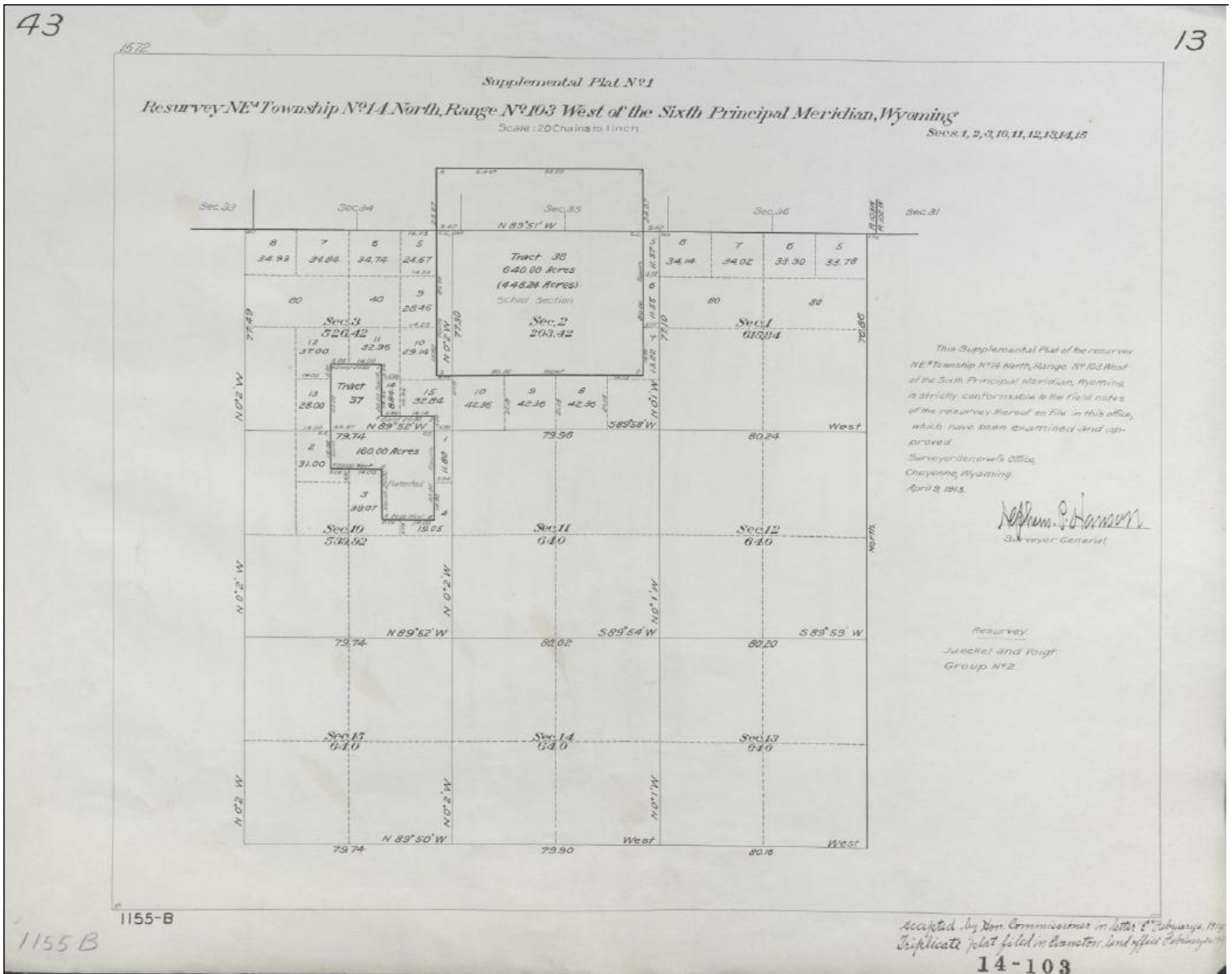


# Salt Wells Live Stock Co. A-26367

*(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 "A" Decisions are unpublished opinions which resulted from appeals of the Director's Decisions.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.)*

This case provides principles for evaluating long accepted resurveys where charges of "gross error" or fraud" have been put forth. Several earlier cases are cited in support of the principle that: "An official resurvey shall not be overturned except upon clear proof of fraud or gross error amounting to fraud. This is especially true after a long lapse of time or good faith reliance." (2009 Manual Section 6-52)

The 1913 survey plat is labeled "Resurvey" but it is actually an "Independent Resurvey" where the private holdings were given Tract Numbers and new section line were surveyed.



ABSTRACT OF SERIES IN T. 14 N., R. 103 W. BY ORIGINAL SURVEY  
WITH THEIR DESCRIPTION BY RESURVEY

Description by Original Survey					Status	Description by Resurvey
Entry	Entryman	Subdivision	Sec.	T.O.		
Kind No.						
35	Wyoming	Lots 3 and 4 S <sup>1</sup> / <sub>2</sub> SW <sup>1</sup> / <sub>4</sub>	4	Pat.	Tract 41	
D 02062	Ernest Kruse	Lots 3 and 4 Lots 1 and 2	5	Rejected Appeal taken		
36	Wyoming	W <sup>1</sup> / <sub>2</sub> SW <sup>1</sup> / <sub>4</sub>	5	Approved	Tract 40	
37	Wyoming	Lots 3, 4, 5. SE <sup>1</sup> / <sub>2</sub> SW <sup>1</sup> / <sub>4</sub>	6	Approved	Tract 55 T. 14 N. R. 104 W.	
38	Wyoming	W <sup>1</sup> / <sub>2</sub> SW <sup>1</sup> / <sub>4</sub>	8	Approved	Tract 39	
39	Wyoming	All	16	Valid	Tract 42	
PH 1033	Howard McCart	SW <sup>1</sup> / <sub>4</sub> , NW <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>	18	Pat.	Tract 37 T. 14 N. R. 104 W.	
40	Wyoming	SW <sup>1</sup> / <sub>4</sub> , SE <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub>	18	Approved	Tract 38 T. 14 N. R. 104 W.	
41	Wyoming	SE <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub> , Lots 1 and 2	19	Approved	Tract 39 T. 14 N. R. 104 W.	
PH 105	William Laney	SW <sup>1</sup> / <sub>4</sub>	24	Pat.	Tract 37	
42	Wyoming	Lots 1, 2, 3, 4. SW <sup>1</sup> / <sub>4</sub> , NW <sup>1</sup> / <sub>4</sub>	30	Approved	Tract 40 T. 14 N. R. 104 W.	
43	Wyoming	SW <sup>1</sup> / <sub>4</sub>	32	Approved	Tract 56	
44	Wyoming	All	35	Valid	Section 36	

Survey of Boundary Lines of Private Land Claims  
in Tp. 14 N., R. 103 W.

Chains	TRACT NO. 46.
	From cor. No. 1/43 and 3/46, I run
	East
40.00	Set an iron post 3 ft. long, 1 in. in dia., 24 ins. in the ground, for cor. No. 2/46, marked on brass cap T 14 N R 103 W S 6, and Tr 46-2 in NW. quadrant.
	Thence I run
	North
80.00	Set an iron post 3 ft. long, 1 in. in dia., 24 ins. in the ground, for cor. 1/46, marked on brass cap T 15 N R 103 W S 20, and Tr 46-1 in SW. quadrant.
	Thence I run
	West
40.00	Set an iron post 3 ft. long, 1 in. in dia., 24 ins. in the ground, for cor. No. 4/46, marked on brass cap T 15 N R 103 W S 20, and Tr 46-1 in SW. quadrant.
	Thence I run
	South
80.00	To the cor. No. 1/43 and 3/46.

June 26, 1911.

TRACT NO. 37.

June 26: At 5h. 55m., a.m., 1.m.t.v., I set off 41° 13' S. on the lat. arc, 63° 24' W. on the Geol. arc; and determine a meridian with the solar at the identified cor. position of cor. No. 2/37, which cor. position was identified by Mr. W. F. Gettache, the claimant.

At this identified cor. position, I

set a sand stone, 10x10x4 ins., 12 ins. in the ground, for cor. No. 2/37, marked 2/37 on SW. face.

Thence I run

East

20.00 Set a sand stone, 5x10x6 ins., 12 ins. in the ground, for cor. No. 1/37, marked 1/37 on SW. face.

Thence I run

South

## Survey of boundary lines of Private Land Claims

In Tp 14 N., R. 10E W.

- 20.00 Set a sand stone, 15x12 ins., 10 ins. in the ground, for cor. No. 2/37, marked 2/37 on SW. face.  
Thence I run  
East
- 20.00 Set a sand stone, 24x22 ins., 10 ins. in the ground, for cor. No. 3/37, marked 3/37 on SW. face.  
June 20: At this cor. I set off 23° 24' E. on the decl. arc: and observe the sun on the meridian; the resulting lat. 14° 13' N.  
Thence I run  
South
- 40.00 Set a sand stone, 18x16 ins., 12 ins. in the ground, for cor. No. 4/37, marked 4/37 on SW. face.  
Thence I run  
West
- 20.00 Set a sand stone, 18x10x4 ins., 10 ins. in the ground, for cor. No. 5/37, marked 5/37 on NE. face.  
Thence I run  
North
- 20.00 Set a sand stone, 14x10x8 ins., 10 ins. in the ground, for cor. No. 6/37, marked 6/37 on NE. face.  
Thence I run  
West
- 20.00 Set a sand stone, 16x8x4 ins., 11 ins. in the ground, for cor. No. 7/37, marked 7/37 on NE. face.  
Thence I run  
North
- 40.00 The cor. No. 8/37.

June 20, 1911.

Herman Jaekel.

Transitman.

*Lavender  
Edelstein*

19081

SALT WELLS LIVE STOCK CO., ET AL.

A-26367

Decided May 9, 1952

Surveys--Resurveys.

The Department will not order a further resurvey of a tract segregated in connection with a previous resurvey more than 35 years ago under the provisions of the act of May 29, 1908 (35 Stat. 465), where the previous resurvey embraced the land identified and occupied by the claimant and where private rights would be adversely affected by a further resurvey at this late date.

ABEID

DOCKET COPY

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

A-26367

May 9, 1952

Salt Wells Live Stock Co., : F. C. 106, Evanston 025804.  
Continental Oil Company, : Resurvey of tract ordered.  
Husky Oil Company, :  
Appellants :  
Neil F. Stull, : Reversed.  
Appellee.

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

This is an appeal to the head of the Department by Salt Wells Live Stock Company, Continental Oil Company, and Husky Oil Company from a decision of the Acting Director of the Bureau of Land Management, who, on July 27, 1951, ordered that a resurvey of land now identified as Tract 37, T. 14 N., R. 103 W., 6th P. M., Wyoming, be made. The Acting Director held that the tract should be resurveyed, using the northwest corner of the tract as the starting point, for the purpose of conforming the tract to the shape and dimensions of the  $E\frac{1}{2}E\frac{1}{2}$  sec. 24 of the township as shown on the plat of the original survey.

Neil F. Stull, an applicant (Evanston 025804) for an oil and gas lease on the tract involved in the proposed resurvey, was permitted to intervene in the proceeding below, and he has filed a brief in opposition to the appeal by the other parties.

The township in which the land is located was first surveyed in 1881, as shown by a plat approved on February 18, 1883. Thereafter, on November 16, 1891, a patent (F. C. 106) was issued to William Laney for a 160-acre homestead within the township. The Laney homestead was described in the patent as the  $E\frac{1}{2}NE\frac{1}{4}$ ,  $E\frac{1}{2}SE\frac{1}{4}$  sec. 24, T. 14 N., R. 103 W., 6th P. M., Wyoming, "according to the official plat of survey of such land returned to the General Land Office by the Surveyor General." The land described in the Laney patent may also be described as the  $E\frac{1}{2}E\frac{1}{2}$  sec. 24, according to the plat approved in 1883. Mr. Laney appears to have conveyed the land to William H. Gottsche in 1900.

By section 1 of the act of May 29, 1908 (35 Stat. 465),  
Congress authorized and directed the Secretary of the Interior

" \* \* \* to cause to be made in the manner now provided by law for the survey and resurvey of public lands, and from time to time as may be necessary, a resurvey of the following townships in the State of Wyoming: \* \* \* townships twelve to sixteen north, ranges eighty-eight to one hundred and four west, inclusive \* \* \*."

Section 2 of the act provided in part as follows:

"That nothing herein contained \* \* \* shall be so construed as to impair the present bona fide rights or claims of any actual occupant of any of said lands so occupied to the amount of land to which, under the law, he is entitled: Provided further, That before any resurvey is ordered it shall be made to appear to the Secretary of the Interior that the former official survey of said lands is so inaccurate or obliterated as to make it necessary to resurvey the land, and only such parts of the land where the survey is so inaccurate or obliterated shall be resurveyed \* \* \*."

Pursuant to the 1908 act, special instructions were issued on July 15, 1910, for the resurvey of the exterior, subdivision, meander, and connecting lines of T. 14 N., R. 103 W., among others, and for the survey of the boundaries of private land claims, school sections, and State land selections in this and other townships. Particular attention was directed to the Manual of Surveying Instructions (1902) then in force, and specific instructions were issued with respect to the surveying and segregation of private land claims found within the limits of the townships. It was pointed out that erroneous or fraudulent surveys had been made in the townships covered by the instructions, and it was directed that all old corners should be destroyed.

Thereafter, T. 14 N., R. 103 W., was resurveyed in 1911, and Tract 37, containing 160 acres, was segregated. The index to the segregated tracts in the plat of the resurvey shows Tract 37 to be the ~~E<sub>1</sub>E<sub>2</sub>~~ sec. 24 of the original survey, which was patented to William Laney as the ~~E<sub>1</sub>N<sub>1</sub>E<sub>1</sub>~~ and the ~~E<sub>1</sub>S<sub>1</sub>E<sub>1</sub>~~. However, Tract 37, as so segregated, is not in the shape of a rectangle one mile long and one-fourth of a mile wide, as would be the land described in the Laney patent. Instead, it is irregular in shape, and is partly within section 3 and partly within section 10 of the township as shown on the new plat. The field notes which accompany the resurvey of the township state that the boundaries of the Laney homestead were surveyed according to its location upon the ground and in conformity with its improvements. They state further that the location was identified "by Mr. W. H. Gottsche, the present claimant."

The 1911 resurvey of the township, plainly indicating Tract 37 in an irregular shape quite unlike the rectangular form called for by the Laney patent, was approved by the Surveyor General in 1913 and was accepted by the Commissioner of the General Land Office in 1914.

Mr. Gottsche apparently continued to occupy the Laney homestead for a number of years. The land is now claimed by the Salt Wells Live Stock Company under a warranty deed from Carrie

Gottsche, dated July 17, 1939. That deed describes the land as the ~~E1/4, E1/4~~ sec. 24, the description that was used in the Lancy patent.

The Salt Wells Live Stock Company on May 10, 1945, granted to the predecessor in interest of the two appellant oil companies a five-year oil and gas lease on land described in the lease as the "~~E1/4, E1/4~~ Sec. 24, Twp. 14 North, Range 103 West Original Survey, being Tract 37 Resurvey Twp. 14 North, Range 103 West 6th P. M." A new lease describing the land in the same manner was granted by the Salt Wells Live Stock Company to the two oil companies on March 21, 1950.

Tract 37 is completely surrounded by public lands of the United States, all of which are now covered by oil and gas lease Evanston 022674 issued to Richard L. Hughes as of April 1, 1947.

After the acceptance of the resurvey plat by the Commissioner of the General Land Office in 1914, neither the General Land Office nor its successor, the Bureau of Land Management, apparently took any further action respecting Tract 37 until July 28, 1950, following the filing, on May 16, 1949, of Mr. Stull's application for an oil and gas lease on the tract. At that time, the Bureau of Land Management called upon the Salt Wells Live Stock Company to submit any objections that it might have to another resurvey of the tract. It was after the submission of objections by the Salt Wells Live Stock Company and by the two oil companies, which were permitted to intervene, that the decision of July 27, 1951, ordering a further resurvey was made. 1/

It is well established that the Government may survey and resurvey its public lands at will. No such survey or resurvey, however, can affect adversely the rights of owners of private lands. Lane v. Darlington, 249 U. S. 331 (1919). The courts will protect the private rights of those who have, in good faith, acquired lands from the Government, against any prejudicial consequences of corrective resurveys made by this Department subsequent to the disposition of such lands. Cragin v. Powell, 128 U. S. 691 (1888); United States v. State Investment Company et al., 264 U. S. 206 (1924). Then, too, a boundary between a private claim and surrounding public lands, long recognized and accepted, should not ordinarily be disavowed by means of a resurvey. See New Mexico v. Colorado, 267 U. S. 30 (1925).

1/ That decision was made after the Office of the Secretary had, on December 7, 1950, remanded the case to the Bureau for its consideration of the showing made by the oil companies and their lessor (A-26144).



It is understood that during the period (1910-1915) when the previous resurvey here in question was being executed, approved, and accepted, it was a rather common practice for the General Land Office, in accepting independent resurveys under the 1908 act, to permit changes in the configuration of patented areas and of valid entries. It appears also to have been the policy of the General Land Office at that time to segregate under the 1908 act an area claimed by a patentee or an entryman, regardless of location or configuration. In this connection, the 1908 act provided that nothing therein contained should "be so construed as to impair the present bona fide rights or claims of any actual occupant \* \* \* to the amount of land to which, under the law, he is entitled." The General Land Office seems to have construed this provision as permitting a patentee or entryman to claim land occupied and improved by him, up to the maximum acreage permitted by law, regardless of whether such land conformed to the subdivision lines called for in the patent or entry. In view of the language of the 1908 act and the fact that, in many instances, original corners could not be located, this was not an unreasonable construction of the statutory provision.

This Department has on many occasions refused to disturb accepted surveys after the lands surveyed had been disposed of and after a long lapse of time subsequent to the approval and acceptance of the surveys. It has ordered resurveys only upon the clearest proof of an evident mistake or fraudulent conduct on the part of those charged with the execution of such surveys. George S. Whitaker et al., 32 L. D. 329 (1903); Marshall Dental Manufacturing Company, 32 L. D. 550 (1904); Mercantile Trust Company, 49 L. D. 663 (1923). No such proof has been submitted in the present proceeding.

The Department has held that where a patentee acquiesces in an adjustment made by the Land Department during the course of a resurvey, such acquiescence establishes that the tract shown on the plat of resurvey as the tract patented is the tract which was selected in accordance with the plat of the original survey, and that another person who never acquired any vested interest in the public land affected by the resurveys has no right to object to the resurvey. Wiegert v. Northern Pacific Railway Company, 48 L. D. 48 (1921). Here, the successor in interest to the patentee acquiesced in the boundary of his claim as shown on the plat of resurvey, and those claiming under him should not now be penalized because of such acquiescence.

Again, the Department held in the Mercantile Trust Company case, supra, that it is not appropriate to consider, after a lapse of many years, whether the survey of the boundaries of a private claim was effected with the nicest discrimination or the highest wisdom, and that such a survey will not be disturbed on account of inaccuracies where it accomplished the purpose of establishing the boundaries with approximate and reasonable accuracy. The Department said (p. 665):

" \* \* \* Since this survey and patent have stood for about 60 years, it is too late to reopen the title by process of resurvey."

The segregation of the tract in the present case appears to have accomplished the purpose of setting off, as patented land, 160 acres of land identified by the claimant as the land patented, based on the original survey; and, having stood unchallenged for more than 35 years, it should not be disturbed.

The result of the decision below, if permitted to stand, would be a resurvey of the tract into the shape and dimensions of the unit called for by the original survey and the Laney patent. The new tract would presumably contain 160 acres (as does the present tract), but 80 acres of land now under an oil and gas lease between private parties would be eliminated from the tract and 80 acres of public land now under an oil and gas lease issued by the Government would be added to the tract. Confusion would be bound to follow any such action. Such a result is to be avoided in a situation where a resurvey of the tract is not necessary to protect the Government's interest.

In all the circumstances of this case, it does not appear to be proper or just at this late date to disavow the segregation of Tract 37, as made many years ago under the act of May 29, 1908, particularly as private rights would be adversely affected by a resurvey at this time.

Therefore, pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (sec. 23, Order No. 2509; 14 F. R. 307), the decision of the Acting Director of the Bureau of Land Management is reversed.

(Sgd) Mastin G. White  
Solicitor