

VOLUME NO. 41

OPINION NO. 89

OIL AND GAS - Application of Corner Recordation Act to notice of intention to drill;  
SURVEYORS - Application of Corner Recordation Act to notice of intention to drill;  
ADMINISTRATIVE RULES OF MONTANA - Section 36.22.602;  
MONTANA CODE ANNOTATED - Sections 37-67-331(1)(e), 70-22-102, 70-22-104, 82-11-111, 82-11-122.

HELD: Survey plats submitted with a notice of intention to drill under section 82-11-122, MCA, must be completed in conformance with the Corner Recordation Act, §§ 70-22-101 to 110, MCA.

31 October 1986

Denzil R. Young  
Fallon County Attorney  
Fallon County Courthouse  
Baker MT 59313

Dear Mr. Young:

You have requested my opinion on the following question:

Whether the survey plat required in connection with the written notice of intention to drill under section 82-11-122, MCA, is the sort of "survey" which, under the provisions of section 70-22-104, MCA, must result in a "corner record" being filed by the surveyor.

I conclude that the involved statutes and relevant administrative regulations require compliance with

section 70-22-104, MCA, as to such notices of intent to drill.

Section 82-11-122, MCA, creates an obligation on the part of any person who intends to drill an oil or gas well to notify both the surface owner and the Board of Oil and Gas Conservation (hereinafter "the Board"). This statute reads as follows:

It is unlawful to commence the drilling of a well for oil or gas without first filing with the board written notice of intention to drill and obtaining a drilling permit as provided in 82-11-134. After the permit is issued, an oil and gas developer or operator as defined under 82-10-502 shall comply with the notice requirements of 82-10-503 before commencing drilling operations. It is unlawful to conduct seismic explorations without first giving the board a copy of the notice of intention to explore filed with the county under 82-1-103.

The written notice that must be filed with the Board is the subject of administrative rules promulgated by the Board under a statutory delegation of authority. See § 82-11-111(2)(c), MCA. The particular rule that is determinative of the question you have submitted is section 36.22.602, ARM. Quoted in full this rule provides: "Notice of intention to drill shall be accompanied by a survey plat certified by a registered surveyor."

All survey plats that are certified by the registered surveyors of this state must be completed in conformance with the Corner Recordation Act, §§ 70-22-101 to 110, MCA. In fact, compliance with the Act is compelled by licensing statutes applicable to engineers and land surveyors. The Board of Professional Engineers and Professional Land Surveyors may revoke, suspend, or refuse to renew the certificate of a registered surveyor who is found guilty of failing to comply with the Corner Recordation Act. § 37-67-331(1)(e), MCA.

Language within the Act itself dictates that surveyors are under a mandatory duty to file descriptions on all undescribed corner records. This duty was established to accomplish the purpose of the Act:

[T]o protect and perpetuate public land survey corners and information concerning the location of such corners by requiring the systematic establishment of monuments and recording of information concerning the marking of the location of such public land survey corners and to allow the systematic location of other property corners ....

§ 70-22-102, MCA. The original monuments and corners of government surveys are of great significance for they are conclusive evidence of the true location of those corners, whether such location is right or wrong. Stephens v. Hurly, 172 Mont. 269, 563 P.2d 546 (1977); Vaught v. McClymond, 116 Mont. 542, 155 P.2d 612 (1945). To perpetuate these corners the Act provides:

A surveyor shall complete, sign, stamp with his seal, and file with the county clerk and recorder of the county where the corner is situated a written record of corner establishment or restoration to be known as a "corner record" for every public land survey corner and accessory to such corner which is established, reestablished, monumented, remonumented, restored, rehabilitated, perpetuated, or used as control in any survey by such surveyor and within 90 days thereafter unless the corner and its accessories are substantially as described in an existing corner record filed in accordance with the provisions of this part.

§ 70-22-104, MCA. The exception contained within the statute must be noted. If a description of the corner record is already on record with the county clerk and recorder, additional descriptions need not be filed. The drafters of the legislation obviously recognized that redundant descriptions serve no purpose once a monument has been established.

When the Legislature passed the Corner Recordation Act in 1963 it echoed the policy that reestablishment of the original land surveys in our state was a noteworthy goal because of our vast expanses of rural land, mineral resources, and the potential for property disputes. The Act does place a significant burden on land surveyors who often are not compensated for their time filing corner records discovered during survey work that was

previously bid. Nonetheless, the language of the Corner Recordation Act as presently drafted is clear and unambiguous and must be complied with in all circumstances.

THEREFORE, IT IS MY OPINION:

Survey plats submitted with a notice of intention to drill under section 82-11-122, MCA, must be completed in conformance with the Corner Recordation Act, §§ 70-22-101 to 110, MCA.

Very truly yours,

MIKE GREELY  
Attorney General