

**Arizona Department of Transportation
Intermodal Transportation Division**

**Right of Way
Procedures Manual**



**TITLES SECTION
Org. 9330**

FHWA Certified: January 01, 2011



U.S. Department
of Transportation
**Federal Highway
Administration**

ARIZONA DIVISION

December 30, 2010

4000 North Central Avenue,
Suite 1500
Phoenix, Arizona 85012-3500
(602) 379-3646

In Reply Refer To:
410
HOP-AZ

Mrs. Sabra Mousavi, Chief ROW Agent
Arizona Department of Transportation
205 South 17th Avenue
Phoenix, Arizona 85009

Dear Mrs. Mousavi: *Sabra*

State's which receive Federal-aid funding from the highway trust fund are required to maintain a manual describing its right-of-way organization, policies, and procedures. The guidelines for this manual are detailed in Title 23 CFR 710.201 (c). Beginning on January 1, 2001 and every five years thereafter, the manual will be certified by the FHWA. The manual shall be updated periodically to reflect changes in the operations and submit the updated material to the FHWA for approval.

The manual was submitted to FHWA for approval in August, 2010. After an extensive review, subsequent corrections have been accomplished. Realizing the manual will have continual updates/revisions and observed technical corrections will be corrected; the FHWA finds the manual to be materially in compliance with federal regulations. Therefore, by this letter, the FHWA is certifying the Arizona Department of Transportation's Right of Way Manual to be in compliance with federal regulations as of January 1, 2011.

Sincerely yours,

Raymond S. Patton

for Robert E. Hollis
Division Administrator



Table of Contents

- Chapter 1 Organization and Responsibilities..... 5**
- 1.01 Purpose..... 5
- 1.02 Organization and Functions..... 5
- 1.03 Authorization and Regulation 5
- 1.04 Responsibilities of the Title Section..... 6
- 1.05 Primary Goals and Objectives..... 7
- 1.06 Title Research..... 7
- 1.07 Resolution..... 7
- 1.08 Condemnation 7
- 1.09 Major Documents and Reports Originated or Processed 8
- 1.10 Grandfathered Irrigation Water Rights & Wells 8
- 1.11 R/W Titles Section- Table of Organization 8
- Chapter 2 General Procedures 8**
- 2.01 Purpose..... 8
- 2.02 Function 8
- 2.03 Origins of Title Report Requests..... 8
- 2.04 Project Files 9
- 2.05 Title Examining Procedures..... 9
- 2.06 Review 9
- 2.07 Report Assembly, Transmittal, and Filing..... 9
- 2.08 Transaction Package Final Review 9
- 2.09 Transfer of Rights for Grandfathered Irrigation Water Rights & Wells..... 10
- Chapter 3 Titles Examining Procedures 10**
- 3.01 Purpose..... 10
- 3.02 Senior Title Examiner Surveys and Assigns Work..... 10
- 3.03 Assignment Work Procedures..... 10
- 3.04 Arizona Transportation Board Resolutions 11
- 3.05 Requests for Establishment of R/W Facilities..... 13
- 3.06 Requests for Disposal of Real Property 14
- Chapter 4 Titles Preparation of Reports 15**
- 4.01 Purpose..... 15
- 4.02 Preliminary Ownership Reports 15
- 4.03 Ownership Reports 15
- 4.04 Title Reports..... 15
- 4.05 Federal, State and Primate Land Reports..... 15
- 4.06 Title Report Face Sheets 16
- 4.07 Parts of the Title Report 16
- 4.08 Updating Title Reports..... 17
- 4.09 Existing R/W Reports..... 17
- 4.10 Material Site Title Report..... 17
- 4.11 Title Reports for Temporary Construction Easements 18
- 4.12 Special Reports 18
- Chapter 5 Title Company Reports 18**
- 5.01 Purpose..... 18
- 5.02 Title Company Reports..... 18
- 5.03 Preparation of Report Forms..... 18
- 5.04 Type of Reports and Copies Furnished..... 18
- Chapter 6 Field Investigations 19**

6.01	Purpose.....	19
6.02	Responsibility.....	19
6.03	Field Investigation.....	19
Chapter 7	Encumbrances and Requirements	20
7.01	Purpose.....	20
7.02	Encumbrances.....	21
7.03	Requirements.....	21
7.04	Special Procedures.....	21
Chapter 8	The Title Search.....	22
8.01	Purpose.....	22
8.02	Searches Begin in U.S. Government Records.....	22
8.03	Search for Title Under State Ownership.....	23
8.04	Search for Titles of Patented Land.....	23
Chapter 9	Public Record Sources of Title Information.....	23
9.01	Purpose.....	23
9.02	Federally Owned Land in Arizona.....	24
9.03	Bureau of Land Management.....	24
9.04	Survey Office.....	24
9.05	Grazing Offices of the B.L.M.....	24
9.06	Bureau of Indian Affairs Offices.....	24
9.07	National Forest Office Locations in Arizona.....	25
9.08	Bureau of Reclamation Office Records.....	25
9.09	Department of Defense Title Records.....	25
9.10	State Land Department Title Records.....	26
9.11	The County Assessor's Office.....	26
9.12	County Recorder's Office.....	26
9.13	Indices Maintained by County Recorder's Offices.....	26
Chapter 10	Waiver – Title Insurance and Escrow	27
10.01	Purpose.....	27
10.02	Waiver Approval Procedures.....	27
Chapter 11	Condemnation Organization and Responsibilities	28
11.01	Purpose.....	28
11.02	Responsibilities.....	28
11.03	Organization.....	28
11.04	Supervisory Personnel.....	28
Chapter 12	Condemnation General Procedures	29
12.01	Purpose.....	29
12.02	Definition of Terms.....	29
12.03	ADOT's Office of Legal Advisor.....	29
12.04	Determination and Approval to Condemn.....	29
12.05	Preparation and Filing of Condemnation Actions.....	30
12.06	Possession of Property.....	30
Chapter 13	Condemnation Legal Responsibilities	31
13.01	Purpose.....	31
13.02	Condemnation Responsibilities.....	31
13.03	Condemnation Function Aids Chief R/W Agent.....	31
13.04	Record Receipt of Parcel File.....	31
13.05	Acquisition Package.....	31
13.06	Preparation of the Legal File.....	31
13.07	Preparation of Property Description and Plat.....	32
13.08	Recommendation and Resolution Establishing the Highway.....	32

13.09	Preparation of Vicinity Map.....	32
13.10	List of Parties Defendant.....	32
13.11	Assembling the Legal File.....	33
13.12	Submittal of Legal File.....	34
13.13	Parcel File Submitted to R/W Records Center.....	34
13.14	Instituting the Condemnation Action.....	34
13.15	Post Trial Functions of Office of Legal Advisor.....	35
13.16	Legal Description of the Property Taken.....	36
13.17	Description of Access Rights.....	38
13.18	Special Assignments.....	39
Chapter 14	Condemnation Procedures.....	39
14.01	Purpose.....	39
14.02	Responsibilities.....	39
14.03	Preparation for Trial.....	40
14.04	Field Investigations.....	40
14.05	Other Condemnation Duties.....	41
14.06	Use of Other Work Order Forms.....	41
Chapter 15	Recording of Condemnation Data.....	41
15.01	Purpose.....	41
15.02	Receipt of Acquisition Package.....	41
15.03	Transaction Report.....	41
15.04	Procedure for Routing and Recording Acquisition File.....	42
15.05	Posting of Bonds.....	42
15.06	Payment of Judgments.....	43
15.07	Settlements Without Trial.....	44
Chapter 16	Grandfather Water Rights and Wells.....	44
16.01	Overview.....	44
16.02	ADOT Water Rights Management Program.....	46
16.03	Notification of Water Rights.....	47
16.04	Transferring of Water Rights.....	47
16.05	Annual Water Withdrawal and Use form.....	48
16.06	Assessments by Water Users' Association's.....	49
16.07	Water Delivery Fees.....	49
16.08	R/W Property Management Section's Responsibilities with IGR's:.....	49
16.09	Excess Land:.....	51
16.10	ADOT Districts and IGR's:.....	52
16.11	ADOT Construction and IGR's:.....	52
16.12	Irrigation Water Duties and Maximum Annual Groundwater Allotment:.....	52
16.13	Wells.....	53
16.14	Notice of Well Capping.....	53
16.15	Notice Of Intent To Abandon A Well Form.....	54
16.16	Well Abandonment Check List Form:.....	54
16.17	Request Form To Change Well Information:.....	55
16.18	Records:.....	55
Chapter 17	Property Tax Resolutions.....	55
17.01	Purpose.....	55
17.02	Title Companies Notification.....	56
17.03	Non Compliance by Outside Entities.....	56
17.04	Records.....	57
Chapter 18	Titles Exhibits.....	57

Chapter 1 Organization and Responsibilities

1.01 Purpose

The purpose of this chapter is to describe the organization, authorization and regulation and responsibilities of the R/W Titles Section.

1.02 Organization and Functions

The R/W Titles Section, which is supervised by a Manager under the general direction of the Assistant Chief R/W Agent, consists of five (5) major functions: Title Research, Resolution, Condemnation Functions, Management of ADOT-owned Grandfathered Irrigation Water Rights and Wells, and Property Tax Resolutions on ADOT-owned property.

See current Table of Organization is located in the main table of contents [\(Org. 9330\)](#).

The primary functions of the R/W Titles Section are:

- a. Examine real property records at various federal, state, county, and city offices; prepare title reports and existing right of way reports based on information obtained; conduct field investigations as needed.
- b. Review private title company reports for accuracy, correct in house or resubmit to Title Company for correction.
- c. Prepare Resolution of Establishment and Disposal for approval by the State Transportation Board; review for compliance with State Transportation laws.
- d. Gather and prepare data for the Attorney General's Office when condemnation proceedings are required; institute necessary actions in the appropriate Superior Court.
- e. Provide title related research and opinions to the Attorney General's Office and its Risk Management Sections for potential or existing litigation.
- f. Provide information verbally and in writing to the general public, ADOT groups, and local jurisdictions as to existing or proposed right of way or other transportation facilities.
- g. Contract and coordinate as needed with private title companies and ADOT consultants for the preparation of title reports and other research.
- h. Create and maintain records and spread sheets on Irrigation Grandfathered Water Rights (IGR's) and Wells acquired or disposed of by ADOT.

1.03 Authorization and Regulation

The R/W Titles Section operates under the authority delegated by the Chief R/W Agent to initiate and perform approved assignments and responsibilities. Other authorities and regulations guiding the R/W Titles Section include:

- a. Arizona Revised Statutes (ARS) 11-951 and 11-954: Joint exercise of powers.
- b. ARS 28-363 and 28-364: Powers and duties.
- c. ARS 28-334: Acceptance and expenditure of federal funds; limitation.
- d. ARS 28-7209: Powers and duties of the Board; vacated/abandoned highway.
- e. ARS 28-368: Powers and duties of the Director. Power of Director to acquire property.
- f. ARS 28-7041 through 28-7057: State Highways and Routes.
- g. ARS 28-7201 through 28-7215: Disposition of public roadways.
- h. ARS 28-7091 through 28-7103: Eminent Domain. Purchase, sale or condemnation of land for transportation purposes. Arizona Constitution Article 2, Chapter 17, and Article 14, Chapter 9, Eminent Domain.
- i. ARS 41-515: Acquisition of land for parkways, scenic and historic; scenic easement.

1.04 Responsibilities of the Title Section

The following responsibilities are assigned to the R/W Titles Section:

- a. Assure that the State acquires satisfactory title to all property acquired for right of way and other transportation facilities.
- b. Prepare Resolutions of Establishment and Disposal for approval by the State Transportation Board; Assure compliance of said Resolutions with applicable State Transportation Laws.
- c. Assist the Attorney General's Office in condemnation proceeding; initiate said proceedings as necessary and file required actions in the Arizona Superior Courts.
- d. Provide title related research to the Attorney General's Office and its Risk Management Section for claims or potential claims against the State or for litigation actions.
- e. Answer inquiries from the general public, ADOT groups, and local jurisdictions concerning existing or proposed existing right of way and other transportation facilities.
- f. Prepare existing right of way reports for documentation of State, County and City highways, roads and streets.
- g. Prepare various title reports for the acquisition and disposal of real property interests; prepare special reports as needed.
- h. Review private title company reports for accuracy as needed.
- i. Conduct field investigations as needed for parcels to be acquired or disposed of by ADOT.

- j. Coordinate ADOT-owned Water Rights and Well issues with various State Departments and Agencies, including but not limited to the Arizona Department of Water Resources (ADWR), the Arizona Department of Environmental Quality (ADEQ), etc., and Water Users Association Districts, i.e., Salt River Project Water Users Association, Roosevelt Water Conservation District, etc.

1.05 Primary Goals and Objectives

The primary goals and objective of the Title Section are to:

- a. Carry out assigned responsibilities in a prudent and economic manner.
- b. Schedule workload to make the most efficient use of personnel.
- c. Make every effort to meet due dates.

1.06 Title Research

Title research consists of the search, examination and preparation of preliminary ownership reports, ownership reports, temporary construction easements reports, title reports, existing right of way reports, and any special reports requested by ADOT groups, governmental agencies and the public.

1.07 Resolution

Resolutions of Establishments are generally prepared according to bid dates for construction projects and are mandatory prior to spending any money for acquisition, relocation, etc. Resolutions of Disposal regarding extinguishment of an easement or abandonment to other Governmental Jurisdictions are prepared upon the completion of the Disposal process as defined under Section 3.06 herein.

This resolution function requires research and review of past Resolutions to determine verbiage in the preparation of new various Resolutions for Establishment, Disposal, Route Redesignation, Scenic and Historic or Parkway designations which will have a major effect on current Resolutions being prepared. Determinations as to when a route was taken into the State Highway System as a State Route and later as a State Highway, any relocation improvements thereafter, and any prior route numbering designations are also an important factor to consider. The Transportation Board Minutes and approved Resolutions are organized and filed, as these items will be used for necessary research in years to come. All Resolutions must be prepared in accordance with the State Transportation Laws.

1.08 Condemnation

The condemnation process starts as a result of negotiation breakdown between a property owner and ADOT. The issue may be of value or a title problem. The right of eminent domain is an inherent right of sovereignty to appropriate private property for public good. The laws of eminent domain are defined in ARS 12-111 and 28-7091 through 28-7103. In this condemnation process the value and/or title issues are resolved by the Arizona Attorney Generals Office and the courts.

1.09 Major Documents and Reports Originated or Processed

R/W Titles Section originates or processes the following documents or reports:

- a. Title Reports.
- b. Existing Right of Way Reports.
- c. State Transportation Board Resolution of Establishment and Disposal.
- d. Files and reports relating to condemnation proceedings.
- e. Special reports and correspondence as required for management, ADOT groups, the general public, the Attorney General's Office, and other Governmental jurisdictions.

1.10 Grandfathered Irrigation Water Rights & Wells

Grandfathered Irrigation Water Rights and Wells are attached to a majority of all land in Arizona. Because these Rights and wells must be maintained, transferred, tested, capped, and reported on, they are subject to fees and fines. Due to the environmental and contamination issues, it is essential to maintain information on the ADOT-owned Rights and Wells issues.

1.11 R/W Titles Section- Table of Organization

Please refer to the Manual Introduction for the most recent Organizational Chart.

Chapter 2 General Procedures

2.01 Purpose

The purpose of this chapter is to describe the general policies and procedures of the R/W Titles Section. When circumstances require deviation from these procedures, the R/W Titles Section Manager will determine the course of action best suited to the situation.

2.02 Function

A R/W project is considered assigned to R/W Titles Section upon receipt of a written request from any of a number of sources. The pertinent information is immediately entered in the log, which is a record of all projects in progress.

2.03 Origins of Title Report Requests

A request from the R/W Plans Section is usually for an ownership report, to be furnished by a specified date, and for title reports to be furnished by a later, specified "due date."

- a. A request for a material site title report will also be received from Materials Section.
- b. Requests for title reports to be used in the acquisition of maintenance or other utility sites are received from R/W Property Management Section.

- c. Requests for special purpose reports generally come from Administration, but also may come from other Sections of the Department.

2.04 Project Files

Two files are established for R/W projects, namely, a correspondence file and a work file containing records of all matters pertaining to the project except correspondence. A single file is set up for each material or maintenance site and other facility.

2.05 Title Examining Procedures

The R/W Titles Section Manager will assign the project to a Senior Title Examiner, who will review the project to determine the nature of the work to be done, and will then assign the project to an appropriate staff examiner. The staff examiner will make the necessary search and examination of the public records and will prepare the required reports.

- a. If a title examiner learns that an owner of a specific parcel of land is a minor, or is otherwise incompetent, the R/W Titles Section will be notified immediately and a copy of the title report and any pertinent information will be forwarded to the office of the ADOT Legal Advisor.
- b. When the staff is unable to provide the required title reports, the R/W Titles Section Manager will purchase the reports from a title company under contract with the Department of Transportation.
- c. Before finalizing title reports on R/W project parcels, a staff examiner will generally conduct a field investigation to determine any unrecorded interests.

2.06 Review

The Senior Title Examiner reviews all completed reports and, after having them typed, proofread for transcription accuracy, copied and assembled they are ready for transmittal.

2.07 Report Assembly, Transmittal, and Filing

Completed reports are assembled for each Section concerned and transmitted by memo. The R/W Titles Section copy of each report and all pertinent work papers will be placed in an individual folder and filed.

2.08 Transaction Package Final Review

In addition to providing title information, R/W Titles Section is also responsible for reviewing all transaction packages that involve escrow.

- a. R/W Titles Section will receive from R/W Operations Section all escrow transaction packages when all of the necessary documents have been received from the title company.
- b. R/W Titles Section will check each closing statement to see that only proper charges have been made and that it is in complete conformity with the purchase agreement. The title policy will be checked to verify the description and that exceptions are in agreement

with the title requirements. If errors are found, it will be the responsibility of R/W Titles Section to have them corrected by the title company. R/W Titles Section will indicate their approval on these two documents before sending the package to the Records Center for inclusion in the master parcel file.

2.09 Transfer of Rights for Grandfathered Irrigation Water Rights & Wells

The R/W Titles Section Agent will:

- a. Assist in the transfer, sale and leasing of State-owned Grandfathered Irrigation Water Rights & Wells on State-owned property.
- b. Coordinate payments for the Water User's Association.

Chapter 3 Titles Examining Procedures

3.01 Purpose

The purpose of this chapter is to present procedures for handling title-examining work performed by the Title Section.

3.02 Senior Title Examiner Surveys and Assigns Work

The Senior Examiner surveys the assignment and obtains additional information and documents from the Section and/or Department files as deemed necessary to complete the reports requested. The date and the examiner assigned will be entered in the log.

3.03 Assignment Work Procedures

- a. Upon receipt of a "Title Assignment", (ADOT Form 60-3903, Exhibit 18.01), the examiner will search public records and conduct a field investigation to gather information for a draft of the final report. Each "write-up" for a specific parcel will be placed in a folder on the right side, with maps, search sheets, chain sheets, copies of instruments, etc., on the left side. This folder will be Title Section' folder.
- b. The Senior Examiner will then review the entire folder for completeness and accuracy. If more work is required, the folder is returned to the examiner for further action. The Senior Examiner again reviews the entire folder and, if the assignment is proper and complete, refers it for typing.
- c. The typed report is returned to the examiner to proofread and to make the necessary copies and the final folder assembly.
- d. The original report will be placed in the Title Section file folder on the right side. All other material will be placed on the left side of the folder with map of the property on top.
- e. One set of the reports, containing one copy of each title report appropriately labeled, will be prepared for each of the following Sections: R/W Plans, Project Management, Acquisition, files and consultant.

f. Additional documents will be appropriately labeled and placed in folders with the title reports as follows:

1. For R/W Plans Section:

(a.) One copy of subdivision maps,

(b.) Two copies of the existing R/W report, one of which will be labeled "Delineation".

(When any of the above items have been furnished with the ownership report, it will not be necessary to send new copies with the title reports)

2. For Project Management Section:

(a.) One copy of subdivision maps,

(b.) One copy of the existing R/W report,

(c.) One copy of restrictions for each subdivision,

(d.) One copy of any conveyance or other instrument, which contains restrictions or covenants affecting the possible use of the land,

(e.) One copy of all easements except those that are set out in the existing R/W report,

(f.) One copy of each lease on private land,

(g.) One copy of each agreement for sale which appears as a vesting instrument or in the five year chain-of-title, and

(h.) One copy of each vesting instrument on private land.

g. All sets of the reports and the documents set forth above will be transmitted to R/W Plans Section.

3.04 Arizona Transportation Board Resolutions

Resolutions are formal approval by the State Transportation Board as required by law which authorizes the Director to establish, open, relocate, alter or abandon a state highway or thereof. The resolutions are based on the Directors report and recommendations, which are made part of the resolution.

a. Both the Director's report and recommendation and the Board resolution will be prepared on 8 1/2 inch by 11-inch letter size paper.

b. Resolutions are prepared and presented to the Chief R/W Agent for the State Engineer and the Director, in single-spaced typed form, the original of both the Director's report and recommendation, and the Board resolution, which is signed and certified upon approval by the Board. Duplicate originals of the Director's report and recommendation

and the Board resolution are then made a part of the official recorded minutes. These official documents will be prepared through the use of a Personal Computer (PC) and produced on a letter quality printer providing a neat, uniform record, and the contents stored in the computer until the original has been received from the records office.

c. Resolutions are generally categorized as follows:

1. Resolutions of establishment, which include the following:
 - (a.) The establishment of state routes and state highways and other transportation facilities.
 - (b.) Authority to acquire needed right of way, improvements, and incidentals thereto, for new routes and highways, alternate routes, and relocation and realignment of existing routes and highways.
 - (c.) The establishment of Parkways, Scenic, and Historical Routes.
2. Resolutions of disposal include the disposal of any interest in real property held by the Arizona Department of Transportation. Disposal may be accomplished by:
 - (a) Abandonment
 - (b) Sale
 - (c) Exchange
 - (d) Vacate (extinguishment of easement)
 - (e) Transfer of title
 - (f) Grant of easement
3. Resolutions establishing - corridors.
 - (a.) Preliminary
 - (b) Refine
 - (c) Resolution of Necessity
4. Resolutions outside the discipline of the above are written occasionally. These include but are not limited to:
 - (a) Resolution of rescission
 - (b) Redesignation of state and federal route numbers
 - (c) Renumbering state routes and state highways

d. The general procedures in preparing the Director's reports and recommendations and the Board resolutions are as follows:

1. Upon receipt of a written request from R/W Administration, an appropriate Director's report and recommendation resolution of sufficient scope to meet the needs of the Department is prepared. The report, and recommendation and resolution shall describe and encompass the needed right of way, include highway nomenclature, and designate state route name and number, with a map, plat, or plan sheet as needed to depict the area in question.

2. Initiated by District. A written request for disposal, properly filled in, is usually directed through the Chief Deputy State Engineer to R/W Titles Section. Upon approval, an entry of the request will be logged in the Resolution Status and Progress Report, and the request will be processed through the various offices for Departmental approval.
3. Occasionally special recommendations and resolutions are prepared for the Transportation Board, State Engineer, Chief Deputy State Engineer, Chief R/W Agent, or in some cases, other Transportation Divisions, such as the Aeronautics Division. These may be in the form of public interest items, ADOT special programs, or other related transportation functions.
4. Director's reports and recommendations and Board resolutions are also prepared to renumber presently designated state routes or the state highways by and redesignate request from the Board or the State Engineer, through the Chief Deputy State Engineer, as the need arises.
5. Prior to Board submission, the Director's reports and recommendations and Board resolutions shall be reviewed and approved by the R/W Titles Section Manager and the Chief R/W Agent and approved, as to form, by the Office of Legal Advisor.
6. A complete inventory of all resolutions is prepared for the R/W Section, and thus provides a service for the various groups of the Intermodal Transportation Division, and other interested parties, by making information available relating to Board approved resolutions. The R/W Titles Section is also responsible for the control of all documentation and verification of title records, legal descriptions, ownerships, and other data relating to the preparation and entry of resolutions.

3.05 Requests for Establishment of R/W Facilities

A resolution to establish a state route, highway, or other facility will be prepared upon receipt of a request from R/W Plans Section Teams. A request is accompanied by a plat, map and/or plan sheet, which is used as an Appendix "A" in the resolution. These requests do not always come from Plans they come from all department heads, Roadway Design, TPD, R/W Acquisition, etc.

- a. Upon approval of the above request by the Chief R/W Agent, a resolution is scheduled for a regular meeting of the Arizona Transportation Board, prepared and approved by the R/W Titles Section Manager, the Chief R/W Agent, and approved, as to form, by the Office of Legal Advisor, and placed on the agenda for the next regular meeting of the Arizona Transportation Board. Reports and recommendations and Board resolutions are presented to the State Engineer's office and copies of the report and recommendations and Board resolutions are provided to the Director's office for distribution to Board members at least seven (7) working days prior to the official Board meeting date.
- b. Upon adoption and notification of approval by the Arizona Transportation Board, the R/W Titles Section is responsible for the recordation of all resolutions in the appropriate county recorder's office.

- c. Upon the return of the original recorded resolutions from the recorder's office for the month, the resolution file is then purged, necessary copies are distributed and the resolution file is retired to the R/W Records Center.
- d. A current and historical inventory (log) of all resolutions shall be made available to interested parties.

3.06 Requests for Disposal of Real Property or Easement

Requests for recommendation of disposal shall be processed by the established procedure as set forth below.

- a. The "Recommendation for Disposal of Real Property", (ADOT Form 60-3311, Exhibit 18.02) will be submitted to the R/W Titles Section with prior acknowledgment of the Chief Deputy State Engineer.
- b. If the disposal is an exchange or sale, the R/W Property Management Section is notified of the proposed disposal. R/W Property Management Section will order the appropriate appraisal(s) and provide a copy to the Resolution Team. (This will happen after the 60-3311 form has been signed off by all department heads and the State Engineer.) The R/W Titles Section must provide Property Management a copy of completed 60-3311 disposal report and necessary plans.
- c. When disposing of an easement right (i.e. drainage, slope, embankment, dyke, etc.), R/W Title Section, Resolution Unit, needs to determine whether or not Federal funds were used to acquire said easement right. Should it be determined Federal funds had acquired said easement right, then repayment of Federal funds may be deemed necessary. Reimbursement is to be based on the current market value before the easement right can be extinguished in accordance with 23 CFR 10409 and 23 CFR 10403D.
- d. A disposal file is prepared for final review and all necessary maps, legal descriptions, title information, environmental is ordered and, if necessary, secure any correspondence needed to satisfy Federal Highway Administration regulations involving federal aid projects and necessary correspondence with local jurisdictions, state agencies & district.
- e. Upon approval and completion of final review, the appropriate Director's report and recommendation and Board resolution of disposal will be prepared, approved by the R/W Titles Section Manager and Chief R/W Agent or their assigns, and placed on the agenda for the regular meeting of the Arizona Transportation Board. The Director's reports and recommendations and original Board resolutions are presented to the State Engineer's office and copies of the Director's reports and recommendations and Board resolutions are provided to the Director's office for distribution to Board Members at least seven working days prior to the official Board Meeting date.
- f. Upon adoption and receipt of the recorded resolution, the District Engineer, appropriate political subdivision, and appropriate R/W personnel shall be notified of the disposal of real property.
- g. Upon return of the original recorded resolution from the recorder's office for that month, the file will be purged and retired to R/W Records Center.

- h. Letters of notification must be sent (1) some prior to recording, (2) some after recording.

Chapter 4 Titles Preparation of Reports

4.01 Purpose

The purpose of this chapter is to describe the various types of reports prepared by staff examiners.

4.02 Preliminary Ownership Reports

Preliminary ownership reports are prepared by staff examiners upon receipt of a request from R/W Plans Section. They are generally not furnished for all projects. Each of the reports consists of a statement, or drawing, indicating which lands on a project are federal, state, or private, and the county tax assessor's maps for the area.

4.03 Ownership Reports

Staff examiners prepare ownership reports. These reports consist of a list of the legal descriptions of the parcels of land affected by a R/W project, the names of the owners, the tax assessor's parcel numbers, and the Book and Page of the vesting instrument. These reports also include the legal description of contiguous land. The information contained in these reports is obtained from official public records.

4.04 Title Reports

Title reports contain a complete and accurate account of all recorded or unrecorded matters affecting the title to each parcel of land on a R/W project. Title reports are prepared by staff examiners, except when it is considered advisable to request that such reports be ordered from a title company (see Chapter 5). Title reports on federal and state public lands and on lands of Indian tribes, national forests, national monuments, etc., are always prepared by staff examiners. Individual title reports are prepared for:

- a. Each federal agency concerned or other owner.
- b. Each section or part of a section of state-owned public land.

4.05 Federal, State and Primate Land Reports

- a. When a report covers federal land, the owner is shown as "United States of America" followed by the name of the agency having control or jurisdiction.
- b. When a report covers state land, the owner is shown as "State of Arizona," followed by "State Land Department" for general state public lands, or the name of such other department which has jurisdiction.
- c. When the title report covers privately owned land, the names of all owners shall be shown in full. The terms "et ux," "et al," "etc.," shall not be used.

4.06 Title Report Face Sheets

The "R/W Title Report Form", (Exhibit 18.03) is to be used as a face sheet for all title reports prepared by staff examiners and also as face sheet for title company reports. (The face sheet is always "page 1" and all other attached sheets shall be numbered consecutively thereafter.) The face sheet of the title report form provides space for items a, b, and c, which follow. All other items (d through g) shall be set out on subsequent pages of the report in the order they appear below. When the space provided on the face sheet is not sufficient for any part of items a, b, or c, the information shall be shown on the next page or pages of the report.

4.07 Parts of the Title Report

The title reports shall include, but not necessarily be limited to, the following in the order shown:

- a. Name and address of owner: The mailing address on the title report is taken from the County Assessors Records or the most recent instrument.
- b. Recording data of vesting instrument: The vesting instrument is the conveyance of whatever type which transfers title to the present owner, i.e., deeds, agreement for sale, court decrees, etc. The name of the grantor, type of instrument, date, and recording data is set out in the space provided on the R/W title report. This information shall also be set out when the R/W title report is used as a face sheet for a title company report.
- c. Description: Generally, the description of a parcel is shown in the title report as it is found in the official public records. Whenever a description is incomplete or inaccurate, an explanation or advice that will enable R/W Plans Section to properly plot the property is set out on a subsequent page of the title report with a reference thereto made on the face sheet.
- d. Contiguous property: All title reports include any contiguous property, including land leased from the United States, or state, when the subject property is a farm or ranch. The description of contiguous property may be obtained from tax records, but shall be verified with the official record at the office of the county recorder.
- e. Encumbrances: Encumbrances include, but are not limited to, such matters as taxes, mortgages, easements, leases, and judgments. "Schedule B" of the title report shall include encumbrances determined by the field investigation as well as those of record, except those for which requirements are made.

Complete details such as names, dates, description, and recording data of recorded instruments are set out in the title report. Encumbrances established by the United States or the state prior to patent is included in the staff title reports.

- f. Requirements: Requirements necessary to vest good and sufficient title to the state are set out in detail. Explanations for unusual requirements are set forth when deemed advisable.
- g. Five-year chain of title: The five-year chain of title consists of a list of all conveyances for the five years prior to the date of the title report. Names of parties, dates and recording data of such conveyances shall be spelled out completely. The vesting instrument is not included in this part of the staff report; it is shown on the face sheet. If

the vesting instrument is more than five years old, such information shall be shown on the title company reports as well as staff-prepared reports.

4.08 Updating Title Reports

- a. Periodically, it is necessary to update the title reports for a R/W project. Generally, the R/W Titles Section will receive a request from R/W Plans Section for this purpose, but may update title reports on its own initiative. The work necessitated by each request is handled in the same manner as work generated by original requests for title reports.
- b. The general rule is that title reports should be no older than one (1) year upon completion of the R/W plans for any project.
- c. When a major change has been made in the title of any parcel, a completely new title report shall be prepared by a staff examiner. When minor changes have been made to the title of any parcel, the examiner will make the necessary changes by re-writing only those pages of the report thereby affected. These procedures shall apply to title company reports and staff-prepared title reports.

4.09 Existing R/W Reports

The existing right of way report for a project is prepared while the title reports are being prepared, and will contain information and documentation not only for the road, which is the subject of the project, but also for any and all streets, or roads that will be affected by the project. The report will indicate if such streets or roads are valid or invalid, if they are public or private rights of way, and if they are city streets, county roads, or state highways. This report will include the pertinent data concerning the following items as applicable to the roads reported:

- a. Name of street or road.
- b. Manner of establishment, i.e., city ordinance, resolution of the County Board of Supervisors, resolution of the Arizona Highway Commission, or Transportation Board.
- c. City street map or county road map.
- d. Recorded easements to city, county, state, or individuals.
- e. Permits from United States, or State Land Department, to city, county, state, or individuals.
- f. Federal and state statutes.
- g. All other matters which may be disclosed by the record search or field investigation.

4.10 Material Site Title Report

A material site title report is prepared upon request from the R/W Plans Section. Materials Section uses the report in the acquisition of lands or rights to roadway materials suitable for the construction of highways by the Department.

Each material site title report shall be prepared and processed the same as right of way project title reports, except that only the requirements necessary to clear the title of the material site and any required haul roads will be shown on the title report.

4.11 Title Reports for Temporary Construction Easements

Title reports to be used for the acquisition of temporary construction easements are prepared as other title reports (see 4.07) except that contiguous property, encumbrances, and the five year chain of title (4.07 d, e & g) are not included, and only such requirements necessary to secure the temporary construction easements from the owner(s) will be made. These reports will be labeled "For Temporary Construction Easements Only."

4.12 Special Reports

The form and content of these reports will depend on the nature of the situation necessitating the report, and may be anything from a simple memo to several documents assembled in book form. The R/W Titles Section Manager or Senior Title Examiner will determine, on an individual basis the manner in which these reports will be prepared.

Chapter 5 Title Company Reports

5.01 Purpose

The purpose of this chapter is to describe the procedures to be followed when it is deemed advisable to order title reports from a title company.

5.02 Title Company Reports

- a. When the decision has been made to secure title reports from a title company, the R/W Titles Section Manager will place the order in accordance with the terms of the existing Title Section agreement. The order shall be by letter, which shall include the Department's project number, the descriptions or assessor's numbers of the parcels to be covered by said reports, and the date by which the title reports are to be furnished.
- b. Upon receipt of an invoice from a title company covering title services, the R/W Titles Section Manager will approve such invoice for payment and forward it to R/W Operations Section for payment.

5.03 Preparation of Report Forms

The Senior Examiner will review the reports and determine what additional information, if any, is necessary for the R/W Section use. The reports will then be assigned to an examiner for property inspection and for securing any necessary additional information. Upon completion of the inspection and any necessary additional search and examination, the examiner will prepare the R/W Title Report form, and attach it as a face sheet to the report from the title company.

5.04 Type of Reports and Copies Furnished

- a. One copy of preliminary ownership reports is furnished to R/W Plans Section.

- b. One copy of ownership reports is furnished to R/W Plans Section.
- c. Five copies of the title reports are submitted to R/W Plans Section for all R/W projects. One set of the title reports will be prepared for each of the following:
 - 1. R/W files
 - 2. R/W Plans Section
 - 3. R/W Project Management Section
 - 4. R/W Acquisition Section
 - 5. Consultant
- d. One copy of the title report for material sites is furnished to the ADOT Materials Section.
- e. R/W Property Management Section is furnished one copy of title reports for maintenance campsites and other facility sites upon request. Copies of special reports are furnished as requested.

Chapter 6 Field Investigations

6.01 Purpose

The purpose of this chapter is to explain the reasons for a field investigation by the R/W Titles Section and to set forth general procedures to be followed for such an investigation.

6.02 Responsibility

The R/W Titles Section is responsible for determining the proper description for all parcels of land on all R/W projects and for determining if there are any unrecorded interests, as well as all recorded interests, affecting such parcels of land.

6.03 Field Investigation

A field investigation is made on all R/W projects, unless management determines that such an investigation should not be made on a specific project. The title examiner, to whom the project has been assigned, makes the field investigation after a completed search of the records for all parcels on the project.

- a. The "Field Title Inspection Report Form" (ADOT Form 60-5002, Exhibit 18.04) is used by the title examiner making the investigation. The Title Examiner will indicate, by appropriate checks or notes, that they have considered each item and the nature of the information gathered during the investigation.
- b. A field investigation includes a property inspection of the project as a whole, and each parcel of land individually, as well as an interview of the property owners where practical.
- c. The examiner will make a reasonable effort to secure the permission of the owner before entering private parcels of land and should not enter any improved parcels without the owner's consent.

- d. The examiner begins the field inspection by making an on-site observation of the project as a whole and will determine if there are any additional roads affected by the project and if there are utility lines or other easements for which there are no recorded instruments.
- e. The examiner determines if there are any parties in possession other than the owner of record, and if so, under what circumstances. The examiner will secure such information as necessary to prepare a proper title report for such situations.
- f. If there are any conflicts in parcel boundaries due to erroneous descriptions in the recorded instruments, the examiner will attempt to resolve such conflicts by the inspection of the property and discussion with the owner. It is understood that the title examiner is not qualified to make a property survey, but in many cases can determine from the field investigation how parcel boundaries should be shown on the R/W plans, and therefore how the parcels should be appraised and acquired. It may be necessary for the title examiner to make requirements in the title report that will necessitate overlapping descriptions in the acquisition instruments.
- g. The examiner attempts to determine, from the discussion with a property owner if there are any deceased title holders, and if so, whether there will be a probate of the estate in this state or some other state. The examiner will secure all pertinent information regarding any probate, or, if there will be no probate, attempt to get an affidavit setting forth the names and addresses of all heirs-at-law of any such decedent.
- h. When a parcel is federal or state land, or if there is private land with the minerals reserved to the United States or the state, and if the property is open to entry under the mining laws, the examiner will look for unpatented mining claims. When a mining claim is found, and if a location notice is also found on the claim, or the examiner learns the identity of the owner by other means, the examiner will make a search of the records of the county recorder and will prepare a title report for each such claim using the information gathered from the field investigation and the recorder's records.
- i. Other areas in which the examiner makes observations and inquiries for information, which will aid in making complete and proper title reports are:
 - 1. Contiguous property.
 - 2. Adverse possession.
 - 3. Partnerships.
 - 4. Marital status.
 - 5. Minors, or those otherwise incompetent.
 - 6. Pending sale.
- j. All unrecorded interests that are discovered during the field investigation are reflected in the title reports by encumbrances or appropriate requirements. When the examiner has completed the field investigation, a report will be prepared as indicated in Chapter 3.

Chapter 7 Encumbrances and Requirements

7.01 Purpose

The purpose of this chapter is to indicate the order in which various types of encumbrances and requirements are to be set out in the title reports and to explain any special procedures involving encumbrances or requirements.

7.02 Encumbrances

Encumbrances are always set out in the following order:

- a. On federal and state title reports:
 - 1. Grazing lease.
 - 2. Commercial lease.
 - 3. Utility easements.
 - 4. City or county rights of way.
 - 5. State rights of way.

Multiple items in the same category are listed in chronological order.

- b. On private land title reports:
 - 1. Taxes
 - 2. Restrictions
 - 3. Utility easements
 - 4. City or county rights of way
 - 5. State rights of way

7.03 Requirements

Requirements are set out in the following order:

- a. Taxes (property)
- b. Special assessments
- c. Federal tax liens
- d. State tax liens
- e. Mechanics' and material men's liens
- f. Judgments
- g. Leases
- h. Probate
- i. Mineral reservations
- j. Mortgages/Deeds of Trust
- k. Deed(s) (authorization for deed, when required, for corporation, partnership, church, etc.)

7.04 Special Procedures

The Utility and Railroad Engineering Section is responsible for relocating facilities belonging to a utility company, which has a valid easement that will be affected by a R/W project.

The R/W Titles Section is responsible for determining if there are facilities installed or located within such utility easements.

The title examiner, to whom the project is assigned, will make this determination during the field investigation.

- a. Whenever there is a utility easement with facilities installed or located therein, the title examiner or the team supervisor will contact Utilities and Railroad Engineering Section to determine if that office will, in fact, relocate such facilities. If so, the title report for the property will contain a statement to that effect. No requirement will be necessary for that item.
- b. When there are no facilities installed or located within such utility easement, or if the Utility and Railroad Engineering office advises that they will not enter into a contract with the utility company regarding that particular facility, the title report will contain a requirement for a quitclaim deed from the owner of the easement for that item.
- c. When a utility company has fee title to property, which contains an operating facility that will be affected by new right of way, a title report for that property will be prepared. This title report will also contain a note stating whether this facility will be cleared by Utility and Railroad Engineering Section. If not, a requirement will be made for a deed from the owning company except for property owned by the Salt River Project or for property owned by the United States and operated by the Salt River Project. In such cases, or under other unusual circumstances, the R/W Titles Section Manager will make a decision as to how that particular item will be handled.

Chapter 8 The Title Search

8.01 Purpose

The purpose of this chapter is to describe the steps taken to conduct a title search.

8.02 Searches Begin in U.S. Government Records

- a. The title examiner begins the title examination by making a search of U.S. Bureau of Land Management records. In this phase, the examiner first checks the cadastral survey records (G.L.O. Plats) for the proper legal descriptions of the sections of land traversed or to be traversed by the R/W project. Second, the examiner searches the land maps and historical index in the land office tract books and prepares a list of all entries affecting the land under search. The examiner will then abstract any necessary details from the serial register or other files for information, which will be set out in a title report.
- b. Phase two of the overall search consists of ascertaining the name of the grazing allotment and allottee or the name and date for the grazing lease from the records of the Bureau of Land Management Grazing Office. If the land under search is U.S. public domain, the search of the B.L.M. records is all that is necessary to prepare title reports on such land.
 1. When the land is a part of an Indian reservation, the examiner makes a search of the records of the Bureau of Indian Affairs and of the Agency office of the particular reservation. From these records, the examiner will determine if the

land is general tribal land or individual allotments, and then will abstract all information necessary for preparation of the title reports.

2. When the land under search is a part of a national forest, the examiner will search the records of the headquarters office and will abstract the information necessary for the preparation of the title report.

8.03 Search for Title Under State Ownership

When the examiner finds that any part of the land under search has been transferred to the state, the examiner will search the records of the State Land Office to determine if it is still state land or private. If it is still state land, the examiner abstracts such information as is necessary in the preparation of the title report for that particular land.

8.04 Search for Titles of Patented Land

When the records of the B.L.M. or the State Land Office show land to be patented, the examiner abstracts the pertinent information from the patent, and is then ready to make the search of the public records for private land.

- a. The first step, usually, is to examine the records of the county tax assessor's office and, while doing so; the examiner will secure copies of the assessor's plats. The information gained from these records is not considered accurate or current enough with which to prepare title reports, but they can provide information, which is quite helpful inasmuch as they contain descriptions and owners' names for privately, owned property.
- b. The most exhaustive part of the title search is conducted in the records of the county recorder.
 1. The examiner must search for and abstract a chain of conveyances, complete from the patent to the present owner.
 2. The examiner must search for and abstract all encumbrances that affect the property under search. These include, but are not limited to, taxes, mortgages, leases, easements, judgments, and various types of liens.
 3. The examiner, when possible, will secure copies of subdivision maps, roadmaps, and any others of record that are found. If any of these are not directly available, the examiner will arrange to have them ordered by the supervisor.
 4. The examiner must secure a complete description of contiguous land, which will be affected by the R/W project.
 5. The examiner must also secure addresses of all owners and other parties to be contacted by the R/W agents.

Chapter 9 Public Record Sources of Title Information

9.01 Purpose

The purpose of this chapter is to describe the public record sources of title information available for use by the R/W Titles Section.

9.02 Federally Owned Land in Arizona

The basis for records of ownership of federal lands in Arizona are the records of the Bureau of Land Management (B.L.M.), which is a part of the Department of the Interior and is the federal agency which has been charged with the management of United States land within Arizona. The Bureau of Land Management has three major divisions with which the examiner is concerned: the Land Office, the Survey Office, and the Grazing Office.

9.03 Bureau of Land Management

The B.L.M. has established and maintains the official United States land record of all land within the state. The primary record is kept in a set of tract books that contain plats depicting the sections, townships, and ranges in accordance with the federal survey, and a historical index of matters affecting the public domain.

- a. These records indicate what lands were recognized as private grants at the time of acquisition by the federal government, as well as what disposition, if any, has been made to public land, including any that has been reconveyed to the federal government as a part of the public domain. The records contain information up to a transfer of title to the state of Arizona or the issuance of a patent to a private party.
- b. These records also indicate which lands have been set aside or withdrawn for Indian reservations, national forests, military reservations, or for use by the Bureau of Reclamation or other federal agencies.
- c. These records also contain entries of official actions affecting any of the public lands, such as the granting of right of way, oil and gas leases, and other special use permits.

9.04 Survey Office

The Survey Office of the Bureau of Land Management has established and maintains the records of the cadastral survey. These records are plats made from the official survey and generally referred to as the G.L.O. Plats. They reflect the official legal descriptions of the various land sections, homestead entry surveys, and mineral surveys, etc. This office also maintains files of the official survey field notes and protraction diagrams for land that has not yet been surveyed.

9.05 Grazing Offices of the B.L.M.

The Grazing Office maintains records of all grazing allotments and grazing leases on federal land. There are four grazing districts within Arizona. District 1 includes large areas in the State of Utah and has its headquarters in St. George, Utah. Districts 2 and 3 have a combined headquarters office in the Federal Building in Phoenix. District 4 has its headquarters in Safford, Arizona, and embraces an area within New Mexico.

9.06 Bureau of Indian Affairs Offices

The Bureau of Indian Affairs (B.I.A.) office in Albuquerque, New Mexico, maintains a "title plant" for lands, which are embraced within Indian reservations in Arizona. The agency office of each reservation also maintains records of the land within its reservation. The B.I.A. area office for the Navajo Reservation is in Gallup, New Mexico, but the agency office at Window Rock, Arizona, maintains records of lands within Arizona. Agency offices and Indian reservation land records maintained therein are as follows:

Agency	Reservation
Colorado River Parker, Arizona	Camp Verde Hualapai & Big Sandy
	Colorado River Havasupai
	Fort Mohave Yavapai-Prescott
	Fort Yuma
Fort Apache Whiteriver, Arizona	Fort Apache
Hopi Kearns Canyon, Arizona	Hopi Kaibab
Papago Sells, Arizona	Papago San Xavier
	Gila Bend
Pima Sacaton, Arizona	Gila River Maricopa (Ak Chin)
Salt River Scottsdale, Arizona	Salt River Fort McDowell
San Carlos San Carlos, Arizona	San Carlos
Navajo Window Rock, Arizona	Navajo

9.07 National Forest Office Locations in Arizona

Each national forest has a headquarters office that maintains the records of land within its jurisdiction. The national forests within Arizona and their office locations are as follows:

- a. Kaibab National Forest, Williams, Arizona
- b. Prescott National Forest, Prescott, Arizona
- c. Coconino National Forest, Flagstaff, Arizona
- d. Apache-Sitgreaves National Forest, Springerville, Arizona
- e. Gila National Forest, Silver City, New Mexico
- f. Tonto National Forest, Phoenix, Arizona
- g. Coronado National Forest, Tucson, Arizona

9.08 Bureau of Reclamation Office Records

The Bureau of Reclamation has a regional office located in Boulder City, Nevada, which maintains records of all its projects in Arizona. The local office of a particular reclamation project also keeps the records of its project affairs.

9.09 Department of Defense Title Records

The Phoenix office of The Branch of Realty of the U. S. Army, Corps of Engineers, maintains records for such governmental agencies as the Department of Defense, U.S. Army, and Air Force.

9.10 State Land Department Title Records

The State Land Department maintains the records of all lands that have been transferred from the United States to Arizona. The basic records are tract books, which indicate the status of, and all matters affecting the land after the state acquired title. This office has a sales division that keeps the records on all sales of state land, and a leasing division that keeps the records of all state land under lease. If the land under search has been set aside or withdrawn for use by the Bureau of Reclamation, the Department of Defense, or any other federal agency, the examiner determines if there are other matters which are necessary for the preparation of the title reports.

9.11 The County Assessor's Office

Each county in the state has a tax assessor, and most, if not all, of these offices have maps or plats of the various parcels of private land within the county and the names and addresses of the owners. Since the primary purpose of this office is to assess property for tax purposes, the records are not necessarily accurate or up to date as to descriptions and owners.

9.12 County Recorder's Office

Each county has a county recorder's office in which all instruments affecting title to real property is, or should be, recorded. The recorder makes a copy of the original instrument by photo static or microfilm process, and places the copy in a docket, which is made in book form.

9.13 Indices Maintained by County Recorder's Offices

a. Each county recorder's office maintains an index by names of parties to all recorded instruments. The Arizona Statutes provide that the county recorders shall maintain the indices hereinafter listed. A complete search of these indices should enable the examiner to determine the ownership of the subject property. There may be a variation from county to county as to the exact title given to a particular index, but the list indicates the subjects to be indexed.

1. Deeds – direct
2. Deeds – reverse
3. Mortgages, realty – direct
4. Mortgages, realty – reverse
5. Mortgages, personalty – direct
6. Mortgages, personalty – reverse
7. Release of mortgages, realty – direct
8. Releases of mortgages, realty – reverse
9. Releases of mortgages, personalty – direct
10. Releases of mortgages, personalty – reverse
11. Powers of attorney
12. Leases – direct
13. Leases – reverse
14. Assignments of mortgages and leases – direct
15. Assignments of mortgages and leases – reverse
16. Official bonds
17. Mechanics and materialmen's liens - direct and reverse

18. Attachments - direct and reverse
 19. Judgments – reverse
 20. Lis Pendens
 21. Separate property of married women
 22. Mining locations
 23. Partnerships – reverse
 24. Federal tax liens – reverse
- b. The Statutes also provide that the county recorders may maintain such other indices as may be necessary and in such form as the recorder, with the consent of the Board of Supervisors, may prescribe. Without limitation, the following other indices have been found in one or more counties here in Arizona:
1. Notices affecting real estate
 2. Promiscuous records
 3. Miscellaneous records
 4. Contracts and agreements
 5. Releases, assignments, and renewals of judgments
 6. Patents
 7. Water rights
 8. Corporations
 9. Mining locations - name of claim
 10. Mining deeds
 11. Homesteads
 12. Appointments – direct
 13. Exemptions
 14. Conditional sales contracts in the foregoing lists, no particular significance should be attached to either the numbering or the order.

Chapter 10 Waiver – Title Insurance and Escrow

10.01 Purpose

The purpose of this chapter is to present the procedures to be followed when the acquisition file includes a request to waive title insurance and escrow.

10.02 Waiver Approval Procedures

Upon a receipt of an acquisition file containing a request to waive title insurance and escrow, the title report will be updated if necessary. Approval procedures are based on the amount of the transaction.

- a. When the amount of the transaction is \$20,000.00 or less, and if the R/W Titles Section Manager decides to waive title insurance and escrow, “A & B Waiver of Title Insurance & Escrow [2 types]”, (Exhibit 18.05) will be prepared and signed by the R/W Titles Manager. The file will then be returned to R/W Acquisition Section.
- b. When the amount of the transaction is more than \$20,000.00 and if the R/W Titles Section Manager's decision is to recommend the waiver of title insurance and escrow, a

memo of justification and recommendation will be prepared and signed by the Manager. The file will then be forwarded to the Chief R/W Agent for approval or concurrence.

- c. Upon completion of any or all of these steps, the file will be returned to the R/W Titles Section and then forwarded to R/W Acquisition Section.
- d. The R/W Titles Section Manager may also approve taking title subject to certain encumbrances or requirements.

Chapter 11 Condemnation Organization and Responsibilities

11.01 Purpose

The purpose of this chapter is to present the organization and responsibilities of the Condemnation Function.

11.02 Responsibilities

The Condemnation responsibilities are, but not necessarily limited to:

- a. Assisting the Attorney Generals Office, in the preparation and prosecution of condemnation actions.
- b. Maintaining a calendar of current condemnation actions, including dates of scheduled witnesses to insure their appearance.
- c. Aid in procuring and preparing documentary and graphic exhibits for use by the trial attorney.
- d. Reporting to R/W Administration on matters related to condemnation.
- e. Providing assistance to other R/W Sections on matters pertaining to condemnation.
- f. Providing in-service training for the staff on Condemnation Functions.
- g. Screening all correspondence to the Office of Legal Advisor from the R/W Titles Section.
- h. Disseminating all correspondence or verbal directions from Legal Advisor to the proper Section.

11.03 Organization

A R/W Agent III and a R/W Agent II perform the Condemnation Function.

11.04 Supervisory Personnel

The R/W Titles Manager is responsible for the management, operation, and production of the Condemnation Function. The R/W Titles Manager will designate a staff member to assume the duties and responsibilities as needed.

Chapter 12 Condemnation General Procedures

12.01 Purpose

The purpose of this chapter is to present those procedures which generally apply to the operation of the Condemnation Function. It should be understood, however, that at certain times deviations from the procedures as outlined may be necessary. When deviations are necessary, the R/W Titles Section Manager or the designee shall outline the course of action that will best fit the circumstances.

12.02 Definition of Terms

- a. Eminent Domain: Eminent domain is the power of the state to take property for public use without the owner's consent upon payment of just compensation. When negotiations with property owners have failed, or title defects or other matters make a negotiated settlement impossible, the right of the State of Arizona to institute eminent domain or condemnation proceedings must be invoked.
- b. Chief Counsel: The Chief Counsel is an Assistant Attorney General who has been assigned to ADOT by the State Attorney General, at the request of the Director, ADOT, to serve as Chief Counsel in all ADOT legal matters.
- c. Legal Advisor: The State Attorney General, in accordance with Section 28-109 of the Arizona Revised Statutes, is the state's Legal Advisor in all highway matters.
- d. Fee Attorneys: Fee attorneys are hired under contract by the Chief Counsel when the staff attorneys of the Office of Legal Advisor cannot process all the cases because of heavy court schedules, or when special expertise is required for a particular case, in which the use of a fee attorney is in the best interest of the state.
- e. R/W Matters: The Condemnation Unit supports the Chief Counsel and their staff, but it is a Unit within R/W Titles Section, reporting to the R/W Titles Section Manager.
- f. Organization Chart: A functional organization chart depicting the relationship of the Chief Counsel and the Office of Legal Advisor with the Intermodal Transportation Division is shown in Volume 1 of ADOTM-1.

12.03 ADOT's Office of Legal Advisor

The Chief Counsel is responsible for the direction and operation of the Office of Legal Advisor, under jurisdiction of the ADOT Director. A staff of Assistant Attorneys General is assigned from the State Attorney General's office to assist the Chief Counsel in administration of all legal matters of the ADOT. All secretarial and clerical functions are performed by legal secretaries, stenographers, and clerks who are employees of ADOT.

12.04 Determination and Approval to Condemn

The determination to institute condemnation proceedings shall be made by the Litigation Support Team, with the concurrence of the Chief R/W Agent. All pertinent data is prepared and

submitted to the R/W Operations Section on the Transaction and or Directors Report. It is the responsibility of the Condemnation Unit to initiate this report.

12.05 Preparation and Filing of Condemnation Actions

All action for condemnation shall be brought to the Superior Court of the county in which the property is located. The state may, at the time of filing the complaint, or at any time thereafter, make application to the court for an order permitting immediate possession and use of the property sought to be condemned.

- a. It shall be the responsibility within the Condemnation Function in R/W Titles to assemble all the data required by the Office of Legal Advisor for preparation of the complaint. This responsibility shall include, but not be limited to, a thorough search of all title reports and records pertaining to the property sought to be condemned.
 1. The Office of Legal Advisor shall be furnished the names of all owners and claimants of the property, if known, or a statement that they are not known, and an affidavit as to how the search was conducted.
 2. Since the land sought to be condemned is for specific right of way, the location and general route and a map thereof shall be furnished.
 3. A description of each piece of land sought to be taken will also be furnished, together with information showing whether the land includes the whole or only a part of an entire parcel or tract. ADOT's Office of Legal Advisor shall prepare the complaint.
- b. After the complaint has been prepared, as part of a condemnation function it shall be filed in the Superior Court for the county in which the property is located.

12.06 Possession of Property

- a. Upon filing the application, a time for hearing shall be fixed and notice thereof served personally upon the parties in interest within the state by publication, or by registered mail if out of the state, in such a manner as the court directs. Servicing of this notice or verification of the servicing thereof is a condemnation function.
- b. On the date of the hearing, if it appears that the use for which the property sought to be condemned is a necessary use, the court will receive evidence as to the probable damages to each person having interest in each parcel of land sought and, upon the deposit of security as directed by the court, the state shall be let into the possession and full use of the parcels of land as described in the order.
- c. Assurances shall be made that the appraiser and other witnesses, Exhibits, photographs, maps, or other evidence required by the trial attorney are available at the time of the hearing. It is a condemnation responsibility to insure that the security deposit is posted as directed by the court.
- d. The R/W Property Management, R/W Statewide and Urban R/W Acquisition, and R/W Project Management Sections shall be informed of the scheduled dates of all hearings;

the date of possession of improved properties, and assistance is given to R/W Property Management Section in the taking of physical possession of the property involved.

Chapter 13 Condemnation Legal Responsibilities

13.01 Purpose

The purpose of this chapter is to describe the Condemnation Legal responsibilities and procedures. When, because of unique situations, deviations from the ordinary function must occur, the Condemnation Team Leader shall choose the course of action.

13.02 Condemnation Responsibilities

It is a condemnation responsibility to furnish all necessary information to the Office of Legal Advisor of ADOT required in the preparation of the various legal documents of a condemnation action. When it is determined that condemnation is necessary, with the approval of the Chief R/W Agent, permission is requested to condemn from the Deputy State Engineer, Highway Development Group. All necessary documents are prepared, the R/W parcel file is studied for information, and a legal file created. Inquiries are made as to when the file is to be ready for the ADOT Office of Legal Advisor and condemnation procedures and plats are prepared. After the pleadings are prepared, the condemnation action is filed in the Superior Court of the appropriate jurisdiction.

13.03 Condemnation Function Aids Chief R/W Agent

Data is gathered for presentation to assist the Chief R/W Agent in determining when condemnation proceedings may become necessary. A condemnation action may be necessitated due to an impasse in R/W Acquisition Section negotiations, title defects, or other causes.

13.04 Record Receipt of Parcel File

When the parcel file is received in Titles, the date of receipt will be entered in the project parcel inventory and in the computer data bank.

13.05 Acquisition Package

The acquisition package will be disassembled and the original copy of each document contained therein will be inserted into the R/W parcel file. A complete copy of the acquisition file is assembled by the Condemnation Unit for use of the Office of the Legal Advisor of the ADOT. The empty acquisition file folder is then returned to R/W Acquisition Section for re-use.

13.06 Preparation of the Legal File

- a. The title report for the parcel to be condemned will be thoroughly examined to determine if the information regarding ownership is accurate and complete when compared to the information developed by the Acquisition Agent, as shown in the parcel file, and that the title report is less than six months old.

- b. When the title report is six months old or older, or when it differs greatly with other ownership information contained in the parcel file, a request is prepared for an updated title report. R/W Titles Personal will prepare an updated title report. One copy of the letter-gram will be retained in the parcel file. One copy of the current report or, when available, the updated title report, will be placed in the legal file.
- c. When it appears that the property is held in trust, all documents required by ARS 37-801 are prepared and the trustee is named as the defendant, as shown in 13.10(f), (g) and (h) herein.

13.07 Preparation of Property Description and Plat

- a. A condemnation property description will be prepared for the required parcel, which will include the following information:
 - 1. Project
 - 2. Highway
 - 3. Section
 - 4. Parcel
 - 5. Date of preparation
 - 6. Title of the case
 - 7. Preamble(s) identifying type of interest
 - 8. General location of property
 - 9. Specific description of property to be taken
 - 10. Existing rights of way
 - 11. Any access rights being taken, limited, or defined
 - 12. Area of property to be taken
 - 13. Any other rights required, i.e., construction easements, right to temporarily enter the remainder in order to remove an improvement.
 - 14. Conditions relative to reversion of certain rights.
- b. A plat will be prepared which will set forth the property being sought. The plat will be plainly marked as "Exhibit B" of the condemnation action, and initialed by the person preparing said documents. Copies of the property description and the plat will be made and placed in the legal file.

13.08 Recommendation and Resolution Establishing the Highway

One certified copy of such recommendation and resolution will be obtained from the ADOT Director and will be placed in the legal file.

13.09 Preparation of Vicinity Map

When the recommendation and resolution does not contain a legal description of the project, the Condemnation Unit will prepare sufficient copies of the project vicinity map for inclusion in the legal pleadings and for adequately processing the condemnation action. The vicinity map will be marked as "Exhibit C" of the action and all copies will be placed in the legal file.

13.10 List of Parties Defendant

The current or updated title report, the Acquisition Agent's contact report, and all pertinent documents and information in the acquisition package will be examined. On the basis of facts gained from the examination, a "Party Defendants List", (ADOT Form 60-4304, Exhibit 18.06) and an Exhibit "D", listing the following information will be prepared:

- a. Project number.
- b. Highway.
- c. Section.
- d. Parcel number.
- e. County.
- f. Name of each defendant.
- g. Address of each defendant.
- h. Type of interest of each defendant.
- i. Pertinent comments relative to the particular action.
- j. In the event the address of any party defendant or defendants is unknown, submit all information showing details of an exhaustive and thorough search made to determine whereabouts of each unknown defendant. The said information is to be used as the basis of an affidavit to be filed with the court at the time the action is instituted.

The original copy of the list will be placed in the parent parcel file and the duplicate copy will be placed in the legal file.

13.11 Assembling the Legal File

- a. At this point, a "Condemnation Check Sheet", (Exhibit 18.07) will be attached to the outer front side of the legal file folder. All documents prepared for the legal file as outlined in the foregoing sub-paragraphs will be reviewed and placed in the legal file and checked off on the Condemnation Check Sheet. The assembled legal file must contain the following:
 1. One certified copy of the recommendation and resolution establishing the highway.
 2. Sufficient copies of the condemnation legal description of the required property.
 3. Sufficient copies of the plat showing the required property.
 4. One copy of each appraisal prepared by staff or fee consultant.
 5. One copy of current title report.
 6. Sufficient copies of the vicinity map, when required.
 7. Parties Defendant.
 8. Exhibit "D"
 9. One copy of the acquisition contact report; and
 10. One copy of the "Condemnation Transmittal Memo", (Exhibit 18.12).

b. Other information, which shall be entered on the condemnation check sheet, is as follows:

1. Parcel number;
2. Owner;
3. Highway;
4. Section,
5. Project number;
6. Date of approval to condemn; and
7. Any remarks pertinent thereto.

13.12 Submittal of Legal File

When the legal file is assembled with all the necessary information, it is transmitted to the Attorney Generals Office, Transportation Division. A letter is transmitted with the file giving the following information and a brief explanation why the parcel is being condemned.

Date:	Section:	Date Received:
Project:	Parcel No.:	Date to A.G.
Highway:	Owner:	Priority:

13.13 Parcel File Submitted to R/W Records Center

At this point, the "Condemnation Record", (Exhibit 18.08) in the parcel file will be appropriately updated to reflect the current status of the condemnation parcel. The information is also entered in the database on the computer.

13.14 Instituting the Condemnation Action

- a. When the Office of Legal Advisor has prepared and inserted into a case file all the necessary legal pleadings required in the condemnation action, the R/W Titles Section will be advised. The case file will be obtained from the Office of Legal Advisor and each document will be examined to determine the following:
 1. That the file contains the proper documents necessary to institute the action;
 2. That the number of copies of each required document is sufficient for the particular condemnation action.
- b. After the case file has been examined, a discussion will be made with the state's Trial Attorney to whom the action has been assigned to coordinate a time schedule for instituting and processing the case.
- c. The original copy of the complaint, and any pertinent related pleadings, will be filed with the Clerk of the Superior Court in the county in which the required property is located. The Clerk will be requested to issue a summons for the action.
- d. The condemnation action will be discussed with the judge having legal jurisdiction over the matter and a date for the Order to Show Cause hearing will be set. The signature of the judge will be obtained on the original copy of the Order to Show Cause.

- e. The established date of the hearing, name of the judge, and type of service will be entered in the appropriate places on each additional copy of the Order to Show Cause. The date, indication of court seal, and the name of the Deputy Clerk will be appropriately entered on the additional copies of the summons.
- f. The original copy of the Order to Show Cause will be delivered to the Superior Court Clerk where the case was originally filed.
- g. The process, consisting of one copy of the complaint, one conformed copy of the Order to Show Cause, and one conformed copy of the summons for each defendant to be served, will be delivered to the civil division of the sheriff's office in the county in which the named defendant(s) reside, with instructions for service and the return of service to the sheriff's office. When service is required in more than one county, the above procedure shall apply to each county.
- h. When publication of legal notice of the action is required, the following items will be furnished to the appropriate newspaper:
 - 1. One copy of the Order to Show Cause;
 - 2. One copy of the summons;
 - 3. Adequate instructions and dates for publication of the legal notice within the time required.
- i. The index will be updated to include the date of filing of the complaint and the date of order to show cause hearing.
- j. At this point, the case file will be returned to the State's Attorney, to whom the case is assigned, and who will be advised of any other information concerning the file.

13.15 Post Trial Functions of Office of Legal Advisor

- a. When the condemnation case has been tried in court, or settled by stipulation, and a judgment has been rendered, the Office of Legal Advisor will submit, to the R/W Titles Section a copy of the judgment.
 - 1. After the judgment has been examined and its receipt properly recorded in the Condemnation files, the judgment and memorandum and the parcel file will be submitted to the Condemnation Unit.
 - 2. The judgment will be revised to ascertain the following:
 - (a) That the interests of all defendants named in the action have been adjudicated;
 - (b) That the legal description of the judgment contains the latest, and proper, information when compared to the legal description in the parcel file.
 - 3. When the information of the judgment is correct, it will be indicated on the memorandum accompanying the judgment. The judgment and memorandum and the parcel files will then be sent to R/W Operations Section for payment.

When payment has been made, R/W Operations Section will notify the R/W Titles Section. At that time, the appropriate State's Attorney will be notified that payment has been transmitted.

4. When minor discrepancies are found in the legal description of the judgment, such discrepancies will be noted on the accompanying memorandum. The documents, with the parcel files, will be submitted for further processing and correction to the Office of Legal Advisor. After correction, the document will be reviewed and, if found to be correct, will be processed in accordance with sub-paragraph (3), above.
 5. When major discrepancies are found in the legal description of the judgment, the R/W Titles Section will be advised. The R/W Titles Section will then discuss the matter with the trial attorney to whom the case is assigned and will submit the judgment and accompanying memorandum to the attorney for correction. After correction, the judgment will be reviewed by the Legal Branch and, when found to be correct, will be processed in accordance with sub-paragraph (3), above.
- b. When the judgment of a condemnation action has been satisfied by the state, the court will issue a final order of condemnation. The Office of Legal Advisor will submit by memorandum a copy of such order to the R/W Titles Section.

The Final Order of Condemnation will be reviewed to ascertain the following:

1. That the terms of the order coincide with the terms of the judgment;
2. That the legal description of the order is identical to the legal description of the judgment;
3. The order is transmitted to R/W Operations Section for recordation in the proper jurisdictions(s).

13.16 Legal Description of the Property Taken

- a. The description of the complaint prepared will contain:
 1. TRACS Number/Federal ID Number (If applicable),
 2. Name of the principal highway;
 3. R/W Section number;
 4. Parcel number;
 5. Date of preparation of the description.
- b. The title of the condemnation shall refer to the principal owner shown by the title report. For this purpose, the principal owner is the person or corporation having a fee interest, directly or in trust, who by warranty deed or other instrument may convey title to the state. A person purchasing under valid contract is considered a fee owner as fee owner holds equitable title and would be a fee owner, if their contract were fully executed.
- c. The preamble of the description shall form an introduction to the specific description and shall contain the nature and extent of the estate to be acquired by the state in the condemnation action. The preamble shall describe the general location of the land using

the U.S. Geological Survey subdivision, section, township, range, meridian, county, and state, or within a dedicated sub-division of a city or county, giving reference to the recording data of the dedicated plat. Following the general location of the land, the particular highway, for which this parcel or parcels are being sought, shall be indicated by reference to the standard highway designation format.

- d. The specific description of the property to be acquired shall be set out by metes and bounds, if practical. Alternatively, if a metes and bounds description is not possible to obtain, or too extensive, a line or lines of description shall be tied to legal subdivisions, or to known property lines. Centerline descriptions shall be used only when no other description is practical.
- e. The amount of land sought to be taken shall be stated in acreage or square feet or meters for each parcel. This amount must be the same as reflected in the ownership sheet of the right of way plans map and should also agree with the amount contained in the appraisal. Any variation between these amounts must be resolved prior to submitting the description to the ADOT Office of Legal Advisor.
- f. Any parcel to be acquired by the State lying within the permanent right of way, and to be used exclusively for highway purposes, shall be acquired by obtaining a fee simple interest.
- g. The wording for a taking will be, "For state or interstate highway purposes, a fee simple estate in and to a parcel of land situated in the Southeast quarter of the Southwest quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 12, Township 13 South, Range 13 East, Gila and Salt River Base Meridian, Maricopa, State of Arizona, lying within the right of way of the (state or interstate) Highway described as follows: (Description to be taken.)"
- h. When the acquisition calls for a taking of land outside the right of way, where it will be necessary to construct and maintain a facility such as a drainage ditch, dyke, slope, channel change, or temporary construction feature, the type of taking shall be clearly indicated. This may be either permanent or temporary in nature. Such facts shall be reflected in the preamble.
- g. In certain cases, the easement required will be a type where the abutting owner will have certain rights of use of the area, such as a drainage ditch or slope easement, where grazing will be permitted, or other limited use not inconsistent with the state's requirements. In any case, for an easement for such purposes, there shall be no fence or wall, which will preclude such use of the land or entry thereon. Any taking, which would require fencing or exclusion from the area, must be considered to be part of the right of way, and in such a case, a fee simple estate will be acquired. This fact shall be thoroughly investigated and determined before deciding into which category it shall be placed. The fact that a parcel may have been designated as an easement prior to reaching condemnation is not necessarily a true indication of its nature. Each case shall be carefully considered according to the facts surrounding the acquisition and the construction plans examined to determine how the property will be affected. The type of easement will indicate the language to be used in the descriptions. However, each case may require variations to cover the exact nature of the taking.
 - 1. For a slope easement, the wording will be "For highway purposes, a perpetual easement to construct and maintain a highway slope over and across a portion

the Southwest quarter of the Northwest quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 12, Township 2 South, Range 3 East, Gila and Salt River Base and Meridian, Maricopa County, State of Arizona, described as follows: (Description of land taken for the easement)." Following the specific description, the following clause shall be inserted, if appropriate: "Reserving unto the owners of the above described parcel of land, their successors or assigns, the right to use and occupy said land for purposes not inconsistent with the construction and maintenance of said highway slope."

2. For a drainage or dyke easement, the wording will be "For highway purposes, a perpetual easement to construct and maintain a drainage ditch (the exact specific feature must be set out) over and across a portion of the Southwest quarter of the Southeast quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 15, Township 3 North, Range 5 East, Gila and Salt River Base Meridian, Coconino County, State of Arizona, described as follows: (Description of land covered by easement)." Again, the reservation clause shall be used and made suitable to the type of construction feature required for the easement, such as: "Reserving unto the owners of the above described parcel of land, their successors or assigns, the right to use and occupy said land, provided said use shall not in any way conflict with or obstruct adequate drainage or maintenance of said drainage ditch."
3. In cases of construction easements, the exact purpose and use of the land must be delineated, such as a detour, haul road, turn-out, overpass, or other construction requirement: "For highway purposes, a temporary easement for construction of a "detour road" over and across a portion of the Southwest quarter of the Southeast quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 14, Township 2 South, Range 3 East, Gila and Salt River Base and Meridian, Maricopa County, State of Arizona, described as follows: (Description of property covered by easement)."

13.17 Description of Access Rights

- a. Following the general description, a description of access rights generally will follow. When applicable, the access clause shall follow the specific description and shall refer to the highway to be constructed, or specific parts thereof, wherein access will be denied, limited, or permitted, and also setting forth any point or points of limitation.
- b. The right of access is generally considered to be a right appurtenant to real property abutting upon an existing road, street, or highway. Although the right of access does not exist along every foot of the of the abutting property, any denial or substantial impairment of these rights will normally require that compensation be paid as damages to the property, as reflected by a proper appraisal.
- c. When a limited access highway facility is to be constructed in substantially the same location as a prior existing highway, road or street, and additional right of way is to be acquired to accommodate said construction, it is essential that the right of access be extinguished by proper recitation in the complaint.
- c. If access is to be denied a parcel of abutting land, it is necessary to extinguish the right of access by proper recitation in the complaint of that right alone when no additional right of way is being required from the ownership.

13.18 Special Assignments

In addition to the functions and procedures outlined in the previous paragraphs of this chapter, the R/W Titles Section is at various times as required, is requested to furnish assistance or expertise relevant to the professional experience and abilities of personnel within the Section, for other Divisions and Sections within ADOT, and for other agencies and groups within the state government.

- a. Listed below are some of the typical special assignments performed by the R/W Titles Section:
 1. Provide court testimony.
 2. Perform legal research.
 3. Perform special research of court and public records relative to specific cases being processed by the Attorney General.
 4. Furnish an opinion based on Arizona Revised Statutes to R/W Agents in regard to title problems, settlement procedures for estates, etc.
 5. Furnish an opinion based on Arizona Revised Statutes and assistance in research and preparation of special recommendations and resolutions for Transportation Board consideration.
 6. All requests for opinions of the Attorney General will be submitted to the ADOT Office, through the R/W Titles Section.
- b. Requests for special assistance by the Titles Section will generally be processed through the R/W Titles Section Manager. In certain instances, however, requests for special assistance may come directly from the requesting party to the R/W Titles Section. In such instances, the individual performing the condemnation functions will be informed by the R/W Titles Section Manager.

Chapter 14 Condemnation Procedures

14.01 Purpose

The purpose of this chapter is to describe the responsibilities and general procedures of the Condemnation Function.

14.02 Responsibilities

The Condemnation Functions is responsible for furnishing support to the Office of Legal Advisor of ADOT and particularly to the State's Trial Attorney in all matters pertaining to a condemnation action subsequent to the filing of the complaint.

- a. Maintains a calendar of assigned condemnation actions.
- b. Assists the trial attorney during the course of a trial.

- c. Confirms the information contained in the parcel file.
- d. Requests additional data when required.
- e. Coordinates Exhibits with the Graphic Artists in the R/W Plans Section.
- f. Coordinates with various sections, services, and districts of ADOT for data and testimony as needed.

14.03 Preparation for Trial

Normally, by the time a condemnation action is tried, construction on the project is underway or virtually completed. Buildings or other improvements within the acquired portion may have been demolished and removed. Because this action must be filed prior to letting bids for construction, the "before" photographs (aerials for appraisal) must be studied. If, in the opinion of the trial attorney, additional photographs, plans, or Exhibits are required, this will be a condemnation function, when applicable.

14.04 Field Investigations

- a. Field investigations, when applicable, will be performed to confirm factual data and to discover other characteristics, which may be peculiar to the particular parcel of land being investigated, and which may be contentious in trial. Some of the facts to be considered in the field investigations are:
 - 1. Topography;
 - 2. Flora;
 - 3. Drainage;
 - 4. Fencing (type, conditions, locations, etc.);
 - 5. Availability of water;
 - 6. Type of soil;
 - 7. Improvements (if any);
 - 8. Measurements of improvements (or any distance which may be a factor in trial);
 - 9. Relationship of the highway improvement involved, such as:
 - (a.) Access to the property prior to highway improvement;
 - (b.) Access after highway improvement;
 - (c.) What impairment of access will be caused?

- (d.) Any effect the highway will have on the "before" and "after" level of the property;
 - (e.) Drainage improvements.
- b. During the field investigation, the investigator will take photographs of the land being investigated. This procedure is followed so that if any questions arise during the trial regarding the land, highway, or their relationships with each other, a photograph will be available to correctly show the subject.

14.05 Other Condemnation Duties

- a. Another condemnation duty is to keep all interested parties informed of the status of all condemnation actions, trial dates, scheduled court appearances, and changes in scheduled disposition of the action.
- b. To obtaining approval if an expert witness is required by the trial attorney.

14.06 Use of Other Work Order Forms

When reproduction is necessary, a Reproduction Work Request Order Form (current form available by request) is completed and sent to the Reproduction Branch of ADOT. For aerial photographs, a Photogrammetry and Mapping Section Work Order - Photo Lab Form (current form available by request) is prepared and delivered to the Photogrammetry and Mapping Section of the Arizona Department of Transportation.

Chapter 15 Recording of Condemnation Data

15.01 Purpose

The purpose of this chapter is to describe the routine handling, transmittal, recording, and storage of condemnation data.

15.02 Receipt of Acquisition Package

After receipt of the acquisition package containing the condemnation transmittal sheet from R/W Acquisition Section, the determination to condemn or not to condemn is made by the Chief R/W Agent and the Condemnation Support Team.

15.03 Transaction Report

If the decision is made to condemn, a "Transaction Report Form", (ADOT 60-2310, Exhibit 18.09) will be prepared for a parcel for permission to condemn, or for permission to make a judgment payment either from trial or settlement without trial. A Transaction Report for each parcel is prepared and transmitted to R/W Operations Section for review prior to submitting it to the Deputy State Engineer, Highway Development Group, for approval. After the report is approved, the R/W Operations Section Manager is notified of any pending judgments to be paid, project number, amount, date, and amount of cash bond.

15.04 Procedure for Routing and Recording Acquisition File

After the acquisition package, with the transmittal sheet, is received from R/W Acquisition Section, the data is entered into the condemnation data base computer. All pertinent information is entered.

15.05 Posting of Bonds

Article 2, Section 17, of the Arizona State Constitution provides that the amount required to be deposited for obtaining immediate possession in eminent domain proceedings may be secured by surety bond or cash deposit. In order to gain an Order of Immediate Possession, the following course of action is taken.

a. Surety Bonds

1. Two certified copies of the Order for Immediate Possession (OIP) are received from the ADOT Office of Legal Advisor.
2. One certified copy of the OIP is sent to the County Recorders Office in which the property is located for recording.
3. When the recorded, the OIP is returned from the County Recorders Office, a "County Assessor Notice Letter", (Exhibit 18.10) is sent to the appropriate county assessor's office informing them to remove the property from the tax rolls.
4. The following information will be posted in the Condemnation data base computer and a "Payment Notification Letter", (ADOT Form 60-8904, Exhibit 18.11) is sent out:
 - (b) Date judgment is signed.
 - (c) Amount of judgment.
 - (c.) Whether bond is surety or cash.

b. Cash bonds: When a cash bond is posted, the above procedures, plus all of those listed below, are followed:

1. Notify R/W Operations Sections Accounting Unit of amount of money needed for the bond deposit, project, and parcel numbers.
2. Obtain the R/W Parcel File and complete the information on the Condemnation Record regarding the Order for Immediate Possession, attach the two copies of Order for Immediate Possession, and hand carry the file to R/W Operations Section.
3. Note on the tickler file the date, parcel number, and when sent to R/W Operations Section.
4. The R/W parcel file is returned to the R/W Titles Section and the R/W Group and the Office of Legal Advisor is notified of the date and amount of the cash deposit to the Court's Clerk by a Payment Notification, form ADOT 60-6308.

- c. After payment by the ADOT Accounting Unit:
 - 1. A parcel payment notice is sent from the R/W Operations Section to the R/W Titles Section to verify the date of payment.
 - 2. The State's Attorney is notified of the amount of the judgment and that it has been paid to the Clerk of the Superior Court.
- d. Final Order of Condemnation:
 - 1. Two certified copies of the Final Order of Condemnation are received from the ADOT Office of Legal Advisor.
 - 2. Descriptions are checked.
 - 3. R/W Operations Section has the order recorded in the proper county.
 - 4. The information from the recorded copy of the order is posted in the Condemnation data base computer and on the condemnation record sheet in the parcel file.
 - 5. The R/W Parcel File is sent to R/W Operations Section to be closed out.

15.06 Payment of Judgments

The condemnation procedures for payment of judgments are as follows:

- a. The R/W Titles Section receives two certified copies of the judgment from the ADOT Office of Legal Advisor.
- b. A check is made to ascertain whether the case has been placed on the Transaction Report for approval of payment.
- c. The R/W Operations Section is notified:
 - 1. Amount of judgment, parcel number, project number, date of possession by the state.
 - 2. Whether the bond was surety or cash deposit and if cash deposit, whether or not it has been withdrawn by the defendant.
- d. After payment of the judgment has been approved by the Deputy State Engineer, Highway Development Group:
 - 1. The copy of the judgment is attached to the parcel file.
 - 2. The legal description is double-checked.
- e. The judgment information is posted on the Condemnation Record and the Condemnation computer.

15.07 Settlements Without Trial

When, prior to the trial of a condemnation action, the State's Attorney and the defendant reach an agreement that is acceptable to the defendant, and appears to be in the best interests of the state, the attorney may propose that the action be settled without trial. In proposing a settlement without trial, the attorneys documented recommendations are submitted on the form, "Report and Recommendations of Settlement Without Trial."

- a. When a settlement without trial is approved by the Condemnation Support Team and the Chief R/W Agent, the necessary information is put on the Transaction Report for the Deputy State Engineer's approval.
- b. Assurance is made that the recommended settlement is fully documented and supported in accordance with 49 CFR 24.102(i):

Administrative Settlements

1. Administrative settlement. The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent and in the public interest. When Federal funds pay for or participate in acquisition costs a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trial costs, or valuation problems) support such a settlement.

This documentation must clearly support an opinion that the settlement is justified and in the best public interest.

- c. If the settlement without trial is approved by the Deputy State Engineer, the ADOT Office of the Attorney General will prepare a judgment for the courts signature and process through the R/W Titles Section.

Chapter 16 Grandfather Water Rights and Wells

16.01 Overview

Below is a basic overview of the Groundwater Rights in Arizona, as presented by the Arizona Department of Water Resources (ADWR).

A grandfathered right is the right to use groundwater from well pumping and other sources based on historic withdrawals. For example, a farmer who historically used groundwater for the irrigation of specific acres within an Active Management Area (AMA) can continue to withdraw groundwater for the irrigation of those acres.

There are three (3) types of grandfathered rights:

Irrigation Groundwater Right (IGR):

An IGR is the right to use groundwater to irrigate specific acres of land. That land must have been irrigated with groundwater between 1975 and 1980. Land without an IGR may not be irrigated with groundwater. An IGR may not be sold apart from the associated land. When irrigated land is sold, the IGR goes with it.

Irrigate means to apply water to two (2) or more acres of land to produce plants for sale, human consumption, or as feed for livestock. This means that the watering of grass on a lawn or a golf course is not irrigation; nor is the watering of a commercial orchard that is less than two (2) acres in size. An IGR does not specify how much groundwater can be pumped; that amount will vary over time according to a formula established in management plans developed by ADWR for each AMA.

If the irrigated land is located outside the service area of a water company, the landowner may apply to ADWR to have the IGR retired and converted to a Type 1 non-IGR.

Type 1 Non-Irrigation Right:

The Type 1 non-IGR (Type 1) is a right to use groundwater for non-irrigation purposes. It is associated with farmland that has been retired from cultivation for a non-agricultural use. Examples of non-irrigation uses of Type I include golf courses or industrial plants. With few exceptions, the irrigated land being retired must be located outside the service area of a city, town or private water company. (A service area is the area of land being served water by a city, town or private water company). Once an IGR has been converted to a Type I, the retired farmland can never be irrigated to grow crops again.

The maximum amount of groundwater that may be pumped each year using a Type I is three acre-foot per acre; in some cases the amount is less. (An acre-foot of water covers one acre of land to a depth of one foot; it equals 325,851 gallons).

The owner of irrigated land must file with ADWR in order to convert an IGR into a Type I. The rules governing Type I are complicated. The original owner of a Type I may either withdraw the groundwater from the retired farmland associated with the right or use groundwater from elsewhere on that retired farmland. However, if the groundwater is withdrawn from a well that is not located on retired farmland, the water must be used on the retired farmland.

Like the IGR, the Type I may be sold only with the land with which it is associated. The new owner of a Type I is more restricted than the original owner. The new owner may only withdraw groundwater from the retired farmland associated with the right. Additional restriction may apply to where the water may be withdrawn and where it may be used.

Type 2 Non-Irrigation Rights:

The Type 2 non-IGR is another right to pump groundwater from a well for non-irrigation purposes. The right is based on historical pumping of groundwater for a non-irrigation use and equals the maximum amount pumped in any one year between 1975 and 1980. Examples on non-irrigation uses include industry, livestock watering and golf courses.

The owner of a Type 2 may only withdraw water from the specific wells listed on the Certificate. An owner wishing to add or delete wells from the Certificate must apply to ADWR. Any wells added to the Certificate, however, must be located in the same AMA in which the historical pumping of groundwater occurred.

Unlike the Type 1 and IGR, Type 2s can be sold separately from the land or well. People needing groundwater for non-irrigation use may wish to consider buying a Type 2. The owner of a Type 2 may, with ADWR approval, withdraw groundwater from a new location within the same AMA. It is possible to lease a portion of a Type 2, but if the right is sold, it cannot be split. Instead, the entire right must be sold.

ADWR sets limits on who can use groundwater, where it can be used, and how much of it can be withdrawn. ADWR administers and enforces Arizona's groundwater law.

Exempt Wells:

An exempt well is a well that has a maximum pump capacity of 35 gallons per minute and is used to withdraw groundwater on for non-irrigation purposes, including watering less than two acres of grass or garden.

Only one exempt well is allowed to serve the same use at the same location. In other words, an individual cannot drill a second exempt well to serve the same purpose.

A person wishing to have an exempt well drilled must file a Notice of Intent with ADWR and receive approval before drilling. Exempt well owners are not required to measure groundwater pumpage, file annual water use reports, or pay withdrawal fees.

Irrigation Water Duties and Maximum Annual Groundwater Allotment:

The irrigation water duty and maximum annual groundwater allotment was established in the Management Plan for the Phoenix AMA for the Third Management Period (TMP), and became effective in 2003. The irrigation water duty and maximum annual groundwater allotment applied to water use on a farm while regulated under the Base Agricultural Conservation Program (Base Program). ADOT will be regulated under the Base Program unless we apply for, and are accepted into, one of the two alternative agricultural conservation programs.

Of special importance is the maximum annual groundwater allotment. This allotment is the maximum amount of groundwater that may be used to irrigate the acres described on the Certificate while we are regulated under the Base Program, except as provided by A.R.S. § 45-467, the flexibility account provision. Under this provision, if we use less than our maximum annual groundwater allotment, ADWR will register a credit to our flexibility account. If we use more than our maximum annual groundwater allotment, ADWR will register a debit to our account. The total amount of flexibility account debit allowed under A.R.S. § 45-467 is 50% of the maximum annual groundwater allotment. Any person using groundwater pursuant to the Certificate will be in violation of the Statute if the flexibility account exceeds 50% of the maximum annual groundwater allotment. There is no limit to the amount of flexibility account credit we can accrue.

16.02 ADOT Water Rights Management Program

The State of Arizona, by and through its Arizona Department of Water Resources (ADWR) sets the policies and procedures for obtaining water used outside of the public water systems.

These Irrigation Grandfather Water Rights and Wells play a big role in the development of Arizona's Highways, including but not limited to its use in dust mitigation, the construction of

highways, rental agreements, facility sites and rest stops, maintenance camps, and any other project deemed necessary by the Arizona Department of Transportation (ADOT).

In keeping with ADWR's policies and procedures, Right of Way Titles Section, as the Administrator of the Irrigation Grandfathered Water Rights (IGR) and Wells on ADOT-owned property has put together the following policies and procedures:

The following information is being provided to assist in processing the notification; transfer, reporting and maintenance of ADOT owned Irrigation Water Rights (IGR's) and wells.

16.03 Notification of Water Rights

Because of the potential liabilities and benefits to ADOT, it is important that R/W Titles Section be notified when property with an IGR is purchased as soon as possible. Below is the requested mode of notification:

- a. R/W Acquisition Section's Parcel Transmittal asks the question, "Irrigation Water Right or Well?"
 - If the answer is yes, the Agent is requested to ask for the Certificate number, then provide a copy of the Transmittal to R/W Titles Section.
- b. If the R/W Agent recognizes the property to be agricultural or horse property when reviewing the subject Appraisal:
 - The R/W Agent should ask if the owner has an unregistered well on the property.

16.04 Transferring of Water Rights

In accordance with A.R.S. §45-482(B), it is the responsibility of both the buyer and seller of an IGR to file a "Notification of Change of Ownership of an Irrigation Grandfathered Right Form," (This form can be found in the ADWR web site under forms) along with any associated fees, within thirty- (30) days of the conveyance.

In Arizona, water rights belong to the land. Although considered to be personal property, you can't take them with you. You may lease or sell water rights, but they will remain with the property. If a parcel has water rights and a portion of the property is sold (no matter the size), that portion will also have water rights.

An exempt right is considered to be ten (10) acres or less and does not need to be transferred; however if the property is being farmed with an adjacent piece of property, it is not exempt.

ADWR requires the following information to transfer ownership of an IGR:

- a. A completed form entitled, Notification of Change of Ownership of an IGR.
- b. Copy of the Assessor's Map.
- c. Enclose the required certificate conveyance fee payable to ADWR for each new certificate to be issued.

- An interoffice memo requesting an electronic transfer of funds along with the above package is sent to R/W Operations Section for further processing.

16.05 Annual Water Withdrawal and Use form

ADWR requires the owners of a Grandfathered Right to file an “Annual Water Withdrawal and Use form,” even if no Groundwater was used. This report must be postmarked no later than March 31 of each year, and mailed to ADWR.

- a. If ADOT is using the State-owned Right for construction, i.e., non-irrigation use:
 - 1. The Annual Water Withdrawal and Use form is mailed to the Project Manager or an individual designated by the Project Manager of the site.
 - (a.) The Project Manager will notify the R/W Titles Section Agent that the project will be using the Rights.
 - 2. The completed original forms are mailed to ADWR.
 - 3. Copy to R/W Titles Section files.
- b. If ADOT, as Lessee, is leasing the private property containing a Right, for a Facility Site, Maintenance Camp, Rest Area, Construction Road, etc.:
 - 1. The District Engineer or designated individual will file a report with ADWR or provide R/W Property Management Section with the appropriate information. Any water use fees associated with this Right are then passed on to the appropriate ADOT office.
 - 2. The completed original forms are mailed to ADWR.
 - 3. Copy to R/W Property Management Section files.
- c. R/W Property Management Section leases for State-owned Rights:

Lessees on ADOT-owned property containing an Irrigation Grandfathered Water Right and or a Well in a Water Users’ Association are required to file an “Annual Water Withdrawal and Use Report” with ADWR. Following are the requirements by ADOT concerning these reports:

 - 1. ADWR will mail the Annual Water Withdrawal and Use Report forms to the user of the IGR.
 - 2. The Water Users Association will mail the usage report (in most cases) directly to the Lessee (user).
 - (a.) Lessee will forward a copy of the completed report to the R/W Agent. The R/W Titles Section Agent should receive a copy of this report for the IRG file.

3. ADWR imposes a fine of \$25.00 for each month late, if a report was not received. ADOT will forward this fine to the Lessee with a notice that the lease may be terminated.

16.06 Assessments by Water Users' Association's

The yearly assessments on property with water rights are used by the Water Users' Association's and or ADWR for the operation and maintenance of canals, laterals (small ditches) and machinery such as pumping equipment, and broken pipes, etc. The assessments are based on a per acre-foot rate which is established by each association. The rates are not set and may vary per district per year, depending on their needs.

ADOT is not exempt from paying the yearly assessments while the property is active. However, if the property is developed for highway use, the associations (in most cases) will inactivate the rights and fees.

a. R/W Property Management Lessee's Responsibilities are as follows:

1. Lessees on ADOT-owned property containing an Irrigation Grandfathered Water Right and or a Well in a Water Users' Association are required to pay the assessments as determined by the association and per their lease agreement.
 - (a.) First half assessments are due on October 1, and delinquent after November 3, of each year. Second half taxes are due by March 1 and delinquent after May 3, of each year.
 - (1.) Lessee is required to pay only a half-year payment at a time, however the Lessee is responsible for all assessments while under lease agreement with ADOT.
 - (2.) Lessees will be required to send proof of the payment to the R/W Property Management Section Agent.
2. Lessee will be responsible for any late fees associated with the assessment payments.

16.07 Water Delivery Fees

Water Users' Associations may charge a Delivery Fee, which is the annual administrative cost of servicing an active irrigation account. The fees may vary from district to district however it is required to pay this fee before any waters will be delivered. The fee is usually a flat fee for the delivery and an additional per acre foot fee for the administrative costs, e.g., new accounts, name changes, etc.

a. This would be considered "utilities" and it is not ADOT's policy to pay for users' utilities.

16.08 R/W Property Management Section's Responsibilities with IGR's:

Because ADOT R/W Property Management Section leases and sells property, the following guidelines have been put together for the current handling and maintenance of IGR's:

- a. Documenting the Rental Agreement:
 - 1. The IGR number is included as part of the header of the Rental Agreement.
 - 2. An attachment entitled, "Attachment A" is noted in the R/W Property Management Sections Lease Agreement.
 - "Attachment A", will cover Lessee's responsibilities in leasing property with an IGR and asks the Lessee to initial in agreement.

Note: A copy of the first page of the R/W Property Management Section Rental Agreement is forwarded to the R/W Titles Section and notice is given to R/W Titles Section when that lease is terminated.

- b. When R/W Titles Section is made aware of an active IGR, the information as listed below is entered into the ADOT PaTS Data system (when available) for the R/W Property Management use in developing a lease agreement:
 - 1. The water right number.
 - 2. The number of irrigation acres of land.
 - 3. The maximum annual groundwater allotment.
 - 4. The name of the Water Users Association (when appropriate).
- c. The IGR number automatically appears on the Rental Agreement Screen in the ADOT PaTS Data System under the R/W Property Management Section.
- d. Maximum Annual Groundwater Allotment

The Lease Agreement should contain a statement regarding the Maximum Annual Groundwater Allotment for the IGR on that land. "Maximum Annual Groundwater Allotment", is defined as the maximum amount of groundwater that may be used per year for the irrigation of each irrigation acre in the farm that is calculated pursuant to A.R.S. § 45-465.

The maximum allotment allowed, per ADOT Parcel annually can be found in the PaTS Data System, in the Table or in the Property Management Section under Water Rights.

- 1. Should the lessee exceed the maximum allotment allowed, they will be required to purchase replacement credits through ADWR.
 - (a.) The R/W Agent will advise the lessee to contact ADWR and correct the situation. The lessee should be instructed that the Lease Agreement might be terminated if the situation occurs again.
 - (b.) ADWR will have a list of contacts willing to sell credits and the Lessee will have the responsibility of finding a seller. The Lessee will need to show proof that the credits have been replaced.

(1.) The lessee will need to show proof that the credits have been replaced.

(c.) DWR will have a list of contacts willing to sell credits and the Lessee will have the responsibility of finding a seller. The Lessee will need to show proof that the credits have been replaced.

Note: Please see Chapter 16.12, for more responsibilities imposed by ADWR should the maximum allotment be overused. If the lessee has either vacated or their Lease Agreement terminated before this situation is resolved, the costs for replacing credits can be in the Hundreds ± of dollars.

e. Direct Counter Cyclical Program:

The United States Department of Agriculture (USDA) Farm Service Agency (FSA) Direct Counter Cyclical Program subsidizes certain program crops that are associated with the land. In order to participate in this program, the operator is responsible for maintaining the land according to the USDA program regulations.

The farm bill requires the owners of the land to sign the Base and Yield Election form before the operator can benefit from the FSA program. However the program is set up for the operators only and as owner, ADOT is not entitled to these benefits.

➤ Below is the recommended and FSA approved language needed for agricultural leases that will allow the Lessee to receive their earned benefits without relying on ADOT:

“This statement will allow the operator/lessee of the ADOT owned property to be put into combination or to be farmed separate for the length of the lease.”

16.09 Excess Land:

When ADOT sells property with an IGR, the right to use and maintain the IGR must be transferred. Following are the procedures when selling Excess Land with an IGR:

a. The ADOT R/W Sales Notices and or Brochure contains the statement; “A.R.S. § 45-593.C requires that ADWR be notified of change of well ownership and the new owner is required to keep the ADWR’s Well Registration records current and accurate. Well data and ownership changes must be submitted within thirty (30) days after changes take place.”

1. ADOT needs to file a conveyance with the ADWR on behalf of the new owner(s).

There is a conveyance fee associated with the notification, however, ADOT does not want to be listed as the current owner when a property has been sold.

2. A copy of the Notification of Change of Ownership form is included with the Excess Land File to be provided to the buyer(s) with an explanation of ADOT’s process as previously stated.

Notification of Sale with a copy of Warranty Deed and Assessors Map to R/W Titles Section.

16.10 ADOT Districts and IGR's:

ADOT Districts use State-owned property with IGRs for a variety of purposes, such as construction, dust stabilization, offices, or any other project deemed necessary by the State. Following are the procedures for the Districts:

- a. R/W Titles Section will forward the Annual Water Withdrawal and Use form to the Project Manager or the designated individual who will file the report with ADWR.
 - Copy to R/W Titles Section Agent files.
- b. Any fees associated with the IGR are the responsibility of the user.
 - If necessary R/W can request payment on the behalf of the District using their Org numbers.
- c. The responsibilities and procedures as outlined in, Section 16.13 "R/W Property Management Section and IGR's", also apply to ADOT Districts.

16.11 ADOT Construction and IGR's:

ADOT's agreements with various Water Users Associations for exchange water allows the associations to assign the use of State-owned IGRs to contractors for their use in dust mitigation and in the development of the highways (even if the rights have been inactivated).

- a. The Water Users Associations sends water use reports to this office on a monthly, bi-monthly or yearly basis when these rights are being used.
 1. Contact is made with the association to determine the user of the right.
 2. The user is notified that they are responsible for any fees and reporting involved with using the IGR.

16.12 Irrigation Water Duties and Maximum Annual Groundwater Allotment:

The owner of an IGR has an allotment of water use for the year. If the allotted amount of water is exceeded by even one (1) acre foot of water, ADWR may require that a report for a conservation plan be submitted. It is important that Lessees not exceed the allowed allotment over 50% (also see Section 5 of "Grandfather Water Rights and Wells", entitled "Irrigation Water Duties and Maximum Annual Groundwater Allotment"). Following are the requirements for the report to ADWR:

- a. The report can be anything from one to 1000 pages, detailing the ways ADOT will plan to properly use the IGR, e.g., knowing our limits, proper instructions to our lessees, district engineers, construction crews, project managers and anyone authorized to use an IGR on ADOT property.

- b. The methods ADOT would employ to accomplish the plan, e.g., low-flow plumbing fixtures, showerheads, toilets, and any other method that would reduce water flow.

16.13 Wells

A majority of water rights are served by wells which if not properly monitored can be a safety hazard. If the opening is large enough, someone could fall in or be injured. Wells can also become contaminated or contaminate the surrounding ground.

The Environmental Enhancement Group has to give the all clear before a well can be capped or abandoned, or the property that the well is on can be leased, sold or before construction can begin. Not knowing about a well in advance can cost the State in both time and money.

- a. A majority of the wells on ADOT owned property will be abandoned, however before any procedures can be performed the rights have to be conveyed. Below are actions that may be taken depending on the need for the property the well is located on:
 - 1. ADOTs Environmental Group need to inspect the Well for contaminates, leeching, etc., before requesting the conveyance.
 - 2. After a conveyance a Well may be capped temporarily only if the property is deemed Excess Land and there are no plans to lease the property.
 - 3. If there are intentions to use the Well for construction, the well may be temporarily capped depending on the construction schedule.
 - 4. The Well will be abandoned by the Environmental Enhancement Group, if not needed for either construction or excess land, but will require an inspection first which may cut into the construction schedule.
 - 5. Prior to the termination or expiration of a Lease Agreement on ADOT-owned property, the Environmental Group should be requested to test the well for possible contaminants. The Lessee should be advised of the consequences of illegally contaminating a well and or ADOT owned property prior to signing a Lease Agreement.

16.14 Notice of Well Capping

It is the policy of ADOT to cap all open and unused wells on State-owned property. The Arizona Revised Statute § 45-594 and A.A.C. R12-822 require the owner of an open well to cap or abandon the well.

- a. The Environmental Enhancement Group shall file a “Notice of Well Capping Form” (This form can be found in the ADWR web site under Forms) with the ADWR no later than five (5) days after a well is capped. The listed procedures will also be followed:
 - 1. Original form mailed to ADWR.
 - 2. Copy to R/W files (not mandatory).
 - 3. Copy to R/W Titles Section files.

16.15 Notice Of Intent To Abandon A Well Form

A "Notice of Intent to Abandon a Well" (This form can be found in the ADWR web site under Forms) is filed with the ADWR when during the construction of a highway or for preventive measures on State-owned property the decision has been made to permanently abandon a well.

- a. The Environmental Enhancement Group requires the Licensed Well Driller to:
 1. Complete all areas of the form. ADWR will not process incomplete forms.
 2. Provide the ADOT Parcel or County Assessor Number on the form.
 - (a.) The Environmental & Enhancement Group and or R/W Titles Section Employee must sign on behalf of the State, as owner.
 - (b.) The Licensed Well Driller may not proceed until the above criteria have been met and ADWR issues a "Drilling Card."
 - (c.) Once the ADWR has approved the abandonment and stamped the form, the completed form is mailed to the Environmental & Enhancement Group who will provide R/W Titles Section a copy for filing. The Drilling Card is mailed directly to the Driller by ADWR.

16.16 Well Abandonment Check List Form:

The "Well Abandonment Check List form", (Exhibit 18.13) was developed for the purpose of documenting the R/W Records Center File and for the input of data into the "Well Abandonment Spread Sheet" (located in the Excel G-Drive), which is used by the Environmental & Enhancement Office and the R/W Titles Section for research and record keeping.

- a. The Environmental & Enhancement Office of the ADOT shall provide the Consulting Firm with a Well Abandonment Check List form that is to be returned to ADOT within fifteen (15) days of the completion of the abandonment containing the following information:
 1. Dates that the Driller submitted, received and completed the following forms and actions.
 - (a.) Notice of Intent to Abandon (NOIA) a well.
 - (b.) Well Abandonment Card.
 - (c.) Well Abandonment Completion Report.
 - (d.) Notification of Abandonment.
 - (e.) Attach a copy of each of the above forms to the Well Abandonment Check List form.

16.17 Request Form To Change Well Information:

The “Request Form to Change Well Information” (This form can be found in the ADWR web site under Forms) is used when any changes are made to the existing information concerning the ownership, Driller or if a variance is needed, e.g. if for any reason the Licensed Driller who remitted the forms to the ADWR is not able to continue with the project and a new Driller is hired, this form must be filed.

a. Various other Well Types and Responsibilities:

1. Potable (Domestic) Wells: Overseen by the ADOT Physical Plant Operations. The Water/Wastewater Operations Supervisor oversees the operation of ADOT Public Water and wastewater Systems as well as unregulated systems serving potable water for domestic use. These systems include most Rest Areas, MVD Inspection Stations, DPS and ADOT remote Maintenance Camps.
2. Potable (Domestic) Wells on ADOT owned property including residential, agricultural, etc., are maintained by the R/W Property Management Section and inspected by the Environmental Enhancement Group when the property is purchased. If it is determined to be a rental property, the well is to be inspected at the termination of each agreement.
3. Monitoring Wells: Requested by GEO-TECH and the Environmental Enhancement Group.
4. Dry Wells: Handled by the Environmental Enhancement Group, and the Arizona Department of Environmental Quality (ADEQ).

16.18 Records:

R/W Titles Section maintains records of ADOT owned Grandfather Irrigation Right Numbers in an Excel Spreadsheet entitled “Complete List of IGR’s and Wells”. The list is compiled of active, inactive, and sold water rights and wells. The following spreadsheets will also available in Excel:

- a. Potable State-owned Wells “Wellsort”.
- b. Well Abandonment’s Spreadsheet: Including the start and completion dates, sites, parcel and well numbers, and the purpose of the well, etc.
- c. Files on all Active Water Rights (located in the R/W Titles Section).

Chapter 17 Property Tax Resolutions

17.01 Purpose

The purpose of this chapter is to outline the procedures when R/W Titles Section receives a notice for property taxes on ADOT-owned Property.

17.02 Title Companies Notification

The State of Arizona is exempt from paying real property taxes from the date of purchase, which is the recorded date. The following instructions are included in the R/W Acquisitions Purchase Agreement to the assigned Title Company:

- a. Total Acquisition of Grantor's Property: Full release of all monetary liens and encumbrances, and leases of any kind. Pay in full all due and delinquent real property taxes and general and special improvement assessments. Prorate the current year's real property taxes on closings that occur on or after the 3rd Monday of August each year. Escrow Agent shall withhold the prorated amounts from each party and pay the lien of the current year's taxes in full.
- b. Partial Acquisition of Grantor's Property: Partial release of all monetary liens and encumbrances, and leases of any kind. At the discretion of State, pay due and delinquent property taxes and general and special improvement assessments, including full payment of taxes and assessments on individual assessor parcels within State's partial acquisition, and any Certificate(s) of Purchase (C.P.s). The current year's taxes shall not be prorated regardless of the closing date.

17.03 Non Compliance by Outside Entities

When the Assessor's Office fails to reflect the purchasing instrument, or the Title Company fails to pay all real property taxes in accordance with chapter 17.02, or for any reason that the R/W Titles Section should receive a notice of taxes due, it is the responsibility of the R/W Titles Section Agent to forward the notice to those responsible and ensure that those taxes and any fines or C.P.s are paid immediately, and in full.

The following process should be used to determine where an error might have taken place that caused the notification of taxes due to be sent, and who should resolve the problem:

- a. The R/W Titles Agent will search the ADOT parcel files which should contain the following information:
 1. Instrument used to purchase the parcel with the date of recording.
 2. The R/W Acquisition Section's Purchase Agreement detailing the instructions to the Title Company as referenced in Chapter 17.02.
 - (a.) The agreement indicates a partial or total take, the legal description and size of property purchased.
 - (b.) This agreement will include the name of the title company and the escrow agent's name and phone number.
 3. The Settlement Statement from Title Company detailing the payments made.
- b. If the determination is made that the Title Company is errant, the R/W Titles Section Agent will contact the Escrow Agent. If the escrow agent, after researching their files, comes to the same conclusion, the R/W Titles Section Agent will request that they

contact the Treasurer's Office to determine the amount that will resolve any delinquent taxes. A copy of the check is then forwarded to R/W Titles Section Agent.

- The R/W Titles Section Agent will apply the ADOT parcel number to the copy of the paid Title Company's check and the Delinquent Tax Notice and forward it to the R/W Records Center to be put in the ADOT parcel file.
- c. If it is determined that the parcel is in Condemnation, the tax notice should be forwarded to the appropriate R/W Titles Section Agent.

17.04 Records

Because errant tax notices cause a lot of unnecessary work for ADOT, a spreadsheet, entitled Delinquent Taxes and Condemnation Notices was developed to contain the following information for future reference:

- a. The assessor number.
- b. The county the parcel is in.
- c. The ADOT parcel number.
- d. Comments concerning the research and outcome of the notices, i.e., resolution dates and numbers submitted by the Treasurer's Office, etc.
- e. "Hard to Identify". Sometimes a notice is received for property that has been Highway Developed for several years. The information was time consuming and difficult to find in the systems. An asterisk next to the parcel or in a column indicates that the information should be maintained.

Each notice is entered into the spreadsheet each time it is received. If you receive the notice again, the information is already available to you.

Chapter 18 Titles Exhibits

The following Exhibits are intended for reference purposes. Some of the Exhibits have been reduced in size in order to include them in this manual. [Click Here](#) to view the Exhibits.

To Return to the R/W Manual Table of Contents [Click Here](#).
To Return to the Titles Section Table of Contents [Click Here](#)