

Tim Kent, representative of the USFS and Dan Berry, representative of the USDA visited some of these corners and issued statements within their respective departments. Neither Mr. Kent nor Mr. Berry are licensed to practice surveying in the State of Oregon. These statements resulted in written statements by Wayne Gardner and Kimberly Evart Brown.

Mr. Ferguson recorded Map No. 1609, in the office of the Grant County Surveyor. The narrative includes a written statement by Kimberly Evart Brown, USDA. Mrs. Brown makes a statement that the original evidence which I recovered and remonumented is superior to the positions monumented by Mr. Ferguson. ORS 209.200 states that the corners established by the GLO must stand. Section 6-15 of the BLM Manual states "The position of a tract of land, described by legal subdivisions, is absolutely fixed by the original corners and other evidences of the original survey and not by occupation or improvements, or by the lines of a resurvey which do not follow the original." ... The BLM Manual also states "Under fundamental law the corners of the original survey are unchangeable." Also Section 5-13 should also be considered in the context of her statement - "...bear in mind that his professional work is technical in character, not legal or judicial." I have performed the technical aspects of this survey in good faith. I have recovered the original corners which do take precedence over the monuments which were set by proportion.

The statement also addresses the aspect of "corner stability". This concept has not been adopted by the Oregon State Legislature or the Oregon Professional Surveyors. I considered this solution offered by Mr. Kent but could not find basis for this concept in Oregon State Law. To have used such a method would not have been defensible in Oregon. Mrs. Brown also indicates that over the last 18 years, Survey No. 785 has not been protested or objected to. This is not an accurate statement in light of the corrective surveys that began in 1985 with Survey No. 879 and continued thru 1999 with Survey No. 1525. This lack of information should be inexcusable for someone writing a USDA opinion and decision such as this.

The narrative of Survey No. 1609 also includes a written statement by Wayne Gardner on behalf of Tim Kent: I do not take exception to Mr. Kent's opinion of the marks visible to him on the various stones. That is his opinion. I do disagree with several conclusions that were put forth in this statement. First, in the remarks concerning the SW corner of Section 35, T12S, R30E. He says, "... there appeared to be two man-made notches on one edge and that it was found on a rather steep hillside in an area that showed clear indication of sliding rocks and soil". Because the stone did not have all the original marks visible, but only two that Mr. Kent could identify, is not a valid reason to reject the stone monument. Many recovered original stones do not have all the original marks visible. There are a number of factors that can account for the missing marks. The presence of man-made marks, consistent with the record, on a stone of call size within a reasonable search radius relative to other known corners in the area is sufficient evidence that you have found the original corner stone. The surface rock to the east and west of this corner is moving downhill, the bedrock is exposed and there is no soil depth. But the position that the stone was set in is stable, with 10 inches of top soil and a large juniper tree just a few feet uphill from the stone.