

BEFORE THE
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation against:)	
)	
JED BERKELEY BLAKE)	Case No. 920-A
Blake Land Surveys)	
P. O. Box 869)	OAH No. 2011010287
Buellton, CA 93427)	
)	
Land Surveyor License No. L 4786,)	
)	
Respondent.)	
_____)	

CLARIFICATION OF ORDER OF DECISION

Pursuant to Government Code section 11517(c)(2)(B), the Board for Professional Engineers, Land Surveyors, and Geologists of the State of California adopted the attached Proposed Decision of the Administrative Law Judge as its Decision in the above-entitled matter and reduced the penalty order.

The Order is revised as follows:

1. Land Surveyor License Number L 4786 issued to Respondent, Jed Berkeley Bake, is hereby publicly reprovod pursuant to Sections 495 and 8780, which public reproval is subject to the condition that Respondent reimburse the Board the sum of \$2,500.00
2. Respondent shall pay the Board \$2,500.00 as reimbursement of the Board's investigative costs in this matter.

This Decision shall become effective on July 12, 2013.

Original Signed

BOARD FOR PROFESSIONAL ENGINEERS,
LAND SURVEYORS, AND GEOLOGISTS
Department of Consumer Affairs
State of California

BEFORE THE
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation against:)	
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Buellton, CA 93427)	
)	
Land Surveyor License No. L 4786,)	
)	
Respondent.)	
_____)	

DECISION

Pursuant to Government Code section 11517, the Board for Professional Engineers, Land Surveyors, and Geologists of the State of California hereby adopts the attached Proposed Decision of the Administrative Law Judge as its Decision in the above-entitled matter.

In adopting this Proposed Decision as its Decision, the Board for Professional Engineers, Land Surveyors, and Geologists has reduced the penalty order pursuant to Government Code section 11517(c)(2)(B) as follows:

Condition 2 of the Order is revised as follows:

2. Respondent shall pay the Board \$2,500.00 as reimbursement of the Board's investigative costs in this matter.

This Decision shall become effective on July 12, 2013.

IT IS SO ORDERED June 13, 2013.

Original Signed

BOARD FOR PROFESSIONAL ENGINEERS,
LAND SURVEYORS, AND GEOLOGISTS
Department of Consumer Affairs
State of California

BEFORE THE
BOARD FOR PROFESSIONAL ENGINEERS,
LAND SURVEYORS, AND GEOLOGISTS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JED BERKELEY BLAKE,

Respondent.

Case No. 920-A

OAH No. 2011010287

PROPOSED DECISION

This matter came regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in Santa Barbara, California, on January 30 and 31, 2012, and in San Luis Obispo, California on January 9 and 10, 2013.

Helene E. Swanson, Deputy Attorney General, represented Complainant Richard B. Moore, Executive Officer, Board for Professional Engineers, Land Surveyors, and Geologists (Board), Department of Consumer Affairs, State of California.

Arnold H. Lancaster, Attorney at Law, represented Jed Berkeley Blake dba Blake Land Surveys (Respondent), until his withdrawal on August 3, 2012, just before the then-scheduled continued hearing. David S. Vogel, Attorney at Law, represented Respondent at the continued hearing in 2013.

Complainant seeks to discipline Respondent's license based on allegations that Respondent was negligent and incompetent, and that he engaged in unprofessional conduct, in connection with survey work performed in San Luis Obispo County for homeowners Jeff and Cindy Hastings (collectively Hastings). Respondent denied the allegations and asserted that cause for discipline does not exist.

Oral and documentary evidence, and evidence by written stipulation, was received at the hearing. The record was left open for the submission of written closing arguments. Initial closing argument was received January 25, 2013, and February 12, 2013. Reply closing argument was received on February 11 and 12, 2013, and the matter was submitted for decision.

On February 13, 2013, Respondent's Counsel objected to references in Complainant's reply brief, and moved to strike the references. He argued that the matters set forth in the reply brief were not charged as grounds for discipline. Complainant's Counsel countered that the evidence on which the argument is based was received in evidence without objection from Respondent's prior attorney.

In his reply brief, Respondent's Counsel made certain statements regarding the costs incurred by Respondent in defending against the Accusation and about the financial impact of the imposition of an obligation to reimburse the Board for its costs of investigation and enforcement. On February 15, 2013, Complainant moved to strike these references as unsupported by the evidence, and objected to any reopening of the record to permit introduction of such evidence. Respondent's Counsel replied that he was under the impression that costs would be addressed in argument or by affidavit, and, alternatively, moved to reopen the record to submit an affidavit on the matter of costs.

Submission of the matter was vacated on February 25, 2013, to address these motions. Respondent's motion to strike portions of Complainant's reply brief was denied. Complainant's motion to strike the portions of Respondent's reply brief that relate to costs was granted, but Respondent's motion to reopen the record was granted. Respondent was given until March 11, 2013, to submit an affidavit pertaining to the reasonableness of the costs sought by Complainant, and argument solely on the matter of costs. Complainant was given until March 22, 2013, to file a responsive affidavit and/or argument.

Respondent and his attorney filed declarations on March 11, 2013, which documents have been marked collectively as Exhibit S. On March 22, 2013, Complainant filed objections and argument on the matter of costs. Objections to the admissibility of Exhibit S are overruled and the exhibit is received in evidence. The reasonableness of the costs sought by Complainant is addressed in the body of this Proposed Decision.

The matter was submitted for decision on March 22, 2013.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant filed the First Amended Accusation solely in his official capacity.
2. On March 19, 1980, the Board issued License number L 4786 to Respondent. The license has been in effect at all times material. Respondent reported having received two prior complaints during his entire professional career, but no evidence of Board discipline as a result of these complaints was submitted.

3. Respondent worked for the predecessor of the California Department of Transportation upon graduation from high school in 1964. He worked on the survey crew through 1970, and participated in an apprenticeship program while doing so. From 1970 through 1977, Respondent worked on survey crews for the County of Santa Barbara. He thereafter worked for other engineering and surveying companies before setting up his own firm, Blake Land Surveys. He has experience in performing surveys in public lands.

Work by Respondent

4. At least since 2001 and at all times material, the Hastings owned a property in the Figueroa Mountain area of Santa Barbara County, located at 12000 Figueroa Mountain Road (Property). The Property is located on a portion of Section 3 of Township 7 North, Range 29 West, San Bernardino Meridian, and has tax assessor parcel number of 145-070-006.

5. The Property is surrounded by the Los Padres National Forest, land owned by the United States and managed by the United States Forest Service (USFS). The Property and its surrounding area has hills, creeks, and trees. Because of its location, any survey of the Property had to be performed in accordance with the Manual of Surveying Instructions, United States Department of the Interior, Bureau of Land Management (1973) (Manual).

6. In 1881, J.R. Glover, Deputy Surveyor, Bureau of Land Management (BLM), surveyed the north boundary of the township and a portion of the east boundary. In 1882, G.S. Collins (Collins), Deputy Surveyor, BLM, surveyed some of the subdivisional lines in the area of the township on which the Property is located. In 1910, L. Ross, Deputy Surveyor, re-surveyed a portion of the north boundary and a portion of the west boundary of the township.

7. The Hastings conducted research regarding the prior surveys of the area and obtained pertinent documents, such as Collins's field notes, maps, homestead records, and mining records. They also contacted the BLM, and learned they had to procure their own survey of the Property. The Hastings first contacted Respondent in 2002 to conduct a survey to establish Property boundaries.

8. a. On November 12, 2002, the Hastings and Respondent entered into a contract. The contract incorporated the scope of work in a "first proposal" submitted by Respondent on October 7, 2002, in which Respondent agreed to "1. Perform a survey locating your found points and the [North Quarter Corner of Section 3, the North Quarter Corner of Section 4, the Witness Corner on] the South line of [Section] 3, and I would like [to set] the [Section Corner for Sections] 10, 11, 14, and 15. At the same time we will establish points for searching [for] the [Quarter Corners] and other [section corners] of Sec. 3. [¶] 2. Calculate all of the above and derive search areas for the missing [corners]. [¶] 3. Search for the missing [corners]. [¶] 4. If any are found, tie them in to the control and see what is necessary to complete the work." (Exh. 3, at p. 49.) The price for this work was \$13,000.

b. Respondent further agreed to the following: "A. If what is done on the original proposal yields the desired results, I will: 1. Establish the property corners of your property[.] [¶] 2. File a Record of Survey with the County of Santa Barbara. [¶] B. If what was done on the original proposal does not give you enough answers, I will: 1. Search the adjoining sections looking for enough evidence to establish the section corners and quarter section corners of your section in order to do items A.1. and A.2. above. [¶] C. If all else fails, assist you in negotiations with the USFS to establish mutually agreed upon boundary between you and the USFS, prepare a legal description for a quitclaim deed from the USFS to you and then do items A.1 and A.2., above. [¶] For the above work and the original proposal, the costs to you from this office will [*sic*] not exceed [the] sum of \$60,000.00." (Exh. 3, at p. 51.)

c. The parties entered into subsequent, supplemental, contracts, including, as pertinent to the accusation, a July 10, 2003 agreement for Respondent to prepare a record of survey "on the North line of section 3 showing what I found and set" for \$1,192. (Exh. 3, at p. 63.)

9. Work on the project commenced on November 15, 2002. Respondent tried to trace the steps of the prior surveyor, Collins, and plotted Collins's notes on a United States Geological Service Quad map. Finding monuments was difficult because Collins had used wooden posts in a hilly, forested terrain. Respondent found two monuments set by Collins south of the Property, in section 3. He did not find any of Collins's monuments on the east-west line connecting the sections 3, 4, 9, 10 and sections 2, 3, 10, 11 corners, but relied on Collins's field notes to set a witness point from which he could perform calculations for the northern Property boundaries.

10. At about 49 chains from the southwest corner of the section, Collins reported crossing a creek, now known as Lion Canyon Creek, which was approximately four feet wide, and then about another nine chains later he crossed another creek, now known as Cachuma Creek, which was approximately five feet wide. Approximately 146 feet east of Cachuma creek, Collins set his witness point, as he described an abrupt slope at that point that precluded him from walking to the east to set a corner monument. Collins noted that the course of the first creek was to the southeast and that of the second was to the south. Because of the diverging nature of the creeks and the steep hills above the creek, Respondent believed that Collins's notes could only refer to one point and that what he was observing in 2002 must have been the same scene Collins referred to in 1882. He therefore felt that making a decision based on the topographical references in Collins's field notes was a sound solution to calculate the Property boundaries. He described the topographical references made by Collins as very compelling, of the type that Respondent had not previously encountered.

11. Respondent reported his findings to Jeff Hastings, and they entered into the amended contract for Respondent to set the witness corner based on the topographic calls.

12. Subsequent disputes between the parties regarding payments due under the contracts delayed completion of the survey. Respondent testified that he was fired before he had a chance to continue to work on establishing the east-west line. The Hastings paid Respondent \$15,577.50.

13. On December 29, 2003, Jeff Hastings filed a complaint with the Board against Respondent.

Submissions to the County of Santa Barbara

14. a. On January 21, 2004, Respondent submitted a Corner Record to the County of Santa Barbara, described as "Witness Corner Section 3 & Section 10 T7N, R29W, S.B.M." (Exhibit 3 at pp. 189-190.) With respect to the evidence or procedure used to establish the corner, Respondent explained that "Nothing found at Witness Corner [*sic*] re-established from topographic calls per G.L.O. field notes by G.S. Collins dated 1887." (Exh. 3, at p. 189)

b. In the accompanying drawing, Respondent depicted the two monuments found and the witness corner set by Respondent to offer an opinion about the boundary of the Property. Respondent wrote the following note on the drawing: "This Corner Record was prepared because in my professional opinion I believe that I have reset an obliterated corner as originally established by the Survey of the Public Lands by the United States." (Exh., 3, at p. 190.)

15. County of Santa Barbara Surveyor Michael Emmons (Emmons) disagreed with Respondent's opinion as expressed in the Corner Record, and entered the following note in the official document: "The County Surveyor disagrees with the surveyor that there is sufficient evidence shown on this Corner Record to precisely locate the point being set. The County Surveyor is also of the opinion that a Record of Survey is required to be filed in accordance with Sections 8762(b)(4) and 8773(b) of the California Business and Professions Code. The surveyor disagrees with that opinion." (Exh. 3, at p. 189.)

16. Emmons explained his decision at the hearing. In his view, the Manual, which sets the standards for surveyors working in lands that abut Federal public lands, requires evidence in addition to topographical calls for the setting of a point, and Respondent had not reported finding such evidence.

17. In February 2008, a Board representative contacted Respondent and informed him that an expert reviewer had concluded that the more involved record of survey, not just a corner record, was required for the witness corner Respondent had set.

18. On July 30, 2008, Respondent filed a Record of Survey regarding his survey of the Property. The drawing is essentially the same, in a larger format, as the Corner Record filed

on January 21, 2004. Respondent's note on the document states: "This Map was prepared because the State Board agreed with the County Surveyor that the Witness Corner was lost and demanded that this Map be filed. I definitely disagree with both opinions. I firmly believe that my solution using the government field note's topographic calls for a witness corner established on a one way line from the West is superior to searching for two wood posts that were set in 1882 in a national forest that has been and still is subject to forest fires. Double proportion is a poor substitute from what appears to be legitimate topographic calls." (Exh. 3, at p. 316.) The County Surveyor's note on the document reads: "The County Surveyor disagrees with the surveyor that there is sufficient evidence shown on this record of survey to precisely locate the point being set." (*Ibid.*)

BLM Survey

19. During the period of 2008 through 2012, the BLM, principally through the efforts of Gregory J. Aten (Aten), Cadastral Land Surveyor, and his crew, engaged in a resurvey of Township 7 North, Range 29 West, San Bernardino Meridian. As it pertains to the area at issue in this proceeding, Aten found two separate groupings of stones along the north-south line near the intersection of sections 3, 4, 9, 10, to the west of the 2, 3, 10, 11 corner, which he concluded were the original monuments set by Collins. Using these two monuments, Aten was able to re-monument the 3, 4, 9, 10 corner, which is to the west of the area surveyed by Respondent. Aten also used two monuments separating sections 2 and 3 and 10 and 11, respectively, to determine and monument the corner monument for sections 2, 3, 10, and 11. The east-west line that connected the corners of sections 3, 4, 9, and 10 and 2, 3, 10, and 11 was consistent with the topographical references in Collins's field notes. Aten estimated that the witness monument set by Respondent should have actually been set approximately 15 feet to the west along the same east-west line.

20. Aten testified at the hearing that the Manual requires other evidence to corroborate topographical calls and opined that the two monuments he found constituted such evidence.

Expert testimony and Findings

21. a. Complainant called Russell Marks (Marks) as an expert witness. Marks obtained a Bachelor of Science degree in surveying and metric engineering. He worked for other surveyors until obtaining his land surveyor license in 1990. He then joined his current employer, where he works as a project surveyor, supervising others. He has extensive experience as a surveyor, including approximately ten years performing surveys in public lands for the USFS. As noted above, Emmons and Aten also expressed expert opinions.

b. Respondent provided expert opinions, and called Michael Stanton (Stanton) as an expert witness. Stanton obtained a degree in natural resource management from

California Polytechnic University, San Luis Obispo, and has been a surveyor for more than 30 years, the last eight in his own business. His first job was with the USFS, and he has conducted between 100 to 200 public land surveys.

22. At the core of the dispute is whether Respondent could use a topographic call, in this case the location of the Cachuma and Lyon Creeks, to establish a witness point.

23. All experts agreed that the Manual is the authoritative source for the conduct of surveys in areas abutting public lands, having been authored by the BLM, the agency with ultimate responsibility over surveys on public lands. A pamphlet entitled "Restoration of Lost or Obliterated Corners & Subdivision of Sections," 1974 Edition, supplements the Manual. Field guides prepared by BLM contain abbreviated information from the Manual.

24. In pertinent part, section 5-16 of the Manual states: "The proper use of topographic calls of the original field notes may assist in recovering the locus of the original survey. . . ." (Exh. N., at p. 131.) The Manual warns about potential problems with use of topographical calls, and states: [M]isapplication usually may be avoided by applying the following tests: [¶] (1) The determination should result in a definite locus within a small area. [¶] (2) The evidence should not be susceptible of more than one reasonable interpretation. [¶] (3) The corner locus should not be contradicted by evidence of a higher class or by other topographic notes." (Exh. M, at p. 132.)

Aten, the person most familiar with the Manual and who most regularly uses it, testified that all three tests must be used by a prudent surveyor conducting a survey of lands adjacent to public lands. In his opinion, Respondent failed to follow the Manual's requirements for proper use of topographical calls. He did not make a determination in a definite locus within a small area. The evidence was susceptible to more than one interpretation because the distance between the two creeks in Collins's notes could have existed along more than two points and may have been the subject of variability over time. The results of his survey show that evidence of a higher class, the monuments, led to a different result.

Marks, who did not have the benefit of Aten's survey results, opined that reliance on Collins' topographic calls to establish the witness corner also violated the Manual's tests. The evidence is susceptible to more than one interpretation because Respondent did not persuasively establish, by reference to other evidence, that the east-west line he drew with reference to the creeks was the only possible line at which the distance between the two creeks was the distance identified by Collins.

Aten, Marks, and Emmons opined that topographical calls are insufficient, without other corroborating evidence, such as existing monuments, to establish a point.

25. In Marks' opinion, Respondent failed to adhere to the standard of practice required of a prudent surveyor conducting a survey in the area in which the Property was found in that he set a point, his witness corner, based on topographical calls without supporting stronger evidence. In his opinion, Respondent failed to look for such stronger evidence, namely, evidence of the monuments set by Collins in the area to the west of the Property, including evidence of the monument at the corner of sections 3, 4, 9 and 10.

26. a. Stanton opined that Respondent properly relied on the topographical calls in Collins's field notes to establish his witness corner, since he did not find any monument with which to establish the corners along the east-west line connecting the section 3, 4, 9, 10 and section 2, 3, 10, 11 corners. Use of the topographical calls would be appropriate and meet the Manual tests because the distance in question is small and there is no evidence to contradict the calls.

b. Stanton agreed that "ideally" a monument should be found to establish the corner of sections 3, 4, 9, and 10, but did not fault Respondent if circumstances, such as a dispute with a property owner, prevented him from looking for the monument. In his experience, looking for a monument for 8 to 16 hours with a crew of three is reasonable before declaring the monument was lost. In his opinion, given the terrain and the likelihood of forest fires, it would be unlikely for the wooden posts and rocks used by Collins to create his monuments to have survived.

27. Respondent called a geologist, Craig Smith, in support of his opinion that the topographical call he made was a reasonable one because the creeks are not likely to have changed in course or dimension since the time Collins surveyed the area. Smith testified, credibly and without contradiction, that given their geological composition and steep nature, the canyons formed by the Cachuma and Lyons creeks have not suffered any significant erosion since the time of Collins's survey and that, therefore, the creeks have not been the subject of lateral movement.

28. Marks' opinion, as corroborated by those of Aten and Emmons, is persuasive and sufficient to establish that Respondent deviated from the standard of practice. Stanton's opinion is in fact partially consistent with Marks's opinion, in that he agreed that finding a monument would have been preferable. Smith's opinion confirms the strength of the topographical call, but does not negate or contradict the opinion that other evidence must exist to corroborate even a strong topographic call.

29. a. Marks also opined that the Record of Survey filed by Respondent on July 30, 2008, does not meet professional standards because the document does not contain adequate information or documentation to support what it purports to represent. There are insufficient notes to explain what Respondent did, particularly his efforts to locate the corner of sections 3, 4, 9, and 10. The map also failed to include any reference to tie its findings to other properties

or to the geodetic network, or the surveyors' plane coordinate system, so that others could relate Respondent's information to points in the public survey system.

b. Stanton opined that the amount of information a surveyor includes in a record of survey is within the surveyor's professional discretion, and that Respondent provided sufficient information for another surveyor to ascertain what Respondent did. However, in explaining his reasoning, Stanton unwittingly undermined his own opinion and strengthened Marks's opinion. Stanton testified that he commonly searches all pertinent records and would be able to read the record of survey in light of the information he obtained. He conceded that it would have been "helpful" for Respondent to note that he searched but could not find the monument for the corner of sections 3, 4, 9 and 10.

c. Marks's testimony, which is supported in part by Stanton's own testimony, is more persuasive and is credited.

30. Respondent was negligent by failing to establish the position of the east-west line between the corners of sections 3, 4, 9, and 10 and 2, 3, 10, and 11, with reference to one or more of Collins's monuments.

31. Respondent was negligent by relying on topographic calls to establish a witness corner on the east-west line between the corners of sections 3, 4, 9, and 10 and 2, 3, 10, and 11, without acceptable corroborative evidence.

32. Respondent was negligent by failing to provide sufficient information in the Record of Survey he filed on July 30, 2008, to support his conclusions.

33. The evidence does not establish that Respondent's conduct involves incompetence. His deviations from the standard of practice are not so widespread or significant to indicate the lack of knowledge about proper survey procedures. All deviations occurred during a single project and primarily stemmed from his opinion on the strength of the topographical calls.

Costs of Investigation and Prosecution

34. The Board has incurred \$52,697.50 in charges from the Attorney General's office in costs of investigation and prosecution. Based on the violations established and the nature, complexity, and circumstances of the case, 70 percent of these costs, or \$36,888.25, are deemed reasonable. The Board also incurred \$1,734.29 in costs from expert review, which costs are reasonable. The total of the reasonable costs, therefore, is \$38,622.54.

Concluding Finding

35. Except as set forth in this Proposed Decision, all other allegations in the First Amended Accusation, and other contentions of the parties, are without merit or constitute surplusage.

LEGAL CONCLUSIONS

1. Business and Professions Code¹ section 8780, authorizes the Board to “[r]eprove, suspend for a period not to exceed two years, or revoke the license or certificate of any licensed land surveyor . . . whom it finds guilty of: [¶] . . . [¶] (b) Any negligence or incompetence in his or her practice of land surveying. [¶] . . . [¶] (h) A violation in the course of the practice of land surveying of a rule or regulation of unprofessional conduct adopted by the board.”

2. Section 8764 provides as follows: “The record of survey shall show the applicable provisions of the following consistent with the purpose of the survey: [¶] . . . [¶] (d) The relationship to those portions of adjacent tracts, streets, or senior conveyances which have common lines with the survey. [¶] . . . [¶] (g) Any other data necessary for the intelligent interpretation of the various items and locations of the points, lines, and areas shown, or convenient for the identification of the survey or surveyor, as may be determined by the civil engineer or land surveyor preparing the record of survey.”

3. Cause exists to discipline Respondent’s license pursuant to section 8780, subdivision (b), in that he committed acts of negligence in the practice of land surveying, by reason of factual finding numbers 4 through 32, and legal conclusion numbers 1 and 2.

4. Cause exists to discipline Respondent’s license pursuant to sections 8764, subdivisions (d) and (g), and 8780, subdivisions (d) and (h), in that he violated provisions of the surveyors law, by reason of factual finding numbers 4 through 32 and legal conclusion numbers 1 through 3.

5. Cause does not exist to discipline Respondent’s license pursuant to section 8780, subdivision (b), in that it was not established that he committed acts demonstrating incompetence in the practice of land surveying, by reason of factual finding numbers 4 through 33.

6. Cause exists pursuant to section 125.3 to order Respondent to pay the Board’s costs of investigation and prosecution, in the sum of \$38,622.54, by reason of factual finding numbers 4 through 32, and 34, and legal conclusion numbers 1 through 4.

¹ All further references are to the Business and Professions Code.

7. All evidence presented in mitigation and aggravation and in Respondent's defense has been considered in light of California Code of Regulations, title 16, section 419 (Disciplinary Orders), and of the purpose of disciplinary proceedings, public protection (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786; *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476.) While Respondent engaged in acts of negligence, he did so in connection with a single survey and the facts and circumstances surrounding the deviations from the standard of practice involved, at its core, a professional dispute regarding the utilization of one particular technique. Although Respondent's reliance on the topographic calls did not excuse the violation, the unique topography involved mitigated the deviation. In these circumstances, it is not required to place Respondent on probation or otherwise subject him to close monitoring by the Board for the protection of the public. The order that follows is necessary and sufficient for the protection of the public.

ORDER

1. Land Surveyor License number L 4786 issued to Respondent, Jed Berkeley Blake, is hereby publicly reprovved pursuant to section 495, which public reprovval is subject to the condition that Respondent reimburse the Board the sum of \$38,622.54.

2. Respondent shall pay the Board \$38,622.54 as reimbursement for the Board's reasonable costs of investigation and enforcement.

DATED: 4/6/17

Original Signed
SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings

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8 **BEFORE THE BOARD FOR PROFESSIONAL**
ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 920-A

11 **JED BERKELEY BLAKE dba BLAKE**
12 **LAND SURVEYS**
13 **P. O. Box 869**
250 Industrial Way, Suite C
14 **Buellton, CA 93427**

FIRST AMENDED ACCUSATION

15 **Land Surveyor License No. L 4786**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Richard B. Moore, PLS (Complainant) brings this Accusation solely in his
20 official capacity as the Executive Officer of the Board for Professional Engineers, Land
21 Surveyors, and Geologists, Department of Consumer Affairs.

22 2. On or about March 19, 1980, the Board for Professional Engineers, Land
23 Surveyors, and Geologists issued Land Surveyor License Number L 4786 to Jed Berkeley Blake
24 (Respondent). The Land Surveyor License was in full force and effect at all times relevant to the
25 charges brought herein and will expire on September 30, 2012, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board for Professional Engineers, Land
3 Surveyors, and Geologists ("Board"), Department of Consumer Affairs, under the authority of the
4 following laws. All section references are to the Business and Professions Code unless otherwise
5 indicated.

6 **STATUTORY PROVISIONS**

7 4. Section 8780 of the Code states, in pertinent part:

8 The Board may receive and investigate complaints against licensed
9 land surveyors and registered civil engineers, and make findings thereon.

10 By a majority vote, the board may reprove, suspend for a period not
11 to exceed two years, or revoke the license or certificate of any licensed land surveyor
12 or registered civil engineer, respectively, licensed under this chapter or registered
13 under the provisions of Chapter 7 (commencing with Section 6700), whom it finds to
14 be guilty of:

12 * * *

13 (b) Any negligence or incompetence in his or her practice of land
14 surveying.

15 * * *

16 (d) Any violation of any provision of this chapter or of any other law
17 relating to or involving the practice of land surveying.

18 5. California Code of Regulations Title 16, Division 5, section 476 states:

19 To protect and safeguard the health, safety, welfare, and property of
20 the public, every person who is licensed by the Board as a professional land surveyor
21 . . . shall comply with this Code of Professional Conduct. A violation of this Code of
22 Professional Conduct in the practice of professional land surveying constitutes
23 unprofessional conduct and is grounds for disciplinary action pursuant to Section
24 8780 of the Code. . .

23 **(a) Compliance with Laws Applicable to a Project:**

24 A licensee shall provide professional services for a project in a
25 manner that is consistent with the laws, codes, ordinances, rules, and regulations
26 applicable to that project. A licensee may obtain and rely upon the advice of other
27 professionals (e.g., architects, attorneys, professional engineers, professional land
28 surveyors, and other qualified persons) as to the intent and meaning of such laws,
codes, and regulations.

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(c) Representations:

* * *

(7) A licensee shall only express professional opinions that have a basis in fact or experience or accepted land surveying principles.

6. Code section 8762 states that:

(a) Except as provided in subdivision (b), after making a field survey in conformity with the practice of land surveying, the licensed surveyor or licensed civil engineer may file with the county surveyor in the county in which the field survey was made, a record of the survey.

(b) Notwithstanding subdivision (a), after making a field survey in conformity with the practice of land surveying, the licensed land surveyor or licensed civil engineer shall file with the county surveyor in the county in which the field survey was made a record of the survey relating to land boundaries or property lines, if the field survey discloses any of the following:

(1) Material evidence or physical change, which in whole or in part does not appear on any subdivision map, official map, or record or survey previously recorded or properly filed in the office of the county recorder or county surveying department, or map or survey record maintained by the Bureau of Land Management of the United States.

(2) A material discrepancy with the information contained in any subdivision, official map, of record or survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States. For purposes of this subdivision, a "material discrepancy" is limited to a material discrepancy in the position of points or lines, or in dimensions.

(3) Evidence that, by reasonable analysis, might result in materially alternate positions of lines or points, shown on any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States.

(4) The establishment of one or more points or lines not shown on any subdivision map, official map, or record of survey, the positions of which are not ascertainable from an inspection of the subdivision map, official map, or record of survey.

(5) The points or lines set during the performance of a field survey of any parcel described in any deed or other instrument of title recorded in the county recorder's office are not shown on any subdivision map, official map, or record of survey.

(c) The record of survey required to be filed pursuant to this section shall be filed within 90 days after the setting of boundary monuments during the performance of a field survey or within 90 days after completion of a field survey, whichever occurs first.

* * *

1 (e) Any record of survey filed with the county surveyor shall, after
being examined by him or her, be filed with the county recorder.

2 7. Code section 8764 specifies, in relevant part, that:

3 The record of survey shall show the applicable provisions of the
4 following consistent with the purpose of the survey:

5 * * *

6 (d) The relationship to those portions of adjacent tracts, streets, or senior
conveyances which have common lines with the survey.

7 * * *

8 (g) Any other data necessary for the intelligent interpretation of the
9 various items and locations of the points, lines, and areas shown, or convenient for
the identification of the survey or surveyor, as may be determined by the civil
10 engineer or land surveyor preparing the record of survey.

11 8. Code section 8773, "**Corner records for corners establishing by public land
survey; lost corners; filing**" states, in pertinent part:

12 (a) Except as provided in subdivision (b) of Section 8773.4, a person
13 authorized to practice land surveying in this state shall complete, sign, stamp with his
14 or her seal, and file with the county surveyor . . . where the corners are situated, a
written record of corner establishment or restoration to be known as a "corner record"
15 for every corner established by the Survey of the Public Lands of the United States,
except "lost corners," as defined by the Manual of Instructions for the Survey of the
16 Public Lands of the United States, and every accessory to such corner which is found,
set, reset, or used as control in any survey by such authorized person.

17 (b) After the establishment of a lost corner, as defined by the Manual of
18 Instructions for the Survey of the Public Lands of the United States, a record of
survey shall be filed as set forth in Section 8764.

19 9. The U.S. Department of the Interior, Bureau of Land Management, "The
20 Manual of Instructions", Chapter V, "Restoration of Lost or Obliterated Corners", provides, in
21 pertinent part, as follows:

22 *5-9. An obliterated corner is one at whose point there are no remaining
23 traces of the monument or its accessories, but whose location has been perpetuated,
or the point for which may be recovered beyond reasonable doubt by the acts and
24 testimony of the interested landowners, competent surveyors, other qualified local
authorities, or witnesses, or by some acceptable record evidence.*

25 *A position that depends upon the use of collateral evidence can be
26 accepted only as duly supported, generally through proper relation to known corners,
and agreement with the field notes regarding distances to natural objects, stream
27 crossings, line trees, and off-line tree blazes, etc., or unquestionable testimony.*

28 * * *

1 **5-16.** The proper use of topographic calls of the original field notes may
2 assist in recovering the locus of the original survey. Such evidence may merely
3 disprove other questionable features, or it may be a valuable guide to the immediate
4 vicinity of a line or corner. At best, it may fix the position of a line or corner beyond
5 reasonable doubt.

6 Allowance should be made for ordinary discrepancies in the calls relating
7 to items of topography. Such evidence should be considered more particularly in the
8 aggregate; when it is found to be corroborative, an average may be secured to control
9 the final adjustment. This will be governed largely by the evidences nearest the
10 particular corner in question, giving the greatest weight to those features that agree
11 most closely with the record, and to such items as afford definite connection.

12 A careful analysis should be made by the surveyor before using
13 topographic calls to fix an original corner point. Indiscriminate use will lead to
14 problems and disputes where two or more interpretations are possible. Close attention
15 should be given to the manner in which the original survey was made. Instructions for
16 chaining in the earlier manuals indicate that memory was an important factor in
17 recording distances to items of topography. Early field notes often appear to have
18 shown distances only to the nearest chain or even a wider approximation.

19 In comparing distances returned in the original field notes with those
20 returned in the resurveys, gross differences appear in a significant number of
21 instances. In some cases the original surveyor apparently surveyed a line in one
22 direction, but then reversed the direction in his record without making corresponding
23 changes in distances to items of topography. These facts have sometimes caused
24 distrust and virtual avoidance of the use of topography in corner restoration where
25 proper application might be extremely helpful. Misapplication usually may be
26 avoided by applying the following tests:

27 (1) The determination should result in a definite locus within a small area.

28 (2) The evidence should not be susceptible of more than one reasonable
interpretation.

 (3) The corner locus should not be contradicted by evidence of a higher
class or by other topographic notes.

 The determination of the original corner point from even fragmentary
evidence of the original accessories, generally substantiated by the original
topographic calls, is much stronger than determination from topographic calls alone.
In questionable cases it is better practice, in the absence of other collateral evidence,
to turn to the suitable means of proportionate measurement.

5-20. *A lost corner is a point of a survey whose position cannot be
determined, beyond reasonable doubt, either from traces of the original marks or
from acceptable evidence or testimony that bears upon the original position, and
whose location can be restored only by reference to one or more independent
corners.*

5-21. The rules for the restoration of lost corners should not be applied
until all original and collateral evidence has been developed. When these means have
been exhausted, the surveyor will turn to proportionate measurement, which
harmonizes surveying practice with legal and equitable considerations. This plan of
relocating a lost corner is always employed unless outweighed by conclusive
evidence of the original survey.

1 corners of their property; file a record of survey with the County; search the adjoining sections
2 looking for adequate evidence to establish the section and quarter section corners and, if all else
3 fails, assist them in negotiating a mutually agreed upon boundary with the United States Forest
4 Service (USFS). For the foregoing work and the work in the original proposal, the contract was
5 not to exceed \$60,000.

6 14. On or about November 15, 2002, Respondent began work on the survey of the
7 subject property.

8 15. On or about May 8, 2003, a dispute arose between Respondent and the owners,
9 concerning the correctness of Respondent's billing, whether the original contract would include
10 all work required by the Manual of Surveying Instruction to complete the search for missing
11 corners in Section 3, whether the bills were due and payable, if Respondent had completed all
12 work under the original contract, and Respondent's claim that he could prepare a legal description
13 for a quitclaim deed from the USFS, if necessary.

14 16. On or about July 10, 2003, Respondent entered into an additional agreement to
15 prepare a Record of Survey on the North line of Section 3, to set the witness corner on the South
16 line of Section 3, per the topographic notes, and to file a Corner Record with the County
17 Surveyor.

18 17. On or about December 2, 2003, Michael B. Emmons, County Surveyor with the
19 Santa Barbara County Surveyor's Office (County Surveyor), sent a letter to Respondent,
20 requesting various corrections to the Record of Survey Respondent submitted for a portion of the
21 Assessor's Parcel No. 145-070-006.

22 18. On or about December 17, 2003, Respondent sent Jeff Hastings an invoice for
23 \$1,240.16, which included a late charge, and which stated that the map he prepared would not be
24 recorded until payment of the invoice was received by Respondent.

25 19. On or about December 29, 2003, the Board received a complaint against
26 Respondent from the owners, who alleged that they hired Respondent to perform a survey at their
27 subject property, and that Respondent had failed to meet the terms of their written agreement,
28 despite Mr. Hastings' payments to him of approximately \$15,292.50. In addition, they claimed

1 that Respondent had informed them a survey had been filed with the County, but the County
2 Surveyor indicated that no survey had been filed.

3 20. On or about February 6, 2004, Respondent filed the Record of Survey with the
4 County Surveyor.

5 21. On or about April 13, 2004, Respondent filed the Corner Record for the subject
6 property with the County Surveyor. On the same date, the County Surveyor commented on the
7 Corner Record, Document No. 2417, that he “. . . disagrees with the surveyor that there is
8 sufficient evidence shown on this Corner Record to precisely locate the point being set. The
9 County Surveyor is also of the opinion that a Record of Survey is required to be filed in
10 accordance with Sections 8762(b)(4) and 8773(b) of the California Business and Professions
11 Code. The surveyor disagrees with that opinion.”

12 22. On or about June 1, 2004, after numerous requests by Mr. Hastings that
13 Respondent return the records that Mr. Hastings had provided to Respondent so that Mr. Hastings
14 could pay Respondent's final bill, Respondent threw the box of records on the ground and refused
15 Mr. Hastings' payment, while Mr. Hastings was at the Buellton Sheriff's office. Mr. Hastings
16 remitted a final payment to Respondent by mail, which was received by Respondent on or about
17 June 3, 2004.

18 23. On or about October 19, 2007, Board Enforcement Analyst Julie A. Baker
19 transmitted this case to an independent expert for his expert opinion.

20 24. On or about February 6, 2008, Ms. Baker wrote Respondent regarding the
21 review of the complaint filed with the Board about his survey of the subject property. The letter
22 informed Respondent, among other things that the Board's independent expert agreed with the
23 County Surveyor that, based upon Code section 8773(b), a Record of Survey should be filed, as
24 the Witness Corner is a lost corner. Moreover, the letter requested Respondent to complete the
25 required Record of Survey and provide proof of completion to the Board, by no later than March
26 6, 2008.

27 25. On or about February 19, 2008, the County Surveyor received Respondent's
28 first submittal for his project for review.

1 26. On or about February 28, 2006 (typographical error; year when letter was
2 written was 2008, not 2006), Ms. Baker wrote Mr. Hastings, advising him that the Board had
3 requested that Respondent submit the Record of Survey with the County Surveyor, and that no
4 disciplinary action would be taken against Respondent at that time.

5 27. On or about March 3, 2008, Ms. Baker wrote Respondent, informing him,
6 among other things, that although the Board had decided not to pursue a disciplinary action
7 against his license at that time, the case was being closed on the assumption that he would
8 promptly respond to the County Surveyor's requests, and cautioning him that future violations of
9 any provisions of the Professional Land Surveyor's Act could result in a disciplinary action.

10 28. On or about July 30, 2008, Respondent filed in Book 175 of Record of Surveys
11 at page 72 at the County Surveyor a Record of Survey, which is intended to delineate the re-
12 establishment of an original General Land Office (GLO) witness corner.

13 29. On or about October 20, 2008, at the Board's request, an independent expert
14 reviewed the Record of Survey filed by Respondent in Book 175 of the Record of Surveys, page
15 72, with the County, which indicates the survey is within a portion of Section 3, T. 7 N, R. 29 W.,
16 S.B.M. (San Bernardino Meridian). The BLM has authority over the section(s) of land at issue
17 because it has not all passed into private ownership¹. The independent expert finds that:

- 18 • Respondent's map is based upon the Corner Record, which has insufficient evidence
19 to ensure the precise location of the point set.
- 20 • The only reference indicated on Respondent's map is the previous Corner Record,
21 which indicates two references: USGLO Township Plat and Field Notes; and
22 Record of Survey Book 171, pages 24-25. The position established and
23 monumented on the map has no indication as to what the position represents, and
24 failing to adequately label the map causes confusion by having to look at multiple
25 records. Only by reviewing the Corner Record and GLO records can a reviewer
26 determine the intent of the position is to represent an original GLO monument. The

27 ¹ The BLM is in the process of completing a survey in the same section of land as Mr.
28 Blake's survey, but the BLM's survey is not expected to be finalized until 2012.

1 map should stand alone. It is not clearly shown that the witness corner set is a
2 perpetration of an original GLO monument, without inspecting the corner record.

- 3 • Respondent failed and was negligent and/or incompetent in that the map he prepared
4 does not meet the requirements of Code section 8764, subsections (d) or (g),
5 because the only information shown is his measured data, which is based on a
6 Corner Record that was filed in violation of Code section 8773, subdivision (b).
7 The map does not show the relationship of adjacent tracts, or senior conveyances
8 which have common lines with the surveys. The map shows ties to the "CORS"
9 (continuously operating reference station) system, but not to a public land system
10 monument. The only ties to any other survey monuments have no direct
11 relationship to the PLSS. The map should include references to the original record,
12 GLO Township Plat and Field Notes, and Record of Survey Book 171, pages 24-25.
- 13 • The monumented position should be, but was not, treated as a Lost Corner, as defined
14 by the Manual of Surveying instructions, and as is mandated in Code section 8764,
15 subdivisions (d) and (g).
- 16 • The map has no information indicating the proper relationship to known corners, or
17 any collateral evidence supporting the position of his monument, as required by
18 sections 5-9 and 5-21 of the BLM Manual of Instructions.
- 19 • Both tests (1) and (2) in Section 5-16 of the BLM Manual of Instructions fail due to
20 the lack of information on the map and controlling corners to the east and west of
21 the monumented position. From the information presented, there is no evidence to
22 prove the north-south position of this line. Due to the common errors in
23 topographic calls, this line could be either north or south of the position indicated by
24 the map. The map does not contain notes summarizing how Respondent arrived at
25 his conclusion and, based upon the map alone, the evidence is susceptible to more
26 than one reasonable interpretation.

- 1 • Respondent should have considered in the process of establishing the corners several
2 topographic calls noted in the GLO Field Notes of G.S. Collins, under his Contract
3 of April 1, 1882, when he set the following corners:
- 4 ▪ 1/4 Corner of Sections 10/11, a post in a mound of stone.
 - 5 ▪ Witness Corner 20.00 chains south of the Section Corner of Sections 2/3/10/11,
6 a post in the mound of stone.
 - 7 ▪ Witness Corner 10.00 chains east of the Section Corner of Sections 2/3/10/11, a
8 post in the mound of stone.
 - 9 ▪ 1/4 corner of Sections 2/11, a post in a mound of stone.
 - 10 ▪ Witness Corner 20.00 chains north of the Section Corner of Sections 2/3/10/11,
11 a post in a mound of stone.
 - 12 ▪ 1/4 Corner of Sections 2/3, a post in a mound of stone.
 - 13 ▪ 1/4 Corner of Sections 3/10, a post in a mound of stone.
 - 14 ▪ Witness Corner 19.79 chains west of the Section Corner of Sections 2/3/10/11, a
15 post in a mound of stone.
- 16 • Respondent was negligent and/or incompetent in discharging professional obligations
17 by:
- 18 ▪ Failing to establish the position of an east-west line along Section 3 from a
19 monument, or preferably two monuments on that line, in accordance with
20 standard practice.
 - 21 ▪ Relying upon a single topographic call to re-establish a PLSS corner position,
22 without conducting a sufficient search for monuments or finding other
23 acceptable corroborative evidence, and by not following the guidelines set
24 forth by the BLM Manual of Instructions. Respondent's map does not prove
25 that the topographical call(s) was/were reliable, and there is no collateral
26 evidence on the map which was duly supported through the proper relation to
27 known corners, and agreement with the field notes regarding distances to
28 natural objects, stream crossings, line trees, etc.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board for Professional Engineers, Land Surveyors, and Geologists issue a decision:

1. Revoking or suspending Land Surveyor License Number L 4786, issued to Jed Berkeley Blake.

2. Ordering Jed Berkeley Blake to pay the Board for Professional Engineers, Land Surveyors, and Geologists, Department of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: 12/12/11

Original Signed
Richard B. Moore, PLS
Executive Officer
Board for Professional Engineers, Land Surveyors, and Geologists
Department of Consumer Affairs
State of California
Complainant