

## §211.7

## 33 CFR Ch. II (7-1-07 Edition)

for leases or privileges shall be deposited in the Treasury of the United States as miscellaneous receipts. (Sec. 4, act of December 22, 1944, 58 Stat. 887, 889, as amended by sec. 4, act of July 24, 1946, 60 Stat. 641, as amended by Sec. 209, act of Sept. 3, 1954, 68 Stat. 1266.)

(b) *Easements.* (1) The Secretary of the Army is authorized to grant easements for rights-of-way across real estate acquired for civil purposes as follows:

(i) *Poles and wires.* The Secretary of the Army may grant easements for rights-of-way, for periods not exceeding 50 years, for poles and lines for the transmission and distribution of electrical power, and for poles and lines for telephone and telegraph purposes, over lands under his jurisdiction, upon a finding that the same is not incompatible with the public interest (see act of March 4, 1911; 36 Stat. 1253, as amended by the act of May 27, 1952, 66 Stat. 95; 43 U.S.C. 961). Form of easement is ENG Form 1360.

(ii) *Pipelines.* The Secretary of the Army may grant easements for rights-of-ways for gas, water, and sewer pipelines across lands under his control provided that such grants will be in the public interest and will not substantially injure the interest of the United States in the property affected thereby (10 U.S.C. 2669). Form of easement is ENG Form 1361.

(iii) *Other easements.* The Secretary of the Army is authorized and empowered, under such terms and conditions as are deemed advisable by him, to grant easements for rights-of-way over, across, in and upon acquired lands under his jurisdiction and control, and public lands permanently withdrawn or reserved for the use of the Department of the Army, to any State, political subdivision thereof, or municipality, or to any individual, partnership, or corporation of any State, Territory, or possession of the United States, for:

(A) Railroad tracks;

(B) Oil pipelines;

(C) Substations for electric power transmission lines, telephone lines, and telegraph lines, and pumping stations for gas, water, sewer, and oil pipelines;

(D) Canals;

(E) Ditches;

(F) Flumes;

(G) Tunnels;

(H) Dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other fish-cultural improvements;

(I) Roads and streets;

(2) *Provided, That:*

(i) Such rights-of-way shall be granted only upon a finding by the Secretary of the Army that the same will not be incompatible with the public interest.

(ii) Such rights-of-way shall not include any more land than is reasonably necessary for the purpose for which granted.

(iii) All or any part of such rights-of-way may be annulled and forfeited by the Secretary of the Army for failure to comply with the terms and conditions of the grant or for the nonuse for a period of two consecutive years or abandonment of rights granted (10 U.S.C. 2668).

### §211.7 Rights which may be granted by Division and District Engineers.

(a) *Authority of Division and District Engineers.* Division Engineers, the President of the Mississippi River Commission, and District Engineers of districts to which real estate functions have been or may be assigned are authorized to lease, in the name of and by authority of the Secretary of the Army, lands of the United States and improvements thereon, acquired for reservoirs for navigation and flood control, subject to the prior approval of the Chief of Engineers. Recommendations of District Engineers will be considered by Division Engineers and the President of the Mississippi River Commission in granting leases and District Engineers will administer the provisions of the leases, including the collection and deposit of payments.

### §211.8 Limitations on rights which may be granted.

(a) *Advertising.* It is the policy to grant leases to the highest responsible bidders after advertising, where competition is practicable. Advertising consists of the circularization of notices among former owners of the land, owners of adjacent lands, and others known to be interested and by the posting of notices in public places, and

publication of notices in newspapers where such publication is deemed advisable. Exceptions have been made to this policy in favor of former owners in granting leases for agricultural and grazing purposes in reservoir areas.

(b) *Consideration.* Title 10 U.S.C. 2667 provides that notwithstanding section 321 of the act of June 30, 1932 (47 Stat. 412; 40 U.S.C. 303b) or any other provision of law, any such lease may provide for the maintenance, protection, repair, or restoration by the lessee, of the property leased or of the entire unit or installation where a substantial part thereof is leased, as a part or all of the consideration for the lease of such property. The consideration will be adequate but may consist of money and/or maintenance, protection, repair, or restoration by the lessee, of the property leased.

(c) *Consideration in easements and licenses.* In order to fully protect the interests of the United States, the Secretary of the Army will not, without substantial compensation grant to non-government agencies, for the purpose of private profit, valuable rights in Government property. A fair charge will be made for such privileges, the amount to be determined by all the circumstances surrounding the case, including an estimate as to what private interest in the vicinity would charge for a similar privilege.

#### § 211.9 Applications for leases, easements, licenses, and permits.

Applications for use of Civil Works property should be made to the District Engineer of the district within the boundaries of which the real estate is located. The District Engineer will determine whether the property will be required for public use during the period of the contemplated grant and whether the requested grant will interfere with any operations of the United States.

#### DISPOSAL OF REAL ESTATE ACQUIRED FOR CIVIL WORKS PURPOSES

AUTHORITY: Sections 211.10 through 211.13 issued under R.S. 161; 5 U.S.C. 301.

SOURCE: 13 FR 8749, Dec. 30, 1948, unless otherwise noted.

#### § 211.10 Disposition of lands.

(a) Acts authorizing the Secretary of the Army to dispose of land acquired for the improvements of canals, rivers and harbors, or for flood control purposes are as follows:

(1) Section 7 of the act of Congress approved August 30, 1935 (49 Stat. 1048; 33 U.S.C. 558a) as extended by section 6 of the act approved August 18, 1941 (55 Stat. 650; 33 U.S.C. 701c-2, 77th Congress) authorizing sale of lands no longer needed for the purpose for which acquired.

#### § 211.11 Sale or salvage of buildings, improvements, or crops.

(a) *Authority of law.* When any property (except land) which has been heretofore or may be hereafter purchased or acquired for the improvement of rivers and harbors or for flood control work is no longer needed, or is no longer serviceable, it may be sold in such manner as the Secretary of the Army may direct and the proceeds credited to the appropriation for the work for which it was purchased or acquired. (Section 5, act of June 13, 1902 (32 Stat. 373; 33 U.S.C. 558), as extended by section 3, act of March 1, 1917 (39 Stat. 450; 33 U.S.C. 701).)

(b) *Division Engineers.* Sales are conducted by the Division Engineers, Corps of Engineers.

(c) *Removal of buildings, improvements, or crops other than by sale.* If the buildings, improvements, or crops cannot be sold, they may be salvaged or razed as a part of the work under the project if they are in the way of new construction or interfere with the efficient operation of the project.

#### § 211.12 Exchange of lands.

The Secretary of the Army is authorized to exchange lands acquired for river and harbor and flood control projects for privately owned lands required for such purposes. (Sec. 2 of the act of June 20, 1938 (52 Stat. 804; 33 U.S.C. 558b) as extended by sec. 3 of the act of August 11, 1939 (53 Stat. 1414, 33 U.S.C. 558b-1).)

#### § 211.13 Approval of the Office of the Chief of Engineers.

In any case in which it may be necessary or advisable in the execution of