



RUSSELL AND ANN FISHER-IVES, *ET AL.*

172 IBLA 54

Decided August 2, 2007

United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

RUSSELL AND ANN FISHER-IVES, *ET AL.*

IBLA 2003-289

Decided August 2, 2007

Appeal from a decision by the New Mexico State Director, Bureau of Land Management, denying a protest of the official filing of the plat of survey for a portion of the Felipe Gutierrez or Town of Bernalillo Grant. Survey Group No. 994, New Mexico.

Set aside in part and remanded; motion for hearing denied.

1. Surveys of Public Lands: Dependent Resurveys

In a dependent resurvey, a corner is categorized as existent, obliterated, or lost. A lost corner is restored by proportionate measurement from one or more interdependent corners. When the field notes for a dependent resurvey do not identify the monuments or points of control used to restore a lost corner and the record does not include field notes from the original survey which established the corner or any related corner or monument, the survey cannot be held to have complied with the *Manual of Instructions for the Survey of the Public Lands of the United States*.

2. Surveys of Public Lands: Dependent Resurveys

When the placement of a “closing corner” by dependent resurvey is not supported by facts documented in the record on appeal, the dependent resurvey will be set aside and remanded.

APPEARANCES: Joseph L. Werntz, Esq., and Steven J. Hile, Esq., Albuquerque, New Mexico for the appellants (Stephen J. Rhoades, Esq., Albuquerque, New Mexico, withdrew as counsel); Dale Pontius, 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 PRICE

Russell and Ann Fisher-Ives (husband and wife) and Danny Joseph and Nancy Lyon Frank (husband and wife) have appealed an April 7, 2003, decision by the New Mexico State Director, Bureau of Land Management (BLM), denying their protest against the official filing of the plat of survey of the “Felipe Gutierrez or Town of Bernalillo Grant” that had been approved September 23, 2002, for Survey Group No. 994, New Mexico. Notice that the plat of survey would be filed was published in the *Federal Register* with notice for several other surveys (67 Fed. Reg. 66000 (Oct. 29, 2002)), after which appellants filed a timely protest. Administrative Record (AR) B-3.¹ The filing of the plat was stayed pending review of the protest and remained stayed while this appeal was pending. 67 Fed. Reg. 66000 (Oct. 29, 2002); see *Lawyers Title Insurance Corp.*, 92 IBLA 162, 168-69 (1986); see also AR A-12, C-6, Answer at 10.

I. Introduction

Although the plat of survey here at issue is described as being a plat of the “Felipe Gutierrez or Town of Bernalillo Grant” (also spelled “Gutierrez” and herein referred to as the Gutierrez Grant), under Special Instructions for Group No. 994 dated January 22, 2002, and supplemented on March 12, 2002, cadastral surveyor

¹ BLM has submitted an administrative record that consists of (1) a loose leaf notebook containing documents divided into sections identified in an index as “files” A through H, K, L, N, O, and PQ, but which we will refer to as “sections”; (2) Folder 2 identified as “Milford Keene’s submission of Historical information,” which consists of various unbound documents; (3) Folder 3 identified as “Lyons Chain of title;” and (4) a tube containing the “Final Exhibit map of Clint Sherrill.” The Board did not receive the 1954 and 1990 U.S.G.S. quadrangle maps listed for sections I and J. It did receive several large exhibits: 1935 and 1996 aerial photographs of the area in dispute produced by the New Mexico Geographic Sciences Team on Aug. 15, 2002; two copies of two exhibit maps prepared by Clint Sherrill & Assoc., certified May 27, 2003, each with an enclosed overlay from a composite plat known as “Exhibit B,” discussed below; and a copy of the 2002 survey which is the subject of this appeal. In addition, the Board received a number of documents, some of which bear exhibit labels, that may have been submitted with appellants’ protest. Almost all of them appear elsewhere in the record. They have been placed in a file jacket marked “Additional documents,” which for convenience we have designated as Folder 4.

Celina K. Alaniz was to survey a 29.69-acre parcel that lies within the exterior boundaries of the Gutierrez Grant known as “Parcel A.” AR A-11, plat. The northern boundary of the Gutierrez Grant is also the southern boundary of the “Pueblo of Santa Ana Grant or El Ranchito Grant” (El Ranchito Grant). Parcel A is triangular in shape. Its northern boundary lies on the same line as the common boundary between the two Grants. Angle Point 1 of the parcel is a point on the common boundary between the Grants, and from Angle Point 1, a line extends southwest to Angle Point 2, and then northwest to Angle Point 3, which lies on the common boundary between the two Grants. The northern boundary of Parcel A is located over the common corner of sections 20, 21, 28, and 29, T. 13 N., R. 4 E., New Mexico Principal Meridian (NMPM), Sandoval County, New Mexico. Alaniz performed the work under Group No. 994 in 2002.

The January 22, 2002, Special Instructions for Group No. 994 explain that the work was “needed to identify the boundaries of a Parcel of Land described in U. S. District Court Decree No. 1814.” AR A-2 at 1. The work was to be “limited to the investigation and preliminary retracements” of a portion of the boundary between the El Ranchito and Gutierrez Grants and “a portion of the subdivisional lines and the boundaries of a certain parcel of land described in U.S. District Court Decree No. 1814, to the extent necessary to submit a report with rough draft diagrams.” *Id.* at 2. The report was to be “used as a basis for determining the methods and procedure in subsequent supplemental special instructions for completing the field work.” *Id.* A March 12, 2002, memorandum by Alaniz states that her “office [had] surveyed the boundaries of the description (a plat blueprint marked Exhibit B)” and that, as illustrated on Alaniz’s accompanying plat, there are “two structures which encroach on this tract.” AR A-5 at 2. On the same day, the Chief Cadastral Engineer, New Mexico, issued Supplemental Special Instructions to “broaden the scope of the work.” AR A-4 at 1. They describe the work as a “retracement and dependent resurvey” of a portion of the boundary between the Grants and “a portion of the subdivisional lines and the survey of a certain parcel of land described in U.S. District Court Decree No. 1814, to the extent necessary to identify the Indian and non-Indian lands.” *Id.*

The central question presented in this appeal is whether, in conducting her dependent resurvey of portions of subdivisional lines and a portion of the common boundary between the two Grants, Alaniz properly located the closing corner that was the beginning point for the Parcel A description. For the reasons explained *infra*, we hold that she did not.

II. Background

In 1891, Congress enacted a statute establishing the Court of Private Land Claims to sit in the Territories of New Mexico, Arizona, and Utah, and the States of Nevada, Colorado, and Wyoming and hear the petitions of persons “claiming lands within the limits of the territory derived by the United States from the Republic of Mexico” or by “Spanish or Mexican grant, concession, warrant, or survey,” which would be recognized and confirmed by the United States in accordance with the Treaty of Guadalupe Hidalgo. Act of Mar. 3, 1891, ch. 539, § 1, 26 Stat. 854.² An attorney was to be appointed to represent the United States, and an interpreter was authorized. *Id.* § 2. Under the Act, the Commissioner of the General Land Office (GLO), the surveyors-general of the Territories and States, and the keeper of any public records relating to any land grant or claim were obligated to produce such records and papers for the Court, and to testify regarding them. The Court was given exclusive jurisdiction over petitions subject to the Act, and the authority to

hear and determine all questions arising in cases before it relative to the title to the land the subject of such case[s], the extent, location, and boundaries thereof, and other matters connected therewith fit and proper to be heard and determined, and by a final decree to settle and determine the question of the validity of the title and the boundaries of the grant or claim

Id. § 7.

When a decree confirming title became final, the clerk of the Court was required to certify that fact to the Commissioner, GLO, by furnishing a copy of the judgment, which would state the “location, boundaries, and area of the tract confirmed.” *Id.* § 10. The Commissioner was to have the tract surveyed at the expense of the United States, the survey was to be made and returned to the surveyor-general of the Territory or State involved, and a plat completed. *Id.* Notice of the survey and plat was to be published by the surveyor-general for 90 days, and if no objection was raised, the surveyor-general would approve the plat and return it to the Commissioner. With or without objections, however, the Commissioner was to transmit the survey and plat, with field notes and accompanying papers, to the court that had issued the final decree. That Court would then determine whether the survey was “in substantial accordance with the decree of confirmation,” and if it was, the Court’s approval was to be endorsed on the face of the plat, and the

² Of the claims filed for 35 million acres, claims to 33.5 million acres were ultimately rejected. Paul W. Gates, *History of Public Land Law Development* (1968) at 118.

Commissioner would cause patent to be issued. Unapproved plats were to be returned for correction.³ *Id.*

In consolidated petitions 217 (*Jose M. Chaves v. U.S.*) and 258 (*Pedro Perea v. U.S.*), title to the lands within the Gutierrez Grant was confirmed in petitioners and others by the Court of Private Land Claims on June 3, 1898. AR F-1. In accordance with the procedure established in the Act, but over the objections of the U.S. Attorney, on August 25, 1899, the Court approved the survey and plat of the grant of John H. Walker, U.S. Deputy Surveyor, under Contract No. 325 dated June 21, 1898, with the Surveyor General of New Mexico. *Id.*

The Santa Ana Pueblo received patent to the lands contained in the El Ranchito Grant on October 18, 1909. According to the certification on the face of the plat of Walker's survey of the exterior boundaries of the El Ranchito Grant under Contract No. 326 executed from October 28 to November 2, 1898, the Court of Private Claims approved the survey on December 18, 1900.⁴ AR D-3.

In 1924, Congress enacted the Pueblo Lands Act "to resolve conflicting claims to Pueblo lands and to award compensation for the extinguishment of any Pueblo land rights." *Cohen's Handbook of Federal Indian Law*, § 407[2][b] at 326 (2005 ed.). The Act established the Pueblo Lands Board (PLB), which had the duty

to investigate, determine and report and set forth by metes and bounds, illustrated where necessary by field notes and plats, the lands within the exterior boundaries of any land granted or confirmed to the Pueblo Indians of New Mexico by any authority of the United States of America, or any prior sovereignty, or acquired by said Indians as a community by purchase or otherwise, title to which the said board shall find not to have been extinguished in accordance with the provisions of this Act

³ The term of the Court of Private Land Claims was to end on Dec. 31, 1895, *id.* § 19, but plats in the record reflect endorsements well after that date.

⁴ The Indians' title to the land within the Santa Ana Pueblo was confirmed by Act of Congress on Dec. 22, 1858, and patent was issued on Nov. 1, 1864. The exterior boundaries of the Pueblo's lands had been retraced and resurveyed by U.S. Surveyor Francis E. Joy between Feb. 18 and Mar. 29, 1915. AR F-1.

Act of June 7, 1924, ch. 331, § 2, 43 Stat. 636, *as amended*, Act of May 31, 1933, ch. 45, § 7, 48 Stat. 108, 111; *see generally* *Mountain States Telephone & Telegraph Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 240-44 (1985); *United States v. Thompson*, 708 F. Supp. 1206, 1208-10 (D. N.M. 1989), *aff'd*, 941 F.2d 1074 (10th Cir. 1991); Sol Op., “The Legal Status of the Indian Pueblos of New Mexico and Arizona,” 57 I.D. 37 (1939).

The Act instructed the PLB to prepare a report for each Pueblo and file a copy of it with the U.S. District Court for the District of New Mexico, the Attorney General of the United States, the Secretary of the Interior, and the Board of Indian Commissioners. Act of June 7, 1924, ch. 331, § 2, 43 Stat. 636.⁵ Upon the filing of each report for each Pueblo, the Attorney General was directed to file in the U.S. District Court for the District of New Mexico suit to quiet title to any lands identified in the report as Indian lands to which Indian title had not been extinguished. *Id.* § 3 at 636-37. The Act further provided that, where necessary, lands would be surveyed under the direction of the Secretary of the Interior, at Government expense, subject to the approval of the judge of the United States District Court for the District of New Mexico, and if approved, would be filed in said court and become a part of the Court’s decree or decrees. *Id.* § 9.

The PLB issued its report for the Santa Ana Pueblo on July 19, 1927. AR G-2. In regard to the tract at issue in this appeal, the PLB stated:

Attention is invited to a tract or parcel of land containing 29.69 acres lying within the exterior boundaries of what is known as the Felipe Gutierrez or Bernalillo Grant, which said Grant was confirmed to the heirs, legal representatives and assigns of the said original grantee, Felipe Gutierrez, by the Court of Private Land Claims.

It appears that the title to this tract of land is claimed by the Indians of Santa Ana under a deed executed by Juan Gonzales to Josefa Baca, who sold to Cristobal Martinez, *as shown by a plat or map filed with the Court of Private Land Claims*. *The Court, however, appears to have disregarded a part of this deed* in its decree of confirmation.

The testimony submitted shows that the Santa Ana Indians have been in possession of and cultivating all of this tract of 29.69 acres for a

⁵ Both the Secretary and the Attorney General were members of the PLB, but were authorized to act through assistants. A third member was appointed by the President. *Id.*

period of 35 or 40 years, except about 4 acres cultivated for many years by the priests of Jemez. The part cultivated by said priests is shown on [a] blue print marked Exhibit “B”.

The testimony shows further that no non-Indians, except said priests, have ever questioned the Indian title or claim to said land. The Board, therefore, has determined and so finds that the title claimed by said Indians has not been extinguished.

AR G-2 at 19-20 (emphasis added). For purposes of this appeal, it is assumed that the “blue print” referred to as “Exhibit B” was or is similar to the document submitted in the record as AR G-3. AR G-3 is a large document consisting of a plat labeled “Exhibit A,” titled “Map showing Exterior Boundaries of Santa Ana Pueblo or El Ranchito Grant,” and a second plat labeled “Exhibit B,” titled a “Map showing Private Claims within the Santa Ana Pueblo or El Ranchito Grant.” We will refer to AR G-3 as the “blueprint” or the “composite plat.” Exhibit B of the blueprint shows the location, with courses and distances, of 21 “extinguished” claims and 5 “unextinguished” claims within the boundaries El Ranchito Grant. It includes two typed lists of the private claim numbers and names of each of those claimants, which have obviously been superimposed on the blueprint. Exhibit B also portrays and provides courses and distances for the 29.69-acre tract.⁶ The blueprint document does not bear a legend or provide any information about its origin or date of preparation. The back side of the blueprint bears a stamped notation stating that it was obtained from the “Records in the National Archives & Records Administration, Rocky Mountain Region Archival Operations” and a handwritten note identifies it as coming from “USDC N. Mexico Law and Equity Case Files, Case 1814, from folder #3, Bx 217, Entry 73,” discussed *infra*.⁷

⁶ Exhibit B of the blueprint records the courses and distances as follows: “Beginning at an iron post marking Cor. No. 1, a distance of 11.74 chains to the closing corner between sections 20 and 21, which bears N. 89° 58' E.; thence S. 65° 45' E., 6.58 chains [could be 6.51] chains to Cor. No. 2; thence S. 25° [illegible first digit]7' W., 2.97 chains to Cor. No. 3; on the eastern boundary of the El Ranchito Grant; thence N. 59° 58' E., 7.22 chains to Cor. No. 1 and place of beginning.”

⁷ The description set forth in the PLB’s report and in the complaint in Equity Case No. 1814 is as follows: “Beginning at an iron post, Cor. No. 1 of this claim, from which closing corner between sections 20 and 21 bears N. 89° 58' E. 11.74 chains; thence N. 65° 45' W., 6.58 chains to Cor. No. 2; thence S. 25° 57' W., 2.97 chains to Cor. No. 3; on the eastern boundary of the El Ranchito Grant; thence N. 59° 58' E.,

(continued...)

On November 25, 1927, George A. H. Fraser, a Special Assistant to the Attorney General, initiated a quiet title action as Equity Case No. 1814. AR F-3. Among other matters, the complaint asserted “[t]hat ever since the eighteenth century, said Pueblo of Santa Ana has been and now is the owner in fee simple” of a 29.69-acre tract within the Gutierrez Grant, and provided a metes and bounds description. AR F-3 at 4. In addition, the complaint pointed out that the PLB had determined that the tract was Indian Land, “the Indian title to which has not been extinguished, as shown by the Board’s report filed in this Court.” AR F-3 at 6.

On June 2, 1928, Fraser filed a Motion for Decree Pro Confesso and submitted with it a Decree Pro Confesso.⁸ AR F-4. The Court issued the decree that same day finding that the named defendants did not have any right or title to the 29.69-acre tract as against the Pueblo of Santa Ana. AR F-5. The Decree Pro Confesso describes the parcel as:

Beginning at a point on the south boundary of El Ranchito Grant, from which the closing corners at the intersection of the south boundary of the El Ranchito Grant between Sections 20 and 21, Twp. 13 N., Rge. 4 E., N.M.P.M., bears South 89° 58' west, 10.62 chains; thence South 33° 02' West 17.85 chains; thence North 62° 30' West 33.54 chains; thence South 89° 58' East along the south boundary of El Ranchito Grant 39.72 chains to the place of beginning, containing 29.69 acres

AR F-5 at 1-2. The description is virtually identical to that provided in the complaint to quiet title. AR F-3 at 4. With minor exceptions, the courses and distances for the parcel shown on the Exhibit B portion of the composite plat are the same as the Court’s. The primary difference is that Exhibit B shows the northwest course to be 63° 30' rather than 62° 30'.

On May 31, 1929, the Court issued a Final Decree quieting title to the “El Ranchito Purchase” in the Pueblo of Santa Ana, with two specified exceptions (Private Claim (PC) No. 20 and part of PC No. 17). AR F-6.

⁷ (...continued)

7.22 chains to Cor. No. 1 and place of beginning, containing .084 A.” AR G-2 (PLB Report) at 16; AR F-3 (Equity complaint) at 5.

⁸ A *decree pro confesso* is “[o]ne entered in a court of equity in favor of the complainant where the defendant has made no answer to the bill and its allegations are consequently taken ‘as confessed.’” Black’s Law Dictionary (Rev. 4th Ed.)

As previously stated, the Survey Instructions for Group No. 994 were issued in 2002 “to identify the boundaries of a Parcel of Land described in U. S. District Court Decree No. 1814,” but the scope of work was expanded to a “retracement and dependent resurvey” of a portion of the common boundary between the El Ranchito and Gutierrez Grants and a portion of subdivisional lines, “and the survey of a certain parcel of land described in U.S. District Court Decree No. 1814.” AR A-2 at 1, A-4 at 1. Alanize’s field notes, also captioned the “Reestablishment of the Surveys Executed by John H. Walker in 1898 and Approved in 1899 and 1900 and the Resurvey Executed by Francis E. Joy and Basil C. Perkins in 1916 and Approved in 1920,” explain that “[t]his boundary survey” was designed

to provide the best fit of the legal description illustrated in Exhibit B of the Pueblo Lands Board Report, compiled in 1927, and the description of the Decree of the United States District Court for the District of New Mexico, in Santa Fe, filed June 2, 1928 The BLM used both of the above descriptions to determine Angle Point 1 and Angle Point 3 at the record distances in departure on the grant boundary from the closing corner of sections 20 and 21, T. 13 N., R. 4 E., NMPM, New Mexico. These two angle points were then used as the controlling corners to determine Angle Point 2 by Grant Boundary Adjustment.

AR A-11 at 2. The field notes report that the dependent resurvey and survey was commenced on January 22, 2002, and completed on August 2, 2002, but do not specify the date or dates when field work was conducted. AR A-5 at 2. The plat and field notes were approved by the New Mexico Chief Cadastral Surveyor on September 23, 2002.

III. Arguments on Appeal

Appellants do not dispute the ownership of Parcel A. Statement of Reasons (SOR) at 2. Rather, they claim that Cadastral Survey Group No. 994 placed it in an incorrect location. They agree that the parcel is triangular in shape; they do not challenge the alignment of its northern boundary with the common boundary of the Gutierrez and El Ranchito Grants; and they agree that the parcel’s northern boundary is 39.62 chains in length. *Id.* “The sole issue of dispute,” appellants state, “is the correct distance from the point of beginning for this property to the first corner or angle point [1] which is the eastern most point of this property,” but it is clear that they challenge most aspects of Alaniz’s work. *Id.* Thus, they contend that “the overwhelming and almost undisputed discovered and available evidence” is that the first corner is properly located “7.53 chains or 497.21 feet east of the point depicted on Parcel A” by Alaniz. *Id.* They claim that the legal description contained in the

complaint in Equity Case No. 1814 and repeated in the Decree Pro Confesso “is flawed and ambiguous,” does not close, and has errors in two bearings. *Id.* at 4. In particular, they believe that the bearing “South 89° 58' west” should be “South 89° 58' east” and “North 62° 30' West” should be “North 63° 30' West,” as shown on Exhibit B of the composite plat. AR B-5 at 5. Appellants contend that BLM concedes the errors because its survey relied upon Exhibit B of the composite plat to correct them and to locate the parcel. SOR at 4.

Appellants also note that Exhibit B of the composite plat contains its own errors. The most significant error is in showing the distance from the “point of beginning,” the point marked “cc” on the Exhibit B portion of the composite plat and referred to as the “closing corner,” east to the first Angle Point, at the eastern corner of the parcel, as 10.62 chains. *Id.* They argue that the error is demonstrated by applying the scale of 6 chains to 1 inch, on which Exhibit B is based, which results in a measured distance of approximately 17.3 chains. *Id.* In addition, appellants point out that Alaniz found two GLO monuments that identify corners of a .084-acre tract used by Jemez priests, which had been claimed by the Roman Catholic Church and reviewed by the PLB as PC No. 21-P.1. Those corners lie on the common boundary between the two Grants. They contend that the distance between the easternmost monument of PC No. 21-P.1 and the closing corner as shown on Exhibit B of the blueprint is approximately 4.5 chains, which is 7.5 chains less than the distance of 11.74 chains noted on the blueprint. *Id.* at 5.

Appellants further argue that the distance of 11.74 chains is the distance from the westernmost of the two monuments to the “closing corner” and they note that the difference of 7.5 chains “is almost the exact distance . . . the easternmost point” of Parcel A “should be moved in order to accurately reflect the location of this land.” *Id.* Even more precisely, they calculate that an adjustment for the difference between the two monuments would have the effect of placing the eastern corner 7.53 chains or 497.21 feet east of the boundary that Alaniz resurveyed. SOR at 3, 5; AR B-5 at 5. For these and other reasons, appellants argue that, although BLM relied upon Exhibit B to assist in correcting the errors in the Decree Pro Confesso, Parcel A as surveyed in 2002 “does not match the property depicted in Exhibit B and Parcel A is wrong.” SOR at 5.

The resurvey of portions of the subdivisional lines and the common boundary between the two Grants would reestablish the place of beginning, to determine the position of the easternmost point of Parcel A, from which the two other exterior boundaries of the parcel could be surveyed. As established by the 2002 survey, both of those boundaries cross through houses and other structures appellants own and include other land they believe they own within Parcel A. *See* AR K-5 and maps

prepared by Clint Sherrill & Assoc., certified May 27, 2003. Appellants present a variety of other arguments pertaining to the resurvey portions of Special Instructions Group No. 994 to support their position that Alaniz's survey is erroneous. They point out that placing the easternmost point of the triangle 7.53 chains to the east of where Alaniz located it would cause the parcel's eastern boundary to coincide with the right-of-way for State Highway 313 (formerly U.S. Highway 85). SOR at 5; AR B-5 at 5. They also point out that a 4-acre area shown on Exhibit B of the composite plat as extending southwest from the Catholic Church's surveyed .084-acre parcel (P.C. No. 21-P.1) into the 29.69-acre parcel corresponds to measurements made using the discovered GLO monuments, but projected onto Parcel A as surveyed by Alaniz the church parcel would contain 6.1 acres. SOR at 6.

In regard to the western side of the tract, appellants point out that Exhibit B of the composite plat shows the location of Sosten Jaramillo's PC No. 20-P.1, and they argue that surveys of the Gutierrez and El Ranchito Grants identified then-existing fence lines that correspond to contemporary fence lines. SOR at 5-6; AR B-5 at 3-4; *see* Ex. 2 (map prepared by Clint Sherrill & Assoc.). They also point out that Exhibit B shows the tie distance from the second angle point to the intersection with the extended section line as 8.70 chains, but that the distance shown on Alaniz's plat of Parcel A shows that the distance is "negligible." SOR at 6; Ex. 1 (map prepared by Clint Sherrill & Assoc.).

Appellants point to other evidence to support their position. They argue that the location of the 29.69-acre parcel shown on Exhibit B of the blueprint matches the location identified by Bureau of Indian Affairs surveyor Milford T. Keene in 1979. SOR at 3, 5-6. They claim that the land records for the Middle Rio Grande Conservancy District show a number of conveyances of tracts to the south of the 29.69-acre parcel, and none west of the highway or south of the El Ranchito Grant, and that this shows that for over 100 years, both the Santa Ana Pueblo and neighboring non-Native Americans have considered the land between the highway and the eastern boundary identified by the 2002 survey to be Pueblo land. AR B-5 at 6-7; SOR at 6-7.

BLM disputes appellants' conclusions. We note, however, that BLM's Answer contains statements that are not supported by the record BLM has submitted to the Board. For example, BLM explains that the PLB "reexamined Santa Ana Pueblo's claim to the triangular Parcel of land and found that the Parcel had never been surveyed," that it "tasked Mark Radcliffe, the Board surveyor, with identifying the Parcel's boundaries and delivering a report on his findings," and that "Radcliffe prepared a survey drawing which he labeled 'Exhibit B' of his report to the Pueblo Lands Board." *Id.*; *see* Decision at 4-5. BLM also asserts that "[t]he Pueblo Lands

Board's records do not include separate field notes for Radcliffe's survey" and that "[t]he only known record of his field notes are the bearings and dimensions that appear on the survey drawing labeled 'Exhibit B.'" *Id.* As will be discussed, it is doubtful that Radcliffe surveyed the 29.69-acre tract and, while it is possible that he may have drawn a portion of the Exhibit B blueprint that is in the record before this Board, there is no evidence that he submitted a report to the PLB regarding the parcel.

The question of who surveyed the subdivision lines for T. 13 N., R. 4 E., NMPM, and set a monument along the boundary at the closing corner for sections 20 and 21 is a crucial question for the dependent resurvey. The "closing corner" BLM and appellants refer to is not the common corner to sections 20, 21, 28, and 29, T. 13 N., R. 4 E., NMPM, but the point to the north of that common corner where the subdivision line between sections 20 and 21 crosses the shared boundary between the Gutierrez and El Ranchito Grants. *See Manual of Surveying Instructions, Corner Monuments*, at 268. BLM believes that "Joy's 1916 survey was the first survey to set sectional closing corners along the boundary of these two grants." Answer at 4. BLM argues that, "as of 1927, Joy's closing corner was the only government monument that could have been used to anchor the triangular Parcel . . . to a specific point along the northern boundary of the Gutierrez Grant." We think that the latter assertion is very likely true. BLM goes further, however, and asserts that "[w]hen Radcliffe surveyed the triangular parcel at the northern end of the Felipe Gutierrez Grant for the Pueblo Lands Board in 1927, he tied his first corner or 'Point of Beginning' back to Joy's closing corner." *Id.* at 4-5. BLM believes that its 2002 dependent resurvey and survey are valid because "Radcliffe's Exhibit B to the Board's Report was used as the basis for the BLM resurvey," "BLM was able to locate the monument for [Joy's] closing corner," and it "used this monument to locate the correct eastern boundary point, which is conceded by Appellants to be the only issue in this appeal." *Id.* at 11; *see* AR A-11 (plat).

BLM acknowledges that the Exhibit B portion of the blueprint "contains some scaling errors," but asserts that its dimensions nevertheless "are sound" and maintains that the appearance of 63° 30' in the Decree Pro Confesso, rather than 62° 30' as on Exhibit B, is a typographical error. Answer at 2-3, 7. BLM asserts that "[b]y appending Radcliffe's survey drawing to its decision, the Court minimized the effect of the erroneous bearing notation in the Decree Pro Confesso." *Id.* at 3.⁹ BLM also

⁹ The assertion that Radcliffe's survey drawing was appended to the Court's decree is not supported by the present record. Neither the Decree Pro Confesso nor the court's final decree identifies or refers to an appendix or attachment or an Exhibit B. AR F-5, (continued...)

argues that the error is “inconsequential” because Alaniz’s survey found the bearing to be 63° 35', only five minutes more than shown on Exhibit B. *Id.* at 7. Similarly, BLM agrees that the scaled distance between the “cc” and Angle Point 1 of the 29.69-acre tract as drawn on the blueprint is about 17 chains, and acknowledges that “Radcliffe’s scale is obviously off for a number of other points,” including the distance from the “cc” to the first corner of the Catholic Church’s P.C. No. 21-P.1. Answer at 5. BLM contends scale is not important because “Radcliffe’s measurement corresponds to the distance that the Jemez Priests cited in their testimony to the Pueblo Lands Board,” which established that “the distance of the Church tract from the closing corner of Sections 20/21 was 11.74 chains.” *Id.* at 5-6, 8. BLM further acknowledges that a GLO marker “was recovered 4.21 chains west of the sectional closing corner,” but asserts it was properly disregarded because “the Catholic Church’s claim was never validated by the PLB; and GLO records contain no references to these markers. It is unclear who set them or how they tie in to other survey monuments since there are no records about them in GLO files.” *Id.* at 9.

BLM’s legal argument is that 25 U.S.C. § 176 (2000) gives it authority to survey Indian lands and that its resurvey of Parcel A must be upheld over any non-official survey. Answer at 10-11. BLM states that the “Appellants have challenged the BLM’s decision to conduct a dependent resurvey, rather than an independent survey” and argues that

[a] dependent resurvey was wholly appropriate in this case because Appellants confined their dispute to a question over the distance of the first segment of the survey. It would not have been appropriate to survey the Parcel anew when the only measurement at issue was the

⁹ (...continued)

F-6. However, the complaint states that the PLB “has specifically determined that the land comprised in the tracts and parcels hereinabove and in paragraph 8 hereof specifically described, is Indian land, the Indian title to which has not been extinguished, as shown by said report of said Board.” AR F-3, ¶ 11 at 6. In finding that the title of the Santa Ana Indians to the 29.69-acre tract had not been extinguished, the PLB identified the exhibits “upon which title to this tract of land is possibl[ly] based are attached to this report.” AR G-2. The list did not identify Radcliffe or a survey or drawing prepared by him.

length of the first segment and the measurement did not affect the total acreage or the remaining measurements.

Id. at 11.¹⁰

Appellants have requested that the appeal be referred to the Hearings Division for assignment to an Administrative Law Judge (ALJ). *See* 43 C.F.R. § 4.415. BLM opposes the request. It argues that a hearing is not necessary because the Board can resolve any factual disputes “based on the extensive administrative record” BLM has submitted. Reply at 1. BLM asks that the appellants’ request for a hearing be denied but, incongruously, also requests that the Board “enter an order assigning this appeal to an Administrative Law Judge to be resolved by motions to dismiss or, in the alternative, for summary judgment based on the administrative record in this case.”¹¹
Id.

Appellants counter that a hearing is necessary in order to understand the issues, arguing that if BLM had truly performed a dependent resurvey, the administrative record would consist of only “the 1928 [sic] survey and the 2002

¹⁰ This argument apparently was raised at an earlier stage of the proceedings. We find it somewhat perplexing, because the term “dependent resurvey” was used in the Mar. 12, 2002, Supplemental Instructions issued prior to Alaniz’s official survey and before the appellants could take any position on its result to argue that BLM should have performed an independent resurvey. In any event, the parties’ argument can relate only to the portions of the subdivisional lines and the common boundary between the two Grants as specified in the supplemented instructions for Group No. 994.

¹¹ The Board cannot grant either alternative. As developed in the Board’s decisions, referral of an appeal to the Hearings Division under 43 C.F.R. § 4.415 transferred jurisdiction over the case and the ALJ to whom it was subsequently assigned was expected “to convene a hearing, take necessary testimony and receive other relevant evidence, and issue a decision applying the law to the facts of the case.” *See, e.g., Fred T. Angasan & Clarence Kraun*, 166 IBLA 239, 247-48 (2005); *State of South Dakota*, 166 IBLA 210, 224 (2005). Recently, the Director of the Office of Hearings and Appeals issued a decision limiting ALJs in cases referred under 43 C.F.R. § 4.415 to making findings of fact and taking other actions specifically directed by the Board. The responsibility of issuing a decision remains with this Board. *Samedan Oil Corp.*, 32 OHA 61, 69-70 (2005). As a consequence, the Board must maintain the case on its docket pending the results of the hearing. *Id.* at 71.

survey” and not the numerous documents BLM has provided. SOR at 3. They also note that BLM has included in the record “affidavits from non-parties to this appeal[,] . . . which affidavits Appellants have not seen,” and that “BLM’s use of such affidavits to help explain the errors contained in the Exhibit B survey is unknown and should be resolved by testimony and cross-examination at an evidentiary hearing.” *Id.* at 3.¹²

IV. Review of the Record

Having reviewed the record, the Board concludes that the New Mexico State Director’s decision denying appellants’ protest against filing the official plat of survey must be set aside, the 2002 dependent resurvey must also be set aside, and the matter remanded to BLM for further research and appropriate action. The 2002 dependent resurvey was based upon fundamental mistakes about the history of Parcel A, and the record submitted on appeal fails to acknowledge and include other documents that appear to be relevant to determining the location of the closing corner to which the survey of the two boundaries of the 29.69-acre parcel was tied. Most significantly, the record before the Board casts doubt on BLM’s assertions that in 1916 Joy “set a monument along the boundary at the closing corner for Sections 20/21”; that “[w]hen Radcliffe surveyed the triangular parcel at the northern end of the Felipe Gutierrez Grant for the Pueblo Lands Board in 1927, he tied his first corner or ‘Point of Beginning’ back to Joy’s closing corner for Sections 20/21”; and that “Alaniz was able to locate that monument.” Answer at 4-5; *see* Decision at 4-5. Although Alaniz located several points on the common boundary between the Gutierrez and El Ranchito Grants, it appears that she was unable to identify the “closing corner” to which the description of the 29.69-acre parcel is tied in the Decree Pro Confesso, although, as will be discussed below, that conclusion is not free from doubt. *See* Alaniz Field Notes at 6.

An initial error appears in the January 22, 2002, Survey Instructions, which state: “In 1742, the Santa Ana Pueblo purchased 29.69 acres from Josepha Baca.” AR A-2 at 2. The conveyance date is incorrect, and is repeated in Alaniz’s March 12, 2002, memorandum. AR A-5 at 1. As quoted above, the PLB reported that title to the tract appeared to be “claimed by the Indians of Santa Ana under a deed executed

¹² We note that the July 22, 2003, letter from Stephen Beyerlein, New Mexico State Office, BLM, provided appellants a copy of the index to the AR and invited their counsel to telephone him for a copy of any item listed therein. Ex. A to Memorandum in Support of Appellants’ Request for Administrative Hearing. Appellants could have availed themselves of this opportunity. However, those affidavits should have been served on appellants. 43 C.F.R. § 4.413.

by Juan Gonzales to Josefa Baca, who sold to Cristobal Martinez.” AR G-2 at 19. The PLB’s statement was based upon documents attached to its report that included:

- (1) Photostat of original deed, dated October 14, 1713, from Juan Gonzales Bas to Dona Josefa Baca, marked Exhibit “R”;
- (2) English translation of deed, dated October 14, 1713, marked Exhibit “S”;
- (3) Photostat of original deed, dated December 20, 1739, from Dona Josefa Baca to Cristobal Martin, marked Exhibit “T”;
- (4) English translation of deed, dated December 20, 1739, marked Exhibit “U”;
- (5) *Photostat of original deed, recorded in Kearny Code, dated July 7, 1763, executed by Quiteria Contreras, widow of Cristobal Martin, to the Indians of Santa Ana, marked Exhibit “M” to this report;*
- (6) *Photostat of plat or map filed with the Court of Private Claims, marked Exhibit “V”;*
- (7) There is also attached for reference a copy of the decree of the Court of Private Claims confirming to the heirs, legal representatives, and assigns of the original grantee, Felipe Gutierrez, the tract of land known as the Felipe Gutierrez or Bernalillo Grant, within the exterior boundaries of which the said 29.69 acre tract lies, marked Exhibit “W”.

AR G-2 at 19-20 (emphasis added). From this list of evidence considered by the PLB, it appears that the Pueblo’s title arose from the 1763 deed, which originated with the 1713 conveyance.¹³

¹³ We also note that in correspondence seeking information regarding the identity of potential defendants so that he could draft the complaint to initiate the quiet title action, the Special Assistant to the Attorney General stated that the Pueblo’s title to the parcel “rests partly on a chain of deeds beginning in 1713, and partly on possession for 35 or 40 years.” Letter to Hanna & Wilson dated Sept. 21, 1927, Folder 4.

As the above list shows, the PLB had before it Exhibit V, a photostat of a plat or map filed with the Court of Private Land Claims. AR G-2 at 19, 20. Most likely, that “plat or map” not only would have identified the 29.69-acre parcel by metes and bounds, but presumably also would have tied its position on the ground to one or more monuments. BLM’s assertion that the PLB “found that the Parcel had never been surveyed” (Answer at 2) does not accurately describe any statement in the PLB’s report so that BLM’s belief that a survey had not been previously conducted appears erroneous. Exhibit V to the PLB report is not in the record, and the parties have made no argument or representation about the document or failed attempts to discover or obtain it from among the archives of the U.S. District Court for the District of New Mexico, the Attorney General, the Secretary of the Interior, and the Board of Indian Commissioners, all of which were to receive copies as specified in the Act, if not the Pueblo of Santa Ana as well. See Act of June 7, 1924, ch. 331, § 2, 43 Stat. 636.¹⁴

In her February 6, 2002, memorandum Alaniz recognized that the PLB had referred to a plat or map submitted to the Court of Private Land Claims in 1896, and that it included the parcel, but the Court had overlooked a part of the deed under which the Indians asserted title to the 29.69-acre parcel. AR G-2 at 19.¹⁵ Admittedly, the meaning of the statement is not entirely free from doubt, but it nonetheless indicates that, like the PLB, the Court of Private Land Claims had before it not only a “plat or map” of the parcel, but also a deed to the land. BLM theorizes that the PLB had “constructed a plat” of the parcel based upon testimony “and the original deed of conveyance in 1742.” AR A-5 at 1. If there was testimony before the PLB about the location of the 29.69-acre parcel from which Radcliffe might have “constructed” a plat, BLM has failed to include it in the limited transcript of testimony it has provided in the record submitted on appeal.

¹⁴ The records would be extensive. “Through the work of the Pueblo Lands Board, about eighty percent of non-Indian claims within the Pueblos, involving some 50,000 acres, were approved.” *Cohen’s Handbook of Federal Indian Law*, § 407[2][b] at 327 (2005 ed.).

¹⁵ BLM further asserts that the patent for the El Ranchito purchases omitted the parcel, suggesting that the Court of Private Land Claims intended to include the parcel. Answer at 2. Neither the patent nor any record of that Court’s proceedings were submitted on appeal, but the PLB’s report clearly suggests, as would be expected since the parcel lies within its exterior boundaries, that the parcel was omitted from the Court’s confirmation of the Felipe Gutierrez Grant in June 1897. AR G-2 at 19; see also AR F-1 (decree and related documents).

The suggestion that Radcliffe may have surveyed the 29.69-acre parcel is contained in the May 25, 1927, opening statement by Charles E. Jennings, the PLB's acting chairman, who explained that the PLB was meeting "to hear testimony on lands claimed by the Santa Ana Indians lying south of the south boundary of the El Ranchito grant as established by the Court of Private Claims and retraced by the Joy Survey." Jennings further asserted that "[t]his tract has been surveyed out by the surveyors of the Pueblo Lands Board and contains 29.69 acres." AR Folder 2, PLB testimony for May 25, 1927, at 1. Unfortunately, the testimony provided from that day does not confirm Jennings' assertion, because it was not about the 29.69-acre tract, but the location of the common boundary between the El Ranchito and Gutierrez Grants. Radcliffe and others testified. Radcliffe's testimony was brief and did not mention the 29.69-acre tract or the other private land claims portrayed on Exhibit B of the blueprint. He testified that he had drawn the "plat" he was shown, but that plat was not identified by either D.E. Cornell, the individual representing the American Indian Defense Association who questioned Radcliffe, or by Radcliffe himself.

Nor, contrary to BLM's claim, is there any evidence in the record of any report regarding the parcel that Radcliffe may have submitted to the PLB. Moreover, the blueprint containing Exhibit B in the record (AR G-3) portrays the location of 21 "extinguished" claims and 5 "unextinguished" claims within the El Ranchito Grant and provides courses and distances for them and for the 29.69-acre tract. The PLB's report includes legal descriptions of all 26 parcels but *not* the 29.69-acre tract. That fact is significant because the PLB's report refers to both the extinguished and unextinguished claims as being portrayed on Exhibit B. AR G-2 at 5, 15.

In contrast, the report refers to the 29.69-acre tract "as shown by a plat or map filed with the Court of Private Land Claims." AR G-2 at 19. However, the PLB report states that testimony showed that the Santa Ana Indians had been in possession of "all of this tract of 26.69 acres," except the 4 acres cultivated by the Jemez priests, and that "[t]he part cultivated by said priests is shown on blue print marked Exhibit 'B'." *Id.* at 19-20. The tract cultivated by the priests is depicted on Exhibit B of the composite plat as adjoining and intruding into the 29.69-acre parcel. The .084-acre portion within the El Ranchito Grant was described by metes and bounds, while the 4 acres within the Gutierrez Grant was not. We think it unlikely that, as of the date of the report, Radcliffe had surveyed the 29.69-acre parcel, assuming that if he had, the PLB would have referred to his plat specifically as such, rather than identifying

the tract as it did by stating that it was as “shown by a plat or map filed with the Court of Private Land Claims.”¹⁶

More probably, the description of the 29.69-acre tract provided to the Special Assistant and used in the Equity complaint and the Decree Pro Confesso was taken from one of the title documents attached to the PLB’s report or extracted from the “plat or map filed with the Court of Private Land Claims.” Radcliffe (or someone else) may have used the description to illustrate the 29.69-acre parcel on a copy of the PLB’s Exhibit B. For the reasons discussed above, BLM’s belief that the parcel had not been surveyed is not supported in the present record, which has implications for the dependent resurvey portion of Group No. 994.

Ultimately, the source of the plats on Exhibits A and B on the blueprint document obtained from the court files cannot be identified based upon the record BLM has provided. A comparison of the portion of the blueprint labeled “Exhibit A” and titled a “Map showing Exterior Boundaries of Santa Ana Pueblo or El Ranchito Grant” has two parts. The smaller map showing the west boundary of the “San Felipe Pueblo Grant” is similar, but not identical, to a portion of a 1920 plat of the El Ranchito Grant approved by the Surveyor General on May 31, 1920, which BLM has included as part of AR D-5. The legend on Joy’s 1920 plat indicates that it reflects information from 13 surveys Joy and Perkins conducted between September

¹⁶ As a matter of conjecture, it is possible that Radcliffe drew the 29.69-acre parcel onto a copy of the PLB’s Exhibit B sometime prior to its entry into the record of Equity Case No. 1814. By letter dated Sept. 21, 1927, a Special Assistant to the Attorney General in Denver, Colorado, informed the PLB that the papers he had received did not contain a description of the 29.69-acre parcel and requested that “Mark” be asked to “furnish me with a description if he has one already? If not, I fear it will be necessary to make one by survey.” Folder 2. He must have received a quick response, although the record does not disclose who replied to him or furnished the description, because less than a month later, on Oct. 19, 1927, the Special Assistant wrote to the Albuquerque Title Guaranty Company and provided the description of the tract and sought assistance in identifying potential defendants to be named in the complaint. *Id.*

The description the Special Assistant provided to the Albuquerque Title Guaranty Company differs from that set forth on the Exhibit B portion of the composite plat, in that the bearing to Angle Point 1 of the parcel on the blueprint is S. 89° 58' E., not S. 89° 58' W. However, the Special Assistant’s description is identical to that stated in the complaint to quiet title filed in Equity Case No. 1814, AR F-3, and in the Decree Pro Confesso, AR F-5. It is unlikely that Radcliffe conducted a survey on the ground during the intervening month.

20 and December 7, 1916. Folder 2 includes a fragment of the field notes from their survey work from September 26 to November 8, 1916, which was titled “Independent Resurvey of East Boundary, Survey of a Portion of North Boundary, also a portion of Subdivision and Meander Lines within the San Felipe Pueblo and the Santa Ana or El Ranchito Grant, T. 13 N., R. 4 E.” Those notes document Joy’s work involving the closing corners of sections 17, 18, 19, and 20, the subdivision line between sections 21 and 22, and the closing corner between sections 21 and 22 where it intersects the Gutierrez Grant. This evidence inevitably raises the question of whether Joy did not at that time also perform an independent resurvey of the closing corner between sections 20 and 21 where it intersects the Gutierrez Grant.

Whatever might be suggested by the missing portion of Joy’s 1916 field notes just described above, however, the PLB stated that land shown on its Exhibit A, “being a Spanish Grant as confirmed by Act of Congress approved December 22, 1858, and patented November 1, 1864,” was “more particularly described by the field notes of the GLO “survey by A. O. Stinson under direction of Francis E. Joy, U. S. Surveyor, made February 18th to March 29th, 1915” AR G-2 at 1, 2; *see* Act of Dec. 22, 1858, ch. V, 11 Stat. 374, F-3 at 2. The Joy plats submitted as AR D-5 clearly do not reflect information from a 1915 survey, and neither BLM nor appellants have provided any documentation of the 1915 survey or even acknowledged the PLB’s attribution. The Survey Instructions did not identify a 1915 survey in its statement of the history of the “PLSS Surveys,” Alaniz did not identify that survey in her February 2002 chronology or in her list of related surveys in her field notes, and BLM has not submitted any documentation of the survey in the record or explained why it did not. *See* AR A-2 at 1-2, A-11 at 1.

The relevance of Joy’s 1915 survey is further underscored by documents in section D-5 of the AR. These include Joy’s plat of private land claims within the El Ranchito Grant, which were surveyed between October 18 and November 15, 1916, and certified by the Surveyor General on May 31, 1920. The legend of the Joy plat indicates that in 1916 Joy and Perkins surveyed private claims totaling 9 miles, 74 chains, and 75 links. AR D-5. The plat includes Sosten Jaramillo’s PC No. 20-P.1, which is within the El Ranchito Grant near the 29.69-acre tract, although the parcel does not appear on the plat.¹⁷ The Joy plat also does not include the two parcels

¹⁷ D-5 also includes a plat of P.C. No. 20-P.1 that was approved by the Office Cadastral Engineer on Apr. 7, 1931, accepted by the GLO Acting Assistant Commissioner on Oct. 10, 1931, and approved by the U.S. District Court for the District of New Mexico on Feb. 15, 1932. The Cadastral Engineer certified that the plat “conforms to the lines of the previous survey shown upon the plat approved

(continued...)

claimed by the Catholic Church, which the PLB stated had been “surveyed as private claims, indicated on blue print map hereto attached and marked Exhibit ‘B.’” AR G-2 at 15. The U.S. District Court’s final decree identifies “the designation of said tracts by Private Claim numbers and by Parcel Numbers [as] being that of a survey made by the General Land Office in the year 1915, commonly called the Joy Survey, and the descriptions being those of said Joy Survey” AR F-6 at 1. Thus, the survey plat and field notes of the 1915 survey are relevant to the position of the Catholic Church’s P.C. No. 21-P.1 in relation to monuments on the common boundary of the Gutierrez and El Ranchito Grants Alaniz resurveyed, a matter that, as discussed below, is disputed in this appeal.

Despite the fact that both the PLB and the Court identified the 1915 Joy survey, in rejecting appellants’ protest BLM explained that, “[a]fter locating and measuring the land, Mr. Radcliffe superimposed his work over the top of a plat of survey executed in 1916 by Mr. F. E. Joy,” and that “both the triangle and the Jemez Priest’s [sic] tract are placed too far east to match Mr. Radcliffe’s measurements.” AR C-5 at 4; *see* A-5 (the tract was “illustrated on Francis E. Joy’s 1916 plat of survey”). On appeal, BLM maintains its claim that Radcliffe not only drew the Catholic Church’s P.C. No. 21-P.1 on Exhibit B of the blueprint, but also surveyed it, and it argues that the distance of 11.74 chains west of the closing corner for sections 20 and 21 was established by the Jemez Priests in their testimony to the Pueblo Lands Board. Answer at 8 (citations to record omitted).

The Catholic Church’s P.C. No. 21-P.1 appears not to be drawn to scale in one respect. Although the distance between its corner number 1 and the point marked “cc” at the dividing line between sections 20 and 21 is identified on Exhibit B of the composite plat as 11.74 chains, the scaled distance of the line is, as appellants point out, approximately 4.5 chains. BLM’s decision on appellants’ protest asserted that Exhibit B showed the correct distance from the closing corner to the true beginning of the Catholic Church Parcel, or 11.74 chains. AR C-5 at 5. On appeal, BLM maintains that the distance of 11.74 chains is correct. However, BLM also acknowledges that Alaniz found a monument for corner number one of the parcel, inexplicably marked as having been placed by the GLO in 1927, and measured its location as “4.21 chains west of the sectional closing corner.” Answer at 9; AR A-11 at 6. BLM contends that the monument does not determine the correct location of the closing corner and that Alaniz properly “disregarded this marker for good reason: the Catholic Church’s claim was never validated by the Pueblo Lands Board; and GLO records contain no

¹⁷ (...continued)

May 31, 1920 and the field notes of said survey conform to the description contained in the Court decree.”

references to these markers. It is unclear who set them or how they tie in to other survey monuments since there are no records about them in GLO files.” Answer at 9; AR A-11 at 7-8.

The correct position of the “closing corner” on the ground cannot be ascertained from Exhibit B of the blueprint. As has been pointed out, the U.S. District Court recognized that the private claims and their descriptions came from a 1915 survey by Joy. AR F-6 at 1, 2. Witnesses before the PLB testified regarding the 1915 survey on May 25, 1927. Folder 4 (PLB testimony). If the reference to a “closing corner” in the description of P.C. No. 21-P.1 in the PLB’s report was based on the 1915 survey, Joy must have known the position of the “closing corner” on the ground. If the same “closing corner” was used to measure the distance from the first corner of the 29.69-acre parcel, the first corner of Parcel A would be 10.62 chains to the east, 7.5 chains further east than where it was located by Alaniz.

On the other hand, if the monuments Alaniz found for the corners of P.C. No. 21-P.1 were correctly placed, the distance from the first corner of P.C. No. 21-P.1 to the “closing corner” must be 4.21 chains and both Exhibit B and the Decree Pro Confesso must be incorrect. BLM’s repeated assertion that the Jemez Priests testified before the PLB that the distance was 11.74 chains, Answer at 5-6, 8, is simply not supported by the record before us because the limited transcript of testimony included in the record contains no such testimony. Nor does the PLB’s rejection of the Catholic Church’s claim to the parcel have any bearing on the validity of the monuments as evidence of the closing corner if they were placed by a proper survey. Absent a plat or field notes providing evidence to the contrary, the conclusion suggested by the correspondence, complaint in Equity, the Decree Pro Confesso, and Exhibit B of the blueprint is that the “closing corner” of sections 20 and 21, as surveyed in 1915 or earlier, is 11.74 chains from the first corner of P.C. No. 21-P.1 and the first corner of the 29.69-acre parcel is 10.62 chains east of that “closing corner.”¹⁸

IV. The Dependent Resurvey

At the outset, Alaniz located two points on the common boundary between the Gutierrez and El Ranchito Grants. She began her dependent resurvey:

¹⁸ We note that the plat for Joy’s 1916 survey has a notation “cc” at the line between sections 20 and 21 and the number 11.74 appears as the distance between the “cc” and the 4½ mile point of the El Ranchito Grant. AR D-5.

at the 1 1/2 mile cor. on the north boundary of the Felipe Gutierrez or Town of Bernalillo Grant (Note: This cor. is referred to as the 1/2 mile cor. in the Walker surveys and the Joy and Perkins resurvey, but is actually the 1 1/2 cor., originally established at midpoint between the 1 mile cor. and the 2 mile cor.), monumented with a limestone 10x8x6 ins., projecting 1 in. above the ground (1920 Joy and Perkins record: limestone 4x8x10 ins. above ground), with south face marked FG ½ M, and a green T-post alongside.

AR A-11 at 4. Again, the record shows that it was Joy's 1915 survey on which the Court and the PLB expressly relied for the description, and while BLM submitted a Joy plat approved in May 1920 as AR D-5, on its face it does not reflect the 1915 survey, and instead depicts surveys performed in the Fall of 1916. Although that plat shows the subdivision line between sections 20 and 21 and the closing corner at the Gutierrez Grant boundary, the field notes supplied as part of the record do not relate to the subdivision line between sections 20 and 21.

At a point 8.53 chains to the west Alaniz found:

The 4 mile cor. on the east boundary of the El Ranchito Grant, monumented with an iron post, 3 ins. diam., firmly set, 7 ins. below the ground, with brass cap mkd. as described in the official 1920 field note record of the 1916 resurvey, except incorrectly mkd. 3M instead of 4M, with a green fence post alongside.

AR A-11 at 5.

Walker conducted two surveys in 1898. He first surveyed the exterior boundary and connecting lines of the Gutierrez Grant.¹⁹ Walker's field notes report that he proceeded west from the northeast corner of the Gutierrez Grant and at 80 chains at the top of a flat ridge "[s]et a lime stone 17x15x10 ins. in the ground, for 1 mile cor., marked F G 1 M on S. face." After descending from the hill and proceeding onward 40 chains, he "[s]et a lime stone, 12x8x8 ins., 8 ins. in the ground, for ½ mile cor.," which he marked F G ½ M on the south face.

¹⁹ The AR lists Walker's survey of the Bernalillo Grant as document D-2. Tag D-2, however, is attached to a copy of the field notes for his survey of the El Ranchito Grant. A plat and typed partial copy of the field notes for Walker's survey of the Gutierrez (Bernalillo) Grant is included in section D of the AR, but is not separately tagged. Those notes refer to the survey as being performed under Contract No. 324, but the cover page refers to Contract No. 325.

Walker's second contract (No. 326) was to survey the exterior boundary and connecting lines of the El Ranchito Grant. AR D-2, D-3. The field notes BLM has provided (AR D-2)²⁰ show that in 1898 Walker began from his 3-mile monument near the intersection of the El Ranchito Grant's eastern boundary with the northern boundary of the Gutierres Grant. From there Walker reached the top of a "flat ridge" at 29.50 chains and at 31.50 chains he found the "1 mile cor. on N. bdy of the Bernalillo [Gutierres] grant, which is a lime stone 5x15x10 ins. above ground firmly set, marked FG 1M on S. face and properly witnessed." At 40 chains he "set a lime stone 14x10x5 ins. 10 ins. in the ground for the ½ mile cor. marked ER ½M on N. face." At 71.50 chains he found the ½ mile corner for the Gutierres Grant, which he said was "a lime stone 4x8x8 ins. above ground firmly set, marked FG ½M on S. face and properly witnessed," and at 80 chains he "[s]et a lime stone 20x8x7 ins. 15 ins. in the ground for 4 mile cor. marked ER 4M on N. face."

Alaniz's statement that she had found the 1½ mile corner marker for the Gutierres Grant may be correct, despite the reported difference in the size of the monument.²¹ Likewise, she may have correctly positioned the 4-mile corner of the El Ranchito Grant, although she did not find Walker's monument, but instead located an iron post set by Joy. AR D-5 at 12-13.²² The distance of 8.53 chains between the

²⁰ In addition to a copy of 4 pages of typed notes, BLM has included in the record handwritten notes for the "South Boundary." That boundary, however, is south of the northwest corner of the Gutierres Grant and not the boundary of concern in this appeal

²¹ As quoted, Alaniz found a limestone monument 10x8x6 inches. Walker stated that the monument he set was 12x8x8 and buried 8 inches in the ground, apparently resulting in the 4x8x8 monument he later found during his El Ranchito Grant survey. Joy found "a limestone 4x8x10 ins. above ground, marked and witnessed as described by the Surveyor General."

²² Joy set the post at a proportional distance of 78.45 chains from Angle Point 10 and 48.15 chains from where he found a limestone monument for the 1-mile corner of the Gutierres Grant. Although his field notes are titled as a resurvey of the "El Ranchito Grant (Santa Ana Pueblo) and portion of North and all of East boundaries of Angostura Grant," the portion included in the record on appeal does not identify the survey that he resurveyed. His notes, however, refer to monuments Wendall V. Hall placed during a 1914 survey. BLM has provided pages 8 and 10 of Hall's field notes, but they record his retracement of the north boundary of the Gutierres Grant from its intersection with the El Ranchito Grant's east boundary going east to the northeast corner, rather than running west to the northwest corner.

two points is consistent with the 8.54 chains measured by Joy and the distance of 8.5 chains at which Walker set his monument.

At the other end of the common boundary, Alaniz found:

The northwest cor. of the Felipe Gutierrez or Town of Bernalillo Grant, identical with AP 11 of the El Ranchito Grant, monumented with an iron post, 3 ins. diam., firmly set, 12 ins. below the ground, with brass cap mkd. as described in the official 1920 field note record of the 1916 resurvey.

AR A-11 at 9. The iron post Alaniz found is apparently the one that Joy set. AR D-5 at 14. She does not mention either the 6x8x6 inch limestone monument Joy found where he set his iron post or the 18x14x10 inch limestone monument Walker set 12 inches into the ground.

In regard to Parcel A, Alaniz determined that a distance of 17.81 chains from the 4-mile monument was the:

Point for Angle Point 1 of Pueblo of Santa Ana, Parcel A, determined at the record distance in departure from the closing cor. of secs. 20 and 21, T. 13 N., R. 4 E., as shown on the map entitled Exhibit B from the Pueblo Lands Board Report, compiled in 1927, and as described in the Decree

AR A-11 at 5. Proceeding west along the boundary line, Alaniz identified the point at 28.43 chains from the 4-mile monument as the "Point for the closing cor. of secs. 20 and 21, T. 13 N., R. 4 E., at proportionate distance; there is no acceptable remaining evidence of the original cor. position." *Id.* at 6. Despite this statement, Alaniz reported that:

From this corner, the monument for the original 1916 closing cor. of secs. 20 and 21, found to be disturbed and removed from its true original position, bears S. 36° 42' W., 0.095 chs. distance, which is an iron post, 2 ins. diam., firmly set, 16 ins. below the ground, with badly damaged brass cap mkd. as described in official 1920 field note record of the 1916 resurvey. Disposed of the damaged iron post.

Id.

[1] The latter entry raises questions about what Alaniz meant in stating that there was “no acceptable remaining evidence” of the original position of the corner and about BLM’s contrary assertion on appeal that it “was able to locate the monument for the closing corner.” Answer at 11. In a dependent resurvey, a corner is categorized as existent, obliterated, or lost. *John W. Yeargan*, 126 IBLA 361, 363 (1993); *Elmer A. Swan*, 77 IBLA 99, 103-04 (1983). Alaniz’s statement that there was no acceptable evidence indicates a “lost” corner, in which case she should have restored its location by proportionate measurement, as she states she did. See *Manual of Instructions for the Survey of the Public Lands of the United States*, 1973 (BLM Technical Bulletin 6) (*Survey Manual*) §§ 5-20 through 5-24 at 133-34. On the other hand, Alaniz reports that the iron post she found had been “disturbed and removed from its true original position,” although it was “firmly set” 16 inches into the ground. Her field notes neither provide the information from the “badly damaged brass cap” that allowed her to confirm that it was one that had been set in 1916, nor identify the reasons she concluded that it was not in its original position and, correspondingly, was not evidence of the original location of the corner. See *Mark Einsele*, 147 IBLA 1, 16 (1998). If BLM’s assertion is that the iron post identifies the position of the “closing corner,” it is inconsistent with Alaniz’s conclusion that the corner was lost and had to be restored by proportionate measurement.

The partial copy of Joy’s 1916 field notes BLM has included in the record does not contain an entry about locating a “closing corner” on the common boundary of the Gutierrez and El Ranchito Grants, and Joy’s 1915 survey was overlooked altogether. Nor does BLM identify the specific survey during which it believes Joy set the iron post. The documents compiled by Keene, however, include other fragments of the 1916 field notes²³ in which Joy reported that he proceeded “[f]rom the cor. of secs. 15, 16, 21, and 22. S. 0° 01' E., bet. secs. 21 and 22” for 73.94 chains where he “set an iron post 3 ft. long 2 ins. diam. 24 ins. in the ground *for witness cor. to closing cor. secs. 21 and 22*” because “[t]he true point for closing cor. of secs. 21 and 22 falls in arroyo.” Folder 2 (emphasis added). At 74.34 chains he intersected the common boundary of the El Ranchito and Gutierrez Grants “at a point from which the true point for the 3 Mi. cor. of the El Ranchito Grant, bears S. 89° 41' E., 26.87 chs. dist.” The notes establish that Joy set a monument in 1916, but it appears that it was not the point where the section line between sections 20 and 21 crosses the common boundary between the Grants and was not intended to identify that point. Instead, it was set as a witness corner and its position was not only 0.40 chains north of the

²³ These field notes relate to Joy’s “Independent Resurvey of East Boundary, Survey of a Portion of North Boundary, also a portion of Subdivision and Meander Lines within the San Felipe Pueblo and the Santa Ana or El Ranchito Grant,” T. 13 N., R. 4 E., NMPM

common boundary, but even further north of where Alaniz found the “disturbed and removed” iron post, which presents the question of whether Alaniz found the monument marked 3 miles and the witness corner Joy describes in his notes, instead of what she believed was the 4-mile monument for the El Ranchito Grant. If so, however, based upon Joy’s field notes, it appears Alaniz should have placed her “closing corner” 1.56 chains further east than she did.

A more fundamental problem is that Alaniz’s field notes do not describe the markings on the brass caps she found, or the procedure she followed to establish the closing corner “at proportionate distance,” and neither her field notes nor her plat identifies the interdependent corners she used to measure the position of the “closing corner.” *See Survey Manual* § 5-20 at 133. She could not have used the points she identified on the common boundary of the El Ranchito and Gutierrez Grants. Except for the reference in Joy’s field notes, which Alaniz apparently did not rely upon and BLM does not mention on appeal, the record does not provide any description that ties a monument on the common boundary of the Grants to a section line monument. Alaniz’s field notes do not specify that she restored the position of the “closing corner” by proportionate measurement from any specific section, quarter section, or other points of control she “recovered” by finding a monument, its accessories, or other acceptable evidence. *See Howard Vagneur*, 161 IBLA 272, 277-78 (2003); *Mark Einsele*, 147 IBLA at 16. Consequently, her field notes do not provide a “reference to recovered evidence of the previous survey or surveys” from which she established her “closing corner.” *Survey Manual* § 6-1 at 145. The record thus fails to establish that Alaniz located the closing corner “based, first, upon identified original corners and other acceptable points of control, and, second, upon the restoration of lost corners by proportionate measurement in harmony with the record of the original survey.” *Id.* § 6-25 at 149.

[2] “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.” *Survey Manual*, 1973 (BLM Technical Bulletin 6) § 6-4 at 145. Not only does the record strongly indicate that Radcliffe did *not* the survey common boundary between the Grants in connection with the 29.69-acre tract for the PLB, the historical record shows that the description was derived from Joy’s 1915 survey. Consequently, the record does not establish that the 2002 dependent resurvey located the closing corner that was the beginning point for the description of Parcel A based upon information from “the field note record or on the plat of a previous official survey.” *Survey Manual* (BLM Technical Bulletin 6) § 6-1 at 145; *see* 43 U.S.C. § 751 (2000); *Wilogene Simpson*, 110 IBLA 271, 275 (1989), *citing Sweeten v. U.S. Department of Agriculture*, 684 F.2d 679, 680 n.1 (10th Cir. 1982); *Benton C. Cavin*, 83 IBLA 107, 130-31 (1984). Alaniz’s field notes and

plat do not provide a factual basis for her placement of the “closing corner” and, therefore, her resurvey could not have been a dependent resurvey “of the lines of the original survey in their true original positions.” *Survey Manual* (BLM Technical Bulletin 6) § 6-4 at 145.²⁴ BLM’s decision denying the protest cannot be sustained and the 2002 dependent resurvey is to be set aside.

V. Conclusion

Four principal concerns lead us to conclude that the dependent resurvey must be set aside: the unexplained omission of Joy’s 1915 survey; questions regarding Joy’s 1916 field notes, particularly those describing the monument he placed at a witness corner to the closing corner of sections 21 and 22; the lack of detail sufficient to relate the monuments Alaniz found to those described by Joy and others; and the conflicting conclusions of the absence of “acceptable remaining evidence of the original position of the corner” and the discovery of the “original 1916 closing corner . . . found to be disturbed and removed from its true original position.” The absence of the field notes and plat of the original survey for the “closing corner” is alone sufficient reason to set aside the dependent resurvey. *Domenico A. Tussio*, 37 IBLA 132, 133 (1978); see *Rodney Courville*, 143 IBLA 156, 164 (1998); *The Coast Indian Community*, 3 IBLA 285, 291-93 (1971). In the face of such questions and their implications, we are unable to reliably conclude that Alaniz properly located the first angle point of the 29.69-acre parcel 10.62 chains from the “closing corner” referred to in the Decree Pro Confesso, and accordingly, the dependent resurvey cannot be sustained. See *Lawyers Title Insurance Corp. v. Bureau of Land Management*, 117 IBLA 63, 72-77 (1990); *John W. Yeargan*, 126 IBLA at 363; *Stoddard Jacobsen v. Bureau of Land Management*, 103 IBLA 83 (1988); *Peter Paul Groth*, 99 IBLA 104, 111 (1987); *Crow Indian Agency*, 78 IBLA 7 (1983).

Although the New Mexico State Director’s decision to deny the appellants’ protest of the official filing of the plat of survey cannot be upheld based upon the present record, it would be premature to refer the case for a hearing. In general, a hearing would be appropriate in order to determine whether Alaniz properly identified the “closing corner” by proportionate measurement. See *First American*

²⁴ We note that BLM argues that “[t]he defendants who were served in the 1928 quiet title action lived on or near the Parcel as Radcliffe placed it in his 1927 survey. Had the [PLB] intended to review the claims on a more easterly parcel of land, it would have served an entirely different set of defendants. A.R. File C, No. 5, P. 4.” Answer at 9. We agree that this circumstance is relevant, but cannot agree that it demonstrates that Alaniz’s dependent resurvey properly located the first angle point in relation to the closing corner identified in the Decree Pro Confesso.

Title Insurance Co., 100 IBLA 270, 281 (1987); *Elmer A. Swan*, 77 IBLA 99, 104 (1983); *Bethel C. Vernon*, 37 IBLA 226, 228-29 (1978); *Domenico A. Tussio*, 30 IBLA 92 (1977). The immediate need, however, is to obtain and consider additional relevant documents by which the proper position of the closing corner and point of beginning for the 29.69-acre parcel might be ascertained or substantiated, as the case might be, and to explain and document in the record the reasons why the principal concerns we have identified have been considered and rejected or are not relevant.²⁵ Therefore, BLM's decision denying appellants' protest will be set aside and the case remanded for further review.²⁶

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, appellants' motion for a hearing is denied, the April 7, 2003, decision of the New Mexico State Director is set aside, the 2002 dependent resurvey is set aside, and the case is remanded for further research and appropriate action.

_____/s/_____
T. Britt Price
Administrative Judge

I concur:

_____/s/_____
David L. Hughes
Administrative Judge

²⁵ In finding that BLM must consider and document in the record its resolution of the issues and evidence discussed in this opinion, we express no view regarding the ultimate placement of the closing corner that is the point of beginning for the description of Parcel A.

²⁶ The documents compiled by Keene include a Jan. 15, 1980, letter from the Albuquerque Field Solicitor to the Governor of the Santa Ana Pueblo explaining that BLM had completed a litigation report on trespass claims, stating that the tract had been "misdescribed" in the quiet title action "due to a survey error" and that BLM was awaiting a response from the Department of Justice. AR Folder No. 2. The nature of the error was not specified and the accompanying map is not included with the letter.