

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ADMINISTRATIVE ORDER 87-14

IN RE: BIG CYPRESS NATIONAL
PRESERVE

ORDER APPOINTING COMMISSIONERS PURSUANT TO
FEDERAL RULES OF CIVIL PROCEDURE

Actions are filed in the Southern District of Florida related to the condemnation of property within the Big Cypress National Preserve situated in Monroe, Dade and Collier Counties. Additional actions are expected to be filed in the future. The court entered an Order on March 7, 1983 appointing commissioners pursuant to the provisions of Rule 71A(n) of the Federal Rules of Civil Procedure. That Order shall expire on March 13, 1987.

Rule 71A(h), as amended, provides that the court in its discretion may order that:

because of the character, location, or quantity of the property to be condemned, or for other reasons in the interest of justice, the issue of compensation shall be determined by a commission of three persons appointed by it.

In the event that a commission is appointed the court may direct that not more than two additional persons serve as alternate commissioners to hear the case and replace commissioners who, prior to the time when a decision is filed, are found by the court to be unable or disqualified to perform their duties. An alternate who does not replace a regular commissioner shall be discharged after the commission renders its final decision. Before appointing the members of the commission and alternates the court shall advise the parties of the identity and qualifications of each pros-

pective commissioner and alternate and may permit the parties to examine each designee. The parties shall not be permitted or required by the court to suggest nominees. Each party shall have the right to object for valid cause to the appointment of any person as a commissioner or alternate. If a commission is appointed it shall have the powers of a master provided in subdivision (c) of Rule 53 and proceedings before it shall be governed by the provisions of paragraphs (1) and (2) of subdivision (d) of Rule 53. Its action and report shall be determined by a majority and its findings and report shall have the effect, and be dealt with by the court in accordance with the practice, prescribed in paragraph (2) of subdivision (e) of Rule 53. Trial of all issues shall otherwise be by the court.

The court has considered the character, location and quantity of the property to be condemned and has noted that these actions relate to a large number of separate tracts of land, located in three different counties, at varying distances from the court and that different interests are to be considered with respect to differing tracts. The court is of the opinion that considering the distances between the tracts, the congestion of the court's trial calendar and the difficulties involved in the transportation of jurors to view the property when so required, the interest of justice will be best served by again appointing a commission to determine the issue of compensation.

Pursuant to Rule 71A(h), as amended effective August 1, 1985, of the Federal Rules of Civil Procedure, it is now ORDERED:

1. That not later than ten (10) days from the date hereof, counsel for the United States will mail a copy of this order to the owner of any unsettled tract, or counsel therefor, and certify the same to the court, which copies will serve as notice to

the parties that the court is appointing a commission to determine just compensation as to all parcels in each action and will also serve as notice of the identity and qualifications of each prospective commissioner and the alternate.

2. That JOHN WATSON III, SAM I. SILVER and HERBERT S. SHAPIRO be and they hereby are, appointed as Commissioners, and MILTON A FRIEDMAN be and hereby is, appointed as Alternate Commissioner to fix the just compensation to be paid by the United States for each parcel of land involved in unsettled pending actions and in related actions to be filed in the future, unless the court in its discretion orders that such compensation be determined by a jury, or, in a proper case, by the court.

All of the above commissioners and the alternate commissioner have been serving on the Lands Commission created by the Order of March 7, 1983, have the background and ability to appraise real estate valuation testimony, and, have the judicial experience necessary to award fair and just compensation on the basis thereof.

3. That the commissioners named herein shall, as expeditiously as practicable, commence upon their duties; that they shall, at such times as they deem advisable, view the properties involved; commence their hearings as soon as practicable, and continue thereafter with all reasonable dispatch until they shall have completed their assignment; proceed to determine just compensation as to all parcels in each action in whatever order they deem advisable; that their hearings be conducted as such place or places as may, in their judgment, be convenient to themselves,

the parties, their witnesses, and counsel; that they shall give due notice to parties, witnesses, and counsel as to the time fixed for any hearing in which said party, witness, or counsel may be interested; that they shall have authority, sua sponte, for cause satisfactory to them, to defer, advance, or otherwise rearrange the order of hearings on the properties involved, provided, however, that the prompt and expeditious disposition of these actions shall not be prevented thereby and that no hearing shall be postponed indefinitely or continued without an order of the court entered sua sponte or upon motion; and that, in all matter, they be guided by the provisions of Rule 71A, Federal Rules of Civil Procedure, and by the law of each case as instructed by this court.

4. That each of said commissioners be, and is hereby, authorized and empowered to administer oaths to witnesses; that in the said hearings the said commissioners shall allow counsel for the United States and the owner or owners, or their attorneys, to make opening statements, if desired, to adduce evidence in regard to the just compensation for the parcel involved, and to argue the cases orally for a reasonable time after the conclusion of the evidence; and that the said commissioners shall file their report in the nature of an award stating specific findings as to the matters on which their valuations were based and illustrating how they have applied the applicable principles of law in reaching their ultimate conclusions as to each tract.

5. That any party may, within ten (10) days of notification of the entry of this Order, object thereto or, for valid cause,

object to the appointment of any person as a commissioner or alternate and may request from the court permission to examine each designee, provided, however, that if any party objects to the appointment of a commissioner or alternate on the grounds of bias, prejudice, or the like, such party shall accompany such objection by an affidavit setting forth with specificity facts in support thereof and a certificate of counsel of record, if any, stating that the objection is made in good faith.

6. That this Order be entered in each of the actions designated in the caption hereof, and that this Order shall be construed as entered separately in each of said actions, the Clerk to place a certified copy hereof in the record and file of each action.

The notice to the parties pursuant to the preceding paragraphs shall inform the United States and each owner or counsel, if any, of the Court's proposed instructions as to the law of the case with respect to each unsettled tract of land. The parties may, within fifteen (15) days of their receipt of such notification, take exceptions to such proposed instructions and present additional or supplemental instructions, and be heard thereon. Exceptions to the court's proposed instructions and additional or supplemental instructions, shall be accompanied by a memorandum of points and authorities in support thereof. Rulings on exceptions and additional or supplemental instructions shall be made by the court.

7. The court reserves the right to order included additional actions (heretofore or hereafter filed), parcels, and

tracts of land not included in the actions enumerated in the caption hereof, provided, however, that such actions, parcels, or tracts shall be related to the instant actions, parcels, and tracts and provided further, that no such action shall be included in this order until the parties and their counsel have been notified of the court's intention to so include. Such inclusion shall be by Order of the judge of this court to whom the action is assigned, and shall be filed by the Clerk in the record and file of such action, together with a certified copy of this Order.

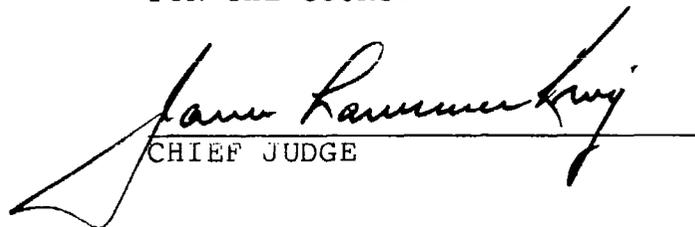
8. The court retains jurisdiction to appoint additional commissioners or substitute commissioners as justice may require or circumstances may dictate.

9. Counsel for the United States shall promptly notify the court and the commission of any settlement which shall make it unnecessary for the commissioners to act in a particular case.

This Order shall be effective on March 13, 1987 and shall expire on March 1, 1992 without further Order.

DONE and ORDERED in the United States District Court, Federal Courthouse Square, Miami, Florida, this 2 day of March, 1987.

FOR THE COURT:


CHIEF JUDGE

Copies:

Honorable Peter T. Fay
All Southern District Judges
All Southern District Magistrates

All Southern District Land Commissioners
Clerk of Court
United States Attorney
Court Executive