

SARAH AND MAGIE CALVIN

IBLA 85-167

Decided October 28, 1986

Appeal from a decision of the California State Office, Bureau of Land Management, dismissing a protest against a portion of a dependent resurvey of patented mining claim boundaries (Group 601 (CA-942)).

Dismissed.

1. 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. Where, pursuant to a cadastral resurvey, all lands have been patented to private owners, disputes concerning boundaries between private owners are matters for the jurisdiction of the state court where the lands are located.

APPEARANCES: Patrick M. Keene, Esq., Pioneer, California, for appellants; Burton J. Stanley, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Sarah G. and Magie B. Calvin appeal from a decision of the California State Director, Bureau of Land Management (BLM), dated October 1, 1984, dismissing their protest against a portion of the dependent resurvey covering lots 50 and 51, sec. 2, T. 6 N., R. 13 E., Mt. Diablo Meridian, which had been approved on November 4, 1975.

The specific area at issue consisted of an irregular swath of public land of a basically triangular shape bounded on all sides by mining claims which had been patented in 1890's. ^{1/} In 1942, one Olaf M. Olson located

^{1/} The patented claims were the Water Lily (M.S. 2881) on the west, the Blazing Star (M.S. 2972) on the south and the Wide West (M.S. 2289) on the east. Additionally, the north line of the patented Bumpersville Lode claim (M.S. 6394), which was patented in 1954, was immediately adjacent to the Blazing Star and intersected the south end line of the Wide West to totally isolate the subject parcel from other public land. It should also be noted

the Triangle mining claim on this parcel. Title to this claim was acquired by the appellants in 1948, who filed an amended notice of location for the claim in that year. The claim was again located by appellants in 1959.

As located by Olson, the Triangle mining claim was expressly bounded by the Water Lily mine on the west, the Blazing Star mine on the south, and the Wide West mine on the east. It was similarly described in the subsequent filings by appellants. Thus, the boundaries of the adjacent claims established and controlled the location of the Triangle claim.

Appellants constructed a house on their claim. On October 23, 1967, appellants filed an application to purchase their claim under the Mining Claims Occupancy Act (MCOA), Act of October 23, 1962, 76 Stat. 1127, 30 U.S.C. § 701 (1982). That Act authorized the Secretary of the Interior to permit the purchase of up to 5 acres of land within a mining claim if such land constituted a principal place of residence of the claimant, where either the Secretary determined the claim was invalid or the claimant filed a relinquishment of the claim after notice from the Secretary that the claim was believed to be invalid. Appellants were deemed to be qualified under the Act and the land designated for conveyance was described as lots 21 and 34, as well as certain other unpatented lands within M.S. 3057 and M.S. 2972 for a total acreage in excess of 3.32 acres. 2/

Appellants completed payment of the purchase price in November 1970. Attempts to prepare an adequate plat in the State Office proved fruitless, and, on January 11, 1972, appellants were informed that a dependent resurvey would be necessary.

The Special Instructions for Group No. 601, California, issued on December 7, 1971, provided, inter alia, for the resurvey of M.S. 2972, for the purposes of determining the boundaries of the remaining public land in the section. The survey, however, also reestablished the east and south boundaries of M.S. 2881 and the west and south boundary of M.S. 2289. The two lots (20 and 34) were redesignated as lots 50 and 51, and the survey returns indicated that they contained 3.59 acres. However, in surveying the east boundary of the Water Lily mine (M.S. 2881), the surveyors ascertained that the line ran through the middle of appellants' home. Appellants' attorney contacted BLM in 1975 with reference to this problem, contending that BLM had established the west boundary of lots 50 and 51 too far east. BLM's response, dated August 1, 1975, is set forth in relevant part:

Mr. Calvin's interest centers on a small strip of natural resource land sandwiched between surveyed mining claims which

fn.1 (continued)

that a small parcel of land just below the intersection point of the Water Lily and Wide West claims is within an Indian allotment and was not included in the mining location or in this appeal.

2/ This latter acreage may have been the source of some confusion as it was subsequently determined that the reference land in cancelled M.S. 3057 had been included in M.S. 6394, patented in 1954. Moreover, the subsequent resurvey also showed that there was no vacant parcel within M.S. 2972.

have long ago been patented. Mr. Calvin qualifies to acquire a portion of this remaining natural resource land. His Triangle Mining Claim is not an officially surveyed claim, does not control private or public land boundaries and has not been surveyed or resurveyed by the Bureau of Land Management.

What has been identified and monumented is the narrow strip of natural resource land upon which most of Mr. Calvin's improvements are situated. This may very well approximate what he knew to be the Triangle Mining Claim, but is bounded and controlled by private property which was originally surveyed in the 1880's as valid mining claims, such as M.S. 2881 (Water Lily Quartz Mine) or M.S. 2289 (Wide West Quartz Mine).

* * * * *

The line between the Water Lily and the natural resource land Mr. Calvin will acquire was dependently resurveyed between the original corners established in 1889. It is unfortunate that this finds a portion of Mr. Calvin's improvements on land that was patented long ago. Our surveyors have merely identified the facts on the ground and perpetuated old corners with iron posts with brass caps that will prove valuable to Mr. Calvin in the future when identifying the boundaries of his land.

The plat of survey was officially accepted on November 4, 1975.

In 1975, the Calvins were sued by the owners of adjoining patented land on the west in a quiet title and ejectment action. On October 9, 1975, the Superior Court, Calaveras County, California, entered a decision against the Calvins, but which also granted them the opportunity to purchase 5,000 sq. ft. around their improvements from the owners of the adjoining property. It is unclear whether appellants ever purchased this land.

On December 23, 1975, the Calvins received a patent under the Mining Claims Occupancy Act for lots 50 and 51 in sec. 2, T. 6 N., R. 13 E., Mount Diablo Meridian, totalling 3.59 acres. However, they continued sporadically to assert that the east line of the Water Lily mine had been located too far east.

In January 1983, the Chief, Branch of Cadastral Survey, spent time on the property in question with a surveyor hired by appellants to assess evidence the latter contended was overlooked during BLM's resurvey. According to the State Director, the evidence presented by appellant's surveyor was vague and unsupported. ^{3/} BLM officials again met with appellants' surveyor "in the field" on February 16, 1983. The State Director describes the discussion of survey evidence as follows:

On February 16, Clifford Robinson and Beverly Capell of my staff met in the field on the Water Lily with Mr. R. F. Walters,

^{3/} State Director's letter dated June 15, 1984, to Sarah Calvin.

a land surveyor from Sonora, to examine evidence Mr. Walters contends related to the original survey of the Water Lily. What was shown to them could not represent the Water Lily lode. The small mound of rock that supposedly represented the southeast corner of the claim is in the bottom of Soap Root Gluch, rather than on the north bank as indicated in the original field notes. The accepted position in the BLM survey, which was a pipe in a mound of stone when located by our surveyors during the resurvey, is on the north bank.

The southeast lode corner, not reestablished in the BLM resurvey, would be situated just south of a granite outcropping, the only one in the immediate area. Similarly, the original record states this position is near a granite bluff.

On the northerly end of the Water Lily the Bureau's surveyor accepted an iron post in an old embedded mound of stone for the northeast corner of the claim. This accepted position is less than one foot different in measurement from the southeast corner when compared to the original record. Similarly, both the northeast and southeast corners, when compared to existing physical evidence marking the Wide West Quartz Mine, were very nearly in agreement to record ties made during the original survey of the Water Lily lode.

The evidence located by our surveyor during his resurvey, its relationship to topography as stated in the original record, and the interrelationship between the evidence recovered as compared to the official record was not only acceptable, but overwhelmingly so. ^{4/} [Emphasis in original.]

In his dismissal of appellants' protest, the State Director noted that BLM had carefully reviewed the survey record and pertinent law as found in the Manual of Surveying Instructions, as well as all correspondence and information filed by appellants. The State Director could find no evidence that the resurvey was improperly executed or that appellants' bona fide rights had been impaired.

In the statement of reasons, appellants allege that BLM's resurvey is fraught with numerous inconsistencies involving calls to natural monuments, marker trees, and stone mounds. Appellants assert that BLM has failed to perform the field work necessary to check its resurvey.

BLM has moved to dismiss the appeal contending that the issue is a boundary dispute between owners of private property over which BLM no longer has jurisdiction.

[1] The right and power to conduct resurveys or retracements of surveys is vested in the Secretary of the Interior. 43 U.S.C. § 772 (1982).

^{4/} Letter dated July 20, 1983, to appellants' counsel.

The provisions of 43 U.S.C. § 772 (1982) 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. 1974). Where, as a result of a dependent resurvey, the owner of adjoining property makes claim to lands owned by an appellant, the proper forum for resolution of such a dispute is the local state courts for the jurisdiction in which the lands are located. Alice L. Alleson, 77 IBLA 106, 108 (1983).

In the instant case, appellants accepted title under the MCOA to land described as lots 50 and 51. These lots consist of the land described in the 1975 survey. Thus, appellants' title is necessarily limited to these two lots as surveyed when appellants obtained title. In other words, their title is coextensive with the boundaries of lots 50 and 51 as shown in the 1975 plat of survey. If appellants disagreed with the survey results they should have either directly protested the survey or, alternatively, protested the description of land in their patent. Appellants did neither. When appellants accepted title to lots 50 and 51, there was no longer any Federal land in sec. 2. As a result, the Federal Government no longer had authority to resurvey such land. See United States v. Hudspeth, 384 F.2d 683 (9th Cir. 1967).

In any event, the allegations regarding error in BLM's resurvey are not convincing. These allegations have been extensively reviewed and repeatedly rejected by officials of BLM for reasons which we find cogent. If appellants had timely filed a protest to challenge the resurvey prior to its acceptance they would have had the burden of establishing by clear and convincing evidence that the resurvey was not an accurate retracement and reestablishment of the lines of the original survey. Where, however, an appellant has not directly protested acceptance of the survey but later challenges its correctness, the individual must present clear and convincing evidence that the dependent resurvey is fraudulent or grossly erroneous. See Crow Indian Agency, 78 IBLA 7, 11 n.5 (1983) and cases cited. Appellants have not met either of these burdens.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

James L. Burski
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

