

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Harold E. Brown, Jr., Assistant United States Attorney
United States Attorney's Office
601 N.W. Loop 410, Ste. 600
San Antonio, Texas 78216 (210) 384-7320

DEFENDANTS

233.0 ACRES OF LAND, MORE OR LESS SITUATE IN MAVERICK COUNTY, STATE OF TEXAS; and CITY OF EAGLE PASS, TEXAS, ET AL.

County of Residence of First Listed Defendant Maverick

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, PROPERTY RIGHTS, OTHER STATUTES. Includes various legal categories like Insurance, Land Condemnation, Voting, Employment, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 40 USC 3114
Brief description of cause: Taking of the Land

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 11/14/2008 SIGNATURE OF ATTORNEY OF RECORD HAROLD E. BROWN, JR.

FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

FILED

2008 JA 14 PM 1:05

WESTERN DISTRICT OF TEXAS
U.S. CLERK'S OFFICE

BY [Signature]
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
)
 233.0 ACRES OF LAND, MORE OR LESS)
 SITUATE IN MAVERICK COUNTY,)
 STATE OF TEXAS; and CITY OF)
 EAGLE PASS, TEXAS, ET AL.,)
)
 Defendants.)

Civil No.

DR08CA003

**COMPLAINT IN CONDEMNATION
WITH DECLARATION OF TAKING (40 U.S.C. §3114)**

The United States of America, by and through the undersigned Assistant United States Attorney files this Complaint in Condemnation with Declaration of Taking pursuant to 40 U.S.C. § 3114.

1. This is a civil action brought by the United States of America at the request of the Secretary of the Department of Homeland Security, through the Executive Director, Asset Management, of United States Customs and Border Protection, for the taking of property under the power of eminent domain through a Declaration of Taking (Exhibit 1), and for the determination and award of just compensation to the owners and parties in interest.

2. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1358.

3. The authority for the taking of the land is under and in accordance with the authorities set forth in Schedule "A" to Exhibit 1 and made a part hereof.

4. The public purpose and use for which said property is taken is set forth in Schedule "B" to Exhibit 1 and made a part hereof.

5. A general description of the land being taken is set forth in Schedule "C" to Exhibit 1 and made a part hereof. A plan showing the property being taken is shown on Schedule "D" to Exhibit 1 and made a part hereof.

6. The interest(s) being acquired in the property is described in Schedule "E" to Exhibit 1 and made a part hereof.

7. The names and addresses of known parties having or claiming an interest in said property are set forth in Schedule "G" to Exhibit 1 and made a part hereof.

8. Local and state taxing authorities may have or claim an interest in the property by reason of taxes and assessments due and payable.

9. In addition to those persons named, there are or may be others who have or may have some interest in the property or interests to be taken, whose names are unknown to the Plaintiff, and such persons are made parties in the action under the designation "Other Interested Parties."

WHEREFORE, Plaintiff demands judgment that the property and interests be condemned, and that just compensation for the taking be ascertained and awarded, and such other relief as may be lawful and proper.

JOHNNY SUTTON
UNITED STATES ATTORNEY

BY:



HAROLD E. BROWN, JR.
Assistant United States Attorney
Okla. Bar No. 1192
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San Antonio, Texas 78216
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FILED

2008 JA 14 PM 1:12

WESTERN DISTRICT OF TEXAS
U.S. CLERK'S OFFICE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

[Signature]
DEPUTY

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

233.0 ACRES OF LAND, MORE OR LESS
SITUATE IN MAVERICK COUNTY,
STATE OF TEXAS; and CITY OF
EAGLE PASS, TEXAS, ET AL.

Defendants.

DRO8 CA003

) Civil No.

EX PARTE MOTION FOR ORDER FOR DELIVERY OF POSSESSION

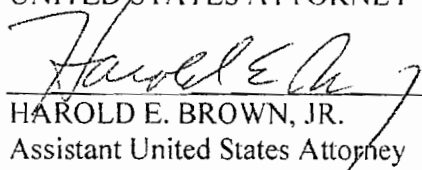
Now comes the United States of America, the Plaintiff herein, and moves this Honorable Court for an order requiring the City of Eagle Pass and any and all persons in possession or control of the property described in the Complaint filed herein to surrender possession of the said property, to the extent of the estate condemned, to the Plaintiff forthwith, and as grounds therefore the Plaintiff states that the Plaintiff has found and determined that it is necessary and advantageous to the interests of the Plaintiff to acquire such possession.

A brief in support of this motion is submitted herewith.

WHEREFORE, Plaintiff United States of America requests the Court enter the attached order awarding immediate possession to the United States of America.

JOHNNY SUTTON,
UNITED STATES ATTORNEY

BY:


HAROLD E. BROWN, JR.
Assistant United States Attorney
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FILED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

2008 JA 14 PM 1:13

WESTERN DISTRICT OF TEXAS
U.S. CLERK'S OFFICE
DEPUTY

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
)
 233.0 ACRES OF LAND, MORE OR LESS)
 SITUATE IN MAVERICK COUNTY,)
 STATE OF TEXAS; and CITY OF)
 EAGLE PASS, TEXAS, ET AL.)
)
 Defendants.)

DR08 CA003

Civil No.

**MEMORANDUM IN SUPPORT OF EX PARTE MOTION
FOR ORDER FOR DELIVERY OF POSSESSION**

I. INTRODUCTION

Plaintiff, the United States of America ("United States"), hereby files this memorandum in support of its motion for an order for delivery of possession. The United States is requesting possession to the extent of the estate condemned, a 180-day right of entry, commencing on the date possession is granted. This minimally intrusive right of entry, to conduct surveying and investigatory work, is a necessary step in implementing the congressional directive to secure the border between the United States and Mexico. For the reasons set forth below, the United States is entitled to immediate possession and therefore the motion is filed ex parte. Accordingly, the United States respectfully requests this Court to immediately enter an Order of Possession.

II. FACTS

Pursuant to the Declaration of Taking Act, 40 U.S.C. § 3114, and Rule 71.1 (formerly Rule 71A) of the Federal Rules of Civil Procedure, the United States filed a complaint and declaration of taking,¹ together with a deposit of estimated just compensation, to acquire a temporary right of entry. This right of entry is an assignable easement giving the United States the right to conduct surveying, make borings and conduct other investigatory work. See Exhibit 1 (Declaration of Taking), Schedule “E.” The easement will last for 180 days, commencing on the date possession is granted. Id. The estate taken reserves to the landowners “all right, title and privileges as may be used and enjoyed without interfering with or abridging the rights” acquired by the United States. Id.

The United States has deposited \$100.00 as estimated just compensation. In addition, the landowners are further entitled to “an additional sum determined at the conclusion of the temporary estate described in Schedule “E” to constitute actual damages, if any.” See Exhibit 1, (Declaration of Taking), Schedule “F.” Therefore, if the use of the property by the United States actually damages the property in some manner, the landowner will be entitled to additional compensation.

III. ARGUMENT

A. Because It Has Acquired this Property Under the Declaration of Taking Act, the United States Is Entitled to Immediate Possession

The United States initiated this case by filing a declaration of taking and depositing estimated just compensation into the registry of the Court, as required by the Declaration of

¹The original declaration of taking, bearing the original signature is Exhibit 1 to the Complaint In Condemnation with Declaration of Taking filed contemporaneously with this motion. For ease of reference in this motion, a copy of this document is Exhibit 1 to this motion.

Taking Act (“Act”), 40 U.S.C. § 3114 (formerly 40 U.S.C. §258a). The filing and deposit immediately vests title to the property described in the declaration of taking in the United States. See 40 U.S.C. § 3114 (b)(1). The Act then specifically provides that upon the filing of the declaration of taking, “the court may fix the time within which, and the terms on which, the parties in possession shall be required to surrender possession to the petitioner” 40 U.S.C. § 3114(d)(1).

The purpose of the Declaration of Taking Act is to give the government immediate possession of the property and give the owner immediate compensation, in the form of estimated compensation, in return for title to the land. United States v. Miller, 317 U.S. 369 (1943). As the Court explained:

The purpose of the statute is twofold. First, to give the Government immediate possession of the property and to relieve it of the burden of interest Secondly, to give the former owner, if his title is clear, immediate cash compensation to the extent of the Government’s estimate of the value of the property.

Id. at 381 (emphasis added). The transfer of title is immediate upon the filing of the declaration and deposit of estimated just compensation. See, e.g., Catlin v. United States, 324 U.S. 229, 238 (1945) (holding that a landowner may not delay or prevent the vesting of title by an interlocutory appeal).

The Supreme Court reaffirmed that the Declaration of Taking Act immediately confers to the United States title and a right to possession of the property in Kirby Forest Industries, Inc. v. United States, 467 U.S. 1 (1984). There it reviewed the methods by which the United States may appropriate property, primarily comparing use of a declaration of taking with a “straight-condemnation” proceeding. Id. at 3-5. In a “straight-condemnation” the United States only files

a complaint in condemnation. After a trial to determine the compensation due the owner of the land, the United States has the option to either purchase the property at the adjudicated price or to dismiss the action. Id. at 4.

In contrast, the Court noted that the Declaration of Taking Act is “[a] more expeditious procedure” Id. The Court held that upon the filing of a declaration of taking and deposit of estimated just compensation, “[t]itle and right to possession thereupon vest immediately in the United States.” Id. at 5. It later stated, in further distinguishing a “straight-condemnation” case from one brought under 40 U.S.C. § 3114, that the adoption of the Declaration of Taking Act was “for the purpose of affording the Government the option of peremptorily appropriating land prior to final judgment, thereby permitting immediate occupancy” Id. at 12. Finally, as more recently stated in Narramore v. United States, 960 F.2d 1048, 1050 (Fed Cir. 1992), Congress enacted the Declaration of Taking Act “[t]o give the Federal Government immediate possession of condemned property and to avoid delays in federal construction projects.” Id.

Accordingly, because the United States has acquired the property at issue under the Declaration of Taking Act, the United States is entitled to immediate possession of the property. See Miller, 317 U.S. at 381; Kirby Forest Indus., 467 U.S. at 5, 12.

B. The Fifth Circuit Has Specifically Approved Entry of Ex Parte Orders of Possession for Property Acquired Under the Declaration of Taking Act

The Fifth Circuit has specifically approved entry of ex parte orders of possession of the estate taken. The Fifth Circuit gave its approval of the entry of ex parte orders of possession in declaration of taking cases in United States v. 131.68 Acres of Land, 695 F.2d 872 (5th Cir.), cert. denied 464 U.S. 817 (1983). There the United States filed a complaint with a declaration of taking, together with estimated just compensation, in order to acquire, part in fee and part in

permanent easement, 131.68 acres out of a 586-acre tract of crop land. On the same day that the complaint was filed, the district judge, without a hearing, entered an order granting the United States possession. The landowners and lessees appealed, arguing that the trial court erred in denying them a hearing before dispossessing them. The Fifth Circuit upheld the action of the district court, stating:

The landowners and the lessees maintain that both the Congress and the Constitution secured their “right” to a hearing before they were dispossessed of their land. We disagree. The Fifth Amendment does not afford them such a right. “The question on which issue is joined is whether the government may exercise its eminent domain power consistently with the Fifth Amendment by physically seizing property without prior notice, hearing, or compensation. The answer to this question is yes.”

Id. at 876 (quoting Stringer v. United States, 471 F.2d 381, 383 (5th Cir), cert. denied 412 U.S. 943 (1973)).

In United States v. 0.95 Acres of Land, 994 F.2d 696 (9th Cir. 1993), the United States had filed a declaration of taking and deposited estimated just compensation in order to acquire privately owned roads adjacent to a national forest. *Id.* at 697. An ex parte order of possession was granted. The landowners then moved to vacate the declaration of taking and order of possession, based on the government’s non-compliance with the National Environmental Policy Act (“NEPA”). The district court granted the landowners’ motion and the government appealed. The Ninth Circuit reversed, holding that non-compliance with NEPA was not a defense to a taking. *Id.* at 699. In so holding, the appellate court specifically recited the procedure to be followed in granting an order of possession:

In this type of condemnation proceeding, the United States files a declaration of taking in the district court pursuant to the Declaration of Taking Act, 40 U.S.C. 258a et seq., and deposits funds with the district court. The district court may then enter an ex parte order of possession. At approximately the same time, the

United States files a complaint The private property owner may now answer. The decision of the trial court that the United States has the right to possession of the property under a declaration of taking is not a final, appealable decision.

994 F.2d at 698 (citing Catlin, 324 U.S. at 232) (emphasis added). Thus, the Ninth Circuit in this 1993 opinion described as an appropriate procedure the entry of an ex parte order of possession.

Here, in keeping with the decisions in 131.68 Acres of Land and 0.95 Acres of Land, the Court should similarly grant the United States an ex parte order of possession. Unlike those cases, which involved the acquisition of permanent interests, in this case the United States is acquiring only a temporary, minimally intrusive right of entry onto the landowner's property. Because courts previously have found that the United States is entitled to an ex parte order of immediate possession of a permanent interest in property, then logically the United States should also be entitled to immediate possession of a 180-day right of entry, which is a lesser interest in property. See 0.95 Acres of Land, 994 F.2d at 696-98; 131.68 Acres of Land, 695 F.2d at 872, 876.

Furthermore, this right of entry simply allows the United States access to this property to conduct surveying, testing, evaluations, and other investigations necessary to plan the proposed construction of roads, fencing, and other security measures designed to help secure the United States/Mexico border within the State of Texas. The landowners may continue to use the property during this time, so long as that use does not interfere with the surveying and other investigatory work being done by the United States.

Finally, the landowner is protected from any further injury because the United States has not only deposited funds with the Court, but has also stated, in the Declaration of Taking, that if there are actual damages to the property caused by these necessary investigations, the

landowners will be entitled to “an additional sum determined at the conclusion of the temporary estate.” See Exhibit 1 (Declaration of Taking), Schedule “F.” Based upon these facts and the case law, it is proper for this Court to grant possession to the United States.

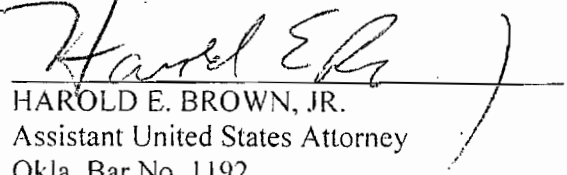
IV. CONCLUSION

Accordingly, the United States requests that the Court enter an order granting immediate possession. A proposed order is accompanies this motion.

Respectfully Submitted,

JOHNNY SUTTON
UNITED STATES ATTORNEY

BY:


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Assistant United States Attorney
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harold.brown@usdoj.gov

FILED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

JAN 14 2008

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY ds DEPUTY CLERK

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 233.0 ACRES OF LAND, MORE OR LESS)
 SITUATE IN MAVERICK COUNTY,)
 STATE OF TEXAS; and CITY OF)
 EAGLE PASS, TEXAS, ET AL.)
)
 Defendants.)

Civil No.

DRO8CA003


ORDER FOR DELIVERY OF POSSESSION

This action coming on for hearing ex parte upon motion of the Plaintiff for an order for the surrender of possession of the property described in the Complaint filed herein to Plaintiff, and it appearing that Plaintiff is entitled to possession of said property,

IT IS HEREBY ORDERED that all defendants to this action and all persons in possession or control of the property described in the Complaint filed herein shall surrender possession of said property to the extent of the estate being condemned, to the Plaintiff on or before January 15, 2008.

IT IS FURTHER ORDERED that a notice of this order shall be served upon all persons in possession or control of the said property forthwith.

Dated this 14th day of January, 2008.


ALIA MOSES LUDLUM
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

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WESTERN DISTRICT OF TEXAS
CLERK'S OFFICE

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) CIVIL ACTION NO.
)
233.0 ACRES OF LAND, MORE OR)
LESS, SITUATE IN MAVERICK)
COUNTY, STATE OF TEXAS; and CITY)
OF EAGLE PASS, TEXAS, ET AL.)
)
Defendants.)

DRO8 CA003

DEPUTY

**MOTION FOR EX PARTE ORDER AS TO
DEPOSIT OF CONDEMNATION PROCEEDINGS**

Now comes Plaintiff, United States of America, by and through the United States Attorney for the Western District of Texas and the undersigned Assistant United States Attorney and moves the Court to enter an ex parte Order ordering that the sum of \$100.00 tendered by check by the Government as estimated compensation in the above-entitled and numbered cause be deposited into the Registry of the Court and subsequently into a passbook savings account according to Plaintiff's proposed Order and would show the Court as reasons the following:

1. Although such funds are deposited for the benefit of the owners or claimants of the property interest acquired under eminent domain proceedings, the ownership of such interest and the apportionment of such funds usually requires a Court determination which takes place after the condemnation action is filed as part of the subsequent proceedings.

2. The Declaration of Taking Act, 40 U.S.C. §§ 3113 and 3114, states that title vests in the United States of America upon the filing of the Declaration of Taking and the deposit of the sum of

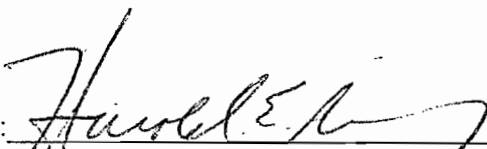
estimated compensation into the Registry of the Court. Should the District Clerk be unable to deposit the funds into the Registry of the Court as soon as possible following the Government's filing of the condemnation action, because of the requirement of Local Rule CV-67(b) (to serve notice of the motion on all interested parties), confusion as to the actual date of taking will result and create title problems as to when the Government acquired the property. This could also cause confusion as to the date of valuation of such property interest.

3. Serving a copy of this Motion of the purported owners and claimants under Local Rule CV-67(b) may unnecessarily cause a purported owner and/or claimant to retain counsel merely for the purpose of responding to the instant Motion which primarily seeks administrative action by the District Clerk's Office. The practical problems, confusion, and delay created by the requirement of Rule CV-67(b) in a condemnation action greatly outweigh any benefits of the Rule. It would appear that the better solution is that after service of the Deposit Order and Order for Delivery of Possession (which is always served as an ex-parte order), any objecting owners/claimants be allowed to file their objection(s). Such a provision has been included in the Government's proposed Order. Thus, all parties to this action will receive timely notice of the deposit into the Court Registry and have an opportunity to respond.

WHEREFORE PREMISES CONSIDERED, Plaintiff, United States of America, moves that the Court waive the requirement of Local Rule CV-67(b) in the instant case, which requires service of the deposit motion to all interested parties, and that the Court enter the proposed Order for Deposit accompanying this Motion.

Respectfully submitted,

JOHNNY SUTTON
United States Attorney

By: 

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Assistant United States Attorney
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San Antonio, Texas 78216-5597
Tel. (210) 384-7320
Fax. (201) 384-7351
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Attorneys for Plaintiff
United States of America

FILED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

JAN 14 2008

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY dy
DEPUTY CLERK

UNITED STATES OF AMERICA,)
)
Plaintiff,)

v.)

CIVIL ACTION NO.

233.0 ACRES OF LAND, MORE OR)
LESS, SITUATE IN MAVERICK)
COUNTY, STATE OF TEXAS; and CITY)
OF EAGLE PASS, TEXAS, ET AL.)

DR08CA003

Defendants.)

ORDER FOR DEPOSIT

Came on to be considered in the instant case Plaintiff's Motion for an Ex Parte Order to waive that portion of Local Rule CV-67(b) requiring the service on all interested parties of motions for deposits of funds into the Registry of the Court, and

It appearing to the Court that such Motion is meritorious,

It is, therefore, ORDERED that the Clerk of the Court accept instanter for deposit into the Registry of the Court the sum of \$100.00 tendered by Plaintiff, United States of America, to the credit of the above-entitled and numbered cause.

It is further ORDERED that the Clerk of the Court, as soon as the business of his office allows, draw his check in the amount of \$100.00, and deliver said check to Laredo National Bank, Del Rio Branch, Del Rio, Texas, for deposit into an interest earning account at the highest rate available. The Clerk is to present said check to Laredo National Bank, Del Rio, Texas. In return, the Clerk of the Court is to receive an indicia of ownership payable to:

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WESTERN DISTRICT OF TEXAS
U.S. CLERK'S OFFICE
BY: BD
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 233.0 ACRES OF LAND, MORE OR)
 LESS, SITUATE IN MAVERICK)
 COUNTY, STATE OF TEXAS; and CITY)
 OF EAGLE PASS, TEXAS, ET AL.)
)
 Defendants.)

CIVIL ACTION NO.

DR08CA003

CERTIFICATE-OF-CLERK

I, William G. Putnicki, Clerk of the United States District Court for the Western District of Texas, do hereby certify that I received for deposit in the Registry of the court the sum of ONE HUNDRED DOLLARS AND NO/100 CENTS (\$100.00) being represented by Check No. 1043, drawn by the United States Bank, and dated January 08, 2008, which sum is to be deposited to the credit of the above-entitled and numbered cause.

This the 14 day of January, 2008.

WILLIAM G. PUTNICKI
Clerk

BY: [Signature]
Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

THE UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

233.0 ACRES OF LAND, MORE OR LESS)
SITUATE IN MAVERICK COUNTY,)
STATE OF TEXAS; and CITY OF)
EAGLE PASS, TEXAS, ET AL.)

Defendants.)

Civil No. DR-08-CA-0003

CERTIFICATE OF SERVICE

I hereby certify that the following documents:

Ex Parte Motion for Order of Delivery of Possession

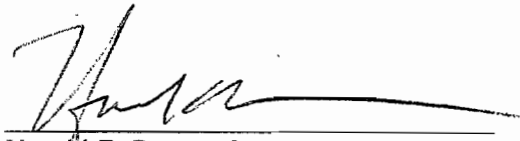
Memorandum in Support of Ex Parte Motion for Order of Delivery of Possession

Order for Delivery of Possession

Ex Parte Motion for Deposit of Condemnation Proceedings

Order for Deposit

were served on the Defendant, City of Eagle Pass, by hand delivery to the Secretary, City of Eagle Pass on January 15, 2008.




Harold E. Brown, Jr.
Assistant United States Attorney

FILED

2008 JA 14 PM 1:14

WESTERN DISTRICT OF TEXAS
U.S. CLERK'S OFFICE


DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

THE UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
233.0 ACRES OF LAND, MORE OR LESS)
SITUATE IN MAVERICK COUNTY,)
STATE OF TEXAS; and CITY OF)
EAGLE PASS, TEXAS, ET AL.)
)
Defendants.)

DR08CA003

Civil No.

NOTICE

TO: The City of Eagle Pass, Maverick County, Texas.

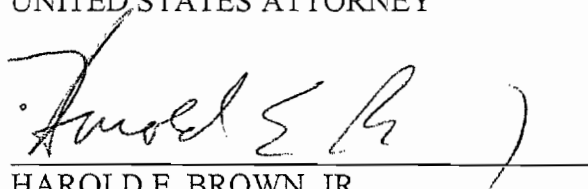
1. You are hereby notified that a complaint in condemnation has been filed in the office of the Clerk, United States District Court for the Western District of Texas, Del Rio Division, in an action to condemn property for public use. The interest taken is described in Exhibit A, attached and incorporated hereto. The Clerk's office is located in the United States courthouse at this address: 111 East Broadway, Del Rio, Texas.
2. The property in which the interest is taken is described in Exhibit B attached and incorporated hereto. The City of Eagle Pass has or claims an interest in it.
3. The authority for taking this property is described in Exhibit C attached and incorporated hereto.
4. If you want to object or present any defense to the taking you must serve an answer on the plaintiff's attorney within 20 days after being served with this notice. Send your answer to this address: 111 East Broadway, Del Rio, Texas.
5. Your answer must identify the property in which you claim an interest, state the nature and extent of that interest, and state all your objections and defenses to the taking. Objections and defenses not presented are waived.
6. If you fail to answer you consent to the taking and the court will enter a judgment that takes

6. If you fail to answer you consent to the taking and the court will enter a judgment that takes your described property interest.

7. Instead of answering, you may serve on the plaintiff's attorney a notice of appearance that designates the property in which you claim an interest. After you do that, you will receive a notice of any proceedings that affect you. Whether or not you have previously appeared or answered, you may present evidence at a trial to determine compensation for the property and share in the overall award.

JOHNNY SUTTON
UNITED STATES ATTORNEY

BY:



HAROLD E. BROWN, JR.
Assistant United States Attorney
Okla. Bar No. 1192
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San Antonio, Texas 78216
(210) 384-7320
(210) 384-7312
harold.brown@usdoj.gov

ATTORNEYS FOR PLAINTIFF
UNITED STATES OF AMERICA

SCHEDULE "E"
ESTATE TAKEN

The estate taken is a temporary, assignable easement beginning on the date possession is granted to the United States and ending 180 days later, consisting of the right of the United States, its agents, contractors, and assigns to enter in, on, over and across the land described in Schedule "C" to survey, make borings, and conduct other investigatory work for the purposes described in Schedule "B" and to access adjacent lands; including the right to trim or remove any vegetative or structural obstacles that interfere with said work; reserving to the landowners, their successors and assigns all right, title, and privileges as may be used and enjoyed without interfering with or abridging the rights hereby acquired; subject to minerals and rights appurtenant thereto, and to existing easements for public roads and highways, public utilities, railroads and pipelines.



SCHEDULE "C"
LEGAL DESCRIPTION

The property taken consists of five separate tracts numbered DRT-EGT-1006, DRT-EGT-1007, DRT-EGT-1008, DRT-EGT-1009, and DRT-EGT-1010, which together encompass 233.90 acres of land, more or less, described as follows:

Tract DRT-EGT-1006

Acres: Calculated 4.39

Beginning at the Northeast corner of a City owned parcel situated in the John Twohig Survey No. 37, Abstract No. A0835 as referenced by Maverick County Appraisal District (herein after designated as MCAD) Parcel No. 5660, said Northeast corner also being on the Westerly ROW line of Jefferson Street;

Thence South along the East line of said lot also being the Westerly ROW line of Jefferson Street to the Southeast corner thereof;

Thence West along the South line of said lot to the Southwest corner thereof;

Thence North along the West line to a point on said West line, said point also being the Southern most Southeast corner of a City owned parcel referenced by MCAD Parcel No. 8700728;

Thence West along the Southern most South line of said lot to the Southwest corner thereof;

Thence Northerly along the West line of said parcel to the Northwest corner thereof;

Thence East along the West line to the Westernmost Southwest corner thereof;

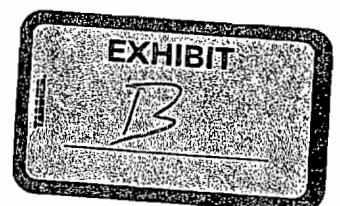
Thence Northeasterly along the North line to the Northeast corner thereof;

Thence Southeasterly along the East line to the Southeast corner thereof, said corner also being the Northeast corner of MCAD parcel No. 13912;

Thence North along the Easternmost West line of said tract to an interior corner, said interior corner also being the Northeast corner of MCAD Parcel No. 13911;

Thence Westerly along the South line to a point on the South line, also being the Northeast corner of MCAD Parcel No. 5650, said corner also being on the Westerly ROW line of Jefferson Street and being the Point of Beginning.

The above described tract DRT-EGT-1006 contains a strip of land 150 feet in width, traversing across said tract in a North to South general direction.



SCHEDULE "C"
LEGAL DESCRIPTION (Cont.)

Tract: DRT-EGT-1007

Acres: Calculated 5.04

Beginning at the Southwest corner of a tract of land situated in the John Twohig Survey No. 37, Abstract No. A0835, owned by the City of Eagle Pass Water Works as referenced by Maverick County Appraisal District (herein after referenced as MCAD) as Parcel No. 5647, said point also being in the Northwest corner of intersection for Cleveland and Jefferson Streets;

Thence Westerly along the Southern boundary of said parcel and the Northerly line of Cleveland Street to a point, said point also being the Northeast corner of MCAD Parcel No. 16757;

Thence continuing along the Southerly boundary of MCAD Parcel No. 5647 and the Northerly boundary of MCAD Parcel No. 16757 to the Southwest corner of MCAD Parcel No. 5647;

Thence Northerly along the Westerly boundary of MCAD Parcel No. 5647 to the Southernmost Northwest corner of MCAD Parcel No. 5647, said corner also being the Southwest corner of MCAD Parcel No. 5648;

Thence Northerly along the Westerly boundary to the Northwest corner of MCAD Parcel No. 5648, said corner also being the Southwest corner of MCAD Parcel No. 5649;

Thence Northerly along the Westerly boundary to the Northwest corner thereof, said corner also being the Southwest corner of MCAD Parcel No. 5649;

Thence Easterly along the Northerly boundary of MCAD Parcel No. 5649 to the Northeast corner thereof, said corner also being the Northernmost Northwest corner of MCAD Parcel No. 5647;

Thence continuing Easterly along the Northerly boundary of MCAD Parcel No. 5647 to the Northeast corner thereof, said point also being in a Westerly boundary of Jefferson Street;

Thence Southerly along the Westerly line of said street and the Easterly boundary of MCAD Parcel No. 5647 to the Point of Beginning.

SCHEDULE "C"
LEGAL DESCRIPTION (Cont.)

Tract DRT-EGT-1008

Acres: Calculated 10.85

Beginning at the Southeast corner of a City of Eagle Pass lot referenced by Maverick County Appraisal District (herein after designated as MCAD) as Parcel No. 17117, said corner also being at the intersection of the Northerly ROW line of Garrison Street and Ryan Street;

Thence Westerly along the South line of said city owned lot to the Southwest corner thereof, said corner also being on the Northerly ROW line of Garrison Street;

Thence Northerly along the Westerly line of said city owned lot to the Northwest corner thereof, said corner also being on the Northerly ROW line of Rio Grande Street;

Thence continuing across Rio Grande Street to the Southwest corner of a city owned lot as referenced by MCAD as Parcel No. 17133, said corner being on the Northerly ROW line of Rio Grande Street;

Thence continuing along the Westerly line of the following city owned lots referenced by MCAD as Parcel Nos. 17133, 17134, 17132, 17131, 17130, and 17129 to the Northwest corner of said parcel No. 17129, said corner also being on the Southerly ROW line of Main Street;

Thence continuing in a Northeasterly direction across Main Street to the Southwest corner of a city owned lot referenced by MCAD as Parcel No. 17147;

Thence continuing along the Westerly line of the following city owned lots referenced by MCAD as Parcel Nos. 17147, 17144, 17146, and 17148 to the Northwest corner of said lot 17148 to the Northwest corner thereof;

Thence Southerly along the East line of said tract to the Southeast corner thereof, said corner being on the Northerly ROW line of Ford Street;

Thence continuing across Ford Street to the Southwest corner of a city owned lot referenced by MCAD as Parcel No. 17148, said corner also being on the Northerly ROW line of Ford Street;

Thence along the Westerly ROW line of Ford Street to the Northwest corner of said parcel No. 17146 to the Northwest corner thereof;

Tract: 1008 (Cont'd)

Thence South along the Easterly line of said lot to the Southeast corner thereof, said corner also being on the Westerly ROW line of Ryan Street;

Thence continuing along the Westerly ROW line of Ryan Street to the Northeast corner of a city owned lot referenced by MCAD as Parcel No. 17146;

Thence continuing Southerly along East line of said Panel No. 17146, and the East line of the following city owned lots referenced by MCAD as Parcel Nos.

SCHEDULE "C"
LEGAL DESCRIPTION (Cont.)

Tract DRT-EGT-1008 (cont.)

17144, 17145, 17143, 17142, 17141 and 17140 to the Southeast corner of said parcel No. 17140;

Thence West along the South line of said parcel No. 17140 to the intersection said South line with the Northeast corner of a city owned lot referenced by MCAD as Parcel No. 17139;

Thence South along the East line of said lot to the Southeast corner thereof, said corner also being on the Northerly ROW line of Main Street;

Thence continuing in a Southerly direction across Main Street to the Northeast corner of a city owned lot referenced by MCAD as Parcel No. 17128;

Thence continuing in a Southerly direction along the East line of said lot and the following city owned lots as referenced by MCAD as Parcel Nos. 17131, 17134 and 17137 to the Southeast corner of said parcel 17137, said corner also being on the Northerly ROW line of Rio Grande Street;

Thence continuing in a Southerly direction across Rio Grande Street to the Northeast corner of a city owned lot referenced by MCAD as Parcel No. 17117, said corner also being on the Southerly ROW line of Rio Grande Street;

Thence Easterly along the North line of said parcel No. 17117, a calculated distance of 246 feet, more or less, to Northeast corner thereof, said corner also being at the intersection of the Northerly ROW line of Rio Grande Street and with the Westerly ROW line of Ryan Street;

Thence South along the East line of said parcel and the Westerly ROW line of Ryan Street to the Southeast corner thereof, said corner also being at the intersection of Ryan Street and the Northerly ROW line of Garrison Street and the Point of Beginning.

The above described tract DRT-EGT-1008 contains a strip of land 150 feet in width traversing across said tract in a North to South general direction.

SCHEDULE "C"
LEGAL DESCRIPTION (Cont.)

Tract: DRT-EGT- 1009

Acres: Calculated 39.98

A tract of land situated in Maverick County, Texas, being described as 44.420 acres (calculated as 39.98 acres) varying in width adjacent and East off the East bank of the Rio Grande, and bordered on the North by the South line of the City of Eagle Pass Water Works System property of Maverick County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a point on the North R.O.W. line of Main Street, said point bears S86°39'27"W, 165.00 feet more or less from the point of intersection of the West R.O.W. line of Ryan Street and the North R.O.W. line of Main Street for an interior corner of this tract;

THENCE S02°07'47"W, 60.27 feet along a line to a point on the South R.O.W. line of Main Street for a tangent point of this tract;

THENCE S02°07'47"W, 191.76 feet along a line to a point of tangency of a curve to the left;

THENCE 11.87 feet along said curve to the left with a central angle of 04°00'00", a radius of 170.00 feet, and a tangent of 5.94 feet;

THENCE S01°52'13"E, 249.89 feet to a point on the North R.O.W. line of Rio Grande Street for a tangent point of this tract;

THENCE S01°52'13"E, 60.00 feet along a line to a point on the South R.O.W. line of Rio Grande Street for a tangent point of this tract;

THENCE S01°52'13"E, 85.69 feet along a line to a point of tangency of a curve to the left;

THENCE 138.71 feet along said curve to the left with a central angle of 46°45'00", a radius of 170.00 feet and a tangent of 73.48 feet;

THENCE S48°37'13"E, 118.01 feet along a line to a point on the West R.O.W. line of Ryan Street for a tangent point of this tract, said point bears N03°20'33"W, 4.46 feet from the intersection point of said West R.O.W. line of Ryan Street and the North R.O.W. line of Garrison Street;

THENCE S48°37'13"E, 148.12 feet along said North line of the Fort Duncan Property to a point on the East bank of the Rio Grande, said point being the Northwest corner of said Fort Duncan Property for the Southwest corner of this tract;

THENCE in a Northerly direction with the meanders of the East bank of the Rio Grande (a calculated 4193.23 feet) to a point on the South line of said City of Eagle Pass Water Works System Property, said point being the Southwest corner of said City of Eagle Pass Water Works Property, for the Northwest corner of this tract;

SCHEDULE "C"
LEGAL DESCRIPTION (Cont.)

Tract: DRT-EGT- 1009 (cont.)

THENCE N86°38'58"E, 57.93 feet with said South line of said City of Eagle Pass Water Works System Property, to a point for the Northeast corner of this tract;

THENCE S16°38'58"W, 12.24 feet along a line to a point for an interior corner of this tract;

THENCE S10°12'27"W, 1554.26 feet along a line to a point for an interior corner of this tract;

THENCE S03°47'33"E, 670.62 feet along a line on the North R.O.W. line of Ford Street for an interior corner of this tract;

THENCE S86°12'27"W, 60.00 feet with said North R.O.W. line of Ford Street for an interior corner of this tract, said point being the point of intersection of said North R.O.W. line of Ford Street with the West R.O.W. line of Ryan Street;

THENCE S03°47'33"E, 60.00 feet with said West R.O.W. line of Ryan Street to a point for an interior corner of this tract;

THENCE S86°12'27"W, 95.21 feet along a line to a point for an interior corner of this tract;

THENCE S03°47'33"E, 391.92 feet along a line to the Point of Beginning and containing 44.420 acres (39.98 acres calculated) of land more or less.

SCHEDULE "C"
LEGAL DESCRIPTION (Cont.)

Tract: DRT-EGT- 1010

Acres: Calculated 173.14

A tract of land situated in the City of Eagle Pass, Maverick County, Texas, being described as 153.40 acres (calculated as 173.14 acres), and being more particularly described by metes and bounds as follows:

BEGINNING at a point in the Southerly line of Garrison Street in the City of Eagle Pass, from which point the bearing and distance of a 2 inch galvanized iron pipe at the point of intersection of said Southerly line of Garrison Street with the Southerly extension of the Easterly line of commercial street, is N87°05'E, 300 feet;

THENCE S02°55'E, 100.00 feet to a point;

THENCE N87°05'E, 300.00 feet to a point;

THENCE S02°55'E, 50.00 feet to a point;

THENCE N87°05'E, 350.00 feet to a point;

THENCE N02°55'W, 150.00 feet to a point in the said Southerly line of Garrison Street;

THENCE N87°05'E, 1390.00 feet along the said Southerly line of Garrison Street, to a stone monument marking the Northeast corner of the tract and the point of intersection of the said Southerly line of Garrison Street with the Southerly extension of the Westerly line of Monroe Street;

THENCE S2°55'E, 2319.50 feet along the Southerly extension of the Westerly line of Monroe Street to a stone monument marking the Southeast corner of the reservation, an intermediate stone monument being in line 1619.50 feet from beginning of course;

THENCE due West, 2812.00 feet more or less to the Rio Grande;

THENCE Northwesterly, 2300.00 feet (calculated as 2164.24 feet), more or less, along the meanders of said river to a point in the Westerly extension of the aforementioned Southerly line of Garrison Street;

THENCE N87°05'E, 1080.00 feet more or less along the said Westerly extension to the Point of Beginning, containing 153.40 acres (calculated as 173.14 acres) more or less.

Tract: 1010 (Cont'd)

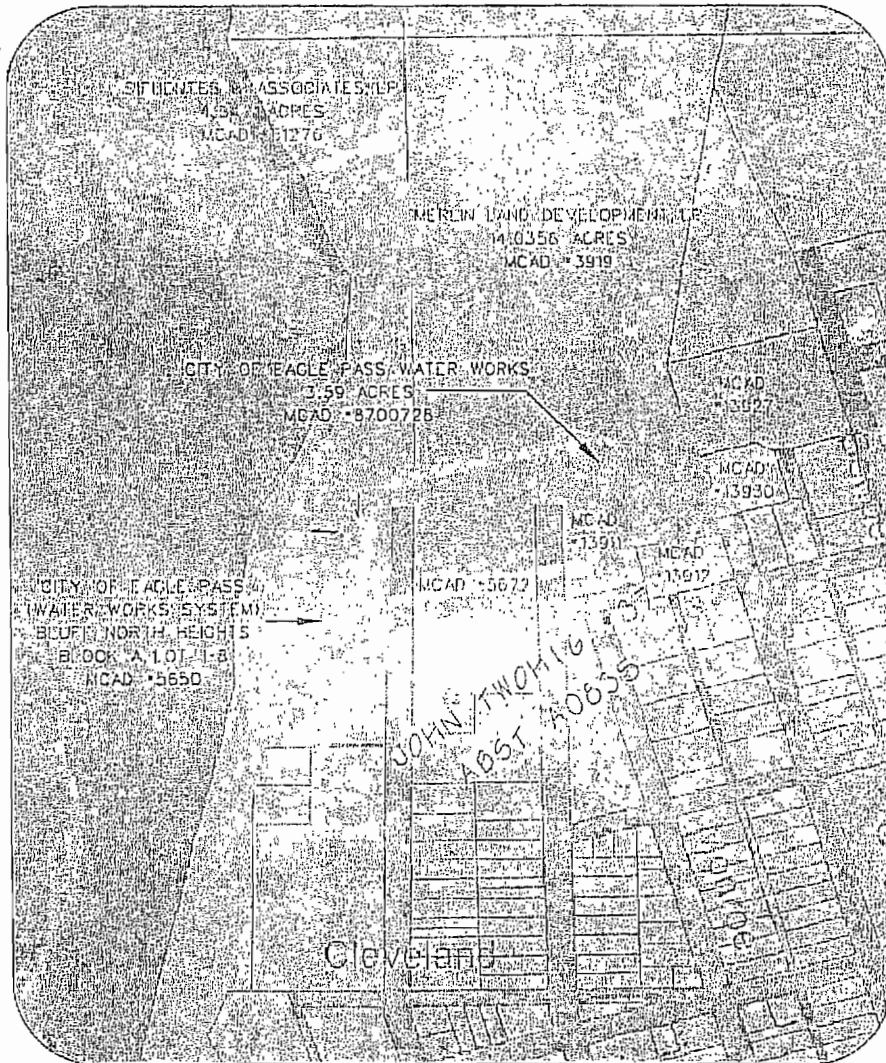
SAVE AND EXCEPT that parcel of land which was transferred to the Treasury Department for use of the Public Health Service by executive order No. 7356, dated May 4, 1936, and that tract or parcel of land which was conveyed to the Eagle Pass and Piedras Negras Bridge Company by quitclaim deed executed by the Acting Secretary of War under date of June 13, 1936.

SCHEDULE "C"
LEGAL DESCRIPTION (Cont.)

Tract: DRT-EGT- 1010 (cont.)

SAVE AND EXCEPT that 58.00 acre parcel of land abandoned by the United States of America pursuant to an Act of Congress approved February 9th, 1927, (Public No. 592-69th Congress) entitled "An Act for Relief of Certain Citizens of Eagle Pass, Texas," did through Dwight F. Davis, its Secretary of War, reconvey said lands to the estate of S.P. Simpson, Sam Schwartz and F.F. Niggli, as shown by deed dated February 26th, 1927, of the Deed Records of Maverick County, Texas.

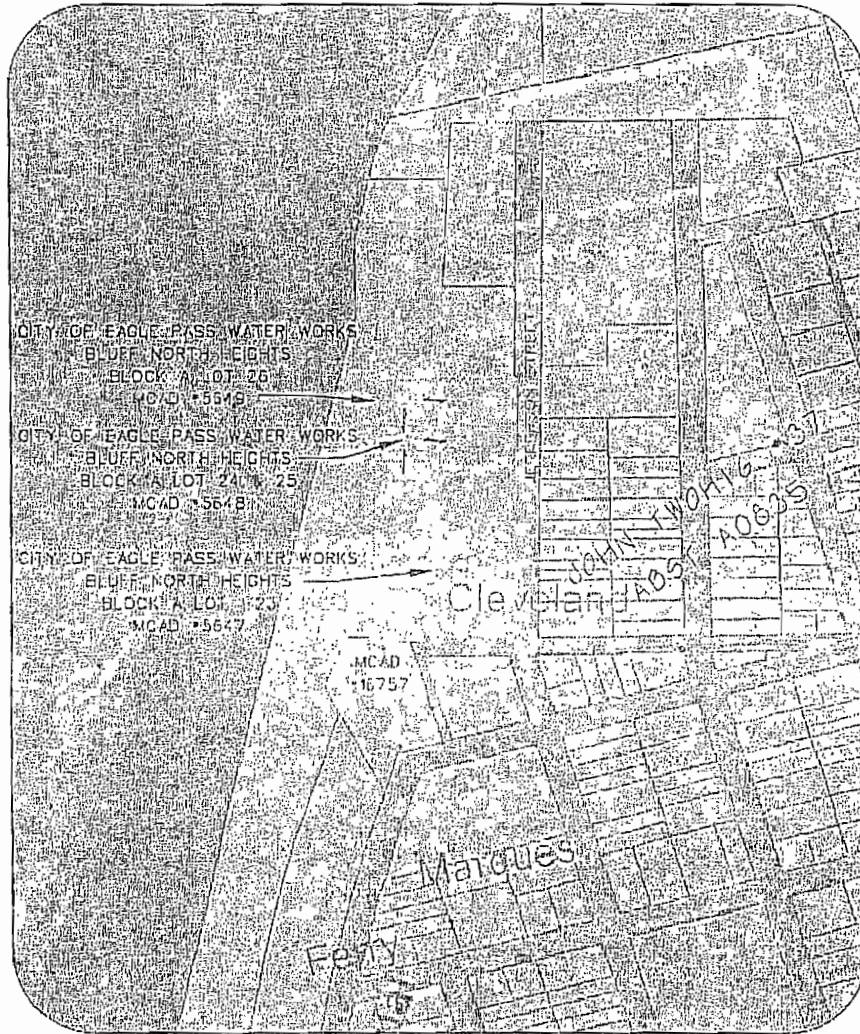
SCHEDULE "D"



BORDER FENCE M2A SERIES
REQUEST FOR RIGHT-OF-ENTRY
TRACT DRT-EGT-1006,
EAGLE PASS, TX

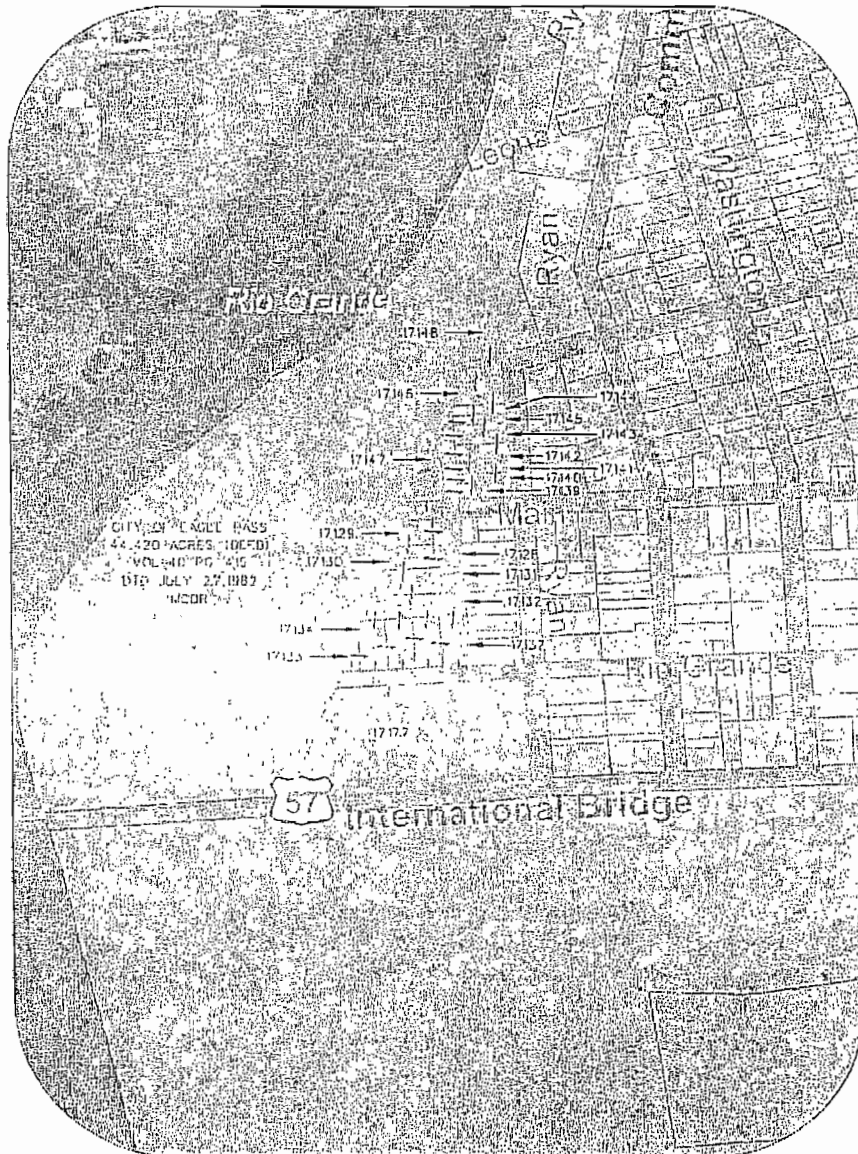
LEGEND:
—— OWNERSHIP PARCEL

SCHEDULE "D" (cont.)



BORDER FENCE M2A SERIES
REQUEST FOR RIGHT-OF-ENTRY
TRACT DRT-EGT-1007,
EAGLE PASS, TX

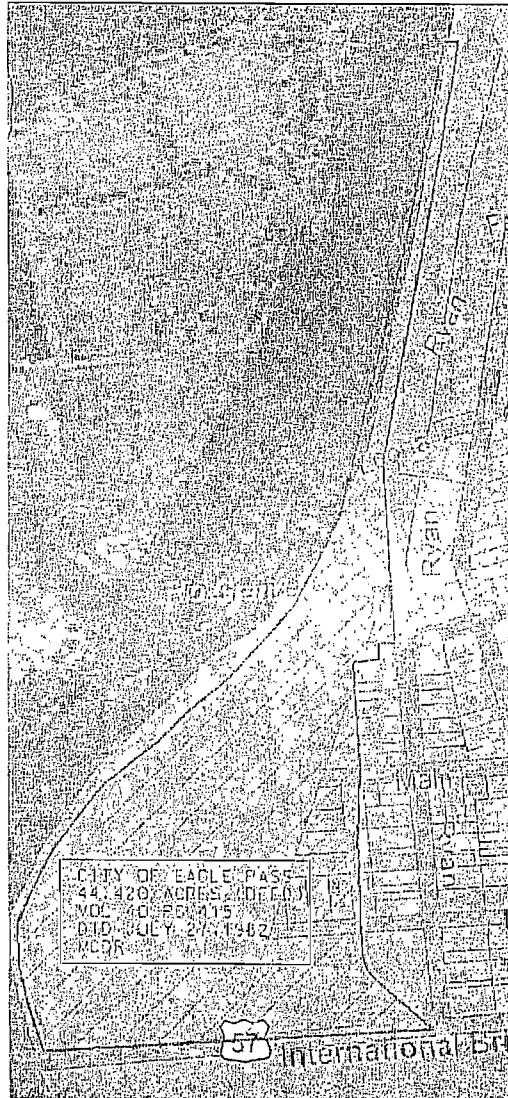
SCHEDULE "D" (cont.)



BORDER FENCE M2A SERIES
REQUEST FOR RIGHT-OF-ENTRY
TRACT DRT-EGT-1008,
EAGLE PASS, TX

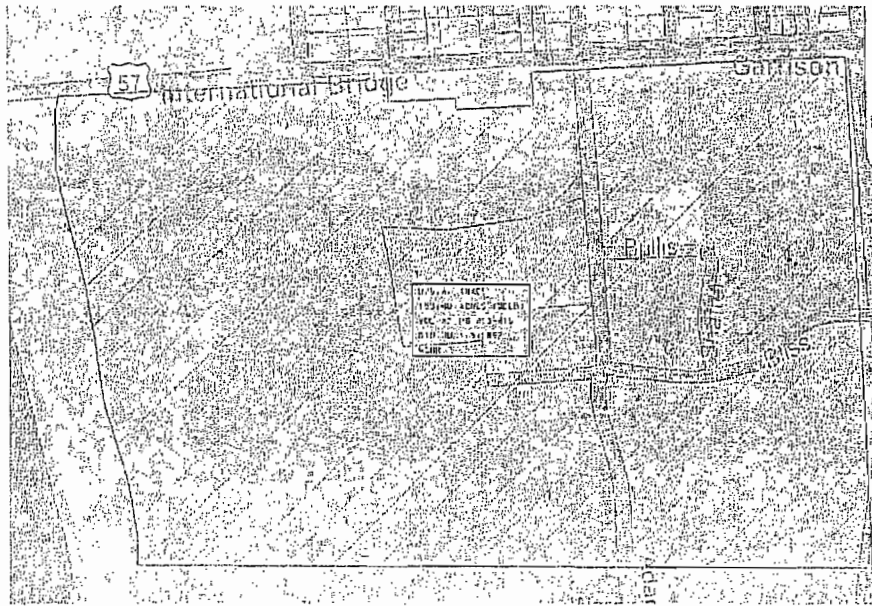
LEGEND:
OWNERSHIP PARCEL

SCHEDULE "D" (cont.)



BORDER FENCE M2A SERIES
REQUEST FOR RIGHT-OF-ENTRY
TRACT DRT-EGT-1009,
EAGLE PASS, TX

SCHEDULE "D" (cont.)

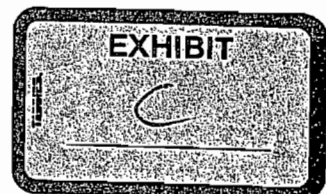


BORDER FENCE M2A SERIES
REQUEST FOR RIGHT-OF-ENTRY
TRACT DRT-EGT-1010,
EAGLE PASS, TX

LEGEND:
OWNERSHIP PARCEL

SCHEDULE "A"
AUTHORITY FOR THE TAKING

The property is taken under and in accordance with the Act of Congress approved on February 26, 1931, as 46 Stat. 1421 and codified at 40 U.S.C. Section 3114, and the Act of Congress approved August 1, 1888, as 25 Stat. 357 and codified at 40 U.S.C. Section 3113, and any acts supplementary thereto and amendatory thereof; the Act of Congress approved September 30, 1996, as Public Law 104-208, Division C, Section 102, Stat. 3009-546, 3009-554, as amended and codified at 8 U.S.C. Section 1103 (b) & note; and the Act of Congress approved October 4, 2006, as Public Law 109-295, Title II, 120 Stat. 1355, which appropriated the funds which shall be used for the taking.



SCHEDULE "F"
ESTIMATE OF JUST COMPENSATION

The sum estimated as just compensation for the land being taken is ONE HUNDRED DOLLARS AND NO/100 (\$100.00), to be deposited herewith in the registry of said Court for the use and benefit of the persons entitled thereto; and, an additional sum determined at the conclusion of the temporary estate described in Schedule "E" to constitute actual damages, if any.

SCHEDULE "G"
NAMES AND ADDRESSES OF PURPORTED OWNERS:

City of Eagle Pass, Texas
c/o Mr. Glenn Starnes, City Manager
100 South Monroe Street
Eagle Pass, Texas 78852