The Federal Land Rights Series Edition 10 - The Overocker / St Clair Saga Illustrating that the bona fide rights concept can operate as a double edged sword in judicial boundary determination

Spring of 2016 brought professional land surveyors engaged in boundary work in our western states one of the most interesting, informative and poignant appellate rulings of recent years, focused squarely upon the importance of properly recognizing and utilizing original boundary evidence in the context of the Public Land Survey System (PLSS). Although set in Colorado, the case we will review herein was tried in federal court, because it involved both federal land and adjoining private land, so the issues presented could not be conclusively resolved at the state court level. The principles which we will observe in action here are equally applicable to all of the states that were carved from the public domain, since in all such cases state courts defer, of necessity, to federal jurisdiction, as administered by the federal court system, so the fact that this dispute arose in the Centennial State is purely incidental, it would have played out judicially in parallel fashion had it taken place in any PLSS state. As we will learn, decisions regarding the use of historical plats and related boundary evidence, necessarily made by land surveyors in the regular course of their work, are not as simplistic as some might believe, and uninformed assumptions about the value of such evidence, made either without diligent research or in ignorance of the law, can prove to be most regrettable. In a multitude of locations throughout the western states private land abuts federal land, bringing key principles that pertain to both publicly and privately held lands into play, and here we will look on as such a scenario exposes unfortunate consequences, of the kind which are often produced by misinterpretations of conflicting boundary evidence. Thus the case we are about to review highlights the need for more thorough professional education of land surveyors, particularly with regard to the manner in which fundamental principles of law can limit the efficacy and reliability of survey work, when resurveys are completed in the absence of knowledge or appreciation for those legal principles which ultimately control and govern all public and private land rights.

The following timeline summarizes the relevant events, as they were revealed by the evidence, and as they were noted and understood by the courts which addressed this controversy, in chronological order. While not every described event is crucial to the outcome, and other ancillary or tangential points were judicially discussed, this summary contains all of the salient factual information which played a material role in the result of this litigation (FN 1). Pause after reading each component of the timeline, to consider the legal significance and potential impact of the developments of that particular date or period, perhaps through thoughtful contemplation you can recognize which items will prove to represent the controlling aspects of the evidence, thereby enabling you to envision the outcome of the judicial analysis in advance.

1876 - Overocker, a typical settler, occupies unsurveyed land in the beautiful Animas Valley in the newly created state of Colorado, not far from Durango, fencing a 160 acre square, and he then files a typical Declaratory Notice, in accord with the law, describing his area of occupation as a cardinally oriented square, measuring half a mile on each side. How he

arrived at the location of his boundaries on the ground and how carefully he placed his fence are both unknown, but these factors prove to be irrelevant to the subsequent controversy. There is no indication that Overocker obtained any surveyor assistance with the process of outlining the area he sought to acquire, or that he possessed any surveyor knowledge or skills, but it is quite possible that he was so assisted. (FN 2)

1877 - The GLO subdivides Township 36 North, Range 9 West, New Mexico Principal Meridian, and the resulting plat produced at this date shows Section 33, in which Overocker had located himself, as an entirely regular section, while noting his presence by depicting his humble dwelling. Whether or not any communication took place between the newly arrived settler and the original survey crew is unknown, but nothing suggests that Overocker had any objection to the survey, or that the survey crew had any issue with Overocker, or that they disturbed any of his existing improvements to the land in any way.

1880 - In anticipation of obtaining a patent, Overocker visits the Lake City Colorado Land Office, pays the required price, and is given a certificate indicating that he is the purchaser of the S/2NE & N/2SE of Section 33. How well Overocker's fence actually corresponded to the boundaries of this described area is unknown, but all parties were evidently satisfied at this time that this description defined the area of his occupation with sufficient accuracy.

1881 - The S/2NE & N/2SE of Section 33 are patented to Overocker, in accord with federal law, based on his use of that land for 5 years as a typical settler, but what use he made of his land after this time, if any, is unknown.

1882 - A GLO survey inspector reports serious problems with the 1877 GLO survey, that survey is deemed by the GLO to have been fraudulent, and the township line forming the south side of Section 33 is independently resurveyed by the GLO, resulting in a relocation of that line approximately 850 feet to the north, effectively reducing the size of all of the sections bounded thereby, but the rest of the township is not resurveyed at this time.

1884 - Overocker, having apparently mortgaged his property at an unspecified date, loses his land to foreclosure and presumably vacates the premises. No details are known pertaining to the use of his land subsequent to this time, and nothing is known of his fate.

1888 - A GLO resurvey of the entire township is conducted, during which the 1882 monuments along the township line are accepted, while older monuments at various locations within the township are found and perpetuated. The east quarter corner of Section 33, set in 1877 and standing upon the east boundary of the former Overocker property, is among the monuments which are located and adopted by the GLO during this resurvey.

1891 - Another plat of the relevant township is approved by the GLO, based on the 1888 resurvey, showing 14 lots covering all of the truncated Section 33, but it also shows part of the original Section 33, including some of the land which was patented to Overocker, as being part of the SW/4 of Section 34, and it depicts an unusual alteration of the meridional quarter section line within Section 33 as well, also resulting from the 1882 remonumentation of the township line. See the snapshot of Section 33 taken from this plat

and appended hereto, showing the positions of these 14 lots, which reveals that this township line was materially shifted to the west, as well as to the north, during the 1882 resurvey, resulting in a westward expansion of Section 33 and its subdivisions, along with the noted reduction thereof on the east side.

1893 - The GLO sends official notice to all of the known land owners in the relevant area that they can apply for amended patents, in order to obtain new legal descriptions conforming to the newly created plat of 1891, but no one ever applied to amend the Overocker patent, presumably because he was long gone from the scene and his tract had no occupant, so this notification either went undelivered or was disregarded, thus no patent was issued citing either Lot 8 or Lot 9. Also during this year, the GLO patents the N/2SW of Section 34 to Woodward, who had satisfactorily established her homestead in that section several years earlier. Notably, Woodward's patent makes no reference to Lot 2 in Section 34, although the 1891 plat clearly indicates that it lies within the portion of that section which was patented to her at this time, so that lot remained uncited in any patent as well.

1898 - A homestead entry pertaining to Lot 6, which had been filed several years earlier by an unspecified settler, is cancelled by the GLO at this point, since Lot 6 had never been put to any actual use by that party.

1907 - The west half of Section 33, which was still unpatented public domain, is incorporated into the San Juan National Forest, thereby becoming federally reserved land, no longer open to settlement or subject to private acquisition of any type.

1908 to 1950 - The area that was patented to Overocker is conveyed by its successive owners an unspecified number of times, using the patented aliquot legal description on each occasion, and no conflicts arise during this period.

1951 - All of the land patented to Overocker is acquired by Dallabetta, but what use he made of the land, if any, is unknown, and there is no indication that Dallabetta or any of his predecessors ever installed any fences, or that they maintained the 1876 Overocker fence, which was presumably dilapidated and may no longer have even been visible by this time.

1967 - Dallabetta conveys part of the southerly portion of his property to St Clair, using a metes & bounds description of unknown origin, which refers to the conveyed area as being part of Lot 9, but this description makes no reference to Lot 6, and it expressly describes the west line of Lot 9 as being the westerly boundary of the conveyed area. Whether or not a land surveyor was involved in creating this description is unknown, but it did include bearing and distance calls, suggesting that it may well have been produced by a surveyor.

1979 - A BLM dependent resurvey of this township is completed, based upon the corrective plat of 1891, but there is no indication that St Clair was informed about this survey or that a copy of the resulting plat was provided to him either before or after it was approved in 1984. See the snapshot of the relevant portion of this plat appended hereto, showing the same 14 lots that were first platted nearly nine decades earlier.

1984 - St Clair obtains a quitclaim deed from the heirs of Dallabetta, conveying the north 7.856 acres of Lot 6 to him, described using metes & bounds, for the apparent purpose of confirming that the 1967 conveyance from Dallabetta to St Clair was meant to cover all of the land owned by Dallabetta in the western part of the SE/4 of Section 33, although there is no indication that Lot 6 was ever patented, or that Dallabetta or anyone else had ever made any use of the land comprising that area.

1985 to 1999 - St Clair engages in improvement activities within the area that was deeded to him in 1984, including road building and the erection of fences. Whether or not he encountered or damaged any objects that may have been put in place by the USFS, such as boundary signs or survey monuments, is unknown, but his activities apparently went undiscovered by any federal personnel during this period.

2000 to 2010 - The USFS discovers that St Clair is using land within Lot 6, which he has fenced in along with Lot 9. For unknown reasons however, the US takes no immediate legal action, while St Clair continues to maintain that he legitimately acquired the northern portion of Lot 6 in 1984 throughout this period.

2011 to 2013 - The US files an action against St Clair, charging him with unauthorized use of federal land, seeking a decree requiring him to withdraw from the area west of the east line of Lot 6, along with a damage award to compensate for his destructive activities in that area, and both sides begin the process of assembling their evidence for presentation in court.

2014 - In an initial judicial order, after reviewing the evidence initially presented by both sides, the federal district court clarifies that the matter at hand represents a purely locational dispute, stemming from conflicting interpretations of boundary evidence, rather than a controversy over the validity of the title held by St Clair as a legitimate successor of Overocker, observing that "... there is no request - express or implied - to annul, vacate or otherwise void the Overocker Patent ... each side's position is premised on title ... defendants arguing that the acreage is clearly included on the face of the Overocker Patent ... plaintiff arguing that ... Lot 6 is not a part of the Overocker Patent.". Both sides are denied summary judgment by the court at this point, due to the obvious presence of conflicting factual evidence, enabling a trial upon the merits to proceed.

2015 - During the trial, a BLM surveyor testifies that Lot 6 is located in the N/2SE of Section 33, as that section is depicted upon the 1891 plat, and the US raises no challenge to the validity of the Overocker patent covering the entirety of the N/2SE. Therefore, St Clair asserts that his property extends westward to the quarter section line location which is shown on the 1891 plat, expressly charging that the creation of Lot 6 constituted an unauthorized and improper invasion of the Overocker patent. Two private surveyors testify as expert witnesses on behalf of St Clair, maintaining that the land comprising Lot 6 was patented to Overocker, and is therefore part of the St Clair property, because the 1891 plat clearly indicates that Lot 6 lies within the N/2SE of Section 33. After reviewing the totality of the evidence set forth during the trial, the district court rejects the position espoused by St Clair, awarding victory to the federal legal team by confirming that the entire contested area has always been federal property, despite the fact that the 1891 plat

placed the land at issue within the portion of the SE quarter which had been patented to Overocker and had subsequently been acquired by St Clair. In so doing, the district court explained that the boundaries of the patent in question had never been either disputed or even unclear on the ground, and informed St Clair that the creation of the 1891 lots had no legal impact whatsoever upon those established boundaries, pointing out that "... the Overocker land could be located on the ground ... Overocker himself had done so ... the equivalent of a perfect quarter section ... with boundaries generally tracking cardinal directions ... subsequent surveys ... neither established, expanded nor contracted the western border of the Overocker land ... there was nothing wrong with the assignment of lot designations ... all this does is change the description of the property on paper, not its boundaries on the ground ... the use of lots to designate lands within Section 33 was sensible and practical ... the United States did not change the boundaries of the Overocker Patent in so doing."

2016 - The Court of Appeals (COA) fully affirmed that lower court ruling, agreeing in all respects with the explanatory information embodied in the well composed opinion of the district court judge. The COA began its analysis by acknowledging that the district court had properly taken due notice of the important fact that the patentee, Overocker himself, had physically defined his own boundaries on the ground, quite logically in the form of a square, thereby demonstrating his intent to acquire nothing other than a typical 160 acre PLSS tract of that shape, and the language of his 1881 patent plainly verified that the federal officials who prepared that document shared that intent. In essence, for purposes of the title held by Overocker and all of his successors, and the boundaries thereof, time stopped in 1881, prior to the discovery of irregularities afflicting the original survey and township plat, so none of the corrective steps taken by the GLO thereafter could alter the rights of Overocker, regardless of whether any corrective measures, such as the creation of another plat in 1891, were merited or not. As the COA put it "Once a patent has issued, the rights of patentees are fixed and the government has no power to interfere with these rights ... no resurvey or retracement shall be so executed as to impair the bona fide rights or claims of any claimant ... once a patent is issued ... the government has no jurisdiction to intermeddle ... in the form of a second survey.". Addressing the defendant's assertions of impropriety on the part of GLO/BLM and a lack of compliance with the BLM Manual, the COA found that "St Clair ... provides no authority to suggest an erroneous or discarded survey can never control a land patent ... St Clair provides no authority suggesting a parcel of land is not locatable if the method used to locate it does not conform to the Manual.". In reality, St Clair was a legitimate holder of valuable bona fide rights, his mistake was simply failing to properly perceive their physical limitations, and in that regard there can be little doubt that everyone he interacted with, from Dallabetta as his grantor in 1967 to his own legal and advisory team, let him down, by neglecting to properly define his tract, to thoroughly research its origin, or to point out to him the power and significance of the numerous evidentiary factors that were militating against him.

As the COA wisely recognized, the fundamental purpose of lot creation at the federal level in the PLSS context is simply to flag irregularities, in order to make the presence of unusual factors potentially impacting titles and boundaries readily apparent to all future readers of both federal plats and all subsequent conveyance documentation based upon them. Most unfortunately, such fundamental concepts are poorly understood by many land rights

professionals, as well as the property owners who trust those professionals to handle their land rights effectively. In this instance, no confusion or concern arose for several decades, until the land at issue was improperly described using the inapplicable 1891 plat, first in 1967 and again in 1984, in the aforementioned deeds to St Clair. Although this was done innocently in all likelihood, it was nonetheless a serious mistake, because it planted the seeds of controversy, giving St Clair the mistaken impression that his right of reliance rested upon the 1891 plat, when in fact it was founded upon the 1877 plat. Presumably attorneys and title professionals, along with county personnel, had occasion to observe the legal descriptions used in those 1967 & 1984 deeds, but sadly it appears that either none of them had the knowledge to recognize the erroneous use of unpatented lot numbers as a problem, or perhaps none of them even cared enough to question the sudden and unjustified appearance of those lot numbers in the Overocker/St Clair chain of title. At that point the damage was done, St Clair, lacking legal description expertise, was understandably convinced that his property encompassed the lots which were shown as occupying the N/2SE on the 1891 plat, and that the 1891 plat had rendered the 1877 plat inconsequential. Whether anyone advised him in that regard is unknown, and he may well have been guilty of making false assumptions without seeking advice, nonetheless the fact remains that no one on his professional support team alerted him to the presence of a potential boundary or title issue, stemming from the fact that the lots conveyed to him had never been patented to Overocker, or in fact to anyone. For that reason, St Clair was destined to invest a substantial amount of time and money in both land improvements and litigation expenses, until he was finally judicially informed, more than 3 decades after obtaining his last deed, that his reliance upon the 1891 plat was entirely unjustified, making all of his efforts to acquire and use Lot 6 completely futile (FN 3).

In hindsight, knowing the result, its fairly easy to ascertain which key events enumerated above proved to be most influential and ultimately dispositive in the eyes of the law. The events of 1876 are fundamentally important of course, because the original intent of the entryman is vividly displayed by the action he took on the ground at that time, as astutely noted by both the district judge and the appellate panel. In a nutshell, Overocker's activities, erecting his dwelling and his fence, represented the foundation of equitable land rights, which then obtained legal status upon the issuance of his patent. Its noteworthy as well that Overocker's rights actually began to accrue upon his arrival in 1876, the patent of 1881 merely provided formal confirmation of his rights, in accord with the time honored maxim that federally authorized use of federal land by PLSS entrants represents the true inception of their rights to the land which they have put to productive use at federal invitation (FN 4). The homestead entry cancellation of 1898 holds significance, because it reveals that the GLO was still exercising federal jurisdiction over Lot 6 at that time, and correctly so as we have learned, indicating that the GLO never regarded that lot as being part of the patented portion of the SE quarter of Section 33, even after the relevant quarter section line was officially deflected to the west in 1891. The inclusion of the west half of Section 33 in a National Forest in 1907 made the federal status of that area permanent, preventing the issuance of any subsequent patents in that area. The 1951 acquisition by Dallabetta marks the last conveyance using the original patented legal description, highlighting the fact that trouble attended the unwise subsequent decision by Dallabetta to abandon that description, when dividing his land for conveyance to St Clair in 1967. The BLM work conducted during the 1970s & 1980s was all legally inconsequential and had no

impact upon any existing land rights, but the BLM plat of 1984, by reiterating the lot numbering of 1891, may well have induced St Clair to believe, albeit mistakenly, that his rights were controlled solely by the 1891 & 1984 plats. This exercise in historical review serves to ideally demonstrate the importance to every land rights professional of gathering all of the evidence, as well as the value of reviewing that evidence in an organized and methodical manner, since that is exactly how our courts handle and decide such factually intensive cases.

As can readily be seen, the fundamental error which set the stage for this controversy was the notion that the 1891 plat effectively superseded the 1877 plat, when in fact it was legally incapable of doing so. The 1891 plat drew virtually all the attention of all of the parties and was the principal focus of the surveyor testimony, yet it was not the most important document in play, and it was incapable of serving as the controlling document, because it did not yet exist when the rights of Overocker came into existence. The 1891 plat eventually came to hold genuine value, as the plat controlling various other conveyances in the relevant township, but for purposes of ascertaining the location and the extent of the Overocker patent it was a legal nullity. The only plat relevant to the Overocker property was the original plat of 1877, which neither any GLO/BLM surveyor nor any private surveyors were authorized to ignore, despite the fact that the GLO had deemed it to be deficient and had effectively discarded it during the 1880s, without realizing the consequences that such action might eventually hold for Overocker's successors. Perhaps the most basic error in judgment made by the surveyors supporting St Clair however, was overlooking the fact that Lot 6 was never patented to anyone, thus it was plainly impossible to prove that it was anything other than federal land. The fact that the area designated in 1891 as Lot 6 was located east of the line dividing the SW & SE quarters of Section 33, as that line was established at that date, evidently convinced St Clair and his supporters that Lot 6 must be regarded as part of the SE quarter, but in fact it was clearly part of the SW quarter at the date of the Overocker patent, and no part of the SW quarter was patented to Overocker. Thus it was the failure of St Clair and his professional team to recognize the legal significance of this sequence of events which occurred well over a century earlier that sealed their fate in this litigation. Once a conclusive federal conveyance has occurred, as they learned on this occasion, no federal authority to alter the conveyed land exists, so any subsequent federal acts potentially having such an effect represent unauthorized actions, and the mere fact that the 1891 plat went on to be adopted and referenced in other federal patents gave it no force or effect whatsoever with respect to the Overocker tract.

Once a federal patent has been issued pursuant to an approved GLO/BLM township plat, any error manifested in that plat becomes subordinate to its intrinsic legal value, the rights of each private entrant must be protected, by defining those rights with sole reference to that specific plat and the survey upon which it was based, however defective that survey may have been, because the patentee was authorized to rely upon that particular plat, and no other. No surveyor, federal, private or otherwise, nor any land owner, has the alternative to utilize any subsequent plat for the purpose of either expanding or reducing the size of any patented property, because under the law the configuration of patented property is conclusively locked in place by the plat upon which the patent was based. Neither any federal officer nor any private party has any authority to substitute any subsequently

produced plat for the one upon which the patentee was authorized by his patent to rely, even if that original plat, or the original survey which it depicted, was afflicted with serious discrepancies. The foundation for this legal premise lies in the fact that every patentee acquires an essential right of complete reliance upon the relevant original survey, and no patentee bears any obligation to take any independent action to verify or validate any original survey or plat before placing full reliance upon those federal products, which frame his bona fide rights. Thus the land surveyor, upon encountering a scenario involving multiple GLO/BLM plats, has no option to choose to use the plat which he or she believes to be best, the surveyor must use the appropriate plat, which is determined entirely by the authority embodied in that plat, emanating from the patents that were issued in reliance upon it. Using the newest plat may appear to be a sound procedure and an attractive option, given the presumption that the most recently produced plat typically represents survey work which was more precise than the earlier original survey. This otherwise logical line of thinking is flawed however, because it neglects to recognize that precision is not the controlling factor in boundary determination, under the law boundary locations are determined through the application of principles, such as the concept of reliance upon an approved federal product in this instance, which principles operate to protect bona fide land rights from unauthorized abuses.

In every case, the original entrants had the right to expect the federal government to stand behind the original survey and plat for perpetuity, regardless of the quality of the relevant survey work, and that vital right is one which does not dissolve or fade with the passage of time, it remains in place and can be wielded with equal force by their successors today. Thus the retracement surveyor's primary duty, as the COA acknowledged on this occasion, is to identify the patented boundaries just as the entrant himself would have identified them, using nothing other than the plat and the monuments which were available to the entrant, as well as faithful perpetuations of the relevant original monuments, along with other cogent and acceptable evidence which can be demonstrably traced back to the original survey. As the outcome seen here illustrates, in each instance the particular boundary evidence which bears most clearly or strongly upon the original location of the relevant tract is most likely to find favor in the eyes of the law, when properly presented for judicial review, and is therefore quite likely to prevail, even in the face of expert testimony to the contrary, because our courts are keenly aware of the need to protect all land rights that are founded upon genuine original evidence, and in the absence of conditions indicative of adverse land use, they inevitably do so. Any deviation from adherence to authenticated original evidence is likely to lead to defeat in federal PLSS litigation, of the kind experienced here by St Clair and his surveyors, whose chief error was their failure to recognize that no governmental activities which took place after the Overocker patent was issued, including federal resurveys and the creation of a corrective plat, could alter any of the boundaries of the Overocker tract in any way (FN 5). The 1891 plat, although mistakenly relied upon by St Clair and his professional support team, was not entirely illegitimate or devoid of value however, it had the capacity to fulfill its intended function and it did so, legally defining the division of other lands in the relevant area which remained unoccupied at the date of its approval, thus the GLO lots appearing on that plat were legitimately created and are legally valid today, to the extent that they do not impair any previously patented rights (FN 6). This is the timeless aspect of the PLSS, circumstances and technical details are infinitely variable, but principles stand eternally on

guard, and necessarily so, since those principles form the bedrock of all land ownership derived from the public domain (FN 7).

Footnotes

1) For those who may wish to read all of the relevant material in full, the following documents, published by Westlaw, set forth the judicial opinions leading to the ruling which was handed down in 2016. These opinions were composed in a well organized and highly readable manner, making them easily understandable, and they are replete with numerous peripheral details which are not reiterated here in the interest of brevity, of the kind that surveyors typically appreciate, making them recommended reading for any land surveyor engaged in boundary work in the western states. These documents can be readily obtained using the free public internet access which is typically available at any law library, or through any other Westlaw subscription holder.

2014 WL 716519 (Initial District Court ruling, dated 2/25/14)

2015 WL 1476762 (Final District Court ruling, dated 3/27/15)

819 F3d 1254 (Tenth Circuit Court of Appeals ruling, dated 4/8/16)

2) La Plata County Colorado, where the events outlined herein unfold, has been the scene of numerous boundary and title disputes, many of which can be traced back to original survey work of dubious quality. For reviews of the most significant cases of that kind which have arisen within the Colorado court system see "The Land Surveyor's Guide to the Supreme Court of Colorado", which is available free of charge upon request from the author of this article.

3) Neither the intensity nor the duration of any land use made by St Clair or any of his predecessors within Lot 6 was of any benefit to him, because federal land is immune to the formation of adverse rights through usage alone - "Time runneth not against the King" - thus there was never any opportunity for land use to operate as a factor in this case. For a fuller discussion of this concept, judicially known as the Nullum Tempus Doctrine, see the third edition of this series, entitled "Examining the applicability of the federal Quiet Title Act to easement litigation - Does every issue generated by the presence of an easement constitute a title issue?", which was published by Multibriefs for NSPS News & Views in September 2015 and can be readily obtained through the web in pdf form by means of a keyword search, or directly from the author of this article upon request.

4) For both boundary and title purposes, typical federal patents relate back to the date of the actual entry of the land by the patentee or those associated in some manner with the patentee, so Nineteenth Century settlers like Overocker typically held valuable land rights of an equitable nature, not subject to disturbance by anyone, even prior to the issuance of a patent, once any applicable statutorily required steps had been completed, making the arrival of the patent itself a mere formality, since under the law it could not be arbitrarily denied by any federal officer to a qualified party. The legal implications of this often misunderstood concept became a decisive factor in the outcome of countless judicial

rulings of the late Nineteenth Century and the early Twentieth Century, during which period courts were perpetually required to address issues pertaining to patent validity, due to the intense settlement activity of that era. One particularly lucid and concise example of the relevance of this powerful form of bona fide rights in the survey context can be found in the case of Wing v Wallace (246 P 8 - Idaho 1926).

5) As the result of this case indicates, land surveyor testimony is not always either convincing or successful, and courts are under no obligation to give controlling weight to expert testimony of any kind, from surveyors or from other licensed professionals. Land surveyor testimony very often holds critical significance in boundary and title litigation however, and has directly controlled the outcome of numerous cases of that variety for many decades throughout the US. For an outstanding example of the potential power and efficacy of well crafted and wisely targeted surveyor testimony, pertaining to PLSS survey and boundary evidence, see the 1984 case of Funk v Robbin, reviewed in "The Land Surveyor's Guide to the Supreme Court of Montana", which is available in pdf form on the MARLS website, or free of charge upon request from the author of this article.

6) Although the potential disturbance of the original east boundary of the Overocker patent, caused by the 1891 alteration of the line between Sections 33 & 34, and the potential for controversy which that alteration held, was judicially noted, that matter played no role in the outcome of the St Clair case, because the successors of Woodward, as the holders of title to the N/2SW of Section 34, took no part in this litigation, and no such controversy ever developed. Interestingly, the absence of any reference to Lot 2 in Section 34 from the Woodward patent strongly suggests that the GLO personnel of that era realized that the section line alteration of 1891 had no impact upon the boundaries of the land to which Woodward was entitled, and also indicates that they correctly understood that they had no authority to require any existing descriptions of privately occupied lands to be changed. Thus if Lot 2 in Section 34 had ever been patented by the GLO at all it would have been patented to Overocker, rather than to Woodward, and the fact that no controversy over that lot arose would appear to verify that Woodward herself understood this. Also importantly, as noted in the timeline above, the Woodward entry, like the Overocker entry, was made long before the 1891 plat existed, so Woodward, just like Overocker, had no right of reliance upon the 1891 plat, both of those entrants held a right of reliance founded upon the original plat of 1877, and this was properly reflected in the Woodward patent. As can therefore be seen, the 3 lots which were created by the GLO in 1891, lying within the Overocker patent, were created only in anticipation of the amendment of that particular patent, which as we have noted never occurred, and there is no indication that any GLO personnel ever intended those lot numbers to be used for any other purpose. It thus clearly appears that the GLO personnel properly understood that all such lots falling within areas to which private land rights had already accrued, prior to the creation of the 1891 plat, were to be left permanently unpatented, if no one who was entitled to those lots ever requested an amended patent. So it would seem quite apparent that GLO personnel were well aware that the 1891 divisions within Section 33 were purely conceptual and hypothetical, and did not constitute a rearrangement of any existing boundaries, as witnessed by both the use of coloration on the 1891 plat and the retention of Overocker's name, despite his absence, flagging the area which they understood to have been patented to him.

7) Some readers may note the absence from this article of any reference to the federal Quiet Title Act (QTA) which has been discussed in previous editions of this series. The QTA provides one pathway for non-federal claimants to initiate litigation against the federal government, relevant to title and boundary issues, when US personnel resist such litigation and the requirements of that Act are met, but the QTA has no role to play when federal officials elect to take legal action against a private party, as they did in this instance. In this particular case, had St Clair chosen to file a QTA action, which he certainly could have done, he would have been vanquished, and presumably he chose not to pursue that course of action because either he or his legal advisors were cognizant of that. The jurisdictional parameters of the QTA, specifically the 12 year limitation period which is incorporated therein, clearly prevented St Clair from prevailing as a plaintiff challenging the US, since he had legal notice of the US title to Lot 6, provided by numerous recorded leases which the US issued for mineral exploration upon that lot dating from 1925 to 1987, although there is no indication that any actual use was ever made of any of those leases. Thus neither St Clair nor his grantor Dallabetta could have successfully assaulted the US title to Lot 6, either before the QTA came into existence in 1972 or during the QTA era, because that federal title was legally bullet proof long before either of them acquired any land in Section 33. Nonetheless, it was the decision of the US to take action against St Clair to eliminate his intervening activities within Lot 6 which made the QTA entirely irrelevant to this scenario.

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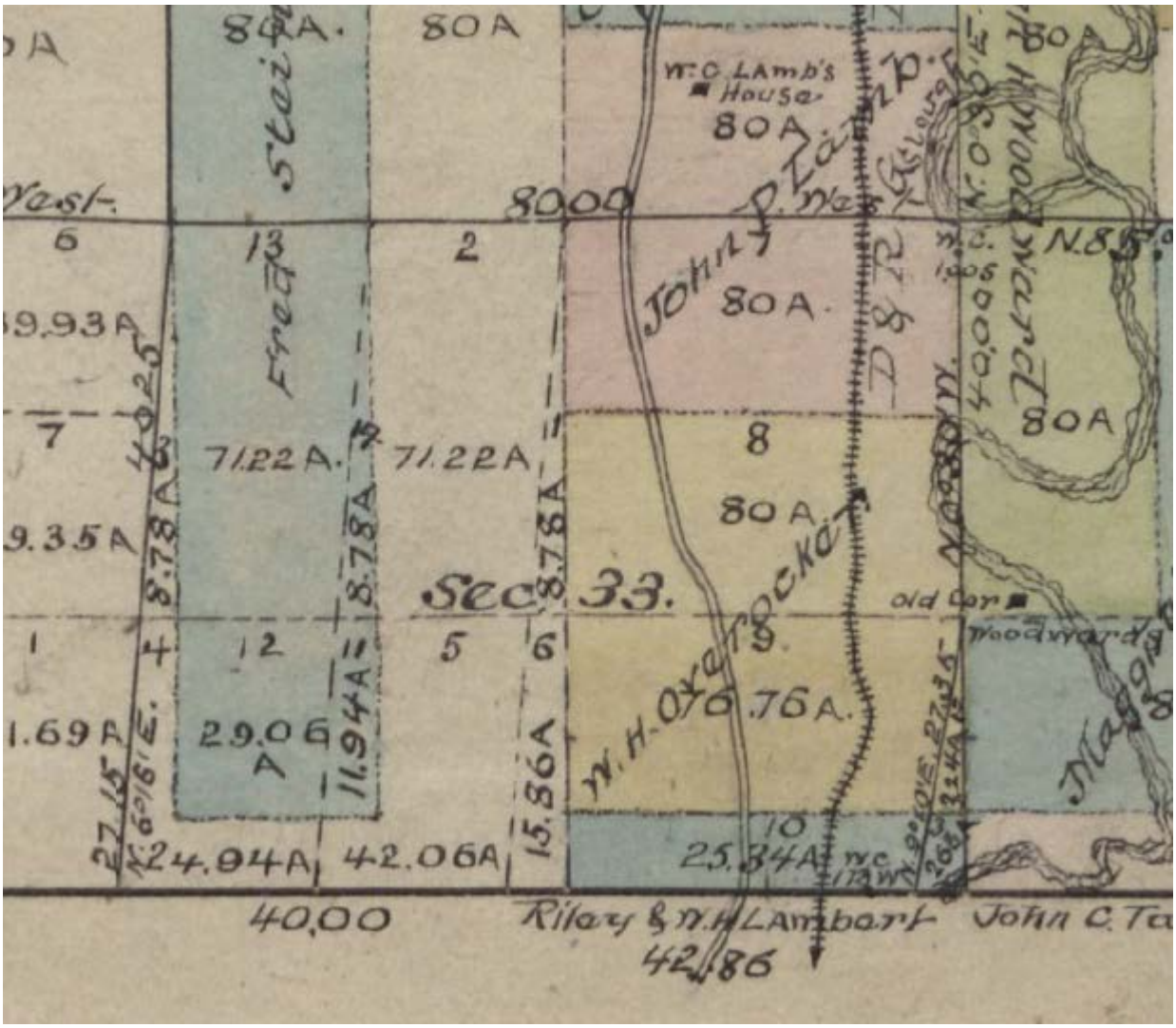
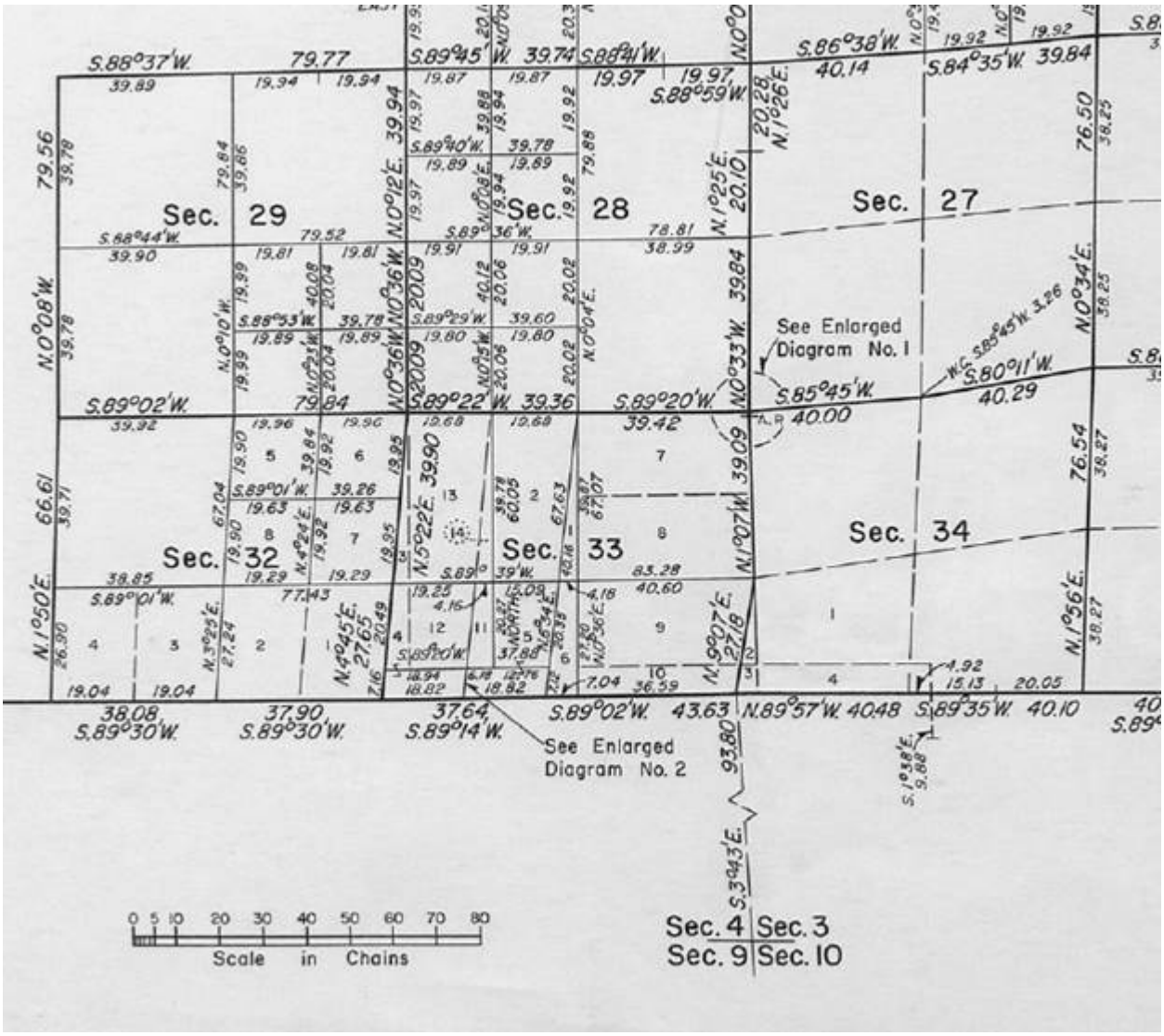


TRUNCATED SECTION 33 ON 1891 PLAT



SECTION 33 AND ADJOINING SECTIONS ON 1984 PLAT