S. Treasury outstanding at the date of taking and having maturities corresponding to the date on which the Government deposits the deficiency into the registry of the court.

Or, the statute could be amended to provide that the judgment shall include, as part of the just compensation awarded, an appropriate rate of interest on the amount finally awarded in excess of the Government's deposit for the period from such deposit to the date of payment of the deficiency into the registry of the court.

AGENCY COMMENTS

Justice stated its preference for an amendment that would tie the interest rate to U.S. debt securities rather than leave the proper rate open to litigation in each case. Justice's comments regarding the approach taken by the Ninth Circuit in considering the rate a matter of judicial determination have been recognized in our preceding discussion. Justice, however, believed that the courts should accord deference to the Congress' views on the reasonableness of a particular interest rate or standard where the Congress has attempted to set a fair rate or standard.

The Forest Service agreed that the rate in 40 U.S.C. 258a should be amended, while the Army did not wish to comment on our recommendation pending Justice's review of this matter.

LEGISLATIVE AUTHORITY

FOR CONDEMNATION OF PRIVATE LAND

The Constitution of the United States recognizes the Government's power to take property for public use without the owner's consent but provides that just compensation must be paid to the owner. An individual Federal agency exercising this power must have general or specific legislative authority to acquire land needed to carry out its program purposes. It also must have an appropriation of funds to cover acquisition costs. While some laws contain specific authority to condemn, others provide general acquisition authority, which is considered to include the power to condemn unless the act specifically restricts such power.

PRINCIPAL STATUTES

The following listing shows principal statutory authorities of the land acquisition agencies whose operations are covered in this report.

The Forest Service, Department of Agriculture, has several acquisition authorities. It has general authority under the so-called Weeks Act of 1911 to acquire land needed for regulating streamflow and the production of timber. It also has authority to acquire road and trail easements. It can acquire lands in specific, congressionally authorized areas, such as the National Trail System (16 U.S.C. 1246), Wild and Scenic Rivers (16 U.S.C. 1277), and Wilderness Areas in the Eastern United States (16 U.S.C. 1132 note).

The National Park Service, Department of the Interior, has numerous specific authorities to establish designated parks or other nationally protected areas. Its authority to acquire inholdings in previously established parks (before fiscal year 1960) is derived from the prior authorizing legislation together with current appropriations from the Land and Water Conservation Fund. Like the Forest Service, the Park Service can acquire congressionally authorized areas for national trails, wild and scenic rivers, and eastern wilderness areas.

The Fish and Wildlife Service, Department of the Interior, has land acquisition authority under the Fish and Wildlife Act (16 U.S.C. 742a), the Migratory Bird Conservation Act (16 U.S.C. 715), and the Endangered Species Act (16 U.S.C. 1534). Its funding is provided by the Migratory Bird Conservation Fund and the Land and Water Conservation Fund.

The Water and Power Resources Service, Department of the Interior, has basic purchase and condemnation authority for reclamation and irrigation activities (43 U.S.C. 421) and numerous specific authorities for individual congressionally approved projects.

The Corps of Engineers, Department of the Army, has authority for the acquisition of lands, rights-of-way, and materials by condemnation, purchase, and donation, if needed for the improvement of rivers and harbors for which provision has been made by law (33 U.S.C. 591). Of interest is section 595, which provides for reducing the amount of compensation or damages to be awarded the landowner by any special and direct benefits to the remainder of the owner's property (not taken by the Government) arising from the improvement brought about by the project. The land acquisition provisions for river and harbor improvements also apply to flood control works (33 U.S.C. 701c-2).

The Departments of the Army, Navy, and Air Force have basic condemnation authority for land needed for such purposes as fortifications, coastal defenses, training camps, manufacture of ammunition, and powerplants (10 U.S.C. 2663). They also have authority for acquiring real property for military housing (42 U.S.C. 1502) and receive specific authority for various military projects in their annual authorizing and appropriation legislation.

RESTRICTIONS ON CONDEMNATION AUTHORITY

Some of the cited legislation specifically restricts the Government's power to condemn. The authority to establish wilderness areas in the Western United States (16 U.S.C. 1134) specifically excludes acquisition without the consent of the owner (because the Government already owns such large land areas in the West). The legislation establishing wild and scenic rivers and national trails limits the area subject to condemnation:

--For wild and scenic rivers, land may not be condemned for fee title if 50 percent or more of the land in the authorized area is owned by the Federal Government or a State or the land is located in urban areas covered by valid and satisfactory zoning ordinances. These restrictions, however, do not preclude the use of condemnation to clear title, acquire scenic easements, or give public access to the river (16 U.S.C. 1277(b) and (c)).

--For national trails, condemnation may not be used to acquire fee title or lesser interests to more than 25 acres of any 1 mile of trail and shall be limited to the most direct or practicable connecting right-of-way (16 U.S.C. 1246(g)).

Several specific authorizing acts, establishing new recreation areas, also limit the power to condemn in order to protect owners residing within the designated areas as of a certain cutoff date. For example:

--For the Cape Cod National Seashore in Massachusetts, the National Park Service may not condemn improved property built before September 1, 1959, and exempted under local zoning regulations; commercial or industrial property whose use has been permitted by the Secretary of the Interior; and land owned by local government.

--For the Big Cyprus National Preserve in Florida, the National Park Service may not condemn improved property if construction began before November 23, 1971.

--Similarly, the Senate Appropriations Committee limited condemnation for the Spruce Knob-Seneca Rocks National Recreation Area in West Virginia. The Forest Service may only condemn properties which are sold on the open market or offered for sale subsequent to September 18, 1969, the date specified in the committee's report.

CONGRESSIONAL NOTIFICATION REQUIREMENTS

Congressional committees approving large-scale Federal acquisition of private lands have been concerned

from time to time over possible abuses of the power to take such property by condemnation. Therefore, in addition to general or specific legislative restrictions, and the general safeguards of the Uniform Relocation Assistance and Land Acquisition Policies Act (43 U.S.C. 4601), some committees have required prior notification and approval of condemnation actions by certain Federal agencies under their jurisdiction. These requirements are contained in the committees' legislative reports.

--The Senate Energy and National Resources Committee (formerly Committee on Interior and Insular Affairs) requires the National Park Service to seek prior consultation and approval for the use of a declaration of taking, if such use is considered necessary by the Service. The committee discourages this form of condemnation, which provides the Government immediate title and possession but forces it to complete the transaction even if the compensation awarded by the court is much higher than anticipated and exceeds available funds. (S. Rept. 90-1597, Oct. 1, 1968.)

--The appropriations committees of both Houses require prior approval of using Land and Water Conservation Fund moneys for acquisition of certain recreational lands by condemnation. Such a requirement had been in force for several years with respect to condemnation actions by the National Park Service against inholders in national park areas authorized before July 1960. It was extended, effective in fiscal year 1979, to condemnation actions by the Forest Service and the Fish and Wildlife Service for the acquisition of certain other recreational land. (Conf. Rept. on H.R. 12932, H. Rept. 95-1672, Sept. 29, 1978.)

--Effective in fiscal year 1979, the House Appropriations Committee requires notification by the Department of the Air Force at least 30 days prior to any purchase or condemnation action involving real property. (H. Rept. 95-1246 on H.R. 12927, June 1, 1978.)

OUTLINE OF

FEDERAL CONDEMNATION PROCEDURES

FUNCTIONS OF AGENCY SEEKING LAND ACQUISITION

A Federal agency seeking to acquire land needed for an approved program or project will resort to condemnation when reasonable efforts to negotiate a purchase from the landowner are unsuccessful. The owner may refuse to sell the land or to sell it at the price offered by the Government. The agency will also use condemnation procedures if a judicial determination is needed to acquire clear title or if the owner is unknown or cannot be located.

Federal agencies generally assign acquisition responsibilities to their regional offices or, in case of large land acquisitions, to specially constituted project offices. The field offices usually are staffed with specialists knowledgeable in real estate operations, mapping, obtaining title evidence, appraising property, and preparing the documentation required by the Department of Justice for filing the case in court. A recommendation to condemn, together with a justification and the required documents to accompany the requested action, must be approved by a higher level area office and/or agency headquarters, as well as the appropriate Department Secretary or his/her delegate. The request is then forwarded to the Department of Justice, Land and Natural Resources Division.

If the agency desires immediate title and possession of the land, it will prepare a "declaration of taking," in addition to a "complaint" which the agency brings as plaintiff against the landowner as defendant. The declaration, signed by the Secretary or his/her delegate, must be accompanied by a check for deposit with the court, representing the agency's estimate of the fair value of the property. This money can be withdrawn by the landowner, with court approval, while the case is pending and until a final award is determined by the court.

Most agencies have issued manuals of detailed instructions for guidance of their staffs engaged in land acquisition and condemnation actions. These manuals are based on Department of Justice requirements and the provisions of the Condemnation Act (40 U.S.C. 257) and the Declaration of Taking Act (40 U.S.C. 258a).

FUNCTIONS OF THE DEPARTMENT OF JUSTICE

The law places the responsibility for processing and trying condemnation cases in court with the Attorney General. This function is performed by the Land Acquisition Section, an organizational unit of Justice's Land and Natural Resources Division, and is shared with the U.S. Attorneys' offices in the various judicial districts.

To assure uniformity throughout the Government, Justice has issued procedural guidelines for the acquisition of real property by Government agencies and for preparation of title evidence in U.S. land acquisitions. Also, under its chairmanship an interagency committee has issued a booklet containing uniform appraisal standards for Federal land acquisitions. Furthermore, the "United States Attorneys' Manual" includes detailed guidelines for the processing of condemnation cases by Government attorneys in compliance with Rule 71A of the Federal Rules of Civil Procedure.

Upon receipt of the package of condemnation documents from the acquisition agency, the Land Acquisition Section decides whether the case should be handled by the U.S. Attorney's office in the district having jurisdiction or Justice's own staff, or assigned for joint handling. This depends on workload, complexity of the case, and any special circumstances. If the case is properly documented by the agency, the complaint and declaration of taking are filed in court together with the deposit accompanying the declaration. The clerk of the court will register and confirm the filing and the deposit.

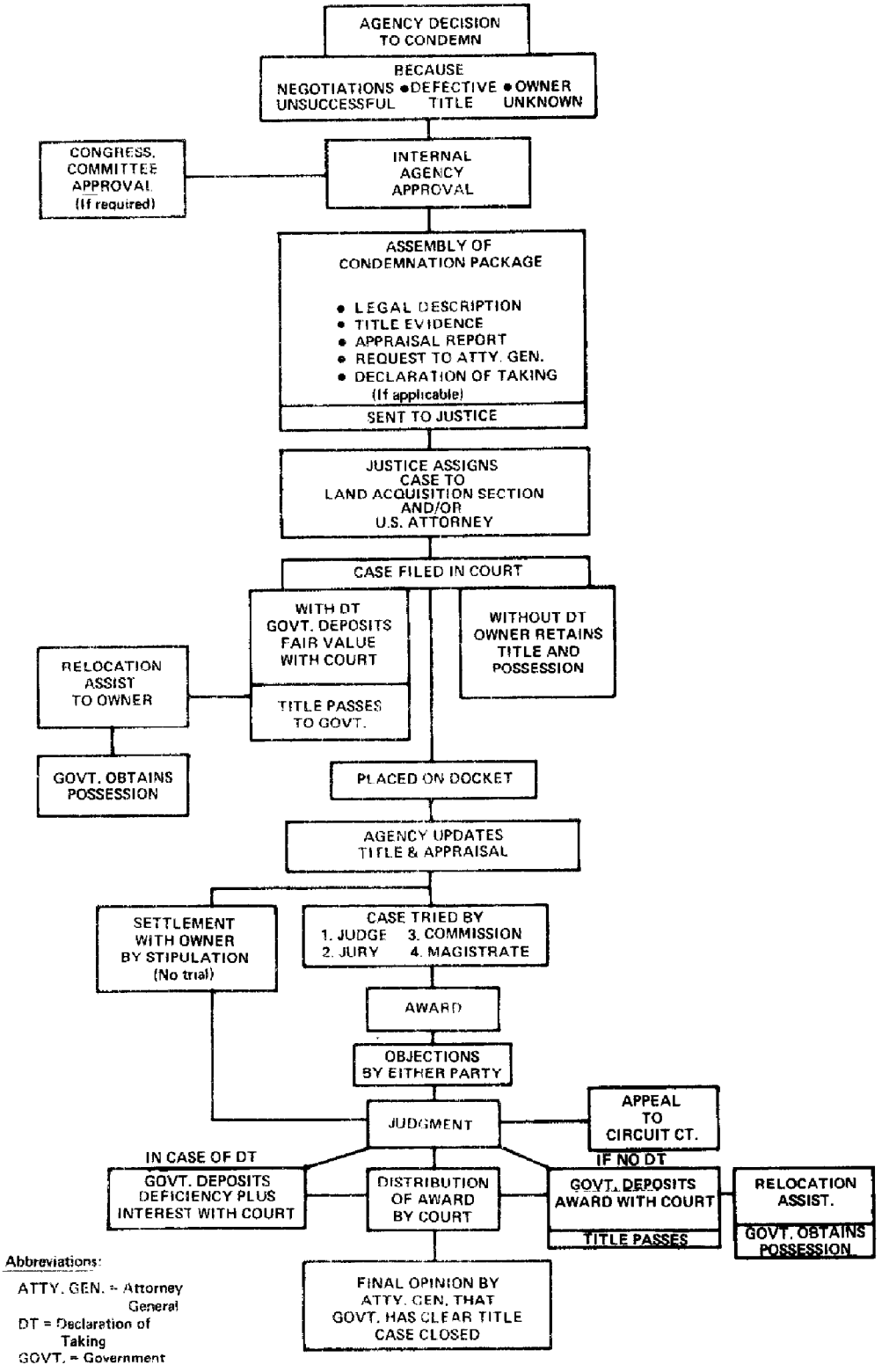
Before the case comes to trial, the Government's attorney will attempt to negotiate a settlement with the landowner, which may be advantageous to both parties, rather than accepting the delays and costs of litigation. The negotiated settlement must be approved by the court and entered as judgment to close the case.

Although prosecution of the case is the responsibility of the Department of Justice, the land acquisition agency remains responsible for a number of functions. Throughout the trial, the agency must assist Government attorneys in obtaining any needed evidence, updating title and appraisal reports, and furnishing expert testimony. Also, the agency's cooperation and concurrence are needed when settlement is sought by stipulation instead of going to trial. Another agency responsibility is providing relocation assistance to the landowner as required by Public Law 91-646. A smooth

functioning of the condemnation process and its successful conclusion by the Government depend on effective team work by the staffs of the three agencies on the Government's side: the acquisition agency, Justice's Land Acquisition Section, and the U.S. Attorney's office in the district where the case is filed.

The various steps that must be taken by the Government to process condemnation cases through the judicial system, until the Attorney General can render a final opinion that the Government has acquired clear title to the desired property, are shown in the accompanying flow chart.

FLOW CHART SHOWING PROCESSING OF CONDEMNATION CASES



APPENDIX III

FEDERAL LAND ACQUISITION AGENCIES

COMMONLY USING POWER OF CONDEMNATION

Department of Agriculture:
- Forest Service 1/

Department of the Interior:
- National Park Service 1/
- Fish and Wildlife Service 1/
- Water and Power Resources Service 1/

Military Departments:
- U.S. Army Corps of Engineers 1/
- Department of the Navy 1/

Department of Transportation:
- Federal Aviation Administration
- Federal Highway Administration

Department of Energy

National Aeronautics and Space Administration

General Services Administration

Tennessee Valley Authority 2/

U.S. Postal Service 2/

1/Procedures of these agencies are covered in this report.

2/Agencies authorized to bring their own court actions and not represented by Department of Justice.

SUMMARY OF MAJOR PROJECTS REVIEWED

To review condemnation procedures and practices followed by principal land acquisition agencies, we examined actions taken by responsible field installations in connection with three major land acquisition projects:

	Name of project	Responsible agency
1.	Harry S. Truman Dam and Reservoir, Missouri	Corps of Engineers, Kansas City District
2.	Delaware Water Gap National Recreation Area (NRA) and Tocks Island Reservoir, Pennsylvania/ New Jersey	National Park Service, Middle Atlantic Region, and Corps of Engineers, Philadelphia District
3.	Fryingpan-Arkansas Project, Colorado	Water and Power Resources Service, Lower Missouri Region, Denver, Colorado

HARRY S. TRUMAN DAM AND RESERVOIR

This project, originally known as Kaysinger Bluff Reservoir, was authorized by the Flood Control Act of 1954 and modified by the 1962 act to include hydroelectric power and recreation. It was renamed in 1970 to honor former President Harry S Truman.

The reservoir will inundate the valleys of the Osage, Grand, and Pomme de Terre Rivers and their tributaries in parts of six Missouri counties. The damsite is located in the vicinity of the city of Warsaw in the headwaters of the Lake of the Ozarks. The dam, of the earthfill type, will be 5,000 feet long with a maximum height of 126 feet above the streambed. The powerhouse will house six generators with a total rated capacity of about 160,000 kilowatts. The reservoir will have a multipurpose pool covering 55,600 acres and a flood control pool of about 209,000 acres. The shoreline of the multipurpose pool will be nearly 1,000 miles long.

The land requirements for the project involve acquisition of about 166,000 acres in fee and 107,000 acres of flowage easements at an estimated cost of $100 million. This land area is contained in about 8,500 tracts of which close to 7,700 (or 90 percent) had been acquired as of September 30, 1979. The long delay in the acquisition program, taking 15 years from 1965 when acquisitions were started, was largely due to two major interruptions: funding limitations from fiscal years 1967 to 1971 and litigation challenging the project for environmental reasons lasting from March 1972 to June 1974.

Corps records show the status of the acquisition program as of September 30, 1979, as follows:

	Tracts	Acres	Cost (millions)
Purchased:			
Fee ownership	3,738	129,404	$37.7
Easements	2,375	51,202	12.8
Total	6,113	180,606	50.5
Condemned:			
Fee ownership	617	35,747	13.4
Easements	951	29,415	7.5
Total	1,568	65,162	20.9
Total	7,681	245,768	$71.4

The above statistics show that about 20 percent of the tracts were acquired by condemnation. Final judgments had been rendered on 526 fee and 597 easement tracts; the remaining condemnation cases were still pending in court. On the basis of past experience, the final costs of condemnation may be expected to be higher than indicated because the Corps shows its own appraised amounts for pending cases and awards to landowners, in the average, have exceeded Corps appraisals by about 64 percent for fee acquisition and by about 103 percent for easements.

DELAWARE WATER GAP NRA-TOCKS ISLAND RESERVOIR

These two acquisition projects, now consolidated into one area under the jurisdiction of the National Park Service, were authorized as separate undertakings. Tocks Island Reservoir, designed as a water control project to alleviate flooding and droughts in the Delaware River Basin, was authorized by the Flood Control Act of 1962 (Public ~~Law~~ 87-874). The Delaware Water Gap National Recreation Area was authorized by Public Law 89-158 (16 U.S.C. 460-1) to provide facilities for public outdoor recreation in conjunction with the Tocks Island project and to preserve the scenic, scientific, and historical features in the area. As provided in Public Law 89-158 and regulated in a 1966 memorandum of understanding between the Departments of the Army and the Interior, the Corps assumed the responsibility of acquiring all lands needed for the two projects.

Land acquisitions, starting in 1968, were hampered by funding limitations, rapidly escalating real estate prices as the area became increasingly attractive to residents and speculators, and strong local opposition to the reservoir project. Also, financing of individual properties was complicated because funds had to come from two separate sources: flood control appropriations to the Corps and appropriations for recreational land to the National Park Service.

According to Corps officials, funds appropriated for the two projects, in view of the sharp increase in local real estate prices, were not adequate to carry out the planned acquisition program. Also, because some of the States participating in the Delaware River Basin Compact withdrew their support of the planned Tocks Island Reservoir, the Congress did not appropriate construction funds for the project. Instead, construction of the lake and dam was indefinitely deferred, and the National Parks and Recreation Act of 1978 (Public Law 95-625, Nov. 10, 1978) transferred all lands acquired, together with any remaining acquisition authority and funds, to the Secretary of the Interior; these lands are to be administered as a recreation area within the exterior boundaries designated in the legislation.

At the time of transfer to Interior (Feb. 1979), the Corps reported the status of land acquisitions as follows:

	Tracts	Acreage	Cost (millions)
Delaware Water Gap:			
Purchased	3,650	20,326	$37.4
Condemned	729	12,484	17.0
	4,379	32,810	54.4
Tocks Island:			
Purchased	1,513	12,608	32.0
Condemned	325	4,979	13.8
	1,838	17,587	45.8
Total	6,217	50,397	$100.2

The above statistics show that 17 percent of the tracts were acquired by condemnation. Of the total 1,054 condemnation actions, 55 were still pending in court, covering 984 acres with an appraised value of $1.3 million. For the 999 cases which had been closed, final payments ($29.6 million) exceeded Government appraisals ($22.2 million) by 33 percent. It is noteworthy, however, that the large majority of closed cases were settled by stipulation with the landowners and did not go to trial. Statistics for the first 10 years of land acquisitions show that only about 10 percent of the cases went to trial, while 90 percent were settled by stipulation. For this period, the trials resulted in awards averaging 50 percent above initial deposits.

National Park Service officials responsible for completing the acquisition program anticipate that the designated recreation area will require a total of about 66,000 acres. Efforts will be made to consolidate earlier acquisitions, some of which represent a patchwork pattern, and to round out the area located within the designated boundaries.

FRYINGPAN-ARKANSAS PROJECT

This Water and Power Resources Service project is a multipurpose transmountain water diversion development in southeastern Colorado. It was authorized by Public Law 87-590, August 16, 1962. It is designed to bring water from the western slope of the Rocky Mountains across the Continental Divide to the water-short areas of the eastern

slope. It uses six storage dams and reservoirs and 17 diversion units, including nine tunnels with a combined length of 26.7 miles. The several reservoirs will have a capacity of 750,000 acre-feet, covering a surface of 10,900 acres and having a shoreline of over 100 miles. The three powerplants will have a generating capacity of 211 megawatts. The project will provide, in addition to irrigation and power, extensive recreation and fish and wildlife benefits.

The most recent Service records show that, as of July 1979, land acquisitions totaled about 118,000 acres, representing 99 percent of the total area needed for the project (as presently approved). The acquisitions came from the following sources:

	Tracts	Acres	Cost
Withdrawn from public lands	-	88,520	-
Purchased	462	17,132	$12,766,000
Condemned	58	12,273	5,713,000
Total	520	117,925	$18,479,000

The high percentage of private acreage which had to be acquired by condemnation (42 percent) is explained by the fact that large areas needed for the reservoirs were under single ownership and could not be acquired by negotiation. Generally, the Service is able to buy most of its project land by negotiation with the owners. Servicewide statistics of land acquisitions for the 6-year period from 1973 to 1978 show that, in terms of tracts acquired, condemnations represented between 7 and 13 percent of annual acquisitions and averaged 9 percent for the period:

	1973-78 Acquisition	
	Tracts	Cost
Purchased	3,774	$84,724,000
Condemned	371	15,070,000
Total	4,145	$99,794,000

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the Division Indicated and Refer to Initials and Number

FEB 21 1980

Mr. Allen R. Voss
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Voss:

This is in response to your request to the Attorney General for the comments of the Department of Justice (Department) on your draft report entitled "Federal Land Acquisitions By Condemnation--Opportunities To Reduce Delays And Costs."

The Department generally agrees with the report and the recommendations. The recommendations are constructive, well-informed, and represent a comprehensive inquiry and analysis of the problems of delays and high costs in land condemnation cases. Our comments offer some clarification of certain facts and several alternate, less costly solutions to several aspects of the problems.

On page 9 the General Accounting Office (GAO) draft report states:

> "As a result of its authorization and appropriation hearings for fiscal year 1980, Justice received increased appropriations for 20 additional positions to carry out land acquisition activities in 1980. With these staff increases, the Land and Natural Resources Division expects to be able to handle its workload of condemnation cases in the foreseeable future provided adequate support can be obtained from the U.S. Attorney offices."

Our present assessment is that attorney strength may be sufficient in most of the Department, but increased attorney strength in United States attorneys' offices would help reduce the backlog of cases. Additional support personnel in the Department and the United States attorneys' offices are also necessary to adequately handle the workload. We request that the citation be modified to reflect our view.

[GAO COMMENT: The report has been revised as suggested.]

We agree that it would be desirable to provide for the coordination of the computerized caseload tracking system with the Department's client agencies to facilitate the exchange of information needed by the Department and the agencies. However, the high cost of individual computer terminals for access to the data by the acquisition agencies, as well as the cost of data conversion of thousands of old agency cases and data on past transactions into a form which is compatible for entry into the Department's computer system must be considered. The first priority for use of personnel and available funds is the settlement and litigation of the 21,000 outstanding cases. It should also be noted that the Department's computerized system is in nascent form, with only a pilot program to be tested in 12 United States attorneys' offices and the Department's Land Acquisition Section during late 1980. Access to the data in the 83 other districts would be extremely limited during the initial trial period.

[GAO COMMENT: These considerations have been recognized and the recommendation has been clarified.]

We generally agree with the recommendations in Chapter 3 regarding standards and procedures for obtaining evidence of title and title insurance. The proposed Government-wide study outlined on page 25 appears to be a useful means to resolve the problems presented. The proposal that the present system of obtaining commercial title insurance be modified to reduce costs of title evidence by 20 to 25 percent might be advisable, particularly in view of the facts cited in the draft report, including the low loss ratio of four or five percent for this type of title insurance, the high cost of title insurance, and the Government's general role as self-insurer.

Chapter 4 of the draft report emphasizes the importance of sound and properly supported appraisals in condemnation cases to convince the court of the fairness of the Government's value evidence and points out that the owners' higher claims often go beyond what constitutes just compensation. A significant point this chapter fails to emphasize, and does not treat elsewhere in the report, is that the need for sound and properly supported appraisals is equally as important for agency negotiations in the first instance. If the agency has sound and realistic appraisals during the initial negotiations, many more properties could be purchased, thus reducing the number of properties that must be referred for condemnation. We have often received condemnation cases that we were able to settle when a reappraisal revealed that the original appraisal was improperly done or was erroneous in

some respect. Had the appraisal process been properly handled in the first instance, the need to resort to condemnation may not have arisen.

[GAO COMMENT: We recognize the importance of sound and properly supported appraisals for the purpose of successfully negotiating with the landowner. Our discussion of the need for improved appraisal practices is in the context of acquisitions by condemnation, the subject of this report, but our recommendation for strengthening appraisals is intended to apply to all acquisitions whether by purchase or condemnation.]

Of the total number of property acquisitions, a relatively small percentage--about 20 percent on the average--is acquired by condemnation. The properties that go to condemnation are in large part the ones that are the hardest to appraise because of the complexity of the appraisal problem and/or the legal premises which must guide the appraisal approach. We would like to re-emphasize the Department's suggestion that ". . . where any tract presents unusual and complicated valuation or other legal problems, there should be coordination among the acquiring agency, the United States Attorney and the Land and Natural Resources Division of the Department of Justice in Washington, D.C., prior to abandonment of efforts to acquire the tract by direct purchase." [Emphasis added.] 1/ It is much better to meet and resolve the problem at the outset, when a determination of the correct appraisal approach may result in an appraisal that may put the parties within negotiating range, than to defer resolution until after the condemnation is filed.

[GAO COMMENT: We have included Justice's observation and the cited passage from the Procedural Guide in chapter 4.]

The recommendations regarding strengthening property appraisals in Chapter 4 are all useful means for enabling the Government, through the Department's attorneys, to present convincing evidence to the court that the Government is offering fair value to the landowners. We believe it would be more appropriate and carry greater impact for the GAO, rather than the Attorney General, to convey to the heads of

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1/ "A Procedural Guide for the Acquisition of Real Property by Governmental Agencies" (1972), page 7.

the land acquisition agencies the specific recommendations made in the draft report.

[GAO COMMENT: We have redirected our recommendations to both the Attorney General and the heads of land acquisition agencies in view of their joint responsibility for adequate land appraisals.]

The following observations and comments are made relative to Chapter 5:

Page 42, second paragraph. Clarification is needed to clearly indicate that the $3,000 average cost of processing a condemnation case in this context refers only to cases valued at $10,000 and under. It is suggested that the referenced sentence be modified by insertion of the underscored phrase as follows: ". . . and the cost of processing condemnations in this low value category (averaging $3,000 a case). . . ."

Page 48, first full paragraph, last sentence. To be compatible with the above, we suggest the referenced sentence be modified by insertion of the underscored words as follows: ". . . considering the average cost of $3,000 a case cited by the Assistant Attorney General for tracts valued at $10,000 and under and the fact that the cost of processing such low value cases will not vary in proportion to the value of the tract."

Page 50, first paragraph, last sentence. To clarify the referenced sentence in accordance with our understanding of GAO's intended meaning, we suggest that the sentence be modified by insertion of the underscored word as follows: ". . . are proportionally more significant than for higher valued tracts."

In absolute terms, the cost and risk of trial for higher valued tracts are more significant than for lower valued tracts. Generally speaking, these costs and risks increase in relation to the value of the tract.

[GAO COMMENT: We have clarified the three cited passages as suggested.]

Page 51. Consistent with our earlier comment on the recommendations addressed to the Attorney General in Chapter 4, we suggest that the first recommendation be addressed directly to the heads of acquisition agencies rather than to the Attorney General. We believe we have already made considerable efforts to persuade the acquiring agencies to use such greater flexibility as the report recommends.

APPENDIX V

[GAO COMMENT: We have redirected the first recommendation, as suggested, in view of Justice's continuing efforts in this direction.]

As suggested in the second recommendation in Chapter 5, the Department can provide assistance to client agencies to establish guidelines for reliably estimating the costs of litigating condemnation cases, including the costs incurred by the Department.

We agree with CAO's recommendations in Chapter 6 to speed the disposition of land condemnation cases by encouraging more commission hearings pursuant to Rule 71 A of the Federal Rules of Civil Procedure, and by encouraging more trials by magistrates with both parties' consent, pursuant to the Federal Magistrate Act of 1979. Attorneys in the Department and attorneys in the United States attorneys offices already have been advised and are seeking the consent of landowners to refer as many simple, low value cases as possible to magistrates for trial.

The first recommendation of Chapter 6 states that the Judicial Conference should initiate action to amend Rule 71 A of the Federal Rules of Civil Procedure to provide for the parties' participation in the selection of members of a court-appealed commission. An amendment providing for the parties' right to object to the court's appointees only "for valid cause" as recommended in the draft report, may create as great a burden on the objecting party as in the present appeal process. An amendment providing for the parties to propose candidates for commission appointment for the court's consideration may create the appearance of bias by the proposed candidates. To create a more impartial appearance, we suggest that an amendment be proposed to Rule 71 A, which more clearly defines the standard qualifications of court-appointed commission members. The qualifications could be similar to the qualifications listed for masters in Rule 53 of the Federal Rules of Civil Procedure, including appointment of an auditor or an assessor, and could also include the requirement that the commission member have no connection with nor conflict of interest regarding the property nor the parties to the land condemnation litigation in question.

[GAO COMMENT: We have recognized Justice's views and have modified our recommendation on the basis of its alternative suggestion, which we believe has merit.]

We believe the recommendations on pages 63 and 67 on the draft report are warranted. We agree that Federal land acquisition agencies should inform landowners of their rights and later ascertain the landowners' opinions of the treatment which they received. We also agree that Federal land acquisition agencies should periodically update the estimated costs of land acquisition projects to ensure timely additional funding for these programs. Such updates of the estimated costs would also assist in providing a more reliable basis for determining whether the Government should negotiate a settlement or proceed with litigation in particular cases.

We believe the recommendation on page 69 to amend the Declaration of Taking Act 40 U.S.C. Section 258a, to provide for an interest rate tied to United States debt securities should be accompanied by the caveat that such an amendment is in conflict with the legal principles on which the Ninth Circuit based its decision to allow interest at a greater rate than 6 percent, namely that interest for delayed payment is an element of constitutional just compensation and that the measure of just compensation is a judicial and not a legislative question. 2/ However, if any amendment of the Declaration of Taking Act is to be made with respect to interest, we would prefer the aforementioned approach to the alternative recommendation in the report of amending the Act to leave the proper rate of interest open to litigation in each case. While the preferred approach presents the legislature with a judicial question, the courts arguably should accord deference to Congress' views on the reasonableness of a particular interest rate or standard, where Congress has attempted to set a fair rate or standard. Obviously, the decision of the Ninth Circuit Court of Appeals to allow interest at a rate greater than 6 percent was based on the fact that it did not consider a 6 percent interest rate to be fair in today's circumstances.

[GAO COMMENT: Justice's views have been recognized in chapter 6.]

Any legislative proposal to authorize the expenditure of large amounts of money by increasing the statutory interest rate must recognize that the severe shortage of funding for Government attorneys, appraisers, and clerical personnel is one of the primary causes of the years of delays in completing condemnation proceedings. The long delays are in turn responsible for a large portion of the deficiency awards and the accrued interest. A more appropriate budgetary measure and meaningful solution to the long-range problem of the delays in

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2/ United States v. Blankinship, 543 F.2d 1276 (9th Cir. 1976); United States v. 100 Acres of Land, Marin County, California, 468 F.2d 1261 (9th Cir. 1972), cert. denied 414 U.S. 822 (1973).

completing land condemnation cases would be to provide funds for additional attorneys and clerical personnel for land condemnation cases in the Department.

[GAO COMMENT: Our recommendation to adjust the interest rate payable on deficiency awards to landowners is made as a matter of fairness to the landowners, although it may increase the Government's costs of land condemnations. We are aware of long-standing limitations in personnel and funds to conduct condemnation proceedings; however these problems have received increased attention by the Congress, particularly during the 1979 hearings before the Senate and House committees considering Justice's authorization legislation. This matter is discussed in chapter 2.]

With respect to the paragraph on page 73, Appendix I, which summarizes the limitations on condemnation for wild and scenic rivers, there is, in addition to the 50 percent limitation mentioned, a limitation on fee acquisition (including acquisition by condemnation) of a maximum of an average of 100 acres per mile on both sides of the river. The last sentence in the subject paragraph is inconsistent with the sentence that precedes it and is incorrect. We suggest the following: "These restrictions, however, do not preclude the use of condemnation to clear title, to acquire scenic easements, or to give public access to the river."

[GAO COMMENT: We have revised this paragraph, as appropriate. The 100-acre limitation on fee acquisitions applies to all acquisitions, whether by purchase or condemnation, and therefore is not cited here as an example of a restriction in the power to condemn.]

We appreciate the opportunity to comment on the draft report. Should you desire any additional information, please feel free to contact us.

Sincerely,

Kevin D. Rooney
Assistant Attorney General
for Administration

NOTE: Page numbers and other references to the draft report have been changed to correspond to the final version.

APPENDIX VI

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20310

22 FEB 1980

Mr. Henry Eschwege, Director
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Eschwege:

This is in response to your letter of 4 January 1980 to the Secretary of Defense requesting comments on a draft of a proposed report prepared by your office entitled, "Federal Land Acquisitions by Condemnation - Opportunities to Reduce Delays and Costs." The report has been reviewed by the Real Estate Directorate of the Office, Chief of Engineers. Our comments follow.

The Department of the Army generally concurs in the content and recommendations of the report. The report is a detailed and thoughtful consideration of the procedures and problems involved in land acquisition through condemnation. We have been concerned with the delays and increased costs incurred by this process, and are interested in any suggestions and recommendations that would help to alleviate the situation.

The report notes the increase in the number of condemnation cases filed over the past few years. Records indicate that the Corps of Engineers' caseload has not significantly increased in recent years and, in fact, has decreased since the peak year of 1977. Nevertheless, because of the large volume, we concur in the recommendation to increase the number of Department of Justice personnel involved in this work, both at the Washington level and the field. Corps attorneys work actively with Department of Justice attorneys in preparing cases and assisting at trial, and will continue to do so. A limitation on resources would preclude full-time assignment of Corps attorneys to U. S. Attorney's offices, except in a few limited circumstances.

The small tract program, in which cases with values less than $40,000 have been emphasized for expeditious handling, has been implemented in the Western District of Missouri where the Corps' Truman Dam and Reservoir project has contributed to the large caseload. As noted in

Mr. Henry Eschwege, Director

the report, this proved generally successful in disposing of cases. However, it should be noted that some of the settlements reached were extremely liberal. This might be justified in terms of court costs and liability risks at trial, but could prove counter-productive if the effect was that landowners and their attorneys were convinced they could get much more if they go into condemnation. This could have the effect of actually increasing the condemnation caseload.

[GAO COMMENTS: Our report recognizes that no overall formula can be established concerning when and at what amounts the Government should settle and that best available judgment must be used considering the effect on other acquisitions in the same project.]

The report discusses the delay encountered in some instances, causing cases to be four years old or more before completion. We recognize that it is incumbent upon our people to do everything necessary to move these cases promptly. We must provide current title evidence and updated appraisals shortly after the case is filed. It should be noted, however, that some of the delay is caused by the courts simply not putting these cases on the docket. We urge the Department of Justice to take this up with the Judicial Conference in order to insure that condemnation cases are treated uniformly with other cases and brought to trial when their time comes up.

[GAO COMMENT: Chapter 6 of our report discusses ways to obtain more expeditious trials by using court-appointed commissions or U.S. magistrates. Justice agreed that encouraging these forms of trial may speed the disposition of condemnation cases.]

As noted in the report, the Corps does have its own computerized system on land acquisition, the expertise of which it would be glad to share with other agencies or the Department of Justice in an effort to improve the system.

Title evidence, as discussed in Chapter 3, is an important part of the acquisition process. We concur in the recommendation that a study be initiated to identify acceptable alternative methods to obtain the needed title services. The Department of the Army would cooperate with the Department of Justice in such a study.

The comments concerning appraisals appear to be appropriate and pertinent. The Corps requires its appraisers, both staff and contract, to promptly update their appraisal reports once the case is filed. The need for convincing testimony in this area is certainly recognized.

Mr. Henry Eschwege, Director

The Corps has assured us that prior to placing a case in condemnation it has taken all appropriate measures in attempting to purchase the property. The need for flexibility in this regard is recognized, especially in small value cases. Various elements, including costs and risks of trial, are considered. However, as previously noted, acceptance of too liberal counteroffers could prove counter-productive in the effort to decrease the condemnation caseload. Moreover, there is a strong feeling in the Corps that they must treat landowners evenhandedly, and not reward the ones who hold out. This attitude is valid, and must be a part of the balanced consideration in determining whether a counteroffer should be accepted. We would concur in the comment in Chapter 5 that protracted negotiations do not benefit the Government, and the Corps emphasizes prompt completion of negotiations once they are begun. As noted in the report, a factor in the process is the availability of funds. The acquisition agency should plan its program so that funds are available when needed, but on occasion this is out of their control because of Congressional inaction.

[GAO COMMENT: These views are recognized at the end of chapter 5 and on p. 67, chapter 7.]

We would most heartily concur in the recommendation that the parties participate in the selection of Commissioners who try the cases. This would help insure an unbiased panel. Also, we concur in the use of Magistrates to try the cases, with the reservation that they should generally be used for low-value cases, and that the Government has the right to petition for removal if they prove to be prejudiced.

[GAO COMMENT: These views are recognized at the end of chapter 6.]

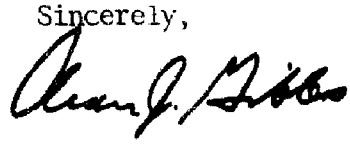
Chapter 7 of the report emphasizes improving treatment of landowners. It is the policy of the Army that our negotiators will treat landowners with courtesy and respect at all times, and be responsive to their questions and requests in connection with the acquisition. The Corps' Real Estate Directorate is currently conducting a series of Negotiators Seminars to stress these points. However, in an area as sensitive as acquiring someone's land, there will always be some adverse reaction, no matter how fairly the landowner is treated.

Mr. Henry Eschwege, Director

As a final recommendation, the report indicates that the present statutory 6% interest on deficiency payments is inadequate, and should be amended. We are aware that the Department of Justice has this matter under consideration and we offer no suggestions pending the outcome of their review.

We trust these comments will be useful in considering this report.

Sincerely,



Alan J. Gibbs
Assistant Secretary of the Army
(Installations, Logistics and
Financial Management)

APPENDIX VII

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Mr. Henry Eschwege
Director, Community and Economic
Development Division
U. S. General Accounting Office
441 G Street, N. W.
Washington, D. C. 20548

FEB 8 1980

Dear Mr. Eschwege:

This letter transmits the comments of the National Park Service, the Forest Service, the Fish and Wildlife Service, the Water and Power Resources Service, and the Bureau of Land Management concerning the GAO draft report entitled: "Federal Land Acquisitions by Condemnation -- Opportunities to Reduce Delays and Costs." The Forest Service, as shown on the enclosed comments, will be submitting a more complete response through the Secretary of Agriculture.

As detailed comments from the agencies indicate, the draft report was found to be objective in most instances but the agencies have a few concerns. The report made an attempt to identify areas needing improvement and did not seem to be influenced by subjective or predetermined objectives. It is directed mostly at problem solving with a minimum of fault finding. Its recommendations, if carried out, should aid the Federal land acquisition agencies in carrying out their responsibilities more effectively. The agencies work closely with the Department of Justice at the present time, and will continue to work on improving the process of condemnation.

However, the agencies do have the following concerns:

References to GAO Report on Federal Land Acquisition Policy, "The Federal Drive to Acquire Private Lands Should Be Reassessed" (12/79)

Several references to the GAO report on Federal land acquisition policy were made throughout this report. The Department of the Interior took exception to both the methodology and the conclusions found in the referenced report and would like to see these references deleted. It is felt that these references are not essential in portraying the conclusions and recommendations of the report concerning Federal land acquisition by condemnation. The issues raised in that report are separate and may or may not result in reduced condemnation workload by reducing overall Federal acquisition.

[GAO COMMENT: The reference to the prior report cannot be deleted as it is pertinent to the magnitude of land acquisitions whether by purchase or condemnation. Our prior report fully recognizes Interior's position and exceptions.]

Mr. Henry Eschwege

Chapter 1 - Introduction

The Water and Power Resources Service points out that they use a Declaration of Taking which establishes the date of taking (and, therefore, date of value) upon filing the Declaration of Taking with the court. Therefore, theoretically, long delays in court which postpone resolution of the condemnation suit will have no effect on the eventual acquisition cost. Under these circumstances, it is doubtful whether this element contributes materially to increased costs as stated by the GAO Draft Report. On the other hand, it is proper to realize that juries tend to equate value with present day price rather than some date established in the past. Expediting disposition of condemnation cases is still a valid consideration if only out of concern for the affected landowner.

[GAO COMMENT: The Department of Justice has been concerned with long delays in court and resulting higher costs to the Government. This applies especially to condemnation actions by the National Park Service which, in compliance with a congressional committee directive, has generally refrained from using declarations of taking and acquires title only after the court has adjudicated the award to the landowner.]

The Water and Power Resources Service also notes that, with respect to its programs, acquiring less than full fee title has been generally inappropriate, ineffective, and counter-productive relative to the best interests of the United States. Most often, the Federal Government must pay nearly full price, yet receives substantially less, than ownership when alternate acquisition strategies are utilized. The United States' rights are severely limited or restricted and, after a short while, are often found inadequate because of changing physical or social conditions. This requires purchase of additional rights, again at nearly full fee value. Alternative land acquisition strategies, such as imposing land use restrictions or arranging for local zoning, may be seen as taking of property rights without compensation and, in any event, is surrounded by serious legal implications.

The Fish and Wildlife Service, however, does acquire less than fee interest in many instances, and finds this an appropriate method of meeting its statutory responsibilities. There are, of course, occasions when full fee title is the only appropriate method.

[GAO COMMENT: The question of whether the Government should acquire fee title to land or a lesser interest is treated in our earlier report of December 1979 and is not the subject of this report.]

Mr. Henry Eschwege

Chapter 2 - Efforts to Control and Reduce Caseload

The agencies strongly support the recommendation for a standardized information system. However, the Forest Service feels it would be of little benefit to them at this time due to the small number of condemnation actions it processes. Eventually, the Forest Service may develop a system for all types of land acquisitions, including condemnation, but until such time would hope that implementation of the proposed system would not generate a significant workload out of proportion to the benefits received.

[GAO COMMENT: The Forest Service's response is recognized at the end of chapter 2.]

The Water and Power Resources Service contends that the major contributor to the condemnation case backlog is the adjudication system. Judges frequently place lowest priority on condemnation trials and the mass of pretrial legal proceedings allows the defendants and/or the U.S. Attorney's Office to delay hearing of the case practically indefinitely. In addition to the tracking system recommended by GAO, they recommend that consideration be given to streamlining the procedures for bringing a case before the court.

[GAO COMMENT: The Department of Justice has been much concerned with speeding up the adjudication process, and our report addresses this concern in particular in chapter 6.]

Chapter 3 - Need to Explore Alternative Procedures for Obtaining Evidence of Title

The National Park Service points out that title companies enable savings by providing closing as an additional service. Contractors secure signatures on documents, disburse funds to grantors, mortgagees and others, record deeds, and either pay or escrow taxes. The fees for such services are minimal, but if the contractor did not provide title insurance or certificates, closing services would not be provided, or at least not at such favorable rates. The alternative would be for the agency to employ closing attorneys at considerable cost.

The Bureau of Land Management has a relatively small acquisition program when compared to those agencies cited in the report. Therefore, the Bureau sees no advantage to doing its own title searches. This is a specialized service which is best left to title experts.

The draft report questioned the necessity for title insurance. Both the National Park Service and the Forest Service have found title insurance to be an effective and cost efficient method of obtaining the needed level of title evidence, although the Water and Power Resources Service suggests that there might be merit in studying alternatives to obtaining title insurance. The report refers to the National Park Service's experience in

Mr. Henry Eschwege

soliciting bids for title services for Big Cypress. Several bids were received for furnishing abstracts, but, in each instance, lower bids were received for furnishing title insurance or certificates of title. Had abstracts of title been used, either the Department of Justice or the Solicitor's Office of the Department of the Interior would have had to hire additional lawyers to render title opinions on the abstracts. This would have caused the total cost to exceed costs of the other forms of title evidence by an even wider margin.

[GAO COMMENT: We are not recommending discontinuance of the services commonly obtained from commercial title companies but a study which should explore the question of when it is in the Government's interest to use the title services generally obtained in the past or to resort to alternative methods.]

Chapter 4 - Strengthening Property Appraisals

The single most important element of a Federal land acquisition is the appraisal. The governmentwide uniform appraisal standards are adequate; however, few agencies monitor their compliance to these or supplemental guidelines. The appraisal product can be improved greatly through increased agencywide monitoring.

The National Park Service disagrees with the recommendation that it lower its dollar limit from $250,000 to $100,000 on the authority of field office review appraisers. The limit was increased in June 1977, because of personnel limitations in the regional offices, and because of the extensive experience of the field office review appraisers. Moreover, inflation in land prices made the $100,000 limit unrealistic. The proper function of regional office review appraisers is to aid field office with difficult appraisal problems, regardless of dollar amount.

[GAO COMMENT: We have recognized the Service's position and added an alternative recommendation that takes account of limited staff resources.]

Chapter 5 - Increasing Efforts to Settle With Landowners

The report stressed the need for increased flexibility in determining whether to accept landowners' counteroffers or proceed with litigation. Most agencies currently consider the expense of a trial when negotiating with landowners and prior to requesting condemnation. However, since many of the agencies acquire tracts less than $10,000, it is hoped the $10,000 limit will serve as a guide and will not become a mandatory limit for condemnation cases handled by the Justice Department. There is a continuing need to be able to use the right of eminent domain even in those cases under $10,000.

Mr. Henry Eschwege

[GAO COMMENT: Our report recognizes that no overall formula can be established concerning when and at what amounts the Government should settle and that best available judgment must be used.]

Chapter 6 - Seeking Ways to Obtain Fair and Speedy Trials

The Water and Power Resources Service feels that a primary ingredient in the acquisition process is the planning phase, which is also the one most ignored by land acquisition agencies. Such preacquisition planning would result in a smoother acquisition program, fewer landowner complaints, proper funding, and increased compliance with the spirit and intent of Public Law 91-646. It is recommended that a regulation requiring an "Acquisition Plan" similar to the "Relocation Plan" required in Interior Regulations 114-500 be adopted.

In addition, the Water and Power Resources Service feels that the Federal Government is failing to meet its management responsibilities through the lack of subsequent program evaluation. Seldom is a completed program evaluated and analyzed to pinpoint its strengths and/or weaknesses for future reference. Strengthening interagency oversight and land acquisition program monitoring would provide some of the badly needed "self-analyses" in Government. Questionnaires as suggested by GAO are only one method of evaluating program effectiveness. Improved communication with landowners should also include a preacquisition and ongoing public participation and awareness program.

[GAO COMMENT: These views seem to apply to chapter 7 rather than chapter 6. The Water and Power Resources Service's emphasis on the planning phase as a primary ingredient of the acquisition process is in consonance with (1) our recommendation in chapter 7 that landowners receive timely information in the early stages of an acquisition project and (2) the recommendation in our report of December 14, 1979, that land acquisition agencies, at every new project, prepare project plans which identify specifically the land needed before private lands are acquired. Also, a second recommendation in chapter 7 points to the need for adequate planning of the funding requirements of land acquisitions and calls for periodic updating of estimated costs so that agencies can make timely funding requests to the Office of Management and Budget and the appropriation committees of the Congress.]

APPENDIX VII

Mr. Henry Lachwege

[We agree there is merit to the Service's recommendation of a regulation requiring an "Acquisition Plan" similar to Interior's required "Relocation Plan," and the Service may wish to suggest to the Secretary adoption of such a regulation applicable to all Interior land management agencies.]

[The Service's emphasis on the need for program evaluation after a completed acquisition program is in consonance with our policy to encourage Federal agencies to evaluate the effectiveness of their programs whenever feasible and appropriate. The Comptroller General has consistently expressed the view that program evaluation is a fundamental part of effective program administration and that the responsibility for evaluations should rest with the agencies charged with carrying out the program.]

The general endorsement of this report should not be construed as extending to the recently released GAO report, "The Federal Drive to Acquire Private Lands Should Be Reassessed."

Thank you for the opportunity to comment on this report. For more detailed information, copies of the agencies' comments are enclosed.

[GAO COMMENT: We have omitted the enclosures as this letter summarizes the essence of the Interior agencies' comments, and the Forest Service has furnished us a separate response which is reproduced in this report.]

Sincerely,

[illegible]
Assistant Secretary for
Policy, Budget and Administration

Enclosures

APPENDIX VIII

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
P.O. Box 241
Washington, DC 20013

1420

JAN 29 1980

Mr. Henry Eschwege, Director
Community and Economic Development Division
United States General Accounting Office
411 G Street N. W.
Washington, DC 20548

Dear Mr. Eschwege:

This letter contains our comments on the draft GAO Report entitled Federal Land Acquisitions by Condemnation - Opportunities to Reduce Delays and Costs.

We appreciated the approach used by the author(s) of this report. The report made an objective attempt to identify areas needing improvement. Since the Forest Service initiates comparatively few condemnation actions, the report deals primarily with Department of Justice, National Park Service and Corps of Engineers activities. However, the recommendations would affect the Forest Service. Therefore, we have commented on the recommendations and suggested a few revisions in the text of the report.

1. Page 14, 15 (Recommendations on Reducing Case Load).

Since we have few condemnation actions, there would not appear to be an agency benefit to a computerized tracking system. The Forest Service may eventually develop a system for all acquisitions, including condemnation actions. In the interim, we would hope that implementation of this proposal would not generate a significant Forest Service workload out of proportion to the benefits received.

[GAO COMMENT: This response has been recognized at the end of chapter 2.]

An effective means of reducing the Justice Department's case load would be to authorize attorneys for the land managing agencies to try cases, subject to dollar limitations and/or other guidelines.

[GAO COMMENT: Using land management agencies' attorneys to try cases was considered in Justice's Caseload Reduction Plan but rejected because of the need for special legislation and various practical reasons such as lack of expertise and possible inconsistencies in the handling of cases.]

2. Page 25 (Alternative Procedures for Obtaining Title Evidence).

Although we have encountered some of the problems discussed in the report, title insurance has been a reasonably effective method of obtaining title evidence.

The problems have a greater impact on our willing seller purchases than the condemnation cases. Since there are extensive negotiations prior to a condemnation recommendation, adequate title evidence has usually been obtained before the Declaration of Taking is drafted. An alternative procedure would not appreciably affect condemnation case processing.

[GAO COMMENT: The study of alternative methods to obtain title evidence, which we propose, would apply to and benefit all land acquisitions, whether by condemnation or purchase.]

Enactment of uniform state marketable title acts would reduce the delays in many areas. These acts limit title searches to a 40-year period.

[GAO COMMENT: We have added this information to our discussion of possible procedures to expedite acquisition programs.]

3. Page 40 (Property Appraisals).

We are presently operating according to the first three recommendations. We support the fourth recommendation pertaining to the need to review the classification standards and position descriptions for the higher grade levels of professional staff appraisers.

4. Page 51 (Increasing Settlement Efforts).

The Forest Service already considers trial costs and risks when evaluating counteroffers on property to be recommended for condemnation. However, we would appreciate more current and accurate information on all the trial costs.

We have considered issuing general guidelines in our directives system. However, we do not plan on establishing specific standards for settlements in excess of the appraised values that would work to the disadvantage of the United States in the negotiating process.

5. Page 56 (Fair and Speedy Trials).

We agree with the recommendations and particularly support the idea that the parties have a right to object to the selection of the Court's appointed commissioners.

6. Page 69 (Improving Treatment of Landowners).

We believe 40 U.S.C. 258(a) should be amended as suggested to insure just compensation for property acquired by condemnation.

Our suggestions for revisions in the text are as follows:

1. Page IV., second paragraph, first sentence, could be revised to read: "Although Federal agencies have made the great majority of their acquisitions by negotiated purchase and not condemnation, GAO found that agencies could improve their chances of reaching agreement with owners..."

2. Page 3, first paragraph, second sentence. The word "forest" could be deleted from the phrase "newly designated forest areas."

3. Page 49, second paragraph, first sentence, could be revised to read: "Once a condemnation action has been filed in court, it may still be to the Government's advantage. . . "

4. Page 71, third paragraph, should be revised to read as follows: "The Forest Service, Department of Agriculture, has several acquisition authorities. For example, it has authority under the so-called Weeks Law of 1911 to acquire land needed for regulating streamflow and the production of timber. It also has authority to acquire road and trail easements. It can acquire lands for congressionally authorized areas, such as the National Trails System (16 U.S.C. 1246), Wild and Scenic Rivers (16 U.S.C. 1277), and within designated wilderness areas in the eastern United States (16 U.S.C. 1132 note)."

APPENDIX VIII

"The authorizing legislation sometimes limits the use of condemnation. For example, legislation authorizing wilderness areas in the western United States specifically excludes acquisition without the consent of the owner (16 U.S.C. 1134)."

3. Page 73, the first paragraph should be revised to read as follows:

"For Wild and Scenic Rivers, land may not be condemned in fee when 50 percent or more of the land in the authorized boundary is owned by the Federal or a State government; . . ."

[GAO COMMENT: We have made the suggested revisions as they improve accuracy of presentation.]

One important aspect of the condemnation process did not appear to be adequately addressed. Our experience has indicated that one of the greatest needs is trained trial attorneys with experience in condemnation actions. We suggest that the author(s) consider a recommendation for an analysis of a regional or zone approach to maintaining these necessary skills and experience.

[GAO COMMENT: Our review did not encompass an appraisal of the availability of experienced trial attorneys. We believe this matter is for consideration by the Department of Justice and is receiving attention under Justice's Caseload Reduction Plan (discussed in ch. 2).]

The report refers to the agencies as the condemning authority. In most cases, the agencies can only recommend condemnation to the appropriate Secretary. The Declaration of Taking is signed at the Secretarial level.

[GAO COMMENT: We have added the approval function of the Department Secretary or his/her delegate in appendix II.]

We have appreciated the opportunity to review and comment on this report. Please let us know if you have any questions.

Sincerely,

for R. MAX PETERSON
Chief

NOTE: Page numbers and other references to the draft report have been changed to correspond to the final version.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

February 13, 1980

Honorable Elmer Staats
Comptroller General
General Accounting Office
Washington, D. C. 20548

Attention: Allen R. Voss, Director
General Government Division

Dear Mr. Staats:

This responds to the request of January 9, 1980 by your General Government Division for my comments upon the draft report to the Congress on "Federal Land Acquisitions by Condemnation--Opportunities to Reduce Delays and Costs." I appreciate the opportunity to submit preliminary comments upon this proposed report.

Our study of this report has focused upon chapter 6, regarding methods to obtain fair and speedy trials in condemnation litigation. This chapter recommends that the Judicial Conference of the United States should consider amendments to the Federal Rules of Civil Procedure to provide (1) for an expressed right of participation by the Government and the land owner in the selection of members for land condemnation commissions and (2) for the use of United States magistrates in the hearing of land condemnation cases.

With respect to the first proposal, any recommendation for amendment to the Federal Rules of Civil Procedure would properly be considered by the Judicial Conference Committee on Rules of Practice and Procedure and would be initially referred to its Advisory Committee on Civil Rules. Any such recommendation which may ultimately be made in your final report on this subject will be referred to these Committees for their study and eventual report to the Judicial Conference. I should point out at this time, however, that a United States district court appointing a commission to determine the issue of just compensation in

condemnation proceedings under Rule 71A(h), Fed. R. Civ. P., is not now precluded from consulting the parties to the action and considering their proposals as to the membership of such commission.

[GAO COMMENT: We have reconsidered this observation but believe that the present rule, which is discretionary for the court, needs modification to assure the appointment of unbiased competent commissioners.]

The employment of United States magistrates to conduct the trial proceedings in most condemnation cases before their district courts appears to be authorized under present law, as suggested in your draft report. The Federal Magistrate Act of 1979, Public Law No. 96-82, §2, 93 Stat. 643, added to 28 U.S.C. §636 a new subsection (c), expressly empowering full-time United States magistrates, or part-time magistrates who serve as full-time judicial officers, to conduct all proceedings in a jury or non-jury civil matter and to order the entry of judgment in the case when designated to exercise such jurisdiction by their district courts and upon the consent of the parties to the particular civil action. Section 636 (c)(2) provides that, in district courts where a magistrate is designated to exercise civil trial jurisdiction, the clerk of court shall notify the parties to a civil action of the right to consent to its trial before the magistrate. Following the consent of the parties and a subsequent entry of judgment by a magistrate in the case, an aggrieved party may appeal directly to the appropriate United States Court of Appeals, as on appeal from any other judgment of a district court.

Thus the Congress in enacting the Federal Magistrate Act of 1979 deliberately provided that the use of United States magistrates to conduct civil trial proceedings and to make final disposition of civil cases would depend upon the consent of the parties. While a land owner could thus act to prevent referral of his condemnation proceeding to a magistrate, there is no reason to think that this would habitually or even frequently occur. In any event, it might be considered whether you wish your recommendation to depart from the philosophy of the Federal Magistrate Act of 1979 by suggesting that a certain class of cases should be referred to United States magistrates under

section 636(c) over the objections of a party. */ I might further note that 28 U.S.C. §636(b) now authorizes the United States district courts to designate magistrates to hear and determine pretrial matters pending before the court, to conduct evidentiary hearings on dispositive motions, and to serve as special masters in civil actions. The employment of magistrates for these more limited types of judicial assistance is not dependent upon the consent of the parties.

[GAO COMMENT: We have modified our recommendation. WE do not suggest dispensing with the consent of the parties but rather seek to encourage wider use of magistrates as an accepted mode of trial in accordance with the provisions of the new law.]

I hope that these comments may be of assistance in the preparation of your final report on this subject. Thank you again for the opportunity to comment.

Sincerely,

William E. Foley
Director

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*/ The legislative history of the 1979 Act expresses disfavor of "de facto categorization of the types of cases assigned to magistrates." See H. R. Rep. No. 96-287, 96th Cong., 1st Sess. 11 (1979). The trial jurisdiction portions of the Act are grounded upon the consent of the parties, which is described as one of three lines of authority ensuring their constitutionality. Id. at 8.

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