

ORION L. FENTON

IBLA 70-61

Decided January 4, 1971

Surveys of Public Lands: Dependent Resurveys

In making a retracement or dependent resurvey, the corners established should be located if possible by considering all the relevant evidence and not simply one or two factors.

Surveys of Public Lands: Dependent Resurveys

A protest against an accepted plat of a dependent resurvey is properly dismissed where the dependent resurvey is based on a detailed evaluation of the physical evidence of a disputed corner and of the corners of that and other surveys while the protestant relies upon one call from one feature, which the U.S. surveyors could not find, to establish the rest of the survey by courses and distances without reference to any other features described in the field notes or other recovered corners.

IBLA 70! 61 : Group 505 (California)

ORION L. FENTON : Protest against accep!
: tance of plat of
: dependent resurvey
: dismissed

: Affirmed

DECISION

Orion L. Fenton has appealed to the Secretary of the Interior from a decision dated April 7, 1969, of the Chief, Division of Cadastral Survey, Bureau of Land Management, which affirmed the dismissal of his protest against the official acceptance of the plat of dependent resurvey of section 26, T. 1 S., R. 15 E., Mount Diablo Meridian, California.

Fenton is the owner of the Criss Cross patented lode mining claim and a restaurant-service station and other improvements in the NE 1/4 section 26, same township and range.

In 1964, the manager of the Sacramento district office requested that a survey be made of the southwest boundary of Mineral Survey 5131, which had been made in connection with the patenting of the Criss Cross, to determine whether the improvements were a trespass on the public domain. Fenton asserts that they lie within his patented land.

Special instruction, January 24, 1964, Group 505, directed the establishment and dependent resurvey of the boundaries of the Criss Cross Lode Mining Claim Mineral Survey No. 5131. Supplemental instructions, dated November 30, 1965, authorized the retracement and dependent resurvey of the north, south, and east boundaries of section 26. In the course of the work, boundaries of mineral surveys of other patented mining claims adjoining the Criss Cross were also reestablished. The field work was completed in October 1966.

During the course of the field work and the preparation of the field notes and plat, Fenton raised a series of objections to the reestablished lines and corners. The points he raised were discussed in letters and in person by representatives of the Bureau. On August 3, 1967, the Chief, Division of Engineering accepted the plat showing the boundaries of section 26 and Mineral Surveys 5131, 5416, and 5759 and portions of Mineral Survey No. 4043.

The plat reestablishes the boundaries of sec. 26 and of several patented mining claims. It depicts a group of five claims in the E 1/2, mainly in the NE 1/4. The Criss Cross is a rectangular claim with its long axis running northwest-southeast. Its southeast corner, No. 1, is common with the corner No. 2 of the Relief claim which adjoins its southeast end line and with corner No. 5 of the Tiger mine whose northeast line departs at this point at a slight angle from the southwest line of the Criss Cross. The rest of the northeast line of the Tiger abuts the southwest line of the Relief. Its southeast end line is common with the northwest end line of the Buffalo quartz claim which also abuts the south line of the Relief.

The southwest line of the Criss Cross runs N49 degrees 14'W 22.25 chains (1468.50') from Corner No. 1 to corner No. 2. Fenton's improvements are located less than 60 feet south of line 1-2 in an area about 200 feet from Corner No. 2.

In a letter dated September 11, 1967, the State Director, Bureau of Land Management, California State Office informed Fenton that the plat had been approved. He also discussed Fenton's latest objections to the resurvey and found them to be without merit. He then dismissed Fenton's protest and allowed him the right of appeal to the Director. 1/

1/ While the resurvey was being conducted, a mining contest was instituted against Fenton's Desire quartz lode claim on which the land office said the improvements were located. The claim was held invalid. United States v. Orion L. Fenton, A-30621 (January 9, 1967).

The records also show that on July 3, 1963, the 1-1/2 acres containing Fenton's improvements, described as a portion of lot 2 sec. 26, were classified under the Small Tract Act of June 1, 1938, as amended, 43 U.S.C. 682d (1964), for lease for residential purposes.

In his appeal Fenton reviewed at length his rationale for justifying the location of the mining claim in the position he says it lies and repeated his criticisms of the dependent resurvey.

The Director's decision noted that the critical issue is the location of corner No. 2 of the Criss Cross claim and listed the several reasons why the survey had correctly located it. Briefly, they are the recovery of the root crowns of two buckeye trees and the courses and distances given in 1914, the date of the original survey, as accessories to the corner; the notation of this point as corner No. 2 in a survey made in 1952 of part of the Criss Cross claim; the similar relation of the corner No. 2 to Cub Gulch in both MS 5131 and the dependent resurveys; and the recovery of corners on the Relief lode, which had been surveyed in MS 5131 simultaneously with the Criss Cross lode, that agreed very well with the original survey. The decision also said that the dependent resurvey is corroborated from direct evidence of the locations of MS 5416 (1918), and MS 5759 (1924), which with MS 5131, form an interrelated block of mineral surveys, namely, a distinctive discovery tunnel on the Tiger mine lode (MS 5416), and a corner on Grizzly Gulch lode (MS 5759), identified by a bearing tree whose fragments were found in 1967, showing an axed face and part of the scribe marks.

All of the evidence, the decision went on, offered by Fenton had been carefully considered and found not to be helpful. It particularly noted the diagram prepared for Fenton by a Walter S. Hardgrove, which indicated the Criss Cross and Relief claims to be in a more southerly location sufficient to place the improvements north of the southwest line (line 1-2) of the Criss Cross. Hardgrove, it said, had accepted rotted wood in rock mounds as corners No. 2 and No. 3 (the northeast corner), on the basis of close agreement of course and distance to those returned in the original survey and on the basis of ties from corner No. 1 and 2 of the Criss Cross and corner No. 1 of the Relief to the corner common to sections 23, 24, 25 and 26. He did not, however, it went on, describe what he found at corner No. 1 of the Criss Cross or corner No. 1 of the Relief. It also found Hardgrove's references to "caved tunnels" on the Criss Cross and Relief

Fn. cont.

1/ Later in a letter dated July 18, 1967, the State Director wrote Fenton: "We are in the process of lotting the land on which your improvements lie. This land is not needed for any government programs and is suitable for transfer. The present use of the area can be resolved by your acquiring the parcel you are occupying."

unpersuasive because the government surveyors could not locate these tunnels. It then stated:

From the detailed evaluation of the physical evidence remaining of the original geological location of Cor. 2 of Criss Cross Lode, M.S. 5131, and other corners of this and interrelated mineral surveys, we conclude that our dependent resurvey of Sec. 26, T. 1 S., R. 15 E., M.D.M., California, was correctly executed and the original boundaries of the lode claims shown have been properly identified according to the best available evidence. Therefore, no action will be taken to either cancel the plat or suspend the official filing of the plat.

In his appeal to the Secretary, Fenton says the primary question is the location of corner No. 2 of the Criss Cross lode. Hardgrove, he asserts, found the corner common to the Relief (No. 1), Buffalo Quartz (No. 2), and Tiger Mine (No. 6), by courses and distances from a tunnel on the Relief lode, as described in the field notes of MS 5131 and from there the establishment of the corners of the Criss Cross was merely a matter of running out courses and distance. He then disputes the assertion that corner No. 2 was originally shown as being on or near the bottom of Cub Gulch. Finally, he says Hardgrove's survey is correct and the accepted one is clearly in error.

In making a dependent resurvey, the government undertakes to retrace and reestablish the lines of the original survey in their true original position according to the best available evidence of the positions of the original corners, and the lines of the dependent resurvey in themselves represent the best possible identification of the true legal boundaries of lands patented on the basis of the original survey. United States v. Sidney M. and Esther M. Heyser, 75 I.D. 14, 18 (1968). In making the retracement or dependent resurvey the corners established should be located, if possible, by considering all the relevant evidence and not simply one or two factors. Rubicon Properties, Inc., et al., A-30748 (May 6, 1968).

A review of the record demonstrates how carefully and thoroughly the dependent resurvey was conducted and how well it is correlated with the corners of this and other interrelated surveys. In rebuttal the appellant offers only two contentions. The first depends on the existence of a tunnel which the government surveyors could not find and a reconstruction of the entire mineral survey

from this one point. It makes no reference to any other corners and ignores all other calls in the field notes to other natural features. As the Director pointed out, there are other features more easily and other corners more persuasively recognizable which support the dependent resurvey.

Fenton's other objection bears on the dependent survey's insistence that corner No. 2 is "in Cub Gulch," -- meaning a narrow, well defined channel -- and not 120 feet on the hillside above it, where Hardgrove's diagram places it. The original field notes refer to Cub Gulch quite specifically several times in such notations as "crossing Cub Gulch." The dependent resurvey places corner No. 2 at about the same distance from Cub Gulch as did the original survey. This evidence is persuasive.

Thus appellant's objections to the plat do not justify the cancellation of the plat or the suspension of the official filing of the plat.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081), the decision of the Bureau of Land Management is affirmed.

Martin Ritvo, Member

I concur:

I concur:

Edward W. Stuebing, Member

Francis E. Mayhue, Member

