State of New Mexico. L.D. 51, 409 (1926)

This case demonstrates that in the disposal of the public lands the official surveys are to govern and that such sections or subdivision of sections shall be held and considered as containing the exact quantity shown on the plat.

(This is a Land Decision, or “L.D.” Decision. Land Decisions were published from July 1881 to December 1929 in volumes 1-52. These volumes are titled Decisions of the Department of the Interior and General Land Offices in Cases Relating to the Public Lands. Cases reported in these volumes pertained almost exclusively to matters coming under the jurisdiction of the General land Office.)

STATE OF NEW MEXICO

Decided March 18, 1926

SURVEY—PLAT—BOUNDARIES—SELECTION—INDEMNITY—NEW MEXICO—STATUTES.

A deficiency in acreage caused by alleged gross inaccuracies in the surveys is not a ground for adjustment of a State grant, inasmuch as section 2396, Revised Statutes, declares that in the disposal of the public lands the official surveys are to govern, and that each section or subdivision thereof shall be held and considered as containing the exact quantity shown on the plat.

FINNEY, *First Assistant Secretary*:

This is an appeal by the State of New Mexico from the decision of the Commissioner of the General Land Office dated May 12, 1925, denying its claim for credit in the amount of 4,439 acres on account of an alleged deficiency in the area of certain tracts or sections in T. 5 S., R. 11 W., and T. 6 S., Rs. 11, 12, and 13 W., N. M. P. M., selected and certified as school indemnity lands, or under grants in quantity for specific purposes.

It appears that the Commissioner had previously been urged to take some remedial action respecting the surveys in this locality, showing being presented to the effect that they were defective and inaccurate; that a material discrepancy existed between the distances on the ground and the length of the lines as shown on the plat, especially with regard to the section lines closing upon the first standard parallel south, where a shortage was alleged of about 34 chains, as a result of which the actual areas of the several sections adjacent to said standard parallel in this locality are much less than those established by the official governmental survey and plat. The deficit is alleged to be approximately 270 acres in each of said sections. In denying the request for correction of the alleged erroneous or defective surveys, the Commissioner observed that the facts reported, and to a certain extent corroborated by the findings of the United States Geological Survey as exhibited upon the Pelona Quadrangle sheet (1915–1916) were such as to create the presumption that unsatisfactory or defective conditions prevailed in the region referred to, and while the townships involved might theoretically be eligible for resurvey, the public interest did not demand that the work be undertaken and administrative necessity did not warrant it since there was no particular governmental purpose to be subserved. Attention was invited to the requirements governing resurvey applications based upon the provisions of the act of March 3, 1909 (35 Stat. 845), and the act of September 21, 1918 (40 Stat. 965), as outlined in Circulars Nos. 520 and 629 (45 L. D. 603; 46 L. D. 504), and it was suggested if conditions warranted such procedure that the State pursue the matter as provided by law. The State concluding that it was not feasible or advisable to apply for resurvey under the provisions of the statutes mentioned, but still insisting that its interests were adversely affected and that the shortage amounted to approximately 4,439 acres in the four townships in question, thereupon requested that it be allowed credit in the adjustment of its grants for this alleged deficiency. This request was supported by evidence in the form of a map or plat compiled in the State land office showing the results

of surveys made by licensed engineers. It appears from this map that there is a shortage, as alleged, of about 34 chains in the section lines closing upon the first standard parallel south, affecting the north tier of sections in T. 6 S., Rs. 11, 12, and 13 W. In the western *range* of sections in T. 5 S., R. 11 W., there is also an apparent shortage of approximately 34 chains in the east and west lines closing upon the western boundary of the township, the actual area of the several sections in this range being much less than that expressed upon the plat. Of this range of sections the State owns 5, viz, 7, 18, 19, 30, and 31. In the north tier of sections in T. 6 S., R. 11 W., the State is the owner of Sec. 4; E. ½, Sec. 5, and about 480 acres in Sec. 6, described as lots 1, 2, 3, 4, 5, 6, E. ½ SW. ¼ and SE. ¼. The State owns the six sections comprising the north tier in T. 6 S., R. 12 W., and owns all of the north tier in T. 6 S., R. 13 W., except Sec. 6. The State estimates its loss as follows, T. 5 S., R. 11 W., 1,320 acres; T. 6 S., R. 11 W., 333 acres; T. 6 S., R. 12 W., 1,426 acres; T. 6 S., R. 13 W., 1,360 acres. There are approximately 18 sections involved. Of these 18 sections, 10 were selected and approved as school indemnity or lieu lands, one is a school section (2) granted in place, and 7 were selected and certified under Sec. 6 of the act of June 21, 1898 (30 Stat. 484), granting 100,000 acres for improvement of the Rio Grande in New Mexico.

In denying the State's claim for credit on account of the alleged deficiency, the Commissioner held that Section 2396, Revised Statutes, contemplated that in the disposal of public lands the official surveys are to govern, and that each section or sectional subdivision, the contents whereof have been returned by the surveyor general shall be held as containing the exact quantity expressed in the return that the design and purpose of this statute was to establish beyond dispute all lines and monuments of accepted official surveys; to obviate inquiry and contention with respect to survey inaccuracies and place a statutory bar against attempts to alter the same or to set up complaints of deficiency of areas as a basis for resurvey. The Commissioner observed that aside from this statutory limitation, administrative reasons precluded the granting of the State's claim; that the stability of surveys and the title to lands described by reference thereto should be unassailable by parties finding differences in measurements and areas from those returned, and if transactions involving the disposition of public lands were not made final, and the Government was obliged to open up for readjudication the question as to the area of a particular tract or tracts granted and patented, controversies would be constantly arising and resurveys and readjudications would be interminable.

The appeal presented by the State, while in effect admitting the correctness of the Commissioner's conclusion as a matter of law, insists that this statutory rule can not be universally applied; that the circumstances and conditions here are exceptional; that the surveys are grossly inaccurate; that the State is equitably entitled to an adjustment and should be allowed to take the full quantity of land granted by Congress.

The Department has carefully considered the matter and finds no reason to differ with the conclusion reached by the Commissioner. The provisions of section 2396, Revised Statutes, recognize the fact taught by experience that measurements of lands can not be performed with precise accuracy and that the work of no two surveyors would exactly agree. True, the alleged shortage in this case looms to a figure of impressive proportions, but the very purpose of the declaration of law above referred to was to obviate inquiry and contention in regard to survey inaccuracies. Moreover, the recognition of right to an adjustment in this instance would establish a far-reaching precedent and afford a basis for similar claims by other States, and a multitude of claims by individuals who had purchased Government lands and found the area short of that expressed on the plat of survey. Also, the rule works both ways, in favor of and against the United States. Manifestly the Government has no basis for claim to readjustment of boundaries or for further payment, or for restitution in those cases of certified or patented lands where there was an excess of acreage over that paid for or taken in harmony with the survey returns at the time of disposal. And if the returns are conclusive against the Government they must also be conclusive in its favor. Take the present case; the Government can not inquire into the contents of the school sections and subdivisions assigned by the State as basis for its indemnity selections, but accepts them as containing the exact quantity expressed in the return. Examination might disclose a deficiency in the area of these sections; frequently, no doubt, exchanges have been made of unequal areas, the discrepancy being in favor of the State, but the law gives these transactions repose and they can not be disturbed. Otherwise endless confusion would ensue.

For the reasons stated it is believed the Commissioner reached a just conclusion and the decision appealed from is, therefore, affirmed.