

Appeal from decision of the Alaska State Office, Bureau of Land Management, requiring a survey deposit be paid. AA-53131.

Affirmed.

1. Fees -- Public Lands: Disposals of: Generally -- Public Lands: Special Grants -- Surveys of Public Lands: Generally

Costs of a survey must be paid by a person authorized by a private law to purchase public lands.

APPEARANCES: Jerry L. Crow, pro se; James R. Mothershead, Esq., Office of the Regional Solicitor, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Jerry L. Crow appeals from a decision of February 9, 1984, of the Alaska State Office, Bureau of Land Management (BLM), which required that a survey deposit be submitted by him.

On June 20, 1967, Jerry L. Crow (appellant) filed a notice of location of settlement or occupancy for an 80-acre trade and manufacturing (T & M) site in unsurveyed sec. 6, T. 22 S., R. 3 E., Fairbanks Meridian. On May 17, 1972, appellant filed an application to purchase the site claiming various improvements. On November 14, 1974, BLM initiated a contest against the T & M site. A hearing on the contest complaint was held on June 26, 1975, and, by decision dated July 22, 1976, an Administrative Law Judge rejected the application. The matter was appealed to this Board and we modified but affirmed the Administrative Law Judge's decision which rejected the T & M site application. United States v. Jerry L. Crow, 28 IBLA 345 (1977), aff'd, Crow v. Andrus, Civ. No. F 77-12 (D. Alaska June 23, 1978).

On January 3, 1983, a private law (Priv. L. 97-49) was approved which provides:

That Jerry L. Crow may \* \* \* select not more than ten acres of land from the public lands included in his original application to purchase a trade and manufacturing site \* \* \* and shall notify the Secretary of the Interior of his intention to purchase the selected land under the provisions of this Act.

Sec. 2. Notwithstanding the provisions of section 203 of the Federal Land Policy and Management Act [of 1976] (90 Stat. 2743) and as soon as practicable upon receipt of a notification under section 1 of this Act, the Secretary is directed to sell the selected land[s] to Mr. Crow at a price based upon their fair market value as of the date of enactment of this Act, excluding any value added to the lands by Mr. Crow.

Sec. 3. The Secretary shall offer to lease to Mr. Crow for thirty years, with an option to purchase, for use as a trade and manufacturing site, all or a portion of the lands included in his original application, with rental based on the land's fair market value. If the option to purchase is exercised by Mr. Crow, the purchase price shall be the fair market value at the time of purchase. Fair market value shall be determined by the Secretary or his designee.

On October 5, 1983, BLM issued a notice which stated that the land encompassed by the T & M site claim is unsurveyed and that a special survey would be required before patent could be issued. The estimated cost of the survey was stated to be \$5,400 based on the applicant's request that BLM survey and monument the entire 80 acres into 5-acre lots.

On November 9, 1983, appellant responded stating that he believed the intent of Congress in passing Priv. L. 97-49 was that he pay only the fair market value of the land and he requested a determination as to whether he is also required to pay surveying costs.

On February 9, 1984, BLM issued the decision which is the subject of this appeal. In its decision BLM assumed the provisions of 43 U.S.C. § 687a-6 (1982) did not apply, since appellant was purchasing the land in accordance with the private law, and, relying on advice from the Assistant Regional Solicitor, based its conclusion that appellant did have to deposit the estimated cost of the survey on section 304(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1734(b) (1982), 1/ the Independent Offices

1/ Sec. 304(b) of FLPMA, 43 U.S.C. § 1734(b) (1982), provides:

"The Secretary is authorized to require a deposit of any payments intended to reimburse the United States for reasonable costs with respect to applications and other documents relating to such [public] lands. The moneys received for reasonable costs under this subsection shall be deposited with the Treasury in a special account and are hereby authorized to be appropriated and made available until expended. As used in this section 'reasonable costs' include, but are not limited to, the costs of special studies; environmental impact statements; monitoring construction, operation, maintenance, and termination of any authorized facility; or other special activities. In determining whether costs are reasonable under this section, the Secretary may take into consideration actual costs (exclusive of management overhead), the monetary value of the rights or privileges sought by the applicant, the efficiency to the government processing involved, that portion of the cost incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant, the public service provided, and other factors relevant to determining the reasonableness of the costs."

Appropriations Act, 31 U.S.C. § 9701 (1982), 2/ the Public Land Administration Act, 43 U.S.C. § 1371 (1970), 3/ and court decisions construing these

2/ 31 U.S.C. § 9701 (1982) provides:

"(a) It is the sense of Congress that each service or thing of value provided by an agency (except a mixed-ownership Government corporation) to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible.

"(b) The head of each agency (except a mixed-ownership Government corporation) may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies are subject to policies prescribed by the President and shall be as uniform as practicable. Each charge shall be --

"(1) fair; and

"(2) based on --

(A) the costs to the Government;

(B) the value of the service or thing to the recipient;

(C) public policy or interest served; and

(D) other relevant facts.

"(c) This section does not affect a law of the United States --

"(1) prohibiting the determination and collection of charges and the disposition of those charges; and

"(2) prescribing bases for determining charges, but a charge may be redetermined under this section consistent with the prescribed bases."

3/ 43 U.S.C. § 1371 (1970), repealed by section 705(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2793, provided:

"Notwithstanding any other provision of law, the Secretary of the Interior may establish reasonable filing fees, service fees and charges, and commissions with respect to applications and other documents relating to public lands and their resources under his jurisdiction, and may change and abolish such fees, charges, and commissions. Before any action is taken under this section, the Secretary shall publish in the Federal Register notice of his intention to take such action, and shall afford interested parties a period of thirty days, or, if he shall find it advisable, more, within which to submit data, views and arguments, either in writing or, if he shall deem it desirable, in open hearing."

(For the current law, see 43 U.S.C. § 1734(a) (1982)). The legislative history of this provision was set forth in Public Service Company of Colorado v. Andrus, 433 F. Supp. 144 (D. Colo. 1977) at 150:

"The history of the bill in the House of Representatives is somewhat more revealing. A letter from Fred G. Aandahl, Assistant Secretary of the Interior is reprinted in H.R. Report No. 1249, 86th Cong. 2d Sess. (1960). In speaking of the need to update fees for service, Mr. Aandahl states:

'The fee system can only be rationalized if flexible authority is placed in the Secretary to fix those fees. In some cases no specific statutory provision has been made for the payment of service charges by those who are the primary beneficiaries of such services. Examples of such services are the handling and recording of papers, the taking of depositions, the preparation of transcripts of hearings or other proceedings, and the making of surveys and field examinations. (Emphasis added.)'

"The last sentence of the quoted portion reveals that the charges intended to be included under the PLAA were not simply minor sums for recording and transcription services. Rather, the Legislature envisioned some larger charges for items such as the making of field surveys and services."

statutes. 4/ The decision stated:

In making a request or application for not more than 10 acres under the private law enacted for his benefit on January 2, 1983, [sic] Mr. Crow will be seeking a special public land benefit not shared with other members of the public. A necessary pre-requisite incidental to obtaining patent to such acreage of "public lands included in his original application to purchase" a T&M site is a survey of the acreage by BLM. Therefore, without survey, Mr. Crow cannot obtain patent to the "public lands" selected by him. It is therefore obvious that Mr. Crow will be the primary beneficiary of BLM's survey of his selected land in that it will enable him to receive patent. Accordingly, the BLM should recover from Mr. Crow the full cost of such survey pursuant to the provisions of IOAA [Independent Offices Appropriations Act, supra] and Section 304(b) of FLPMA. [Emphasis in original.]

However, the decision concluded that appellant need pay only 1/8 of the \$5400 estimated cost of survey at present "because only ten of the eighty acres has been selected," and stated that the remaining survey costs would be required pro rata if he selected additional acreage for purchase in accordance with section 3 of the private law.

In his statement of reasons appellant quotes the language of 31 U.S.C. § 9701 cited in the decision that "each service \* \* \* of value provided by an agency \* \* \* to a person \* \* \* is to be self-sustaining to the extent possible" and asserts: "I contend that Priv. L. 97-49 meets this test. The purchase price is \$36,000.00. The survey cost is \$5,400.00. This service is very self-sustaining. Survey costs are an expense to the seller to be recovered from the market value purchase price."

[1] Both the terms of Private Law 97-49 and the authorities relied on by the BLM dictate that appellant must reimburse the survey costs for the lands he purchases. The private law specifies that the Secretary is to sell the lands appellant selects "at a price based upon their fair market

4/ BLM cited Mississippi Power & Light Co. v. U.S. Nuclear Regulatory Commission, 601 F.2d 223 (5th Cir. 1979), cert. denied, 444 U.S. 1102 (1980). There the Court said:

"The Commission \* \* \* takes the position that it is not required to segregate public and private benefits and that it may recover the full cost of providing a service to a private beneficiary, regardless of whether that service may also benefit the public. We agree with the Commission.

"Our position is consistent with the view of the IOAA taken by the Supreme Court in New England Power [Federal Power Commission v. New England Power Co.], 415 U.S. 345 (1974)]. There, the Court cited with approval a 1959 Bureau of the Budget Circular which the Court felt represented a proper construction of the IOAA. In interpreting the Act, the Bureau opined: 'Where a service (or privilege) provides special benefits to an identifiable recipient above and beyond those which accrue to the public at large, a charge should be imposed to recover the full cost to the Federal Government of rendering that service.'" [Emphasis in original; footnote omitted.] Id. at 229-30. See also Yosemite Park and Curry Co. v. United States, 686 F.2d 925, 928-29 (Ct. Cl. 1982).

value" as of January 3, 1983. The area was appraised "as if vacant with no value \* \* \* included for any improvements to the land" (August 19, 1983, Appraisal Report at 6). Thus, the appraised value of \$450 per acre is the value of the land alone, not the land as improved or surveyed or otherwise enhanced. Although a private seller of land usually bears the cost of a survey, if required, he does so pursuant to an obligation to demonstrate merchantable title. Appellant is exercising rights granted him as an individual by Private Law 97-49 to select public lands and it is he who requested that the 80 acres be surveyed in 5-acre lots. Until the lands are surveyed they are not lands he can obtain. Not only is there no reason for the Government to provide him this special service at no cost, to do so would contravene consistent Congressional policy, both in matters involving lands as well as in other contexts, that individuals who receive such services or benefits from the Government must pay for them. See Colorado-Ute Electric Association, Inc., 46 IBLA 35, 43-44 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

---

Will A. Irwin  
Administrative Judge

We concur:

---

James L. Burski  
Administrative Judge

---

Wm. Philip Horton  
Chief Administrative Judge

