

Federal Boundary Cases of the Last 50 Years (1967-2016)

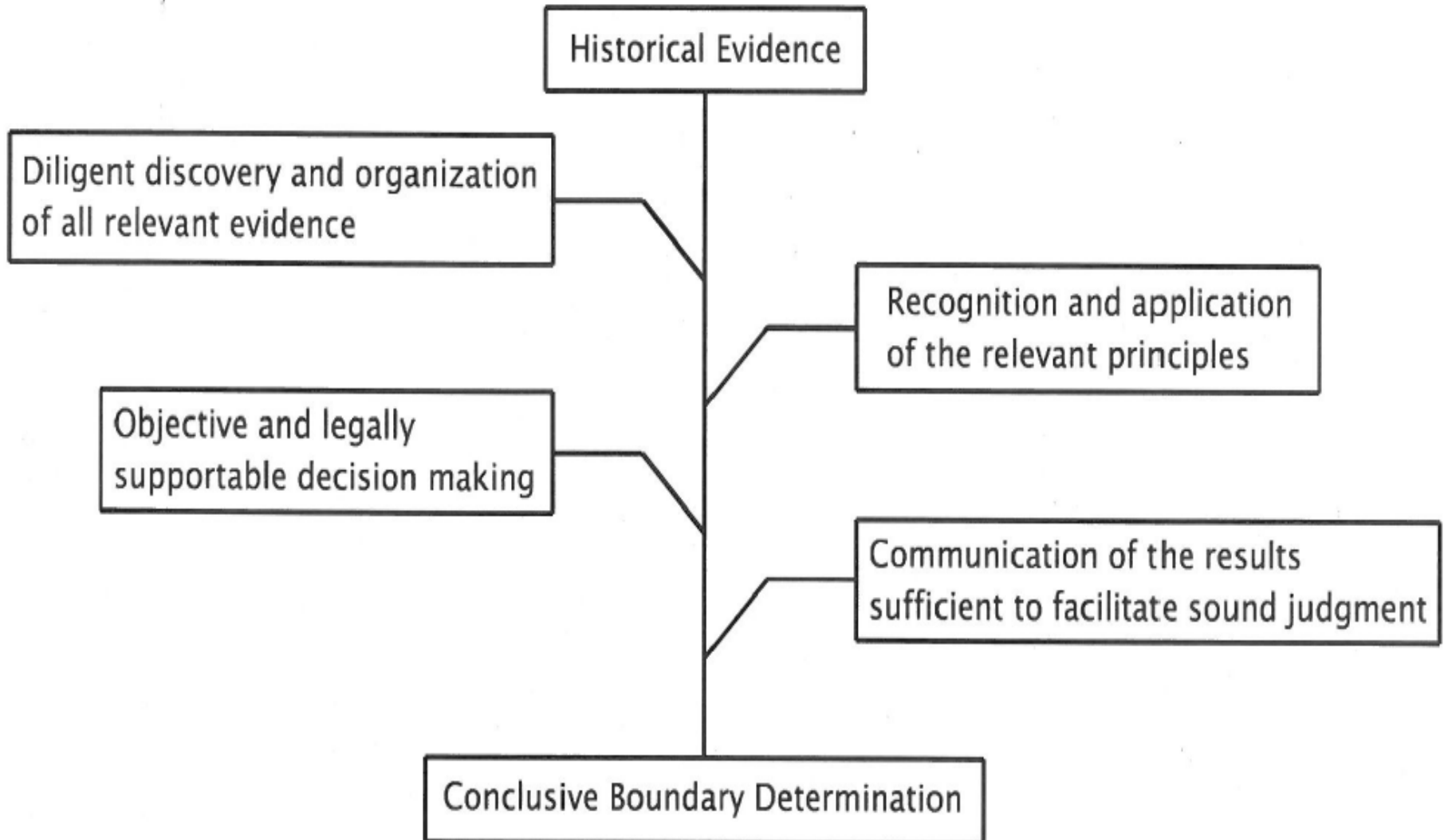
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Today we will review 8 federal cases involving boundary and title issues, which have been selected because they are especially thought provoking and because they enable us to understand and appreciate:

- 1) The importance of knowledge of the law.**
- 2) The fact that proper resolution of conflicting boundary evidence is based upon principles rather than technical factors.**
- 3) The significance of historical evidence of every kind, which does not diminish with the passage of time.**
- 4) The value of thorough research along with a well organized analytical thought process.**

The primary role of the land surveyor in dispute resolution is to gather all of the relevant evidence and to organize it in a manner that is suitable for legal review, making sound knowledge of the law absolutely essential to any proper evaluation of boundary and title evidence conducted by the surveyor. As we will have occasion to observe, proper application of certain fundamental principles ultimately forms the basis for accurate boundary determination.

The Key Ingredients of the Evidentiary Process



**Respect for bona fide rights lies at the heart of all survey work involving
federally created boundaries**

The Bona Fide Rights Act of 1909, amended June 25, 1910 (36 Stat 884) reads:

“No resurvey or retracement shall be so executed as to impair the bona fide rights or claims of any claimant, entryman, or owner of lands affected by such resurvey or retracement.”

In addition, judicial protection of bona fide rights is always a primary objective in federal boundary litigation, which therefore represents a major theme linking the cases that comprise this presentation.

The Weyerhaeuser case of 1967

2 versions of the same township line, run 40 years apart by different GLO surveyors while subdividing adjoining townships, produce omitted federal land.

Featured principles: Authority & Intent

Some lessons we learned:

- ❖ Intent is a very powerful principle, which typically exerts controlling force in land rights litigation, but in the federal legal arena the principle of authority is capable of constraining the legal efficacy of intent.**
- ❖ Authorized acts of federal surveyors, who were tasked with establishing PLSS monumentation, carry the highest level of legal force in the realm of boundary establishment.**
- ❖ Neither negligence nor gross error can be attributed to GLO surveyors who attempted to properly execute their assigned tasks, merely because subsequent analysis of their work reveals that they erred in some respect.**
- ❖ Omitted federal land can and does legitimately exist in certain locations, where federally established monumentation excludes any given area from any patented tract, even if approved federal plats fail to provide any indication of its presence, and even in the absence of any gross error.**

The Macmillan case of 1971

Expansion of a patented section by the GLO, through the creation of a second plat showing additional GLO lots therein, does not expand any patented title.

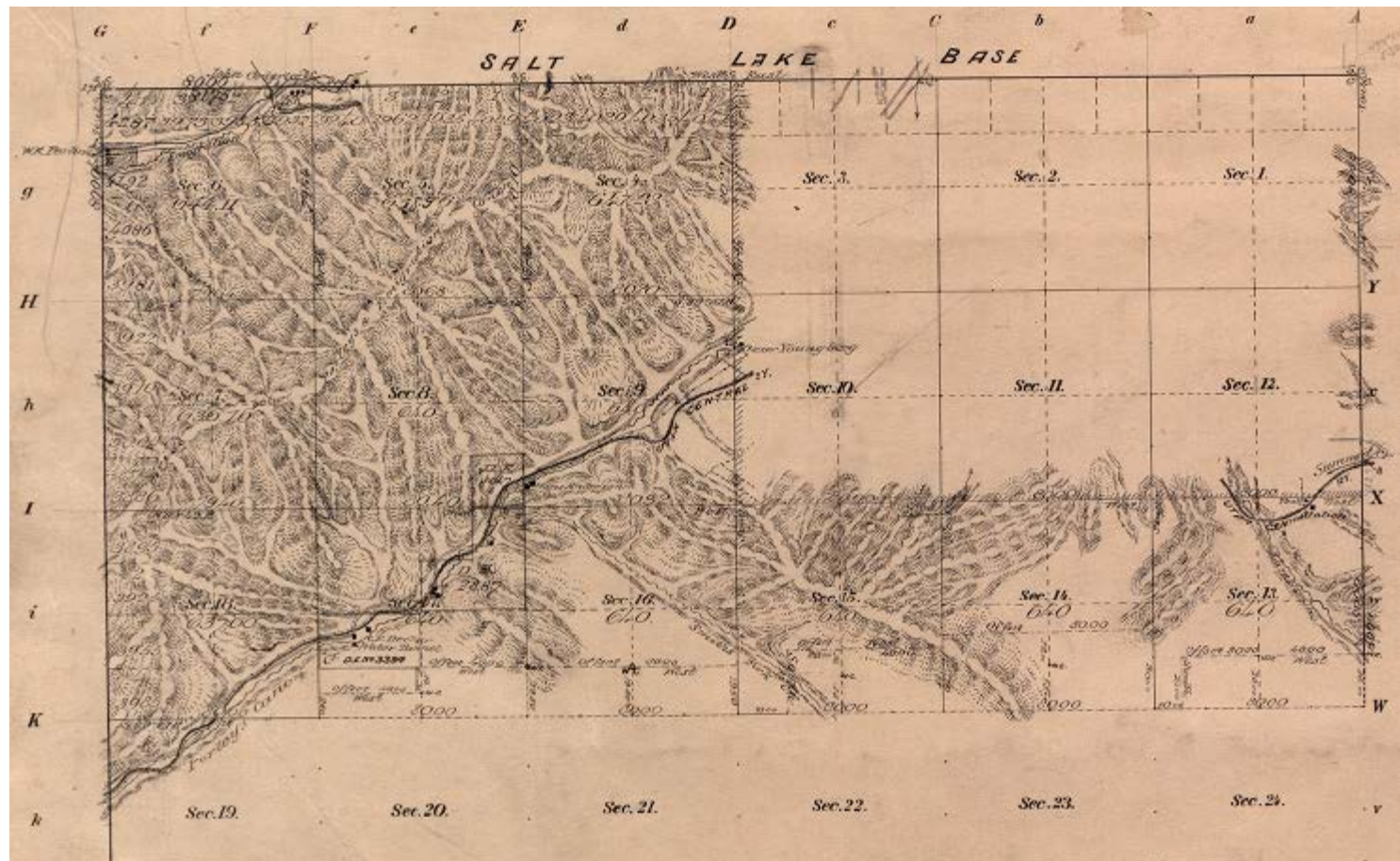
Featured principles: Authority, Intent & Reliance

Some lessons we learned:

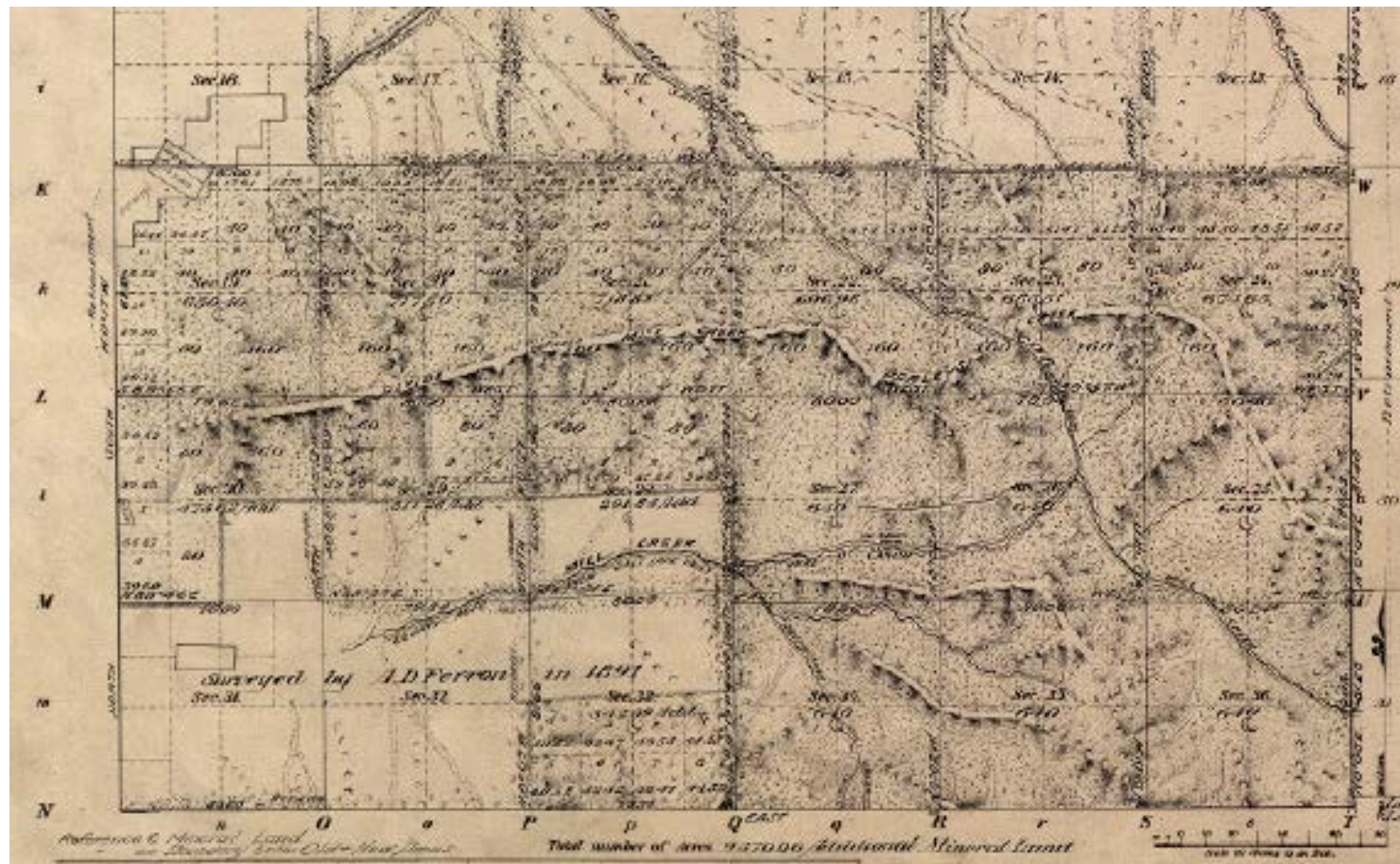
- ❖ An absence of federal authority, to conduct resurveys or to create resurvey plats, can be just as powerful, and just as essential to the resolution of land rights controversies, as the presence of federal authority.**
- ❖ Federal authority to address defects in survey work or plats is limited, regardless of the source or cause of those defects, and the primary factor negating federal authority to resolve such issues is the presence of the land rights which are produced through the issuance of a federal patent.**
- ❖ Reliance upon federal township plats and resurveys by a patentee is limited to those federal products which are directly linked to the title held by the patentee, no other survey or plat can support any bona fide right of reliance.**
- ❖ The power of the principle of intent ends when the fulfillment of that intent requires legal force and effect to be given to unauthorized federal acts, even if that intent emanated from a presumably reliable federal source.**

The Reimann Case (Utah 1974)

1891 - The GLO subdivides the north half of a particular township, and a plat of that area is approved and published the following year.



1902 - Another GLO surveyor performs a completion survey, subdividing the south half of the same township, but he is unable to find the SW corner of Section 15, so he sets a new monument to mark that corner, and a plat of this survey is approved and published the following year.



1904 - The entire area surveyed in 1891 becomes a National Forest, all of the sections shown on the first plat having remained entirely unpatented.

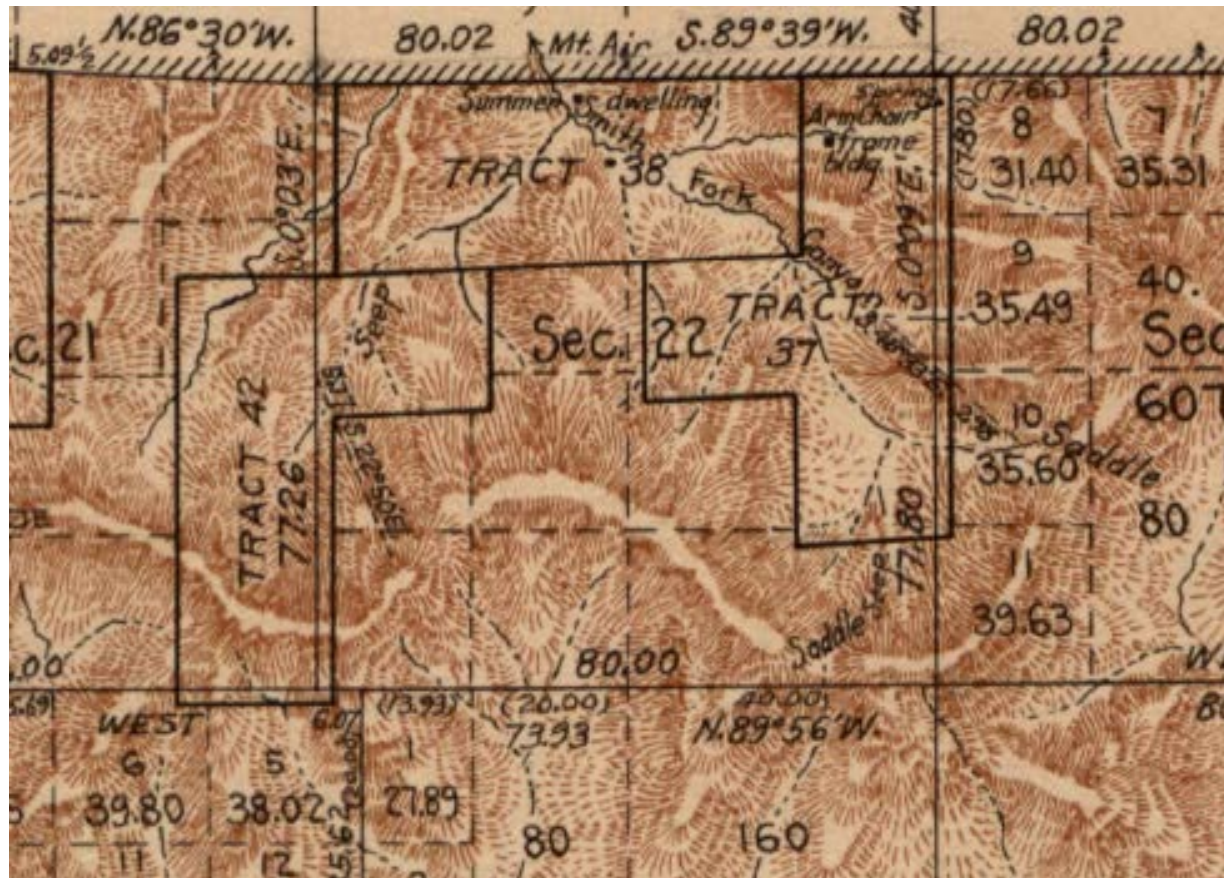
1908 - All 4 lots in the north half of Section 22 are patented to predecessors of Reimann.



1909 to 1923 - What use is made of the patented land in Section 22 during this period, if any, is unknown.

1924 - Based on a report from a GLO field inspector, the GLO discovers that the NW corner of Section 22 was established too far north in 1902, well to the north of the 1891 position for that same corner, and the GLO determines that the 1902 survey contained unacceptable error, officially concluding that it was "fatally defective".

1926 - The GLO remonuments the north line of Section 22, as well as the adjoining sections, adhering in so doing to the original survey of 1891, while disregarding the 1902 survey. The GLO also produces another plat of this area at this time, showing the patented land in Section 22 as tracts, rather than typical sectional divisions.



1927 to 1947 - What use is made of the patented land in Section 22 during this period, if any, is unknown.

1948 - Reimann acquires Lots 1 through 4 of Section 22, described as such in the typical manner, along with additional land lying farther to the south, all without any reference to the aforementioned GLO tract designations. How many different parties owned those lots prior to Reimann is unknown.

1949 to 1974 - What use is made of the patented land in Section 22 during this period, if any, is unknown, but near the end of this period the USFS determines that Reimann is making some unspecified use of about 56 acres of federal land lying north of the north line of Section 22, and files an action against him, seeking to enforce the line which was remarked in 1926 as the National Forest boundary. As part of his efforts to defend his interests, upon learning that his boundaries were being challenged by the USFS, Reimann obtained a survey, but his surveyor located only the southerly monument set in 1926, identifying it as the NW corner of Section 22, while bypassing the northerly monument set in 1902, after concluding that it had been officially superseded by the newer monument.

Reimann believed that he had a right to rely upon the NW corner of Section 22 which was monumented during the completion survey of 1902, but USFS personnel evidently told his surveyor that the 1902 monument no longer held any controlling force, pointing out that the GLO had taken the aforementioned corrective action during the 1920s, effectively amending the completion survey to conform to the section line that was established in 1891, and Reimann's surveyor proceeded to complete his survey in accord with those USFS directions.

Thus Reimann was informed that the GLO survey work done in 1902 was not a source of valid reliance on his part, because the line representing the northerly boundary of Section 22, as it was platted in 1903, had produced an overlap of Sections 15 & 22, which had been eliminated through corrective action by the GLO, long before Reimann made his acquisition. Therefore no overlap existed, the south boundary of the federally reserved Section 15 and the north line of his Section 22 had both been duly established during the survey of 1891.

Do you agree with Reimann's surveyor that this information provided by the USFS accurately defines the northerly boundary of Section 22?

- 1) Yes, the line run in 1891 controls, because that line is the one upon which the creation of the NF in 1904 was based, so that location represents both the original section line and the only valid boundary between Sections 15 & 22.**
- 2) No, both section lines are equally valid, because both of them were monumented, and there is no evidence that either line was more accurately run than the other, and there is no indication that either GLO surveyor committed any gross error.**
- 3) Yes, the line run in 1891 controls, because the NF boundary line has been posted with USFS boundary signs for several decades, so Reimann has no valid basis upon which to assert that he owns any land lying north of that federally marked line.**
- 4) No, the line run in 1902 controls, because the corrective action taken by the GLO during the 1920s constitutes a direct violation of Reimann's right to rely exclusively upon the completion survey and plat.**
- 5) Yes, the line run in 1891 controls, because the 1902 survey was clearly defective and the GLO was authorized to take corrective action when gross error was found in any GLO survey work.**
- 6) No, the line run in 1902 controls, because the section line established in 1902 was clearly intended to supersede and replace the section line of 1891, so the line of 1902 was wrongly discarded by the GLO in 1924.**

Lets Get Some Input – But Please Adhere to These Guidelines!

To avoid excess noise, discussion must be limited to each table, do not attempt to engage in communication with anyone sitting at another table, communicate only with those at your own table.

Please listen respectfully as others express their views, rather than engaging in chit chat about any other subject during this period.

If you already know the outcome of this case, please do not reveal your knowledge to anyone.

Please allow everyone else to experience the full benefit of this exercise by forming their own thoughts and opinions independently.

Expressing ideas and explaining one's position fosters engagement on the part of others, so all views that are expressed contribute to the overall educational experience and should be appreciated.

All those who contribute to the learning objective in this way are entitled to our respect, regardless of whether their views prove to be correct or not.

The only answer that ultimately matters is the one provided by the court of final jurisdiction.

Identify the most important single occurrence, which date marks the event that holds the key to the outcome?

1903 – When the 1902 survey, which produced the overlap, was mistakenly approved and platted by the GLO.

1904 – When the north half of the township became federally reserved land through congressional action.

1908 – When the northerly portion of Section 22 was patented.

1924 – When the GLO formally disapproved both the 1902 survey and the resulting plat of 1903.

1926 – When the GLO took corrective action, producing a new completion plat showing tracts occupying the northerly portion of Section 22.

1948 – When Reimann acquired his property and observed the USFS signs indicating that his land was bounded by a National Forest.

Although each of the cited events held genuine significance, it was the 1924 GLO decision to strike down the 1902 survey, on the grounds that it was grossly erroneous because it overlapped the survey of 1891, which was destined to serve as the trigger for the forthcoming boundary controversy involving Reimann half a century later.

Undoubtedly, both GLO and USFS personnel were confident that they were justified in accepting the line of 1891, while rejecting the line of 1902, on the basis that Congress had created a National Forest covering the area that was surveyed in 1891, making the section line which was run in that year particularly worthy of protection.

Therefore, although these federal personnel were certainly aware of the Bona Fide Rights Act, which had been in effect for 15 years by 1924, they evidently concluded that it had no application to this scenario, viewing federal protection of the National Forest land as a fundamental aspect of their mission and their top priority.

The US argued that the senior GLO survey controlled the line at issue, and that the line which was duly established under proper authority in 1891 was not subject to alteration, because the completion surveyor was not authorized to deviate from that original line, so the resurvey of 1926 reflected the true location of the section line in contention, being a faithful perpetuation of the original section line.

Reimann however, took the position that all of the decisions and the resurveys made by the GLO during the 1920s represented a violation of his bona fide right to rely upon the northerly section corner monument, which was set during the 1902 completion survey, so he was not legally bound in any respect by either the 1891 survey or the 1892 plat.

A federal district court found no merit in Reimann's position, holding that he was bound by the federally remonumented line of 1926, and in fact there were several legitimate factors supporting this ruling:

The GLO had the authority to determine that any GLO surveys, such as the one done in 1902, were grossly erroneous, and to take corrective action in such cases, to eliminate overlaps and for other similar purposes.

The USFS was authorized to mark and to protect any federal boundaries that came under their jurisdiction, such as the section line which was run in 1891.

Reimann had legal notice, when he acquired his land in 1948, that the USFS had adopted the section line of 1891 as a federal boundary line, based upon the rejection by the GLO of the 1902 section line.

Reimann's own survey stood in defiance of his position, and actually operated against him, by supporting the federal position.

Nonetheless, Reimann knew his position was legally sound, so he persevered.

Despite the many factors operating against him, Reimann was able to prevail, where Weyerhaeuser and Macmillan failed, because unlike them his position was based upon a valid and powerful source of reliance, the survey and plat which were directly linked to the 1908 patent that constituted the foundation of his title, but the federal judge had failed to comprehend the power embodied in that patent, forcing Reimann to file an appeal.

The federal Court of Appeals found the resurvey of 1926 to have been "unlawful", constituting an "illegal infringement" upon privately held land. That resurvey failed, the appellate court recognized, to properly "follow the footsteps" of the 1902 completion surveyor, due to the erroneous conclusion drawn by GLO personnel that the 1902 survey remained subject to their corrective authority during the 1920s, and could therefore simply be disregarded.

"The primary issue ... centers upon which of these 2 surveys controls ... both conflicting surveys were conducted prior to the issuance of any patent ... all the land was still in the government's hands ... prior to title passing from the United States ... the government has the power to survey and resurvey ... its own lands ... but once a patent has issued, the rights of the patentees are fixed and the government has no power to interfere ... since no patents had been issued ... the government was empowered in 1902 to re-establish boundaries on its own land ... it exercised this power when it accepted the 1902 survey ... the government ... cannot now be heard to complain that the survey (of 1902) was void ... the government retains no power to nullify a patent, nor the survey upon which it is based ... Executive Department functions ... necessarily cease when title has passed from the federal government ... and a patent has been delivered ... the finding that the survey was "fatally defective" ... did not empower the government or its agents with the authority to disregard or nullify it to the detriment of intervening patentees."

504 F2d 135

(1974 Court of Appeals reversal of lower court ruling)

Reimann was right, in reality it was the 1926 resurvey rather than the 1902 completion survey which was an unauthorized legal nullity. The balance between the presence and the absence of authority was once again pivotal here, and again the controlling principle was the right of every patentee, and all successors of patentees, to rely fully and solely upon their patent.

The GLO had no authority to discard or ignore the 1902 survey after patents had been issued based upon the 1903 plat of that survey, thus the GLO had clearly violated the bona fide rights held by Reimann under the patent to his predecessor in so doing, even though that law did not come into effect until after the relevant land had been surveyed, platted and patented, because the law operated upon all federal decisions made subsequent to its enactment.

Macmillan lost because her reliance mistakenly rested upon the newest plat, and Weyerhaeuser lost because the company was wrongly convinced that it had a right of reliance on the oldest plat. Reimann however, was astute enough to avoid both of those crucial errors, and it was his ability to identify the appropriate plat, which controlled the boundaries of his acquisition, that enabled him to achieve victory in the federal land rights arena.

Until land in Section 22 was patented, the GLO was free to perform as many additional surveys, for corrective purposes or for any other purposes, potentially relocating section lines in so doing, as the GLO might deem necessary, because all of the land on both sides of the problematic section line remained federal. Once a patent was in place however, the boundaries of Section 22, as surveyed in 1902, became conclusive and legally secure, placing any further alteration of those boundaries beyond federal control.

Ironically, the creation of the federal reservation boundary in 1904 actually operated in Reimann's favor, because it prevented the section lying north of the land which would later become his property from ever being patented to anyone. Had the National Forest never been created, Section 15 may very well have been patented prior to 1908, in which event the section line of 1891 would have taken on controlling legal force, as a legitimate boundary of private property at that point in time, and that development would have made it impossible for Reimann to prevail.

The crucial mistake made by Reimann's surveyor was clearly his misplaced reliance upon the plainly bogus resurvey of 1926, which had no legal connection whatsoever to Reimann's chain of title.

Highly comparable to the mistake made by Macmillan, Reimann's surveyor evidently felt compelled to regard the most recent GLO plat as a legally binding adjustment of his client's boundaries, while failing to recognize that it was actually the plat of 1903 which legally controlled the boundaries of his client's property, because only that plat was legally connected to, and was therefore capable of legally supporting, the patent issued in 1908.

As a result of his failure to recognize the power and legal significance of the linkage between the 1908 patent and the plat of 1903, that surveyor made no use of that plat, and delivered a survey which was of no assistance whatsoever to Reimann, thereby missing his chance to support his client's needs, and leaving Reimann to face his federal opponents alone.

Never assume that every decision or statement made by federal personnel is or was necessarily correct, accurate or legally valid. Federal treatment of private land rights has often been erroneous, typically not due to fraud or any kind of nefarious intent, but due to the fact that the relevant federal personnel were simply operating under either a misconception of the law or incomplete knowledge of the law.

In this instance, just as in the Macmillan case, GLO personnel acting during the 1920s unintentionally exceeded their authority, by focusing solely upon the task of correcting errors discovered in past surveys, without pausing to verify that the corrective actions they were taking were actually within the scope of their legal authority and were not barred by federal law.

Reimann's surveyor simply accepted and utilized the information he got from the USFS and GLO personnel at face value, operating either upon the assumption that their decisions were correct and their advice was accurate, or under the belief that he was obligated to agree with their position, or perhaps just because he was confident that he could not be charged with negligence if he relied on their statements, regardless of whether the information they gave him was right or wrong.

Fortunately for Reimann, his reliance upon the northerly section line, being based upon the rights which were derived from the patent that formed the root of his chain of title, was legally sound, and because he was aware that his rights were legally sheltered by the Bona Fide Rights Act he was able to emerge victorious, despite the fact that his surveyor evidently found it impossible to act cooperatively with him.

The federal government won the Weyerhaeuser and Macmillan cases because in those cases genuine omitted federal land existed, which had never been patented to anyone, but in this case no omitted land existed, because the controversy stemmed from an overlap rather than a gap, and the area in contention had in fact been patented, to Reimann's predecessor.

Does that mean the federal side can never win an overlap case?

Was the fact that the legal description of Reimann's property never changed important, and if so why?

Does this ruling mean that the 56 acre area in contention was conclusively lost to the USFS and cannot become part of the National Forest?

Here, unlike the Weyerhaeuser and Macmillan scenarios, the GLO decided to deem a deviant GLO survey defective and to take steps to nullify it. Why was that decision destined to lead to a federal defeat?

The GLO simply failed to recognize that any opportunity to dismiss the 1902 survey for any reason, or to take any corrective action with regard to the 1903 plat, ended once land was patented with reference to that survey and plat. The GLO certainly could have either eliminated or corrected the 1902 survey and secured the federal reservation boundary in the 1891 position if prompt action had been taken, prior to 1908, but the 1926 resurvey clearly came far too late to serve any legitimate boundary rectification purpose, so it was bureaucratic inefficiency, specifically delay in detecting the problem, which doomed their corrective efforts.

In reality, the fact that federal personnel were astute enough to realize that they were legally incapable of declaring any of the surveys or plats fraudulent, grossly erroneous or void in the Weyerhaeuser and Macmillan cases is one of the principal reasons why the US prevailed on those occasions. In both of those cases, rather than attempting to nullify any surveys or plats, the federal personnel realized that they needed to turn to other ways of dealing with the problematic situation, which were ultimately successful, providing us with an important lesson about wise problem solving.

Why has judicial reliance upon the gross error concept diminished over the decades?

United States Department of the Interior

Office of Hearings and Appeals

Interior Board of Land Appeals

LAWYERS TITLE INSURANCE CORP.

v.

BUREAU OF LAND MANAGEMENT

IBLA 89-382

Decided December 3, 1990

“... the gross error rule requires application of various judicially evolved factors ... except in the most egregious circumstances, strong policy considerations weigh against the application of the gross error concept, because old surveys are naturally inaccurate in some respects, and the stability of title dependent upon government patents is immensely important.”

The principle of seniority typically plays no role in determining boundaries between federal grants in the PLSS context, because the boundaries of every land unit are entirely dependent upon the specific survey and the particular plat which comprises the basis for any given federal conveyance employing the PLSS framework, and only those federal products are capable of generating the powerful right of reliance held by patentees and their successors.

The federal government can perform and produce federal surveys, resurveys and plats without limitation, for the purpose of defining units of federal land or any other purpose, as long as doing so interferes with no land rights which were acquired by patent or otherwise vested in accord with federal law.

No survey which was conducted in support of any federal land disposal program can be deemed to have been fraudulent, grossly erroneous or otherwise inaccurate or defective in any respect by the federal government, and thus subjected to any form of federal corrective action, once that survey has been utilized and legitimately relied upon for conveyance purposes.

MG LIFE INSURANCE-SELLERS 835 SW2 475 1992 - CAMDEN COUNTY

LAND SURVEYORS IN MISSOURI ARE AUTHORIZED TO ACCEPT ANY SECTION CORNER MONUMENT WHICH HAS BEEN APPROVED BY THE MISSOURI DNR, AS A FAITHFUL PERPETUATION OF AN ORIGINAL SECTION CORNER LOCATION, AND SUCH MONUMENTATION IS EQUIVALENT IN LEGAL FORCE TO ORIGINAL GLO SURVEY EVIDENCE FOR BOUNDARY PURPOSES.

This case features outstanding testimony given by a land surveyor, successfully defending his decision to adopt a certain section corner monument when that decision was legally challenged.

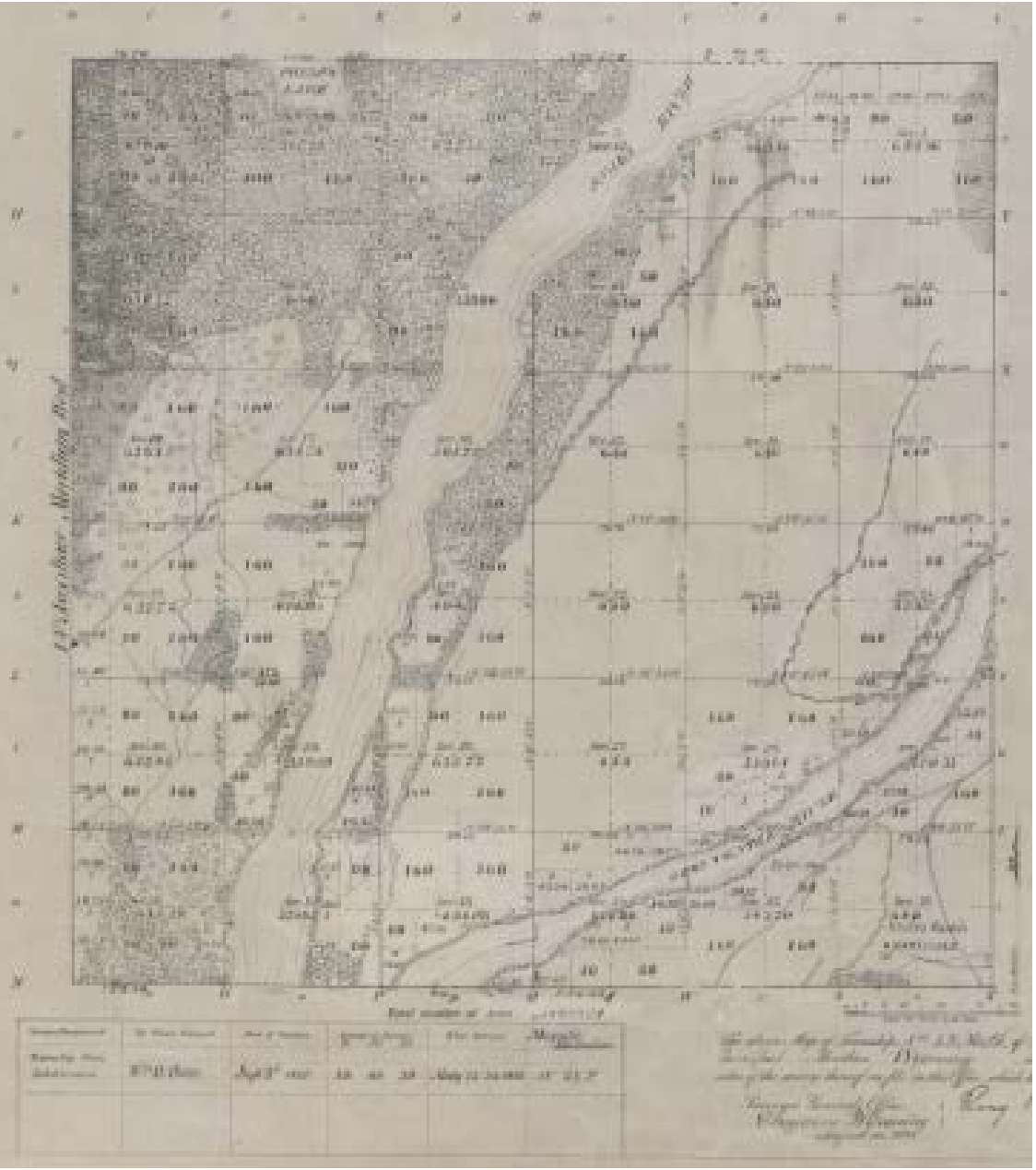
No survey is immune to legal challenge, so how important is it to make certain that all of your survey work accords fully with the law?

WILLS-MEADOR 638 SW2 297 1982 - WAYNE COUNTY

NO JUDGMENT FOR BOUNDARY OR TITLE PURPOSES CAN BE LEGITIMATELY BASED UPON A COURT ORDERED SURVEY UNTIL ALL PARTIES HAVE BEEN GIVEN AN OPPORTUNITY TO CHALLENGE THE VALIDITY OF THAT SURVEY, AND SUCH SURVEYS MUST COMPLY WITH ALL TYPICAL SURVEY REQUIREMENTS IN ORDER TO SERVE AS A LEGITIMATE BASIS FOR ANY SUCH JUDGMENT.

The Snake River Ranch Case (Wyoming 1976)

1893 - The GLO subdivided a certain township through which a portion of the upper Snake River passes. That river had a shallow but very broad channel in the relevant area, and during periods of low water its flow was braided, with innumerable sandbars forming temporary islands, which were actually part of the riverbed, since they were fully submerged during times of peak flow. Although the Upper Snake is non-navigable, this portion of the river was nonetheless meandered during this survey and riparian GLO lots were created in many river bearing townships including this one, to document the amount of land therein which was useless for agriculture.

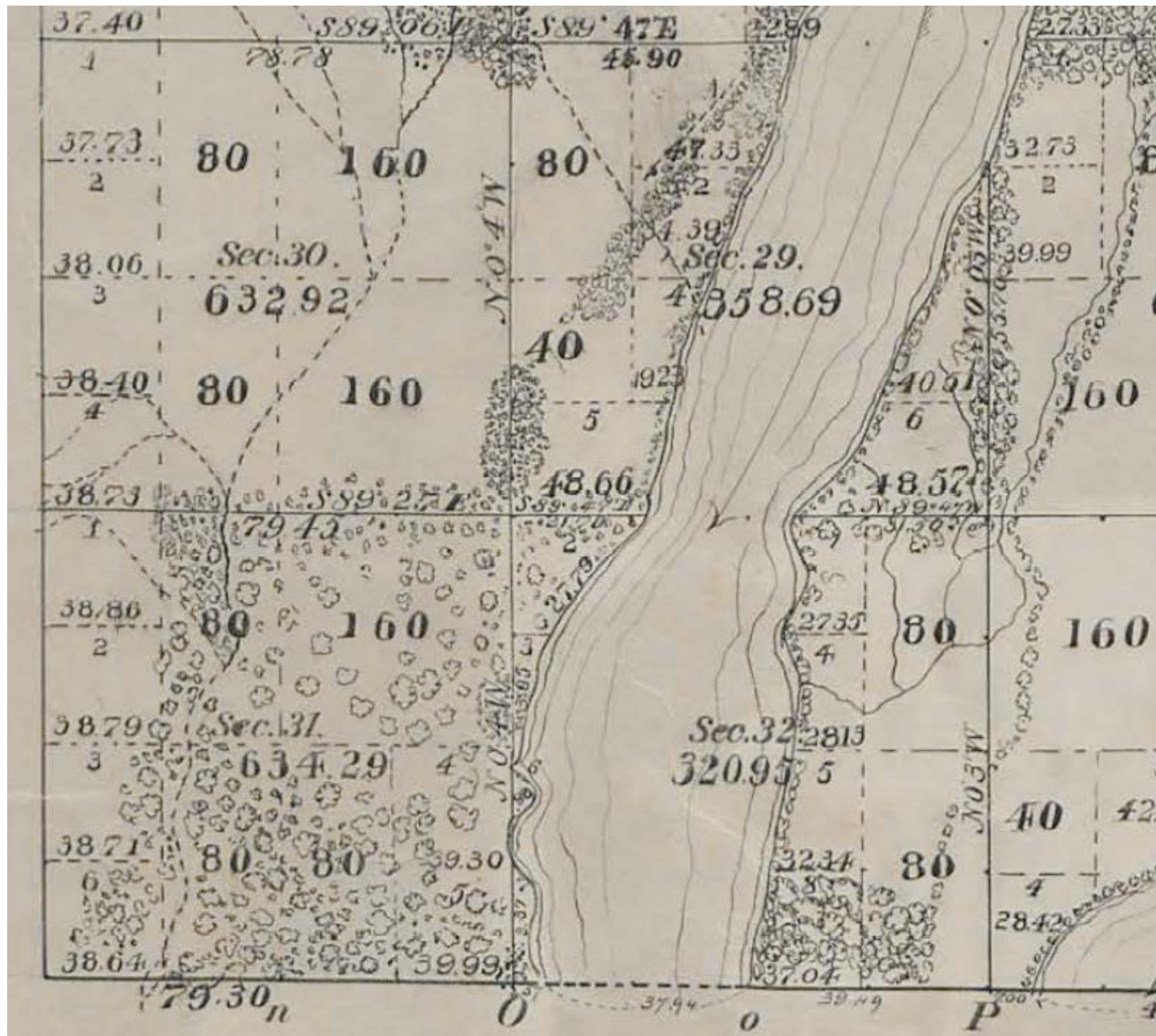


Scale	Projection	Date	Author	Editor
1:25,000	U.S. Standard	April 1887	Wm. M. Smith	Wm. M. Smith

This map was prepared by the U.S. Army, Corps of Engineers, under the direction of the Chief of Engineers, Washington, D.C., and is published by the War Department, Office of the Chief of Engineers, Washington, D.C., 1887.

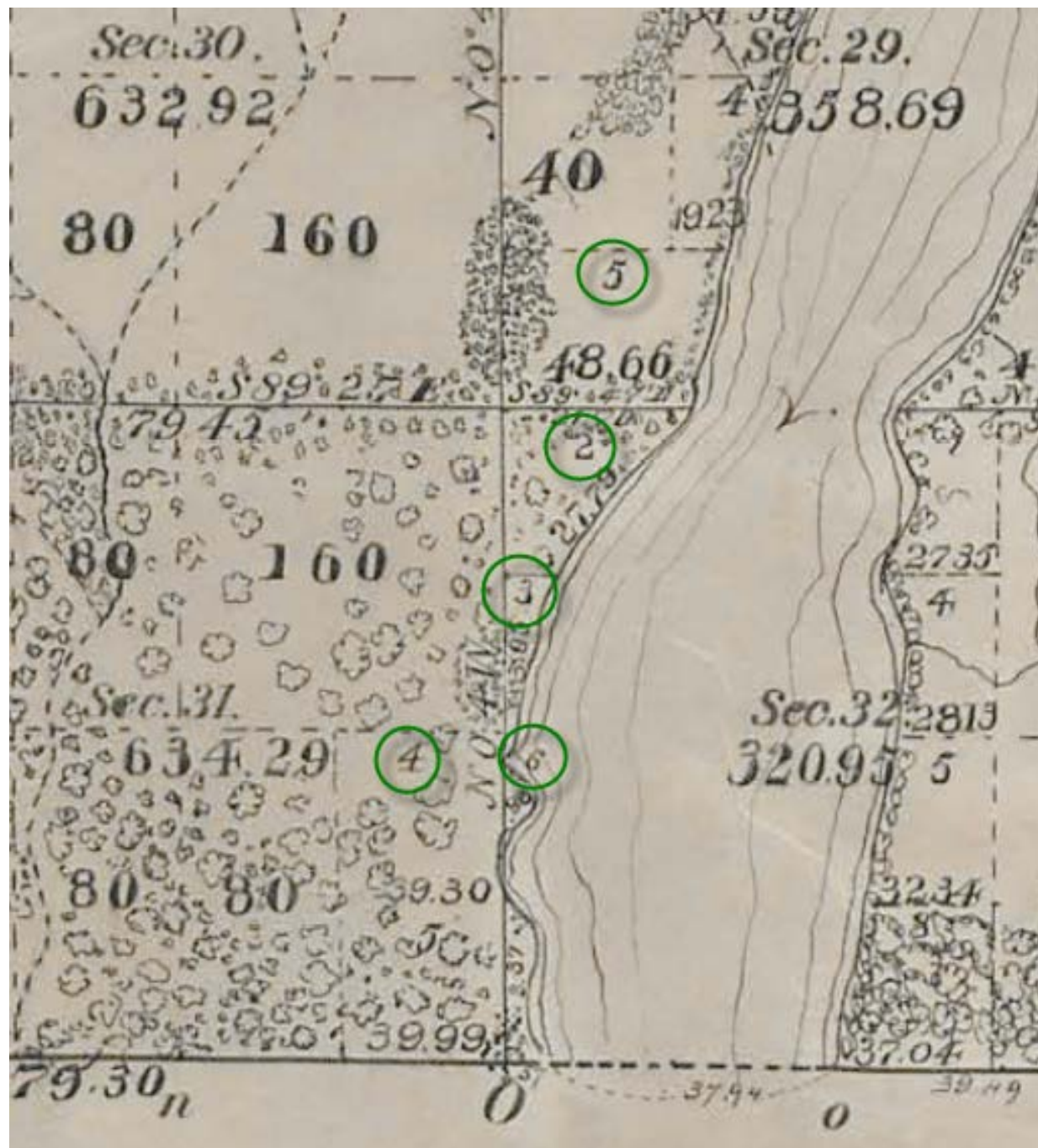
Wm. M. Smith
 Chief of Engineers
 U.S. Army

1894 - The GLO approved and published a township plat based upon the 1893 survey, which showed the river's broad bed occupying nearly the entire west half of Section 32, and also depicted numerous riparian lots resulting from the river's presence in the typical manner. Unknown to the GLO or anyone else however, as fate would have it, the GLO survey work had been conducted during an unusually wet year in this remote area, so the width of the river, as it appeared on this plat, actually represented a high water scenario.



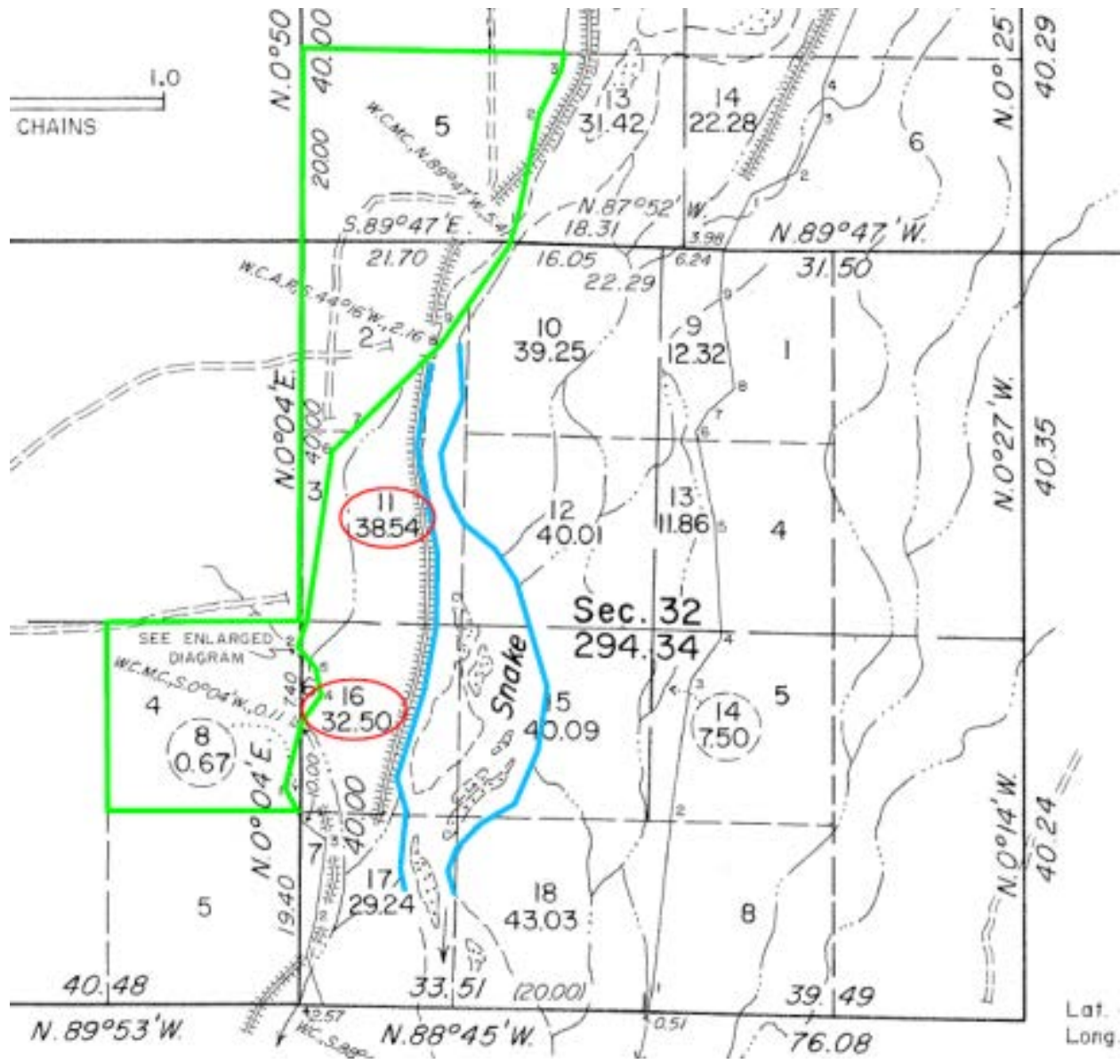
1908 to 1956 - By 1920, most but not all of the GLO lots platted in 1894 were occupied by homesteaders and were patented to various entrants. Several of those patented lots lying in the southwesterly part of this township were acquired by the Snake River Ranch partners or their predecessors during the 1920s, but by 1929 the remaining unpatented land in this township had been federally withdrawn from settlement, leaving some scattered federal holdings amongst the patented properties. The volume of water flowing in the river also diminished significantly during the early portion of this period, due to the erection of dams and reservoirs upstream, from which water was drawn for agricultural use. In addition, severe flooding occurred in the subject area throughout this period, whenever those primitive earthen dams ruptured or overflowed, producing dramatic changes in the river's location on a relatively frequent basis. Due to this essentially perpetual river movement, the boundaries of the platted lots became highly unclear to the local property owners, and as a result some of them unknowingly began making use of land lying well beyond their platted lot lines. Near the end of this period the public land which had been withdrawn during the 1920s was opened once again to settlement, enabling those who were already occupying scattered fragments of federal land to obtain patents covering the property they had been using for many years.

1957 to 1959 - Some of the previously unpatented riparian lots on the west side of the river were patented to one of the Snake River partners under the federal Color of Title Act at this time, bringing their combined land holdings in this vicinity to roughly 3000 acres. A right-of-way for flood control work was federally reserved in all of these patents, in order to facilitate federal plans to stabilize the river's location, indicating recognition on the part of the federal government that these patents effectively extended the Ranch property to the river. Upon completing these acquisitions, the Ranch partners thought they held clear title to all of the land lying both along and within the riverbed in the subject area, and they believed that no unpatented federal land remained in existence in that area, despite the fact that much of the platted riverbed within Section 32 was now dry land, including some substantial islands which had never been platted.



1961 - The Corps of Engineers completed a flood control project in the subject area, during which a large number of levees were built, stabilizing the river and greatly reducing, if not completely eliminating, its capacity to materially shift position. By this point in time however, due to the ongoing intensive extraction of water upstream, the active riverbed had narrowed from its originally platted width, and many of the once temporary and transient sandbars in the stream had become permanent islands bearing vegetation including trees, since under the reduced flow conditions water had ceased to overflow those areas on any regular basis.

1964 to 1973 - The BLM conducted numerous resurveys along the Snake River, including at least one in this township, for the dual purpose of documenting the river's stabilized location and identifying any remaining federal land in this area, but the BLM resurvey plat which was produced at the end of this period had a problematic impact upon the title held by the Snake River partners. That plat revealed that in Section 32 the federally constructed levee along the west bank of the river was up to 900 feet east of the meander line which had been established in 1893, as a result of the extensive river activity and the reduction of its width noted above. In addition, this plat showed additional newly created lots lying west of the levee in Section 32, separating the lots acquired by the partners from the river.



Lots 11 & 16 in Section 32 were targeted for extinction by the partners.

1974 - Pursuant to the federal Quiet Title Act of 1972, the Ranch partners elected to file an action, accusing the BLM of falsely designating substantial portions of the riparian property that had been patented to them and their predecessors as omitted land, which was therefore still under federal ownership.

BLM acknowledged that the river was non-navigable and did not assert that any of the river's historical movement represented avulsion, but BLM took the position that the meander lines run in 1893 were either grossly erroneous or completely fraudulent. In addition, BLM also maintained that the islands, which had grown substantially over the previous 8 decades, were already in existence in 1893, so the GLO surveyor's decision to leave them unsurveyed clearly represented either another gross error or fraud on his part. Thus BLM took the position the land in contention was still federal property, which BLM was free to sell off, having been mistakenly omitted from the 1893 survey, therefore the creation of new riparian lots for that purpose was fully justified.

Snake River Ranch maintained that the original GLO meander lines had been legitimately run, along the banks of the river as it stood in 1893, and could not be characterized as either fraudulent or grossly erroneous, therefore the originally riparian lots acquired by the partners always legally remained riparian, extending to the centerline of the river at all times, as the river's width steadily narrowed over several decades. The partners also insisted that none of the islands existed in 1893, asserting that they had formed in recent decades through accretion and reliction, and they presented evidence documenting the historical reduction of the river's volume, in an effort to prove that no land in the subject area had been wrongly left unsurveyed in 1893.

Are the Snake River partners correct in their complete reliance on the 1894 GLO plat, and their assertion that the BLM resurvey work done during the 1960s & 1970s had no legal impact whatsoever upon the boundaries of their lots, or is the 1973 BLM plat legally sound?

- 1) The 1973 BLM plat controls, because the river is not navigable, so the state never had any legal interest in the riverbed, therefore all of the unsubmerged land which was exposed by the river became subject to a federal resurvey.**
- 2) The plat of 1894 controls, because the river is not navigable, therefore the riparian lots which were created in 1894 legally extend eastward all the way to the river, regardless of what caused the reduction in the width of the river.**
- 3) The 1973 BLM plat controls, because the width of the river diminished only as a result of upstream irrigation activities which reduced the river's flow, therefore the original platted lots could not legally expand as the river diminished in width, they are still bounded by the meander lines of 1893.**
- 4) The plat of 1894 controls, because even though the river's physical width was legally and permanently reduced by the levee system, built within the area that had been meandered in 1893, the levees are on private land, so even their legal presence cannot justify the creation of more federal lots in 1973.**
- 5) The 1973 BLM plat controls, because the 1893 survey work was clearly either grossly erroneous or fraudulent, therefore the meander lines which were run in 1893 were legally converted into permanent upland meander boundaries of each lot when the river narrowed in width.**
- 6) The plat of 1894 controls, because no fraud or gross error in the 1893 survey was proven, and meander lines can operate as boundaries of federal land only through fraud or gross error, but the lots created in 1893 extend only to west bank of the river and do not include any islands.**

Lets Get Some Input – But Please Adhere to These Guidelines!

To avoid excess noise, discussion must be limited to each table, do not attempt to engage in communication with anyone sitting at another table, communicate only with those at your own table.

Please listen respectfully as others express their views, rather than engaging in chit chat about any other subject during this period.

If you already know the outcome of this case, please do not reveal your knowledge to anyone.

Please allow everyone else to experience the full benefit of this exercise by forming their own thoughts and opinions independently.

Expressing ideas and explaining one's position fosters engagement on the part of others, so all views that are expressed contribute to the overall educational experience and should be appreciated.

All those who contribute to the learning objective in this way are entitled to our respect, regardless of whether their views prove to be correct or not.

The only answer that ultimately matters is the one provided by the court of final jurisdiction.

Identify the most important occurrence or decision, which date marks the event or series of events that control the outcome.

1908 to 1956 – When the river grew narrow as a result of increasing extraction of the water at numerous points lying upstream.

1957 to 1959 – When the federal government sold several previously unpatented lots to private parties, reserving the right to construct a levee system crossing the lots that were patented at this time.

1961 – When the levee construction was completed, preventing the river from ever again filling the riverbed which it had occupied during earlier decades.

1964 to 1973 – When BLM personnel discovered that a large amount of dry land existed in certain sections, lying between the meander lines of 1893, and decided to create additional federal lots, in order to enable the federal government to sell that unsubmerged land.

The most important single event was the decision on the part of BLM to identify the 1893 meander lines as upland meander boundaries, because that decision was necessary to justify and facilitate the creation of additional lots in this township, such as the controversial Lots 11 & 16 in Section 32.

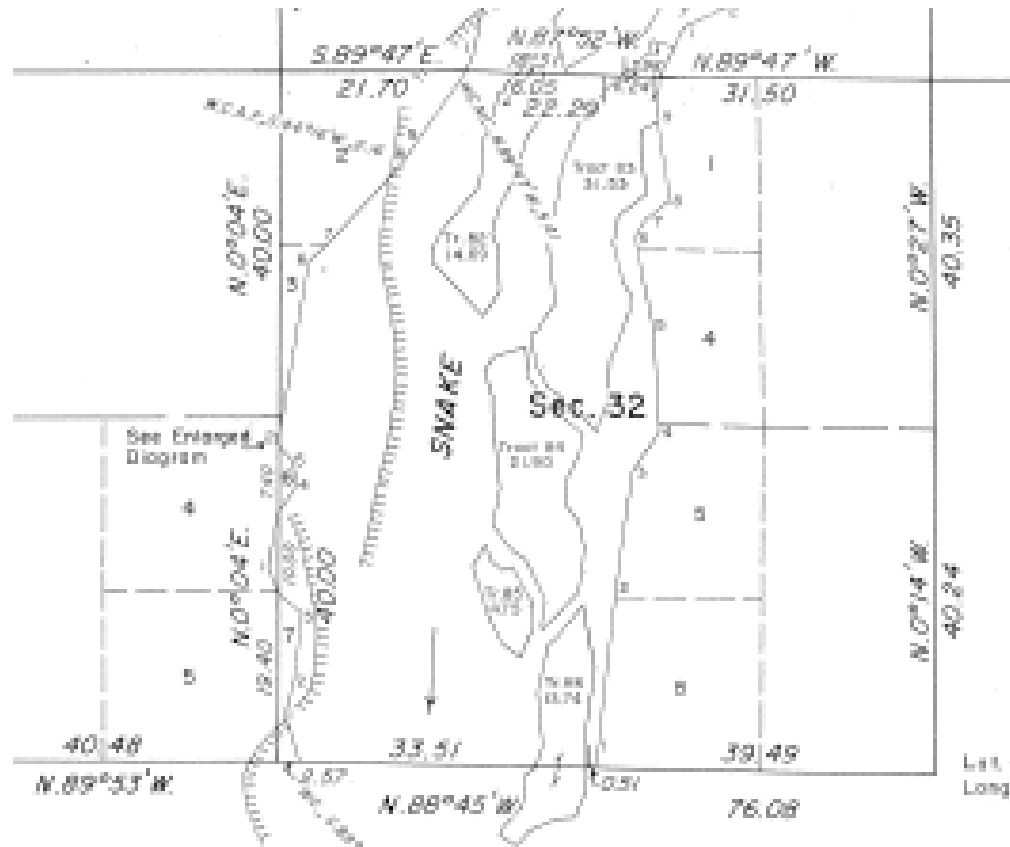
However, that federal decision was evidently based upon the belief, on the part of the BLM personnel, that the river was never really as wide as it appeared to be on the 1894 plat, and that the meander lines run at that time should have been run at a lower elevation, much closer to the center of the river, encompassing only the river's true permanent channel. Because the levee construction had proven that the permanent river channel was actually much narrower than the riverbed shown on the 1894 plat, they concluded that the 1893 survey work must have been fatally inaccurate, and that the GLO surveyor had failed or neglected to properly locate the true riverbank.

But the patents to the lots obtained by the Snake River partners during the 1950s indicated that the levee system was to be built on those lots, creating a federal flood control easement through those lots for that purpose, so important documentation contradicted the legal position taken by BLM.

A federal district court ruled in favor of the partners, verifying that their reliance on the original survey and plat of their township was fully justified. The federal legal team went down to defeat on this occasion because the BLM failed to present convincing evidence that the original survey was seriously defective in any respect, much less grossly erroneous or fraudulent, while the partners were able to prevail because they presented extensive evidence documenting all that had occurred since the date of the original survey. The US took this controversy to the appellate level, only to be vanquished again, as the district court ruling was fully upheld.

The original plat legally made the river a boundary monument, forming a boundary of the lots in question, and the river remained the boundary of those lots at all times, so no omitted land existed, and by the 1960s there was no federal land left in Section 32 to be resurveyed, thus the lots created in 1973 were legally void. The original platted lots extended, like all riparian lots bounded by non-navigable waters, to the center of the stream, so the islands were private lands as well, those west of the river's centerline were part of the lots owned by the partners, while those east of that line belonged to the holders of title to the original lots lying east of the river.

"The US cannot now be heard to attack the riparian title of the plaintiff ... the mere failure of a surveyor to delineate precise boundaries of a water monument or to show all sinuosities of a channel is not gross error ... and does not render such areas omitted lands ... one asserting a meander boundary (BLM in this case) ... must prove by clear and convincing evidence that the water monument could not have been at or near the meander line ... fraud or gross error cannot be imputed ... the government has not sustained its burden of proving ... that the Snake River was not at or near the meander line run in 1893 ... the government has not sustained its burden of proving fraud ... the survey discrepancy does not constitute fraud or gross error ... 900 feet is not sufficient to constitute gross error ... the US will always be deemed to have intended that submerged land pass with a patent to the adjacent upland, unless a contrary intention is clearly manifested ... the government has not proven ... that the original GLO surveyor did not find and survey the bank of the river ... he did in fact run a true meander line ... a patent carries title to the thread of the adjoining non-navigable stream and includes all accretions ... judgment will be entered in favor of Snake River Ranch."



As this 1987 BLM resurvey plat reveals, the BLM wisely proceeded to take sound corrective action, eliminating the additional lots which had been mistakenly created to quantify the purportedly omitted land. As indicated here, for federal purposes the river still legally extends to the westerly meander line, even though in reality it has been physically constrained to the area east of the levee for decades.

Even in places where no river movement or only negligible river movement has occurred since the date of the original GLO survey, omitted federal land can exist, if it can be proven that the meander line or lines at issue were created in a fundamentally fallacious location, without proper regard for the actual location or limits of the streambed, due to either negligence tantamount to fraud, or sheer incompetence leading to gross error, on the part of the original surveyor.

In virtually all cases of this kind however, no permanent body of water ever existed at all, proving that the original surveyor either fictitiously surveyed the area, signifying outright fraud on his part, or he mistakenly identified a temporarily inundated area as a permanent body of water, due to poor judgment, representing a gross error on his part.

As can be seen, gross error in this context refers solely to errors in the judgment that was exercised by the surveyor, not to any errors which occurred during the measurement making process, which is why even large measurement discrepancies are typically not judicially deemed to be indicative of gross error, as this especially sound ruling verifies.

Just as in the Reimann case, the US lost on this occasion because acts of federal personnel violated the bona fide rights of a private property owner, solidly founded upon that land owner's patent.

Specifically, here the BLM erred by reaching the conclusion that the original survey of 1893 was fraudulent or grossly erroneous in haste, without compiling any substantial evidence supporting that conclusion.

No omitted land existed in Section 32, because the 1893 GLO surveyor had faithfully meandered the river as it existed when he arrived on the scene, even if he was understandably unaware that it was apparently running higher than normal, being unfamiliar with that remote area, so his work could not be legally classified as either fraudulent or grossly erroneous.

In addition, he could not be convicted of negligently failing to survey any islands, because BLM presented no proof that any islands existed in 1893, so none of the islands that existed by the 1960s could be properly classified as federal land which had wrongly been left unsurveyed.

Unlike the Weyerhaeuser, Macmillan and Reimann cases, this case featured only one original survey, but just as in the Reimann case, once again here the US lost because land which was actually private was wrongly replatted, by federal personnel who failed to comprehend the law well enough to see that their actions were unjustified, and could not withstand a legal challenge which was based upon informative historical evidence.

Perhaps most importantly however, the outcome of each of these 4 cases had one very elementary factor in common. The success or failure of the party opposing the federal government in each instance was determined by the ability of that party to accurately identify the one and only plat which legally controlled the rights that were bestowed upon them by their patent. In the first 2 cases the private claimants failed that test, but Reimann and the Snake River partners were either smart enough, or well advised enough, to recognize the particular plat which held the key to victory for them.

How confident are you that you always identify and rely upon the right plat?

Why did the US seek to discredit the validity of the meander lines which were run by the GLO in 1893?

Why was it necessary for the US to assert and attempt to prove that the islands actually already existed in 1893?

Could the US have potentially prevailed by arguing that avulsive river movement occurred, rather than accretion and/or reliction?

Why was the exact location of the thread or centerline of the river, which formed the eastern boundary of the lots that were owned by the partners, left unaddressed and unresolved during this litigation?

The bona fide rights of the Snake River partners were properly protected on this occasion, but could the US have won, if the partners had failed to promptly file their legal action under the federal Quiet Title Act?

Any platted stream along which the GLO created and sold riparian lots represents an ambulatory PLSS boundary monument, and that body of water remains a legally controlling boundary monument, of federal origin, until it is conclusively deprived of that status.

Any party maintaining that a GLO meander line has become a property boundary, based upon gross error or fraud in the original survey, bears a very heavy burden of proof, and must present evidence strong enough to clearly demonstrate that the line in question was never capable of functioning as a meander line, because it was fundamentally fictitious in nature, in order to prevail.

Acreage stated on GLO plats is not a primary factor in riparian boundary control, because in riparian scenarios acreage is understood and expected to be variable, therefore the presence of an acreage discrepancy is legally insufficient to justify a conclusion that omitted federal land exists in any such location, and surveyed or platted acreage figures do not operate to define boundaries or otherwise limit the amount of land which was included in any federal patents that conveyed riparian tracts.

The work of original GLO surveyors must always be held in the highest regard, it cannot simply be swept aside as negligent or otherwise deficient in the absence of especially strong evidence that the original survey in question was fictitious, because all presumptions at law favor and point toward the validation of original surveys, which carry a powerful legal presumption of correctness, regardless of the fact that they were conducted using relatively primitive tools and technology.

In riparian boundary resolution, the value of historical evidence is truly monumental, the party who gathers and cogently presents the strongest historical evidence virtually always prevails in such controversies, because nearly all judges are highly appreciative of legal positions which have a demonstrably sound basis in historical fact.

This case stands as a genuine judicial landmark with regard to the subject of omitted federal land. Since 1976, when this ruling became final upon appeal, federal reliance upon the omitted land concept has been dramatically curtailed and only rarely utilized, due primarily to the high burden of proof borne by the federal government which was judicially emphasized at this time. Omitted federal land may very well still exist however, in various locations throughout the west, which have simply not yet been identified, due to a lack of controversy over land rights in such locations, but when attention becomes focused on those areas in the event of a serious land rights conflict, a valid omitted land scenario can still arise.

**395 F Supp 886
(1975 District Court ruling)**

**542 F2d 555
(1976 Court of Appeals affirmance of 1975 ruling)**

BURKE-COLLEY 495 SW2 699 1973 - RIPLEY COUNTY

ALL GLO LOTS WHICH ARE BOUNDED BY MEANDERED NON-NAVIGABLE STREAMS EXTEND TO THE "MIDDLE THREAD" THEREOF, BECAUSE GLO MEANDER LINES DO NOT CONSTITUTE AN EXPRESSION OF INTENT ON THE PART OF THE FEDERAL GOVERNMENT TO RETAIN TITLE TO ANY LAND.

Failure to understand the role of meander lines in the federal land disposal process, and their true legal significance, has long been a source of great consternation for riparian property owners and land surveyors alike. The best way to avoid entanglement in such difficulty is to focus upon the fact that in legal contemplation all meandered bodies of water represent federally platted boundary monuments.

And this case, which involved Creve Coeur Lake, also depicts an interesting riparian boundary scenario, enlightening us about the role of surveyed acreage figures relating to lakefront property, and ideally demonstrating the fundamental principle that acreage figures do not represent a reliable source of boundary control.

WALLIS-COUNTY 621 SW2 720 1981 - ST LOUIS COUNTY

AN UPLAND ESTATE BOUNDED BY A LINEAR NON-NAVIGABLE LAKE TYPICALLY EXTENDS TO THE CENTERLINE THEREOF, AND A CONVEYANCE OF THAT TRACT TRANSFERS FEE TITLE TO THE SUBMERGED LAND, ALONG WITH THE UNSUBMERGED UPLAND AREA, TO THE GRANTEE, EVEN IF THE LEGAL DESCRIPTION USED IN EXECUTING THAT CONVEYANCE MAKES DIRECT REFERENCE TO A SURVEY OF THAT ESTATE, UPON WHICH THE UPLAND ACREAGE AND THE SUBMERGED ACREAGE ARE SEPARATELY SPECIFIED, AND ONLY THE UPLAND ACREAGE FIGURE APPEARS IN THE DEED,

The Pantheon of title and boundary principles

Authority

Estoppel

Intent

Notice

Reliance