

to be public land of the United States and subject to survey and administration as such, and that any protest against the proposed survey should be filed with the appropriate State Director. It must be shown what particular surveyed lands opposite the island, or adjoining the unsurveyed land, are owned by the adjacent land owner on whom the notice is served.

(c) *Evidence required as to character of land in existence at time of original survey.* An application for the survey of an island or other land omitted from the original survey must be accompanied by evidence showing that the land was in existence and above ordinary high-water elevation when the State was admitted into the Union, and when the adjacent lands were surveyed. Such evidence should consist of statements from at least two persons familiar with the land, as to its size, elevation, and appearance, and the species, size, and age of the timber growth thereon, or nature of other vegetation.

(d) *Diagram required with application.* A diagram showing the approximate configuration of the island or other land applied for, and its location with reference, to the public land surveys, must accompany the application.

(e) *Cost of survey.* In the event of approval of the application, the costs of the survey will be borne by the Government.

(f) *No preference right.* Should the island or other land be surveyed as public land, no preference right to acquire the same under the laws governing the disposal of public lands will be gained by the filing of the application for survey.

[35 FR 9798, June 13, 1970, as amended at 44 FR 41795, July 18, 1979]

§ 9185.2-3 Unsurveyed islands and omitted lands.

(a) Section 211(a) of the Federal Land Policy and Management Act of 1976 (90 Stat. 2758), provides for the conveyance under the Recreation and Public Purposes Act of unsurveyed islands determined by the Secretary to be public lands of the United States. The conveyance of any such island may be made without survey; however, such island shall be surveyed at the request of the qualified applicant. If the applicant re-

quests that a survey be executed, the applicant shall be required to:

(1) Furnish a written statement identifying his choice of donation of money, services, or both for the survey.

(2) If the applicant elects to donate money, such donation shall equal the Bureau of Land Management's estimated cost of survey. The donated money shall be credited and expended in accordance with section 307(c) of the Act. A written estimate of such costs shall be furnished to the applicant by the Bureau.

(3) If the applicant elects to donate services, such services shall be conducted and performed pursuant to the criteria established by the Director of the Bureau of Land Management.

(b) Section 211(b) of the Act, provides for conveyance, under the Recreation and Public Purposes Act (43 U.S.C. 869), of lands other than islands determined by the Secretary by survey to be public lands of the United States erroneously or fraudulently omitted from the original surveys. An applicant may be required to donate money, services, or a combination thereof for such survey. The procedures contained in § 9185.2-3(a) of this title shall be followed.

[44 FR 41795, July 18, 1979]

§ 9185.3 Requirements for resurveys; without cost to applicant.

§ 9185.3-1 Eligibility.

(a) *Determined by ownership of land.* As a general rule, and in the absence of any particular governmental purpose to be subserved, no township is eligible for resurvey unless title to at least 50 percent of the area of the lands embraced therein remains in the United States. For the purpose of determining the eligibility of a township under this rule, lands covered by approved selections, school sections, and entries upon which final certificates or patents have been issued are to be considered as alienated lands. Townships within the primary limits of railroad land grants are generally ineligible.

(b) *Determined by physical character of remaining public land.* In general no resurvey will be undertaken unless the preliminary examination of the township develops evidence of existing settlement and agricultural possibilities

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sufficient to support the presumption that the unappropriated lands therein are such as to attract bona fide entrymen, thus eliminating townships which, although theoretically eligible, are of such a physical character that the resurvey thereof would serve no useful purpose.

(c) *Small areas.* In the application of the terms of the Act of March 3, 1909 (35 Stat. 845), as amended, is not intended that there shall be undertaken any work involving the mere reestablishment of lost or obliterated or misplaced corners in a limited area of a township, such work being within the province of the local surveyors, and the authority of the public survey office will be limited to the giving of advice in accordance with the circular for the restoration of lost or obliterated corners. Employees of the Bureau of Land Management are prohibited from participating in the resurvey of a township, the reestablishment of lost corners, or in the subdivision of sections for private parties, even if the expense is borne by the county or municipal authorities or by individuals.

§9185.3-2 Showing required.

(a) *Necessity.* The applicants for the resurvey of any township are required to present satisfactory prima facie evidence of the necessity for such action, based either upon general obliteration of evidences of the original survey or upon conditions so grossly defective as to preclude the possibility of a reasonably certain identification of the subdivisions of the subsisting survey or a satisfactory local restoration thereof.

(b) *Condition of original survey.* Applications for the resurvey of each township must be supported by evidence in the form of a statement, preferably from the county or other competent surveyor, showing in detail that the evidences of the original survey have been obliterated to such an extent as to make it impracticable to apply the suggestions of the circular issued by the Bureau of Land Management for the necessary restoration of the lines and corners in the proper identification of the legal subdivisions occupied by the present or prospective entrymen or that the obliteration of the original monuments has become so advanced

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that the land boundaries can be identified only through extensive retracements by experienced engineers of the Bureau of Land Management.

§9185.3-3 Majority of land owners.

A majority of the settlers in each township are required to join in the application, and, in addition, there must appear the endorsements of the entrymen and owners, including the State, whose holdings represent the major part of the area entered or patented, with a description opposite each name of the lands actually occupied, entered, or owned, and a statement as to whether the applicant is a settler, entryman, or owner thereof. Where an entryman or owner, including the State, has failed for any reason whatsoever to join in the application, evidence of service of notice upon him for at least 30 days in advance of the filing of the application is required in order that he may be afforded ample opportunity to make timely protest against the granting of such resurvey if in his opinion such action is undesirable.

§9185.4 Requirements for resurvey; with cost prorated.

§9185.4-1 Estimate of cost.

(a) The cost of resurvey procedure is as a rule considerably in excess of that incident to the execution of original surveys and may range between rather wide limits. Where the obliteration is not excessive and the evidences of the original survey are harmoniously related, extensive verifying retracements will be unnecessary and ordinary dependent methods of resurvey can usually be applied. If, however, the obliteration is general or total, many miles of preliminary retracement may be required in order to obtain technical control, and where, by reason of errors in the original survey, the existing evidences thereof are discordant and conflicting locations have resulted, the procedure required may, in the case of densely entered townships, involve an expense of \$5,000 or more per township.

(b) The applicants for resurvey should understand, therefore, that although the estimate supplied will be as