



Landon Blake is currently project manager and project surveyor for a small civil engineering and land surveying company in California's Central Valley. Licensed in California and Nevada, his many activities include speaking and teaching at group conferences around the state.

Interior Board of Land Appeals

IBLA 388 (IBLA 2010-152 Hillstrom)

This is the first Interior Board of Land Appeals (IBLA) decision I'm reviewing in Footsteps. This 2010 decision, identified as 180 IBLA 388, involves land in Section 31 adjacent to an Indian Allotment. This is definitely one of the best boundary surveying cases I've ever reviewed, with all sorts of gems for the boundary surveyor. Its lessons are especially important for boundary surveyors like me that practice in public land survey system states. I hope to revisit this decision for more discussion in future installments.

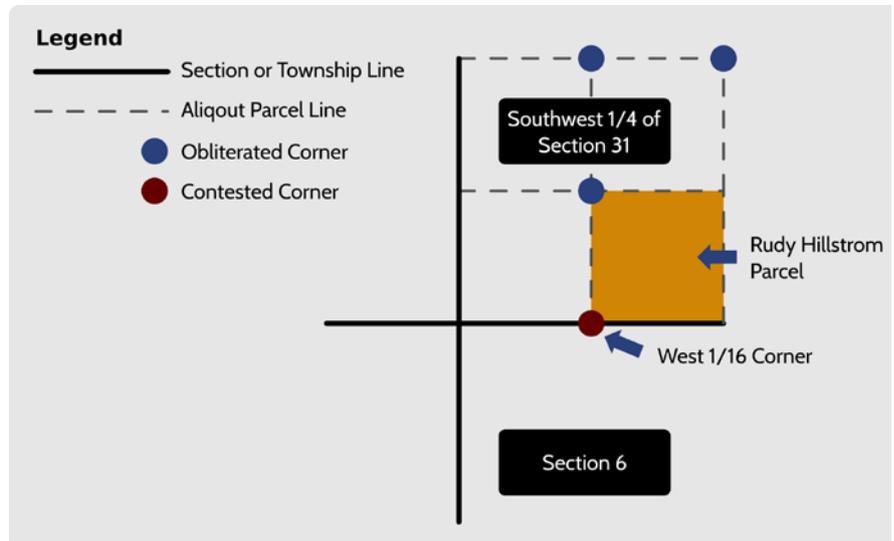
Rudy Hillstrom owns the southeast 1/4 of the southwest 1/4 of Section 31, in Township 16 North, Range 4 West, WM, in Oregon. This decision deals with his challenge of a 2000 BLM Dependent Resurvey of Section 31.

Timeline

1856: David Byles completes the survey of the west and south boundaries of Township 16 North, Range 4 West for the General Land Office.

1873: David Byles subdivides Section 31 and sets various aliquot corners as part of a survey of the Chehalis Indian Reservation Boundary for the General Land Office. He sets a wood post and takes two (2) oak bearing trees at the West 1/16 corner common to Section 6 and Section 31.

1874: The plat of the David Byles survey of Section 31 is filed.



1911: Deputy County Surveyor HS Shorey files a road map showing ties to a stone monument at the West 1/16 corner common to Section 6 and Section 31.

1924: Right of way map for county road approved. The map shows a "1/16 stone" at the position of the West 1/16 corner common to Section 6 and Section 31.

1993: The Bureau of Indian Affairs asks BLM for a survey of Indian Allotments in the northwest 1/4 of Section 31. Private surveys have created confusion about the boundaries of aliquot parcels in Section 31.

5/2/1994: The BLM issues special instructions for the resurvey of Section 31 to Richard Shatto and Daniel Wells. They

determine the west 1/16 corner common to Section 6 and Section 31 is a lost corner and reset it using proportionate methods.

9/5/2000: The dependent resurvey of Section 31 is accepted by the BLM, and the plat is filed.

10/16/2000: BLM publishes notice of the plat filing in the Federal Register. No protests were submitted.

3/18/2010: Hillstrom appeals the BLM 2000 Dependent Resurvey of Section 31 that impacts his property boundaries.

????: Hillstrom hires John Bentley, a private surveyor, to survey the boundaries of his aliquot parcel.

1/23/2008: John Bentley sends the first of multiple letters to the BLM challenging elements of the 2000 Dependent Resurvey.

1/31/2008: The BLM responds to John Bentley's letter, indicating that further investigation of his claims are needed. The BLM proceeds to conduct additional research and work.

7/29/2008: The BLM issues a memo accepting the center 1/4 corner, center west 1/16 corner, and the southwest 1/16 corner as obliterated, not lost, based on evidence presented by John Bentley and its own additional investigation prompted by John Bentley's letter. This is a partial revision of the status of these corners shown on the 2000 Dependent Resurvey.

2009: John Bentley sets a monument at his position for the west 1/16 corner common to Section 6 and Section 31 based on ties in the County Road Survey of 1911. His corner is approximately 40' south and 155' east of the monument set for the same corner on the 2000 Dependent Resurvey by the BLM.

1/22/2010: John Bentley sends a letter to the BLM objecting to the 2000 BLM determination that the west 1/16 corner common to Section 6 and Section 31 was lost.

3/10/2010: BLM sends John Bentley a letter refusing to reject the 2000 Dependent Resurvey position for the west 1/16 corner common to Section 6 and Section 31.

3/18/2010: Rudy Hillstrom protests BLM's response to John Bentley.

4/30/2010: BLM denies Rudy Hillstrom's protest.

Rudy Hillstrom's Claims

With the timeline laid down, we can turn our attention to the claims made by Rudy Hillstrom. His claims focus on the rejection of the BLM's determination that the west 1/16 corner common to Section 6 and Section 31 was a lost corner. Here is a list of the claims Rudy Hillstrom's lays out as part of his argument:

- The BLM failed to follow the 1973 Manual of Surveying

Instructions by improperly evaluating collateral evidence.

- The BLM's failure to locate and consider private and county survey records recovered by John Bentley showed the BLM didn't perform adequate research as part of its survey.
- The BLM didn't consider valuable personal testimony that could be used to establish the west 1/16 corner common to Section 6 and Section 31.
- The BLM didn't give sufficient weight to the identification of the fence line as the south line of Section 31.
- The BLM 2000 Dependent Resurvey overturns long accepted property corners and lines, violating Rudy Hillstrom's bona fide rights.
- The BLM should accept previous surveyor's ties to the stone monument as indirect evidence of the original corner location.
- The position of the stone monument matches an accepted monument to the east better than the BLM monument for the west 1/16 corner common to Section 6 and Section 31. The stone monument is also supported by ample collaborative evidence (like fences), while the BLM monument is not.

A Moment for Reflection

Before we discuss the final IBLA decision in this dispute, I thought it would be helpful to reflect for a moment on the situation being discussed. I specifically want us to consider this dispute from the

"I certainly wouldn't have chosen to proportion, ignoring and old fence, and create structure encroachments. I would've been wrong."

perspective of John Bentley, the private surveyor hired by Rudy Hillstrom. I believe this is important, because before I read this decision, I would have followed the same course of action as John Bentley, and the IBLA would have ruled against me. Put yourself in John Bentley's shoes (or footsteps) and chew on the following facts:

1. The BLM did not consider all of the record documents identifying

the stone monument as the west 1/16 corner common to Section 6 and Section 31. Some of these records included official surveys of government entities, like the County Surveyor.

2. There was a very old fence present along the South line of Section 31 established using the stone monument.
3. A proportioned position for the west 1/16 corner common to Section 6 and Section 31 resulted in the South line of Section 31 running through two (2) existing barns and a house.

Given those facts, what would you have done if you had been hired by Rudy Hillstrom? I certainly would've accepted the stone monument as the location of the west 1/16 corner common to Section 6 and Section 31. I certainly wouldn't have chosen to proportion, ignoring an old fence, and creating structure encroachments.

I would've been wrong. Let's find out why.

The IBLA Decision

The IBLA ruled the 2000 BLM Dependent Resurvey would stand in this case, and it refused to reject the position of the west 1/16 corner common to Section 6 and Section 31 established by the BLM using proportioning. It explained its decision, and addressed the claims by Rudy Hillstrom, in several parts:

1. The 2000 BLM survey position for the west 1/16 corner common to Section 6 and Section 31 was a better fit with the information in the 1873 field notes than the stone monument.
2. Section 5-9 of the 1973 BLM Manual of Surveying Instructions requires that collateral evidence of a corner

continued on page 55

Blake, continued from page 52

location be supported by one of the following:

- a) Proper relation to known corners.
 - b) Agreement with the field notes.
 - c) Unquestionable testimony.
3. The IBLA found that none of these elements supported the stone monument.
 4. None of the deeds or maps relied upon by Hillstrom refer to any evidence of the original monument or accessories. Nor did they explain the origin of the stone monument.
 5. Witness testimony used to establish a corner “must be unquestionable and evince positive knowledge of the precise location of the original monument.” None of the testimony Rudy Hillstrom asserted in this dispute met that criteria.
 6. The “board will not consider a corner obliterated based on an ancient fence line when no evidence exists that the fence line was built based on an accepted corner or that the fence started or terminated at established corners of the original survey.”

In addition to these reasons for its decision, the IBLA included in a footnote an argument from the BLM that explained how the stone monument could have been logically placed in the wrong location by retracing land surveyors. The IBLA does not state how heavily, if at all, this argument played a role in its determination, but they did include it in the published decision.

Today's Lessons

As I mentioned in the introduction, this decision has many lessons for the boundary surveyor and for the land owner. This includes lessons on procedural protection of your property rights, evaluation of survey records as evidence of corner location, and the use of proportioning in corner restoration. We'll save those lessons for a future discussion in the Footsteps column.

Today I want to focus on the lessons this case provides us about the importance of the connection to evidence of the original corner monument or its accessories, and the implications.

Again and again in this decision the IBLA stressed the critical flaw in Rudy Hillstrom's arguments. Did you identify this critical flaw? None of the evidence he presented, including the survey records, the testimony, or the physical occupation had a solid link to the original corner monument or its accessories. This lack of a solid link led to the ultimate rejection of the evidence supporting the stone monument.

What are the implications of this lesson?

It is critical to search for the evidence of the original corner monument and its accessories when conducting a Public Land Survey System Survey. This could include a search on the ground, or a search in the records.

In addition, because this link to the original corner and its accessories is so important, it is critical that today's land surveyors preserve evidence of this link, both on the ground and in the records, whenever they have the opportunity to do so. This action is a great service to future land surveyors and land owners. A failure to preserve this link results in proportioning to establish corner locations. In this case that proportioning led to a prolonged boundary dispute and the ultimate encroachment of existing structures.

I personally practice in an area where most of the original corner evidence in the Public Land Survey System is over 150 years old. In addition, the same area is highly developed or has been in cultivated for decades. I rarely, if ever, find evidence of the original corner or its accessories in the field. Because of the poor quality of early survey records, I also find few links between current monuments or record positions and the original monument and its accessories. What does this mean? I'm still very hesitant to proportion when I have long standing occupation and a monument shown on survey records that has been accepted for many years. However, if I do choose to hold a position for a Public Land Survey System corner without a direct link to the original corner or its accessories, I have an obligation to explain to my client and future surveyors the risk of doing so.

Although I believe the IBLA made a good decision in this particular case, I believe the decision to proportion due to a lack of a direction link to the original corner or its accessories will become more problematic as the public land survey system ages. Perhaps future IBLA decisions will address this challenge. 