PLS Corner Restoration

A Comparison of the 2009 BLM Manual & State Laws

Presented by:
John E. Freemyer, L.S.

MSPS Annual Conference
January 27, 2011

Some Basic Principles About The BLM Survey Manual

- It was primarily written for BLM surveyors
- It generally does not impact those locating patented land
- It includes interpretations of applicable federal law
- It is an excellent PLS related guideline
When Comparing the BLM Manual & State Laws

- State Laws is the primary authority for locating patented land
- Some State Supreme Court decisions differ from BLM Manual
- State Supreme Court has recognized BLM as expert authority

BLM Authority

The Bureau of Land Management assumes no control or direction over the acts of local and county surveyors in the matters of subdivision of sections, evaluation of evidence of corner locations, and reestablishment of lost corners or original surveys where the lands have passed into private ownership, nor will the BLM issue instructions in such cases.

BLM Manual § 3-135
Federal Statute versus BLM Interpretation

All corners marked in the surveys, returned by the Secretary of the Interior or such agency as he may designate, shall be established as the proper corners of the sections… 43 U.S.C. 752

Lost or obliterated corners of the approved surveys must be restored to their original locations whenever this is possible.
Sixth General Rule, BLM Manual § 1-29

Case Law Foundation

The boundaries, as established by the government surveyors, and returned to and accepted by the government, are unchangeable… It is well settled that mistakes in the surveys cannot be corrected by the judicial department… Great confusion and much litigation would ensue if judicial tribunals, state and federal, were permitted to interfere and overthrow the surveys.
Chan v. Brandt, 45 Minn. 93; 47 N.W. 461 (1890)

The acts of Congress prevails over land department (BLM) rules pursuant those acts, where there are inconsistencies.
Moser v. Doffner, 111 Minn. 464, 125 N.W. 275 (1910)
BLM Corner Classifications
Prior to 2009 Manual

**Existent Corner** – One that can be identified by evidence of the monument or accessories

**Obliterated Corner** – One with no remaining traces of the monument or accessories – but can it recovered beyond a reasonable doubt – by acts, testimony or acceptable record evidence

**Lost Corner** - One that cannot be determined beyond a reasonable doubt and can only be restored by reference to one or more interdependent corners

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BLM Corner Classifications
According to 2009 Manual

**Existent Corner** – One that can be identified by substantial evidence of the monument or accessories

**Obliterated Corner** – An existent corner with no remaining traces of the monument or accessories – but can be recovered by substantial evidence – by acts, testimony or acceptable record evidence

**Lost Corner** - One that cannot be determined by substantial evidence and can only be restored by reference to one or more interdependent corners
What is Substantial Evidence

More than a scintilla* of evidence but less than a preponderance** of evidence. BLM Manual § 6-11

Such evidence that a reasonable mind might accept as adequate to support a conclusion.
Black’s Law Dictionary

*Scintilla of evidence – a very insignificant or particle of evidence. Black

**Preponderance of evidence – that which as a whole shows the fact sought to be proved is more probable than not. Black

Burden of Proof
Minnesota Supreme Court

“It would seem to be settled in this jurisdiction that if, for any cause, the original post or monument has disappeared, its location can be ascertained by competent evidence, and if clearly and satisfactorily so established, the site of such location will govern and control as fully as if the original remained in position.”
Belt v. Mathiowitz, 72 Minn. 443; 75 N.W. 699 (1898)
Burden of Proof
Minnesota Supreme Court

“A lost corner is one whose location, as established by the government surveyors, cannot be found. If its location, though evidence of it on the ground is gone, can be determined satisfactorily by competent evidence, it is not a lost corner. The fact that evidence of the physical location of a corner cannot be seen, or no one who saw the marked corner is produced, does not necessarily make the corner a lost one. If evidence is such that the place where the corner was can be determined, it is enough.”

Goroski v. Tawney, 121 Minn. 189; 141 N.W. 102 (1913)
Lawler v. Counties of Rice & Goodhue, 147 Minn. 236; 180 N.W. 37 (1920)

Burden of Proof - Comparison

BLM
Substantial Evidence

State Supreme Court
Competent Evidence
Practical Comparisons

Occupation Considerations

It is not intended to disturb satisfactory local conditions with respect to roads, fences, and other evidence of use of occupancy. Something is needed in support of these locations. This will come from whatever intervening record there may be, the testimony of individuals who may be acquainted with the facts, and the coupling of these things to the original survey. BLM Manual § 6-41

An occupancy position should exercise a regular control upon the retracement only when it was placed with due regard to the location of the original survey, or agreement is so close as to constitute the best available evidence. BLM Manual § 6-42

County surveyor reported no section corners or quarter corners markers could be found – corner fence posts assumed to stand where the original government posts stood – knew of no method more accurate than to assume fence corner post corresponds with posts of government survey.

Court: With government field notes one would think that a surveyor would be able to verify assumed corners. Evidence was not very satisfactory as to the location of the old fences, perhaps because the lapse of time obliterates stakes and dulls memories. For 10 to 15 years fence post have been regarded as occupying the place of the original survey stakes. There was no question about the surveyor’s qualifications – his survey had proper foundation. Lenzmeier v. Ess, 199 Minn. 10; 270 N.W. 677 (1937)
Occupation Considerations

BLM

Something is needed in support of occupation – testimony or some other facts that ties occupation to original survey.

State Supreme Court

Occupation alone is not ideal in restoring obliterated PLS corners. Something should be used to verify occupation. Credibility of surveyor is important consideration.

Practical Comparisons

Common Report

The surveyor cannot abandon the record of the original survey in favor of an indiscriminate adoption of points not reconcilable with it. However, many situations will arise where locally accepted lines (corners) are in substantial agreement with evidence of the original survey, although without testimony or record evidence relating to the original survey. BLM Manual § 6-45

It is a recognized principle that the restoration of a corner may be influenced by the position of one or more existing claims. Where locations are found to have been established on good faith on evidence of the original survey – the position which cannot otherwise be determined by existing evidence of the original survey - such a point will then be recognized as the best available evidence of the true corner. BLM Manual § 6-48
Practical Comparisons

Common Report

The rule rests on necessity, better evidence of the boundary having ceased to exist, is justified on the theory that where – members of a community – are interested in a common boundary, they will know where it is, and their common assent will prove what they know.

Thoen v. Roche, 57 Minn. 135; 58 N.W. 686 (1894)

The location of obliterated section corner and quarter-section corners established by the U.S. government survey may be proved by reputation evidence.

Mpls. & St. Louis Ry. v. Ellsworth, 237 Minn. 439; 54 N.W. 2d 800 (1952)

Practical Comparisons

Corner Accessories

Allowances for ordinary discrepancies should be made in considering the evidence of a monument and accessories. Evidence of less than workmanlike care in original survey in compiling the record thereof has resulted in evidence not marching the record. Examples include erroneous dimensions --- to corner accessories. BLM Manual § 6-14
Practical Comparisons

Corner Accessories
A witness tree is not an established corner, but merely an object by means of which in connection with the field notes, if correct, the corner may be found.

Stadin v. Helin, 76 Minn. 496; 79 N.W. 537 (1899)

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2009 BLM Survey Manual
versus
State Laws

● Manual is a good reference and should be included in library

● BLM opinions do not circumvent State / Federal Laws

● State Laws are primary source for locating patented land

● State Laws properly used with BLM Manual is best approach