

JAMES C. BOUSSIOS
SONIA BOUSSIOS

IBLA 94-46

Decided September 13, 1994

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, denying a protest against the 1988 dependent resurvey of the boundary lines between two townships. Group No. 867 (New Mexico).

Appeal dismissed.

1. Administrative Procedure: Standing--Rules of Practice: Appeals: Standing to Appeal--Surveys of Public Lands: Dependent Resurveys

An appeal from a decision of BLM denying a protest against a BLM dependent resurvey of a boundary between two townships by the owners of private land that borders that boundary is properly dismissed for lack of standing where the appellants' land is entirely surrounded by private land and the resurvey only determined the boundaries of distant public land, as they are not adversely affected by BLM's affirmance of the resurvey.

APPEARANCES: Robert M. White, Esq., Albuquerque, New Mexico, for appellants; Margaret Miller Brown, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

James C. and Sonia Boussios (appellants) have appealed from the September 3, 1993, decision of the New Mexico State Office, Bureau of Land Management (BLM), denying their protest against BLM's 1988 dependent resurvey. 1/

The line in question is the boundary between sec. 3, T. 10 N., R. 6 E., and sec. 34, T. 11 N., R. 6 E., New Mexico Principal Meridian. 2/ Appellants own lands on that line, viz., lots 3 and 4, sec. 34, T. 11 N., R. 6 E., which were patented to their predecessor-in-interest. Appellants

1/ The survey was a resurvey of a township boundary by BLM conducted in 1987. The office plat of survey was filed with BLM on Feb. 11, 1988, and notice of the filing was published in the Federal Register on Feb. 19, 1988.

2/ The lands are located in Bernalillo County, New Mexico.

filed their protest with BLM on August 5, 1993, asserting that BLM had incorrectly "moved" the line to the south, leading the private property owner to their north to encroach upon their property. In support of their protest, appellants provided BLM information from a private surveyor. BLM dismissed the protest by letter dated September 3, 1993, responding to appellants' challenges to the resurvey. Appellants filed a timely appeal of BLM's decision.

Counsel for BLM has moved to dismiss the appeal summarily, arguing that the results of a dependent resurvey will not alter or affect any boundaries between private tracts of land, so that appellants are not adversely affected by the resurvey. We grant the motion to dismiss.

[1] In order to have standing to appeal, appellants must be a "party to [the] case" and have a legally cognizable interest which is "adversely affected" by the September 1993 BLM decision. 43 CFR 4.410(a). See Missouri Coalition for the Environment, 124 IBLA 211, 216 (1992). Appellants are parties to the case, by virtue of the filing of their protest. See Burton A. McGregor, 119 IBLA 95, 98-99 (1991); Colorado Open Space Council, 109 IBLA 274, 279 (1989). However, dismissal of their protest does not automatically render them adversely affected by the September 1993 BLM decision. See Colorado Open Space Council, *supra* at 280; In Re Pacific Coast Molybdenum Co., 68 IBLA 325, 331 (1982).

There is no evidence that appellants have any right, claim, or title to, have any interest in, or use in any way any land adjacent to a boundary of public land or elsewhere that was reestablished by BLM during the 1988 resurvey. As a result, they are not adversely affected by BLM's September 1993 denial of their protest. Ron Martin, 130 IBLA 238 (1994); John W. Yeargan, 126 IBLA 361 (1993).

Appellants assert that they are adversely affected by virtue of BLM's relocation of the township line since that action will move the boundary to the south, thus encroaching on their landholding. Appellants' standing argument is thus premised on the fact that BLM's 1988 resurvey "moved" the boundary. That is not the case.

BLM does not have any authority to relocate, by means of a resurvey, the boundaries of public land once it has passed into private ownership. See United States v. Reimann, 504 F.2d 135, 138-39 (10th Cir. 1974); Wilogene Simpson, 110 IBLA 271, 277 (1989); James S. Mitchell, 104 IBLA 377, 380 (1988). BLM's statutory authority extends only to the relocation of public land boundaries, that is, lines that mark the boundary between public and private or other public land. The applicable statute limits the authority of the Department to "cause to be made * * * such resurveys or retracements of the surveys of public lands as, after full investigation, [the Secretary] may deem essential to properly mark the boundaries of the public lands remaining undisposed of." 43 U.S.C. § 772 (1988) (emphasis supplied). Thus, BLM's resurveying authority extends only to resurveying the boundaries of public lands. No like authority exists with respect to resurveying what are no longer public land boundaries since all of the surrounding land has passed into private ownership.

We note that, consistent with the above, BLM's special instructions for the resurvey expressly stated as follows:

The work to be executed under these Special Instructions consists of the retracements, resurveys and surveys sufficient to identify the boundaries of public land located in sections 19 and 34, T. 11 N., R. 6 E.

Dependent resurvey or retracement of adjacent lines needed in the development of control is authorized. The establishment of 1/16 section corners or other corners of minor subdivision along section lines, where they control Federal Interest lands, is authorized. [Emphasis added.]

Since BLM lacks the authority to resurvey private land boundaries where, although originally surveyed under the rectangular survey system, there is no longer adjacent public land, it is clear that any action taken by BLM will not affect any such boundary. Rather, any action is properly regarded as being solely for BLM's own purposes. The act of accepting a corner as genuine is often taken to aid in the demarcation of distant public land boundaries. Thus, corners along section lines where the land on either side of the line has passed into private ownership are identified and used as "control points" (see Frank Lujan, 40 IBLA 184, 185 (1979)), and the line itself can be viewed as a "control line." See Wilogene Simpson, *supra* at 273.

In cases such as the present, the proper location of the disputed private land boundary must be resolved by the private landowners on either side of the line, by means of negotiation or, if necessary, resort to State court or a Federal court applying State law. See James S. Mitchell, *supra* at 380; Sarah Calvin, 94 IBLA 162, 166 (1986); Manual, § 6-10 at 146.

In the absence of legal authority, BLM cannot actually relocate, by means of a resurvey, the boundaries of public land that has passed into private ownership. In the absence of any legal effect, it is established that the private landowners, whose boundary abuts or is tied to the original corners, are not "adversely affected," within the meaning of 43 CFR 4.21(a), by BLM's resurvey of those corners, and that they accordingly lack standing to appeal from BLM's denial of their protest against the resurvey. Alice L. Alleson, 77 IBLA 106, 107, 108 n.2 (1983).

Appellants' land is entirely surrounded by private land. In these circumstances, it is clear that BLM's 1988 resurvey, locating the boundary between sec. 3, T. 10 N., R. 6 E., and sec. 34, T. 11 N., R. 6 E., New Mexico Principal Meridian, does not affect appellants' private land boundaries. BLM's ability to affect these boundaries ceased once appellants' land and the surrounding land passed into private ownership. Absent any adverse affect on their private landholdings, appellants lack any standing to appeal from BLM's denial of their protest to the resurvey.

In the absence of standing to appeal, the Board is without jurisdiction to consider an appeal, and it must be dismissed. See, e.g., State of Alaska (Anna Nick), 121 IBLA 155, 160 (1991). Therefore, in accordance with our prior decision in Alleson, we hold that appellants' appeal from BLM's September 1993 decision denying their protest against the 1988 BLM dependent resurvey is properly dismissed for lack of standing to appeal. See also John W. Yeargan, supra at 369-70; Wilogene Simpson, supra at 275-76; James S. Mitchell, supra at 380-81; Sarah Calvin, supra at 165-66.

Accordingly, 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.

David L. Hughes
Administrative Judge

I concur:

James L. Byrnes
Chief Administrative Judge