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SIDE SHOTS

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Statute of the Month: 38-51-103. Procedure for Subdividing a Section.

By Earl Henderson, PLS

This statute is divided into (1)-(2). (2) is divided into (a)-(d). And (a) is further divided into (I)-(II), so I'm not going to take the space in this publication to write it all out for the reader. I hope you are able to find it for yourself and read it thoroughly. I will quote the parts pertinent to my discussion though.

(1) states that whenever we as Professional Land Surveyors (PLS's) survey property that is described in terms of the PLSS we "...shall proceed according to the applicable rules contained in the current (BLM Manual)..." I think we all already know that don't we? But do we understand it is a better question. It's important to note that this does NOT say that whenever we're trying to *relocate* an aliquot corner that we pull out our measuring devices and calculators and place a new monument where we determine mathematically it should be based on the existing surrounding monumentation and the Manual's instructions on how to subdivide a section. We must first know the history of not only the aliquot corner and monument we're trying to *relocate* but also all the other corners and monuments surrounding that location that could have an effect on the *relocation* process. After all, it may be pertinent to know that if we're trying to *relocate* the east quarter corner that was originally surveyed in 1889, that the current northeast corner monument was set by double proportionate measurement in 2002 and the current southeast corner monument was set in 1968 by some unknown means. Our first responsibility is to do our best to find the original location of the corner. The chances of hitting the original location of the east quarter corner by proportionate measurement between these two monuments is very close to, if not less than zero. If there is evidence to be found, we are much more likely to find something close to the original location. And use of evidence over proportioning of any kind is exactly what the Manual tells us to do. I have numerous places in my copy of the Manual highlighted that say as much including, but not limited to 4-2, 4-5, 5-1, 5-2, 5-4, 5-5, 5-29*, 5-36*, 6-36,7-1, 7-2, & 7-5. In fact, the Manual tells us that we MUST first use the evidence before we're permitted, as a last resort, to do any calculations to re-establish a monument (BLM Manual 7-1 & 7-2). So if you're about to proportion in a new monument location, be afraid...be very afraid. You may have missed some evidence of the original corner location and be about to start some problems for some property

owners, the thick of which will encompass you for sure.

(2) describes for us the proper procedures for *subdividing* a section. Did you note that italicized word *subdividing*? If that section has been *subdivided* at any time in the past prior to our *retracement* survey then we are not a *subdividing* surveyor but a *retracement* surveyor and (2) doesn't even apply to us. In that situation we MUST go back to (1) and apply the rules of evidence. Unfortunately, I am concerned that many PLS's in Colorado don't understand this fundamental difference between being a *subdividing* surveyor and a *retracement* surveyor. Many of those folks won't ever understand it because they aren't reading this, or any other articles or textbooks about their profession for that matter, or trying to grow to be better professionals. But I digress. How many times in this modern era do we get a call from a property owner that owns an entire section, or even an entire quarter section, that wants to subdivide that property into aliquot parts? That's a rare experience any more. So if that's not the call you got, then you're not a *subdividing* surveyor but a *retracement* surveyor and governed by the rules of evidence not the rules for *subdividing* a section. And as if that's not enough, (2) (b) emphasizes the rules of evidence by stating in part "...shall include all control corners that were *originally monumented*..." (emphasis added) and (2)(d) adds more emphasis with "...the location of *original aliquot corners*..." (emphasis added). The way I read this, the State of Colorado, through these statutes, is trying to tell me something. And that is to use the original corner locations if it is at all possible to determine them before breaking out the calculator and relying on some mathematical solution.

The reasoning for all this is actually pretty simple. This country was originally surveyed starting many hundreds of years ago in the east and only about a couple of hundred years ago starting in Ohio and moving westward. As PLS's it is our sacred duty to perpetuate the originally surveyed locations of all corners, whether they came out of the PLSS or not, whether they were set in error or in a different era, and NOT to try to fix those locations by setting pincushions or ignoring evidence of the original locations. Property owners, whose category many of us also fall into, rely on the original locations to be accurate, not necessarily precise. And as Thomas

Jefferson knew, a time will come when better measuring devices will be invented and future land surveyors will laugh at the imprecision with which we ourselves are currently setting monumentation. But to become "Mr. Fix-it" and try to correct monumentation to the mathematically precise location would completely disregard the Bona Fide rights of the property owners. Where could you possibly begin such a correction (Greenwich, UK?) and where would it ever end (The year 2525. If man is even still alive?)? And who is going to tell the current descendent of a patent claimer that they don't own the farm they've been cultivating for centuries but they actually own the swamp next door because the original surveyors dropped a chain or two?

It is the height of hubris to think you can more precisely reset any monument that is not lost by any mathematical method to a location that is better than where the original corner monument was set. It literally cannot be done. That's what the Colorado Statutes and the BLM Manual are both trying to tell us. Are you listening?



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