

This decision demonstrates the importance of the exact words used by a witness in providing testimony relative to the position of an original corner.

(This is an Administrative Decision, or "A" Decision. "A" Decisions are unpublished opinions which resulted from appeals of the Director's Decisions. "A" Decisions were issued prior to the creation of the Interior Board of Land Appeals, July 1, 1970.)

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SUNRISE DEVELOPMENT CO.
ATOM ORE URANIUM CO.
A-28026 Decided AUG 19 1959

Surveys of Public Lands: Dependent Resurveys

In a dependent resurvey of public land an obliterated quarter corner may be established by testimony which indicates that an existing fence corner marks the position of and has been accepted as the quarter corner for an extended period of years

UNITED STATES
DEPARTMENT OF THE INTERIOR
Office of the Secretary
Washington 25, D. C,

A-28026
Sunrise Development Co. Colorado Survey Group No. 42.
Atom Ore Uranium Co.
: Protest against acceptance of
: plat of resurvey of T. 17 S.,
: R. 72 W., 6th P. M.
: Colorado, dismissed.
: Affirmed

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

Sunrise Development Company, as owner of the surface rights in certain land, and Atom Ore Uranium Company, as owner of the minerals in the same land, have appealed to the Secretary of the Interior from a decision of the Director of the Bureau of Land Management, dated February 11, 1959, dismissing their protest against the acceptance by the Bureau of Land Management of a plat of dependent resurvey of T. 17 S., R. 72 W., 6th P. M., in Fremont County, Colorado. The eastern, western, and southern boundaries of the township in question were established by survey in 1872. The northern boundary was surveyed, the eastern and western boundaries were resurveyed and the subdivision lines were surveyed in 1880. The southern boundary was subsequently resurveyed in 1881, The survey of 1880

showed the northern boundary of section 31 in such township to be 81.97 chains instead of the normal 80 chains in length. This distance was divided so that the length of the northern boundary of lot 1 (occupying the position of the NW¹/₄NW¹/₄.) was 21.97 chains while the north boundaries of the NE¹/₄NW¹/₄ and the NE¹/₄ were the normal 20 and 40 chains. The dependent resurvey made in 1957 and approved July 10, 1958, showed the northern boundary of section 31 as 83.52 chains in length, a distance of 1.55 chains more than shown by the original survey, although both the NW and the NE corners of section 31 were as monumented in 1880. No monument marking the north quarter corner of section 31 was found. The surveyor accepted as the point for the quarter corner the corner of fences running south and west which, according to the testimony of a long-time resident, had been accepted as the position of the quarter section corner for over 25 years. This testimony was accepted as the best available evidence, of the location of the quarter corner.

The appellants have protested the acceptance of the fence corner as marking and locating the north quarter corner of section 31 and have asked that such acceptance be set aside and that the quarter corner and the boundary between the NE¹/₄NW¹/₄ and the NW¹/₄NE¹/₄ be established in accordance with the methods prescribed by the Manual of Instructions for the Survey of the Public Lands of the United States published by the Bureau of Land Management of the Department of the Interior. The Director dismissed the protest on the ground that, since no physical evidence of the original corner monument of the north quarter corner of section 31 could be found, it was proper to rely upon a locally accepted structure, corroborated by a witness statement as to the original position of the corner.

On appeal to the Secretary, the appellants contend that the purpose of a dependent resurvey is to locate the original corners and not to establish new ones and that in accomplishing the resurvey the bona fide rights of landowners cannot be impaired; that the statement of the witness relied upon is insufficient to establish the fence corner as the original location of the quarter section corner; that in relocating a quarter section corner the methods prescribed in the Manual of Instructions should be followed; that whether or not a fence corner has been accepted and recognized as a quarter section corner is a matter to be determined by litigation and not by a resurvey. It may be conceded that the purpose of a dependent resurvey is to reestablish original land boundaries and subdivisions by rerunning and remarking the lines represented in the field-note record and on the plat of a previous official survey. Manual of Surveying Instructions, 1294, United States Department of the Interior, Bureau of Land Management, sec. 387. Likewise it is recognized that a resurvey must afford

adequate protection to bona fide vested rights in both improved and unimproved lands and that the corners of the original survey control the boundaries of land patented under it, even if such survey was poorly executed. Manual. sec. 394.

The sufficiency of the witness' statement as to the location of the quarter corner is attacked on the ground that he "does not allege that the fence corner marks the location of the quarter corner as originally established under the original survey"; that he merely stated that the fence corner had been accepted as the quarter section corner for over 25 years. The appellants concede that the field notes of the original survey of 1880 show that the quarter corner was marked by a granite stone marked "is in a mound of stones and that this monument had been completely obliterated when the resurvey was made in 1957. It is not disputed, however, that there was a fence corner directly on the line of the north boundary of section 31 at a point which suggested that it might mark the quarter corner and thus required an inquiry. The field notes show that the witness testified that "this fence corner-marks the position of and has been accepted as the sec. corner of secs. 30 and 31 for a period of over 25 years" Thus he stated not only that it had been accepted as the quarter corner for over 25 years, but that it actually marks the position of the quarter corner. In other words, the witness said that the fence corner is on the point established as the quarter corner by the original survey. There was no contradictory testimony at that time and the appellants have not even suggested that they know a witness who can controvert such testimony, The surveyor concluded in his field notes: "It is accepted as the best available evidence of the sec. cor." This is in accord with prescribed procedure. Manual, secs. 355, 419.

It appears, therefore, both that the testimony relied upon was sufficient to establish the location of the quarter corner and that the methods of procedure prescribed by the Manual were followed, Accordingly, I conclude that the protest was properly dismissed. Therefore, pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (sec. 210.2.2A(4)(a), Departmental Manual; 24 FERN 1348), the decision of the Director is affirmed.

(Sgd) Edmund T. Fritz

Deputy Solicitor