

ALICE L. ALLESON  
FRANCES ALLESON

IBLA 83-30

Decided November 14, 1983

Appeals from decision by California State Office, Bureau of Land Management dismissing appellants' protest of the results of dependent resurvey. Group No. 713 (C-942)

Dismissed.

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

A dependent survey is designed to accomplish a restoration of what purports to be the original conditions according to the record, based, first, upon identified existing corners of original survey and other recognized and 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.

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

Prior to passing title from the United States, the Government has the right to establish or reestablish boundaries on its own land. However, once patent has been issued, the rights of the patentee are fixed and the Government has no power to interfere with such rights by a corrective survey. Therefore, the results of a dependent resurvey conducted by the Cadastral Survey will not alter or effect any boundaries between private tracts of lands. In disputes between private owners, the location of corners reestablished by a dependent survey conducted subsequent to patent does not make the new survey conclusive against the prior purchaser so as to prevent his assertion of the title he has acquired as against the one claiming under the new survey.

APPEARANCES: Alice L. Alleson and Frances Alleson, pro sese.

## OPINION BY ADMINISTRATIVE JUDGE MULLEN

These are appeals from decisions of the California State Office, Bureau of Land Management (BLM), dismissing the protests of Alice L. Alleson and Frances Alleson (Allesons) regarding the results of a dependent resurvey of sec. 16, T. 33 N., R. 9 W., Mount Diablo meridian, and specifically the place of reestablishment of the corner of secs. 9, 10, 15, and 16 in said township and range. 1/

The background of this case involves unusual circumstances regarding original surveys in the township. A portion of the easterly part of the township was surveyed by William Magee (Magee), a U.S. Deputy Surveyor, pursuant to an 1872 contract. The official plat of the Magee survey was approved on June 29, 1872. In 1873, W. S. Lowden (Lowden), also a U.S. Deputy Surveyor, conducted a survey from the N 1/4 corner, sec. 14, westerly to the west boundary of the township and surveyed land relative to the town of Weaverville. The plat of the Lowden survey was approved on September 9, 1873. This Lowden survey included the line between secs. 9 and 16. The remaining sectional boundaries were surveyed by N. L. Berdan (Berdan), U.S. Deputy Surveyor, and the plat of the Berdan survey was approved on May 5, 1882. During his survey Berdan retraced portions of the original Magee and Lowden surveys. Berdan noted that he could not find the Lowden corners on the connecting line surveyed by Lowden. Not finding these corners, Berdan established new corners, including the N 1/4 corner and NE corner, sec. 16.

Between September 26, 1978, and December 3, 1979, a dependent resurvey and subdivision of sec. 16 was executed by John H. Nelson (Nelson), Supervisory Cadastral Surveyor. This survey was conducted under special instructions dated April 5, 1978, as supplemented. In the course of the resurvey Nelson determined that the corner common to secs. 9, 10, 15, and 16 had been lost. Following this determination he reestablished this corner using the proportionate measurement method for reestablishing the location of a lost corner. Appellants filed a protest claiming that the corner had not been lost and that the location of the corner as reestablished by Nelson was incorrect, thereby affecting the location of the property lines of property owned by them.

At the time of the Nelson survey the only portion of secs. 9, 10, 15, or 16 held by the United States was the E 1/2 of the NW 1/4 sec. 9 and the NW 1/4 sec. 10. The NW 1/4 of sec. 10 was held in trust pursuant to an Indian Trust Patent issued in 1893. None of the boundaries of the land held by

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1/ The Alleson's appeals are consolidated herein under one docket number (IBLA 83-30) because of the similarity of facts. IBLA 83-30 is but one of three cases now before the Board regarding the dependent resurvey of T. 33 N., R. 9 W., Mount Diablo meridian (IBLA 82-1212, IBLA 83-30, and IBLA 83-146). This Board's ability to make a determination was hampered in these cases by the fact that the files, as forwarded to us, were disorganized. Each contained information pertinent to the other, and we fear that none may have been complete.

either appellant in this action is bounded on any side by lands owned or controlled by the United States.  
2/

[1] A dependent survey is designed to accomplish a restoration of what purports to be the original conditions according to the record, based, first, upon identified existing corners of original survey and other recognized and acceptable points of control, and second, upon the restoration of missing corners by proportionate measurement in harmony with the record of original survey. Titles, areas, and descriptions should remain unchanged in a typical dependent resurvey. Bethel C. Vernon, 37 IBLA 226 (1978); Alfred Steinhauer, 1 IBLA 167 (1970).

[2] The right and power to conduct resurveys or retracements of surveys is vested in the Secretary of the Interior. 43 U.S.C. § 772 (1976). The provisions of 43 U.S.C. § 772 (1976) also clearly provide that no such resurvey or retracement shall be so executed as to impair the bona fide rights or claims of any claimant, entryman, or owner of lands affected by such resurvey or retracement. Prior to passing title from the United States, the Government has the right to establish or reestablish boundaries on its own land. However, once patent has been issued, the rights of the patentee are fixed and the Government has no power to interfere with such rights by a corrective survey. United States v. Reimann, 504 F.2d 135 (10th Cir. 1954). Therefore, the results of a dependent resurvey conducted by the Cadastral Survey will not alter or affect any boundaries between private tracts of land. In disputes between private owners, the location of corners reestablished by a dependent survey does not make the new survey conclusive against a prior purchaser so as to prevent his assertion of the title he has acquired as against one claiming under the new survey. Greene v. United States, 274 F. 145, 151 (5th Cir. 1921), aff'd sub nom. United States v. Lane, 260 U.S. 662 (1923).

In the case before us the boundaries of the land owned by appellants is not affected by the location of the corner established by proportionate measurement, as each of appellants' boundaries is adjoined by other private owners. If, as a result of the reestablishment of the corner by the cadastral surveyor, an adjoining property owner is now making claim to lands owned by appellants, the proper forum for the resolution of this dispute is the State court for the jurisdiction in which the lands are located. As appellants have not demonstrated how the survey will adversely affect them, the appeals will be dismissed.

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2/ All of sec. 9 except the E 1/2 of the NW 1/4 was conveyed by two railroad patents issued in 1894 and 1926. The lands in sec. 10 were "conveyed" by four Indian Trust Patents issued in 1893. Three of these trust patents were subsequently replaced with Indian Fee Patents. The land in the E 1/2 and SW 1/4 of sec. 10 was conveyed by these three subsequent patents. The land in sec. 15 was conveyed by railroad patents issued in 1894 and 1926. The land in sec. 16 was granted to the State for support of its common schools. This school grant was effective upon survey. This survey was completed by Berdan. The record indicates that the land owned by appellants is located in sec. 16.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeals in IBLA 83-30 are dismissed.

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R. W. Mullen  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Bruce R. Harris  
Administrative Judge

