

Appeals from decisions of the Idaho State Office, Bureau of Land Management, dismissing protests against a 1983 resurvey of T. 20 N., R. 3 W., Boise Meridian, Idaho. Group 622, Idaho.

Affirmed.

1. Rules of Practice: Appeals: Burden of Proof--Surveys of Public Lands: Dependent Resurveys

An official dependent resurvey by BLM of an 1891 survey that found one of the original quarter corners was not shown to be in error by reference to a conflicting quarter corner monument erected in the course of an unofficial survey run by surveyors for the Forest Service.

APPEARANCES: Thomas James Bushman, Wilder, Idaho, pro se, and for Don Q. Paris; Dan Ogle, Gabbs, Nevada, pro se, and for Arline Green; Robert S. Burr, Office of the Field Solicitor, Department of the Interior, Boise, Idaho, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Dan Ogle and Thomas James Bushman have filed separate notices of appeals from December 31, 1991, decisions of the Idaho State Office, Bureau of Land Management (BLM), dismissing protests against a 1983 resurvey of T. 20 N., R. 3 W., Boise Meridian, Idaho. Ogle has appeared on behalf of his mother, Arline Green, while Bushman claims also to represent Don Q. Paris. Although Bushman's qualification to represent another person in this appeal is problematic, his right to do so need not be analyzed since his appeal must be dismissed. Both appeals challenge a 1983 dependent resurvey run to confirm the quarter-section corner of secs. 9 and 10, T. 20 N., R. 3 W., as originally established in 1891. The 1983 survey determined that the original corner had been found and properly remonumented by a 1970 BLM survey. A complete history of surveys of this land is set out in the BLM decision under review, is not questioned by appellants, and need not be repeated here.

Bushman has neither filed a statement of reasons nor given an explanation for his failure to do so, omissions requiring that his appeal be dismissed. See 43 CFR 4.402(a); Burton A. & Mary H. McGregor, 119 IBLA 95, 98 (1991). The Ogle statement of reasons alleges that the challenged survey improperly relocated the quarter-section corner in question. He argues that

he was deceived by, and acted in reliance on, "a very official looking pile of stone complete with a brass cap and several metal fence posts with Forest Service boundary arrow signs." As a result of this perception, he located improvements on lands belonging to another, if the location of the quarter-section corner by the 1983 BLM survey is correct. This circumstance, he explains, is the reason for his appeal.

[1] The description by Ogle of the official looking stone pile and Forest Service signs apparently refers to a survey conducted for the United States Forest Service by surveyors McCarter and Tuller, whose work was analyzed and rejected as it pertained to the quarter-section corner at issue, both by the 1983 BLM surveyors and by the decision now under review. An earlier survey is only entitled to deference if it is an approved survey. While the Tuller survey was performed for the Forest Service, it was never approved by BLM. The authority to conduct surveys and resurveys is vested in the Secretary of the Interior, who in turn has delegated this authority to BLM. Arthur E. Meinhart, 6 IBLA 39, 41-42 (1972); Manual of Instructions for the Survey of the Public Lands of the United States (1973) (Manual), 9-2 and 9-3 at 191. Surveys such as the one performed by Tuller for the Forest Service do not constitute official surveys of the United States because they were not performed by or for BLM. See Wilogene Simpson, 110 IBLA 271, 275 (1989), and cases cited. Moreover, Forest Service surveys do not define legal boundaries separating Federal from private land; they are administrative surveys used by the Forest Service to manage the national forests. Mr. & Mrs. John Koopmans, 70 IBLA 75, 76 (1983). Therefore, Tuller's survey did not establish the location of the corner set by the original 1891 survey. That location could only be determined by a dependent resurvey such as BLM conducted in 1983.

No one can safely rely on an unapproved survey. See First American Title Insurance Co. v. BLM, 110 IBLA 25, 32 (1989), and authorities cited. Reliance by private landowners on unapproved survey monuments cannot be used to vest any claim of right. Id. Nor is the doctrine of equitable estoppel applicable here, there being no showing of erroneous BLM advice, upon which reliance was placed, made in an official written decision. See Steven E. Cate, 97 IBLA 27, 32 (1987), and authorities cited.

A resurvey can affect bona fide rights only in the matter of position or location on the earth's surface. See Manual 6-13 at 147. Bona fide rights are protected in a resurvey by showing "the original position of entered or patented lands included in the original description." Manual 6-14 at 147. "The position of a tract of land, described by legal subdivisions, is absolutely fixed by the original corners and other evidences of the original survey and not by occupation or improvements, or by the lines of a resurvey which do not follow the original." Manual 6-15 at 147. If rights in the lands at issue are based on a patent grounded on the original survey, then the dependent resurvey will not affect the location of any boundary lines as it is, by definition, a restoration of the original conditions of the official survey. Manual 6-25 at 149.

This case is one where improvements were apparently placed in reliance on an unapproved survey that did not follow the original official survey.

Bona fide rights are protected only where they were established in accordance with an official survey. Therefore, the suggestion that the dependent resurvey is void because it impairs bona fide rights is without merit because appellants have failed to show that the dependent resurvey is not an accurate retracement and reestablishment of the original survey. See, e.g., John W. & Ovada Yeargan, 126 IBLA 361, 369-70 (1993).

BLM considers a corner to be found if that conclusion is supported by some evidence of the original corner location. James O. Steambarge, 116 IBLA 185, 191 (1990). To determine that a corner is found does not require evidence beyond a reasonable doubt. Stoddard Jacobsen v. BLM (On Reconsideration), 103 IBLA 83 (1988), aff'd, CA No. 88-513-HDM (D. Nev. Oct. 12, 1989); cf. Manual 5-9 and 5-20 at 130, 133. Instead, a found corner ("existent" in the parlance of the Manual) is defined as "one whose position can be identified by verifying the evidence of the monument or its accessories, by reference to the description in the field notes, or located by an acceptable supplemental survey record, some physical evidence, or testimony." Manual 5-5 at 130. The 1983 BLM surveyors retraced the distance between secs. 9 and 10, comparing the record calls along the line to topography and other references in the original 1891 field notes. The BLM decision here under review considered the evidence used in the 1983 resurvey and concluded that it was a faithful retracement and reestablishment of the original 1891 survey, after consideration of the protests and comments from other interested landowners. We find that BLM carefully considered all the relevant evidence in a detailed decision that is free from error. No evidence of fraud or gross error having been shown in the 1983 dependent resurvey, we conclude that BLM's decision was correct. See James O. Steambarge, supra. Contrary to the contention by Ogle, there is nothing in the record to indicate that BLM relocated the corner from the place it was originally set in 1891.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, Bushman's appeal is dismissed and the decisions appealed by Ogle and Green are affirmed.

Franklin D. Arness
Administrative Judge

I concur:

John H. Kelly
Administrative Judge