

Rubicon Properties Inc., Et Al., A-30743

This decision concerns an official survey completed 40 years before the protest and an even older local survey. Therefore, much of the corner evidence relied upon in those surveys no longer exists. This decision demonstrated the importance of preparing a complete record including:

- ⇒ Corner evidence recovered
- ⇒ Collateral evidence including a complete record of pertinent testimony
- ⇒ Bearing and distance ties to all purported corner points recovered
- ⇒ List of all previous surveys
- ⇒ Why corners were accepted
- ⇒ Why corners were rejected

Here the Department was forced to rely on a very limited amount of information from the record of the two conflicting surveys.

The following documents are provided before the case:

- 1926 resurvey by Siebecker and Hunter
- 1929030 resurvey by Hiester, Averill and Hunter.

T. 14 N., R. 17 E.

Exchange Between USFS
and Rubicon Properties:

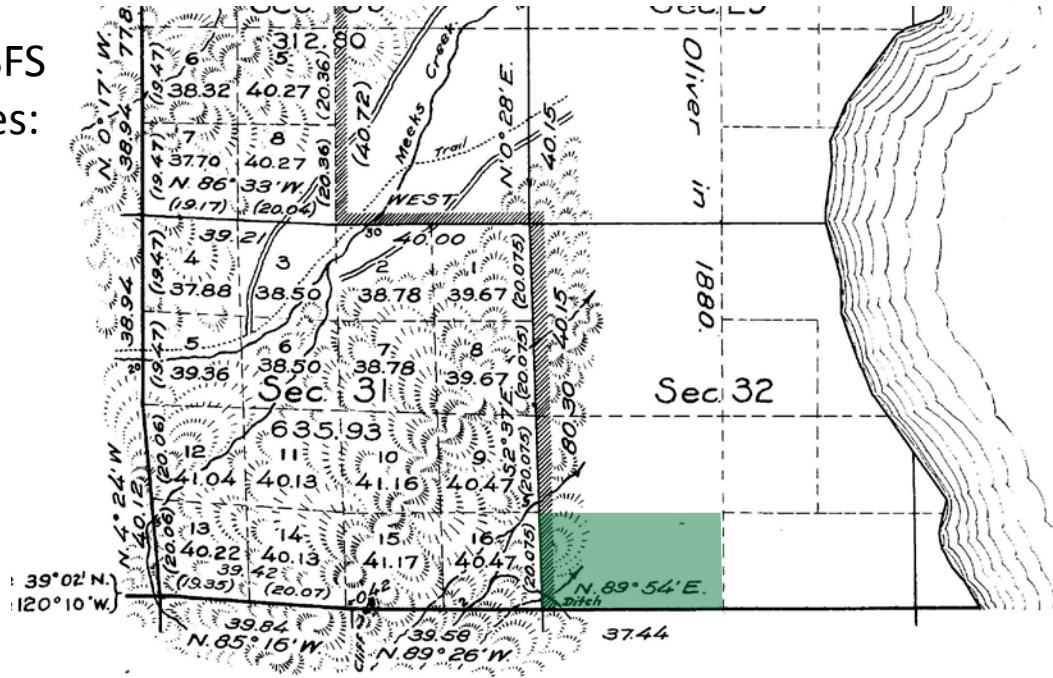


U.S. to Rubicon

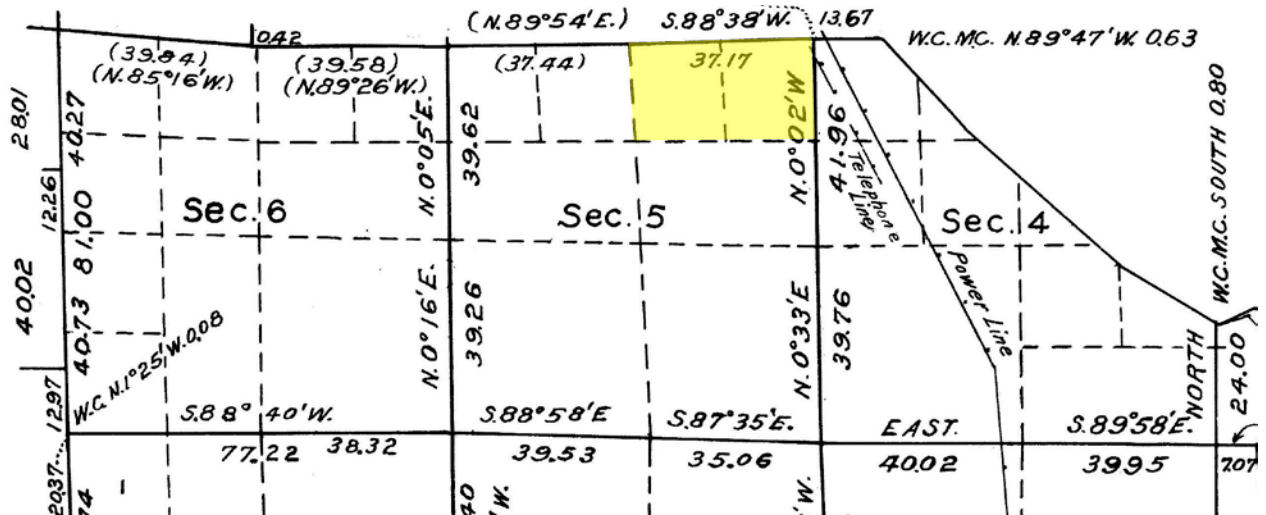


Rubicon to U.S.

1926 resurvey by
Siebecker and Hunter



1929-30 Resurvey by
Hiester, Averill and Hunter



T. 13 N., R. 17 E.

RUBICON PROPERTIES, INC., ET AL.A-30748 Decided MAY - 6 1968 13

Surveys of Public Lands: Generally

Locations of corners established by an official Government survey are conclusive, and the corner of a Government subdivision is where the United States surveyors in fact established it, whether such location is right or wrong.

Patents of Public Lands: Generally -- Surveys of Public Lands: Generally

A resurvey of public land by the United States cannot alter or change property rights of private persons which have become vested and fixed by virtue of patents issued by the United States.

Surveys of Public Lands: Generally -- Surveys of Public Lands: Dependent Resurveys

In making a retracement or dependent resurvey of public lands, the corners established by the original survey should be located if possible by considering all relevant evidence and not simply one or two factors.

Surveys of Public Lands: Generally -- Surveys of Public Lands: Dependent Resurveys

In determining whether original survey corners were properly identified by an official dependent resurvey of public lands, the fact that the measured distance between two identified original corners as determined by the resurvey differs somewhat from the measurement given in the original survey is not sufficient alone to disprove the identification of the corners as discrepancies between measurements in old and more recent surveys are not uncommon.

Surveys of Public Lands: Generally -- Surveys of Public Lands: Dependent Resurveys

A protest by private parties against the acceptance of a plat of a dependent resurvey of an area of public land is properly dismissed where the evidence supports a determination that an original quarter section corner in dispute was actually found by Government surveyors rather than by a private surveyor, contrary to the protestants' contentions.



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

A-30748

: Survey Group 500-Calif.

Rubicon Properties, Inc., et al.

: Protest against dependent
: resurvey dismissed

: Affirmed

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

Rubicon Properties, Inc., Virginia Williams and the Estate of Irving Williams, and Inter-County Title Company have appealed to the Secretary of the Interior from a letter-decision, dated October 18, 1966, by the Chief, Division of Engineering, Bureau of Land Management, which dismissed their protest against a dependent resurvey and subdivision of section 32, T. 14 N., R. 17 E., M.D.M., California, by the Bureau.

The appellants' protest was specifically against the Bureau's use or recognition of a brass capped iron pipe set by U.S. Transitman Charles E. Hunter under the direction of U.S. Surveyor Karl L. Siebecker in a 1926 resurvey as the quarter section corner common to section 5, T. 13 N., R. 17 E., and section 32, T. 14 N., R. 17 E., M.D.M., California. They contended that the setting of this corner in the 1926 resurvey was grossly erroneous or fraudulent and without legal force and effect. Basically they contended that it did not reestablish the original quarter section corner established by Deputy Surveyor Ephraim Dyer in the original survey of the area in 1865, approved on January 17, 1866.

The Bureau, however, concluded that the brass capped iron pipe was properly placed and was located where the Dyer corner was. It pointed out that the public had been on notice of the recovery of the Dyer corner for nearly 40 years and no protests against the acceptance of the Hunter corner as the original corner location had been made until the protest of one of the appellants, Inter-County Title Company, on November 24, 1964. The Bureau informed the appellants that a plat of "Dependent Resurvey and Subdivision of Section 32", T. 14 N., R. 17 E., M.D.M., California, was accepted for the Director on September 14, 1966.

This land is near Lake Tahoe. Appellant Rubicon Properties, Inc., is a corporation owned by appellants Virginia Williams and the Estate of Irving Williams (letter of their attorney, Max Barash, dated March 12, 1965), which has subdivided properties for residential-recreational purposes in the area. Appellant Inter-County Title Company has approved title on private properties in the area.

Mrs. Williams and her late husband, Irving Williams, negotiated and consummated an exchange of lands with the United States Forest Service, Department of Agriculture. Among other lands, they conveyed to the United States by a deed dated July 10, 1963, the $S\frac{1}{2}SW\frac{1}{4}$ sec. 32, T. 14 N., R. 17 E., M.D.B. & M., with certain described excepted portions, in return for lots 1 and 2, sec. 5, T. 13 N., R. 17 E., M.D.M., described in patent number 1233727 as containing 80 acres "according to the Official Plat of the Survey of the said land, on file in the Bureau of Land Management."

The recent resurvey conducted under the direction of William H. H. Hoedt and William M. Smart from 1963 to 1966 was undertaken at the request of the Forest Service following this exchange to determine the boundary of the Forest Service lands in section 32, particularly along the north-south center line of the section, and was authorized by Special Instructions, Survey Group No. 500, California, issued October 1, 1963. In making this resurvey, past official surveys of section 32 or relating to it were considered and the lines thereof retraced. These surveys, to the extent pertinent here, included the survey by Ephraim Dyer in 1865 who surveyed the east half of the south boundary of section 32 and the center line of section 32. In 1880 James Oliver surveyed the west half of the south boundary of section 32 and the east half of the south boundary of section 31. In 1883, C. F. Putnam resurveyed Oliver's lines and surveyed the west half of the south boundary of section 31 and the west township boundary. In 1926 Siebecker and Hunter resurveyed the south boundary of section 31 and the $W\frac{1}{2}$ of the south boundary of section 32. In 1931 Hiester and Averill resurveyed the east half of the south boundary of section 32.

The controversy in this case is over the identification of the original quarter section corner common to sections 32 and 5 which was set by Dyer. Appellants rely upon a monumentation assertedly found by a private surveyor, J. C. Boyd, which is approximately 74 feet north and 179 feet west of the Hunter-Siebecker corner relied upon by the Bureau. A diagram prepared by the Bureau of Land Management shows an area of approximately 5.12 acres which is claimed by both the United States and the appellants as a result of the difference in the location of the two corner points. Appellants essentially claim that private surveys of land in the area since the Boyd location of the corner have relied on his corner location, and appellants Mrs. Williams and the estate of her late husband claim that the patent to them of lots 1 and 2 of section 5, which comprise the $N\frac{1}{2}NE\frac{1}{4}$ of that section, has been unilaterally reduced in area by 5.86 acres from the 80 acres stated in the patent and shown on previous survey plats. The diagram of the Bureau shows that patented area by the Bureau's location of the corner to contain 75.70 acres.

Appellants have submitted a lengthy brief attacking the Bureau's decision and its reliance on the 1926 resurvey of Hunter and Siebecker. Briefly, they request the following: that the 1926

resurvey be declared null and void in its impact on the lines run and corners established by earlier official surveys along the township boundary line common to sections 5 and 32; that the quarter section corner common to those sections be declared to be the one established by Dyer in his original survey in 1865 and subsequently found and identified by U.S. Surveyors Oliver and Putnam, and by Boyd, the private surveyor; that the boundary line common to sections 5 and 32 be declared to be 80 chains or one mile in length; and that the patent issued to the Williamses in 1963 for lots 1 and 2 of section 5 containing 80 acres be declared valid and proper.

Despite contentions to the contrary by appellants, the Bureau agreed with and did not dispute appellants' statements as to the controlling legal principles governing this matter, especially to the effect that when the locations of corners established by an official Government survey are identified they are conclusive and the corner of a Government subdivision is where the United States surveyors in fact established it, whether such location is right or wrong (C. D. Cooper et al., 59 I.D. 254 (1946)); and that a resurvey cannot alter or change property rights of private persons which have become vested and fixed by virtue of patents issued by the United States (D. R. Williams, 60 I.D. 301 (1949)). The 1926 and the recent 1963-1966 resurveys were dependent resurveys. As recently stated:

"A dependent resurvey consists of a retracement and reestablishment of the lines of the original survey in their true original positions according to the best available evidence of the positions of the original corners, and the section lines and lines of legal subdivisions of the dependent resurvey in themselves represent the best possible identification of the true legal boundaries of lands patented on the basis of the original survey." United States v. Sidney M. and Esther M. Heyser, 75 I.D. 14, 18 (1968).

To the same effect is Sunrise Development Co., Atom Ore Uranium Co., A-28026 (August 19, 1959), and Texaco, Inc., A-30290 (April 29, 1965), cited by appellants.

The appellants have not challenged the propriety or methodology of the Hoedt-Smart resurvey now being protested except insofar as that resurvey accepted the 1926 Hunter-Siebecker resurvey. Also not questioned here is what effect, if any, the reliance of the private landowners upon the Boyd corner could have upon the boundaries of the Government's land, assuming that it is not in the location of the original corner. Appellants have relied completely upon their assertion that the Boyd corner does represent the true location of the quarter section corner established by Dyer. In this respect, they contend that the Bureau has misstated their position by implying that the controversy is whether a private survey should prevail over an official Government resurvey in determining the precise location of a particular quarter section corner, but that this is not so. They state that the Boyd

private surveys, which were made in 1914 and 1922, were referred to merely to show that he, like two U.S. Deputy Surveyors before him, had no problem in finding and identifying the Dyer quarter section corner. They attack statements by the Bureau which pointed out certain discrepancies in Boyd's surveys as being unfair as his surveys are not in question.

As appellants referred to Boyd's survey in 1914 to attempt to substantiate their contention as to the location of the corner, it is apparent that the Bureau referred to that survey only to show the difficulties inherent in any survey and to demonstrate that certain alleged errors asserted by appellants as to the Hunter-Siebeck resurvey were observable in Boyd's survey. Appellants apparently would have this Department accept the private survey for the purpose of showing error in the Government's 1926 resurvey, but then consider it unfair to show why the factual assumptions drawn by appellants are not valid with respect to the private survey. Except perhaps in a technical sense, the accuracy of the Boyd survey is involved here in that appellants' contentions are all predicated on the assumption that the original quarter section corner was truly identified by Boyd rather than by Hunter.

In any resurvey or identification of land governed by a Government survey, the most important step is the determination of existing corners. In the latest edition of the Bureau of Land Management's Manual of Surveying Instructions (1947) an "existent corner" is defined as:

"one whose position can be identified by verifying the evidence of the monument, or its accessories, by reference to the description that is contained in the field notes, or where the point can be located by an acceptable supplemental survey record, some physical evidence, or testimony".
§ 350.

It is recognized in the Manual that there may be material disagreements between the particular evidence and the record calls for locating the corner, and it suggests:

"the process of elimination of those features regarding which there may be doubt, after making due allowance for natural changes, * * * as follows:

"(a) The character and dimensions of the monument in evidence should not be widely different from the record;

"(b) The markings in evidence should not be inconsistent with the record; and,

"(c) The nature of the accessories in evidence, including size, position and markings, should not be greatly at variance with the record." § 354.

The Manual then emphasizes:

"A certain measure of allowance for ordinary discrepancies should enter into the consideration of the evidence of a monument and its accessories, and no definite rule can be laid down as to what shall be sufficient evidence in such cases. Much must be left to the skill, fidelity, and good judgment of the engineer in the performance of his work, ever bearing in mind the relation of one monument to another, and the relation of all the recorded natural objects and items of topography." Id.

In determining whether a given situs is the original corner then the totality of relevant evidence must be considered and weighed and not simply one factor. With this in mind, we can proceed to consider appellants' discussion of the relevant surveys and their contentions regarding them.

The first official survey of the boundary common to Ts. 13 and 14 N., R. 13 E., M.D.M., was carried out in 1865 by Dyer, who was authorized to survey a portion of the south boundary of T. 14 N., R. 17 E. His field notes in Vol. 71, page 16, California, disclose that after establishing the corner of sections 29, 30, 31 and 32, T. 14 N., R. 17 E., he proceeded east between sections 29 and 32 (Var. 17° 33'E.), as follows:

"18.50 [chains] Fir. 32 in dia.
22.50 [chains] Top of ridge, trending N.E. & S.W.
40.00 [chains] Set a stone 12 x 8 x 6 as per instructions for
¼ Sec. Cor."

After describing the terrain and vegetation the notes continue:

"Began at ¼ Sec. cor. between Secs. 29 & 32 and run South in an offset line through
Sec. 32
Var 17° 33'E
80.00 [chains] Set a Stone 12 x 9 x 8 for ¼ Sec. cor. as per instructions on South Boundary of Sec. 32, and on South Bdy. of Township."

He then proceeded as follows:

"Began at ¼ Sec. Cor. established on South Boundary of Sec. 32, and run East in South Boundary of Sec. 32.
Var. 17° 33'E.

Ascend:

22.50 [chains] Descend:
40.00 [chains] Set a Stone 18 x 14 x 3 as per instructions.
Cor. to Secs. 32, 33, 4 & 5".

Appellants emphasize the dimensions of the ¼ section corner stone for sections 32 and 5, as will be discussed in more detail later. They also emphasize that the chain measurements given by Dyer measured

the line of the north boundary of the NW $\frac{1}{4}$ sec. 32 as 40 chains or 2640 feet in length, the line from north to south through sec. 32 as 80 chains or 5280 feet in length, and the line of the south boundary of the SE $\frac{1}{4}$ sec. 32 as 40 chains or 2640 feet in length. They state that "this clearly established that the South boundary of the SE $\frac{1}{4}$ Sec. 32 was the usual, regular half mile in length."

In relation to their contention regarding the land conveyed to them by the patent of lots 1 and 2 they state that Dyer's plat of survey, which was approved January 17, 1866, shows the north boundary of the N $\frac{1}{2}$ NE $\frac{1}{4}$ of section 5 as 40 chains in length. They also point out that a plat approved November 10, 1874, of a survey by O. O. Brown shows lots 1 and 2 of section 5 as containing 40 acres each - no chain measurements were given. A plat by Brown approved May 19, 1875, gives the same acreage for the lots and shows the north boundary of the N $\frac{1}{2}$ NE $\frac{1}{4}$ section 5 as being 40 chains in length.

The field notes of the next survey, that by U.S. Deputy Surveyor James Oliver in 1880, are quoted by appellants from Vol. 152, page 363, California, to show that he began his survey of the west half of the north boundary of section 5 as follows:

"From the $\frac{1}{4}$ sec. cor. between sees. 5 & 32 on North Boundary of Township I run West on a true line between secs. 5 & 32 Var. 17 $^{\circ}$ 30'E * * *
 "40.00 [chains] Set post 4 in sq. 2 ft. in earth, 2 ft. above for cor. to secs. 5-6-31-32 from which to a Red Fir 40 in. in diam N 63 lks dist. * * *
 "West on true line bet. secs. 6 and 31 Var 17 $^{\circ}$ 30'E * * *
 "40.00 [chains] Marked a Red Fir 8 in dia for $\frac{1}{4}$ sec cor. from which bears a Red Fir 42 in dia NE 137 lks dist."

Appellants contend that this survey establishes that the quarter corner for sections 5 and 32 established by Dyer was found, and that a true line 40 chains or 2640 feet West between Secs. 5 and 32 to the corner of Sections 5, 6, 31 and 32, * * * [was run] thus establishing the West half of the North boundary of Sec. 5, T. 13 N., R. 17 E., just like the East half run by Dyer 15 years earlier, * * * was the usual, regular half mile in length. The Oliver plat of survey was approved July 29, 1880. It showed lots 1 and 2, sec. 5, as containing 40 acres each, but gave no chain measurement for the north boundary of those lots.

The next official survey was conducted in 1883 by U.S. Deputy Surveyor C. F. Putnam who was authorized to run "Exterior and Retracing" lines of a number of townships including Ts. 13 and 14 N., R. 17 E. In his field notes in Vol. 251, page 216, California, with reference to the boundary common to Ts. 13 and 14 N., R. 17 E., Putnam states that he proceeded:

"East on a random line between Secs. 6 and 31 Va. 16 $^{\circ}$ 45' East
 40.89 [chains] Descend through dense brush

Intersect 25 lks. South of $\frac{1}{4}$ Sec. Cor. bet. Secs. 31 & 6 which is red fir 8 ins. dia. from which bears a fir 42 ins. dia. NE 137 lks. dist. * * *

"From $\frac{1}{4}$ Sec. Cor. on S. By of Sec. 32 T. 14 N., R. 17 E which is a stone I run West on true line bet. Secs. 5 & 32 Va. 17° 30' East
40 [chains]

All trace of the old corner being destroyed, I establish same by setting post 4 ft. long 4 ins. square 12 ins. in the ground with marked stone for Cor. to Secs 5, 6, 31 & 32 marked T. 14 N.S. 32 on N.E. R. 16 E S. 5 on S.E. T. 13 N.C. 6 on S.W. & S. 31 on N.W. faces with 1 notch on N & 5 notches on E. edges dug pits 18x18x12 ins. in each Sec 5 $\frac{1}{2}$ ft. dist. and raised a mound of earth a ft. high 4 $\frac{1}{2}$ ft base around post from which the old bearing tree plainly marked bears North 63 lks dist.

Thence

West on a true line between Secs. 6 and 31 Va. 17° 30' East
40.05 [chains]
to old $\frac{1}{4}$ Sec. Cor. Bet. Secs. 6 and 31 which has been previously described."

Appellants repeat their contentions that this survey also shows that the same quarter corner was found and that the west half of the south boundary of section 32 was 40 chains or the usual, regular half mile in length, confirming Oliver's survey of 1880. The plat of this survey was approved April 11, 1884, and shows lots 1 and 2 as containing 40 acres and the north boundary of the lots as 40 chains in length.

The above are the official governmental surveys which appellants recognize. They contend that the private surveyor, J. C. Boyd, found the quarter section corner for sections 32 and 5 established by Dyer and also found by Oliver and Putnam. They state that according to Boyd's field notes of July 13, 1914, he began "at stone Sec. Cor. common to Secs. 32, 33, 4 & 5 ran due West by compass" until he arrived "at sta. 2660.82 $\frac{1}{4}$ Sec. Cor." which he described as follows:

"This cor. is a stone 12"x9"x8" set in a mound of rocks."^{1/}

The Bureau indicates that the second reference to this corner in Boyd's field notes (p. 133) was made by C.W. Levisee operating as Boyd's transitman, as follows:

^{1/} Appellants refer to two citations: p. 10 of Boyd's notes and top of page 6 of M.D. Boyd's notes as transcribed from J.C. Boyd's field notes. The Bureau refers to p. 111 of Boyd's field notes.

"At $\frac{1}{4}$ Cor. on S. side Sec. 32 set new stone beside old stone cor. marked with + on top from which fir 10" diam. bears N. 30°05' E. 27 ft. dist."^{2/}

The Bureau indicates that the third record of Boyd's corner is a letter dated September 18, 1914, from Levissee to Boyd, saying "Starting from the $\frac{1}{4}$ Cor., located by you, on the S. side of Sec. 32 * * *".

The fourth Boyd record is found in another survey Boyd made to lay off the S $\frac{1}{2}$ S $\frac{1}{2}$ Sec. 32 for George A. Newhall. In his field notes of July 17, 1922, the Bureau reports he said at page 49:

"I first hunted for and found the concrete monuments which were set for * * * 5th $\frac{1}{4}$ Sec. Stone and Erg tree at $\frac{1}{4}$ sec. Cor. on S. bdy of Sec. 32."

On page 50 the Boyd notes read:

"Begng at $\frac{1}{4}$ Sec. Cor. on S. bdy of Sec. 32, T. 14 N., R. 17 E. and run N. on a random line for the S. line of the S $\frac{1}{2}$ of Sec. 32."^{3/}

Appellants contend that these surveys by Boyd were accurate and correct in identifying the quarter section corner in question. They then proceed to attack the resurvey by Hunter and Siebecker and quote from the field notes of that survey in Vol. 408, at page 444, Calif., which read as follows:

"No trace of the township corner; set temp.

Thence

East on a random line along the S. bdy. of township, bet. secs. 6 and 31.

42.78 [chains] A point 3.29 chs. N. of the position for the $\frac{1}{4}$ sec. corner as reestablished from NE. bearing tree.

"From the true point for the $\frac{1}{4}$ sec. corner for secs. 6 and 31 on the S. Bdy of Township.

East on random line bet. secs. 6 and 31, along the S. bdy. of township.

39.58 [chains] A point 39 lks. N. of the corner for secs. 5, 6, 31 and 32, as reestablished by the U.S. Forest Service from original bearing trees, which have been burned; but

^{2/} Appellants refer to this quotation as at p. 15 of Boyd's notes and at the bottom of page 11 of M.D. Boyd's notes as transcribed from J.C. Boyd's field notes.

^{3/} Appellants refer to page 1 of M.D. Boyd's 1922 notes transcribed from the field notes of J. C. Boyd for these references.

the charred stump of a tree 63 lks. N. would check the approximate position of the original tree.

 However to further corroborate the authenticity of the corner for secs. 5, 6, 31 and 32, continue the random line E. from this corner.

37.44 [chains]

A point 7 lks. S. of the $\frac{1}{4}$ sec. corner, which is a granite stone, 15 x 9 x 8 ins., marked $\frac{1}{4}$ on N. face, set in a mound of stone, 3 ft. base, 2 ft. high. To further perpetuate this corner, set an iron post, 3 ft. long, 1 in. in diam., 26 ins. in the ground, alongside of and against the S. side of the stone corner in the center of the mound of stone, for the $\frac{1}{4}$ sec. corner for secs. 5 and 32 with brass cap marked

$$\frac{1}{4} \quad \frac{S \ 32}{S \ 5}$$

1926

from which

A tamarack, 14 ins. in diam., bears N. $36\frac{1}{2}^{\circ}$ E., 149 lks. dist., marked $\frac{1}{4}$ S 32 B T

A fir, 13 ins. in diam., bears S. 65° W., 57 lks. dist., marked $\frac{1}{4}$ S 5 B T

This line bears N. $89 \ 54'E.$, 37.44 chs.

Considering the relationship between this $\frac{1}{4}$ sec. corner and the corner for Secs. 5, 6, 31 and 32 as reestablished by the U.S. Forest Service together with the evidence of the original bearing tree at the sections corner and the rather unusual method used by the original deputy surveyors in the establishment of these corners, to all of which is added the testimony of settlers corroborating their respective positions there can be not the slightest doubt as to the correct identification of these corners."

The plat of this survey was approved October 20, 1927. It showed the west half of the south boundary of section 32 as 37.44 chains in length.

Appellants do not mention the Hiester-Averill survey of 1930 which relied upon the Hunter-Siebecker remonumentation of the quarter section corner in question, except in relation to the plat of that survey approved September 29, 1932, which did not specify lots or acreage but showed the north boundary of the $N\frac{1}{2}NE\frac{1}{4}$ sec. 5 as 37.17 chains.

Appellants attempt to make much of the fact that the dimensions of the stone monument for the quarter section corner given by Dyer (12 x 9 x 8) correspond exactly with that reported by Boyd, whereas the stone mentioned in the Hunter-Siebecker survey differed 3 inches in length (15 x 9 x 8). As the quotation from the 1947 Manual of Surveying Instructions, states, supra, the character and

dimensions of the monument should not be "widely different from the record." The discrepancy of 3 inches in one of the three dimensions is not a "wide" difference from the record. The Division of Engineering, Bureau of Land Management, reports that in practical surveying operations little effort is made to determine precisely the lengths of the three dimensions by which corner monuments are described. They normally are determined by spanning. The normal span (from ends of little fingers to thumb when hand is spread) is eight inches but will vary by individuals. Also, the corner stone is seldom a mathematically shaped parallelepiped but is normally rough and irregular, thus permitting varying interpretations of the dimensions of length, width, and depth.

Of equal or greater importance is the marking on the monument. Dyer described the monument only as a "Stone 12 x 9 x 8" which he set "as per instructions". The instructions which he would have followed would have been those in the official Departmental Surveying Manual of 1855. By the act of May 30, 1862, 12 Stat. 409, the Manual instructions of 1855 were incorporated in every contract to survey the public lands. Therefore, they would have been a part of Dyer's contract and instructions. Page 9 of the 1855 Manual says, "Stones, when used for quarter section corners, will have \dagger cut on them". Hunter, Siebecker's transitman, described the markings of the stone as " \dagger on N. face" which agrees with the instructions.

On the other hand, as the above quotations from Boyd's surveys show, he did not in his first survey in 1914 describe any markings on the stone but simply gave its dimensions and described it as being set in a mound of rocks. The second notation in the field notes concerning the quarter section corner was made by C.W. Levissee, operating as Boyd's transitman. It stated that "At \dagger Cor. on S. side Sec. 32 set new stone beside old stone cor. marked with \dagger on top from which fir 10" diam. bears N. $30^{\circ} 05'$ E. 27 ft. dist." It is not clear whether appellants interpret this notation as meaning that the old stone was marked with a \dagger or the new stone set by Levissee. The Bureau concludes that it is the new stone which Levissee marked. This conclusion seems sound in view of the fact that a field investigation made by the Bureau in June 1965 disclosed only one stone marked with a cross in the location of the Boyd corner and that stone had dimensions of approximately 17 x 10 x 8 inches.

In any event, the cross marking was not the type of marking used to designate quarter section corners under the Departmental instructions of 1865, and it is unreasonable to assume that Dyer would have so marked the quarter corner stone. Bureau instructions have prescribed that a cross (x) will be made on a rock in place or on a boulder at the exact corner point witnessed by proper number of bearing trees. See p. 48, Manual of Surveying Instructions (1894). Now generally a cross (x) is used, together with other appropriate notations, to designate corner accessories. See §§ 316-327,

Manual of Surveying Instructions (1947).4/

Appellants disparage the Hunter-Siebecker survey for the reason that the field notes stated that the granite stone found was set "in a mound of stone, 3 ft. base, 2 ft. high." Appellants say that Dyer's field notes made no reference to the stone monument being set in a mound of stone of any size and that Oliver and Putnam made no reference to a mound of stone. Yet they mention that Boyd's field notes referred to Dyer's monument as "set in a mound of rocks." They conclude that the "discrepancy as to the mound of stone versus the mound of rocks" (our emphasis), together with the discrepancy as to the size of the stone, lends proof to their assertion that the Hunter-Siebecker resurvey "was performed with no regard for factual accuracy." The nicety of the distinction between "stone" and "rocks" escapes us, but it is typical of the extremes to which appellants' arguments have gone.

Appellants further attack the Hunter-Siebecker resurvey because the field notes said that the marked brass capped iron pipe was set against the original corner stone. Appellants assert that there is now no stone monument in existence alongside the iron post and that such a stone monument has never been seen by any person alive today since the 1926 resurvey was completed. They conclude therefore that there never was a stone monument at the precise location where the capped iron pipe was set, and that it must have been a "figment of Siebecker's imagination." By the same token, the stone described by the Boyd survey next to which another stone monument was placed by Levisco is no longer in existence so if we applied the same reasoning we could conclude that it must have been a "figment of Boyd's imagination." Actually, appellants have no proof to substantiate their contention that there was in fact no such stone monument as found by the Hunter-Siebecker survey or to refute the record information in the field notes concerning the finding of the stone monument.

4/ At this point we note an error in the Bureau's letter of October 18, 1966. In the first paragraph of page 2 it states that:

"The documentary evidence that Hunter found the Boyd corner is contained in the official field notes where he describes the Boyd corner as 'a granite stone, 15 x 9 x 8 ins., marked on N. face, set in a mound of stone, 3 ft. base, 2 ft. high.'"

The Bureau has informed this office that the references to the "Boyd corner" in this paragraph were erroneous and that they should have read "Dyer corner". It is apparent in the general context of the Bureau letters with regard to this survey that the corner found and relied on by Hunter was believed by him to be the original survey quarter section corner established by Dyer, and not the corner established by Boyd. Appellants have contended that the Bureau's decision is confusing and misleading. This error was the only misleading factor and in its context we believe appellants should not have been misled by it.

Appellants characterize the reference in the Hunter-Siebecker field notes to corroboration of the quarter section corner location by the "testimony of settlers" as being "completely incredible" as no settlers are named nor their testimony stated. They would dismiss this statement as outright dishonesty, and "another figment of his imagination". They state that Siebecker apparently made no effort to take the testimony of the Newhall family who in 1926 owned the contiguous land in section 32 and who would have led him to Boyd whose surveys were a matter of common knowledge to a number of private land owners in the area. They state that eight private surveys from 1914 to 1961 relying on the Boyd location of the Dyer corner are public records and were available for inspection by Bureau of Land Management engineers, but that "it is apparent no effort was made by the Bureau to obtain testimony of surveyors and landowners in the identification of existent corners or to check the official maps and records of the county." They state that the quarter section corner established by Dyer in 1865 is located on top of a steep slope and its original position is obvious even now to any one examining the facts with an open mind because although the Dyer stone monument is no longer identifiable, its precise location is fixed by the stone monument set by Levissee in 1914 alongside the Dyer stone. They ridicule the 1926 resurvey by saying that Hunter and Siebecker should have found the stone corner found by Boyd in 1914 as it was not located too far from where the brass capped iron pipe was placed.

Although the field notes do not detail "the testimony of settlers", this is no reason to conclude that information relevant to the location of the corners was not elicited, nor does the failure to mention the stone monument found by Boyd signify that the surveyors were not aware of its existence. If they considered it only as a private monumentation and not an official corner, there was no need to mention it. Appellants have named the Newhall family as settlers but they really have not shown that the Newhalls would testify that the "Boyd corner" was the true location of the original corner rather than that found by the Bureau's surveyors. It is apparent from the record that Boyd was aware of the Government plats based upon the resurvey as they were sent to him. They, of course, are also a matter of public record. Appellants' insinuations regarding the silence of the Government's surveyors and their failure to mention the Boyd corner or to locate it raise similar questions as to why private surveyors after the brass capped iron pipe was set in 1926 continued to rely on Boyd's monumentation nearby and why there was not some protest or other action against such a monumentation for the official quarter section corner. Thus, the criticisms leveled by appellants at Siebecker and Hunter may well be focused upon their own alleged reliance on Boyd's corner.

The Bureau has suggested an explanation for the stone and the mound of rocks found by Boyd which is a more plausible reason for his finding that monument than appellants' contention that Hunter's finding

of the marked stone was a "figment of his imagination". They have pointed out that Boyd's field notes contain references to evidence of previous surveys, including a specific mention of finding an "old mound of rocks." They suggest, therefore, that the stone and mound of rocks found by Boyd could have been placed there in an earlier private survey. This may be so especially if there were no markings on the stone as prescribed by Bureau instructions and practices. Boyd mentioned none.

Reliance by private parties on a given corner location may be considered together with other evidence in considering where the proper location of an original corner is; however, such reliance cannot overcome other evidence which demonstrates that another corner location is the correct location of the original corner. The only function of the Department here is to determine the boundary of public lands in accordance with the original surveys. Courts are proper forums for resolving boundary disputes among private parties stemming from reliance on different corner locations.

Having considered the character and size of the original quarter section monument and its markings in relation to the Hunter-Siebecker and Boyd surveys, it would next be appropriate to consider accessories to that corner such as bearing trees, monuments, etc. to further determine the correct situs of the corner. However, the field notes of Dyer, Putnam and Oliver do not mention any accessories to the disputed quarter section corner, therefore, we must next consider its location with respect to other established corners.

Appellants contend generally that the Hunter-Siebecker field notes by themselves demonstrate that the survey was either grossly erroneous or fraudulent. This is significant since they have no evidence to support such an assertion otherwise. However, a review of the field notes shows that appellants appear to be fighting wind-mills rather than demonstrating errors in the survey. First of all they contend many times that the employment of "random" rather than "true" lines shows that the surveyors did not follow Bureau standards. They do not point to any citations to support this theory with respect to the retracement and resurvey of original survey lines, or explain how a true line could be run rather than a random line from a point to another monument which may or may not be there. Furthermore, they have not explained why the use by Hunter and Siebecker of random lines is so much worse than the use of such lines in the other surveys, including that of Putnam and that of Boyd, which mention random lines.

Next appellants contend that Hunter and Siebecker were probably not aware that the true corner of the quarter section corner common to sections 6 and 31 was a red fir 8 inches in diameter established by Oliver as they fail to mention this in the field notes, simply referring to the position of that quarter section corner as reestablished from the NE bearing tree. This assumption by appellants is specious. The

surveyors had to refer to the Oliver field notes to determine the original corner position from the reference to the original bearing tree. The fact that the surveyors did not mention that the red fir tree was the corner is not significant in view of the other reference.

Appellants next attack the notes regarding the location of the corner for sections 5, 6, 31 and 32. They contend that the surveyors merely accepted the position of the corner as one that the U.S. Forest Service had reestablished. They contend that this was improper as it is this Department rather than the Forest Service which is charged with the responsibility of establishing or reestablishing a corner. That fact is true; however, the implication and contention are not. First of all, it is entirely proper for the Forest Service to perpetuate the corners of boundaries to land under its jurisdiction, as any private person may seek to perpetuate his boundary identifications. The statement in the field notes did not suggest that the corner was a new one, but only that the corner had been recognized as the true corner by the Forest Service and monumented by them and the surveyors found it was the true corner also.

Appellants also say that the field notes failed to refer to the non-existence of the corner reestablished by Putnam, but this would have been mere repetition of matters already of public record in Putnam's notes. Bureau personnel in connection with the most recent resurvey have found evidence which supports the finding that the Hunter-Siebecker location for the corner for sections 5, 6, 31 and 32 was the true original corner site. Putnam had mentioned placing a post 4"x4" in the ground. The Bureau investigators who dug around the iron post placed by Hunter marking the corner found a very old, rotted wooden post 4"x4". Furthermore, they also found, as did Hunter, a charred stump of a tree which agrees with the record courses and distances to the original bearing tree given by both Oliver and Putnam.

Appellants next contend that the statement by the surveyors regarding further corroborating the authenticity of the corners was in effect an apology - an admission of impropriety. This again is so fallacious as to be undeserving of further comment, as are other specious assertions attacking the survey.

The main thrust of appellants' contentions is that the original surveys established that the west half of the south boundary of section 32 was the usual, regular half mile in length, and the entire south boundary the usual mile in length. This, however, is a thin reed upon which to support their contention that the Boyd corner is the proper situs of the original Dyer corner. The Bureau has pointed out differences between the Boyd survey and the earlier surveys for the purpose of demonstrating the point that differences in distances and bearings are usually found when older surveys are resurveyed. This is a well recognized situation which is apparent in reading the Bureau's different Manuals of

Instructions. For example, the Manuals of 1894 and 1902 define a "retracement" as a "determination of the true bearings and distances between the successive corners along the entire length of * * * a [survey] line" (p. 71, 79, respectively), a recognition that original distances shown may be erroneous. As said in the 1930 Manual, "Reasonable discrepancies between former and new measurements may generally be expected. Errors may occur through many causes and should be as carefully avoided in re-measurements as in original surveys." § 209. The differences in measurements between old and new surveys have not only been recognized by this Department but have been pointed out many times by a well recognized authority, Clark On Surveying and Boundaries (2d ed. 1939), who states:

"It is seldom that the recent and former measurements will agree. Such differences occur in a variety of ways such as using a chain too long or too short; the failure to level up in measuring an incline, by carelessness in setting pins; by failure to measure in a direct line or by an error in entering or transcribing the notes." § 141; see also §§ 7 and 10.

This is the reason for the universal rule in determining correct boundaries that courses and distances must yield to actually existing monuments, or to the site of their former location if that has been clearly established. See Clark, *supra*, §§ 240, 420. The fact that differences do occur in measurements between former and more recent surveys does not mean that the courses and distances are not to be considered in determining the limits of the original survey and the true location of the original corners, but the courses and distances are only a factor to be considered with other evidence in locating those corners, as indicated previously.

The fallacy in appellants' attempt to establish Boyd's corner as the location of Dyer's corner upon the basis of the 40 chain measurements given by Dyer and Oliver (and Putnam) for the east half and the west half, respectively, of the south boundary of section 32 is easily demonstrated. First, there is no dispute as to the location of the corner common to sections 32, 33, 4 and 5. Dyer said that he set a stone for that corner by running east 40 chains from the south quarter corner that he set for section 32. Then Oliver said that he ran 40 chains west from this quarter corner and established the section corner common to sections 31, 32, 5, and 6. He next ran another 40 chains and established the quarter section corner common to sections 6 and 31. Putnam then came along and he too started at Dyer's south quarter corner for section 32. Putnam, like Oliver, ran 40 chains west and reestablished the corner for sections 31, 32, 5 and 6, Oliver's corner having been destroyed. Putnam tied his corner to the same bearing tree that Oliver used. Putnam then ran 40.05 chains west (as contrasted with Oliver's 40 chains) to the same tree that Oliver established as the south quarter corner for section 31. Thus, if the record distances given by Dyer, Oliver, and Putnam were correct, there was a total distance of 120 (or 120.05) chains between the corner for sections 32, 33, 4 and 5 and the south quarter corner for section 31.

Relying on these record distances, Boyd started at the corner for sections 32, 33, 4 and 5 and ran 2660.82 feet west (40.32 chains) where he found what he apparently thought was Dyer's quarter corner for section 32. This was in 1914. In 1922 he started at the quarter corner (as marked by Levissee) and ran west the record distance of 40 chains (2640 feet) where he set a 2 x 2 stake for the southwest corner of section 32 (the corner common to sections 31, 32 5 and 6). This would give the south boundary of section 32 a total length of 80.32 chains, essentially the distance claimed by appellants. Also, this would have Boyd, Oliver, and Putnam concurring that the west half of the south boundary of section 32 is 40 chains in length.

But the fact is that the corner marked by Boyd in 1922 as the southwest corner of section 32 is 5.19 chains (342.54 feet) west and north of the corner established by Oliver and reestablished by Putnam as the southwest corner of section 32. Although appellants have attacked Hunter and Siebecker's location of that corner on the ground that they simply accepted the Forest Service's location of the corner, appellants have shown nothing which would disprove that the Hunter-Siebecker location was the same as the Oliver and Putnam location. As pointed out earlier, the Hunter-Siebecker corner had the same tie to the same bearing tree that the Oliver and Putnam corners had, and the Bureau found in 1965 at the Hunter-Siebecker corner the remnants of a post corresponding to the one that was driven by Putnam. Thus, from section corner to section corner, the south boundary of section 32 is not a mile but more than 5 chains short of a mile. The recent Hoedt-Smart resurvey shows the length to be 74.71 chains.

Moreover, if we consider the distance between the southwest corner of section 32 and the south quarter corner of section 31, we find that Oliver measured it at 40 chains, Putnam at 40.05 chains, and Hunter-Siebecker at 39.58 chains. These measurements are substantially identical. Appellants have attacked the Hunter-Siebecker location of the south quarter corner of section 31 because the surveyors did not say that it was marked by the 8-inch red fir which Oliver and Putnam established as the quarter corner. But again appellants have not said that the Hunter-Siebecker location was not the same as the Oliver and Putnam location when it is considered on the basis of the identical tie to the bearing tree which all the surveyors used. When the position of Boyd's location of the southwest corner of section 32 is considered in relation to the south quarter corner of section 31, we find that it is only 35 $\frac{1}{2}$ chains east of that corner, not 40, 40.05, or 39.58 chains as the other surveyors found. Boyd's field notes (page 51) did not claim to have found the original S.W. corner of section 32, but only that at "Sta 2640 Set a 2x2 wht stk for S.W. cor. of Sec. 32." The location by the Bureau of the southwest corner of section 32 and its relationship to the quarter section corner of that section found by Hunter support its location as the correct situs of the original corner.

These considerations, we believe, demonstrates beyond doubt that Boyd's attempted relocation of the Dyer corner on the basis of record distances simply did not accord with the actual facts.

There is further support for the Hunter-Siebecker quarter section corner by considering it and the Boyd corner in relation to a creek which Oliver mentioned as being 8.50 chains west of the quarter section corner. The Bureau investigators state that this reference must be to the Lonely Gulch Creek which is 6.50 chains west of the Siebecker corner and 3 chains west of Boyd's corner which is too close to the creek to be in the position of the original corner. Generally, with respect to Boyd's surveys, the Bureau's investigators point out that his method of reestablishing corners was to begin at "one or two known corners on the lake shore" and project the lines using record bearings and distances to locate approximate positions for boundaries of large areas of land, a method which is not uncommon in practice, but unacceptable in reestablishing government boundaries of land.

As to appellants' requests stated earlier in this decision we can repeat that the quarter section corner common to sections 5 and 32 is the one established by Dyer in his 1865 original survey. The corner found by Boyd did not correctly identify that corner. Instead, the evidence supports the finding that the original Dyer corner was found by the Hunter-Siebecker survey and remonumented. We find no reason to declare the 1926 resurvey null and void. As to the boundary line common to sections 5 and 32, we again emphasize that this line is governed by the corners established by the original surveys and therefore the length of the line is dependent upon the actual distance between those corners regardless of the record distance shown on a survey plat. For this reason appellants' request that the line be declared to be 80 chains or one mile in length is inconsistent with their allegations that the original corners govern and for that reason it must be considered as frivolous and must be denied. We may note again that the official plat of survey approved September 29, 1932, when the N¹/₂NE¹/₄ of section 5 was in Government ownership showed the north-east half to be 37.17 chains and the north-west half of that line to be 37.44 chains. However, in the recent retracement of the line between the quarter section corner of sections 32 and 5 to the corner of sections 5, 6, 31 and 32, Smart and Hoedt measured 37.54 chains. The plat approved September 14, 1966, therefore, shows the west half of the south boundary line of section 32 to be 37.54 chains. As to appellants' request that the patent to the Williamses for lots 1 and 2 of section 5 containing 80 acres be declared valid and proper apparently as to that exact acreage, this matter is beyond the purview of this decision. We suggest only that the patentee took the land according to the official surveys thereof under rules as previously discussed. We see nothing in the action by the Bureau in its resurveys that deprived appellants of any rights in private lands or that purported to affect any private property rights adversely as against government property rights.

To conclude, we have reviewed appellants' contentions in their entirety with the record and we must conclude that their protest

was properly dismissed. Accordingly, when this case is returned to the Bureau, the approved plat of the 1963-1966 resurvey of portions of section 32 will be officially filed in the land office.

Therefore, pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (210 DM 2.2A(4)(a); 24 F.R. 1348), the decision appealed from is affirmed.



Ernest F. Horn
Assistant Solicitor
Land Appeals