

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

57029

FILE:

DATE: SEP 22 1975

MATTER OF: 183062

97437

Duane Meriwether voucher certification

DIGEST:

Payment of Standard Form 44a purchase order for \$3000, to permittee holder of revocable Forest Service special-use permit concerning 15 acres of pasture land is not entitled to \$3000 rental from Government for 15 day period permittee was not able to use pasture because of Government's use thereof as heliport incident to fighting a forest fire, but he may be reimbursed cost of hay and oats he purchased to feed 6 horses he had on pasture at time of fire, such purchase being necessary because of Government use of pasture. ✓

This decision is in response to a request from A. J. Brady, Authorized Certifying Officer, Forest Service, Department of Agriculture, concerning the propriety of certifying for payment a Standard Form 44a (Purchase Order-Invoice-Voucher) drawn in favor of Mr. Duane Meriwether in the amount of \$3000 in light of the facts and circumstances set forth below. ✓

The certifying Officer's letter describes that:

"During the course of the recent Squaw Basin Fire on the Ashley National Forest, it became necessary to provide a base for helicopters used on the fire. The area elected for the heliport was a 15 acre fenced, irrigated pasture site on the Ashley National Forest in Utah. The pasture was used by Duane Meriwether under the terms of * * * [a] terminable special-use permit issued May 23, 1963. By payment of an annual fee Mr. Meriwether's permit was effective through 1974.

"Although the pasture site served a compelling need during the fire suppression activities, I question the validity of renting the 15 acres from Mr. Meriwether. The enclosed Standard Form 44a reflects the aggregate total of \$3,000. The payment computation, as shown in Mr. Dunch's enclosed statement, includes costs of hay, oats, and transportation for Mr. Meriwether's horses, reseeding and fertilizer for the damaged Forest Service land, loss of customer relations, overhead, and miscellaneous items.

✓ "Research through Comptroller General decisions could not locate a precedence, although 20 CG 379 reflects a somewhat similar situation. That decision forbid the payment for relocating telephone lines on public lands due to Federal-Aid Highway construction.

"The special-use permit is silent regarding Government use of the land for fire emergencies. We do not consider our act of using the land as a heliport as a revocation of the special-use permit. The permit does not give the permittee exclusive right to the land. The permit is revokable and limited to the purpose for which given. Please note clause 19 regarding the limit of 15 horse months for a four-month period."

✓ As indicated above the voucher (Standard Form 44a), in the amount of \$3000 covers rental of the pasture by the Government for 15 days (10 days at \$250 per day and 5 days at \$100 per day). Thus, the permittee is claiming \$3000 for renting to the Government for 15 days a pasture which the Forest Service allows the permittee to use under a revocable Special Use Permit for which the permittee pays \$23.50 per annum. It appears, however, from the record before us that the \$3000 is intended to cover damages suffered by the permittees because of the Government's use of the pasture as a helicopter base incident to fire suppression activities. It further appears from the record that the claim is based on an offer made to the claimant by an employee of the Forest Service, on the basis of the following estimate of costs:

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10 tons hay @ \$65/ton	\$650
1000 pounds oats @ \$7.50/cwt.	75
Transport and handling	400
Reseeding 7 acres @ \$100/acre	700
1 ton fertilizer	120
Loss of customer relations	300
15% O/H and miscellaneous expenses	<u>336</u>
	\$2581

While, the permittee's Special Use Permit was not revoked, it was revocable at will at the discretion of the regional forester or the Chief of the Forest Service without any liability on the part of the Government. Further, the permittee is not liable under the permit either to restore the land, or pay for damages thereto, where the injury to the land was caused by the Government. Moreover, we are not aware of any authority for Forest Service employees to rent back from a permittee Government land the permittee was authorized to use under a Special Use Permit revocable at the discretion of the Forest Service. However, as indicated above the claim is for damages suffered rather than rental, and in this case there are certain equities that militate in favor of the permittee in that his permit was not revoked and that because of the Government's use of the pasture the permittee incurred certain expenses he apparently would not have otherwise incurred, including the cost of feed and the cost of reseeding and fertilizing the pasture.

Considering all the facts and circumstances we would not object in the instant case to reimbursing the claimant for the expenses he incurred for the purchase of feed and the transportation thereof as well as the cost of reseeding and fertilizing the pasture. However, in view of all the equities involved that part of the claim covering loss of customer relations, overhead and miscellaneous expenses

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should be denied. Subject to the foregoing the claim may be allowed if otherwise correct.

The invoice is returned herewith for handling in accordance with the above.

Paul G. Dembling

For ~~the~~ Comptroller General
of the United States