



DENNIS KRAMER

181 IBLA 291

Decided September 20, 2011



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

DENNIS KRAMER

IBLA 2011-136

Decided September 20, 2011

Appeal from a decision of the Redding (California) Field Office, Bureau of Land Management, requiring appellant to cease his unauthorized residential occupancy, constituting a trespass on public lands within the Sacramento River Bend Area of Critical Environmental Concern.

Affirmed.

1. Trespass: Generally

The Board properly rejects an appellant's assertion of the applicability of the State agreed-boundary doctrine, made in defense of a notice of trespass on public land, where he has failed to proffer evidence demonstrating the existence, prior to the time the United States acquired title to the lands described in its deed, of uncertainty as to the location of the boundary, of an agreement between neighboring property owners to employ the location of a fence as the means of establishing the boundary, and of acceptance and acquiescence in the line so fixed for the period of the statute of limitations or under such circumstances that a substantial loss would occur were the position changed.

APPEARANCES: Mark G. Steidlmayer, Esq., Yuba City, California, for appellant; Nancy S. Zahedi, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

Dennis Kramer has appealed from a January 13, 2011, decision of the Field Manager, Redding (California) Field Office, Bureau of Land Management (BLM), styled a "Notice to Cease and Desist" (Decision), requiring him to cease his unauthorized residential occupancy, or trespass, on public lands in the SE $\frac{1}{4}$ sec. 10,

T. 28 N., R. 3 W., Mount Diablo Meridian, Tehama County, California, within the Sacramento River Bend Area of Critical Environmental Concern (ACEC).

Because appellant has not demonstrated that BLM committed any error of fact or law in issuing its Decision, it is affirmed.

Background

The lands at issue are two adjoining parcels of land making up most of a 62.58-acre triangular tract of land along the left (or east) bank of the Sacramento River, situated in what would normally be considered the SE $\frac{1}{4}$ sec. 10. The river bisects the SE $\frac{1}{4}$ sec. 10, creating the triangular tract of land at issue along the left bank, and a triangular tract of land, which is not at issue, along the right (or west) bank of the river. The triangular tract of land at issue is further broken down into two adjoining parcels that are east and west of a north-south dividing line that splits the tract. To the west of the dividing line is a small parcel much of which is now owned by Kramer, which encompasses part of Lot 4 of sec. 10, as well as part of Lot 5 of sec. 10, and to the east of the dividing line is a larger parcel now owned by the United States, which encompasses part of Lot 4 of sec. 10, as well as part of Lot 5 of sec. 10.¹

Kramer acquired the relevant portion of his lands in Lots 4 and 5 (APN 009-160-11-1), pursuant to an October 24, 1972, Grant Deed from the Title Insurance and Trust Company (TITC), and BLM acquired its lands in Lots 4 and 5, along with other lands, pursuant to an October 7, 1974, Grant Deed from Paynes

¹ The lands in Lots 4 and 5 total, respectively, 44.45 and 18.13 acres. East of the dividing line, the United States owns 51 acres in Lots 4 and 5, denoted, on the County Assessor's map, as Assessor's Parcel Number (APN) 009-160-08-1. West of the dividing line, Kramer owns most of the remainder of Lots 4 and 5, denoted, on the County Assessor's map, as APN 009-160-10-1, 009-160-11-1, and 009-160-19-1. Kramer's property encompasses a total of 8.61 acres of land. Evidently, the United States now owns the remainder of Lot 4 west of the dividing line, south of Kramer's property, which encompasses 2.97 acres. See Response to Statement of Reasons (Response) at 2. The present case focuses on the dividing line where it separates Kramer's property in APN 009-160-11-1, in Lot 4, from the United States' property in APN 009-160-08-1, in Lot 4. The relevant portion of the County Assessor's map is set forth in the Appendix to this decision.

Creek-Sacramento River.² The relevant lands acquired by the United States were described in the Grant Deed, tied to the SE corner of sec. 10, as follows:

IN TOWNSHIP 28 NORTH, RANGE 3 WEST, MOUNT DIABLO
MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF:

Section 10: Beginning at the Southeast corner of Section 10, Township 28 North, Range 3 West; thence West along the line between Sections 10 and 15 in said township and range 15.0 chains; thence at right angles North to the Sacramento River; thence Northeasterly along said river to the section line between Sections 10 and 11 in said township and range; thence South along said last named line to the place of beginning.^{3]}

The lands at issue were originally surveyed, along with the remainder of the subdivisional lines in the township, by John M. Ingalls, U.S. Deputy Surveyor, in March 1868. The official survey plat was approved by the Surveyor General for California on December 18, 1868.

BLM's record confirms that some time after October 10, 1974, and before June 10, 1980, both times when the lands at issue were photographed from the air, a modular/mobile home and an underlying pad were constructed/placed on the lands.⁴ See Kramer Chronology, dated Feb. 3, 2011; Response at 8 (citing Williams Declaration, ¶¶12, 13, 15, at 2, 3). At that time, BLM reports that a longstanding residential structure, consisting of a 754-square foot structure, with 3 bedrooms and 1 bath, which dated from the 1960s, was also found in the vicinity of the mobile home, but that, some time in the late 1980s, the original structure burned to the ground. Later inspection of the lands on April 1, 1988, found that the mobile home had been sheathed with wood siding, and surrounded by a large deck, all of which was covered by a large roof.

² The 1974 Grant Deed is referred to on BLM's Jan. 6, 2011, Resurvey/Survey Plat, as "653 O.R. 193 Tehama County Records," referencing the fact that the deed, which was filed for record with the County Recorder, appears at p.193 of Book 653 of the County Records.

³ We have obtained a copy of the 1974 Grant Deed, which confirms BLM's quotation, on appeal, of the relevant language in the deed.

⁴ BLM provides a copy of the Oct. 10, 1974, aerial photograph on appeal, as "Attachment 2" to a Mar. 30, 2011, Declaration of Kelly F. Williams, Natural Area Manager, Sacramento River Bend ACEC, Redding Field Office (Attachment 1 to Response). The record contains a copy of the June 10, 1980, aerial photograph.

During the process of acquiring the lands adjacent to Kramer's property, to the south, in sec. 10 and other land "[i]n or around 2008," BLM concluded, based on the record of the original survey, that Kramer's residential occupancy, in the mobile home, might be in trespass on the public lands in Lot 4 of sec. 10, which were then within the Sacramento River Bend ACEC, without appropriate BLM authorization.⁵ Response at 2. It initially notified Kramer, by letter dated May 2, 2008, that his occupancy constituted a "potential encroachment on public lands," and afforded him the opportunity to provide any and all evidence disproving a trespass, adding that, if the mobile home was, in fact, on public land, he had several "options" to resolve the trespass, and asked him to contact BLM "to arrange a time to discuss this issue." *Id.* While the letter sought an amicable resolution of the matter, it noted that BLM could pursue administrative, civil, and/or criminal sanctions, should Kramer fail to respond.

Kramer responded to BLM's May 2 letter, by telephone, on May 19, 2008, stating that he was not aware that the mobile home was on public lands, and, when offered the options of moving or removing the home, stated that it would be difficult to do so. *See* Conversation Record of Susie Rodriguez, Supervisory Realty Specialist, Redding Field Office, dated May 19, 2008.

In a subsequent January 21, 2009, letter, BLM stated that Kramer had, in his May 19 phone call, failed to offer any evidence disproving a trespass or any proposed resolution of the trespass. It stated that it would "move forward with trespass proceedings," noting that, "[i]f it is determined that the improvements are located on public lands," Kramer might be subjected to administrative, civil, and/or criminal sanctions, and "would be asked to remove the structures from Federal lands." Letter, dated Jan. 21, 2009, (emphasis added). Kramer responded by telephone on February 3, 2009, offered no evidence disproving a trespass and no proposed

⁵ ACECs are defined, by section 103(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1702(a) (2006), as areas of the public lands "where special management attention is required (when such areas are developed or used or where no development is required)," in order to "protect and prevent irreparable damage" to the values which ACEC designation sought to recognize. The ACEC at issue was designated pursuant to section 202(c) of FLPMA, 43 U.S.C. § 1712(c) (2006), with the promulgation of the applicable land-use plan (Redding Resource Management Plan (RMP)) in June 1993. *See* Redding RMP and Record of Decision, dated June 1993, at 47-50. It is "managed for natural values and recreational opportunities for the public[.]" Williams Declaration, ¶16, at 3. BLM reports that the ACEC at issue is "a highly visible area with more than 35,000 visitors per year with many recreational trails throughout the area." Request for Cadastral Survey, dated Nov. 9, 2009.

resolution of the trespass, and indicated that “he is planning to fight this.”⁶ See E-Mail to Rodriguez, *et al.*, from Williams, dated Feb. 3, 2009.

In order to resolve the question of the trespass, BLM undertook to dependently resurvey the south line of sec. 10 and to perform a metes-and-bounds survey of the public/private boundary line dividing Lots 4 and 5 of sec. 10.⁷ The resurvey/survey, which took place from June 15 to 17, 2010, consisted first of retracing the original survey of the south line of sec. 10 (between secs. 10 and 15), searching for corners and calls of record, followed by a resurvey of the south section line, starting at the corner common to secs. 10, 11, 14, and 15 (SE corner of sec. 10) of the township and continuing generally west to the S¼ and SW corners of sec. 10, and, finally, a metes-and-bounds survey running north from the south section line along the public/private boundary line dividing Lots 4 and 5.⁸

In surveying the public/private boundary line, BLM started at what it reported was the SW corner of the 1974 Grant Deed, which was 15 chains on a bearing of S. 89° 57' 20" W. from the SE corner of sec. 10,⁹ and ran N. 0° 02' 40" W. along the west boundary of the Grant Deed,¹⁰ 14 chains, to the witness point on the west

⁶ Kramer noted that he desired to pursue a “lot line adjustment[.]” E-Mail to Rodriguez, *et al.*, from Williams, dated Feb. 3, 2009. BLM rejected this proposal as “contrary to our planning[.]” *Id.*

⁷ The resurvey/survey, which was undertaken by Dale E. Nelson, Supervisory Cadastral Surveyor, California, BLM, pursuant to Special Instructions, dated May 27, 2010, for Group No. 1605, California, was formally denoted as a “Dependent Resurvey and Metes-and-Bounds Survey,” since it not only dependently resurveyed the south line of sec. 10, but also newly surveyed, by metes-and-bounds, the western boundary of the 1974 Grant Deed in sec. 10. It was executed in accordance with the current “Manual of Surveying Instructions for the Survey of the Public Lands of the United States,” BLM, 2009 (Survey Manual).

⁸ The SE corner of sec. 10 was denoted by a remonumentation of the original corner, adopted by BLM in 1983.

⁹ The original survey reported that the south line of sec. 10 ran a total distance of 29 chains from the SE corner of sec. 10, on a bearing of N. 89° 52' W., to the left bank of the River, which generally agreed with the dependent resurvey’s report of a total distance of 29.071 chains, on a bearing of S. 89° 57' 20" W.

¹⁰ BLM noted, at page 5 of the Resurvey/Survey Field Notes, that the west boundary, which began along the south line of sec. 10, proceeded north “at record angle to the line bet[ween] secs. 10 and 15.” The “record angle” was, as reported in the 1974 Grant Deed, the “right angle[] North,” which, given the bearing of the south section
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boundary of the Grant Deed.¹¹ In doing so, BLM reported finding “a single wide mobile home, 12 ft. x 60 ft.,” with a covered porch along the western side and a small deck along the southern and eastern sides, east of the boundary line, at a point 8.848 chains along the line.¹² Resurvey/Survey Field Notes at 5. The Chief Cadastral Surveyor, California, BLM accepted the dependent resurvey/metes-and-bounds survey plat on January 6, 2011.

In his January 2011 decision, the Field Manager concluded, based on the 2010 dependent resurvey/survey, that Kramer’s mobile home was, in fact, situated east of the public/private boundary, on public lands in Lot 4 of sec. 10 without authorization from BLM, and was, therefore, in trespass on the public lands.¹³ The Field Manager

¹⁰ (...continued)

line (S. 89° 57' 20" W.), determined by dependent resurvey, resulted in a bearing for the west boundary of N. 0° 02' 40" W. Kramer neither alleges, nor establishes, that BLM’s survey of the west boundary failed to conform to the legal description in the Grant Deed, by which the United States acquired its land in Lots 4 and 5 of sec. 10.

¹¹ The record contains copies of a June 1999 Record of Survey prepared by Thomas M. Wulfert, a private surveyor, and an August 1959 Survey of Property prepared by John H. Larkin, a private civil engineer, both of which reported, *inter alia*, a survey of all or part of the west boundary of the 1974 Grant Deed. In Wulfert’s survey, the west boundary started at a point approximately 15 chains, on a bearing of N. 89° 20' 51" W., from the SE corner of sec. 10, and ran approximately 4.39 chains, on a bearing of N. 0° 45' 40" E., along the west boundary to the intersection with the southernmost point, along that boundary, of Kramer’s private property. In Larkin’s survey, the west boundary started at a point approximately 15 chains, on a bearing of N. 89° 20' 20" W., from the SE corner of sec. 10, and ran a total of approximately 21.88 chains, on a bearing of N. 0° 47' 40" E., along the west boundary to the left bank of the River.

Both private surveys generally agreed with BLM’s metes-and-bounds survey of the west boundary, and both would place the mobile home on public lands. See Response at 12-13 (citing Declaration of James B. McCavitt, Chief, Field Surveys Section, California, BLM, dated Apr. 29, 2011 (Attachment 3 to Response), ¶¶9-11, at 2, and attached Diagram).

¹² The SE corner of the mobile home was determined to be 0.574 chains east of the boundary line. See Resurvey/Survey Field Notes at 5. We note that a BLM Diagram, in the record, reports that the SW corner of the home is situated 0.391 chains (roughly 25 feet) east of the boundary line.

¹³ The Field Manager specifically cited Kramer with a violation of 43 C.F.R. § 2920.1-2, which generally provides for administrative sanctions for unauthorized
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directed Kramer to cease and desist “from the violations charged,” but did not require Kramer to remove the mobile home from the public lands, or specify what action Kramer was to take in order to resolve the trespass, other than to state that the mobile home “must remain vacant.” Decision at unpaginated (unp.) 2. The Field Manager requested Kramer to contact BLM, within 30 days of receiving the decision, “to arrange a time to discuss resolution of this issue,” adding that failure to comply with the decision and resolve the trespass might result in the imposition of trespass penalties by BLM and civil and/or criminal penalties by a Federal court.^{14,15} *Id.*

Kramer appealed timely from BLM’s January 2011 decision. BLM requests the Board to affirm its decision, since Kramer has failed to demonstrate that BLM erred in surveying the public/private boundary at issue, or otherwise improperly declared him to be in trespass on the public lands.¹⁶

Since Kramer has failed to carry his burden on appeal, as discussed below, we affirm BLM’s decision.

¹³ (...continued)

use, occupancy, or development of the public lands. Both 43 C.F.R. § 2920.1-2(e) and § 9262.1, which was also cited, provide for civil and/or criminal penalties in the event of a knowing and willful violation of § 2920.1-2(a).

¹⁴ The Regional Solicitor, in a Feb. 8, 2011, letter, notifying Kramer’s counsel that BLM was treating his Jan. 24, 2011, letter as a notice of appeal, and forwarding the case to the Board, confirmed BLM’s position that the mobile home must, under its January 2011 decision, not be occupied: “[I]f your client fails to comply with the Notice to Cease and Desist by occupying or allowing the vacant trailer to be occupied by a third party, BLM will take any and all appropriate legal action, including seeking civil or criminal sanctions.” The Solicitor’s reference to a third party clearly refers to the fact that Kramer, in his January 24 letter, had stated, at unp. 2, that he had “a tenant” willing to pay for the privilege, who, absent a counter-offer by BLM, “is going to occupy the property.”

¹⁵ The Field Manager also stated that Kramer would be liable for administrative costs and other fees incurred by BLM as a consequence of the trespass, but did not assess any specific trespass damages, or require payment within a specific time period. See Decision at unp. 1.

¹⁶ Kramer mentioned, in a Mar. 2, 2011, letter to the Regional Solicitor, that he and the Solicitor’s Office had discussed the potential purchase of Kramer’s “property,” a concept that Kramer originally had raised in his May 19, 2008, and Feb. 3, 2009, phone calls. It appears that “property” refers to Kramer’s private land. However, BLM had previously rejected this proposal in earlier phone calls, and the record provides no indication that BLM has pursued this proposal.

Discussion

Section 303(g) of FLPMA, 43 U.S.C. § 1733(g) (2006), provides simply that: “The use, occupancy, or development of *any portion of the public lands* contrary to any regulation of the Secretary [of the Interior] . . . is unlawful and prohibited.” (Emphasis added.) Implementing regulations, appearing at 43 C.F.R. § 2920.1-2, provide that: “Any use, occupancy, or development of *the public lands*, . . . without authorization under the procedures in § 2920.1-1 of [43 C.F.R.], shall be considered a trespass.”¹⁷ 43 C.F.R. § 2920.1-2(a), emphasis added. They then direct BLM to notify the responsible party of the trespass, and hold him liable for “administrative costs” BLM incurred as a result of the trespass, the “fair market value rental” of the affected land “for the current year and past years of trespass,” and “rehabilitati[on] and stabiliz[ation]” of the affected land (or the costs incurred by BLM when that is not done timely). *Id.*; see *Summit Quest, Inc.*, 120 IBLA 374, 377 (1991). Finally, 43 C.F.R. § 2920.1-2(e) provides for civil and/or criminal penalties.

The applicability of 43 C.F.R. § 2920.1-2 “hinges on whether the use, occupancy, or development was without authorization ‘under the procedures in § 2920.1-1 [of 43 C.F.R.]’” *William H. Snavely*, 136 IBLA 350, 356 (1996) (quoting 43 C.F.R. § 2920.1-2(a)). 43 C.F.R. § 2920.1-1, in turn, provides that: “Any use not specifically authorized under other laws or regulations . . . may be authorized under this part.”¹⁸

Whether BLM Properly Determined that Kramer’s Residential Occupancy was on Public Land

[1] Kramer does not deny ownership of the mobile home. Nor does he dispute that the regulations at 43 C.F.R. Part 2920 require BLM authorization for the establishment of a home on public lands, and that he failed to obtain such approval. Rather, Kramer contends that, under the California State law concept of “agreed boundaries,” an old fence constitutes an agreed boundary between his private land

¹⁷ The only exception is “casual use,” which is defined as “any short term non-commercial activity which does not cause appreciable damage or disturbance to the public lands.” 43 C.F.R. §§ 2920.0-5(k) and 2920.1-2(a). Kramer does not assert any basis, and we find no basis, for concluding that his long-term and substantial residential occupancy constitutes a casual use of the public lands. See *Carrie Dann*, 147 IBLA 81, 87 (1998); *Michael Rodgers*, 137 IBLA 131, 132, 134 (1996).

¹⁸ The “part” refers to 43 C.F.R. Part 2920, which was promulgated pursuant to sections 302, 303, and 310 of FLPMA, 43 U.S.C. §§ 1732, 1733, and 1740 (2006), and generally provides for issuing leases, permits, and easements for various purposes. See 43 C.F.R. §§ 2920.0-3 and 2920.1-1.

and the public land, and, as a result, he owns approximately one acre of the Federally acquired lands that fall between the old fence line and the actual boundary described in the 1974 Grant Deed.

Kramer specifically asserts that, when he originally acquired his land in 1972, the eastern boundary of his property was marked by an “old fence,” denoting what he believed to be the boundary between the property he was acquiring and the adjacent property to the east, which, at that time, was not owned by BLM: “[T]he fence in question . . . was the perceived property line between the two neighbors as it no doubt had been for a great period of time or the fence wouldn’t have stayed where it is.”¹⁹ Letter to BLM, dated Jan. 24, 2011, at unp. 1; Letter to Regional Solicitor, dated Mar. 2, 2011, at unp. 1. He contends that, under California law, specifically “the doctrine of ‘agreed boundaries,’” “fence lines may serve as boundaries between neighbors.” *Id.* at unp. 1; Letter to Regional Solicitor, dated Mar. 2, 2011, at unp. 1. Kramer argues that, absent any Federal law to the contrary, State law “applies . . . because it impacts California Land Titles with respect to which both Mr. Kramer and the BLM take their title.” Letter to Regional Solicitor, dated Mar. 2, 2011, at unp. 1-2.

Kramer further maintains that he relied on the fence line as the eastern boundary of his property, and that, since BLM failed to investigate the matter when it purchased the property to the east or, ultimately, to challenge the fence line, the line now relied upon by BLM cannot be considered the public/private boundary: “Your notice to not occupy the premises is premature, because *you haven’t established your title to the property.*” Letter to BLM, dated Jan. 24, 2011, at unp. 2, emphasis added. He notes that BLM placed “boundary signs” on the fence, thus “implying [its] acceptance of the fence as the boundary line [between the two properties].” Letter to Regional Solicitor, dated Mar. 2, 2011, at unp. 1. He also notes that there is a private survey, which, while not “an official record of Tehama County,” indicates that the fence denotes the boundary between the two properties.^{21,22} *Id.*

¹⁹ Photographs of the fence in the record reveal it to be a dilapidated multi-strand barbed wire fence, strung between trees, old fence posts, and metal stakes.

²⁰ We believe that Kramer’s reference to the private survey erroneously identifies it as a 1949 survey, rather than Larkin’s 1959 survey.

²¹ Kramer recognizes that the fence line does not perfectly parallel the public/private boundary line recognized by BLM, noting that there is a “sliver of land between the fence and the property line,” which, at one point, places about one acre into Kramer’s property, and, at another point, places about two acres into BLM’s property. Letter to Regional Solicitor, dated Mar. 2, 2011, at unp. 1. He questions the logic of BLM failing to accept the fence line as the public/private boundary line, which results in
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In sum, Kramer has not alleged errors in the dependent resurvey. He objects to BLM's finding that his mobile home was situated in trespass on public lands by essentially challenging BLM's premise that title to the lands acquired by the United States are as described in the 1974 Grant Deed, which placed the home on the public land side of that public/private boundary line, and in BLM's survey of the west boundary. He points instead to the fence, which he claims the parties agreed would constitute the public/private land boundary.^{22,23}

²¹ (...continued)

BLM losing two acres, only to gain one acre.

BLM properly notes that Kramer is, evidently, referring to the fact that, were the public/private boundary line to entirely follow the fence line, he would gain the area of public land, east of the boundary line, where his mobile home sits, and BLM would gain the area of private land, in the northern half of APN 009-160-11-1. *See* Response at 5-6 (citing Part of Survey of Property (Sheet 2 of 2), dated August 1959 (Attachment 2 to Response)). However, this does not conform at all to the legal description in the 1974 Grant Deed, and would require a deed reformation that could only be granted by a court in an action to quiet title to those lands. *See infra* note 22.

²² BLM argues that, where he "asserts a property interest" in public lands, Kramer's remedy is to pursue an action under the Quiet Title Act, 28 U.S.C. § 2409a (2006), and that the Board lacks jurisdiction to quiet title to approximately one acre of Federal lands on which the trespass structure is located, and which are Federal lands as confirmed by the legal description in the 1974 Grant Deed conveying these lands to the United States and by the dependent resurvey approved on Jan. 6, 2011. Response at 7-8. While we agree that an action in Federal court under the Quiet Title Act would finally resolve any challenge to the United States' title to any land east of the west boundary of the 1974 Grant Deed, the Board does have jurisdiction to adjudicate an appeal challenging an order to cease and desist issued by BLM in the exercise of its administrative jurisdiction over the ACEC lands at issue.

²³ To be clear, Kramer does not challenge BLM's dependent resurvey of the south line of sec. 10, from which the public/private boundary line at issue originates. Moreover, Kramer does not challenge the data, methodology, analysis, or conclusion by which BLM's cadastral surveyors determined the on-the-ground location of the west boundary of the parcel of land acquired by the United States, as described in its 1974 Grant Deed. *Compare with, e.g., John D. Carter, Sr.*, 90 IBLA 286, 291-92 (1986) (metes-and-bounds survey); *Stoddard Jacobsen*, 85 IBLA 335, 336, 342 (1985) (dependent resurvey). Kramer's objection is based solely on his assertion that the proper location of the boundary line is not the location that was established by BLM in its 2010 metes-and-bounds survey, but rather is the fence line, pursuant to the doctrine of agreed boundaries.

As stated, Kramer asserts there is a private survey, which indicates that the fence denotes the boundary between the two properties. The only record evidence of a private survey of the west boundary of the parcel is a private survey executed by Larkin in 1959. Larkin surveyed the west boundary of what was described in the 1974 Grant Deed, and reported the existence of a "Fence" running in a northerly direction, for a distance, just east of the boundary, and then changing to a northwesterly direction, crossing over the boundary, for a short distance, before terminating.²⁴ Survey of Property (Sheet 2 of 2), dated August 1959. The fence begins at a point approximately 1.5 chains south of the point identified on the west boundary that sits approximately 9.3 chains from the starting point of the west boundary along the south line of sec. 10, and runs northerly to a point approximately 0.379 chains south of the point identified on the west boundary that sits approximately 14.81 chains from that starting point. At that point, the fence begins to veer to the northwest.

Since BLM has placed the mobile home just east of the west boundary, at a point 8.848 chains from the starting point of the west boundary along the south line of sec. 10, we conclude that the fence, reported by Larkin at that point, is very likely the same fence now identified by Kramer, which is said to be a very short distance further to the east of his mobile home.²⁵ However, not only does the fence not conform to the west boundary of the 1974 Grant Deed, as determined by Larkin and now BLM, but it also is clearly located a short distance east of the west boundary. This means that, when Kramer went to locate his mobile home just west of the fence, believing it to be west of the west boundary of the 1974 Grant Deed, and thus on his land, he actually located the home just east of the actual west boundary described in that deed, and thus on public land.

The Larkin survey, which generally agrees with the 2010 BLM survey, reveals the existence of a fence that diverges from the legal description of the west boundary of the lands acquired by the United States in 1974, in the area where the mobile

²⁴ The fence was denoted, on Larkin's survey plat, by a series of lines between x marks, which presumably denoted fence lines and fence posts.

²⁵ BLM places the SW and SE corners of the mobile home, respectively, 25.8 and 37.9 feet east of its west boundary. Given the scale on Larkin's survey plat (1 inch = 200 feet), the fence is located an almost uniform distance of 37.5 feet east of his west boundary, where it parallels the fence. Since Larkin's west boundary is 8.5 feet east of BLM's west boundary, in the vicinity of the mobile home, this means that the fence observed by Larkin is 46 feet from BLM's west boundary, in the vicinity of the mobile home. See Diagram attached to McCavitt Declaration. Larkin thus clearly places the current situs of the home immediately west of the fence, which is where Kramer says it is presently found.

home presently sits. As this fence is likely the same fence that existed when he acquired his land, we find that the survey should have alerted Kramer there was a discrepancy between the legal description and the fence in delimiting that boundary, and also supports BLM's current conclusion that the mobile home sits east of the west boundary. Although the Larkin survey undermines, rather than supports Kramer's position, Kramer points to it nonetheless, asserting that the fence marks the boundary of his property.

Kramer urges us to look to State law. We agree that, in the present circumstances, State law controls the transfers of title both in 1972 to Kramer (of his lands, west of the dividing line in Lot 4), and in 1974 to the United States (of its lands, east of the dividing line in Lot 4), since both transfers were made by private entities, pursuant to State law. *See Oregon State Land Board v. Corvallis Sand & Gravel Co.*, 429 U.S. 363, 371-72 (1977) (citing *Wilcox v. Jackson*, 38 U.S. 498, 517 (1839)); *James A. Simpson*, 136 IBLA 77, 79 (1996). With specific regard to the doctrine of "agreed-boundaries," however, Kramer provides scant discussion or legal support.

In its Response, BLM summarizes that doctrine, arguing it may be invoked "only under carefully specified circumstances," as an exception to the rule that the location of a common boundary line is controlled by the respective deeds under which the coterminous private landowners acquired their adjacent property. Response at 9 (quoting *Bryant v. Blevins*, 884 P.2d 1034, 1039 (Cal. 1994)). *Bryant* provides that the party seeking the benefit of the doctrine has the burden to prove each element, which requires a showing that: (1) the true boundary line at issue is uncertain; (2) the coterminous owners have reached an agreement fixing the line; and (3) the owners have accepted and acquiesced in the line so fixed for the period of the statute of limitations or under such circumstances that a substantial loss would occur were the position changed. *See* 884 P.2d at 1039.

Fundamentally, even were the boundary line at issue considered to be uncertain, which is not established, Kramer has not shown that the United States or its predecessors-in-interest have agreed with Kramer or his predecessors-in-interest to accept the fence as the dividing line between their properties. Absent such an agreement, the fence line cannot be considered for BLM's administrative purposes as the situs of the true boundary line between the two parts of Lot 4. *See Leo Hardy*, 172 IBLA 296, 298-99 (2007), and cases cited.

We agree with BLM that the circumstances of this case are substantially similar to those before the court in *Bryant*. There, the court, in rejecting a longstanding fence line believed by one adjoining property owner to be the true boundary line at the time of acquisition of his property, held:

[A]lthough the presence of the barbed wire fence “suggests a lengthy acquiescence to its existence,” that circumstance alone does not nullify the requirement “that there be an uncertainty as to the location of the true boundary when the fence was erected, and an agreement between the neighboring property owners to employ the location of the fence as the means of establishing the boundary.” . . . [I]n the absence of any evidence supporting the premise that the barbed wire [fence] was erected to resolve uncertainty on the part of the parties’ predecessors in interest as to the true location of the boundary separating the properties, the court held that defendants “failed to establish the ‘uncertainty’ and ‘agreement’ required in order to establish an agreed boundary.” [Emphasis added.]

Response at 11 (*quoting Bryant v. Blevins*, 884 P.2d at 1041, 1043). That is the situation here.

At best, Kramer refers to BLM’s supposed failure to investigate the status of the fence line as denoting the public/private boundary line when it acquired its land in Lot 4 in 1974. However, we find no evidence that BLM ever agreed the fence was the boundary line, or was uncertain about the true boundary line or that Kramer ever sought BLM’s concurrence that it was. BLM will not be held to have accepted a fence line as a public/private boundary line simply because BLM declined to preemptively object to the adjoining private owner’s unexpressed belief that a particular fence line constituted the true boundary line, or because Kramer failed to survey a private parcel before acquiring it.

Moreover, given the unambiguous land description in the 1974 Grant Deed, which was established on the ground with reasonable certainty by the 2010 survey, we must conclude that the “available legal records provided a reasonable basis for fixing the boundary” at issue, and thus properly excluded application of the agreed-boundary doctrine here, as it had in *Bryant*, in the absence of satisfactory evidence that the neighboring owners had, in fact, agreed to otherwise resolve uncertainty in their land ownership.²⁶ 884 P.2d at 1038; *see id.* at 1035, 1038, 1041

²⁶ In citing, with approval, various decisions of its lower appellate court, the court in *Bryant* stated:

[T]he [agreed-boundary] doctrine should not be applied broadly to resolve boundary disputes where there is no evidence that the neighboring owners entered into an agreement to resolve a boundary dispute and *where the true boundary is ascertainable from the legal description set forth in an existing deed or survey.* [Citations omitted.] The common theme of these decisions is a deference to the sanctity of

(continued...)

("[T]he agreed-boundary doctrine should not be invoked under the circumstances of the present case to trump the boundary established by the legal records").

In the final analysis, it is undisputed that a portion of Lot 4 of sec. 10 was acquired by the United States in 1974, pursuant to a Grant Deed that included a legal description of the lands. What is at issue is solely the situs of the public/private boundary line on the ground. Regardless of any unproven uncertainty that may have attended the situs of the boundary line described in the 1974 Grant Deed, BLM determined the situs of the line with the acceptance of the 2010 survey. Kramer fails to demonstrate any error in that survey or proffer any evidence showing the agreed-boundary doctrine applies to this case under California law.

The Board properly rejects an appellant's assertion of the applicability of the State agreed-boundary doctrine, made in defense of a notice of trespass on public land, where he has failed to proffer evidence demonstrating the existence, prior to the time the United States acquired title to the lands described in its deed, of uncertainty as to the location of the boundary, of an agreement between neighboring property owners to employ the location of a fence as the means of establishing the boundary, and of acceptance and acquiescence in the line so fixed for the period of the statute of limitations or under such circumstances that a substantial loss would occur were the position changed.

We therefore conclude BLM correctly determined Kramer was in trespass, and properly issued the January 2011 cease and desist order under appeal.²⁷

²⁶ (...continued)

true and accurate legal descriptions and a concomitant reluctance to allow such descriptions to be invalidated by implication, through reliance upon unreliable boundaries created by fences or foliage, or by other inexact means of demarcation. [Emphasis added.] 884 P.2d at 1039; *see id.* at 1042 ("Were we to hold that . . . dilapidated—and perhaps meandering—fences constitute a sufficient basis for displacing the legal descriptions set forth in recorded deeds, we would be taking a significant step backward toward the days of . . . frontier justice").

²⁷ To the extent Kramer's SOR could be construed as asserting that BLM should be equitably estopped from denying the fence line as the proper location of the public/private boundary line, because BLM took no action to disabuse him of this reliance, we find the argument unavailing. Kramer has not established the basic elements necessary for estoppel to lie against the United States. He has not shown that ignorant of the true facts, he reasonably relied, to his detriment, on affirmative misconduct by BLM, in the form of an affirmative misrepresentation or concealment (continued...)

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

_____/s/_____
Christina S. Kalavritinos
Administrative Judge

I concur:

_____/s/_____
James K. Jackson
Administrative Judge

²⁷ (...continued)
of a material fact. *See, e.g., Carl Riddle*, 155 IBLA 311, 314 (2001) (citing *United States v. Ruby Co.*, 588 F.2d 697, 703-04 (9th Cir. 1978), *cert. denied*, 442 U.S. 917 (1979)); *Hugh D. Guthrie*, 145 IBLA 149, 152-53 (1998) (citing *United States v. Georgia-Pacific Co.*, 421 F.2d 92, 96 (9th Cir. 1970)).

APPENDIX

