

INTERIOR BOARD OF LAND APPEALS

Volney Bursell

130 IBLA 55 (July 19, 1994)

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Appeal from a decision by the State Director, California State Office, Bureau of Land Management, dismissing a protest of a survey and dependent resurvey. (Group No. 1005, California).

Affirmed.

1. Surveys of Public Lands: Generally

Surveys by the Forest Service do not constitute official surveys of the public lands of the United States, as the authority to conduct such surveys and resurveys is vested solely in the Secretary of the Interior, who in turn has delegated this authority to BLM.

2. Surveys of Public Lands: Generally

Where location of a corner cannot be determined from evidence of original accessories, proportionate measurement is a suitable means to determine the corner. Ordinarily, such determination will be set aside only if an appellant establishes by a preponderance of the evidence that BLM used an improper proportioning methodology or that the corner exists.

APPEARANCES: Volney Bursell, Big Bar, California, pro se; Ed Hastey, Director, California State Office, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Volney Bursell has appealed from the December 23, 1991, decision of the Director, California State Office, Bureau of Land Management (BLM), denying his protest against a survey of the subdivision of sec. 26 and a dependent resurvey of the boundaries of that and other sections in T. 4 N., R. 7 E., Humboldt Meridian, California, Group 1005. The public lands being surveyed are in the Trinity National Forest, and Bursell owns part of a tract of land within sec. 26 that had been patented to Frank J. Ege in 1921. Although the patent described the land in terms of subdivisions, only the northern boundary of the Ege tract was on a section line surveyed in 1883. The other boundaries of the tract were never officially surveyed until the survey leading to this appeal.

Bursell believed that the boundaries of his tract corresponded to the cutting boundaries indicated by a 1963 survey by the United States Forest Service (FS). He asserts that when he was presented with the cutting boundary agreement in 1963, he asked about the survey, and although he was aware that it was not official, he was told that it would not be off by more than a few feet at worst and built his fences on it. The general effect of BLM's survey would be to establish the boundaries of appellant's parcel somewhat less than 3/4 chains to the west and approximately 1-1/2 chains to the north of the FS cutting boundaries. <sup>1/</sup>

[1] Although appellant's protest initially was concerned with various issues such as the effectiveness of the cutting survey in identifying his boundary, he does not dispute that the cutting survey did not establish the legal boundaries of his tract, such effect being expressly disclaimed in the 1963 cutting agreement. Indeed, surveys by the Forest Service do not constitute official surveys of the public lands of the United States, as the authority to conduct such surveys and resurveys is vested solely in the Secretary of the Interior, who in turn has delegated this authority to BLM. Wilogene Simpson, 110 IBLA 271 (1989).

Bursell's appeal focusses on BLM's establishment by proportionate measurement of the lost corner common to secs. 26, 27, 34, and 35, which we will refer to as the southwest corner of sec. 26. Although this corner is not on the boundary of appellant's parcel, it affects the placement of the southern boundary of his parcel. He observes that the plat used as the basis for granting the 1921 patent and the field notes of the 1883 original survey show a distance of 80 chains for the western boundary of sec. 26 and 40 chains for the quarter corner, not 78.225 chains for the section line or 39.112 chains for the quarter corner shown by the dependent resurvey. Appellant asks why the field notes of the 1883 survey were not used and asserts that the lines of his property should be based on the distances shown on the plat used as a basis for granting the patent.

The record indicates, however, that BLM did not ignore the field notes of the original survey. BLM reviewed both the handwritten and typewritten versions of the field notes and used them to locate corner monuments by retracing the 1883 survey. BLM found no monument, accessories, or other evidence from which the location of the monument for the southwest corner of sec. 26 set in 1883 could be identified. Although BLM determined that the southwest corner of sec. 26 was lost, BLM confirmed the location of the original section corners immediately to the north and south.

Although the 1883 survey describes each corner to the north or south as 80 chains distant from the southwest corner of sec. 26, the actual distance between the two existing corners is less than 160 chains. Unfortunately, discrepancies in the measurements of lines and certain topographic calls are not uncommon between old and more recent surveys. See State of Oregon,

<sup>1/</sup> One chain equals 66 feet.

78 IBLA 13, 20 (1983), citing Alfred Steinhauer, 1 IBLA 167, 172-73 (1970). The chains used to measure distances at the time of the original survey were difficult to keep at standard length, and inaccuracies often arose in measuring steep slopes with them. Manual of Instructions for the Survey of the Public Lands of the United States (1973) (Manual), 5-23. We note that at each reference to the southwest corner of sec. 26 in the 1883 field notes, the land there is described as mountainous, and the 1883 field notes refer to the ascents and descents of the survey crew as the lines from that corner were being surveyed. The dependent resurvey discloses errors of similar magnitude in the record distances for other meridional lines established in the 1883 survey. Were BLM to make the western boundary of sec. 26 80 chains long as appellant suggests, BLM could do so only by reducing the western boundary of sec. 35 to less than 77 chains, despite the fact that the 1883 survey also gives that distance as 80 chains. Thus, it is impossible to place the southwest corner of sec. 26 in such a way as to accommodate the record distances north and south of it given in the 1883 survey.

[2] Where location of a corner cannot be determined from evidence of original accessories, proportionate measurement has long been recognized a suitable means to determine the location of a corner. Manual, 5-20 through 5-47; John W. Yeargan, 126 IBLA 361, 367-69 (1993); James O. Steambarge, 116 IBLA 185, 193 (1990); Boise Cascade Corp., 115 IBLA 327 (1990). Proportionate measurement attempts to equitably distribute differences arising from such errors in record calls and distances when placing lost corners between found control points. To reestablish a lost corner common to four sections within a township, BLM uses the double proportionate method. Manual, 5-28. This method relies on control from four known corners within the township, two each on the intersecting meridional and latitudinal lines. Manual, 5-25.

The control points for the latitudinal line through the southwest corner of sec. 26 are about 5 miles apart, and consist of an approved BLM corner on the western township boundary and the original locally remonumented southwest corner of sec. 25 about 1 mile to the east of the lost corner. As indicated above, the control points for the longitudinal lines are only about 2 miles apart, and consist of the southwest corner of sec. 23 and the southwest corner of sec. 35 on the southern township boundary.

Ordinarily, the establishment of a lost corner by proportionate measurement will be set aside only if an appellant establishes by a preponderance of the evidence that BLM used an improper proportioning methodology or that the corner exists. See James O. Steambarge, *supra*; Stoddard Jacobsen (On Reconsideration), 103 IBLA 83 (1988), *aff'd*, CA No. 88-513-HDM (D. Nev. Oct. 12, 1989). Merely showing discrepancies in the measurements of lines and certain topographic calls does not satisfy this burden. Accordingly, we conclude that BLM's decision of December 23, 1991, must be affirmed.

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 is affirmed.

John H. Kelly  
Administrative Judge

I concur:

James L. Byrnes  
Chief Administrative Judge