

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

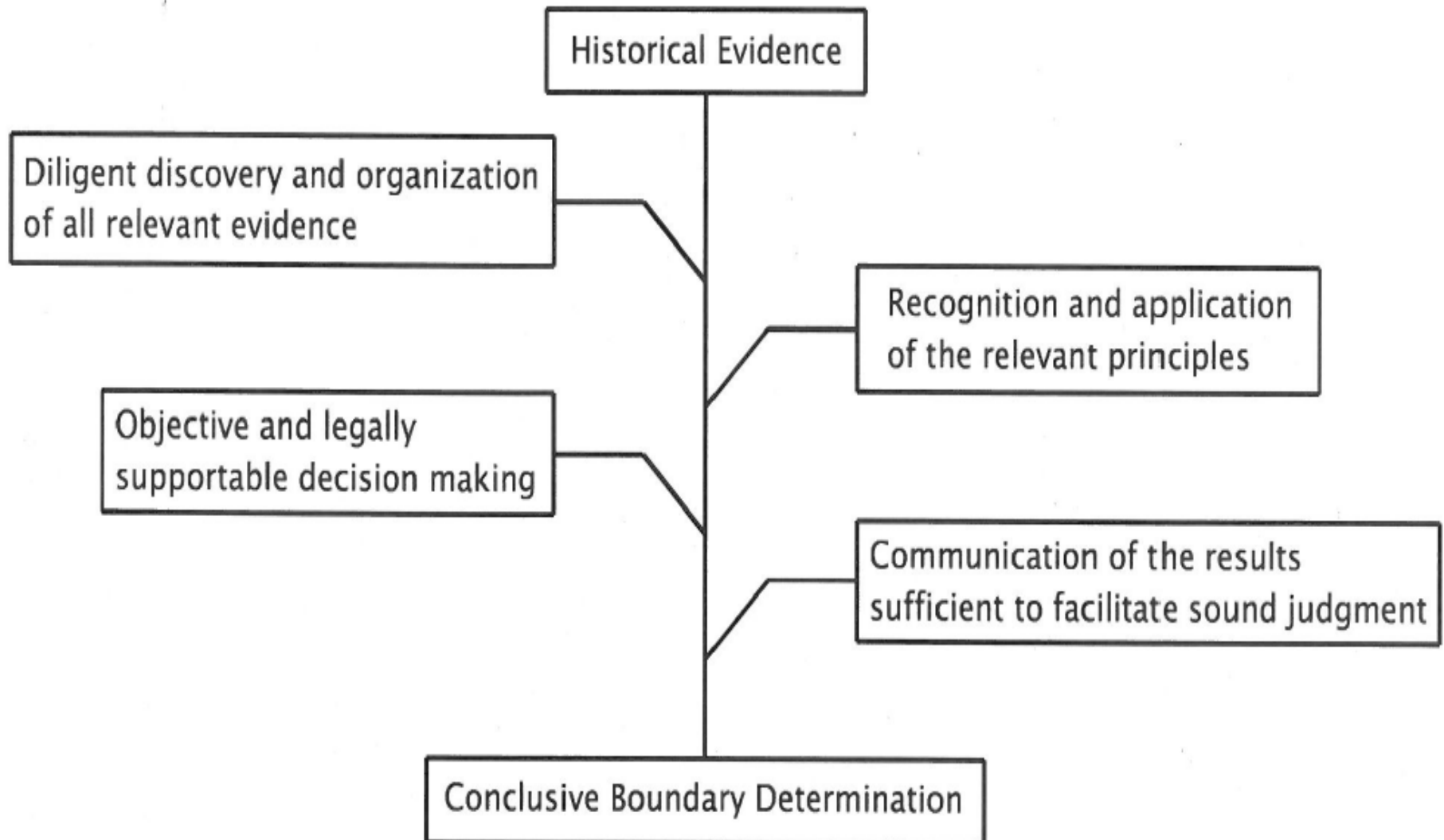
Brian Portwood – Land Surveyor - Bonneville Power Administration – bportwood@bpa.gov

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



Recommended approach - to guide your thoughts as you review this material

As professionals, we proceed through the evidence in a detailed and organized manner, in order to insure that we have duly noted all of the relevant points of information, but of course not every factual item will prove to be decisive or vital to the outcome, so keep the primary focus of your attention upon:

- The sequence in which the described events occur**
- The passage of time between events and the length of each time period**
- Which parties are directly involved in each event**
- The potential legal implications of each event**
- The principles of law and equity which each event brings into play**

Treat this as an exercise in professional analysis and decision making, try to avoid diverging into speculation or conjecture, but be observant as the essential evidentiary facts unfold before you. Concentrate upon objectively noting the potential value of each fact that is presented, but read each page with a relaxed, open and thoughtful mindset, then after reading each piece of additional information ask yourself “How does this piece of the puzzle fit in with the other known information, and does this fact appear to create some form of legal tension or conflict with any of the other known facts?”.

The Reimann case of 1974

A GLO completion survey which overlaps an existing boundary of a previously surveyed part of a township can control that boundary.

Featured principles: Authority, Estoppel & Reliance

Some lessons we learned:

- ❖ **A federal patent prevents the government from ever denying the legitimacy of the monuments or the plat upon which that patent is founded.**
- ❖ **The earliest original survey or township plat is not always capable of serving as the controlling survey or plat, even if it was legitimately executed.**
- ❖ **The presence of a federal reservation boundary does not overcome the power of a patent, and federal authority to negate federal surveys is limited.**
- ❖ **The federal government is free to resurvey and resubdivide land an unlimited number of times, while that land remains federal, but a patent terminates the federal capacity to resurvey or resubdivide that land.**
- ❖ **Any approved federal survey can effectively supersede or nullify another approved federal survey of the same land, without regard for the dates of either the surveys or the plats, in the absence of any reliance by any patentee upon the negated survey or plat.**

The Snake River Ranch case of 1976

A BLM resurvey plat, showing additional lots along a river, created 80 years after the original survey, is void due to an absence of federal authority.

Featured principles: Authority & Reliance

Some lessons we learned:

- ❖ Original surveys are judicially regarded with high respect.**
- ❖ Wherever riparian GLO lots have been platted and patented, the platted stream represents an ambulatory boundary monument.**
- ❖ The law and our courts recognize the right of reliance acquired by all riparian patentees upon streams as property boundaries.**
- ❖ The authority of BLM to conduct federal resurveys for land disposal purposes has distinct limitations.**
- ❖ Any suggestion that federal omitted land exists in any given location, due to fraud or gross error in an original survey, carries a heavy burden of proof.**
- ❖ Under the Bona Fide Rights Act, neither the presence of unsubmerged land nor unsurveyed islands is sufficient to justify any federal resubdivision of that land, when such federal work would impair any patented rights.**

The Soda Flat Case (California 1987)

1883 to 1896 - The GLO creates and subdivides townships throughout California, and Sections 16 & 36 in each township become property of the state as school land, at the moment when each township plat is approved, pursuant to an 1853 federal statute devoting each of those sections to the state, as a source of revenue to be used by the state for the establishment of public schools.

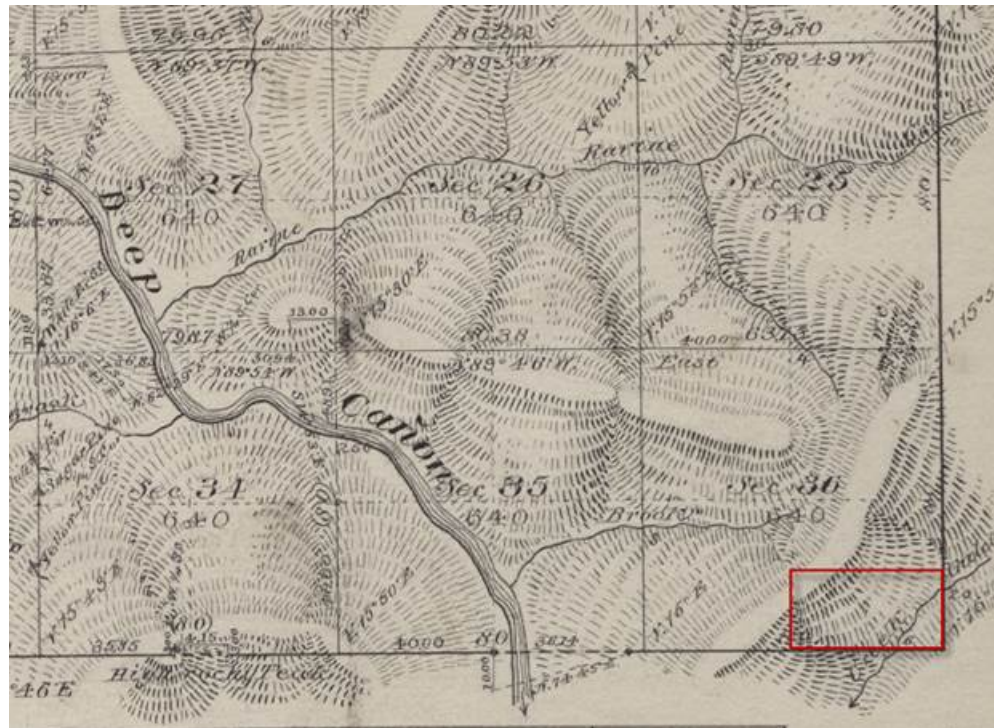
1897 - An Act of Congress authorizes the creation of federal Forest Reserves, in California and other western states, including the Sierra Forest Reservation, from which the Inyo & Sequoia National Forests would later be created. By this means, millions of acres, including a great many entire existing townships, situated in the wooded regions of the west, become federally reserved lands at this time. This Act contains a land exchange provision, allowing those who hold rights to land lying within any of the federal reservations thus created an opportunity to exchange their land for an equivalent amount of unpatented and unreserved federal land in another location, known as lieu land, by filing a lieu land selection application, which is subject to review and approval by the GLO. A period of confusion over the legal implications of this Act ensues however, due to a lack of clarity regarding the rights and the legal options of both states and private patentees whose lands are impacted by the Act, resulting in numerous federal court cases in which the title status of various properties is a central issue.

1900 - California issues a school land patent, conveying the south half of the SE/4 of a certain Section 36 to Glover, but upon finding that her tract lies within a township which was federally reserved in 1897, she elects to turn her tract over to the federal government, by means of the federally created and statutorily outlined exchange process. Glover then submits a lieu land selection application to the GLO for that purpose, offering her 80 acre tract in exchange for a tract of equal size in some other unspecified location in California, lying outside the federally reserved area, and in accord with the federal application requirements she also sends the GLO a signed deed to her tract. Apparently confident that her proposal will be accepted, she records not only her patent from California but also her deed to the GLO at this time.

1902 - The GLO initially has no issues with Glover's exchange proposal and tentatively approves her lieu land selection, so federal employees begin treating the vacant forest land comprising the Glover tract as part of the federal reservation at this time, but no patent is issued to Glover for the lieu land which she requested. Nonetheless, Glover does not protest the ongoing federal evaluation of her proposal, she just waits patiently for the GLO review process to play out, presumably trusting that the requested tract will eventually be patented to her.

1905 - The Act of 1897 is repealed, causing further concern and disagreement over the legal status of various properties lying within the federally reserved boundaries which were created under that Act. This uncertainty and confusion extends to the federal personnel who are tasked with implementing the land exchange process, causing substantial delays in the application review process. Many applications, such as Glover's are held in abeyance by GLO personnel, pending guidance or clarification on how they should be handled, as the title status of other tracts in such locations all around the west is litigated in the federal court system.

1911 to 1915 - A full GLO investigation of Glover's land exchange proposal finally takes place and the GLO eventually determines that her 1900 acquisition was fatally defective in some unspecified respect, so the GLO refuses to accept her deed and sends it back to her at the end of this period, informing her that she owns no land in Section 36, and declining to provide her with a patent to her requested tract for that reason. Glover elects not to challenge this GLO decision.



1919 - Rather than taking any steps to secure her title in Section 36, which has been deemed worthless by the GLO, or to clarify its true legal status, Glover simply sells her tract to the McCloud River Lumber Company, and McCloud thereby takes on the burden of seeking some kind of confirmation that Glover's title was actually valid. McCloud disregards and drops the proposed land exchange, choosing to focus only upon securing marketable title to the Glover tract in Section 36, so a company representative contacts the GLO with that objective and obtains a letter from the Commissioner of the GLO, expressly stating that the US holds no title to the land in question. This letter is then recorded, and McCloud deeds the former Glover tract to Scott, who then builds a cabin upon the land and begins occupying it, but the 1900 deed from Glover to the US remains upon the public record.

1921 - The Department of the Interior informs Congress that " ... the General Land Office has in a number of cases entered upon its records renunciations of title ... but the effect of such a document, even where recorded, has been frequently questioned."

1922 - Congress takes action to resolve the legal problem pointed out in 1921, enacting a federal statute authorizing the Commissioner of the GLO to formally and conclusively quitclaim federal title under appropriate circumstances.

1924 - Scott conveys his tract to Hewey, but whether or not Hewey ever makes any use of the subject property is unknown. Presumably the Scott cabin is abandoned or falls into disuse at this point and no additional structures are ever erected within the former Glover tract.

1930 to 1960 - Various federal statutes creating short term windows of opportunity for litigation by those who are engaged in boundary or title conflicts with the US, resulting from incomplete or otherwise defective land exchanges, are put in place, but no claims under any of those statutes are ever filed with regard to the subject property. Also during this period the USFS begins producing and distributing public trail maps for National Forest visitors, which indicate that the subject property is not under USFS jurisdiction, but USFS personnel on the ground continue to regard that area as federal land.

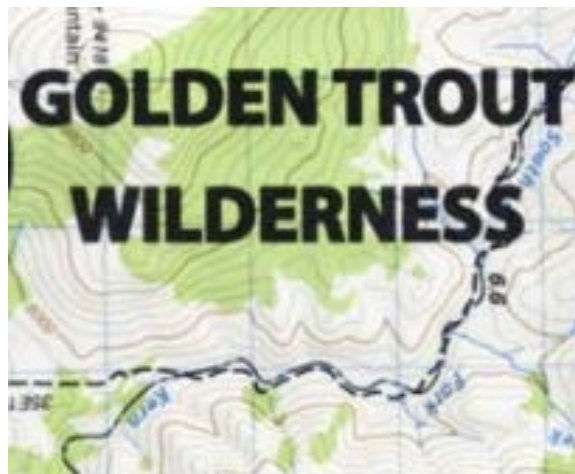


1968 - The Soda Flat partners acquire the subject property from the heirs of Hewey.

1970 - Some USFS employees become concerned that the old cabin represents a fire hazard, potentially threatening federal timber resources in the area, so they begin an investigation into the origin of the cabin and the title purportedly held by the Soda Flat partners.

1973 - Presumably unaware that the title held by the partners may be flawed or deficient, Tulare County enters a contractual agreement with them, under which the Soda Flat tract is formally declared to be an "agricultural preserve", as part of a county land preservation program. Therefore, the subject property remains substantially unused, although it is crossed by at least one public trail, which is patrolled on a regular basis by the USFS.

1976 to 1978 - After discovering Glover's 1900 deed conveying the subject property to the US, the USFS informs the partners that the south half of the SE/4 of Section 36 has been under federal jurisdiction as part of the National Forest since its inception, thereby notifying the partners that they acquired nothing in 1968 and they own no land whatsoever in that section. The partners disagree and they turn to the BLM, requesting official confirmation that the 1919 GLO disclaimer of federal title is valid and legally binding. At the end of this period a large area, including the Soda Flat tract, is federally designated as the Golden Trout Wilderness.



1981 - The BLM informs the USFS about the request that was filed in 1976 by the Soda Flat partners and the USFS advises the BLM to reject their request.

1982 - The BLM informs the partners that their request has been denied, confirming the federal position that the US owns the Soda Flat tract.

1983 - The IBLA upholds that BLM decision, deeming the title purportedly held by the partners to be invalid and worthless.

United States Department of the Interior

Office of Hearings and Appeals

Interior Board of Land Appeals

SODA FLAT CO., INC.

IBLA 83-381

Decided September 2, 1983

1985 - The Soda Flat partners file an action against the US in federal court under the federal Quiet Title Act, seeking a judicial decree that the US holds no interest whatsoever in their land.

By this point in time, all of the subject matter experts and all of the legal forces of the Department of Agriculture and the Department of the Interior had been consulted and had provided official input on this matter. As we have seen, all of the federal personnel who addressed this controversy were evidently in agreement that the title which had been acquired by the Soda Flat partners was bogus, and that they could not prove that the tract at issue was not federally reserved land, just like all the rest of Section 36.

Does any of the evidence we have reviewed provide the partners with any chance of success in federal court, and if so which evidence is most supportive of their position that the federal reservation boundary lies at the north and west lines of their tract, rather than following the south boundary of Section 36?

- 1) The 1919 deed from Glover to McLeod was worthless, but the partners can win anyway, because the federal government failed to raise any legal challenge to the McCloud title for over 50 years, thereby creating a federal estoppel.**
- 2) The IBLA ruling was correct, the chain of title held by the partners is fatally defective, because by 1919 Glover had no title to convey to McCloud.**
- 3) Congress approved the GLO practice of issuing federal disclaimers, so the partners position is legally sound and they will prevail on that basis.**
- 4) The IBLA ruling was correct, because the 1919 federal disclaimer constituted an unauthorized act by the GLO Commissioner, which was legally invalid.**
- 5) The 1919 deed from Glover to McLeod was legally valid, and the GLO had the authority to confirm Glover's title by returning her deed of 1900 to her, so the partners position is legally sound and they will prevail on that basis.**
- 6) The IBLA ruling was correct, because the GLO had the authority to conclusively determine that Glover had never acquired any land in Section 36.**
- 7) Congress repealed the lieu land exchange process in 1905, which rendered Glover's deed to the GLO a legal nullity, so the partners can win, because no federal interest in that tract has existed since that date.**
- 8) The IBLA ruling was correct, the partners never acquired any portion of Section 36, because nothing that occurred at any point in time ever nullified the 1900 deed from Glover to the GLO, which remains a valid recorded deed.**

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?

1900 – When California deeded the tract in question to Glover and she deeded it to the GLO.

1905 – When Congress repealed the lieu land exchange program.

1915 – When the GLO informed Glover that she owned no land in Section 36.

1919 – When the GLO formally disclaimed title to the Glover tract.

1922 – When Congress granted the GLO the authority to issue disclaimers for the purpose of title clarification.

1978 – When the relevant portion of the National Forest became part of the federal Golden Trout Wilderness area.

The core issue here was the validity of the 1919 federal disclaimer, if it was valid then the federal position was fatally flawed, so the key question was whether or not that disclaimer was really unauthorized and therefore completely worthless, as the US maintained.

The disclaimer was issued 3 years before the GLO was expressly authorized by Congress to renounce federal title, but the federal district court astutely observed that the 1922 congressional action had been taken as a direct response to an established federal practice, thus the congressional action not only enabled the issuance of valid federal disclaimers going forward, it effectively ratified those which had been previously issued in the absence of express authority, so in reality the originally invalid 1919 disclaimer had been retroactively authorized by Congress in 1922.

Having found that any federal interest in the subject property which may have once existed had been vacated in 1919 by the Commissioner of the GLO, as the most appropriate voice of federal authority on such matters, the district court awarded victory to the Soda Flat partners, quieting their title to the tract at issue against the US.

Federal officials were not expressly authorized by Congress to issue title disclaimers until 1922, but they often did so anyway, and the public acted in reliance upon those federal statements, as an authoritative verification of marketable title, making it inequitable to judicially categorize any such federal action as either a breach of federal authority or an activity constituting an excessive application of federal authority.

When the Interior Department informed Congress in 1921 that the GLO had been issuing title disclaimers on a regular basis, and in response Congress proceeded to place its stamp of approval upon that practice the following year, by incorporating it into a federal statute, that procedural option, which had been adopted by the GLO without authority, was formally ratified, and in the view of the court that congressional ratification was retroactive.

3) Congress approved the GLO practice of issuing federal disclaimers, so the partners position is legally sound and they will prevail on that basis.

"The government argues that prior to the enactment of the 1922 Act the GLO was without authority to ... issue the disclaimer ... the practice of the GLO was certainly acquiesced in by the Secretary of the Interior ... Congress evidently found nothing objectionable in the process ... Congress ... Interior and the Public Land (GLO) Commissioner were certainly aware and at least tacitly approved ... the Secretary expressed to Congress that the disclaimers were perhaps illegal ... nothing has been brought to the court's attention which might indicate that the practice was unlawful ... the actions reflected approved administrative practice of Interior and/or the GLO ... the Secretary apparently believed ... that the ongoing practice of the GLO was acceptable ... without ever taking any action to disapprove the practice ... maps and records of the government ... never indicated that the US claimed any interest ... a disclaimer is ... a disavowal, denial or renunciation of an interest, right or property ... a validly executed and recorded disclaimer is the factual equivalent of a quitclaim deed ... the disclaimer ... was duly recorded ... the claims of the US ... are invalid because the US ... formally disclaimed any interest in the real property in 1919."

The Soda Flat partners, like Reimann and the Snake River Ranch partners, were among those relatively few litigants who have been able to prevail over the US in either the boundary or title context, because in each instance they very diligently gathered and quite masterfully presented all of the vital historical evidence supporting their position.

In addition, the Soda Flat partners had an exceedingly important factor operating in their favor, one which is among the most powerful forces in the realm of land rights, and that is the principle of notice. Because the 1919 disclaimer was very wisely recorded by McCloud, and was therefore available to be repeatedly relied upon by multiple parties, over a period of several decades, as validation of the legitimacy of the privately held title to the former Glover tract, the district court clearly recognized that it would be fundamentally inequitable to allow the US to deny that the disclaimer ever held any legal value.

Thus on this occasion the principles of intent, notice and reliance all effectively coalesced, and their combined strength was enough to put an estoppel in place, preventing the federal position, based as it was upon an absence of federal authority, from gaining any traction in federal court.

In contrast to Macmillan, who relied upon a federally unauthorized document which was never recorded, and which was never ratified in any respect by Congress, both recordation and ratification operated as powerful factors supporting the letter of 1919 as legitimate title evidence.

The success achieved by both Reimann and Snake River Ranch was based upon their astute recognition of federal acts which were fatally deficient, because in each case those acts exceeded federal authority on the subject of platting, enabling them to leverage the defective status of those federal acts in their favor. Similarly, the Soda Flat partners prevailed because they realized that the absence of federal authority which originally afflicted the crucial 1919 GLO disclaimer, upon which their title rested, had been legally swept away, by a source of superior authority, the US Congress.

Federal personnel employed by the BLM and the USFS, including federal attorneys, evidently failed to make that realization, presumably because they were focused solely upon supporting the federal position, which in this case meant asserting that the 1919 letter was penned without any authority, leaving them unable to objectively view the congressional action taken in 1922 as a classic example of the ratification principle in operation.

Because the validity of the 1919 disclaimer letter was judicially upheld, it was unnecessary to examine the legal consequences of any events which occurred prior to the date of that letter, when any US interest in the Soda Flat tract which had ever existed ended, since the only matter requiring judicial determination to resolve the controversy between the litigants was the validity or invalidity of the federal assertion of title to that tract.

Section 36 was never patented to any typical recipient, but it nonetheless theoretically passed out of federal ownership when that section came into legal existence, because it was a school section, granted by Congress to California, so in accord with that premise it was no longer federal public domain by the time Glover's tract was deeded to her in 1900.

Given that scenario, the federal title to the Glover tract, from 1900 to 1919, was based solely upon her 1900 deed to the GLO, making that tract federally reacquired land, unlike the federal public domain which the US successfully retained in both the Weyerhaeuser and Macmillan cases, therefore it was impossible for the US to once again utilize the omitted land concept here.

Why was the potential interest of California left unadjudicated?

Could the Soda Flat partners have prevailed if the 1919 disclaimer of federal interest had never been recorded, which would have eliminated the legal presumption that several other parties had taken notice of the existence of that letter over the decades, and had proceeded to regard it as a valid legal document, relying upon it for many years for purposes of title security?

Although they were not legal documents, how important were the publicly distributed USFS trail maps, showing that the Soda Flat tract was not part of the National Forest, given the fact that no documentation depicting any federal interest in that tract was ever federally published?

Does any federal agency which has responsibilities pertaining to federal land rights, such as the GLO/BLM or USFS, hold sufficient legal authority to conduct investigations of privately held titles, and to draw definite conclusions about the legal status of those privately held land rights?

No, issues pertaining to privately held land rights which arise in the federal context can be resolved only through mutual agreement or adjudication, federal personnel have no authority to make any conclusive statements about private land rights, thus any such determination made by any federal employee carries no conclusive power and has no legally binding effect. Federal employees are required to form well reasoned and legally supportable positions on land rights issues involving private interests however, in support of federal acquisition projects, which are conducted on a regular basis by numerous federal agencies, so conflicts over such matters are simply inevitable.

Genuine bona fide rights result from every federal land grant, thus federally executed disclaimers or quitclaims, as well as federal patents, prevent the government from ever denying the legitimacy of such documentation, through estoppel, generating a right of complete reliance upon any such federal relinquishment of title, which right vests in the grantee and all successors thereof. In addition, as this case reminds us, neither surveys, nor plats, nor patents, nor any other GLO or BLM documents can be properly viewed in isolation, because they are all legally interconnected.

In the federal context, authority to act typically requires specific citation, meaning that no action can be taken by any federal personnel which is not expressly outlined and defined as being within the scope of their authority, but authority relating to federal treatment of land rights issues can also develop through established and accepted professional practice, which has been either tacitly or expressly approved by those federal officials who are charged with addressing and handling such matters.

Acquiescence by federal personnel is typically not a factor in federal land rights controversies, including those involving boundary or title issues, because no federal employee is authorized to diminish, curtail or eliminate any federal land rights simply by neglecting to act, yet acquiescence can become a factor in governmental affairs when it is systematic in nature and permeates the federal treatment of a given issue, as we have seen here.

75 IBLA 388

(1983 Administrative decision supporting the federal position as implemented by the BLM)

670 F Supp 879 (1987 District Court ruling overturning the IBLA decision - no appeal was filed)

121 Tex 515 Supreme Court of Texas June 1, 1932

STATE et al.
v.
BRADFORD et al.

“The rule is well established where the act of some agent of the state, or of some agency which must derive its power to act from the Legislature, is void for the reason that at the time the act was performed legislative power therefor had not been given, the Legislature may ... supply by law operating retrospectively, the power originally lacking, so the act which was originally void is valid and binding ... what the Legislature could have authorized in the first instance, it could ratify ... even though an act of an instrumentality or agent of the state was void in its inception, because of an unwarranted exercise of power, or because of an entire absence of power, yet the Legislature may validate such act.”

BUSSEN-KERTZ 723 SW2 922 1987 - GENEVIEVE COUNTY

THE APPROPRIATE FORM OF LEGAL ACTION, FOR PURPOSES OF JUDICIAL BOUNDARY DISPUTE RESOLUTION WHEN ADVERSE LAND USE APPEARS, IS THE QUIET TITLE FORMAT, BECAUSE IN ANY SUCH SCENARIO JUDICIAL BOUNDARY DETERMINATION IS GOVERNED BY THE SAME PRINCIPLES THAT CONTROL THE RESOLUTION OF TITLE CONFLICTS OF EVERY OTHER VARIETY.

Those who wish to arrive at a truly complete understanding of the nature of boundary issues, and how they are judicially handled, will find it quite beneficial to develop an appreciation of the powerful role played by title principles in judicial boundary establishment.

The Kamilche Case (California 1995)

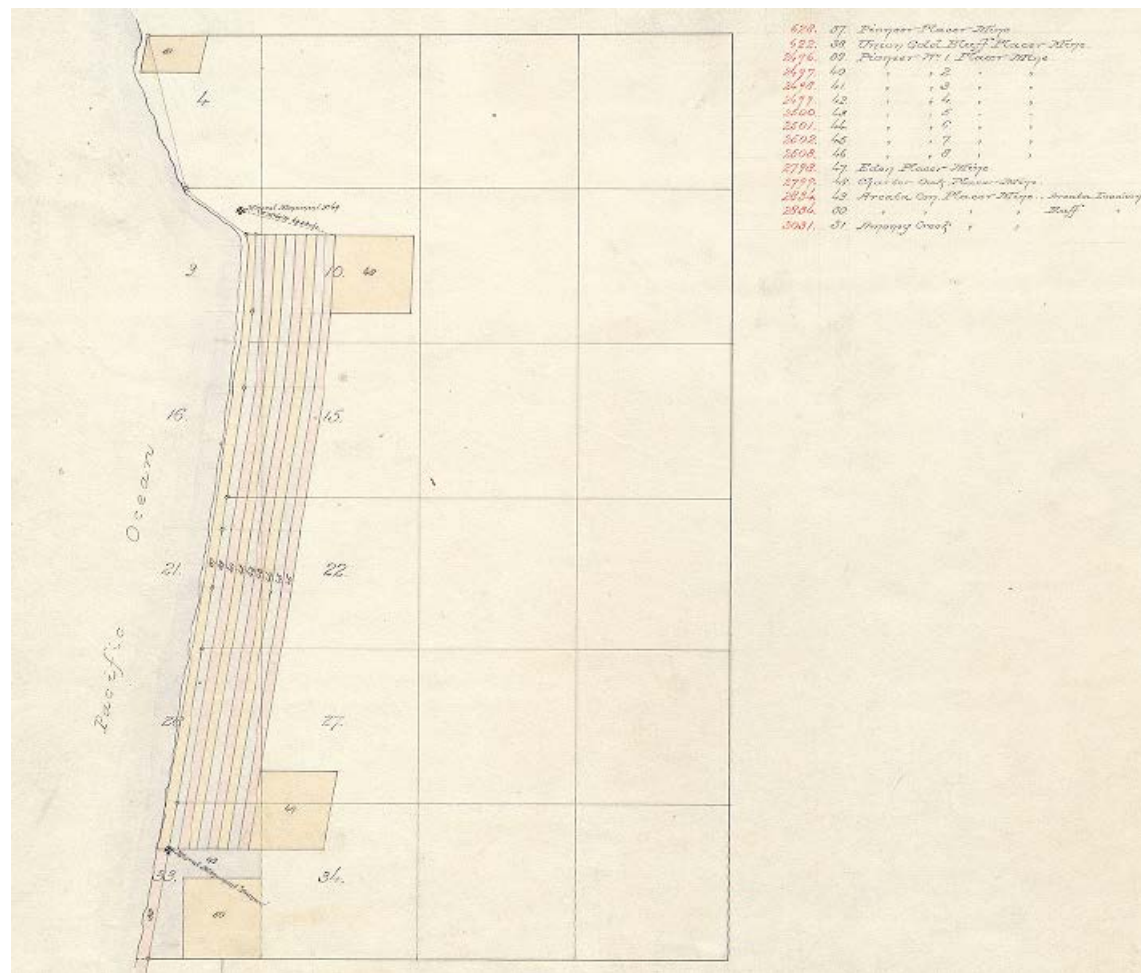
1873 to 1882 - The GLO conducts surveys in northwestern California, laying out township and range lines and subdividing townships along the Humboldt Meridian, many of which extend to the Pacific Ocean, and one particular township lying along the coast, through which Prairie Creek passes, is platted the following year.



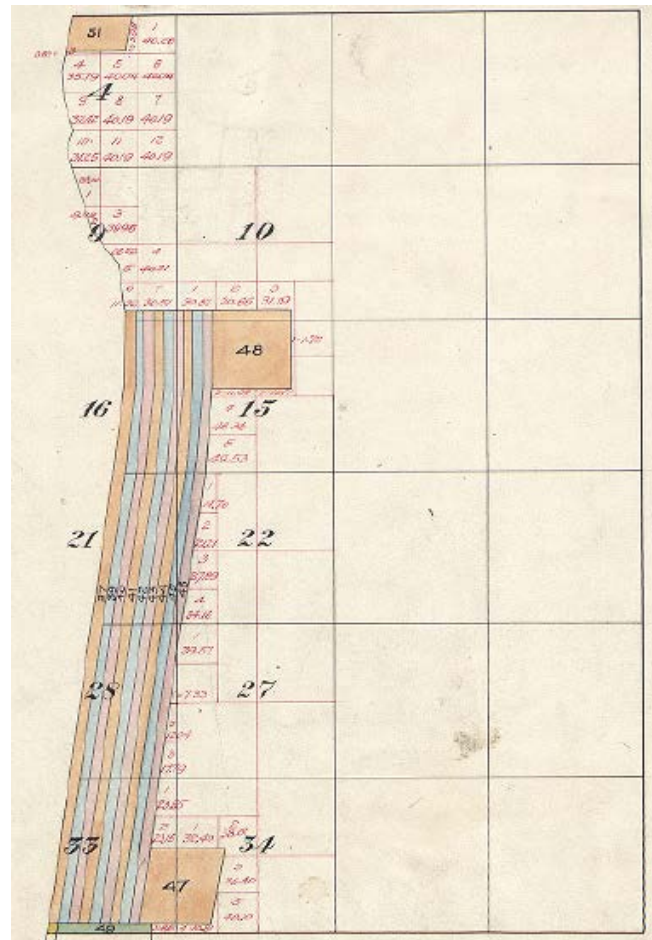
1886 - The township lying directly east of the one platted in 1883 is subdivided, but the GLO surveyor is unable to locate any monumentation along the range line forming the east boundary of the coastal township. He then searches for monumentation inside that township and finds none, so he reports to the GLO that the township platted in 1883 appears to have been fraudulently surveyed. He then proceeds to independently monument the range line and subdivide the township which was assigned to him.

1889 - The GLO instructs the surveyor who subdivided the adjoining township in 1886 to resurvey the oceanfront township and to monument any and all unmonumented corners therein, so he proceeds to do that, working his way westward from the range line which he established in 1886, but the 1883 plat is not updated or otherwise changed in any way, and no plat of this resurvey is ever produced.

1890 to 1894 - Mining activity occurs in the coastal area, numerous mineral claims are surveyed, and at the end of this period the GLO produces a mining claim diagram based upon the 1883 plat. There is no indication that any non-mineral land was patented in this township at this time, presumably miners were the only occupants of this area.



1904 - The GLO creates another mining claim diagram of this township, showing numerous lots adjoining the mineral properties, but for unknown reasons this diagram is based upon data from the unplatted 1889 resurvey, rather than the 1883 plat, therefore it shows that the sections fronting upon the ocean are quite a bit larger than they were in 1883.

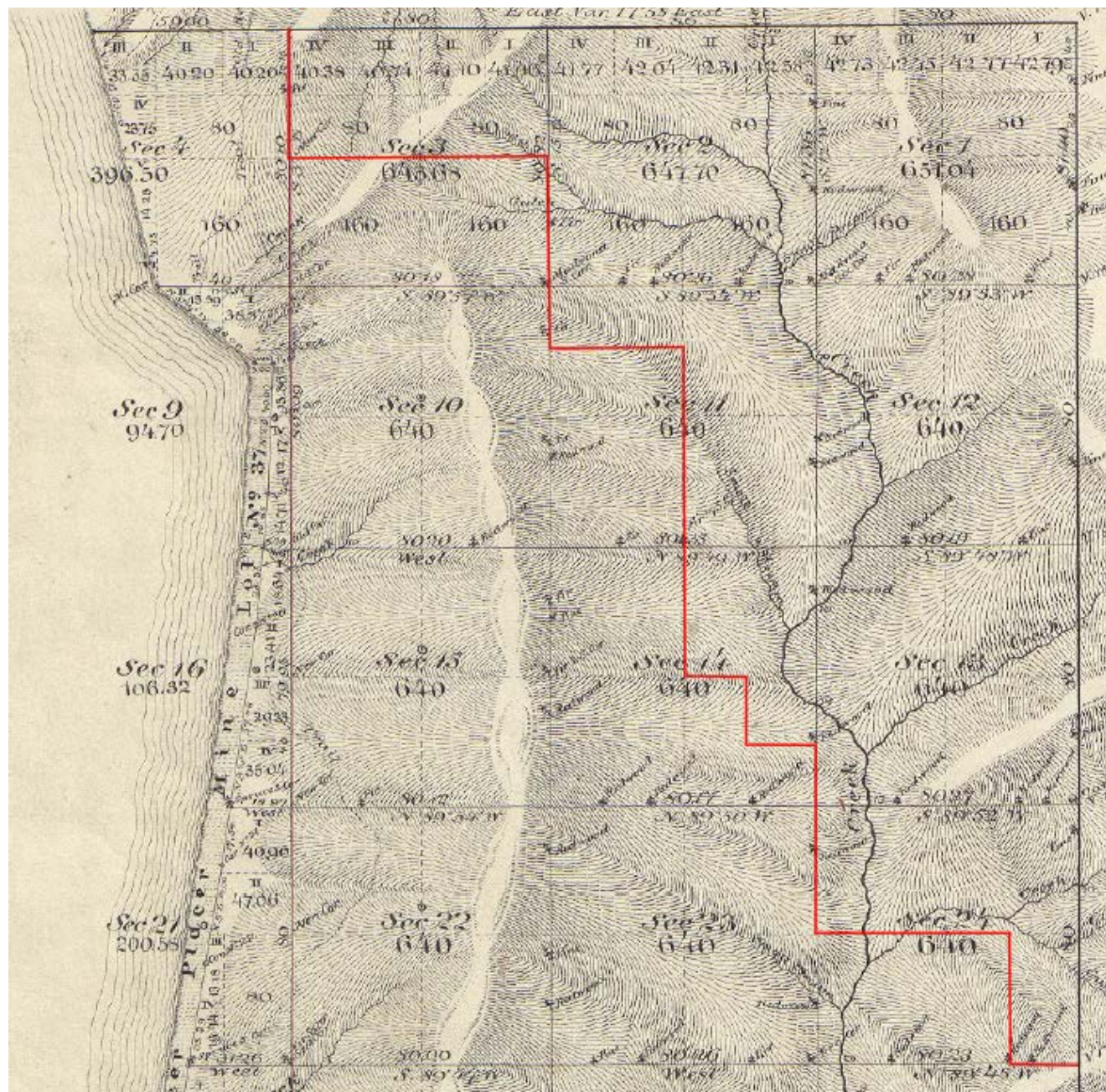


1905 to 1922 - Most of the land in the northeastern part of this township is patented to an unspecified number of parties, and they find the monuments set in 1889, so quite naturally they regard those monumented lines as their property boundaries, assuming that they represent the section lines shown on the 1883 plat. Most of the sections in the central and southern parts of the township, consisting mainly if not entirely of dense Redwood forest, remain apparently unpatented however, for at least the majority of this period.

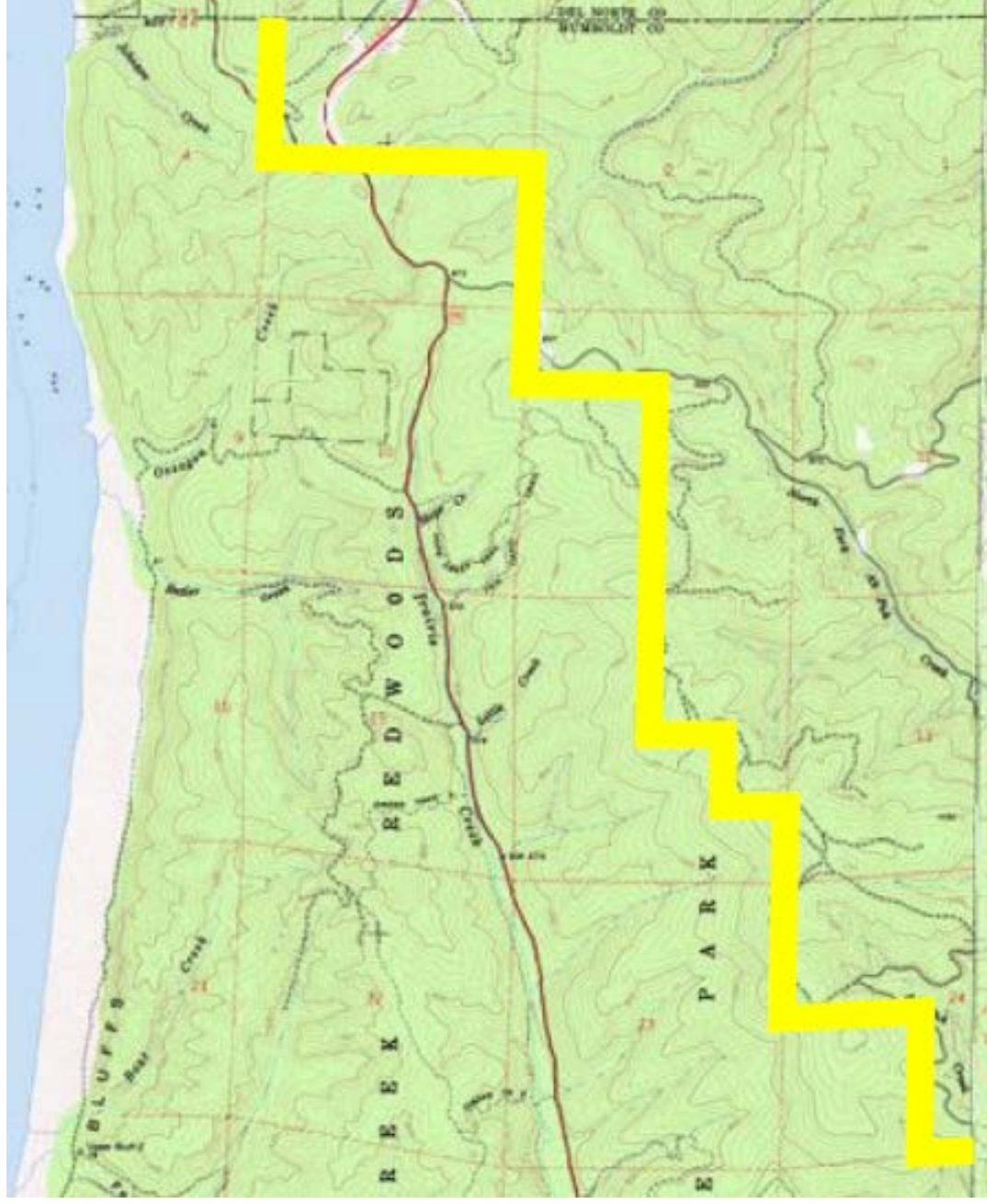
1923 to 1933 - California acquires most of the remaining unpatented land in this township, along with some other nearby land, for the purpose of establishing a state park, and at the end of this period Prairie Creek Redwoods State Park is officially created. Whether or not any survey work was done at this time however, to identify or mark any of the park boundaries, is unknown.

1944 - The land lying in the northeastern portion of this township is acquired by the Sage Land Company. Sage orders a survey to clarify the location of the boundary between their land and the state park, the surveyor employed by Sage locates an unspecified number of the 1889 GLO monuments, all of which he accepts, and he freshly blazes the Sage boundaries.

1945 to 1977 - At an unspecified date during this period Simpson Redwood, a logging company, acquires the Sage Land Company and thereby becomes the owner of the northeastern portion of this township. Simpson harvests timber within the Sage tract on numerous occasions, and those timber operations extend up to the lines which were blazed in 1944.



1978 to 1981 - Controversy arises over the true location of the range line defining the eastern edge of this township, when it is discovered that 2 monumented range lines exist, several hundred feet apart. The evidence reveals that the 1882 survey was properly carried out, the subsequent surveyor simply failed to find the original range line in 1886, and he therefore established another range line too far to the east. Upon further investigation, many more 1882 monuments are found throughout the westerly township, and they all lie southwest of the corresponding 1889 monuments, which were set in the mistaken belief that the 1882 monuments did not exist. At the end of this period, the BLM formally verifies that both the 1882 survey and the 1883 plat were not fraudulent and were valid, thus they control the location of all patented boundaries within this township, and no new township plat is produced, because there is no federal land remaining to be sold. The strip lying between the lines of the 1882 original survey and the resurvey of 1889 consists of 161.5 acres, occupied by countless highly valuable trees, which are coveted by the owners of the land lying on both sides of that strip, although for very different reasons.



1984 - Federal surveyors working on the Highway 101 Project reject the discredited 1889 monuments and utilize the 1882 monuments in the process of defining the location of the proposed right-of-way for purposes of condemnation. A portion of the Highway 101 right-of-way crosses the aforementioned strip, forming a 3.5 acre condemnation area, and the US treats that area as part of the Simpson property, but California protests this decision, insisting that the long accepted 1889 monuments mark the northeasterly boundary of the park property, so that strip is actually part of the park.

1985 - A federal judge reviewing the condemnation scenario refuses to approve the federal condemnation payment to Simpson until the controversy over whether Simpson or California owns the strip in question is adjudicated, so Simpson files a quiet title action against California in state court, in order to achieve definitive resolution of that issue.

1987 - Simpson and California settle their dispute by means of agreement, bringing the state court case to an end, by eliminating any need for a trial on the issue of who holds fee title to the entire strip. Under this agreement, California quitclaims the 3.5 acre portion of the strip to Simpson, thereby enabling Simpson to obtain the condemnation funds from the US, and in exchange Simpson agrees to quitclaim the 158 acre remainder of that strip to California.

1988 - Based on this agreement the litigants inform the federal judge that their dispute has been resolved, and pursuant to that mutual stipulation he approves the 3.5 acre right-of-way condemnation, so the US pays Simpson for that area, ending the condemnation action and enabling the road construction work to proceed. Having deeded the 158 acre remainder area to California during 1987, Simpson files a federal income tax return for that year, in which Simpson includes a very large tax deduction, listing that conveyance to California as a charitable contribution, but the IRS deems that deduction to be invalid, on the grounds that it was never conclusively proven or expressly decreed that Simpson held fee title to the portion of the 161.5 acre strip lying outside of the condemned 3.5 acre parcel.

1989 to 1991 – The Kamilche Company acquires Simpson Redwood, and Kamilche then proceeds to file an action in federal court against the IRS, maintaining that prior to 1987 Simpson did in fact hold fee title to all of the land lying east of the section lines of 1882 which Simpson had quitclaimed to California to fulfill the aforementioned legal settlement, and insisting that the rejected tax deduction was completely valid for that reason.

The fate of the problematic multi-million dollar tax deduction plainly depends on the true title status of the entire area lying between the monumented section lines of 1882 and the lines lying to the east that were monumented by the GLO 7 years later, as that title stood in 1987, prior to finalization of the settlement agreement. Resolution of that title issue however, clearly depends entirely upon the extent to which any controlling force legally attached, at any time during the preceding 98 year period, to either of those 2 physically established sets of lines.

A federal district court agreed with the IRS, holding that even if the BLM and Kamilche were correct in asserting that the 1882 monuments marked the true original boundaries, the adoption of the 1889 monuments by all parties, and the subsequent reliance upon those monuments by all relevant parties for several decades, during which protracted time period the existence of the monuments set in 1882 was entirely unknown to all, had resulted in adverse possession of the strip by California.

California had in fact become the fee owner of the strip long before the controversy over the legal implications of the conflicting GLO monuments had ever arisen, the federal judge determined, through the application of the California standards governing adverse possession, thereby making the lines established in 1889 the park boundaries by operation of law.

"Two surveys ... done in the late 1800s ... were not consistent and the inconsistencies created a potential land hiatus ... plaintiff (Simpson/Kamilche) clearcut the trees on its property down to that border ... plaintiff argues that the US should be equitably estopped from asserting the state's adverse possession ... on the grounds that the US encouraged private parties to rely upon the erroneous line ... however ... estoppel requires a showing of affirmative misconduct ... there was no affirmative misconduct by the US ... there was no affirmative concealment ... the state marked the boundary of the park with signs and monuments ... and other indicia of the property being a state park ... the state has maintained the park property using the northeasterly line as the boundary ... the State of California acquired title to the property in dispute here by virtue of adverse possession ... it is ordered that judgment be entered in favor of the US against Kamilche and Simpson."

Thus the federal legal team prevailed at this judicial level, the plaintiffs elected to appeal this judicial decision however, and the federal Court of Appeals agreed with them that this ruling contained a fatal flaw. On what basis did the appellate panel find it necessary to overturn this federal victory?

- 1) BLM had no authority to address this boundary controversy, because there is no federal land in the relevant township, the ruling must be struck down because the judge wrongly utilized BLM statements as boundary evidence.**
- 2) BLM had the authority to address this controversy, but wrongly approved the 1882 monumentation which had been rejected by the GLO, so no adverse possession took place, because the lines of 1889 are all legitimate PLSS lines.**
- 3) California failed to make any adverse use of the strip, so the lines of 1882 still define the legal location of the boundary between the litigants.**
- 4) Adverse possession was unnecessary, California was legally entitled to rely exclusively upon the 1889 monuments for land acquisition purposes.**
- 5) Adverse possession never occurred, because Simpson relied on the 1889 monuments only due to innocent boundary ignorance, the lines of 1882 control.**
- 6) Adverse possession by California was properly sustained, so the lines of 1889 comprise the boundary, but the IRS cannot deny that the tax deduction is valid.**
- 7) Adverse possession is solely a matter of state law and is irrelevant in federal court, so the lines of 1882, having been identified as the controlling PLSS lines by BLM, define the legal location of the boundary between the litigants.**
- 8) The federal judge wrongly addressed this controversy, because no federal land is involved, so the boundary issue can only be resolved, either on the basis of controlling monumentation or adverse possession, in a state court.**

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 that will ultimately control the outcome?

1889 – When a second set of monumented lines was unknowingly and unintentionally established on the ground, per GLO instructions, and the GLO neglected to produce a resurvey plat.

1933 – When California acquired the last remaining unpatented land in this township and created the state park, potentially triggering conditions which could support adverse possession.

1944 – When the 1889 monumentation was recovered and the lines of 1889 were flagged, leading to further reliance upon those monuments.

1945 to 1977 – When Simpson relied intensively and exclusively upon the boundaries that had been marked in 1944.

1981 – When the BLM officially stated its conclusion that the survey work of 1882 was not defective, indicating that the 1882 monuments marked the true original section lines.

1984 – When surveyors working on a federal project rejected the 1889 monumentation and utilized the 1882 monumentation.

The Court of Appeals agreed that the monumentation set during the 1882 original survey comprised the true lines of record bounding all of the relevant patented lands, as the BLM had verified 99 years later, and also agreed that California had completed adverse possession of the strip in contention several decades prior to this litigation, since the period required to complete adverse possession in California is only 5 years, so in reality the state had obtained title to the whole strip by operation of law before the Sage acquisition of 1944, in accord with the factual determinations made by the lower court. The Court of Appeals disagreed with the lower court however, regarding the legal consequences of the agreement and stipulation which had been set forth by the litigants in 1987, finding that estoppel was in fact applicable against the US, and that it negated the legal efficacy of California's adverse possession for all federal purposes.

6) Adverse possession by California was properly sustained, so the lines of 1889 comprise the boundary, but the IRS cannot deny that the tax deduction is valid.

"This case arises from a boundary dispute ... survey inconsistency created a hiatus between the boundary lines of the State Park and what was later to become Simpson's property ... in 1978 the area was surveyed yet again, this time by the BLM ... this survey reconfirmed the older survey ... Simpson and the State settled the state court suit by executing a stipulation ... that Simpson would dismiss its quiet title action and donate the lands ... the US was precluded from asserting California's ownership ... collateral estoppel, or issue preclusion, bars the relitigation of issues ... the US seeks to relitigate ... ownership of the entire property was litigated ... the issue decided in Simpson I (the condemnation case) and the issue presented here are indeed identical ... the only difference ... is that here the US (the IRS) asserts the State's ownership by adverse possession ... the entire issue (of title) is precluded ... the US cannot now argue ... any legal theory that is inconsistent with the ruling that Simpson owned the disputed property."

Thus the 1981 BLM decision to address this boundary issue publicly was the key federal act or event, with major ramifications, not upon the boundary location, which was appropriately established pursuant to state law, but upon the critically important financial component of this conflict, as that official statement made by BLM in 1981, once acted upon for subsequent legal purposes, generated an estoppel, making it impossible for the IRS to prevail.

Comparing the outcome here, from a boundary location perspective, to the contrasting results of the Weyerhaeuser, Macmillan and Reimann cases, the significance that established land use patterns can hold in the resolution of land rights issues at both the federal and state court levels can be seen.

Kamilche and Simpson prevailed, as did Reimann, while Weyerhaeuser and Macmillan each lost, due in part to the land use factor, which was entirely absent from those 2 earlier cases. Land use often becomes a matter of high relevance in the judicial boundary determination context, because the presence of any form of substantial land use provides open notice of reliance upon boundaries for purposes of title, and such reliance comprises a crucial evidentiary element, which is typically deemed to be worthy of respect by our judiciary. In fact, protection of land use founded upon legitimate reliance is the very essence of the bona fide rights concept.

Additionally, here once again, just as in all 3 of those prior cases, federal input regarding the validity of federally established monumentation proved to be instrumental to judicial determination of the rights of the litigants.

This case also confirms, in accord with the Soda Flat case, that federal surveys, plats and patents are not the only items of federal origin to be considered when evaluating boundary issues, because other relevant federal documentation, such as the 1981 BLM letter announcing that the 1889 monuments were illegitimate in this instance, can trigger a series of subsequent events with serious legal implications in the realm of boundary and title resolution, and as we have seen here, that can be true even when no federally owned land exists in the relevant vicinity.

Just as the problematic disclaimer set in motion a long chain of events pertaining to the subject property which held great legal significance in the Soda Flat case, here the BLM statement regarding the Nineteenth Century monumentation in question had an equally significant legal impact. That information, stemming from a widely respected authoritative source, was quite understandably relied upon for purposes of conflict resolution, thereby creating a right of reliance, directly comparable in the eyes of the law to the right of reliance associated with federal patents and the federal work and products which are integral to any given patent, forming the core components of all bona fide rights.

The BLM is authorized to resurvey only federal interest lands, why was the 1981 BLM resurvey judicially accepted as legitimate evidence in this case, rather than being judicially rejected as an unauthorized federal survey of private land, on the grounds that no federal interest in the boundary at issue existed?

Did the BLM resurvey conducted in the late 1970s & early 1980s, nearly a century after the original survey, represent an improper intervention in private affairs or a violation of any bona fide rights?

Why did the BLM not create another township here, as was successfully done when the Weyerhaeuser scenario was addressed in the 1960s, or create lots populating the strip in contention, as was successfully done by the GLO during the 1920s in the Macmillan scenario?

Can the 1889 GLO surveyor be convicted of negligence, for failing to find the existing 1882 monuments, and what about the 1944 private surveyor, who apparently never even looked for the 1882 monuments, can he be deemed guilty of negligence, having failed to find original monumentation?

As we learned from the Weyerhaeuser case and others we have reviewed, not every error made by a surveyor can be attributed to negligence, and in fact the law acknowledges that most mistakes made by surveyors do not result from negligence. Here, just as in that case, the second GLO surveyor created a problem by failing to discover legitimate existing GLO monuments, but in both cases their search efforts were hampered by especially rugged or extreme conditions, and that fact was judicially observed and appreciated.

Perhaps the most serious errors were made not in the field, but by the GLO personnel who mistakenly deemed the 1882 survey to be fraudulent, and then unwisely neglected to order the creation of a township plat based upon the 1889 resurvey. That combination of errors made adverse possession virtually inevitable, and by the time the next surveyor arrived over half a century later in 1944, the adverse possession was already legally complete, so any discovery of the 1882 monuments made by him at that point in time would have served only to bring the long dormant boundary controversy to the point of litigation several decades sooner.

With regard to the role of BLM here, what does this case tell us about the legal force and effect of a BLM resurvey in the federal context?

A duly approved BLM resurvey which is faithful to an original GLO survey becomes conclusive once its legitimacy has been fully litigated, making it legally binding upon all parties, including all other federal agencies. In addition, as sister organizations of BLM, other federal agencies like the IRS, which lack the authority over boundary issues that is vested in BLM, are bound to defer to BLM decisions on such issues, having no valid basis upon which to contradict official BLM conclusions regarding PLSS boundary validity.

The IRS was unable to prevail on this occasion because IRS personnel and the federal legal team failed to recognize that the GLO lines run in 1882, after being formally verified by BLM in 1981, and utilized for federal condemnation purposes a few years later, had become legally binding upon all branches of the federal government, by virtue of the settlement agreement and the resultant federal decree in condemnation, which were directly based upon the boundary evaluation that had been conducted by BLM, and the subsequent publication by BLM of an official statement rejecting the 1889 survey work and affirming the validity of the original section lines of 1882.

The concept of estoppel is only rarely applicable to federal personnel or federal activities, but estoppel is an exceedingly powerful equitable force, which can operate in the boundary or title context, as demonstrated here. The basic principle underlying estoppel is fair dealing in good faith, thus it simply represents judicial enforcement of the premise that no party or entity can take any position during litigation which directly contradicts any position previously announced by that same party or entity, and then justifiably relied upon.

Lastly, the role played here by the concept of boundary agreement is worthy of note. The IRS effectively sought to penalize Kamilche for Simpson's decision to settle this boundary dispute by means of a mutually satisfactory agreement with California, as opposed to carrying the Simpson quiet title action forward to a point of complete adjudication. Both state and federal courts however, respect and typically honor any voluntarily made and properly documented agreement which operates to resolve boundary or title issues, so the position adopted here by the IRS was not well taken, being antithetical to the boundary agreement concept.

**809 F Supp 763
(1992 District Court ruling)**

**53 F3d 1059
(Court of Appeals 1995 reversal of 1992 ruling)**

This especially unique Missouri case is likely to be of interest to those concerned with RR R/W issues, and those who would like to improve their knowledge of adverse possession as well:

KOHLER-BOLINGER 70 SW3 616 2002 - CASS COUNTY

A SUCCESSFUL ADVERSE POSSESSOR, RATHER THAN THE OWNER OF RECORD, GETS HALF OF AN ABUTTING RR R/W, WHICH WAS LEGALLY ABANDONED BY THE RAILROAD AFTER THE ADVERSE PERIOD EXPIRED, BUT BEFORE THE SUCCESSFUL ADVERSE POSSESSION WAS ADJUDICATED, BECAUSE THE ADVERSE PARTY BECOMES THE LEGAL OWNER OF THE ADVERSELY ACQUIRED LAND WHEN THE STATUTORY PERIOD EXPIRES, NOT WHEN THE ADJUDICATION SUBSEQUENTLY TAKES PLACE.

And this federal case, set in Shannon County, demonstrates that although federal land is immune to adverse possession, federal land rights can be adversely impacted by events which took place before a federal land acquisition was made, at a time when the land was in private hands:

BREWER-US 562 F SUPP 128 1983

THE US CANNOT ACQUIRE LAND IN FEE BY DEED FROM A PROPERTY OWNER OF RECORD WHO HAS IN FACT LOST THAT LAND, OR SOME PORTION THEREOF, TO ADVERSE POSSESSION.

A PROPERTY OWNER OF RECORD CANNOT NEGATE A COMPLETED ADVERSE POSSESSION BY DEEDING THE LOST LAND TO THE US, SINCE EVEN FEDERAL LAND ACQUISITIONS ARE SUBJECT TO ACREAGE REDUCTION, IN THE EVENT OF PREVIOUSLY COMPLETED ADVERSE POSSESSION.

UNDER THE FEDERAL QUIET TITLE ACT, AN ADVERSE POSSESSOR OF LAND SITUATED IN ANY STATE HAS 12 YEARS FROM THE DATE WHEN THE RELEVANT LAND WAS DEEDED TO THE US TO ASSERT THAT EITHER THE ENTIRE DEEDED AREA OR SOME PORTION THEREOF WAS ADVERSELY ACQUIRED BY HIM PRIOR TO THAT FEDERAL ACQUISITION.