

**Forest Service Handbook
National Headquarters - Washington Office
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**Forest Service Handbook 5509.11 – Title Claims, Sales, and Grants Handbook
Chapter 10 – Title Claims and Encroachments**

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Approved by: F. Dale Robertson, Chief

Date approved:

Responsible Staff:

POSTING NOTICE. Amendments are numbered consecutively by Handbook number and calendar year. Post document in numerical order of chapters (1109.12, sec. 4.32, ex. 01). Remove entire national text of the Handbook and replace with this amendment. DO NOT REMOVE SUPPLEMENTS OR INTERIM DIRECTIVES. Retain this transmittal as the first page of this document.

Explanation of changes:

This amendment is a reissuance of FSH 5509.11 to conform the format and structure of the Handbook to the requirements of electronic directive issuance.

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

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

Table of Contents

13 - Administrative or Legal Action by the United States	4
13.1 - Procedures.....	4
13.11 - Title Claim and Encroachment Report Outline	6
13.12 - Alternatives.....	14
13.12a - Valid Claims and Qualified Encroachments	14
13.12b - Invalid Claims.....	15
13.2 - Adjustment of Land Titles Act (P.L. 78-120, 1943).....	15
13.21 - Adverse Possession.....	15
13.22 - Overlapping Deeds	16
13.23 - Inaccurate Property Boundaries.....	16
13.24 - Condemnation.....	16
13.25 - Erroneous Deed.....	16
13.26 - Recovery of Purchase Consideration	16
13.27 - Reconveyance of Land Acquired by Exchange.....	17
13.27a - Case Not Consummated	17
13.27b - Case Consummated.....	17
13.28 - Processing	18
13.3 - Quitclaim Act of 1930	18
13.31 - Description	18
13.32 - Scope	18
13.33 - Processing	19
13.34 - Conveyance Documents.....	19
13.35 - Application for Quitclaim Deed	19
13.36 - Specimen Quitclaim Deeds.....	21
13.37 - Delivering and Recording Title Conveyances.....	23
13.4 - Color of Title Act of 1928	23
13.41 - Description	23
13.42 - Processing	24
13.43 - Wisconsin Land Title Act of 1954.....	25
13.5 - Disclaimer of Interest	26
13.51 - Types of Interests Affected	26
13.52 - Evaluation of Request.....	26
13.53 - Processing Responsibility.....	26
13.6 - Correction of Documents.....	27
13.61 - Processing	27
13.7 - Invalid Claims and Encroachments.....	28
13.71 - Land Exchange or Special-Use Permit	28
13.71a - Limitations.....	28
13.71b - Special-Use Permit	28
13.71c - Land Exchange.....	29
13.72 - Negotiation	29
13.72a - Disposal of Improvements.....	29

13.72b - Demand Letters	30
13.73 - Occupancy Based Upon Mining Claims	30
13.8 - Litigation Resolution.....	31
13.81 - Not Under Claim of Title	31
13.82 - Under Claim of Title	31
13.83 - Civil Action	31
13.84 - Followup on Court Orders.....	31
13.85 - Closing Case.....	32

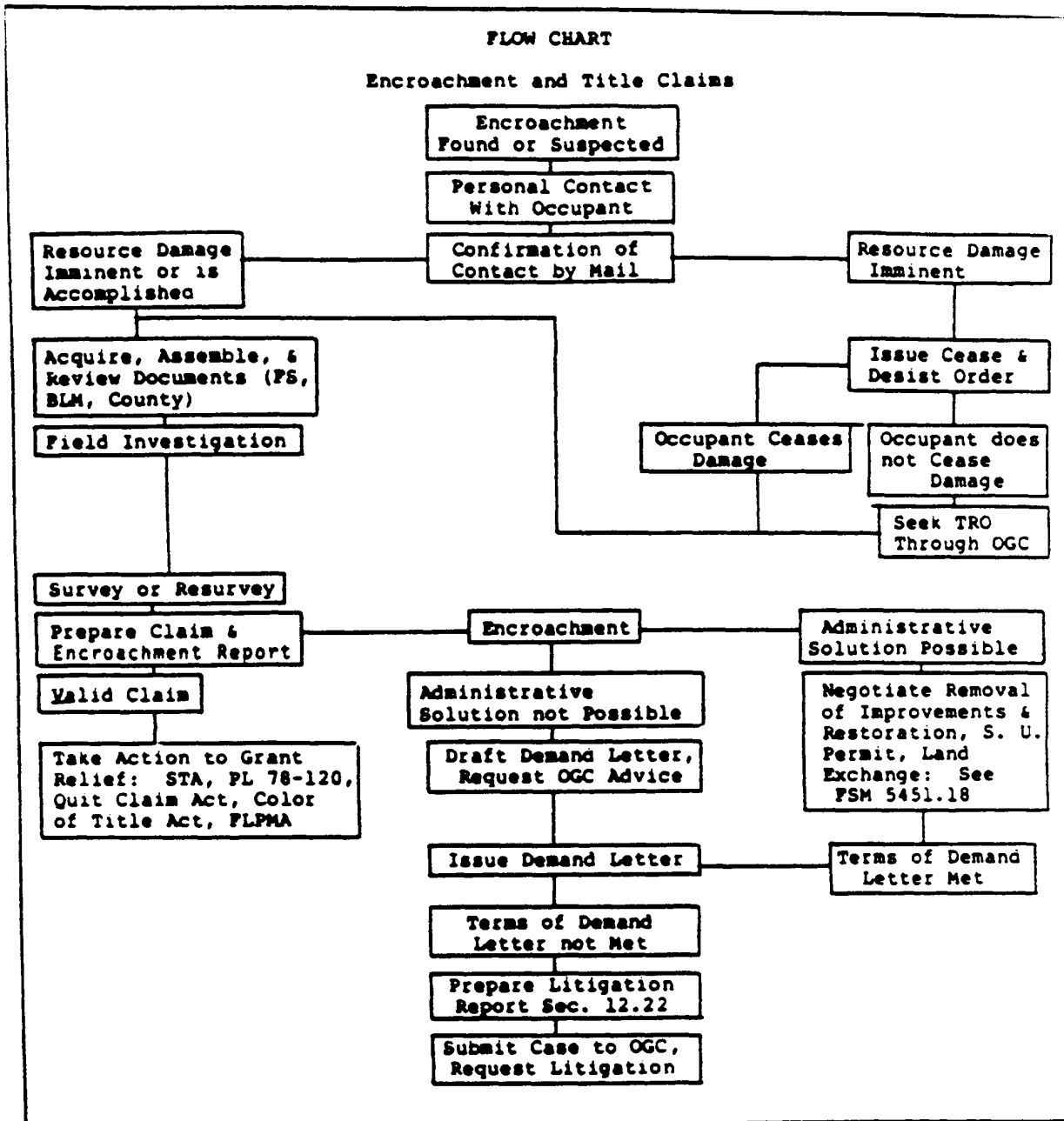
13 - Administrative or Legal Action by the United States

13.1 - Procedures

Take prompt action on a new or suspected encroachment discovered in progress or upon discovery of a claim of title (flow chart, ex. 01). The responsible forest official shall:

1. Investigate the basis for the action.
2. Contact the occupant or claimant to determine the asserted basis for occupancy.
3. Afford claimant the opportunity to present evidence in support of the occupancy or claim.
4. Prepare a Title Claim and Encroachment, Sale and Grant Report (sec. 13.11) to develop the facts fully.
5. Conduct field investigation and research of records for facts.

13.1 - Exhibit 01



13.11 - Title Claim and Encroachment Report Outline

The Forest Supervisor's report, FS-5500-S, Title Claim and Encroachment, Sale and Grant Report, must include all necessary information concerning facts, evidence, and witnesses. Exhibit 01 shows the format.

Attach the two separate sections, narrative and exhibits, to the top side of the folder. Place the narrative section to the left and the exhibits section to the right side of the folder.

For sales and grants, see section 20 for background information under those authorities.

13.11 - Exhibit 01

Title Claim and Encroachment Report Outline

NARRATIVE SECTION - Include a copy of each document or any pertinent parts thereof referenced in the narrative section under the exhibits section of the report, unless these are readily available to the reviewers. Use only pertinent sections and keep the report brief and factual.

A. Case Title and Approval

B. Facts Concerning Claimant

1. Complete name and address. If married, give full name of spouse. If corporation, give name and address of representative and the State of incorporation.

2. Occupation.

3. Reputation, based upon public record.

4. Financial standing, based upon public record.

5. Other: age, physical condition, or other special problems (in case of lawsuit).

C. Location

1. Ranger District and National Forest.

2. State.

3. County.

13.11 - Exhibit 01--Continued

4. Other political subdivision.
5. Township, range, and section or lot.
6. In metes and bounds States, give latitude and longitude; grant or patent, if known; district and land lot, if applicable.
7. Topographic features, watershed.

D. U.S. Tract--Legal Status and Method of Acquisition

1. Name and number.
2. Date and act, proclamation, Executive order, or other authority reserving or withdrawing claimed land.
3. Bureau of Land Management status record.
4. Date and recording data of deed or judgment.
5. Acquired by purchase, exchange, condemnation, transfer, and so forth. Include data for each tract involved if there is more than one.
6. For transfer lands, furnish the agency or department and the contract number and date of transfer.

E. Basis for Claim

1. Conflict of surveys.
 - a. United States survey and boundary marks and corners.
 - (1) By Joe Doe;
Registration Number Idaho 3496
 - (2) Basis of survey. Do markings conform to description in deed or condemnation decree?
 - (3) Survey notes, book and page numbers, and date.
 - (4) Relationship of survey to existing survey marks, present usage or possession, and past usage.
 - (5) Surveyor's report.
 - (6) History of line maintenance.

13.11 - Exhibit 01--Continued

- (7) Description of markings on the ground.
- b. Claimant's survey.
 - (1) Name and address of surveyor(s).
 - (2) Professional status and employer.
 - (3) Basis of survey. Instructions given by employer.
 - (4) Relationship of survey to Forest Service survey, old surveys, present usage, and past usage.
 - (5) Surveyor's report or statement.
 - (6) Plat by claimant's surveyor with recording data.
- 2. Conflict of Record Title (Overlapping Deeds).
 - a. Refer to preceding paragraph D.
 - b. Certified copy of claimant's deed with recording data.
 - c. Copy of instrument showing first conflict of title. Include your explanation, claimant's statement, and statement(s) of other knowledgeable persons.
 - d. Abstract of claimant's title.
- 3. Claimant's Property Included in Condemnation Action.
 - a. Name, case number, court, and location of the condemnation suit.
 - b. Was the claimant or predecessor named as party defendant in the suit?
 - c. Was the claimant or predecessor served notice by the U.S. Marshall, or involved in the condemnation proceedings in any way?
- 4. Adverse Possession.
 - a. Type, such as fence, cultivation, buildings, timber, cutting, grazing, and mineral activity.
 - b. History of possession with names and dates, including date of origin. History before acquisition by the United States or reservation from public domain is most important.

13.11 - Exhibit 01--Continued

- c. Has claim been continuous, always hostile and under claim of ownership, exclusive, open and notorious, or actual? Include evidence of use.
- d. Does claimant have color of title? Include written instruments as exhibits.
- e. Have boundaries of claimed acres remained the same?
- f. Record of land tax payments, if made.
- 5. Riparian Land Title.
 - a. Title to bed of water course.
 - b. Change of water course boundaries.
 - (1) Accretion, reliction, and erosion.
 - (2) Avulsion.
 - (3) Artificial improvements.
 - c. Historic evidence of water course archived by various Federal and State agencies.
 - (1) Maps, aerial photos, and plats.
 - (2) Files, reports, other documents.
 - d. Field examination of historic water course positions.
 - (1) Coring trees for age.
 - (2) Soil profile for age and cause of deposition.
 - (3) Correlation of evidence in historic documents with physical evidence.
- 6. Navigability.
 - a. Navigability for title is distinct and separate from navigability related to State or other Federal statutory applications of the term.
 - b. Navigability for title relies on Federal definition as formulated by the Courts.
 - c. Evidence of navigability applies to date of Statehood.

13.11 - Exhibit 01--Continued

d. Evidence that the waters were used or susceptible of being used as highways of commerce by customary modes of travel and trade on water.

e. Location and accessibility of waters surrounded by lands without facilities for trade or commerce or physically inaccessible are not navigable.

7. Aboriginal Title.

a. Treaties.

b. Indian Claims Commission reports and decisions.

c. Indian Reservations.

(1) Establishments and disestablishment documents.

(2) Boundary establishment orders and surveys.

8. Spanish Land Grants.

a. Spanish and Mexican law applicable to Land Grants.

b. Copies of Spanish Land Grant documents and surveys.

c. Mexican Land Grant documents and surveys.

d. Court of private land claims records.

e. State laws affecting title.

f. Survey or general boundary surveys and descriptions.

F. For All Claim Cases

1. Plat showing claimant's land as platted from deed and boundaries of adjoining National Forest land. Make scale large enough to show details of area in controversy.

2. Claimant's statement or explanation of the claim.

3. Written, signed, and witnessed statements, when possible, from both United States' and claimant's witnesses.

13.11 - Exhibit 01--Continued

4. Available physical evidence that either confirms or denies statements of the witness. This includes blocks cut out of trees, increment borings, wire cut out of trees; rotting rail fences, building foundations, and hedgerows; timber or other vegetative type changes, mining activity, tree stumps, and so forth.

5. Assessment of damages (sec. 12.22 ex. 01, par. IV).

6. Discuss applicability and compliance with requirements of statute or regulation under which the claim and encroachment or grant is most appropriate.

G. Use Before Government Acquisition

1. On-the-ground evidence of past use.

2. Evidence in tract folder.

a. Tract examination map.

b. Boundary description.

c. Certificate of possession.

d. Correspondence, proposal, disclaimer, tenancy agreement, rent, note, and so forth.

3. Other records, such as homestead files, classification maps, historical records about grazing, timber uses, aerial photos, and other agency files.

4. Witnesses with knowledge of area's history.

H. Use After Government Acquisition

1. Permits, easements, or leases issued on area.

2. Roads, buildings, or other improvements constructed.

3. Timber cutting by United States or claimant.

4. Other administrative acts, such as timber and stand improvements.

5. Plans for future use, such as wild and scenic river; research natural area, and so forth.

I. Possible Adjustments in Quitclaim Deed Cases

1. Mineral leases covering claimed area.

13.11 - Exhibit 01—Continued

2. Special-use permits, easements, reservations, or third-party rights.
3. Release of Forest Service from past administrative acts and possible monetary claim.

J. Conclusion

1. Summarize findings and conclusion based on the facts.
2. Include claimants' offers of settlement or compromise.

K. Suggested Resolution

1. Explain, in detail, how best to resolve the conflict.
2. If quitclaim deed is the recommended action, state whether former vendor (or exchange proponent) must reimburse the United States. If so, give amount (sec. 13.26).
3. Analyze the recommendation in an environmental assessment if it involves a discretionary act such as agreement to a grant, land exchange, use permit, or a land altering impact.

L. Witnesses

If litigation is a possibility, identify those who will testify on behalf of the United States.

EXHIBIT SECTION - Identify and include in this section all available documents and materials that bear upon the subject. The following list suggests general and specific types of exhibits. Group related exhibits together to facilitate report use. Place an index to the exhibits as the first (cover) page in the exhibits section.

Appendix or Exhibits

1. General location map.
2. Claim report plat.
3. Deed to the United States.
4. Attorney General's opinion.
5. Abstract or title policy for acquired National Forest lands. Obtain chain of title information to supplement a title policy.
6. Proclamation with map reserving land for National Forest purposes.

13.11 - Exhibit 01--Continued

7. Transcript of civil action if acquisition of tract was through condemnation.
8. Copies of other significant documents from acquisition files.
9. Previous opinions by Government attorney.
10. Photographs.
11. Aerial photographs.
12. Old survey plats affecting claim.
13. Forest Service survey books available. (Do not send the books until requested.)
14. Claimant's survey books or plat. (Do not send the books until requested.)
15. Witness statements in affidavit form for quitclaim deed cases when requested by the Regional Attorney.
16. Statements from intended expert witnesses.
17. Disclaimers, special-use permits, rent notes, and other instruments recognizing ownership.
18. Former court decisions affecting the corners, lines, or disputed land.
19. Claimant's deed.
20. Deeds in claimant's chain of title.
21. Abstract of claimant's chain of title.
22. Claimant's statement.
23. Tract description of subject area.
24. Plat of subject area.
25. Area computation sheets or computer tapes for item.
26. County tax assessment and payment records, if any.
27. Correspondence to and from claimant.

13.12 - Alternatives

Normally, there are several alternatives or combinations thereof for resolving encroachment cases.

1. Valid Claims and Qualified Encroachments.
 - a. Relief authorities (sec. 13.2).
 - b. Small Tracts Act (sec. 21).
2. Invalid Claims and Encroachments.
 - a. Negotiation for removal of structure(s) or, where appropriate, abandonment of improvement(s) and site restoration.
 - b. Land exchange (FSM 5430).
 - c. Issuance of a special-use permit (FSM 2720).
 - d. Validity contests where the case involves mining claims (FSM 2818).
 - e. Civil action to secure removal of structure(s), or abandonment of improvement(s), site restoration, and collection of damages. It may be appropriate to obtain a court restraining order (FSM 5512.12 and FSM 5335).
 - f. Criminal action, if necessary, in those instances when claim is clearly not bona fide (FSM 5335) and this action is determined to be most feasible.

13.12a - Valid Claims and Qualified Encroachments

Qualifying claims or encroachments may be resolved under one of the following applicable authorities:

1. Title or color of title to the land or interest in land was acquired by the United States through mistake, misunderstanding, error, or inadvertence. Does not include reserved lands (sec. 13.2).
2. Unconsummated general exchange and related exchange cases (sec. 13.3).
3. Color of title to land that had public domain or related status (sec. 13.4).
4. Disclaimer of interest to lands or interest in lands not owned by the United States (sec. 13.5).
5. Correction of conveyance documents (sec. 13.6).

6. Small Tracts Act (sec. 21).

13.12b - Invalid Claims

Invalid title claims or claims not qualifying under the authorities listed under section 13.13a may be resolved under the following applicable authorities.

1. Special-use permit or exchange (sec. 13.71).
2. Negotiated settlement (sec. 13.72).
3. Litigation (sec. 13.8).

13.2 - Adjustment of Land Titles Act (P.L. 78-120, 1943)

Claims to acquired land may exist for a number of reasons. The following sections list the situations that usually cause claim cases under Public Law 78-120.

13.21 - Adverse Possession

Adverse possession is the most common basis for claims on National Forest lands in the eastern Regions. The claimant may assert title to the contested land through claimant's or predecessor's occupancy and use for a statutory period. To be valid, claims involving adverse possession must be based on the period of occupancy and use of the land by the claimant before United States acquisition.

Adverse possession does not work against the United States. Once a tract becomes part of a National Forest, a person cannot acquire title to any part of that tract by adversely occupying or using it, regardless of the period or intensity of use.

1. Substantiating Adverse Possession. Two primary sources of information that substantiate adverse possession are; (1) tract examination reports, property boundary descriptions, maps, aerial photos, and certificates of possession--all of which may reveal the extent of occupancy at the time of United States acquisition; and (2) affidavits from persons familiar with the land before United States acquisition.

2. State Law. Each State has statutes that allow a person without record title to gain title to land by using or occupying it for a certain number of years. The principal ingredients of adverse possession are actual, open, hostile, and uninterrupted possession and use of the land. The required period of time and degree of use or occupancy vary by State.

13.22 - Overlapping Deeds

The land description in the deed to the United States may overlap deeded land owned by a third party because an abstracting error excluded a recorded deed or because of improperly prepared deed descriptions.

13.23 - Inaccurate Property Boundaries

Improperly surveyed boundaries or lack of survey create a majority of the claims under this and other authorities.

13.24 - Condemnation

Condemnation proceedings result in court action vesting title in the United States. A claim may be either against the titled landowner(s) or against the land itself. Condemnation extinguishes all outstanding rights not excepted in the condemnation decree. Technically, a valid claim might survive by:

1. Land or interests of a third party inadvertently or erroneously included in the property description contained in the condemnation decree but not properly joined in the condemnation action. It is possible to minimize this situation by issuing a quitclaim deed or by a negotiated settlement to buy out the claimant's interest.

2. Claim against the fund or condemnation award by a person entitled, but not properly made a party to, the condemnation action. Payment of all or part of the monetary award can resolve the matter.

13.25 - Erroneous Deed

Title to or interest in all or some part of a given tract may not properly be vested in the Government's vendor; where this occurs, a valid claim arises. If the vendor's title was defective, for example, the existence in the chain of title of a better claim to the land than the vendor's claim, the deed of the United States is imperfect. This color of title or "cloud" in the public records may be disposed of by a quitclaim deed from the United States to the person holding the superior title or by other action taken to negotiate a settlement with the claimant.

13.26 - Recovery of Purchase Consideration

Public Law 78-120 requires that if the person who is to receive a quitclaim deed is the same person, or the successors in interest, from whom the United States acquired title, that person or those successors shall restore any consideration given by the United States for such land or interest or shall repay the value equivalent. Obtain, from the party named in the draft quitclaim deed, a refund of the amount paid by the United States or a deed restoring to the United States the land or interest intended for conveyance when the United States acquired the title. Obtain the refund or restoration before delivering the quitclaim deed.

In cases where the Regional Attorney finds that someone other than the grantor to the United States or the grantor's successor in interest is entitled to receive a quitclaim deed and the value amounts to \$100 or less, it is not necessary to request a refund in cash or property from the person who conveyed the title to the United States or from that person's successors, heirs, assigns, and so forth. When the purchase price exceeds \$100 and it is impractical or impossible to recover, the Regional Forester may waive the refund collection.

The Federal Claims Collection Act and regulations thereunder provide that the minimum amount for referral to the Department of Justice is \$10,000 (4 CFR 105.6). Request the refund before delivering the quitclaim to the grantee. This provides the grantor to the United States with an opportunity to (1) perfect the title, or (2) to acquire the land in question and thereby make good the warranty in the deed, or (3) to present any defense to the claim. Collection of the refund is not a condition precedent to granting relief under Public Law 78-120.

The memorandum sending the case to the Regional Forester must state whether a refund or conveyance has been or will be obtained. If so, the memorandum must state the amount or include a copy of the conveyance document.

13.27 - Reconveyance of Land Acquired by Exchange

If the case involves reconveyance of land acquired by exchange, but not reserved public domain land exchanges, the following additional information pertains.

13.27a - Case Not Consummated

1. If the deed to the United States that covers the non-Federal land has been recorded and the grantor thereafter withdraws or rejects the exchange offer, the title reconveys to the grantor under Public Law 78-120 (7 U.S.C. 2253).

2. If the Federal lands have not been conveyed, the exchange offer may be amended to drop the parcel with defective title and to substitute a new parcel of equal value. In this case, it is necessary to readvertise the exchange. If the exchange was under authority of the Weeks Law Exchange Act (16 U.S.C. 516), the Secretary of Agriculture must approve the modification. Under Public Law 78-120 (7 U.S.C. 2253), the United States may reconvey the parcel of non-Federal land with defective title to the grantor or true owner, and the grantor may convey the substituted parcel to the United States under the appropriate exchange act.

13.27b - Case Consummated

Occasionally, after consummation of a land-for-land exchange, it is found that title to a parcel of the non-Federal land is defective. If both parties to the exchange are willing, the reconveyance of the defective parcel may be handled in one of the following two ways:

1. Under Public Law 78-120 (7 U.S.C. 2253), the United States may reconvey the parcel of non-Federal land with defective title to the grantor or true owner, and the grantor may

reconvey to the United States a parcel of the conveyed Federal land equal in value to the reconveyed parcel of non-Federal land.

2. Under Public Law 78-120 (7 U.S.C. 2253), the United States may reconvey the parcel of non-Federal land with defective title to the grantor or true owner, and the grantor may convey to the United States under 7 U.S.C. 2253 a parcel of land qualifying for acquisition and equal in value to the conveyed parcel.

13.28 - Processing

See section 13.33.

13.3 - Quitclaim Act of 1930

13.31 - Description

Occasionally, it is necessary to reconvey land that was deeded to the United States under one of the authorities appropriate for reserved land public land exchanges. For various reasons, consummation of the exchange might not take place after recording of the deed to the United States, as required in exchange procedures or if part of the land was not owned by the vendor in a consumsted exchange. Section 6 of this act authorizes the Secretary of Agriculture to execute a quitclaim deed to the proponent or other party or parties entitled thereto.

13.32 - Scope

This act is applicable to the following case types:

1. The United States elects to withdraw from the exchange offer because:
 - a. The Federal land is subject to prior claims, that is, valid mining claim(s) encompasses all or part of the Federal land.
 - b. The Federal land is not surveyed. (Pursuant to the General Exchange Act, there must be a survey of the Federal land.)
 - c. Withdrawal from entry falls under the public land laws.
 - d. Federal lands are necessary for a public use.
 - e. Proponent does not have marketable title.
 - f. Land values are not equal or would not become equal with deposit of 25 percent of Federal land value.
 - g. Proponent does not have legal authority to convey.
 - h. Land is encumbered in a manner unsuited to United States ownership.

2. The exchange proponent elects to withdraw from the offer because:
 - a. Federal land is encumbered with a lease or license incompatible to proponent's use of the land.
 - b. Delay in conveying the patent.
 - c. Proponent dies, and heirs do not wish to proceed.
 - d. Land values are not equal.
 - e. Proponent wishes to withdraw for personal reasons.
3. The application must be partially rejected in a consummated exchange because the vendor lacked title to conveyed land.

13.33 - Processing

When the Forest Supervisor determines to grant a quitclaim deed under section 13.2 or section 13.3, submit the case to the Regional Forester. The Regional Forester, if agreed, prepares a quitclaim deed and provides a copy of the quitclaim deed, statement explaining recommendations, and any other pertinent material to the Regional Attorney for legal review and opinion. If the Regional Attorney agrees with the conveyance, the Regional Attorney returns the opinion, deed, and other related papers to the Regional Forester. The Regional Forester then executes the deed, prepares the needed copies, and sends the original to the Forest Supervisor for recording and delivery to the grantee (sec. 13.37).

13.34 - Conveyance Documents

The examples shown in section 13.35 cover an application for quitclaim deed and quitclaim specimen. These samples are in the general form approved for Forest Service use. The Regional Attorney may modify them, as necessary, to meet requirements of State law and conveyances under other Federal title claims, sales, and grants authorities. Conveyance documents issued to the United States also must comply with the Department of Justice "Standards for the Preparation of Title Evidence in Land Acquisition by the United States" (U.S. Government Printing Office: 1920 0-406-522).

13.35 - Application for Quitclaim Deed

Although an application is desirable and should be obtained when a claim is determined to be valid, it is not essential. If the claimant refuses to sign an application, consider the fact that a valid claim of ownership to the land exists as sufficient grounds for the issuance of a quitclaim deed.

Exhibit 01 shows a sample application for quitclaim deed. Whenever there is an application for a quitclaim deed that reconveys a partial interest in land as opposed to the entire fee, change the wording of the application accordingly. The phrase "partial interest in the land" may be

substituted for the word "land" in the three places in which the latter term appears in the application. A road right-of-way is an example of a partial interest. Also, change the cited statutory authority and other wording, as necessary, after review with the Regional Attorney.

13.35 - Exhibit 01

Application for Quitclaim Deed

The undersigned Joe and Jane Doe (Insert here the names of applicant(s) and any others on whose behalf the application is made) hereby applies to the Secretary of Agriculture for a quitclaim deed claiming title to the land hereinafter described to be executed pursuant to the Act of July 8, 1943 (57 Stat. 388), as amended (76 Stat. 1157), and, for the purpose of obtaining such a deed, hereby states and represents:

1. The land for which this application is made is located in the County of Thunder, State of Maine, and is described more particularly as follows:

(Insert here a description that identifies the land for which the applicant seeks a quitclaim.)

2. To the best of applicant's knowledge and belief, the aforesaid land, at the time the United States acquired or purportedly acquired title thereto was acquired or purportedly acquired by the United States, was owned by Tom Smith, who claimed such ownership under and by virtue of that certain deed from John Smith to Tom Smith dated May 2, 1925 and recorded in the public records of County Thunder in Maine Book 110 of deeds at, page 20, and that at such time no other person, firm, or corporation had any right, or was making any claim thereto, other than by easement or mortgages, deed of trust, or other lien or encumbrance which had not been foreclosed.

Signed this _____ date of _____, 19____.

Signed: _____

Signed: _____

13.36 - Specimen Quitclaim Deeds

The Regional Forester shall check in all conveyance documents the description of the estate to be conveyed before submitting these documents to the Regional Attorney. The Regional Attorney shall review the documents for legal content under State law and other authorities.

Exhibit 01 is a specimen of a Quitclaim Deed under the Adjustment of Land Title Act (P.L. 78-120). The wording for conveyance documents under other authorities may be developed with the help of the Regional Attorney (ch. 20, sec. 21.6).

13.36 - Exhibit 01

(P.L. 78-120) QUITCLAIM DEED

THIS DEED, made this 3rd day of March, 1985,
between the United States of America, acting by and through the Forest Service, Department of
Agriculture, hereinafter called Grantor, and
John Doe (marital status) hereinafter called Grantee.

WITNESSETH: The Grantor is authorized by the Act of July 8, 1943, as amended, 7 U.S.C.
2253 (1970) to adjust titles to certain lands or interests therein subject to its control; and

It has been found that the Grantor has acquired title or color of title to certain land hereinafter
described under provisions of a deed from
Hokay Land Company dated July 7, 1934, and recorded among the land records in
the County of Thunder, State of Maine, on 10th day of
August 1934, in (Type of record--book, page), which land the Grantor acquired through
mistake, misunderstanding, error, or inadvertence; (Continue as necessary, that is: through
adverse possession; erroneous survey; by condemnation pleadings; error or omissions in
abstracts, and so forth.); and

The Grantee meets the requirements of the foregoing acts and is entitled to this conveyance;

NOW THEREFORE, the Grantor, in consideration of the sum of \$159.00
(One hundred fifty-nine and 00/100 dollars) 1/; the receipt of which is acknowledged, does
hereby remise, release, and quitclaim unto the Grantee, its heirs and assigns, all its right, title,
interest, and claim in and to that certain parcel of land situated in the County of Thunder, State
of Maine, and described as follows:

Metes-and-bounds or aliquot-part description 2/

Estimated to contain 2.91 acres, more or less.

13.36 - Exhibit 01--Continued

This deed is executed solely for the purpose of revesting in the Grantee such right, title, and interest as may have been conveyed to the United States of America by the deed above mentioned and to remove from the Official Records any cloud that execution and recording of this deed may have cast upon the title to the property above described.

IN WITNESS WHEREOF, the Grantor, by its duly authorized representative, has executed this deed pursuant to the delegation of authority promulgated in Title 7 CFR 2.42 and 49 F.R. 34284, August 29, 1984.

UNITED STATES OF AMERICA

By 3/

4/

5/

Forest Service
Department of Agriculture

ACKNOWLEDGMENT 6/

1/ Also may show lands or interest in lands as described in the deed to the United States.

2/ The description may be (1) by an actual description of the land or interest, (2) by reference to a deed or other instrument that describes it, (3) as the portion of the land or interest described in a certain deed or other instrument included in the designated tract of the particular Government project, or (4) in such other manner as may be appropriate.

3/ Signature of authorized executor.

4/ Type in the name of the authorized executor.

5/ Title of authorized executor such as Regional Forester or Forest Supervisor.

6/ The form, content, and acknowledgement to conform to State laws.

13.37 - Delivering and Recording Title Conveyances

1. Quitclaim Deeds. The Forest Service shall deliver to the grantee quitclaim deeds executed under Department of Agriculture authority such as Public Law 78-120 (sec. 13.2), the Quitclaim Act of 1930 (sec. 13.3) or the Small Tracts Act of 1983 (sec. 21.6). The Bureau of Land Management delivers to the grantee quitclaim deeds or patents executed under Department of the Interior authority such as the Color of Title Act of 1928. The Regional Attorney shall coordinate the execution, delivery, and recording of deeds to the United States issued under P.L. 78-120.

All quitclaim deeds are to be recorded in the county where the quitclaimed area is situated. This is the responsibility of the grantee. However, the Forest Service shall have the deed recorded at Government expense if the grantee requests it and if location, economic condition, or other conditions prevent the grantee from having it recorded.

2. Patents. Patents will be delivered in accordance with the Bureau of Land Management's procedure unless the Forest Service requests in specific cases that it receive the patent for delivery to the patentee.

13.4 - Color of Title Act of 1928

13.41 - Description

The act applies to land that had public domain status when occupied (43 CFR 2540). It does not apply to Weeks Law lands. Under this act, the applicant files an application for patent with the State office of the Bureau of Land Management (BLM), Department of the Interior.

Color of title claims recognized by the act are referred to as Class 1 and Class 2 claims.

Class 1: A claimant, the claimant's ancestor, or previous owners have held a claim in good faith and in peaceful, adverse possession under claim or color of title for more than 20 years, and have placed valuable improvements on or have cultivated some part of the land.

Class 2: A claimant, the claimant's ancestor, or previous owners have held a claim in good faith and in peaceful, adverse possession under claim or color of title for the period commencing not later than January 1, 1901, to the date of application. During this time, they have paid taxes levied on the land by State or local governmental units.

A claimant does not hold a claim in good faith when it is held with the knowledge that the United States owns the land.

A claimant does not hold a claim in peaceful, adverse possession when the claim was initiated while the land was withdrawn or reserved for Federal purposes, such as National Forest System lands.

13.42 - Processing

If the Forest Service receives an application for patent under the Color of Title Act, it may assist the applicant in requesting the necessary information and forms from the Bureau of Land Management (BLM) and may assist the applicant in completing the forms.

When it is known that an applicant has applied for a color of title patent involving National Forest land, the Regional Forester shall investigate the case and submit the information to the Regional Attorney with a request for a legal opinion. After receiving the legal opinion, send the information to the Chief with the Regional Forester's report and recommendation. The Chief returns the Forest Service report and recommendation to the Regional Forester, who then transmits it to the BLM State Office (43 CFR 2540).

Nomally, the applicant files the application with BLM, which forwards the application to the appropriate Regional Office or Forest Supervisor's headquarters asking the Forest Service to review the application and recommend whether the claim appears valid. The final determination about the validity of the claim rests with the BLM.

1. Information helpful in evaluating application.
 - a. Copy of the application, including the description of the land claimed.
 - b. BLM Master Title Plat.
 - c. Evidence that the claimant has paid taxes continuously from the date of the purported color of title.
 - d. Claimant's chain of title, including homestead entry file.
 - e. Affidavits from individuals who have knowledge about the claimant's period of use or occupancy.
 - f. Status check to ascertain that the claimed lands are in National Forest System status.
 - g. Act, proclamation, Executive order, or other document withdrawing the claimed land for National Forest purposes.
 - h. Copy of any withdrawal from entry under the public land laws affecting the claimed land that was in effect when claim was initiated.
 - i. An on-the-ground examination of the evidence regarding actual use or existence of improvements.
 - j. On-the-ground examination (survey) to verify or refute the description of the lands cited in the application.

2. Preparation of Report. Use the pertinent parts of exhibit 01, section 13.11 to prepare a report on the application. Facts to emphasize in the report are:

- a. Is the land claimed by the applicant the same land described in the color of title documents?
- b. When did the first document in the color of title chain originate? Was it before 1901 or before the land was withdrawn from entry under the public land laws for another agency or reserved for National Forest purposes? If the answer is affirmative, are there any letters or documents that indicate the claimants or predecessors knew or should have known that the land belonged to the United States?
- c. Have the claimants or predecessors paid State and local taxes each year, intermittently, or when?
- d. Is the claim a Class 1 or Class 2?
- e. Do affidavits and on-the-ground evidence substantiate or refute the claim and in what ways?
- f. Have the lands been covered by an official U.S. survey?

13.43 - Wisconsin Land Title Act of 1954

When it is known that a claimant has applied for a Wisconsin land title patent involving National Forest land, the Regional Forester shall investigate the case. Upon completion of the investigation, the Regional Forester shall submit the information to the Regional Attorney for a legal opinion. After receiving the legal opinion, send the information to the Chief with the Regional Forester's report and recommendation. The Chief returns the Forest Service report and recommendation to the Regional Forester, who then transmits it to the Bureau of Land Management's (BLM) State Office (43 CFR 2540).

Claims on land under this act are valid only on omitted lands found to exist between the original Government Land Office meander line around a Wisconsin lake and a subsequent BLM meander survey line around the lake. The claimant must file such claims within 1 year of the official filing of the plat of the resurvey. Use procedure shown in section 12 to investigate any claim for such land that appears to encroach upon National Forest ownership. Follow the outline in section 13.11 to prepare a report for the Regional Forester and forward the report to the Chief with the Regional Forester's recommendation. The Chief then sends the Forest Service report and recommendation to BLM for resolution.

13.5 - Disclaimer of Interest

The Secretary of the Interior is authorized, under section 315 of the Federal Land Policy and Management Act (43 U.S.C. 1745), to issue a document of disclaimer of interest or interests in any lands where the disclaimer helps remove a cloud on the title of such lands.

Before issuing a disclaimer, the Secretary of the Interior shall consult with the Federal agency affected by an application and shall determine if operation of law has terminated the record interest of the United States or if it is invalid in some other way. The Secretary also must determine whether such lands lie along shorelines of a body of water and are lands of the United States.

The purpose of the disclaimer is to remove a cloud on the title of non-Federal land. After consulting with any affected Federal agency, the Bureau of Land Management (BLM) may issue a document of disclaimer of interest or interests in lands. Claimants shall file applications involving Forest Service lands with BLM who shall forward them to the Forest Service for recommendation.

13.51 - Types of Interests Affected

1. Lands to which the recorded interest or the United States has terminated.
2. Land between the meander line and shoreline of a body of water not owned by the United States.
3. Accreted, relicted, or avulsed lands, not owned by the United States.

13.52 - Evaluation of Request

Prepare claim report (sec. 13.11). When the claim involves land between meandered lines or accreted, relicted, and avulsed lands, consider ownership of adjoining land as evidence to ownership of the riparian lands. If the records indicate that the United States owns part or all of the uplands, the United States also may have title to the riparian lands. If the status and other records indicate that the United States does not have title to the uplands and has not asserted riparian ownership, the United States probably does not have title to the riparian land; recommend a disclaimer.

13.53 - Processing Responsibility

1. The claimant files an application for a disclaimer of interest with the Bureau of Land Management (BLM). If the claim involves National Forest System lands, BLM shall forward the application to the appropriate Regional Forester with a request for the Regional Forester's recommendation on the application.

2. The Regional Forester shall review the application, verify that the land surface has been conveyed and that the record interest of the United States has terminated.
3. The Regional Forester forwards the request to the appropriate Forest Supervisor's requesting a statement of facts and the Forest Supervisor's recommended action on application.
4. The Regional Forester shall request a review by the Regional Attorney and ask for the Regional Attorney's opinion on the Forest Supervisor's recommended action.
5. The Regional Forester makes a recommendation and returns the case to BLM for processing.
6. If BLM agrees with the recommendation of the Regional Forester to disclaim interest identified in the application, BLM issues a disclaimer document with a copy to the Regional Forester.
7. Post status records accordingly.
8. If BLM agrees with the Regional Forester's recommendation not to disclaim interest identified in the application, BLM shall notify the applicant and offer the applicant the opportunity to appeal the decision. A copy of the decision will be sent by the BLM to the Regional Forester.
9. After an appeal, the final BLM or Interior Board of Land Appeals ruling is controlling unless the Regional Forester believes that the Interior Board of Land Appeals is in error.
10. If the ruling appears to contain errors, the Regional Forester may recommend the filing of a suit through the Chief's Office.

13.6 - Correction of Documents

The Secretary of the Interior is authorized, pursuant to section 316 of the Federal Land Policy and Management Act (43 U.S.C. 1746), to correct patents or documents of conveyance relating to the disposal of public lands where necessary to eliminate errors.

13.61 - Processing

The Forest Service shall submit any applications it receives, with a report, if warranted, to the State Office of the Bureau of Land Management (BLM), which shall be responsible for handling the case.

If the application is turned down by BLM, no further action is necessary. If an application appears to be valid, process the case through Forest Service procedure for approval as any other claims case.

13.7 - Invalid Claims and Encroachments

Once the encroachment is established firmly, make every effort to negotiate an administrative settlement to remove or validate the occupancy. Criminal charges may be appropriate in some cases unless the unauthorized occupant claims title to the land (sec. 13.12f).

13.71 - Land Exchange or Special-Use Permit

13.71a - Limitations

Existing statutes, regulations, or the Manual do not provide for the resolution of encroachments through special-use permits or land exchanges. Base the decision to use either of these two alternatives upon an environmental assessment that clearly shows, with supportable evidence and facts, that the use of these authorities is consistent with current program direction, is in the public's interest, and is a reasonable solution to the case.

13.71b - Special-Use Permit

1. Do not issue special-use permits to cover improvements placed on National Forest lands under a title claim situation or on tracts being considered under the Small Tracts Act. It is first necessary to resolve the ownership status by the claimants' acceptance of the evidence of Federal ownership or by court action adjudicating Federal ownership. A permit may be issued only if:

- a. The occupancy is consistent with the land and resource management objectives for the area.
- b. No unacceptable environmental damage would result.
- c. There is no foreseeable public need for the site during the term of the permit.
- d. Granting a permit would set no adverse precedent.
- e. A cost/benefit analysis shows that issuing and administering a permit is a justifiable action.
- f. The use does not conflict with national and Regional policies.
- g. The violation is not intentional (such as an action taken to acquire use of land not otherwise available).

2. Conditions of Special-Use Permit Issuance.

- a. In a normal situation, the special-use permits have a special tenure clause requiring permanent termination and removal of improvements. The permits also are usually nontransferable.

- b. The occupant pays the appropriate previous land-use fees owed the United States for the occupancy from the date of discovery, but in no case for more than 6 years.
- c. A special-use permit may be used as an interim authorization if other administrative remedies are pending.

13.71c - Land Exchange

1. Land exchange may be used in certain cases only if:
 - a. The land exchange is consistent with the forest landownership plan, national and Regional exchange requirements, and the requirements of the authorizing statute.
 - b. The exchange would set no adverse precedent.
 - c. The exchange does not enhance the value of the occupant's estate at the expense of the United States.
2. If an exchange is in the public interest, during settlement of the case, negotiate with the occupant the survey costs and other significant operational costs incurred by the Government because of the encroachment.

13.72 - Negotiation

In negotiating with the unauthorized occupant, review the facts, explain why the claim is invalid, and point out the general rules that apply; that is, adverse possession may not be asserted against the United States.

Adverse possession must have matured on acquired lands under State laws before acquisition by the United States. Offer the unauthorized occupant who acknowledges Government ownership the opportunity to vacate the area voluntarily. Allow the unauthorized occupant reasonable time to do this. Base the decision for what is reasonable on the size of the job, the season, and other factors. The Forest Service shall lend every reasonable assistance within the law and shall not place serious obstacles in the way to settlement. See chapter 20 for relief for certain cases under the Small Tracts Act.

13.72a - Disposal of Improvements

Upon the determination that a claim or encroachment is not valid and does not qualify for other relief, it may be necessary to decide on the removal of improvements, the restoration of land, or the obliteration of roads. It may be necessary to make judgments about when to remove and when to allow abandonment based on such factors as the least environmental damage that is likely to occur, future use of the area, public health and safety, salvage value, invitation for future encroachment, and historical value.

1. Voluntary Removal. The Forest Service should not prevent the removal of improvements unless they have passed to Federal ownership by prescribed procedures.

The claimant should have free choice of abandonment or relinquishment. Otherwise, the claimant might assert that the Government has seized the property for its own use, and demand payment. However, the Forest Service need not acquiesce in methods of removal that would cause unacceptable damage, such as the cutting of large trees to remove a structure intact, the use of a bulldozer to excavate buried utilities, burning when a hazard exists, or improper disposal of certain hazardous substances.

2. Relinquished to Forest Service. When appropriate, the claimant may relinquish improvements to the Government. When this is desirable, ask the owner to sign a relinquishment. Exercise care in accepting relinquished improvements. The owner must volunteer to take this action. The Forest Service shall not use this method to obtain administrative improvements because the Government could be held liable for payment of the full value. However, the Government may accept historically valuable improvements by this method.

13.72b - Demand Letters

When it is not possible to settle the case administratively and before any demand letters are issued, submit the case to the Regional Office for advice of the Office of General Counsel.

Include a complete and updated (supplemental) case report with all pertinent documents and a proposed letter to the unauthorized occupants demanding payment of damages and other amounts due the United States and demanding that they cease and desist trespassing on land of the United States.

Upon the Regional Attorney's approval, issue a certified demand letter. Be sure to follow up on the demand letter.

Do not send a demand letter to an unauthorized occupant while criminal charges are pending unless the U.S. Attorney approves this action.

13.73 - Occupancy Based Upon Mining Claims

1. Most of the reserved National Forest lands are subject to the location of certain minerals under the Mining Law of 1872, as amended (30 U.S.C. 21-54, FSM 2803). A mining claimant acquires certain rights described in more detail in FSM 2810.

2. Procedures for eliminating uses of the surface where such uses are not reasonably necessary or where the claimant actually is not involved in bona fide minerals-related activities appear in FSM 2818. Such use is an encroachment upon National Forest System lands.

3. Upon notification that a Department of Interior decision declaring the claim null and void is administratively final, the Forest Supervisor shall take action to resolve the unauthorized occupancy pursuant to FSM 2818 and FSM 5330.

4. There may be some cases where the claimant(s) will appeal or protest the administrative decision or continue occupancy in the disputed land. In these cases, the Forest Supervisor shall attempt to stop the unauthorized occupancy through additional contacts with the individual. As soon as it becomes evident that it is not possible to terminate the encroachment through negotiation or that an administrative resolution is not appropriate, initiate procedures for obtaining a court order. Prepare report FS-5400-U, Trespass Report, if not prepared previously; include pertinent mining claim-related information. Refer to section 13.11 and FSM 2810 for supplemental information.

13.8 - Litigation Resolution

Litigation may be necessary to resolve unauthorized occupancy when the unauthorized occupant does not meet the terms of the demand letter. At that time, again submit the case to the Regional Attorney with a request that a lawsuit be filed.

The U.S. Attorney, based on advice from the Office of the General Counsel, shall make the final decision on criminal or civil charges or both, including the decision about when to file the charges.

The United States has the legal right to sue for the recovery of the use of its lands.

Forest Service field officers shall prepare case reports under the assumption that both criminal and civil actions are a possibility. The report must include the Regional Foresters recommendations. See section 13.11.

13.81 - Not Under Claim of Title

Follow the procedures under FSM 5330.

13.82 - Under Claim of Title

Follow the procedures in this section.

13.83 - Civil Action

The United States may bring civil actions for ejectment and to recover damages and other monetary reimbursement. Civil action must be used in any case involving title interests. Criminal action may be used in cases not involving title interest or after the title issue has been resolved.

13.84 - Followup on Court Orders

Request the U.S. Attorney to take action to have occupants cited for contempt of court if unauthorized occupants still refuse to cease and desist and make necessary payments to the United States.

13.85 - Closing Case

When the unauthorized occupant has met the terms of the court orders, post status records and close the case file.