

PAUL CHABOT

IBLA 93-22      Decided May 24, 1995

Appeal from a decision by the State Director, California State Office, Bureau of Land Management, dismissing a protest of a pending resurvey  
CA-942 (Group No. 1037, California).

Set aside, in part; affirmed, in part; and remanded.

1.      Surveys of Public Lands: Dependent Resurveys

The purpose of a dependent resurvey is to retrace and reestablish the lines of the original survey in their true and original positions according to the best available evidence of the positions of the original corners. To succeed on appeal, the party challenging the filing of a plat for a dependent resurvey must meet his burden of establishing by a preponderance of the evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

2.      Surveys of Public Lands: Dependent Resurveys

Where the record establishes that a portion of an original survey was fraudulent, a challenge to a dependent resurvey of part of the fraudulent portion of the original survey will be sustained where the record establishes that a dependent resurvey would not fairly protect the rights of innocent third parties.

APPEARANCES: Donald B. Gilbert, Esq., Sacramento, California, for appellant; Clifford A. Robinson, Chief, Branch of Cadastral Survey, for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE BYRNES

Paul Chabot has appealed from an August 31, 1992, decision of the California State Director, Bureau of Land Management (BLM), dismissing his protest against the acceptance of BLM's resurvey of the line between secs. 1 and 2, T. 46 N., R. 7 W., Mount Diablo Meridian, situated in Siskiyou County, California.

The record reflects the history of the surveys of the township in question, indicating that the northeast corner of the township was originally established by D. S. McKay in 1875. In the context of the survey of T. 47 N., R. 6 W., the south and west exterior boundaries were officially surveyed in 1880 by W. F. Benson. The east and north boundaries and the subdivisional lines of the township were surveyed in 1883 by H. E. Buckley. A portion of the south boundary of the township was resurveyed by L. L. Dent in 1908. In addition to various mineral surveys conducted within the township between 1875 and 1949, certain corners within the township were remonumented by A. M. Rauch from 1963 to 1966. From 1964 to 1972, R. G. Strejc and C. W. Hamon dependently resurveyed a portion of the Ninth Standard Parallel North, along a portion of the south boundary of the township. <sup>1/</sup>

Pursuant to joint requests by the United States Forest Service (USFS) and the Ukiah District Office of BLM for a dependent resurvey of this township, Special Instructions for Group No. 1037, California, were approved on December 12, 1988. In addition, Supplemental Special Instructions No. 1 were issued and approved April 21, 1989. The field work and major research for the project, known as the Ash Creek Survey, was directed and completed by Richard B. Davis, California LS 3340, under USFS Contract No. 53-91W8-9-9050. The record also confirms that Davis conferred with and was aided by USFS surveyor Howard Whitman, and BLM surveyors John H. Nelson and Ronald S. Hamilton, during the course of the resurvey.

By letter dated February 6, 1992, Chabot filed a protest of the resurvey in question generally stating that the subject resurvey failed to comply with the Manual of Instructions for the Survey of the Public Lands of the United States, 1973 and applicable case law. Chabot's primary contention was that the resurvey was in error because it improperly determined that the corner of secs. 1, 2, 11, and 12, and the  $\frac{1}{4}$  section corner of secs. 1 and 2, T. 46 N., R. 7 W., Mount Diablo Meridian, are not lost corners, but merely obliterated. Chabot argued that the contract resurveyor, Richard Davis, improperly applied the rules for restoration of lost corners in that he rejected evidence of local monumentation and testimony of neighbors and property residents concerning the historic location of the corners at issue without any reason.

Chabot pointed out that the landholders in sec. 1 had relied in good faith for many years on local monumentation. He noted that the USFS, itself, had acknowledged that it had established ownership lines in the area and that these good faith ownership lines should be recognized.

In his decision dated August 31, 1992, the State Director, dismissed Chabot's protest after considering the information submitted by him as it

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<sup>1/</sup> Special Instructions for Group No. 1037, California, at 2.

related to the protested corner positions at the junction of secs. 1 and 2, and the location of other points of reference on the resurvey. The State Director noted that he had considered the issues raised by the protest in conjunction with a thorough examination of all the records related to the Bureau's resurvey, as well as all available local records of survey and other documents. The State Director included for reference a detailed protest report (PR) examining the specific issues and arguments raised by the Chabot protest. <sup>2/</sup> He concluded that the pending survey would be approved and officially filed, specifically stating:

In conclusion, then, this office has critically reviewed and evaluated the data and contentions submitted in your letter of protest as well as the official records relating to the pending resurvey, and accordingly, have concluded and found: (1) that there is no evidence indicating the two local corners to be perpetuation of the original 1883 Buckley corners, (2) that the local monuments and the USFS boundary signs do not constitute collateral evidence of the original survey, (3) that there is no basis for the determination that the subject corners are merely obliterated, (4) that reliance on the local corners and boundary signs do not satisfy the requirements of good faith location, (5) that the history of the local corners does not constitute evidence of their authenticity, (6) that the field note record fully explains the reason for rejecting the local corners, (7) that the two corners in question are lost, (8) that the pending resurvey, as executed, does fully protect all bona fide rights vested in the original survey, (9) that the position thusly taken is, for those reasons discussed above, in accord with the Manual of Surveying Instructions, 1973, and all pertinent case law relating to the subject considerations, and (10) that your statement of reasons (SOR) does not carry your burden of showing by a preponderance of the evidence that the pending resurvey is in any way erroneous.

(Decision at 4). Chabot filed a timely appeal. <sup>3/</sup>

In his statement of reasons, (SOR) Chabot reiterates all the arguments raised before BLM, generally challenging the validity of the Government's dependent resurvey for T. 46 N., R. 7 W., Mount Diablo Meridian, California, with specific regard to the southwest and west quarter corners of sec. 1 as they affect his property. He challenges the location of the boundary line between secs. 1 and 2 on the resurvey performed by Richard

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<sup>2/</sup> Protest Report to the Chief, Branch of Cadastral Survey, from Protest and Appeal Specialist Jack W. Rabedew, dated Aug. 28, 1992.

<sup>3/</sup> A BLM decision of Aug. 31, 1992, dismissing the other protest challenging this same dependent resurvey by Theodore J. Vickman has been appealed and is considered in a separate case docketed as IBLA 93-3.

Davis, where it was determined that the southwest corner and west quarter corner of sec. 1 (sometimes "the corners") were lost. He states:

As a result, the corners were reestablished by proportional measurement, thereby causing the boundary line to be erroneously redrawn substantially to the east of its original location. Consequently, Mr. Chabot has lost a significant portion of his property, including its most valuable assets, water access and the Negro Boy Mine \* \* \*.

(SOR at 1).

He contends:

(1) The fact that the BLM's reestablished boundary line excludes the Mine from Section 1 is conclusive evidence that the corners established by the BLM are erroneous.

(2) The local monuments represent the original corners established by the 1883 Buckley survey, and consequently the locally accepted boundary line represents the original boundary line.

(3) In the alternative, Mr. Chabot contends that the BLM's premature and hurried determination that the corners were lost, rather than obliterated, was a violation of the procedures established by the BLM's Manual of Surveying Instructions, 1973 ("Manual").

(SOR at 2).

In support of his position, Chabot submits chain of title documents which he contends prove that the BLM erroneously redrew the boundary line which caused the improper exclusion of the Mine from sec. 1. He contends that this conclusive documentary evidence establishes a chain of title back to the original patent in 1896 which shows the mine has always been located within sec. 1 in the "Chabot Parcel" (SOR at 2-5).

Chabot challenges the fact that Davis failed to rely on local monuments for the boundary line when, in fact, these monuments are the best remaining evidence of the original corners. He maintains the corners marked by the local monuments have been relied upon and accepted by all the affected landowners "as long as anyone can remember." He notes that Davis had indicated the previous owner of his parcel, Mr. Dan Clybyme lived on the parcel from 1946 to 1970 and had stated that the boundary signs (USFS) as well as the  $\frac{1}{4}$  corner of secs. 1 and 2 and the corner of 1, 2, 11, and 12 were in place during his residency (SOR at 6).

BLM has responded that appellant's chain of title evidence which states that the Negro Boy Mine is located in sec. 1 does not conclusively establish that the mine is located within the "240 acre Chabot parcel" because it is not evidence of where those boundaries are located on the ground or that the mine is within those boundaries. BLM admits that the various deeds in appellant's chain of title prove ownership of the lands described therein and may provide evidence of location. However, it notes that it is a different question which locates on the ground those lands described in the conveying document. It emphasizes that such lands are controlled by monuments, either authenticated recoveries or proper reestablishments. A deed cannot demonstrate whether its owner has limited his or her occupation to the boundaries described therein or has exceeded those boundaries to encroach upon adjacent lands (Response at 1-2).

BLM argues that regardless of the limits of the land which appellant's predecessors may have occupied, his claim is limited to lands within sec. 1 as established by the original survey. Lands patented are described in terms of the official Government survey and are limited to the interest as defined by the official survey (Response at 3).

[1] The Secretary of the Interior is authorized to consider what lands are public lands, what public lands have been or should be surveyed, and has the authority to extend or correct the surveys of public lands and make resurveys to reestablish corners and lines of earlier official surveys. John W. & Ovada Yeargan, 126 IBLA 361, 362 (1993); Elmer A. Swan, 77 IBLA 99 (1983); see 43 U.S.C. §§ 2, 52, 751-53 (1988).

Certain general principles may be accepted as beyond dispute. A dependent resurvey is a retracement and reestablishment of the lines of the original survey in their true original positions according to the best available evidence of the positions of the original corners. The section lines and lines of legal subdivision of the dependent resurvey in themselves represent the best possible identification of the true legal boundaries of lands patented on the basis of the plat of the original survey. In legal contemplation and in fact, the lands contained in a certain section of the original survey and the lands contained in the corresponding section of the dependent resurvey are identical (Manual 6-4 at 145; John W. & Ovada Yeargan, supra; Crow Indian Agency, 78 IBLA 7, 10 (1983).

A dependent resurvey seeks to restore what purports to be the original conditions of the official survey according to the record, based, first, upon identified existing corners of the original survey and other recognized 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. Jean Eli, 78 IBLA 374, 376 (1984). Therefore, the cadastral surveyor's primary responsibility when

conducting a dependent resurvey is to act as a "detective" who gathers all available information and uses his best effort to determine the location of all the original corners. John W. & Ovada Yeargan, *supra* at 363.

In an appeal from a protest against acceptance of the filing of a plat of a dependent resurvey, the appellant has the burden of establishing by a preponderance of the evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey. John & Ovada Yeargan, *supra* at 363; James O. Stearnbarger, 116 IBLA 185, 188 (1990). Peter Paul Groth, 99 IBLA 104, 111 (1987); Stoddard Jacobsen, 85 IBLA 335, 342 (1985).

Appellant presents various arguments regarding the failure of the dependent resurvey to accept his characterization of and reliance on the asserted original location of the quarter section corner of secs. 1 and 2 and the corner of secs. 1, 2, 35, and 36 on the north boundary of the township. He disputes the validity of the dependent resurvey based on local monuments which he and all the affected local landowners have relied for a long period of time. He maintains that these local monuments are the best remaining evidence of the original corners and have been substantiated by the other references of record, and as such should not have been rejected by Davis and the BLM without careful study of the issue. At a minimum, he argues that BLM should have looked to the monuments as the perpetuation of obliterated corners.

These same arguments were thoroughly reviewed and discussed at length by BLM in its decision and the incorporated protest report. We have considered these arguments on appeal and would reject them for the same reasons previously outlined by BLM in its decision below. However, irrespective of any finding that appellant's presentation on appeal has generally been ineffective to establish error in the execution of the dependent resurvey, our review of the record as a whole raises serious questions as to the validity of crucial aspects of the original 1883 Buckley survey which, we believe, undermine the utility of a dependent resurvey in the context of determining the location of the common section line between secs. 1 and 2. Our review confirms doubts expressed by the various surveyors involved in the resurvey project that Buckley, in fact, did not actually survey parts of the north and east boundary and interior section lines of the township and that his field notes describing the survey of these lines were fraudulent.

In a memorandum dated June 7, 1990, from Forest Service surveyor Howard Whitman to BLM surveyor John Nelson, Whitman concluded that portions of the Buckley original survey appeared to be fraudulent, stating:

On May 22, 1990 Forest Service and Bureau of Land Management surveyors met with Richard Davis who holds the contract. During this meeting Mr. Davis discussed his investigation efforts in T. 46 N., R. 7 W., MDM, and the corner and collateral evidence

he has recovered. After an exhaustive search by him, and some search by Government personnel, we concluded that all of the existing evidence of the original township survey has been recovered. Mr. Davis also presented a control diagram of the township, which shows relationships between the corners found or remonumented, and ties to complete sections where no evidence was found.

An examination of this diagram and the accompanying evidence shows that while some portions of the township were faithfully surveyed by the original surveyor, other portions appear to be fraudulent. To a large extent, this condition can be traced to topography and settlement patterns: the areas where the survey was carried out are those either adjacent to the major drainage in the area, or in areas known to have been settled and/or mined during the period of the original survey. Much of the southern and northeastern parts on the other hand, where little evidence was recovered, are mountainous, covered with thick brush, and extremely difficult of access.

This conclusion is corroborated by Richard Davis in his survey status report of November 8, 1989, where he outlines a brief history of the township, questioning Buckley's completion of the full extent of the survey, stating:

The North and East Boundaries as well as the subdivisions were performed by Deputy Surveyor H. E. Buckley under his contract dated August 3, 1882. I believe that Buckley performed very little actual survey work and that his field notes are largely fictional. With the possible exception of the corner of 20-21-28-29, I do not believe Buckley performed any surveying in the entire south-half of the Township.

(Survey Status Report (SSR) Exh. B at 1).

As to the North boundary, Davis further noted:

The N1/4 of section 6 and corner of sections 4 and 5 were remonumented by the BLM in 1964.

It is my opinion that the original Buckley survey did not extend any farther East along this line than the corner of sections 4 and 5, and that Buckley did not realize the large discrepancy which existed between his survey and the Northeast corner of the Township which had been previously established by Deputy Surveyor Alexander McKay in 1875.

(SSR Exh. B at 2).

As to the East boundary, Davis also noted:

It is my opinion that the East Boundary of the Township was run by Buckley from the NE township corner southerly to the  $\frac{1}{4}$  corner of secs. 13 and 18, at which point the confluence of the Shasta and Klamath Rivers can be observed, and that is how Buckley positioned these rivers in their correct location on his plat. I do not believe that Buckley extended this line any farther to the South, nor ever closed from this stub line to any other corner of this survey, therefore remaining unaware of the gross discrepancy in departure he was creating with this Township.

(SSR Exh. B at 4).

Subsequently, in 1992 the Forest Service again expressed its concerns as to the suspected fraudulent nature of parts of the original township survey, noting that the surveyors had been unable to find authentic monumentation on the ground to confirm that the line between secs. 1 and 2 had actually been run. In his comprehensive report on the survey and boundary situation of the area in question, <sup>4/</sup> Whitman emphasized this point and noted that the lack of original monumentation most likely resulted in the problem of wider than standard sections. He stated:

Forest Service corner records, prepared in 1964, indicate that monuments were found along a line purported to be that between Sections 2 and 1, T. 46 N., R. 7 W., but that these monuments did not have any accessories, as they would have if they were original. It is my opinion that these monuments (wooden posts in mounds of stone with K-tags attached) were probably set by foresters working for the Southern Pacific Company sometime in the 1940's. Their positions closely agree with USGS 7.5 minute quadrangle maps of the area, which depict Section 1 as being approximately 40 chains (one-half mile) wider than a standard section. \* \* \* Mr. Davis, Mr. Nelson, Mr. Hamilton, and I have discussed the problem of the "extra" 40 chains at some length, and we consider that due to the severe character of the terrain, and the apparent low quality of the land, the original surveyor probably did not survey the entire north line of the township and was thus unaware of the discrepancy in distance to the northeast township corner. No evidence has been found of an original corner at any position for the northwest corner of Section 1.

In addition, we note that Buckley's fraudulent participation in surveys of the times has been widely known as part of his association with

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<sup>4/</sup> This information was part of Attachment #1 included in a letter dated July 23, 1992, to Congressman Wally Herger, from the Regional Forester, Ronald Stewart, Pacific Southwest Region, USFS.

the "Benson Syndicate," which was reputed to have fraudulently conducted many public land surveys. The issue of Buckley's questionable operations in the field has previously been called to the attention of this Board in its consideration of Wilogene Simpson, 110 IBLA 271 (1989), where we found appellants in that case failed to provide a preponderance of evidence to establish the fraudulent nature of another Buckley survey which he also was associated with in 1883. Appellants did, however, 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." Id. at 277.

[2] Insofar as the instant survey is concerned, we must conclude that the record, taken as a whole, establishes that at least portions of the original survey were fraudulent. Thus, we must consider whether such a fraudulent survey can properly be the basis for a dependent resurvey. For reasons provided below, we find that the Buckley survey could not provide a proper foundation from which to reestablish the north township boundary line along secs. 1 and 2 or the section line between secs. 1 and 2 which appear to never have been run on the Buckley survey. This is consistent with the requirements of The Manual of Survey Instructions 1973, Special Cases, secs. 5-46, which sets forth the axiom among experienced surveyors:

that the true location of the original lines and comers can be restored, if the original survey was made faithfully, and was supported by a reasonably good field-note record. That is the condition for which the basic principles have been outlined, and for which the rules have been laid down. The rules cannot be elaborated to reconstruct a grossly erroneous survey or a survey having fictitious field notes.  
[Emphasis added.]

These crucial ingredients appear to be lacking in the case at hand, thereby preventing a proper dependent resurvey of the area under challenge from being conducted.

From a merely cursory examination of the plat of the original Buckley survey, it is clear that Buckley's plat depicts a classic township with symmetrical sections of equal size and shape, and section lines running straight and true, north and south. The Davis plat shows something considerably less than the ideal township, completely different as to the size and shape of the interior sections of the township. Specifically, the north-south interior section lines in the eastern part of the township do not come close to reflecting the same symmetrical picture depicted in the plat of the original survey. Instead, these section lines angle off at various points, distorting the shape of many sections. Secs. 12, 13, and 24 are considerably oversized, reflecting the 40 chain extra width as noted by the surveyors.

An examination of the field notes of both the original Buckley survey and the dependent resurvey clearly shows that Davis could not locate the disputed corner of secs. 1 and 2, T. 46 N., R. 7 W., and secs. 35 and 36, T. 47 N., R. 7 W., from monuments or accessories on the ground because acceptable monumentation simply did not exist. Indeed, Davis indicated his conclusion that Buckley did not actually survey along the township line any farther east than the corner of secs. 4 and 5. While Davis was able to locate the township corner for Ts. 46 and 47 N., R. 6 and 7 W., which had been established by Alexander McKay in 1875, the only other original corner he was able to locate on the boundary line was a quarter corner for sec. 6, T. 46 N., and sec. 31, T. 47 N., for which the geographic calls corresponded with the original field notes. <sup>5/</sup> For the remainder of the northern boundary including the north section lines of 1, 2, 3 and 4, the available evidence found during the resurvey did not correspond well with the official record, again suggesting that the original surveyor was never out on the ground and did not run this line.

As for the retracement of the interior section lines of the township, Davis has similarly noted that it was his opinion, based on a photogrammetric and topography study of the terrain along these lines, that "very limited survey work was performed within the Township by Deputy Buckley." A review of the resurvey plat in conjunction with the resurvey notes shows that Davis was only able to locate four original corners within the township. Of these corners only one is reasonably close to the area in conflict, i.e., the quarter-corner between secs. 13 and 24. Davis also remarked upon the extreme difficulty of using Buckley's references to geographic calls even within areas that Buckley may have surveyed. He questioned reliance on these topographical calls for the purpose of reestablishing corners within the township by reference to the original notes, stating: "At best Buckley's topographic features are poorly described, with many prominent features such as ridges and streams between known Buckley corners simply not mentioned at all (emphasis in original)" (SSR at 5).

An examination of section lines between secs. 1 and 2 and secs. 11 and 12 and secs. 1 and 12 and secs. 2 and 11 corroborates the fictitious nature of the Buckley survey. Buckley's notes indicate he would have arrived at this area beginning his work from the south boundary of the township between secs. 35 and 36, and working north through the sections first running the west boundary of each section and then moving to the east boundary of the township and working back on a true line running the north boundary of each section.

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<sup>5/</sup> Davis was able to confirm the location of an 1882 bearing yellow pine (page 18 original Buckley field notes (OBFN) and page 30 Davis Resurvey notes (DRN)).

Buckley shows in his notes that he reached a point on the east boundary of the township at the common corner of secs. 12 and 13 (T. 7 W.) and secs. 7 and 18 (T. 6 W.) from where he ran a true line between secs. 12 and 13, running 79.81 chains to reach the common section corner for secs. 11, 12, 13, and 14 (OBFN at 10). To reach this same corner starting from a point on the east boundary, Davis had to run 117.121 chains on the resurvey, an unexplained difference of 37.31 chains, almost a half mile (DRN at 41).

Proceeding north 12 degrees west, between secs. 11 and 12, at a distance 60.20 chains from the corner Buckley notes a brook (Ash Creek), 8 links wide coursing southwest. From the corner for secs. 1, 2, 11, and 12, Buckley reports that, running east 18.13 chains on a random line between secs. 1 and 12, he again crossed a brook 8 links wide. He notes crossing the same brook a third time when moving north from the corner of secs. 1, 2, 11, and 12 at a distance 18.90 chains, where the brook is 3 links wide and coursing southwest (OBFN at 10-12).

Theoretically, attempting to retrace this same section line between secs. 11 and 12, Davis started from the corner of secs. 11, 12, 13, and 14, and proceeded north at an angle 19° degrees 59' east, a distance of 79.992 chains to the common corner of secs. 1, 2, 11, and 12. He reported no evidence of the original corner nor did he cross a brook at any point along the line of survey, above the quarter corner. Working from the east boundary of the township at the common corners of secs. 1 and 12, T. 7 W., and secs. 6 and 7, T. 6 W., Davis went a distance of 88.831 chains to the common corner of secs. 1, 2, 11, and 12, during the course of which he, once again, did not cross Ash Creek. Similarly, when working north to the north township boundary at a distance of 74.956 chains to the corner of secs. 1, 2, 35, and 36, he did not encounter Ash Creek. <sup>6/</sup>

We find ourselves in substantial agreement with the surveyors on the ground that the only plausible explanation for the various inconsistencies is that Buckley did not run any of the lines bracketing secs. 1, 2, 11, or 12, with the only possible exception of those along the east township boundary. This determination brings into question the propriety and acceptability of utilizing dependent resurvey procedures, the purpose of which is to "reestablish" the original lines of survey, where the evidence establishes that the original lines were never run.

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<sup>6/</sup> Moreover, we would point out that the practical result of the resurvey of the section line between secs. 1 and 2 and secs. 11 and 12 is that, from the common corner for secs. 11, 12, 13, and 14, Davis proceeded almost 20 degrees off-line to the east, abandoning the east bank of Ash Creek (which, at that point, runs relatively true north) and, instead, ascended a hill into mountainous terrain, thereby greatly increasing the arduousness of the survey.

At the beginning of our analysis of the instant appeal, we recounted various general principles which we described as beyond dispute. Of particular relevance at this juncture is the definition of a dependent resurvey as a "retracement and reestablishment of the lines of the original survey in their true original positions." It seems a matter of elementary logic that, where the original lines of survey were never run, it is impossible to "reestablish" such lines "in their true original positions," since such positions never existed. <sup>7/</sup> More problematic, however, is the question of how such a situation should be handled once it has manifested itself.

It seems axiomatic that no hard and fast rules can be formulated which will fairly deal with the myriad factual situations which might arise in the context of a fraudulent survey. Rather, each such case must, as suggested by the Manual itself (see Manual at 5-47), be approached with due attentiveness to the facts and equities as they appear in the record. <sup>8/</sup>

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<sup>7/</sup> We are well aware that in J. M. Beard, 52 L.D. 444 (1928), First Assistant Secretary Finney affirmed a dependent resurvey of interior lines of a township where it was conceded that the evidence established that such lines were never run. It is clear that the ultimate predicate for rejecting a challenge to the resurvey by Beard was the fact that, at the time Beard acquired his asserted title to the land in question, the parcel was already occupied by a Forest Service Ranger station. Id. at 451. Thus, Beard was affirmatively found lacking in bona fide rights deserving of protection, a finding which must be contrasted with the instant case. <sup>8/</sup> We note that the existence of equities was recognized by Whitman, the Forest Service surveyor, in a memorandum to Nelson, the supervisory cadastral surveyor, dated June 7, 1990:

"We believe that the best way to treat this township is to recognize and use acceptable evidence in those areas where it exists, and to recognize good faith ownership lines in those areas where the original survey cannot, with confidence, be restored. This would result in the reconstruction of the entire township boundary, and a portion of the interior, specifically section 36, sections 14, 15, and 16, and the western two tiers of sections except sections 29 and 32. In the remainder of the township private ownerships would be surveyed by metes and bounds according to the rules governing those surveys.

"Such a construction would be closest to following the lines of the original survey, perpetuating those that exist without creating them where they never existed at all. Encroachments, particularly against lands administered by the Forest Service, would be minimized, thus recognizing good faith on the part of landowners and saving the expense of the numerous Small Tracts surveys that would be required if dependent resurvey methods were employed. This would also help to foster the idea that the government really is a 'good neighbor,' whose purpose is to fix problems rather than create them by holding to an unrealistic rule: i.e., 'reconstruct' a survey in an area where it never existed in the first place. It would truly reflect conditions as they were found, and what the original surveyor did."

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We have considered the entire record of this survey and conclude that proper consideration of the relevant factors requires that the resurvey be redone so as to correct the deficiencies in the following limited area:

1. The common north corner of sections 1 and 2 must be reset only as to the lower township 46 N., R. 7 W., and not as a common corner of sections 35 and 36, 47 N., R. 7 W. This corner should be moved to the west to protect the rights of those asserting an interest in the lands along the east bank of Ash Creek resurveyed north of the section line between secs. 12 and 13.
2. No other changes save those necessary to effectuate the changes delineated in paragraph 1 are necessary. There having been no other protests to Group No. 1037, California, all other lines and corners may be concluded an accurate retracement of the original lines of survey.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed is set aside in part and remanded for further action consistent herewith.

James L. Bymes  
Chief Administrative Judge

I concur.

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James L. Burski  
Administrative Judge

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