

ROBERT J. WICKENDEN

IBLA 83-370

Decided June 15, 1983

Appeal from decision of California State Office, Bureau of Land Management, dismissing a protest against the positioning of a quarter section corner during a dependent resurvey. California Group 826.

Affirmed.

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

In determining whether original survey corners were properly reestablished by an official dependent resurvey of public lands, the fact that the measured distance and bearing between a quarter corner and the adjacent section corners as determined by the resurvey differs somewhat from the measurement and bearing given in the original survey is not sufficient alone to disprove the reestablishment of the quarter corner, as discrepancies between measurements and bearings in old and more recent surveys are not uncommon.

2. Surveys of Public Lands: Dependent Resurveys

Surveys of the United States, after acceptance, are presumed to be correct and will not be disturbed except upon clear proof that they are fraudulent or grossly erroneous. An appellant challenging a Government resurvey has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

3. Surveys of Public Lands: Dependent Resurveys

Where reestablishment of a quarter section corner on a second survey is supported by substantial evidence, a protest not accompanied by acceptable conflicting evidence but principally by hearsay, does not warrant a further survey or investigation of the corner.

4. Surveys of Public Lands: Dependent Resurveys

Where a protestant does not meet his burden of establishing by clear and convincing evidence that a dependent resurvey is not an accurate retracement and reestablishment of the lines of the original survey, the decision dismissing his protest against the survey will be affirmed.

APPEARANCES: Richard J. Wickenden, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Robert J. Wickenden has appealed the California State Office, Bureau of Land Management (BLM), decision of January 7, 1983, which dismissed his protest against the dependent resurvey of sec. 1, T. 46 N., R. 15 E., Mount Diablo meridian, particularly the location of the quarter section corner between secs. 1 and 2 at a point where a rock is found with the inscription "1/4" chiseled into its east face.

In the BLM decision the chronology of historical events involving the subject quarter section corner was given, from the original survey by William Minto in 1879, where the field notes reflect that a post was set for the quarter corner, witnessed by two small willow trees, five and eight links distant. The NW 1/4 (lots 3 and 4, S 1/2 NW 1/4) sec. 1 was patented to David Baty August 7, 1906. From remnants of an old fence, it was presumed that Baty had fenced his property, using the inscribed rock as the south-west corner. In 1921, Roscoe B. Weaver, an examiner of the United States Forest Service, found the marked stone, accepted it as marking the original location of the quarter corner, and placed a Forest Service metal location poster on a white fir tree, 46 inches in diameter, about 60 links distant N. 20 degrees E. In 1934, Don M. Dawson, an employee of the Forest Service, placed another location poster on a white fir north-west of the quarter corner. In 1979, Robert J. Wickenden, under contract from the Bureau of Indian Affairs (BIA), reestablished the quarter corner by proportionate measurement based on the 1879 survey record. Wickenden asserted that he did not find the marked stone. In 1982, Patrick Carroll, a BLM cadastral surveyor, under Special Instructions, resurveyed the west boundary of sec. 1. He recovered the marked stone and based on its relation to the downed white fir tree bearing

the metal poster placed by Weaver in 1921, accepted the stone as marking the site of the original quarter corner established by Minto in 1879. Remnants of old fences running N. 5 degrees W. and S. 79 degrees E. led Carroll to assume the marked stone had been used as the corner of the Baty property. A core sample from one of the trees used to hold the fence wires near the marked stone showed the fence was approximately 60 years old. The decision stated that monumented evidence in disagreement with the original survey field notes is not unusual. Accordingly, the marked stone was considered to be at the situs of the original quarter corner established by Minto in 1879, and was accepted, with new bearing trees being marked. The monument set by Wickenden during his 1979 survey, 1.64 chains S. 1 degree 05' W., was not utilized by Carroll in his dependent resurvey.

Appellant states that the decision is incorrect in stating that the only patented land adjacent to the quarter corner was the patented land of David Baty, because the NW 1/4 SW 1/4 sec. 1, was subject to a cash entry for which patent No. 44346 was issued February 1, 1909, to James Fee. This tract was sold to the United States for an addition to the Fort Bidwell Indian Reservation on October 6, 1936. Appellant asserts that there is no angle of any old fence at the marked stone, as the projection of the east-west fence between Baty and Fee properties does not intersect the west section line at the quarter corner stone monument. He questions the statement by BLM that Baty had accepted the stone monument as his south-west corner. He asserts that he had contacted the heirs of both David Baty and James Fee, and none of them had any knowledge of the quarter corner stone monument. Appellant questions whether Roscoe Weaver, the Forest Service examiner, really accepted the marked stone as being at the original location of the quarter corner, as established in 1879, because his notes relative to the stone do not indicate whether he thought the corner was a genuine GLO (General Land Office) corner. Appellant also questions the reference tree marked by Weaver, a 46-inch white fir about 60 links, S. 20 degrees W., whereas the BLM surveyor noted a down white fir tree, 36 inches in diameter, 75.5 links N. 19-1/2 degrees E. on which the marker placed by Weaver was still in place. Appellant states that the photos of the stone taken by the BLM surveyor appear to have fresh chisel marks on the horizontal leg of the "4." He argues that there is no conclusive evidence that anyone had accepted the stone marked "1/4" as the quarter corner between secs. 1 and 2.

[1] In determining whether the original surveyed quarter corner was properly reestablished by an official dependent resurvey of public lands, the fact that the measured distance and bearing between the quarter corner and the adjacent section corners as determined by the resurvey differs somewhat from the measurement and bearing given by the original survey is not sufficient alone to disprove the reestablishment of the corner, as discrepancies between measurements and bearings in old and more recent surveys are not uncommon. Alfred Steinhauer, 1 IBLA 167 (1970).

[2] Surveys of the United States, after acceptance, are presumed to be correct and will not be disturbed except upon clear proof that they are fraudulent or grossly erroneous. An appellant challenging a Government resurvey has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of

the original survey. Paul N. Scherbel, 58 IBLA 52 (1981); Henry O. Woodruff, 24 IBLA 190 (1976).

[3] Where the reestablishment of a surveyed corner on a second survey is supported by substantial evidence, a protest not accompanied by acceptable conflicting evidence but principally by hearsay, does not warrant a further survey or investigation of the corner. Cf. O. R. Williams, 60 I.D. 301 (1949) (protest of dependent resurvey accompanied by affidavits of conflicting evidence does not necessarily warrant a further survey or investigation of the corner).

[4] In challenging the Government resurvey, the appellant has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey. Bethel C. Vernon, 37 IBLA 226 (1978). Where a protestant does not meet his burden of establishing by clear and convincing evidence that a dependent resurvey is not an accurate retracement and reestablishment of the lines of the original survey, the decision dismissing his protest against the survey will be affirmed. Bethel C. Vernon, 47 IBLA 315 (1980).

We have reviewed the material submitted by appellant with his appeal, and while it establishes that there is a difference of opinion between qualified surveyors, it falls short of the clear and convincing evidence that would be necessary to conclude that the subject resurvey is not accurate. BLM correctly dismissed his protest.

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.

Douglas E. Henriques
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Edward W. Stuebing
Administrative Judge

