

MARK EINSELE ET AL.

IBLA 96-87 Decided December 10, 1998

Appeal of a decision of the Acting Chief, Branch of Cadastral Survey, California State Office, Bureau of Land Management, dismissing a protest of dependent resurvey Group No. 1194, California.

Affirmed.

1. Administrative Procedure: Generally--Administrative Procedure: Standing

In order to have standing to appeal, appellants must be both "parties to the case" and have a legally cognizable interest that is "adversely affected" by BLM's decision. Where the record adequately supports a finding that appellants intended and attempted to jointly protest the proposed decision, they are parties to the case. Dismissal of their protest does not automatically render appellants adversely affected, and therefore it is necessary to show that they have a right, claim, title to, or interest in, land adjacent to a boundary of public land.

2. Surveys of Public Lands: Dependent Resurveys

A dependent resurvey is a retracement and reestablishment of the lines of the original survey in their true original positions according to the best available evidence of the positions of the original corners. The section lines and lines of legal subdivision of the dependent resurvey in themselves represent the best possible identification of the true legal boundaries of lands patented on the basis of the plat of the original survey. In legal contemplation and in fact, the lands contained in a certain section of the original survey and the lands contained in the corresponding section of the dependent resurvey are identical.

3. Surveys of Public Lands: Generally--Surveys of Public Lands: Dependent Resurveys

An existent corner is one whose position can be identified by verifying the evidence of the monument or its accessories, by reference to the description in the field notes, or located by an acceptable supplementary survey record, some physical evidence, or reliable testimony. The applicable standard with respect to an existent corner is whether BLM's conclusion is supported by substantial evidence. "Substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

4. Administrative Procedure: Burden of Proof--Administrative Procedure: Substantial Evidence--Surveys of Public Lands: Generally--Surveys of Public Lands: Dependent Resurveys

The standard that governs the question of whether a corner is existent or found is not the same as that applicable to the adjudication of appeals from survey decisions. A party challenging the filing of a plat for a dependent resurvey has the burden of demonstrating by a preponderance of the evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey. Thus, even where an appellant is able to show that his or her placement of a disputed corner is supported by substantial evidence, as long as BLM's placement of the corner is also supported by substantial evidence, appellant's showing is of no avail.

5. Surveys of Public Lands: Generally--Surveys of Public Lands: Authority to Make--Surveys of Public Lands: Dependent Resurveys

The Secretary of the Interior has exclusive authority to consider what lands are public lands, to determine what public lands have been or should be surveyed, to extend or correct the surveys of public lands and to make resurveys to reestablish corners and lines of earlier official surveys. 43 U.S.C. §§ 2, 52, 751-53 (1994). Forest Service surveys are merely administrative surveys that do not purport to establish or identify public lands or the corners and lines thereof, and one who relies on other than an official survey that has been duly accepted and approved by the Secretary of the Interior does so at his peril.

6. Surveys of Public Lands: Generally--Surveys of Public Lands: Dependent Resurveys

Because the Secretary's authority in matters pertaining to surveys of the public lands is exclusive, it follows that there can be no binding "silent acquiescence" in the corner positions or lines established by private surveys or administrative government surveys so as to diminish or deprive the Secretary of his authority to survey the public lands at such time as he may choose.

7. Surveys of Public Lands: Generally--Surveys of Public Lands: Dependent Resurveys

A corner is not lost if its position can be recovered through the testimony of one or more witnesses who have a dependable knowledge of the original location. In recovering a corner, there is a hierarchy of evidence, the most dependable and highest form being the monument and its accessories, followed by the evidence contained in the field notes, followed by an acceptable supplemental survey record, by some physical evidence, and finally, by testimony. All evidence is to be examined, and the first step is to conduct retracements by projection to known points, as determined by connection with known corners, so as to indicate probable positions and what discrepancies are to be expected. The supplemental survey record or testimony then is considered in light of the facts thus developed.

8. Surveys of Public Lands: Generally--Surveys of Public Lands: Dependent Resurveys

The Manual of Surveying Instructions provides that a witness offering testimony regarding the position of a corner must have a dependable knowledge of the original location. Such knowledge must constitute positive knowledge of the precise location of the original monument. Weight will be given such testimony according to its completeness, its agreement with the original field notes, and the steps taken to preserve the original marks. Such evidence must be tested by relating it to known original corners and other calls of the original field notes, particularly to line trees, blazed lines, and items of topography.

APPEARANCES: Mark Einsele, Yreka, California, pro se; John R. Batson, Yreka, California, pro se; E.R. Batson, Yreka, California, pro se; Jess Brown, Yreka, California, pro se; Jan Spence, Yreka, California, pro se; Lance J. Bishop, Acting Chief, Branch of Cadastral Survey, Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Mark Einsele, John R. Batson, E.R. Batson, Jess Brown, and Jan Spence have appealed from the October 4, 1995, Decision of the Acting Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, dismissing their protests of the dependent resurvey of a portion of the subdivisional lines in T. 45 N., R. 8 W., Mount Diablo Base and Meridian (MDBM), California (Group No. 1194). 1/ In particular, Appellants object to acceptance of a mound of stone as the best evidence of the original corner of secs. 23, 24, 25, and 26, T. 45 N., R. 8 W., MDBM.

Before taking up the merits of this appeal, however, it is necessary to dispose of the preliminary matter of Appellants' standing to appeal, an issue raised by the Acting Chief of the Branch of Cadastral Survey, in a letter to Einsele dated November 27, 1995. Among other things, in that letter the Acting Chief challenged the standing of E.R. Batson, Jess Brown, and Jan Spence, whose names and signatures 2/ also appear on the Notice of Appeal submitted by Einsele and John Batson, on the ground that they did not participate in the protest. We take the opposite view, at least with respect to E.R. Batson and Jess Brown, but agree that the appeal of Spence must be dismissed for lack of standing.

Among the documents submitted by Appellants with their joint Statement of Reasons (SOR) was a copy of a letter from John R. Batson to James B. McCavitt, Acting Chief, 3/ dated December 26, 1994. In that letter, John R. Batson stated that he is the son of E.R. Batson and the nephew of Jess Brown, and requested notice of any meetings, as well as that a copy of the results of the investigation be provided to him and to his father and uncle. As grounds for objecting to the acceptance of the mound of stones, the letter stated that the corner position had been properly perpetuated by the County and by the FS; that private surveys and government surveys had been conducted relying on the County's position as monumented by Cansino in 1970, 4/ discussed infra; and that in the past his father's and uncle's properties had been the subject of costly disputes which they believed had been settled, and would again be affected by the proposed action.

1/ Harold Lipke, of Sisco Land Surveying, Yreka, California, also appealed the Decision, which was docketed as IBLA 96-144. By Order dated Nov. 5, 1997, the Board dismissed Lipke's appeal for failure to file a statement of reasons in support thereof.

2/ Jan Spence did not sign the Notice of Appeal.

3/ The letter does not identify the office or function over which McCavitt served as Acting Chief, but we note that there have been at least three Acting Chiefs of the Branch of Cadastral Survey since the last confirmed Chief issued Special Instructions for Group No. 1194 on Feb. 23, 1994, authorizing the investigation of the section corner here at issue.

4/ See n.6, post.

BLM treated John Batson's letter as a protest and Michael R. Collie, Acting Chief, Branch of Cadastral Survey, so informed him by letter dated January 17, 1995. Collie's letter did not acknowledge E.R. Batson or Brown as protestants, although they were shown as copyees. John Batson's letter did not specifically state that he represented his father and uncle, but there also is nothing in the record that would suggest that they objected to his request on their behalf. Indeed, in their joint SOR, Appellants state that when they met in the field with Hamilton and Jake Rabadew, the BLM Protest and Appeals Specialist (Specialist) assigned to this matter, John Batson stated that he represented himself and his father and uncle. (SOR at 4.) The joint SOR also refers to the protests filed by the Einseles, Browns, and Batsons. (SOR at 3.) In our view, the joint signatures on the Notice of Appeal are consistent with Appellants' belief that they had taken appropriate action to register their objections and protect their interests in the land affected by the section corner here at issue.

[1] As we have said many times, in order to have standing to appeal, Appellants must be both "parties to the case" and have a legally cognizable interest that is "adversely affected" by BLM's Decision. 43 C.F.R. § 4.410(a). With respect to the first requirement, we find that the record adequately supports a finding that the Batsons and Brown intended and attempted to jointly protest the proposed decision to reject the disputed corner position, and accordingly, henceforth we will refer to the December 26, 1994, submission as the Batson/Brown protest. They, like Einsele, therefore are parties to the case as a result of filing their protests. As we noted in Ron and Margery A. Martin, 130 IBLA 238, 241 (1994), however, "dismissal of their protest does not automatically render them adversely affected." Appellants must show that they have a right, claim, title to, or interest in land adjacent to a boundary of public land in secs. 23, 24, 25, or 26. Id. Although none of the parties specifically identified the property that is adversely affected by the pending resurvey or provided a legal description, map or diagram showing where Appellants' homes are located along Greenhorn Road, we note that the record contains evidence that shows parcels owned by E.R. and/or John Batson and Brown, and unidentified private parcels adjoining Greenhorn Road that are adjacent to Federal land.

The record before us contains two copies of a standard form letter dated March 23, 1994, addressed to "Landowner," informing the landowner that BLM would be in the area conducting a land survey. The form letters do not show the addresses to which they were sent; however, the record also includes a short note dated March 16, 1994, written by Ron Hamilton, the surveyor to whom Group No. 1194 was assigned, to which a list of the names and addresses of landowners in the vicinity of the work to be performed in Group No. 1194 was attached. In addition, the note bears the handwritten notation that seven landowners are to be contacted. Attached to the note are two computer-generated pages, each bearing the heading of "TRW-REDI," which list the names and addresses of affected landowners by parcel number. Seven entries are highlighted in yellow, including entries for E.R. Batson,

John Batson, Jess Brown, and Mark Einsele. As noted, all four Appellants live on Greenhorn Road, which traverses the S $\frac{1}{2}$ of sec. 24, T. 45 N., R. 8 W. ^{5/} As BLM's challenge to Appellants' standing relates solely to whether E.R. Batson, Brown, and Spence were parties to the case and not to their assertion that they are adversely affected by the resurvey, we conclude that Einsele, the Batsons, and Brown have standing to appeal.

As to Appellant Spence, we are unable to reach a like conclusion. Spence's name was not among those identified as a landowner, the Post Office Box address is insufficient to determine whether he or she owns land adjoining Federal land, Appellants' December 1994 request to participate in the decision-making did not identify Spence as a party, and Appellants' SOR contains no representations or allegations that are specifically related to that person. Spence therefore is neither a party to the case nor, on the record before us, adversely affected by the Decision at issue. Accordingly, Spence's appeal is dismissed for lack of standing to appeal. Burton A. McGregor, 119 IBLA 95, 98-99 (1991); Phelps Dodge Corp., 72 IBLA 226, 228 (1983); In Re Pacific Coast Molybdenum Co., 68 IBLA 325, 331 (1982).

This case began with a letter from Alfred D. Morris, a registered land surveyor, to the Chief, Branch of Cadastral Survey, dated January 18, 1994. The letter advised that Morris, while conducting a survey for Kogap Manufacturing Company in sec. 26, T. 45 N., R. 8 W., MDBM, had discovered what appeared to be a "major positional discrepancy with the northeast corner of this section." Morris had encountered an old, embedded mound stone that in his view is more consonant with surrounding General Land Office corners and calls to Greenhorn Creek than the corner position monumented by A.R. Cansino, a Siskiyou County surveyor, in 1970. ^{6/} Klamath National Forest is affected by the location of the corner of secs. 23, 24, 25, and 26, and after learning of Morris' discovery, the Forest Supervisor requested an investigation of the section corner by letter dated January 31, 1994.

As mentioned, Special Instructions for Group No. 1194 were issued on February 23, 1994. These called for "investigation of the cor. of secs. 23, 24, 25, and 26, and the sec. lines adjoining the cor. * * * to the extent necessary to determine the correct position of the subject sec. cor." These Special Instructions further stated that no resurveys or monumentation or remonumentation were to be undertaken without further instructions to do so.

^{5/} All four also hold mining claims in the NW $\frac{1}{4}$, SW $\frac{1}{4}$, and SE $\frac{1}{4}$ of sec. 24.

^{6/} The Special Instructions for Group No. 1194 erroneously state that Cansino reestablished the section corner in 1971, as recorded in County records at Vol. 606, Page 341. A copy of the referenced County record is in the case file, and it shows that 1970 is the correct year.

The complete history of surveys involving or implicating the disputed corner is as follows:

- 1880 W.F. Benson, U.S. Deputy Surveyor, surveyed the subdivisional lines of T. 45 N., R. 8 W. and established the corner of secs. 23, 24, 25, and 26.
- 1892 J.M. Davidson, U.S. Mineral Surveyor, surveyed the Greenhorn Placer Mine (GPM), which was located in about 1853, Lot 53, M.S. 3168. The plat certified on March 7, 1893, shows a tie to the corner of secs. 23, 24, 25, and 26. ^{7/}
- 1970 A.R. Cansino, a Siskiyou County Surveyor, set a County monument that purported to perpetuate the position of the cor. of secs. 23, 24, 25, and 26. His corner card notes that "[t]his corner was reset from field notes of J.M. Davidson on the Greenhorn Placer Mine. All information is on file in the Assessors [sic] office in Book 1 of Homestead Entry Surveys."
- 1975 Richard B. Davis performed a dependent resurvey of sec. 24 at the request of the U.S. Forest Service and Klamath National Forest (FS/Klamath), during which he determined the position for the corner of secs. 23, 24, 25, and 26 from the bearing trees marked by Siskiyou County as re-established by Cansino from recovered corners of the GPM mineral survey. Specifically, the plat referenced the sec. corner "as re-established by the Siskiyou County Surveyor's Office from recovered corners of the Greenhorn Placer Mine Survey [Mineral Survey 3168]. Refer to Volume 606 of Official Records, page 341."
- 1984 L.J. Friar, U.S. Mineral Surveyor, surveyed the O.S.A. Sunrise Annex Placer and O.S.A. Sunrise Annex Millsite, M.S. 6913 A & B. This plat notes a tie to the sec. cor. of secs. 23, 24, 25, and 26 as set by Siskiyou County Surveyor.
- 1986 Stephen M. Zenovic, a private surveyor, surveyed the NW¹/₄SE¹/₄ and the NE¹/₄SW¹/₄ of sec. 24 for Batson, Brown and Dye.
- 1989 Howard C. Whitman, a private surveyor, surveyed the S¹/₂S¹/₂ of sec. 24 at the request of FS/Klamath.

^{7/} The plat of Mineral Survey 3168 for the GPM bears the notation "Cancellation by Memorandum dated April 22, 1986." The record before us does not include a copy of that memorandum. Although the original plat and field notes were destroyed by fire early in this century, a copy of the approved plat was maintained in Washington, D.C.

On May 2, 1994, Hamilton filed his Field Investigation Report, which began by noting that the corner reestablished by Cansino in 1970 was the result of using a record tie from the GPM plat, M.S. 3168. Hamilton stated that the monument set by Cansino was destroyed by Greenhorn Creek, and in 1975 Davis determined the corner position using the County's bearing trees, which were still extant when Hamilton conducted his field investigation, for which Davis established a witness corner. In the course of searching County records, however, Hamilton discovered an unsigned original field tablet dated July 1881, believed to be that of J.M. Davidson, ^{8/} which contains a description of Corner No. 1 of the GPM, M.S. 3168, and a tie to the section corner of secs. 23, 24, 25, and 26. The tie to the section corner shown in the field tablet does not coincide with the tie shown on Davidson's plat of the GPM, approved in 1893, which led Hamilton to "question the integrity of the tie to the sec. cor. shown of the [GPM] plat." (Field Investigation Report at 2.)

Hamilton concluded that the mound of stone is more harmonious with record topographical calls to Greenhorn Creek than to the record tie from the GPM, and that it bears a closer mathematical relationship to the record on the lines between secs. 25 and 26, between secs. 24 and 25, and between secs. 23 and 24. Other evidence that the mound marked the true corner consisted of: a blazed fir line tree recognizing the mound; a line tree south of the section corner related more closely to the mound; use of three-point control that favored the mound; and the mound's agreement with the existent original corners to the north, south, and east. Hamilton's report includes a tabulation that compares the record calls and ties to the GPM plat tie from GPM ^{9/} Corner No. 1 to the section corner, to those for the mound of stone. More particularly, the tabulation shows that of 18 points of comparison, in 1 instance the GPM position was closer to record than the mound; in 5 instances the mound of stone was closer to record; in 7 instances the GPM position and the mound fit equally well; in 3 instances neither was particularly harmonious, although in 1 of those 3 instances, the mound was a better fit; and there were 2 instances where the record calls were questionable or not good. In summary, Hamilton credited the GPM position as closer to the record in 8 cases (1 plus the 7 cases when both positions fit equally well), while the mound was credited with 12 instances in which it was

^{8/} The field tablet was found by Siskiyou County staff almost 20 years ago. It had no identifying names in it, so it was filed under the name of Varnum, the County Surveyor in 1881, and labeled Varnum #11. It later was discovered that the handwriting appeared to be that of Davidson, based upon comparisons to field tablets known to have belonged to him. Field Investigation Report at 2, n.1. Although Appellants question the evidentiary weight that should be ascribed to the Varnum #11 tablet, they have not challenged the assertion that the handwriting appears to be that of Davidson.

^{9/} Hamilton refers to the Greenhorn Placer Mine as "GHPM" rather than GPM. (Field Investigation Report at 3.) There is no second, undisclosed plat pertaining to the mine, as Appellants seem to suggest. (SOR at 6.)

closer (5 plus the 7 cases when both positions fit equally well). (Field Investigation Report at 3-4.) Ultimately, he concluded:

After a careful examination of the tie from the County corner position to Cor. 1 of the Greenhorn Placer Mine, M.S. 3168, it is obvious that the County reestablished the sec. cor. from the record tie as shown on the mineral survey, but by using the bearing tree to the mining claim corner as the corner, thus resulting in an improper reestablishment of the sec. cor.

(Field Investigation Report at 2.)

Hamilton recommended accepting the mound of stone, and on July 13, 1994, Supplemental Special Instructions were issued for Group No. 1194 directing the dependent resurvey of the section lines for the S $\frac{1}{2}$ of the line between secs. 23 and 24; the W $\frac{1}{2}$ of the line between secs. 24 and 25; the N $\frac{1}{2}$ of the line between secs. 25 and 26; and the E $\frac{1}{2}$ of the line between secs. 23 and 26. In addition, Hamilton was authorized to retrace or resurvey adjacent section lines needed to develop control or for verification; to establish 1/16th section corners where they control Federal lands; and to conduct a mineral survey of the lines that form a boundary of Federal land where intersected by resurveyed section lines or the subdivision of section lines of the dependent resurvey.

By letter dated November 14, 1994, Einsele protested BLM's acceptance of the position established by Hamilton as the section corner. Apart from noting that he had moved his mobile home once at the direction of FS and incurred considerable expense in having his property surveyed in reliance on the line thus established by FS, Einsele argued that "moving" the corner was "unfair and unethical" and would prove ruinous because of the improvements he had made to his land in reliance on the FS survey. In addition, however, he claimed that the mound in fact was a mound that he and John Batson had established to monument the corner of the Lucky Lady mining claim, explaining that they had set a pile of rocks at that location because they knew the corner actually was in the creek and the land is very steep there. Einsele further argued that the County's corner has been accepted for so many years, it should not be moved.

As discussed above, the Batsons and Brown filed their joint protest on December 26, 1994, alleging that the County's corner was the true corner, and that it had been recognized and accepted as such in "numerous private and government surveys." (Batson/Brown Protest.)

The County filed its protest dated February 7, 1995, 10/ arguing that the Varnum #11 tablet is neither an official record nor credible evidence

10/ The letterhead bears the date of Feb. 7, 1995, but the headers on pages 2-4 show the date of Feb. 13, 1995. Despite this discrepancy, the letter, signed by D.A. Gravenkamp, Director of Public Works, and Harry Krause, Deputy County Surveyor for Siskiyou County, appears to be complete and internally consistent, such that we dismiss the different dates as an oversight.

of the position accepted by Hamilton, and that Davis, Friar, and Whitman subsequently had accepted the Cansino position on three occasions, as had FS when it issued quitclaim deeds to Batson and Brown in December 1985 that recognized the Cansino corner. Appellants' objections were assigned to the Specialist, and on September 7, 1995, he submitted a lengthy report (Protest Examination) in which the evidence and the parties' assertions were examined in considerable detail. The Specialist ultimately concluded that the mound of stones discovered by Morris should be accepted as the best evidence of the corner established by Benson. The Acting Chief, Branch of Cadastral Survey, agreed, and on October 4, 1994, he dismissed Appellants' protests, and this appeal followed.

In general, Appellants raise the following groups of issues on appeal: whether Hamilton properly assessed the physical evidence available at the site where the mound of stones was found; whether Appellants' assertion that it was well known that "creek action had washed away the original corner" (SOR at 5) was properly rejected; whether BLM failed to recognize that "no survey concerning the section corner ever mentioned a mound of stones, nor has the mound of stones ever been represented as the section corner" (SOR at 5); whether BLM improperly rejected Einsele's assertions regarding the condition of the mound before it was marked by Hamilton (SOR at 5); whether BLM attached too much weight to the Vamum #11 tablet so as to overcome Friar's formal certification that he had conducted his survey in accordance with the Manual of Survey Instructions (1973) (Manual) and his field notes (SOR at 8-9); whether equity and Appellants' reliance on previous FS surveys and BLM's "silent acquiescence" require the acceptance of the Cansino corner as the true section corner (SOR at 13).

Appellants have submitted various documents in support of their appeal, including evidence to buttress their contention that it was generally known that the original corner was washed out by the Greenhorn Creek; copies of various correspondence with BLM and others; a copy of Cansino's corner record; an excerpt of Benson's field notes; an excerpt from the field notes for M.S. 6913 A and B; Friar's Surveyor's Certificate; portions of copies of a proof of labor and location notice for the Lucky Lady placer mining claim filed by or for Appellants in 1982; pages from the Vamum #11 field tablet; and copies of plats, maps, and other documents that are in the case file submitted by BLM.

[2] We begin with a discussion of applicable survey principles. As the Board said in John W. and Ovada Yeagan, 126 IBLA 361, 362-363 (1993):

A dependent resurvey is a retracement and reestablishment of the lines of the original survey in their true original positions according to the best available evidence of the positions of the original corners. The section lines and lines of legal subdivision of the dependent resurvey in themselves represent the best possible identification of the true legal boundaries of lands patented on the basis of the plat of the original survey. In

legal contemplation and in fact, the lands contained in a certain section of the original survey and the lands contained in the corresponding section of the dependent resurvey are identical. Manual of Instructions for the Survey of the Public Lands of the United States (1973) (Manual), 6-4 at 145; Crow Indian Agency, 78 IBLA 7, 10 (1983); Mr. and Mrs. John Koopmans, 70 IBLA 75, 76-77 (1983).

We further observed:

A dependent resurvey seeks to restore what purports to be the original conditions of the official survey according to the record, based, first, upon identified existing corners of the original survey and other recognized acceptable points of control, and second, upon the restoration of missing corners by proportionate measurement in harmony with the record of the original survey. Titles, areas and descriptions should remain unchanged in a typical dependent resurvey. Jean Eli, 78 IBLA 374, 376 (1984). Therefore, the cadastral surveyor's primary responsibility when conducting a dependent resurvey is to act as a "detective" who gathers all available information and uses his best effort to determine the location of all the original corners.

Id. at 363.

[3] The section corner here at issue is an existent corner, that is, one whose position can be identified by verifying the evidence of the monument or its accessories, by reference to the description in the field notes, or located by an acceptable supplementary survey record, some physical evidence, or reliable testimony. Manual, 5-5 at 130. Evidence of each type appears in this case, but it is the probative weight accorded the evidence by BLM that is at the heart of the controversy. However, the applicable standard with respect to an existent corner is whether BLM's conclusion is supported by substantial evidence, Kendal Stewart, 132 IBLA 190, 195 (1995); Stoddard Jacobsen v. BLM (On Reconsideration), 103 IBLA 83, 85-86 (1988), aff'd Civ. No. 88-513-HDM (D. Nev. Oct. 12, 1989, aff'd No. 91-15372 (9th Cir., Sept. 29, 1992). "Substantial evidence" is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Stoddard Jacobsen, supra, at 86 n.6, citing Coleman v. Gardner, 264 F. Supp. 714, 717 (D. W.Va. 1967).

[4] The standard governing whether a corner is existent or found is not the same as that applicable to the adjudication of appeals from survey decisions. A party challenging the filing of a plat for a dependent resurvey has the burden of demonstrating by a preponderance of the evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey. Stoddard Jacobsen, 85 IBLA 335, 342 (1985). Thus, we have cautioned that even where an appellant is able to show that his or her placement of a disputed corner is supported by substantial evidence, "as long as BLM's placement of the corner is also supported by substantial evidence, appellant's showing is of no avail. To prove error in

the BLM decision, appellant must demonstrate by a preponderance of the evidence that BLM's placement of the corner is wrong." Stoddard Jacobsen, 103 IBLA at 86 n.7. Accordingly, Appellants are obliged to offer more than a difference of opinion or speculation; they must establish that there was error in the methodology used or the results obtained, or show that the resurvey was carried out in a manner that did not conform to the Manual. Rodney Courville, 143 IBLA 156, 164 (1998); Thom Seal, 132 IBLA 244, 247 (1995).

[5] We will first dispose of the last group of issues as described above. To do so, we commence by noting that the Secretary of the Interior has exclusive authority to consider what lands are public lands, to determine what public lands have been or should be surveyed, to extend or correct the surveys of public lands and to make resurveys to reestablish corners and lines of earlier official surveys. 43 U.S.C. §§ 2, 52, 751-53 (1994). Thus, FS surveys are merely administrative surveys that do not purport to establish or identify public lands or the corners and lines thereof. Dan Ogle, 131 IBLA 129 (1994); Volney Bursell, 130 IBLA 55, 56 (1994); James O. Steambarge, 116 IBLA 185 (1990). Although we appreciate Appellants' dilemma, one who relies on other than an official survey that has been duly accepted and approved by the Secretary of the Interior does so at his peril. Longview Fibre Co., 135 IBLA 170, 185 (1996).

[6] In that regard, Appellants also argue that BLM has silently acquiesced to the position monumented as the true section corner by Cansino in 1970, and that they were entitled to rely on such "acquiescence." This contention also must fail. Because the Secretary's authority in matters pertaining to surveys of the public lands is exclusive, it follows that there can be no binding "acquiescence" in the positions of corners or lines established by private surveys or administrative government surveys so as to diminish or deprive the Secretary of his authority to survey the public lands at such time as he may choose. Accordingly, Appellants' contentions to the contrary must be rejected.

[7] We turn to the central question on appeal: whether BLM properly assessed the evidence supporting its decision to accept the mound of stones as the best evidence of the original 1880 corner of secs. 23, 24, 25, and 26 as determined by Benson. Appellants contend that Cansino's 1970 position is the best evidence of the original position, and that Cansino's position was determined from a tie between the section corner and Corner No. 1 of the GPM as shown on Davidson's plat of the GPM. BLM disputes this argument, stating that Cansino actually measured from a bearing tree that only witnessed GPM Corner No. 1 (Decision at 1-2.) The support for BLM's conclusion is persuasive. First, Benson recorded the corner to be 5.40 chains south of Greenhorn Creek and thus not in the Creek as Appellants aver, whereas the disputed mound is 5.20 chains south of the Creek.

Second, the line between Cansino's position and the original corner of secs. 19, 24, 25, and 30 is 80.187 chains. Benson recorded 80.160 chains

for this line. Appellants argue that this is clear and convincing evidence that Cansino's position should be accepted. However, as BLM points out, the argument ignores the evidence posed by the intervening $\frac{1}{4}$ corner, about which there is no dispute. Benson reported 40.08 chains between the $\frac{1}{4}$ corner and the disputed section corner. The distance to Cansino's position is 41.37 chains from the $\frac{1}{4}$ corner, while the distance to the mound of stones is 39.784 chains, a difference of 0.296 chains compared to 1.290 chains to the Cansino position.

Third, Appellants assert that Davidson's tie to the GPM Corner No. 1 and Benson's section corner, if corrected for both distance ("the scale factor") and bearing ("rotation angle"), is 30 feet closer to Cansino's position than the mound of stones. BLM responds that the argument cannot be sustained because it assumes that the two corners are lost when in fact they are recovered. Where corners are existent, such adjustments are not utilized. (Decision at 2; Protest Examination at 19.)

Next, although the resurvey located a bearing tree for the GPM Corner No. 1 described on page 22 of Davidson's field tablet (also known as Varnum #11), with a connection to the section corner described on page 33, Appellants contend such evidence should be rejected because it is not an "official" document and because its entries were voided by means of a page-size "X" written through the text. BLM acknowledges that the table is an "unofficial document," and explains the evidence of the tablet as follows:

Those pages were voided because the boundaries of the Greenhorn Mine, as described therein, were later rotated and extended considerably further to the south and west, so as to generally parallel the banks of Greenhorn Creek; they were not voided because they reported any incorrect measurements or because they incorrectly identified any corners, least of all the section corner. The rotation and extension of the claim's boundaries will be made plainly obvious by comparing the several lines described in the 1881 field tablet with Davidson's final plat, approved March 7, 1893.

(Decision at 3; Protest Examination at 23.) In addition, the Protest Examination notes that the usual method of correcting a mistake in a measurement is to line out the erroneous information and write the correct data above the lined out entry. (Protest Examination at 22.)

BLM offered an additional reason why the 1881 field tablet should be accepted:

But perhaps the strongest evidence in support of the 1881 tablet arises from the results of having restored the Greenhorn's Corner No. 1 from the bearing tree described on page 22 of the tablet. The position thus restored is at a point from which undisputed [GPM] Corner No. 2 bears S. $20^{\circ}30'00''$ W., 8.980 chains. Although not exact, this connection is much too close to

the S.20°30'00" W., 9.00 chains shown on the official plat to support any notion that Davidson's preliminary Corner No. 1, as reestablished from the above described bearing tree, is not the same as the Greenhorn's final Corner No. 1 as shown on the approved 1893 plat; the two corners are most definitely one and the same.

(Decision at 3.) We observe that Appellants have not challenged either BLM's explanation of the significance of the voided tablet entries, or the conclusion that the preliminary and final GPM Corner No. 1 are the same.

As mentioned, the tablet also includes a connection between the GPM Corner No. 1 and the disputed section corner that is S. 15°30'00" W., 4.920 chains. The connection between the contested mound of stones is S. 12°37'40" W., 4.816 chains, a difference of 3 degrees and 10.4 links, a variance that is well within the acceptable margin of error attributable to Davidson's era. (Protest Examination at 26.) While this connection does conflict with the official plat of the GPM approved in 1893, it nonetheless agrees with other original corners and calls of record that are not disputed, particularly the ¼ corners to the north, south, and east, and agrees "reasonably" well with the ¼ corner to the west. (Protest Examination at 27.)

The Decision notes that the tablet is important because it identifies the bearing tree Cansino used to establish his corner position. The Decision further states that "although less than conclusive, [the tablet] is nonetheless one more item of evidence." (Decision at 4.) We agree with BLM that the field tablet constitutes credible evidence that is highly relevant to the issue at hand, and as will be seen, there is ample evidence of a less controversial nature to support the conclusions regarding Davidson's work, as well as the Decision.

The Decision states that the resurvey recovered the line tree between secs. 25 and 26, and the course and distance between the mound and the line tree are closer to the 1880 field notes by 5 degrees and 22 links than the course and distance to Cansino's monument. The decision to accept the mound is further buttressed by the fact that the mound is almost exactly where the 1880 field notes placed it in relation to the ¼ corner monument between secs. 23 and 24, compared to a difference of 2°23'40" in bearing and 0.898 chains presented by the Cansino position. Moreover, as set out early in this opinion, the mound was determined to be in closer agreement with the original survey record in 12 out of 16 cases where the record calls were deemed good calls, compared to 8 for Cansino's position. (Field Investigation Report at 3-4.) BLM thus denies that it accepted the mound solely because of its relationship to the GPM Corner No. 1.

Appellants correctly note that Benson did not report that he had constructed a mound at the contested section corner, and argue that the 4-inch post he recorded in his field notes could survive at least 25 years, so that Davidson should have found it a year later, or alternatively, that traces of the original post or at least its hole should have remained. (SOR at 5.) Appellant Einsele avers that he saw the mound in

its "original condition," and that it had neither a hole nor a trace of the post. Id. It is claimed that Einsele and John Batson erected the mound to mark a corner of their Lucky Lady mining claim at some unspecified time in the past. (Protest at 1.) The only evidence offered relative to this assertion is partial copies of a proof of labor filed August 3, 1982, and the notice of location filed with the County on June 16, 1982. The location notice shows only that the claim was located in the NW¹/₄ of sec. 24, T. 45 N., R. 8 W. (Geographic Index, p. 3860). However, Hamilton states that he also examined the mound erected by Einsele and Batson, that it disappeared before he could take measurements to it, and that it had a wooden stake in its center, as described by Einsele. It was southeasterly of the contested mound approximately 30 feet, the distance by which the contested mound is in closer agreement with the record. (Protest Examination at 27-28.) The disputed mound was also recognized by a blazed 31-inch fir that is on a line that connects the mound to the ¹/₄ corner to the east. (Protest Examination at 28.)

As to the fir tree, Appellants contend that what BLM identified as an old blaze that witnesses the corner established by Benson in fact is heart rot (SOR at 4, 6), and that there are a number of big trees in the vicinity of the mound that bear many official blazes of the right age that are also similar to Benson's blazes (SOR at 3), suggesting that BLM could be mistaken in identifying the disputed tree as a line tree. BLM readily acknowledges that the tree's core is rotted, but asserts there is "little question as to the ax marks which identified the tree as a point intended to mark the section line." These ax marks were also examined by Morris, who first recovered the monument, and Lipke, who protested the Decision (Protest Examination at 28), both registered land surveyors.

We are willing to accept that the mound no longer bears traces of the post set by Benson, but this is to be expected, given the passage of more than a century and the logging and mining activities noted by Appellants themselves. Cf. Manual, 5-6, 5-7 at 130. We agree with BLM that the identity of the person who set the mound of stones is less important in these circumstances than the fact that Davidson's field tablet shows that he recovered the corner 1 year after Benson had established it. The record shows that the large fir that Davidson marked as a bearing tree to the corner was identified by Hamilton, and that the corner was recovered at the course and distance stated at page 22 of Davidson's field tablet. This corner position was verified by a connection to the GPM Corner No. 2, which is not disputed, by a course and distance that is virtually identical to that shown on the official plat of the GPM. (Protest Examination at 25-26.) We believe this evidence negates Appellants' speculation that the dead fir in truth is a pine that Davidson misidentified as a result of its being dead. See SOR at 7. We concur in BLM's conclusion that it is highly improbable that random chance could place the stone "in near perfect alignment with a locally marked line tree." (Decision at 4.)

Appellants further contend that it is well known in the area that the original section corner monument was set in Greenhorn Creek and was destroyed. They state that they were informed of this by Frank Schultz, now deceased, who once held placer mining claims in the area, and they note that the Yreka Quadrangle map published by the U.S. Geological Survey shows the section corner in the creek. In support of the contention, they have provided copies of two quitclaim deeds dated April 29, 1980, from Schultz to three parties. One of these parties, James Thomsen, has submitted a signed statement for the record dated March 3, 1996. According to Thomsen, Schultz "had always said that the original section corner 23, 24, 25, 26 was in the creek area and that it had been washed out by [G]reenhorn [C]reek on more than one occasion." The quitclaim deeds are offered to establish two points central to Appellants' argument.

First, in showing that Schultz located the Big Rock placer mining claim in April 1968, Appellants intend to suggest that Schultz's purported knowledge of the section corner's position is more credible because it predated the setting of Cansino's monument in 1970. Second, the quitclaim deeds for the O.S.A. and the O.S.A. #1 placer mining claims each contain similar notations following the metes and bounds descriptions of the two 20-acre claims: "Situated in Greenhorn Creek" and "Located in Greenhorn Creek," respectively. It appears that Appellants believe that this language shows or tends to show that the corner of secs. 23, 24, 25, and 26 as originally surveyed lies in Greenhorn Creek, that the Yreka Quadrangle map is proof thereof, and that the position reestablished by the resurvey therefore is incorrect. We must reject this line of argument for several reasons, and find that the evidence does not establish the propositions for which it is offered.

The Manual provides that where the physical evidence of a corner has disappeared entirely, "a corner is not lost if its position can be recovered through the testimony of one or more witnesses who have a dependable knowledge of the original location." Manual, 5-5 at 130. It is clear, however, that the Manual envisions a hierarchy of evidence, the most dependable and highest form being the monument and its accessories, followed by the evidence contained in the field notes, followed by an acceptable supplemental survey record, by some physical evidence, and finally, by testimony. Manual, 5-5 at 130. The Manual also envisions a certain sequence of events in restoring a corner. Thus, while all evidence is to be examined, the first step is to conduct retracements by projection to known points, as determined by connection with known corners, so as to indicate probable positions and what discrepancies are to be expected. Following the retracements, the supplemental survey record or testimony "should then be considered in light of the facts thus developed." Id., 5-8.

[8] The Manual also provides guidance regarding the nature of the testimony offered to establish the position of a corner. In reference to an existent corner, it states that the witness offering the testimony must have a "dependable knowledge of the original location." Id., 5-5. With respect to obliterated corners, the Manual is even more specific, requiring such testimony to be "unquestionable," and a "positive knowledge of the precise location of the original monument." Manual, 5-9, 5-10 at 130-31. More particularly, the Manual states that

[w]eight will be given such testimony according to its completeness, its agreement with the original field notes, and the steps taken to preserve the original marks. Such evidence must be tested by relating it to known original corners and other calls of the original field notes, particularly to line trees, blazed lines, and items of topography. * * * Corroborative evidence becomes necessary in direct proportion to the uncertainty of the statements advanced. [11/]

Manual, 5-11 at 131.

Assessing the statement attributed to Schultz, it is clear that it is not beyond question as contemplated by the Manual, because a general statement that the corner locus was "in the Creek" hardly constitutes positive knowledge of the precise location of the original corner monument. Moreover, Appellants offer no other information regarding the factual basis for Schultz's alleged assertion that would assist in judging its reliability and completeness. Thomsen's signed statement adds nothing to the issue, because he attributes an even more general statement to Schultz—that is, that the corner was in the "creek area." The quitclaim deeds similarly avail Appellants nothing, because apart from the inherent ambiguousness of the phrases to which they point and the different purposes served by quitclaim deeds, the metes and bounds descriptions therein do not purport to identify the disputed section corner. Consequently, neither Thomsen's statement nor the quitclaim deeds establishes any general knowledge among landowners or others regarding the locus of the section corner or Schultz's positive knowledge of it. The Yreka Quadrangle map also must be rejected because it may be held to depict accurately only that for which it was prepared: contours and elevations in meters and conspicuous natural features. Under no circumstances can it be accepted as a substitute for an approved plat of survey prepared by the Branch of Cadastral Survey.

We find that the record clearly establishes that BLM proceeded in the manner specified by the Manual, and that Appellants have failed to demonstrate error in either the results of the resurvey or in the manner in which it was conducted. We further find that BLM's conclusions in the Decision and in the Protest Examination on which it relied regarding the available evidence are supported by substantial evidence. 12/ Although

11/ For purposes of the present discussion, it is immaterial that the cited Manual provisions pertain to obliterated corners, because the same considerations should be equally applicable to testimony offered in connection with existent corners.

12/ The reservation noted in the Decision regarding certain of the interpretations set forth in the Protest Examination, notably those pertaining to the relationship between the legal consequences of a resurvey and equity, are well taken. (Decision at 4.) We agree with the Acting Chief of the Branch of Cadastral Survey, however, that these points of individual interpretation do not vitiate the decision to accept the mound of stones as marking the true section corner, or the analysis and reasoning underlying it.

the matter is not wholly free of question, we are satisfied that BLM reasonably concluded that the mound of stone agrees more closely with the known corners and the field notes, line trees, blazed lines, and topography.

To the extent not specifically mentioned herein, Appellants' other arguments have been fully considered and rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

T. Britt Price
Administrative Judge

I concur.

John H. Kelly
Administrative Judge

