Examining adjudication pertaining to federal title interests beyond the federal Quiet Title Act - Does the work of land surveyors have a role to play in Tucker Act litigation?

Our featured case on this occasion provides us with an outstanding example of the importance and value of historical research in the land rights context, replete with unusually rich detail, presenting a fascinating saga which plays out in an exotic setting. Anyone who seeks the opportunity to obtain a judicial ruling against the federal government, and therefore desires to file a legal action against the United States (US) immediately faces the very substantial hurdle known as sovereign immunity. The concept of sovereign immunity generally shields the US from lawsuits, in order to prevent federal funds from being endlessly consumed defending federal interests in the vast multitude of cases which would undoubtedly arise in the absence of such a bar. So any claimant who wishes to directly confront federal authority in a courtroom must first find a legitimate and open channel of attack and select the appropriate form of action, in order to have any chance of completing a successful legal action assailing any federal interest. This initial evaluation of the relevant scenario, and the resulting determination of the proper legal pathway down which to proceed, presents a daunting and difficult task in itself for claimants and their legal counsel, because valid opportunities to challenge federal actions or decisions are intentionally quite narrowly limited under federal law. As we have already learned and discussed however, in previous editions of this series, opportunities for intrepid parties to take on the US in court do exist, because Congress has enacted certain statutes which expressly waive sovereign immunity, albeit with certain stern limitations, allowing federal activities and rights to be judicially reviewed, and of course federal interests in real property are among the many forms of subject matter encompassed by such congressional waivers. As we will learn here, although sovereign immunity is a most formidable force, it can be dealt with and overcome, by those whose efforts embody astutely designed legal strategy along with great diligence in evidence gathering, and that path to success begins with selecting a specific form of legal action.

As most people are well aware, the Fifth Amendment to our Constitution was designed to prevent governmental action amounting to "taking without just compensation", but of course that proposition brings forth the elementary question of exactly what does or does not represent a taking, since even this powerful constitutional mandate can be rendered ineffective, if takings can occur without ever being recognized as such. Since the Constitution naturally says nothing specific in that regard, our federal courts, functioning in observance of federal statutory law, bear the obligation to evaluate and determine what is or is not a taking on a case by case basis, mindful of the large body of guidance which has been provided on that subject by the United States Supreme Court. Even when consideration of that question is limited to the realm of real property law, the word "taking" still has a broad range of application, since real property rights of many kinds exist, so a taking can certainly occur even where there has been no loss of fee simple title. Privately held title to land has long been characterized as the proverbial "bundle of sticks", as a way of illustrating that it typically represents not just one right, but a plethora of rights, which are legally distinct and can be conveyed separately, one classic example of separated rights being mineral reservations, while ubiquitous examples of shared rights include cotenancies and easements. When any form of federal title is contested, the federal Quiet Title Act (QTA) provides the sole statutorily authorized forum within which a non-federal claimant can obtain conclusive resolution of the true legal status of the relevant land or land rights, because as long as title stands in a contested state no taking can be deemed to have occurred (FN 1). A non-federal claimant can circumvent the QTA however, by acquiescing to a federal assertion of title, in which case the existence of that federal title is no longer a contested issue, enabling the claimant to proceed by means of another form of legal action, known as the Tucker Act, which requires claimants to demonstrate that they have been victimized in some manner that comprises a taking, for which they are entitled to compensation (FN 2).

Passage and adoption of the Tucker Act in 1887 represented the culmination of a long running national debate, which according to most commentators began in or around 1855, over how to best judicially implement the strong protection of private rights of all kinds that is plainly stated in the Fifth Amendment. Only a fraction of all Tucker Act cases have involved land rights, since rights of many other varieties can obviously be taken, but over the decades the relevance of the Tucker Act to real property has come to be recognized and its parameters have been fairly well defined through numerous historic judicial rulings. As previously noted however, the Tucker Act effectively requires the claimant to concede and prove that a taking has occurred, so it is of no use to those who are intently focused solely on securing title to either land or an easement, and who therefore have no desire to settle for financial compensation, thus it cannot fully satisfy or meet the needs of those citizens. For that reason, the QTA was eventually developed, nearly a century after the Tucker Act, to fill that void, by providing an opportunity for non-federal title holders to tackle the federal government in court, without first conceding that their title had been lost to federal control. The creation and enactment of the QTA was motivated by bitter complaints to legislators, registered by affluent and influential citizens who found themselves with no way to contest federal title assertions which they felt were clearly unjustified (FN 3). Those individuals had no use for the relatively insubstantial amount of money which they might be judicially awarded, if they were to prevail under the Tucker Act, because the property at stake was often remote land of low monetary value, although they saw that land as a priceless part of their historical family heritage, so they disdained the Tucker Act, choosing instead to advocate for a new form of action, which the QTA eventually provided. In the modern age of high property values however, the Tucker Act now provides an avenue which can potentially be employed to obtain very substantial judicial awards, although it offers only a narrow window of opportunity, limited to just 6 years, contrasted with the 12 year window afforded by the QTA.

When jurisdiction is found to exist under the QTA, both federal and private survey evidence becomes potentially central to the outcome of the controversy at hand, particularly when the dispute being adjudicated is over the physical extent of title, implicating boundary location issues. In a typical Tucker Act case however, no contention over boundary issues takes place, because either an entire private title, having a known and clearly defined extent and quantity, has been taken, or a certain portion of a private title, often outlined by an uncontested survey, has been taken, so the dispute is typically centered upon the attributes and valuation associated with the taken area, rather than its boundaries or acreage. But our featured case is certainly not a typical one in any sense, since it takes place at the intersection of title issues and compensation issues, and thus shows the intrinsically important role played by title evidence, even when title itself is judicially viewed as a merely ancillary matter, rather than being the ultimate issue. To prevail on their claim for compensation, the claimants here had to compile extensive historical evidence supporting the validity of their purported title, and the coastal nature of the subject property, operating in combination with the obscure historical origin of that title, made the presence of arcane boundary issues afflicting their land inevitable. Indeed, as we will see, in this case inherent boundary ambiguity, manifested in the subsequent varying interpretations of the location of both documented and undocumented land rights, by various federal and non-federal parties, served as the very source generating this controversy. Not surprisingly, the title research conducted here by the claimants and their professional support team turned up multiple surveys of the relevant area, spread out over a full century, providing a wonderfully panoramic view of the variations in the coastal landscape, and thereby supplying crucial support for their position. Thus here the great legal significance of land surveys and plats produced by land surveyors is powerfully displayed, clearly illustrating that boundary evidence is among the most essential factors related to proof of title.

Katzin v United States, US Court of Federal Claims (CFC) 127 Fed Cl 440 (2016) (FN 4) is set upon Culebra Island, which is a US territorial possession, 7 miles in length and 3 miles in width, under Puerto Rican jurisdiction, situated east of the Puerto Rican mainland, where the Atlantic Ocean meets the Caribbean Sea. Culebra is a volcanic island, with a limited amount of land useful for cultivation, surrounded by a coastal zone populated mainly by mangrove swamps. While it was territory of Spain, it was long regarded as uninhabitable, being frequently lashed by hurricanes, and visited primarily by pirates, but in modern times it has become an infamous point of rendezvous for those participating in the illicit drug trade. In 2006, the Katzin family sought to sell some land on Culebra Island, and they located a potential buyer, but shortly thereafter, before their anticipated transaction was completed, a long neglected conflict involving the land which they believed they owned and a certain federal interest therein was investigated and brought to their attention. After their initial buyer pulled out, and further efforts by the family to sell their land failed, they decided to legally contest the federal position relating to that problematic federal real property interest. Having wisely obtained the services of an attorney who was highly familiar with the relevant area, and had extensive experience dealing with land rights issues in that area, the Katzins had to decide which of the legal avenues available to them was most likely to lead to success. At this juncture they were thus faced with deciding what success meant to them, because if success meant nothing less than judicial nullification of the federal title interest, while securing clear fee title to the contested ground unto themselves, they would have to proceed under the federal Quiet Title Act. They elected not to pursue that option however, presumably upon recognizing that their chances of succeeding under the strict parameters of the QTA were slim to none. Instead they chose to define success in monetary terms, so they opted to proceed by filing their action under the Tucker Act, thereby conceding the federal title to the relevant area, and limiting themselves to the possibility of obtaining compensation for a federal taking.

Before reviewing the magnificent historical montage comprising the evidence presented by the claimants in this case, its important to recognize the specific goal which their evidence was targeted at achieving, and that was to meet their burden of proof under the Tucker Act. At the most basic level, the Katzins and their allies had to prove that they held a "cognizable property interest", under state or territorial law, which was impaired or taken from them as a consequence of some form of federal intervention, amounting to unjustified interference with their affairs, resulting in actual damage to some component of their legal title interest, in order for them to qualify for a judicial compensation award. The ability to market and transfer title, without any unjustified impediment imposed by others, is a genuine core property right, which is subject to taking, if it can be shown that a proposed private sale has been disrupted by any federal presence or action. This was the fundamental premise under which the Katzins and their associates set out to prove that they had been victimized, by federal actions, decisions or pronouncements, which had at a minimum created a cloud or encumbrance upon their title to their land, which they were powerless to eradicate. Although the Katzins had bypassed the rigors of the QTA, their decision to proceed under the Tucker Act did not eliminate the need for them to bring forward strong title evidence in order to prevail, because quite obviously they could be awarded no compensation unless they could prove that they or their predecessors actually had genuine title in the first place, to be taken from them. The task before the Katzins and their legal team was a massive one to say the least, because they had to compile voluminous and convincing historical evidence, stretching back well over a century, to support the origin of their title, but at the same time they had to find a way to circumvent the Tucker Act's 6 year statutory bar, which seriously threatened to turn all of their own historical evidence against them. We will contemplate the controlling principles and their legal effect, after taking due notice of the vitally important sequence of historical events which produced this litigation.

Settlement of Culebra Island commenced in 1880, at which time it was under Spanish jurisdiction, forming part of the Kingdom of Spain, and by the time it became US territory, following the Spanish-American War of 1898, about 700 occupants inhabited the island. Under the law of Spain, certain parts of the island, forming the Maritime Terrestrial Zone (MTZ) which included beaches and coastal mangrove swamps, as well as all other tidally impacted ground, legally constituted public domain. Spanish law also provided for a public littoral easement, extending 20 meters landward from the MTZ at any given point, which allowed for use of that area in the event of a shipwreck, so certain boundaries, defined by natural features and circumstances, already existed on the island before it became subject to US law. In addition, an original survey, done in 1887 and authorized by the Spanish Crown, divided most of the island into lots, so artificial boundaries already existed on the island prior to the earliest US interest therein, although whether or not any monumentation had been established in 1887 is unknown, and how many of those lots had been patented to private parties by 1898 is unknown as well. The 1887 plat also showed various reservation areas, including a strip of unspecified extent running along the coastline, presumably representing the MTZ, although it was not expressly labeled as such on the plat. The southeastern portion of the island forms a very substantial peninsula projecting generally southeastward, occupying at least a few square miles of land, and having an irregular coastline with arms or branches extending seaward from each of the platted lots in that vicinity. The Treaty of Paris, which ended the Spanish-American War in 1898, legally preserved any and all private land rights which had been established on the island prior to that date, and of course it also passed the remaining land rights held by the Kingdom of Spain on the island to the US, so all of the reserved areas shown on the original plat of Culebra became US federal interest lands at that time.

The Foraker Act of 1900 established civil government under US jurisdiction throughout Puerto Rico, including Culebra Island, and in 1901 President Roosevelt officially placed all federal land on Culebra under the control of the Department of the Navy. In 1902, Mulero, who was the original patentee of Lots 24 and 25 shown on the original plat, registered his properties, and for unknown reasons they were renumbered at that time, becoming Property 55 and Property 28 respectively. Mulero evidently owned or acquired other adjoining real property however, and in April of 1903 his land holdings were consolidated, becoming Property 117, also known as the Buena Vista tract, which was described as 346.5 cuerdas, bounded on the south and the east by the ocean (FN 5). In June of 1903, Mulero, who was apparently a farmer who could not read or write either Spanish or English, conveyed a portion of Property 117 to the Navy, by way of a deed containing a legal description which had been prepared by the Navy for that purpose. This acquisition was just one of several of the same kind which were made by the Navy to facilitate the installation of naval guns around the perimeter of the island, presumably to deal with incursions by pirates. The description in this deed identified the small federally acquired area as 2.25 acres, outlined by metes and bounds, citing a "cannon emplacement" as a point of beginning, but this description did not indicate that a cannon actually existed in the relevant area at this time, and no evidence that a cannon was ever placed anywhere upon Property 117 was produced, so that reference appears to have been intended to apply to a proposed cannon, which was never installed. Nonetheless, there was no question that this gun mount location, like others around the island, plainly required direct shoreline visibility in order to serve its purpose, and the description stated that it was situated upon a "punta de terreno", so it was evidently intended to be located somewhere on the portion of Property 117 which comprised a peninsula that projected eastward, and this deed was accepted for recordation at the Property Registry, where this 2.25 acre parcel was designated Property 120.

Mulero died in 1904, and in 1909 his widow sold the majority of his land to Arias, retaining only a relatively small portion thereof. The area conveyed to Arias was designated as Property 167, purportedly containing 300.5 cuerdas, and it evidently included all of the land which had formed the easterly portion of Property 117. The existence of Property 120, the proposed naval gun mount

site, was clearly known to all the parties at this time, although it had apparently not been put to any actual use, since the documentation by which Property 167 was created made reference to Property 117 as containing 344.25 cuerdas rather than 346.5 cuerdas, reflecting the prior subtraction of that 2.25 acre federal parcel. Arias and his brother formed a partnership, but they evidently never made any use of Property 167, and they both died within the ensuing 10 years, leaving their land to the widow of one of the brothers, who evidently paid no taxes on it, so in 1923 it was sold at auction to Vieques, which was apparently a property management firm based in New York. After a consolidation of Property 167 which other Vieques land located on the island, it became Tract 6 of Property 228, but this procedure amounted only to another renumbering, which had no impact upon any existing boundaries. In 1928, all of the Vieques land was acquired by United Porto Rico Sugar, triggering yet another consolidation and renumbering, by which Property 228 became Property 249, which was evidently an even larger tract of unspecified size, and Tract 6 of Property 228 became Tract 76 of Property 249, but again its boundaries underwent no change, remaining just as they were in 1909, when it was known as Property 167. As the 1920s ended however, the southeastern portion of Culebra remained substantially unused land, and with the arrival of the economic malaise which accompanied the Great Depression, that area was destined to continue to languish in obscurity and disuse throughout the ensuing decade as well.

During the 1930s however, as real property values slumped, efforts to better organize arcane federal land records were underway in federal offices in the US, and in 1936 as part of that effort the Department of the Interior (DOI) inquired about the real property interests that were held on Culebra Island by the Navy. A naval official responded to that DOI request, confirming that "gun mount platforms" had been acquired on Culebra by the Navy, and the list of specific sites which he sent to the DOI included the one which had been acquired from Mulero in 1903. Then in 1937 the Navy published a "Manual of Real Estate", which again specifically identified a 2.25 acre site on the southeastern peninsula of Culebra as naval property. This document also made reference to the original plat of 1887, listing 11 entire original lots shown on that plat which the Navy regarded as still comprising part of the public domain, under naval jurisdiction per the aforementioned presidential order to that effect, making a total of about 2400 acres on the island which were reportedly under naval ownership and control at this time. Naval personnel clearly knew about the 1887 plat and utilized it at this time, since this 1937 Manual also made reference to the MTZ, which was documented on that plat as we have previously noted, and the Navy asserted jurisdiction over that coastal strip, as part of the public domain, although the MTZ had never been quantified, described, monumented or conveyed, and was thus essentially invisible for all legal and practical purposes to anyone who had never seen the 1887 plat. Also in 1937, the DOI produced a map of Culebra, based upon the 1887 plat, but in addition to the original lot lines this map depicted several "small polygons", representing the gun mount sites that had been reported to the DOI by the Navy, and one of those symbols signified the 1903 naval acquisition from Mulero, so although no effort was apparently made to show the size or location of those sites with accuracy, this map did serve to flag their presence.

In 1940, Tract 76, being identical in configuration to the former Property 167, was conveyed by Eastern Sugar, which had acquired all of Property 249 in 1934, to Gonzalez, having apparently been deemed to be useless for sugar production. This separation of title of course produced still another designation, as Tract 76 became Property 270, which was described just as Property 167 had been described at the time of its creation over 3 decades earlier. This 300.5 cuerda tract was thus consistently described every time it was conveyed throughout this period, although it was described only in a general manner, using only bounding calls for adjoining features or properties, and on each occasion it was described as being bounded on the east by "the ocean and lands of the US Navy". It appears that in 1945 the Navy may have finally elected to take some steps to identify the location of the 2.25 acre gun mount parcel acquired in 1903 on the ground, as a concrete

monument was subsequently found in the relevant vicinity, inscribed "USN 1945". However, an exhibit produced by the Navy in 1947 for unknown purposes, labeled "Parcel Buena Vista", which covered the relevant peninsular area, gave no indication that any monumentation had been established at the gun mount site, showing it once again only as a numbered dot symbol, similar to the manner in which it was depicted on the aforementioned 1937 DOI drawing. Perhaps more importantly, this 1947 naval diagram also indicated that the peninsula occupied by this gun mount site contained 10.01 acres, and it showed a boundary line of unknown origin, about 670 feet in length, crossing the neck of the peninsula, suggesting that the peninsula was not regarded by the Navy as being part of Property 270. Gonzalez apparently never used Property 270, and there is no indication that any communication ever took place between Gonzalez and the Navy, but starting in 1951 the entire 10 acre peninsula was labeled as tax exempt naval property in the local tax records, presumably based upon acceptance of the 1947 naval drawing by local tax officials, as an authoritative and therefore reliable assertion of federal title to that area.

When Gonzalez died in 1963, his real property on Culebra Island passed to his heirs, which included his 2 married grand-daughters, Winters & McLaughlin, who apparently lived elsewhere and may never have even visited the island, so presumably they had little if any knowledge about the boundaries or extent of the land that they had inherited. They and their fellow heirs promptly hired Quinones to survey the Gonzalez estate, in order to clarify exactly how much land the heirs owned, and Quinones produced a survey entitled "Plano De Mensura A Estadia", which showed that he had conducted a stadia traverse around the subject property, as he understood it. How Quinones determined the boundaries of the surveyed area is unknown, his drawing showed no existing lot lines and gave no indication that he made any use of the original plat, nonetheless he reported to Winters & McLaughlin that they owned 344.62 cuerdas, as opposed to the 300.5 cuerda previously documented size of Property 270. Most significantly, in traversing around the subject property, Quinones cut off and excluded the 10 acre peninsula, although whether in so doing he followed the same line crossing the neck of the peninsula that appeared on the 1947 naval exhibit, or he established a different line for the purpose of segregating the peninsula from Property 270, is unknown. Then in 1967, the heirs of Gonzalez hired Gomez, who was presumably a civil engineer, to create a subdivision for them based upon the 1963 survey, and he produced a drawing showing 6 numbered parcels within the area that had been surveyed by Quinones. Parcel 4 was depicted on this subdivision plan as containing 67.5 cuerdas, and in the deed of partition, by which it was formally created, along with the other new parcels designed by Gomez, it was described as being bounded on the east by the ocean, since it had a substantial amount of ocean frontage, despite the linework appearing on these 1963 & 1967 maps, indicating that it did not include the 10 acre peninsula.

In 1968, the Navy produced a "Culebra Island Real Estate Summary Map", which once again indicated and clarified that the Navy asserted fee ownership of several portions of the island, including a strip of varying width running along virtually the entire coastline, presumably meant to correspond to the MTZ, although the map bore no specific notation to that effect. This map did not show any of the parcels created by virtue of the aforementioned 1967 subdivision plat, but like the earlier federal mapping of this area, it once again noted the existence of the various gun mount parcels, which in each case were identified only by numbered labels, pointing only to the general area of each gun mount site, while making no attempt to define their exact locations. In addition, this map once again showed the entire peninsular area which projected eastward from the newly created Parcel 4 as being naval property, in accord with the 1947 naval exhibit. So at this point in time, the documents produced for the Gonzalez heirs and those generated by the Navy appeared to be in agreement that the Gonzalez estate had either never included the peninsula, or no longer included it, given the fact that the boundaries established by the 1963 survey and the 1967 subdivision plat effectively signified that the heirs of Gonzalez had conceded the peninsula to the

Navy, or at least they raised no challenge to the naval position regarding the title status of that area, if they were aware of that position. Since piracy in the Atlantic Ocean had long ceased by this time however, and no other threats to peaceful navigation in this region appeared on the horizon, thoughts of US lawmakers began to turn to other matters relating to federal land use, such as habitat protection, and as a result the need for naval jurisdiction over the federal property interests on Culebra Island would soon receive congressional attention.

In 1971, the US Senate directed the DOI to prepare a report identifying federal lands which appeared to hold conservation value, as a preparatory step toward establishing a number of federal wildlife sanctuaries. A plan produced by the Bureau of Land Management (BLM) in 1973 for that purpose pointed out that the Navy held a substantial amount of land on Culebra Island, which had been classified in 1972 as "excess" federal land, holding little if any military value, but potentially suitable for the protection of marine life. In so doing however, BLM alerted the Senate to the fact that much of the real property on Culebra was plagued to a significant degree with title issues, resulting from historical boundary ambiguity. The BLM report stated "... although there is no doubt that the federal government owns the MTZ, there is uncertainty about the landward boundary of the zone ... private owners claim that their deeded holdings extend nearer to the sea ... lawsuits raising the issue are currently pending ...", before concluding that "... title and boundary disputes render any quantification of land ownership in Culebra uncertain". This BLM report characterized the federal property boundaries on Culebra as "estimated", suggesting that the naval assertion of title to the aforementioned peninsula, and quite possibly to many other portions of the island, similarly situated near the coast, might well be inaccurate, having been based upon suppositions made by naval personnel who had little or no knowledge of boundary or title law. The excess federal property on the island, as it was federally outlined in 1972, consisted of well over 500 acres, stretched out along more than 16 miles of coastline, and all of the "former gun mount sites", some of which had never been used at all, were expressly included within the land area that was proposed for federal transfer or disposal at that time. Also in 1972, it may be worthy of note, the federal Quiet Title Act became law, effectively silencing all private title claims to federal land which had arisen prior to 1960.

Also in 1971, while the US Senate and federal employees were developing plans involving the federal land on Culebra, a partial interest in Parcel 4 was acquired by Grayson and the Katzins, who acquired the interest of McLaughlin, thereby becoming co-owners of that parcel along with Winters. Grayson and the Katzins, who were evidently business partners, also acquired other adjoining lands at that time, and they employed Melendez, who was an attorney, to oversee their plan to subdivide that adjoining land into 5 acre parcels. Fletcher, a land surveyor, was then engaged as well, and his work between 1971 and 1974 resulted in the creation of those parcels. Also during this period, Melendez obtained a copy of a naval map, dated 1945, from the mayor of the town of Culebra, which depicted the 1903 gun mount parcel situated on the peninsula connected to Parcel 4, and he shared that map with Grayson and the Katzins, so all of them were aware of the presence of that 2.25 acre naval property interest by 1974. The owners of Parcel 4 also agreed to physically partition their partial interests in that particular parcel at this time, Winters was to get the north half, while Grayson and the Katzins would get the south half, so Fletcher was directed to split Parcel 4 accordingly. When Grayson instructed Fletcher however, he told Fletcher that Parcel 4 included the peninsula, based on Grayson's opinion that it had been erroneously excluded when the Gonzalez estate was surveyed in 1963. Fletcher then prepared the requested survey, including the peninsula and showing that Parcel 4 contained 70.86 cuerdas, but he wisely placed a note on the survey indicating that he had included the peninsula only because he had been directed to do so. This note was evidently effective, and when it was seen by Winters she refused to complete the proposed partition until the matter of title to the peninsula was clarified. Her reaction was upsetting to Grayson and the Katzins however, so they attempted to compel Fletcher to remove

this note of warning from his survey, threatening not to pay him for his work, but he declined to comply with their request, leading to the abandonment of the plan to partition Parcel 4.

In 1975, the US Fish & Wildlife Service (FWS) applied for a federal transfer of some of the naval property on Culebra, but this initial request made reference to only 121 acres, the exact location of which was unspecified. This application was duly approved by federal officials, but the relevant area was left unclear, and no legal descriptions were created at this time, instead the proposed transfer was evidently kept on hold, pending the outcome of related negotiations between naval personnel and officials representing Puerto Rico. In 1980, the FWS produced several legal descriptions to facilitate the proposed transfer, purporting to cover 776.35 acres, which included all of the "areas formerly known as gun mounts, totaling 13.83 acres", although how these new legal descriptions were composed is unknown. Among these descriptions was one covering the 2.25 acre naval parcel that was created in 1903 upon the land of Mulero, which was identified at this time as Tract 1f. Also during 1980, FWS personnel held open hearings on the island, which were attended by some island residents, to inform the public about the FWS refuge plan, and numerous complaints about problematic federal boundaries were presented by Culebra citizens, but neither the Katzins nor any of their associates apparently attended these meetings. Final agreement between representatives of the US and Puerto Rico was evidently reached and duly documented in 1981, regarding the disposition of all of the federal interest lands on Culebra, and the anticipated transfer of naval property to the FWS became official, ending all naval interest and jurisdiction pertaining to the peninsula connected to Parcel 4 and all other federal land in the vicinity. This 1981 agreement, notice of which was published in the Federal Register in 1982, made reference to the original plat of 1887, and included a 1976 map, which like the earlier federal maps of this area depicted the federal interest boundaries in only a very general manner. Thus in 1982 the FWS officially stepped into the shoes of the Navy, becoming the new steward of the federal interest property on Culebra, which continued to be afflicted with boundary ambiguity.

Recognizing that a need for boundary clarification clearly existed, the FWS ordered a survey of the Culebra National Wildlife Refuge to be done by a contractor in 1985, and an unspecified number of boundary monuments were evidently set at that time, but this survey may or may not have encompassed the entire Refuge, and nothing is known about any survey instructions or the manner in which this survey was executed. Among the sites that were monumented on this occasion was the 2.25 acre federal parcel which had been acquired from Mulero in 1903, but whether or not any monuments were set defining the landward limits of the MTZ, which was the matter of foremost concern to the local private property owners, is unknown. A copy of this survey was obtained by Borges, who was an attorney representing the owner of one of the properties adjoining Parcel 4, and in 1987 he complained to the FWS that a portion of the Refuge boundary was inadequate and needed to be modified, because in his opinion it did not properly segregate the wetlands, which were intended to comprise the Refuge, from the adjoining privately held upland. While negotiations over that issue were ongoing, Borges shared an aerial photo of the area, known as La Pela Bay, which the FWS had provided to him, with the Katzins, who had acquired the interest of Grayson in Parcel 4 in 1978. The Katzins agreed with Borges that boundary changes were needed, so in 1987 they sent the FWS a boundary adjustment proposal apparently pertaining to another nearby portion of the recently surveyed federal boundary. The FWS promptly responded to the Katzins, informing them that their proposal would be given due consideration, once the Borges proposal had been fully evaluated and that matter had been resolved, but the FWS evidently did not provide the 1985 survey or any other federal land rights documentation to the Katzins at this time. Shortly thereafter, Melendez, acting as attorney for the Katzins, contacted the FWS again, indicating that the Katzins were anxious to get on with "resolving the controversy with the boundaries", but for unspecified reasons none of these proposed boundary alterations were ever enacted.

In 1989, presumably disappointed that no buyers offering to purchase any of the 5 acre lots which had been platted for them 15 years earlier had emerged, the Katzins evidently began trying to sell off all of their Culebra property. An initial deal, in which they proposed to sell 22 of the 24 platted lots adjoining Parcel 4 to a resort developer fell through at this time however, apparently due to a clause in the conveyance agreement stating that those lots were "subject to any and all claims of the United States Fish & Wildlife Service", as the developer wisely decided not to take on a potential legal battle against a federal opponent. Boundary concerns soon arose again however, and in 1994 another attorney working for the Katzins contacted the FWS, suggesting that the MTZ "border represented in the 1887 plan was impossible to define and trace today", while requesting a meeting to move the Refuge boundary issue toward mutually satisfactory resolution. Shortly thereafter, FWS personnel met with representatives of the local land owners, including the Katzins, and the FWS notes from that meeting confirmed that the title status of the peninsula connected to Parcel 4, bearing the "Buena Vista Gun Mount", was among the issues discussed, but yet again, those notes tersely concluded, "the boundary dispute was not resolved". The 1994 FWS Annual Narrative Report stated that some of the local land owners had agreed to the creation of a 20 meter wide conservation easement, which was evidently intended to augment the MTZ, but there is no indication that this agreement remedied or even addressed any of the existing boundary issues. For unknown reasons, the Katzins did not agree to allow the proposed conservation easement to be applied to Parcel 4, but in 1995 they did agree to allow their adjoining land, which had been platted in 1974, to be subjected to that easement, in exchange for a quitclaim deed from the FWS, disclaiming any other federal interest in their 5 acre platted lots. Just days thereafter, the elder Katzin died, leaving his widow and Winters as the co-owners of Parcel 4, then in 2004 his widow conveyed her interest in that parcel to the next generation of Katzins, her son and his wife, who 8 years later would become plaintiffs.

In 2006 Klaber, who was a developer, contractually agreed to buy Parcel 4 from the younger Katzins for 4 million dollars, along with 2 nearby platted lots which they also owned, while the Katzins contractually pledged to convey marketable title. Klaber soon changed his mind however, so he asked Motta, who was his attorney, to search for title problems which could be used as leverage to escape his acquisition commitment, and Motta reported to Klaber that unspecified title problems appeared to exist, so Klaber contacted Berrios, who served as attorney for the Katzins. Berrios explained the nature of the title issues presented by the presence of the MTZ to Klaber, forthrightly and quite accurately informing him that the boundary and title issues posed by the historical rights associated with the MTZ had long been "a matter of continuous debate". Wagner, who was a realtor for the Katzins, attempted to ease Klaber's concerns, by telling him that the oceanfront land on Culebra was typical of all such properties, reminding him that in all such locations "government entities limit activities along the waterfront". Klaber evidently remained unsatisfied however, so he informed Wagner, that he wanted to cut Parcel 4 out of the deal, but the Katzins rejected that proposal. As the designated closing date for the Katzin-Klaber transaction loomed, just 2 weeks away, Motta reached out by way of e-mail to the FWS for information, seeking clarification of the federal interest in the relevant area. The FWS responded promptly to Motta's request, faxing her several of the historical documents mentioned previously herein, and Motta subsequently engaged in verbal discussion with a FWS representative about the meaning and legal implications of those documents, but no details of that conversation are known. For unknown reasons, Motta apparently did not communicate any of the information thus obtained from the FWS to Klaber however, instead she informed the Katzins and Winters that the transaction was off, because she had learned that part of Parcel 4 was actually "property of the FWS". About 2 months later Klaber acquired 4 platted lots from the Katzins in a separate deal, leaving the Katzins and Winters stuck with Parcel 4.

The following year the Katzins and Winters resumed their efforts to sell Parcel 4, with the assistance of Wagner. In 2007, Orbay, who was another resort developer, seriously considered acquiring Parcel 4, at a price of 4.6 million dollars, so Wagner sent him some documentation pertaining to the subject property for his review. In his response to Wagner, Orbay stated that he was "surprised by the fact that two cuerdas of the property actually belong to the FWS", apparently making reference to the 1903 gun mount site, although there is no indication of what specific information he saw that brought him to that conclusion. Wagner promptly replied, suggesting to him that there was no real reason for concern, but Orbay continued to see the FWS presence as a problem, stating that in his view the unclear federal interest in the subject property "has ominous implications for any future development, as the owner ... cannot build or utilize this land", while also correctly noting that the existing documentation appeared to leave the true location of the 1903 federal parcel very indefinite and uncertain. As negotiations with Orbay dragged on through the end of 2007, the economic climate began to turn cold, casting a chill over the real estate market, and bringing elevated urgency to the completion of the proposed transaction. Although no details are known regarding any further communication that any of the parties may have had with the FWS, subsequent to the aforementioned contact with the FWS that was undertaken by Motta in 2006, early in 2008 Berrios informed Orbay that the FWS had agreed in principle to complete a land exchange, which would eliminate the 2.25 acre parcel. Orbay responded however, by indicating that his development plan called for the construction of a dock, and Berrios then informed him that it was unlikely that a permit allowing a dock could be obtained, due to the protected status of the shorezone. A few weeks later, Orbay notified Berrios and Wagner that he was no longer interested in acquiring Parcel 4, so like the Klaber deal, this acquisition proposal never came to fruition, and in this case no conveyance contract was ever signed.

Later in 2008 another potential opportunity for the Katzins and Winters to sell Parcel 4 appeared, as a corporation named Global Emerging Markets (GEM) offered 3.8 million dollars for Parcel 4. GEM was evidently aware of the existence of the 2.25 acre federal parcel, since their acquisition proposal made reference to it, suggesting that Berrios was still negotiating the aforementioned land exchange proposal with the FWS, for the purpose of terminating that federal interest. However, nothing further came of the GEM proposal and the matter was dropped, because the Katzins and Winters evidently declined to sell Parcel 4 for less than 4 million dollars. In 2009, one final acquisition effort also ended unsuccessfully, as Colon, who owned the property situated directly north of Parcel 4, offered 1.5 million dollars for the northerly portion of Parcel 4, which he desired to obtain not for development purposes, but rather to prevent any development of that area, because it was close to his home. The Katzins and Winters flatly rejected this proposal, apparently adamant that they would not sell anything less than the entirety of Parcel 4. Interestingly, it appears that none of these potential buyers ever expressly identified the title status of the entire peninsular area as a source of concern, they cited only the 2.25 acre gun mount parcel and the MTZ running along the shoreline as title issues, which suggests that none of the buyers ever recognized that title to the full peninsular area connected with Parcel 4 was actually clouded. This lack of concern about title to the peninsula as a whole presumably resulted from the absence of any specific assertion of title to that whole area by the FWS in 2006, along with the absence of any disclaimer pertaining to the peninsula on the part of the Katzins and Winters, leading all of the buyers to simply assume that title to Parcel 4 physically extended all the way to the seashore, encumbered only by the gun mount site and the MTZ. In addition, despite all of this boundary and title ambiguity, both Klaber and Orbay maintained that the presence of an ambiguous federal interest or interests in the land either comprising or potentially comprising Parcel 4 was not the cause of their decisions to refrain from acquiring Parcel 4.

In 2010 the Katzins spent nearly the entire year trying to pin down the true location of the gun mount parcel themselves, after apparently becoming disgusted upon learning that a senior FWS

surveyor had searched for evidence of its location on the ground in 2008 and had been unable to find anything. Finally near the end of 2010 the Katzins were expressly informed by an attorney representing the FWS that the Navy had acquired not just that 2.25 acre parcel but the entire peninsula, making all of their search efforts pointless as well as futile. This FWS attorney told the Katzins that upon completing their historical research into the matter federal personnel were able to conclude only that the originally intended gun mount site was located somewhere "within or near the borders of the Buena Vista Peninsula", revealing to the Katzins that even the federal government, with all of its vast investigative resources, had deemed the true original location of that parcel created in 1903 to be impossible to ascertain with precision. Whether or not this particular FWS attorney was aware that the gun mount parcel had been monumented and shown on a federally authorized survey in 1985 is unknown, if he knew about that survey he was apparently unconvinced that the location of that parcel had been properly identified at that time. In 2012 the Katzins and Winters elected to commence legal action against the US, and their suit was filed nearly a full 6 years after the date in the summer of 2006 when their deal with Klaber had collapsed. Some of the 1985 survey monuments were evidently found during additional searches which were conducted by federal personnel or federal contractors during 2012 & 2013, who were presumably motivated to search more diligently by the urgency introduced by the filing of the lawsuit. Still no evidence could be found however, that any "cannon emplacement" had ever existed, suggesting that the layers of mystery and confusion in which the location of the ancient 2.25 acre parcel had long been wrapped, along with the serious chance that its originally intended location may have simply been washed away several decades earlier, accounted for the expansion of the federal title assertion to cover the whole peninsula.

In 2015, addressing an initial summary judgment proposal set forth by the US, the CFC decided that the legal action filed by the claimants in 2012 was not time barred, either by statute or by laches, while acknowledging the time honored maxim that "equity aids the vigilant, not those who sleep on their rights", yet holding that in the presence of a definite limitation period, specifically applicable to a particular federal statute, "laches will generally not be invoked to shorten the statutory period". Thus the Katzins were judicially deemed to be not guilty of any unjustified delay, despite knowing for decades that genuine issues involving federal land rights existed within their property, because they did in fact act with genuine promptness, once information emanating directly from a federal source, and having a distinctly negative impact upon their title, was federally provided to their contractual partners in 2006, placing the completion of their sales contract with Klaber in jeopardy. Given that their legal action was based on an allegation of damage linked to a contract, and was therefore within the parameters of the Tucker Act, the CFC recognized at this juncture that since the Katzin-Klaber contract did not exist until 2006, nothing which happened before that date could be characterized as direct interference with that particular contract, even if certain prior federal activities may have represented some form of intrusion upon the land rights of the Katzins. At a minimum, in the view of this controversy taken by the CFC, any federal interference with the Katzin estate, which may have taken place prior to the federal responses to the private inquiries that were made while attempting to bring the Katzin-Klaber deal to fruition in 2006, were insufficient to provide notice to the Katzins that they were unable to convey clear title to Parcel 4, or to support a conclusion that they were unwise to have made a contractual commitment to do so. Thus the US failed in this first effort to preclude the Katzins from setting forth the voluminous title evidence which they had compiled, as the CFC agreed that their evidence qualified for judicial consideration, setting the stage for a full trial, as opposed to a judicial dismissal of their legal action, which was sought by the US.

In the course of announcing its decision in 2016, while acknowledging the historical boundary uncertainty in the relevant area, the CFC rejected the federal position that the US had ever obtained title to the entire peninsula, which position was based upon the premise that the 1963

survey and the 1967 subdivision plan, showing the peninsular area divided from the land lying directly to the west, controlled the boundaries of Parcel 4, making reference to the original plat of 1887 unnecessary. The evidence introduced by the Katzins and their fellow plaintiffs, dating from the 1940s & 1950s, strongly suggested that these documents generated during the 1960s merely adopted lines that already appeared on local tax mapping, which by that time had shown the peninsula as a separate tax exempt property for several years, albeit without any legitimate basis founded upon any known conveyance. The CFC was next required to address the federal assertion that acreage should be viewed as an important factor in determining the true boundaries of the Katzin property, since the US had correctly pointed out that the Katzins had never expressly disputed that Parcel 4 was limited to 67.5 cuerdas, the size at which it had been consistently depicted, described and taxed ever since its creation. By highlighting the fact that the Katzins had never paid any taxes on the peninsula, the US plainly hoped to cast a shadow of bad faith upon them, but was unable to do so, because tax records are not a form of title and cannot operate as a surrogate for title. Thus the CFC readily swept the federal argument emphasizing the historical acreage discrepancies aside, recognizing that acreage ambiguity and variability is inherent in all coastal property. In so holding, the CFC noted that the evidence clearly verified that the size of the peninsula had quite understandably varied significantly over time, from 10 acres during the 1940s, to just 3 acres when it was surveyed by Fletcher in the 1970s, to about 15 acres at the time of the trial, finding that under such circumstances acreage cannot operate as a factor in boundary control, before ultimately concluding that the 1963 survey was simply "erroneous" with regard to the exclusion of the peninsula from Parcel 4.

Moving on to address the evidence pertaining to the location of the gun mount site acquired in 1903, which had been exceedingly troublesome for over a century, the CFC found that the site's location was never adequately established, and remained perpetually unclear, due in large measure to the broad array of conflicting documentation purporting to describe or portray its location. Exposing the erratic manner in which the problematic gun mount parcel had historically been depicted, even on maps produced by the federal government itself, as the fee owner of that parcel, was a key objective of the Katzins, which their diligent research enabled them to accomplish, as such evidence emphatically drove home the point that the legal description of that parcel which was employed in 1903 was fundamentally ambiguous. Although no one ever suggested that the 2.25 acre parcel never really existed, or suggested that it had been legally abandoned, or suggested that the US no longer held title to 2.25 acres somewhere, the Katzins scored a direct hit on the US position, by demonstrating that this US acquisition was so poorly defined in locational terms as to cloud title to all of the surrounding property from the date of its inception. In so doing, the Katzins very wisely focused judicial attention on the fact no visible object had ever occupied the gun mount site, leading the CFC to observe that adverse possession on the part of the US could have served to confirm and secure a specific site location for the US, thereby eliminating the locational ambiguity, but of course adverse possession was inapplicable to this scenario and could not benefit the US, because no evidence indicated that any improvements were ever placed at the site. The CFC then went on to criticize the various site locations mapped over the years by the US as "inconsistent", while suggesting that the FWS action taken since 2006 was inadequate since it did not properly resolve the matter, thus a "prudent buyer" would still be justified in refusing to acquire the subject property even today, and stating that the FWS remained guilty of never expressly "disavowing a claim to the peninsula", making the conclusion that a federal taking had occurred inescapable.

Consistency was clearly lacking in the historical mapping of the southeastern portion of Culebra Island, but in reality natural events may well account for much of the variability in the way the southeasterly coast of the island appeared from one map to another as the decades passed. Given the fact that the island was directly in the path of numerous hurricanes, there can be little doubt and no surprise that significant coastal erosion occurred on multiple occasions, reshaping the

coastline. This factor could easily explain the mapping and acreage variations which presented themselves during this thorough inspection of historical documentation, so its quite possible that all of the surveys and maps were in fact reasonably accurate, with respect to the coastline location and the size of the peninsula, at the time they were created. Thus it becomes clear that the ambiguity relating to the intended location of the gun mount site may very well have developed primarily because the outer portion of the peninsula, where the US insisted that the cannon was meant to be placed in 1903, had simply eroded completely away at some unknown time shortly thereafter, and this could also explain why this particular defensive site, unlike others around the island, was never put to any use by the Navy. Moreover, the flexible nature of the coastline also quite obviously held the potential to substantially alter the location of the shorezone, constantly relocating the MTZ and thereby either expanding or reducing the unencumbered acreage of the original platted lots and the private properties which had been created from them, in accord with the whims of nature. Nonetheless, in the absence of any evidence clarifying that the entire peninsula had become part of the MTZ through the operation of natural forces such as erosion and accretion, and therefore comprised federal property on that basis, the CFC was cognizant that the principle of original plat control dictated that the title assertion set forth by the US had to be viewed as a taking of the peninsula, because that area was clearly within the original platted lot from which Parcel 4, and all of the antecedent numbered properties preceding it in the Katzin chain of title, had been created.

The impressive chain of title presented by the claimants bore no indication that the peninsula had ever been legally severed from the platted lot within which it was included in 1887, nor was there any evidence that the US had ever physically commandeered that area, thus the evidence supported the conclusion that the US assertion of title to the full peninsular area was really based upon a plain misinterpretation of the law by unspecified naval personnel during the 1940s, pursuant to which the US had never taken any physical action upon the land. For that reason, in the view of the CFC, no genuine taking of that area had occurred until the US announced that it held an ambiguously defined interest, comprising a title cloud upon Parcel 4, to Motta in 2006, thereby effectively throwing the proverbial monkey wrench directly into the proposed Katzin-Klaber transaction. Had the US presented evidence definitively illustrating that the peninsula had actually eroded to such an extent that all of it was within the shorezone at some point in time, making that whole area part of the MTZ, which was clearly property of the US, a different scenario would have been presented, possibly producing a different result, but it appears that the US made no effort to do so, presumably confident that the Katzins would be unable to present sufficient title evidence to prevail. Thus the fundamental principles controlling the title status of the contested area were readily apparent, and they were squarely aligned against the US position on the value and proper interpretation of the historical evidence. Making reference to the controlling force of the 1887 original plat, the CFC reminded the litigants that the origin of title resides in "the donor's dispositive plan", informing them that any ambiguity found in subsequent documentation must always be resolved through judicial ascertainment of the true intent of the original parties. In addition, the CFC held, for purposes of boundary control in the context of title determination, platted, monumented or described boundaries, both typically and presumptively control over any quantification statements, such as documented acreage figures, so no acreage ambiguity could operate to denigrate the conclusive legal effect of the original plat of 1887.

Since the US could not prevail on the matter of record title, the federal legal team was required to focus on the aforementioned 6 year limitation period which is statutorily incorporated into the Tucker Act, motivating them to point out certain specific events which would nullify the ability of the Katzins to leverage their historical title evidence, if the federal judge could be convinced to agree that the Katzins or their predecessors should have known that federal title assertions clouded title to the entire peninsula prior to 2006. To that end, the US maintained that the Katzin family

had ample notice of the existence of material title issues related to the presence of federal land rights, which were clearly relevant to Parcel 4, by 1982, when notice of such rights was published in the Federal Register. This particular point made by the federal legal team was certainly valid in principle, since it has long been well established through federal litigation that all property owners are expected and effectively required to apprise themselves of any matters pertinent to their title that are addressed in the Federal Register, which represents the official means of communicating such federal activities and related information to the public at large. Therefore, this position set forth on behalf of the US definitely could and presumably would have doomed the Katzins, had this been a QTA case, resulting in a dismissal of their legal action, but the QTA standard requiring claimants to take notice of all information thus federally published which impacts their title is inapplicable to the Tucker Act, the CFC indicated, declining to support the US position on that key point. In so holding, the CFC took the contrary view that "... what counts is ... whether the government's activity materially and substantially interferes ... the crucial issue in this case is when the United States first interfered with the Katzins enjoyment of the subject property", thereby employing a standard based upon actual interference, as opposed to notice of a legal interest. Thus the Katzins effectively dodged the legal bullet represented by that 1982 federal publication, indicating the presence of land rights held by the FWS within or upon Parcel 4, by virtue of their wise decision not to proceed under the QTA.

The US next pointed directly to the 1985 federal survey of the Refuge, asserting that the Katzins must have known or should have known about the federal title interests in their property as a result of the placement of boundary monuments at that time, accompanied by typical federal boundary signs. In addition, the US accurately argued, by 1985 tax maps had indicated that the full peninsular area was federal property for decades, clarifying to anyone who saw the federal boundary signs that the monuments in question marked the boundary crossing the neck of the peninsula, thereby making it impossible for the Katzins to successfully maintain that they had no idea where the boundary signified by those signs and monuments was located. Nonetheless, this evidence, which would have been more than sufficient to silence the Katzins in a QTA case, was insufficient under the Tucker Act, in the eyes of the CFC. Finally, the federal legal team pointed out the events of 1994 & 1995 for accrual purposes, potentially setting the Tucker Act's 6 year bar in motion at that time, but again the CFC took a skeptical view of the US position, unconvinced that the FWS personnel who had discussed the boundary issues in the relevant area with the concerned local parties in 1994 had made the location of the boundaries of the federal Refuge clear to them at that time. Moreover, the CFC correctly noted, although the 1994 discussions were evidently initiated to address concerns over the Refuge boundaries, the only apparent product emerging from that episode of communication was the 1995 conservation easement, which left the boundary issues unresolved, suggesting that the federal personnel engaged at that time had deflected the discussion away from the subject of boundary resolution and converted it into a process through which additional federal rights were created. Thus the CFC found nothing in the evidence presented by the US indicating that any federal personnel had ever made it clear to the Katzins or any of their associates or representatives that the US owned the entire peninsular area until 2010, and no definitive damage to the title held by the Katzins had occurred prior to 2006, therefore the Tucker Act's 6 year bar afforded the US no protection.

The "actual interference" standard, which controlled the outcome here, represents a truly critical distinction between the QTA and the Tucker Act, and that vital distinction is concisely captured in the phrase "mere assertions of government ownership do not amount to interference" with privately held title, which was reiterated on this occasion by the CFC. Any form of governmental "appropriation" in the land rights context can potentially constitute a taking however, and the evidence amassed by the Katzins revealed that the US had prevented them from exercising their right to transfer their title free of unjustified federally imposed burdens, in the assessment of the

CFC. A physical disruption of real property rights, through encroachment, invasion or seizure, is not the only form of taking, any governmental action which "prevents a land owner from exercising property rights" can signify a taking, and statements or documents provided by a federal entity, which are intended to inform a land owner about the presence of federal title, can comprise actionable notice of such an appropriation. It appears that the CFC was unimpressed with the federal efforts made during the 1980s & 1990s, cited previously herein, which resulted in the creation of a federal conservation easement, viewing that sequence of events as a lost opportunity on the part of the federal personnel who were present at that time to fully clarify the federally created boundary and title issues to the satisfaction of the relevant property owners. The CFC recognized that creating the conservation easement in 1995 did nothing to rectify the existing boundary ambiguity, which was inherent in the ever shifting MTZ. In fact the 1995 federal easement compounded that boundary ambiguity, by forming another constantly moving area of federal interest, attached to the MTZ, since the shoreline's perpetual movement made both the landward MTZ boundary and the easement boundary ambulatory. Thus the conservation easement operated along with the MTZ to render the unencumbered acreage of the impacted private properties endlessly variable, and by leaving this area in a state of boundary uncertainty federal personnel practically invited the CFC to view such federal action as problematic (FN 6).

Perhaps most intriguing, from the perspective of those charged with creating and documenting federal land rights interests, is where the CFC chose to draw the line between those activities on the part of federal employees which constitute interference with the legal interests of private parties, and those federal activities which do not rise to that level. All of the federal actions taken prior to 2006, which illustrated deficiencies in federal processes, as well as some actual mistakes made by federal personnel, such as the unexplained and apparently unjustified expansion of the federal title in the subject area from 2.25 acres in 1903 to blanket the entire peninsula 4 decades later, were not classified by the CFC as forms of interference with private title. Yet a transmittal of federal documentation to a non-federal party, in response to a request from that party for federal real property information, to be used for title evaluation purposes, was deemed by the CFC to mark the moment at which federal interference with the Katzin title occurred. All of the federal acts prior to 2006, the CFC found, were too indefinite and unclear to constitute a genuine taking, only a direct delivery of information, emanating from a federal source, shedding light on the meaning of prior federal actions, rose to the level of a taking, triggering a cause of legal action on the part of the Katzins. Ironically therefore, it was an attempt by a FWS employee to provide prompt and helpful assistance with title research in 2006, when the FWS "made a claim of ownership ... and communicated that claim to prospective purchasers" which ultimately stood as the definitive source of damage to the Katzins, in the contractual context of the Tucker Act. Having established that federal liability existed, all that remained was judicial determination of the amount of compensation due to the Katzins, resulting from the federally generated title cloud which afflicted Parcel 4, and the CFC set their damage award at $610,962.97, plus interest since 2006, representing their loss of the entire peninsular area, lying east of the federally adopted boundary line at the neck of the peninsula, as an acreage based percentage of the 4 million dollar property value appearing in the ill fated Katzin-Klaber conveyance contract.

But was the 2016 CFC decision, to the extent that it was adverse to federal interests, and thus to the public in general, truly justified? That pivotal question remains to be evaluated and determined upon appeal as this is written, at the dawn of 2017. It appears that the Katzins, unlike the vast majority of claimants who take on the US, were able to prevail at the CFC level for 2 primary reasons. As noted by the CFC, "they commendably first endeavored to resolve the dispute over ownership without litigation", which made the court highly receptive, and perhaps even especially sympathetic, toward their position. The law, by imposing a time limitation mandating that aggrieved parties must take legal action with promptness or lose their right to do so, essentially

encourages or compels the typical citizen involved in such a scenario to bypass efforts to reach an amicable solution and proceed directly to litigation, in order to protect their rights. Our courts most definitely appreciate all efforts to avoid litigation however, so its not particularly surprising that in this instance, upon observing that for many years the Katzins had clearly sought to resolve this matter through direct communication with the appropriate federal officials, the CFC was unwilling to view their conduct as delinquent or negligent, or to effectively penalize them for their hesitancy to file suit against the US by deeming their legal action to be stale or statutorily barred. Secondly, it was very clear that the Katzins had made a truly extraordinary investment in historical research, producing extensive evidence, far in excess of typical title research efforts, all of which was well targeted and strongly supported their cause, richly illustrating the integrity of their chain of title. Although the law very definitely deems stale evidence to be worthless, it appears that the CFC was disinclined to allow the high diligence demonstrated by the Katzins and their research team to go unrewarded. So when this controversy is reviewed again on appeal, will the outstanding diligence of the Katzins once again be honored, upholding their victory, or will the appellate panel agree with the US that all of their historical evidence is irrelevant and useless to them, striking down their compensation award?

Footnotes

1) For further reading pertaining to the federal Quiet Title Act (QTA) which since its inception in 1972 has become the primary form of action facilitating judicial dispute resolution involving federal title interests in real property, see the following prior articles in the NSPS Federal Land Rights Series, all of which are available by means of an internet search or directly from the author:

September 2015

"Does every issue generated by the presence of an easement constitute a title issue?"

January 2016

"What factors control judicial implementation of the QTA?"

July 2016

"Can ignorance of federal law carry implications that are powerful enough to effectively negate certain fundamental aspects of state law?"

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2) The Tucker Act is primarily focused on contractually based damage claims arising in the federal context, such as the one presented by the case reviewed here, but it can also apply to certain claims which are not based upon any contract. The federal statutes typically cited for purposes of outlining the parameters of the Tucker Act are: 28 USC 1346, 28 USC 1491 & 28 USC 2501, the full text of which can be readily obtained at no charge through the internet.

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3) The Senate bill which went on to become the QTA, after substantial modification motivated by input from the US Department of Justice, was introduced by Senator Frank Church of Idaho in 1971, in response to title problems chronically experienced by owners of land lying along the Snake River. Title issues involving large portions of the historic riverbed were very often generated in that region by the combined forces of river movement and inadequate or conflicting original survey

evidence. Thus federal policy on the topic of omitted federal land, in the riparian boundary context, served as a prime factor sparking the investment of resources at the congressional level which ultimately produced the QTA, as an alternative legal pathway to accommodate potential litigants who could derive no meaningful benefit from the Tucker Act.

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4) Although the text of the 2016 CFC opinion reviewed here, occupying over 40 typical printed pages, is highly informative, and appears to cover all relevant points and items, some earlier judicially documented information pertaining to this litigation also exists, which is concisely summarized here as follows for the convenience of those who may wish to read further:

115 Fed Cl 618 (2014) - The US proposed to charge the claimants with laches, and the CFC allowed the US to amend its position for that purpose at this time. This eventually proved to be inconsequential however, since laches was not a factor in the subsequent CFC ruling. Nonetheless, this document contains a discussion of the applicability of the equitable concept of laches in the federal context, for those interested in that subject.

120 Fed Cl 199 (2015) - The US sought summary judgment against the claimants, on the grounds that their historical evidence was irrelevant and need not be presented, asserting that their action was time barred, and the US also challenged some of the expert witness testimony which the claimants proposed to present. The CFC disagreed and rejected these US assertions, deeming the controversy to be worthy of a trial, in which all of the proposed evidence would be heard and considered. This document may be of interest to those studying the admissibility of expert witness testimony in the federal context, and it also contains some factual evidentiary information that is not repeated in the 2016 CFC opinion reported at 127 Fed Cl 440.

124 Fed Cl 122 (2015) - The US once again challenged expert witness testimony proposed by the claimants, and the CFC again decided to allow the proposed testimony, although the CFC agreed with the US that one particular witness need not appear in person, accepting the US proposal that the testimony in question could be presented by way of a video teleconference.

The CFC is now the court of sole jurisdiction over all major Tucker Act litigation, although some relatively insubstantial Tucker Act cases, involving only minimal damages capped at $10,000, can be handled by other federal courts. This particular legal channel has existed as such only since 1982, when the federal judicial structure pertinent to the adjudication of damage claims was changed by the Federal Courts Improvement Act. Tucker Act cases originally, and for several decades, went to the US Court of Claims, until that court was eliminated in 1982, being replaced at that time by the US Claims Court. Then in 1992, the jurisdiction of that court was expanded, and its name was changed to the US Court of Federal Claims, the decisions of which are subject to review upon appeal by the US Court of Appeals for the Federal Circuit. None of this restructuring has any impact upon the value of established judicial precedent however, prior judicial decisions are not disregarded simply because they were produced by a court which technically no longer exists. Federal courts have always been generally cognizant and observant of precedents resulting from prior litigation, and have endeavored to produce results which accord with existing jurisprudence, regardless of the particular court from which a given decision emanated, although rulings from the relevant Circuit and of course those of the US Supreme Court, are naturally viewed with the greatest deference by the lower courts.

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5) A cuerda or "Spanish Acre" is just slightly smaller than our standard acre, equating to about 43,200 square feet.

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6) In the course of composing the portion of the 2016 judicial opinion reviewed here, the federal judge made reference to the Otay Mesa case, which presents another very interesting recent controversy based upon problematic interaction between private and federal land rights, stemming from a comparable federal intervention upon private land, set in the California desert along the border with Mexico. The Otay Mesa case was reviewed in an earlier edition of this series of articles, all of which are available at no charge from the author upon request.

(The author of this series of articles, Brian Portwood (bportwood@mindspring.com) is a licensed professional land surveyor, a federal employee, and the author of the Land Surveyor's Guide to the Supreme Court series of books, devoted to advanced professional education focused upon effective conceptualization of the nexus and interaction between title and boundary law.)