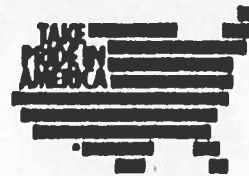




United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240



IN REPLY REFER TO:
9609 (720)

Memorandum

AUG 21 1987

To: Commissioner, Bureau of Reclamation
PRINCIPAL DEPUTY (Sgd) Wayne Marchant
Through: Assistant Secretary - Water and Science SEP 1 1987
Assistant Secretary - Land and Minerals Management J. Steven Griles
From: Director, Bureau of Land Management
Subject: Bureau of Reclamation Survey Authority

AUG 25 1987

In a recent case, United States v. Pappas (D. Idaho, Civil No. 79-4030; 9th Cir. No. 85-4179), a portion of federally-owned land managed by the Bureau of Reclamation (BOR) was lost unnecessarily in our opinion. One of the most important factors which weakened the case for the United States is that the resurvey of the reserved public lands contracted by the BOR to a land surveyor licensed in the State of Idaho was not an official United States survey, reviewed and cleared by the Bureau of Land Management (BLM). Had this procedure been followed, the litigation might well have been headed off.

A memorandum to the Solicitor from the Associate Solicitor, Energy and Resources, dated June 18, 1987, clearly summarized the invalidity of the survey contracted by the BOR as follows:

The 1985 resurvey offered by the Government and allowed into evidence during the trial is not an official resurvey of the United States. Consequently, it should not have been offered into evidence, and it may not represent the official position of the United States in the litigation. The survey was performed by a private surveyor hired by the BOR and returned to that Bureau without clearance through the Bureau of Land Management (BLM). While the BOR has limited authority to conduct certain subdivision resurveys in the field, it cannot do so without adherence to BLM survey instructions which are supposed to be furnished at the outset of the work. Furthermore, Reclamation resurveys do not become official unless and until approved by the BLM. 757 DM 2.7B(2). Neither of these conditions were honored by Reclamation in relation to the 1985 resurvey.

BOR's limited authority is outlined in 43 U.S.C., Section 434:

"Wherever it may be necessary, for the purpose of accurate description, to further subdivide lands to be irrigated under the provisions of said reclamation law, the Secretary of Interior may cause subdivision surveys to be made by the officers of the Bureau of Reclamation * * * Such subdivision surveys shall be noted upon the tract books in the Bureau of Land Management."

SEP 2 1987

The Departmental policy on cadastral surveys is clarified in the Departmental Manual (757 DM 2.7B(2)):

"All Interior bureaus and offices will coordinate their cadastral surveying needs with BLM * * * The Bureau of Reclamation has specific authority to conduct cadastral surveys on certain public lands withdrawn for reclamation purposes under BLM instructions and with BLM approval."

It is important to note that the Interagency Agreement between BOR and BLM, signed by the Commissioner and Director on March 25, 1983, defines part of its purpose as bringing "coordinated efforts into compliance with recent laws and policies." Section 6-I states:

"BLM will conduct, on a reimbursable basis, cadastral surveys, resurveys, and investigations * * * If BLM is unable to accomplish a cadastral survey within Reclamation's time limits * * * (BLM) may contract with Reclamation to conduct the surveys with qualified Reclamation surveyors, according to BLM standards and procedures. * * * The survey plat and field notes will be reviewed and, if adequate, be officially accepted by the appropriate BLM State Office."

Benton C. Cavin, 83 IBLA 107, 130-131 (1984), confirms that the "power to officially survey public lands is vested solely in the Secretary of Interior. * * * So, too, is the authority to conduct resurveys." Cited are 43 U.S.C. 2, 752, 772. The IBLA decision points out that since the surveys in the case are not authorized Interior resurveys, they are "thus, not official surveys but are rather what are generally termed administrative surveys, useful for administrative purposes of the surface management agency but not controlling as to legal boundaries of land."

The Secretary of the Interior's policy is that the location of legal boundaries of subdivisions administered by the BOR must be determined by means of a cadastral survey or resurvey conducted or approved by BLM. The litigation in United States v. Pappas might have been averted or decided favorably if the Secretary's policy and directives had been observed. The inconveniences perceived in pursuing a BLM resurvey are inconsequential when compared to the costly litigation and the permanent loss of a portion of Federal lands. Another consideration is the possible misapplication of precedents concerning survey law, if the decision is given a cursory review in the future.

The survey needs of the BOR should be evaluated with the considerations of the BLM's survey authority, especially if litigation is even remotely probable. Surveys conducted without the BLM's approval have limited administrative uses, particularly when boundaries are contiguous to private lands. Cadastral survey needs can be addressed at the National Interagency Cadastral Coordinating Council (ICCC) meeting on September 8-11, 1987, in Green Bay, Wisconsin. Local ICCC meetings are conducted in our State offices and cadastral survey chiefs can be approached at any time for purposes of assessing cadastral survey need in any region. Any instances of uncooperativeness or unresponsiveness by State Office cadastral survey chiefs to cadastral survey needs of the BOR can be reported to the BLM, Division of Cadastral Survey.

As sister Interior agencies, there should be no reason that discussions cannot be held to assign work priorities and iron out problems in the area of cadastral surveys. The BLM is more than willing to develop methods to respond to needs of the BOR in a fashion which will be satisfactory for everyone involved. Further details on the subject of cadastral surveys can be discussed with Bernard Kostrop or Keith Williams of the BLM, Division of Cadastral Survey at (FTS) 653-8798.

Robert F. Burford

cc: 720 RM
700

Office of the Solicitor
Assistant Secretary - Indian Affairs
Director, Fish and Wildlife Service
Director, National Park Service
Office of Inspector General
Interior Board of Land Appeals

720: B01ver:vh:7/22/87:653-8798:0182r
Retyped:agh:8-14-87



United States Department of the Interior

BUREAU OF RECLAMATION
WASHINGTON, D.C. 20240

Oliver Copy
MWH
12/17/87
KW
JB
(action needed)

IN REPLY REFER TO: 420

NOV 16 1987

Memorandum

To: Director, Bureau of Land Management *M. P. ... 700 12/17/87*

Through: ~~Deputy~~ ^{Acting} Assistant Secretary - Water and Science *Steph ...*
 Deputy Assistant Secretary - Land and Minerals Management *James E. ...*

From: Commissioner *C. Dale Small*

Subject: Bureau of Reclamation Survey Authority (Your Memorandum of August 21, 1987)

NOV 27 1987
DEC 2 1987

Your memorandum raised two questions: (1) Does Reclamation have the authority to conduct resurveys of the public lands under its jurisdiction for the purpose of reestablishing property boundaries? and, (2) Was that authority unnecessarily used and incorrectly administered in United States v. Pappas (D. Idaho, Civil No. 79-4030; 9th Cir. No. 85-4179)?

These two questions involve some very complicated issues; however, we believe that Reclamation's authority is clearly stated in the Departmental Manual, 255 DM 1.4A, which provides for a cooperative agreement to be executed by the Bureau of Reclamation (Reclamation) with the Bureau of Land Management (BLM) before taking action to survey, subdivide, or sell public lands protectively, formerly, or currently withdrawn for Reclamation purposes. The interagency agreement between BLM and Reclamation, dated March 13, 1983, meets the requirement of 255 DM 1.4A. This agreement was reviewed by the Solicitor's Office several times during the drafting stage, and was reviewed by that office in the final stage prior to signing. The Director and the Commissioner agreed that the issues covered in the agreement did not require approval by the Secretary; therefore, that review and approval was not sought. The agreement was the result of careful negotiations over a 3- to 5-year period.

Following is a summary of the circumstances surrounding the survey in question. While it does not change the fact that the survey was not cleared by the BLM, it does explain why.

In late December 1979 or early January 1980, Reclamation received a request to provide the Assistant U.S. Attorney with a survey of the land in dispute. The BLM Cadastral Survey Section was asked to make the survey, but stated that it could not meet the time schedule. On January 17, 1980, a contract to subdivide the section and to provide plats of lots 1 and 2 showing the land in dispute was

awarded to a Registered Professional Engineer-Registered Land Surveyor in Idaho. The plats were filed with the county and forwarded to the U.S. Attorney's Office. On about the first of March 1985, nearly 5 years later, the BLM Cadastral Section, Idaho State Office, contacted us concerning problems with the plat. It appears that neither the original plat nor the resurvey properly apportioned the unsurveyed lands along the river, and that the north line was not properly oriented. Representatives of the BLM met in the field with the contract land surveyor and directed the corrections and reviewed the results in the field. The BLM and Reclamation's surveyor consulted together as the plats were drafted. The plats were finished on the day prior to the trial, filed with the county, and forwarded to the U.S. Attorney in Boise. The U.S. Attorney apparently thought this evidence did not justify requesting a further delay in the trial, or he did not receive the redrafted plats in time to review them and request a continuation.

The trial was conducted on March 6, 1985. The judgment in the District Court set the line north between lots 1 and 2, a sufficient distance to include an additional 5.9 acres in lot 2, but still south of the fence rebuilt by Mr. Annest, Mrs. Pappas' son, and an attorney. Mr. Annest then took the case to the Ninth Circuit Court of Appeals. The Appeals Court judgment of April 13, 1987, moved the line further north to include an additional 7.2 acres. This gave river frontage to lot 2 and moved the line north to include most of the land south of the rebuilt fence.

In accordance with the Judge's decisions, the line between lots 1 and 2 was established so that lot 2, purchased by the Pappas' from the United States, contains 52.85 acres, rather than the 39.75 as surveyed by the BLM and paid for by the Pappas family.

Based on the above, the following conclusions have been drawn:

-Only after determining that the BLM Cadastral Survey Section in the Idaho State Office was unable to meet the requirements of the U.S. Attorney's Office for a resurvey of the boundaries of lot 1, did Reclamation utilize its delegated authority to contract for this resurvey with a Registered Professional Engineer-Registered Land Surveyor. While the contracted resurvey was recorded in the county courthouse and forwarded to the U.S. Attorney, apparently it was not formally provided to the BLM for approval and adoption.

-The BLM was aware of, and obtained a copy of the resurvey, and was also aware of the pending litigation, as it had been contacted by the U.S. Attorney for expert witness services; however, it did not review the survey until immediately prior to the commencement of the trial. This review indicated that the contract survey was incorrect, thus, placing a cloud over all previous surveys, including the original survey of the Government Land Office. This information was made known too late for reaction by the U.S. Attorney trying the case.

-While the normal procedure for resurveys made by Federal agencies would be for them to be reviewed and approved by the BLM before they become official, the circumstances of the pending litigation, originally scheduled for 1980, did not permit the resurvey requested by the U.S. Attorney trying the case to be reviewed and approved by the BLM. The urgency of the case made it seem imperative that the resurvey be filed in the county courthouse. The resurvey was conducted by a person holding correct and legal credentials, and could reasonably have been expected to be conducted utilizing correct survey methods.

-It is our observation that in this case the Courts chose not to use the standard method of proportioning lots as contained in BLM survey manuals. Rather, the Federal Judges ruled in favor of a compromise position which resulted in the loss of United States land. The loss was not the direct result of the resurvey by the Bureau of Reclamation to reestablish the original survey.

-To our knowledge, this is the first instance of an alleged problem arising from Reclamation's exercising its delegated survey authority during the past 85 years.

RECOMMENDATIONS:

We agree with the last paragraph of Director Burford's August 21, 1987, memorandum, that as sister agencies we can satisfactorily resolve mutual concerns regarding cadastral surveys. To that end, I suggest your staff in the Division of Cadastral Survey contact Mr. Bruce Brown of our Land Resources Management Branch, at 343-5204, to arrange an appropriate meeting. As tentative agenda items, we propose the following actions be further agreed to regarding resurveys.

1. Whenever legal action involving land survey boundaries is instituted against or by the Bureau of Reclamation, the appropriate BLM cadastral survey section will be notified by registered letter, return receipt requested, so that office can take immediate action to review the original field notes, and any resurvey notes regarding the boundaries involved in the litigation to ascertain that all surveys comply with prescribed procedures. This will also provide the opportunity to make provisions to accomplish any necessary resurveys which the attorneys may require.

2. Whenever the BLM uncovers any question regarding the validity of any survey involved in the legal action, the BLM will promptly notify Reclamation's appropriate regional office and the U.S. Attorney's Office of its concern, and arrange all actions required to conclude its investigation and corrections, where necessary, to ensure that a correct and legally sufficient survey is available for the trial.

3. Reclamation will continue to ensure that all surveys done by either Reclamation's staff or through contract will have a prompt formal referral to the appropriate BLM cadastral staff for review and approval.

To: Director, BLM

4

4. Reclamation will, whenever possible, arrange for all resurveys to be completed by the BLM on a reimbursable basis. Where conditions will not permit survey needs to fit into the BLM's cadastral survey schedule, the procedure in number 3 will be adhered to.

Questions on these actions should be addressed to Mr. Terence Cooper of this agency at telephone 343-5204. We look forward to your continued cooperation regarding management issues of mutual concern.