

12.1.11 - Fax to Dwane Sykes at 801-475-4732

Dwane, I've skimmed through the background material you faxed to me and here are some thoughts. First, as this is not a DOT related issue I won't be able to put any conclusion in writing particularly on a DOT letterhead. But I'm happy to put a couple of thoughts into a non-DOT note. I agree that we are good with the offer and acceptance dates and that this case takes place outside of the hiatus dates. The official survey for these sections was approved on April 16, 1962. So the only issue is whether the lands were unreserved public lands on April 16, 1962. If they were then the federal section line easement should exist. The critical issue revolves around Walker's two homestead applications on October 27, 1958 and July 10, 1961 which were prior to the official survey. If either of these dates created a vested interest, the section line easement could not exist. But the Walker file indicates a date of August 28, 1963 for an "Authorization Issued, Entry Allowed. If this date controls the section line easement would exist. Subsequently patent was issued on November 19, 1963.

In similar situations I have seen before, there had been a homestead entry prior to the official survey that was relinquished (and sometimes noted as relinquished in the file) or abandoned and the land became open for entry again and it was filed on by another homesteader after the official survey had been approved. In those cases we would say that the section line did exist because the land had to be open for entry, even for a few minutes, for the second homesteader to successfully file on the homestead. In this situation Walker did not clearly relinquish his interest and BLM did not close the pre-survey file out and require a new file be opened for the post survey entry. You'll notice on page 9 of your fax which lists a series of BLM transactions that several entries note "REL", "CANC" or "EXP" in the comments for Relinquished, Canceled or Expired. But on the line of Walker's October 27, 1958 entry the comment just says "SEE PAT 1234207 11/19/1963" instead of any indication that his entry was relinquished, cancelled or expired. This leads me to wonder whether BLM considered his earlier claim relinquished or closed or whether they allowed his earlier claim to be continued. I can't reach a conclusion on that issue myself and so you might either have to do more research with BLM and get their position on the matter or obtain a legal opinion.

So unfortunately, while this is an interesting situation, I'm not able to reach a conclusion that would support or deny your own conclusion. JohnB