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BUREAU OF LAND MANAGEMENT
Oregon State Office
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IN REPLY REFER TO:

9631 (OR957)
Douglas County, OR

SEP - 9 2013

Date: 1-7-2014 By: J.C.
This survey consists of:
Map: M1166-6
Narrative: CS 65/81-1 (8 pgs)
Corner Rpt: BLM Opinion

DOUGLAS COUNTY
SURVEYOR

Ken Hoffine, PLS
Lone Rock Timber Management
P.O. Box 1127
Roseburg, Oregon 97471

Dear Mr. Hoffine:

This is in response to your question submitted by e-mail on August 14, 2013, supplemented with additional e-mail information submitted on August 16, 27, and 28, 2013. You ask our opinion on how to subdivide section 31, T. 30 S., R. 4 W., Willamette Meridian, Douglas County, Oregon. In particular, is the east quarter-section corner of section 36 in T. 30 S., R. 4 W., common with the west quarter-section corner of section 31 in T. 30 S., R. 4 W.? You also ask in general what criteria we consider when deciding whether or not to accept a local corner. We are of the opinion the two corners are not common based on the official record, and future subdivision of section surveys in section 31 should be according to the official record.

History and Reference Documents

History considered in this response is limited to the official Federal record and the information you have provided.

- 1854, Butler Ives and George Hyde, Deputy Surveyors, survey the west boundary of the township (Offset Meridian).
- 1854, Nathaniel Ford, U.S. Deputy Surveyor, surveys the north, south, and east township boundaries, and a portion of the subdivisional lines of T. 30 S., R. 4 W., and surveys the north, south, and west township boundaries, and a portion of the subdivisional lines (including sections 25 and 36) of T. 30 S., R. 5 W., both plats approved March 9, 1855.
- 1889, William Thiel, U.S. Deputy Surveyor, resurveys the north, south, east, and west township boundaries, resurveys the subdivisional lines originally surveyed by Ford, and surveys additional subdivisional lines in T. 30 S., R. 4 W., as shown on the official plat approved February 18, 1890. In the survey Thiel finds and remonuments the Ives and Hyde corners on the west line of section 31, and monuments new corner positions on the south line of section 31 (because he could not find the corners set by Ford).
- 1890, Authorized use of "closing corners" is expanded to include township exteriors ("double corners" existed prior to 1890, but closing corners were reserved for standard parallels).

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- 1891, W.F. Briggs, U.S. Deputy Surveyor, resurveys the east tier of sections in the township using the new closing corner policy as shown on the plat approved on June 29, 1895.
- 1893, William F. Bushey, U.S. Deputy Surveyor, resurveys the south boundary and a portion of the west boundary, and completes the subdivision of the T. 30 S., R. 4 W., as shown on the plat also approved on June 29, 1895. In the survey Bushey establishes a new south quarter-section corner of section 31; remonuments the Thiel township corner (calling it a “closing corner”); visits the Butler and Ives $\frac{1}{4}$ section corner of sections 6 and 31 (calling it “The $\frac{1}{4}$ Sec. cor. on my line’, according to the plat this corner is the E. $\frac{1}{4}$ section corner of section 36 only); does not monument or mention the platted position of the W. $\frac{1}{4}$ section corner of section 31; visits the corner of sections 25, 30, 31, and 36; and establishes the closing corner of sections 31 and 32 (rejecting Thiel’s corner of sections 5, 6, 31, and 32, as a section corner but using it to control alignment of the township line).
- 1894, William F. Bushey, U.S. Deputy Surveyor, completes the subdivision of T. 31 S., R. 4 W. including establishment of the closing corner of sections 5 and 6, as shown on another plat approved June 29, 1895.
- 1925, Homestead Entry Patent granted to Harry T. Landrum for “... *Lot two, the southeast quarter of the northwest quarter and the south half of the northeast quarter of Section thirty-one in Township thirty south of Range four west of the Willamette Meridian, Oregon, containing one hundred sixty-two acres and forty-three hundredths of an acre, according to the Official Plat of the Survey of the said Land, returned to the GENERAL LAND OFFICE by the Surveyor General ...*” (Roseburg Patent 014083 attached).
- 1957, Douglas County Surveyor’s Office, “Set an Iron pipe with brass cap at corner mkd: $\frac{1}{4}$ S 36|31 T 30 S R5W R4W County Surveyor’s Office, 1957”, C.S. File 47/175 (information from PLSS Corner Renewal 100140, we do not have a copy of C.S. File 47/175). This seems to be the first time the E. $\frac{1}{4}$ section corner of section 36 is specifically referred to as common with the W. $\frac{1}{4}$ section corner of section 31.
- 2005, “DCSO-GIS Corner visitation – 6/21/2005 – Typed: 2/8/2011 – C.S. File 67/33-1 – Monument – 1-1/4 in. IP/BC Comment – needs rehab”, (information from PLSS Corner Renewal 100140, we do not have a copy of C.S. File 67/33-1).

County Surveyor’s Record (transcribed from the official Federal record) for various surveys listed above.

Douglas County Surveyor’s Township 30 Range 04 Point Identifier # 100140 “PLSS Corner Renewal” history summary for “ $\frac{1}{4}$ Cor. Sec. 31; & 36 of T30-5”.

maps: 1989, easement Exhibit A, Pacific Power & Light Company, Book 1091, page 278, Deed Records of Douglas County?

1991, crossing plat “Proposed Road Traverse on BLM and City of Canyonville Lands”, Ken W. Hoffine, PE

1992, timber sale Exhibit A, Contract for Sale of Timber OR-100-TS-92-209 Negotiated R/W O&C

date unknown, section 31 portion of Douglas County tax map

aerial photography: 1974, 1989, 1999, 2012

Discussion and Recommendations

This office assumes no control or direction over the acts of State authority surveyors. The following should not be construed as instructions to you. Portions of section 31 are Federal interest lands. Material facts considered in this discussion are limited to the official Federal record and the information you have provided.

Careful examination of the official record indicates the W. $\frac{1}{4}$ section corner of section 31 was not intended to be common with the E. $\frac{1}{4}$ section corner of section 36. Based on the parenthetical distances used to compute the areas and how the E-W center line is graphically depicted on the 1895 section 31 plat, clearly the two quarter-section corners were intended to be separate and distinct. The goal of the surveyor general was to dispose of the public domain using as many regular aliquot parts as possible (and as few government lots as possible). In this case the draftsman met the goal by platting the E-W center line of section 31 parallel with the N. line. Attached is a diagram of the parenthetical distances used by the draftsman to compute the acreage returns (reverse engineered from the acreages).

The plat and field notes are considered together with, and as a part of the patent itself. Whereas the one private patent in section 31 is by government lot and aliquot part (everything else is "O&C") "*containing one hundred sixty-two acres and forty-three hundredths of an acre, according to the Official Plat of the Survey of the said Land, returned to the GENERAL LAND OFFICE by the Surveyor General*", and the latest official plat normally supersedes everything previous, and section 31 did not even exist until it was created by the 1895 plat, the "proper method" to subdivide the section and "protect the plat" is according to the subdivision of section plan protracted on the 1895 plat. There is no other plat of section 31 to even consider, and there is no conflict between the 1895 field notes and plat.

General Land Office standard procedure in 1895 was to not monument quarter-section corners between closing corners for sections that closed up against a senior range line (that changed in 1919, see *Advance Sheets ... Manual ... (1919) §188*). It is, therefore, understandable why the Bushey field notes make no mention of the W. $\frac{1}{4}$ section corner of section 31 only. Also understandable is why Thiel makes no mention of a $\frac{1}{4}$ section corner of section 31 only either: 1) it hadn't been created yet, and 2) under the rules in effect when Thiel was there, it wasn't going to be created in the future either (look at the E. tier of sections on the Thiel plat and how he closed against the E. range line).

Regarding exact proper procedure for where to now place the W. $\frac{1}{4}$ section corner of section 31 only, according to the plat, normally with quarter-section corners in sections closing against a senior range line we advise establishing the quarter-section corner at midpoint (or proportionate distance) in latitude between the closing corners against the range line. However, this situation is a little unique in that Bushey physically retraced the entire west line of section 31. In this situation, using the *Manual ... (2009)* general principle of establishing corners where the original surveyor would have established them, we would establish the W. $\frac{1}{4}$ section corner of section 31 only, at single proportionate distance between the closing corner of sections 6 and 31 and the E. $\frac{1}{4}$ section corner of section 36 only (Bushey record $3.44 + 1.96 = 5.40$ chains).

That covers the official record component of the question. The other component is the bona fide rights aspect. The record has been misinterpreted. Cut lines have been marked to the wrong corner. There is a Douglas County brass cap at the E. ¼ section corner of section 36 only, marked as if it is common with the W. ¼ corner of section of section 31. Has use and acceptance now made the two corners common?

We are of the opinion that it has not made the corner common. If this were all private land one could argue the quarter-section corner is in one location according to the official plat and the “property corner” is somewhere else according to what people have recognized as the corner. But that approach won’t work in this situation. Not without special legislation. With O&C Federal interest land, the Bureau of Land Management (BLM) is bound by Federal law, including the *Manual of Surveying Instructions (2009)*, and administrative decisions of the Interior Board of Land Appeals (IBLA).

Some applicable portions of the *Manual ... (2009)* include:

§5-36: “... *Some flexibility is allowable in applying the rules of proportionate measurement and subdivision of sections in order to protect the bona fide rights of claimants. This is particularly so in those cases where no objection is found to adopting a point acceptably located under the good faith location rule, and only slightly at variance with the theoretical position computed from the primary control.*”

§6-48: “*The age, position, and degree to which a local corner has been relied on by all affected landowners may lead to its adoption as the best remaining evidence of the position of the original corner. When a local reestablishment of a lost corner or a local establishment of a legal subdivision corner has been made by proper methods without gross error, it will ordinarily be acceptable. Monuments of unknown origin must be judged on their own merits, but these monuments should never be rejected out of hand without careful study. ...*”

For IBLA guidance, several recent instructive decisions include *Longview Fibre Company (135 IBLA 170)*, and *Rudy Hillstrom (IBLA 2010-152)*. Again in these we find evaluation of the age, position, and degree of use, as important factors in determining the acceptability of a questionable corner.

More IBLA guidance includes:

“*A landowner’s bona fide belief concerning the boundary between his land and federal interest land is not the same as a bona fide right that must be protected in a survey under 43 U.S.C. §772 (2000)*” [Rylee, 147 IBLA 239 (2008)].

“*In legal contemplation and in fact, the lands contained in a certain section of the original survey and the lands contained in the corresponding section of the dependent resurvey are identical.*” [Einsele, 147 IBLA 1 (1998)].

To, hopefully, summarize the law and the criteria we consider:

Was the corner established by a person legally authorized to do so?

Was the survey filed/recorded as appropriate?

How accessible has the record historically been?

- Is the record of survey complete or are there ambiguities/conflicts with other surveys which cannot be reconciled?
- Was the corner established/reestablished using the proper limits of control?
- Was the corner established/reestablished using procedures commensurate with the era/area in which it was established?
- Was the acreage returned on the official plat protected?
- Was the patent protected, including the acreage noted on the patent?
- Is the original record free from significant distortion?
- Is the Federal interest public domain, reacquired, or reconveyed?
- How long has the corner been in place?
- How many and to what degree has the corner been relied upon by other surveyors?
- How many and to what degree have landowners, government entities, and utility companies relied upon the corner (including land clearing, crop cultivation, fencing, house and utility placement, route positioning, and the positioning of other improvements)?
- Has the corner been used as a basis for land transactions, further land subdivision, or land development?
- Are errors in positioning due to minor technical errors reflective of technology, or are they indicative of negligence, incompetence, unethical practice, blunder, or fraud?
- What are the adverse effects of correcting/not correcting the corner?
- Should the corner be only partially accepted (e.g. for latitude or departure only)?
- Is the decision to accept or reject the corner defensible in court? On what basis?

We look at these types of situations on a case by case basis. In this case “age”, or “How long has the erroneous position been used as the corner?” appears to date back to at least 1957 (when the county marked the brass cap as common, it may date back even further). For timber cutting lines, the oldest aerial photograph we have is dated 1974. On that photo it looks like cut lines based on the wrong quarter-section corner were marked on roughly one-sixth of the potential boundary lines (the rest follow natural features). In the 1989 photo perhaps half the cut lines are based on the erroneous position. In the 1999 photo it looks like most of the cut lines are based on the erroneous position. The “age” component in this case is relatively long.

The “position” or magnitude of the blunder, according to the latest recorded survey (Bushey 1895), is 1.96 chains. Generally the larger the error in positioning the more inclined we are to want to “correct” it. 1.96 chains is probably a large error in positioning.

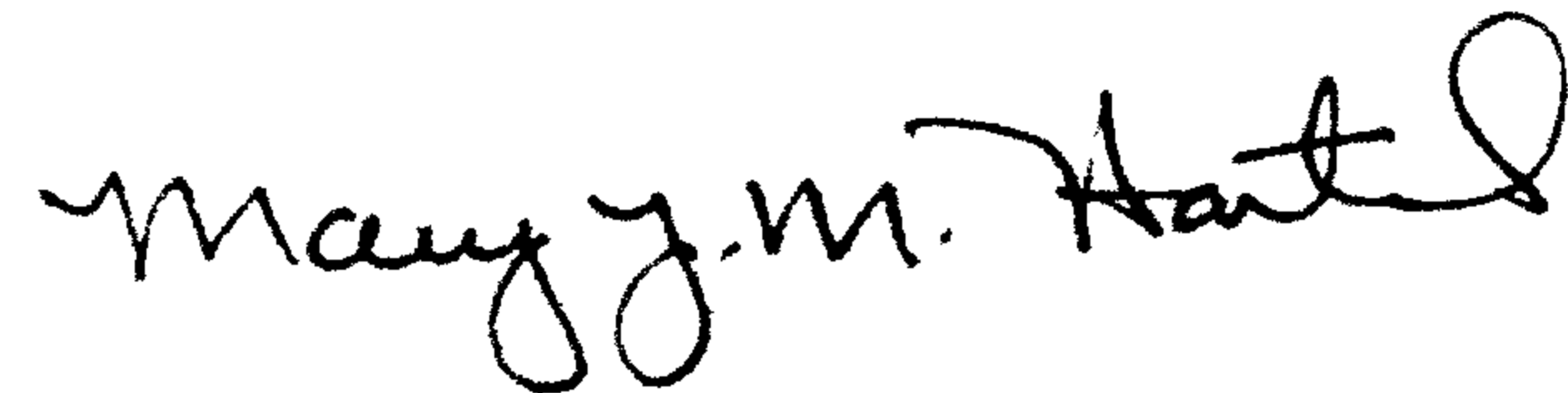
“Degree of use” in this case appears to be limited to timber cut lines between Lone Rock Timber and BLM. Nobody else seems to be affected. There does not appear to be any records of survey or partition plats filed in the county based on the erroneous position. There are no fences on the lines, no houses over the line, no 5-acre land conveyances based on the bad corner, no loss of road or water access, and no zoning complications due to a change in acreage. Not using the two corners as common also appears consistent with how the corner is depicted on the county tax map and geographic information system.

Considering it all together, we are of the opinion future subdivision of section surveys in section 31 should be according to the official record. To claim the E. $\frac{1}{4}$ section corner of section 36 has become common with the W. $\frac{1}{4}$ section corner of section 31, does not stabilize boundaries or protect bona fide

rights, it only pushes the confusion on into the future. Although definitely not insignificant, the effects of erroneous treatment of the quarter-section corners is limited to incorrectly marked timber cutting lines. We think the mistake should be corrected now while it is still relatively easy to fix.

We hope these comments are helpful. If you have any questions or need additional information please contact Royce Hill at 503-808-6392.

Sincerely,



Mary J.M. Hartel
Chief Cadastral Surveyor of Oregon

Attachments

cc: A. Bert Skeesick, Eugene District Office

Hoseburg 014083.

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Register of the Land Office at **Hoseburg, Oregon,**
 has been deposited in the General Land Office, whereby it appears that, pursuant to the Act of Congress of May 20, 1862,
 "To Secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of
Harry T. Landrum
 has been established and duly consummated, in conformity to law, for the **Lot two, the southeast quarter of**
the northwest quarter and the south half of the northeast quarter of Sec-
tion thirty-one in Township thirty south of Range four west of the Willa-
mette Meridian, Oregon, containing one hundred sixty-two acres and forty-
three hundredths of an acre,

according to the Official Plat of the Survey of the said Land, returned to the GENERAL LAND OFFICE by the Surveyor-General:

NOW KNOW YE, That there is, therefore, granted by the UNITED STATES unto the said claimant the tract of Land above described;
 TO HAVE AND TO HOLD the said tract of Land, with the appurtenances thereof, unto the said claimant and to the heirs and assigns of
 the said claimant forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and
 rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws,
 and decisions of courts; and there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the
 authority of the United States.

IN TESTIMONY WHEREOF, I, **Calvin Coolidge,**

President of the United States of America, have caused these letters to be made
Patent, and the seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the **NINETEENTH**
 day of **MARCH** in the year of our Lord one thousand
 nine hundred and **TWENTY-FIVE** and of the Independence of the
 United States the one hundred and **FORTY-NINTH**

By the President: *Calvin Coolidge*
 By *W. B. Cuyler*, Secretary.

M. P. LeRoy
 Recorder of the General Land Office.

RECORD OF PATENTS: Patent Number 955631 4-2021

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