

CHESTER H. FERGUSON ET AL.

IBLA 74-330

Decided May 13, 1975

Appeal from decision (9181, Group 154, Florida) by the Chief of Cadastral Survey, Bureau of Land Management, dismissing protest against the acceptance of a plat of survey.

Affirmed.

1. Secretary of the Interior -- Surveys of Public Lands: Generally -- Surveys of Public Lands: Authority to Make

The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands have been or remain to be disposed of by the United States, and he has the authority to extend or correct the surveys of public lands as may be necessary, including the surveying of lands omitted from earlier surveys.

2. Public Lands: Disposals of -- Surveys of Public Lands: Generally

A patent of land from the United States conveys only land which is surveyed, and when the surveyors have carried a survey only to a certain line, a grantee may not successfully challenge the correctness of their action or claim land beyond that line under a patent issued in accordance with that survey.

3. Public Lands: Riparian Rights -- Surveys of Public Lands: Generally

Generally, the meander line is not to be treated as a boundary and when the United States conveys a tract of land by patent

referring to an official plat which shows the tract to be bordering on a navigable body of water, the patent conveys all the land to the water line. However, there are three situations in which meander lines will serve as the boundary of a conveyance or grant, rather than a water body: namely, where there is (1) fraud or (2) gross error shown in the survey, or (3) where the facts and circumstances disclose an intention to limit a grant or conveyance to the actual traverse lines.

4. Surveys of Public Lands: Generally

The Bureau of Land Management acted appropriately in surveying an omitted area of 18.17 acres of land as compared to the original area of surveyed land of 17.52 acres where it found that area of omitted land to be too large to be regarded as merely a technical difference from the original survey. Such a discrepancy is unquestionably a large enough omission to be classified as either gross error or fraud in the original survey.

5. Surveys of Public Lands: Generally -- Public Lands: Generally

A survey of a previously unsurveyed portion of an island, proven to have been in existence in 1876 when an original survey was conducted in the area, is proper and shall be officially filed where the record shows that the plat of survey reflects the true location of the island on the surface of the earth and was conducted in accordance with both the Manual of Survey Instructions and the special instructions for this conditional survey.

APPEARANCES: James B. McDonough, Jr., Esq., of MacFarlane, Ferguson, Allison & Kelley, Tampa, Florida, for appellants.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Chester H. Ferguson, Stella Ferguson Thayer and Howell L. Ferguson have appealed from a decision dated May 28, 1974, of the Chief, Division of Cadastral Survey, Bureau of Land Management, which dismissed their protest against the Bureau's official filing and acceptance on October 2, 1972, of a plat of survey entitled "Survey of Islands within Pine Island Sound, Township 43 South, Range 21 East and Townships 44 South, Ranges 21, 22, and 23 East, Tallahassee Meridian, Florida." The protest pertained particularly to the survey of part of Mondongo Island.

The record shows that an investigation and cadastral survey were undertaken by the Bureau of Land Management in response to a request of October 12, 1965, from the Deputy Director, Bureau of Sport Fisheries and Wildlife, for the purpose of determining the status of islands withdrawn for wildlife refuge purposes under Executive Orders 939 and 943, dated September 15 and September 26, 1908, respectively. The special instructions authorizing this examination and survey were approved on March 18, 1969. These instructions were formulated under Group 154, Florida, and included, in addition to the islands named in E.O. 939 and 943, all unsurveyed islands in Pine Island Sound, Matlacha Pass and San Carlos Bay.

The responsibility for the examination and survey of islands or portions thereof omitted from previous surveys in Tps. 43 and 44 S., R. 21 E., and Tps. 44 through 46 S., Rs. 22 and 23 E., T.M., Florida, was assigned to DeWitt A. Crain, Supervisory Cadastral Surveyor, from the Denver Service Center, Bureau of Land Management, Denver, Colorado, on September 28, 1971. Crain conducted his survey from October 12 to October 27, 1971. The plat representing his examination and survey of islands within Pine Island Sound in Tp. 43 S., R. 21 E., and Tps. 44 S., Rs. 21, 22 and 23 E., was accepted by the Bureau on October 2, 1972.

On May 10, 1973, a public notice of the Bureau's intent to officially file the accepted plat in the Eastern States Office was published in the Federal Register, 38 F.R. 12242. Appellants, among others, filed a protest against the survey on June 12, 1973. ^{1/} The official filing of the plat of survey was thereafter

^{1/} Mr. Richard M. McConnell also filed a protest to the acceptance of the same plat of survey with regard to his claim for McCardle Island. His protest was also dismissed by a decision dated May 28, 1974, of the Chief, Division of Cadastral Survey, Bureau of Land Management. Although Mr. McConnell filed a notice of appeal from that decision on July 8, 1974, no statement of reasons was thereafter timely filed with this office, and his appeal is being dismissed for that reason by an order of this date.

stayed pending consideration of all the protests. 38 F.R. 16398, June 22, 1973.

The survey records of the Bureau indicate that the north, east, south and west township boundaries of T. 44 S., R. 21 E., aggregating 2 miles, 59 chains, and 76 links as well as meanders and triangulations, were surveyed by Horatio Jenkins, Jr., U.S. Deputy Surveyor, in 1875, under his contract dated January 26, 1875, as delineated on the plat approved June 5, 1876. The plat shows Mondongo Island (Mundanbo) as encompassing lot 1 sec. 4, consisting of 17.52 acres. The records further indicate that Jenkins had also surveyed the township immediately to the north, T. 43 S., R. 21 E., under the same contract in 1875. His survey showed no part of Mondongo Island as lying in that township on a plat also approved June 5, 1876.

The 1972 survey by Crain shows Mondongo Island, as extending to the north into T. 43 S., R. 21 E. The plat depicts the portion north of the township line as tract 37 containing 18.17 acres. The Bureau found that this portion of Mondongo Island was unsurveyed land in existence as of the date Florida entered the Union as a State in 1845, and was omitted from the 1876 survey by Jenkins, and is therefore public land subject to survey. 2/

Appellants assert ownership of the whole of Mondongo Island which they state they have possessed for many years. The record shows that appellants' source of title is derived through mesne conveyances from a patent originally issued to Thomas A. McAllister, November 30, 1885, pursuant to the sale of 17.52 acres of public land described as Lot 1 sec. 4, T. 44 S., R. 21 E., Florida. 3/ The patent was issued "according to the official plat of survey of said lands returned to the General Land Office by the Surveyor General."

The evidence establishes beyond dispute that Mondongo Island was at the time of original survey and is now roughly

2/ Referring to Tract 37 in his field notes, Crain states:

"The character of that portion of Mondongo Island encompassed in this tract and the timber and undergrowth thereon attest to its existence on March 3, 1845, when Florida was admitted to the Union, and at all times since. That portion of Mondongo Island which is included within this tract is more than 50% upland in character within the interpretation of the Swampland Act, dated September 28, 1850."

3/ Thomas A. McAllister filed an application for Homestead Entry on Lot 1 sec. 4, T. 44 S., R. 21 E., T.M., on January 8, 1877, but the application was changed to Cash Entry on April 20, 1885. The Certificate of Patent No. 10154, Gainesville, was granted on November 30, 1885.

twice as extensive in area as shown on the plat of T. 44 S., R. 21 E., from the 1876 survey. The error in the size and shape of the island is obvious when comparing the Jenkins plats to other maps of the area which reflect Mondongo as a much larger and elongated land mass. The limited triangular shape of the Lot 1 shown by Jenkins bears no reasonable resemblance to other representations of the whole island found on (1) the U.S. Coast Survey Map, Register, No. 738, titled "Map of Charlotte Harbor Approaches," dated 1859; (2) U.S. Geological Survey topographic map of the Bokeelia Quadrangle, dated 1958; (3) graphic compilation of the Gulf Coast-Florida, Pine Island Sound, Shoreline Manuscript, U.S. Coast and Geodetic Survey (1956); and (4) aerial photographs GS-NS 4-32 and 4-33 taken of Pine Island Sound in 1951. From these the Bureau correctly concluded that Mondongo Island is substantially the same size and shape today as in the historical past and the island is in the same geographical location on present day maps as on the 1859 Coast Survey map made over 100 years ago.

The Bureau rejected the various alleged errors, inconsistencies of ties and distances, and misinterpretations attributed to the Crain survey by the Fergusons' protest when it determined that (1) Mondongo Island is a fixed monument in the same position on the earth's surface now as it was at the time of the Jenkins survey of T. 44 S., R. 21 E., T.M., and (2) the north boundary of Mondongo Island, as shown on the original plat on which the patent to Lot 1 was based is part of the surveyed township boundary between the adjoining 43 S. and 44 S., R. 21 E., T.M.

In response to proposed theories of how Jenkins may have originally erred in the location of the township line across Mondongo Island, the Bureau decision properly noted "Even assuming that Jenkins made an error in the location of the township line he surveyed across Mondongo Island, it would be incorrect to contend the line as surveyed and later approved was not established. Furthermore, if an error in surveying was made by Jenkins, it is not necessary to search for the sources of that error. This was brought out in the case of John McClennen, et al. (29 L.D. 521-522) (1900)." That is, if this land was omitted from the original survey by Jenkins, it does not matter how the error arose. The consequences are the same.

Appellants challenge the Government's survey of the omitted portion of Mondongo Island. They contend that the official plats of 44 S., R. 21 E., (Mondongo Township) and 43 S., R. 21 E. (Bokeelia Township), as accepted June 5, 1876, are conclusive, that all of Mondongo was returned as being within the meander lines on the same plat of T. 44 S., R. 21 E., and all of Mondongo was conveyed out of the United States by the 1885 patent. In effect they

contend there is no omitted land to be surveyed in this case. They challenge the Government's right to raise the issue where a patent has already issued purportedly conveying all the lands within the established boundaries shown by the official maps of the Government's surveys.

[1] The northern boundary of Lot 1 sec. 4, as originally surveyed was either the township line and also the southern boundary of sec. 33, T. 43 S., R. 21 E., or it was a meander line marking only the northern boundary of Lot 1. In either case, the appellant's argument is not well-founded. The authority of the Department in such circumstances to decide whether lands have been omitted from an original survey and whether the area omitted is sufficiently large enough to warrant the Government's claiming them as public lands has long been established. Kirwan v. Murphy, 189 U.S. 35, 54 (1903). The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands have been or remain to be disposed of by the United States. This Department, acting for the United States, has the authority to extend or correct the surveys of public lands as may be necessary, including the surveying of lands omitted from earlier surveys. Joe S. Dent, 18 IBLA 375 (1975); Mrs. J. W. Moore, 8 IBLA 261 (1972); Bernard Gaffney, A-30327 (October 28, 1965); 4/ State of Oregon, 60 I.D. 304 (1949) and cases cited therein; Utah Power and Light Company, 6 IBLA 79, 79 I.D. 397 (1972).

[2] We examine first the consequences of the northern boundary of Lot 1 being the township line. In such case no land beyond that line would pass with a patent to Lot 1. Contrary to appellants' arguments the area designated as an omitted portion of Mondongo Island was not conveyed to their predecessor with the patent to Lot 1. A patent conveys only land which is surveyed, and when the surveyors have carried a survey only to a certain line, a grantee may not successfully challenge the correctness of their action or claim land beyond that line under a patent issued in accordance with that survey. Bernard J. Gaffney, supra, at 11, and cases cited therein. It also holds true that a patentee of public land takes according to the actual survey on the ground, even though the official survey plat may not show the tract as it is located on the ground, or the patent description may be in error as to course or distance or the quantity of land stated to be conveyed. United States v. Heyser, 75 I.D. 14, 18 (1968).

4/ A suit for judicial review of the Gaffney case resulted in a stipulated dismissal without prejudice, January 17, 1969, Bernard J. Gaffney v. Stewart Udall, Civil No. 3-66-22 (D. Minn.)

The Government in making a grant of public land does not guarantee the size and the location of the land conveyed to be exactly as described and shown on the survey. Whether in fact the original grant to appellants' predecessor as shown on the Jenkins' survey contained a full 17.52 acres does not affect the disposition of this case. The extent of appellants' Lot 1 is limited to whatever land existed as of the date of conveyance as the southern portion of Mondongo Island below the boundary line reflected on the survey as the township line between T. 43 T. 44 S. It is clear the intent was to convey no more than the number of acres actually surveyed and specified in the patent.

The intent of the original surveyor was to depict the northern boundary line of T. 44 S., R. 21 E. as it crossed Mondongo Island as the northern limit of the described Lot 1 sec. 4 on the plat. As the Bureau has pointed out, it was clear from Jenkins' field record that the line he surveyed across the island was intended to be the township line. From an examination of both the governing survey Instructions to the Surveyor General of 1871 and pertinent sections of the field notes, it is evident that the northern line of Lot 1 as shown, 20 chains long, could not be intended as a meander line of the northern water boundary of the island. The Bureau discussed in detail how Jenkins followed standard procedures in setting the meander corners. Meander corners were set only to mark where township or section lines intersected the banks of a navigable stream or any meanderable shore stream. The meander corners were accordingly set for sec. 4, T. 44 S., R. 21 E., and for sec. 33, T. 43 S., R. 21 E., where the township line intersected the shoreline on each side of Mondongo. Descriptions in the field notes of the terrain when crossing the island from one corner to the other confirm that Jenkins was crossing vegetated upland rather than traversing meanderable shoreline. ^{5/}

^{5/} Page 4 and 5 of the Bureau's decision discussed at length how Jenkins marked the meander corners on Mondongo. They state from excerpts of the field notes:

"He says twice that he set meander corners for 'Secs. 4, 33.' He further makes the statement after setting the easterly meander corner, 'Chop and hack mangrove.' He then surveys 20 chains west and sets the other meander corner as described above. The fact that, in no instance does Jenkins describe the vegetation when meandering, but does describe the terrain cover when running section lines, is persuasive that in running 20 chains west from one of the meander corners at issue to another, he was crossing vegetated upland, and not meandering a shore."

[3] If the north line is not the boundary line but a meander line a crucial question is whether under the laws relating to situations where a boundary of the patented land is shown as a water line, land, if such there be, beyond that line passes with the patent of the upland. It is true generally that the meander line is not to be treated as a boundary and that when the United States conveys a tract of land by patent referring to an official plat which shows the tract to be bordering on a navigable body of water, the patent conveys all the land to the water line. Internal Improvement Fund of State of Florida v. Nowak, 401 F.2d 708, 716 (5th Cir. 1968). See also United States v. Lane, 260 U.S. 662 (1923). However, this Board recently reviewed the leading cases setting forth the exceptions to the general rule in Utah Power and Light Company, *supra*, and concluded at 87:

These decisions establish three situations in which meander lines will serve as the boundary of a conveyance or grant, rather than a water body: namely, where there is (1) fraud or (2) gross error shown in the survey, or (3) where the facts and circumstances disclose an intention to limit a grant or conveyance to the actual traverse lines.

Important factors helpful in determining whether the exceptions apply are the area of land omitted compared with the area patented, the value of the land at the time of the original survey, the difficulty involved in surveying the land due to its topography, and the distance of the original meander line from the actual water line. Burt A. Wackerli, 73 I.D. 280, 287-292 (1966); suit pending Wackerli v. Udall, Civil No. 1-66-92, D. Idaho; William P. Surman, A-31010 (Dec. 1, 1969).

[4] In accordance with these principles the Bureau acted appropriately in surveying the omitted area of tract 37, T. 43 S., R. 21 E. In comparing the area of surveyed land conveyed in Lot 1 (17.52 acres) to the area of the newly surveyed tract 37 in dispute (18.17 acres), the Bureau found the omitted area of Mondongo to be too large to be regarded as merely a technical difference from the original survey. Cf. cases discussed in Wackerli, *supra*, at 290-291. Where the area of omitted land exceeds that of the original surveyed land, such an omission is unquestionably large enough to be classified as either gross error or fraud in the original survey. See Sec. 512, Manual of Instructions for the Surveying of Public Lands of the United

States (1947), hereafter referred to as the "Survey Manual." ^{6/} Thus, even if the northern boundary of Lot 1 is considered as a meander line, the omitted lands are still public lands omitted from the original survey.

Appellants also raise objections to the method and extent of Crain's survey. They charge that Crain departed from the special instructions for the survey under Group 154 by including the north portion of Mondongo Island, quoting page 4 of the instructions where it states:

Because it has been developed that the original surveys in the area are erratic in correlation the chief of party will exercise care to avoid the inclusion of islands which have previously been returned as lying within the old meander line.

We do not agree with appellants. This instruction is consistent with the survey of substantial areas omitted from the original survey.

As previously indicated, the examination of pertinent charts and aerial photographs revealed a glaring omission from the public land surveys extended over Mondongo Island. The Bureau's determination in this case that a substantial part of Mondongo Island, lying north of the township line surveyed by Jenkins, remained public land subject to survey is consistent with the established law.

Also with respect to Crain's survey procedures, appellants charge that the 1972 plat of survey was not executed in accordance with the Survey Manual. They question the fact that the survey is titled a "Conditional" rather than either a "Dependent" or "Independent" Resurvey.

We find no merit in this argument. Both Crain's field notes and the special instructions refer to the specifications as set forth in the Survey Manual. The general outline for procedures of the Manual which govern surveys of omitted areas are found in Chapter VII, Special Surveys and Instructions, Sec. 511 et seq., Erroneously Omitted Areas.

^{6/} Since the survey for Group 154, Florida was conducted, the Bureau of Land Management has prepared and published a new Manual of Survey Instructions, 1973, Technical Bulletin 6. All citations used herein refer to the 1947 manual which was in use at the time of the Crain Survey.

The survey here in question was first undertaken as an administrative responsibility for identifying public lands withdrawn for wildlife refuges. The special instructions for Group 154 limited the examination and survey to unsurveyed areas. ^{7/} The objective was therefore not to resurvey previously surveyed lands, but to conduct a survey in the nature of an original survey to identify the omitted public lands as part of these refuges. Previous surveys were only considered as references for points of control and lottings and areas of surveyed lands were accepted as shown on earlier surveys.

The term "conditional" survey is a term merely descriptive of this type of original survey indicating that the survey of any specific island area is undertaken only if it is first determined to be omitted unsurveyed public land. Accordingly, these particular criticisms are of no significance.

Appellants, in attacking the technical sufficiency of the Crain survey, make much of their allegations that they say establish the fictitious nature of the original meander corners of sec. 4 and sec. 33 as recorded for both sides of Mondongo Island. They have also gone to great lengths to point out several mathematical inconsistencies in the location of Mondongo Island on the 1972 plat of survey as compared to recorded points of triangulation and courses and distances from the Jenkins field notes. However, without need for specific examination of each alleged error in detail, the net result of the allegations is an attempt to establish appellants' theory that the Crain survey does not reflect the true position of the township line between T. 43 S., R. 21 E., and T. 44 S., R. 21 E.

It is appellants' theory that if the township line was properly reproduced from Jenkins' field notes as a township line drawn due west from the original record meander corners of secs. 2 and 35 on the mainland, the proper location of that line would substantiate their claim that all of Mondongo Island lies within T. 44 S., R. 21 E. They contend that the line would have cut across Patricio but would not have touched Mondongo. All of the

^{7/} Page 1 of the Special Instruction provides:

"The field work in this authorization is limited to the examination and conditional survey of unsurveyed islands in T. 43 S., R. 21 E.; Tps. 44 S., Rs. 21, 22, and 23 E.; Tps. 45 S., Rs. 22 and 23 E.; and Tps. 46 S., Rs. 22 and 23 E.; Tallahassee Meridian, together with the development of adjacent official surveys for control and such supplemental surveys as may be needed to secure data regarding the natural topographic features or improvements on the islands for proper representation of the plat of survey."

island would be shown south of that line and lying in its entirety in sec. 4 of the Mondongo Township. Thus, no part of Mondongo would then be unsurveyed.

A crucial defect in this approach is that it totally ignores the present-day reality of the known, on-the-ground situation. The overlay maps, which they have used in both the protest and appeal, indicate they do not acknowledge any difference in the size and shape of Mondongo from that originally shown by Jenkins. In the face of modern aerial photography and other reliable sources which show otherwise, they persist in urging the acceptance of his survey of the island which bears no reasonable conformity with the true meander line of the whole island.

[5] Appellants' theory also avoids the basic premise established by the Bureau, i.e., Mondongo is an island that by its very nature is a fixed monument in a fixed position on the surface of the earth. The Bureau has demonstrated that it has located Mondongo on the 1972 plat in the same position as shown on the U.S. Coast and Geodetic Charts, U.S. Geological Survey Topographic maps and pertinent aerial photographs. The original corner positions of the Jenkins' survey were projected on the aerial photos from the best available evidence of those corner positions. In addition, the memorandum on the face of the 1972 plat of survey emphasizes:

The aerial photography was supplemented by a field reconnaissance which was carried out for the development of control from existing evidence of the original survey and for the identification of improvements and topographic features as they appear on the photographs.

Appellants' assignment of error does little to refute the location of the island as it now has been verified by modern techniques. Instead, they concern themselves primarily with the faults of Jenkins' survey methods and alleged errors of his records. These are not persuasive that the 1972 plat does not reflect the true location and size of the island on the earth's surface.

Appellants rely heavily in their argument on a showing that Crain has not made an accurate or reliable retracement of the original survey from the field notes. As previously noted, Crain's survey was not intended as a dependent resurvey. In the execution of this survey of these omitted lands, the surveyor was not limited to merely a retracement of the boundaries of earlier surveys. Rather, it was the objective to establish the true location of the omitted lands based on all the best evidence available at the time of survey.

Because of the inability to locate the original meander corners on Mondongo, for whatever reason, we find the Bureau's method of determining the relation of the Jenkins' survey to the island reasonable under the circumstances. Where meander corners are lost, as in this case, the Bureau found the best method of reestablishing the township line across Mondongo Island was to accept the southern tip of Mondongo as a fixed point and to reestablish the lost meander corners by record courses and distances of the original meander line. ^{8/} This method is consistent with Sec. 377 of the Bureau's Survey Manual governing restoration of lost meander corners, which provides for the use of the shore line as an identified natural feature from which to reconstruct the boundary. This section specifically states:

In extreme cases the restoration of a meander corner by adjustment of the record meander corners to the bank or shore line may actually be indispensable to the reconstruction of the section boundaries. Granting extensive obliteration in a situation where there has been obvious stability to the bank or shore line, or absence of appreciable changes by erosion or accretion, and where the record meander courses and distances may be adjusted or conformed to the salents and angles of the physical bank or shore line, that method should be given a trial, and if found satisfactory that restoration may be regarded as the most suitable position for the meander corner. This may give a location in both latitude and departure, or possibly may control the position only in latitude, or only in departure.

Again record evidence, maps, photos, etc., support the conclusion of stability of the shore line. The Bureau's method of working from the southern tip of Mondongo was a proper procedure under the circumstances.

The crux of the case to which appellants never address themselves is that no matter where the township line has been established across Mondongo, the Bureau has first made ample provision to allow for an area of previously surveyed land, i.e., that area south of the township line that coincides with the patented Lot 1 on the Jenkins' survey. By using the southern tip

^{8/} Crain's field notes state:

"The south boundary of Tract No. 37, Tp. 43 S., R. 21 E., is established on a projection of the township line which was determined by topographic features of the recorded original meanders within this township, and those of Mondongo Island within Tp. 44 S., R. 21 E., surveyed by Jenkins, in 1875."

of Mondongo as the fixed point from which the township line was drawn, using record courses and distances, the Bureau has not interfered with private rights based on the original survey. The acreage of that portion of the island projecting into T. 43 S., R. 21 E., was determined by planimetric methods on a controlled base as projected on the topographic maps and aerial photographs only as applied to the area north of the township line.

The survey has made adequate allowance for appellants' patented lands. Their occupancy of the patented lands according to the Jenkins' Survey is not adversely affected. Their claim to the area of the whole island which is derived from the original patentee is another matter. As we have said earlier, the patentee never received more than 17.52 acres in his patent. It has long been established by the Department that a patent in which land is described in accordance with the plat of survey conveys all the land within the limits so specified. Nina R. B. Levinson, 78 I.D. 30, 32 (1971); Wildman v. Montgomery, 20 L.D. 230 (1895). The patent confirmed title only to the surveyed land. In this instance the same patent did not serve as a conveyance for any additional unsurveyed land on the island which may have been occupied outside the limits of the grant.

In conclusion, we find that appellants have not demonstrated any error in the decision appealed from and that their protest was properly dismissed. Accordingly, when this case is returned to the Eastern States Office, the approved plat of the survey may be officially filed in that office.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Douglas E. Henriques
Administrative Judge

