

**Forest Service Handbook  
National Headquarters - Washington Office  
Washington, DC**

**Forest Service Handbook 5509.11 – Title Claims, Sales, and Grants Handbook  
Chapter 10 – Title Claims and Encroachments**

**Amendment number:** 5509.11-2024-1

**Effective date:** February 6, 2024

**Duration:** This amendment is effective until superseded or removed.

**Approved by:** Troy Heithecker, Associate Deputy Chief, National Forest System

**Date approved:** February 2, 2024

**Responsible Staff:** Lands, Minerals, and Geology Management

**Last Change:**

**Superseded Document(s):** 5509.11,10-12, Amendment 5509.11-92-4, August 3, 1992

**Digest:** Following is an explanation of the changes throughout the directive.

**Chapter 10:** The contents of the 1992 handbook have been reorganized to be parallel with the case processing activities in the Title Claims and Encroachment Management System. Additional internal processing steps were also included to provide clarity.

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## **10.01 - Authority**

See FSM 5510.1

1. FSM 5510.11 - Real Property Quiet Title Act of October 25, 1972 (86 Stat. 1176; 28 U.S.C. 2409a).

This act specifies the only method by which adverse claimants can challenge the United States' title to real property (FSM 5511.1).

2. FSM 5510.12 - Adjustment of Land Titles Act of July 8, 1943 (also referred to as Pub. L. 78-120, as amended (57 Stat. 388; 7 U.S.C. 2253).

This act provides the Secretary of Agriculture with authority to execute quitclaim deeds to certain acquired lands or interests if title is found to be insufficient or acquired in error or by inadvertence (FSM 5513.1).

3. FSM 5510.13 - Quitclaim Act of April 28, 1930 (46 Stat. 257; 43 U.S.C. 872).

Section 6 authorizes the Secretary of Agriculture to execute a quitclaim deed for the non-Federal lands conveyed in uncompleted land exchanges for reserved National Forest or public domain lands (FSM 5513.11).

4. FSM 5510.14 - Color of Title Act of December 22, 1928, as amended (45 Stat. 1069, 43 U.S.C. 1068, 1068a, 1068b) and Related Acts.

This act and other acts cited under 43 CFR 2540 involve the Secretary of the Interior's authority to resolve claims to public land that was unreserved Federal real property and subject to the public land laws at the time the claim was initiated (FSM 5513.13a).

5. FSM 5510.15 - Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2770; 43 U.S.C. 1745, 1746).

Section 315 authorizes the Secretary of the Interior, after consultation with any affected Federal agency, to issue a document of disclaimer of interest(s) to lands or interest in lands not owned by the United States (FSM 5513.14). Section 316 provides for correction of patents or other conveyance documents in order to eliminate errors (FSM 5513.15).

6. FSH 5509.11- Small Tracts Act of January 12, 1983 (96 Stat. 2535; 16 U.S.C. 521c-i) as amended by Title VIII, Subtitle F, Part II, Section 8621 of the Agriculture Improvement Act of 2018 (Pub. L. 115-334).

This Act provides the Secretary of Agriculture with discretionary authority to sell, exchange, or interchange by quitclaim deed all the United States' right, title, and interest, including the mineral estate, in and to certain limited categories of National Forest System lands.

## 10.02 - Objectives

(See FSM 5510.2).

## 10.03 - Policy

(See FSM 5510.3).

## 10.04 - Responsibility

(See FSM 5510.4).

## 10.05 - Definitions

**Approximately equal value.** A comparative estimate of value of lands that have readily apparent and substantially similar elements of value, such as location, size, use, physical characteristics, and other amenities, by appraisal staff or as assigned.

**Authorized Officer.** A Forest Service Director or Line/Staff Officer to whom is delegated, by statute, regulation or directive, the authority and responsibility to make decisions related to selling, exchanging, and/or interchanging relevant rights, titles, and/or interests on National Forest System lands.

**Claim of title.** A legally colorable claim of ownership of a parcel of land, based upon any reasonable evidence that the person obtained title thereto when the person obtained ownership of abutting land (also known as title claim).

**Color of title.** Arises from an instrument or writing purporting to convey title or a real property interest in a tract of land.

**Encroach.** To enter by gradual steps or to intrude upon the lands, property, or authority of another.

**Encroachments.** Improvements occupied or used on National Forest System land under claim of title or color of title.

**Exchange.** A discretionary, voluntary transaction involving mutual transfers of land or interests in land between the Secretary of Agriculture acting by and through the Forest Service and a non-Federal entity.

**Improvements.** An addition to property costing labor or capital which affects its value. The term generally includes fixtures, structures and attendant facilities, or buildings.

**Interchange.** A land transfer in which the Secretary and another person exchange lands or interests in lands of approximately equal value without a formal appraisal.

**Mineral survey fractions.** Small parcels of National Forest System lands interspersed with or adjacent to lands transferred out of Federal ownership under the mining laws.

**Occupancy.** Taking or maintaining possession of property.

**Permanent habitable improvement.** A dwelling, house, structure, or other improvement presently being used as a residence or domicile for a lasting or indefinite period.

**Person.** Includes any non-federal entity such as a state or any political subdivision as well as any individual or business entity.

**Regional Attorney.** The field office representative of the Office of the General Counsel, whether titled Regional Attorney or Attorney in Charge, as used in this handbook.

**Secretary.** Refers to the Secretary of the United States Department of Agriculture.

**Trespass.** To enter on another's land or property unlawfully; an illegal act causing injury to the person or to the relative rights of another's property.

## 10.06 - Planning

Base plans for resolution of title claims and encroachments upon realistic time and cost estimates for the program of work. Programming for aspects of this work associated with inventory, investigation, and resolution is in the Lands Program Component. These include, for example, the resource activities associated with the management of: Native American land, and other Land Title Claims, Encroachments, Land Sales, Grants and Selections.

Current program budget development must reflect the elimination of backlog cases. Finance trespass, encroachment, and title claim cases as follows:

1. **Administrative Costs.** Accomplish the investigation, reporting and processing of unexpected, unplanned trespass cases by using the financing principles in FSH 1909.13, Program Development and Budgeting Handbook, chapter 50.
2. **Survey Costs.** Consider the following methods to cover costs of needed surveys.
  - a. Priority realignment of previously financed and programmed cadastral survey work.

- b. Program funds to accomplish the survey through contracting or force account. Programming is now done 2 years in advance.
  - c. Survey by adjoining property owner.
  - d. Cooperative survey with adjoining property owner(s).
  - e. A request for assistance from the Bureau of Land Management (BLM).
3. **Priority.** Consider the following factors when developing criteria for assigning priority of work:
- a. Litigation against the United States.
  - b. Cases that may be resolved under existing authorities.
  - c. Relationship and precedent setting to neighboring or similar cases.
  - d. Value of land and improvements and/or size.
  - e. Potential for litigation.
  - f. Impact upon other resource management activities.
  - g. Time since discovery.
  - h. Degree of concern because of interest and inquiries by the claimant, trespasser, or others.
  - i. Location within a specially designated area such as wilderness, wild and scenic river, national recreation area, and so forth.
4. **Inventory.** Plan and carry out the inventory of title claims and encroachments in connection with other resource management activities. Marking and posting property boundaries will reveal most potential and suspected cases. Other title claims and encroachments become known through observance of physical occupation of the land or title evidence. The TCEMS shall be used to inventory, monitor and resolve title claim and encroachment cases. Cases must be entered and processed in TCEMS using the case activities to document case progress.
- a. Inventory all known and suspected title claims and encroachments. Include all cases where there is a claim on the land, even if the claimant cannot produce any supporting documentation.



- b. Include cases of unauthorized occupancy of mining claims.
- c. In TCEMS, separate case types by Conservation Easement Violation, Encroachment, Legacy, RS 2339, RS 2477, Title Claim or Trespass.
- d. In TCEMS, separate case status into active cases, cases on hold, inactive cases, completed cases, cancelled cases or suspected claims.

## **11 - Claim Identification, Records and Reporting**

### **11.1 - Case Identification Activities**

Unauthorized uses (or trespasses), boundary encroachments, and title disputes may occur at any time and may be discovered by any employee, a neighboring landowner, or interested citizen. Capturing basic information will enable determination of whether or not this discovery has been previously reported or is potentially a new case that needs detailed investigation. If a new case is warranted, then planning for funding and human resources as outlined in section 10.6 will be necessary before assigning the case to a case manager. This process also allows for timely communication with reporting parties to keep them apprised of how their discovery is being handled.

#### **11.11 - Intake Basic Case Information**

The intent of this step is to intake basic information related to discovery of a potential problem. Capturing basic information will enable us to determine whether or not this discovery has been previously reported or is potentially a new case that needs detailed investigation. If a new case is warranted, then planning for funding and human resources will be necessary before assigning the case to a case manager.

#### **11.12 - Perform Preliminary Records Review**

After being notified of a potential encroachment or trespass situation, make a fairly quick review of readily available records. Such records would include, but not necessarily be limited to the following:

1. Forest Service Land Status Records System (LSRS).
2. BLM records (master title plats, Serial Register pages, tract books, LR2000 or Alaska BLM SDMS, public land orders, survey plats, mineral withdrawals).
3. State or Country records (if easily available online).
4. If the encroachment location includes acquired land, then also check the 5420 acquisition or 5430 Exchange case files. Review the status of the mineral estate.

Depending on the results of the records review, you may need to consult with other agency employees, such as district or forest staffs, land surveyor or law enforcement for advice. If the records indicate that the location of an encroachment is on or near a mining claim, then contact a mineral specialist.

If location of the encroachment or trespass appears to be entirely upon National Forest lands, it may be necessary to check for an existing or expired special use authorization (SUA). That information would be in the Special Uses Data System or ask someone who works with special uses on district or forest. Findings may include:

1. There is an existing encroachment or trespass case for this reported location, in which case there is no need to create another new case.
2. Our records indicate there is no potential encroachment or trespass (that is, location is not on Federal land).

If either of these situations occur, then in TCEMS, Create a Case = No and Status = Closed. There will be a space for comments about the preliminary records review and local contacts explaining what was found (so we don't repeat this multiple times). Also, note whether or not a case already exists, or the location was not on Federal lands.

If there is no existing case, and if the records and the location indicate there may be an encroachment or trespass situation, then in TCEMS, establish a new case. When possible, update information on the location and description of the potential encroachment or trespass. As mentioned above, provide a brief description of findings from records review and consultations with local contacts.

### **11.13 - Consult Forest Service Law Enforcement**

Once a known encroachment or trespass situation is identified, it is important to share information with Forest Service Law Enforcement. There are a couple of considerations for consulting them at this early stage.

When the case is urgent, such as posing a risk to public health and safety, there is ongoing damage to natural resources, or a potential encroachment is under construction and could grow, then it might be advisable to cite the trespasser to "cease and desist" their activities. Only law enforcement can issue citations. We would continue to process the case administratively, as long as their activities cease.

Even if there is no immediate need for law enforcement action, it is still important to notify law enforcement of the encroachment or trespass situation and how it is being handled administratively. The administrative process may still require their assistance in specific processing steps.

Finally, this step provides law enforcement an opportunity to advise us if they have an active investigation involving this location or this situation, if so then we defer to the law enforcement process.

#### **11.14 - Establish a New Case**

Upon the decision to create a new case, the information captured in the initial intake of information and preliminary records review will automatically be copied into a case record. To accomplish this in TCEMS, a case manager changes the case status from suspected to active, inactive, or on-hold, and completes the additional fields.

#### **11.15 - Respond to Reporting Party**

Based on the information from the preliminary review of records and consultations with local contacts, advise the reporting party of your findings. This may include letting them know no Federal lands are involved, or it may be letting them know an encroachment case is being processed. The purpose of this step is to close the communication loop with those who took the time to make us aware of a potential problem.

#### **11.16 - Notify Suspected Encroacher**

This step is optional; it depends on whether the encroacher is known. It also depends upon the relationship between the responsible official and the encroacher. This is a decision to be made only by the Authorized Officer with delegated authority. This is often the Forest Supervisor or the District Ranger. Be sure to check your region and forest delegations of authority in FSM 1230.

Make no contact until there has been a preliminary investigation into the matter and the Authorized Officer has approved the contact. Personal contact places the encroacher on notice that a suspected problem exists, and it may prevent additional trespass and resource damage. If evidence warrants and there is potential for irreversible resource damage, it may be necessary to obtain an injunction; consult with Regional OGC.

Prompt action may be important; however, be sure to distinguish between a bona fide claim and trespass that does not involve a bona fide claim. Criminal charges are not appropriate when title to the land is a valid issue.

Learn from the claimant or unauthorized occupant the reasons for their occupancy; for example, a survey, title document, a claim of adverse possession or color of title, or an occupancy based upon a mining claim. Obtain copies of documents and other information on which the claimant or occupant bases claim or action. Provide the person(s) with the details of Forest Service planned actions; that is, research status records, corner search and found corners, survey records, certified status check from the BLM, and so forth.

Do not make personal contact when a lawsuit has been filed against the United States or its officers. Make no contacts, oral or in writing with the plaintiff, the plaintiff's attorney, or other representative relative to the facts of the case. The responsible Forest Officer shall forward all requests for information by the plaintiff, the plaintiff's attorney, or anyone else, to the U.S. Attorney through the Regional OGC or the Attorney in Charge, or directly to the U.S. Attorney's Office if the time factor is critical.

## **11.2 - Investigation Activities**

The investigation process contains two major activities: research of title records and a field investigation. A title specialist will check all available sources for documents that legally describe all parcels and parcel encumbrances in the vicinity of a suspected encroachment or title claim. These documents are then used in the field to gather first-hand evidence of the situation in question. Photos and sketches are compiled, and the boundary is checked for marking evidence, so a clear picture of the field conditions is captured for a particular case. If the boundary between the parcels is unclear or suspect, a boundary survey may be requested to verify its actual location. Some estimate of the length of time these conditions have existed and an estimate of any resource damage, reclamation costs and rental fees are documented during the field investigation.

### **11.21 - Check Appropriate Records**

Work done in previous activities, is carried over into establish a new case and is available for this activity. This activity involves a more thorough review of all available factual records. The desired outcome of this step includes electronically linking historical or other reference documents to the case for future use during the Perform Field Investigation activity. This records review produces a Land Status Report (for Federal and non-Federal lands) and supports development of the Title Claim or Encroachment report.

1. Check Forest Service status records for information about how and when the land acquired National Forest status and for information about outstanding rights, reservations, encumbrances, and withdrawals. Obtain copies of all relevant laws, Presidential proclamations, Executive orders, public land orders, and similar documents.
2. For acquired lands, obtain the original acquisition file or the title file if created and scanned. This file may be on microfilm, in a closed file, or at the Federal Records Center. Copies of homestead patent records and others are available from the National Archives.
3. For reserved National Forest land, check the BLM ownership records for other documents as appropriate. For example, the BLM master title/plats, BLM tract records, General Land Office survey plats, field survey notes, and other records (sec. 11.24).

4. Check other Forest Service records that may have a bearing on the case. For example, helpful information may be found in different vintage maps and aerial photos, history files of the forest, range permittee files, range allotment files, road files of the forest, Forest Service land classification records, reforestation files, range improvement files, forest survey plats, corner search records, and working papers.
5. Obtain the following information from the county offices. Certified copies of these documents are necessary only if requested by the U.S. Department of Agriculture (USDA) Office of General Counsel (OGC).
  - a. Copy of the deed to the United States or judgment.
  - b. Copy of the deed to the claimant.
  - c. Copies of tax assessment or payment records, if any, on tract in question. A certified statement from the county tax collector citing the land description, amount of taxes paid, by whom, and year of each payment is sufficient.
  - d. County ownership plat.
  - e. Recorded private survey documents.
6. Abstracts.
  - a. In adverse possession or color of title claims prepare or obtain an abstract of documents on the claimant's land; begin with the deed into the claimant. List each document in the claimant's chain of title. Include wills or court decisions and similar essential conveyance data.
  - b. In title claim cases, an abstract is necessary for both the Government's chain of title and the chain of title of the claimant. These abstracts must include the deed to the United States and the deed to the claimant, and should go back to a common predecessor in title if there is one. This may mean going back to the grants from the State or to land patents or other grants by the United States.

It is often possible to obtain the abstract for the chain of title of the United States tract from the Federal Records Center. The abstract for the chain of title of the claimant may be available from the claimant, claimant's title insurer, or the claimant's attorney.

If there is title insurance for either tract of land, obtain a copy of the policy. It still is necessary to obtain an abstract or certified copies of deeds.

7. Obtain from the claimant any documents that support the claim.
8. Discuss cases with present and former district and forest personnel familiar with the area. If survey problems exist, contact a cadastral surveyor and obtain a written evaluation of the survey problems.
9. Obtain signed statements from residents' familiar with the historical use and occupancy of the property.
10. When necessary, use other public records systems, such as county recorders, to obtain documents missing from Forest Service title files.
11. The County Recorder is the most common source of information about title. This office is known by various names, including County Recorder, Register or Register of Deeds, the County Clerk's Office, and the County Auditor's Office.

State law provides for the recording of title documents and the effect of such records as notice to creditors, purchasers, encumbrances, and others who are interested.

Information available includes, for example:

- a. Recorded deeds of private property owner(s).
  - b. Current and historical ownership of property.
  - c. Mortgage on property.
  - d. Liens against property.
  - e. Mining claim location notices.
  - f. Water users association articles of incorporation and stock subscriptions.
  - g. Recorded plats and maps.
  - h. Power of attorney.
  - i. Abstract records.
  - j. Other transaction evidence.
12. Documents on file in the county records usually are maintained in the following manner:

- a. **Entry Book.** The entry book contains a listing of all instruments recorded in the order received. The entry includes a unique entry or instrument number, the names of the parties, the date, hour, day of month, and year of filing, and a brief description of the premises for the filing (the part of the deed that states the names of the parties and sets forth the facts of the transaction).
  - b. **Grantor Index.** A book, indexed by grantor, which contains a listing of all deeds and final judgments or decrees partitioning or affecting the title to or possession of real property. This index shows the number of the instrument, name of each grantor (in alphabetical order), date of instrument, time of filing, kind of instrument, consideration, the book and page and entry number under which it is recorded, as well as a brief description of the premises.
  - c. **Grantee Index.** A book with the same particulars as grantor index but indexed by grantee.
  - d. **Mortgagor Index.** A file or book in which all mortgages, deed of trust, liens, and all other instruments in the nature of encumbrances upon real estate are maintained. This index shows the number of instrument, the name of each mortgagor, debtor, or person charged with the encumbrance in alphabetical order, name of mortgagee, lien holder, creditor or claimant, date of instrument, time of filing, nature of instrument, consideration, the book and page and entry number under which recorded, and a brief description of property charged.
  - e. **Mortgagee Index.** A file or book with the same particulars as mortgagor index but indexed by mortgagee.
  - f. **Chattel Mortgage Index.** An index of any item of movable or immovable property and fixture, except those classified as real estate.
  - g. **Recorded Maps, Plats, and Subdivision Index.** An index of maps and plats of a subdivision of land situated in a city, town, or county and approved by these authorities.
13. **Power of Attorney.** A list of those authorized to act as attorney or agent for another.
14. **Miscellaneous Index.** An index containing all instruments not provided for elsewhere.
15. **Transcript of Judgment Index.** An index of debts or obligations created by decision or decree of courts.

16. **Military Records.** A book listing honorable discharges from the military services of the United States and all orders, citations, and decorations of honor relating to military service.
17. **Mining Claims Index.** An index of location notices and assessment notices. Some counties break this index down into lode and placer claims indexes.
18. **Federal Tax Liens.** A record of tax liens filed by the United States against individuals and companies.
19. **Tax Deed Book.** A book listing property sold for taxes.
20. **Water Users Association.** A list showing articles of incorporation and stock subscriptions to the water users association.
21. **Book of Record.** A book that brings together most of the preceding items with the exception of chattel mortgages.
22. **Plat Books.** A book of present ownership maps and plats drawn to a convenient scale. These books show current record owner of each tract of land in the county.
23. **Abstract Record or Tract Book.** A document that shows by tract every conveyance or encumbrance or other instrument recorded, the date and character of the instrument, time of filing, and book, page, and entry number where the same is recorded.

## 11.22 - Use of County Records

**The Recorder.** Recorders can provide names of grantors and grantees, the location, the price paid and the approximate date; or they can provide the name of a contact who has this information. The assessor, treasurer, and county clerk also can provide assistance; however, the recorder is the key contact to track down realty transactions.

**Names.** Spelling of names is important; many names are misspelled. For example, John O. Malley, the name in the deed, would appear under the letter M in the grantor or grantee index. However, a mortgage for the same person was made under John O'Malley. The mortgage would appear under the letter O. If the name searched for does not show up in the proper location, continue searching under probable misspelling.

**Locating Documents.** The quickest way to find documents in a recorder's office is by the book, volume, and page number of the type of instrument sought. If the book, volume, and page number are not available, the instrument may be located by the name of the grantor or grantee and the township, range, and section. The recorder's assistance may be necessary initially to research county records or to find obscure documents.



### 11.23 - State Records

**Location of Records.** Records of the State Land Board or the State Land Commission, as it is called in some States, are frequently beneficial in title claim cases. The records kept in this office deal with all lands granted to the State by the United States or others including the State's claim to the bed of any lake or stream which the State perceives to be navigable for title purposes. These records also include lands or interest in lands granted by the State to others.

**Central Index.** The State indexes records in a central index normally under custody of the State Land Board. The index includes the following types of information: legal description of a land transaction; when the land was acquired, leased, or disposed of; where it is possible to find abstracts, deeds, contracts, or indexes of ownership to the land; the name of the State agency acquiring, using, holding, or disposing of the land; the name of grantor or grantee if the land disposed of was disposed; and nature of State's interest in the land disposed of.

**Reasons to Visit.** Reasons to visit this office include the need to research:

1. Ownership of land.
2. State oil and gas leases.
3. Rights-of-way the State may have.
4. State mineral reservations.
5. Transaction evidence.

### 11.24 - Bureau of Land Management Records

It is important in title claim cases to check the Forest Service status record against the BLM records and to reconcile any differences. The BLM, successor to the General Land Office, is responsible for the performance of the executive duties relative to the maintenance of records of original survey and the appropriation, entry, settlement, sale, and related activities on the public lands of the United States, subject to appropriation and entry.

1. **Kind of Information Provided.**
  - a. Orders relative to jurisdiction of Federal lands.
  - b. Withdrawals for administrative sites, power sites, and so forth.
  - c. Survey plats, including mineral surveys.

- d. Survey plat field notes.
  - e. Patents by number, name, and date.
  - f. Lands granted from common schools, institutional grants, reservoir sites, and so forth.
  - g. Certain rights-of-way, easements, and so forth, granted by the United States.
  - h. Railroad, wagon road, and other similar grants.
  - i. Tract books showing unperfected entries to federal land under the Public Land Laws.
2. **Kind of Instruments, Books, or Materials.** The BLM maintains the following records in its state offices.
  3. **Historical Index.** This is a summary and index of all essential actions that have affected the title, use, or availability of public lands and resources. This index is used in the new status system and corresponds to the tract book used in the old system.
  4. **Master Title Plat.** This is a plat used in conjunction with the Historical Index; it corresponds to the plat books used in the old system. It provides a graphic representation of the location of current actions by township, range, sections, and meridians.
  5. **Controlled Document Index.** This index contains micro-filmed copies of documents mounted in aperture tabulating cards that are arranged by meridians, townships, and ranges. Material that is too bulky for the index, such as maps pertaining to these items, are in a separate file and are not on microfilm.
  6. **Historical Status Records.** Microfilm copies of the following old status records are available at the State BLM offices. The originals are in the National Archives.
    - a. **Tract Books.** These records are in bound volumes by meridian, township, range, and section. Underneath the line designating the sections is a list of actions concerning the section.
    - b. **Plat Books.** It is necessary at times to refer to the old plat books. These are bound volumes of the BLM survey plats that graphically show by township and range the actions shown on the tract book. This is the companion book to the tract book.
    - c. **Serial Book.** This is a serial record in which the BLM tracks its cases. The record shows the act, location, name of party, date and time received, and the various

actions taken (by date) until final consummation when the case usually is marked closed.

7. **Withdrawals for Administrative, Power, and Related Sites.** The withdrawal orders are microfilmed for the controlled document index and shown on the historical index and master title plat or in the case of the old records. They are on the tract and plat books. In either case, they usually are in labeled file folders, because the material, usually maps, is bulky.
8. **Survey Plats.** These comprise the regular BLM plats as well as the mineral survey plats. Copies are normally on microfilm.
9. **Field Survey Notes.** These are kept with the regular surveys and mineral surveys. Usually, these are bound volumes in two sets: one for the regular surveys and one for the mineral surveys. For ease in locating the necessary book and page number, index cards are kept for each type of survey. These books contain the courses and distances used by the surveyor, the surveyor's ties, and a brief description of the land traversed.
10. **Patent Records.** These are kept in the controlled document index. If the State BLM records offices do not have copies of the patent you need, obtain copies from the National Archives either through the Bureau Land Management or direct contact.
11. **State School and Institutional Grants.** These are on microfilm in the controlled document index, as well as in separate folders by each kind of grant and by the case number of each grant. For common school grants, there is a school card file that shows the meridian, township, and range. These cards show the date of survey acceptance and withdrawals before school lands were surveyed, and they indicate whether the State received title to all or to parts of the school sections.
12. **Railroad and Wagon Grants.** These are normally on microfilm for the controlled document index and hand copied on the old tract and plat books.
13. **Easements and Rights-of-Way.** These are usually in separate file folders because many of these items, such as maps, are bulky. Only those portions that are easy to photograph are microfilmed for the controlled document index and hand copied on the old tracts and plat books. There are cross references to the file folder.
14. **Use of Bureau of Land Management Records.** The BLM records show the passing of public domain land from the United States to States, counties, municipalities, or private individuals. They also show the return of the land to the United States from these sources. Withdrawal by Government agencies and rights-of-way that the BLM issues are shown. If requested, the BLM allows other Government agencies to review the files for rights-of-way they have issued. At least one of the following items is necessary for use of BLM records:

- a. Serial number by land district, State, or date.
- b. Township, range, section, and meridian.
- c. Type of instrument, whether right-of-way withdrawal, patent, mineral survey, and so forth.

### 11.25 - Prepare Land Status Report

A land status report is similar to a title report on private land. This report documents the findings of a records search to determine what previous actions have been taken by the United States or non-Federal entities regarding a specific tract of National Forest System (NFS) land. A Land Status report is important for both the Federal land (especially if it is acquired land) and the adjoining non-Federal land.

It is used to determine:

1. Federal interests which may be conveyed.
2. Non-Federal interests which may be acquired.
3. Federal interests which must be reserved.
4. Outstanding rights in non-Federal ownership such as easements, reservations, and exceptions to title.

The Land Status Report is one of the basic documents to be used in preparation of the NEPA documentation for any lands transaction. The status records document whether a tract of NFS land (surface and subsurface) has Public Domain, Acquired, or Public Domain Acquired by Exchange status. The Land Status Report will document the following:

1. **Easements.** The existence of easements for roads, ditches, reservoirs, pipelines, railroads, power transmission lines, and so forth.
2. **Reservations.** A reservation is a clause in a deed or patent in which the grantor reserves some right or interest being conveyed. Reservations in title may occur on any NFS land that has been in non-Federal ownership; or on land proposed for acquisition by the
3. **Exceptions.** An exception withdraws part of the property described in a deed from operation of the deed. Tract exceptions can occur on any NFS land that has been in non-Federal ownership. These exceptions in title are normally parcels of less than 5 acres in

size and may not be delineated on administrative maps. The source for specific descriptions of excepted areas is the conveyance document and will be in the acquisition or title file.

4. **Withdrawal.** If a parcel is covered by a withdrawal, revocation of the withdrawal may not be necessary before the tract can be conveyed. However, concurrence of the agency holding the withdrawal would be prerequisite to making a determination of public interest. In the event that a holding agency concludes that conveyance would create a management problem, the conveyance would not be in the public interest. If a Federal Power Withdrawal or a Federal Energy Regulation Commission (FERC) Withdrawal covers the tract it may be necessary to reserve interests required by Section 24 of the Federal Power Act.
5. **Special Use Permits.** In some cases, NFS lands eligible for conveyance may be encumbered by a land use authorization to someone other than the applicant. These authorizations must be mitigated before the conveyance can take place. Mitigation will usually be in the form of a waiver of the authorization, an easement, or other instrument executed by the applicant in favor of the permit holder.
6. **Mineral Leases.** If the United States has issued a permit or lease for the exploration and production of such minerals as oil, gas, coal, phosphate, carbon dioxide, and so forth, on the affected NFS tract, the permitted or leased mineral interest must be reserved for the term of the permit or lease. General information concerning mineral permits and leases is available in the mineral leasing records at each Forest Supervisor's Office but should be confirmed with the BLM office authorizing the permit or lease.
7. **Grazing Permits.** NFS lands eligible for conveyance may be authorized for use as part of a grazing allotment. If conveyance of the land requires a reduction in permitted use, a waiver for that amount of use must be secured from the permittee. In addition, 36 CFR 222.4 (Changes in Grazing Permits) requires a two-year prior notification in the case of cancellation of a grazing permit. If the permittee is unwilling to waive the portion of the permit affected by the sale, exchange, or interchange of lands under STA authority, it may be necessary for the permit to be terminated. To terminate all or a portion of the permit, the two-year notification must first occur. It is important to address this notification issue early in the process.

#### 11.26 - Perform Field Investigation

Undertake field investigation of all known encroachment or trespass cases. For cases involving litigation against the United States complete field investigation only after consultation with OGC. Keeping an ongoing activity log might be useful to assist with tracking and coordination.

1. Coordinate with claimant and with cadastral surveyor if there are indications of survey problems. It is essential to determine the correct and accurate location of the boundary line before initiation or settlement of a boundary line claim through negotiations by the United States. At least temporarily, mark technically correct survey lines on-the-ground before beginning determination of facts negotiations with the claimant.
2. Provide the claimant with an opportunity to share in the cost of the boundary survey. Obtain permission to survey and to cut branches, trees, and underbrush on claimant's land or on the disputed area. If working relations between the Forest Service and the claimant are poor, this may not be possible. In this case, it may be necessary to conduct a survey traverse to locate the boundaries of the claimed area. This traverse avoids the claimant's land and the land in dispute.
3. Take photographs, investigate, and note on-the-ground evidence of past and present occupancy (cultivation, boundary lines and corner markings, ditches, fences, buildings, timber cutting, and so on). The photographer and the date the photographs were taken need to be noted. Note points and direction of view on map or plat pictures. Describe the condition of each.
4. Note on aerial photographs the location of past and present occupancy, property corners, and boundary lines.
5. Make note of information for use in calculating rental fees and damages if the claim is invalid or a trespass.
6. Interview and secure statements from witnesses who have information about the use of the encroachment area.
7. Request soils or geology reports or other expert reports such as riparian rights.
8. Ensure that the collected evidence tracks back in time to the earliest possible date.
9. Complete form FS-5400-37, Certificate of Possession. All physical items that can be seen on the ground, such as roads, power lines, abandoned vehicles, structures, fences, garbage, and so forth shall be documented on form FS-5400-37, Certificate of Possession. Unauthorized occupancies, potential trespass, and adverse possession shall be documented and immediately brought to the attention of the landowner. Identify any potential adverse claims that might contribute to a mechanic's lien, as evidenced by lumber or other building supplies located on the property. The employee who conducts the on-the-ground review is responsible for completing and signing the form FS-5400-37. Please also refer to the Attorney General Governing review and approval of Title for Federal Land Acquisitions (2016), Certificate of Possession, Appendix Document 1. The DOJ CIP form could be used in lieu of FS-5400-37.

10. Complete form FS-5400-38, Certificate of Use and Consent (for lands to be acquired). It is the responsibility of the appropriate Forest Service specialists to evaluate all outstanding and reserved interests on lands the United States may acquire and to inform the Authorized Officer of any potential impacts those outstanding and reserved interests may have on future use and management of the land. The Authorized Officer considers the findings of the specialist(s) and certifies on the Certificate of Use and Consent form that the reserved and outstanding interests are or are not acceptable to the United States. List all outstanding rights disclosed by the title evidence, as well as proposed reservations, on the certificate with a brief statement as to whether or not the outstanding right or reservation is an:
- a. **Administratively Acceptable Outstanding Right.** Administratively acceptable outstanding rights would not interfere with the use and management of the property for its intended use.
  - b. **Administratively Waived Outstanding Right.** Administratively waived outstanding rights include third-party rights where a diligent effort was made to acquire the outstanding right without success. All efforts to acquire the rights and the rationale for believing that the probability is low for the third-party to exercise those rights shall be documented in writing. In these situations, the Authorized Officer may recommend to the Regional Forester that the lands be acquired subject to the outstanding right.
  - c. **Unacceptable Outstanding Right.** Administratively unacceptable outstanding rights are provisions that:
    - (1) May commit the United States to payments of financial obligations in excess of appropriations.
    - (2) Require United States to make a payment by a specific date.
    - (3) Require limit the uses of the non-Federal land acquired, the purchase of resources, or employment.
    - (4) Reserve or except rights that are not clearly defined or that might interfere with use of the property for national forest purposes generally or the purposes for which it is being acquired.

### 11.27 - Investigate Rental Fees and Damages

Make note of information for use in calculating rental fees and damages if the claim is invalid or a trespass, request reports about soils, geology or hydrology, or other expert reports such as riparian rights.

If there is evidence of resource damage involving historical or cultural resources, fish or wildlife habitat, or wetlands and floodplains, you may need to consult with the appropriate agency specialist to determine costs for restoration and damages.

FSH 6509.11h provides additional guidance for calculating damages for trespass situations.

1. **Trespass Claims for the Government.** A trespass claim for the Government results when a person or legal entity, acting unlawfully under applicable property laws, takes or causes damages to Forest Service resources or property.
2. **Criminal Trespass.** Trespass to federal property generally, and to National Forest System land specifically, is criminal when provided by federal statute such as 16 U.S.C. § 551, 18 U.S.C. § 1863, and other Federal statutes.

If the property would have been used during the time it was occupied, there are indirect damages for the rental value of the property for the period of time it was in the trespasser's possession both for the loss of use by the owner and the unjust enrichment of the trespasser. If Forest Service real property or resources are damaged as a result of a theft or a criminal trespass, damages are the value of resources lost, and costs to restore or repair or restore the damaged real property or resources.

### 11.28 - Request Boundary Survey

1. Submit a written request to the Boundary Management Program Leader. Land surveys may only be started at the written request of the Forest Supervisor or District Ranger. See the Survey Request form on e-templates site. Once completed, ensure that every land survey plat entered into the public record contains the date and signature of the Forest Supervisor or District Ranger stating the survey was made at the request of a line officer.
2. Upon completion of a cadastral survey, each survey plat shall receive a professional peer review to ensure correctness of procedure, completeness and data accuracy before the plat is entered into the public record. The review procedure is standardized within each Region, see FSM 7152.03(2)(c).



Every land survey plat entered into the public record shall contain the date and signature of the Forest Supervisor or District Ranger certifying the survey was made at the request of a line officer.

### **11.3 - Determination Activities**

These activities evaluate the evidence collected in the records review and from field investigation.

#### **11.31 - Evaluate Collected Evidence**

Evaluate all evidence gathered and document key factors that will lead to a fair and equitable resolution. Through the Regional Forester, a request for advisement from the Regional OGC may be appropriate when addressing the validity of the claim and other relevant legal questions.

Consult Forest Service Law Enforcement if there is any potential for criminal action.

Desired outcomes from this activity are a Title Claim and Encroachment Report, including Resolution Options.

#### **11.32 - Prepare Recommendation Package**

Based upon the collected evidence, this activity includes preparation of the Title Claim and Encroachment report, including resolution options, for the purpose of being prepared to recommend a resolution action to the Authorized Officer.

Resolution options may include one of the following:

##### **1. Valid Claims and Qualified Encroachments Relief Authorities.**

- a. **Adjustment of Land Titles Act of 1943, (Pub. L. 78-120).** Applies only to acquired lands. (See sec. 12.22)
- b. **Quitclaim Act of 1930.** Occasionally used to reconvey lands deeded to the United States under an authority appropriate for reserved public land, via land exchange. (Quitclaim Act of 1930 is included in TCEMS as a resolution method; but no step-by-step list of work activities have been developed.)
- c. **Color of Title Act of 1928.** This act applies to land that had public domain status when occupied (43 CFR 2540). It does not apply to Weeks Act-acquired lands(36 Stat. 961). Under this act, the applicant files an application for patent with the State Office of the BLM. (Color of title is included in TCEMS as a resolution method; but no

step-by-step list of work activities have been developed.)

- d. **Small Tracts Act.** The Secretary of Agriculture, upon precedent determination that it is in the public interest, is authorized to sell, exchange, or interchange all right, title, or interest, including the mineral estate of the United States in NFS land, to resolve certain land ownership disputes associated with encroachments and land management problems associated with mineral survey fractions and road rights-of-way.

The Small Tracts Act (STA) has conveyance categories for landfills, sewage treatment plants, and cemeteries currently authorized to operate on NFS lands. The STA also allows conveyance to a person involved in a documented encroachment; conveyance of parcels 40 acres or less that are physically isolated, inaccessible, or no longer possess National Forest character; or 10 acres or less encroached on by a permanent habitable improvement for which there is no evidence that the encroachment was intentional or negligent case found by a Forest Service official to be amenable to a negotiated settlement under the STA.

(FSM 5570.11 and 36 CFR 254, subpart C.) (FSH 5509.11, ch. 20, sec. 21).

- e. **Wisconsin Land Title Act of 1954.** Claims for land under this act are only valid on omitted land found to exist between the original Government Land Office meander line around a Wisconsin lake and a subsequent BLM meander survey around the lake. (This act is included in TCEMS as a resolution method, but no step-by-step list of work activities have been developed.)
- f. **Disclaimer of Interest.** The Secretary of Interior is authorized, under section 315 of Federal Land Policy and Management Act to issue a document of disclaimer of interest or interests in any lands where the disclaimer helps remove such a cloud on the title to such lands. (This act is included in TCEMS as a resolution method, but no step-by-step list of work activities have been developed.)
- g. **Correction of Documents.** The Secretary of Interior is authorized, under section 316 of Federal Land Policy and Management Act to correct patents or documents of conveyance relating to disposal of public lands where necessary to eliminate errors.

## 2. Invalid Claims and Encroachments.

- a. Removal of structure(s) through an administrative process or, where appropriate, abandonment of improvement(s) and site restoration.

- b. Noncompliance process or validity contests where the case involves mining claims (FSM 2818).
- c. 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).
- d. 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.
- e. Noncompliance process where trespass is associated with permitted uses.

### 3. **Non-Approved Resolution Options.**

The primary focus of the Title Claims and Encroachments Program is the defense and protection of the lands and title of the public's estate managed by the Forest Service. We are responsible for protecting the NFS lands to ensure the public estate does not continue to erode.

- a. **Special-Use Authorization Permit.** Do not issue a SUA to authorize improvements placed on National Forest System land without authorization. When the apparent trespass is defended by a title claim, or other title relief is sought under authorities such as the Small Tracts Act or Color of Title Act, process those claims accordingly.

Uses of National Forest System land should only be authorized in accordance with applicable regulations upon determination that the proposed use is an appropriate use of National Forest System land based on the regulatory criteria.

- b. **Land Exchange.** Do not use a land exchange to resolve an invalid title claim. It is first necessary to resolve ownership status by the claimants' acceptance of the evidence of Federal ownership or by court action adjudicating Federal ownership. 36 CFR 254 Subpart A does not provide land exchange as an option to resolve trespass or encroachments. However, for qualified cases see the Small Tract Act in 36 CFR 254 Subpart C.

The desired output from this activity includes a communication plan, if needed by the Authorized Officer.

### 11.33 - Prepare Title Claim or Encroachment Report

1. **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.

Claim reports submitted in a folder should contain two separate sections, narrative and exhibits, attached 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. Reports that are bound should place the narrative at the beginning, followed by tabs for each exhibit.

2. **Narrative Case Folder.** 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 (as shown in exhibit 11.33 – 01) and keep the report brief and factual. 11.33 – Exhibit 01 below, will help create uniform case files.

#### 11.33 – Exhibit 01

##### Narrative Case Folder

1. Case Title and File Number
2. Facts Concerning Claimant
  - a. Complete name and address.
  - b. If married, give full name of spouse.
  - c. If a corporation, give name and address of representative and the State of incorporation.
3. Location
  - a. Ranger District and National Forest.
  - b. State.
  - c. County.
  - d. Other political subdivision
  - e. Township, range, and section or lot.
  - f. In metes and bounds States, give latitude and longitude; grant or patent, if known; district and land lot, applicable.
  - g. Topographic features, watershed
  - h. Include vicinity map as an exhibit.

**11.33 – Exhibit 01--continued**

4. U.S. Tract—Legal Status and Method of Acquisition
  - a. Name and number.
  - b. Date and act, proclamation, Executive order, or other authority reserving or withdrawing claimed land.
  - c. Bureau of Land Management status record.
  - d. Date and recording data of deed or judgment.
  - e. Acquired by purchase, exchange, condemnation, transfer, and so forth. Include data for each tract involved if there is more than one.
  - f. For transfer lands, furnish the agency or department and the contract number and date of transfer.
  - g. If available for acquired NFS lands, review Abstractor's Opinion and include with report.
5. Basis for Claim
6. Conflict of Surveys
  - a. United States survey and boundary marks and corners
    - (1) Surveyors name
    - (2) Registration number
    - (3) Basis of survey. Do markings conform to description in deed or condemnation decree?
    - (4) Survey notes, book and page numbers, and date
    - (5) Relationship of survey to existing survey marks, present usage or possession, and past usage
    - (6) Surveyor's report
    - (7) History of line maintenance.
    - (8) 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.
    - (7) Conflict of Record Title (Overlapping Deeds).
  - c. Certified copy of the claimant's deed with recording data.
  - d. Copy of instrument showing first conflict of title. Include your explanation, claimant's statement, and statement(s) of other knowledgeable persons.
  - e. Abstract of claimant's title.

**11.33 – Exhibit 01--continued**

7. Claimant's Property Included in Condemnation Action (if applicable)
  - 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?
  - d. If available provide OGC a copy of the Petition and Judgment, include copies of the plat and legal description used as court exhibits.
8. 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.
  - 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.
9. Riparian Land Title
  - a. Riparian actions
    - (1) Title to bed of water course.
    - (2) Change of water course boundaries.
    - (3) Accretion, reliction, and erosion.
    - (4) Avulsion.
    - (5) Artificial improvements.
  - b. Historic evidence of water course archived by various Federal and State agencies.
    - (1) Maps, aerial photos, and plats.
    - (2) Files, reports, other documents.
  - c. 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.
  - d. Claims involving riparian issues should be addressed in the Surveyor's Report.
10. Navigability for title
  - a. Ownership of the bed and banks of navigable bodies of water is determined by State law, which in most states provides that the beds are owned by the State,

**11.33 – Exhibit 01--continued**

but some state laws provide that the bed is owned by the adjacent upland owner.

- b. Navigability for title relies on Federal definition as formulated by the Courts.
- c. Under federal law, a body of water is navigable for purposes of determining title to the bed if it was susceptible of navigation in commerce in its natural condition at the date of statehood.
- d. “Natural condition” allows for some modification of the body of water to make it navigable.
- e. Navigation in commerce has been found to include floating log bolts, transporting furs by canoe, and recreational outfitting by some courts.
- f. Navigation in commerce requires that the body of water be used as a highway in commerce to transport goods between points.

**11. Indian Title**

- a. Treaties by which the United States annexed territory often provide for recognition of land grants by prior sovereigns.
- b. Indian Claims Commission reports and decisions.
- c. Indian Reservations.
- d. Establishments and disestablishment documents
- e. Boundary establishment orders and surveys.

**12. Sovereign Land Grants**

- a. Prior sovereign law applies to Land Grants that were made prior to addition of territory to the United States.
- b. Land grants by Spain, Mexico, Britain, and France are documents in proceedings of land grant commissions designated to determine the validity of prior grants.
- c. State laws affecting title.
- d. Survey or general boundary surveys and descriptions.

**13. For All Claim Cases**

- a. Plat showing claimant's land as platted from deed and boundaries of adjoining NFS land. Make scale large enough to show details of area in controversy.
- b. Claimant's statement or explanation of the claim.
- c. Written, signed, and witnessed statements, when possible, from both United States' and claimant's witnesses.
- d. 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.

**11.33 – Exhibit 01--continued**

- e. Assessment of damages. (see 14.21 – Exhibit 01, 4)
14. Discuss applicability and compliance with requirements of statute or regulation under which the claim and encroachment or grant is most appropriate.
15. Use Before Government Acquisition
- a. On-the-ground evidence of past use.
  - b. Evidence in tract folder.
  - c. Tract examination map.
  - d. Boundary description.
  - e. Certificate of possession.
  - f. Correspondence, proposal, disclaimer, tenancy agreement, rent, note, and so forth.
  - g. Other records, such as homestead files, classification maps, historic quad maps, historical records about grazing, timber uses, aerial photos, and other agency files.
  - h. Witnesses with knowledge of area's history.
16. Use After Government Acquisition
- a. Permits, easements, or leases issued on area.
  - b. Roads, buildings, or other improvements constructed.
  - c. Timber cutting by United States or claimant.
  - d. Other administrative acts, such as timber and stand improvements.
  - e. Plans for future use, such as a Wild and Scenic River; research natural area, and so forth.
17. Possible Adjustments in Quitclaim Deed Cases
- a. Mineral leases covering claimed area.
  - b. Special-use permits, easements, reservations, or third-party rights.
  - c. Release of Forest Service from past administrative acts and possible monetary claim.
18. Conclusion
- a. Summarize findings and conclusion based on the facts.
  - b. Include claimants' offers of settlement or compromise.
19. Suggested Resolution
- a. Based on the validity of the claim, explain in detail, how best to resolve the conflict.



**11.33 – Exhibit 01--continued**

- b. If quitclaim deed is the recommended action, state whether former vendor (or exchange proponent) must reimburse the United States. If so, give amount (see 14.21 – Exhibit 01, 4.B.).
  - c. 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.
20. Witnesses. If litigation is a possibility, identify those who will testify on behalf of the United States
21. Exhibit Folder 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.
- 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 OGC.
- 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.

**11.33 – Exhibit 01--continued**

22. Claimant's statement.
23. Tract description of subject area.
24. A drawing or plat delineating the subject area, approved by the Forest Land Surveyor.
25. Drawing or plat denotes acreage of subject area reviewed by the Forest Land Surveyor.
26. County tax assessment and payment records, if any.
27. Correspondence to and from claimant.

**11.34 - Present Recommendation**

Based upon the facts and findings in the Title Claim or Encroachment Report, present the pros and cons of suitable resolutions to the case. Be prepared to make a recommendation to the Authorized Officer, should you be asked to do so.

**11.35 - Request Further Investigation**

In a few cases, the Authorized Officer or the Regional Counsel may request additional information prior to selecting a resolution method. In those cases, research and provide the additional information and present recommendations again.

**11.36 - Select Case Disposition**

Based upon facts and findings, and the presentation of resolution options, the Authorized Officer makes a decision on a resolution method, refer to section 11.32 for suitable dispositions. Cases selecting Adjustment of Land Titles Act, Public Law 78-120, in order to resolve the case will require an OGC opinion, determining that the claimant qualifies under the act.

**11.37 - Inform Interested Parties**

This is an optional activity, if the case warrants it might be beneficial to notify Forest Service employees who have been consulted on the case and who might have an interest in how it will be handled. This is also an opportunity to notify employees who will be involved in resolution of this case. Notification in this step will likely be an email or other informal contact.

**12 - Administrative or Legal Action for Valid Claims**

**12.1 - Small Tracts Act Resolution**

See FSH 5509.11, chapter 20, section 21.

## 12.2 - Adjustment of Land Title Resolution

Claims to acquired land may exist for several reasons. The following sections list situations that usually cause claim cases. As indicated below, many of these situations are addressed under Public Law 78-120, Adjustment of Land Titles Act (7 U.S.C. 2253) or other authorities.

1. **Adverse Possession.** Adverse possession is the most common basis for claims on acquired 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 while the land was in non-federal ownership. To be valid, claims involving adverse possession must be based on the period of occupancy and use of the land by the claimant before acquisition by the United States.
2. **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.
  - a. **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.
  - b. **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.
3. **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.
4. **Inaccurate Property Boundaries.** Improperly surveyed boundaries or lack of survey create a majority of the claims under Public Law 78-120 (7 U.S.C. 2253) and other authorities.
5. **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:

- a. 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. See Public Law 78-120 (7 U.S.C. 2253).
  - b. 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.
6. **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. See Public Law 78-120 (7 U.S.C. 2253).
7. **Recovery of Purchase Consideration.** Public Law 78-120 (7 U.S.C. 2253) requires that if the person who is to receive a quitclaim deed is the same person, or the successor 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.
  - a. In cases where the Regional OGC 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.
  - b. 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 (7 U.S.C. 2253).

- c. 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.

**8. Reconveyance following withdrawn or rejected exchange offer.** 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 43 U.S.C. 872.

**9. 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.

**10. Case Not Consummated.**

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.

**11. 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:

- a. 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.
- b. 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.

### **12.21 - Meet with Applicant Landowner**

The Case Manager meets with the landowner to discuss potential resolutions. Review documentation, photos (with the date on the back) and maps provided by Claimant(s) to verify the length of time the encroachment has been in place. Application includes landowner signed acceptance and release form which will be attached to the deed.

### **12.22 - Prepare Adjustment of Land Title Resolution Agreement**

When a determination has been made through field inspection and case document review that a claim to acquired land is the result of:

1. Erroneous location of survey lines, or the inconsistency between the ground location and deed descriptions at the time of acquisition.
2. Failure to locate property lines on the ground at the time of acquisition.
3. Disclosure, after acquisition by purchase or exchange, that certain lands were included through error in description.
4. Title conveyed to the United States by deed from other than the true owner.
5. Condemnation proceedings in which lands were included through error, mistake, or inadvertence.
6. Adverse possession perfected before the United States acquired title.

The Adjustment of Land Titles Act, Pub. L. 78-120 may be used to rectify the situation.

### **12.23 - Determine Local Regulations**

Surveyor contacts State, County, and local governmental agencies to determine applicable regulations for boundary setbacks and variances before preparing final legal land description. Forest Service reviews final description and plat map, and co-signs with the surveyor of record (if not originally prepared by a Forest Service surveyor).

### **12.24 - Draft Quitclaim Deed**

If OGC determines that a claim is valid and qualifies under Public Law 78-120, the Forest Service will prepare a Quitclaim deed for transfer of the portion of the parcel included in the boundary line adjustment. Landowner signed acceptance and release form will be attached to the deed.

When there is an application that re-conveys partial interest in the 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 three places in which the latter term appears in the application. A road right-of-way is an example of a partial interest.

### **12.25 - Obtain Regional Forester Approval**

The Forest Supervisor will make an initial review of case evidence and make a recommendation to the Regional Forester as to the validity of the claim. A determination will be made by the Regional Forester to submit the case to the OGC for review and legal opinion.

The Regional Forester will advise the Forest Supervisor of the legal determination made by OGC regarding the validity of a case and advise on how to proceed. For those cases qualifying for conveyance under Public Law 78-120, the Authorized Officer will prepare a survey plat and draft quitclaim deed.

### **12.26 - Receive Legal Opinion from Office of the General Counsel**

The Regional OGC will provide a legal opinion as to the validity of the claim and advise the Regional Forester in writing as to their determination. If the case qualifies, OGC will review and approve the deed used for conveyance under Public Law 78-120.

### **12.27 - Make Adjustment to Deeds**

If the Regional OGC disagrees with the conveyance, the Regional OGC returns the opinion, deed, and other related papers to the Regional Forester with recommendations for corrections.

### **12.28 - Deed Signed by Private Party**

Once final corrections are completed, the deed package is returned to the Forest staff. Forest Staff meets with applicant landowner and obtains signatures on deed. The landowner signed acceptance and release form will be attached to the deed. The landowner signs the deed first.

### **12.29 - Execute and Record Deed**

Regional Forester executes deed, prepares needed copies, and returns the originals to the Forest Supervisor for recording and delivery to the applicant landowner. The Regional Forester shall coordinate the execution, delivery, and recording of deeds to the United States issued under Public Law 78-120.

All quitclaim deeds are to be recorded in the county where the quitclaimed area is situated. The Forest Service shall have the deed recorded. Title insurance is not required for land conveyed from Federal ownership.

Notify appropriate staffs (for example: land status group, land adjustment group, boundary management) of the changes to the Federal Records based on this adjustment of land title.

Land Status group normally is responsible to notify the BLM so they can update the Federal records.

### **12.3 - Administratively Resolve Valid Access Claims RS 2339**

The 1866 Ditch Act, the 1866 Mining Act, or Revised Statute (RS) 2339 granted holders of recognized rights to the use of water, an associated right to construct and operate facilities on the public lands of the United States; facilities needed to divert and transport this water for various beneficial uses. The specific language that applies to claims is pursuant to Section 9 of the Act of July 26, 1866 – RS 2339:

"And be it further enacted, That whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by local customs, laws, and decisions of courts, the possessors, and owners of such vested rights shall be maintained and protected in the same, and the right of way for the construction of ditches and canals for the purposes aforesaid is hereby acknowledged and confirmed; Provided, however, That whenever, after the passage of this act, any person or persons shall, in the construction of any ditch or canal, injure or damage the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage".

Please see the Forest Service RS 2339 Desk Guide (for administrative use only) for additional guidance and exhibits

#### **12.31 - Receive Assertion of Outstanding Right**

Claimant submits an assertion of claim of title under RS 2339 (or RS 2477) of the Act of July 26, 1866 (The Mining Law).

Section 8 of the Mining Act of 1866, later revised as Revised Statute 2477 (RS 2477), granted rights-of-way for the construction of highways across public land not reserved for public uses. RS 2477 was repealed by Federal Land Policy and Management Act (FLPMA), but FLPMA did not terminate valid rights-of-way that had been established under RS 2477 prior to its repeal. Since RS 2477 does not require recordation of rights-of-way, it is often difficult to know which rights-of-way claims are valid, where they are located, and how they may be used. A determination of an RS 2477 rights-of-way is a judicial procedure, not administrative.

Forest Service Line Officers should not negotiate with a State or its counties regarding the conveyance of a Forest Service or Federal Highway Administration easement (that is, Forest Roads and Trails Act (FRTA) or FLPMA easement) without consulting with your regional OGC to avoid compromising the Department of Justice's strategy and the Department of the Interior's



interests. The Washington Office will continue coordination for RS 2477 issues with the Washington Office Department of the Interior.

Three elements of the statute must be satisfied for a valid RS 2477 highway to exist:

1. The lands were public, not reserved for public uses, at the time of establishment.
2. There had to have been some form of physical establishment of the highway (simply having a road show up on maps alone is not sufficient evidence)
3. The highway so constructed must be considered a public highway (county or state) under State or territorial law in effect at the time it was established.

The Forest Reserves and later the National Forests were generally reserved from the public domain between 1891 and the early 1900s. A highway must have been established prior to reservation in order to qualify under this Act. RS 2477 also applies to private land if the three conditions were met while the lands were still in the public domain.

Currently, the Forest Service lacks the legal authority to make a binding legal determination regarding the validity of an RS 2477 claim. However, the Forest Service may evaluate the likely validity of R.S. 2477 claims for administrative purposes. Under 36 CFR § 251.50(e)(3), proposed uses of National Forest System land outside designated wilderness are exempted from the requirement for a special use authorization when the authorized officer of the Forest Service determines that the proposed use falls within the scope of a valid R.S. 2477 right-of-way. If a proponent asserts that it is exempt from Forest Service permit requirements because it holds an R.S. 2477 right-of-way and is unwilling to accept an alternative Forest Service authorization, the Forest Service must make an administrative determination as to the validity of the R.S. 2477 right-of-way claim to comply with the regulations. Because of the legal and factual complexities of evaluating R.S. 2477 title claims, alternative avenues, such as issuance of FLPMA, FRTA, or FHWA easements or other special use authorizations should be explored, the BLM also has authority to issue Recordable Disclaimers of Interest to validate R.S. 2477 right-of-way claims. (43 CFR 1864.1-4).

National Policy in FSM 2734.5 encourages public road agencies to seek FRTA easements (use code 751, see FSM 2732) for roads they believe qualify as RS 2477 public highways. In most cases, the Forest Service seeks to grant an easement to a county since it alleviates the USA's liability and maintenance responsibility while not compromising physical or legal access by the public or Forest Service. FRTA easements are a simple authorization to generate and cost recovery and annual land use fees are commonly waived. Consequently, counties can secure a legal, recordable right with a clearly defined right-of-way at little to no cost. This method is much simpler and less expensive to accomplish than pursuing an RS 2477 claim of title.

The Office of the General Counsel and Regional Office have approved language to reply to an individual or any entity (that is not a public road management agency) who assert an RS 2477

claim: “An assertion of an RS 2477 public road right-of-way is a claim of title against the Federal Government. Therefore, an RS 2477 claim can only be asserted by a public road management agency (county or state) and not an individual. The Forest Service does not have the legal authority to make a binding determination regarding the validity of a RS 2477 claim. A claim challenging the title of the United States real property can only be asserted under the Quiet Title Act, 28 U.S.C. § 2409a.” In the Forest Service response to the claimant, articulate that the claim will not be given any further consideration, but in cases where a special use authorization (SUA) may be considered, we should direct the claimant to the steps to submit a proposal for a SUA and/or to engage a public road management agency.

### **12.32 - Prepare Adjustment of Title Resolution Agreement for R.S. 2339 claims**

R.S. 2339 granted the right-of-way for the construction of ditches, canals, reservoirs, and other water facilities on unreserved federal land. To perfect the grant, one needed to construct the facilities for use in conjunction with a water right recognized by state or territorial law in effect at the time on unreserved federal land. When a party claims a right to the use and occupancy of NFS land for water development facilities pursuant to the rights granted in the Act of July 26, 1866, then the Authorized Officer will address such a claim as follows:

The status of the NFS land being occupied by the subject water development facility will be determined from the land status records.

If the NFS land was acquired or has Weeks Law status, notify the Regional Office-Lands Staff with information addressing the specifics of the subject claim. The appropriate Regional Office-Lands Staff will review and provide additional direction concerning an appropriate agency response to such claims.

For NFS lands having "reserved public domain" status, identify (from the land status records) the specific date of reservation of the land being used and occupied by the claimant's water development facility.

### **12.33 - Check Appropriate Records**

See Section 11.21-Check Appropriate Records

### **12.34 - Request Claimant Submit Evidence**

If necessary, notify the claimant that the Forest Service needs additional information to make a determination as to the potential validity of their claim to a right. The claimant should be sent a letter which provides him/her with information relevant to each case, including case-specific criteria that need to be met in order for the subject use/facility to qualify as an outstanding RS 2339 right.

12.34 – Exhibit 01 below includes information to provide to a claimant. It cites that it is the claimant's responsibility to provide the authorized officer with the evidence needed for the Forest Service to make an administrative determination concerning the potential validity of the claim being made. This letter is available in the TCEMS application under Sample Letters / RS 2339 templates folder.

### **12.34 – Exhibit 01**

#### **Request Claimant Submit Evidence**

##### **LETTER REQUESTING THE NEED FOR ADDITIONAL SUPPORTING EVIDENCE**

United States Department of Agriculture  
Forest Service  
File Code: 5510/2720

**[Date]**

**[NAME/ADDRESS OF PERSON ASSERTING CLAIM TO AN RS 2339 OUTSTANDING RIGHT]**

Dear **[Name of Claimant]**:

I am responding to your **[Date]** correspondence in which you have asserted a claim to an outstanding right to use and occupy National Forest System land with your water development facility known as **[Insert here the subject facility's locally-known name or reference, its location/etc.]**. You are asserting that you have a statutory right to use, operate, and maintain this facility on National Forest System land, pursuant to the grant of such a right in the Act of July 26, 1866, as amended. You assert that this right authorizes you to conduct these activities without additional authorization from the Forest Service.

That Act, also known as the "1866 Ditch Act", the "1866 Mining Act, or "Revised Statute [RS] 2339" granted holders of recognized rights to the use of water, an associated right to construct and operate facilities on the unreserved public lands of the United States; facilities needed to divert and transport that water for various beneficial uses. The specific language that applies to your claim in this case is Section 9 of the Act, which states:

“And be it further enacted that whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws,

and decision of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right-of-way for the construction of ditches and canals for the purpose aforesaid is hereby acknowledged and confirmed..."

The right-of-way grant provided by this legislation had specific applications and limitations. They include the following:

1. The Act was repealed on October 21, 1976, with passage of the Federal Land Policy and Management Act (FLPMA).
2. While in effect, the Act applied only to water development facilities that were constructed and made operational on the unreserved public lands of the United States. As used in the context of the Act, public lands of the United States are those Federal lands which were open to entry under the Federal public land laws. Therefore, the Act did not grant rights to construct and operate water development facilities on Federal lands which, at the time of facility construction, were reserved from the public domain.
3. Most National Forests in the western United States were established by either Executive Order, Presidential Proclamation, or by Congress. Many originated as Forest Reserves, under authority of the Act of March 3, 1891. When established by one of these means, the Federal land within each Forest Reserve or National Forest was reserved from the public domain. Consequently, no RS 2339 right could have been established on Federal land within a Forest Reserve or National Forest after the specific date of establishment of the Reserve or Forest.
4. The creation and designation of Forest Reserves and National Forests were made subject to valid existing rights. Therefore, an outstanding right may have been validly established under authority of the Act of July 26, 1866 on Federal land BEFORE it was reserved from the public domain (as a Forest Reserve or National Forest). In such cases, that right could continue to exist and be exercised after the Federal land that the water facility occupies was reserved from the public domain (as a National Forest or Forest Reserve). So, both the date of construction of a particular water facility, and the date that the National Forest land which it occupies was reserved from the public domain, are critically important in determining the potential validity of claims to outstanding rights pursuant to the Act of 1866.
5. Rights that now exist, for the purposes identified in the Act, were established by A) having secured a recognized and acknowledged right to the use of water, as determined by local laws, customs, and/or court decision; AND B) the actual construction and operation of a ditch or canal on the public land needed to store, divert, and/or convey

**12.34 – Exhibit 01--continued**

6. that water. Both of these conditions had to have existed on or before the date that the National Forest System land being occupied by your facility was reserved from the public domain.
7. The Act of 1866 contained no provisions which required the grantee (that is, the owner of the facility) to secure a license, easement, permit, or other document in advance of acquiring the right granted by the Act to use and occupy public land of the United States.
8. A vested or certificated water right does not authorize the right of ingress and egress to your facility across National Forest System lands.
9. States or Counties do not have the authority to validate the existence of an outstanding right that may exist pursuant to the Act of 1866.
10. When the owner of a water facility, asserts a claim to a right under the Act of 1866, it is the responsibility of the claimant (that is, you) to provide the Forest Service with evidence that demonstrates the existence of a valid water right, and that the subject facility was constructed and made operational on or before the date Federal land which it now occupies was reserved from the public domain.

Based upon the above information, please re-evaluate whether or not you believe that your facility meets the above limitations of the provisions of the Act of July 26, 1866. If you believe it does, be advised that Congress has not granted the Forest Service the authority to legally validate your right to a real property interest in Federal land. Only a federal court of competent jurisdiction has such authority to make such finding, in response to a filing made with the court pursuant to the Quiet Title Act of 1972.

In lieu of such a court proceeding, the Forest Service's authority is limited to making an administrative determination as to the "potential validity" of your claim. We will do so, when you provide us as evidence needed to support of your claim to a right. As cited under Item number 9 (above), we need evidence that indicates a priority date of the water right associated with your facility, and documents that this facility was first constructed on or before **[Enter appropriate date here – that is, either the date that the Federal land it now occupies was reserved from the public domain, or the 10/21/1976, whichever occurred first]**. Enclosed is a listing of possible evidence to consider in your search of documentation to support your assertion. After we review the evidence you provide, if we can make a finding that verifies the potential validity of the right you are asserting, then we will document that finding for you, and work with you in defining the scope of your right.

**12.34 – Exhibit 01--continued**

Please provide us with as much evidence as you can in support of your claim to an outstanding right in this case. I request that you do so by **[Enter appropriate date here]**. If we don't hear from you by then, we will proceed under the assumption that you no longer wish to pursue your claim to this right. We will then require that you obtain a special use authorization for your continued use, operation, and maintenance of this facility on National Forest System land.

If we can be of further assistance in your gathering of evidence to respond to this request, please contact **[Insert name/address/phone number of appropriate contact person here]**. I look forward to hearing from you on this case, and receiving any evidence you may want us to evaluate in support of it.

Sincerely,

**[NAME]**

**[TITLE]**

Enclosure (1)

**12.35 - Review Information Submitted for Sufficiency**

Ensure there is sufficient information from the claimant. When the claimant has provided to the Authorized Officer all the supporting evidence to secure, then the case should be forwarded to a designated member of the Regional Office-Lands Staff for review and evaluation. If warranted, the Regional Office-Lands Staff will consult with OGC as part of the agency's evaluation of the evidence provided.

**12.35a - Prepare Title File for the Office of the General Counsel Review**

If warranted, the Regional Office-Lands Staff will consult with the OGC as part of the agency's evaluation of the evidence provided. As part of this consultation, a Title Opinion File, with all the facts documented, is usually submitted for OGC review.

**12.35b - Office of the General Counsel returns review of the Title File**

The Regional Office-Lands Staff will inform the Authorized Officer of the results of the administrative (and, where warranted, OGC) review and evaluation of the evidence in each case and will recommend to the Authorized Officer a proposed finding with respect to the potential validity of the claim being made.

### **12.35c - Notify Authorized Officer of Title Findings**

The Regional Office-Lands Staff will inform the Authorized Officer of the results of the administrative (and, where warranted, OGC) review and evaluation of the evidence in each case and will recommend to the Authorized Officer a proposed finding with respect to the potential validity of the claim being made.

### **12.36 - Authorized Officer either Verifies or Denies Potential Validity of Claim**

Upon receipt of the recommendations of the Regional Office-Lands Staff, the Authorized Officer will make a determination to either verify or deny the potential validity of the claim(s) being made.

Where the evidence provided supports a finding that there is a high potential of the existence of a valid outstanding right, see 12.34 – Exhibit 01, and for a potentially valid right please see 12.38 – Exhibit 01.

Where the evidence provided is inadequate or insufficient to support a claim to the existence of a potentially valid right, the claimant will be informed of such a determination using the language provided in 12.37 – Exhibit 01.

### **12.37 - Notify Claimant**

1. **If denied.** If review of the evidence provided finds that it is inadequate for the Authorized Officer to make a determination of a potentially valid right pursuant to the Act of July 26, 1866, use the following 12.37 – Exhibit 01 to notify claimant of insufficient evidence to support a potentially valid claim.
2. **If accepted.** If the Authorized Officer makes a determination that verifies the potential existence of a valid outstanding right, then, per sample letter 12.37 – Exhibit 02, the Authorized Officer will offer to meet with the claimant. This letter is available in the TCEMS application under Sample Letters / RS 2339 Templates folder.
3. The Forest Service does not have the statutory authority to legally validate claims to real property interests in Federally owned lands. Neither are we authorized to issue a deed to formalize this potentially valid right. At such a meeting, every possible effort will be made to identify and agree upon those operation and maintenance activities which both the Forest Service and claimant will recognize as being within the scope of the asserted right.

**12.37 – Exhibit 01**  
**Finding of Insufficient Evidence**

United States Department of Agriculture  
Forest Service  
File Code: 5520/2720  
[Date]

**[NAME/ADDRESS OF PERSON ASSERTING  
CLAIM TO AN RS 2339 OUTSTANDING RIGHT]**

Dear [Name of Claimant]:

I am responding to the evidence that you provided to this office on **[Insert date when evidence was presented/received from claimant]** in support of your claim to a statutory right under the Act of July 26, 1866 (RS 2339). That Act granted certain rights to use and occupy Federal land with water development facilities. You are asserting that the rights granted by this Act apply to your facility, known as the **[Insert appropriate name/location of facility here]**, on the **[Name]** Ranger District of the **[Name]** National Forest.

In my letter to you dated **[Enter appropriate date here]**, I outlined the limitations and applications of the rights granted by the above-referenced Act. I asked that you provide evidence which would demonstrate that your facility was constructed and in place on or before **[Enter appropriate date here]**, the date that the National Forest System land which your facility now occupies was reserved from the public domain.

My review of the evidence you have provided finds that it is inadequate for me to make a determination that you have a potentially valid right pursuant to the Act of July 26, 1866. Therefore, you have not adequately demonstrated that this particular facility meets the conditions necessary to qualify as a potentially valid outstanding right to use and occupy the National Forest System land on which it is situated.

This finding is not an administratively appealable decision. If you disagree, the appropriate remedy for resolving your differences with this finding is in Federal court, through the filing of a claim pursuant to the Quiet Title Act of 1972.

In the interim, if you wish to continue your use of these facilities, they need to be administered as a special use of National Forest System land under 36 CFR §§ 251.50 - 251.65. As such, you will need to apply for a special use authorization for this use and occupancy. If interested in securing such an authorization, please contact **[Enter appropriate name/phone number]** and



**12.37 – Exhibit 01--continued**

she/he will arrange to have an application provided to you. If you choose not to secure a special use authorization, then we will administer your facility as an unauthorized use and occupancy and provide you with a reasonable period of time within which to dismantle and remove it from National Forest System land.

If you have any questions or concerns about this matter, please contact **[Name]** at your earliest convenience.

Sincerely,

**[Name]**

**12.37 – Exhibit 02**  
**Finding of Potential Validity**

United States Department of Agriculture  
Forest Service  
File Code: 5520/2720  
[Date]

**[NAME/ADDRESS OF PERSON ASSERTING  
CLAIM TO AN RS 2339 OUTSTANDING RIGHT]**

Dear [Name of Claimant]:

I am responding to the evidence that you provided to this office on **[Insert date when evidence was presented/received from claimant]** in support of your claim to a statutory right under the Act of July 26, 1866 (RS 2339). That Act granted certain rights to use and occupy Federal land with water development facilities. You are asserting that the rights granted by this Act apply to your facility, known as the **[Insert appropriate name/location of facility here]**, on the **[Name]** Ranger District of the **[Name]** National Forest.

We have reviewed and evaluated your evidence, and it appears that it supports your claim to an outstanding right, pursuant to the above-referenced Act. In making this finding, please be advised that the Forest Service does not have the statutory authority to legally validate claims to real property interests in Federally owned lands, nor to issue a recordable title instrument. This determination is for administrative purposes only, to determine that a special use authorization is not required for the use and occupancy of National Forest System land for routine operation and maintenance of water facilities within the scope of any right-of-way that existed at the date of reservation of such land for national forest purposes. 36 CFR § 251.50(e)(3).

Lacking such authority, I have instead made this administrative determination as to the potential validity of your claim to an outstanding right. Following as a formal statement of my findings:

I have reviewed the evidence you have provided in support of your claim to a right to use and occupy National Forest System land with your facility that [diverts water from "X" creek and transports to "Y" property, etc.]. The location of this facility is more particularly shown and described on Exhibit A, attached hereto. Based upon my review and evaluation of that evidence, I have determined that there is a high potential that you possess an outstanding right to use, operate, and maintain this facility on National

### 12.37 – Exhibit 02--continued

Forest System land, a right that was statutorily granted pursuant to the Act of July 26, 1866 (14 Stat. 254). The evidence suggests that as the owner of this facility, you are correspondingly the current holder of this potentially valid right.

Until and unless a court of competent jurisdiction, or a Federal agency who has the authority to do so, renders a decision to the contrary, the Forest Service will administer your claim as if it were in fact a valid outstanding right that encumbers the United States' fee title interest to the National Forest System land being occupied by this facility. We will make a notation of this determination to our land status records.

The rights granted by the Act of July 26, 1866, were limited to the right to use and occupy Federal lands for specific purposes. Therefore, the above statement references the fact that the underlying fee title to the land being used and occupied by your water facility remains in the name of the United States. As National Forest System land, the Forest Service has the authority to administer uses and occupancies of that land, including those being exercised pursuant to an outstanding right. Likewise, we have the authority to regulate any use or occupancy that may be occurring outside the identified scope of the right granted by the Act. Therefore, with this administrative determination comes the need for us to work together in defining and documenting what the scope of this right consists of.

To do so, I am proposing that we meet to discuss and agree upon a description of the scope of your right. We would like to define its scope in specific and measurable terms, by addressing the following aspects of your water facility and its use:

1. Its location/alignment (on a map?)
2. Its width (is it consistent for the entire length of the right-of-way?)
3. Size/location/design of the diversion structure
4. Design (open ditch? pipeline? flume? lined? unlined?)
5. Equipment needed for operation/maintenance (Hand tools? Equipment?)
6. Removal of vegetation/excavation needed as part of "typical maintenance"?
7. Any occasional need for "heavy maintenance" work??
8. Any proposed changes in design? (For example, open ditch to pipeline?)
9. Timing (At what time of the year does use/operation routinely occur?)
10. Volume of water that the facility carries (consistent with the water, right?)
11. Routes of access needed to/from the right-of-way for operation/maintenance?
12. Ancillary facilities needed to protect the right-of-way (fences, gates)?
13. Motorized vs. nonmotorized means of access?
14. What is the most commonly used route of access for use/operation/maintenance?

### 12.37 – Exhibit 02--continued

Using these criteria as a start point, we want to come to an agreement with you as to the scope of the right. We then will want to document that agreement for the mutual benefit of us both, AND for the benefit of future owners of this facility, and future Forest Service staffs responsible for recognizing and administering uses associated with this outstanding right. We hope you agree that doing so will be in everyone's best interest.

Please contact **[Appropriate name/phone number]** of this office at your earliest convenience to set up a meeting place and time. You can also contact (him/her) with any other questions or concerns about this determination regarding your outstanding rights claim.

Sincerely,

**[Name]**  
**[Title]**

### 12.38 - Define Scope of Potentially Valid Right

1. The Scope of the potentially valid right will be documented in a detailed narrative, in a follow-up letter to the claimant. Language used in that letter to define the scope of the potentially valid right will be, to the greatest extent possible, clear, objective and measurable. It will provide a common understanding between the claimant and the Forest Service as to those activities associated with the use, operation and maintenance of the subject facility considered to be within the scope of the asserted right. See 12.38 – Exhibit 01 below. Language included in 12.38 – Exhibit 01 can be used as a basis in preparing a definitive description of the scope of a verified assertion to a potentially valid right. This letter is available in TCEMS, in the Sample Letters / RS2399 Templates folder.
2. Map of non-binding Outstanding Right should also be included.
3. Prepare and submit Permanent Case File to Land Status. In cases where the Authorized Officer has verified that there is a high potential for the existence of a valid outstanding right, upon completion of all the prior activities, the Authorized Officer will prepare a 5590-OUTSTANDING FEDERAL GRANT case file. It will include the following information:
  - a. Copies of all evidence provided by the claimant in support of their claim to a right.
  - b. Copies of the Forest Service's evaluation of the claimant's evidence, and all documented responses/recommendations that were made thereto.

- c. A copy of the Authorized Officer's determination letter (see 12.37 – Exhibit 02).
- d. A copy of the Authorized Officer's letter to the claimant (facility owner) documenting the scope of the asserted right, including those activities which will be considered within the scope of the right and not requiring Forest Service approval or further authorizations (documented in a letter which resembles 13.14 – Exhibit 04).

Completed permanent case file will be sent to Regional Office-Lands Staff for posting to land status records and notifying BLM.

### 12.38 – Exhibit 01

#### Documenting Scope of An RS 2339 Potentially Valid Right

United States Department of Agriculture

Forest Service

File Code: 5520/2720

**[Date]**

**[NAME/ADDRESS OF PERSON ASSERTING  
CLAIM TO AN RS 2339 OUTSTANDING RIGHT]**

Dear **[Name of Claimant]**:

In my **[Appropriate date]** letter to you, I made a determination that there was a high potential that you held a valid outstanding right to the use and occupancy of National Forest System land pursuant to the Act of July 26, 1866 (RS 2339).

On **[Date]**, you and **[Names/title of Forest Officers who met with claimant]** met to discuss and agree upon the various aspects of your use, operation, and maintenance of this facility which we will define as being the SCOPE OF YOUR RIGHT. This letter has been drafted to document our meeting, and what we agreed to in terms of defining the scope of your right to use and occupy National Forest System land with your water facility, as a result of my previous finding of the potential validity of such a right.

The scope of your right has been defined in the enclosed attachments. We will recognize the fact that your right authorizes you to conduct all activities we have defined as being within its scope, without the need to obtain a special use authorization from the Forest Service. As stated in our meeting, any activity associated with your use/operation/maintenance of this facility not

### 12.38 – Exhibit 01--continued

defined as being within the scope of your right will require you to contact the Forest Service in advance and obtain a special use authorization. This would include such proposals as increasing its capacity or changing its alignment.

If you agree with the enclosed documentation of our meeting on this subject, please sign the enclosed document and return it to **[Location]**. Upon receipt, I will approve and execute it, and an original will be returned to you for your records. We will retain a copy of this document for our administration of your activities associated with this outstanding right. If you have any questions or concerns about this documentation, please contact **[Name/phone number]**

Sincerely,

**[Name]**  
**[Authorized Officer]**

Enclosure (1)

### 12.4 - Quitclaim Act of 1930

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 consummated 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.

#### 12.41 - 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 consumated exchange because the vendor lacked title to conveyed land.

#### **12.42 - Processing**

When the Forest Supervisor determines to grant a quitclaim deed under section 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 OGC for legal review and opinion. If the Regional OGC agrees with the conveyance, the Regional OGC 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.

#### **12.43 - Conveyance Documents**

The examples shown in section 12.44 cover an application for quitclaim deed and quitclaim specimen. These samples are in the general form approved for Forest Service use. The Regional OGC 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 Regulations of the Attorney

General Governing the Review and Approval of Title for Federal Land Acquisitions, commonly referred to as the Department of Justice Title Standards.

#### 12.44 - 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.

12.44 – Exhibit 01 below shows a sample application for a 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 OGC.

#### 12.44 - 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]** in **[Type of record]—[book], [page]**, and that at such time no other person, firm, or corporation had any right, or was making any claim thereto, other than by



**12.44 - Exhibit 01--continued**

3. easement or mortgages, deed of trust, or other lien or encumbrance which had not been foreclosed.

Signed this date of **[Date]**.

Signed: **[Name]**

Signed: **[Name]**

**12.45 - 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 OGC. The Regional OGC shall review the documents for legal content under State law and other authorities.

12.45 – Exhibit 01 is a specimen of a Quitclaim Deed under the Adjustment of Land Title Act (Pub. L. 78-120). The wording for conveyance documents under other authorities may be developed with the help of the Regional OGC.

**12.45 – Exhibit 01**

**Quitclaim Deed (Pub. L. 78-120)**

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]**

Forest Service Handbook 5509.11 – Title Claims, Sales, and Grants Handbook  
Chapter 10 – Title Claims and Encroachments  
Amendment number: 5509.11-2024-1  
Effective date: February 6, 2024  
**12.45 – Exhibit 01--continued**

**(One hundred fifty-nine and 00/100 dollars)]**<sup>1</sup>; 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]**<sup>2</sup>

Estimated to contain **[2.91]** acres, more or less.

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

**[Signature or Authorized Executor]**

**[Name of Authorized Executor]**

**[Title of Authorized Executor]**

Forest Service  
Department of Agriculture

ACKNOWLEDGMENT <sup>3</sup>

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

<sup>2</sup> 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.

<sup>3</sup> The form, content, and acknowledgement to conform to State laws.

## 12.46 - Delivering and Recording Title Conveyance

1. **Quitclaim Deeds.** The Forest Service shall deliver to the grantee quitclaim deeds executed under Department of Agriculture authority such as the Small Tracts Act of 1983 (sec. 12.1), Public Law 78-120 (sec. 12.2), per the Quitclaim Act of 1930 (sec. 12.4). The BLM delivers to the grantee quitclaim deeds or patents executed under Department of the Interior authority such as the Color of Title Act of 1928.

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 BLM's procedure unless the Forest Service requests in specific cases that it receive the patent for delivery to the patentee.

## 12.5 - Color of Title Act of 1928

This 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 and application for patent with the State office of the 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.

### **12.51 - 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 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 OGC 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 the 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 NFS 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 13.11 – Exhibit 01: Notice of Intent to Impound Personal Property, 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?

## 12.6 - Wisconsin Land Title Act of 1954

When it is known that a claimant has applied for a Wisconsin land title patent involving NFS lands, the Regional Forester shall investigate the case. Upon completion of the investigation, the Regional Forester shall submit the information to the Regional OGC 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's 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 14 to investigate any claim for such land that appears to encroach upon National Forest ownership. Follow the outline in section 14.21 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 the BLM for resolution.

## **12.7 - 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 BLM may issue a document of disclaimer of interest or interests in lands. Claimants shall file applications involving Forest Service lands with the BLM who shall forward them to the Forest Service for recommendation.

### **12.71 - 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.

### **12.72 - Evaluation of Request.**

Prepare a title claim report (sec. 11.33). 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.

### **12.73 - Processing Responsibility**

1. The claimant files an application for a disclaimer of interest with the BLM. If the claim involves NFS lands, the 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 OGC and ask for the Regional OGC's opinion on the Forest Supervisor's recommended action.
5. The Regional Forester makes a recommendation and returns the case to the BLM for processing.
6. If the BLM agrees with the recommendation of the Regional Forester to disclaim interest identified in the application, the BLM issues a disclaimer document with a copy to the Regional Forester.
7. Post status records accordingly.
8. If the BLM agrees with the Regional Forester's recommendation not to disclaim interest identified in the application, the 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.

## **12.8 - 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.

### **12.81 - Processing**

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

If the application is turned down by the 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 - Resolution of Invalid Claims, Trespass and Encroachments

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

#### 13.1 - Removal of Structures

If encroachments of structures are found to be located on the National Forest, it is very important to work closely with Forest Service Law Enforcement to ensure proper procedures are being followed for proper removal of any structures.

##### 13.11 - Notify an Unknown Encroacher

1. In some situations, we will receive a report of improvements or unauthorized uses on the National Forest, but through the investigation stage have not been able to discover a name or contact information for the encroacher. In these situations, we depend upon public notice to try to contact them prior to taking action on their property. The basic steps are:
  - a. **Create Removal Notice.** If the encroacher is unknown and the situation involves Personal Property, then follow guidance in 36 CFR 262.12 - Impounding of Personal Property and Removal: "In the event the local Forest Officer does not know the name and address of the owner, impoundment may be effected at any time 15 days after the date a notice of intention to impound the property in trespass is first published in a local newspaper and posted at the county courthouse and in one or more local post offices. A copy of this notice shall also be posted in at least one place on the property or in proximity thereto."

This activity involves working closely with Law Enforcement to prepare a *Notice of Impoundment* and a *Legal Notice* to be published in the Legal Section of the local newspaper(s). See 13.11 – Exhibit 01 for an example of such a notice; this is also available in the TCEMS application in Sample Letters/Removal folder.

The Notice of Impoundment is laminated and physically attached to the improvements. It is a common practice (for safety purposes) to invite Law Enforcement to accompany the field contact when physically attaching the Notice of Impoundment on the improvements. The Notice of Impoundment must also be posted in one or more local post offices. Be aware that the local newspaper or the post office closest to the location of an encroachment, may not be the same as the local newspaper or post office closest to the Forest Service office handling the case, so use common sense.



- b. **Create a Legal Notice.** To advise of pending impoundment, create a legal notice and publish in a local newspaper. While the regulations provide for a 15-day notice, the local Authorized Officer may provide additional time (30, 45, or 90 days) depending on whether or not the encroachment is accessible or in a remote location. The season of year may also limit the ability to physically post a Notice of Impoundment on the encroaching improvements, or for the unknown owner to remove them.

If the encroacher is unknown and the situation involves **Real Property** then we use a process similar to the process for impounding property, while also using guidance from the Law Enforcement FSM 5335 - Occupancy and Use; and Handbook FSH 5309.11, section 23.2 - Actions to stop illegal occupancy.

This activity involves working closely with Law Enforcement to prepare a *Notice of Removal* and a *Legal Notice* to be published in the Legal Section of the local newspaper(s). The Notice of Removal is laminated and physically attached to the improvements, if there is active construction or maintenance going on, then the Notice of Removal should also include a notice to suspend work. It is a common practice (for safety purposes) to invite Law Enforcement to accompany the field contact when physically attaching the Notice of Impoundment on the improvements. The Notice of Removal must also be posted in one or more local post offices. Be aware that the local newspaper or post office closest to the location of an encroachment or trespass may not be the same as the local newspaper or post office closest to the Forest Service office handling the case, so use common sense.

If the person is engaged in constructing or maintaining any unauthorized building or other structure, or any unauthorized road, trail, or other improvement on NFS land, give the person notice to suspend work. See FSM 2810 for direction on structures or impoundments relating to mining claims.

Allow reasonable time for the removal of any such structures.

2. Law enforcement personnel shall not destroy real property without the advice of the U.S. Department of Agriculture, OGC, or by court order. Make an attempt to get the owner to remove unauthorized property, both real and personal. If an owner refuses to remove the property, then advise and consult with OGC for direction on how to move forward.
  - a. **Attach Removal Notice to Improvements.** The Notice of Impoundment for personal property or the Notice of Removal for real property is laminated and physically attached to the improvements. It is a common practice (for safety purposes) to invite Law Enforcement to accompany the field contact when

physically attaching the Notice on the

- b. **Publish Legal Notice.** A *Legal Notice* describing improvements and their location, is to be published in the Legal Section of the local newspaper(s). The Legal Notice must also be posted in one or more local post offices and at the local courthouse. Be aware that the local newspaper or post office closest to the location of an encroachment, may not be the same as the local newspaper or post office closest to the Forest Service office handling the case, so use common sense.
- c. **A Legal Notice is Prepared and Published in a Local Newspaper.** While the regulations provide for a 15-day notice, the local Authorized Officer may provide additional time (that is, 30, 45 or 90 days) depending on the whether or not the encroachment is accessible or in a remote location. The season of year or weather may also limit the ability to physically post a Notice of Impoundment on the encroaching improvements, or for the unknown owner to remove them.
- d. **Inform Neighboring Landowners.** When an encroachment is along a boundary and there are several adjacent landowners, a letter may be sent to each letting them know that we intend to impound (personal property) or remove (real property) the improvements. This provides an opportunity for an adjacent landowner to let us know whether or not the improvements belong to them. If they identify themselves, we work through the Known Encroacher set of activities. See 13.11 – Exhibit 02 below.

### 13.11 – Exhibit 01

#### Notice of Intent to Impound Personal Property (FSM 5330)

Notice is hereby given, pursuant to Regulations of the Secretary of Agriculture, 36 Code of Federal Regulations (CFR) 262.12, that personal property upon National Forest System Lands or other lands under Forest Service control is now in violation of law or regulation:

Legal Description	Ranger District	National Forest or Grassland	State
[Mount Diablo Meridian, Nevada T.1.N., R. 21 E., Sec.18, NW1/4SE1/4]	[White Mountain Ranger District]	[Inyo National Forest]	[Nevada]

Forest Service Handbook 5509.11 – Title Claims, Sales, and Grants Handbook  
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Amendment number: 5509.11-2024-1  
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**13.11 – Exhibit 01--continued**

The personal property is described as follows: **[Travel trailer, boat, vehicle, couch, and movable shed]**.

May be impounded by the United States Forest Service on or after **[Date]**, if the same has not previously been removed permanently from the above-described lands.

After the impoundment, the owner may regain possession by contacting the **[District Ranger or Forest Supervisor]** at **[Address and phone number]** and paying the costs of advertising, removing, and storing the property. If the property is not redeemed prior to **[Number days after date of impoundment]** it may be offered for sale at public auction after that date.

Property not sold at public sale may be sold at private sale or otherwise disposed of as provided by Secretary of Agriculture Regulation 36 CFR 262.12.

Signed at:

**[White Mountain Ranger Station]**

This day of: **[Date]**

**[Name and Signature]**

**[Title]**

**[District Ranger]**

**13.11 – Exhibit 02**

**Notice for Removal of Real Property (FSM 5330)**

Notice is hereby given that pursuant to Regulations of the Secretary of Agriculture, 36 CFR 261.10 (a), “Constructing, placing or maintaining any kind of road, trail, structure, fence, enclosure, communication equipment, or other improvement without a permit” is now in violation of law or regulation, and must be removed by direction of the U.S. Department of Agriculture, Forest Service on or before **[Give a minimum of 90 days after the date of publication]**.

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**13.11 – Exhibit 02--continued**

Legal Description	Ranger District	National Forest or Grassland	State
[Mount Diablo Meridian, Nevada T.1.N., R. 21 E., Sec.18, NW1/4SE1/4]	[White Mountain Ranger District]	[Inyo National Forest]	[Nevada]

The real property is described as follows: **[Travel trailer, boat, vehicle, couch, and movable shed]**.

Failure to comply with this removal notice could result in seizure of the improvements, a fine as directed under Title 18 of the United States Code (see 18 U.S.C. 3571), or imprisonment of not more than six months, or both (Title 18 U.S.C. 1863).

Signed at:

**[White Mountain Ranger Station]**

This day of: **[Date]**

**[Name and Signature]**

**[Title]**

**[District Ranger]**

### **13.12 - Create Internal Removal Plan**

In instances where the Forest Service has not been able to identify the encroacher, or where the encroacher is uncooperative in removing their improvements, we may need to develop a removal plan to be implemented by the Forest Service.

For either personal property or real property, make sure there is mutual agreement with Law Enforcement that all of the appropriate steps have been completed before removing the improvements and restoring the site.

### **13.13 - Implement Internal Removal**

Upon approval of the Authorized Officer, and based upon a mutual understanding with Law Enforcement, Forest Service employees remove improvements and restore the site.

### 13.14 - Notify a Known Encroacher

1. **Create Removal Letter.** When the encroacher is known, prepare a reasonable but firm letter using the proper exhibits for **Personal Property** (see 13.14 – Exhibit 01) and for **Real Property** (see 13.14 – Exhibit 02). Be sure to use the correct template. Stat the improvements that need to be removed from National Forest Service land, and send it. The encroaching party or unauthorized occupant should sign the removal plan prior to the Authorized Officer's signature. The contents of this letter are similar in content to the Notices for an unknown person. Be sure to follow up on the removal letter.
2. **Negotiate Removal Plan.** Where possible meet with the encroacher or unauthorized occupant and negotiate removal of the improvements. In most cases, the role of the Forest Service is to specify "what" needs to be done as it relates to removal of improvements and site restoration, while allowing the encroaching party to propose "how" they will accomplish removal and site restoration. In an ideal situation agreement on the removal plan can be completed in one meeting. At other times, there may need to be a couple of iterations between the Forest Service and the encroaching party before agreement can be reached. Seek to reach agreement on a removal plan expediently.
  - a. 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 provide all reasonable assistance within the law and shall not place serious obstacles in the way to settlement. See chapter 20, section 21 for relief for certain cases under the Small Tracts Act.

- b. 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.
3. **Sign Removal Plan.** Both parties need to sign the removal plan. The encroaching party or unauthorized occupant should sign the removal plan prior to the Authorized Officer.
4. **Execute Removal Plan.** Once there is a signed removal plan it is up to the unauthorized occupant or encroacher to implement the plan. In complicated cases, or sensitive areas, Forest Service employees may need to monitor implementation of the plan.
5. **Create Second Removal Letter.** There are times when the initial removal letter fails to obtain the desired results. Examples of possible scenarios are listed below.
  - a. The encroacher may ignore the initial letter and/or fail to respond.
  - b. The encroacher may have reached agreement on removal of the improvements but failed to take any action.
  - c. The encroacher may have started removing the improvements but has failed to complete actions agreed upon in the removal plan; or is taking actions contrary to those agreed upon.

Contents of this second letter must specifically address the case situation. Whatever the circumstances, the second letter clearly states consequences for failure to comply with the removal plan (if there is one) or failure to comply due to lack of a response.

By this time in case processing, it may be necessary to include the Regional Office and/or OGC in review of the case and approval of the second demand letter.

There are separate templates for **Personal Property** (see 13.14 – Exhibit 03) and for **Real Property** (see 13.14 – Exhibit 04). Be sure to use the correct template.

Be sure to follow-up on the second removal letter.

6. **Create Third Removal Letter.** There are situations where the initial letter and the second letter have failed to produce the desired result of removal of the improvements and site restoration.

If the first two letters have failed to result in compliance with law, regulation, and agency policy, then we have the option of filing a Notice of Encroachment against the property owner. This would have the effect of clouding title to the adjacent landowner's (the encroacher's) property. It also places prospective buyers on notice that a problem exists and protects them from possible ownership concerns in the future.

The third removal letter includes a copy of the Notice of Encroachment and advises the encroacher of our intent to file this notice in the county or borough records within a certain time frame if the landowner fails to cooperate and remove their property from NFS lands. This action must be pre-approved by OGC.

7. **Create Notice of Encroachment.** In some instances, rather than initiating civil or criminal action against the encroacher, the Forest Service determines the best course of action is to file a Notice of Encroachment. In cases where the adjacent landowner refuses to remove their items, or contests the boundary location, the Forest Service may record a document with the local county or borough attesting to the fact that improvements have been placed on NFS lands. This would have the effect of clouding title to the adjacent owner's property. It also places prospective buyers on notice that a problem exists and protects them from possible ownership concerns in the future.

Never use a Notice of Encroachment without a legal land survey and prior approval from OGC. Use the template for Notice of Encroachment upon approval by OGC found in the TCEMS application, Sample Letters / Removal folder. See 13.14 – Exhibit 05.

8. **Record Notice of Encroachment.** After sending the third removal letter with a Notice of Encroachment to the unauthorized occupant or encroacher, record the Notice of Encroachment in the county or borough recorder's office where the encroachment or trespass occurred. The recording costs are part of the program responsibility.

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9. **Terminate Notice of Encroachment.** If after filing a Notice of Encroachment, the encroachment is resolved and field verified, then make sure to file a Terminate Notice of Encroachment in the county or borough records. Use the terminate Notice of Encroachment template in Sample Letters / Removal folder in TCEMS. See 13.14 –

**13.14 – Exhibit 01**

**First Notice for Removal of Personal Property**

United States Department of Agriculture  
Forest Service  
[Date]

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

[Name of Encroacher]  
[Address of Encroacher]

RE: Occupancy Trespass

Dear [Encroacher's Name]:

I am writing to you regarding *personal property* that encroaches onto National Forest land. The **[describe in detail the personal property items such as boat/trailer, swing set/playhouse, doghouse, wood pile, etc.]** located at **[provide a specific location such as 101 Wagon Wheel Road, in the community of Running Springs (Assessor's Parcel Number 0297-201-45, XXX County)]**, for which you are the owner of record. By this letter we are providing you with official notification of the violation and issuing a formal request that the items described above be removed from National Forest Land.

On **[Date]** a Forest Employee discovered the personal property items described above have been illegally placed on National Forest Land. Placement of personal property on Federal land without permission constitutes an illegal trespass and violation of Federal law. With this letter we are providing you with official notification of the violation and issuing a formal request that the items described above be permanently removed from National Forest Land on or before **[Date]** (*give a date not less than 15 days from date of this letter*).

Failure to comply with this request could result in impoundment of your property. After the impoundment, you may regain possession by contacting **[Name of Authorized Officer]** at **[address, phone]**; by providing proof of ownership, and paying the costs of advertising, removing, and storing the property. If the property is not redeemed prior to **[Date]** it may be



**13.14 – Exhibit 01--continued**

offered for sale at public auction after that date. Failure to redeem the property within 90 days of the impoundment date will result in its disposal as provided for in 36 CFR 262.12.

We encourage you to contact this office at **[phone number]** to discuss complying with this request or to ask any questions you may have.

Sincerely,

**[Name of District] [Ranger or Forest Supervisor]** <sup>4</sup>

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<sup>4</sup> Check local Delegations of Authority for your Region, Forest, and District in FSM 1230

Forest Service Handbook 5509.11 – Title Claims, Sales, and Grants Handbook  
Chapter 10 – Title Claims and Encroachments  
Amendment number: 5509.11-2024-1  
Effective date: February 6, 2024  
**13.14 – Exhibit 02**

**First Notice for Removal of Real Property**

United States Department of Agriculture  
Forest Service  
[Date]

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

[Name of Encroacher]  
[Address of Encroacher]

RE: Occupancy Trespass

Dear [Encroacher's Name]:

I am writing to you regarding *real property* that encroaches onto National Forest land. The [describe in detail the real property items such as house, garage, barn, driveway, fence, garden, satellite dish, well or waterline, etc.] located at [provide a specific location such as 1001 Dredge Lake Road, in the community of Gold Creek (Assessor's Parcel Number 0457-901-64, XXX County)], for which you are the owner of record.

On [Date] a Forest Employee discovered the improvements described above were on National Forest Service land. Placement of private improvements on Federal land without permission constitutes an illegal trespass and violation of Federal law. With this letter we are providing you with official notification of the violation and issuing a formal request that the items described above be removed from National Forest Land by [Date].

*(If there is any evidence of ongoing construction or maintenance, then include a notice to stop work.)*

Failure to remove the illegal improvement(s) could result in a citation for trespass under Section 36 of the Code of Federal Regulations paragraph 261.10 (a), "Constructing, placing or maintaining any kind of road, trail, structure, fence, enclosure, communication equipment, or other improvement without a permit."

We encourage you to contact [Name of employee] at [Address and phone number] to discuss complying with this request or to ask any questions you may have.

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**13.14 – Exhibit 02--continued**

Sincerely,

**[Signature of Authorized Officer]**

**[Name of District] [Ranger or Forest Supervisor]** <sup>5</sup>

**13.14 – Exhibit 03: Second Notice for a Cooperative Property Owner**

File Code: 5510

**[Date]**

**[Property Owner Name]**

**[Property Owner Address]**

Re: Property Encroachment

Dear **[Property Owner Name]**:

This letter serves as a follow up to our discussion on **[Date]**, which took place at **[Location]**. *(or refer to a prior letter)*

As we discussed with you, during routine boundary line maintenance by Forest Service personnel, the following (personal or real property items) were found to be encroaching on National Forest System (NFS) lands in **[Section]**, **[Township]**, **[Range]**, **[Meridian]**, **[State]**:

- 1. [Item of encroachment]**
- 2. [Item of encroachment]**
- 3. [Item of encroachment]**

The boundary line in question was established in **[Year]**. As you stated during our conversation, you were aware of the property line location prior to placing the above improvements on public land. You must remove the unauthorized improvements from NFS lands and restore the property, no later than **[Date]**. Restoration of the site shall include the following:

- **[Removal of...]**
- **[Removal of...]**
- **[Cease and desist maintenance of...]**
- **[This area should be re-seeded with an approved seed mixture...]**

Removal of these items and completion of site restoration by **[Date]**, will be considered as resolution of this matter. However, if these items are not completed, or if future trespass

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<sup>5</sup> Check local Delegations of Authority for your Region, Forest, and District in FSM 1230.

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**13.14 – Exhibit 03--continued**

occurs, the matter will be pursued through appropriate law enforcement and legal actions.

I appreciate your willingness to work with us and look forward to your continued cooperation. If you have any questions regarding this matter, please contact **[Name, Title, Name of Ranger District, Name of National Forest at (area code), phone number]**.

Sincerely,

**[Signature Authorized Officer]**  
**[District Ranger or Forest Supervisor]**<sup>6</sup>

**13.14 – Exhibit 04**

**Second Notice for an Uncooperative Property Owner**

**United States Department of Agriculture**  
**Forest Service**  
**[Date]**

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

**[Encroacher Name]**  
**[Encroacher Address]**

RE: Property Encroachment

Dear **[Encroacher Name]**:

I am writing to you regarding real property that encroaches onto National Forest land. This is a follow up letter to one we sent you on **[Date]**. **[The driveway services the property at 101 Wagon Wheel Road, in the community of Running Springs (Assessor's Parcel Number 0297-201-45, San Bernardino County)]**, for which you are the owner of record.

On **[Date]** a forest employee verified the property line and discovered that **[Examples of real property: 6 feet of your driveway; barn, garage, sheds, fences]** was placed on National Forest

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<sup>6</sup> Check local Delegations of Authority for your Region, Forest, and District in FSM 1230.

Forest Service Handbook 5509.11 – Title Claims, Sales, and Grants Handbook  
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**13.14 – Exhibit 04--continued**

Land. Placement of private improvements on Federal land without a permit constitutes an illegal trespass and violation of Federal law.

If, after the date of the issuance of the citation, you have not complied within 30 days with this request, all property in trespass will be subject to confiscation and removal by government contract. You will be held responsible for all costs incurred and billed for the removal of the illegal improvement, plus you may be subject to a fine.

Law Enforcement Officer **[Name]** of our office has been assigned to oversee the resolution of this trespass. We encourage you to contact this office at **[Phone Number]** to resolve complying with this request or to ask any questions you may have.

Sincerely,

**[Signature Authorized Officer]**  
**[District Ranger or Forest Supervisor]** <sup>7</sup>

**13.14 – Exhibit 05: Third and Final Notice for an Uncooperative Property Owner**

**NOTICE OF ENCROACHMENT**

*(Do not use without having a legal survey AND Regional OGC case specific approval, even though the form has already been reviewed and approved by Washington Office OGC.)*

It appears that the person or persons responsible for the encroachment without authority on the land described below is the owner of record:

**[Name]**  
**[Address]**

I, **[Name]**, District Ranger of the **[Name of District]** Ranger District, **[Name of National Forest]** National Forest, USDA-Forest Service, hereby certify that on **[Date]**, qualified employees under my supervision and direction made a personal inspection and examination of that certain National Forest System land as described above and found that said parcel is being encroached upon by **[Describe items]**, and that said items are unauthorized uses of National Forest System

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<sup>7</sup> Check local Delegations of Authority for your Region, Forest, and District in FSM 1230

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**13.14 – Exhibit 05--continued**

lands. This encroachment was identified as a result of a survey, **[Record of Survey Number]**, of the aforesaid lands dated **[Date]**, and on file in **[Name of County]** County Records.

The purpose of this NOTICE is to place in the records a notification that said encroachment is an unauthorized use of National Forest System land.

Provided that if the District Ranger determines that the encroachment has been resolved, the Notice of Encroachment shall terminate.<sup>8</sup> Time termination shall be evidenced by a statement in recordable form furnished by the appropriate District Ranger to the landowner, heirs, or assigns in interest.

**[Authorized Officer]**, Forest Service, U.S. Department of Agriculture  
**[Date]**

**ACKNOWLEDGEMENT**

STATE OF **[State]**  
COUNTY OF **[County]**

On the day of **[Date]**, before me **[Name]**, a Notary Public within and for said State, personally appeared **[Name]** District Ranger **[Name]**, Ranger District **[Name]**, National Forest, USDA-FS, and the same person who executed the within and foregoing instrument, who, being by me duly sworn according to law, did say that he is the District Ranger **[Name]**, Ranger District **[Name]**, National Forest, USDA-FS, and that said instrument was signed in behalf of the United States of America by its authority duly given and by him delivered as and for its act and deed. And he did further acknowledge that he executed said instrument as the free act and deed of the United States of America, for the purposes and consideration herein mentioned and set forth, and I do hereby so certify.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal the day and year above written.

**Notary Public for the State of [State]**

SEAL

Residing at **[Address]**

My commission expires **[Date]**

\_\_\_\_\_

<sup>8</sup> Check local Delegations of Authority for your Region, Forest, and District in FSM 1230.

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**13.14 – Exhibit 06: Termination of Notice of Encroachment**

*(Do not use without having a Legal Survey AND prior OGC approval)*

**[Owner of Record Name]**

**[Owner of Record Address]**

Legal Survey Description: (as provided in the land survey, or certified by a surveyor)

**[Mount Diablo Meridian, Nevada T.1.N., R. 21 E.,  
Sec.18, NW1/4, NE1/4SE1/4SW1/4 and NW1/4SE1/4.]**

The area described contains **[210.00]** acres.

THIS TERMINATION OF NOTICE OF ENCROACHMENT dated this **[Date]** day of **[Month]**, **[Year]**,  
by the United States of America, acting by and through the Forest Service, U.S. Department of  
Agriculture,

WHEREAS, a NOTICE OF ENCROACHMENT, dated **[Date]**, was filed by the United States of  
America on **[Date]**, in Book **[Insert Number]**, of Deeds, Page **[Number]**,  
County of **[County]**, State of **[State]**.

NOW THEREFORE, this TERMINATION OF NOTICE OF ENCROACHMENT is executed for the  
purpose of showing that it has been determined that the encroachment has been resolved and  
that the NOTICE OF ENCROACHMENT is hereby terminated and canceled.

IN WITNESS WHEREOF, the United States of America by its duly authorized representative, has  
executed this TERMINATION OF NOTICE OF ENCROACHMENT on the day and year first above  
written.

UNITED STATES OF AMERICA

**[Authorized Officer]**, Forest Service, U.S. Department of Agriculture  
**[Date]**

ACKNOWLEDGEMENT

STATE OF **[State]**

COUNTY OF **[County]**

**13.14 – Exhibit 06--continued**

On the day of **[Date]**, before me **[Name]**, a Notary Public within and for said State, personally appeared **[Name]** District Ranger **[Name]**,<sup>9</sup> Ranger District **[Name]**, National Forest, USDA-FS, and the same person who executed the within and foregoing instrument, who, being by me duly sworn according to law, did say that he is the District Ranger **[Name]**, Ranger District **[Name]**, National Forest, USDA-FS, and that said instrument was signed in behalf of the United States of America by its authority duly given and by him delivered as and for its act and deed. And he did further acknowledge that he executed said instrument as the free act and deed of the United States of America, for the purposes and consideration herein mentioned and set forth, and I do hereby so certify.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal the day and year above written.

**Notary Public for the State of [State]**

SEAL

Residing at **[Address]**

My commission expires **[Date]**

**13.15 - Verify Removal**

At the end of the timeline established in the removal plan, if not already being monitored, a Forest Service employee will make a site inspection and verify removal of improvements and site restoration has been completed as agreed upon in the removal plan.

**13.16 - Cancel Removal Resolution**

In some situations, the encroacher may present sufficient evidence to warrant a re-evaluation of the information. This could potentially lead to selection of an alternative resolution method. If so, then cancel the Removal Method, and record the reasons why the removal was cancelled in TCEMS.

**13.2 - Special Use Authorization**

1. The primary focus of the Title Claims and Encroachments program is the defense and protection of the lands and title of the public's estate managed by the Forest Service. We are responsible for protecting the NFS lands to ensure the public estate does not continue to erode. Existing statutes, regulations, or the Manual do not provide for the resolution of encroachments through SUAs.

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<sup>9</sup> Check local Delegations of Authority for your Region, Forest, and District in FSM 1230.



SUAs are not to be used to delay encroachment resolution. Do not issue a SUA 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 land ownership status by the claimants' acceptance of the evidence of Federal ownership or by court action adjudicating Federal ownership.

2. SUAs are not an acceptable resolution method, and they are not a tool for managing encroachments. This is national policy and should be adhered to. In the past, when an authorization was issued in an encroachment situation, the title problem becomes magnified if the authorization covers a more or less permanent structure or includes land which significantly improves the value or usability of the private parcel.
3. Issuance of a SUA in encroachment cases complicates or may void the Government's title claim to the property involved.
  - a. It provides appeal rights and can complicate getting an encroachment removed.
  - b. If we wish to take legal action for removal, the U.S. Attorney will not support any claim of damages for something we previously identified as acceptable occupancy.
4. In the TCEMS data base, SUAs will not be an option for resolution. If a SUA has been issued in the past, based on certain expectations of resolution in the future, the case may be entered into TCEMS as an encroachment or a trespass with a status of "on hold" with no resolution method identified. The case notes will identify what the specific circumstances are in relation to the encroachment and what the expected future action will be to resolve it. Having it in TCEMS as an encroachment will allow it to be monitored to ensure the expected action is completed.
5. Do not enter **expired** SUAs into TCEMS as a trespass, encroachment or title claim. Use the authority of the SUA to resolve non-compliance issues and removal of any improvements.

### 13.3 - Land Exchange

36 CFR 254, subpart A, does not provide Land Exchange as an option to resolve trespass or encroachments. However, for qualified cases see the Small Tract Act in 36 CFR 254, subpart C.

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.

### **13.31 - 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 provide all reasonable assistance within the law and shall not place serious obstacles in the way to settlement. See chapter 20, section 21 for relief for certain cases under the Small Tracts Act.

### **13.4 - 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 NFS lands.
3. Upon notification that a Department of Interior decision declaring the claim null and void is administratively final, the Responsible Official 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 Responsible Official 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 a Title Claim and Encroachment report see 11.33, if not prepared previously; include pertinent mining claim-related information. Refer to FSM 2810 for supplemental information.

## **14 - Litigation**

The Real Property Quiet Title Act (Pub. L. 92-562; 86 Stat. 1126; U.S.C. 2409a, 1972). The Federal district courts shall have exclusive original jurisdiction of civil actions under Section 2409a to quiet title to an estate or interest in real property in which the United States claims an interest.

### **14.1 - Scope**

The Quiet Title Act provides as follows:

1. The United States may be used in a Federal Court to litigate most real property interest with the exception of security interest, water rights, or Indian land.
2. The United States shall not be disturbed in its possession of real property or interest therein pending outcome of the trial and may elect to retain interest if the decision is adverse by paying just compensation as established by the court.
3. Civil action against the United States is barred unless commenced within 12 years from the date the plaintiff or predecessor in title knew or should have known of the United States' claim of title. A recorded deed or other acts of possession in the name of the United States shall serve as constructive notice of claim of title by the United States.
4. Nothing in Section 2409a shall be construed to permit suits against the United States based on adverse possession.

### **14.2 - Procedures**

When the plaintiff or predecessor in title has filed a lawsuit against the United States under Public Law 92-562, proceed as follows.

Upon receiving word of the suit, immediately begin assembling documents and other information needed for preparation of the litigation report.

Use the specific Litigation Report format in section 14.21, or refer to the Title Claim and Encroachments report for all cases concerning title claims, sales, and grant cases. Also, see general direction under FSM 1548.11 and FSM 1570.

If items required in the litigation are in the Federal Records Center, use your shelf list and make your request for documents by telephone. Explain the urgency of prompt delivery.

### **14.21 - Prepare Litigation Report and Assemble documents for Litigation**

The Regional Forester is responsible for preparation of the final Litigation Report in consultation with the Regional OGC. The Regional Forester may request delegated authority from the Chief to handle routine and emergency cases directly with the U.S. Attorney. FSM 5511.11c.

Use the specific Litigation Report format (see 14.21 – Exhibit 01 below). Please also refer to the Title Claim and Encroachment Report (sec. 11.33) as a reminder list of items needed for the litigation report. Further, see general direction under FSM 1548.11 and FSM 1570. Carefully study all letters and documents received about the case. Pay particular attention to all details in correspondence from the Regional OGC or the U.S. Attorney. Prepare you own list of requested information.

Prepare the original and five copies of the reports within established time limits to meet court-imposed action dates. Include the abstract, the transcript, and other voluminous attachments in the original copy only.

To expedite review, prepare the report in two separate sections: the narrative section and the exhibits section. Attach both sections to the top of the file. Attach the narrative section to the left-hand side of the folder(s) and the exhibits section to the right-hand side of the folder(s).

#### **14.21 - Exhibit 01**

##### **Litigation Report**

**NARRATIVE SECTION.** Include a copy of each document or pertinent parts thereof referred to in the narrative section under the exhibits section of the report, unless these documents are readily available to the reviewers, for example, certain United States Code and Code of Federal Regulations.

#### **1. Cover Page**

- A. Case name, Court, and number.
- B. Region, Forest, District, State, and County.
- C. Name, position, address, and telephone number of person(s) preparing report and date prepared.

#### **2. Table of Contents**

**14.21 - Exhibit 01--continued**

- A. Prepare a brief table of contents for lengthy narrative reports so that a person who is not familiar with the facts can locate pertinent information easily.
- B. Prepare a separate table of contents for the exhibits section.

**3. Regional OGC's Opinion**

Include or incorporate in the report the Regional OGC's opinion and assessment regarding validity of Forest Service title and/or of the title claim.

The opinion consists of the Regional OGC's understanding of the law as it applies to the statement of facts appearing in the report. When the Regional OGC has worked in conjunction with the Forest Service in preparing the litigation report, a separate legal opinion may not be necessary.

**4. Assessment of Damages**

Consider the assessment of damages in each case. Develop this assessment with the help of the Regional OGC. Several areas for consideration are:

- A. **Fair Rental Value of the Occupied Land.** Assess this value if the land is encumbered by improvements, is fenced, or is otherwise encompassed to the exclusion of others for National Forest purposes. The damages shall include all land rent that normally would have accrued for this type of use going back 6 years from the date of the report or from the date of occupancy if this is less than 6 years.
- B. **Restoration Cost.** Although this normally is handled in the final court order, include it in the report as part of the itemization of damages. If the cost to cure involves correction of resources damage requiring special expertise, seek damages for reimbursement.
- C. **Punitive Damages.** One may request punitive damages, subject to the approval of the Regional OGC, under extenuating circumstances. For example, continued and willful cutting of timber with full knowledge that the timber was on the disputed area or repeated and willful trespasses may constitute cause for requesting punitive damages.

**5. Statement of Facts**

**Forest Service Handbook 5509.11 – Title Claims, Sales, and Grants Handbook**  
**Chapter 10 – Title Claims and Encroachments**  
**Amendment number: 5509.11-2024-1**  
**Effective date: February 6, 2024**  
**14.21 - Exhibit 01--continued**

A statement of facts relies on evidence to prove that a particular activity was conducted--that an action was performed or that an incident transpired. An unsupported statement is mere conjecture and cannot support or defend an action or position. Do not include statements that cannot be supported by evidence in this report.

Include all documents or pertinent parts thereof referred to in the report in the exhibits section and cross-reference them to the narrative section.

**A. Background of Action**

4. What is the dispute?
5. When did the dispute begin?
6. Where did the dispute begin? Include accurate, complete, and clear maps and pictures in the exhibits section. Provide sufficient detail in the legend to describe or identify pertinent details.
7. Who is making the claim?
8. How much area is involved?
9. When did the claimant or the claimant's predecessor in title know, or when should they have known, of the title claim by the United States?
10. Why was the case filed? Are there other outside factors that might affect the trial or outcome of the case?

**B. Facts**

1. Status of claimed land and how the United States acquired interest.
  - a. Reserved National Forest System land.
    - (1) Date of withdrawal for National Forest purposes.
    - (2) Reference to proclamation and authority.
  - b. Acquired by purchase, exchange, condemnation, transfer, and so forth.

**14.21 - Exhibit 01--continued**

- (1) Date and recording data of deed or judgment.
  - (2) Title evidence, including copies of all documents, abstract, title insurance, and certificates of use and occupancy judgments, Declaration of Taking.
  - (3) Chronology of period and nature of uses and activities on the property in question.
2. Claimant's interest in tract.
    - a. Chain of title or color of title. Fully explain basis for claim and identify evidence, including tax assessment and payment records.
  - d. Nature and period of occupancy. Include photographs of improvements and other land alterations.
  3. If claim involves conflicting surveys, include the following:
    - a. History of U.S. surveys, corners, and boundary marking, including name and qualifications of surveyor.
    - e. History of claimant's survey, including name and qualifications of surveyor.
    - f. Maps, pictures, and drawings, along with a narrative description showing relationships of surveys to each other and to use lines (past and present).
    - g. Copies of any conveyances that have served to perpetuate conflicting surveys.
    - h. Analysis of the conflicting surveys prepared by a cadastral surveyor.
    - i. Copies of pertinent parts of the survey notes.
  4. Judgments, Declaration of Taking, transcript of civil action, as applicable.

**14.21 - Exhibit 01--continued**

5. Use documents from Forest Service files only. Include court records by reference.
6. Statement on Forest Service's assertion of ownership on behalf of the United States. Include copies of letters of demand and other correspondence indicating Forest Service's claimed ownership on behalf of the United States.

**6. List of Witnesses**

List the names, addresses, and contact information of all persons, regardless of whether or not employed by the Forest Service, who can testify on behalf of the United States. For each of them, state official position, if any, and direct connection with the matters in litigation and briefly summarize those matters to which the witness can testify. Statements relative to testimony facts are desirable enclosures. When appropriate, prepare affidavits in consultation with the Regional OGC.

**7. Laws, Regulations, and Other Pertinent Data**

With the help of the Regional OGC or attorney in charge, compile all of the Federal or State laws, Department regulations, Executive orders or proclamations, and Comptroller General's decisions; also list Forest Service Manual provisions that apply to the case, or actions which resulted in the dispute, and the obligations of all parties and the degree to which these obligations were or were not met.

**8. Suggested Answers to Complaint and Legal Defense**

The field unit shall prepare a draft of this section. The responsible staff person in the Regional Office shall prepare the final draft with the help of the Regional OGC. The U.S. Attorney shall file the formal answer.

**A. Answer to Complaint**

1. Respond to each allegation in the complaint by number.
2. Admit or deny each allegation in the complaint.
3. Explain the reasons for each answer.

**B. Legal Defense**



**14.21 - Exhibit 01--continued**

1. Outline any other defense, possible counter claims, or cross-complaints for damages or other relief that the United States may have.
2. Identify points of law that support the position of the United States and cite the court cases.
3. Identify any legal or procedural errors in the complaint.

**EXHIBIT SECTION** - Identify and include in this section all evidence relative to the issues on both sides. Include all material that substantiates the statement of facts or that tends to dispel, defeat, or contradict factual assertions or statements contradictory to the statement of facts. Itemize all evidence not currently available, but that seems obtainable, that can provide additional support for the Forest Service case.

Be sure to identify, or organize, and index the following types of exhibits so that the reader can understand not only the exhibit itself, but also how the exhibit relates to the case as a whole. Include:

1. Copies of all documents referred to in complaint or report.
2. Any maps, plats, or photographs that help to explain the problem. Prepare a clear legend for each, including date and name of photographer or drafts person. Use overlays to help explain the case. Identify photo points.
3. Copies of complaints, answers, and decisions in any pertinent or companion cases filed in the same or other courts.
4. Calculations for all counter claims for damages or restoration costs.

**Table of Contents** - Provide enough information in the index for easy identification of the exhibits. Group related exhibits to facilitate report use. Use the index as the first, or cover, page of the exhibit section. See following example:

**Forest Service Handbook 5509.11 – Title Claims, Sales, and Grants Handbook**  
**Chapter 10 – Title Claims and Encroachments**  
**Amendment number: 5509.11-2024-1**  
**Effective date: February 6, 2024**  
**INDEX TO EXHIBITS**

<b>Page</b>	<b>Document</b>	<b>Date</b>
1	1-1 Warranty Deed to United States	09/19/1937
1	1-23 Title Opinion by Attorney General	12/14/1937
1	1-66 Affidavit by Forest Supervisor	09/23/1937
2	2-1 Order appointing Joe Doe as Administrator of Jack P. and Jane E. Doe estate	02/26/1976
2	2-11 Quitclaim Deed to Joe Doe from alleged heirs of Jack P. and Jane E. Doe	01/26/1960
3	3-1 Order & Decree - Jane E. Doe estate Final Account & Report& Petition for Final Distribution -Jane E. Doe died testate.	03/05/1974

#### **14.22 - Respond to Complaint**

When the plaintiff or predecessor in title has filed a lawsuit against the United States under Public Law 95-562, proceed as follows:

1. The U.S. Attorney sends complaint to Regional OGC with deadlines for litigation report and administrative record.
2. Regional OGC meets with Regional Forester and Regional Director of Lands re: complaint filed.
3. Regional OGC and Regional Director of Lands (might also include regional appeal / litigation paralegal) identify individual issues raised in the complaint by paragraph. Points will be numbered by paragraph and topic for response.
4. Answer the numbered paragraphs in the complaint.
5. Deny or agree with all or parts of each allegation.
6. Explain the reasons for denial or agreement, support by the facts in the report.

#### **14.23 - Send Litigation Report to OGC**

The Regional OGC or the attorney in charge shall review and approve the final draft of the answer for the litigation report. After the Regional OGC's final review, send or carry the original and three copies of the reports to the Lands Staff, Washington Office.

#### **14.24 - Finalize Litigation Report**

If Regional OGC requests additional information, go back through steps and present modified Litigation report to Regional OGC. Information to be requested from Plaintiff is processed through OGC and the U.S. Attorney.

If additional time is absolutely necessary, request an extension of time from the court through the Regional OGC. The trial attorney must have time to consider thoroughly and to prepare the case for trial.

#### **14.25 - Prepare Witnesses**

When an employee is called as a witness it could be either as a witness to the facts of the case, or as an agency expert witness concerning agency policy, procedures, and previous precedents. Work with the Regional OGC and/or Public Affairs to be briefed on expectations of an agency witness. Prior approval of the Regional Forester is necessary before appearing as a witness.

In the litigation report, list the names and addresses of all persons, regardless of whether or not employed by the Forest Service, who can testify on behalf of the United States. For each of them, state official position, if any, and direct connection with the matters in litigation and briefly summarize those matters to which the witness can testify. Statements relative to testimony facts are desirable enclosures. When appropriate, prepare affidavits in consultation with the Regional OGC.

#### **14.26 - Respond to Interrogatories**

In the course of litigation, opposing sides often file interrogatories or requests for admission, or witnesses are deposed. Forest Officers are asked by Counsel to comment on briefs filed by opposing attorneys. The court must receive most of these comments within given time periods specified by the rules of court procedure.

The rules require complete and accurate answers; however, make no attempt to argue the Government's case in answering interrogatories or requests for admissions. Also, do not admit to something only supported by hearsay. In such cases, it be sufficient to state that, "*The Forest Service has no direct knowledge of this,*" or "*This is denied,*" if the Forest Service knows it to be untrue.

Usually there is a place for answers to interrogatories and requests for admission the form filed by the opposing side's attorney; however, in some cases, the Attorneys may include with the interrogatories and requests their instructions on where to place answers.

#### **14.27 - Respond to Discovery Requests**

Discovery and requests for certified copies of Forest Service documents require special handling.

The Secretary of Agriculture must receive copies of all documents for certification. This can be slow and somewhat burdensome. Attorneys often can stipulate that is unnecessary to certify official files. However, in these cases, it is sometimes necessary for the person with custody of those files to testify to their authenticity.

Discovery may be under either the rules of the court or the Freedom of Information Act (FSM 6270). Coordinate any Freedom of Information Act request related to litigation with Regional OGC as well as with the Regional Office freedom of information officer. The general rule is that the Government shall release material under the Freedom of Information Act unless that material is demonstrably harmful to the Government's case. However, each request requires a separate determination.

#### **14.28 - Respond to Settlement Proposals**

Compromises in or settlement of a case requires advance consultation with the Regional Forester and the Chief unless procedures for settlement or compromise were established when the case was initiated.

In negotiating with an 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 provide reasonable assistance within the law and shall not place obstacles in the way to settlement.

#### **14.3 - Report Litigation Status**

Monitor status of litigation case with OGC. Update appropriate personnel such as line officers, directors, and program managers of litigation case progress. Also, record litigation case progress in TCEMS.

#### **14.31 - Address Litigation Decision**

There are times when the U.S. Attorney and/or OGC may decline to initiate litigation procedures. If this happens, note the rationale in resolution comments of the case record and change status to On-Hold. Review other options available to resolve the situation.

### **14.32 - Receive Court Judgments**

When litigation is complete in court, the Judge will issue a statement or judgment on the merits of the case. The judgment may be against the plaintiff, against the United States, or be split between the parties. Work with the Regional OGC to determine next steps in closing the case.

### **14.33 – Address Court Judgments**

If the Court finds in favor of the United States, then ensure the court directions to the plaintiff are clearly understood and follow up on them. If the Court finds in favor of the plaintiff, then evaluate what actions are required of the United States to comply with the Court findings.

### **14.34 - Field Inspection and Follow Up on Court Orders**

Inspect the site of encroachment or trespass and ensure compliance with Court Orders. Request the U.S. Attorney to take action to have occupants cited for contempt of court if unauthorized occupants refuse to cease and desist and make necessary payments to the United States.

### **14.35 - Close Litigation Case**

When the court confirms the occupant has complied with court orders, Judge will issue orders to close the case. When the unauthorized occupant has met the terms of the court orders, post status records, and close the case file.

## **15 - Legislative Action**

See FSM 1510 for guidance on Legislative Reports and Legislative Program proposals. Use the Title Claim and Encroachment Report as a guide in responding to requests for reports on pending legislation related to title claims, encroachments, sales, and grants. Also, consider the following:

1. The effect of the proposed legislation on National Forest programs and administration of the land for public purposes, including:
  - a. Critical game or fish habitat.
  - b. Timber, range, recreation, mineral, and other resources.
  - c. Special designated area, such as wilderness, wild and scenic rivers, research natural area, and so forth.
  - d. Rare or endangered plant or animal species.

- e. Archaeological or historical sites.
  - f. Flood plains and wetlands.
2. The effect of conveyance on landownership patterns.
  3. Application of administrative remedies in lieu of legislation.
  4. Survey history of the lands if boundaries are at issue.
  5. Local, regional, and national ramifications of the legislative proposal.
  6. Creation of undesirable precedent.

Included map(s) must show clearly the location of the subject lands in relation to other National Forest and non-Federal lands. They must show all encroachments, survey information, location of mining claims, and other pertinent data addressed in the narrative section.

## **16 - Property Boundaries**

### **16.1 - Program**

Establish an aggressive landline location program for each Forest. Immediately follow the locating of any property boundary with marking and posting to Forest Service standards. Implement a planned program for periodic maintenance of such lines. Locate all property lines by legally acceptable methods and, once located, keep lines visible. Ensure that no management activity near or adjacent to a property line creates a false or misleading boundary line.

#### **16.11 - Cooperation with Local Authorities**

Forest officers shall participate in local government planning activities and shall become familiar with private land subdivisions and developments that lie adjacent to, or in close proximity to, NFS boundaries. Forest Supervisors and District Rangers should establish relationships with the local governing bodies and area planning organizations to ensure adequate coordination in preventing encroachments on NFS lands. Forest officers shall become knowledgeable about and shall review all relevant subdivision or development plans and plats, and later shall monitor development to the degree needed to ensure that encroachment on Government lands does not occur.

#### **16.12 - Cooperation with Adjoining Landowners**

Forest officers shall make personal or written contacts with adjoining landowners, particularly those who are developing their lands, to remind them of their responsibility and accountability

for boundary line surveys on their lands that adjoin NFS lands. Inform them and their surveyors that Forest Service records concerning the location of lines or corners, such as the corner search record file maintained on each District on Form FS-7100-52, Corner Record (Search)/Corner Reward (Perpetuation), are available. Also, inform landowners that they may use Forest Service brass capped iron pipe or aluminum monuments on Federal property corners provided that the Forest Service reviews and approves the surveys which establishes these corners. Ensure that the landowners are aware that the United States is not bound by, and courts probably would not recognize, any previous unofficial surveys and verbal boundary agreements. Refer questions concerning the legality of a survey to the Regional Forester for any necessary coordination with the Regional OGC.

#### **17 - Riparian Land Title [Reserved]**

#### **18 - Navigable Water Title [Reserved]**

#### **19 - Reports**

The TCEMS shall be used to inventory, process, and resolve title claim, trespass, and encroachment cases. Cases must be entered and processed in TCEMS using the case activities to document case progress. TCEMS will also be the database of record used to measure annual performance goals and to establish regional targets.