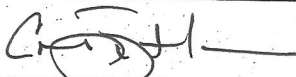


NARRATIVE COVER SHEET PURSUANT TO O.R.S. 209.250

Letter of opinion issued by the Bureau of Land Management regarding survey of private ownership located in the SW 1/4, SE 1/4, NE 1/4 and NW 1/4 of Section 33, Township 4 North, Range 10 West, W.M. in Clatsop County, Oregon.

See also sheets 1 through 6 of a Record of Survey recorded in conjunction with this narrative.

REGISTERED
PROFESSIONAL
LAND SURVEYOR



OREGON
NOVEMBER 13, 2012
CHRISTOPHER MICHAEL
BUTLER
86894PLS

EXPIRES: 12-31-13

BUTLER SURVEYING INC.



475 NW CHEHALIS AVENUE
P.O. BOX 149, CHEHALIS, WA 98532
360/748-8803 FAX 360/748-9319

BOOK 1 022



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Oregon State Office
P.O. Box 2965
Portland, Oregon 97208

IN REPLY REFER TO:

9631 (OR957)
Clatsop County, Oregon

JUN 10 2013

Chris Butler
Butler Surveying, Inc.
475 N.W. Chehalis Avenue
P.O. Box 149
Chehalis, Washington 98532

Dear Chris:

You ask how the Bureau of Land Management (BLM) would: 1) reestablish the quarter-section corner of sections 33 and 34, and 2) establish the center quarter-section corner of section 33, both in T. 4 N., R. 10 W., Willamette Meridian (W.M.), Clatsop County, Oregon.

This office assumes no control or direction over the acts of private surveyors. The following should not be construed as instructions to you. There is no Federal interest in the outcome. Our response is limited to the official Federal record and the information you have provided.

The history is:

- 1892, Manius Buchanan, U.S. Deputy Surveyor, surveys the south boundary of the township and a portion of the subdivisional lines. The SE1/4 of section 33 is protracted as containing 160 acres on the official plat.
- 1907, Cash Entry Certificate No. 7655 for Patent is granted to Henry M. Serr by the Oregon City Land Office for the NE1/4 of section 33.
- 1908, In Lieu Selection No. 11904 for Patent is granted to the Santa Fe Pacific Railroad Company for the SE1/4 of section 33.
- 1911, Fred Mensch, U.S. Transitman, surveys additional subdivisional lines and completes the survey of section 33 as shown on the official plat approved in 1912.
- 1960, W.A. Markham, PE, CS No. AA-4888, filed in Clatsop County.

1. Quarter-section corner of sections 33 and 34, T. 4 N., R. 10 W., W.M.

We agree with your conclusion. If the BLM were to reestablish the 1/4 section corner of sections 33 and 34 it would be at proportionate distance.

Before the *1902 Manual*, it was permissible to use the "recollection" of chainmen to record items of topography. Other surveyor accounts tell of topographical calls being memorized throughout the day and recited back to the party chief later. Thus, while a typical chaining procedure involving 11 chaining pins and a four-count tally included somewhat of safeguard against blunders, there was very little to protect against blunders with topographical calls. Experience has shown record topographical calls sometimes don't correlate good with the found position of original corners. While the corners themselves may have been established with care, sometimes the topographical calls on the same line are loose, measured only to the nearest chain, reversed along the line, taken on the random line, or completely fictitious.

The next problem with topographical calls is how to apply them. In this case the call at 41.00 chains is "Summit of Mt., 2000 ft high, bare sharp rocks, Desc'd - Leave windfall". Whereas you find the ridge to bear N. 22° E., the question becomes how to apply the call? Do you assume the error is due to chaining and starting at a single proportionate midpoint, move southerly 150 feet+/- until the topo call fits the ridge, setting the corner there? Or do you assume the discrepancy was due to the original surveyor's compass being out, in which case you start at midpoint and slide west until the ridge call fits? Or maybe it should be a combination of the two? Even if we believe the ridge call is rock solid, no clear best answer stands out with what to do with it.

2009 Manual §6-23, 6-24, 6-25, & 6-26 contain detailed discussion on the use of topographic calls as evidence in corner restoration. Quoting from §6-25, misapplication usually may be avoided by applying the following tests. We believe all three tests must be met to pass.

- (1) *The determination should result in a definite locus within a small area.*
- (2) *The evidence should not be susceptible of more than one reasonable interpretation.*
- (3) *The corner locus should not be contradicted by evidence of a higher class or by other topographic notes.* *2009 Manual* §6-25.

A reestablishment of the 1/4 section corner of sections 33 and 34 dependent on Buchanan's ridge call does not in our opinion pass the test. We also agree that since Markham's corner is now lost and there is no serious reliance on the Markham position, therefore there is no reason to use anything but the official record to reestablish the corner. Therefore, if the BLM were to reestablish the 1/4 section corner of sections 33 and 34, it would be at proportionate distance.

2. Center quarter-section corner of section 33, T. 4 N., R. 10 W., W.M.

We agree with your conclusion. If the BLM were subdividing section 33 we would subdivide the section normally.

Where an approved "fractional survey" with outlying areas protracted as surveyed, is followed by a "completion survey" of the remainder of the section, the decision as to how to subdivide usually boils down to whether the section is regular or fractional for subdivisional purposes. Generally if the results

of a normal subdivision of section agree relatively close with the results of a fractional approach (i.e. the normal approach adequately protects the fractional portion of the section), the section is termed "regular for subdivisional purposes" and is subdivided normally (i.e. straight line intersection).

Conversely, if normal subdivision of section methodology does not adequately protect the areas returned in the first survey, especially if private rights have been acquired based on the first survey, or if retracement reveals significant distortion in the section, or if the Land Office draftsman appears to have intended double corners, the section is termed "fractional for subdivisional purposes" and subdivided using different principles. Fractional subdivision of section principles can include broken center-of-section lines and double (and even triple) aliquot part corners. *2009 Manual* §1-29 "Fifth" gives the legal theory behind the fractional section. *2009 Manual* §3-120 provides the actual mechanics of subdivision.

In the case of section 33, Mensch was able to close against Buchanan's work within acceptable limits. This enabled Mensch to establish the quarter-section corners on the north and west boundaries of section 33 at positions where a normal section subdivision protects the previously returned SE1/4. Mensch's good closure against Buchanan's work enabled the plat to be drafted with a plan towards normal section subdivision. Therefore a normal subdivision protects the SE1/4 and gives the patentees of the other three quarters all they reasonably could have expected.

What's interesting in this situation, as you astutely point out, is the SE1/4 wasn't the first quarter of the section to be patented; the NE1/4 was. Problem is, like you say, how was it possible for the NE1/4 to be patented in 1907 when that quarter wasn't returned as surveyed on an official plat until 1912? Good question! In (1889) the Supreme Court had ruled:

"No portion of the public domain, unless it be in special cases not affecting the general rule, is open to sale until it has been surveyed and an approved plat of the township embracing the land has been returned to the local land office," Buxton v. Traver, 130 U.S. 232.

Normally the surveyors general interpreted "surveyed" to mean if three of the regular corners of a quarter-section had been legally established the quarter-section could be returned as surveyed. After all, the fourth corner was the center of section and that corner wasn't going to be established by the General Land Office anyway (that was the job of the local surveyor). The 1892 approved official plat is consistent with the three corner approach.

So how was the Oregon City Land Office able to issue a certificate of patent for the NE1/4 before the east half of the line between sections 28 and 33 had been surveyed? It doesn't appear to have been a mistake. While certainly not common we have seen it before. In this township alone six other quarter sections have exactly the same issue.

We are not sure we can say for certain exactly what the reasoning was at this late date. We lean toward it being a difference of opinion between the Surveyor General in Portland (which executed the official survey), and the Land Office in Oregon City (which issued the official patent), on the definition of "special case". It seems at the time Oregon City answered to the Commissioner in D.C., not the surveyors general in Portland. Perhaps Oregon City had a more liberal view on what constituted a "special case" as allowed for in the Supreme Court ruling and other decisions (e.g., F.A. Hyde et al, 40 L.D. 284). Consider, for example, the wording in the *1902 Manual*:

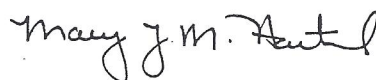
"As a general rule, a quarter section is returned as surveyed land when three of its regular corners have been legally established. The following exceptions are made to this rule: ... When undetermined corners of the sections are in mountainous regions pronounced unsurveyable in the returns, or where witness corners have been substituted for true corners of the tract, at a distance of greater than 10 chains." 1902 Manual, §228-229

Referring to the above, section 33 is certainly in a "mountainous region". And while the plat uses the term "impracticable to survey" instead of "unsurveyable" to describe the unreturned portion of the township, we can see where the Oregon City Land Office may have taken it as sufficient justification to issue a certificate. To fully explore it more research would be needed.

Ultimately it probably doesn't matter. Today patents that were issued under those circumstances are honored as valid. If this was a BLM survey, we would establish the center quarter-section corner of section 33 at intersection of the section center lines as surveyed between opposite corresponding exterior quarter-section corners.

We hope these comments are helpful. If you have any questions or need additional information, please contact Royce Hill at 503-808-6132.

Sincerely,



Mary J.M. Hartel
Chief Cadastral Surveyor of Oregon