



WILLIAM HUGH & MARY BRINDLEY

175 IBLA 51

Decided June 30, 2008



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

WILLIAM HUGH & MARY BRINDLEY

IBLA 2007-280

Decided June 30, 2008

Appeal from a decision of the Montana State Office, Bureau of Land Management, dismissing a challenge to a dependent resurvey approved and filed in 1974. Groups 556 and 1023, Montana.

Appeal dismissed.

1. Appeals: Generally--Rules of Practice: Appeals: Dismissal: Jurisdiction

The Board is without jurisdiction to decide survey disputes that do not involve public lands or resources. A dependent resurvey does not alter or affect boundaries between private tracts of land. An appeal complaining that such a boundary was moved as a result of a dependent resurvey will be dismissed.

APPEARANCES: Jack R. Stone, Esq., Lewiston, Montana, for William Hugh and Mary Brindley; Janet L. Parsanko, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Billings, Montana, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

William Hugh and Mary Brindley appeal from a July 31, 2007, decision of the Bureau of Land Management, Montana State Office (BLM), dismissing the Brindleys' "Protest and Complaint" to a dependent resurvey officially adopted in 1974. The Brindleys alleged that the dependent resurvey incorrectly located the common corner of secs. 1 and 12 in T. 14 N., R. 26 E., and secs. 6 and 7, T. 14 N., R. 27 E., Principal Meridian Montana (the Subject Corner), on the east side of T. 14 N., R. 26 E.

This appeal derives from a private legal dispute between the Brindleys and adjacent landowners Vince and Lana Murnion. The Brindleys aver that "Hugh" Brindley and Vince Murnion's father constructed a fence between their private properties in 1993. The Murnions subsequently named the Brindleys in a lawsuit alleging that the fence is in trespass, disputing the ownership of between 45 and 53

acres of land. The Brindleys contend that the dispute arises from the location of the Subject Corner and an associated section line determined as a result of a Federal dependent resurvey conducted in 1969 and approved in 1974 (Lindenberg Survey).

The east boundary of T. 14 N., R. 26 E., Principal Meridian Montana, was first surveyed in the 1880s by Willis D. Chapman and John B. Thompson (Chapman Thompson survey). The township boundary, including its sections, was shown on an official plat of survey approved May 5, 1883. According to statements in the record made by BLM employees, and confirmed by the Brindleys, the private lands surrounding the Subject Corner were patented out of Federal ownership in 1883. A dependent resurvey was conducted by Duane G. Lindenberg, BLM Cadastral Surveyor, in 1969, under Special Instructions dated April 1, 1969, for Group No. 556. June 24, 1974, Plat distribution. This dependent resurvey did not include the Subject Corner. The surveyor, however, re-monumented the corner based on local control, pursuant to survey instructions to re-monument control points recovered if “necessary to retrace beyond the lines of the sections described . . . to obtain control” See Special Instructions Group No. 1023, Montana, at 3, and Map entitled “Montana Cadastral Mapping Project,” attached.¹

Through their United States Senator, the Brindleys requested and obtained a meeting on August 19, 2005, with the Montana State Office, BLM. At this meeting the Brindleys presented information including the field notes for the 1969 dependent resurvey and information regarding private surveys surrounding the town of Winnett, Montana, which was originally established north of the Subject Corner. Relying on calls in field notes of the original Chapman Thompson survey, as well as private surveys conducted relating to the establishment of Winnett, the Brindleys contended

¹ As we have explained:

BLM does not have any authority to relocate, by means of a resurvey, the boundaries of public land once it has passed into private ownership. See *United States v. Reimann*, 504 F.2d 135, 138-39 (10th Cir. 1974); *Wilogene Simpson*, 110 IBLA 271, 277 (1989); *James S. Mitchell*, 104 IBLA 377, 380 (1988). BLM’s statutory authority extends only to the relocation of public land boundaries, that is, lines that mark the boundary between public and private or other public land. The applicable statute limits the authority of the Department to “cause to be made . . . such resurveys or retracements of the surveys of public lands as, after full investigation, [the Secretary] may deem essential to properly mark the boundaries of the public lands remaining undisposed of.” 43 U.S.C. § 772 [(2000)] (emphasis supplied). Thus, BLM’s resurveying authority extends only to resurveying the boundaries of public lands.

James C. Boussios, 130 IBLA 342, 343 (1994).

that Lindenberg re-monumented the Subject Corner north of where it should be. By letter dated September 1, 2005, the Chief of the Branch of Cadastral Survey, Montana State Office, BLM, documented this meeting, and advised, based on the evidence submitted at the meeting which suggested a “blunder” on Lindenberg’s part, that the Brindleys submit a protest to the State Director pursuant to 43 C.F.R. § 4.450.²

By “Protest and Complaint” dated October 5, 2005, the Brindleys purported to challenge the location of the Subject Corner as established by Lindenberg’s dependent resurvey. With respect to the disputed land, they explained only that they “have been sued by the adjoining landowners, Vince L. and Lana J. Murnion (‘Murnions’), for trespass. Murnions disputed ownership to approximately 45 acres of real property they allege is improperly fenced between the properties.” Complaint ¶ 4. They claim that the “true location of the section line between Sections 6 and 7, T14N, R. 27E is the subject of the dispute.” *Id.* It is not possible from this record to determine the location of the Murnions’ or Brindleys’ lands, or the disputed boundary between them.³

The Brindleys’ complaint identified the private surveys and maps provided to their Senator; according to the Brindleys the private surveys and maps placed the southwest boundary of the the 1914 Winnett Original Townsite 1,946.05 feet north of the Subject Corner. By tracing that location through a number of subsequent private surveys, placements of privately-owned businesses, and maps, the Brindleys contended that the Chapman Thompson Survey was necessarily consistent with the later private surveys in placing the Subject Corner on a section line that trended from the northeast to the southwest from the relevant corner to the east (this would be the

² The letter advised the Brindleys to follow the procedures at 43 C.F.R. § 4.450.1-8. The protest and contest regulations appear at 43 C.F.R. §§ 4.450-1 through 4.450-8. These rules specify generally that a person claiming an interest in land adverse to another person’s interest may submit a complaint regarding and identifying his or her interest in such land. *See also* 43 C.F.R. § 4.450-2 (protests).

³ The Brindleys did not include within this “Protest and Complaint” a statement, other than what is quoted here, regarding their own interest in land as would be required by 43 C.F.R. § 4.450-4 (requiring the complaint to include a “legal description of the land involved”). We report the facts as they appear in the record. We take no position on (a) whether BLM properly guided the Brindleys to submit a challenge to a 31-year old dependent resurvey in order to obtain a statement from the Department that would purportedly pertain to the private land boundary; or (b) whether the Brindleys submitted a complaint that met the requirements of the protest and contest regulations.

corner of secs. 5, 6, 7, and 8, T. 14 N., R. 27 E.).⁴ The Lindenberg Survey placed the Subject Corner on a section line that ran due east to west between the two corners; therefore the Subject Corner was several hundred feet to the north of where the Brindleys allege it should be.

The Acting State Director explained to the Brindleys, by letter dated November 17, 2005, that “[b]ased on the preponderance of the evidence contained within your protest and complaint, it appears very likely that Mr. Lindenberg made a large blunder during the dependent resurvey reestablishing the southwest corner of section 6, Township 14 North, Range 27 East, Montana Principal Meridian. The southwest corner of section 6 appears to now lay hundreds of feet north of its correct position.” The Acting State Director advised the Brindleys that he was sending a field crew to the site in 2006 to investigate, and “[a]ssuming the investigation produces evidence agreeing with the evidence brought forth in your protest and complaint, the southwest corner of section 6 will be established and monumented in its correct position.” Nov. 17, 2005, letter from Acting State Director to Jack R. Stone, the Brindleys’ attorney.

Special Instructions for Group No. 1023, Montana, were issued June 5, 2006, requiring “an investigation and retracement of a portion of the east boundary” of T. 14 N., R. 26 E. The investigation was assigned to Heidi Pfosch, Field Section Chief, Cadastral Survey. Pfosch issued her Report of Field Investigation, Group 1023, on July 30, 2007. Without restating the results of the detailed investigation, it suffices to say that Pfosch considered every piece of evidence submitted by the Brindleys, but nonetheless concluded that the Subject Corner had been an obliterated corner and that Lindenberg had reestablished the position “in good faith” during the dependent resurvey. She found that the evidence submitted by the Brindleys contained internal discrepancies and was also based on suspect assumptions regarding the location of the Subject Corner. Given that the Lindenberg Survey had been accepted locally by local officials, land surveyors and landowners for several decades, she recommended that the Lindenberg Survey stand.

Based upon the fruits of this investigation, the State Director issued the July 31, 2007, decision that is the subject of this appeal. He explained that the time for filing a protest against the Lindenberg survey had long passed, but that BLM had agreed to investigate the Brindleys’ complaint “on [its] own motion.” He continued:

⁴ The Brindleys relied on a 1913 Milwaukee Railroad Survey, the 1914 Map of the Winnett Original Townsite, the 1920 Map of the Milwaukee First Addition (due south of the original townsite and allegedly abutting the Subject Corner), a 1953 Survey by Gordon Blossom, the location of the Fergus Electric Substation, and an “MDT Fuel Tax Map,” which superimposed section lines over an aerial map.

During our investigation, we evaluated the numerous points of potential evidence you refer to in your protest and complaint dated October 5, 2005. We have also reviewed the original topography calls pertinent to the subject corner in the field. We agree that the original topographic call for MacDonald Creek does place the corner point some 800 feet southerly of its current position; however, it is also apparent that your evidence presented could place the corner in question in several more different locations.

It should be noted that a party challenging the filing of a plat for a dependent resurvey has the burden of demonstrating, by a preponderance of the evidence, that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey (*Stoddard Jacobsen*, 84 IBLA 335, 342 (1985)).⁵ Thus, we have cautioned that even where an appellant is able to show that his or her placement of a disputed corner is supported by substantial evidence, “. . . as long as BLM’s placement of the corner is also supported by substantial evidence, appellants showing is of no avail. To prove error in the BLM decision, appellant must demonstrate by a preponderance of the evidence that BLM’s placement of the corner is wrong.” (*Id.* at 86 n.7.) Accordingly, Appellants are obliged to offer more than a difference of opinion or speculation, they must establish that there was error in the methodology used or the results obtained, or show that the resurvey was carried out in a manner that did not conform to the *Manual* (*Rodney Courville*, 143 IBLA 156, 164 (1998); *Thom Seal*, 132 IBLA 244, 247 (1995)).

Our field investigation does not reveal that our survey is in error or the subject corner was mislocated as the result of a blunder. It should also be noted that the survey has been in existence for over 37 years and relied upon by a majority of the landowners and has not been challenged to date. Furthermore, several Montana Registered land Surveyors have accepted the position and recorded certified land corner recordation certificates on the BLM corner position.⁶

While you have presented evidence that places the subject corner in several different locations, your protest has failed to offer by a preponderance of evidence a definitive position (best available

⁵ One challenging a survey that has been accepted after a long lapse of time must show fraud or gross error amounting to fraud. *Robert W. Delzell*, 158 IBLA 238, 256 (2003).

⁶ This information is documented in Pfosch’s Report of Field Investigation.

evidence) for the corner or proof that BLM blundered in their 1969 dependent resurvey. We are therefore dismissing your protest.

July 31, 2007, decision at 1-2.

The Brindleys appealed and demanded a copy of Pfosch's Report. Their statement of reasons (SOR) contains a point-by-point refutation of Pfosch's assertions and conclusions and claims that, though BLM was obligated to "conduct a retracement" of the 1883 Chapman Thompson Survey, SOR at 19, instead Pfosch merely performed a "validation of the Lindenberg Resurvey." SOR at 1, 2. The Brindleys argue that to the extent the 2006 investigation, or the Lindenberg Survey, was unable to verify field note calls with respect to McDonald Creek because the Creek had been rerouted for a bridge in 1940, BLM should have instead validated the field notes by reviewing other private or state surveys and survey markers. The Brindleys thus contend that the dependent resurvey was not an accurate retracement of the 1883 Chapman Thompson Survey. The Brindleys claim that, to the extent either Lindenberg, in 1969, or Pfosch, in 2006, could not reproduce facts set forth in field notes from the original survey, they should have accepted and reestablished the Subject Corner based on evidence from private and state surveys. The Brindleys question the veracity of Lindenberg's and Pfosch's findings, and proceed to analyze private and state records, local control, and fence line information to reach a conclusion consistent with their claim in their private dispute to "53 acres" of land. *See also* Additional Information for Appellants' Aug. 22, 2007, Appeal, submitted Nov. 13, 2007.

Analysis

It is not clear to us when the dispute arose between the Munions and the Brindleys. Nothing in the record identifies the location of the private lands, the date of acquisition of the interests in the private land, or the precise relationship to the dependent resurvey. We can only presume that the location of the section line, as controlled by the Subject Corner, is relevant to the parties' contentions regarding ownership by one or the other private landowner. Whether the location of the section line might relate to a private property boundary is beyond the scope of this appeal and our authority.

[1] What is clear is that the Board has no jurisdiction over this matter. We have long held that this Board is not vested with authority to consider private disputes that do not involve public lands or resources. In *Benton C. Cavin*, 166 IBLA 78 (2005), the relevant land had been surveyed in 1881. The Department had conducted a dependent resurvey between 1984 and 1987. Cavin had purchased property by a deed which fixed the south boundary of the property along the east-west section centerline according to the official survey. 166 IBLA at 80. Cavin

approached BLM with material in support of his contention that the resurvey “misinterpreted available evidence.” 166 IBLA at 79. Cavin requested that BLM investigate the accuracy of the 1984-87 dependent resurvey for reasons related to his contentions regarding his private deed. *Id.* BLM denied the request and Cavin appealed. As in this case, Cavin’s land dispute did not involve any boundary with public lands or involve the use and disposition of public lands and resources.

We refused to take jurisdiction of the case. We held:

The jurisdiction of this Board is limited to that authority delegated by the Secretary of the Interior which is defined in the Departmental regulations at 43 CFR Part 4. Thus, the Board is authorized to issue final decisions for the Department in appeals from decisions of BLM officials relating to the use and disposition of the public lands and the disposition of Federal mineral resources on both public domain and acquired lands. 43 CFR 4.1(b)(3).

Exxon Corp., 95 IBLA 374, 375 (1987). Given the facts of this case, we find that we do not have jurisdiction to adjudicate Cavin’s appeal of the August 4, 2000, decision, or his underlying question regarding the accuracy of BLM’s placement of the 1/4 corner, and the appeal must be dismissed.

Benton C. Cavin, 166 IBLA at 82. We reached the same conclusion in *James S. Mitchell*, 104 IBLA 377, 380-81 (1988), holding that the appropriate forum for such private disputes is in the State courts and that the Board has no jurisdiction, even where the private dispute may hinge on a Departmental survey line. The outcome must be the same here.

We recognize that to make any sense of the Brindleys’ contentions, there must be some association between the parties’ private land descriptions and the Subject Corner and/or the section line. Nonetheless, nothing we say now, and nothing Lindenberg concluded in the Lindenberg Survey, can have legal bearing on the location of the private lands. This is because “no such resurvey or retracement shall be so executed as to impair the bona fide rights or claims of any claimant, entryman or owner of lands affected by such resurvey or retracement.” 43 U.S.C. § 772 (2000). Under the Survey Manual, bona fide rights are those “acquired in good faith under the law.” United States Department of the Interior, [BLM], *Manual of Surveying Instructions* (1973) § 6-12 at 147.

Thus, where land has passed out of Federal ownership after an original survey, any subsequent survey cannot affect private rights conveyed. We held 25 years ago:

Prior to passing title from the United States, the government has the right to establish or reestablish boundaries on its own land. However, once patent has been issued, the rights of the patentee are fixed and the government has no power to interfere with such rights by a corrective survey. Therefore, the results of a dependent resurvey conducted by the Cadastral Survey will not alter or [a]ffect any boundaries between private tracts of lands. In disputes between private owners, the location of corners reestablished by a dependent resurvey conducted subsequent to a patent does not make the new survey conclusive against the prior purchaser so as to prevent his assertion of the title he has acquired as against the one claiming under the new survey.

Alice L. Alleson, 77 IBLA 106, 108 (1983); *see, e.g., Pittsmont Copper Co. v. Vanina*, 227 P. 46 (Montana 1924).

Given that a Government survey cannot impair existing bona fide rights, we routinely dismiss appeals where the appellant believes that a public survey has had an impact on his or her private boundary. *James S. Mitchell*, 104 IBLA at 379-80.

In the absence of legal authority, BLM cannot actually relocate, by means of a resurvey, the boundaries of public land that has passed into private ownership. In the absence of any legal effect, it is established that the private landowners, whose boundary abuts or is tied to the original corners, are not “adversely affected,” within the meaning of 43 CFR 4.21(a), by BLM’s resurvey of those corners, and that they accordingly lack standing to appeal from BLM’s denial of their protest against the resurvey.

James C. Boussios, 130 IBLA at 344, *citing Alice L. Alleson*, 77 IBLA at 107, 108 n.2. The “results of a dependent resurvey will not alter or affect any boundaries between private tracts of land and an appeal will be dismissed with respect to such boundaries for failure to demonstrate how the appellant has been adversely affected.” *Id.* at 108; *see also John and Oveda Yeagan*, 126 IBLA 361, 369-70 (1993).

The record contains references suggesting that the Brindleys owned their property prior to the Lindenberg Survey. If this is the case, the Lindenberg Survey could not affect their bona fide rights. 43 U.S.C. § 772 (2000). If, on the other hand, the Brindleys acquired their property after the 1974 approval of the Lindenberg Survey, its boundaries would be fixed by the instrument through which they obtained title to the land and the bona fide rights associated with it.

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 appeal is dismissed.

_____/s/_____
Lisa Hemmer
Administrative Judge

I concur:

_____/s/_____
T. Britt Price
Administrative Judge