



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

SOLICITOR'S MEMORANDUM 1/21/81

JAN 21 1981

MEMORANDUM

TO: Director, Bureau of Land Management (720)
FROM: Assistant Solicitor, Branch of Realty (DER)
SUBJECT: BLM's Survey Authority with respect to Acquired Lands

This is in reply to your September 25, 1980 memorandum requesting our opinion with regard to the following questions: (1) Under what conditions does the Bureau of Land Management (BLM) have the authority to resurvey federal acquired land; (2) Does state law govern the execution of field and office work pertinent to the resurvey by BLM of the acquired land?

We are of the opinion that BLM may resurvey federal acquired land under the following conditions: (1) If a federal statute authorizes or directs BLM, or the Secretary of the Interior (hereinafter the "Secretary") acting through BLM, to resurvey the acquired land; (2) If the acquired land is, by law, denominated public land under the management of BLM when title to the land is vested or revested in the United States; (3) If the Secretary lawfully delegates to BLM the authority of the Secretary to resurvey acquired land under the Secretary's jurisdiction; or (4) If another federal agency having management authority over acquired land, requests BLM to resurvey the land.

We are also of the opinion that BLM surveyors are not required to follow survey standards prescribed by state law, so long as the BLM resurvey will not affect the bonafide rights of adjacent property owners. If, on the other hand, the rights of adjacent property owners could be affected, the survey standards required by state law should be complied with in executing a resurvey of acquired land.

The following examples will serve to substantiate or illustrate the conclusions that are set forth in our response to your first question. The Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1701 et seq., provides in part:

The term "public lands" means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except--

- (1) lands located on the Outer Continental Shelf;
- and (2) lands held for the benefit of Indians, Aleuts, and Eskimos.

(Emphasis added) 43 U.S.C. § 1702(e).

FLPMA then directs that:

As funds and manpower are made available, the Secretary shall ascertain the boundaries of the public lands; provide means of public identification thereof including, where appropriate, signs and maps; and provide State and local governments with data from the inventory for the purpose of planning and regulating the uses of non-Federal lands in proximity of such public lands.

(Emphasis added) 43 U.S.C. § 1711(b).

As the Secretary's duty "to ascertain" the public land boundaries clearly implies the necessity of land resurveys in appropriate cases, and as the "public lands" are those lands, including acquired lands, which are administered by the Secretary through BLM, the responsibility for discharging the Secretary's surveying duties as to those acquired lands falls squarely upon BLM, in the absence of any law or lawful directive to the contrary, none of which are known to exist. 235 DM 1.1.

In some instances, Congress has mandated that acquired land shall be deemed to be public land for administrative purposes and, therefore, like other public lands under BLM's management, the "acquired" public land will be subject to resurvey by BLM. E.g., 43 U.S.C. § 1715(c); 43 U.S.C. § 772.

BLM may also resurvey acquired lands under the Secretary's jurisdiction, other than those administered by BLM, if the Secretary lawfully delegates resurvey authority, exercised by him with respect to such lands, to BLM. Reorganization Plan No. 3 of 1950, 5 App. U.S.C. at 742.

Finally, the expertise and services of BLM may be lawfully procured in order to resurvey acquired land that is administered either by the Secretary, acting through another office or bureau of this Department, or by the head of any other federal department or agency. In this regard, the Economy Act provides:

Any executive department or independent establishment of the Government, or any bureau or office thereof, if funds are available therefor and if it is determined by the head of such executive department, establishment, bureau, or office to be in the interest of the Government so to do, may place orders with any other such department, establishment, bureau, or office for materials, supplies, equipment,

work, or services, of any kind that such requisitioned Federal agency may be in a position to supply or equipped to render....

(Emphasis added) 31 U.S.C. § 686(a).

Thus, a federal agency such as the Army Corps of Engineers or the National Park Service--to take but two examples--can, after appropriate clearance by the head of the agency, request BLM to resurvey any acquired land of the United States over which the agency exercises management authority.

Turning to your second question, it is settled law that the United States may survey what it owns and thereby establish and reestablish boundaries, but what the government does in this regard is for its own information and cannot affect the rights of owners on the other side of an existing boundary. (United States v. State Investment Co., 264 U.S. 206, 212 (1924) (Corrective resurvey of public land boundary), citing Lane v. Darlington, 249 U.S. 331, 333 (1919). See, also, United States v. Weyerhaeuser Co., 392 F.2d 448, 451-452 (9th Cir., 1967); United States v. Reimann, 504 F.2d 135, 138 (10th Cir. 1974). The rule is firmly embedded in federal statutory law pertaining to the resurvey of the original boundaries of the remaining public lands:

The Secretary of the Interior may as of March 3, 1909, in his discretion cause to be made, as he may deem wise under the rectangular system on that date provided by law, such resurveys or retracements of the surveys of public lands as, after full investigation, he may deem essential to properly mark the boundaries of the public lands remaining undisposed of: Provided, That no such resurvey or retracement shall be so executed as to impair the bonafide rights or claims of any claimant, entryman or owner of lands affected by such resurvey or retracement.

43 U.S.C. § 772.

This statute or, to be more precise, the proviso found in it, protecting private property rights that are governed by state law, implicitly recognizes that state law controls the manner in which BLM resurveys of original survey lines, established under the Public Land Survey System, are to be executed, albeit in instances only where the existing boundary line separates federally owned land from non-federal or privately owned land. (United States v. Doyle, 468 F.2d 633, 636 (10th Cir. 1972) (BLM dependent

resurvey of national forest boundary in Colorado requiring restoration of a lost quarter corner). 1/ However, in its review of the applicable law, the court in Doyle emphasized the importance of the BLM survey Manual and the fact that the Manual has been recognized in state court decisions as "a proper statement of surveying principles." Id., at 636-637, n.4. It is also important to note that both the Ninth and the Tenth Circuit Courts of Appeal have adopted the view, first enunciated in the state courts, that a resurvey is evidence, although not conclusive evidence, of the location of the original line being resurveyed and have expressly applied this generally accepted rule to the evidentiary status to be given to BLM dependent resurveys. Id. at 636; United States v. Hudspeth, 384 F.2d 683, 688 n.7 (9th Cir. 1967).

In the case of BLM resurveys of boundary lines originally established by private surveys in accordance with state law, this Department has held previously that a BLM resurvey must be executed in accordance with the survey standards required by state law. The Indian Community, 3 IBLA 285, 291 (1971).

In summary, then, as to your second question, we are of the opinion that federal (BLM) survey standards will apply to acquired land resurveys provided that the resurvey is made solely for the information of the United States, or an agency thereof, and is not intended to affect the valid existing rights of adjoining owners. If, on the other hand, an existing boundary is retraced, or is reestablished by a resurvey, for the purpose of fixing geographically the legal boundary between federally acquired property and adjoining privately owned property, the survey standards recognized by state law will govern the execution by BLM of the requisite survey work. 2/

1/ The conclusion that state law governs the survey standards which apply to the execution of federal resurveys of previously established private property boundary lines does not in any way alter our previous advice to the effect that BLM surveyors are not subject to state licensing requirements. See, Memorandum Opinion, dated September 27, 1977, from the Associate Solicitor, Division of Energy and Resources, to the Director, BLM.

2/ It is our understanding that the plats and field notes of acquired land surveys are retained by BLM or the federal managing agency and that none of these documents are filed with state or local land recording offices. Consequently, we have not considered the question of the need to comply with state recording requirements in connection with the preparation of the resurvey documents.

Since your questions were not posed in the context of given factual situations, we have responded in general terms. The particulars of a given situation might conceivably lead to a different legal analysis, although in all likelihood the result would remain the same. See, for example, Wilson v. Omaha Indian Tribe, 442 U.S. 653 (1979).

If we may be of further assistance, kindly advise us accordingly.



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