

9.08.03.00 **Service of Notice of Deposit and Summary of the Basis for the Appraisal**

The District makes initial service of the Notice if the OP is to be served at the same time as the Summons and Complaint. CCP Section 1255.020 requires such service to be made on all parties named in the suit in the same manner as provided in CCP Section 1255.450 for service of OPs. This fulfills technical service requirements set forth in CCP Section 1255.020.

Occasionally, it is necessary to serve the OP after service of the Summons and Complaint. Then, either the District or the Regional Legal Office serves the Notice in accordance with CCP Section 1255.450. This must be a joint determination to ensure an orderly process of service.

A court award draws interest from the date possession is to be taken, as specified in the Order. If any portion of the deposit is withdrawn prior to judgment, that portion does not draw interest.

9.08.04.00 **Increase or Decrease in Amount of Deposit**

The Department, or any other party having an interest in the property, may move to have the Court redetermine and order the appropriate deposit. Or, the Court on its own motion can order the deposit increased (CCP Section 1255.030). The District notifies the Regional Legal Office immediately when redetermination of the deposit is sought by the District, other party, or the Court.

If the deposit is to be decreased pursuant to CCP 1255.030 (a) and (e), the Regional Legal Office prepares a Notice of Motion for Order to Decrease Deposit and to Release Balance of Deposit to Plaintiff, at the request of the Condemnation Section. The District serves the Notice of Motion on all parties along with the Declaration in Support of Motion for Order to Decrease Deposit and to Release Balance of Deposit to Plaintiff. Decrease below the amount already withdrawn is prohibited by statute.

The State's attorney prepares the Motion and Order. After the Order is signed by the Court and filed, the District serves the Order on all parties.

9.08.05.00 **Deposit Initiated by Defendant**

When the property to be acquired is a dwelling of not more than two units and at least one is occupied as a residence by a defendant owner, or the property is subject to a leasehold interest, the resident or the lessor may initiate a deposit. The resident or lessor serves a notice on the Department requiring the Department to deposit the probable compensation at a specified date and not earlier than 30 days after service of said notice. CCP Sections 1255.040 and 1255.050 provide certain sanctions against the Department if such deposits are not made. The District should contact the Regional Legal Office if it receives such a notice.

The Regional Legal Office will probably receive the notice and will forward the notice and request for deposit to the District to arrange for the deposit.

The Department may obtain an OP, if it chooses, 30 days after making a deposit under this section. The District should inform the Regional Legal Office whether possession is desired.

9.08.06.00 **Conformed Copies of Order for Possession**

Before being served on a defendant, each copy of the OP must be conformed to agree with the original as filed.

9.08.07.00 **Preparation of Excess Land Inventory Record**

The Condemnation Section, at the time of filing the OP, notifies the acquisition agent whenever excess lands are included in an OP. The acquisition agent must prepare an Excess Land Inventory and Disposal Record inventory card and forward it to the Excess Land Section.

9.08.08.00 **Service of Order for Possession**

The District is required to serve a copy of the OP on all record owners of the property and on all occupants, if any. A record owner is defined as the owner of the legal or equitable title to the fee or lesser interest in property as shown by recorded deeds or other recorded instruments.

Service of the OP shall be made by personal service except as follows:

- If the person on whom service is to be made has previously appeared in the proceeding or been served with Summons in the proceeding, service of the OP may be made by mail upon such person and their attorney of record, if any.
- If the person on whom service is to be made resides out of the State, has departed from the State, or cannot with due diligence be found within the State, service may be made by registered or certified mail addressed to such person's last known address.
- The Court, for good cause shown on *ex parte* application, may authorize the plaintiff to take possession of the property without serving a copy of the OP on a record owner not occupying the property. In such cases, the District should immediately request the Regional Legal Office to obtain a Court order allowing the Department to dispense with service of the OP.
- A single service on or mailing to one of several persons having a common business or residence address is sufficient. For instance, service on husband or wife is sufficient for a family unit.

9.08.08.01 Time Requirements

If the property is lawfully occupied by a person dwelling thereon or improved as a farm or business operation, service of the OP and the 90-Day Notice (issued by the Relocation Assistance Section) may be made concurrently. When there is concurrent service, the effective dates of both documents must coincide. The Relocation Assistance Branch will serve a 30-Day Notice to Vacate at the end of the first 60 days of the Information Notice. Close coordination is required between Relocation and Acquisition to have the effective dates coincide. (See Section 10.03.10.00.)

In all other cases, service shall be made not less than 30 days prior to the time possession is to be taken. If uncertain, always give 90 days' notice. Service of the OP may be made at the same time as or following service of Summons.

9.08.08.02 Circumstances

Service shall be made not less than 30 days prior to the time possession is to be taken pursuant to the Order under the following circumstances:

1. The Department has deposited probable compensation pursuant to a deposit initiated by an owner (CCP 1255.040 and 1255.050) **or**
2. The Department has deposited the probable compensation and the defendant in possession has either:
 - Expressed in writing a willingness to surrender possession of the property on or after a stated date, **or**
 - Withdrawn any portion of the deposit.

If the District seeks possession on either of the two conditions in 2. above, CCP Section 1255.460 requires that the OP:

- Recite that the OP is made pursuant to CCP Section 1255.460.
- Describe the property to be acquired. The description may be by reference to the Complaint.
- Include the date after which the Department is authorized to take possession. This can be the date requested by the defendant, or, if a portion of the deposit is withdrawn, not less than 30 days after the date the deposit was made.

9.08.09.00 Emergency Situations – No Appraisal

Emergency projects are those that preserve health, safety, welfare, or property. In emergency situations where there is insufficient time to complete an appraisal of a required property prior to the date possession is needed, Regions/Districts have the authority to approve use of an estimated compensation. The appraiser executes an affidavit stating:

- The reasons why possession must be obtained immediately.
- That an adequate appraisal cannot be made in time.
- The status and estimated date of availability of the appraisal.

than the balance remaining on deposit after payment of the earlier withdrawal.

The Court order to withdraw all or any portion of the amount deposited by the State will not include interest on such amount to the date of withdrawal. Payment of interest is made only after judgment has been rendered. Separate computations are necessary in all cases where a withdrawal has been made from the deposit. Interest is computed in the judgment on the principal amount of compensation from the OP date to date of payment of the amount withdrawn. A separate computation is made on the balance of the award from the date of withdrawal to the date of payment of the remaining balance.

9.09.05.00 Procedure for Withdrawal

After all notices are given, the Court holds a hearing to determine the amounts to be withdrawn and who shall withdraw them. If no other parties have an interest in the property, no hearing is necessary. If no party having an interest in the property appears and objects within 10 days after service of notice, all objections are waived and a hearing is not necessary.

The Order of the Court authorizing the withdrawal directs either the State Treasurer or the Court (County Clerk) to pay the amount authorized to the defendant or other persons determined to have an interest in the property. Prior to issuing payment, the defendant or other persons authorized to receive payment are to complete the Payee Data Record (STD. 204). This information is to be forwarded to the appropriate entity processing the payment request. Whether the Order is directed to the State Treasurer or to the County Clerk depends on whether the original deposit was made with the County Clerk or into the Condemnation Deposits Fund in the State Treasury. In most cases, the deposit is in the State Treasury (CCP 1255.070).

It is preferred that the State Attorney take the lead on the mailing of the Certified Order to the State Treasurer rather than have the owner's attorney do it. Payment is made as directed by the Order, usually to the defendant or defendant's counsel. The Department Cashier will provide the designated person in each district, as well as the State Attorney, with a copy of a Claim Schedule. Payment is made directly to the defendant or other parties authorized in the Order. The District should follow up on applications for withdrawal to determine whether such payments have actually been made. The State's attorney obtains copies of the Order and forwards one copy to the District.

9.09.06.00 **Waiver of Defense**

If any portion of the money deposited is withdrawn, the party waives all defenses to the action except a claim for greater compensation. The amount withdrawn shall be credited upon the judgment ultimately entered in the proceeding.

9.09.07.00 **Waiver of Objection**

If no other party has objected and there is no independent reason for the Department's objection, the Department's objection shall be waived when the Regional Legal Office forwards the Report of Service, Notice of Application for Withdrawal, and Declaration of Service to the Court. The Regional Legal Office shall file a copy of the waiver signed by the State's attorney with the Court and serve it on the applicant.

9.09.08.00 **Deposit—Conflicting Claims to Amount Withdrawn**

The Court must determine whether the applicant shall file a bond (undertaking) to secure a third party claimant. If the Court allows withdrawal and parties have not been served, the Court may require a bond by the applicant to indemnify the Department against liability. Unless the bond is required because of an issue as to title, the applicant can recover premiums paid as part of recoverable costs in the eminent domain proceeding.

9.09.09.00 **Repayment of Amount of Excess Withdrawal**

A party who withdraws an amount in excess of any entitlement, as finally determined, must pay the excess to the party entitled thereto. The Court enters judgment to that effect.

The judgment does not include interest except in the following cases:

- **Withdrawal by Another Defendant** - An amount to be paid to a defendant shall include legal interest from the date of its withdrawal by another defendant.
- **Excess Withdrawal** - If the defendant who requested the Department to increase the original deposit has made an excess withdrawal, any amount of the excess attributable to the increased deposit shall be repaid to the Department including legal interest from date of withdrawal.

In the case of an excess withdrawal, the Court may grant a defendant up to one year to repay the Department. If the Court authorizes such delay in repayment, the District records an abstract of the judgment in the appropriate county. If repayment has not been made by the expiration of the authorized delay period, the District shall notify the Regional Legal Office. It determines the appropriate means to recover the excess withdrawn plus interest, if applicable.

9.10.00.00 – JUDGMENT OF CONDEMNATION

9.10.01.00 General

The Regional Legal Office prepares the Judgment and forwards the documents to the District for filing with the Court.

9.10.02.00 Judgment by Default

The Department takes defaults in condemnation proceedings only after making a diligent effort to induce the property owner to answer. Prior to entering a default under any condemnation proceeding, the Regional Legal Office sends a letter to the property owner giving a final date for appearance.

The Court requires military affidavits before granting a judgment by default. The party serving the Summons and Complaint must obtain sufficient facts to thereafter make a military affidavit, if required.

9.10.03.00 Time of Paying Judgment

CCP Section 1268.010 requires the plaintiff to pay the full amount required by the judgment within 30 days after final judgment.

The District will make every reasonable effort to pay the amount of the award on the date the judgment is entered to keep payment of interest to a minimum. The District should not have the judgment signed until it is in a position to deposit the award, plus interest under OP if any, computed to the date the judgment will be signed and entered. If a motion for a new trial will be made by the State, State's attorney will request the District to delay making the deposit.

9.10.04.00 Method of Paying Judgment

Payment is made by either or both of the following methods:

- **Payment of Judgment Directly to the Defendant** – Any amount that the defendant has previously withdrawn shall be credited as a payment on the judgment.
- **Deposit of Money with the Court Pursuant to CCP Section 1268.110** – It is State's practice to pay the defendant directly rather than deposit into Court. The State may deposit with the Court when there are outstanding issues regarding settlement.

9.11.00.00 – DEPOSITS AND SCHEDULES

9.11.01.00 Deposit of Award and Costs

The District makes two separate deposits and/or payments:

- **Amount of Award** - plus interest on possession (if any), computed to the date of payment of the award computed at the apportionment rate. (See CCP Sections 1268.310 and 1268.350.)
- **Amount of Defendant's Costs** - the State's attorney will advise the District of the amount of the property owner's legal costs. (See Section 8.01.35.00.)

9.11.02.00 Interest for Possession

If an OP is involved, the District pays the award, together with interest, to the party directed in the judgment. The payment may be made to the defendant, defendant's counsel, or to the court.

9.11.03.00 Interest on Award

Compensation, including damages, awarded in an eminent domain proceeding draws interest pursuant to CCP Section 1268.310 from the earliest of the following dates:

- The date of entry of judgment.
- The date the plaintiff takes possession of the property.
- The date after which the plaintiff is authorized to take possession of the property as stated in an OP.

The compensation award ceases to draw interest pursuant to CCP Section 1268.320 on the earliest of the following dates:

- The date the amount deposited as probable compensation has been withdrawn by the person entitled thereto.
- The date of deposit of the amount of the award.
- The date a person is paid the amount to which they are entitled.

9.11.04.00 **Offset Against Interest**

If after the date interest begins to accrue (date of possession), the defendant continues in actual possession of or receives rent, issues, or profits from the property, the value of such possession and of such rents or other income is offset against the interest that accrues during such period.

[CCP Section 1268.330(b)] Value of possession should be presumed to be the rate of interest on the compensation award for the period defendant continues in possession and receives rent or other income. The District gathers the necessary facts to determine whether an offset against interest should be made so this issue may be tried in the condemnation proceedings.

9.11.05.00 **Payment of Judgment**

When the judgment payment is deposited with the Court, the District must obtain a receipt from the County Clerk in order to obtain the FOC and to schedule payment of the judgment.

When the judgment payment is paid to the defendant or to the defendant's counsel, the District must have the party sign a receipt of funds and provide a satisfaction of judgment or partial satisfaction of judgment for the defendant or the defendant's counsel to sign. The District or Regional Legal Office will determine who will file the document once it is accepted.

9.11.06.00 **Appeal or Motion for New Trial by Defendant – State in Possession**

The District should deposit the amount of the judgment at time of entry of judgment to stop the accrual of interest. Except where the defendant has withdrawn the judgment award, the State should not obtain the FOC until the appeal is terminated and the judgment becomes final. Otherwise, the State would be responsible for creating a cloud on the title should the judgment be reversed.

It is particularly important that the Department not withdraw the deposit under an OP during the pendency of an appeal. If the judgment is reversed, State's possession would not be supported by the constitutionally required deposit.

9.11.07.00 Scheduling of Judgments for Payment

To schedule payment for judgments, the district submits Form RW 9-20, Condemnation Check Request-Invoice, to R/W Accounting together with, but not limited to, the following items:

- **Judgment in Condemnation** - A certified copy specifying the amount of compensation to be paid by State.
- **Interest Calculation Worksheet** - one copy, if applicable.
- **Federal Participation Memo (Form RW 8-16)** - two copies.
- **Payee Data Record (Form STD. 204)**

Explain in detail any difference between the amount of the judgment and the amount being scheduled and not accounted for above.

A certified copy of the FOC is retained in District files. A certified copy is defined as a copy that has been formally certified by the County Clerk as a true and correct copy of the original on file. Endorsed or conformed copies are identical to the original, but have not been certified as true and correct copies.

9.11.08.00 Tax Identification Numbers

Requirements for securing Tax Identification Numbers in condemnation cases are identical to the regular acquisition procedures described in Manual Section 8.04.43.00. Every effort should be made to secure Payee Data Records for all condemnees.

9.12.00.00 – FINAL ORDER OF CONDEMNATION

9.12.01.00 Recording of Final Order of Condemnation – Vesting of Title

CCP Section 1268.030(c) provides that title to the property described in the Final Order of Condemnation (FOC) vests in the State upon the date that a certified copy is recorded in the Office of the Recorder of each county in which the property is located. After the judgment has been entered and the judgment is paid, the Judge signs the FOC upon being shown the receipt for deposit or a signed, full Satisfaction of Judgment. A Satisfaction of Judgment signed by the defendant or defendant's attorney must be presented with the FOC if payment has been made directly to the defendant. Since payment for the property will have been deposited prior to issuance of the FOC, it is essential that the required certified copy be recorded immediately to vest title to the property in the State.

After the FOC is recorded, the Regional Legal Office prepares, serves, and files a Notice of Entry of Judgment, Deposit Pursuant to Judgment, and Notice of Recording of Final Order on all defendants or the defendant's counsel unless Notice has been waived in the judgment. If Notice is waived, a courtesy copy of the FOC may be mailed to the previous owner of the property.

9.13.00.00 – SETTLEMENT AND DISMISSAL

9.13.01.00 Settlement by Judgment After Entry into Right of Way Contract

In some cases where a negotiated settlement has been made with a defendant through a Right of Way Contract, it may be necessary to secure a Judgment in Condemnation or a Default Judgment for technical or other reasons, such as clearing the remaining interest from title. Before Judgment in Condemnation is secured, a written agreement should be entered into with the defendant or the defendant's attorney providing for the cancellation of all contractual obligations included in the Judgment. Failure to do this creates duplicate obligations.

The Agreement of Cancellation should be executed in duplicate and distributed as follows:

- One copy to the defendant or the defendant's attorney.
- One copy affixed to the executed original Contract in the District file.

If the defendant, or the defendant's attorney, refuses to enter into such a written agreement, the District should submit complete information to the Regional Legal Office with a request for instructions on how to proceed to complete the acquisition.

A DM Series - Actual Possession clause must be included in the Deed whenever the State has the right to take possession under Court order or has taken actual possession through Right of Entry or OP. (See Section 6.06.11.00.)

9.13.02.00 Settlement by Right of Way Contract

Whenever a parcel included in a condemnation suit is settled by Right of Way Contract, the action shall be dismissed. If a deposit has been made for an OP, provision should be made for its release.

The District should not request a dismissal until it obtains consent from all attorneys who have filed an answer alleging an interest in the parcel and escrow has closed. The attorneys representing such interests should be advised of the proposed settlement and the provisions concerning the distribution of the payment.

9.13.03.00 **Settlement After Withdrawal of Deposit**

Whenever a withdrawal of funds has been made by the defendant and a negotiated settlement is subsequently reached, the Contract shall include a provision wherein the defendant acknowledges receipt of the amount withdrawn as a credit to the State against the total payment provided for in the Contract. A similar provision shall also be included if settlement is by stipulated judgment.

9.13.04.00 **Approval of Stipulated Judgments**

The District will secure approval from HQ R/W before entering into a Stipulated Judgment whenever:

- The amount of the stipulation is substantially in excess of the highest value based upon an authorized appraisal report that would have been testified to if the action had proceeded to trial. Any limitations under current delegations will apply.
- When the proposed payment is not substantially at variance with the authorized appraisal report but where the settlement (with the exception of the form of the instrument) does not conform to the criteria and conditions for district-approved contracts. (See Acquisition Chapter.)
- When it is proposed to exchange noncontiguous excess land. (See Section 8.03.07.00.)

After approval is secured by letter, fax, or telephone, the District shall submit to HQ R/W a Memorandum of Settlement fully explaining the details of the stipulated settlement.

9.13.05.00 **Release of Deposit – Settlement by Judgment**

The Order for Release of Deposit can be filed with the Final Order of Condemnation. The District should notify the attorney of record upon payment of the judgment, as specified in the judgment, so the FOC and Release can be prepared.

9.13.06.00 Abandonment of Proceedings

Under certain circumstances, the Department may abandon all or part of a parcel after suit has been filed. If an abandonment is contemplated, the District should consult with the Regional Legal Office.

9.14.00.00 – DEPOSIT RELEASES

9.14.01.00 Responsibility for Release of Deposit

The DDC-R/W is responsible for the prompt release of deposits. The District should review the status of these deposits periodically to ensure release immediately following the vesting of the property in the State, regardless of whether title was acquired through Court proceeding or by deed.

9.14.02.00 Release of Deposit, or Cancellation of Deposit, After Filing of Suit

When a parcel is settled by a Judgment in Condemnation, the condemnation deposit is released by court order (Request and Order for Release of Deposit). The Regional Legal Office will prepare said document and will coordinate with the District, the responsible party, for the filing of the Order. It is preferred that the Order for Release of Deposit be filed concurrently with the Final Order of Condemnation. Three copies of the Order should be delivered to the Court. One of the copies is to be received by the Court along with a request that the Court certify two copies of the Order, upon filing of said documents. The Division of Accounting, Cashiering Unit, requires two certified copies of the Order.

If the case is dismissed, the District is responsible to cancel the deposit. The standard release request form, RW 9-21, should be filled out canceling the deposit and stating the reason the deposit is canceled. The reason for the cancellation is identified on the form by checking the appropriate box. A court order is not required.

9.14.03.00 Cancellation of Deposit Prior to Filing of Suit

A condemnation deposit on a parcel settled by right of way contract or decertified prior to a case being filed needs to be canceled by the District. The standard release request form, RW 9-21, should be filled out by the District canceling the deposit. The appropriate box should be checked providing the Division of Accounting, Cashiering Unit, and the State Treasurer with the reason the deposit is canceled. The original form is then sent to the Division of Accounting, Cashiering Unit.

The standard release request form, RW 9-21, Release of Condemnation Deposit, contains the necessary language for the District's affidavit; necessary explanatory data is added in the appropriate boxes. In addition, for

stipulated and court-ordered judgments, two court-certified copies of the Request and Order for Release of Deposit must be included.

9.14.04.00 Processing of Order for Release of Deposit

The District shall transmit the Release of Condemnation Deposit (RW 9-21) and two certified copies of the Order for Release of Deposit, if applicable, to the Division of Accounting, Cashiering Unit, for processing. Accounting arranges for the transfer of the deposit from the Condemnation Deposits Fund to the State Transportation Fund. After this transfer has been made, the transaction will appear on the R/W Accounting Weekly Report, which is then forwarded to the District P&M Office to confirm the deposit has been released.

9.15.00.00 – GENERAL CLOSING PROCEDURES

9.15.01.00 Ordering Policy of Title Insurance

After recordation of the FOC, the District shall secure a Policy of Title Insurance to insure the interests acquired by State.

9.15.02.00 Record of Condemnation

Upon completion of a trial, the District forwards a copy of the attorney's Trial Report to HQ R/W. Two copies of the MOS are forwarded to the Regional Legal Office. Trial Reports are required when there is a contested award. Trial Reports are not required for stipulated judgments, but written concurrence from Legal is necessary for all Legal Settlements. The District submits Supplemental Memoranda to HQ R/W as events occur covering retrials, appeals, or situations where the Court has amended the original verdict.

9.15.03.00 Improvements Acquired

The District lists improvements acquired through condemnation trial or secured under an OP on Right of Way Improvements and Personal Property Inventory and Disposal Record in the same manner as those acquired through Right of Way Contract. When improvements are acquired by condemnation but without an OP, the inventory is prepared concurrently with Page 3 (Alternate) of the MOS.

9.15.04.00 Prepaid Tax Cancellation

Prepaid current taxes on property acquired after the lien date, which would have been subject to cancellation if unpaid, are recoverable from the State. Money owed by the State for the tax refund is paid as part of the defendant's cost bill. The State arranges to recover this money from the taxing agency pursuant to the Revenue and Taxation Code.

When property is acquired by eminent domain, the following requirements apply to recovery of prepaid taxes:

- If the State has taken possession of the property prior to judgment, the property owner must claim payment for these taxes as part of the cost bill filed after judgment in condemnation.

- If the State has not taken possession of the property prior to judgment, the property owner must claim payment for these taxes by means of a supplemental cost bill filed not later than 30 days after recording of the FOC. (See Section 8.66.03.00 of the Acquisition Chapter.)

9.15.05.00 Filing of Recorded Document

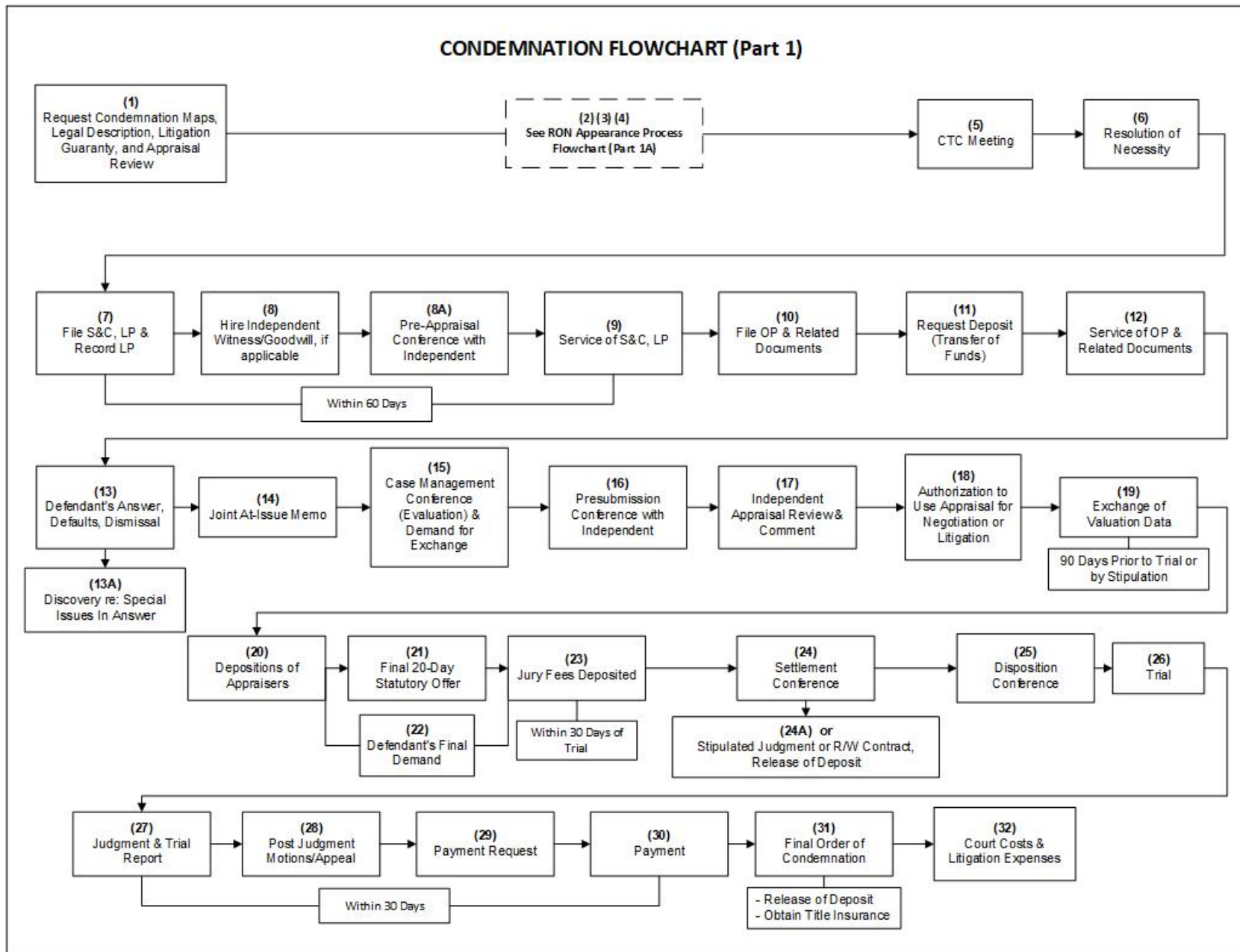
Procedures for filing of recorded documents are set forth in the Acquisition Chapter, Section 8.67.00.00, "Filing of Completed Transactions."

9.16.00.00 – CONDEMNATION TIMELINE AND FLOWCHARTS

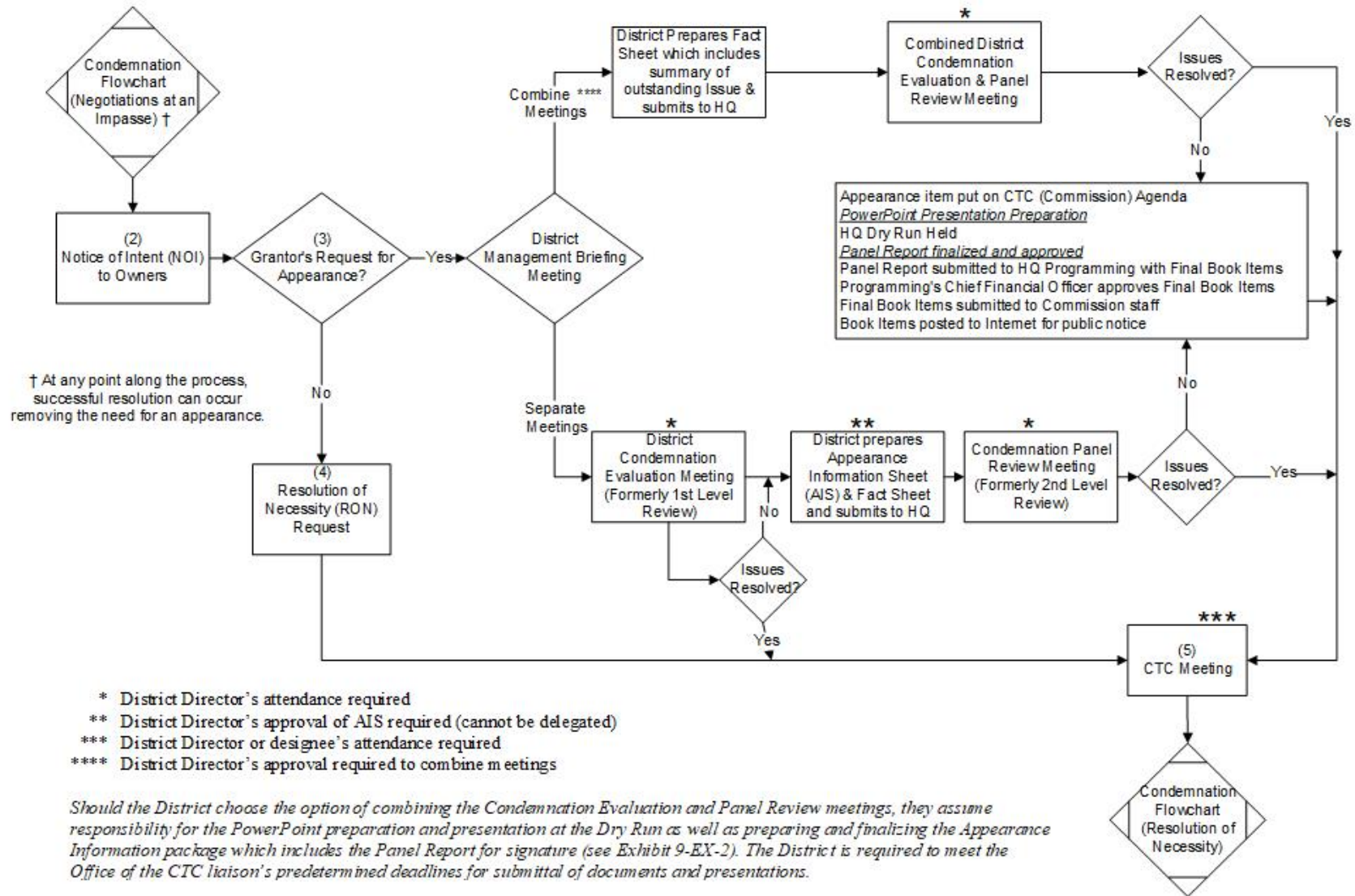
EMINENT DOMAIN LITIGATION TIMELINE

Month	Action
0	File summons, complaint, and order for possession, deposit amount of probable compensation
1	Contract for Independent Appraiser/Expert Witness
2	Complete service of summons, complaint, and order for possession
3	Answers filed by all defendants
4	
5	File joint at-issue memorandum
6	
7	Trial setting and status or case management conference
8	Presubmission conference - Legal, Right of Way, and Independent Appraiser
9	Review for contract payment of independent appraisal
10	Authorization to use independent appraisal for negotiation
11	Exchange of valuation data
12	Statutory final offer and mandatory settlement conference
13	Trial begins

CONDEMNATION FLOWCHART (Part 1)



RESOLUTION OF NECESSITY (RON) APPEARANCE PROCESS FLOWCHART (Part 1A) †



RIGHT OF WAY/LEGAL CONDEMNATION FLOWCHART (Part 2)

<u>Activity</u>	<u>Responsible Party</u>	<u>Summary of Responsibilities</u>
1	District R/W Office	Requests documents from R/W Engineering. Also, requests litigation guaranty or update, if dated.
1a	District R/W Engineering	Prepares maps and legal descriptions.
1b	District R/W Office	Requests Appraisal Branch to confirm market value (Confirmation of Market Value Memo). Can be requested earlier.
2	District R/W Office	<p>Makes decision to seek Resolution of Necessity.</p> <p>Determines parties receiving notice. Sends a minimum of 30 days prior to CTC meeting date (personal call required within 30 days of mailing). Checks maps and descriptions.</p>
3	District R/W Office	<p>If grantor requests an appearance, responsible for initiating the process and conducting the District Condemnation Evaluation Meeting;</p> <p>Having a District Management briefing meeting prior to the District Condemnation Evaluation Meeting;</p> <p>Preparing the Appearance Information Sheet and Fact Sheet.</p> <p>Setting up the Condemnation Panel Review Meeting, if required.</p>

RIGHT OF WAY/LEGAL CONDEMNATION FLOWCHART (Part 2) (Continued)

<u>Activity</u>	<u>Responsible Party</u>	<u>Summary of Responsibilities</u>
3	District R/W Office	<p>OR:</p> <p>If the District chooses to combine the Condemnation Evaluation and Condemnation Panel Review meetings, then the District is responsible for:</p> <p>Having a District Management briefing meeting;</p> <p>Preparing a Fact sheet, which includes a summary of the owner's outstanding issues;</p> <p>Setting up the combined Condemnation Evaluation and Panel Review Meeting.</p>
	HQ R/W	Conducts the Condemnation Panel Review Meeting, if required, or the combined Condemnation Evaluation and Panel Review Meeting.
4	District R/W Office	Submits Resolution of Necessity request to HQ R/W a minimum of 45 days prior to CTC date. R/W Agent completes the form based on information from the map, the appraisals, and the parcel diary.
5	CTC	CTC adopts Resolution of Necessity.
6	HQ Legal	Sends certified Resolution to Regional Legal Office.
	HQ R/W	Sends original plus copies of Resolution to District R/W.

RIGHT OF WAY/LEGAL CONDEMNATION FLOWCHART (Part 2) (Continued)

<u>Activity</u>	<u>Responsible Party</u>	<u>Summary of Responsibilities</u>
7	District R/W Office	<p>Compiles the necessary information required for Legal to prepare the Summons and Complaint and Lis Pendens documents (title report, appraisal, parcel diary, legal description and maps, and the CTC Resolution).</p> <p>Note: Compiling information, transmitting to Legal and preparation of suit papers can be done prior to passage of the CTC Resolution.</p>
	Legal	Prepares the Summons and Complaint, Lis Pendens, and maybe OP documents.
	District R/W Office	Files Summons and Complaint and Lis Pendens, then records the Lis Pendens, deposits amount of probable compensation.
8	District R/W Office	Hires independent(s) with Legal's concurrence.
8a	District R/W Office	Legal and District R/W should hold a pre-appraisal conference with the hired witness to discuss the appraisal problem, legal concepts, etc.
9	District R/W Office	Completes services to all named defendants; completes proofs of service and submits to Legal.
	Legal	Checks proofs for completeness and correctness, and files with the Court.

RIGHT OF WAY/LEGAL CONDEMNATION FLOWCHART (Part 2) (Continued)

<u>Activity</u>	<u>Responsible Party</u>	<u>Summary of Responsibilities</u>
10	District R/W Office	Sends Legal the necessary information for preparation of the Order for Possession, Notice of Deposit, and Summary for Basis for Appraisal.
	Legal	Prepares the OP and related documents.
	District R/W Office	Files the OP and related documents with the Court.
11	District R/W Office	Submits Request for Transfer of Funds to District Planning and Management.
12	District R/W Office	<p>Completes services to those who have possessory or equitable interests; completes proofs of service and submits to Legal.</p> <p>Note: If property is occupied, a 90-day Notice to Vacate must also be served. [See RAP Section 10.03.09.00 and 49 CFR 24.203 (c).]</p>
	Legal	<p>May sometimes serve by mail those who have possessory or equitable interests who were personally served Summons and Complaint and Lis Pendens. Checks all proofs for complete and accurate information.</p>
13	Legal	Sends copies of Answer to District R/W Office. Requests Default and files Disclaimers, if necessary.
13a	Legal	Discovery on Special Issues in the "Answer" (such as: goodwill, delay, etc.).
14	Legal	Informs Court that case is ready for trial calendar.

RIGHT OF WAY/LEGAL CONDEMNATION FLOWCHART (Part 2) (Continued)

<u>Activity</u>	<u>Responsible Party</u>	<u>Summary of Responsibilities</u>
15	Legal	Court sets date for Disposition (Evaluation) Conference and Trial. Legal serves and files Demand for Exchange of Valuation Data within 10 days after trial is set.
16	Legal	Prior to completion of the independent's report, Legal and District R/W shall hold a presubmission conference with the hired witness to review appraisal concepts, date of value, market data, compensable items, etc. Also checks the parcel areas and the proposed project with the independent appraiser.
17	District R/W Office	District reviews, comments, and completes Exhibit 7-EX-18; HQ R/W authorizes use if it is a high-value parcel.
	Legal	Reviews and comments on District's analysis.
18	District R/W Office	Acquisition Branch requests authorization to use the report for settlement or trial.
19	Legal	Exchanges and deposits with Court— Expert Witness list and Statement of Valuation Data—90 days before trial.
20	Legal	Takes depositions of appraisers and other designated experts.
21	District R/W Office	Determines and approves the Statutory Offer based on all available data and Legal's recommendation.
	Legal	Serves and files the final offer at least 20 days before trial.

RIGHT OF WAY/LEGAL CONDEMNATION FLOWCHART (Part 2) (Continued)

<u>Activity</u>	<u>Responsible Party</u>	<u>Summary of Responsibilities</u>
22	Defendant's Attorney	Defendant's attorney files final demand at least 20 days before trial.
23	Legal or District R/W	Deposits Jury fees with the Court 30 days before trial.
24	District R/W Office	If a Settlement Conference is scheduled, the Acquisition Agent/Senior attends and is prepared with a settlement proposal.
	Legal	Represents and advises District.
24a	Legal	If settlement is reached by Stipulated Judgment, Legal prepares the documents and forwards to District R/W for the payment request to be initiated.
	District R/W Office	If settlement is by R/W Contract, agent prepares documents in same manner as for a regular transaction.
25	Legal	Parties present the Joint Issues Disposition Conference Report to the Judge.
26	Legal	Prepares for the trial. In some Districts, R/W Department assists.
27	Legal	Prepares the Judgment and sends draft to R/W so the payment request is initiated. Also prepares trial report for contested settlements and submits to District R/W for approval within 10 working days after conclusion of trial.
	District R/W Office	DDC-R/W approves the trial report. A copy is returned to Legal, one goes to Acquisition.

RIGHT OF WAY/LEGAL CONDEMNATION FLOWCHART (Part 2) (Continued)

<u>Activity</u>	<u>Responsible Party</u>	<u>Summary of Responsibilities</u>
28	Legal	Prepares or defends against motion for new trial and/or Appeal.
29	District R/W Office	Prepares the necessary paperwork to enable payment processing by Division of Accounting.
30	District R/W Office	Delivers payment to defendant's attorney and obtains a receipt or, if applicable, deposits in Court. Note: For Legal Settlements, delivery of payment is to be made only after receipt and approval of Attorney's Legal Settlement Memo.
31	Legal	Prepares the FOC and release of deposit responsibilities.
	District R/W Office	Prepares MOS. For contested settlements, sends copy of the trial report to HQ R/W. Files and records the FOC with the Court. Obtains Title Insurance.
32	Legal	If necessary, prepares motion to tax litigation costs. Prepares points and authorities and declaration re: reasonableness of offer and demand.
	District R/W Office	Processes payment request through Division of Accounting.

9.17.00.00 – DELEGATIONS

9.17.01.00 Delegations of Authority

As referenced in Section 2.05.01.00, the delegation matrix for Condemnation is noted below. The delegation matrix reflects the associated policy and RW Manual reference for each delegated item. The matrix also distinguishes whether an item is delegated to the District or Headquarters (HQ) level, along with the lowest level of sub-delegation authorized.

Reference (Statutory, WBS, Director's Policy, Deputy Directive, etc.)	RW Manual Section	Responsibility	Delegation	Lowest Level of Sub- Delegation
CCP §1245.235	9.01.04.00	Notice of Intent to Adopt Resolution of Necessity	District	Senior RW Agent
CCP §1245.230	9.01.11.00	Request for Resolution of Necessity Approval (RW 9-8); or Alternately RON Generator (Electronic Format Approval)	District	RW Manager
CCP §1245.235	9.01.13.00	Provide District Notification of CTC's Adoption of Resolution of Necessity	HQ	Senior RW Agent
CCP §1255.010	9.08.01.00	Request for Transfer of Funds	District	Senior RW Agent
CCP §1245.230	9.08.09.00	Order for Possession – Emergency Situations – No Appraisal	District	Supervising RW Agent

CHAPTER 9

CONDEMNATION TABLE OF CONTENTS

EXHIBITS

<u>Exhibit No.</u>	<u>Title</u>
09-EX-01	Notice of Intent to Adopt Resolution of Necessity
09-EX-01A	Notice of Intent to Adopt Resolution of Necessity for Properties That Are Subject to a Conservation Easement
09-EX-02	Appearance Information Package
09-EX-03	HQ R/W Notice to Person(s) Requesting Appearances Before the CTC
09-EX-04	HQ R/W Notice to the District to Conduct a Condemnation Evaluation Meeting
09-EX-05	District Notice to Owner of Condemnation Evaluation Meeting
09-EX-06	District Notice to Owner of Condemnation Panel Review Meeting
09-EX-06A	District Notice to Owner Regarding a Change in the Date or Location of the CTC Meeting
09-EX-07	HQ R/W Notice of CTC Appearance Schedule
09-EX-08	Resolution of Necessity (First and Second Level Reviews) Guidelines for Local Agencies Performing Work on the State Highway System
09-EX-09	Processing of Department Resolutions of Necessity (RON) Through the California Transportation Commission (CTC), County Board of Supervisors (Board) or City Councils (Council)

Exhibits are located online:

- [External Exhibits site](#)
- [Internal Exhibits site \(internal Caltrans link\)](#)

(REV 1/2020)

CHAPTER 9

CONDEMNATION TABLE OF CONTENTS

FORMS

<u>Form No.</u>	<u>Title</u>
RW 09-01	<i>Held for Future Use</i>
RW 09-02	<i>Held for Future Use</i>
RW 09-03	<i>Held for Future Use</i>
RW 09-04	<i>Held for Future Use</i>
RW 09-05	<i>Held for Future Use</i>
RW 09-06	<i>Held for Future Use</i>
RW 09-07	<i>Held for Future Use</i>
RW 09-08	Resolution of Necessity Request
RW 09-09	Consent to Substitute Condemnation
RW 09-10	Substitute Condemnation for Private Utility Service or Access Road
RW 09-11	Consent to Condemnation of Excess Lands
RW 09-12	Consent to Acquisition of and Easement to Remove Improvements Straddling the Right of Way Line
RW 09-13	Proof of Service
RW 09-14	Declaration of Mailing (Summons)
RW 09-15	Declaration of Mailing (Notice of Intent)
RW 09-16	Acknowledgement of Receipt of Summons and Complaint
RW 09-17	Application for Fee Appraiser
RW 09-18	Independent Expert Claim
RW 09-19	Request for Transfer of Funds
RW 09-20	Condemnation Check Request - Invoice
RW 09-21	Release of Condemnation Deposit

Forms are located online:

- [External Forms site](#)
- [Internal Forms site](#) (internal Caltrans link)

(REV 8/2018)