

WILOGENE SIMPSON ET AL.

IBLA 87-110

Decided September 13, 1989

Appeal from a decision of the California State Office, Bureau of Land Management, dismissing a protest of dependent resurvey. Group No. 764.

Appeal dismissed in part, decision affirmed in part.

1. Administrative Authority: Generally--Appeals: Jurisdiction--Board of Land Appeals--Surveys of Public Lands: Generally

The Board has no jurisdiction to adjudicate the propriety of a survey conducted by or on behalf of the Forest Service or of decisions by the Forest Service accepting such survey. However, such surveys do not constitute official surveys of the public lands of the United States, as the authority to conduct such surveys and resurveys is vested solely in the Secretary of the Interior, who in turn has delegated this authority to BLM. Thus, a Forest Service survey does not effect any change in the location of a corner, but is merely an administrative survey which the Forest Service uses in managing the National Forests.

2. Administrative Procedure: Standing--Rules of Practice: Appeals: Dismissal--Rules of Practice: Appeals: Standing to Appeal--Surveys of Public Lands: Generally

An appeal from a BLM decision dismissing a protest of a BLM dependent resurvey which did not affect any corner or line separating Federal from the protestants' private land will be dismissed where the protestants were not adversely affected by the decision.

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

An appellant will not be regarded as having established by a preponderance of the evidence that a section corner was fraudulently established where, despite discrepancies in the internal features of other sections in the

township between the original survey plat and the modern record, the original plat and modern record generally agree in the area of the disputed corner.

APPEARANCES: Wilogene Simpson, pro se, and for Forrest R., Dana F., and Charles R. Simpson, Patti A. and Darrell J. Jackson, and Robert C. and Virginia J. Alexander.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Wilogene Simpson and certain members of her family have appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated September 26, 1986, dismissing their protest of a 1981 dependent resurvey conducted by BLM and a 1984 survey conducted by the Forest Service (FS), U.S. Department of Agriculture, of certain land situated in T. 44 N., R. 9 W., Mount Diablo Meridian, Siskiyou County, California. 1/

This case concerns the location of the corner common to secs. 9, 10, 15, and 16, T. 44 N., R. 9 W., Mount Diablo Meridian, Siskiyou County, California (hereinafter referred to as the "SE corner sec. 9"). The importance of that corner is that it partially controls the boundary lines between the Klamath National Forest and private land owned by Simpson and members of her family. 2/ Appellants also own land in sec. 16 which, as discussed below, may ultimately be affected by the placement of the SE corner sec. 9.

The SE corner sec. 9 was originally surveyed by Henry E. Buckley, a U.S. Deputy Surveyor, in November 1883 in connection with his survey of the subdivisional lines of T. 44 N., R. 9 W., Mount Diablo Meridian, Siskiyou County, California. Field notes of that survey describe run-ning the line from the corner common to secs. 15, 16, 21, and 22, T. 44 N., R. 9 W., Mount Diablo Meridian, Siskiyou County, California, through mountainous and heavily timbered terrain north 80 chains and setting a scribed and notched post, 4 feet long and 4 inches square, 24 inches in the ground with four bearing trees. That monument was then tied to the corner common to secs. 10, 11, 14, and 15, T. 44 N., R. 9 W., Mount Diablo Meridian, Siskiyou County, California, by a record bearing and distance of N. 89~44' W., 79.83 chains. The survey (hereinafter "the original 1883 (Buckley) survey") was approved on February 26, 1885, by the U.S. Surveyor General for California.

Thereafter, in 1911, A. H. Hodgson surveyed sec. 10 under contract with FS, setting a new monument for the SE corner sec. 9. That monument was set

1/ The appellants are Wilogene and Forrest R. Simpson, Dana F. Simpson, Charles R. Simpson, Patti A. and Darrell J. Jackson, and Virginia J. and Robert C. Alexander, all of whom own one or more parcels of land situated in the S\ sec. 9 and the NE^ NW^ sec. 16, T. 44 N., R. 9 W., Mount Diablo Meridian, Siskiyou County, California.

2/ Appellants' lands in the S\ sec. 9 are bordered by the Klamath National Forest on the west, north, and east sides.

by running west 80 chains from the corner common to secs. 10, 11, 14, and 15, T. 44 N., R. 9 W., Mount Diablo Meridian, Siskiyou County, California. Hereinafter, this survey will be referred to as "the 1911 FS (Hodgson) survey."

Between July and October 1981, Claude W. Hamon, a BLM supervisory cadastral surveyor, conducted a dependent resurvey of certain lines in T. 44 N., R. 9 W., Mount Diablo Meridian, Siskiyou County, California, viz., those lines marking a portion of the north boundary, Mineral Survey No. 3450, and the exterior and subdivision of sec. 3. Hamon did not resurvey the line between secs. 9 and 10, nor did he re-establish the SE corner sec. 9. However, the field notes for the resurvey (hereinafter "the 1981 BLM (Hamon) dependent resurvey") indicate that, in running the line between secs. 3 and 10, he found no evidence of the original corner common to secs. 3, 4, 9, and 10, T. 44 N., R. 9 W., Mount Diablo Meridian, Siskiyou County, California, and that, as a result, he set a new monument for that corner at a proportionate distance. This monument was then tied to two section corners by control lines. One corner to which the monument was tied was the corner common to secs. 15, 16, 21, and 22, T. 44 N., R. 9 W., Mount Diablo Meridian, Siskiyou County, California, with a record bearing and distance of S. 1~48' E., 159.25 chains; the other was the corner common to secs. 1 and 12, T. 44 N., R. 9 W., and secs. 6 and 7, T. 44 N., R. 10 W., Mount Diablo Meridian, Siskiyou County, California, with a record bearing and distance of S. 89~56' W., 239.68 chains. Hamon's field notes report, at page 11, that the "control lines were fully retraced and careful search was made for all evidence of intervening cor[ners]; none of which were found." One of those intervening corners is, of course, the SE corner sec. 9. ^{3/} BLM accepted the 1981 BLM (Hamon) dependent resurvey on March 14, 1983, and the survey plat and field notes were filed on March 28, 1983.

In July 1984, John C. Fryer, Jr., under contract with FS, surveyed certain exterior and subdivisional lines of secs. 4, 5, 7 through 10, 15 through 18, and 22, T. 44 N., R. 9 W., Mount Diablo Meridian, Siskiyou County, California, unofficially marking the boundary of the Klamath National Forest. In the course of that survey (hereinafter "the 1984 FS (Fryer) survey"), Fryer set a new monument for the SE corner sec. 9, using the method of proportionate measurement. As placed by the 1984 FS (Fryer) survey, the monument bears N. 4~3'15" W., 79.79 chains, from the corner common to secs. 15, 16, 21, and 22. In addition, the field notes for the 1984 FS (Fryer) survey report that, although the monument set by the 1911 FS (Hodgson) survey was found, it was disregarded because of the survey method employed. The Hodgson monument was described as situated S. 84~51'14" E., 303.63 feet from the new monument.

The 1984 FS (Fryer) survey was accepted by FS on January 30, 1985, and Simpson subsequently challenged FS' decision to accept it, utilizing the

^{3/} The control lines between the corner common to secs. 3, 4, 9, and 10 and the corner common to secs. 15, 16, 21, and 22 did not establish the position of the SE corner sec. 9.

administrative appeal procedures of FS. She principally challenged acceptance of the survey to the extent that it had rejected the monument set by the 1911 FS (Hodgson) survey for the SE corner sec. 9, contending that she had long relied on that monument as it controlled the subdivisional line between the NE[^] NW[^] sec. 16, owned by Simpson, and the NW[^] NE[^] sec. 16, owned by one Bissell. Simpson also noted that various structures and the Alexander family cemetery had been located in reliance on the Hodgson monument. The 1984 FS (Fryer) survey placed them within the NW[^] NE[^] sec. 16.

Acceptance of the 1984 FS (Fryer) survey was affirmed initially by the Regional Forester, by decision dated June 12, 1985, and ultimately by the Chief, FS, by decision dated December 18, 1985. The Chief held that the 1911 FS (Hodgson) survey was erroneous and the 1984 FS (Fryer) survey was a true retracement. The Secretary of Agriculture did not subsequently exercise his discretion to review the Chief's December 1985 decision and that decision evidently became final for that Department. It does not appear that Simpson appealed to a Federal district court.

During the period of time that Simpson pursued her appeal within FS, she corresponded with BLM regarding FS' placement of the SE corner sec. 9 as a result of the 1984 FS (Fryer) survey. Finally, on May 16, 1986, Simpson, on behalf of herself and members of her family, filed a formal protest with BLM, challenging at length both the 1981 BLM (Hamon) dependent resurvey and the 1984 FS (Fryer) survey, primarily on the basis that they impaired protestants' bona fide rights established in reliance on Hodgson's location of the SE corner sec. 9. Significantly, protestants also contended that the original 1883 (Buckley) survey fraudulently established the SE corner sec. 9.

In its September 1986 decision, BLM expressly dismissed the protest against the 1981 BLM (Hamon) dependent resurvey, concluding that protestants had not established that it was not an accurate retracement of the original survey conducted in conformance with the Survey Manual. With respect generally to the 1984 FS (Fryer) survey, BLM stated that it lacked any control or direction over surveys contracted or conducted by employees of other departments when it had not authorized that such surveys be made. BLM held that the evidence was not sufficient to conclude that the original 1883 (Buckley) survey fraudulently established the SE corner sec. 9. It also held that the corner as established by the 1911 FS (Hodgson) survey (which appellants favor) was unacceptable and could not have been adopted in the Bureau's 1981 dependent resurvey. Simpson, on behalf of herself and named members of her family, appealed from BLM's September 1986 decision.

[1] Before addressing the merits of the appeal, we note that it purports to be not only from the September 1986 BLM decision but also from the various FS decisions rendered regarding acceptance of the 1984 FS (Fryer) survey. This Board, however, has no jurisdiction to review decisions issued by an official of FS. Our jurisdiction is limited strictly to appeals from decisions rendered by certain officials of the Department of the Interior. See 43 CFR 4.1. Accordingly, we will not review the propriety of the FS decisions challenged by appellants.

Appellants' appeal also raises a number of other questions which are not justiciable by the Board. In particular, appellants challenge the 1984 FS (Fryer) survey, contending that it was not performed in accordance with the Manual of Instructions for the Survey of the Public Lands of the United States, 1973 (Survey Manual) and impairs their bona fide rights in the S\ sec. 9 and the NE^ NW^ sec. 16, as established by the 1911 Hodgson survey, in contravention of 43 U.S.C. § 772 (1982). That survey, however, was performed solely at the instigation of FS and was never reviewed or approved by BLM. As the Chief of BLM's Branch of Cadastral Survey, California, stated in a November 13, 1985, letter to Simpson: "The survey by John Fryer in 1984 * * * was not a survey done by the Bureau of Land Management, nor was it done under BLM authority. Fryer's survey will not be reviewed by the Bureau of Land Management nor will it be filed as an official BLM survey." Accordingly, the survey does not constitute action by an official of BLM, and a challenge to its propriety is not subject to adjudication by this Board. See 43 CFR 4.1, 4.410(a).

It is important to note, however, that while we do not have any jurisdiction to adjudicate the propriety of the 1984 FS (Fryer) survey or the 1911 FS (Hodgson) survey, such surveys do not constitute official surveys of the United States because they were not performed by or on behalf of BLM. Sweeten v. U.S. Department of Agriculture, 684 F.2d 679, 680 n.1 (10th Cir. 1982); Benton C. Cavin, 83 IBLA 107, 130 (1984). The authority to conduct surveys and resurveys is vested solely in the Secretary of the Interior, who in turn has delegated this authority to BLM. Arthur E. Meinhart, 6 IBLA 39, 41-42 (1972); Survey Manual at 191. FS surveys do not define the legal boundaries separating Federal from private land. Rather, they are merely administrative surveys which FS uses in managing the National Forests. See Mr. & Mrs. John Koopmans, 70 IBLA 75, 76 (1983). Thus, neither the 1984 FS (Fryer) nor the 1911 FS (Hodgson) survey effected any change in the location of the SE corner sec. 9 as established by the original 1883 (Buckley) survey. See id. at 88. Such location can be altered only by a dependent resurvey conducted by BLM.

[2] However, BLM has not conducted any dependent resurvey which has re-established the SE corner sec. 9. The 1981 BLM (Hamon) dependent resurvey plainly did not re-establish that corner. At best, the field crew passed over that point in running a control line from the corner common to secs. 15, 16, 21, and 22, but did not tie into that corner where it found no evidence of the original monument. 4/ In the absence of any evidence

4/ In their protest, at page 5, appellants asserted that the "BLM [field] crew accepted Hodgson's 1911 corner and placed metal Department of the Interior signs on each of the bearing trees marked by Hodgson, further protecting them." It is clear that the BLM field crew, during the course of the 1981 dependent resurvey, attached metal signs to the bearing trees used by Hodgson in connection with his monumentation of the SE corner sec. 9 in 1911, which signs identified those trees as bearing trees and stated that it was unlawful to cut down or deface bearing trees pertaining to a public land survey. Nevertheless, there is no evidence in the record that BLM at any

that the 1981 BLM (Hamon) dependent resurvey re-established the SE corner sec. 9 or otherwise affected any corner or line which has a bearing on the boundary between the Klamath National Forest and appellants' private land, we cannot conclude that appellants have been adversely affected by the September 1986 BLM decision dismissing their protest of that dependent resurvey. Accordingly, we dismiss their appeal to the extent that it challenges the 1981 BLM (Hamon) dependent resurvey. 43 CFR 4.410(a); Oregon Natural Resources Council, 78 IBLA 124, 125-26 (1983); In re Pacific Coast Molybdenum Co., 68 IBLA 325, 331 (1982).

Appellants, however, have also challenged the original 1883 (Buckley) survey on the basis that it was fraudulent to the extent that it never established the SE corner sec. 9. The question of whether that survey fraudulently established that corner is justiciable on appellate review by the Board. See Peter Paul Groth, 99 IBLA 104, 109 (1987). 5/ Moreover, to the extent that appellants' ownership of land situated in the S\ sec. 9 is defined by the original 1883 (Buckley) survey's establishment of the SE corner sec. 9, where that was the official survey of the United States in effect at the time of the original 1896 patent of the S\ sec. 9 to the Central Pacific Railroad Company, appellants' predecessor in interest, they clearly have standing to pursue this matter. 6/

fn. 4 (continued)

time accepted the Hodgson corner as the correct SE corner sec. 9. As adequately explained in the September 1986 BLM decision, at page 8: "The BLM field crew did make a tie to Hodgson's corner, but only for the purpose of establishing the relationship between that corner and other identified original corners. However, since that relationship only further discredited the corner, the BLM field crew had no alternative but to reject that position." We note that there is no mention of the Hodgson corner in the field notes for the 1981 BLM dependent resurvey. In the statement of reasons for their appeal (SOR), at page 2, appellants seemingly now conclude that the field crew did not officially accept the Hodgson corner, stating: "The field crew accepted Hodgson's * * * corner * * * if not as original, then as a corner in use for many years."

5/ We note in passing that the question of whether the SE corner sec. 9 was fraudulently established was not decided in the course of FS' adjudication of this matter. Indeed, as noted supra, the Chief, FS, for purposes of choosing between the 1984 FS (Fryer) and 1911 FS (Hodgson) surveys in his December 1985 decision, effectively assumed, without deciding, that the original 1883 (Buckley) survey is acceptable. As discussed above, the question of the acceptability of the original 1883 (Buckley) survey, like all survey questions, is subject to resolution by the Department of the Interior.

6/ The interest of Simpson and members of her family in the S\ sec. 9 and the NE^ NW^ sec. 16 derives from that of Charles M. Alexander, Simpson's father. By deed dated Apr. 30, 1945, Alexander took title to the S\ sec. 9 from the Southern Pacific Land Company (formerly the Central Pacific Railroad Company), which had originally acquired the land from the United States by patent dated Mar. 14, 1896. By deed dated May 26, 1938, Alexander took title to the NE^ NW^ sec. 16 from the State of California, which had originally been granted the land by Congress pursuant to section 6 of the Act of Mar. 3, 1853, ch. 145, 10 Stat. 244, 246, effective Feb. 26, 1885.

We also recognize that appellants' ownership of land situated in the NE[^] NW[^] sec. 16 may ultimately also be affected by the original 1883 (Buckley) survey's establishment of the SE corner sec. 9. Indeed, the location of the subdivisional line between the NE[^] NW[^] and the NW[^] NE[^] sec. 9 is controlled by the quarter corner between secs. 9 and 16, which corner was originally tied to the SE corner sec. 9 by the 1883 survey by a record bearing and distance of N. 89~51' W., 40.17 chains. However, it must be noted that the land on either side of the line between secs. 9 and 16 is no longer Federally owned. Accordingly, the Department no longer has any jurisdiction over that land and, therefore, no longer has any jurisdiction to affect the location of the quarter corner between secs. 9 and 16 or the subdivisional line between the NE[^] NW[^] and the NW[^] NE[^] sec. 16. The proper location of that corner and the subdivisional line must be resolved by the private parties involved or, if necessary, by resort to State court. See United States v. Hudspeth, 384 F.2d 683, 688 n.7 (9th Cir. 1967); Sarah & Magie Calvin, 94 IBLA 162, 166 (1986); Alice L. Alleson, 77 IBLA 106, 108 (1983).

[3] Turning back to the question of whether the original 1883 (Buckley) survey fraudulently established the SE corner sec. 9, we note that, in order to prevail, appellants must establish by a preponderance of the evidence that the survey fraudulently established that corner. See Peter Paul Groth, supra at 111. As proof that Buckley never established the SE corner sec. 9, appellants point first to Buckley's association with the "Benson Syndicate," which was reputed to have fraudulently conducted many public land surveys. Appellants submit pertinent portions of the book Chaining the Land, A History of Surveying in California, in which Francois D. Uzes, at page 181, details how Buckley worked for the syndicate as a "dummy surveyor": "Henry Buckley was then taken to a field camp, where he stayed 6 months doing nothing in the way of work. When the surveying party left camp and took to the field, Buckley returned to town." In its September 1986 decision, BLM concluded that the association between Buckley and the syndicate does not, by itself, prove that the original 1883 (Buckley) survey was not conducted. We agree. Indeed, the Uzes book indicates that, while Buckley may generally have not participated in surveying activities, the surveying parties, purportedly under his direction, may have conducted operations in the "field."

In their protest, appellants also asserted that no evidence of the original 1883 (Buckley) survey has ever been found in the north half of T. 44 N., R. 9 W., Mount Diablo Meridian, Siskiyou County, California, "despite the fact that all local surveyors, the County Surveyors, and County survey crews, Forest Service [s]urvey crews, BLM survey crews, and all affected landowners have diligently searched for any shred of evidence on the ground." BLM refuted this assertion, pointing to various monuments which have been recovered and which have been accepted, in some cases with BLM's verification, as the original monuments. ^{7/} In their SOR, appellants

^{7/} BLM admitted that the "number of original corners which have been recovered [in the entire township] * * * is not a significant percentage of the total," but concluded that this was "not an unusual occurrence":

"It

do not challenge the fact that a number of original monuments have been found in the north half of the township or that this is indicative that the survey was actually performed. Rather, they point to various discrepancies between topographic and other features as depicted on the plat of the original 1883 (Buckley) survey and the actual location of those features as evident from a Geological Survey topographic map of the area (Fort Jones Quadrangle, California - Siskiyou County).

Specifically, appellants note that "Rattlesnake Creek," as depicted on the topographic map, runs north across the north line of sec. 9, whereas it runs northwest across the west line of sec. 9 on the 1883 survey plat. We acknowledge this discrepancy. While the topographic map depicts the west fork of the creek running west across the west line of sec. 9, there is no indication on the survey plat that the main section of the creek crosses the north line of sec. 9 although the topographic map shows that to be the case. However, at this point, the creek is, according to the topographic map, near its origination point and, thus, may have been regarded as too insubstantial to merit a call. The field notes for the 1883 survey report that it was only four links wide further to the south.

We note that, of particular relevance to the question of whether the area surrounding the SE corner sec. 9 was surveyed, the 1883 survey plat depicts Rattlesnake Creek crossing the south line of that section in virtually the same position shown on the topographic map. Regardless of whether the survey crew carried the survey into the mountainous regions further to the north and west, the field notes indicate that the crew ran the line between secs. 9 and 16, tying into the already established SE corner sec. 9. These notes are amply corroborated by the accurate place-ment of the creek on the surveyor's map.

Appellants also point to the fact that the 1883 survey plat shows a stream running northwest across sec. 15, exiting across the north line of the section, such that, according to the topographic map, it runs "up [a] hillside and down the other side" (SOR at 5). The topographic map shows a short stream running northwest across the south section line into sec. 15 along the same general course as the stream depicted on the 1883 survey plat. In addition, the field notes for the 1883 survey contain a call for a gulch, four links wide, crossing the north line of sec. 15. The survey crew, thus, may simply have erroneously assumed that a stream continued across the section, having failed to note that the internal topography of the section precluded this fact.

Next, appellants note that the 1883 survey plat fails to show two gulches which branch off from Rattlesnake Creek in sec. 16 and cross nearby

fn. 7 (continued)

must be realized * * * that a substantial portion of this township is not only remote, but also in somewhat rugged terrain. Additionally, those corners have been subjected to the debilitating effects of erosion and decay for over a hundred years. And, when considering the forces of nature in combination with, in all likelihood, poor construction, a high rate of attrition would be the normal expectation."

section lines, as shown on the topographic map. Such gulches are clearly omitted from the 1883 survey plat. This may simply reflect a decision by the survey crew not to make the call, especially where the more prominent creek was noted.

Finally, appellants point out that, in connection with sec. 17, the 1883 survey plat failed to note the creek running in Tyler Gulch, as shown on the topographic map. The 1883 survey plat, however, does depict a creek crossing the south line of sec. 17 in virtually the same position as the creek shown on the topographic map.

The discrepancies to which appellants refer are principally erroneous projections of the contour lines into the interior of sections and of the courses of streams. However, it is not expected of the original surveyors either that topographic and other features in the interior of sections be accurately portrayed, where it is clear that they did not survey that land, or that the courses of streams be accurately shown, where it is clear that they did not follow the streams along their entire course. It must be remembered that the field notes of the 1883 survey only record what the survey crew came across as it ran the section lines. There is no evidence that any effort was made to explore the interior of the sections. Discrepancies in the depiction of items of topography or other features in the interior of sections do not render a survey of a section line fictitious or fraudulent. See J. M. Beard (On Rehearing), 52 L.D. 451, 456 (1928).

In its September 1986 decision, at page 2, BLM concluded:

[I]t is acknowledged that there are differences between the 1883 record and what exists on the ground. But there are also numerous items which are in agreement with the record. One such item is Indian Creek. This creek runs the entire length of the township and was recorded with reasonable accuracy for the time period. Another, McAdam Creek, was likewise recorded with some precision. Other lesser drainages such as Rattlesnake and Patterson Creeks are relatively well located in the lower portion of the township, though, admittedly, their location is reported with progressively less accuracy as their prominence as terrain features diminish in the northern half of the township. This same pattern is also recognizable with regard to other recorded features such as roads, trails, gulches, spurs, and ridges. But viewed historically, this is not an uncommon condition.

Accordingly, BLM concluded that, while the 1883 survey may have been poorly executed in some areas, appellant had failed to demonstrate that it was fraudulently executed with respect to establishment of the SE corner sec. 9.

We also note that Hodgson in his 1911 survey for FS, which appellants rely upon, implicitly recognized the SE corner sec. 9 as having been previously established by Buckley in 1883. Indeed, the 1911 FS (Hodgson) survey re-established the corner by the method of one-point control, which, as part of a dependent resurvey, is one of the methods of re-establishing corners

which were originally surveyed but have since been lost. See Survey Manual at 143, 150; Peter Paul Groth, supra at 116-17.

We conclude that appellants have not established by a preponderance of the evidence that the original 1883 (Buckley) survey fraudulently established the SE corner sec. 9, and that BLM's decision of September 1986 is affirmed to the extent that it so holds. In the absence of convincing proof to the contrary, we hold that the corner must be deemed to have existed at one time, and that appellants have not established the necessary basis for initiating an independent resurvey in order to establish that corner.

However, on the basis of the record as it presently stands, it appears that the SE corner sec. 9 should be regarded as a lost corner. As noted above, the field notes of the 1981 BLM (Hamon) dependent resurvey effectively reported that, after a careful search, no "evidence" of that corner could be found. Nor is there any evidence in the record that any person has ever recovered evidence of the original SE corner sec. 9. It also appears that, in accordance with the Survey Manual, the corner should be re-established by the method of proportionate measurement. See Stoddard Jacobsen, 85 IBLA 335, 336 (1985); Alfred Steinhauer, 1 IBLA 167, 172 (1970). As BLM points out in its September 1986 decision, it is well recognized that use of that method fully protects bona fide rights, consonant with 43 U.S.C. § 772 (1982).

BLM has never re-established this corner. 8/ We, however, are reluctant to order it to initiate a dependent resurvey re-establishing the SE corner sec. 9. The scheduling of such a resurvey is subject to the administrative prerogative of BLM. Nevertheless, BLM may wish to initiate such a resurvey, given the present uncertainty regarding the boundary line between appellants' private land and the National Forest. 9/ Appellants should be

8/ BLM's statement of disapproval of the 1911 FS (Hodgson) survey in its September 1986 decision falls short of an official determination as to the official location of this corner.

9/ We note that the record indicates that the 1911 FS (Hodgson) survey used one of the secondary methods for re-establishing lost corners, known as one-point control, in re-establishing the SE corner sec. 9. Use of this method was expressly rejected by BLM in its September 1986 decision. That decision, however, only supports BLM's decision not to use the Hodgson corner as a control corner in the course of the 1981 dependent resurvey. BLM has not yet officially rejected the Hodgson corner as the location of the SE corner sec. 9 in the course of a dependent resurvey of that corner. Thus, in the absence of a resurvey, we do not have before us at present the question of whether BLM should adopt the Hodgson corner, using the method of one-point control, as the SE corner sec. 9. We point out only that one-point control has only very limited application, and would not appear to be applicable in this instance where lines can be run from the corner common to secs. 10, 11, 14, and 15 and the corner common to secs. 15, 16, 21, and 22, T. 44 N., R. 9 W., Mount Diablo Meridian, Siskiyou County, California, both of which are recognized corners. See Peter Paul Groth, supra.

notified of the initiation of a resurvey and allowed the opportunity to offer any pertinent evidence. Moreover, should BLM conduct such resurvey, it should provide notice of the official filing of the plat of resurvey to all interested parties, in order to afford them the opportunity to challenge the survey prior to official acceptance. See Peter Paul Groth, supra at 109.

In summary, we dismiss appellants' appeal from the September 1986 BLM decision to the extent that decision dismissed their protest of the 1981 BLM (Hamon) dependent resurvey and affirm the BLM decision to the extent that it concluded that the original 1883 (Buckley) survey did not fraudulently establish the SE corner sec. 9.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, appellants' appeal is dismissed in part, and the September 1986 BLM decision is affirmed in part.

David L. Hughes
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

February 22, 1990

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| IBLA 87-110 | : | Group No. 764 (California) |
| 110 IBLA 271 | : | |
| WILOGENE SIMPSON | : | Cadastral Survey |
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| | : | Petition for |
| | : | Reconsideration Denied |
| | : | |
| | : | Clarification Provided |

ORDER

By letter filed on December 18, 1989, Wilogene Simpson, an appellant in the above-captioned decision, raised questions concerning that decision. We will treat Simpson's letter as a petition for reconsideration and request for clarification.

The time for petitioning for reconsideration of the Board's decision expired on November 12, 1989, 60 days after the date of the decision (34 CFR 4.403), and we therefore cannot formally consider these objections at this time. Insofar as Simpson's letter seeks reconsideration, it is denied as untimely.

However, we recognize that Simpson may not be seeking reconsideration of our decision as much as clarification thereof. In the way of clarification, we offer the following:

Simpson suggests that we did not adequately consider the effect of a "gross error" in the placement of Russell Peak on the original map for the 1883 "Buckley" survey. However, at pages 277 through 279 of the decision, we did consider this, and other discrepancies in the 1883 survey map, concluding as follows: "Regardless of whether the survey crew carried the survey into the mountainous regions further to the north and west, the field notes indicate that the crew ran the line between secs. 9 and 16, tying into the already established SE corner of sec. 9. These notes are amply corroborated by the accurate placement of the creek on the surveyor's map." Wilogene Simpson, 110 IBLA 271, 278 (1989). Thus, although the misplacement of Russell Peak on the original map is not expressly mentioned, the decision expressly holds that any deficiencies in the more mountainous areas, which would include Russell Peak, did not detract from the conclusion, amply supported by other contemporaneous evidence,

that this corner was actually surveyed in the 1883 "Buckley" survey.

Simpson characterizes as erroneous the holding on page 279 of the decision that, in 1911, Hodgson "implicitly recognized the SE corner sec. 9 as having been previously established by Buckley in 1883," noting that Hodgson was unable to find any evidence of it even though the Buckley" survey had been performed on the ground only 28 years earlier. The unofficial 1911 "Hodgson" survey "re-established" the corner using a technique associated with a independent resurvey. Based on this fact, we held that Hodgson recognized that the area had been surveyed Buckley in 1883, despite his inability to find a survey monument in existence.

Simpson questions whether there is precedent which would allow the use of long-accepted local lines and corners established by local surveyors, urging us to adopt such a rule and accept Hodgson's 1911 corner as long-accepted. When the Board issued its decision, it returned jurisdiction of this dispute to the California State Office, Bureau of Land Management (BLM). Since the time for filing a petition for reconsideration of our decision has now expired, the dispute is no longer before us, and this issue is therefore no longer justiciable by us.

However, as indicated in our decision at page 280, it appears that the SE corner sec. 9 should be regarded as a lost corner, and that BLM might wish to re-establish it. Indeed, Simpson indicates that BLM has now designated the corner as a lost corner. Insofar as Simpson's letter offers suggestions on whether and under what rules to initiate a resurvey of this corner, it should be considered by BLM. Accordingly, it is being forwarded to BLM for appropriate action.

In conclusion, we note that Simpson will have the right to appeal any adverse decision concerning this corner, at which time we would again have jurisdiction over this dispute.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition for reconsideration is denied, and the decision is clarified as discussed above.

David L. Hughes
Administrative Judge

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I concur:

C. Randall Grant, Jr.
Administrative Judge

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