

INTERIOR BOARD OF LAND APPEALS

Benton C. Cavin

166 IBLA 78 (June 22, 2005)

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BENTON C. CAVIN

IBLA 2001-4

Decided June 22, 2005

Appeal from an August 4, 2000, decision of the Chief, Branch of Geographic Services, California State Office, Bureau of Land Management, declining to conduct a field investigation of the 1/4 corner between Sections 32 and 33, T. 32 N., R. 10 W., Mount Diablo Meridian, Trinity County, California.

Appeal dismissed.

1. Appeals: Generally--Rules of Practice: Appeals: Effect of

BLM has the general authority to carry out its management obligations without Board permission, but BLM has no jurisdiction unilaterally to reverse a decision under appeal and grant relief. Instead, BLM should seek a remand of the matter and issue a new decision.

2. Appeals: Generally--Rules of Practice: Appeals: Dismissal: Jurisdiction

The Board of Land Appeals decides appeals involving the use and disposition of public lands and their resources. The Board is without jurisdiction to decide survey disputes that do not involve public lands or resources.

APPEARANCES: Benton C. Cavin, Pleasant Hill, California, pro se; Lance J. Bishop, Chief, Branch of Cadastral Survey, California State Office, Bureau of Land Management, Sacramento, California.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Benton C. Cavin appeals an August 4, 2000, decision (Decision) of the Chief, Branch of Geographic Services, Bureau of Land Management (BLM), declining to

conduct a field investigation of the east 1/4 corner of Section 32, between Sections 32 and 33, T. 32 N., R. 10 W., Mount Diablo Meridian, Trinity County, California.^{1/}

The Decision was issued in response to Cavin's letter dated July 17, 2000 (Request), contending that a 1984-87 dependent resurvey (Resurvey) misinterpreted available evidence and erroneously identified a prominent dead Douglas fir snag (the old snag) as the location of the original 1/4 corner, and requesting that BLM investigate the accuracy of the Resurvey. The Decision stated that BLM reviewed the material Cavin submitted with his Request, but that BLM disagreed with his interpretation of his evidence. BLM stated, "[w]hile the arguments contained in your letter are not entirely unreasonable, they nevertheless represent little more than different points of view. But different interpretations of the same evidence, by equally experienced and qualified professionals, are endemic in all academic fields." (Decision at 1.) Accordingly, the Decision denied Cavin's Request to investigate the location of the east 1/4 corner of Section 32. BLM also considered Cavin's objections untimely, observing that "the opinions of your expert witnesses simply do not rise to a level which would justify an investigation of a decision which has been approved for nearly 13 years, particularly where no objections were raised by any interested party at the time the decision was made." (Decision at 1.) BLM warned him of the high standard to meet if he wished to pursue this matter: that after a resurvey has been accepted, a challenging party must show that the resurvey is either fraudulent or so grossly erroneous as to constitute fraud. Cavin appealed to this Board, submitting a Statement of Reasons on October 5, 2000.

This township was originally surveyed in 1881 and resurveyed from 1984 to 1987, pursuant to 43 U.S.C. § 773 (2000).^{2/} BLM engaged a resurvey team of two private contractors to resurvey the township, pursuant to Special Instructions Group No. 853, California, dated September 1, 1983, and Supplemental Special Instructions dated April 15, 1986, and accepted on September 10, 1987. The Supervisory Cadastral Surveyor, BLM, authorized the contractors to remonument specified corners in the township that "have original and/or collateral evidence." The specified corners included the east 1/4 corner of Section 32 in dispute here. The Resurvey identified the old snag as marking the original 1881 east 1/4 corner. The plat for the Resurvey was approved September 10, 1987.

^{1/} All township references in this appeal are to T. 32 N., R. 10 W., Mount Diablo Meridian.

^{2/} This statute provides authority for resurvey of a township where more than 50% of the area is privately owned and where the owners of at least three-fourths of the privately-owned land petition for resurvey and share resurvey costs. 43 U.S.C. § 773 (2000); 43 CFR 9180.0-3(c).

Cavin and his wife purchased property within the SW1/4NE1/4, Sec. 32 from Neal Summerhays in 1999, twelve years after approval of the Resurvey. The deed fixed the south boundary of the property along the east-west section centerline according to the official survey. By Individual Grant Deed, dated January 20, 1999, Summerhays conveyed to the Cavins:

All that portion of the Southwest quarter of the Northeast quarter of Section 32, Township 32 North, Range 10 West, M.D.M., according to the official plat thereof, which lies South of the old California State Highway, which is now a County Road known as Summit Creek Road.

(Deed, Ex. 3.)^{3/} During escrow, Cavin retained one of the two members of BLM's 1987 contract resurvey team to survey the property he was buying. Upon doing so, the survey contractor concluded that the Resurvey had incorrectly located the 1/4 corner between Sections 32 and 33. (Request at 1.) This 1/4 corner does not abut Cavin's property, but does define the east terminus of the east-west centerline that delineates his south boundary.^{4/} On July 17, 2000, Cavin submitted his Request to BLM, and on August 4, 2000, BLM issued the Decision, declining to reinvestigate the 1/4 corner. Cavin then appealed to the Board. The Board received his Statement of Reasons on October 5, 2000.

On December 1, 2000, BLM asked the Board for an extension of time in which to prepare and file an answer to Cavin's Statement of Reasons. In its request, BLM stated that "this office has just recently conceded to Mr. Cavin's request to make a field investigation of the disputed corner tree. * * * The agreement to make the investigation was officially confirmed in a letter to Mr. Cavin [dated December 1, 2000]." Attached to this request was that December 1, 2000, letter from BLM to Cavin, confirming BLM's commitment to investigate the disputed 1/4 corner, and also discussing BLM's decision not to seek a remand of Cavin's appeal from this Board. BLM stated that even though filing an appeal deprives BLM of jurisdiction to act on the matter under appeal, "neither the Board of Land Appeals nor the regulations prohibit [BLM] from conducting additional field investigations or from continuing to review a decision under appeal in search of an alleged error, or to seek some kind of administrative solution."

^{3/} All property boundaries except the northern (road) boundary of Cavin's new purchase were defined according to public survey.

^{4/} The center subdivisional east-west line is a straight line between opposite quarter corners. Manual of Instructions for the Survey of Public Lands of the United States U.S. Department of the Interior (1973), (Manual) chapter 3-87, at 85.

On January 9, 2001, the Board granted BLM an extension of time to file an answer.

BLM filed its Answer on March 20, 2001, including a request that the appeal be dismissed because it was, in effect, an untimely appeal of the Resurvey. BLM included an exhaustive review of the Resurvey and the more recent investigation of the 1/4 corner, together with a request in the transmittal letter that the Board affirm the Resurvey. “We therefore have no doubt but that the Board will find that the evidence clearly preponderates in favor of the resurvey.” (Answer, transmittal letter dated March 16, 2001.)

Both parties to this appeal have submitted large volumes of documents asserting various positions. Cavin has appealed the Decision, attacked the validity of the Resurvey, asked the Board to declare the 1/4 corner “lost” and to order another resurvey or refer the matter for an evidentiary hearing.^{5/} Cavin later asked the Board to affirm the location of the 1/4 corner,^{6/} and then reject the location of the 1/4 corner,^{7/} among other requests. BLM responded to each of Cavin’s pleadings and arguments, generally attesting to the validity of the Resurvey. It is clear that both parties have lost sight of the issue before us.

Cavin appealed from the Decision declining his Request for an investigation of the location of a 1/4 corner established by the original 1881 township survey and reestablished by BLM during the Resurvey. He asked that an order be issued by the Board “directing BLM to determine the facts and if error is confirmed to correct the error.” (Statement of Reasons at 16.) That is the appeal with which we must deal.

[1] As an initial matter, we note that BLM’s actions in this matter have resulted in unnecessary confusion. BLM denied Cavin’s Request, prompting this appeal. Before any action on the appeal by the Board, BLM decided to reverse its previous decision and conduct the requested investigation, effectively granting the appellant his requested relief. At that time, it would have been proper for BLM to seek a remand of this matter and issue a new decision that indicated the results of its investigation. Instead, BLM reasoned that it had the authority to conduct field investigations without such a remand, and it proceeded to do so.

^{5/} Statement of Reasons, dated October 4, 2000.

^{6/} Motion to Affirm Old Snag As 1/4 Corner; Motion to Censure BLM, dated Sept. 15, 2001.

^{7/} Response to Respondent’s Answer to Appellant’s Motions to Affirm and to Censure, dated Mar. 18, 2002.

Although BLM clearly has the general authority to carry out its management obligations without Board permission, BLM has no jurisdiction unilaterally to reverse a decision under appeal and grant relief. McMurry Oil Co., 153 IBLA 391, 393, 395 (2000). Accordingly, we find that BLM erred when, without requesting a remand and, without jurisdiction over the Decision on appeal, it reversed that very Decision, conducted the investigation Cavin requested, and then reported its investigative conclusion in its Answer. By proceeding as it did, BLM effectively denied Cavin the opportunity to appeal its conclusion regarding the accuracy of the 1/4 corner. BLM compounded the error when, through its Answer and subsequent pleadings, it attempted to redirect the Board toward a decision on the validity of the Resurvey, an issue not before us.^{8/} We decline to follow BLM's direction.

[2] Our review of the record confirmed that the placement of the disputed 1/4 corner does not define a boundary between Cavin's land and public lands. Cavin's south boundary is tied to the 1/4 corner, but it delimits adjoining tracts of private land. The disputed 1/4 corner is a quarter of a mile away from his land. In fact, there is no Federal land in the vicinity of the 1/4 corner. The land immediately south of Cavin's is private, and an effort to move his south boundary southward would infringe upon that private tract, not upon public lands. Accordingly, BLM's decision regarding the investigation of the 1/4 corner, and Cavin's and BLM's aspirations regarding the validity of the Resurvey, do not involve the use and disposition of public lands and resources.

The jurisdiction of this Board is limited to that authority delegated by the Secretary of the Interior which is defined in the Departmental regulations at 43 CFR Part 4. Thus, the Board is authorized to issue final decisions for the Department in appeals from decisions of BLM officials relating to the use and disposition of the public lands and the disposition of Federal mineral resources on both public domain and acquired lands. 43 CFR 4.1(b)(3).

Exxon Corp., 95 IBLA 374, 375 (1987). Given the facts of this case, we find that we do not have jurisdiction to adjudicate Cavin's appeal of the August 4, 2000, decision, or his underlying question regarding the accuracy of BLM's placement of the 1/4 corner, and the appeal must be dismissed.

^{8/} The Board is not without fault in this matter. BLM was forthright in its Dec. 1, 2000, request for an extension of time to file an answer about its intention to investigate and its position that it did not need to seek a remand to do so. The more opportune time for this Board to have addressed the issues now discussed was when we granted the extension of time. By failing to do so, we have added to the confusion in this case.

Even if public lands were involved in this case and we had jurisdiction to decide it, we have held previously that an appeal is properly dismissed as moot if the Board can provide no effective relief. Wildlife Damage Review, 131 IBLA 353, 355 (1994). In this case, Cavin requested that BLM conduct an investigation into the accuracy of the location of the 1/4 corner between Sections 32 and 33. Subsequent to Cavin's submission of his appeal, BLM conducted the requested investigation. Therefore, the relief requested has already been provided. This Board could provide no additional relief and this appeal would be moot and would have to be dismissed.

Finally, Cavin also moved to censure BLM for its inadequate notice of the Resurvey to local landowners and for its handling of evidence. Cavin also objected to BLM's failure to retain all supporting documentation. Even if we had jurisdiction, we would conclude that this Board does not exercise supervisory authority over BLM, except in the context of rendering decisions in cases over which it has jurisdiction. Nevada Outdoor Recreation Association, 158 IBLA 207, 210 (2003). Cavin's motion to censure would have to be denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed for lack of jurisdiction.

H. Barry Holt
Chief Administrative Judge

I concur:

Christina S. Kalavritinos
Administrative Judge