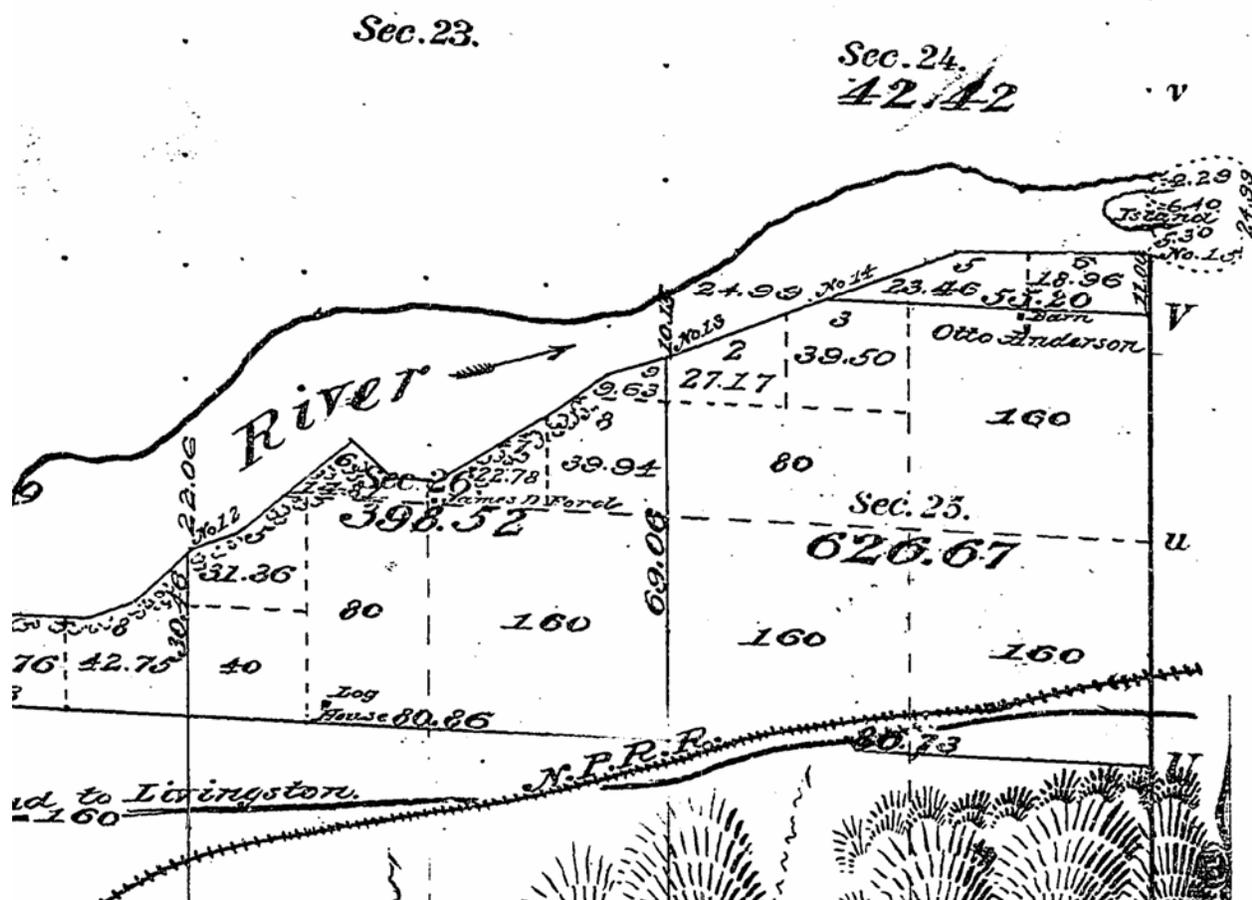
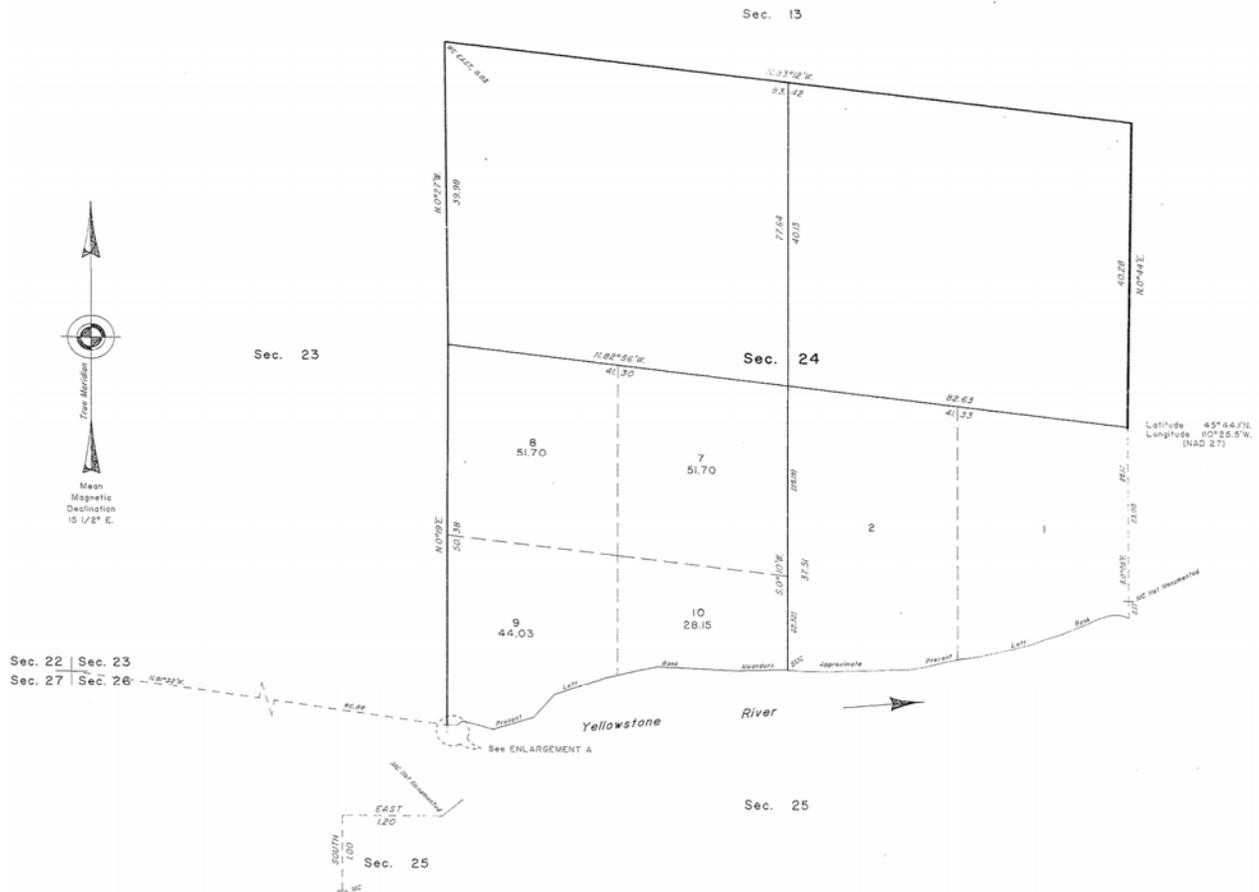


David Viers

143 IBLA 209

The Bureau of Land Management's placement of the corner of sections 23, 24, 25 and 26, T. 1 S., R. 10 E., Principle Meridian, Montana, is the subject of this decision. BLM's resurvey identified many discrepancies in the original survey but minimal physical evidence of the original survey was found. BLM chose to deviate from the standard restoration method and reestablished the corner by a secondary method using the bank of the Yellowstone River as a "permanent and identified natural feature". Notice that the Group File contained a memorandum documenting a meeting where seven restoration methods were considered. The memorandum contained reasons for selecting the modified two point method and reasons for rejecting the six other methods.





DAVID VIERS

IBLA 95-105

Interior Board of Land Appeals

143 IBLA 209; 1998 IBLA LEXIS 65

March 31, 1998, Decided

[*209] Appeal from a decision issued by the Acting State Director, Montana State Office, Bureau of Land Management, dismissing a protest of dependent resurvey Group No. 820, MT.

Affirmed.

HEADNOTES:

1. Surveys of Public Lands: Dependent Resurveys

The purpose of a dependent resurvey is to retrace and reestablish the lines of the original survey in their true and original positions using the best available evidence of the positions of the original corners. A party challenging the filing of a plat for a dependent resurvey has the burden of establishing by a preponderance of the evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey. If a party who objects to BLM's reestablishment of a lost corner based on the original calls and distances from a river does not show error in BLM's utilization

of the record calls to the meander corners of a river bank, BLM's decision dismissing the protest of the dependent resurvey will be affirmed.

APPEARANCES: David Viers, Livingston, Montana, pro se; Larry Hamilton, State Director, Montana State Office, Bureau of Land Management, U.S. Department of the Interior, Billings, Montana, for the Bureau [**2] of Land Management.

OPINIONBY: MULLEN

OPINION BY ADMINISTRATIVE JUDGE MULLEN

David Viers has appealed the October 7, 1994, Decision issued by the Acting State Director, Montana State Office, Bureau of Land Management (BLM or Bureau), dismissing his protest of the placement of the section corner [*210] common to secs. 23, 24, 25, and 26, T. 1 S., R. 10 E., principle meridian, Park County, Montana, reestablished by dependent resurvey Group No. 820, MT. n1

n1 For convenience the corner common to secs. 22, 23, 26, and 27 will be referred to as the SW corner of sec. 23, the corner common to secs. 23, 24, 25, and 26 will be referred to as the SE corner of sec. 23 and the corner common to secs. 13, 14, 23, and 24 will be referred to as the NW corner of sec.24.

In 1873, U.S. Deputy Surveyors Baker and Thomas surveyed the north part of fractional T. 1 S., R. 10 E. Their field notes indicate that they erected a monument at the SW corner sec. 23 and then ran easterly for 80 chains between secs. 23 and 26 to the SE corner of sec. 23. The [**3] original survey notes describe the SE corner of sec. 23 as being 1 chain north and 1.20 chains west of the left (north) bank of the Yellowstone River. The survey continued along the line between secs. 23 and 24 to the NE corner of sec. 23. n2

n2 In 1886, U.S. Deputy Surveyor Johnson completed the survey of that portion of fractional T. 1 S., R. 10 E., not surveyed by Baker and Thomas. The adjacent fractional T. 1 S., R. 11 E., was surveyed in 1877, 1883, and 1905 by U.S. Deputy Surveyors McFarland, Gallaher, and Mumbrue. Several private surveyors resurveyed portions of these townships between 1970 and 1986.

On January 22, 1992, BLM's Butte District Area Manager, requested a cadastral survey to redetermine the location of the SE corner and the E 1/4 corner of sec. 23 and establish the center quarter corner of sec. 24. The stated purpose was to establish the boundary between public and private lands to prevent trespass on public land in Lots 3 and 4 and the N 1/2 SW 1/4 sec. 24. In response to [**4] this request, Special Instructions for Group No. 820, Montana, were approved on August 26, 1992.

Between September 8 and November 20, 1992, a BLM Cadastral Survey crew, headed by Steve L. Toth, resurveyed portions of the township boundaries, the subdivisional lines, and the subdivision of sec. 24. During the course of this survey, fences and intersections of fences were tied to develop a pattern with the original survey, and local landowners were interviewed and records were researched for evidence of road and other surveys. Many discrepancies in the 1873 and related surveys were revealed, and minimal physical evidence of the original survey was found. n3 The meander along the northerly bank of the Yellowstone River where it ran through sec. 24 was surveyed and this survey was compared with the original survey. The original meanders fell 600 to 1,000 feet north of the river's [*211] present location and were found to be unrelated to the general pattern of the river. The conclusion was that, at most, the survey of the meander was poorly done, and that the river had "eroded no appreciable amount to the north." (Nov. 3, 1992, Memorandum at 4.

n3 The only identifiable evidence of the 1873 Baker and Thomas survey found during BLM's retracement were the quarter corner between secs. 21 and 28, the quarter corner between secs. 15 and 22, and a mound of stone at the quarter corner between secs. 23 and 24. See Nov. 3, 1992, Memorandum at 3.

[**5]

A memorandum dated November 3, 1992, records a discussion among cadastral surveyors regarding the appropriate method for reestablishing the SE corner of sec. 23. This memorandum contains a brief recount of earlier surveys, a description of what was found when attempting to retrace the original surveys, and a list of seven proposed methods which could be used to reestablish the SE corner of sec. 23. Reasons for rejecting six of the proposals were provided and the seventh, use of a modified two point control, was selected because

in this method, weight was given to the line between secs. 23 and 26 for controlling the alignment of the south one half mile between secs. 23 and 24. Although no original evidence can be found at the cor. of secs. 22, 23, 26, and 27, this position is accepted by local landowners and private surveyors as the sec. cor. As stated earlier, the Yellowstone River eroded no appreciable amount to the north. Its bank, being stable and permanent, was used for control latitudinally. This is supported in the [Manual of Instructions for the Survey of the Public Lands of the United States (1973) (Manual)] in sec. 5-40 and case book history * * *. This approach [**6] results in an attempt to use as much evidence as possible for the re-establishment of the sec. cor. in question. The sec. cor. will be re-established by record bearing & distance from the new position for the north meander cor. of secs. 25 and 26. The reasoning for this is the close proximity to the Yellowstone River and the calls to the meander cors. 1 ch. south and 1.20 chs. east of the sec. cor. in the original field notes.

(Nov. 3, 1992, Memorandum at 6-7.) The memorandum set out further reasons for using a modified two point control method to reestablish the corner.

The 1992 resurvey revealed many discrepancies and unanswered questions of the original 1873, 1883, and 1886 surveys. Distortions of 600 ft. or more exist within the township, topographic calls in the field notes do not correlate with actual ground retracements, many calls are left out of the field notes, original meanders do not follow the general pattern of the bank and lack of original evidence. Disagreement of cor. positions and the amount of survey work performed by private surveyors adds to the dilemma also.

It is the conclusion of this office that the north bank of the Yellowstone River is a permanent [**7] and identified natural feature and should be used latitudinally to control the sec. cor. question. This isolates the error or blunder of the original [*212] survey in the south one half mile between secs. 23 and 24 and follows guidelines in section 5-23 of the Manual. Although the new meanders differ considerably to the original meanders the call for sec. cor. being 1 chain north and 1.2 chains west of the river is significant. This approach follows section 5-40 of the Manual closely and casebook history (A1-3, A4-5 and A12-3).

The use of record departure from the cor. of secs. 22, 23, 26, and 27 was used to add weight in the restoration and aid in the alignment of the south one half mile between secs. 23 and 24. Since the sec. cor. in question was established from the sec. cor. to the west, this office concluded it was necessary to use this line in determining the new position. We feel this approach best protects adjacent landowners rights and best follows the footsteps of the original surveyor.

Id.

The corner was then reestablished in accordance with the modified two-point control described in the memorandum:

Hold the position of the mound of stone at [**8] the 1/4 sec. cor. of secs. 23 and 24 as the controlling cor. to the north. Hold the cor. of secs. 22, 23, 26, and 27 as the controlling cor. from the west and run record bearing and distance east to control the departure of the lost cor., then extend a line south to the present north bank of the river for the north meander cor. of secs. 25 and 26. Re-establish the cor. of secs. 23, 24, 25 and 26 by * * * record bearing & distance from the north meander cor. * * *. n4

(Nov. 3, 1992, Memorandum at 5.)

n4 The memorandum also identified proportionate measurement between the mound of stone at the quarter corner between secs. 23 and 24 and the north meander corner as an alternative to record bearing and distance from the north meander corner. See Nov. 3, 1992, Memorandum at 5.

When the SE corner of sec. 23 was surveyed, using the above described method, the corner fell in a county road referred to as Convict Road, 15 links north of its centerline. n5 This placement increased the record distance between the SE corner [**9] of sec. 23 and the quarter corner between secs. 23 and 24 by 685 feet.

n5 This road is identified as both Convict Road and Convict Grade Road. For consistency, we will call it Convict Road.

The Chief Cadastral Surveyor for Montana accepted the plat and field notes of the dependent resurvey on March 22, 1994. The Bureau published [*213] notice of the official filing of the plat of survey in the Federal Register on April 21, 1994. *59 Fed. Reg. 19024* (Apr. 21, 1994).

On May 13, 1994, Viers, who owns land abutting the northern and eastern boundaries of sec. 26, protested, objecting to the position of the SE corner of sec. 23. In his protest, he adopted the arguments outlined in the accompanying letter drafted by Warren P. Latvala, who had previously met with BLM to discuss the method used to reestablish that corner. Latvala had identified additional documents he considered relevant to the proper placement of the corner, including surveys and other evidence that Convict Road was south of the corner and that an island [**10] in the river no longer existed, as well as a United States Geological Survey (USGS) map indicating that a "BLM rock" had been recovered north of Convict Road. Latvala asserted that BLM's reliance on the record calls to the river was questionable, considering the admitted inaccuracy of the original survey of the meanders and the closing of the section, arguing that if the calls to the river were correct and the meanders incorrect, the subdivisional survey would not close. Given that the original survey closed and the meanders were inaccurate, Latvala asserted that the calls to the river could also not be correct and therefore should not have been used to reestablish the location of the corner. He further contended that when Convict Road was constructed, beginning in 1909, thousands of cubic yards of fill material were placed along the roadbed adjacent to the river on the inside of a bend located immediately upstream from the corner and that this fill had altered the river's flow, moved the meander line to the south, and obscured the true meander line, as it existed in 1873. Latvala urged BLM to reestablish the corner based on the position of the stone shown on the USGS map, if supporting [**11] evidence existed, or by a Grant Boundary adjustment.

Upon receipt of Viers' protest, BLM thoroughly searched the Park County Courthouse for additional survey records relating to the recovery or position of the SE corner of sec. 23, but recovered no records specifically tying Convict Road, fence lines, or other features to the boundaries or corners as placed in the original 1873 survey. The Bureau also contacted USGS, seeking information about the position of the corner marked on the 1952 quadrangle map, as photorevised in 1981. The USGS records contained no information indicating that it had found the original stone, a mound of stone, or a fence intersection. The surveyors then undertook a field search of the digitalized location of the USGS corner, which was 148.11 feet N. 29 [degrees] 05' E. from the corner as reestablished and monumented. No evidence was discovered in that area. As a result, BLM concluded that the resurvey had reestablished the corner based on the best evidence available to it. See generally Aug. 1, 1994, Memorandum.

In his October 7, 1994, Decision, the Acting State Director concluded that BLM's further investigation of known references to the SE corner [**12] of sec. 23 had disclosed no basis for changing the corner's designation from "lost" to "obliterated" or altering the manner in which BLM had restored the position of that corner. Recognizing the admitted gross errors in the [*214] 1873 survey, the Acting State Director noted that the dependent resurvey had isolated an error of 685 feet to the south 1/2 mile between secs. 23 and 24. Noting that the survey team had recovered the quarter corner between secs. 23 and 24 at a position 3,391 feet north of the Yellowstone River, rather than the record 2,706 feet, he noted the survey conclusion that the Yellowstone River was a natural monument of the original survey and that the north bank of that river had not moved since the time of the original survey. He found BLM's utilization of the record ties to the bank of the river to be amply supported by its investigation showing that the north bank of the river at the

original meander corners was a stable, permanent natural feature, with steep rock cliffs immediately upstream and downstream, that had not moved appreciably since 1873. He further indicated that the resurvey's removal of the blunder in the line by proportionate measurement conformed [**13] to the Manual and prevented the line containing the gross error from biasing the integrity of the lines without such errors.

The Acting State Director stated that neither the original surveyor's failure to actually run the meanders of the river nor the closing of the sections using the 1873 record invalidated the calls to the river but only indicated that the survey line contained an error. Comparing the ground adjacent to the river with the steep rugged terrain immediately to the north, he considered it highly unlikely that the original surveyor erred when measuring the shorter distances from the corner to the river. He found that the lack of ties to the corner on the map of Convict Road and the absence of any field books of the survey of Convict Road rendered any placement of the corner north of the road speculative. He then noted that the formation and subsequent disappearance of an island in the middle of the Yellowstone River did not prove that the banks of the river had moved.

The Acting State Director rejected use of the Grant Boundary adjustment method for reestablishing the corner because that method would not isolate the error and because that method was a secondary [**14] restoration method designed for use on irregular grant and reservation boundaries rather than rectangular subdivision of lands. He concluded that, in accordance with the Manual and applicable case law, the resurvey properly isolated the error in the section line between secs. 23 and 24 and restored the SE corner of sec. 23 to its true location, using the best available evidence of the original position of the corner, and that this action protected the bona fide rights of Viers and other private landowners in the area. Accordingly, the Acting State Director dismissed Viers' protest.

On appeal, Viers n6 asserts that when BLM isolated the 685-foot error to the south 1/2 mile between secs. 23 and 24, rather than making the adjustment between the quarter corner between secs. 23 and 24 and the [**215] river, it introduced errors of 8-1/2 [degrees] and 0.88 chains in the direction and length of the section line between secs. 23 and 26, thereby undermining the integrity of that line, which Viers claims to be contrary to the directives set out in section 5-23 of the Manual. Viers contends that, because original meanders were false and the sections closed, there must have been a [**15] second error in the boundaries of the sections along the river. He maintains that BLM's placement of the disputed corner improperly alters the boundaries of sec. 23, which does not abut the river, again conflicting with the Manual's directives.

n6 Letters prepared by Latvala were attached to Viers' statement of reasons. For simplicity, we have attributed Latvala's statements to Viers.

Viers objects to BLM's rejection of collateral evidence, particularly the composite Convict Road maps and the USGS quadrangle map, which depict the location of the corner north of Convict Road. Viers acknowledges that the notes of survey of Convict Road and the plat of that survey have not been recovered, but insists that the fact that the notes and plats are no longer available is not a basis for rejecting the position shown for the corner on the composite plat. n7 Similarly, Viers avers that USGS' failure to maintain field notes for its topographic maps does not undermine the validity of the location of the corner as it is shown on [**16] the USGS quadrangle map.

n7 But see *State of Missouri, 142 IBLA 201, 204 (1998)*, Judge Mullen dissenting, where Cadastral Survey deemed a corner remonumented while recognizing that there was no collateral evidence of who had remonumented it or when it had been remonumented.

Viers claims that BLM has no corroborative data validating the use of the 1873 calls to the river. He contends that BLM's conclusion that the north bank of the river is a stable, permanent natural feature, lacks supporting physical evidence, and ignores the subsequent dumping of thousands of cubic yards of fill along the north bank of the river at the meander corners and upstream for over 1/2 mile. Viers concedes that the river was never 685 feet north of its current position but maintains that the fill material has significantly changed the course of the river, making it impossible to determine the exact location of the 1873 meander line. He further argues that the failure to recover the original meander corners undercuts [**17] BLM's assumption that those corners lie in the same position today as they did in 1873.

In his Statement of Reasons, Viers retreats somewhat from his earlier position that the corner should be restored through a Grant Boundary adjustment. He now indicates that reestablishing the corner by two-point control from the

accepted corners to the north and west would also be acceptable. He contends that both of these methods would place the corner north of Convict Road and in agreement with the existing collateral evidence.

In response, BLM avers that, in accordance with section 5-23 of the Manual, it correctly regarded the north (left) bank of the Yellowstone River to be the best available evidence of the position of the northing of [*216] the original SE corner of sec. 23, and properly placed the 685-foot blunder in the south 1/2 mile between secs. 23 and 24 rather than in the 1 chain course between the corner and the river. The Bureau contends that reasonable agreement exists between the original survey's topographic call to the north of the SE corner of sec. 23. The original notes describing the line between secs. 23 and 24 state that the line ascended bluffs to 21.50 chains [**18] and then crossed rolling ground on its northerly course. The resurvey of that line ascends the ridge to a point 20.40 chains from the restored corner. The Bureau asserts that road construction and other human activity in the area of the relocated corner may explain why the original monument cannot be found. It notes that, on the other hand, the area 685 feet north of the river, at the record position of 40 chains south of the quarter corner between secs. 23 and 24, is virtually undisturbed and evidence of an original corner monumented in that area would have been found by Government or private surveyors, who had been surveying in the area since the early 1900's. n8

n8 The Bureau notes that it considered restoring the lost corner by proportionate measurement by equally distributing the normal discrepancies between the record and the retracement between the found corners even though 685 feet is not a normal discrepancy. If this method had been adopted, it would have moved the corner to a position slightly north of Convict Road, only 17 feet north of its present position. The Bureau rejected this method because of the manifest error in the original survey.

[**19]

The Bureau states that it did not disregard the existing collateral evidence but acknowledges that the conclusions it drew after analyzing that data differ from Viers' opinions. It maintains that it exhaustively searched and evaluated every available source of data concerning corners found and used for ties by surveyors and road builders, noting that the Bureau cannot manufacture a corner tie or imply one into existence if no evidence of it is found in the records. The Bureau asserts that it has been unable to corroborate the USGS topographic map symbol indicating a found corner with any direct physical evidence on the ground, testimony, or statements in existing records despite its thorough search of the ground at the coordinates for the location. According to BLM, the collateral evidence, including the USGS map and the Convict Road plats and field notes, also fails to produce a narrow location for the corner's position, but does discredit any attempt to locate the corner 685 feet away from the river.

The Bureau supports the validity of its determination that the Yellowstone River occupies the same position it did in 1873 with photographs taken during the 1992 resurvey showing [**20] a stable left (north) bank consisting of sheer rock without fill material upstream or downstream from the corner. The Bureau admits that the section corner is located in a bend in Convict Road that contains fill material, but maintains that the fill altered neither the position nor the course of the river. The Bureau further observes that using photographic evidence it found that, if the [*217] natural slope of the land above the road is projected through the road to the river, there is no evidence of movement of the river's position due to road construction. The Bureau concludes that to locate the corner 685 feet north of its present location, as suggested by Viers, would contradict the original survey record and conflict with Viers' admission that the river was never 685 feet north of its current position.

In reply, Viers asserts that he is not suggesting that the corner be placed 685 feet to the north n9 unless that location is determined to be the true position of the corner, but is seeking to have BLM carefully consider all the evidence in a professional manner and not ignore or disregard material information. n10 Viers reiterates his contention that, because the meanders [**21] are false yet the sections close, there must be errors in the calls to the meander corners. He speculates that, as revealed in retracements of Baker and Thomas surveys in other townships, not only are the 1873 survey's meanders false but its topographic calls are unreliable as well. Viers concedes that original field notes for Convict Road no longer exist but contends that the USGS notation, the plat of the Convict Road survey, and the general trend of a fence line in the area (see n.9, supra) all indicate a position for the corner north of Convict Road. He again disparages BLM's insistence that the river has not moved despite the thousands of yards of fill at Convict Road and upstream of the river, stating that, although the amount of displacement is unknown, the river must have moved, and asks the Board to obtain an independent opinion of the extent of the movement. Viers concludes that too many factual items and valid questions exist to uphold a corner position established from a single topographical call to a questionable natural feature continually altered by 85 years of road construction and improvement and incompatible with adjacent accepted corners.

n9 The county and USGS maps place the corner about 200 feet north of the river.

[**22]

n10 In his reply, Viers notes for the first time that a fence considerably north of the line between secs. 23 and 26 established by the resurvey has been in existence for close to 100 years and has historically been considered the boundary between those sections. That fence line, however, veers south of the resurvey's boundary between secs. 23 and 26 before it reaches the SE corner of sec. 23 (see Nov. 3, 1992, Memorandum, Attachment 9), and thus provides no support for placing the corner north of the resurvey's position.

[1] The Secretary of the Interior is authorized to consider what lands are public lands and what public lands have been or should be surveyed and has the authority to extend or correct the surveys of public lands and make resurveys to reestablish corners and lines of earlier official surveys. *John W. and Ovada Yeargan, 126 IBLA 361, 362 (1993)*; see 43 U.S.C. §§ 2, 52, 751-53 (1994).

A dependent resurvey is a retracement and [**23] reestablishment of the lines of the original survey in their true original positions according [**218] to the best available evidence of the positions of the original corners. The section lines and lines of legal subdivision of the dependent resurvey in themselves represent the best possible identification of the true legal boundaries of lands patented on the basis of the plat of the original survey. In legal contemplation and in fact, the lands contained in a certain section of the original survey and the lands contained in the corresponding section of the dependent resurvey are identical. Manual, 6-4, at 145; *John W. and Ovada Yeargan, 126 IBLA at 362-63*; *Crow Indian Agency, 78 IBLA 7, 10 (1983)*; *Mr. and Mrs. John Koopmans, 70 IBLA 75, 76-77 (1983)*.

In a resurvey, a corner is categorized in one of three ways. An existent corner is one whose position can be identified by verifying the evidence of the monument or its accessories or by referring to the description in the field notes, or can be located by an acceptable supplementary survey record, some physical evidence, or testimony. [**24] Manual, 5-5, at 130. An obliterated corner is one at whose point there are no remaining traces of the monument or its accessories, but whose location has been perpetuated or may be recovered beyond reasonable doubt based on the acts or testimony of the interested landowners, competent surveyors, or other qualified local authorities, or witnesses, or by some acceptable record evidence. Manual, 5-9, at 130. A lost corner is a point of a survey whose position cannot be determined, beyond reasonable doubt, either from traces of the original marks or from acceptable evidence or testimony which bears upon the original position, and whose location can be restored only by reference to one or more interdependent corners. Manual, 5-20, at 133.

The purpose of a dependent resurvey is to restore what purports to be the original conditions of the official survey according to the record, based, first, upon identified existing corners of the original survey and other recognized acceptable points of control, and second, upon the restoration of missing corners by proportionate measurement in harmony with the record of the original survey. Titles, areas, and descriptions should [**25] remain unchanged in a typical dependent resurvey. *Jean Eli, 78 IBLA 374, 376 (1984)*. Therefore, the cadastral surveyor's primary responsibility when conducting a dependent resurvey is to act as a "detective" who gathers all available information and uses his best effort to determine the location of all the original corners. *John W. and Ovada Yeargan, 126 IBLA at 363*.

In an appeal from a BLM decision dismissing a protest of the acceptance of the filing of a plat of a dependent resurvey, the appellant has the burden of establishing by a preponderance of the evidence that the resurvey is not an accurate retracement and reestablishment of the lines and corners of the original survey. *Peter Paul Groth, 99 IBLA 104, 111 (1987)*. Viers states two bases for his objection to the placement of the SE corner of sec. 23: His contention that BLM disregarded collateral evidence indicating that the original corner was north of Convict Road; and BLM's reliance on calls to the Yellowstone River which, according to Viers, is no longer occupying the position it occupied at the time of the original [**219] survey. [**26] We find neither of these arguments sufficiently supported by the evidence to warrant a finding that a preponderance of the evidence supports a conclusion that the resurvey is not an accurate retracement and reestablishment of the lines and corners of the original survey.

Although Viers does not specially state where he believes the corner should be, he argues that the Convict Road plats and records and the USGS quadrangle map are sufficient to establish that the corner was north of Convict Road and criticizes BLM for failing to give sufficient weight to this collateral evidence of the corner's location. This argument suggests that the corner should be considered obliterated, rather than lost. In order for a corner to be considered obliterated,

ated, there must be substantial evidence of a perpetuated corner location in the form of acts and testimony of interested landowners, competent surveyors, and other qualified local authorities, or witnesses or by some acceptable record evidence. Manual at 5-9; *Kendall Stewart*, 132 IBLA 190, 195 (1995); *James O. Steambarqe*, 116 IBLA 185, 191 (1990); cf. *State of Missouri*, 142 IBLA 201, 208 (1998), [**27] Judge Mullen dissenting. The Convict Road plat and notes contain no tie to the SE corner of sec. 23 and there are no notes supporting a finding that the corner was found, as depicted on the USGS quadrangle map. As it stands, this evidence is not sufficient to establish the location of the SE corner of sec. 23. See *Kendall Stewart*, *supra*; *James O. Steambarqe*, 116 IBLA at 193. Thus, Viers has failed to show error in BLM's refusal to consider the corner obliterated and to restore the corner at a location north of Convict Road.

Viers has also not submitted evidence to establish that the north bank of the Yellowstone River has moved appreciably since the 1873 survey. The photographs in the record and BLM's description of the river bank at the meander corners amply outweigh Viers' speculation that road fill must necessarily have altered the location of the north bank of that river some time after 1873.

We further find that Viers has not demonstrated that BLM erroneously relied on the record calls to the meander corners in restoring the corner of secs. 23, 24, 25, and 26. The Bureau evaluated and weighed the available evidence, [**28] and considered the effect of the manifest errors in the original survey when deciding to adopt the record calls to the meander corners as the best evidence of the original corner location. The short distances of the calls and the similarity between the descriptions of the topography north of the corner in the notes of the original survey and the dependent resurvey support BLM's acceptance of the accuracy of those calls. Viers has not produced any concrete evidence that the challenged corner reestablished in the dependent resurvey is not in the position of the original survey corner, nor has he shown error in the methodology used when locating that corner's position. That Viers reaches a contrary conclusion does not undercut the validity of BLM's Decision. His mere disagreement with BLM's opinion is not substantial, conclusive evidence and does not establish reversible error in the dependent resurvey. See *John W. and Ovada Yeargan*, 126 IBLA at 129. Viers has failed to establish by a preponderance of the evidence that the dependent resurvey is not an accurate [*220] retracement of the lines and corners of the original survey, and BLM's Decision dismissing [**29] the protest against the survey is affirmed.

To the extent not specifically addressed herein, Viers' additional arguments have been considered and rejected.

Therefore, 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.

R.W. Mullen, Administrative Judge

I concur: James L. Burski, Administrative Judge

Legal Topics:

For related research and practice materials, see the following legal topics:

Evidence
Demonstrative Evidence
General Overview
Governments
Public Lands
General Overview
Real Property Law-
Water Rights
General Overview