

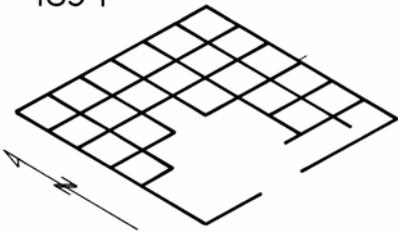
Chapter A

Corner Identification Using Conflicting Testimony & Evidence

A14

History of Surveys

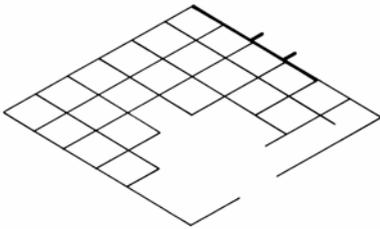
1894



1894 Frances W. Oury and Charles E. Perkins surveyed the range line through T. 23 N., between Rs. 7 and 8 E. The line was surveyed north to south.

1894 Oury and Perkins also surveyed a portion of the subdivisional lines of T. 23 N., R. 7 E. The line between sections 13 and 24 was run East and a closing corner was established 7.79 chains south of the previously set corner to sections 13, 18, 19 and 24. A portion of the plat approved July 13, 1895. is shown in figure 1.

1902



1902 James A. Lamport surveyed a portion of the subdivisional lines of T. 23 N., R. 8 E. He surveyed the line between sections 18 and 19, Parallel to the south boundary of section 19, establishing the closing corner of sections 18 and 19 on the range line at a point 80 links north of the former corner of sections 13, 18, 19 and 24 as established by Oury and Perkins. Because he found misclosures, Lamport then retraced the north four miles of the range line.

Township N^o 23 North Range N^o 7 East Gila and Salt River Meridian Ariz.

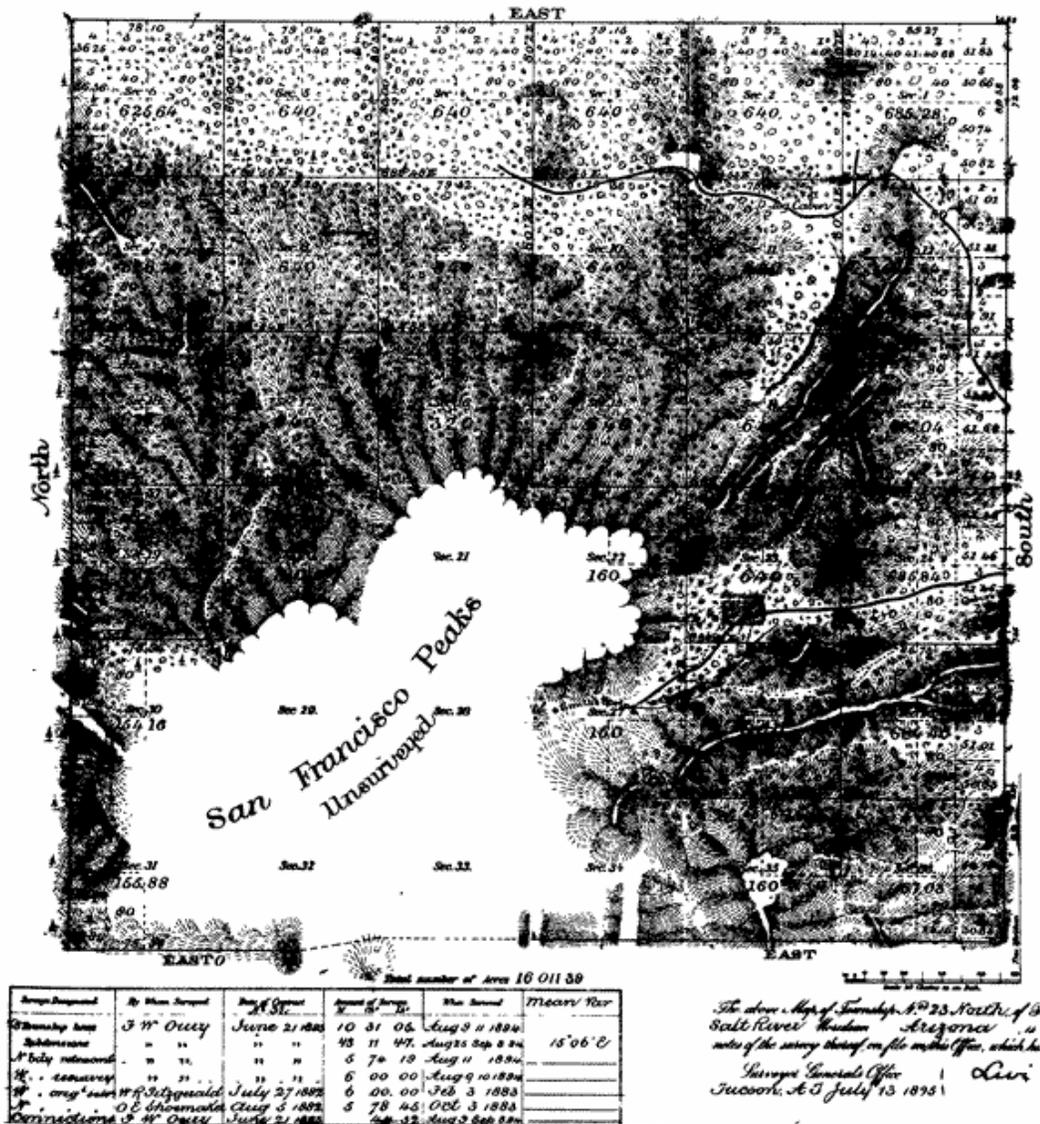
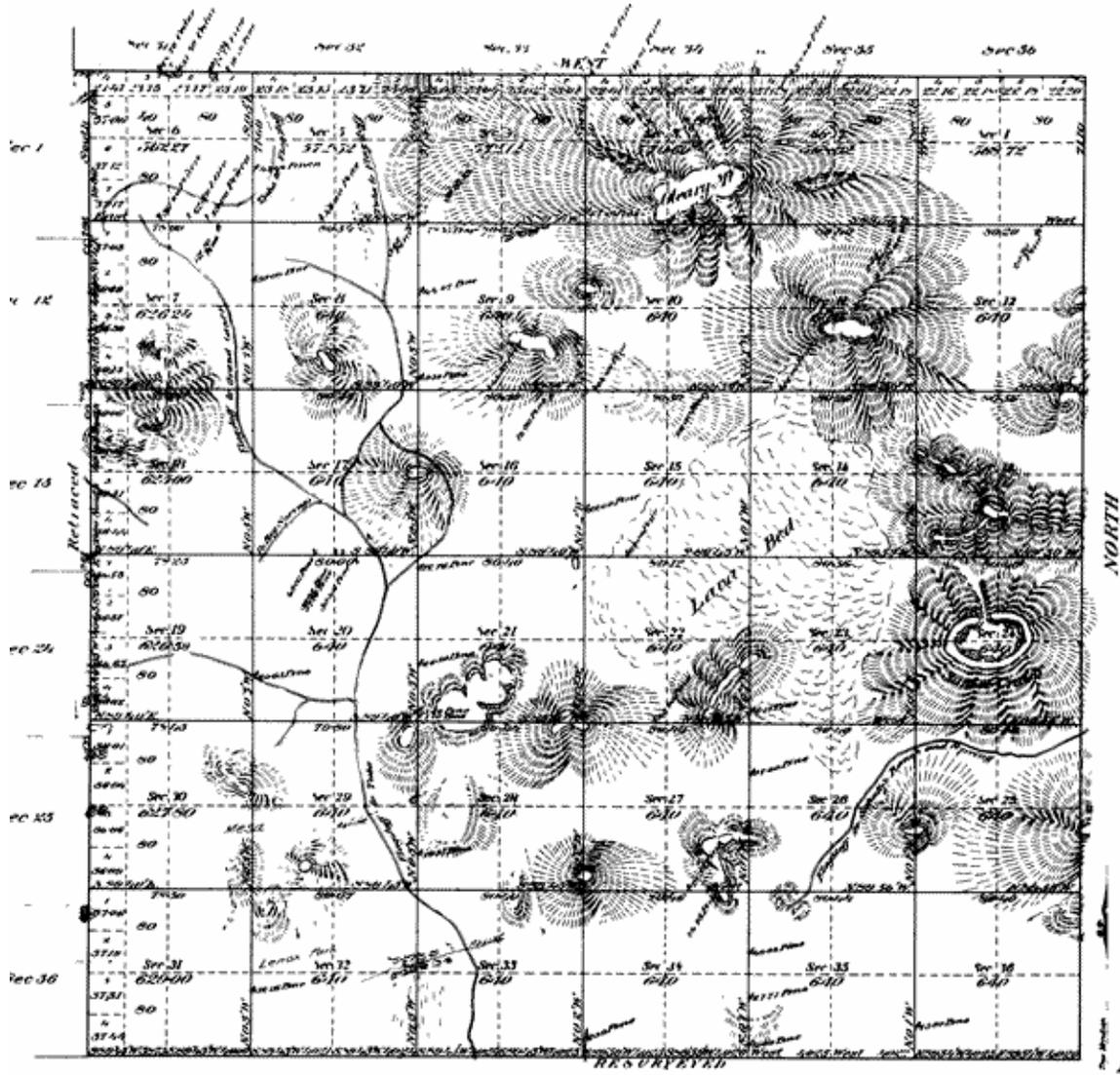


Figure 1(a) - Original Plat

Township N^o 23 North, Range N^o 8 East Gila and Salt River Meridian, Arizona

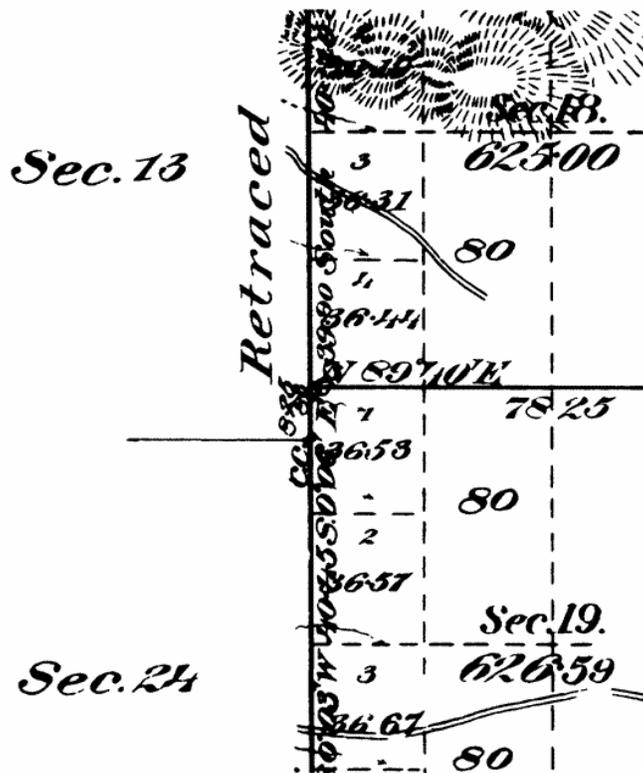
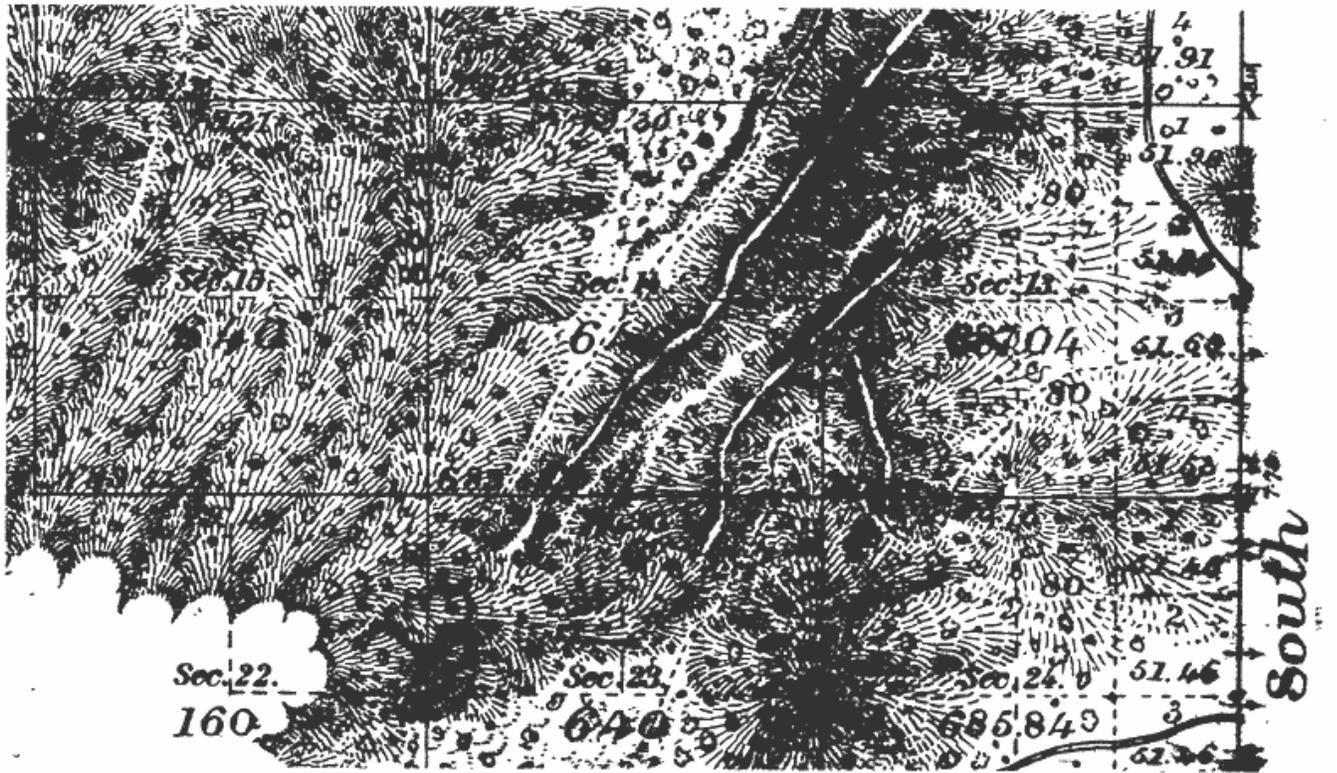


Total number of Acres 22 750 75

Survey Disposition	D. Khan Surveyed	Date of Closing	Amount of Survey	When Surveyed
N. & E. 1/4 of Township	J. A. Lampart	June 30, 1902	11 60 60	Aug 11 to Sept 25, 1902
Section 1			50 55 55	60 4
Section 2			6 01 04	July 25, 02
Section 3			5 71 56	Aug 20
Section 4			7 31	

The above plat of Township N^o 23 North, Range N^o 8 East, Gila and Salt River Meridian, Arizona, is a copy of the survey thereof on file in this office, which has been approved by the Surveyor General's Office, Frank C. Stevens, Arizona, Nov. 14, 1903.

Figure 1(b) – Original Plat



Original Plat Details

Reasons for Request of this Survey

The Forest Service requested this survey because they had become involved in a dispute between claimants of mining property within the boundary of the Coconino (pronounced Cocakneeno) National Forest. Settlement of the dispute between claimants would also settle the boundary between public lands and patented mining claims.

On June 13, 1938, Earl E. Collins recorded placer mining claim locations for the Collins No.1 and No.2 claims in sections 13 and 24. These claims were tied to the 1/4 section corner of sections 13 and 24.

On May 18, 1943, Roy E. Kincanon recorded a placer claim location for the Kincanon No.1 claim. This claim was also tied to the 1/4 section corner.

On June 10 and August 10, 1943, Del W. Fisher recorded location claims on the Fisher Lode and Fisher Placer claims, in sections 13 and 24. These claims are also described as tied to the 1/4 section corner of sections 13 and 24, T. 23 N., R. 7 E. These five location notices are shown in figure 2 as recorded in the Coconino County records.

In 1959 Del W. Fisher amended his locations to conform to legal subdivisions as part of a procedure for obtaining a patent. Each claim would, in theory, contain approximately 20 acres and be bounded on the east by the north-south centerline of sections 13 and 24. The claims were staked by Harvey W. Smith, Registered Professional Engineer in August, 1959. Smith did not survey the claims. Fisher applied for patent and patent was issued January 5, 1961, to Fisher Placer No. 1a, S1/2 SE1/4 SW1/4, section 13, and to Fisher Placer No.1, N1/2 NE1/4 NW1/4 of section 24.

Special Instructions

Special Instructions for Group 477, Arizona, were issued on November 30, 1966. They provided for the resurvey of the section line and ties to the Fisher, Collins and Kincanon claims.

Conditions Found on the Ground

The line between sections 13 and 14 was retraced. The corner of sections 13, 14, 23 and 24, and the closing corner of sections 13 and 24 were both recovered and remonumented. Original bearing trees remained at both corners. Careful and complete search was made for any remaining conclusive evidence of the original 1/4 section corner monument and bearing trees. None was found.

Note: The following pages contain the contents of Figure2a and Figure 2b – Mining Location Notices

NOTICE OF MINNING LOCATION

PLACER CLAIM

TO WHOM IT MAY CONCERN:

This Placer Mining Claim, the name of which is the Earl Collins Placer Mining and Sand Claim, No.1, situate on lands belonging to the United States of America, and being a form of valuable mineral deposit other than in veins or lodes of quartz or other rock in place, was entered upon and located for the purposes of exploration and purchase by me E. E. Collins, a citizen of the United States and a resident of the State of Arizona, on the 16th, day of May, 1938.

I claim eighteen and sixty five one hundredths (18.65) acres thereof and have marked the same at the ground as follows:

Beginning at Corner No.1, from which the quarter corner between sections 13 and 24, T. 23 N., R. 7 E., G. & S. R. B. & M. Arizona bears North 70 degrees East, 283 feet; thence South 64 degrees 44 minutes north 6 degrees 07 minutes west, 543.0 feet to corner No. 3; thence north 10 degrees 12 minutes west, 756.7 feet to corner No.4; thence south 67 degrees 42 minutes west 1336.0 feet to corner No.1, the place of beginning and containing 18.65 acres more or less.

All done under the provisions of the Revised Statutes of the United States and the laws of the State of Arizona.

Dated and posted on the grounds this 11 day of June, 1938.

Earl E. Collins

Recorded at the request of F. M. Gold
June 13th, A. D. 1938 at 4:00 o'clock P. M.
Marie Gregg, County Recorder.

Placer Claim

To Whom It May Concern:

This Placer Mining Claim, the name of which is the Earl Collins Placer Mining and Sand Claim, No.2, situate on lands belonging to the United States of America, and being a form of valuable mineral deposit other than in veins or lodes or quartz or other rock in place, was entered upon and located for the purposes of exploration and purchase by me E. E. Collins, a citizen of the United States and a resident of the State of Arizona, on the 16th., day of May, 1938.

I claim eighteen and sixty seven one hundredths, (1867) acres thereof and have marked the same on the ground as follows:

Beginning at corner No.1, from which the quarter corner between sections 13 and 24 T. 23 N., R. 7 E., G. & S. R. B. & M, Arizona, bears north 70 degrees east, 283 feet; thence south 10 degrees west, 480 feet to corner No.2; thence south 50 degrees east, 480 feet to corner No.3; thence south 56 degrees east, 500 feet to corner No.4; thence north 60 degrees east, 800 feet to corner No.5; thence north 64 degrees 44 minutes west, 1548.2 feet to corner No.1, the place of beginning and containing 13.67 acres more or less.

All done under the provisions of the Revised Statutes of the United States and the laws of the State of Arizona.

Dated and posted on the ground this 11th day of June, 1938.

Earl E. Collins

Recorded at the request of F. M. Gold
June 13th, A. D. 1938 at 4:00 o'clock P. M.
Marie Gregg, County Recorder.

NOTICE OF MINING LOCATION

PLACER CLAIM

TO ALL WHOM IT MAY CONCERN:

This Placer Mining Claim, the name of which is the Kincanon No.1 Placer Mining Claim, situate on lands belonging to the United States of America, and being a form of valuable mineral deposit other than in veins or lodes of quartz or other rock in place, was entered upon and located for the purposes of exploration and purchase by Roy E. Kincanon, a citizen of the United States the undersigned, on the 18th day of May, 1943.

I claim 17 acres thereof, and have marked the same on the ground as follows: Beginning at a point which bears N. 70° W., 283 feet from the South 1/4 corner of Section 13, T. 23 N., R. 7 E. G. & S. R. B. M. thence N. 9° W., 486.7 feet, thence N. 67° 42' E., 1000 feet, thence N. 42° 18' E., 400 feet, thence S. 55° 30' E. 243 feet, thence S. 1° 10' E. 167 feet, thence S. 37° 32' W. 233.9 feet, thence S. 67° 42' W. 1336' to the place of beginning, at a Post in Stone Monument (post, stone or other monument) where this notice is posted; containing 17 acres, all in Sugar Loaf Mt. Mining District, in the County of Coconino in the State of Arizona, about 1 mile in a westerly direction from the divide on Highway 89. All done under provisions of Chapter Six, of Title XXXII, of the Revised Statutes of the United States, and of an Act of the General Assembly of Arizona, entitled "An Act to Revise and Codify the Laws of the Territory of Arizona," approved March 16, 1901.

Dated and Posted on the Ground this 18 day of May, 1943.

Roy E. Kincanon

NOTE. -If the location is upon surveyed lands, the claim must conform to such survey by rectilinear subdivisions.

Recorded at the request of Roy E. Kincanon
May 18th, A. D. 1943 at 4:00 o'clock P.M.
Marie Gregg, County Recorder -

NOTICE OF MINING LOCATION
LODE CLAIM

TO ALL WHOM IT MAY CONCERN:

This mining Claim, the name of which is the Fisher No. 1 Mining Claim, situate on lands belonging to the United States of America, and in which there are valuable mineral deposits, was entered upon and located for the purposes of exploration and purchase by D. W. Fisher (a citizen of the United States)the undersigned, on the 9th day of June, 1943.

The length of this claim is one thousand feet, and I claim two hundred feet, in an easterly direction, and eight hundred feet in a westerly direction, from the center of the discovery shaft, at which this notice is posted, lenqthwise of the claim, together with three hundred feet in width of the surface grounds, on each side of the center of said claim. The general course of the lode deposit and premises is from the East to the West.

The claim is situated and located in Coconino Mining District, in Coconino County, in the State of Arizona, about seventeen miles in a North Easterly direction from Flagstaff and one and one half miles in a Westerly direction from the divide on Highway 89. The claim is located in a mountain known as Sugar Loaf.

The surface boundaries of the claim are marked on the ground as follows: Beginning at a point which bears N. 45°w. (Approximately) 500 feet plus or minus from the South 1/4 corner of Section 13, T. 23 N., R. 7 E., G & S. R. B. M. which point is in an Easterly direction two hundred feet from the discovery shaft (at which this notice is posted), being in the center of the East end line of said claim; thence Northerly 300 feet to a 2x2 Redwood post, being the North East corner of said claim; thence Westerly one thousand feet to a 2x2 Redwood Post, being the North East corner of said claim; thence Westerly one thousand feet to a 2x2 Redwood Post, being at the Northwest corner of said claim; thence South 300 feet to a 2x2 Redwood Post at the center of the West end of said claim; thence southerly 300 feet to a 2x2 Redwood Post being at the Southwest oornor of said claim; thence Easterly 1000 feet to a 2x2 RedwoodPost at the Southeast corner of said claim; thence Northerly 300 feet to the place of beginning.

Dated and posted on the ground this 9th day of June, 1943.

D. W. Fisher

Recorded at the request of D. W. Fisher
June 10th, A. D. 1943 at 2:40 o'clock P. M.
Marie Gregg County Recorder
Fern Otteson, Deputy.

NOTICE OF MINING LOCATION

PLACER CLAIM

TO ALL WHOM IT MAY CONCERN:

This Placer Mining Claim, the name of which is the Fisher No. 1 Placer Mining Claim, situate on lands belonging to the United States of America, and being form of valuable mineral deposit other than in veins or lodes of quartz or other rock in place, was entered upon and located for the purposes of exploration and purchase by D. W. Fisher, a citizen of the United States, the undersigned the 6th day of July, 1943.

I claim 20 acres thereof, and have marked the same on the ground as follows: Beginning at Corner No.1, which is a monument of stone and which is a point on the section line between said Sections 13 and 24, 95.9 feet west of the One Quarter Section Corner common to said sections 13 and 24; thence south 23°35' East, 127 feet to Corner No.2, a monument of stone which is a point on the West line of Collins No. 2 Placer Claim; thence South 7°10' West, along said West line of Collins No.2, a distance of 350 feet to Corner No.3, which is a monument of stone and which is a point 87 feet from the Corner No. 2 of Collins No.2, where this notice is posted; thence West 1045 feet to Corner No.4, a monument of stone; thence North 463.7 feet to Corner No.5, a monument of stone, and which is a point on the Section line between said sections 13 and 24; Thence North 375 feet to Corner No.6, a monument of stone; thence East 875 feet to Corner No.7, a monument of stone which is a point on the westerly line of Silver Bell Lode Claim 62 feet southerly from the Northwest corner of said Silver Bell Claim; thence South 23°35' East along the westerly line of said Silver Bell Claim, 407 feet to the place of beginning, and containing 20 acres, more or less, all in Coconino Mining District, in the County of Coconino, in the State of Arizona, about 17 miles in a Northeasterly direction from the town of Flagstaff and 1-1/2, miles in a westerly direction from the divide on Highway 59.

All done under the provisions of Chapter Six, of Title XXXII, of the Revised Statutes of the United States, and of an Act of the General Assembly of Arizona, entitled 'An Act to Revise and Codify the Laws of the Territory of Arizona,' ~ March 16, 1901.

Dated and Posted on the ground this 6th day of July, 1943.

D. W. Fisher

Recorded at the request of D. W. Fisher
August 10th, A. D. 1943 at 2:30 o'clock P.M.
Marie Gregg, County Recorder
Fern Otteson, Deputy

The original field notes of the line between sections 13 and 24 read in part:

Chs.	East on a true line bet. secs. 13 and 24 Var. 15°06' East. Over mountainous heavily Timbered land. Descend 400 ft.
9.00	Foot of descent in bed of ravine, course S. 40° E. Ascend 60 ft. to
13.00	Top of ascent on ridge, brs. N. and S. Descend 300 ft.
26.40	Foot of descent in bed of ravine, course N. 60° E. Ascend 100 ft.
37.00	Top of ascent, on ridge course N.W. and S.E. Descend 100 ft. to
40.00	Set a limestone 19 x 19 x 12 ins., 15 ins. in the ground for 1/4 sec. cor. marked 1/4 on N. face, and raised a mound of stone 2 ft. high, 3 ft. base alongside, from which A pine 6 ins. diam brs. S. 2°16' E. 88 lks. dist. marked 1/4 S.B.T. A pine 8 ins. diam. brs. N. 46°33' W. 112 lks. dist. marked 1/4 S.B.T. Descend gradually over rolling land to
85.73	Intersect E. boundary of Tp. 7.79 chs. S. of cor. to secs. 13,18,19 and 24, as hereinbefore described, from which I obliterate all marks which refer to surveys on the W. At the point of intersection I set a malpais stone 19 x 14 x 13 ins, 15 ins. in the ground for closing cor. to secs. 13 and 24, marked C.C. on W. face, with 3 notches on N. and S. faces and raised a mound of stone 2 ft. high, 3 ft. base alongside, from which A pine, 12 ins. diam. brs. N. 30°20' W. 46 lks. dist. marked T. 23 N., R. 7 E., S. 13 B.T. A pine 24 ins. diam brs. S. 72°05' W. 93 lks. dist. marked T. 23 N. R. 7 E. S. 24 B.T. A pine 20 ins. diam. brs. S. 51°15' W., 106 lks. dist.

In 1966 the Collins and Kincanon claims were amended by their owners and application was made for a U.S. Mineral Survey of these claims. On October 3, 1966, order for M.S. No. 4650, the Collins No.1 and No. 2 claims was issued to J. William Waara, Mineral Surveyor. On November 8, 1966, order for Mineral Survey No. 4652, the Kincanon No.1 claim was also issued to Waara who proceeded with both Mineral Surveys in accordance with the amended locations. He made ties to the corner of sections 18 and 19 on the east boundary of T. 23 N., R. 8 E., which corner of sections 18 and 19 was not specified. The Mineral Survey plats are shown in figure 3. Waara did not tie to the 1/4 section corner of sections 13 and 24 on the grounds that there was no remaining evidence of the original monument.

The Waara surveys show the Collins and Kincanon claims to be entirely clear of conflict with the north-south center section line and the previously patented placers.

Fisher maintained that those claims were in conflict because he considered the 1/4 section corner between sections 13 and 24 to be marked by a monument at a different location.

This dispute concerns the validity of the retracement of the line between sections 13 and 24 and reveals the following facts:

1. A straight line between the corner of sections 13, 14, 23 and 24 and the closing corner of sections 13 and 24 bears S. 88° 20' E., 79.88 chains distant. The point for the 1/4 section corner of sections 13 and 24, based on strict single proportionate measurement falls at 37.27 chains.
2. About 500 feet in elevation below and at 26.50 chains from the corner of sections 13, 14, 23 and 24 along the straight line is a ravine which drains southeasterly. (Record 26.40 chains and course N. 60° E.)
3. At 36.00 chains is the top of ascent on a rounded spur which slopes northerly. The westerly side of the spur has been excavated and the top of the ascent may have been slightly farther west prior to excavation. (Record 37 chains)
4. At 40.70 chains the straight line intersects the foot of the slope and enters a canyon bottom which bears NE and S. 70 W.
5. At 41.675 chains corner No.4 of the Collins No.1 Placer, Mineral Survey No. 4650 bears North, 9 links distant.
6. At 79.88 chains is the closing corner of sections 13 and 24.

At a point 0.927 chains east and 0.201 chains south from the point for the 1/4 section corner of sections 13 and 24, as determined by single proportionate measurement, is a 1 1/2-inch diameter iron pipe with an iron cap marked for the 1/4 section corner of sections 13 and 24. The pipe, which has been driven firmly into the ground, is not rusted. There is no firm evidence to indicate long it has been in this position. This iron pipe is referenced by a ponderosa pine, 36 inches diameter, N. 81/4° E., 34 links distant with the scribe marks 1/4 S13 BT on an open blaze. It is also referenced by a ponderosa pine, 25 inches diameter, S. 72 1/4 ° E., 16 links distant, with the scribe marks 1/4 S24 BT, on an open blaze. A careful ring count indicates that these two bearing trees were blazed about the year 1957 to 1959.

A 1/2 inch steel rod bears N. 88 ° 15' W., 1.448 chains distant (95.6 feet) from the iron pipe and is driven firmly into the ground.

The true point for corner No.4 of the Collins No.1 Placer, Mineral Survey No. 4650 bears N. 87° 19' E., 3.484 chains distant (229.9 feet) from the iron pipe. This point is monumented with the remains of a wooden post which has been cut off below the ground surface by a bulldozer.

Preliminary Statement of the Problem

A retracement of the mile in question shows that some of the Topography fits the original calls in the first half mile. No other direct evidence of the original monument remains.

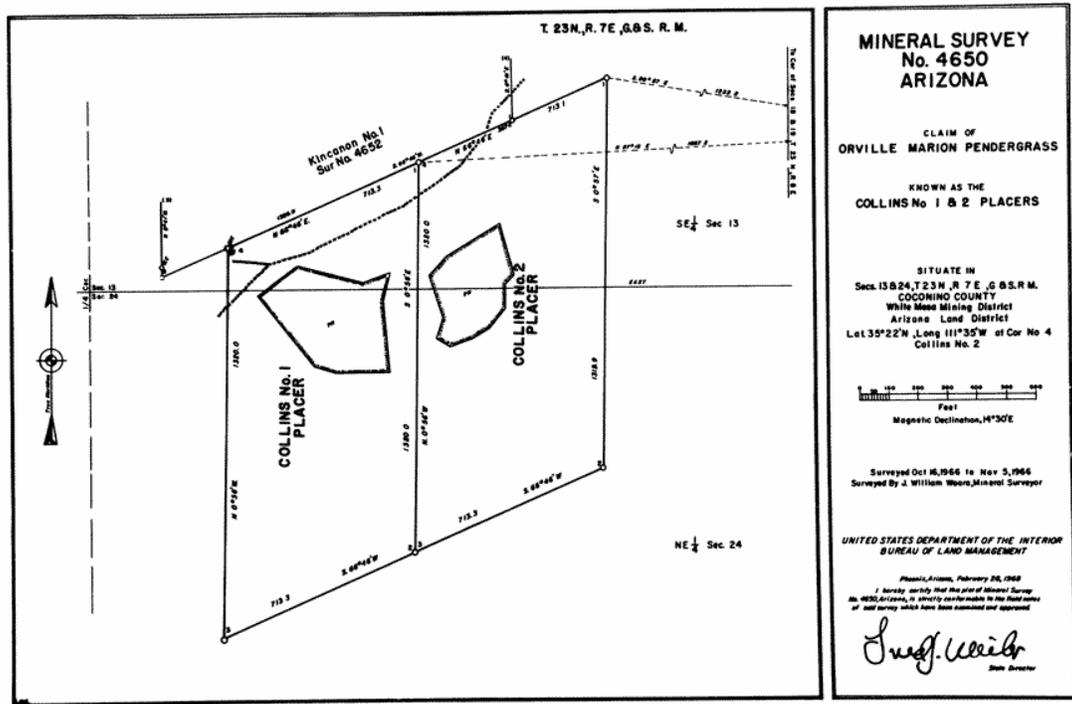
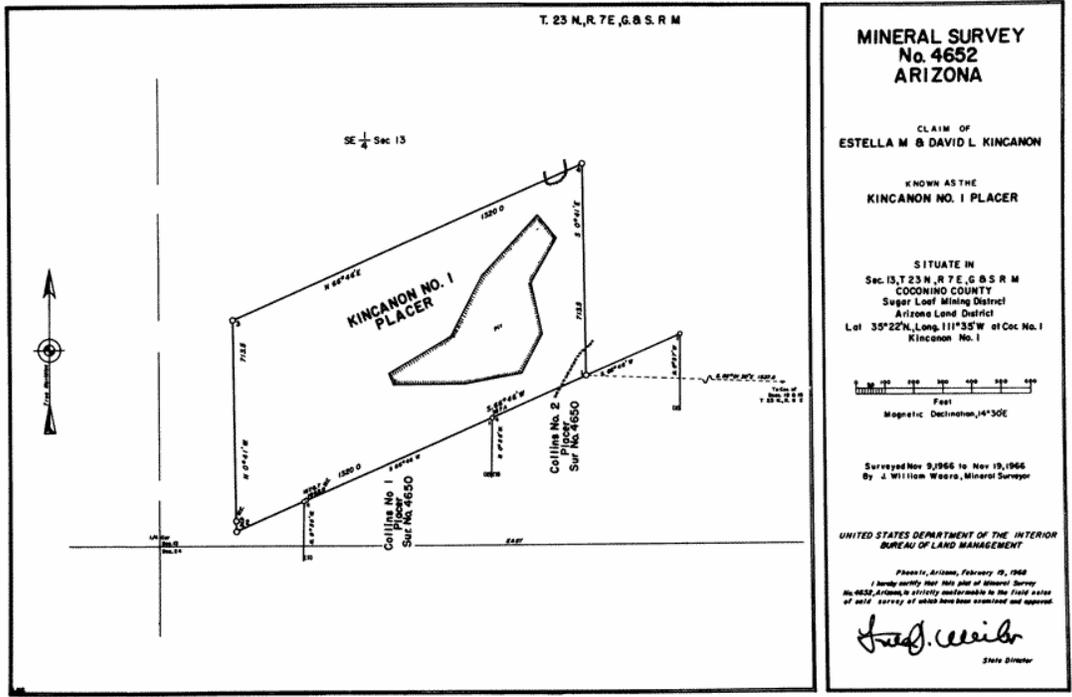
Collateral evidence of the corner location is the only remaining method available for restoration of the 1/4 section corner. The surveyor must evaluate:

1. Testimony of adjacent owners and their surveyors.

2. Testimony of disinterested parties who may have knowledge of the corner.
3. Ties by private surveyors.
4. Ties by mining location notices.

The original corner of sections 13, 18, 19 and 24 is now an angle point controlling the range line, with the closing corner of sections 18 and 19, 0.80 chains northerly and the closing corner of sections 13 and 24, 7.45 chains southerly (Lampport record) therefrom.

Upon retracing the Fisher Placer and Collins No.2 locations, corner No.3 of the Fisher Placer was recovered, monumented with an 8x8 inch square wood post with nails driven into it forming the letters and numbers for corner No.3. At a point 87 feet distant on a bearing of about S. 10° W., from the wood post was an old mound of stone with an unmarked round wood post in the center.



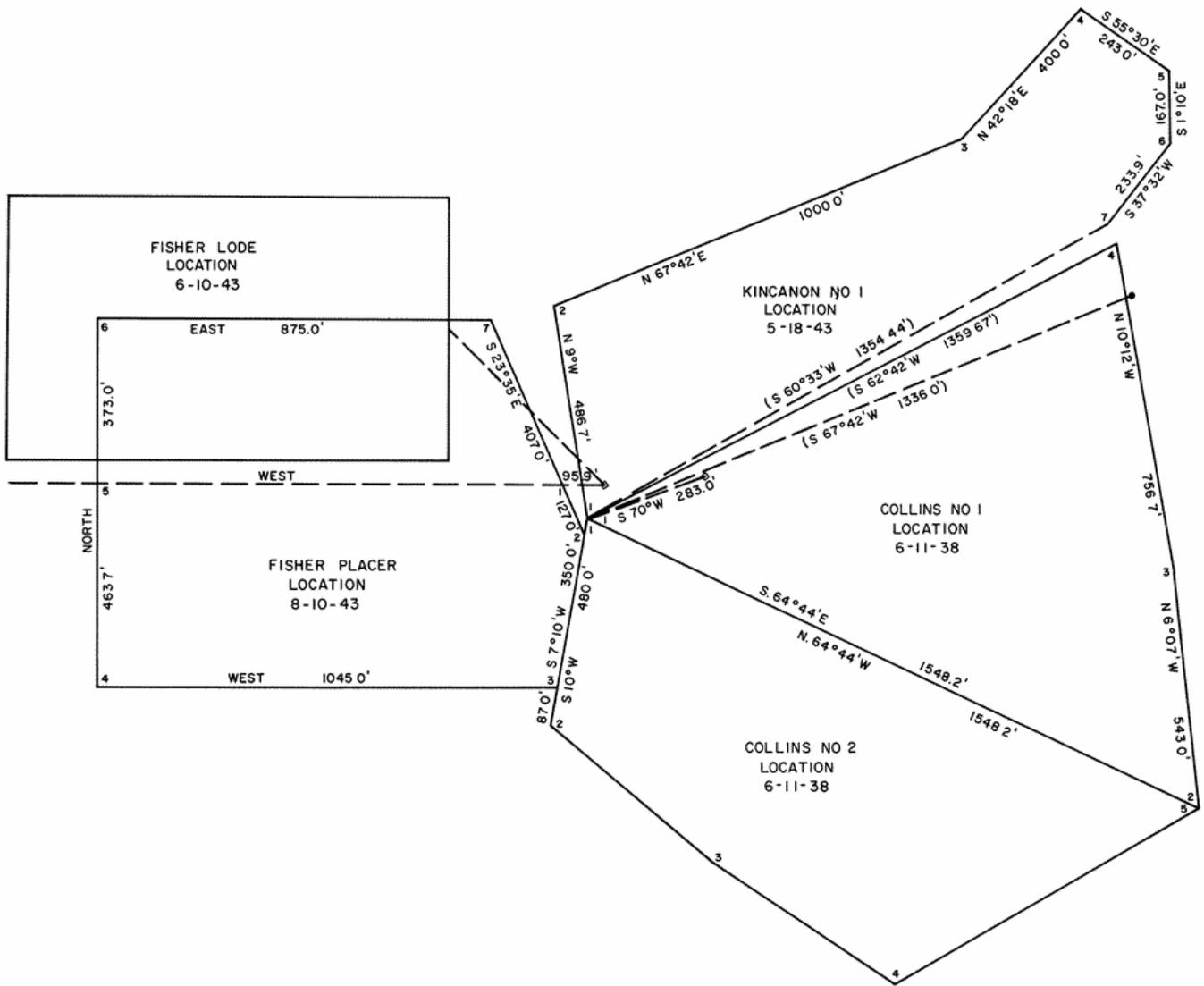


Figure 4 - Sketch of Combined Data

Regulations

This survey illustrates the application of sections 6-25 to 6-30, Dependent Resurveys, of the Manual of Surveying Instructions, 1973.

Amended Information

Statements made in writing were examined to determine collateral evidence.

The principal points were made in a letter from Mineral Surveyor Waara and in affidavits from attorney Hale C. Tognoni, Professional Engineer Clyde M. Etter, and E.R. Traggitt, Registered Professional Engineer and mineral examiner for the Forest Service. Letters from Estella M. Kincanon and Orville M. Pendergrass, owners of the Kincanon and Collins claims respectively, were also used.

Mr. Waara contended that the iron pipe and bearing trees (described above) were too new, not the original 1/4 section corner and were fictitious; that 1/4 section corner used for the ties in the Collins and Kincanon location descriptions was located at corner No.4 of the Collins No.1 Placer as that corner appears on Mineral Survey No. 4650; and that all the claims, including the Fisher claims had been tied to that position. Waara strongly advocated restoring the ¼ section corner by single proportionate measurement methods.

Mr. Tognoni's affidavit contains many exhibits including sketch maps of the claims (none are recorded surveys) and pictures of the iron pipe and bearing trees. The main points of the affidavit are:

1. Tognoni had recommended that Mr. Fisher employ Harvey W. Smith, Registered Engineer and Deputy Mineral Surveyor to survey the Fisher claims for patent. He stated that Smith plotted the location notices and made a plat of the amended claims, all using the iron pipe for position of the ¼ section corner. Smith's plat was shown as an exhibit and is dated August 23, 1959.
2. Tognoni stated he had visited the iron pipe 1/4 section corner on many occasions, as both an attorney and professional engineer, on behalf of various clients and for various purposes and that it was the only valid corner position.

Mr. Etter's affidavit is shown in full in figure 5. The claims in Item 2, the "Christenson Claims," are actually the Collins claims which were purchased by Christensen who later sold them to Pendergrass. Item 5, Kincanon amended to legal subdivision on August 11, 1966 but amended again to "metes and bounds" on October 19, 1966. Also presented, but not as part of the affidavit, was a description of the "Fisher No.1 Placer Claim," dated 7-19-43, and signed by Clyde M. Etter. The signatures are the same.

Figure 6 is the affidavit of Mr. Traggitt, mineral examiner for the Forest Service.

AFFIDAVIT OF CLYDE M. ETTER

STATE OF ARIZONA)
) ss.
County of Yavapai)

CLYDE M. ETTER, being duly sworn, deposes and says that he is a citizen of the United States and resides at Sedona, Arizona, that he is an Arizona Registered Professional Engineer 41977 and that he has examined the affidavit of Hale C. Tognoni dated July 6, 1967, the maps and attached pictures thereof concerning the quarter corner common to Sections 13 and 24, T. 23 N., R. 7 E., G&SRB&M, Coconino County, Arizona.

That the quarter corner as pictured in those pictures is the same quarter corner from which he made the following surveys:

1. May 29. 1938 for Earl Collins. He identified the outside' corners of the two Collins claims which are now owned by Mr. Pendergrass. That it was probably Mr. Collins who first took him to said quarter corner.

2. April, 1942 for F. L. Christianson. He surveyed the Christianson #1 and #2 claims from said quarter corner.

3. May 19. 1943 for R. E. Kincanon. He surveyed the Kincanon #1 claim from said quarter corner.

4. July 19. 1943 for Del Fisher. He surveyed the Fisher lode and Fisher placer claims from said quarter corner.

5. August 11. 1966 for Estella Kincansn. He returned to said quarter corner and surveyed the Kincanon #1 claim for Mrs. Kincanon and laid out the legal subdivision area for the amended Kincanon claim.

That at various times he had identified surrounding section corners in the area and then surveyed from those corners to said quarter corner.

That the pipe that now exists on the ground was there when he visited said corner in 1966.

That in 1938 when he visited said corner a limestone marker measuring 19" x 19" x 12" was in place where the pipe now stands.

That in 1942 and 1943 when he visited said quarter corner a pile of rocks layover the area where the stone was in place in 1938.

That the same two witness trees pictured were there in 1938, 1942, 1943 apd 1966.

That until Mr. Waara telephoned him in the fall of 1966 and stated that the corner was not proper, no one had questioned that said corner was not the true quarter corner.

That in his opinion this is a proper location of the original quarter corner common to Sections 13 and 24, T. 23 N., R 7E.

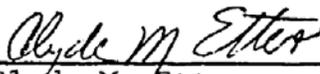

Clyde M. Etter

Figure 5 -Etter Affidavit

AFFIDAVIT OF E. ROLAND TRAGITT IN SUPPORT OF QUARTER CORNER
COMMON TO SECTIONS 13 and 24, T. 23 N., R. 7 E.

STATE OF NEW MEXICO)
) ss.
County of Bernalillo)

E. ROLAND TRAGITT, Arizona Professional Engineer #2613, being first duly sworn, deposes and says that he is a mining engineer for the U. S. Forest Service in the Albuquerque, New Mexico, Regional Office and that he is personally acquainted with the geographic location of what is known as the quarter corner common to Sections 13 and 24, T. 23 N., R. 7 E., G&SRB&M, Coconino County, Arizona.

That he has examined the affidavit of Hale C. Tognoni dated July 6, 1967, the maps and affidavits and pictures thereof concerning said quarter corner.

That the quarter corner pictured in those pictures is the same quarter corner which was pointed out to him by the local forest ranger as being said quarter corner.

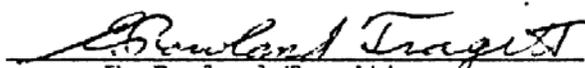
That he examined the Fisher 1 and Fisher 1(A) mining claims to determine the validity of same for patent in the fall of 1957.

That at that time upon his visit to the claim with said forest ranger, he went to said quarter corner and followed the stakes of Harvey W. Smith, Deputy Mineral Surveyor around the outside of the claim.

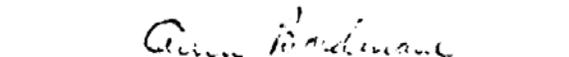
That at that time, it appeared to be no conflict as to the location of said quarter corner and to his knowledge, was accepted as the proper location of said quarter corner in the community.

That until the fall of 1966, when Mr. Waara's survey was made, his first mineral survey from said quarter corner, and raised the question of the location of said quarter corner, that he had never known that anyone claimed any other location of said quarter corner.

That in his opinion, said quarter corner's location is the accepted location of said quarter corner.


E. Rowland Tragitt

Subscribed and sworn to before me this 24th day of July, 1967.


Notary Public

My Commission Expires:
March 14, 1971

Figure 6 – Tragitt Affidavit

Mr. Pendergrass makes no contention in his letter as to the actual location of the 1/4 corner, only that it isn't "nailed down" and he is applying for patent under the "Gulch Placer" method.

Mrs. Kincanon states in her letter: "My knowledge of this described corner above (1/4 corner) would be located at the position of the N.W. corner of the Collins No.1 claim (corner No. 4, Mineral Survey 4650-Ed.) a common tie corner to the Collins claims, Fisher claims and the Kincanon No.1 claim, situated down on the flat territory and not on the steep side hill. This is the common tie corner which has been used since 1937, by Mr. Clyde Etter, and was used in our survey, also the Mineral Survey done by Mr. Waara.

"My first knowledge of the 1 1/2 inch iron post, marked 1/4 section corner of sections 13 and 24, situated on the side hill, was the early spring of 1960."

Next, the collateral evidence using prior surveys by private surveyors was to be considered. These surveys were made for the purpose of location of mining claims.

An examination of the location notices revealed that:

1. The Collins No.2, closes nearly perfectly in latitude but miscloses 8.4 feet in departure.
2. The Collins No.1 miscloses about 117 feet in latitude and 28 feet in departure.
3. If the line 4-1 of the Collins No.1 is calculated as a closing course it would be S. 62° 42' W., 1336 feet.
4. The Kincanon claim miscloses by about 159 feet in latitude and 57 feet in departure.
5. The Fisher claims both close flat.
6. The description of the Collins and Kincanon claims "tied" to a common point described as a 1/4 section corner.
7. The Fisher Placer was tied to a different 1/4 section corner location, about S. 84 15' W., 228 feet from the Collins - Kincanon 1/4 section corner location. (Depending on the bearing of line 1-2 of the Collins No.2).

From the descriptions it appears that the Collins claims were prepared by a surveyor because of the bearings of the closing courses which are given in minutes. Such preparation is indicated by the closures, if due regard is given to an error of numbers in the line 4-1 of the Collins No.1, i.e., 67° instead of 62°. The line 7-1 of the Kincanon claim coincides exactly with line 4-1 of the Collins No.1 in the descriptions, indicating they were common. The N. 70° W., 283 feet instead of S. 70° W., 283 feet from the 1/4 section corner to corner 1 of the Kincanon was another error. The large misclosure and description errors indicate that the Kincanon claim may not have been staked by a surveyor or at least the description may not have been written by a surveyor. There is no requirement that claim locations be surveyed to be valid.

The Fisher claims both close flat. The Fisher Placer is limited by calls to line 1-2 of the Collins No.2 and a boundary of the "Silver Bell Claim." It appears nearly certain that the Fisher Placer was described by a surveyor, and may have been surveyed when staked on the ground. The claims are plotted in figure 4.

Final Statement of the Problem

After all the available evidence and testimony was assembled, the surveyor had to decide between these possible solutions:

1. Restore the 1/4 section corner at the position of corner No.4, Collins Placer No.1, Mineral Survey No. 4650, as contended by the Collins and Kincanon locations owners.
2. Restore the 1/4 section corner at the 1 1/2 inch iron pipe and bearing trees. The monument was probably set during the survey of the Fisher claims but there is no evidence available to support that.
3. Restore the corner by single proportionate measurement methods on a straight line.

Solution

The 1 1/2 inch diameter iron pipe was accepted and monumented for the following reasons:

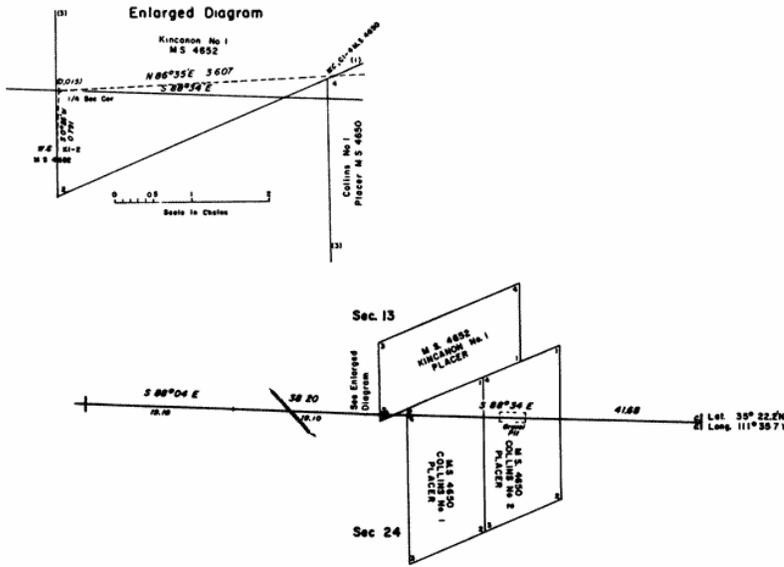
1. It more nearly fits the topography given in the original field notes.
 - a. The ravine called at 26.40 chains fits.
 - b. The iron pipe is 2.20 chains east of the top of an ascent. The record called for 3.00 chains east. The "Collins-Kincanon" position is 5.67 east of the top.
2. Etter's affidavit and his signed description of the "Fisher Placer," dated 7-19-43, contain obvious contradictions. If he surveyed all of the claims as stated then he must have used two different positions for the 1/4 section corner, but he must have used the 1 1/2 inch diameter iron pipe position for the Fisher survey.
3. The iron rod 95.6 feet westerly from the iron pipe which monuments corner No. 1 of the original Fisher Placer fits the Fisher location description.

The old mound of stone with an unchains marked round wood post in the center at a point S. 100 W., 87 feet distance from the post with nails in it (corner No. 3 of the Fisher Placer), was accepted as corner No.2 of the Collins No.2. These two posts verified the iron rod at corner No.1 of the Fisher Placer.

4. The iron pipe was accepted and used as the basis for approval of the Fisher Patent in 1959 and was not "protested" until 1966.

The field notes and plat were submitted to the Washington Office and were accepted April 18, 1969. The plat is shown in figure 7.

TOWNSHIP 23 NORTH, RANGE 7 EAST, OF THE GILA AND SALT RIVER MERIDIAN, ARIZONA
DEPENDENT RESURVEY



History of earlier surveys is contained in the field notes

This plat represents a retracement and reestablishment of a portion of the subdivisional lines, designed to restore the corners in their true original locations according to the best available evidence

Survey executed by Cadastral
Cadastral Surveyor, from December 14, 1966, to
October 12, 1967, under Special Instructions
dated November 30, 1966, for Group No. 477,
Arizona

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington, D C April 18, 1969

This plat is strictly conformable to the approved field notes, and the survey, having been correctly executed in accordance with the requirements of law and the regulations of this Bureau, is hereby accepted.

For the Director

Chief, Division of Cadastral Survey