

INTERIOR BOARD OF LAND APPEALS

Fred Wolske d.b.a. F.K.W. Logging Co.

137 IBLA 211 (December 30, 1996)

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Editor's Note: Reconsideration denied by order dated March 4, 1997.

FRED WOLSKE
D/B/A F. K. W. LOGGING CO.

IBLA 93-364

Decided December 30, 1996

Appeal from a decision of the Idaho State Office, Bureau of Land Management, requiring payment of trespass damages for the unauthorized cutting of timber. IDI-29287.

Affirmed.

1. Trespass: Generally

Under 43 CFR 9239.0-7, the unauthorized removal of materials from public lands under the jurisdiction of the Department of the Interior is an act of trespass. Where there is no dispute that Ponderosa pine trees were removed without authority, from Federally-owned lands (as determined by a resurvey of the area by BLM's cadastral surveyors), BLM properly held that there was an act of trespass. Where BLM concedes that the trespass was inadvertent, it is unnecessary to resolve allegations that the trespasser did not know that the trees were on Federally-owned lands.

2. Surveys of Public Lands: Dependent Resurveys--Trespass: Generally

Where the correct location of a surveyed line is an element of a trespass determination by BLM, and BLM conducts a dependent resurvey to confirm that a trespass occurred, the burden of proving, by a preponderance of the evidence, that BLM improperly established the boundaries of public land falls on the party challenging the resurvey. Where that party fails to present adequate evidence of error, the underlying trespass determination is properly affirmed.

3. Estoppel--Trespass: Generally

BLM is not estopped from assessing trespass damages for removing trees from Federally-owned lands based on an uncorroborated assertion that BLM approved the marking of a boundary placing the trees on private property prior to logging, where other facts in the record render it highly unlikely that such approval was granted. Even assuming arguendo that appellant

was informed by a BLM employee prior to logging of the correctness of his determination of the public/private land boundary, such action would not estop BLM from charging him with trespass, as a claim of estoppel cannot be made to rest simply on an oral opinion, as more reliable means (such as a formal land ownership review based on a cadastral resurvey) were available for ascertaining the status of the lands.

4. Trespass: Measure of Damages

Under 43 CFR 9239.1-3(a), unless State law provides stricter penalties, the minimum damages applicable to nonwillful timber trespass are administrative costs incurred by the United States as a consequence of the trespass, plus twice the fair market value of the timber at the time of the trespass. As State law in Idaho provides for the assessment of single stumpage value, and thus does not provide for a "stricter penalty," BLM properly assesses damages for nonwillful trespass including twice the fair market value of the timber at the time of the trespass. BLM properly includes that amount even where the timber is not removed from the land. BLM's determination of the fair market value of the timber and administrative costs will be affirmed where the record supports its computation of the amount of board feet of timber cut, the value of that timber at the time of the trespass, and the administrative resources expended as a consequence of the trespass, and no convincing evidence to the contrary is submitted.

APPEARANCES: Jon N. Wyman, Esq., and Gordon S. Nielson, Esq., Boise, Idaho, for appellant; Kenneth M. Sebby, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Boise, Idaho, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Fred Wolske (d/b/a F.K.W. Logging Company) appeals from the April 2, 1993, decision of the Idaho State Office, Bureau of Land Management (BLM), holding Fred Wolske and F.K.W. Logging Company responsible for the damages resulting from the cutting of nine Ponderosa pine trees from public lands in the SE¹/₄ SW¹/₄ sec. 19, T. 9 N., R. 4 E., Boise Meridian, Boise County, Idaho. ^{1/}

^{1/} BLM's Oct. 1, 1992, materials unauthorized use investigation report (Investigation Report) indicates that the logging company is a partnership between Fred Wolske and his brother Kelvin Wolske. We shall refer jointly to Fred Wolske and F.K.W. Logging Company as "Wolske."

BLM was initially notified on June 8, 1992, that logging might be occurring in trespass on public lands. BLM investigator James M. Jones, after running a few rough survey lines, discovered that nine Ponderosa pine trees had been cut from the northeast corner of a parcel of Federally-owned land, the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of sec. 19 (Jones' June 9, 1992, Memorandum (Jones Memo I); June 17, 1992, Initial Report of Unauthorized Use (Initial Report)). The trees were found still lying on the ground (Jones Memo I).

Later that day, Jerry F. Hansen, owner of F. Hansen Logging Company, which was conducting the logging operation under contract to Wolske, was informed of the possible trespass (Jones Memo I; Initial Report). He admitted to cutting the trees, but stated that he was just following orange flagging put up by Wolske to show the cut line (Initial Report; Investigation Report at 2). Hansen produced a copy of his May 12, 1992, "logging agreement" contract with Wolske that provided for timber harvesting on about 351 acres of land, including the "E. $\frac{1}{2}$ S.W. $\frac{1}{4}$ SEC. 19," all of which was denoted as the "Kathleen Blaser property" (Jones Memo I; Initial Report (attachment)). ^{2/} Jones informed Hansen "of the current land status" (presumably, that the United States owned the parcel) and that there appeared to be a timber trespass. He told Hansen not to remove any timber on or near the lines around the "BLM 40," and that a "true line needs to be run around part of [BLM's] 40" (Jones Memo I). The apparent trespass trees were seized and marked by BLM, and remained at the site (Investigation Report at 1-2).

On June 17, 1992, BLM prepared an unauthorized use investigation report, setting the amount of timber at 14.5 thousand board feet (MBF), and calculating damages at \$5,082.25 (doubled to \$10,164.50) and administrative charges of \$6,521.61. Also on June 17, BLM issued a trespass notice, notifying Wolske and F.K.W. Logging Company that they had violated 43 CFR 9239.1-1 by engaging in the unauthorized cutting of timber. Wolske was afforded 10 days from receipt of the notice to submit proof to the contrary, or to make an offer of settlement. The trespass notice was personally served on Fred Wolske on June 19, 1992. He was advised that the trespass damages included field time, double stumpage, and administrative time. Wolske had with him an old plat map given to him by Blaser that did not show proper land ownership (BLM Memorandum dated June 19, 1992).

Contrary to indications that the line had been flagged, BLM found that the line separating public from private land over which the trespass occurred was not marked (Investigation Report at 2). However, BLM also noted that the corners in the area "were poor to not present." *Id.* It accordingly undertook a dependent resurvey (Group No. 841, Idaho) to determine the true location of that line, other pertinent subdivisional lines,

^{2/} The map attached to the copy of the agreement that is in the record shows the SE $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 19 marked as "BLM." However, it is not clear when that notation was made or whether it was on the contract being used by Hansen (Investigation Report, Attachment).

and all of the exterior lines of sec. 19. Byron Lee McCombs, a BLM cadastral surveyor, began work on the resurvey on June 23, 1992.

By letter-decision dated July 29, 1992, the Area Manager, Cascade Resource Area, Idaho, BLM, formally required Wolske to pay double the stumpage value of the nine trees cut on the public lands (\$10,164.50), within 30 days. Wolske was not required to pay treble damages since the trespass was determined to have been "inadvertent." See 43 CFR 9239.1-3(a). In addition, BLM, assessed administrative charges (\$6,521.61) as reimbursement for the costs of manpower and vehicle use incurred in preparing the trespass case. The total amount assessed was \$16,686.11.

On August 17, 1992, Wolske met with BLM. He disputed BLM's assessment of the volume, setting it at about 13 MBF. He offered to pay \$375 for each tree, representing what he usually received for such trees (which he described as "bull pine" and "fire scarred") at the mill, and also to plant 100 tree seedlings. He later amended his offer in a September 8, 1992, letter, agreeing to pay BLM the price he actually received for these trees at the mill, after skidding and hauling them there at his own expense. The Area Manager rejected the offer of settlement in a November 6, 1992, letter, which also demanded payment of the full amount owed within 15 days of receipt.

No payment was forthcoming. By letter-decision dated January 11, 1993, the Area Manager required Wolske to pay the original amount plus interest and penalties totalling \$917.18. He stated that failure to pay within 30 days would result in referral of the debt to a collection agency and a credit reporting agency. Wolske responded, through counsel, on February 2, 1993, stating (among other things) that the case involved "disputed boundaries" and that, in cutting timber, he had relied on the survey of a reputable licensed surveyor.

By letter dated April 2, 1993, BLM again required Wolske to pay trespass damages, plus interest and penalties reduced to \$777.00. ^{3/} BLM repeated that failure to pay within 30 days would result in referral to the appropriate agencies, but properly notified Wolske of his right to appeal to the Board. A timely appeal was taken by Wolske.

Work on BLM's dependent resurvey of sec. 19 was completed while BLM was attempting to collect trespass damages from appellant. McCombs completed the dependent resurvey on May 13, 1993, and it was finally approved by the Chief, Branch of Cadastral Survey, Idaho, BLM, on May 17, 1993. The survey plat and field notes were officially filed on July 2, 1993.

^{3/} This amount was less than that assessed in BLM's January 1993 letter primarily due to a recalculation of the interest owed.

The survey confirmed that the nine Ponderosa pine trees had been felled on public lands in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 19. 4/

[1] Appellant admits that he unintentionally cut trees which the Government subsequently determined were on Federal land (Response at 1-2). Under 43 CFR 9239.0-7, the unauthorized removal of materials from public lands under the jurisdiction of the Department of the Interior is an act of trespass. There is no dispute that materials were cut without authority. Therefore, if the lands from which the trees were removed were Federally owned, BLM properly held that there was an act of trespass here.

Appellant indicates that, at the time he conducted logging operations at the behest of Blaser, he relied on corners previously established by a private surveying firm to denote the boundaries of Blaser's property, since no monuments set by the United States were to be found at the corners of the section (Notice of Appeal/Statement of Reasons (SOR) at 1). 5/ The

4/ Of critical importance to this case is the location of the south quarter (S $\frac{1}{4}$) corner of sec. 19, since it determines the situs of the eastern and northern boundaries of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of sec. 19, which separate public land in that aliquot part from private land to the east, northeast, and north.

At the corner common to secs. 19, 20, 29, and 30 (SE corner of sec. 19) McCombs found a depression in the ground which was determined to have been left by the iron post set by Kurtzweil in 1925 (Field Notes at 6). It was tied to the remains of an original bearing tree. McCombs accepted that corner and remonumented it. Id.

From that point, McCombs ran S. 89° 53' W., 39.94 chains over mountainous terrain to the S $\frac{1}{4}$ corner of sec. 19, which was placed at record bearing and distance from the remains of an original bearing tree. Id. at 7. McCombs also accepted that corner and remonumented it. Id.

McCombs found no evidence of the original SW corner of sec. 19 and reestablished it at a proportionate distance from a found meander corner on the left bank of the Payette River. Id. at 2.

McCombs resurveyed the other exterior lines of sec. 19.

McCombs subdivided sec. 19, running a north-south center line from the S $\frac{1}{4}$ to the N $\frac{1}{4}$ corners and an east-west center line from the E $\frac{1}{4}$ to the W $\frac{1}{4}$ corners of the section (Field Notes at 12-15). He also subdivided the SW $\frac{1}{4}$ of sec. 19. Id. at 15-16. In the process, he monumented the centersouth (C-S) 1/16 corner on the north-south center line and the SW 1/16 corner on the east-west center line of the SW $\frac{1}{4}$ of sec. 19. Id. at 12-13, 15, 16. The C-S 1/16 and SW 1/16 corners are critical to this case, as they established the NE and NW corners of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of sec. 19, and thus (along with the S $\frac{1}{4}$ corner of sec. 19) defined the location of the east and north boundaries of that aliquot part of Federally-owned lands. It is that land from which BLM found that appellant cut the logs in trespass.

5/ In a subsequent affidavit filed with the Board on July 19, 1993, appellant clarifies that, in cutting the timber, he relied on a monument

only question is whether the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of sec. 19 is Federally-owned. It is no defense to a charge of unintentional or inadvertent trespass on the public lands that the trespasser acted on the basis of a mistaken belief that the land was privately owned. At best, it simply establishes that the trespass was inadvertent, a fact which BLM concedes in this case. Thus, it is irrelevant what survey monuments appellant used (or were available for appellant to use) prior to the trespass.

[2] The case thus turns on whether, as BLM has now officially determined after a dependent resurvey, the trees were cut from Federally-owned lands. Appellant contends that the 1992 BLM resurvey erroneously reestablished corners in the area of the alleged trespass, asserting that the BLM corners are not properly tied by course and distance and do not agree with local points of reference (SOR at 2). Appellant initially offered to submit proof that the Tudor private survey was correct (SOR at 1-2, 3). However, appellant subsequently conceded in his July 15, 1993, affidavit that the Tudor survey essentially agrees with the BLM resurvey of the S $\frac{1}{4}$ corner of sec. 19 (Wolske Affidavit at 1), wherein he notes that the Tudor monument for the S $\frac{1}{4}$ corner of sec. 19 is "in close proximity to the government's newly established corner" (Wolske Affidavit at 1). 6/ Appended to his affidavit is a hand-drawn map depicting the location of the Tudor monument in relation to the BLM monument for that corner. The map clearly shows that the trees that were cut were found on public land

fn. 5 (continued)

for the S $\frac{1}{4}$ corner of sec. 19 of Ron Gabriel, another private surveyor, instead of Tudor's monument (Wolske Affidavit at 1-2).

The record reveals some doubt as to whether appellant was, in fact, unaware that the timber was situated in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 19. Evidence in the record suggests that he believed the SE $\frac{1}{4}$ SW $\frac{1}{4}$ was privately owned by Blaser. When appellant contracted with Hansen to harvest timber, he denoted the SE $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 19 as the "Blaser property" (Logging Agreement at 1). Further, Jones reports that, in a June 19, 1992, meeting, following receipt of the trespass notice, appellant produced an "old plat map that did not show proper land ownership" (Jones Memo I). Appellant further admitted in a Sept. 8, 1992, letter: "We were not attempting to intention[al]ly cut B.L.M. timber as the maps * * * we were using and what we were told by the landowner indicated that the parcel in question belonged to * * * Blaser."

However, as BLM has conceded that the trespass was unintentional, we need not resolve the question whether appellant (as he now asserts) believed that he was over the boundary line on Blaser's private land in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 19. 6/ Despite the admission that reliance on the Tudor survey would not have helped him, appellant subsequently asserted that "a private survey conducted by Toothman-Ortman Engineers and Surveyors * * * and Tudor Engineering * * * placed the nine trees cut by Mr. Wolske on private property not with the jurisdiction of the BLM." Appellant seems to have conceded that that was incorrect.

even if Tudor's location had been accepted, since it would result in only a slight eastward shift in the north-south center line of the section. It would not result in any southward shift of the east-west center line of the SW¹/₄ of sec. 19. There is no evidence indicating that any of the other relevant corners of sec. 19 were ever resurveyed by Tudor or, having been resurveyed, disagree with BLM's location of the corners.

In any event, appellant has failed to establish, by a preponderance of the evidence, that BLM's 1992 resurvey was in error, as he failed to offer any contrary evidence. The ultimate burden of proving, by a preponderance of the evidence, that BLM improperly resurveyed public land boundaries falls on the party challenging the resurvey. Thom Seal, 132 IBLA 244, 251-52 (1995); Stoddard Jacobsen, 85 IBLA 335, 342 (1985). This is also the case where the correct location of a surveyed line is an element of a trespass determination by BLM. John D. Carter, Sr., 90 IBLA 286, 288-89 n.3, 292 (1986).

[3] Appellant contends that BLM is estopped from charging him with a trespass since, in cutting the timber, he justifiably relied on BLM's prior approval of his marking of the boundary lines between the public and private land (Response at 4). Appellant states in his July 15, 1993, affidavit: "BLM employees looked at my flags marking the boundaries and agreed that I had correctly marked the boundary by the 9 trees. I had not cut the 9 trees!" (Wolske Affidavit at 3 (emphasis in original)). ^{7/} Appellant also states in his response he "did not, in fact, cut the nine trees until after employees of the Forest Service [sic] agreed with [his] conclusion that the trees were on private property" (Response at 2). ^{8/}

Appellant offers no corroboration for those assertions, and nothing in the record indicates that BLM or USFS had occasion to review the proposed location of appellant's timber harvesting activities before the fact.

^{7/} In his July 15, 1993, affidavit, almost immediately after stating that "BLM employees * * * agreed that I had correctly marked the boundary by the 9 trees," Wolske asserts, "[a]fter I cut the trees, * * * the employees that I spoke with at the Forest Service told me that they were not sure of the boundaries and check with me but still they thought I was correct. * * * The employees were the ones who first came up to the property to examine the facts." (Emphasis added.)

The reference to Forest Service employees seems to be an error, as it was BLM employees who conducted the investigation.

Any conversation that occurred after the trees were cut cannot be viewed as granting permission to take the action and thus does not provide a basis for estoppel. The record indicates that, in the days after the trees were cut, BLM conceded that they could not be certain of the boundaries in question, owing to the poor state of the corner monumentation. It is likely that appellant refers to those conversations.

^{8/} The record contains no reference to Forest Service employees, and we deem it unlikely that any would have been involved in this matter. The reference is likely in error.

To the contrary, the record indicates that BLM first learned of appellant's activities after they had occurred and, after running approximate boundary lines, discovered that they were in trespass and immediately advised Wolske's agent of that fact (Jones Memo I; Initial Report; Investigation Report at 1). BLM's investigation report indicates that the boundary line had not been marked at the time it initiated its investigation (Investigation Report at 2).

Further, Wolske's other statements cast doubt on these assertions. On September 8, 1992, Wolske admitted that the trees were cut because "the maps and data we were using and what we were told by the landowner indicated that the parcel in question belonged to Blaser. As we found out[,] the maps in our possession and information given us was wrong" (Sept. 8, 1992, Letter to BLM). That statement is consistent with contemporary reports in the record. This statement points out that there was no reason for Wolske to have sought BLM's opinion as to the boundaries between the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of sec. 19 and neighboring parcels to the north and east when he believed that the timber in the entire E $\frac{1}{2}$ SW $\frac{1}{4}$ of sec. 19 was privately owned.

Even assuming arguendo that appellant was informed by a BLM employee prior to logging of the correctness of his determination of the public/private land boundary, we conclude that BLM is not equitably estopped from charging him with trespass. We have long held that a claim of estoppel cannot be made to rest simply on an oral opinion, even where it is given by a responsible Government official. United States v. Webb, 132 IBLA 152, 168 (1995); James W. Bowling, 129 IBLA 52, 55 (1994). Reliance on such an informal, verbal opinion would have been unreasonable and thus could not form the basis for an estoppel, especially where more reliable means (such as a formal land ownership review based on a cadastral resurvey) were available for ascertaining the status of the lands. See Heckler v. Community Health Services of Crawford County, 467 U.S. 51, 59, 63-66 (1984).

[4] Appellant also challenges certain aspects of BLM's assessment of damages suffered by it as a result of the timber trespass. Such assessment is governed by 43 CFR 9239.1-3(a), which provides:

Unless State law provides stricter penalties, in which case the State law shall prevail, the following minimum damages apply to trespass of timber * * *:

- (1) Administrative costs incurred by the United States as a consequence of the trespass.

* * * * *

- (3) Twice the fair market value of the [timber] at the time of the trespass when the violation was nonwillful, and 3 times the fair market value at the time of the trespass when the violation was willful.

State law in Idaho provides for the assessment of actual damages, i.e., single stumpage value. United States v. Chamberlain, 51 F. Supp. 54, 55, 56 (D. Idaho 1943); Menasha Woodenware Co. v. Spokane International Ry. Co., 115 P. 22, 25 (Idaho 1911). Thus, under 43 CFR 9239.1-3(a), the required damages for this nonwillful trespass are "[t]wice the fair market value of the [timber] at the time of the trespass," as State law does not provide a "stricter penalty."

Appellant contends that BLM improperly valued the nine trees by inaccurately determining their board footage and relying on their 1993 value rather than that at the time of the trespass in May 1992 (Wolske Affidavit at 2; Response at 2-3). He asserts that the nine trees contain 11, not 14.5, MBF, and are properly valued at \$135/MBF, not \$350.50/MBF.

The record contains BLM's notes in which its calculation of the amount of timber felled by appellant is precisely set forth. We are thus generally informed regarding the diameter at breast height and height of each of the trees. More particularly, these notes set out the various "scaling diameter[s]" along certain lengths of each of the trees. BLM then computed the board footage along each of these lengths and added them together to reach the total gross footage for each tree. ^{9/} It also subtracted out, in each case, the footage that was defective, thus reaching the total net footage for each tree. ^{10/} The figures for all of the trees were then added to get the total amount of net board feet for all nine trees.

Appellant has failed to demonstrate that BLM erred in any respect in its assessment of the total board footage. He has presented no evidence that BLM inaccurately determined the lengths and diameters of the various parts of any of the nine trees or the amount of defective footage, or committed any mathematical error in its calculations. Compare, Charles M. Rice (On Reconsideration), IBLA 93-563 (Order Affirming in Part and Referring for Hearing). Further, appellant has offered nothing to show how it reached its contrary determination of 11 MBF. ^{11/}

Appellant is correct that timber taken in trespass must be valued for damage assessment purposes according to its value "at the time of the trespass." 43 CFR 9239.1-3(a)(3). However, appellant was first notified by BLM of its determination of the stumpage value of the timber (\$350.50/MBF) in its July 29, 1992, letter-decision, which was received by appellant on July 31, very near the time of the trespass. That is the

^{9/} This counters appellant's assertion that the board footage was not determined by scaling on the basis of the various size diameters along certain lengths of the individual trees (Wolske Affidavit at 2).

^{10/} This counters appellant's assertion that BLM failed to take into account the occurrence of defective timber (Wolske Affidavit at 2).

^{11/} We note that, in August 1992, appellant had set the volume at 13 MBF.

amount charged in 1993. The record supports that determination, 12/ and there is no evidence that this amount was incorrect.

Appellant contends that BLM improperly charged him the full stumpage value of the felled timber by failing, despite his request, to allow him to mitigate the damages to BLM by hauling the trees to the mill to be cut and sold (and the proceeds paid to BLM) before they suffered rot and "bluing," which would render them worthless (SOR at 2; Response at 3-4). We, thus, address the question of whether damages assessed a trespasser should be lessened where the United States can still realize or could have realized (following notice of the trespass) the value of the trees cut in trespass, but never removed from the Federal lands. We hold that such diminishment of damages is not permitted.

The applicable regulation, 43 CFR 9239.1-3(a), clearly provides that the minimum damages applicable to "trespass of timber" are twice the fair market value of the timber at the time of a nonwillful trespass. The regulations further provide that the "severance * * * or removal of timber * * * from public lands * * * is an act of trespass," for which the trespasser is liable in damages to the United States. 43 CFR 9239.0-7 (emphasis added); see also 43 CFR 9239.1-1(b). Thus, it is clear, as a matter of Departmental regulation, that merely cutting timber, even if it is never removed from the public lands, is an act of trespass for which the minimum damages must be assessed. See J. W. Weaver, 124 IBLA at 33. Further, since there is no provision for diminishment of such damages, we must hold that none is permitted: The damages apply regardless of what may happen to the timber following severance. Id. at 36. Therefore, we conclude that BLM properly assessed trespass damages against appellant according to twice the fair market value of the timber cut in trespass, with no deduction for any value that could have been or can still be realized therefrom.

Finally, appellant contends that he believes that BLM improperly charged him with the costs of the entire resurvey, including surveying corners other than those pertinent to the trespass (SOR at 2). 13/ BLM

12/ The record contains BLM's calculation of the total stumpage value of the 14.5 MBF, which evidently informed its July 1992 demand letter. Basically, BLM took an adjusted sales price for Ponderosa pine (\$708.12/MBF) and then subtracted the total costs of production (including logging) (\$279.75/MBF) and a profit/risk margin (\$77.89/MBF) to arrive at the stumpage value of the timber (\$350.48, rounded to \$350.50, per MBF), which was multiplied by the total net board feet (14.5 MBF) to arrive at the total stumpage value of the nine trees (\$5,082.25) ("Timber Appraisal Summary"). This was proper. See J. W. Weaver, 124 IBLA 29, 36 (1992).

13/ Elsewhere, appellant appears to challenge BLM's charging him for any surveying costs where it proceeded with its own resurvey, rather than simply relying on the Tudor resurvey (Wolske Affidavit at 4). As discussed below, since BLM is ultimately responsible for surveying public land boundaries, any reestablishment of the S¼ corner of sec. 19 and the boundary

is permitted to charge a timber trespasser only with the "[a]dministrative costs incurred by the United States as a consequence of the trespass." 43 CFR 9239.1-3(a)(1) (emphasis added). In a September 10, 1992, memorandum, BLM Inspector Jones responded to an earlier assertion of appellant's belief that he was charged the costs of the entire survey: "[Appellant] was only charged for a portion of the survey, the portion that was necessary to establish for certain that a trespass had occurred." This is reiterated by BLM on appeal: "Appellant * * * was also charged[.] * * * contrary to [his] allegation that all dependent resurvey costs were charged to [him], only those costs necessary to establish the points to determine this timber trespass" (BLM Answer at 5).

The record contains BLM's calculation of the total amount of administrative costs charged to appellant. From these notes, we see that appellant was charged for the work of three employees over the course of 7 days from June 23, through July 9, 1992, for what is termed "Line Survey." We presume that this refers primarily to the resurveying of the south boundary of sec. 19, which (by establishing the location of the S¹/₄ corner of that section) defined (along with the resurvey of the subdivisional lines) the east and north boundaries of the SE¹/₄ SW¹/₄ sec. 19, and thus the extent of the trespass. We note that the total number of hours charged appellant was 68.5 each in the case of Jones and Robert L. Arnold, a BLM forestry technician, who both assisted in the resurvey, and 74.5 in the case of McCombs (Field Notes at 17). We do not find this out of the ordinary given the fact that BLM first retraced each of the surveyed lines, diligently searching for remnants of the original survey, and then engaged in the actual resurvey.

Appellant has presented no evidence that BLM employees were not productively employed, or that the reported hours do not relate to resurvey efforts pertinent to the instant trespass or were inaccurate. Thus, we are persuaded that appellant was only charged the resurveying costs incurred by BLM "as a consequence of [his] trespass." 43 CFR 9239.1-3(a)(1). This was proper. See J. W. Weaver, 124 IBLA at 36.

fn. 13 (continued)

lines tied thereto could only have been accomplished through a BLM resurvey. Wilogene Simpson, 110 IBLA 271, 275 (1989). Nonetheless, if BLM had been persuaded by the correctness of the private resurvey, it could have adopted it, thus perhaps sparing appellant some of the survey costs. However, BLM was not so persuaded, as clearly demonstrated by the fact that its S¹/₄ corner does not precisely match that of Tudor. Appellant has failed to establish any error in BLM's divergent placement of the corner.

Accordingly, 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.

David L. Hughes
Administrative Judge

I concur.

James L. Bymes
Chief Administrative Judge