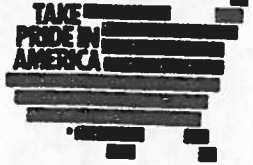




United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240



IN REPLY REFER TO:
9684.1(720)

December 26, 1990

**COPY FOR YOUR
INFORMATION**

Roy Minnick, Supervisor
Land Location and Boundary Section
State Lands Commission
1807 13th Street
Sacramento, California 95814

Dear Mr. Minnick:

It has come to our attention that certain survey actions by the Department of Agriculture, Forest Service (FS), have raised serious concerns by both the California State Lands Commission and the Oregon State Historic Preservation Office. These actions involve the remonumentation of original mile posts along a portion of the California and Oregon boundary that extends from the northeast corner of California westward to the 48 Mile Post.

By letter dated August 28, 1990, you presented your concerns to the Forest Supervisor of the Fremont National Forest in Oregon. In your letter you reported on the destruction and removal of original monument evidence of the State boundary, apparently by a licensed land surveyor on the staff of the Fremont National Forest. You further questioned whether this work was incidental to an official resurvey by the FS.

The Forest Supervisor responded to your office by letter, dated September 11, 1990, in which he stated:

The Fremont National Forest employs a land surveyor for the purpose of managing the property boundaries of the forest. In addition to surveying and posting the forest boundaries for various resource activities it is also a part of the surveyor's responsibilities to locate and perpetuate original corners which are either on or control the boundaries of the Fremont National Forest.

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Most of the mile posts that have been remonumented were done by forest personnel, a few were done by a private surveyor under contract to the Forest Service, and a few were done by the Bureau of Land Management.

Since the FS response did not answer your question regarding the official status of their survey actions, and further, since the FS, by implication, has chosen to involve the Bureau of Land Management (BLM), we are compelled to respond to this matter.

The official survey records of the United States indicate that mile posts 27, 28, 30, and 31 were remonumented by our Oregon State Office, in 1967. These corners were remonumented during the execution of the official retracement of a portion of the California-Oregon boundary from the 27 Mile Post to the 31 Mile Post.

This retracement was done in conjunction with the official dependent resurvey of a portion of Township 41 South, Range 18 East, Willamette Meridian, Oregon. Along that portion of the State line in question, no other official resurveys of adjoining public land have been executed by the BLM, and subsequently, no other official remonumentations are of record; with the exception of certain resurveys performed by the General Land Office, the predecessor to the BLM.

The remonumentation of original mile posts, by the Fremont National Forest, was made without the required statutory and administrative elements of authorization, instructions, review, approval, filing and publication by the BLM. Only those remonumentations, made with proper authority, can be filed in the official survey records of the United States. The subject FS actions do not fulfill any of the above statutory or administrative elements and are thus regarded as unofficial by the BLM.

The statutory authority for the survey and resurvey of the public lands is vested solely in the Secretary of the Interior, as delegated to the Director, BLM;¹ this includes those public lands reserved in the National Forest System.² The FS may only execute official surveys and remonumentations under the auspices of the 1989 BLM/FS Memorandum of Agreement (MOA), copy enclosed.³

BLM's delegated survey authority includes the protection and preservation of all survey evidence that controls the boundaries of the Public Land Survey System. The BLM has further statutory responsibility for the segregation of valid private claims and the protection of bona fide rights of adjoining private lands. Such authority includes the determination of State boundary alignments between fixed original mile post monuments, normally as a limiting and senior boundary of adjoining public lands.

The BLM has held for many years that only duly identified original State boundary mile posts, when necessary to determine the extent of adjacent public lands, would be subject to remonumentation, and only if the condition of the original monument warranted such action. Until recently, the BLM did not reestablish any lost mile posts. This resulted in many miles of control being retraced and resurveyed along State boundaries, but without any intermediate monuments being reestablished in the field. The BLM considered such actions as unnecessarily limiting the usefulness of the Federal survey, both by adjoining private landowners, and by numerous state, county and private surveyors that rely upon official BLM survey monuments as control and evidence of the boundary.

Therefore, by memorandum, dated February 6, 1990, (copy enclosed) the Director, BLM, instructed all State Office Cadastral Chiefs to reestablish lost mile posts during the course of any official survey or resurvey of Federal lands adjacent to State boundaries. The intent

1. 43 U.S.C. §§ 2, 52, and 772, Presidents Reorganization Plan No. 3, § 403 (1946), and 16 U.S.C. §§ 474 and 488.

2. Act of February 1, 1905, Public Law No. 34, 33 Stat. 628, 16 U.S.C. § 472. This Act transferred the administration of the forest reserves from the Secretary of the Interior to the Secretary of Agriculture, but expressly excepted all laws affecting surveying; commonly referred to as the Transfer Act.

3. Formerly the Memorandum of Agreement, dated March 19, 1980.

of such action is to insure that the boundaries of public lands are identifiable, usable and locatable as a result of our survey efforts. This policy, in no way, acts to impair or change the location of the original State boundary.

As stated earlier, the FS survey actions in question are not recognized by the BLM. Therefore it is imperative that we clarify the official Federal survey responsibilities of the BLM.

The BLM recognizes two general classes of land surveys, "cadastral surveys" and "administrative surveys". These surveys are defined in Mr. and Mrs. John Koopmans, 70 IBLA 75 (1983) as follows:

Cadastral surveys in general create, reestablish, mark, and define boundaries of tracts of land. Such surveys—unlike scientific surveys of an informative character which may be amended with changing conditions, or because they are not executed according to the standards now required for accuracy—cannot be ignored, repudiated, altered, or corrected, and the boundaries created or reestablished cannot be changed so long as they control rights vested in the lands affected. The official record of a cadastral survey ordinarily consists of a drawing or map and a written description of the fieldwork. The drawing represents the lines surveyed, showing the direction of and length of each of such lines; the boundaries, descriptions, and area of the parcel of land; and, as far as practicable, a delineation of the culture and improvements within the limits of the survey.

Administrative surveys are not based on necessary statutory authority to establish or reestablish the boundaries of Federal lands, and they do not result in the filing of field notes and plats in the public land records. They do not establish legal ownership boundaries for title and/or taxation purposes. In general, administrative surveys are made to identify boundary lines of ownership previously established by a cadastral survey (Federal) or property line survey executed under the laws of a State or other authorized political entity. No legal property corner monuments are established or reestablished by the administrative process.

In this context, an administrative survey can be nothing more than the identification of boundary lines which are delineated by previously fixed and duly identified corners of an official cadastral survey. It cannot be used to create, reestablish, mark or define legal corners or boundaries of Federal land. Any land survey that exceeds the limits of an administrative survey or in any way purports to meet any element of a cadastral survey, without proper authority, is considered unofficial, and is not recognized by the BLM.

Through the annual appropriations process, the Congress has provided funding to the FS Land Line Location (LLL) program, for the purpose of identifying existing boundaries of the National Forest System. Unless authorized by the Director, BLM, the LLL functions cannot operate to duplicate any of the official duties of the BLM. This includes the official retracement, survey, resurvey, reestablishment or remonumentation of corners and boundaries of Federal land.⁴ As stated earlier, all official surveys or resurveys must be performed under the authority of the Director, BLM.

The Forest Service has long recognized the delegated statutory survey authority of the BLM. For example, in 1957, the Chief, FS, issued a policy memorandum to all Regional Foresters on the subject of FS authority and responsibility with regard to cadastral

4. Manual of Instructions for the Survey of the Public Lands of the United States, 1973, Department of the Interior, Bureau of Land Management. §§ 4-2 to 4-3, and 6-1 to 6-8.

surveys;⁵ this policy memorandum was reissued in 1973. In this memorandum, the Chief, FS stated the following:

This interpretation applies to all national forest lands irrespective of whether reserved from the Public Domain or acquired by purchase or exchange.

. . . .

The Forest Service, as an agency of the Federal Government, has no authority to execute official cadastral surveys, or subdivide officially for the purpose of determining boundaries between publicly and privately owned lands in the national forests. This is clearly stated in the act transferring responsibility for the administration of the national forests from the Department of the Interior to the Department of Agriculture. This does not preclude the Forest Service from making subdivision surveys for administrative and management purposes.

. . . .

The Forest Service, lacking the authority to execute official cadastral surveys, likewise has no authority to officially monument surveys for the purpose of establishing or marking ownership boundaries or fixing corner positions intended to establish the location of lands.

. . . .

The B.L.M. has sole jurisdiction for official cadastral surveys, including the subdivision of sections, on national forest lands reserved from the Public Domain. The authority under Federal and State law for determining boundaries between these Public Domain lands and private lands is vested equally with the local surveyor. The expenses for both subdivision surveys and boundary surveys mentioned above may be paid from B.L.M. appropriation for cadastral surveys or by reimbursement. This is upon the grounds that they are determining the boundaries of the remaining Public Domain.

. . . .

The Bureau of Land Management has the sole responsibility to set, reset, establish, or re-establish all monuments for the purpose of permanently marking of the line and to fix the legal corner positions so that the location of the lands may always be definitely known on national forest lands which were reserved from the Public Domain. On national forest lands in areas covered by the rectangular survey system acquired by purchase or exchange, the B.L.M. has the authority to restore by monumentation an obliterated corner so far as it relates to physical evidence or other means of identification of the corner itself.

. . . .

This interpretation is not altogether new to most of us but will be somewhat of a surprise to some. However, it clearly states the position of the Forest Service in respect to its legal authority to make cadastral surveys.

These statements give the basic policy guidelines under which the FS has operated since 1957. However, as in the case at hand, an increasing number of land surveys, performed in support of the FS LLL program, have exceeded the mere identification of landlines.

5. Memorandum, dated September 23, 1957, prepared by the Deputy Chief of the FS, C.W. Hendee, for the Chief, Richard E. McArdle. The 1957 policy memorandum was reissued by the Acting Associate Deputy Chief, FS, by memorandum dated May 18, 1973. The 1973 policy memorandum is prefaced with the statement, "Please reference Mr. Hendee's 1957 memorandum, which is enclosed. The statements made at that time still apply".

They have, in fact, executed cadastral surveys which are neither authorized by, nor done under instructions from the BLM, and are thus unofficial. By such actions, the FS has established and reestablished monuments and boundaries, on the ground, which exist in fact, but do not exist in law.

The public may perceive such actions by the FS as official cadastral surveys (executed by what appears to be duly authorized government employees or contract surveyors) when in fact, such surveys are performed under a color of legal authority. Adjoiners to the National Forest System should not be held responsible for determining which surveys are official and which are unofficial. They should be confident that any survey which purports to determine or define their common boundary is executed within statutory authorities. Enclosed is a recent Opinion of the Solicitor of the Department of the Interior, on the subject of "Forest Service Survey Authority and Status of Public Lands Conveyed in Accordance With Forest Service Surveys". This Opinion succinctly addresses the subject of Federal survey authority.

Your letter further questions the removal of original mile post monuments from the field by Fremont National Forest employees; a fact that the Forest Supervisor has acknowledged. You have inferred that these monuments may be subject to protection as antiquities under Federal law. This office agrees that the original mile posts of any State boundary are both legally and historically significant. The evidence of any official Government survey is expressly protected under 18 U.S.C. § 1858 (1988).

Whoever willfully destroys, defaces, changes, or removes to another place any section corner, quarter-section corner, or meander post, on any Government line of survey, or willfully cuts down any witness tree or any tree blazed to mark the line of a Government survey, or willfully defaces, changes, or removes any monument or bench mark of any Government survey, shall be fined not more than \$250 or imprisoned not more than six months, or both. (underline added).

The removal of any official monument set pursuant to the authority vested in the Secretary of the Interior, or his delegated officer, is strictly prohibited. During the course of an official remonumentation, any removal must be fully justified and supported with full documentation in the official survey records of the United States. Such documentation must describe the reasons for removal and the exact location or repository of the original monument.

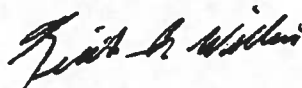
The stability of land title and the location of land depends on many elements. The highest priority is given to the physical survey evidence that defines the original boundary lines. A remonumentation when properly authorized, executed, and approved is a very valuable tool for the preservation of obliterated or deteriorated survey evidence. However, a remonumented survey corner must be able to withstand the test of both legal review and authentication. If the original monument is removed to a distant and possibly unknown location, then the history of the corner monument becomes discontinuous. This office will not tolerate the unauthorized removal of official survey monuments of the United States.

This office is strongly opposed to the FS performing any survey actions outside of the provisions of the BLM/FS MOA. By copy of this letter, the FS will be notified that the mere employment of a land surveyor, licensed under State registration laws, does not

confer upon them the legal authority for the retracement, survey, resurvey, reestablishment or remonumentation of corners and boundaries of Federal land. They will be further advised to comply with the terms and conditions embraced in the language of the BLM/FS MOA.

We regret the necessity and nature of this letter. However, we trust that this information will clarify the statutory responsibility of the BLM in regards to official cadastral surveys, including those that adjoin State boundaries. If you have any additional questions please contact, Patrick G. Carroll of this office at 202-653-8798.

Sincerely,



Keith R. Williams
Chief, Division of Cadastral Survey (Acting)

Enclosures: (3)

1. 1989 BLM/FS MOA
2. Instruction Memorandum No. 90-319
3. Solicitor Opinion BLM.ER.0520

cc:

1. Chief, Branch of Cadastral Survey (CA-942)
2. Chief, Branch of Cadastral Survey (OR-942)
3. WO-720 Reading File
4. Office of the Associate Solicitor (SOL-ER) (w/incoming and enclosures)
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