CADASTRAL SURVEY LEGAL REFERENCE

CIRCA 2000

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Jurisdiction and Sovereignty

The general rule is that nonnavigable lakes and ponds and the beds and shores thereof belong to the owners of the adjacent soils. Hardin v. Jordan, 140 U.S. 371 (1891); Lamprey v. Metcalf, 53 N.W. 1139 (1893). This rule applies in some states to lakes which are navigable. Hilt v. Weber, 233 N.W. 159 (1930 Mich.). Other states hold that navigable lakes and ponds and their beds and shores are owned by the State. Hardin v. Shedd, 190 U.S. 508 (1903).

A lake or pond which is entirely within the boundaries of a single tract of land belongs to the owner of such land as an appurtenance thereto. Hardin v. Jordan, 140 U.S. 371 (1891). The beds of navigable lakes, when not owned by the adjacent landowners, are the property of the State, not of the U.S. Utah v. U.S., 403 U.S. 9 (1971); Pollard v. Hagan, 44 U.S. 212 (1845). The title to land under lakes and ponds held by the state does not change by reason of the fact that such lakes or ponds are artificially filled so as to raise the land above the surface of the water. Illinois Steel Co. v. Bilot, 84 N.W. 855 (1901).

Where the U.S. has made grants of public lands bounded on lakes or ponds, without any restriction or reservation, the effect of the grant with regard to the rights conferred in and to the lake or pond and the soil below high-water mark is usually governed by the law of the state in which the lands are situated. Marshall Dental Manufacturing Co. v. Iowa, 226 U.S. 460 (1913); McGilvra v. Ross, 215 U.S. 70 (1909); Hardin v. Shedd, 190 U.S. 508 (1903). The U.S. assumes the position of a private owner subject to the general law of the State, so far as its conveyances are concerned. Hardin v. Shedd, 190 U.S. 508 (1903); Hardin v. Jordan, 140 U.S. 371 (1891); Shively v. Bowlby, 152 U.S. 1 (1894). The construction, operation, and effect of federal grants of land bordering on waters, as passing the title of the U.S. to the land underlying such waters, or within the meander lines of surveys thereof, are federal questions which cannot be controlled by local laws or decisions of state courts. Borax Consol., Ltd. v. Los Angeles, 296 U.S. 10 (1935); U.S. v. Oregon, 295 U.S. 1 (1935).

Where lakes or ponds are navigable or otherwise capable of public use, a good number of the courts which have passed on the question of whether title to the beds of small lakes and ponds passes into private ownership with a grant of the littoral or abutting land have held that the title to such a lake or pond cannot be granted by the state into private onwership and therefore does not pass under a grant of the abutting land. State v. Korrer, 148 N.W. 617 (1914); Lamprey v. Metcalf, 53 N.W. 1139 (1893); Priewe v. Wisc. State Land and Improv. Co. 67 N.W. 918 (1896). In some cases, following the common law rule, it has been held that the state, by a grant of abutting land, may vest the title to the beds of lakes in individuals, but that the question in each case is whether by the form of the grant the intention to do so was shown; if the grant is bounded by water, the intention is to pass title to the center. Hardin v. Jordan, 140 U.S. 371 (1891); Grand Rapids Ice and Coal Co. v. South Grand Rapids Ice and Coal Co., 60 N.W. 681 (1894).

The question of whether waters within a State are navigable, so that title to the underlying lands may be considered to have passed from the U.S. to the State upon its admission to the Union, is a Federal question. U.S. v. Oregon, supra; U.S. v. Utah, 283 U.S. 64 (1931); State v. Adams, 89 N.W. 2d 661 (1957), cert. den 358 U.S. 826 (1958).

Title to lands underlying navigable waters within a State passes to the State upon admission to the Union, subject to the paramount authority of the U.S. in respect of the regulation of navigation and of interstate and foreign commerce. Scott v. Lattig, 227 U.S. 229 (1913); Illinois Central RR Co. v. Illinois, 146 U.S. 387 (1892); Borax, Ltd. v. L. A., supra; U.S. v. Oregon, supra; Pollard v. Hagan, 44 U.S. 212 (1845); Rust-Owen Lumber Co., 50 L.D. 678 (1924); Emma S. Peterson, 39 L.D. 566 (1911). The land underlying nonnavigable streams is subject to private ownership, and generally, title thereto is vested in the proprietors of the adjoining uplands or their grantees, each taking to the center or thread of the stream. Oklahoma v. Texas, 258 U.S. 574 (1922); Lamprey v. Metcalf, 53 N.W. 1139 (1893). When lands are conveyed with a nonnavigable watercourse described as a boundary, there is a rebuttable presumption that the grantor intended that the boundary should extend to the middle of the watercourse. Hardin v. Jordan, 140 U.S. 371 (1891); Carter Oil Co. v. Watson, 116 F. 2d 195 (1940).

Pollard's Lessee v. Hagan
44 U.S. 212 (1844)

-- The shores of navigable waters and the soil beneath them were reserved to the States respectively.

--The new States have the same rights, sovereignty, and jurisdiction over this subject as the original States.

The Propeller Genesee Chief v. Fitzhugh
53 U.S. 443 (1851)

--The admiralty and maritime jurisdiction of the U.S. is not limited to tidewaters, but extends to all public navigable lakes and rivers, where commerce is carried on.

Howard v. Ingersoll
54 U.S. 381 (1851)

--When a power possesses a river and cedes the territory on the other side of it, making the river the boundary, that power retains the river, unless there is an express stipulation for the relinquishment of the rights of soil and jurisdiction over the bed of such river.

Hardin v. Jordan
140 U.S. 371 (1891)

--Grants by the U.S. of its public lands bounded on streams and other waters, made without reservation or restriction, are to be construed according to the law of the State in which the lands lie.

--By the common law, which is still the law of Illinois, under a grant of lands bounded on a lake or pond which is not tidewater and is not navigable, the grantee takes to the center of the lake or pond, ratably with other riparian proprietors, if any.

Illinois Central Railroad Co. v. Illinois
146 U.S. 387 (1892)

--The ownership of/and dominion and sovereignty over lands covered by tidewaters are in the states within whose limits they are located, subject to the paramount right of Congress to control their navigation as necessary for the regulation of commerce.

Lamprey v. Metcalf
53 N.W. 1139 (1893)

--If the lake is "navigable" in fact, its waters and bed belong to the state in its sovereign capacity, and the riparian patentee takes the fee only to the water line, but with all the rights incident to riparian ownership on navigable waters.

Shively v. Bowlby
152 U.S. 1 (1894)

--The title and dominion of the tidewaters and lands beneath them vested in the several States.

--Diverse state laws exist concerning the extent of title of an owner whose land bounds on a navigable river, but above the ebb and flow of the tide. The prevailing doctrine is that such a riparian owner does not own to the thread of the stream.

--The U.S. may lawfully dispose of tidelands while holding a future State's land "in trust" as a territory.

U.S. v. Mission Rock Co.
189 U.S. 391 (1903)

--California, upon admission into the Union, acquired absolute property in and dominion and sovereignty over all soils under the tidewaters within her limits, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper, subject to the paramount right of navigation over the waters.

McGilvra v. Ross
215 U.S. 70 (1909)

--Each state has full jurisdiction over the lands within its borders, including beds of streams and other waters, subject to the rights granted by the Constitution to the U.S.

Emma S. Peterson
39 L.D. 566 (1911)

--Upon admission of a State into the Union, it acquires absolute dominion and sovereignty over all soils under the navigable waters within its borders, but islands formed therein prior to the admission of the state remain the property of the U.S., subject to disposal as other public lands.

Scott v. Lattig
227 U.S. 229 (1913)

--Lands underlying navigable waters belong to the respective states in virtue of their sovereignty and may be used and disposed of as they may direct, subject to the public rights in such waters, and to the paramount power of Congress to control their navigation in the regulation of commerce.

Utah Power and Light Co. v. U.S.
243 U.S. 389 (1917)

The power to regulate the use of the lands of the U.S., and to prescribe the conditions upon which rights in them may be acquired by others, is vested exclusively in Congress; the inclusion of such lands within a state does not diminish this power.

Rust-Owen Lumber Co.
50 LD 678 (1924)

--Upon admission of a State into the Union, title to all lands under the navigable waters within the State inures to the State as an incident of sovereignty, and the laws of the State govern with respect to the extent of the riparian rights of the shore owners.

Borax, Ltd. v. Los Angeles
296 U.S. 10 (1935)

Tide lands in California; which had not been granted by Mexico or subjected to trust requiring a different dispostion, passed to the state upon her admission to the Union.

The Federal Government had no right to convey tideland which had vested in the state by virtue of her admission.

Rights and interests in the tideland, which is subject ot the sovreignty of the state, are matters of local law.

(see Oregon v. Corvallis, 1977)

U.S. v. Oregon
295 U.S. 1 (1935)

In a suit by the U.S. against a State to quiet title to the bed of a lake on which the State owns part of the uplands bordering on the meander line, the owners of the other parts of the uplands are not necessary parties and their rights will not be affected by the decree.

A state statute declaring that lakes within the State which have been meandered by the U.S. surveys are navigable public waters of the State, and that the title to their beds is in the State, can have no effect on title retained by the U.S. to the bed of a non-navigable lake, nor upon the interests in the bed that may have passed to others as incidents of grants of the U.S. conveying abutting uplands.

Alabama v. Texas
347 U.S. 272 (1954)

Congressional power over federal lands is paramount and plenary.

U.S. v. Washington
294 F. 2d. 830 (9th cir. 1961)

The question of ownership of accretions, where title to uplands is in or derived from the federal government, will be determined in accordance with federal law.

U.S. v. Gossett
416 F. 2d 565 (1969)

If U.S. has prima facie good title to property, in absence of proof to contrary, it is presumed that title remains in U.S.; the fact that executive orders withdrawing lands, title to which was in dispute, from public entry had been issued in 1929 and 1931 was sufficient to give government prima facie good title to such lands.

U.S.A. v. Alaska
--U.S.--(1975)

--The sparse evidence as to Russia's exercise of authority over Cook Inlet during the period of Russian sovereignty, the enforcement of fishing and wildlife regulations, and the mere failure of any foreign nation to protest authority asserted by the U.S. during the territorial period all held insufficient to establish Cook Inlet as a historic bay; thus, the U.S., as against Alaska, has paramount rights to the land beneath the waters of the lower portion of the inlet.

Oregon ex rel State Land Board
vs.
Corvallis Sand and Gravel Co.
--U.S.--. 1977

Absent a claim under a federal grant, a title dispute between a State and a private riparian owner concerning land beneath navigable waters is a question of state, and not federal law.

Rejection of Bonelli Cattle Co. vs. Arizona.

Omitted Lands

Chandos v. Mack

Mitchell v. Smale

* Horne v. Smith

* Niles v. Cedar Point Club

John McClennen

Franzini v. Layland

Kirwan v. Murphy

Palo Alto County

Security Land & Exploration Co. v. Burns

Scott v. Lattig

Cawlfield v. Morrison

Gauthier v. Morrison

* State v. Nolegs

Lee Wilson & Co. v. U.S.

Bode v. Rollwitz

Greene v. U.S.

* Lane v. U.S., U.S. v. Lane

* Jeems Bayou v. U.S.

Arthur Savard

Rust Owen Lumber Co.

* Work v. Beachland Development Co.

* Brothertown Realty Co. v. Reedal

Thomas Bishop v. Santa Barbara County

* Lakelands Inc. v. Chippewa & Flambeau

Wittmayer v. U.S.

* State of Louisiana

Omitted Lands

* Salt Wells Livestock Co.
* C.V. Branham Lumber Co.
* Schultz v. Winther
* Bernard & Myrle Gaffney

  Burt Wackerli

  Giles & Juanita Leonard
* U.S. v. Hudspeth
* Internal Improvement Fund v. Nowack
* Gaffney v. Udall
* Wm. P. Surman
* Walton v. U.S.
* U.S. v. Zager
* Ruby Co. v. U.S.
* Chester Ferguson
* Wackerli v. Morton
* Snake River Ranch v. U.S.

  R. A. Mikelson
* Mable M. Farlow

Omitted Lands

Qualifications for omitted lands and forwarding application, Misc. File No. 2144203 - 8/13/47

Riparian rights, omitted lands, Wisconsin, Misc. File No. 1858596 - 2/17/41

Returning application for survey of omitted lands, Misc. File No. 1488148 - 2/17/41

Dismissing protest against omitted land survey in Arkansas, Misc. File No. 888791 - 2/1/23

Omitted lands and color of title Act, Circular 1186, Misc. File No. 1773030 - 3/7/45 and 9/4/47 (19 Fed 2nd 699)

Authorizing omitted land surveys in Minnesota, Misc. File No. 1773031, 4/23/45

Authorizing instructions for omitted land survey including citation upon which such surveys are based, Gp. 51, Wisconsin, Misc. File No. 1858605 - 5/21/43 and 3/21/43

Application for omitted land survey denied subject to right of appeal, Gp. 51, Fla., Misc. File No. 1212680 - 2/24/28

Islands in Mississippi River involving swamp lands, Misc. File No. 1647593 - 7/6/35

Group Nos.

--Authorizing instructions for omitted land survey

-Gp 51, Wisc.

--Application for 0.1 survey denied subject to right of appeal.

-Gp 51, Florida

--No authority to quit claim title to omitted lands

-Gp 115, Florida

--Hardship on claimant

-Gp 65, Wisconsin

Omitted Land

Meander lines are run in surveying fractional portions of the public lands bordering on navigable rivers, not as boundaries of the tract, but for the purpose of defining the sinuosities of the banks of the stream, and as the means of ascertaining the quantity of land subject to sale. St. Paul and P.R. Co. v. Schurmeier, 74 U.S. 272 (1868); Hardin v. Jordan, 140 U.S. 371 (1891); Horne v. Smith, 159 U.S. 40 (1895); Niles v. Cedar Point Club, 175 U.S. 300 (1899). But where, by reason of gross fraud or mistake, there was a substantial amount of land between the survey line and the actual water's edge at the time of survey the meander line will be treated as the true boundary. Security Land and Exploration Co. v. Burns, 193 U.S. 167 (1904); Jeems Bayou Fishing and Hunting Club v. U.S., 260 U.S. 561 (1922); Niles v. Cedar Point Club, 175 U.S. 300 (1899); Lee Wilson and Co. v. U.S., 245 U.S. 24 (1917); Wittmayer v. U.S., 118 F. 2d 808 (1941). Where a substantial amount of land has been formed between the survey line and the actual water's edge by accretion between the time of survey and the time of entry, the meander line will be treated as the true boundary. Madison v. Basart, 59 L.D. 415 (1947). Where a meander line is through fraud or error mistakenly run, riparian rights do not attach and the Department of the Interior has the power to deal with the area which was excluded from the survey, to cause it to be surveyed and to lawfully dispose of it. Niles v. Cedar Point Club, 175 U.S. 300 (1899); French-Glenn Live Stock Co. v. Springer, 185 U.S. 47 (1902); Security Land and Exploration Co. v. Burns, 193 U.S. 167 (1904); Chapman and Dewey Lumber Co. v. St. Francis Levee District, 232 U.S. 186 (1914); Lee Wilson and Co. v. U.S., 245 U.S. 24 (1917); C.V. Branham Lumber Co., A-26987 (Nov. 26, 1954); Rust-Owen Lumber Co., (on rehearing), 50 L.D. 678 (1924). The fact that the Department of the Interior determines that an omitted area is sufficiently large to warrant claiming it as public land and surveys and disposes of it does not finally settle the question of the ownership of resurveyed areas. Burt A. Wackerli et al., 73 I.D. 280 (1966), C.V. Branham Lumber Co., A-26987 (Nov. 26, 1954). The legal questions are subject to reexamination in the courts. The courts may either agree that the omitted land is public land, Jeems Bayou Club v. U.S., 260 U.S. 561 (1923); Brothertown Realty Corp. v. Reedal, 227 N.W. 390 (1929), or find that the omitted land passed with the patent of the abutting land. U.S. v. Lane, 260 U.S. 662 (1923); Lakelands, Inc. v. Chippewa and Flambeau Improvement Co., 295 N.W. 919 (1941).

The determination as to whether a particular situation falls within the general rule or the exceptions to it is difficult to make in close cases. Four factors have consistently been used in making this decision:

1) the area of land omitted as compared with the area patented,
2) the value of the land at the time of the original survey,
3) the difficulty involved in surveying the land due to its topography, and
4) the distance of the original meander line from the actual water line.

At the extremes, there is little difficulty involved in making a determination. Where it is conclusively shown that no body of water exists or existed at or near the place indicated, or where no attempt to survey tracts lying beyond the meander line was actually made, the land is clearly public land subject to survey and disposal. Jeems Bayou Club v. U.S., 260 U.S. 561 (1922); Niles v. Cedar Point Club, 175 U.S. 300 (1899); Horne v. Smith, 159 U.S. 40 (1895); Rust-Owen Lumber Co. (on rehearing), 50 L.D. 678 (1924). Where adopting the body of water as the boundary would greatly increase the patentee's land, the meander line will constitute the boundary. Security Land and Exploration Co. v. Burns, 193 U.S. 167 (1904); Wittmayer v. U.S., 118 F. 2d 808 (1941); Horne v. Smith, 159 U.S. 40 (1895); Producers Oil Co. v. Hanzen, 238 U.S. 325 (1915); Kirwan v. Murphy, 189 U.S. 35 (1903). The omission may be so great as to render the original survey invalid, despite hardship on the good faith purchaser. Brothertown Realty Corp v. Reedal, 227 N.W. 390 (1929). The equities of the abutting owner, if any, are not cognizable judicially, and should be addressed to the legislative branch of government. Lee Wilson and Co. v. U.S., 245 U.S. 24 (1917).

At the opposite extreme, small tracts of land between the meander line and the water boundary have been held to have been embraced by the patent for the adjoining land. U.S. v. Lane, 260 U.S. 662 (1923); Railroad Co. v. Schurmeier, 74 U.S. 272 (1868); Thomas B. Bishop Co. v. Santa Barbara County, 96 F. 2d 198 (1938); Arthur Savard, 50 L.D. 381 (1924). In Mitchell v. Smale, 140 U.S. 406 (1891), the Supreme Court held that 25 acres of land between the meander line and the water passed with the patent, even though the patent covered only 4.53 acres. The Court expressed concern for the good faith purchaser, stating that it is a great hardship for government officers to make new surveys and grants of the beds of lakes after selling and granting the lands bordering thereon or represented to be so.

The general rule, however, is that the erroneous omission of a portion of land from a survey thereof does not divest the U.S. of title. Lee Wilson and Co. v. U.S., 245 U.S. 24 (1917); Kirwan v. Murphy, 189 U.S. 35 (1903; Brothertown Realty Corp. v. Reedal, 227 N.W. 390 (1929); John McClennen et al., 30 L.D. 527 (1901).

Omitted Land Cases -- A Comparison

Case	Area of Surveyed Lands Conveyed	Area of Newly Surveyed Lands In Dispute
Horne v. Smith 159 U.S. 40 (1895)	170.42 acres	approx. 600 acres
French-Glenn Live Stock Company v. Springer 185 U.S.47 (1902)	158.53	approx. equivalent
Kirwan v. Murphy 189 U.S. 35 (1903)	859.38	1,202.
Producers Oil Co. v. Hanzen 238 U.S. 325 (1915)	12.84	40.
Jeems Bayou Club v. U.S. 260 U.S. 561 (1923)	48.	85.22
C.V. Branham Lumber Co. A-26987 (1954)	177.89	99.96
Walton v. U.S. 415 F. 2d 121 (1969)	111.55	323.59

In all of the above cases, the land in dispute was held to have been erroneously omitted.

Railroad Co. v. Schurmeier 74 U.S. 272 (1868)	9.28	2.78
Mitchell v. Smale 140 U.S. 406 (1891)	4.53	25.00
U.S. v. Lane 260 U.S. 662 (1923)	590.6	155.39
Thomas B. Bishop Co. v. Santa Barbara County 96 F. 2d 198 (1938)	15,000.	25.
Internal Improvement Fund of Fla v. Nowak 401 F. 2d 708 (1968)	over 4,000.	98.58

In all of these last five cases, the land in dispute was held to have passed with the patent and was not found to have been erroneously omitted.

Chandos v. Mack
46 N.W. 803 (1890)

Where the government leaves a small island in a Navigable river, lying between the shore and the middle of the stream, unsurveyed, and sells all the surveyed islands and all the lands on both sides of the river without any reservation as to such island, title to such island passes to riparian owner on river's bank.

Mitchell v. Smale
140 US 406 (1891)

The projection of a strip of land beyond the meander line is entirely consistent with the water of the lake or pond--being the natural boundary of the granted land and such a strip is not omitted land, absent fraud or mistake, subject to a corrective resurvey.

Horne v. Smith
159 US 40 (1895)

Where US surveyors have surveyed a lot only to a bayou which they called the river, leaving a tract between the bayou and river unsurveyed, the owner of the lot may not claim the unsurveyed portion as a strip of land beyond the meander line, where the unsurveyed area is over four times as large as the lot.

Niles v. Cedar Point Club
175 US 300 (1899)

Where surveyor stopped his survey at what he called a marsh, which intervened between the point where he stopped and the lake, thus limiting the land thereafter patented, the patentee may not claim the unsurveyed marsh.

John McClennen et al.
29 L.D. 514 (1900)

--The Land Department has the authority, after the tracts designated by a government survey as fractional by reason of bordering upon a body of water have been disposed of, to examine the correctness of such survey. If that examination shows that there was no body of water to prevent the extension of the township or subdivision lines, the Land Department may survey the lands thus erroneously omitted and dispose of them as public lands.

Franzini v. Layland
97 NW 499 (1903)

--The omission to take notice of the existence of an island in making the public land surveys, and approval of the survey, is evidence that the omitted land was intended to pass as an incident of the land it lies opposite of, and is appurtenant to it if to any.

Kirwan v. Murphy
189 US 35 (1903)

Land Department may survey land omitted from an alleged survey over the objection of a purchaser of other land under such survey.

Palo Alto County
32 L.D. 545 (1904)

--The Land Department has authority to examine into the correctness of the public surveys and to resurvey any public lands that were erroneously omitted from survey when it is clearly shown that no sufficient reason then existed for not extending the public surveys over them; but it has no authority to survey as public lands tracts which were properly indicated as covered by the waters of an apparently permanent lake.

Security land and Exploration Co. v. Burns
193 U.S. 167 (1904)

When the plat of a Government survey is grossly fraudulent, and adopting the lake as it is actually located would increase patentee's land fourfold, the false meander line can be regarded as a boundary, instead of a true meander line.

Scott v. Lattig
227 U.S. 229 (1913)

--An island within the public domain in a navigable stream and actually in existence at the time of the survey of the banks of the stream, and also in existence when the State within which it was situated was admitted to the Union, remains property of the U.S. and even though omitted from the survey it does not become part of the fractional subdivisions on the opposite bank of the stream.

Cawlfield v. Smith
138 P. 227 (1914)

If by mistake or fraud a surveyor omits large tracts, placing them inside a meander line instead of bounding them by the survey of the meander line with reasonable accuracy, the purchasee of abutting lands will take only to that line and not beyond.

Gauthier v. Morrison
232 U.S. 452 (1914)

Under the Homestead Law of the U.S. unsurveyed public land, if agricultural and unappropriated, is open to settlement by qualified entrymen, and this applies to land of that description left unsurveyed by a surveyor by erroneously marking it on the plat as included within the meander lines of a lake.

State v. Nolegs et al.
139 P. 943 (1914)

An oversight in omitting an island in a navigable stream from the field notes and plat of the government survey of 1872 did not divest the U.S. of the title thereto, or interpose any obstacle to a survey thereof being made in 1908.

Where a government patent to land describes the same by lots, and refers to the official plat of the survey thereof, and such plat shows that the land conveyed is bounded by a navigable river, the title extends no further than the edge of the stream, and does not include an island, though the channel between that and the mainland may not be navigable.

Lee Wilson and Co. v. U.S.
245 US 24 (1917)

Land omitted through mistake or grant may be surveyed and claimed by the U.S. even against an abutting good faith owner who purchased in reliance of Government's assurance that riparian rights existed.

Bode v. Rollwitz
199 P. 688 (1921)

Surveyor's error in failing to extend his survey over islands in a river did not make them less a part of the government domain; that administrative government officers, before discovering surveyor's error, had treated such a meandered tract as subject to the riparian rights of butting owners, could not estop the U.S. from asserting its title even as against such an owner, who had acquired his property before the mistake was discovered.

Greene v. U.S.
274 F. 145 (1921)

Where the patent referred to the official survey which showed a meander line as the shore of the lake, but it appeared that the lake shore varied from the calls for the line so that the fractional subdivisions conveyed by the patent, if extended to the lake shore, exceeded by 50 per cent and 20 per cent respectively, the acreage stated, and the intervening land was intersected with ravines sometimes filled with water, and was of little value until oil was discovered thereon, the shore of the lake and not the meander line was the boundary of the tract conveyed by the patent.

Lane v. U.S.
274 F 290 (1921)

The water course and not the meander line is the boundary of measured lands, and a survey is not invalidated by the failure to include within the meander lines small, irregular areas of land.

U.S. v. Lane
260 U.S. 662 (1923)

Lots, patented according to the plat showing them bordering upon a lake, extend to the water as the boundary and embrace pieces of land found between the water and the meander line of the survey, where the failure to include such pieces within the meander was not due to fraud or mistake, but was consistent with a reasonably accurate survey, considering the areas included and excluded, the difficulty of surveying them at time of survey and their value at that time.

Jeems Bayou Fishing and Hunting Club v. U.S.
260 U.S. 561 (1922)

The rule that a body of water constitutes a boundary where meander lines are run along the margin of such water does not apply when it is conclusively shown that no body of water exists or existed at or near the place indicated, or where no attempt to survey tracts lying beyond the meander line was actually made.

Arthur Savard
50 LD 381 (1924)

--After the Land Department has disposed of adjacent surveyed lands, it has no jsd to survey, as omitted areas, small tracts of lands outside the meander line along lakes and streams, which were narrow strips of other unsubstantial areas, considered of like value at the time of survey.

Rust-Owen Lumber Co.
(on rehearing) 50 LD 678 (1924)

--Where a survey was fraudulent or grossly inaccurate in that it purported to bound tracts of public lands upon a body of water when in fact no such body existed at or near the meander line, the false meander line marks the limit of the grant of a lot abutting thereon, and the Government may survey and dispose of the omitted area as a part of the public domain.

Work v. Beachland Development Co.
19 F. 2d. 699 (1927)

Authority of the Secretary of the Interior to ascertain and determine what constitutes public lands is subject to limitations where it involves resurveys and corrections of public land surveys; where the U.S. has already conveyed lands, the Secretary is without jurisdiction to intermiddle by second survey.

Where a small amount of land, of mineral value at time of survey, lying between the meander line of survey and the body of water, is omitted from the survey, the U.S. may not claim such as unsurveyed lands.

Brothertown Realty Corp v. Reedal
227 N.W. 390 (1929)

The question whether title to land has passed from the U.S. Government must be determined by federal law.

Where original survey line departs so far from true meander line, that such a large tract is left unsurveyed as to indicate clearly the meander line was never actually run, survey will be held invalid as constructive fraud on government, and a resurvey running meander line approximately at the shore will be upheld, despite hardship on good faith purchasers.

Thomas B. Bishop v. Santa Barbara County
69 F. 2d. 198 (1938)

Where patent was issued for 15,000 acres of land in California bordering on the ocean, and plat of official survey did not show a sandspit containing about 25 acres but followed generally the meander of the shore, with the courses running in straight lines and cutting across the base of the sandspit; and considering the smallness of the unsurveyed area, its apparent lack of value and the difficulties of the terrain; the sandspit is adjudged to have been included in the grant of the land.

Lakelands, Inc. v. Chippewa and Flambeau
295 N.W. 919 (1941)

Determination of whether acreage of government lands between true line of lake shore and the meander line is so great as to constitute fraud upon the government is a judicial question not determinable by the federal government Land Department.

Where, in a government lot, adjusted meander line and true line of lake shore were less than 400 feet apart at their greatest divergence, and greatest divergence between the two lines anywhere in the section was not over 900 feet, "constructive fraud" upon the government was not shown so as to affect title of government patentee's grantee, unless the whole original survey were held fraudulent.

Where a second patent is issued pursuant to a resurvey covering land covered by a prior patent based on the original government survey, the question which patent conveyed title to the land covered by the later patent must be determined by a court of competent jurisdiction, and determination by a government agency is not conclusive.

Where a non-ambiguous warranty deed conveys government lots in a government section designated in a deed, subsequent surveys cannot be introduced as independent evidence to change that deed or boundaries of land comprised in lots included therein.

Wittmayer v. U.S.
118 F 2d 808 (1941)

Where, by reason of fraud or mistake, there was a substantial amount of land between survey line and actual shore at time of survey, or if a substantial amount of land was formed therein by accretion between time of survey and time of entry, the meander line will be treated as the true boundary.

State of Louisiana
A-24618 February 18, 1948

In the absence of evidence that survey was fraudulent or grossly in error, the waterline, not the meander line, is the boundary of the surveyed watercourse.

Salt Wells Livestock Co.
A-24618 May 9, 1952

The Department will not order a further resurvey of a tract segregated by a previous resurvey 35 years earlier, where private rights would be adversely affected by a further resurvey at this late date.

Salt Wells Livestock Co., et al.
A-26367 Decided May 9, 1952

Surveys-Resurveys

The Department will not order a further resurvey of a tract segregated in connection with a previous resurvey more than 35 years ago under the provisions of the act of May 29, 1908 (35 Stat. 465), where the previous resurvey embraced the land identified and occupied by the claimant and where private rights would be adversely affected by a further resurvey at this late date.

C. V. Branham Lumber Company
A-26987 Decided November 26, 1954

Surveys--Meander Lines--Omitted Lands.

Where through gross error or fraud in the recorded meanders of a lake considerable areas of land were omitted from the original survey, the omitted lands are public lands subject to survey and disposition by the United States.

In all cases where the Secretary of the Interior deems it necessary to properly mark the boundaries of the public lands remaining undisposed of, he may, on his own initiative, cause the necessary resurveys to be made.

Schultz v. Winther
101 N.W. 2d. 631 (1960)

The question of whether meander line shown on government plat is sufficiently in error so that is should be the boundary, should be determined in accordance with the amount and proportion of acreage between the meander line and the shore, and in setting the proper standard of accuracy, regard should be given to circumstances surrounding the original survey, and the type and comparative value of the land at that time.

Although there is no exact formula for determining when error in running a meander is to be considered a gross error amounting to fraud on the government, where the record did not show the percentage by which acreage shown on the original plat would understate the area of various lots if bounded on the shore, except for a 27% understatement in one lot, such error did not constitute fraud.

Contains a review of omitted land cases; concludes that where the error in the meander line was sufficient so that meander would constitute boundary, the error has involved greater than 73.44 acres, and only where the plat showed greater than 42% understatement of the land conveyed was constructive fraud found.

(See comparison in Burt A. Wacherli, 73 I.D. 280)

Bernard and Myrle A. Gaffney
A-30327 Oct. 28, 1965

--In cases in which the general rule that meander lines are not to be treated as boundaries has been followed, it was found that the surveyor intended the meander line to represent the actual water line and that any discrepancies between the actual water line and the meander line resulted from difficulties encountered in surveying or from the determination of the surveyor that an area was of so little value as land, or that its status as dry land was so uncertain that it should not be surveyed as land.

--In cases in which the exception to the rule has been followed, the discrepancy was found to be the result of gross error or fraud, or the facts have been persuasive that the meander line was intended as the boundary line of the land surveyed.

Burt A. Wackerli, et al.
73 ID 280 (1966)

--Generally, meander lines are not to be treated as boundaries, but where it is shown that the meander line did not approximate the course of the meandered river and that substantial areas of land remained unsurveyed because of error on the part of the surveyor. The meander line may serve as the boundary in lands lying between the original meander line and the bank subject to survey as public lands of the United States.

--Factors to evaluate is determining whether the general rule applies:

1) area of land omitted as compared with area patented.
2) value of land at time of original survey.
3) difficulty involved in surveying the land due to its topography.
4) distance of the original meander line from the actual water line.

Giles R. and Juanita Leonard
A-30503 3/23/66

--A patent of lots abutting a navigable river does not pass title to unsurveyed islands lying between the lots and the thread of the river which were in existence when the State was admitted into the Union, and the Secretary of the Interior is authorized to survey such omitted islands.

U.S. v. Hudspeth
384 F. 2d. 683 (1967)

Where the U.S. as plaintiff based its case for damages for timber trespass on the basis of alleged dependent resurveys, and the defendant sought to show that the surveyor had not accurately retraced the original lines, the District Court was justified in dismissing the action and concluding that the Government had failed to carry its burden of proof, as there was no way the court could fix the extent of the trespasses, and the defendants were bound by the resurvey.

Internal Improvement Fund v. Nowack
401 F. 2d. 708 (1968)

Where tract, which projected north into the river and which was not shown on plat of survey, was not large in relation to total acreage on plat, there was no evidence of such gross error in survey as to constitute fraudulent survey and there was positive evidence that surveyor intended the river to be the boundary, such tract was conveyed by patent conveying adjoining government lots.

William P. Surman, et al.
A-31010 Dec. 1, 1969

--Where the meander line did not approximate the course of the river and the area of omitted lands is 272 acres compared to 195 acres of patented lands, the case is governed by the exception to the general rule; the meander line forms the boundary of the tract and the excess omitted lands belong to the U.S.

William P. Surman, et al.
A-31010 Decided Dec. 1, 1969

Public Lands: Riparian Rights--Surveys of Public Lands: Generally

Generally meander lines are not to be treated as boundaries, and when the United States conveys a tract of land which is shown by the official plat of survey to border on a navigable river the patentee takes title up to the water line, but where it is shown that the meander line shown on the plat did not approximate the course of the meandered river and that substantial areas of land remained unsurveyed because of error on the part of the surveyor, the patentee may be limited in his conveyance to those lands lying outside the meander line, as shown on the official plat of survey, and lands lying between the original meander line and the bank of the river may be surveyed as public lands of the United States.

Walton v. U.S.
415 F. 2d. 121 (1969)

In public grant, nothing passes by implication and, unless grant is clear and explicit regarding property conveyed, construction will be adopted which favors sovereign rather than grantee.

Where there existed a gross discrepancy between the meander line shown on the official plat of the government survey and the actual shore, leaving 323.59 acres of unsurveyed land between meander and water, and where the ratio of surveyed to omitted lands is 1:3, such land is determined to be omitted land belonging to the U.S., not accreted land of riparian owner.

U.S. v. Zager
338 F. Supp. 984 (1972)

--Where the ratio of surveyed land to omitted land is roughly 2:1, and there is no evidence of gross error, fraud, or a "paper survey," since the omitted land is mainly marsh land which was practically worthless at the time of survey, the case does not constitute an exception to the general rule that the water line, not the meander line, forms the boundary. (Total area: 319.16 acres; omitted land: 112.11 acres)

--In determining whether a 19th century survey involved such gross and palpable error as to constitute fraud, in which case the meander line forms the boundary of patented land, the following factors must be considered:

1) amount and proportion of acreage between the meander line and shore.
2) circumstances surrounding the original survey.
3) type and comparative value of the land at the time of survey.

Ruby Co. v. U.S.
Group 359, Idaho (1974)

Where a substantial amount of land lying between the original meander line and the actual shore of the body of water is omitted from the original survey, its omission constitutes gross error, and such land is unsurveyed public land of the U.S. which the U.S. is entitled to survey and dispose of.

Chester H. Ferguson
IBLA 74-330 May 13, 1975

B.L.M. acted appropriately in surveying an omitted area of land of 18.17 acres, compared to the original surveyed area of 17.52 acres, where it found that area of omitted land to be too large to be regarded as merely a technical difference from the original survey.

Wackerli v. Morton
Gp. No. 376, Idaho, Part 3 (1975)

Although the meander line may serve as the boundary of a tract of land in cases of gross fraud, and although a small tract of 750 feet at its greatest depth, lying between the river band and the meander line was erroneously omitted, where the area of the omitted lands is relatively small and their value is minimal, the error does not constitute fraud and title to the disputed area may be quieted in the patentee.

Snake River Ranch v. U.S.A.
___ F. Supp. ___ (1975)

--The failure to delineate the precise boundary of a body of water is not gross error or fraud; if the meander line was run reasonably close to the water's edge at the time of survey, the omission of comparatively small areas (0 to 900 feet) lying between the meander line and the shore does not render such areas omitted lands.

--We have recommended that this decision be appealed.

R. A. Mikelson
IBLA 76-12 (1976)

The omission of an island from a survey does not divest the U.S. of the title to the island or interpost any obstacle to surveying it at a later date if the island existed at the date of the original survey (or at the date of a State's admission to the Union in the case of an island in a navigable river.)

Title to such an island in the U.S. despite the disappearance of the channel separating the island from the lots which were formerly riparian.

Mable M. Farlow
IBLA 75-523 (1977)

Where a lot is shown on the survey plat as lying entirely to the east of the meandered river, but resurvey shows that the waterline actually lies east of the meander line, so that omitted lands lie to the west of the river between the river and the incorrect meander, held that the boundary to the lot on the east side of the river is the waterline, and not the incorrect meander, so as to convey title to the omitted land on west with title to land on east.

1987

U.S. v PAPPAS ~~814 F.2d 353~~

814 F. 2d 1342, 1987

Signal: A Cited and neutral analysis indicated
Citation: **542 F.2d 555** (Get this Document, Table of Authorities)

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Snake River Ranch v. United States, 542 F.2d 555, 1976 U.S. App. LEXIS 6828 (10th Cir. Wyo. 1976)

PRIOR HISTORY (1 citing reference) ◆ Hide Prior History

Snake River Ranch v. United States, 395 F. Supp. 886, 1975 U.S. Dist. LEXIS 12298 (D. Wyo. 1975)◆

Affirmed by (CITATION YOU ENTERED):
Snake River Ranch v. United States, 542 F.2d 555, 1976 U.S. App. LEXIS 6828 (10th Cir. Wyo. 1976)A

CITING DECISIONS (6 citing decisions)

9TH CIRCUIT - COURT OF APPEALS

Cited by:
United States v. Pappas, 814 F.2d 1342, 1987 U.S. App. LEXIS 4899 (9th Cir. Idaho 1987)I

Cited by:
814 F.2d 1342 p.1343
814 F.2d 1342 p.1344

10TH CIRCUIT - COURT OF APPEALS

Cited by:
Albrecht v. United States, 831 F.2d 196, 1987 U.S. App. LEXIS 13257 (10th Cir. Wyo. 1987)A

Cited by:
831 F.2d 196 p.198

Cited in Dissenting Opinion at:
Bradford v. United States, 651 F.2d 700, 1981 U.S. App. LEXIS 12555 (10th Cir. Okla. 1981)

Cited in Dissenting Opinion at:
651 F.2d 700 p.716

Cited by:
Smith v. United States, 593 F.2d 982, 1979 U.S. App. LEXIS 16286 (10th Cir. Okla. 1979)

Cited by:
593 F.2d 982 p.988

11TH CIRCUIT - U.S. DISTRICT COURTS

Cited by:
Howell v. United States, 519 F. Supp. 298, 1981 U.S. Dist. LEXIS 15151 (N.D. Ga. 1981)

Cited by:
519 F. Supp. 298 p.304

D.C. CIRCUIT - U.S. DISTRICT COURT

Cited by:
Pueblo of Taos v. Andrus, 475 F. Supp. 359, 1979 U.S. Dist. LEXIS 10912 (D.D.C. 1979)

LAW REVIEWS AND PERIODICALS (2 Citing References)

Cited by:
TENTH CIRCUIT SURVEY: Real Property, 73 Denv. U.L. Rev. 925

Cited by:
COMMENT: BATTURE, ORDINARY HIGH WATER, AND THE LOUISIANA LEVEE SERVITUDE, 69 Tul. L. Rev. 561 (1994)

ALR ANNOTATIONS (1 Citing Annotation)

Deeds: description of land conveyed by reference to river or stream as carrying to thread or center or only to bank thereof--modern status, 78 A.L.R.3d 604, supp sec. 3

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Bradford v. United States, 651 F.2d 700, 1981 U.S. App. LEXIS 12555 (10th Cir. Okla. 1981)

PRIOR HISTORY (0 citing references) ◆ **Hide Prior History**

▶ **(CITATION YOU ENTERED):**
Bradford v. United States, 651 F.2d 700, 1981 U.S. App. LEXIS 12555 (10th Cir. Okla. 1981)▲

CITING DECISIONS (16 citing decisions)

5TH CIRCUIT - U.S. DISTRICT COURTS

Cited by:
LaFargue v. United States, 4 F. Supp. 2d 593, 1998 U.S. Dist. LEXIS 8201 (E.D. La. 1998)◆

Cited by:
4 F. Supp. 2d 593 p.598

10TH CIRCUIT - COURT OF APPEALS

Cited by:
Vitkus v. Beatrice Co., 127 F.3d 936, 1997 U.S. App. LEXIS 28463, 1997 Colo. J. C.A.R. 2335 (10th Cir. Colo. 1997)▲

Cited by:
127 F.3d 936 p.946

Cited by:
Fenstermacher v. Telelect, Inc., 1994 U.S. App. LEXIS 6054 (10th Cir. Kan. Mar. 28, 1994)Ⓐ

Cited by:
Neyman v. United Telecommunications, 1993 U.S. App. LEXIS 18532 (10th Cir. Kan. July 19, 1993)Ⓐ

Cited by:
Lyons v. Jefferson Bank & Trust, 994 F.2d 716, 1993 U.S. App. LEXIS 10183, 25 Fed. R. Serv. 3d (Callaghan) 1005 (10th Cir. Colo. 1993)▲

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994 F.2d 716 p.721

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Farmers Ins. Co. v. Hubbard, 869 F.2d 565, 1989 U.S. App. LEXIS 2865 (10th Cir. Okla. 1989)

Cited by:
869 F.2d 565 p.570

Cited by:
Hokansen v. United States, 868 F.2d 372, 1989 U.S. App. LEXIS 1587 (10th Cir. Kan. 1989)

Cited by:
868 F.2d 372 p.378

Cited by:
Vincent Murphy Chevrolet Co. v. United States, 766 F.2d 449, 1985 U.S. App. LEXIS 20229 (10th Cir. Colo. 1985)

Cited by:
766 F.2d 449 p.452

Cited by:
United States v. Gammache, 713 F.2d 588, 1983 U.S. App. LEXIS 25367 (10th Cir. N.M. 1983)

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713 F.2d 588 p.591

Cited by:
Nevada Power Co. v. Watt, 711 F.2d 913, 1983 U.S. App. LEXIS 26699, 21 Env't Rep. Cas. (BNA) 2029, 15 Envtl. L. Rep. 20821 (10th Cir. Utah 1983)

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711 F.2d 913 p.933

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Evans v. Hartford Life Ins. Co., 704 F.2d 1177, 1983 U.S. App. LEXIS 28954, 1983 Life Cas. (CCH) P242 (10th Cir. Okla. 1983)

Cited by:
704 F.2d 1177 p.1182

Distinguished by:
James v. Langford, 701 F.2d 123, 1983 U.S. App. LEXIS 30131 (10th Cir. Okla.

Distinguished by:

701 F.2d 123 p.124

10TH CIRCUIT - U.S. DISTRICT COURTS

Cited by:
Koch v. United States, 824 F. Supp. 996, 1993 U.S. Dist. LEXIS 7760 (D. Colo. 1993)

Cited by:
824 F. Supp. 996 p.1001
824 F. Supp. 996 p.1002

Cited by:
James v. Langford, 558 F. Supp. 737, 1981 U.S. Dist. LEXIS 10155, 76 Oil & Gas Rep. 273 (W.D. Okla. 1981)

Cited by:
558 F. Supp. 737 p.745

11TH CIRCUIT - U.S. BANKRUPTCY COURTS

Cited by:
In re Lumpkin Sand & Gravel, Inc., 104 B.R. 529, 1989 Bankr. LEXIS 1450, 10 U.C.C. Rep. Serv. 2d (CBC) 704 (Bankr. M.D. Ga. 1989)

Cited by:
104 B.R. 529 p.533

D.C. CIRCUIT - U.S. DISTRICT COURT

Cited by:
D. C. Transit System, Inc. v. United States, 531 F. Supp. 808, 1982 U.S. Dist. LEXIS 10752 (D.D.C. 1982)

Cited by:
531 F. Supp. 808 p.810

LAW REVIEWS AND PERIODICALS (1 Citing Reference)

Cited by:
TENTH CIRCUIT SURVEY: Real Property, 73 Denv. U.L. Rev. 925

ALR ANNOTATIONS (2 Citing Annotations)

Real property quiet-title actions against United States under Quiet Title Act (28 USCS sec. 2409a), 60 A.L.R. Fed. 645, sec. 14

Deeds: description of land conveyed by reference to river or stream as carrying to

thread or center or only to bank thereof--modern status, 78 A.L.R.3d 604, supp sec. 3

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Smith v. United States, 593 F.2d 982, 1979 U.S. App. LEXIS 16286 (10th Cir. Okla. 1979)

PRIOR HISTORY (0 citing references) ◆ Hide Prior History

▶ **(CITATION YOU ENTERED):**
Smith v. United States, 593 F.2d 982, 1979 U.S. App. LEXIS 16286 (10th Cir. Okla. 1979)▲

CITING DECISIONS (5 citing decisions)

8TH CIRCUIT - COURT OF APPEALS

Cited by:
Bear v. United States, 810 F.2d 153, 1987 U.S. App. LEXIS 1143 (8th Cir. Neb. Ⓐ

Cited by:
810 F.2d 153 p.156

9TH CIRCUIT - COURT OF APPEALS

Followed by:
De Boer v. United States, 653 F.2d 1313, 1981 U.S. App. LEXIS 18465 (9th Cir. Alaska 1981)◆

Followed by:
653 F.2d 1313 p.1316

Cited by:
653 F.2d 1313 p.1314

9TH CIRCUIT - U.S. DISTRICT COURTS

Cited by:
De Boer v. United States, 470 F. Supp. 1137, 1979 U.S. Dist. LEXIS 12313 (D. Alaska 1979)●

Cited by:
470 F. Supp. 1137 p.1138

10TH CIRCUIT - COURT OF APPEALS

Cited by:

Albrecht v. United States, 831 F.2d 196, 1987 U.S. App. LEXIS 13257 (10th Cir. Wyo.

1987)

Cited by:
831 F.2d 196 p.198

Limited by, Cited in Dissenting Opinion at:
Bradford v. United States, 651 F.2d 700, 1981 U.S. App. LEXIS 12555 (10th Cir. Okla. 1981)

Limited by:
651 F.2d 700 p.707

Cited in Dissenting Opinion at:
651 F.2d 700 p.716

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Protest and Appeal

U.S. v. Robert G. Stumbo

Roy J. Pray

Circular-Lands Within National Forests

J. M. Beard

U.S. v. Sidney M. & Esther M. Heyser

Kirwan v. Murphy

* A. W. Schunk

* Stanley G. West

* Joe S. & Delores Dent

* Edward M. Clark

* Southern Pacific Co.

* Ronald E. Cooper

U.S. v. State of Washington

* Moore v. Northern Pacific RR Co.

J. C. Nelson et al.

* Herald E. & Alice L. Trowbridge

* Robert Kamon et al.

* Hershel E. Crutchfield

Giles R. & Jaunita Leonard

* Mrs. J. W. Moore

* County of Mohave, Arizona (Kessler)

Court testimony of Cadastral surveyors

* Gibbonsville Townsite

* Duncan Miller

* California Assn. of Four Wheel Drive Clubs

Field Notes in Book 5914

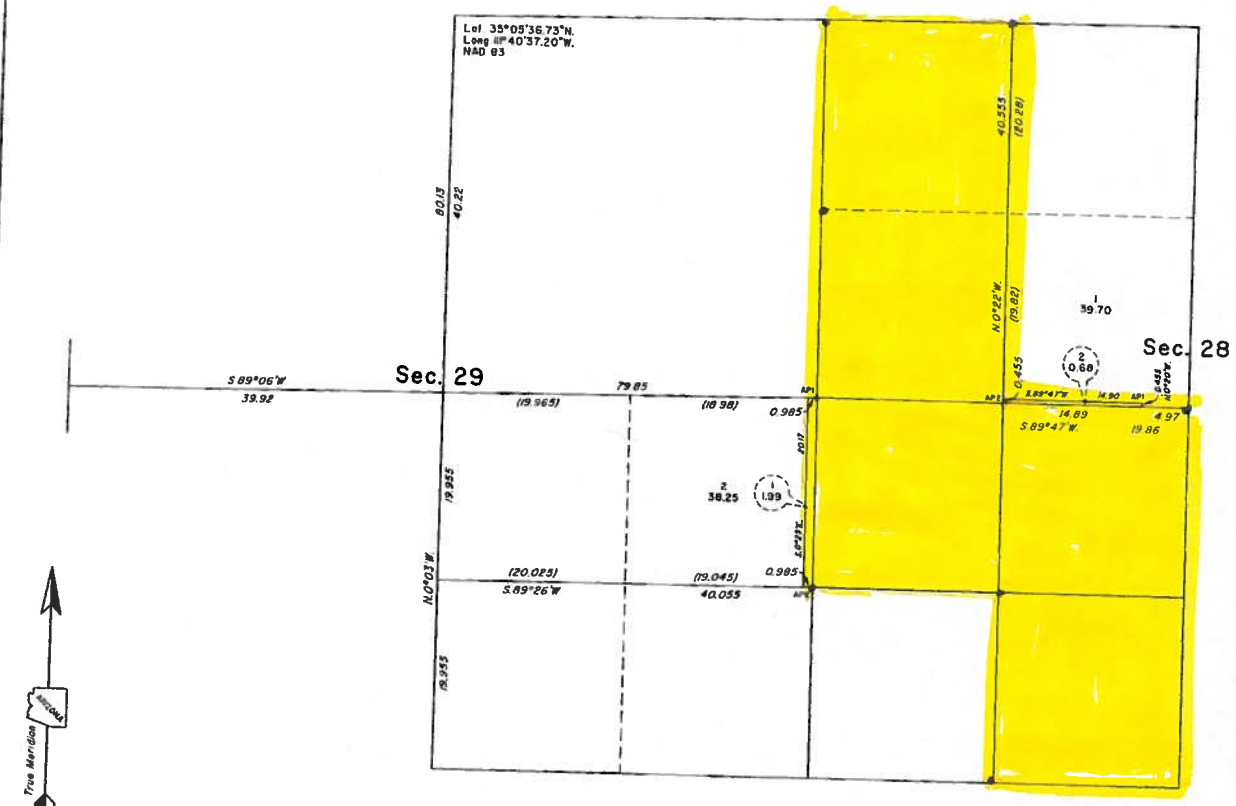
Officially Filed
DATE February 5, 2010

ORIGINAL

TOWNSHIP 20 NORTH, RANGE 7 EAST, OF THE GILA AND SALT RIVER MERIDIAN, ARIZONA

0860-D

SUBDIVISION AND METES-AND-BOUNDS SURVEYS IN SECTIONS 28 & 29



The history of surveys is contained in the field notes.

This plat represents the dependent resurvey of a portion of the subdivision of section 28 designed to restore the corners in their true original locations according to the best available evidence; and the subdivision of section 29, and metes-and-bounds surveys in sections 28 and 29, Township 20 North, Range 7 East, Gila and Salt River Meridian, Arizona.

Except as indicated hereon, the lottings and areas are as shown on the plat approved December 30, 1878.

This survey was executed by Geoffrey A. Graham, Cadastral Surveyor, beginning October 5, 2009, and completed October 15, 2009, pursuant to Supplemental Special Instructions dated September 28, 2009, for Group No. 1016, Arizona.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Phoenix, Arizona — February 2, 2010

This plat is strictly conformable to the approved field notes, and the survey, having been correctly executed in accordance with the requirements of law and the regulations of this Bureau, is hereby accepted.

For the Director

Stephen K. Hansen

Chief Cadastral Surveyor of Arizona

U.S. v. Rbt. G. Stumbo 3/6/67 A-30702

--An appeal to the Director, BLM, is properly dismissed where appellant failed to file any statement of reasons in support of the appeal, or did not serve a copy of his notice of appeal on the adverse party.

Roy J. Pray
A-30683 3/29/67

--An appeal to the Director of the BLM is properly dismissed when the statement of reasons for appeal is filed more than 30 days after the notice of appeal was filed, although a request for an extension of time for filing the statement of reasons may have been filed within the 30 days with the district land office but not received by the Director within the 30-day period or thereafter.

Circular - Lands within National Forests
44 LD 360 (1915)

No patent shall issue for lands within a national forest until the Commissioner of the GLO ascertains that no claim will be protested by the district forester.

Regulations concerning the filing and disposition of protests of claims within national forests.

J. M. Beard
52 LD 451 (1928)

--Dismissal of protest involving dependent and independent resurveys where claimant failed to exercise good faith.

U.S. v. Sidney M. and Esther M. Heyser
75 ID 14 (1968)

--Where a mining claimant makes no attempt to show error in a finding that a mining claim is null and void for lack of discovery, the finding will be affirmed on appeal.

Kirwan v. Murphy
189 U.S. 35 (1903)

--A bill in equity cannot be maintained to enjoin officers of the land department from surveying land which years before had been omitted from an alleged survey, where the complainants have purchased lands under such alleged survey which did not include the land in question, claimant's remedy for any infringement of his rights is at law after the administrative action of the Government has been concluded.

A. W. Schunk
IBLA 73-86 6/28/74

--The IBLA may entertain an appeal although the statement of reasons did not respond to the BLM decision, where it appears that dismissing the appeal would preserve error or inequity.

Stanley G. West
IBLA 74-71 11/28/73

--The Secretary of the Interior has the authority and duty to determine what lands are public lands and which of them require extension of correction of surveys.

--Where probative evidence is offered by one protesting the performance and acceptance of a survey that the land is not Federally owned, a hearing will be held to consider the evidence.

JOE S. DENT
and
DELORES L. DENT

IBLA 74-315 Decided January 30, 1975

Appeal from decision 9182(420) Group 566, Montana, by the Director, Bureau of Land Management, dismissing a protest against acceptance of a plat of survey.

Hearing ordered.

1. Secretary of the Interior--Surveys of Public Lands: Generally--Surveys of Public Lands: Authority to Make

   The Secretary of the Interior is authorized, and is under a duty, to consider and determine what lands are public lands, what public lands have been or should be surveyed, and what public lands require extension or correction of past surveys.

2. Accretion--Avulsion--Boundaries--Hearings--Surveys of Public Lands: Generally

Where one who protests the performance and acceptance of a survey of land, identified by the cadastral engineer making the survey as public domain land, offers probative evidence that changes arose because of avulsion rather than accretion and so the land is not in fact federally-owned, a hearing will be ordered to receive and consider such evidence and to ascertain the facts.

18 IBLA 375

Edward M. Clark
A-30589 (Nov. 15, 1967)

--A request for a hearing on the validity of an application for a trade and manufacturing site will be denied where there is no evidence to contradict the original finding that the claim is void by reason of conflict with patented land.

Southern Pacific Company
Sacramento 079867 (Nov. 4, 1966)

--An application for relief filed more than 15 years after the parties were informed of defects in their claim is subject to rejection because of laches.

Ronald E. Cooper
Contest #903
Fairbanks 031288
(September 24, 1969)

--Where a private contest complaint contains an improper and ambiguous description of the land, the complaint will be dismissed.

U.S. v. State of Washington
233 F 2d 811 (1956)

--In a suit to quiet title to property in the U.S. as trustee for certain Indian wards, where the Government proved cancellation of fee title patent and subsequent issuance of a trust patent, the Government was the real party in interest in prosecuting the action, thus, giving the district court jurisdiction over the suit.

Moore v. Northern Pac. R.R. Co.
45 P 215 (1896)

--A decision of the Secretary of the Interior that certain land was not included within a grant to a corporation is conclusive until reversed in a direct proceeding for that purpose, and cannot be collaterally attacked.

J.C. Nelson et al.
64 I.D. 103 (1957)

--Where mining claimants contest the issuance of oil and gas leases and the filing of applications therefor, alleging the existence of prior valid mining claims, but it is impossible to identify the land covered by the mining claims from the land descriptions given in the notices to contest and the location certificates of the claim, and timely objection to the defective descriptions is made by the contestees, the contest proceedings can be dismissed for this reason alone.

HAROLD E. AND ALICE L. TROWBRIDGE

A-30954 Decided Jan 17, 1969

Mining Occupancy Act: Generally

The determination of the extent of the relief that will be granted to a qualified applicant under the act of October 23, 1962, is committed to the discretion of the Secretary of the Interior, and were it is determined that a tract of land applied for is in an area having recreational potential, that it offers a scenic view of the Rogue River, that, if patented, the tract would create a 5-acre fragment of private land within a full section of Oregon and California reconveyed land that is managed by the Bureau of Land Management for permanent forest production, and that the tract may, at some future time, be utilized to allow access to adjacent timber lands, an applicant for the conveyance of the land is properly limited to a lifetime lease of the land applied for.

Mining Occupancy Act: Generally--Rules of Practice: Hearings

An applicant for the conveyance of land under the Mining Claims Occupancy Act is not entitled as a matter of right to a hearing on the question of the extent of the relief which the Secretary sees fit to grant, and a hearing is properly denied where the applicant fails to allege the existence of facts which, if proved, would serve as sufficient bases for modification of a prior limitation placed upon the relief to be granted.

Federal Employees and Officers: Authority to Bind Government

An applicant can gain no right to public land because he may have been informed, prior to the relinquishment of a mining claim, that upon abandonment of his claim he would be permitted to purchase a portion of the land embraced in the claim.

ROBERT KAMON ET AL.

A-30732 Decided Sept. 13 1969

Oil and Gas Leases: Land Subject to

Since the Departmental policy expressed in its regulations prohibits the issuance of oil and gas leases for lands within a mile of the exterior boundaries of a naval patroleum reserve except where certain conditions prevail, a lease offer for such land is properly rejected in the absence of a showing by the offeror that the conditions requisite for leasing exist.

Oil and Gas Leases: Discretion to Lease

The Departmental policy against issuing oil and gas leases for lands within a mile of the exterior boundaries of a naval petroleum reserve is an expression of the discretion vested in the Secretary to decide whether or not to issue oil and gas leases.

Administrative Procedure Act: Hearings

An offeror for an oil and gas lease is not entitled to a hearing to examine the reasons for the rejection of his offer.

Public Records

Where a person desiring to inspect Departmental records does not follow the procedure set up in the applicable regulation, he cannot later complain that he has been denied access to them.

HERSHEL E. CRUTCHFIELD

A-30876 Decided Sep. 30, 1968

Alaska: Trade and Manufacturing Sites

A trade and manufacturing site application based upon use of land for cabin rental and recreation area is properly rejected where only one 8' X 12' cabin, furnished with two bunk beds and a column stove, note completed prior to the filing of the application and where evidence of the use of that cabin as commercial rental property is vague and is void of all details with respect to periodic use of occupancy and revenuous derived therefrom.

Alaska: Trade and Manufacturing Sites--Rules and Practice: Hearings

A hearing will not be granted in connection with a trade and manufacturing site application where the applicant fails to allege facts which, if proved, would entitle him to favorable consideration of his application.

Giles R. and Juanita Leonard
A-30503 March 23, 1966

--A protestant against the acceptance of a plat of survey of omitted islands can submit whatever evidence he deems pertinent in support of his protest, but there is no requirement that a formal hearing be held.

MRS. J. W. MOORE

IBLA 71-10 Decided December 5, 1972

Appeal from decision (9181 (420) Group 394, Idaho), by Chief Division of Cadastral Survey, Bureau of Land Management, dismissing protest against the acceptance of a survey.

Affirmed

Survey of Public Lands: Generally--Survey of Public Lands: Authority to Make

The Department is authorized to correct prior surveys where fraud or gross error has occurred.

Administrative Practice -- Administrative Procedure: Burden of Proof -- Rules of Practice: Appeals: Burden of Proof -- Survey of Public Lands: Generally

Where a government resurvey is challenged by an appellant, he has the burden of establishing that the resurvey is erroneous and of identifying specifically reversible error in the decision appealed from. An appellant cannot expect the Department to assume his burden of searching the record and the law in an effort to find some reversible error in the decision appealed from.

APPEARANCES: J. Kent Jolley, Esq., Jolley & Eames, of Rexburg, Idaho, for the appellant.

OPINION BY MR. FISHMAN

Mrs. J. W. Moore has appealed from a decision, dates July 16, 1970, rendered by the Chief, Division of Cadastral Survey, Bureau of Land Management, dismissing her protest against the Bureau's acceptance of the plat representing a dependent resurvey of omitted lands in T. 7N., R. 39 E., B.M., Idaho. The protest was particularly directed to lots 5 and 6, sec. 34, as reflected by such plat. The plat delineates as being in federal ownership some 5.05 acres claimed by the appellant. Appellant purchased certain land, a portion of which is delineated on the plat as said federal land.

8 IBLA 261

County of Mohave
IBLA 77-304 (1977)

Notice of appeal must be filed within thirty days after the person making the appeal is served with the decision from which he is appealing.

COURT TESTIMONY OF CADASTRAL SURVEYORS

General
What the surveyor can testify to:

1. Approved Survey The record is the official opinion of the Department. The surveyor can say nothing to add to or subtract from it. He may interpret the meaning of the record - what the symbols, letters, and numbers of the plat mean. He should not give opinions on why the surveyor did this or that in an old survey. If the special instructions are an exhibit, he may explain them or state that the surveyor did as they instructed him. If he is qualified as an expert witness - which he should be in such cases - he may give some opinions, but he should not allow himself to engage in wide speculations. He can turn away improper questions in several ways. He may say that he cannot speculate why the original surveyor (for instance) failed to meander the actual water's edge. He may say that such-and-such is not a surveying matter and he is not competent to answer it. He may say the official record speak for itself and represents the facts at the time of the survey unless shown to be in error.

2. Unapproved Survey This is even harder. There is no official record except in the case of a resurvey. The surveyor may be questioned as to how he carried out the work. He should remember that he followed the surveying manual and the special instructions.

3. Miscellaneous Surveys The surveyor should keep his answers as brief as will be responsive. Ordinarily he is first questioned by the U.S. attorney on direct examination, then cross-examined by the opposing attorney. If it helps in clarifying a point, he should ask if he may refer to the pertinent exhibit. He should avoid making long, complicated, rambling answers. All answers should be made so that the judge (and/or jury) and the clerk can understand them. The judge often refers to the clerk's record in deciding a case, and the clerk has to have a fighting chance to get it down correctly. I have seen transcripts of testimony containing technical terms so mangled that no one could understand them. I made a deposition in which I was questioned by an opposing attorney (with the U.S. attorney present) for five hours. When the case came up for trial the transcript was so poor that I had to go on the stand for two hours in lieu of having the deposition made a part of the record. I had testified at slow dictation speed directly to the commercial stenographer. There were dozens of plain technical words not misspelled but replace by other words. Once the steno wrote something else for "meander line," for instance, she stuck to it, and the result was a sight to see.

4. Surveys where the U.S. is not a party

(file on Testimony of Cadastral Surveyors)

November 6, 1959

Memorandum

To: Mr. Clement, Bureau of Land Management

From: Associate Solicitor, Division of Public Lands

Subject: Cadastral Engineer as witness to method of executing the field work of a retracement of "dependent resurvey"

It is not exactly proper to say in your first paragraph that the surveyor "executed" "the resurvey in question." There is, as yet, no resurvey here. The running of the lines in the field and the laying out and platting of the sections and/or subdivisions are not alone sufficient to constitute a survey. As to an original survey, the lands are to be regarded as unsurveyed until the Director accepts the plat of survey. As to independent resurveys, the original survey continues in effect until the resurvey plat is accepted. Nothing done toward making dependent resurvey has any legal affect as such until acceptance. Cox v. Hart, 2760 U.S. 427. What the surveyor "executed" was the field work upon which the proposed dependent resurvey presumptively will be based.

The first sentence in your 4th paragraph also does not quite reach the point. It is not that "land surveys * * * do not become official" until accepted. They are not Therefore, the field survey here does not, in the present posture of the case, even define the positions of the lines and corners of the original survey, and the most that the surveyor could do if he testified at all in a private case would be to testify to such position (of the original survey lines and corners) as an expert witness, not as an official employee of the United States. Since in doing so he would reasonably give the basis for his opinion as evidence, the only reasonable basis for the request would seem to be that the party feels that this surveyor is well qualified, having ascertained the essential facts, and, therefore, wants him as his witness. Aside from the fact that the Cadastral Engineer has already obtained the facts necessary to an opinion, any competent private surveyor with equivalent qualifications by making an examination, including the retracement of lines, would be an equally competent witness.

The request, therefore, amounts to no more than one to obtain, without cost for his necessary qualifications, the services of an expert witness. Hence, the reasons for denial are: (1) even if there had been a resurvey, the testimony of the engineer would not be necessary or proper on the question of the validity of the survey and otherwise would be of no more extent or effect than that of a private surveyor; (2) there has been no resurvey and no competent testimony based on a resurvey as such can be obtained from this Cadastral Engineer; and (3) to the extent that he can testify at all, the purpose of the request necessarily is, to secure without cost for qualifying the witness, expert testimony buttressed perhaps by the possible effect on the Court of the semi-official character of his testimony.

It obviously would be contrary to the interest of the United States to permit itself to be deprived of the services of an employee merely to serve the needs of private parties in private litigation unless his testimony was the only evidence obtainable and the lack of it would result in a serious miscarriage of justice. And it would be improper to permit him to testify in relation to a matter what is pending final administrative action and is wholly outside the jurisdiction of the Court for that reason.

I suggest you consider revising your memorandum in view of the above.

/s/ C. R. Bradshaw

C. R. Bradshaw
Associate Solicitor
for Public Lands

July 11, 1960

Hon. Spessard L. Holland
United States Senate
Washington 25, D.C.

Dear Senator Holland:

Your letter of June 16, to the Director, Bureau of Land Management, with respect to his denial of a request from Mr. Ralph McLane, Assistant Attorney General of the State of Florida, that Mr. Hugh B. Crawford, a Cadastral Engineer employed by the Bureau of Land Management, be permitted to testify at the trial of a suit involving lands in T. 39 S., R. 23 E., Tallahassee Meridian, Florida, has been referred to me for reply.

While the Director would like to be as helpful as possible to Mr. McLane, and to the State of Florida, in the trial of this law suit, we feel that it would not be in the interests of the United State, and in disregard of the Department's policy of many years standing, to permit Mr. Crawford to testify in his official capacity as the Cadastral Engineer who surveyed the lands in question for the Government.

More important than this necessary policy is the fact that, as a matter of law, the survey in question in this, or in any other such case, speaks for itself and cannot be modified, amended, or corrected by or because of the testimony of this surveyor since the official plat of the survey and the field notes made, submitted, and approved in connection therewith constitute the official record of the survey and govern the limits of any grant or deed by which the lands were subsequently conveyed. Cragin v. Powell, 128 U.S. 691. Once a survey is accepted by the Department it becomes an official survey of the United States and it would be clearly improper to permit the agency who did part of the field work to testify for or against its validity especially in a case where that cannot properly be put in issue. It is well settled as a rule of law that power to make and correct such surveys is exclusively within the jurisdiction of this Department and that they are unassailable except by a direct proceeding. Knight v. United States Land Association, 142 U.S. 161. They are not open to challenge, correction, alteration or modification by collateral attack in the courts. Stoneroad v. Stoneroad, 158 U.S. 240; Russell v. Maxwell Land Grant Company, 158 U.S. 253. A survey or resurvey does not create title, but only defines boundaries. Thus, in the voluminous litigation involving the rights to possession of lands, the title may be disputed but the official survey so the United States on which the claims of title are based cannot be collaterally challenged. Russell v. Maxwell Land Grant Company, supra. These rules of law do not carry the implication that all surveys made by the Department over the years are in all cases correct. But the courts have repeatedly pointed to the necessity of those rules and their enforcement if any stability of title is to be acquired with respect to lands granted in accordance with official surveys of the Government.

In these circumstances the reasonableness and the necessity of the Department's long-standing policy against permitting the testimony of its Cadastral Engineers in private title litigation involving Government surveys is clear. However, we shall be glad to furnish certified copies of any of the official records of the Department, including the plats and field notes, to Mr. McLane for use in the litigation to which you refer.

Sincerely yours,

/s/ George W. Abbott

George W. Abbott
The Solicitor

Copy to: Director, BLM -- Attention: Mr. Donald B. Clement
Supervisor, ESO, BLM -- Attention: Mr. Shearer

Eng 5.04b 8
July 19, 1960

Memorandum

To: Area Administrators, Areas 1, 2, 3, and 4, and Eastern State Supervisor

From: Director

Subject: Testimony of Cadastral Surveyors

Enclosed are two copies of letter to Senator Holland from the Solicitor of the Department. This letter clearly states the Department's position on permitting our Cadastral Surveyors to testify in the Courts on matters concerning accepted surveys. Copies of our memorandum of November 12, 1959, to Area Administrator of Area 1, which was approved by the Deputy Solicitor, have been furnished to other areas. This memorandum defines the Department's attitude concerning testimony of Cadastral Surveyors where unacceptable surveys are concerned.

The policy of the Department is so clear with respect to cadastral surveyors' testimony that if, upon request, an Area Administrator concludes such testimony is not appropriate he should explain to the litigant the reasons for the Department's policy. If the litigant pursues the matter the procedure set out in 43 GFR 2.20 can be followed. However, occasions can arise where a serious miscarriage of justice might occur without testimony of our cadastral surveyors. These circumstances would be unusual but each case should be considered on its merits.

The specific restrictions on testimony by our cadastral surveyors is not applicable to other employees of the Bureau. This follows because of the quasi-legal status of the approved work of our surveyors and their operation in an arena where real property rights can be affected.

For your information in answering requests for testimony or depositions by our surveyors, the Courts have passed on the standing-at-law of approved field notes and plats. The United States Supreme Court in The United State v. Low, 16 Pet. 166 (1842) said "The official return of the Surveyor-General has accorded to the force of a deposition." In Kirby v. Lewis, 39 F. 66 (1889) the above statement was cited approvingly. The basis upon which the official character and finality of approved surveys and their returns rest is the act of Feb. 11, 1805. This statute has been carried in R.S. 2396 and 43 USC 752.

The requestor for the appearance or statement from a cadastral survey should be informed that certified copies of official survey records can be furnished. He also should be notified that these certified records should be acceptable by any court.

For the Director

/s/ Donald B. Clement

CLGumm:wa

March 13, 1961

Memorandum

To: Area Administrator, Area 1

From: Director

Subject: Testimony of Cadastral Surveyors

On January 30 the California State Supervisor wrote us requesting that the acceptance of the resurvey in T. 31 N., R. 9 W., M.D.M., be expedited. He explained that a new criminal trespass had been developed in this township and the FBI expected court action within 60 days. He further stated that unless this resurvey would be approved prior to the trial, it would be necessary to call for testimony from the cadastral surveyor who made the resurvey.

This resurvey was accepted February 9 and will be available for evidence in the trial before April 1. In all cases where returned are priority-flagged, they will be taken up for examination as soon as possible.

The first intimation this office had that cadastral surveyors in California have regularly been called to testify came with the excitement attendant on the Robert P. Quinn criminal timber trespass acquittal in November. In this case the testimony of the cadastral surveyor as to the position of original boundaries in an unapproved resurvey he had made, was not approvingly received by the court.

It long has been the policy of the Department that cadastral surveyors should not testify as to details of their official work in private suits except where a miscarriage of justice might result. On November 12, 1959 and July 19, 1960, memorandum were transmitted to all areas setting out the Department's policy in this respect.

Cadastral surveyor testimony should, of course, be freely made available in suits in which the Bureau is interested. However, where approved surveys are at issue, the record speaks for itself and cannot be modified, amended, or corrected. The entire official record is contained in the field notes and plat of survey. The surveyor can add nothing to the approved record since upon approval the survey represents the Director's finding of fact based on the data in the record.

Where unapproved surveys are concerned, there actually is no "survey" until the record is approved. Nothing done during the field work has any legal significance until approved and accepted by the Director. However, testimony of a cadastral surveyor may be helpful and appropriate to establish that a trespass was committed on public lands.

This is not to say that such testimony might not be necessary under certain conditions. The authority given you by 43 CFR 2.20 and Bureau Order 603 cannot be redelegated. Consequently, when a written request is received for a cadastral surveyor's testimony, as required by regulations, your written permission should be considered in light of the discussion in this memorandum.

/s/ H. R. Hochmuth

Associate Director

Copy to: Area Administrators 2, 3, 4
BLM Reading File
BLM Permanent File
Daily

CLGumm: eh 3/7/61
HRHochmuth 3/10/61

August 22, 1968

Memorandum

To: AD-RM

From: Chief, Division of Engineering

Subject: Comments for Asst. Sec. Anderson for Regional Solicitor's Conference

Litigation involving the Bureau's cadastral surveys has increased significantly over the past few years. The increase will continue because of more intensive land management on the part of both Federal agencies and local proprietors. Cooperation with the Solicitors occupies a growing part of the worktime of cadastral survey personnel. Herewith is a booklet examplifying the kinds of cases involved.

Cases dealing with surveys are often complicated. We are always prepared to render any assistance possible in technical matters. At the same time, it is important that our personnel not be requisitioned unduly for expert testimony. If carried too far, this practice disrupts field operations and we believe it is usually unnecessary. The official record of an approved survey seeks for itself. It is entirely contained in the plat and field notes of the survey.

A survey after approval cannot be modified, amended, or corrected by or because of the surveyor's testimony, since the official plat and field notes made, submitted, and approved constitute the official record of the survey and govern the limits of any grant or deed by which the lands were subsequently conveyed. Cragin v. Powell, 128 U.S. 691.

The courts have passed on the standing at law of approved field notes and plats. The U.S. Supreme Court in The United States v. Low, 16 Pat. 166 (1842) said: "The official return of the Surveyor General has accorded to the force of a deposition." In Kirby v. Lewis, 39 F. 66 (1889), the above statement was cited approvingly. The basis upon which the official character and finality of approved surveys and their returns rest is the Act of February 11, 1805 (R.S. 2396 and 43 USC 752).

A perspective on expert testimony by surveyors can be gained by envisioning that the survey in issue is not recent but very old. The surveyor who did the fieldwork a century ago cannot be used for testimony except through the official records of his work. These records must then speak for themselves.

The finality of cadastral surveys after approval constitutes a problem that we have ben informed can foreclose a private individual from having a full administrative review of the survey. As a result of cooperation with the Solicitor's office, we now consider any protest against a survey at the Bureau level before approval. If the protest is rejected, the survey is approved and the protester permitted to appeal to the Secretary. The plat meanwhile is made available to the public but not officially filed until the appeal is heard and the Bureau's rejection affirmed.

/s/ R. E. Brown

Enclosure

cc:
DDRF 1-2-3
Daily

CLGumm/TATillman: rs/ah

May 16, 1969

Dear Mr. Pace:

I have your letter of February 20, 1969, requesting that you be permitted to take the deposition of Mr. William H. Teller, an employee of the Division of Cadastral Survey, Bureau of Land Management.

As I understand the situation, you seek to preserve Mr. Teller's testimony for the purpose of seeking legislation in connection with your client's claim. It would be in the interests of the United States, and in disregard of the Department's policy of many years standing, to permit Mr. Teller to testify in his official capacity as the Cadastral Engineer who surveyed the lands in question for the Government. As a matter of law, the survey in question in this, or in any other such case, speaks for itself and cannot be modified, amended, or corrected by or because of the testimony of this surveyor since the official plat of the survey and the field notes made, submitted, and approved in connection therewith constitute the official record of the survey and govern the limits of any grant or deed by which the lands were subsequently conveyed. Cragin v. Powell, 128 U.S. 691. Once a survey is accepted by the Department is becomes an official survey of the United States and it would be clearly improper to permit the agent who did part of the field work to testify for or against its validity.

With regard to the substantive information which you seek, the records of the Department are available for public inspection under the regulations which appear at 43 CFR, Part 2. There is no objection to your examination of the field notes and plats made in connection with the survey and of any other documents in accordance with the Public Information Act 5 U.S.C. S 552, and the regulations of this Department which implement it, 43 CFR, Part 2.

I regret that I cannot be more helpful to you.

Sincerely yours,

/s/ Russell R. Smith

Under Secretary of the Interior

Mr. Dean Francis Pace
Attorney at Law
Westwood Village
257 Danslow Avenue
Los Angeles, California 90049

December 19, 1969

Memorandum

To: Director, 420

From: State Director, California

Subject: Instructions for Reply to Request for Attendance of Bureau Employee at Judicial Proceeding

A request, by Attorney Laurence J. Kennedy, Jr., to have Bureau employee William Smart, Cadastral Surveyor, attend as a witness in a quiet title action tentatively set for trial on February 16, 1970, has been received by this office.

Section corners controlling boundaries of Forest Service and Bureau of lands have been marked by surveyor Smart under the remonumentation program, Group 540, (field notes transmitted under separate cover). The public lands have common boundaries with the parties in this case and the method of identifying these boundaries are in dispute between surveyors for the land owners.

In accordance with Part 2.6, Subtitle A, Title 43, Code of Federal Regulations, instructions are requested in order to reply to Mr. Kennedy's request.

/s/ J. R. Penny

cc: Ltr fm Mr. Kennedy

December 10, 1969

State Director of California
Bureau of Land Management
Federal Office Bldg.
2800 Cottage Way, Room E-2820
Sacramento, California 99825

Re: McCannel et al. vs. California Pines Recreational Estate, Inc., et al. Modoc County Superior Court No. 7491

Dear Sir:

We represent the plaintiffs in the above quiet title action tentatively set for trial in Alturas commencing on February 16, 1970.

We would like to arrange for the attendance, as a witness, of William Smart, Cadastral Engineer, who we understand has set some of the corners in dispute in this case in agreement with the plaintiff's surveyor, Loren Sargent L.S. 2322 of Redding.

We will appreciate being advised of the procedure required to arrange for Mr. Smart's appearance.

Sincerely,

CARR & KENNEDY

/s/ Laurence J. Kennedy, Jr.

LAURENCE J. KENNEDY, JR.

LJK/gf
cc: William M. Beaty

January 13, 1970

Memorandum

To: SD, California

From: Chief, Division of Cadastral Survey

Subject: Request for testimony by William Smart in private litigation

The following quotation is from a recent letter which states the Department's position with respect to testimony by cadastral surveyors:

> As I understand the situation, you seek to preserve Mr. _____'s testimony for the purpose of seeking legislation in connection with your client's claim. It would not be in the interests of the United States, and in disregard of the Department's policy of many years standing, to permit Mr. _____ to testify in his official capacity as the Cadastral Engineer who surveyed the lands in question for the Government. As a matter of law, the survey in question in this, or in any other such case, speaks for itself and cannot be modified, amended, or corrected by or because of the testimony of this surveyor since the official plat of the survey and the field notes made, submitted, and approved in connection therewith constitute the official record of the survey and govern the limits of any grant of deed by which the lands were subsequently conveyed. Cragin v. Powell, 128 U.S. 691. Once a survey is accepted by the Department it becomes an official survey of the United States and it would be improper to permit the agent who did part of the field work to testify for or against its validity.
>
> With regard to the substantive information which you seek, the records of the Department are available for public inspection under the regulations which appear at 43 CFR, Part 2. There is no objection to your examination of the field notes and plats made in connection with the survey and of any other documents in accordance with the Public Information Act, 5 U.S.C., S 552, and the regulations of this Department which implement it, 43 CFR Part 2.

Although the reference above was to private claim legislation, the position with regard to the status of the official records is that which has been taken for many years.

cc: DDRD
Daily (420)
420:TATillman:rs:1-13-70

Thomas A. Tillman
Acting

January 23, 1970

Memorandum

To:

From:

Subject: Request for Testimony by William Smart in Private Litigation

Further consideration on the subject matter, covered by your memo of January 13, is requested at this time.

The land lines to be resolved in this case are felt to present an immediate and future trespass problem for Forest Service and BLM lands. Consideration has been given to removing this case to a Federal Court; however, research by Forest Service and BLM Attorney's find the position held by this office to have able expression in the lawyers for the plantiff in the civil action. If the Government's interest can be represented by William Smart of this office it is felt this problem can be expedited to the advantage of the Government and avoid inconvenience to the parties involved.

We request that Mr. Smart be allowed to testify in this proceeding as we feel his testimony at this time will avoid future surveys and legal actions by the Bureau.

/s/ J. R. Penny

March 2, 1970

Memorandum

To: State Director, California

From: Assistant Director, Technical Services

Subject: Request for Testimony by William Smart in Private Litigation - FD 3/31/70

This is a followup on the telephone conversation which Elmer Graham had with Assistant State Director Peterson concerning the above subject on February 12. Mr. Peterson advised that the trial in the litigation in question has been postponed until April 27, 1970. He also agreed that your office will reconsider the desirability of authorizing Mr. Smart to testify. In doing so, you should consider carefully the Departmental position stated in our memorandum of January 13, 1970. Bear in mind also that the remonumentation notes were approved January 5, 1970, and that these notes, together with the notes and plat of the original survey, constitute the official record and reflect the position of the Bureau of Land Management.

Please let us know by March 31 your further thinking in the matter.

Pursuant to BLM Order No. 687, you have authority to grant the request for Mr. Smart to testify in the litigation in question. We assume, therefore, that you may have had some reservations in the matter and, therefore, referred it for decision here.

/s/ George L. Turcott

cc: DDRF
410 RF
410/EFGraham/eas/2/25/70

April 19, 1963

ORDER NO. 687, Amendment No. 1

Subject: Testimony of Employees

1. Paragraph 2 of Bureau Order No. 687 dated September 18, 1961, is amended to read as follows:

   Pursuant to the authority contained in section 2.20 of Title 43 CFR, each State Director and each Field Administrative Officer may authorize any employee of the Bureau under his jurisdiction, to testify in a judicial or administrative proceeding concerning matters related to the business of the Government or the contents of official records whenever a written request for such testimony is received and in the opinion of the State Director or the Field Administrative Officer, permission to give the testimony should be granted.

2. Paragraph 3 is amended to read as follows:

   If any State Director of Field Administrative Officer is of the opinion that a request should be denied, the request should be forwarded to the Director with an appropriate recommendation.

/s/ H. R. Hochmuth

Associate Director

BUREAU ORDER DISTRIBUTION LIST

March 31, 1970

Memorandum

To: Director, 420

From: State Director, California

Subject: Request for Testimony by William M. Smart in Private Litigation.

This is in reply to your memo of March 2, 1970, asking for our final thoughts on the subject matter.

As it has been Bureau policy over the years to have approved field notes stand on their own as a deposition in court proceedings, we do not feel it will be necessary to have Mr. Smart appear in the litigation in question.

A certified copy of the field notes has been sent to the attorney in this case and we will be advised or our decision.

/s/ E. J. Petersen

Acting

October 29, 1970

Mr. Harvey Dickerson, Attorney General
State of Nevada
State of Highway Building
Carson City, Nevada 89701

Attention: William M. Raymond, Deputy Attorney General

Dear Sir:

This is in reply to your letter of October 22, 1970, requesting permission for Mr. Lacel Bland to testify regarding the resurvey, approved November 25, 1968 of T. 35 N., R. 37 E., M.D.M., Nevada.

It would not be in the interests of the United States, and would disregard the Department's policy of many years standing, to permit Mr. Bland to testify relative to his official capacity as the Cadastral Surveyor who supervised the surveys in question for the Government. As a matter of law, the survey in question in this, or in any other such case, speaks for itself and cannot be modified, amended, or corrected by or because of the testimony of any surveyor since the official plat of the survey and the field notes made, submitted and approved in connection therewith constitute the official record of the survey and govern the limits of any grant or deed by which the lands are subsequently conveyed by the United States Government. Once a survey is accepted by the Department, it becomes an official survey of the United States and it would be clearly improper to permit the agent who did part of the field work or his supervisor to testify for or against its validity.

With regard to the substantive information, the field notes and plats are available for public inspection at Room 3104, Federal Building, Reno.

I regret that I cannot be more helpful to you.

Sincerely yours,

/s/ Nolan F. Keil

Nolan F. Keil
State Director, Nevada

cc: Director (420)
Mr. Otto Aho, Esq.

October 22, 1970

Mr. Nolan Keil, State Director
Bureau of Land Management
300 Booth Street
Reno, Nevada

Dear Mr. Keil:

Re: Cadastral Survey, T. 35 N., R. 37 E., M.D.B. & M., Humboldt County, Nevada

The legal Division of the State of Nevada, Department of Highways, is engaged in litigation in Humboldt County in acquiring certain property for use in a Federal Aid Highway. From the information given us, it appears that there is a discrepancy in survey in Section 2 of T. 35 N., R. 37 E., M.D.B. & M. It is our thinking that in order to be equitable to all concerned, that a prior declaratory action be filed before the court so as to determine which survey is valid.

We have contact Mr. Lacel Bland, Chief Branch Cadastral Engineer and he has informed us that permission must be secured for either him or any surveyor in the BLM to testify. Your cooperation is requested and permission is solicited for Mr. Bland to testify in our forthcoming action. His testimony will only be as to the resurvey in 1965, approved in 1968, and the remonumenting of corners therefrom.

It is not the purpose or desire of our Department to request assistance from you as to actual surveys in Section 2, because, as you know, the BLM did not survey any sections therein because there was not any public lands located in said Section 2. It is further not the function of BLM surveyors or the Department of Highway survey teams to do private surveys. We just need testimony as to certain acknowledged corners so that the Department of Highways may submit evidence to the judge as to certain ties and any decisions as to the correctness of the various surveys of Section 2 will then be made by him.

Should you have any questions or desire further information, please do not hesitate to call or write. I am sending copies of this letter to your solicitor as well as to Mr. Bland and Mr. Bland's supervisor.

Very truly yours,

HARVEY DICKERSON - Attorney General

/s/William M. Raymond

by:
William M. Raymond, Deputy
Attorney General
Assistant Counsel, Department of
Highways

WMR:sp

cc: Mr. Lacel Bland
Mr. Ralph Dunn
Mr. Otto Aho, Esq.

As of October 22, 1970, following additional material is in Clark Gumm's file of this same subject:

Memos of November 4 and 12, 1959 to Solicitor from Director, transmitting copies of memos.

Memo of February 20, 1963, and letter of January 18, 1963, inre testimony by George K. Holland.

February 13, 1959 - Testimony by N. E. Shearer, Morgan v. Seator

April 4, 1969 - Testimony by T. A. Tillman, U.S. v. Wolle

Order #687 - Amendment No. 1	April 19, 1963
Manual 452-DM1	April 15, 1963
Order #687	September 18, 1961
Order #603	December 5, 1955

Gibbonsville Townsite
IBLA 76-285 (1977)

An appeal to the Board of Land Appeals will be dismissed where enactment of legislation renders moot the question on appeal.

Duncan Miller
IBLA 76-794 (1977)
IBLA 76-567 (1976)

A statement of reasons in support of an appeal which fails to point out affirmatively where the decision being appealed is in error, does not meet with the Department's rules of practice and may be dismissed.

California Association of Four Wheel Drive Clubs
IBLA 77-226 (1977)

An "appeal" by an Individual or group which has not, prior to the "appeal", participated in the formulation of the action to which objection is being voiced, should be treated as a protest rather than as an appeal.

Regulations

--Appeals Procedures
43 CFR § 4.400 - § 4.845

--Dismissal for failure to include statement of reasons.
43 CFR § 4.402 (a) and (c)

--Statement of reasons, written arguments, and briefs to be filed no later than 30 days after notice of appeal was filed.
43 CFR §4.412

--Appeals Procedure cross referenced to 43 CFR Part 4, subparts A, B, and E
43 CFR §1840.1

--Hearings Procedures cross referenced to 43 CFR part 4, subparts A, B, and E
43 CFR § 1850.1

--Definition of terms
5 USC § 551

Statutes

--Administrative Procedure Act

Provides that Federal agencies publish in the Federal Register their organization, procedures, rules, and proposed rule making, and accord any interested person the right to petition for the issuance, amendment, or repeal of a rule. Rules establish for adjudications, hearings, and judicial review.

60 State. 237

June 11, 1946 (p. 1. 404)

Statutes

--Act establishing a Court of private land claims and providing for the settlement of private land claims in certain States and Territories.

26 Stat. 854

March 3, 1891

--Act providing for the dissolution of the Court of Private Land Claims.

32 Stat. 1031, 1144

Act of March 3, 1903

--Act providing that the U.S. may be named as a party defendant in a civil suit to adjudicate a disputed title to real property in which the U.S. claims an interest.

86 Stat. 1176
P.L. 92-562
Oct. 25, 1972

PLATS AND PATENTS

* Newson v. Pryor's Lessee
* Sale of Public Lands in the Territory of Orleans
* U.S. v. Hughes
* Branson v. Wirth
* Moore v. Robbins
* U.S. v. Schurz

  Instructions, filing of township plats

* Chapman v. Polack

  Edward Marsh

* Jones v. Pashby
* Wright v. Roseberry

  Cragin v. Powell

* Whiting v. Gardner
* Cornett v. Dixon

  Jefferis v. East Omaha Land Co.

* U.S. v. Hancock

  Hiram Brown

  Frank Ryan

  Carlos C. Burr

* Beaty v. Robertson

  Horne v. Smith

  Wildman v. Montgomery

* Whitney v. U.S.
* DeGuyer v. Banning

PLATS AND PATENTS

* Mendota Club v. Anderson
* Goltermann v. Schiermeyer

  Mary Darling Placer Claim

  Allen H. Cox
* Harrington v. Boehmer

  Southern Pacific R.R. Co. v. Burns

  Security Land and Exploration Co. v. Burns

  Wright-Blodgett Co.

  Champan and Dewey v. St. Francis

  Alaska United v. Cincinnati-Alaska Mining Co.

  Wiegert v. No. Pacific Railway Co.

  Cox v. Hart

  Scott K. Snively

  State of New Mexico
* Hardee v. Horton

  Amos D. Ruhl

  J.E. Wilson

  U.S. v. 11,993 Acres
* Wm. B. Collister

  Weaver v. Knudsen
* U.S. v. State of Louisiana and Humble Oil
* Rasmus P. Nielson

  U.S. v. Heyser

  Fontenelle v. Omaho Tribe of Nebraska

PLATS AND PATENTS

Richard Grainger

U.S. v. Boyd

* Hudson Investment Co.

Chester H. Ferguson

U.S. v. Big Bend Transit Co.

Salt River Pima-Maricopa v. Arizona Sand and Rock Co.

Misc. File

Effect of Plat on patents - #2123645 5/19/47

Cases where plats become a part of patent - #2122905, 1770004 - 6/23/39

Difference in record area on plats - 2084880 - 1/15/46

Plat along cimmarron baseline in Oklahoma - #1955494 5/6/43

Authority of island surveys in Florida when old plat shows swamp symbol 2096418 6/24/46

Prerequisite for lands to be surveyed - 1956317 - 5/27/43

Patent Nos.

Exclusion of power site reserve in patent

Patent No. 655699

Mineral patents and exclusions

Patent No. 24738

Statement in patent as to acreage must yield to terms of description therein

Patent No. 1124456

Mineral patent involving State selection

Patent No. 555877

Maps on plats prepared by projecting lines of prior erroneous surveys on paper over unsurveyed areas are insufficient to convey to the Florida Everglades Patent No. 137.

Hes 726, Montana
Acreage over 160 acres on Plat

U.S. Surveys

Revoking official filing instructions for plats of non-public lands in Alaska

USS 3243

Symbols for roads

USS 3441

Statutes and Legislation

Where a mineral patent is issued for claims on unsurveyed lands, any extension of public lands surveys shall be adjusted to the boundaries of such patented claim.

R.S. 2327

Compensation for shortages in area of patent

H.R. 6038 4/10/30

Survey and plats govern platent

R.S. 2396

Other Sources

--Archives to be delivered to State authorities, transfer of books and records to State, including plats and field notes.

The Public Domain, 1880, p. 194

--In case of discrepancy between the field notes and the plat, the field notes govern.

Corpus Juris Secundum
Public Lands, sec. 31; p. 680

Newsom v. Pryor's Lessee
7 Wheat. 7
(5) U.S. 194 (1822)

A patent for lands issued upon a survey and plat, returned as if actually surveyed, must be treated as if the survey had been made, though no actual survey was in fact made.

Sales of Public Lands in the Territory of Orleans
3 Op. Atty. Gen. 697 (1841)

--The surveyor-general's approval of plats of land surveyed was a sufficient authentication of both the survey and the plats.

--No indispensable form of approval had been prescribed, and the substance and spirit of the policy re approvals was that the surveyor should not only cause the land to be surveyed and platted, but should satisfy himself that the plats corresponded with the field notes, and then transmit the plats to the proper offices.

U.S. v. Hughes
11 How. 552 (1850)

When a person enters land according to law, but failed to obtain a patent for it, and another person thereafter obtained a patent from the U.S. by proceeding as if it were vacant land, but knowing that it was not vacant, the patent thus obtained is void.

Branson v. Wirth
84 U.S. 32 (1872)
Wirth v. Branson
98 U.S. 118 (1878)

Where land was granted under a military bounty land-warrant, which had not been vocated or set aside, a subsequent entry of the land was without authority of law, and a patent issued to the second entryman is void.

A party who has complied with all the terms and conditions which would entitle him to a patent for a particular tract of land acquires a vested interest therein, and is to be regarded as the equitable owner thereof. While his entry or location remains in full force and effect, his rights will not be defeated by the issue of patent to another party for the same tract.

Moore v. Robbins
96 U.S. 530 (1877)

A patent for public land, when issued by the land department, acting within the scope of its authority, and delivered to and accepted by the grantee, passes the legal title to the land, and all control of the government over the title thereafter ceases.

U.S. v. Shurz
102 U.S. 378 (1880)

--When a patent for part of the public lands has been regularly signed, sealed, countersigned, and duly recorded, the patentee has a perfect right to the possession thereof.

--Title by patent from the U.S. is title by record and delivery of the instrument is not essential.

Instructions re: the official filing of township plats
4LD 202 (1885)
45 LD 648 (1917)

Notice of filing to be posted; filing not less than 30 days from date of notice; copies of notice to be sent to courts, post offices, and newspapers in the town and country in which the land is located.

Champan v. Polack
11 P. 764 (1886)

Parol testimony and private surveys and plats will not be admitted in evidence in contradiction of the plats of the surveys of the U.S.

Edward N. Marsh
5 L.D. 96 (1886)

If the amount of land embraced by a patent corresponds with the number of acres in a particular subdivision covered by said patent, quantity will determine the subdivision conveyed, though larger boundaries may be described.

Jones v. Pashby
29 N.W. 374 (1886)

Where the tract has an irregular southern boundary and the grantor's intent is to deliver one-half the land, the deed is held to convey one-half of the quantity of land, and not the land lying east of a line drawn through the middle of the tract.

Wright v. Roseberry
121 U.S. 488 (1887)

Where Congress, after confirming to parties title to lands, has directed that U.S. patents should be issued to them, the patent operates merely as record evidence of title--and the survey required for the patent was only to secure certainty of description.

Cragin v. Powell
128 U.S. 691 (1888)

When lands are granted according to an official plat, the plat becomes as much a part of the deed as if written therein.

The courts do not have jurisdiction to correct errors in surveys--that is the duty of the GLO, but the court may protect a good faith purchaser under a Government patent from interference by subsequent corrective resurveys.

Whiting v. Gardner
22 P. 71 (1889)

Field notes control over plat where there is a discrepancy; in absence of evidence to the contrary; however, it will be presumed that the map correctly represents the survey.

Cornett v. Dixon
11 SW 660 (1889)

Where a patent is made in accordance with a recorded plat and survey, a contradictory statement in the field notes as to the length of one line is insufficient to prove the plat and survey erroneous.

Jefferis v. E. Omaha Land Co.
134 U.S. 178 (1890)

Where plats are referred to in a deed, the particulars of the plat are as much a part of the deed as if expressly enumerated therein.

U.S. v. Hancock
133 U.S. 193 (1890)

--doubts respecting the corrections of a survey of public land which passed unchallenged for 15 years should be resolved in favor of the title as patented.

Hiram Brown
13 L.D. 392 (1891)

When a new plat of a survey is made necessary by the relinquishment of a claim excluded therefrom, and, prior thereto, an entry is erroneously allowed in accordance with the original survey, and patent is issued thereon, the Department is without jurisdiction to issue for the benefit of a transferee an amended or new patent to include the additional acreage shown by the new survey.

Frank Ryan
13 L.D. 219 (1891)

In case of conflict between entries arising through a change of subdivisional description caused by resurvey, and the local office taking action without regard thereto, rights of the prior entry are superior.

Carlos C. Burr
15 LD 395 (1892)

Correction of plat.

In case of discrepancy between the plat of survey in the local office and the one on file in the GLO an entry in accordance with the former may be permitted to stand, with a view to its approval when the plat in the GLO has been corrected.

Beaty v. Robertson
30 NE 706 (1892)

Plat controls over field notes, where there is a variance, since the plat represents the lines and corners as fixed by the surveyor general, and by which the land was sold.

Horne v. Smith
159 U.S. 40 (1895)

--A patent conveys only the land which is surveyed and not necessarily an adjoining unsurveyed tract which ought to have been, but which was not in fact, surveyed.

Wildman v. Montgomery
20 LD 230 (1895)

A patent in which the land is described in accordance with the subdivisions shown on the official plat conveys all the land within the limits so specified, whether the quantity of said land supposed to be contained therein is correctly stated in the patent or not.

Whitney v. U.S.
167 U.S. 529 (1897)

The burden of proof that patent conveys more than shown on face is on the claimants; so long as the description of the land is reconcilable with the smaller grant, the Government is entitle to the benefit of construction.

DeGuyer v. Banning
167 U.S. 723 (1897)
27 P. 761 (1891)

Where decree of District Court and the survey made in execution of the decree differ as to the inclusion of a small island within a bay in the surveyed tract of land, and the patent is issued based on the survey, the patent and survey are held to be controlling over the decree in determining whether the island was included in the grant of land.

Mendota Club v. Anderson et al.
78 N.W. 185 (1899)

A patent from the U.S. for swamp or mineral lands, or lands subject to pre-emption or homestead entry, cannot be impeached in an action at law.

The interior department has no power to grant a patent for land a part of which is covered by a navigable lake, and such patent, in so far as it purports to convey portions of the lake, is inoperative and void.

Goltermann v. Schiermeyer
19 S.W. 484 (1899)

The plat, with all its marks and figures and the field notes, become a part of the patent for all purposes of identifying the land granted.

Power to accept or reject a plat is in the land department; when the government has accepted a plat, that act is not reviewable by the courts.

Mary Darling Placer Claim
31 LD 64 (1901)

The survey and subdivision of the public lands makes the quantity of land stated therein conclusive for the purpose of the disposal of the lands; and the returns of mining claims are also conclusive as to the quantity of the lands embraced in such claims.

Allen H. Cox
30 LD 468 (1901)

Requirement that 30 day's notice be given before plat will be treated as officially filed has no application to an amended plat filed for purpose of showing subdivisions of public lands in a surveyed township.

Harrington v. Boehmer
66 P. 214 (1901)

Field notes control over plat where there is a discrepancy between the two, since the plat is made from the field notes and the field notes constitute better evidence as to where the line was run in the field.

Where government field notes show that a government plat delineates land where there is no such land according to such notes, the land department may at any time correct such plat to correspond to the field notes, and the corrected plat supersedes the original plat.

Southern Pacific RR Co. v. Bruns
31 LD 272 (1902)

Statement in patent as to acreage of the land conveyed must yield to the terms of description therein employed.

Security Land and Exploration Co. v. Burns
193 U.S. 167 (1904)

The general rule that in matters of boundaries, natural monuments or objects will control courses and distances is not absolute and inexorable.

When the plat of a survey is grossly fraudulent, the false meander line may serve as a boundary, confirming the patentee to the lots correctly described with the lines and distances of the plat of survey which he actually paid for.

Wright-Blodgett Co.
36 LD 238 (1908)

Where a patent has issued in conformity with the record upon which the right to patent is predicated and has been signed, sealed, and recorded, the title to the land has passed and the land department is without further jurisdiction over the patent.

Chapman and Dewey Lumber Co. v. St. Francis Levee Dist.
232 U.S. 186 (1914)

The showing of area on a plat becomes part of the patent.

The specification in a patent of the acreage of land conveyed is an element of the description and while of less influence than other elements, is an aid in ascertaining what land was intended.

Swamp Land Act of 1850 passed to State only inchoate title which could not be perfected until the lands were listed and patented.

Alaska United Gold Mining Co. et al v. Cincinnati-Alaska Mining Co. et al
45 LD 330 (1916)

Plats and field notes referred to in patents may be used to determine the limits of the areas passed under the patents.

Wiegert v. Northern Pacific Railway Co.
48 L.D. 48 (1921)

When a patentee acquiesces in an adjustment made by the Land Department incidental to resurvey of a township, a third party who has no vested interest in the land affected by the resurvey is in no position to raise an objection that the tract shown by said resurvey as having been patented is not, in fact, the identical tract that was patented.

Cox v. Hart
260 U.S. 427 (1922)

--Public lands lose their status as "surveyed lands" and become "unsurveyed" when the lines and marks of the original survey have become obliterated for practical purposes and when a resurvey has been directed by an Act of Congress.

--The running of lines in the field and the platting of townships, sections, and legal subdivisions are not alone sufficient to constitute a survey. Until all conditions as to filing in the proper land office and all requirements as to approval have been complied with, the lands are to be regarded as unsurveyed.

Scott K. Snievely
49 LD 583 (1923)

Where the evidence of a Government survey are sufficient for identification of the boundaries, differences in the measurements and areas of public lands from those shown in the returns of the official survey alleged by an owner asserting a claim for repayment on the ground of shortage does not afford a basis for resurvey.

State of New Mexico
51 LD 409 (1926)

A deficiency in acreage caused by alleged gross inaccuracies in surveys is not a ground for adjustment, since official surveys govern and each section or subdivision is considered as containing the exact quantity shown on the plat.

Hardee v. Horton
108 So. 189 (1926)

--map or plat representing no survey, but prepared by projecting lines of a prior erroneous Government survey on paper over space representing unsurveyed lands, although adopted in deeds as official map of grantor, is insufficient as a survey thereof.

--a complete title to unsurveyed lands does not vest in grantee until lands conveyed have been identified by authorized survey, though deed be grant in presenting title vests in grantee upon delivery of the deed subject to right of the State to identify and separate by a survey the lands conveyed from the unsurveyed lands within which they are included.

Amos D. Ruhl
52 LD 262 (1928)

Once a patent for public lands has issued, no executive officer of the Government is authorized to reconsider the facts on which it was issued, or to recall or rescind it.

J. E. Wilson
A 20395 5/21/37

--Once patent has issued, the land office is without power to adjust a controversy or to correct any error. Any remedy lies in the courts.

U.S. v. 11, 993.32 Acres of Land
116 F. Supp. 671 (1953)

Where a substantial strip of land was formed by accretion between the meander line as shown on the official plat of survey and the actual bank of the river between the date of survey and the date of patent, the patent conveyances "according to the official plat" carried with them the rights to the accreted realty.

WILLIAM B. COLLISTER

A-28480 Decided Dec. 5, 1960

Surveys of Public Lands: Generally

Where convincing evidence is presented that a plat of resurvey of a township does not reflect the true position of a particular patented entry, a cadastral investigation will be ordered to determine whether the tract shown on the resurvey plat to have been patented is, in fact, public land.

Weaver v. Knudson
127 N.W. 2d. 217 (1964)

The intent of the government is to be ascertained in construing the original patent; not the intent the government would have had if there had been no mistake, but the intent it actually had at that time.

The plat controls in determining what land was intended to be conveyed.

Where the U.S. Government conveyed a fractional lot according to the official plat, and there existed over the lower part of the lot a lake which was not meandered on the plat, which lake cut across the boundaries of the lot in such a way as to cut off a small triangular piece of land in the southwest corner of the lot, government is deemed to have intended to convey small triangular section as part of the lot.

U.S. v. State of Louisiana and Humble Oil Co.
229 F. Supp. 14 (1964)

The U.S. would be enjoined from officially filing a plat setting forth that certain lands in question were open to application, location, selection and petition under the Public Land Laws, where such official filing would result in a determination of the issues of ownership of the land involved.

The Department of the Interior does not have authority to determine ownership of land through surveys. . . .

Rasmus P. Nielson
Jim J. Snipes
A-30478 (7/21/66)

--A mineral segregation diagram which has not been officially approved and accepted for filing does not constitute a survey of public land.

U.S. v. Sidney M. and Esther M. Heyser
75 ID 14 (1968)

A patentee of public land takes according to the actual survey on the ground, even though the official survey plat may not show the tract as it is located on the ground.

Fontenelle v. Omaha Tribe of Nebraska
298 F. Supp. 855 (1969)

Generally, where a grant of land is made by patent, which refers to an official plat of the survey, the plat becomes a part of the patent and usually it cannot be collaterall, attached; where through mistake, fraud, negligence or for unknown reasons the true meander line of main water body has not been shown on the plat the official survey and plat are vulnerable to attach.

Richard Grainger, et. al. v. U.S.
197 Ct. Cl.1013 (1972)

Boundaries of land recited in a patent, even if incorrect, are conclusive upon the U.S. and the patenters and their successors.

A survey, even if incorrect, which is incorporated in a land patent becomes a part of the patent and is conclusive despite contrary or conflicting descriptions also incorporated in the patent.

In determining boundaries of land, ordinarily natural objects control over courses and distances, but an official government survey of lands prerequisite to patent issuance is considered controlling as to boundaries over broad, vague descriptions referring in general terms to natural objects.

U.S. v. Boyd
458 F. 2d. 1252 (1972)

--Federal law governs as to the construction of a patent and the quantum of premises which it purports to convey.

--Where the patent conveyed premises according to the plat, and the plat showed only water -- no land -- in the bay to one side of the tract, the patent conveyed title only to the edge of Lake Michigan, with the Government as riparian owner of lots extending to the edge of the lake, owner of accretions thereto.

Hudson Investment Co. et. al
IBLA 73-235 (1974)

--Where an internally inconsistent approved official plat was used in the issuance of the certificate and patent of a claim, the Register correctly resolved the inconsistency in acreage by using the distance calls over the computation of acreage, and such did not constitute a resurvey of the claim.

Chester H. Ferguson
IBLA 74-330 May 13, 1975

A patent of land from the U.S. conveys only land which is surveyed, and when surveyors have carried a survey only to a certain line, a grantee may not challenge the correctness of their action or claim land beyond that line under a patent issued in accordance with that survey.

U.S. v. Big Bend Transit Co.
42 F. Supp. 459 (1941)

Where the description in a conveyance is erroneous, that which is intended to be conveyed, rather than that which is described, is conveyed.

Courses and distances in instrument always give place, in questions of doubt or discrepancy, to know monuments and boundaries referred to as identifying the land.

Salt River Pima-Maricopa Indian Community
v.
Arizona Sand and Rock Co.
No. Cv-72-376-Phx (1976)

A patent is void ab initio if the land was not legally available for patent, or where land has not been surveyed.

There is a strong presumption in favor of patent where there is no gross error or fraud, but gross error may be evidenced by patent issued to land which has never been surveyed.

VOLUME I
Accretion

* Deerfield v. Pliny Arms

* New Orleans v. U.S.

* Johnston v. Jones

* Granger v. Swart

* County of St. Clair v. Lovingston

Wm Reninger

* Jefferis v. East Omaha Land

St. Louis v. Rutz

Gleason v. Pent

Naylor v. Cox

Nebraska v. Iowa

George Streeter

Harvey LaFollette

John J. Serry

French-Glenn Livestock Co. v. Springer

Survey--Owen's Lake, California

Bode v. Rollwitz * Harper v. Holston

Rules for establishing boundaries, Red River Okla.

R.M. Stricker

* Mecca Land & Exploration Co. v. Schlecht

Towl v. Kelly & Blankenship

* U.S. v. Eldredge

Wittmayer v. U.S.

Rex Baker

Madison v. Basart

Accretion

* State v. Gill
* U.S. v. 11,993 Acres

  Grape v. Lailling
* U.S. v. Washington (1961)
* U.S. v. Gas & Oil Development Co.
* U.S. v. Washington (1956)

  Sam K. Vierson
* Uhlhorn v. U.S. Gypsum
* Hughes v. Washington
* Fontennelle v. Omaha Tribe of Nebraska

  U.S. v. 62 Acres
* Pannell v. Earls
* Bonelli Cattle Co. v. Arizona
* Cobb v. Lavalle

Deerfield v. Pliny Arms
17 Pick. (Mass.) 41 (1835)

Establishing rules for the apportionment of accretion. (See also Johnston v. Jones, 66 U.S. 117)

New Orleans v. U.S.
10 Peters 662
35 U. S. 292 (1836)

One whose land is bounded by a stream which changes its course gradually by alluvial formations shall still hold the same boundary, including the accumulated soil. Every riparian proprietor is subject to loss by the same means which may add to his property.

Johnston v. Jones et al
1 Black 209
66 U. S. 209 (1861)

--affirming Jones v. Johnston (18 How. 150, 59 US 150)(1855) as laying down the rule for measuring the rights of riparian properties in the accretions formed along the water line.

Granter v. Swart
10 Fed Cases 961 [Case No. 5, 685] (1865)

If the lake or river extends to and borders on the meandered boundary line, accretions formed after date of entry belong to party holding title under the entry.

If there was a body of swamp or waste land between the bank of the river and the meandered survey line at the time entry was made, such land was not included within the entry.

William Reninger
1 LD 596 (1881)

Accretions formed by washing or recession become part of the lands they adjoin.

Jefferis v. East Omaha Land Co.
134 U.S. 178 (1890)

--Accretion is an addition to land coterminous with the water, which is formed so slowly that its progress cannot be perceived.

--Where a water line is the boundary of a given lot, that line remains the boundary, no matter how it shifts; thus, a deed of the lot carries all the land up to the water line, including any accretion.

Grape v. Laiblin
314 P. 2d. 335 (1957)

Where an owner loses a part of this land by a process of gradual and imperceptible erosion by the stream adjoining his land, and subsequently a bar or island formed in the bed of the river which was extended into the original boundaries of owner's land by accretions, with a slough separating owner's remaining land from said accretions, owner's boundary is at slough, and he has no title to accreted lands.

U.S. v. Washington
294 F. 2d.. 830 (9th Cir. 1961)
cert. denied 369 U.S. 817 (1962)

The question of ownership of accretions, where title to the uplands is in or derived from the federal government, will be determined in accordance with federal law.

Federal law follows the common law in determining the measure of the title to lands retained by the U.S.; at common law, the person whose land is bounded by sea, lake or river owns any additions thereto resulting from imperceptible accretions.

U.S. v. Gas and Oil Development
126 F. Supp. 840 (1954)

and

U.S. v. Washington
233 F. 2d. 811 (9th Cir. 1956)

Jurisdictional aspects of U.S. v. Washington, 294 F. 1d. 830.

Sam K. Vierson, Jr.
72 I.D. 251 (1965)

--Where an oil and gas lease offer refers to land applied for as being in a river bed, but the metes and bounds description, the acreage stated, the rental paid, and the area plotted on the photograph indicate that the description intended to cover some land that is now fast land as the result of accretion, a lease issued pursuant to the offer covers the described accreted land.

--The doctrines of accretion and reliction are not desirable tools for determining the coverage of oil and gas leases of riparian, accreted, and water-covered lands where the entire area is owned by the U.S.; the lessee of the upland lot gets what he paid for and his lease acreage is much less subject to variation.

Uhlhorn v. U.S. Gypsum Co.
366F. 2d. 211 (1966)

"Thalweg" defined as the main channel of navigation.

"Rule of thalweg" holds that where navigable river is the boundary between states, the true line is the middle or thread of the main channel of the river; change in boundary is acknowledged only if accomplished by slow, imperceptible or insensible processes of accretion and erosion.

Hughes v. Washington
389 U.S. 290 (1967)

Federal law controls the question of ownership of accreted land, gradually deposited by the ocean on adjoining upland property conveyed by the U.S. prior to statehood.

Under Federal law, a grantee of land bounded by navigable water acquires a right to accretion formed along the shore.

Hughes v. Washington
410 P. 2d. 20

Held that State owns accretions to upland formed after date of statehood.

Reversed by Hughes v. Washington, 389 U.S. 290.

Fontennelle et al v. Omaha Tribe of Nebraska
298 F Supp 855 (Nebraska) (1969)

Land added by accretion and reliction to tracts which were riparian at time of official survey is property of riparian owner.

Reliction -- the gradual recession of water from bank -- is governed by the same principles as accretion.

Even though a claim is based upon a grant from the U.S., the boundary of land on waters and streams is determined by the law of the State in which the land is situated. (But see, Hughes v. Wash.).

U.S. v. 62.57 Acres of Land
449 F. 2d. 5 (1971)

Where, at time of issuance of patents, portions of land described in patents were located on west side of river which thereafter moved eastward, accretions to land on west side of river resulting from further movement of river belonged to patentee's successors in interest, and not to the U.S.

Date of patent controlled date for determining position of river which had moved and caused accretions to west side, and doctrine of relation back to date of entry did not apply.

Pannell v. Earls
483 S.W. 2d 440 (1972)

--There is a strong presumption in favor of the permanency of boundary lines and when land lines are altered by the movement of a stream, it is presumed that the movement occurred by gradual erosion and accretion rather than by avulsion.

Overruled by:
Oregon State Land Bd. v. Corvallis Sand & Gravel Co.
429 U.S. 363 (1977)

Bonelli Cattle Co. v. Arizona
414 U.S. 313 (1973)

--Ownership of land once held by the State as a riverbed and later uncovered by a man-induced accretive process is a question governed by Federal law.

--Title to land abandoned by the Colorado River as a result of a Federal rechanneling project vests in the owner of land riparian to the river at the time of rechanneling, and not in the State as owner of the beds under navigable streams within its borders, since there was no longer a public purpose to be served by State ownership once the water has receded.

--See Oregon v. Corvallis Sand & Gravel Co.

Avulsion

Rancho Santiago de Santa Ana

* Nebraska v. Iowa

Bode v. Rollwitz

Harper v. Holston

U.S. v. Eldredge

Uhlhorn v. U.S. Gypsum

Pannell v. Earls

* Sandra Lough; Damon Blackburn - IBLA 75-614
76-93

Rancho Santiago de Santa Ana
1 LD 213 (1883)

--Where the boundary of a claim is a river which has suddenly changed its course, cutting off a part of the claim and joining it to the estate of another, the change does not deprive the claimant of the excised land; the boundary remains where the river ran at the date of the grant. Such an abrupt change is know as avulsion.

State of Neb. v. State of Iowa
143 U.S. 359 (1892)

--A riparian owner's boundary line remains the stream although the banks are changed by the gradual process of accretion; but the center of the old channel remains the boundary where a boundary stream suddenly abandons its old bed and seeks a new course by avulsion.

Bode v. Rollwitz
199 P. 688 (1921)

Where the channel of a river is suddenly and sensibly changed, as by reason of an ice-gorge, so that the old channel is abandoned, except in high water, and a new channel formed, no change in the boundary or ownership of land of riparian owners is worked thereby.

Harper v. Holston
205 P. 1062 (Wash. 1922)

--Where course of boundary stream changes by avulsion, boundary does not change.

U.S. v. Eldredge
33 F. Supp 337 (1940)

--The State of Montana was entitled only to the portion of certain land which was occupied by the Mo. River at the time of an avulsion, and extending to the ordinary low water mark.

--Lands in place when a survey was made with adjoining lands as homesteads, lying between the meander line and the low-water mark of the Missouri River, which subsequently changed its channel, continued to be the property of the U.S., except the abandoned bed of the river, which belonged to the State of Montana.

Uhlhorn v. U.S. Gypsum Co.
366 F 2d 211 (1966)

Where a stream which is a boundary abandons its old bed and seeks a new one, from any cause, such change of channel does not change the boundary, which remains as it was, in the center of the old channel, although no water may be flowing therein.

Pannell v. Earls
483 S.W. 2d 440 (1972)

--There is a strong presumption in favor of the permanency of boundary lines and when land lines are altered by the movement of a stream, it is presumed that the movement occurred by gradual erosion and accretion rather than by avulsion.

Avulsive Changes
Misc. File

--River changes - riparian rights #1435464 11/20/31

--Avulsive changes in Mo. River affecting title of lands in Nebraska and Dakota Territories #1317943 1/15/29

Re-emergence

* Mulry v. Norton
* Welles v. Bailey
* Naylor v. Cox
* Cox v. Arnold
* Wallace v. Driver
* Hughes v. Birney's Heirs
* Widdecombe v. Chiles
* Fowler v. Wood

  Randolph v. Hinck

* Allard v. Curran
* Yearsley v. Gipple
* Doebbling v. Hall
* Baumhart v. McClure

  Towl v. Kelly & Blankenship

  Rex Baker

  Edwin J. Keyser

* Herron v. Choctaw & Chickasaw Nations
* Grape v. Laibling
* Perry v. Ehrling

  J.M. Jones Lumber Co. 74 ID 417 (1967)

Re-emergence of Land after Erosion or Submersion

The courts are in conflict as to the right of riparian owners to accretions that occur on navigable waters within the boundaries of land gradually lost by erosion or submergence. The doctrine or re-emergence rests upon the "easy identification" of riparian land "lost" and "found" again by re-emergence. Beaver v. U.S., 350 F. 2d 4, cert den 383 U.S. 939 (1965). Some courts hold that a riparian owner whose land is submerged by water does not lose his property right therein if it is afterward restored, either by natural or artifical means, and that the lapse of time during submersion does not bar the owner's right to reclaim the land. Chicago v. Ward, 48 N.E. 927 (1897); Mulry v. Norton, 3 N.E. 581 (1885); Baumhart v. McClure, 153 N.E. 211 (1926); Fowler v. Wood, 85 P. 763 (1906); Gilbert v. Eldridge, 49 N.W. 679 (1891). These courts imply that the title of the true owner is destroyed or that it may be acquired by another person where the erosion is accompanied by a transportation of the land beyond the owner's boundary, or where the submergence continues for such a length of time as to preclude establishing the identity of the identity of the property. Mulry v. Norton, 3 N.E. 581 (1885); Herron v. Choctaw and Chickasaw Nations, 228 F. 2d 830 (1956).

Other courts hold that new land formed within the old boundaries along navigable waters will not belong to the riparian owner unless it begins to form on his shore. Wallace v. Driver, 33 S.W. 641 (1896); Frank v. Goddin, 91 S.W. 1057 (1906); Cox v. Arnold, 31 S.W. 592 (1895).

There is also disagreement as to the right to accretions where riparian land is washed away until former nonriparian land becomes riparian, and then, beginning on the shore of the latter, the land reforms until it extends across the former line between the two owners. One line of cases reasons that all original lines submerged by the water have ceased to exist and that the whole of the reformed land belongs to the owner of the land against which it started to reform under the law of accretion, even where the accretion extends beyond the original boundary lines of the former nonriparian owner onto land belonging to the original riparian owner. Welles v. Bailey, 10 A 565 (1887); Doebbeling v. Hall, 274 S.W. 1049 (1925); Widdecombe v. Chiles, 73 S.W. 444 (1903); Yearsley v. Gipple, 175 N.W. 641 (1919). Other courts maintain the contrary doctrine, that the original riparian owner is entitled to all accretions beyond the line which formerly separated the two proprietors' lands. Ocean City Ass'n v. Shriver, 46 A. 690 (1900); Perry v. Erling, 132 N.W. 2d 889 (1965); Allard v. Curran, 168 N.W. 761 (1918); Erickson v. Herlyk, 205 N.W. 613 (1925). The reasoning of these courts is that where the boundary line can be re-established, there is no justification for depriving the original owner of his land, merely because the river had, at some time, touched formerly non-riparian land.

If the riparian owner owns the fee to the bed of the stream, land newly formed by accretion belongs to him although it extends beyond the shoreline as it existed before a washing away of the land which preceded the new accretion. St. Louis v. Rutz, 138 U.S. 226 (1891). If a navigable river suddenly encroaches upon adjoining private land, the

title to the submerged portion remains in the former owner, so that if land arises to the surface, either through accretion or a change in the channel of the stream, dominion reattaches thereto as if never suspended. Fowler v. Wood, 85 P. 763 (1906); Keel v. Sutton, 219 S.W. 351 (1919). Thus where accretions occupied the situs of former land which had been submerged, the court held that the accretions inured to the benefit of the former owner of that land. Stockley v. Cissna, 119 F. 812 (1902). The court said it could not be pretended that because the surface of the land had been washed away, the owner lost his title to the land so submerged; land lost by erosion or submergence is regained to the original owner of the fee when by reliction or accretion the water disappears and the land emerges. In this case, this conclusion was reached even though the title to the land bordering on the river was held to extend only to low-water mark. Stockley v. Cissna, supra. But in a contest between a grantee in a riparian grant from the state and one claiming under a deed from the former owner of the submerged land, which had been restored, the court held that the grantee of land bordering on the ocean has a right to follow accretions thereto, even though they extend across the place where the grantor's land has been before it was lost by erosion. Dewey Land Co. v. Stevens, 90 A 1040 (1914).

If an owner of a body of land, a part of which has been submerged, conveys the upland and retains title to the remainder, the purchaser, upon the reappearance of the submerged portion, can include it within his boundary only through the processes of accretion or reliction. Fowler v. Wood, 85 P. 763 (1906). But in another case, the court held that conveying all riparian rights in land adjacent to an inland navigable lake, the grantor thereby transfers all right, title, and interest in and to lands reappearing after submergence for a number of years. Doiron v. O'Bryan, 51 So. 2d 628 (1951).

The fact that land within the original boundaries of a tract is not wholly washed away does not entitle the former owner to all land replaced by accretions within such boundaries, but the replacement will be divided between those owning the shore after the erosion as though the line existing when the accretion began was the original water boundary. Doebbeling v. Hall, 274 S.W. 1049 (1925).

Mulry v. Norton
3 N.E. 581 (1885)

--Land lost by submergence may be regained by reliction, and its disappearance by erosion may be regained by accretion, upon which the ownership temporarily lost will be regained. The lapse of time during which the submergence continues does not bar the right of such owner to enter upon the land reclaimed and assert his proprietorship.

--Private beach which is submerged does not become state property unless the erosion is accompanied by a transportation of the land beyond the owner's boundary, or the submergence continues for such a length of time as to preclude establishing the identity of the property.

Welles v. Bailey
10 A. 565 (1887)

--Where plaintiff and defendant were originally adjoining upland owners, but, by a change in the bed of the river, the adjoining portions of their lands became submerged, after which the river gradually receded from plaintiff's land and encroached on the land of the defendant until it passed the original boundary, the original lines ceased to exist by virtue of the submersion and plaintiff became a riparian owner with all the accompanying rights of accretion and reliction.

--Plaintiff's right to accretion was not limited to his original boundaries, and included accretion which was land originally belonging to the defendant.

Naylor v. Cox
21 S.W. 589 (1892)

--If, after the original survey, a part of a fractional section is washed away by the river, and the main channel of the river covered the place where it originally stood for any considerable length of time, and afterwards accretions to a nearby island formed, and gradually extended over what was originally the fractional section, the accretions belong to the owner of the island.

Cox v. Arnold
31 S.W. 592 (1895)

--Where a portion of a fractional section bordering on a navigable stream was washed away by the current, and an accretion formed from an island in the river, and extended within the boundaries of the section, but did not connect with the new shore line, the owner of the section holds no title to any part of the accretion.

Wallace v. Driver
33 S.W. 641 (1896)

Where land of a riparian owner on a navigable stream is gradually and imperceptibly washed away, and the place where it remains for many years the bed of the river, such owner does not acquire title by accretion to new land subsequently formed within his original boundaries, unless its formation began at the high water mark.

When a part of land belonging to a riparian owner is washed away by sudden and perceptible process, new land subsequently formed on the submerged portion belongs to such owner.

Hughes v. Birney's Heirs
32 S. 30 (1902)

If after submergence, the water disappears from the land, either by gradual retirement or by the elevation of land by natural or artificial means, and its identity can be established by reasonable marks, or by situation, extent, quantity or boundary lines, the proprietership returns to the original owner.

Widdecombe v. Chiles
73 S.W. 444 (1903)

--Where the owner's land consists of the south half of a section of land between which and the river bed there was originally an 8-acre strip of land forming the fractional north half, and the 8-acre strip is washed away by the river and is eventually rebuilt by accretion, extending 200 acres further than the original boundary line, such accretion belongs to the owner, and any patent for the fractional north half of the section as described by the original survey, issuing after the accretion, does not extend to the additional 200 acres of accretion.

Fowler v. Wood
85 P. 763 (1906)

If, through the deposit of alluvion upon the former site, a deflection of the current of the river, or other action of the water, land submerged by avulsion is made to reappear, it may be reclaimed, if its identity can be established.

If the owner of a body of land, a part of which has been submerged, conveys the upland and retains title to the remainder, the purchaser, upon the reappearance of the submerged portion, can include it within his boundary only by processes of accretion or reliction.

Where a quantity of land is apportioned between owners, and subsequently land which was submerged at time of survey made for purposes of apportionment reappears, the owners are entitled to a partition of the undivided land with its accretions.

Randolph v. Hinck
115 N.E. 182 (1917)

Where island which was totally submerged at one time, and remained so for a considerable length of time, subsequently reappeared and was capable of identification by its original description, owner before time of submergence retains title.

Allard v. Curran
168 N.W. 761 (1918)

Where a river gradually washed away lots in section 31 belonging to the plaintiff, until they becam submerged, and encroached on the southwest quarter of section 30 upon some owned by the defendant, so that he became the riparian owner, and thereafter the land submerged was by gradual deposit restored, the lots in section 31 did not become the property of defendant on the theory that the old boundary was extinguished.

Yearsley v. Gipple
175 N.W. 641 (1919)

--If lands become riparian by the washing away of adjoining lands, the owner is entitled to the right of a riparian owner to accretions, even though they extend beyond the original boundary line of his land.

Doebbeling v. Hall
274 S.W. 1049 (1925)

Where land bordering on a river is washed away until nonriparian land becomes riparian, and is then replaced by accretions, the accretions belong to the former nonriparian owner, although they pass beyond the former line dividing the two tracts.

Accreted lands are apportioned between adjoining riparian owners according to the proportionate part of the river frontage that each riparian owner had at time that accretions began to form.

Baumhart v. McClure
153 N.E. 211 (1926)

Land lost by submergence may be regained by reliction, and its disappearance by erosion may be returned by accretion, whereupon ownership temporarily lost may be restored.

Holder of legal title to lot lost by submergence has title upon reappearance of land, as against claimant by accretion or reliction.

Riparian owner may gain land by accretion or reliction, or lose it by slow erosion, but not by sudden avulsion as a result of storm.

Towl et al. v. Kelley and Blankenship
54 I.D. 455 (1934)

--Where surveyed public lands bordering on a navigable stream and to which the U.S. has not parted with title, are eroded in their entirety by the action of the stream, and later restored by accretion, title to the restored lands is in the U.S. and not in the owners of the remote non-riparian lands which were shore lines for a time.

Rex Baker
58 LD 242 (1942)

--Where waters gradually eroded and submerged all of the land within the tracts, and following this submergence, land in the form of a sandbar reappeared, caused by the recession of the waters and by accretion to private land, the question of title thereto is governed by the law of the State in which the land reappeared.

--Neither the laws of Arkansas nor Tennessee afford sufficient basis for holding that the reappeard land become the property of the U.S.

Edwin J. Keyser (1954)
61-LD 327
A-26836

Where land which was originally within the boundaries of an Indian reservation has been eroded away by the current of the river which was the boundary, and, after being submerged has reappeared as fast land attached to the opposite bank, the land is no longer within the reservation.

Herron v. Choctaw and Chickasaw Nations
228 F. 2d. 830 (1956)

Where, because of inroads of a river, riparian land is lost by erosion or submergence, but through subsequent change in the course of the river, water disappears and land reappears, and boundaries are susceptible of definite identification, title to restored lands (and accretions) is vested in owner of fee at time erosion or submergence occurred.

Each state determines for itself questions relating to loss of land by erosion, submergence or avulsion, and questions concerning acquisitions of land by accretion.

Grape v. Laiblin
314 P. 2d. 335 (1957)

Where an owner loses a part of this land by a process of gradual and imperceptible erosion by the stream adjoining his land, and subsequently a bar or island formed in the bed of the river which was extended into the original boundaries of owner's land by accretions, with a slough separating owner's remaining land from said accretions, owner's boundary is at slough, and he has not title to accreted lands.

Perry v. Erling
314 P. 2d. 335 (1957)

--Where land which was riparian at time of original survey is lost by erosion, so that nonriparian land becomes riparian, and land is thereafter built by accretion to the land which was originally nonriparian, extending over the location formerly occupied by original riparian land, owner of land which was originally nonriparian only has title to the accreted land within the boundaries of the formerly nonriparian tract, and all other land so accreted, extending over the area formerly occupied by land of the original riparian owner, becomes property of the owner for the original riparian land.

SUBSIDENCE

* State v. Western Tennessee Land Co.

  Welles v. Bailey

State v. Western Tennessee Land Co.
158 S.W. 746 (1913)

The fact that land was submerged by a navigable lake, created by an earthquake, after the land was granted by the State, would not deprive owners of their title to the land, so long as it could be reasonably identified.

Welles v. Bailey
10 A. 565 (1887)

--Where plaintiff and defendant were originally adjoining upland owners, but, by a change in the bed of the river, the adjoining portions of their lands became submerged, after which the river gradually receded from plaintiff's land and encroached on the land of the defendant until it passed the original boundary, the original lines ceased to exist by virtue of the submersion and plaintiff became a riparian owner with all the accompanying rights of accretion and reliction.

--Plaintiff's right to accretion was not limited to his original boundaries, and included accretion which was land originally belonging to the defendant.

LAKES

Hardin v. Jordan

John P. Hoel

Instructions 1-12

Amanda Hines

F.M. Pugh

Boord v. Girtman

Lamprey v. Metcalf

Edward C. Hill

* Carpenter v. Board of Commissioners

George Streeter

Hardin v. Shedd

Palo Alto County (State of Iowa)

Survey -- Owens County, California

Julius A. Stroehle

William Erikson

Rust-Owen Lumber Co.

* U.S. v. Holt State Bank

U.S. v. Oregon

* Grayce R. Hiler

Navigable Waters in Alaska

* Utah State Land Board

State of Utah

* State of Montana

* Utah v. U.S. (1967, 1969, 1977, 1972, 1974)

Hardin v. Jordan
140 U.S. 371 (1891)

By common law, under a grant of lands bounded on a lake or pond which is not tidewater and is not navigable, the grantee takes to the center of the lake or pond, ratably with other riparian proprietors, if any.

John P. Hoel
13 LD 588 (1891)

An application for the survey of land covered by a nonnavigable lake must be denied where it appears that the lake has been meandered and the adjacent land disposed of by the Government, as the land beneath the lake belongs to the adjoining riparian owners.

Instructions - 1-12 - 1892
14 LD 119

If none of the lots contiguous to a former nonnavigable meandered lake or pond have been patented or applied for, the land previously covered by the water which has become dry and fit for agricultural use may be surveyed and disposed of as Government land.

Amanda Hines
14 LD 156 (1892)

The riparian ownership of an allottee whose lands are adjacent to a meandered nonnavigable lake, which is dry during the greater part of the year, includes the lands to the middle of the lake.

F.M. Pugh et al.
14 LD 274 (1892)

The Government has no jurisdiction to order a survey of lands lying within the meander line of a nonnavigable lake, where the lands adjacent thereto have been patented or applications filed therefor.

Boord v. Girtman
14 LD 516 (1892)

The Government cannot claim and convey land lying between the meander line and of an approved official plat and survey and the shoreline, where the lands have been bought, sold, and cultivated in good faith with the understanding that the lake shore was the boundary and where, if there was an error in the amount of land, it was so small as not to be easily detected. The purchaser of such meandered tract lying on the border of the lake takes title to the shoreline.

Lamprey v. Metcalf
53 N.W. 1139 (1893)

The same rules govern the rights of riparian owners on lakes or other still waters as govern the rights of riparian owners on streams. Thus, if a meandered lake is nonnavigable in fact, the riparian owner takes to the center of the lake; if it is navigable, the riparian patentee takes only to the water line.

Edward C. Hill
17 LD 568 (1893)

An application for the survey of a small tract of land lying between the meander line of a lake and the water's edge will not be granted, where the original survey has stood for a number of years, even though the meander line did not exactly indicate the true water line and a small fraction of land was omitted.

Carpenter v. Board of Com'rs of Hennepin County
58 NW 295 (1894)

--"High-water mark" as a line between the public and riparian owners on navigable waters where there is no ebb and flow of the tide is to be determined by examining the bed and banks, and ascertaining where the presence and action of the water are so common and usual as to mark on the soil of the bed a character distinct from that of the banks in respect to vegetation as well as the nature of the soil.

--Where the banks are low and flat and the water does not impress on the soil any well-defined line of demarcation between the bed and the banks, the effect of the water on vegetation is the principal test in determining the location of high water mark. High water mark is the point up to which the presence and action of the water is so continuous as to destroy the value of the land for agricultural purposes.

--The bed does not include low lands which, although subject to frequent overflow, are valuable as meadows and pastures.

George W. Streeter et al.
21 LD 131 (1895)

--Where a lake has been filled in by a person or corporation, such party does not acquire any riparian rights; nor does this make land belong to the Government, and the Interior Department has no jurisdiction to direct the survey or disposal of such land.

Hardin v. Shedd
190 U.S. 508 (1903)

When land bounded by a navigable lake is conveyed by the U.S., the land under the water belongs to the State by virtue of its admission to the Union.

In the case of land bounded on a nonnavigable lake, the U.S. assumes the position of a private owner subject to the general law of the State so far as its conveyances are concerned.

Palo Alto County (State of Iowa)
32 LD 545 (1904)

Land department has no authority to survey as public lands tracts which were at the date of the township survey properly indicated as covered by the waters of an apparently permanent lake.

Survey-Owens Lake, California
Ownership of Lands Uncovered by Water's Recession
43 LD 68 (1917)

Ownership of all lands covered by the waters of Owens Lake at the date of admission of California into the Union was in the State of California, and any as may have been uncovered since that date are not in any sense public lands of the United States.

Julius A. Stroehle
47 LD 72 (1919)

Under applicable common law ownership of bed of a nonnavigable lake is in the riparian owner; ownership of bed of a navigable lake is in the State.

Wm. Erickson
50 LD 281 (1924)

An unrestricted patent issued by the Government conveying public lands abutting upon a nonnavigable lake in the State of Montana, in which the common law with respect to riparian proprietorship has been adopted, carries with it absolute title to the lake bed.

Prior to issuance of an unrestricted patent, the U.S. may dispose of the bed of the lake separate from the uplands without regard for local law.

Rust-Owen Lumber Co.
50 LD 678 (1924)

With respect to public lands bordering on nonnavigable bodies of water, the Government assumes the position of a private owner, and when it parts with title to those lands, without reservation or restriction, the extent of the title of the patentee to the lands under water is governed by the laws of the State which the lands are situated.

U.S. v. Holt State Bank
270 U.S. 49 (1926)

--Navigability, when asserted as the basis of a right arising under the constitution, is a question of Federal laws, and by the Federal rule, streams or lakes which are navigable in fact are navigable in law.

--Mud Lake, within the limits of an Indian reservation, was navigable when Minnesota was created a State and the land under the lake passed to the State, since there was no affirmative declaration of the rights of Indians therein, nor any attempted exclusion of others from the use of navigable waters.

U.S. v. Oregon
295 U.S. 1 (1935)

--Title to land within the meander line of a nonnavigable lake did not pass to the State as incident to ownership of abutting uplands granted by the U.S. where prior to approval of the survey of such lands and lake had been set aside by Executive Order.

--the construction of U.S. grants and the extent of title granted therein is a Federal question.

--Title of the U.S. toland underlying nonnavigable lakes remains unaffected by the creation of a new State.

GRAYCE R. HILER

A-27370 Decided December 19, 1956

Public Lands: Riparian Rights -- School Lands: Indemnity Selections

Where the United States has certified to a State, which follows the common law, as school indemnity selections, lots abutting on a meandered nonnavigable lake, the title to the bed of the lake passes to the State.

Surveys of Public Lands: Generally

Although the Secretary of the Interior may survey any public lands which have been erroneously omitted from a survey, a plat of survey once accepted is presumed to be correct and will not be disturbed except upon clear proof of fraud or gross error and an application for a survey of omitted land, in such circumstances, is properly rejected.

Oil and Gas Leases: Lands Subject to

An application for an oil and gas lease for lands in the bed of a nonnavigable lake must be rejected where it is determined the lake bed is not public land.

Rules of Practice: Supervisory Authority of Secretary

The Secretary of the Interior may assume jurisdiction of any matter before the Department at any time and act directly upon it himself wityout waiting for the matter to be presented on appeal.

Navigable Waters in Alaska
M-36596 March 15, 1960

Lakes may be navigable because their size and location makes them adaptable to useful commerce, but unless they form links in a chain of navigable waters or are so situated as to be useable for useful trade or travel in the ordinary and usual manner, size alone is no criterion even though the depth of the water may be sufficient for purposes of navigation.

State of Utah
70 LD 27 (1963)

Where the high water mark of a navigable lake is not capable of being deduced from physical evidence, the lake shall be meandered along the waters edge as of the time of the survey. This case concerns the Great Salt Lake where the mean high tide has not left any permanent impress in the soil because the surrounding lands are so flat that they presented no resistant surface against the waters, and where there is no vegetation to use in determining the presence and action of water against the shore.

State of Montana
IBLA 72-189 May 17, 1973

--A lake is navigable when it is used, or is susceptible of being used, in its ordinary condition, as a highway for commerce. A meandered lake, not over waist deep, is nonnavigable where it is located in a remote region and there is no evidence to show that it has been or is capable of being used as a highway for commerce.

--Title to the underlying bed of a meandered nonnavigable lake is in the U.S. where the abutting uplands surrounding the lake are public lands.

Utah v. United States
403 U.S. 9 (1971)

--Great Salt Lake was navigable at the date of Utah's admission to the Union, and the lake bed passed to Utah at that time (adoption of the special Master's report).

Utah v. United States
406 U.S. 484 (1972)

--Special Master to be appointed to determine whether the doctrine of reliction applies and, if so, whether Utah is divested of any right, title, or interest to any or all of the exposed shorelands between the water's edge of June 15, 1967 (date of deed from U.S. to Utah), and the meander line.

U.S. Surveys

Color-of-title within boundaries of facensite #3247 Alaska 10/31/55 Riparian rights defeat dedication #3303 Alaska.

RIVERS

* Alabama v. Georgia
* Gibson v. Kelley
* Willow River Club v. Wade
* Sun Dial Ranch v. May Land Co.

Tempel v. U.S.

* Arkansas v. Tennessee
* Commissioners of Land Office of Oklahoma v. U.S.

Rules for establishing boundaries, Red River, Oklahoma

Rust-Owen Lumber Co.

Oklahoma v. Texas (1922)

* Oklahoma v. Texas (1925)

Towl v. Kelly & Blankenship

Ownership of land, Fort Berthold Indian Reservation

* U.S. v. Claridge
* Arkansas Land & Cattle Co. v. Anderson-Tully Co.

Alabama v. Georgia
23 How. 505, 64 U.S. 556 (1859)

Discussion of terms: river, bed, bank, shore, channel.

The bed of a river is that portion of its soil which is alternately covered and left bare, as there may be an increase or diminution in the supply of water, and which is adequate to contain it at its average and mean stage during the entire year, without reference to the extraordinary freshets of winter and spring, or the extreme droughts of summer and autumn.

Gibson v. Kelley
39 P 517 (1895)

--The title of a riparian owner on a non-tidal, navigable river in Montana extends to the ordinary low-water mark, subject only to the public use of navigation and fishing.

Willow River Club v. Wade
76 NW 273 (1898)

--Rivers are navigable in fact, and therefore, in law, when they are used or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

Sun Dial Ranch v. May Land Co.
119 P. 758 (1912)

The bank of a river is that line or ridge of earth which contains the river, holding the natural direction of its course, and if at any time the river has overflowed for a time that line, it does not by such overflow change its bank within the rule fixing high-water mark as a boundary between a riparian owner and the public.

cites the "vegetation test" for ascertaining high-water mark.

Tempel v. U.S.
248 U.S. 121 (1918)

--Under Illinois law, riparian owners own to the middle of a navigable river subject to the right of the U.S. to make improvements thereon for navigation.

Arkansas v. Tennessee
246 U.S. 158 (1918)

--When two States are separated by a navigable stream and their boundary is described as "a line along the middle of the river" or as "the middle of the main channel of the river," the boundary must be fixed (by the rule of "thalweg") at the middle of the main navigable channel, subject to change by erosion and accretion, so that each State may enjoy an equal right of navigation.

Commissioners of Land Office of Okla. v. U.S.
270 F. 110 (1920)

Where a river changes its main channel, not by excavating, passing over and then filling in the intervening space between its old and its new channels, but by flowing around the intervening land, as by gradually enlarging a smaller channel so that in time it becomes the main channel, a boundary which was fixed as the main channel remains in the old channel, subject to changes in the channel wrought by erosion or accretion while it remains a running stream.

Rule for Establishing Boundaries of Riparian Claims in the North Half of the Bed of Red River, Oklahoma

50 LD 216 (1923)

--In establishing the side boundaries of claims of riparian proprietors to the area between the original meander line and the medial line of the non-navigable Red River, lines should be drawn from points representing the limits of frontage of the original claims on the meander line to points on the medial line at distances thereon proportionate to the lengths of frontage of the respective abutting owners.

Rust-Owen Lumber Co.
50 L.D. 678 (1924)

--Disposal of beds of nonnavigable waters following Government patent is governed by the law of the state in which the land lies.

Oklahoma v. Texas
258 U.S. 574 (1922)

--No part of the Red River in Oklahoma is navigable, as its use for transportation is confined to irregular and short periods of temporary high water.

--When the U.S. owns the bed of nonnavigable stream and the upland on one or both sides, it may retain all or part of the bed while disposing of the upland.

Oklahoma v. Texas
268 U.S. 252 (1925)

--A river bank boundary, whether public or private, follows any changes caused by erosion and accretion.

Towl et al. v. Kelly and Blankenship
54 I.D. 455 (1934)

--Where surveyed public lands bordering on a navigable stream and to which the U.S. has not parted with title, are eroded in their entirety by the action of the stream, and later restored by accretion, title to the restored lands is in the U.S. and not in the owners of the remote nonriparian lands which were shore lines for a time.

Ownership of Island within Boundaries of Ft. Berthold Indian Reservation
55 I.D. 475 (1936)

--Where, prior to the admission of a territory to statehood, an Indian reservation located therein had been established which included lands on both sides of a river traversing a portion of the reservation, and the state, on admission, disclaimed all right and title to Indian lands, an island formed in the river after the admission of the state into the Union, the island is part of the reservation and not the property of the state.

U.S. v. Claridge
416 F. 2d. 933 (1969)

Any change in the course of the Colorado River's course has resulted from gradual erosion and not from avulsion, regardless of where high-water mark is located, so that resulting accretions pass to U.S. as riparian owner, not to Arizona as owner to high-water mark of lands covered by navigable, nontidal waters at time of statehood; whether Hoover Dam affected the course of the river is of no significance, for it did not result in avulsive changes and was not constructed for purposes of reducing riverbed holdings.

Ordinary high-water mark of a river is a natural physical characteristic placed upon the land by the action of the river. It is placed there by the ordinary flow of the river, and does no extend to the peak flow or flood stage so as to include overflow on the flood plain; nor is it confined to the lowest stages of water flow.

Arkansas Land and Cattle Co. v. Anderson - Tully Co.
452 SW 2d 632 (1970)

--River boundaries generally follow the changing channel of a river when change is not sudden and violent.

--But the boundary remains in the same place whenever a river changes its main channel, not by excavating, passing over, and then filling the intervening place between the old and new channel, but by flowing around intervening land, which never becomes the main channel in the meantime. The change from old to new channel is wrought over a period of years by the gradual or occasional increase of the proportion of the waters passing over the course until the greater part of the waters flow through the new channel.

Group Numbers

--Red River through Oklahoma and Cimarron ruled nonnavigable

Gp. 23, Oklahoma

--Sample of plat filing instructions for plat containing PSR - PSC

Gp. 235, Utah
Gp. 333, Arizona

Statutes

--Act authorizing the President to direct a change in the mode of surveying the public lands on any river, lake, bayou, or water course when necessary to promote the public interest.

4 Stat. 34
May 24, 1824

MEANDER LINES

* Railroad Co. v. Schurmeier

Rancho Santiago de Santa Ana

James H. May

* Bissell v. Fletcher

James Shanley

James Hemphill

* Everson v. City of Waseca

Hardin v. Jordan

John W. Moore

* Mitchell v. Smale

Tolleston Club of Chicago v. State

Watson H. Brown

* Grand Rapids & Indian Railroad Co. v. Butler

Horne v. Smith

Kean v. Roby

Harvey M. LaFollette

W.L. Hemphill

John J. Serry

French-Glenn Livestock Co. v. Marshall

Niles v. Cedar Point Club

* French-Glenn Livestock Co. v. Springer

* Kean v. Calumet Canal & Improvement Co.

* Security Land & Exploration Co. v. Burns

* Brown v. Dunn

* Barringer v. Davis

Cawlfield v. Smith

MEANDER LINES

* Chapman & Dewey v. St. Francis

  Whiteside v. Norton, Norton v. Whiteside

* Producer's Oil Co. v. Hanzen

  Alaska Unified Gold Mining Co. v. Cincinnati-Alaska Mining Co.

* Lord v. Curry

* Lee Wilson & Co. v. U.S.

* Greene v. U.S.

  Bode v. Rollwitz

  Lane v. U.S., U.S. v. Lane

* Wisconsin Reality Co. v. Lull

  Mecca Land & Exploration Co. v. Schlecht

  Marco Island

  Brothertown Realty Co. v. Reedal

* Gardner v. Green

* Thomas Bishop v. Santa Barbara County

  U.S. v. Eldredge

* Wittmayer v. U.S.

  Madison v. Basart

* Richard L. Oelschlager

* Weaver v. Knudsen

  Bernard & Myrle Gaffney

* Udall v. Oelschlager

* Trustees of Internal Improvement Fund v. Wetstone

  Mable M. Farlow

Railroad Co. v. Schurmeir
74 U.S. 272 (1868)

The meander line is not the boundary of a tract bordering upon a navigable river; it is run to define the sinuosities of the banks of the stream and to ascertain the quantities of land in the fraction subject to sale.

Rancho Santiago de Santa Ana
1 LD 213 (1883)

--A boundary which is to terminate at the seashore reaches its termination where it intersects the line of ordinary high water, at the head of an inlet, or arm of the sea.

James H. May
3 LD 200 (1884)

--Meander lines about a lake are not lines of boundary, and grants by the Government of lands bordering on such lake extend at least to the permanent water line of the lake.

Bissell v. Fletcher
28 N.W. 303 (1886)

Where lands had formerly extended to the meander line, and the testimony showed that there had been a change in the channel of a river of about three-fourths of a mile, but no accretion to the owner's land, the boundaries of his land did not extend to the new channel, nor beyond the meander line.

James Shanley
5 L.D. 641

An entry including tracts lying on opposite sides of a meandered stream, made under existing rulings and practices, will not be disturbed.

James Hemphill
6 LD 555 (1888)

--Meander lines are run to determine quantity of land subject to sale; the true boundary is the water line.

Everson v. City of Waseca
46 N.W. 405 (1890)

A patent from the U.S. of a surveyed fractional government subdivision, bounded on a meandered lake, conveys the land to the lake, although the meander line of the survey be found to be not coincident with the shore line; the purchaser is not estopped to assert that his title extends to the lake, and beyond the meander line.

Hardin v. Jordan
140 U.S. 371 (1891)

--Meander lines are run to determine the exact quantity of upland to be charged for, but the waters themselves constitute the real boundary.

John W. Moore
13 LD 64 (1891)

--A meander line determines the quantity of land subject to sale, but the water line forms the true boundary of the tract.

--When a tract has been surveyed, sold, and has passed to subsequent purchaser, a survey will not be authorized of land that may lie between the meander and water lines.

Mitchell v. Smale
140 U.S. 406 (1891)

Meanders are run to define the sinuousities of the stream, but the stream or lake is the boundary.

The projection of a strip or tongue of land beyond the meander line of the survey is entirely consistant with the water of the pond or lake being the natural boundary of the granted land, which would include the projection if necessary, to reach that boundary.

Tolleston Club of Chicago v. State
38 N.E. 214 (1894)
40 N.E. 690 (rehearing denied)

Where, under a patent from the U.S. the state acquires title to a section of land, partly within and partly without a meander line, and the dry land without the meander line is divided into lots, and there is nothing to indicate that it was intended to bound the lots by such meander line, a patent from the state of one of the lots, describing it by its number and section, conveys the whole thereof to the opposite section line.

The term "fractional" as used in describing a section of land partly within and partly without a meander line, to the circumstance that the section does not contain 640 acres of dry land, and does not bound the same by the meander line.

Watson H. Brown
20 LD 315 (1895)

--Land lying between a properly established meander line of a lake and the shore line of the water is not unsurveyed land, but forms and adjunct of the adjacent subdivision.

Grand Rapids and Indiana R'd Co. v. Butler
159 U.S. 87 (1895)

--A grantee of land bounded by a river takes title to all islands lying between the meander line and the middle thread of the river in the absence of express reservation to the contrary.

Horne v. Smith
159 U.S. 40 (1895)

--Where the meander line of the plat for a 170-acre tract is the water line of a bayou rather than that of the main body of the river, and a 530-acre tract between the bayou and river is unsurveyed, the patent for the surveyed tract has the bayou as its boundary, and not the main body of the river.

Kean v. Roby
42 N.E. 1011 (1896)

The original survey, despite fact that it meandered a body of water within the area encompassed by such survey, held to have been a sufficient survey; therefore patent in 1853, under Swamp Land Act of 1850, conveyed all land dry or covered by water within the lines of such sections: land which was meandered by original survey is not unsurveyed land.

Harvey M. LaFollette et al.
26 LD 453 (1898)

--The lines of survey run along permanent bodies of water are run as meander lines, the water itself being the true boundary line of the land to be sold. All accretions after survey and prior to patent pass under the patent when issued.

W.L. Hemphill et al.
27 LD 119 (1898)

--Land excluded from the public surveys by the establishment of a fictitious meander line should be surveyed and disposed of under the public land laws.

John J. Serry, et al.
27 LD 330 (1898)

The purchaser of a meandered fractional tract takes to the water line, and if the Land Department has any authority thereafter to order a resurvey of such land, it should be exercised only in exceptional cases, on a clear showing of flagrant mistakes and disregard of regulations in the execution of the original survey.

French-Glenn Live Stock Co. v. Marshall
28 LD 444 (1899)

--The meander line is run to ascertain the quantity of land in the subdivision rendered fractional by reason of their bordering upon the water, not to mark the boundary.

Niles v. Cedar Point Club
175 U.S. 300 (1899)

--The meander line is the boundary, where the surveyor erred in not extending his surveys into the marsh.

French-Glenn Live Stock Co. v. Springer
185 U.S. 47 (1902)

--While if there was a lake abutting the lot, plaintiff would take all land between meander line and water, it was competent for defendant to show that there was never any such lake and therefore no intervening land.

Kean v. Calumet Canal & Improvement Co.
190 U.S. 452 (1903)

Where the state of Indiana acquired land from the U.S. under the Swamp Land Act of 1850, the patent describing the whole of fractional sections bordering on non-navigable water between Indiana and Illinois, it acquired all land under water up to the line of the state, such being the local law of Indiana.

The making of a meander line has no certain significance and does not necessarily import that the tract on the other side of it is unsurveyed or will not pass by conveyance of the upland shown by plat to border on the lake.

Security Land and Exploration Co. v. Burns
193 U.S. 167 (1904)

--Where the plat is the result of gross fraud and adopting the lake as it is actually located would increase patentee's land fourfold, the false meander line can be regarded as a boundary.

Brown v. Dunn
115 NW 1097 (1908)

--The rule that a body o water appearing on the survey and plat as the boundary of a tract of land will constitute the boundary, however distant from the position indicated for it by the meander line, and the limitation that the rule does not apply where the body of water is so far from the tract that it cannot be supposed that the plat indicates a purpose to make it the boundary, can have no restrictive effect where the contour of a lake 60 rods from the meander line is similar to that shown by the meander line; and where no other lands are surveyed or conveyed by the Government which can interfere with the projection of the lines of the lot in question.

Barringer v. Davis
120 NW 65 (1909)

Where, by mistake or fraud in a survey, a meander line has been run where no lake or stream exists, or where it is established at such a distance from the actual shore as to leave between its course and the shore an excess of unsurveyed land so great as to clearly indicate fraud or mistake in the survey, and the U.S. has not parted with its right to the land so left unsurveyed, it may cause a survey to be made, and dispose of such land as a part of the public domain.

Where lots were conveyed with reference to the original survey, which showed the north and south lines of the section ending at meander posts upon the shore, and the meander line between them coinciding with the shore, which so marked as constituting the east boundary of the lots, the shore of the lake, and not the meander line as actually run on the land, is the boundary.

Cawlfield v. Smith
138 P. 227 (1914)

If by mistake or fraud a surveyor omits large tracts, placing them inside a meander line instead of bounding them by the survey of the meander line with reasonable accuracy, the purchasee of abutting lands will take only to that line and not beyond.

Chapman and Dewey v. St. Francis
232 U.S. 186 (1914)

A patent for the "whole" of a township "according to the official plat of the survey" is construed, in view of what appeared on the plat and of the acreage specified in the patent, as embracing the whole of the surveyed land in the township, but not an unsurveyed area which was incorrectly represented upon the plat as a meandered body of water.

Where public lands are patented "according to the official plat as officially approved by the Government," the notes, lines, landmarks and other particulars appearing upon the plat become as much a part of the patent, and are as much to be considered in determining what it is to include, as if they were set forth in it.

The specification in a patent of the acreage of land conveyed is an element of the description and, while of less influence than other elements, is yet an aid in ascertaining what land was intended to be conveyed.

Whiteside v. Norton
205 F. 5 (1913)
cert,den. 232 U.S. 726

Where title to an island in a navigable stream has become vested in a riparian propetier by virtue of its location on his side of the main channel of the stream, his title to such island is not divested by a subsequent change in the channel from any cause (in this case, by the U.S. Government, in the exercise of its power to improve navigation, dredging a new main channel between island and land of riparian owner.).

Norton v. Whiteside
239 U.S. 144 (1915)

The mere fact that Congress directed the improvement of a new channel in a navigable river does not destroy riparian rights existing under state law and create new ones under Federal law.

Producer's Oil Co. v. Hansen
238 U.S. 325 (1915)

As a general rule, meanders are not to be treated as boundaries and when the U.S. conveys a tract of land by patent referring to an official survey which shows the same bordering on a navigable river, the purchaser takes title up the water line.

Where the facts and circumstances, however, affirmatively disclose an intention to limit the grant to actual traverse lines, these must be treated as definite boundaries; and a patent to a fractional section does not necessarily confer riparian rights because of the presence of meanders.

Alaska Unified Gold Mining Co., et al. v. Cincinnati-Alaska Mining Co. et al.
45 LD 330 (1916)

--A meander line is run to define the sinuosities of the bank of the water and to determine the quantity of land subject to sale.

--The rule as to meander lines is applicable to mining claims and the shoreline, not the meander line, forms the boundary.

Lord v. Curry
71 So. 21 (1916)

Where the official government plat and the field notes of a survey of a fractional section show that the government surveyor stopped his survey at what he called a "lagoon", and it further appears that the surveyor did not intend to define the sinuousities of the beach or to make the banks of the lagoon the boundary of the lot, but his intention is rather indicated to define by boundary lines the land embraced by the fractional section, and not to include a small tract of land, whether marsh land, tide land, or otherwise, which lies off the point at which the official survey stopped, such tract of land must be held not to be included within such fractional section.

Lee Wilson and Co. v. U.S.
245 U.S. 24 (1917)

--If an area is meandered through fraud or mistake as a body of water where no such body of water exists, riparian rights do not accrue.

Green v. U.S.
274 F. 145 (1921)

Where the patent referred to the official survey which showed a meander line as the shore of the lake, but it appeared that the lake shore varied from the calls for the line so that the fractional subdivisions conveyed by the patent, if extended to the lake shore, exceeded by 50 percent and 20 percent respectively, the acreage stated, and the intervening land was intersected with ravines sometimes filled with water, and was of little value until oil was discovered thereon, the shore of the lake and not the meander line was the boundary of the tract conveyed by the patent.

Bode v. Rollwitz
199 P. 688 (1921)

Where in the survey of the public domain, a body of water is found to exist and is meandered, the result of such meander is to exclude such area from survey, and to cause it as thus separated to become subject to riparian rights of the respective owners abutting on the meandered lines in accordance with the laws of the several states.

Lane v. U.S.
274 F 290 (1921)

The water course and not the meander line is the boundary of measured lands, and a survey is not invalidated by the failure to include within the meander lines small, irregular areas of land.

U.S. v. Lane
260 U.S. 662 (1922)

--Lots whose plats show them bordering on a lake extend to the water as a boundary and embrace pieces of land found between it and the meander line, where failure to include such pieces not due to fraud or mistake.

--The difficulty of following all the various sinuosities of the water line is the reason for running the meander line, and the official plat shows the general form of the lake deduced therefrom.

Wisconsin Realty Co. v. Lull
187 N.W. 978 (1922)

Where the meander lines of a river as shown on the government plat do not correspond with the actual location and course of the river, so that if grantee of lot north of the river where allowed to extend his title to the river, his lot would contain 173 acres as opposed to the 65.48 acres cited in the patent, grantee does not take to the river, but only to the section subdivision line.

The term "more or less" covers an excess or deficit of acreage within reasonable limits, but does not cover a situation where there is grass error.

Mecca Land and Exploration Co. v. Schlecht
4 F. 2d. 256 (1925)

Where, between time of survey and time of homestead entry, river receded and a large tract of land was formed between river and the Meander line of the survey, such land being three times the size of the surveyed tracts, and which was not claimed by the original patentees, who received their patents according to the survey for the quantities shown thereby; the meander line constitutes the boundary of the surveyed tracts, and additional lands are not accretions thereto.

Marco Island
51 LD 322 (1926)

--Natural or artificial monuments prevail over calls for course, distance, or quantity.

Brothertown Realty Corp. v. Reedal
227 N.W. 390 (1929)

The question whether title to land has passed from the U.S. Government must be determined by Federal law.

Where original survey line departs so far from true meander line, that such a large tract is left unsurveyed as to indicate clearly the meander line was never actually run, survey will be held invalid as constructive fraud on Government, and a resurvey running meander line approximately at the shore will be upheld, despite hardship on good faith purchasers.

Gardner v. Green
271 N.W. 775 (1937)

Where field notes and the official plat of U.S. survey showed that a fractional portion of land bordered on and was bounded on one side by a navigable stream, and it was shown by evidence that the survey's meander line did not follow the actual shore but that there was a strip of land between the meander line and the shore, the Government subdivision lines forming the boundaries of the fractional subdivision do not stop at their intersection with the meander line but maintain course to the water's edge or to other Government subdivision lines indicated on survey as intended boundary (whichever comes first).

Thomas B. Bishop v. Santa Barbara County
69 F. 2d. 198 (1938)

Where patent was issued for 15,000 acres of land in California bordering on the ocean, and plat of official survey did not show a sandpit containing about 25 acres but followed generally the meander of the shore, with the courses running in straight lines and cutting across the base of the sandpit; and considering the smallness of the unsurveyed area, its apparent lack of value and the difficulties of the terrain; the sandpit is adjudged to have been included in the grant of the land.

U.S. v. Eldredge
33 F Supp. 337 (1940)

--Where accretion land exists between the meander line and the stream, and to extend the lines of a homestead entry to the stream would give an acreage largely in excess of what the patent calls for, the court will construe to meander line to be the boundary.

Wittmayer v. U.S.
118 F 2d 808 (1941) 9th Cir.

--Where official survey purports to meander the mean high-water mark of an island and a patent grants fractional lots, the boundary of such a grant is the actual water line, not the meander line.

--Meander line will be treated as true boundary line, where (1) by reason of fraud or mistake in survey, there was in fact at time of survey a substantial amount of land between survey line and actual shore, of (2) a substantial amount of land was formed by accretion between survey line and waters of stream, between time of survey and time of entry.

Madison v. Basart
59 ID 415 (1947)

--The meander line is held to be the true boundary line if: (1) the meander line was run where no lake or stream calling for it exists; or (2) where it is established so far from the actual shoreline as to indicate fraud or mistake; or if, (3) at the time of a homestead entry is made, a large body of land previously formed by accretion is existing between the meander line and the water.

Richard L. Oelschlaeger
67 ID 237
A-28299 (1960)

--Where an order gives the line of mean high tide as one of the boundaries, the meander line which is run in accordance with the mean high-water line is to be regarded as the equivalent of the line of mean high tide in establishing the littoral boundary of the withdrawn area.

--Line of mean high tide and mean high-water mean the same thing.

Weaver v. Knudson
127 N.W. 2d. 217 (1964)

The intent of the government is to be ascertained in construing the original patent; not the intent the government would have had if there had been no mistake, but the intent it actually had at that time.

The plat controls in determining what land was intended to be conveyed.

Where the U.S. Government conveyed a fractional lot according to the official plat, and there existed over the lower part of the lot a lake which was not meandered on the plat, which lake cut across the boundaries of the lot in such a way as to cut off a small triangular piece of land in the southwest corner of the lot, government is deemed to have intended to convey small triangular section as part of the lot.

Bernard and Myrle A. Gaffney
A-30327 Oct 28, 1965

--In cases in which the general rule that meander lines are not to be treated as boundaries has been followed, it was found that the surveyor intended the meander line to represent the actual water line and that any discrepancies between the actual water line and the meander line resulted from difficulties encountered in surveying or from the determination of the surveyor that an area was of so little value as land, or that its statues as dry land was so uncertain that it should not be surveyed as land.

--In cases in which the exception to the rule has been followed, the discrepancy was found to be the result of gross error or fraud, or the facts have been persuasive that the meander line was intended as the boundary line of the land surveyed.

Udall v. Oelschlager
389 F. 2d. 974 (1968)
cert. den. 392 U.S. 909 (1968)

Court must defer to Secretary of Interior's interpretation of his own regulation, so long as that interpretation is not plainly beyond bounds of reason or authority, and such interpretation must prevail though there are plausible grounds to sustain homestead claimant's position.

Where survey of area immediately north of area covered by Public Land Order withdrawing land from appropriation referred to "meander corner," Secretary of Interior's interpretation that "the line of mean high tide" as used in such order meant surveyor's meander line and not precise average of all high tides over a complete lunar cycle was sustained, and homestead claimant whose land was within withdrawal order under such interpretation was not entitled to patent.

Trustees of Internal Improvement Fund v. Wetstone
222 So. 2d 10 (1969)

--The meander line may be considered the boundary separating swamp and overflowed land from sovereignty lands, where the line of mean high tide circumscribing the swamp lands could not be located but the meander line could be determined through use of the original field notes.

Mable M. Farlow
IBLA 75-523 (1977)

Where a lot is shown on the survey plat as lying entirely to the east of the meandered river, but resurvey shows that the waterline actually lies east of the meander line, so that omitted lands lie to the west of the river between the river and the incorrect meander, held that the boundary to the lot on the east side of the river is the waterline, and not the incorrect meander, so as to convey title to the omitted land on west with title to lane on east.

RIPARIAN RIGHTS

Johnston v. Jones

* Serrin v. Grefe

Gleason v. Pent

Amanda Hines

Boord v. Girtman

Benjamin Peterman

Nebraska v. Iowa

Pruszyuski v. Winona

Patrick Brazil

Edward C. Hill

Carpenter v. Board

* Tolleston Club v. State

George Streeter

* Kean v. Roby

John C. Christenson

Harvey LaFollette

John J. Serry

French-Glenn Livestock Co. v. Marshall

* U.S. v. Rio Grande

Pacific Livestock Co. v. Armack

Pacific Livestock Co. v. Marshall

French - Glenn Livestock v. Springer

* McBride v. Whitaker

Widdecombe v. Rosemiller

Franzini v. Layland

* Hardin v. Shedd

Oregon Land Board v. Corvallis Sand and Gravel Co.

Johnston v. Jones
1 Black 209 (222)
66 U.S. 209 (1861)

--Accretions formed along the shoreline belong to the riparian owners;

--The extent of riparian ownership in accreted land shall be determined by apportioning the newly accreted land according to the extent of each proprietor's title on the old shoreline.

Serrin v. Grefe
25 NW 227 (1885)

--A patentee of lands on a navigable river which were described as bounded by the meander lines of the survey, extends only to the highwater mark, although the congressional act declaring the river to be navigable was repealed after the time of sale.

--Exhaustive discussion of navigable rivers and rights therein.

Gleason v. Pent
14 LD 375 (1892)

--An owner of land bordering on a navigable body of water has the right to subsequent accretions to his lot.

Amanda Hines
14 LD 156 (1892)

--The riparian ownership of an allottee whose lands are adjacent to a meandered nonnavigable lake, now dry, includes the lands to the middle of said lake.

Board v. Girtman
14 LD 516 (1892)

--A purchaser of meandered land bordering on a lake takes title to the shoreline of the lake, regardless of the navigability of the lake.

Benjamin E. Peterman
14 LD 115 (1892)

--Under Oregon law, the title of riparian proprietors on navigable streams and lakes extends only to the water's edge; the land below high water mark on a navigable river belongs to a State. The right remaining to the proprietor beyond the water's edge is only an easement which cannot be conveyed.

Nebraska v. Iowa
143 US 359 (1892)

--Where banks are changed by accretion, the riparian owner's boundary line still remains the stream, although the area of his possessions may vary. Avulsion establishes a fixed boundary at the center of the abandoned channel.

--These propositions apply to a State when a river forms one of its boundary lines.

Pruszyuski v. Winona and St. Peter R.R. Co.
14 LD 637 (1892)

--Once the Government has disposed of lands bordering on a shallow, non-navigable, meandered lake, it has no jurisdiction to entertain an application for the survey of tracts lying between the meander and water lines, as such lands now belong to the owners of the adjacent lands.

Patrick Brazil et al.
17 LD 326 (1893)

--Each State has the right to determine the question of the ownership of beds of navigable streams; in Wisconsin, the proprietor of lands on navigable streams takes to the middle thread of the current, subject to the public easement, or right of navigation. The proprietor of lands bordering on large lakes or other bodies of fresh water, however, takes only to the water's edge.

--A survey may be properly allowed of an island in a navigable lake, where it appears that such island was in existence at the date of the original survey, but was omitted therefrom.

Edward C. Hill
17 LD 568 (1893)

--An application for the survey of a small tract of land, lying between the meander line of a lake and the water's edge, will not be granted, where the original survey has stood for a number of years, even though the meandered boundary may not exactly indicate the true water line.

Carpenter v. Board of Com'rs of Hennepin County
58 NW 295 (1894)

--"High-water mark" as a line between the public and riparian owners on navigable waters where there is no ebb and flow of the tide is to be determined by examining the bed and banks, and ascertaining where the presence and action of the water are so common and usual as to mark on the soil of the bed a character distinct from that of the banks in respect to vegetation as well as the nature of the soil.

--Where the banks are low and flat and the water does not impress on the soil any well-defined line of demarcation between the bed and the banks, the effect of the water on vegetation is the principal test in determining the location of high water mark. High water mark is the point up to which the presence and action of the water is so continuous as to destroy the value of the land for agricultural purposes.

--The bed does not include low lands which, although subject to frequent overflow, are valuable as meadow and partures.

Tolleston Club of Chicago v. State
38 N.E. 214 (1894)
40 N.E. 690 (rehearing denied)

Where, under a patent from the U.S. the state acquires title to a section of land, partly within and partly without a meander line, and the dry land without the meander line is divided into lots, and there is nothing to indicate that it was intended to bound the lots by such meander line, a patent from the state of one of the lots, describing it by its number of section, conveys the whole thereof to the opposite section line.

The term "fractional" as used in describing a section of land partly within and partly without meander line, to the circumstance that the section does not contain 640 acres of dry land, and does not bound the same by the meander line.

Geo. W. Streeter et al.
21 LD 131 (1895)

Land formed between the meander line and the shoreline of Lake Michigan, through the acts of persons or corporations, is not the property of the Federal Government and does not give such person or corporation any riparian rights.

Kean v. Roby
42 N.E. 1011 (1896)

The original survey, despite fact that it meandered a body of water within the area encompassed by such survey, held to have been a sufficient survey; therefore patent in 1853, under Swamp Land Act of 1850, conveyed all land dry or covered by water within the lines of such sections. Land which was meandered by original survey is not unsurveyed land.

John C. Christensen
25 LD 413 (1897)

--An application for the survey of an island lying in a meandered, non-navigable stream will not be allowed, as a grant for surveyed land bounded on a nonnavigable river conveys to the grantee title to unsurveyed islands or parts of islands lying between the meander line and the middle thread of the river.

Harvey M. LaFollette et al.
26 LD 453 (1898)

--Where the water itself is the true boundary line of the land to be sold, all accretions after survey and prior to patent pass under the patent when issued, and the Government is not thereafter entitled to subsequent accretions.

John J. Serry et al.
27 LD 330 (1898)

--The interests of the Government as a riparian proprietor cease on the sale of a meandered tract; and all accretions to such tract after survey and prior to sale pass to the purchaser, with accretions thereafter belonging to the riparian owner.

French-Glenn Livestock Co. v. Marshall
28 LD 444 (1899)

--Riparian owners have a right to reliction, as an incident of ownership.

U.S. v. Rio Grande Dam & Irrigation Co.
174 U.S. 690 (1899)

--Under common law, every riparian owner was entitled to the continued natural flow of the stream, but every State has the power to change this rule, and permit the appropriation of flowing waters for such purposes as it deems wise, limited by the superior power of the Federal Government to secure the uninterrupted navigability of all navigable streams within the limits of the U.S.

--A State may not destroy the right of the U.S., as a riparian owner, to the flow of its waters as is necessary for the beneficial use of Government property.

Pacific Livestock Co. v. Armack
30 L.D. 521 (1901)

--The owners of fractional tracts bordering on a meander line of a survey shown by the field notes to have been closed upon a march and not a body of water, acquire no riparian rights to the lands thus excluded from the survey.

Pacific Livestock v. Marshall
30 LD 521 (1901)

--Owners of tracts bordering upon a meander line which the field notes show was closed upon a march, acquire no riparian rights to the lands thus excluded from the survey.

French-Glenn Livestock Co. v. Springer
185 U.S. 47 (1902)

--While if there was a lake abutting on or to the north of the lots, the plaintiff would take all land between the meander line and the water and all accretions, it was competent for the defendant to show that there was not, at the time of the survey nor since, any such lake, and to contend that there could be no intervening land and no accretion by reliction.

McBride v. Whitaker
90 N.W. 966 (1902)

Grants of land bounded upon a river not navigable carry with them exclusive right and title of the grantee to the center of the stream, unless the terms of the grant clearly denote the intention to stop at the bank or margin of the river.

A grant of land bounded upon a non-navigable river, made by the U.S. with reference to the plat of the survey, which shows a meandered line along the river bank, conveys to the grantee title to such unsurveyed islands or parts of islands as lie within that limit.

Widdicombe v. Rosemiller
118 F. 295 (1902)

An island in a navigable river, which had been surveyed prior to the admission of the state, so long as it remained undisposed of by the U.S., was governed by the rules of the common law with respect to riparian rights and the effects of erosion and submergence, and not by the law of the state.

Franzini v. Layland
97 NW 499 (1903)

--A riparian proprieter upon a navigable stream in Wisconsin has absolute title to the land to the line of ordinary high water mark and owns to the center of the stream by the grace of the State, subservient to public rights.

--Where a river separates Wisconsin and another State, the title to riparian land in Wisconsin extends to its boundary line, regardless of whether that is nearer to or further from the shore than the filum aquae of the stream.

Hardin v. Shedd
190 U.S. 508 (1903)

--Land under navigable water passes to the State on its admission to the Union.

--Whether land under both navigable and non-navigable waters passes to the riparian proprietor under a U.S. grant is determined by State law.

Oregon ex rel State Land Board
v.
Corvallis Sand and Gravel Co.
___ U.S. ___, (1977)

Disputed ownership of lands under a navigable river is a question governed by state, rather than federal law.

Rejection od Bonelli Cattle Co., v. Arizona decision.

Miscellaneous File

--Riparian rights omitted land

Wisc. Misc. File No. 1858596 2/17/41

--Riparian rights by reason of ownership of lands opposite island

#1250859 6/8/27

--River changes, riparian rights

#1435464 11/20/31

--Section lines across waters do not affect riparian rights

#1444737 2/8/32

--#1887709 10/22/41

45 ID 330 - Mining Claims Riparian Rights

66 IBLA 374 1982

ROSENBAUM

RIPARIAN RIGHTS - Navigable Waters

East Kansas City Land Co. v. Heirs of Mensing

Emma Peterson

* Micelli v. Andrus

* Cawlfield v. Smith

Alaska United v. Cincinnati-Alaska Mining Co. (45 ID 330)

Survey - Owens Lake

Lee Wilson & Co. v. U.S.

* U.S. v. Cress

Julius Stoehle

Lane v. U.S., U.S. v. Lane

Wisconsin Realty Co. v. Lull

* Oklahoma v. Texas

Rust Owen Lumber Co.

* U.S. v. Oregon

Ownership of Island

State of Utah

Perry v. Erling

Giles & Juanity Leonard

Hughes v. Washington

* Burns v. Forbes

South Venice Corp. v. Casperson

* U.S. v. 62.57 Acres

* U.S. v. Boyd

Pollard's Lessee v. Hagan

Propeller Genesee Chief v. Fitzhugh

Railroad Co. v. Schunmier

RIPARIAN RIGHTS - Navigable Waters

The Daniel Ball

Barney v. Keokuk

Norcross v. Griffiths

Packer v. Bird

Hardin v. Jordan

Illinois Central R.R. v. Illinois

Lempry v. Metcalf

Shively v. Bowlby

Gibson v. Kelley

Eldridge v. Trezevant

Wallace v. Driver

Mendota Club v. Anderson, et al.

Hardin v. Shedd

Fowler v. Wood

McGilvra v. Andrus

Whiteside v. Norton

Norton v. Whiteside

Scott v. Lattig

State v. Korrer

Producer's Oil Co. v. Hanzen

Tempel v. U.S.

Payne v. Hall

Oklahoma v. Texas

Hatcher v. Palmer

U.S. v. Holt State Bank

Gardner v. Green

RIPARIAN RIGHTS - Navigable Waters

U.S. v. Appalachian Power Co.

U.S. v. Chicago, M. St. P., and P.R. Co.

Conran v. Cirvin

Bourough of Ford City v. U.S.

Arkansas Land and Cattle Co. v. Anderson-Tully Co.

U.S. v. Crow, Pope and Land Enterprises

Bonelli Cattle Co. v. Arizona

East Kansas City Land Co. v. Heirs of Mensing et al.
34 LD 423 (1906)

--A State acquires jurisdiction over all soil under navigable rivers upon admission to the Union, subject to Congress' power to regulate commerce. All lands that may thereafter form on the bed of such streams become the property of the sovereign State, or of the riparian owner, according to the law of the State.

Emma S. Peterson
39 LD 566 (1911)

--Upon admission of a State into the Union it acquires absolute dominion over all soils under the navigable waters within its borders, but islands formed therein prior to admission of the State remain the property of the United States.

--The U.S. have authority to survey and dispose of an island lying between the meander line and the thread of a stream, navigable or nonnavigable, omitted from survey at the time public land surveys were made, if the island was a well-defined body of public land at that time.

Micelli v. Andrus
120 P. 737 (1912)

The middle-line of a non-navigable stream is the boundary of riparian owner's land.

The boundary of public land on non-navigable streams granted by the U.S. by describing the boundary as running to the bank and thence with its meanders, extends to the center of the river.

The middle-line of a non-navigable river at low-water mark is not the center of the channel, which means the continuous course of deepest water, but is a line equally distant from all point on the opposite bank at right angles with the thread at low-water mark.

The navigability of waters is a question of fact, and if a stream is non-navigable, the meander of its banks by Government surveys will not make it navigable.

Cawlfield v. Smith
138 P. 227 (1914)

If by mistake or fraud a surveyor omits large tracts, placing them inside a meander line instead of bounding them by the survey of the meander line with reasonable accuracy, the purchaser of abutting lands will take only to that line and not beyond.

An owner of land bordering on a body of water is entitled to any gain by recession of the water, but "recession" does not mean sudden avulsion which changes the channel so as to cut off land in large quantities.

Alaska Unified Gold Mining Co. et al. v. Cincinnati-Alaska Mining Co. et al.

45 LD 330 (1916)

--Where one of the boundaries of a patented mining claim is a navigable body of water, all accretions formed after survey and prior to entry and patent of the tract passed under the patent, and all accretions that may thereafter form become the property of the riparian proprietor.

Survey-Owens Lake, California - Ownership of Lands Uncovered by Water's Recession. 46 LD 68 (1917)

--The extent of the rights of riparian owners is controlled by the laws of each individual State.

--The laws of California accord the owners of lands abutting upon navigable streams the right to claim lands added by the accumulation of material or by the recession of the stream, but the State asserts ownership of such lands above the line of high water on navigable lakes.

Lee Wilson and Co. v. U.S.
245 U.S. 24 (1917)

--Where an area is meandered as a body of water through mistake or fraud where no such body of water exists, riparian rights do not accrue to the surrounding lands.

U.S. v. Cress
243 U.S. 316 (1917)

--The well-established rule is that private ownership or property in the beds and waters of navigable streams is subject to the exercise of the public right of navigation, but where such exercise results in the periodic overflow of lands on a nonnavigable tributary, and in substantial injury to the value of such property, the U.S. is liable to compensate the owner to the extent of the injury.

Julius A. Stroehle
47 LD 72 (1919)

--According to the common law which is still in force in No. Dakota, title to the bed of nonnavigable lake is in the riparian owners, their title extending to the center of the lake; riparian owners whose land abuts a navigable lake take to the edge of the lake or stream at low water mark, as navigable rivers are deemed public highways under the State's jurisdiction.

Lane v. U.S.
274 F 290 (1921)

The water course and not the meander line is the boundary of measured lands, and a survey is not invalidated by the failure to include within the meander lines small, irregular areas of land.

U.S. v. Lane
260 U.S. 662 (1928)

Lots bordering on a lake extend to the water as a boundary and embrace pieces of land found between the water and the meander line of the survey, where the failure to include such pieces was not due to fraud or mistake but was consistent with a reasonable accurate survey, considering the areas included and excluded, the difficulty of surveying them at the time of survey and their value at that time.

Wisconsin Realty Co. v. Lull
187 N.W. 978 (1922)

Where the meander lines of a river as shown on the government plat do not correspond with the actual location and course of the river, so that if grantee of lot north of the river where allowed to extend his title to the river, his lot would contain 173 acres as opposed to the 65.48 acres cited in the patent, grantee does not take to the river, but only to the section subdivision line.

The term "more or less" covers an excess or deficit of acreage within reasonable limits, but does not cover a situation where there is grass error.

Oklahoma v. Texas
261 U.S. 345 (1923)
(Supplement to partial decree)

--The disposal of riparian tracts which were not riparian when surveyed carried the title to the medial line of the river, unless other tracts between them and that line had been disposed of theretofore, in which case the later disposals did not affect title to such intervening tracts.

Rust-Owen Lumber Co.
50 LD 678 (1924)

--Land under navigable bodies of water inures to the State as an incident of sovereignty.

--In the case of land bounded on nonnavigable waters (lakes), the U.S. assumes the position of a private owner, subject to the general law of the State.

U.S. v. Oregon
295 U.S. 1 (1935)

In a suit by the U.S. against a State to quiet title to the bed of a lake on which the State owns part of the uplands bordering on the meander line, the owners of the other parts of the uplands are not necessary parties and their rights will not be affected by the decree.

A state statute declaring that lakes within the State which have been meandered by the U.S. surveys are navigable public waters of the State, and that the title to their beds is in the State, can have no effect on title retained by the U.S. to the bed of a non-navigable lake, nor upon the interests in the bed that may have passed to others as incidents of grants of the U.S. conveying abutting uplands.

Ownership of Island within Boundaries of Ft. Berthold Indian Reservation
55 ID 475 (1936)

--Tidelands and beds of navigable streams which have been made part of an Indian reservation do not pass to a State subsequently created; islands subsequently formed from the river bed, which belonged to the Indians of Ft. Berthold Reservation, retained the original status of the river bed and are part of the reservation.

State of Utah
70 ID 27 (1963)
A-29043 (2/18/63)

--The U.S., as riparian proprietor of the public domain, has a vested right to future accretions and relictions. No State may deprive the U.S. of its rights to such accretions and relictions, as the doctrine of accretion and reliction is applicable to two sovereigns.

--Where the high-water mark of a navigable lake is not capable of being deduced from physical evidence, the lake shall be meandered along the water's edge as of the time of the survey.

Perry v. Erling
132 N.W. 2d 889 (1965)

--Where land which was riparian at time of original survey is lost by erosion, so that nonriparian land becomes riparian, and land is thereafter built by accretion to the land which was originally nonriparian, extending over the location formerly occupied by original riparian land, owner of land which was originally nonriparian only has title to the accreted land within the boundaries of the formerly nonriparian tract, and all other land so accreted, extending over the area formerly occupied by land of the original riparian owner, becomes property of the owner of the original riparian land.

Giles R. and Juanita Leonard
A-30503 3/23/66

--A patent of lots abutting a navigable river does not pass title to unsurveyed islands lying between the lots and the thread of the river which were in existence when the State was admitted into the Union.

Hughes v. Washington
389 U.S. 290 (1967)

--Under Federal law which governs the ownership of accreted land on property conveyed by the U.S. prior to Statehood, a grantee of land bounded by a body of navigable water acquires a right to any natural and gradual accretion formed along the shore.

Burns v. Forbes
412 F. 2d. 995 (1969)

Where tidewater is the boundary of land in the Virgin Islands, title of the grantee appears to extend to the low-water mark at time of conveyance and to those portions of the bed of adjacent waters subsequently becoming fast land above low-water mark by accretion or reliction.

Where tidewater is the boundary of lands in Virgin Islands, the doctrin of accretion extends to accretions artificially created by a third party, but not where accretions were made by upland owner.

The right of the owner of littoral land access to tidewaters is a fundamental riparian right.

Where riparian owner of tidewater property filled in swamp interfering with his access to water, he had right to use filled land for access to water, subject to such regulations that the U.S., as owner of the land, would make to protect public interest.

U.S. v. 62.57 Acres of Land
449 F. 2d. 5 (1971)

Where, at time of issuance of patents, portions of land described in patents were located on west side of river which thereafter moved eastward, accretions to land on west side of river resulting from further movement of river belonged to patentee's successors in interest, and not to the U.S.

Date of patent controlled date fore determining position of river which had moved and caused accretions to west side, and doctrine of relation back to date of entry did not apply.

U.S. v. Boyd
458 F. 2d 1252 (1972)

--Federal law governs as to the construction of a patent and the quantum of premises which it purports to convey.

--Where the patent conveyed premises according to the plat, and the plat showed only water -- no land -- in the bay to one side of the tract, the patent conveyed title only to the edge of Lake Michigan, with the Government, as riparian owner of lots extending to the edge of the lake, owner of accretions thereto.

Pollard's Lessee v. Hagan
44 U.S. 212 (1845)

--Shores of navigable waters and the soils under them were not granted by the constitution to the U.S. but were reserved to the States.

--States, upon admission to the Union, became entitled to the soil under the navigable waters within the limits of the State, not previously granted, and the U.S. has no power to grant land within a State which is below the usual high water mark.

The Propeller Genesee Chief v. Fitzhugh
53 U.S. 443 (1851)

--The admiralty and maritime jurisdiction of the U.S. is not limited to tidewaters, but extends to all public navigable lakes and rivers, where commerce is carried on.

Railroad Co. v. Schurmeir
74 U.S. 272 (1868)

--Riparian owners whose land borders on nonnavigable waters hold to the center of the stream, but title to land bordering on navigable streams stops at the stream, as navigable rivers are public highways.

The Daniel Ball
77 U.S. 557 (1870)

--Rivers are navigable in fact, and therefore in law, when they are used or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

--Navigable waters of the U.S., in contradistinction from the navigable waters of the States, are those which form in their ordinary condition by themselves or by uniting with other waters, a continued highway over which commerce is or may be conducted with other States or foreign countries.

--The test for navigability is the navigable capacity of a river, not the ebb and flow of the tide, as at common law.

Barney v. Keokuk
94 U.S. 324 (1876)

--The beds of navigable rivers, above and below the flow of the tide, belong to the States by their inherent sovereignty.

--Although the riparian owner's title attached to the ground reclaimed and filled in by the city outside of the original high water, it was a bare legal title under Iowa law, subject to the public easement and use, not only for street purposes, but for the purposes of wharves, landings, and levees.

--If the States choose to resign to the riparian owner rights, which properly belong to them in their sovereign capacity, it is not for others to make objections.

Norcross v. Griffiths
27 N.W. 606 (1886)

The owner of a bank of a navigable stream by purchase from the U.S. is presumed to be the owner of the bed of the stream in front of his purchase to the middle of the thread of the stream, and the same presumption arises in favor of the owner of the bank in all cases, however the owner acquired title; but the presumption in the case of owners not deriving their title directly from the government is not conclusive.

The owner of lands bordering upon a navigable stream, and of the bed of the stream, may separate the ownership of the lands upon the bank from the ownership of the bed, and convey the shore and bank to one grantee, and the bed to another.

When the owner of land bordering upon a navigable stream makes a deed to such lands, the boundaries mentioned including the whole bank and shore the whole length of the lot conveyed, there is a presumption that the grantor intended to convey all rights to the bed of the stream in front of the lands, in the absence of an actual reservation in the deed, or the production of such facts as to show intention to limit the grant to the exact boundary fixed in the description in the deed.

Packer v. Bird
137 U.S. 661 (1891)

Whatever rights or incidents attach to the ownership of property conveyed by the U.S. bordering on navigable streams, will be determined by the State in which it is situated, subject to the limitation that their rules do not impair the efficacy of the grant, or the use and enjoyment of the property by the grantee.

The State shall determine the extent of property conveyed by U.S. grant bordering on a navigable stream according to the laws of the State, whether to the high or low water mark, or to the thread of the stream.

Hardin v. Jordan
140 U.S. 371 (1891)

--Grants by the U.S. of public lands bounded on streams or other waters are to be construed according to the law of the State in which the lands lie, in the absence of restriction in the grant.

--By common law, which is the law of Illinois, a grantee of land bounded on a lake or pond which is not tidewater and is not navigable takes to the center of the lake, ratably with other riparian owners, if any.

Illinois Central R.R. v. Illinois
146 U.S. 387 (1892)

--The common law doctrine that the ownership of, and dominion over, lands covered by tide waters belong to the respective States in which the waters are found extends to land covered by navigable fresh waters (e.g., the Great Lakes).

Lamprey v. Metcalf
53 N.W. 1139 (1893)

Where the U.S. has disposed of lands bordering on a meandered lake, by patent, without reservation or restriction, it has nothing left to convey, and any patent thereafter issued for land forming the bed, or former bed, of the lake, is void and inoperative.

Where the U.S. has made grants, without reservation or restriction, of public lands bordering on streams or other waters, the question of the ownership of beds or former beds of such waters is determined by the law of the State in which the land lies.

The same rules govern the rights of the riparian owners on lakes and other still waters as streams. Riparian owners take fee to center of water if body if non-navigable; if navigable, its waters and beds belong to the State, and riparian owner takes fee to water-line, but with all rights incident to riparian ownership on navigable waters, including right to accretions or reliction.

Shively v. Bowlby
152 U.S. 1 (1894)

--The owner of upland bounding on navigable water has no title in the adjoining lands below high water mark; the State has title in those lands.

--The title and the rights of riparian owners in the soil below highwater mark are governed by the laws of the several States, subject to the rights granted to the U.S. by the Constitution.

Gibson v. Kelley
39 P 517 (1895)

--The title of a riparian owner on a non-tidal, navigable river in Montana extends to the ordinary low-water mark, subject only to the public use of navigation and fishing.

Eldridge v. Trezevant
160 U.S. 452 (1896)

--Grants by Congress of portions of public lands within a territory to settlers thereon, though bordering on or bounding by navigable waters, do not convey little or right below high water mark, an do not impair the title and dominion of the future State when created. The question of the use of the shores by the owners of uplands is left to the soveign control of each State, subject only to the rights of the Federal Government.

Wallace v. Driver
33 S.W. 641 (1896)

An owner of land on a navigable stream holds only to high water mark, and not to the middle of the stream.

Where land of a riparian owner on a navigable stream is gradually and imperceptibly washed away, and the place where it was remains for many years the bed of the river, such owner does not acquire title by accretion to new land subsequently formed within his original boundaries, unless its formation began at high water mark.

Mendota Club v. Anderson et al.
78 N.W. 185 (1899)

Where a permanent dam was erected in a navigable stream, causing the waters above it to be raised, the rights of riparian owners above the dam, as against persons entitled to use the stream, are to be construed with reference to the changed conditions, and not as they existed before the dam was built.

Hardin v. Shedd
190 U.S. 508 (1903)

--Land under navigable water passes to the State on its admission to the Union.

--Whether land under both navigable and non-navigable waters passes to the riparian proprietor under a U.S. grant is determined by State law.

Fowler v. Wood
85 P. 763 (1906)

An owner of land bounded by a navigable stream has the right to protect his soil against inroads of the water, to secure accretions which form against his bank, and to erect and maintain improvements necessary to promote commerce, navigation, fishing and other uses of the river as navigable water; but he has not right, by obstructions placed across the main current, to deflect the stream itself into a new channel.

McGilvra v. Ross
215 U.S. 70 (1909)

--Riparian rights are the same whether the lands border on tidal waters or on nontidal waters, as long as the waters are navigable in fact. The common law test of navigability -- the ebb and flow of the tide -- is rejected.

Micelli v. Andrus
120 P. 737 (1912)

The navigability of waters is a question of fact, and if a stream is non-navigable, the meander of its banks by government surveys will not make it navigable.

Whiteside v. Norton
205 F. 5 (1913)
cert. den. 232 U.S. 726

Where title to an island in a navigable stream has become vested in a riparian propetier by virtue of its location on his side of the main channel of the stream, his title to such island is not divested by a subsequent change in the channel from any cause (in this case, by the U.S. government, in the exercise of its power to improve navigation, dredging a new main channel between island and land or riparian owner.)

Norton v. Whiteside
239 U.S. 144 (1915)

The mere fact that Congress directed the improvement of a new channel in a navigable river does not destroy riparian rights existing under state law and create new ones under Federal law.

Scott v. Lattig
227 U.S. 229 (1913)

--Purchasers of subdivisions on the bank of a navigable stream do not acquire title to an island on the other side of the channel merely because the island was omitted from the survey; such island remains property of the U.S. where it was in existence both at the time of survey and when the State within which it is situated was admitted to the Union.

State v. Korrer
148 N.W. 617 (1914)

"Navigable waters" need not be capable of commerce of pecuniary value. If a body of water is adapted for use for public purposes, it is a public navigable water.

Producer's Oil Co. v. Hansen
238 U.S. 325 (1915)

As a general rule, meanders are not to be treated as boundaries and when the U.S. conveys a tract of land by patent referring to an official survey which shows the same bordering on a navigable river, the purchaser takes title up to the water line.

Where the facts and circumstances, however, affirmatively disclose an intention to limit the grant to actual traverse lines, these must be treated as definite boundaries; and a patent to a fractional section does not necessarily confer riparian rights because of the presence of meanders.

Tempel v. U.S.
248 U.S. 121 (1918)

--Under Illinois law, neither the U.S. nor the State owns the land under a navigable river. Riparian owners own the fee to the middle of the stream subject to the paramount right of the Government to use the river and to make improvements therein for purposes of navigation, without the payment of compensation.

Payne v. Hall
185 N.W. 912 (1921)

An island is a body of land entirely surrounded by water, but land in a navigable stream which is only surrounded by water in times of high water is not an island within the rule that the state takes title to newly formed islands in navigable streams.

Where land of a riparian owner on a navigable stream was worn away by erosion, and thereafter an island was formed in the channel of the stream where the land of the riparian owner had been, such island belonged to the State, and not to the riparian owner.

Oklahoma v. Texas
258 U.S. 574 (1922)

--Navigability in law cannot be implied from the fact that official Government surveyors meandered a stream and failed to extend township and section lines across it.

--Navigability in fact is the test of navigability in law; and whether a river is navigable in fact is determined by whether it is used or susceptible of use in its natural and ordinary condition as a highway of commerce.

--A river which can be used for transportation only during irregular and short period of temporary high water is not navigable.

Hatcher v. Palmer
49 LD 452 (1923)

--Sovereign rights are not vested in the Indian tribes, only the right of possession; title to the beds of navigable waters within the boundaries of the reservation vests in the State by virtue of its sovereignty.

U.S. v. Holt State Bank
270 U.S. 49 (1926)

Navigability, when asserted as the bases of a right arising under the construction, is a question of federal law, to be determined by the rule applied in federal courts, and not by a local standard.

Gardner v. Green
271 N.W. 775 (1937)

Where field notes and the official plat of the U.S. survey showed that a fractional portion of land bordered on and was bounded on one side by a Navigable stream, and it was shown by evidence that the survey's meander line did not follow the actual shore but that there was a strip of land between the meander line and the shore, the government subdivision lines forming the boundaries of the fractional subdivision do not stop at their intersection with the meander line but maintain course to the water's edge or to other government subdivision lines indicated on survey as intended boundary (whichever comes first).

U.S. v. Appalachian Power Co.
311 U.S. 377 (1940)

A waterway is navigable if artificial aids are used to make it navigable. A waterway which by reasonable improvement can be made available for navigation in interstate commerce is a navigable river of the U.S.

It is not necessary that the improvement shall have already been undertaken or completed, or even authorized.

It is not necessary that use of the river be continuous; a navigable waterway does not lose that characteristic because its use for interstate commerce has lessened or ceased.

A waterway may be a navigable waterway of the U.S. for part of its course only.

The authority of Congress over navigable waters of the U.S. is not limited to control for purposes of navigation only, but is as broad as the needs of commerce.

U.S. v. Chicago, M., St. P., and P.R. Co.
312 U.S. 592 (1941)

The power of the federal government over navigation covers the entire bed of a navigable stream, including all lands below ordinary high-water mark. Whether title to the bed is retained by the State or is in the riparian owner, the rights of the titleholder are subservient to this dominant easement.

Any structure placed in the bed of a navigable stream, the bed including the land between low-water and high-water mark, may be injured or destroyed without compensation by a federal improvement of navigable capacity; and the right to compensation does not depend on the absence of physical interference with navigation.

Bed of river defined as in Alabama v. Georgia, 23 How. 505 (1859).

Conran v. Girvin
341 S.W. 2d. 75 (1960)

When a navigable river cuts a new or additional channel, not by eroding away intermediate lands but by jumping over them or running around them and leaving a part of the land of a riparian owner intact and identifiable, then the title to land so cut off remains in the riparian owner; it does not pass to the State or County as owner of the bed of the stream.

Title to an island is in the one upon whose land it appears.

Bourough of Ford City v. U.S.
345 F. 2d. 645 (1965)

Government right to take private property without compensation when it is controlling and regulating navigable waters in interest of commerce extends to entire bed of stream involved, including lands below ordinary high water mark, but government must compensate for any taking of fast lands which results from exercise of the power.

Vegetation test for navigable stream's ordinary high water mark means not that within such line where all vegetation has been destroyed by water covering soil but that soil has been covered by water for sufficient periods of time to destroy its value for agricultural purposes.

Arkansas Land and Cattle Co. v. Anderson - Tully Co.
452 SW 2d 632 (1970)

--River boundaries generally follow the changing channel of a river when change is not sudden and violent.

--But the boundary remains in the same place whenever a river changes its main channel, not by excavating, passing over, and then filling the intervening place between the old and new channel, but by flowing around intervening land, which never becomes the main channel in the meantime. The change from old to new channel is wrought over a period of years by the gradual or occasional increase of the proportion of the waters passing over the course until the greater part of the waters flow though the new channel.

U.S. v. Crow, Pope and Land Enterprises
340 F. Supp. 25 (1972)
appeal dismissed, 474 F. 2d. 200 (1973)

Extensive discussion of navigability and determining navigability.

Bonelli Cattle Co. v. Arizona
414 U.S. 313 (1973)

--Ownership of land once held by the State as a riverbed and later uncovered by a man-induced accretive process is a question governed by Federal law.

--Title to land abandoned by the Colorado River as a result of a Federal rechanneling project vests in the owner of land riparian to the river at the time of rechanneling, and not in the State as owner of the beds under navigable streams within its borders, since there was no longer a public purpose to be served by State ownership once the water has receded.

--See, Oregon v. Corvallis Sand & Gravel Co. (1977)

SURVEYS

* Lindsey v. Hawes

  Snyder v. Sickles

  Virginia Lode

* Cragin v. Powell

  Buxton v. Traver

* Miller v. Topeka Land Co.

  U.S. v. Hancock

  S.P. Randolph

* Stoneroad v. Stoneroad

  Horne v. Smith

* Russell v. Maxwell Land Grant

  Opinion (28 LD 292)

  John McClennen (1900, 1901)

  Pacific Livestock Co. v. Armack

  George S. Whitaker

* Kirwan v. Murphy

  Marshall Dental Man. Co.

  Robt. L. Sheppard

* Washington Rock Co. v. Young

* U.S. v. Cowlishaw

* Gauthier v. Morrison

* U.S. v. Morrison

  U.S. v. Redondo Development Co.

  Schwartz v. Dibblee

* Cox v. Hart

  Merchantile Trust Co.

SURVEYS

* Galt v. Willingham

* U.S. v. State Investment Co.

  Hardee v. Horton

  J. M. Beard

* Addis v. Hoagland

* Vaught v. McClymond

  Henry O. Woodruff

* Stanley A. Phillips

  Salt River Pima-Maricopa v. Arizona Sand & Rock Co.

  Departmental References

  Current Problems in Federal Cadastral Surveys

  Survey Returns - their problems and solutions; preparation and submission.

SURVEYS

The power to make and correct surveys of the public lands belongs exclusively to the political department of the government. 43 USC secs. 751, 752; Cragin v. Powell, 128 U.S. 691 (1888); Knight v. United Land Association, 142 U.S. 161 (1891). The surveying of the public lands is an administrative act confided to the control of the Commissioner of the General Land Office under the direction of the Secretary of the Interior. U.S. v. Morrison, 240 U.S. 192 (1916). Under Federal statutes providing for the survey of public lands, Acts of May 20, 1785 (Journals of the Second Continental Congress); May 18, 1796 (1 Stat. 465); May 10, 1800 (2 Stat. 73); March 3, 1877 (19 Stat. 348); and 43 USC secs. 751 and 752, such public lands are surveyed and platted into rectangular tracts of townships six miles square, sections one mile square, and minor legal subdivisions thereof, except where circumstances render this impractieable, as where lines of the survey are interrupted by waters, public reser- vations, prior grants, patents, or state lines.

A survey does not merely ascertain or identify boundaries, rather, it creates them. Cox v. Hart, 260 U.S. 427 (1922); Verdi Development Co. v. Dono-Han Mining Co., 296 P. 2d 429 (1956): Union Producing Co. v. Placid Oil Co., 178 So. 2d 392 (1965), cert. den. 385 U.S. 843 (1966). Surplus lands do not vitiate a survey, nor does a deficiency of acreage called for in the survey operate against it. Robinson v. Moore, 20 Fed. Cas. No. 11,960 ( ). An original survey, whether mathematically correct or grossly erroneous, controls the location and length of boundaries of sections and parts thereof, and the shape and size of tracts granted to patentees. Foltz v. Brakhage, 36 N.W. 2d 768 (1949); Hickerson v. Dillard, 247 S.W. 801 (1923); State v. Aucoin, 20 So. 2d 136 (1944).

There is no official survey of government lands until the plat of survey has been approved by the surveyor general. Kendall v. Bunnell, 205 P. 78 (1922). Even after a principal meridian and base line are established and the exterior lines of the township are surveyed, the sections or subsections do not have a legal existence until they are established by an approved survey. Smith v. Los Angeles, 112 P. 307 (1910).

Plats are required to be made and filed in the land office of the district and the General Land Office, and, until there has been a compliance with all the conditions as to filing in the proper land office, the lands are to be regarded as unsurveyed and not subject to disposal as surveyed lands. Cox v. Hart, 260 U.S. 427 (1922). The government plat and survey referred to in a patent became a part of it as if copied therein. Chapman and Dewey Lumber Co. v. St. Francis Levee District, 232 U.S. 186 (1914); Cragin v. Powell, 128 U.S. 691 (1888); Vaught v. McClymond, 155 P. 2d. 612 (1945).

Whether a government survey as originally made is correct or incorrect is for the land department alone to determine, and the courts have no jurisdiction except by original proceedings in equity. State v. Aucoin, 20 So. 2d 136 (1944). Decisions of the General Land Office are unassailable by the courts except by direct proceedings, Cragin v. Powell, 128 U.S. 691 (1888), and the government's official surveys are not open to collaterial attack in an action at law between private parties.

Horne v. Smith, 159 U.S. 40 (1895). Making, correcting, and approving surveys of public lands are under the authority of the General Land Office and its decisions are not subject to correction by courts in suits between individuals. Leader Realty Co. v. Lakeview Land Co., 76 So. 599 (1917), error dismissed, 248 U.S. 550 (1918). Courts have no concurrent or original power to correct surveys, Kirwan v. Murphy, 189 U.S. 35 (1903), nor do they have jurisdiction to determine the correctness of a survey except by direct proceeding, Russell v. Maxwell Land Grant Co., 158 U.S. 253 (1895); Cragin v. Powell, 128 U.S. 691 (1888), or by an original proceeding in equity. State v. Aucoin, 20 So. 2d 136 (1944). The courts may, however, protect private rights acquired against interference by corrective surveys subsequently made by the Land Department. U.S. v. State Investment Co., 264 U.S. 206 (1924); Craigan v. Powell, 128 U.S. 691 (1888).

Lindsey et al. v. Hawes et al.
67 U.S. 554 (1862)

Where a party takes up and resides upon a tract of land within a quarter section, whose limits have been fixed by an authorized U.S. survey, pays for it and receives his patent certificate from the proper officers, and by subsequent survey it is found that the house of the pre-emptor is not within the tract for which he has paid, the commissioner of the Land Office cannot, for this reason, set aside the sale.

In such a case the U.S. Government is bound by the original survey.

Snyder v. Sickles
98 U.S. 203 (1878)

Survey of land made under a confirmed Spanish land grant, having been disapproved by the Secretary before patent issuance, has no binding effect, and the question of its correctness was not for determination by the court.

Virginia Lode
7 L.D. 459 (1888)

--The State is entitled to sections sixteen and thirty-six under the school grant, as long as such sections were not know to contain mineral when the survey was approved; discovery of mineral on the lands after the survey was approved would not defeat the State's title.

--Title to school lands would not pass to the State where the survey was grossly irregular and inaccurate, and a mining claim on the land returned therein would not be precluded.

Cragin v. Powell
128 U.S. 691 (1888)

--A court may not determine whether an official survey is erroneous; the power of correction lies with the Commissioner of the General Land Office and his decisions are unassailable by the courts, except in a direct proceeding instituted for the purpose.

--The courts may protect the rights of a good faith purchaser from the Government against the interferences or appropriations of a subsequent corrective resurvey.

Buxton v. Traver
130 U.S. 232 (1889)

--No portion of the public domain, unless in special cases, is open to sale until it has been surveyed and an approved plat of the township has been returned to the local land office.

--A settlement upon public lands in advance of survey is allowed to parties who in good faith intend to apply for their purchase when survey is made.

--A settler acquires no estate in the land until he properly files a declaratory statement after a survey has been made and performs other required acts, at which time he acquires a right of preemption to the land.

Miller v. Topeka Land Co.
24 P. 420 (1890)

Reference in a deed of conveyance of land to government patent in the description of land conveyed makes the description and reference to the U.S. survey a part of the deed.

On a line of the same survey, and between remote corners, the whole length of which is found to be variant from the length called for, it is not to be presumed that the variance was caused by defective survey in any part, but it must be presumed, in the absence of any showing to the contrary, that it arose from imperfect measurement of the whole line; and such variance must be distributed between the several subdivisions of the line, in proportion to their respective lengths.

U.S. v. Hancock
133 U.S. 193 (1890)

--Doubts respecting the corrections of a survey of public land which passed unchallenged for 15 years should be resolved in favor of the title as patented.

S.P Randolph
15 LD 433 (1892)

Although fraud or gross mistake in the original survey will warrant the extension of the surveys over a meandered tract (shallow lake), where the adjacent land has been disposed of, such action should not be taken after the lapse of time in the absence of proof of the most positive character.

Stoneroad v. Stoneroad
158 U.S. 240 (1894)

U.S. surveys are not subject to revision by the courts.

also: West v. Cochran
Cragin v. Powell
Knight v. Land Assn.
Russell v. Maxwell Land Grant
Kirwan v. Murphy
Murphy v. Tanner

Horne v. Smith
159 U.S. 40 (1895)

--A patent conveys only the land which is surveyed and a patent for a surveyed tract does not carry with it adjoining land which ought to have been but which was not in fact surveyed.

Russell v. Maxwell Land Grant Co.
158 U.S. 253 (1895)

A survey made by the proper officers of the U.S., and confirmed by the Land Department, is not open to challenge by an collateral attack in the courts.

A survey does not create title; it only defines boundaries.

Conceding the accuracy of a survey is not an admission of title.

Whether a survey as originally made is correct or not is a matter committed exclusively to the Land Department; where the lines run by such survey lie on the ground, and whether any particular tract is on one side of the other of that line, are questions of fact which are always open to inquiry in the courts.

Opinion
28 LD 292 (1899)

--The provisions in the appropriation act of March 3, 1899, requiring public land surveys thereafter made to be under the direction of the Commissioner of the General Land Office do not preclude the completion, by the Geological Survey, of the subdivisional survey of a township, within a forest reserve, begun under authority of the Act of June 4, 1897.

John McClennen et al.
29 L.D. 514 (1900)

--The Land Department has the authority, after the tracts designated by a government survey as fractional by reason of bordering upon a body of water have been disposed of, to examine the correctness of such survey. If that examination shows that there was no body of water to prevent the extension of the township of subdivision lines, the Land Department may survey the lands thus erroneously omitted and dispose of them as public lands.

John McClennen et al.
30 L.D. 527 (1901)

--The U.S. does not, by he approval of a survey, part with its title to lands there were erroneously omitted from survey; the power to make and correct surveys of the public lands belongs exclusively to the political department of the government, and the Sec. of the Interior is the proper tribunal to determine whether the land was erroneously omitted from survey.

The Pacific Livestock Co. v. Armack
30 L.D. 521 (1901)

--The U.S. has authority to examine into the correctness of a survey and to cause lands erroneously omitted from survey to be surveyed and disposed of as public lands, even if they had been represented as bordering on a body of water.

George S. Whitaker et al.
32 L.D. 329 (1903)

--While the Government may correct its surveys so as to extend them over lands improperly omitted therefrom, when such surveys have been approved, they should not be disturbed -- especially after the lands surveyed have been disposed of and after a long lapse of time -- except upon the clearest proof of mistake or fraud.

Kirwan v. Murphy
189 U.S. 35 (1903)

The courts can neither correct nor make surveys. The power to do so is in the Land Department, which must primarily determine what are public lands subject to survey and disposal, and as it is possessed of this power in general, its exercise of jurisdiction cannot be questioned by the court before it has taken final action.

Marshall Dental Manufacturing Co.
32 L.D. 550 (1904)

--The Interior Department has power to correct surveys upon a proper showing, but the proper rule is to refuse to disturb the public surveys, except on the clearest proof of accident, fraud or mistake, where a resurvey may affect the rights or claims of anyone resting upon the original survey.

Robert L. Sheppard
32 L.D. 474 (1904)

--The approval of a township survey which purports to show that all public lands within the limits of such township have been surveyed, raises a strong presumption in favor of the correctness of such survey, and no additional surveys should be made except upon clear proof of mistake or fraudulent conduct on the part of those charged with the execution of the surveys.

--Notice of the application for the survey of islands not designated upon the township plats of survey must be served on owners of the opposite shores and upon the authorities of the State within such islands are situated.

Washington Rock Co. v. Young
80 P. 382 (1905)

Where an original Government survey of land was made before the township line was established, the fact that a retracing of such survey by the aid of courses and distances given in the field notes of the original survey for the purpose of discovering a lost boundary placed the corner of a section east of the township line as subsequently established, and in another township, could not injuriously affect the rights of a party holding under a Government patent based on the original survey; such survey controlling.

U.S. v. Cowlishaw
202 F. 317 (1913)

Acts granting land to a state for school purposes did not pass title until the lands were identified by official survey and location.

A field survey of public lands in a township is not sufficient to designate the location of school sections, so as to vest title thereto in the State; such designation not being complete until approval of the plat of the survey and filing thereof by the Commissioner of the G.L.O.

Gauthier v. Morrison
232 U.S. 452 (1914)

The surveyor is not invested with the authority to determine the character of land surveyed or left unsurveyed or to classify it within or without the operation of particular laws.

While the Land Department controls the surveying of public lands and the courts have no power to revise a survey, the courts can determine whether the land was left unsurveyed and whether a right of possession exists under an inceptive claim.

U.S. v. Morrison
240 U.S. 192 (1916)

Surveying the public lands is an administrative act, confided by statute to designated officers of the U.S. who have power to direct how the surveys shall be made; and until all requirements have been fulfilled, a survey is not a completed official act.

A survey is incomplete until approval by the Commissioner of the G.L.O.; and even though approved without modification, it does not so relate back to the date of the grant or of the field survey as to destroy the power of Congress to dispose of the land while unsurveyed.

U.S. v. Redondo Development Co.
254 F. 656 (1918)

General rule of precedence of proofs for determining disputed boundaries is: first, natural monuments; second, artificial marks; third, courses and distances; and last, recitals of quantity; but the rule is not imperative, and is adaptable to circumstances.

Where persons entitled under a treaty to select certain lands out of the public domain undertook to locate nearly 100,000 acres of land, and the selection and location were made specifically to comprise that acreage, held, that the calls for quantity will prevail over the marks, etc., of contract surveyors, it being apparent from the field notes that they did not actually run the exterior lines of the location.

Schwartz v. Dibblee
197 P. 125 (1921)

A survey, purporting to be a survey of public lands in township 30, did not control over an accepted survey and subdivisional survey of lands in township 29, the surveys being conflicting in that the surveyor of township 29 having dropped a tally of 10 chains in his survey, the surveyor of township 30 attempted to correct the error by establishing the north line of township 30 some distance south of the south line of township 29.

Before patent the Government may make as many surveys of public land as the Land Department desires, and the last accepted survey prior to patent will control.

Cox v. Hart
260 U.S. 427 (1922)

--Public lands lose their status as "surveyed lands" and become "unsurveyed" when the lines and marks of the original survey have become obliterated and when, for that reason, a resurvey has been directed by an act of Congress.

Mercantile Trust Co.
49 L.D. 663 (1923)

It is not appropriate to consider after a lapse of many years whether the survey of a boundary of a Mexican land grant was well-executed, and such survey will not be disturbed on account of inaccuracies, where it accomplished the purpose of establishing the boundaries with reasonable and approximate accuracy.

Statutes

--Rules of survey -- division of public lands, setting of corners, subdivision into sections, marking and measuring of lines, keeping of field books, and making of plats.

43 USC 751

--Boundaries and contents of public lands; how ascertained

43 USC 752

--Amount of land for which entry may be made for irrigation purposes; areas for farm units; subdivision of lands under reclamation law

43 USC 434

--Withdrawal of land for townsites under Reclamation Act and reservation for public purposes.

43 USC 561

--Use of reclamation fund for expenses of and disposal of proceeds of sale of townsites.

43 USC 568

Statutes

--Act ordering the surveyor general of the public lands south of Tennessee to survey lands ceded by the Cherokees and Chickasaws and establishing a land office in Mississippi.

Act of March 3, 1807
2 Stat. 440

Statutes

--Act providing for ascertaining claims and titles to land within the territory of Florida; none other than township lines to be run where the land is deemed unfit for cultivation.

Act of May 8, 1922
3 Stat. 709, 718

Where the southern boundary of an Indian reservation had never been surveyed, the Secretary of the Interior has authority to cause survey to be made, and the court can review the Secretary's decision only insofar as to determine if it was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law.

U.S. Surveys and Group Nos.

--Discontinuing use of A & B designations in numbered townsite surveys in Alaska.

U.S.S. 3291 11/14/56

--Complete section line data on extension survey plats.

Gp. No. 86, Alaska 3/15/54

Group Numbers

--Suspension of fraudulent surveys in Colorado

Gp. 261, Colorado

--First survey under Public Law 490

Gp. 385, California

--Complete section line data on extension survey plats

Gp. 86, Alaska (3/15/54)

United States Code

--Law providing that surveys, field notes, and plats returned from surveys undertaken under the supervision of the Director of Geological Survey shall have the same legal force and effect as those of the Field Surveying Service.

16 USC 474

Vaught v. McClymond
155 P. 2d. 612 (1945)

The location of corners and lines established by an official federal Government survey, when identified, are conclusive.

Where a quarter section was purchased "according to the U.S. Government survey thereof," private surveys not made in accordance with the official plat, field notes, monuments of survey, lines, descriptions and landmarks made and established by official Government survey of quarter-section and adjoining quarter-section, were not evidence of location of boundary line between quarter sections.

The fact that location of corner in accordance with inaccurate official Government survey will set awry shapes of sections and subdivisions, does not affect conclusiveness of survey.

Official Federal Government surveys are, as a matter of law, the best evidence of boundaries of land purchased "according to U.S. Government survey thereof", and where boundaries are clearly established thereby, other evidence is superfluous and may be excluded.

The Federal Government surveys of public lands cannot be changed in actions at law between individuals.

Henry O. Woodruff
IBLA 76-230 (1976)

Surveys of the United States, after acceptance, are presumed to be correct, and will not be disturbed except upon clear proof that they are fraudulent or grossly erroneous.

Stanley A. Phillips
IBLA 76-562 (1977)

It is within the power of BLM, as delegated by the Secretary of the Interior, to retrace any survey it has made whenever it becomes necessary to the determination of a question pending before it for decision involving rights to the public lands.

Salt River Pima-Maricopa Indian Community
v.
Arizona Sand and Rock Co.

No. Cv-72-376-Phx (1976)

Galt v. Willingham
300 F. 761 (1924)

A mistake of the Government surveyor in call of the field notes in noting minor points does not impeach the integrity of the survey as a whole.

U.S. v. State Investment Co.
264 U.S. 206 (1924)

--As long as it has not conveyed its land, the U.S. may survey and resurvey what it owns, and establish and reestablish boundaries, but in so doing, it cannot affect the rights of owners on the other side of the line already existing.

Hardee v. Horton
108 So. 189 (1926)

--Map or plat representing no survey, but prepared by projecting lives of a prior erroneous Government survey on paper over space representing unsurveyed lands, although adopted in deeds as official map of grantor, is insufficient as a survey thereof.

--A complete title to unsurveyed lands does not vest in grantee until lands conveyed have been identified by authorized survey, though deed be grant in presenting title vests in grantee upon delivery of the deed subject to right of the State to identify and separate by a survey the lands conveyed from the unsurveyed lands within which they are included.

J. M. Beard
52 L.D. 444 (1928)

--The power to make surveys of the public lands which is vested in the Land Department cannot be divested by the fraudulent action of a subordinate officer, and the determination of which public lands are subject to survey and disposal cannot be questioned by the courts before final action has been taken by the Land Dept.

Addis v. Hoagland
8 So. 2nd 655 (1942)

Where surveyor does not follow the statutory rules in making his survey, in re-establishing the lines of his survey, the lines are to be run as the surveyor ran them and not as they should have been run.

--Appropriation Act in which the rectangular system of surveys was extended to Alaska.

Act of March 3, 1899
30 Stat. 1074, 1098

Statutes

--Act providing for the sale of lands in the territory northwest of the Ohio River, and above the mouth of the Kentucky River. Provides for townships of 6 miles square, corners a mile apart, and subdivision of townships into sections of 640 acres each. All lines to be measured with chains, with field notes to be kept and returned to the Surveyor General, with a plat to be made of the township, describing the subdivision thereof and the marks of the corners.

1 Stat. 464
May 18, 1796

Statutes

--Act providing for one survey of public lands in California

Act of March 3, 1853
10 Stat. 244

--Act amending 43 U.S.C. Sec. 751 on the subdivision of townships, 43 U.S.C. sec. 770 providing for the departure from the system of rectangular surveys when necessary, 48 U.S.C. 379 on the survey of homestead claims in Alaska, and repealing 43 U.S.C. secs. 768 and 769.

Act of Ap. 29, 1950
64 Stat. 92 (P.L. 490)

--Act providing for the subdivision of lands entered under the reclamation act.

Act of June 27, 1906
34 Stat. 519 (P.L. 308)

--Act amending Act of May 18, 1796.

Act of May 10, 1800
2 Stat. 73

Sources - Statutes

--Ordinance providing for the survey and disposal of lands in the Western Territory.

Journals of the Continental Congress
Act of May 20, 1785

Subdivisional Surveys

* Palmer v. Montgomery
* Finelife v. Sinnott
* Gazzman v. Lessee of Phillips

Palmer v. Montgomery
26 N.W. 535 (1886)

--The section corners on a range line, as established and approved in an official government survey, are controlling over the corners marked in any subsequent survey for the purpose of dividing up the sections.

Finelite v. Sinnott
25 NE 1089 (1890)

--Reference to lots by number as laid down on a map or plat will operate as a sufficient description to define the boundaries of the land.

Gazzam v. Lessee of Phillips
20 How., .375 (1857)

Some latitude of discretion is allowed to the surveyor-general under the Act of April 24, 1820, and the instructions of the land office, in the subdivision of fractional sections containing more than 160 acres; and he is not obliged absolutely to lay off a full quarter of half-quarter section, though the fraction is capable of such subdivision.

Modifying Brown's Lessee v. Clements, 3 How. 650

Departmental Sources

--How subdivisional lines shall be run.

--Notice of the Acting Commissioner
G.L.O., Nov. 1, 1879

Statutes & U.S. Code

--Provision that the subdivision of all surveyed lands into lots less than 160 acres be done by county and local surveyors at the expense of claimants, but that nothing shall require the survey of waste or useless lands.

43 U.S.C. 766

Surveys

Early instructions and inspections by Sur. Gen., Act of 3/3/53, (10 Stat. 248).

Early provisions for approving surveys in Louisiana, Misc. File No. 1899965 - 2/14/51.

First rectangular surveys, Misc. File No. 1773877 - 6/19/39.

Jurisdiction of BLM for making surveys or resurveys in closed Land States, Misc. File No. 1676465 - 1/6/48.

Protest against using original survey corners and citations in regard thereto, Misc. File No. 2141753 - 3/22/48.

Suspension of fraudulent surveys in Colorado, Gp. 261, Misc. File No. 1501061 - 1/20/18.

Power to make surveys and resurveys vested in Interior Dept. for public land and in licensed surveyors for private lands Misc. File No. 1931177 - 1/21/48.

Decision denying application for survey, Misc. File No. 1204286 - 2/9/42.

Application for survey denied, Misc. File No. 1827574 - 1/2/41.

Initial point of Gila and Salt River Meridian, Misc. File No. 34337 - 4/30/47.

Misc. File

--Extension of rectangular surveys to Alaska
#37323 6/4/48

--Lands not surveyed until survey is approved & plat is filed
#42146 8/10/49

--Trend of surveys
#1925679 4/13/43

--Texas rectangular surveys
#1891580 11/15/41

--Allowable closures in earlier surveys
#59926 1/9/51

--Authority for reclamation surveys
#59920 1/6/51

--Listing or early survey districts & acts
#1899965

Resurveys

Cragin v. Powell

Frank Ryan

* Michigan Land & Lumber Co. v. Rust

John J. Serry

Pacific Livestock Co. v. Armack

Kean v. Calumet Canal & Improvement Co.

Washington Rock Co. v. Young

* Lane v. Darlington

R.J. Gilmore & H.J. Hill

Greene v. U.S.

Wiegert v. Northern Pacific Railway Co.

Scott K. Snively

U.S. v. State Investment Co.

Work v. Beachland Development Co.

J.M. Beard

State of California

Vaught v. McClymond

O.R. Williams

* Sunrise Development Co.

* U.S. v. Hudspeth

* Gilbert & Logie Nolan

* Afred Steinhauer

* U.S. v. Smith

* Orion L. Fenton

Resurveys

* U.S. v. Doyle
* Henry O. Woodruff
* Stanley A. Phillips
* Domenico A. Tussio

Corners

Palmer v. Montgomery

* Hubbard v. Dusy

* Hess v. Meyer

* Ogilvie v. Copeland

* Beltz v. Mathiowitz

Washington Rock Co. v. Young

* State v. Ball

* Halley v. Harriman

* Puget Mill Co. v. No. Seattle Improvement Co.

Scott K. Snively

* Thomsen v. Keil

Vaught v. McClymond

O.R. Williams

* Verdi Development Co. v. Dono-Hon

* Johnson v. Siebert

Gilbert & Logie Nolan

U.S. v. Heyser

* California v. Thompson

U.S. v. Doyle

Henry O. Woodruff

Corners

Corner removal, Misc. File No. 1856772 - 2/14/41; 2104890 - 2/18/48

Supersedence of monuments over record course, Misc. File No. 1766027 - 10/23/41

Supersedence of corner monuments over protractions, Misc. File No. 1773360 - 7/13/44 (221 PIC 556)

Original corners govern, 2396 Rev. Stats. 43 USC 752; 49 LD 583 - 584

Government non-liability for erroneously set corners, [H.R. 1269 - 7/28/42;] Misc. File Nos. 1930241 and 1888916

Corners established in original survey forever remain fixed in position mandatory by law, Misc. File No. 1646276 - 12/9/47

Reconstruction of corners due to street improvements, Misc. File Nos. 37202 - 5/24/48 and 1785643 - 10/2/39

Full complement of corners to complete survey of sections, Misc. File No. 34898 - 5/5/48

Recorded courses and distances less certain than fixed objects, Misc. File No. 51310 - 2/24/49

--Restoring missing patented mineral survey corners
1804776 - 6/6/40

--Authenticity of original corners over resurvey corners
* #59312 - 10/31/50

Corner rehabilitation for Forest Service - Eng. 9-9 5/18/61

Cost of Survey

George Mor

Deposit Surveys - Circular

Misc. File

--Survey of reservations on reimbursable basis #1922906 6/27/42

--Cost of survey by land owners #1796114 11/30/39

--Survey of townsite lots reimbursable #1503275 2/8/34

--Contracts for Surveys in Indian territory #1171059 2/26/25

Surveys

--Survey of townsite lots reimbursable U.S.S. 2158-59 Alaska

George Mor
A-30914 5/27/68

Where the BLM has found that an applicant for a trade and manufacturing site is only entitled to a portion of the surveyed lot applied for, the applicant may properly be required to furnish a deposit to cover the estimated costs of a supplemental survey and plat to segregate the allowable portion of the lot.

Alaska: Trade and Manufacturing Sites -- Applications and Entries: Generally -- Surveys of Public Lands: Generally

Where the Bureau of Land Management has found that an applicant to purchase a trade and manufacturing site is entitled to only a portion of the surveyed lot applied for by reason of his occupancy and improvement of the land, the applicant may properly be required to furnish a deposit to cover the estimated costs of a supplemental survey and plat to segregate the allowable portion of the lot.

Deposit Surveys-Circular
3 LD 599 (1885)

persons authorized to apply for surveys are settlers; definition of settlers

how applications shall be made

applications shall deposit the sum estimated as the total cost of the survey

Statutes

When a survey may be had by settlers in a township

R.S. 2401 (amended Aug. 20, 1894-see Xerox copy)

--deposit for expenses of surveys deemed an appropriation

R.S. 2402

--deposits made by settlers for public surveys to go in part payment of lands

R.S. 2403 (amended Aug. 20, 1894-see Xerox copy)

--survey of Indian reservations shall be in accordance with rules and regulations of other surveys

R.S. 2115

--prices of surveys and how they are to be established

R.S. 2400

--survey of Indian reservations shall be in conformity to rules for survey of other public lands

25 USC 176

Surveys

--survey of townsite lots reimbursable

-USS 2158-59, Alaska

Oil and Gas

Mineral Leasing Act

* Mineral Leasing Act and Deposits of Bentonite

Jensen et al.,; Keith et al.

Starks v. Mackey et al.

Cochran et al. v. Bonebrake et al.

* McKay v. Wahlemaier

* Sun Oil Co. et al.

* J.E. McTiernan

* J.L. Dougan et al.

* Zena L. Cochran

* Alvin A. Polet et al.

* George E. Conley

* L.M. Schwartzkopf

* Pan American Petroleum Corp.

* Charles J. Babington et al.

* Ernest F. Brackmier

* Duncan Miller

* Clarence and Mamie Hunt

* The California Co.

* Alice H. Dickson, Robert L. Graham

* R. L. Smart

Sam K. Viersen, Jr.

Margaret Russell Justheim et al.

Columbian Carbon Co.

* Mark B. Ringstead et al.

Oil and Gas

The Signal Companies, Inc.

* Authority to issue oil and gas lease in a navigable stream

* John Snyder -- State of Montana

* Grace M. Brown, et al.

Mineral Leasing Act
60 ID 26 (1947)

--The Mineral Leasing Act does not authorize the issuance of oil and gas leases in the submerged lands below low tide off the U.S. coasts and outside the island waters of the States.

Jensen et al., Keith et al.
63 ID 71 (1956)

--The Multiple Mineral Development Act does not authorize the issuance of oil and gas leases on lands covered by valid mining claims.

Starks v. Mackey et al.
60 ID 309 (1949)

--Only mining claims relating to oil and other minerals named in the Mineral Leasing Act (sec. 37) on which a valid discovery had been made prior to the effective date of the Act, or on which work leading to a discovery was being pursued and was continued to a valid discovery, were preserved by the section.

--Neither a recital in a notice of location or in a validating certificate that a valid mineral discovery has been made, nor evidence that a 3-foot layer of oily, greasy, shale was discovered 2 feet below the surface, will serve as evidence of a discovery, thus validating the claim.

Cockran et al. v. Bonebrake et al.
57 ID 105 (1940)

--An oil placer mining claim is not valid until there is a discovery of oil or gas within its limits.

--A qualified person may take possession and hold public land for a reasonable time while prospecting for mineral.

McKay v. Wahlenmaier
226 F. 2d 35 (1955)

--Where the president of a corporation, who owned 23.7 percent of capital stock therein, filed an application for an oil and gas lease of public lands in his individual capacity, though the corporation had also filed an application, without disclosing his interests as a shareholder in violation of the applicable regulations, the president was not a qualified applicant and the lease issued to him should have been canceled.

Sun Oil Company, et al.
OCS-G 1711 (July 23, 1968)

--The Secretary of the Interior, may, in his discretion, reject any and all bids for oil and gas leases, even though a bid may be above the minimum cash bonus specified, without a showing that the bid is inadequate, unreasonable, or lacking in good faith.

J. W. McTiernan
A-30645 Feb. 14, 1967

--A noncompetitive oil and gas lease offer for a tract of acquired land lying outside the area of the public land survey is properly rejected where the description of the land, although consistent with the description in the deed of conveyance to the U.S., does not include the courses and distances between angle points along the meanders of a river which forms a portion of the boundary of the tract applied for.

J.L. Dougan, Howard E. Young, Mary W. Young, Rachael S. Preston
A-26774 Sept. 1, 1954

--The rule of approximation as applied to noncompetitive oil and gas leases provides that an offer listing an acreage in excess of 2560 acres may be allowed if elimination of the smallest legal subdivision involved would result in a deficiency of area under 2560 acres greater than the excess over 2560 acres resulting from inclusion of such subdivision.

Zena L. Cochran
A-28297 June 8, 1960

--A preference right may attach only to public lands beneath nontidal navigable water and to offers for public lands adjacent to such lands. No preference right attaches to an offer for tidal lands or submerged lands.

Alvin A. Polet et al.
A-28958 (Sept. 10, 1962)

--Oil and gas lease offers may be rejected where they conflict with offers previously filed, and the extent of such conflicts may be determined without an actual survey of the lands, by computing distances and bearings between all of the tie monuments.

Oil and Gas Leases: Applications--Oil and Gas Leases: Description of Land

Where oil and gas lease offers are rejected because of conflicts with offers previously filed and where the offerors present nothing on appeal to show that the conflicts do not exist, the decision rejecting the offers will be affirmed.

George E. Conley
IBLA 70-56 Jan. 13, 1971

Oil and Gas Leases: Lands Subject to Applications: Generally

Lands included in an outstanding oil and gas lease is not available for leasing to others and an application filed for such land must be rejected whether or not the outstanding lease was properly issued.

Oil and Gas Leases: Applications: Description--Oil and Gas Leases: Lands Subject to

When land which was inadequately described in an oil and gas lease offer and in the lease thereafter issued is adequately identified prior to the filing of a conflicting offer after the lease issued, the land considered to be in an outstanding oil and gas lease is not available for leasing to others.

L. M. Schwartzkopf
A-29072 (Nov. 6, 1962)

--Surveyed land must be described by legal subdivision, section, township, and range in oil and gas lease offers, and unsurveyed land must be described by metes and bounds. Where an offer describes a tract by metes and bounds as unsurveyed and a portion is actually surveyed, the offer is properly accepted as to the unsurveyed land.

Pan American Petroleum Corporation
AA 903 etc. (April 1, 1970)

Oil and Gas Leases: Generally 3120

An oil and gas lease issued for land according to description in an approved protraction diagram is limited to the area set forth on such diagram. It is proper to dismiss a protest against oil and gas leases issued for public lands adjacent to tidal waters in Alaska where such lands are not within an area surveyed under the public land rectangular system nor within a protracted survey as shown on an approved protraction diagram and where the offer properly described the land according to the regulations.

Charles J. Babington et al.
BLM-A 077874 etc. (Mississippi) (May 2, 1966)

Mineral Leasing Act for Acquired Lands: Lease Requirements 3212

Protests against issuance of oil and gas leases pursuant to simultaneously-filed offers, on the basis of allegedly inadequate metes and bounds descriptions, are properly dismissed where the descriptions have been found adequate to the extent of certain lands. Intervening offers of the protestants cannot obtain priority over earlier offers containing adequate descriptions.

Ernest F. Brackmier
A-28911 Sept. 20, 1962

--An applicant for an oil and gas lease must adhere to the regulations and include courses and distances between successive angle points on the boundary in his description of the tract applied for, even if the agency administering the land is uncertain of the boundary. A good description must be made, even if a private survey must be made.

Duncan Miller
A-28999 Sept. 21, 1962

--Where a noncompetitive oil and gas lease offer fails to meet the requirements for a metes and bounds description of the land and conformance of the boundaries to true cardinal directions, even if the land applied for is unsurveyed, such application is properly rejected.

The California Company
A-28753 (July 30, 1962)

--Acquired lands may be leased only with the consent of the head of the department or instrumentality having jurisdiction over the lands, and an oil and gas lease offer is properly rejected where such department does not consent to the issuance of a lease.

Alice H. Dickson, Robert L. Graham
A-28956 Sept. 21, 1962

--Where an oil and gas lease offer describes the unsurveyed land being applied for according to prescribed courses and distances, the qualification of two of the calls by the words "more or less" will not render the description insufficient to identify the land.

R. L. Smart
A-25677 Decided June 22, 1950

Mineral Leasing Act--Indian Lands--Bed of Red River

Indian lands cannot be leased by the Department of oil and gas development under the Mineral Leasing Act of February 25, 1920.

The bed of the Red River between the 98th meridian west longitude and the Oklahoma-Arkansas boundary line is the property of the Choctaw and Chickasaw tribes.

Sam K. Vierson, Jr.
72 I.D. 251 (1965)

--The common law doctrine of riparian rights does not apply to oil and gas permits and leases under the Mineral Leasing Act, at least for river beds and other bottoms under nonnavigable bodies of water. Congressional intent is clear that a leasee should receive only the acreage he paid for.

--As long as title to the mineral deposits is in the U.S., an oil and gas lease carries with it the acreage shown on the plat of survey regardless of whether the river has moved onto it or away from it.

Margaret Russell Justheim, et al.
52 LD 417 (1928)

--Intruding applications will not be allowed for narrow strips of land between individual claims which, due to error in measurements, were not covered by the metes and bounds descriptions of the prior permits.

Columbian Carbon Co.
Merwin E. Liss 63 ID 166 (1956)

--Where an acquired lands oil and gas lease containing an insufficient metes and bounds description was filed after the effective date of a regulation providing that if the description is insufficient to identify the land, the application will be rejected without priority, the application must be rejected.

Mark B. Ringstead et al., Inlet Oil Corporation et al.,
Robert L. Lawler et al.
A-31111, A-31115, A-31134, A-31188 Decided Mar. 17, 1970

Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Lands Subject to

Where an area of public land has been declared in a public land order not to be available for noncompetitive oil and gas leasing until certain steps have been taken, and the requisite steps have not been taken, the land is not subject to oil and gas leasing and offers for it are properly rejected.

The Signal Companies, Inc.
A-31020 May 27, 1969

--An oil and gas offer for unsurveyed land in an alleged hiatus is properly rejected where the existence of the hiatus is predicted solely upon distances and acreages shown on the plats of survey, and, in fact, the survey records show that the west line of the townships involved coincides with the east line of the adjoining western townships.

John Snyder, State of Montana
A-30462 Decided Dec. 3, 1965

Oil and Gas Leases: Applications: Description--Surveys of Public Lands: Generally

A metes and bounds description of a tract of land in an oil and gas lease offer must be connected to an official corner of the public land surveys, which term includes township corners, section corners, quarter-section corners and meander corners and excludes quarter-quarter section corners and lot corners established by protraction, but an offer is not to be rejected for failure to tie the description to an official corner where the point of beginning for the description is a lot corner which is also a meander corner.

Navigable Waters--Rules of Practice: Hearings

Although a hearing is not required prior to a determination that a lake is nonnavigable and its bed public lands, a State which has heretofore not been informed of the factual basis for such a determination will be allowed to present such information as it desires supporting its view that the lake is navigable and the Director will then decide whether a hearing would be useful.

Statutes
42 Stat. 1448 March 4, 1923 (P.L. 500)

--Act authorizing the Secretary of the Interior to adjust and determine the claims for oil and gas deposits on public lands along the Red River in Oklahoma.

Alvin A. Polet et al.
A-28958 (Sept. 10, 1962)

--Oil and gas lease offers may be rejected where they conflict with offers previously filed, and the extent of such conflicts may be determined without an actual survey of the lands, by computing distances and bearings between all of the tie monuments.

Mining Claims & Mineral Surveys

Roman Placer Mining Claim

William J. Harris

Ventura Coast Oil Co.

U.S. v. Charles H. & Oliver M. Henrikson

Fred B. Ortman

Holmes Placer

Archibald McNabb

Charles H. Head et al.

* Charles Ketchum et al.

* Waskey v. Hammer

* Seymour Gray et al v. Milner Corp.

U.S. v. Baranof Exploration & Dvpt. Co.

* U.S. v. Zweifel et al.

* U.S. v. Menzel G. Johnson

* U.S. v. Leslie & Maxine Horn

J.C. Nelson et al.

A.W. Schunk

* Harry Yukon

Bi-Metallic Mining Co.

Roos. v. Altman et al.

* Southern Pacific Co.

* Russ Journigan

Devearl W. Dimond

* Wilbur v. Krushnic

Mining Claims & Mineral Surveys

* Conkling Mining Co. v. Silver King Coalition Mines Co.

  Survey of Mining Claims

* U.S. v. Kincanon

* J. P. Hinds et al.

  Sliger Gold Mining Co.

* Federal-American Partners

  U.S. Mineral Surveyor

  Conflict of Interest

Roman Placer Mining Claim
34 L.D. 260 (1905)

--The smallest legal subdivision provided for by the mining laws is one of 10 acres in square form.

William J. Harris
45 L.D. 174 (1916)

--The smallest legal subdivision according to which placer claims on surveyed lands may be located and described are 10-acre tracts in square form; rectangular 10-acre tracts may be used in certain situations.

--see 70 I.D. 212 (1963)

Ventura Coast Oil Co.
42 L.D. 453 (1913)

overruling Chicago Placer Mining Claim
34 L.D. 9 (1902)

--The rule of approximation permitted in disposal of nonmineral lands is equally applicable to placer mining locations and entries on surveyed lands, but in dealing with placer claims the rule should be applied on the basis of 10-acre legal subdivisions.

U.S. v. Charles H. and Oliver M. Henrikson
70 I.D. 212 (1963)

--A 10-acre placer claim consisting of four contiguous 2½-acre tracts straddling three regular 10-acre divisions is not thereby invalid as not being in conformity with the public land surveys, where the allowance of such a claim would not cut the public domain into a grossly irregular shape.

--Where a discovery has been made in one 10-acre subdivision, it is not necessary to show that the portion of the claim in the other two 10-acre subdivisions are mineral in character in order to sustain the validity of the entire claim.

Fred B. Ortman
52 L.D. 467 (1928)

--A placer location which was defective and not subject to entry and patent in its original form because of nonconformity with the U.S. system of public land surveys, is not void.

--The defect is curable, in the absence of an adverse claim, either by suitable amendment or by relocation.

Holmes Placer
29 L.D. 368 (1899)

--An official survey of a placer mining claim must be furnished, if the description of the lands cannot be made to conform to legal subdivisions of the public land surveys.

Archibald McNabb
42 L.D. 413 (1913)

--Where a placer claim is described as a legal subdivision and is thereby identifiable, a special mineral survey thereof will not be required.

Charles H. Head et al.
40 L.D. 135 (1911)

--A placer location for 20 acres may not be enlarged to cover forty acres by means of a amended or supplemental location, as such amendment would constitute a new location.

Charles Ketchum et al.
IBLA 74-134 (June 26, 1974)

--Where payment for annual rental on a mining claim was tendered within a few days after the due date and before action by BLM to declare the claim invalid, the claim will not automatically be declared null and void for failure to make timely payment.

Waskey v. Hammer
223 U.S. 85 (1912)

--Mineral surveyors are disqualified from making a mining location under the general prohibition against the purchase of public lands by officers and employees of the Land Department.

--Thus where a locator readjusts the lines of a valid claim in which he had made a discovery, and in doing so, leaves the only place of his prior discovery outside the readjusted lines, and thereafter makes a discovery within the readjusted lines, at which time he is a mineral surveyor, the new location is invalid since he was disqualified at the time of readjustment.

--An original location is invalidated by readjusting the lines so as to exclude the point or place of the only prior discovery.

Seymour Gray et al. v. Milner Corp.
64 I.D. 337 (1957)

--The fact that a U.S. deputy mineral surveyor performed the work of locating a claim for a patent applicant does not make the location void under the prohibition against the purchase or acquisition of interest in the purchase of public lands by officers and employees of the General Land Office, as long as there is no evidence that at the time of location the surveyor had, or has since, acquired an interest in the land.

U.S. v. Baranof Exploration and Development Co.
72 I.D. 212 (1965)

--A mining claim may be declared null and void where, after adversary proceedings are brought, a hearing examiner finds no discovery has been made.

U.S. v. Zweifel et al.
IBLA 74 - 155 June 26, 1974

--A discovery on one claim does not validate a group of claims, and a mining claimant has the burden of providing a discovery within the limits of each claim.

U.S. v. Menzel G. Johnson
IBLA 74-170 July 10, 1974

--A qualifying discovery of a valuable mineral deposit may be lost through the occurrence of a number of events, including a loss of a market of substantial duration.

U.S. v. Leslie and Maxine Horn
IBLA 74-207 July 8, 1974

--A discovery of a valuable mineral deposit is not demonstrated on a placer mining claim which yields small amounts of gold but can never be expected to produce an economic return commensurable with the labor and cost involved in such production.

--Once the Government established a prima facie case in contesting a mining claim, the burden of proof shifts to the claimant to show that his claim is valid.

J.C. Nelson et al.
64 I.D. 103 (1957)

--Recitals of discovery in notices of location are not evidence of discovery nor are affidavits of annual assessment work or notices of intention to hold claims in years when assessment work is not required.

A.W. Schunk
IBLA 73-86 June 28, 1974

--The Forest Service cannot withdraw or close unimproved national forest land from mining location by issuing a special use permit for a transmission line right-of-way. A BLM decision invalidating mining claims which conflicted with a transmission line right of way will be vacated.

Harry Yukon
A-30762 August 23, 1967

--A valid mining location confers an exclusive possessory right upon the locator and is not available for selection under the Taylor Grazing Act.

--When the invalidity of a mining claim depends on the resolution of a factual issue, the claim can only be declared invalid in administrative proceedings after notice has been given to the mining claimant; such proceedings will not be instituted where the advantage to the public interest does not justify the expense and time required to contest the claims.

Bi-Metallic Mining Co.
15 L.D. 309 (1892)

--Where a mineral entry is in conflict with a prior preemption claim, the land embraced in the entry that lies beyond the point where the lode or vein intersects that preemption claim must be excluded from the mineral survey.

Roos v. Altman et al.
54 L.D. 47 (1932)

--The fact that the records of the Land Department show that a tract of public land is free from claim is not conclusive that the land has been validly appropriated under the mining laws.

Southern Pacific Company
Sacramento 079867 Nov. 4, 1966

--Lands returned as mineral are not open to entry and did not pass to the railroad company or its purchasers under a grant of place lands to the railroad.

Russ Journigan
IBLA 74-163 June 26, 1974

A mining Claim located on land subject to first form reclamation withdrawal and not open to mineral entry is void ab initio.

Devearl W. Dimond
62 ID 260 (1955)

--An entry of land under the Stockraising Homestead Act segregates the land entered into two separate estates--the surface and the mineral.

Wilbur v. Krushnic
280 U.S. 306 (1930)

Under the General Mining Law, a perfected location of a mining claim has the effect of a grant by the U.S. of the right of present and exclusive possession, and so long as the owner complies with the law, this right, for all practical purposes of ownership, is as good as though secured by patent.

Failure to perform annual labor (Rev. Stat. §2324, U.S.C. Title 30, § 28) renders the claim subject to loss through relocation by another claimant, but it does not ipso facto forfeit the claim, and no relocation can be made if work be resumed by the owner after default and before such relocation.

Conkling Mining Co. v. Silver King Coalition Mines Co.
230 F. 553 (1916)

--The owner of a mining claim has no extralateral rights beyond the end lines of his claim extended vertically downward, except when he has mistakenly located his claim across, rather than along, his discovery vein.

Survey of Mining Claims
44 LD 316 (1915)

--Regulations concerning the appointment of mineral surveys and the methods of surveying a mining claim.

U.S. v. Estella M. Kincanon and David L. Kincanon
IBLA 72-325 9/26/73

IB IBLA 165

J.P. Hinds et al.
IBLA 76-370 (1976)

Mining Claims and millsites located on lands previously withdrawn from entry under the mining laws by a first-form reclamation withdrawal are null and void ab initio.

Sliger Gold Mining Co.
56 ID 67 (1937)

Lands not known to be mineral at date of survey presumptively passed to State under its grant of school sections. If land was known to be mineral at date of survey, the title did not pass to State under school land grant.

Presumption that land passed to State under its original grant is not conclusive and may be contested by a mineral claimant.

USC and USCA

--Length of claims on veins or lodes - 30 USC 23

--Description of vein claims on surveyed and unsurveyed lands - 30 USC 34

--Where placer claims do not conform to the subdivisional lines of a section, the plat and survey shall be made as on unsurveyed lands. 30 USC 35

Statutes

--Placer claims shall conform to the legal subdivisions of the public lands where the lands have previously been surveyed. R.S. 2329

--Authority to subdivide 40-acre legal subdivisions into 10-acre tracts; placer claims made after July 9, 1870, not to exceed 160 acres for any one person or association.
R.S.2330

--Where placer claims are on surveyed lands and conform to legal subdivisions, no further survey or plat is necessary; where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands. R.S. 2331

Outside Sources

--Conformation of placer mining claims - Lindley on mines, secs. 397, 672

Memorandum

December 29, 1982

To: Assistant Director, Bureau of Land Management

From: Acting Associate Solicitor, Division of General Law

Subject: U.S. Mineral Surveyor Conflict of Interest

The four questions submitted in your memorandum of July 21, 1977, above subject, are repeated below. Our answer follows each question.

1. Are we correct in our interpretation of the principles enunciated in Waskey v. Hammer, 223 U.S. 85 (1912), that Mineral Surveyors should not be allowed to negotiate for cadastral survey contracts because a conflict of interest would result?

Yes. In Waskey the Court in deciding that mineral surveyors are within the term "officers, clerks, and employees", as used in Revised Statute § 452, 43 U.S.C. 11, describes the relationship between the Government and mineral surveyors as follows:

> The work which they [mineral surveyors] do is the work of the Government, and the surveys which they make are its surveys. The right performance of their duties is of real concern, not merely to those at whose solicitation they act, but also to the owners of adjacent and conflicting claims and to the Government. Of the representatives of the Government who have to do with the proceedings incident to applications for patents to mining claims, they alone come in contact with the land itself, and the extent and nature of the work done and improvements made thereon; and it is upon their reports that the surveyor general makes the certificate required by Rev. Stat., § 2325 [30 U.S.C. 29], which is a prerequisite to the issuance of a patent. * * * Waskey v. Hammer, 223 U.S. 85, 92 (1912).

Section II of title 43 of the United States Code, which is derived from R.S. § 452, prohibits ". . . officers, clerks and employees in the Bureau of Land Management. . . from directly or indirectly purchasing or becoming interested in the purchase of any of the public lands. . ." Department regulations, 43 C.F.R. Part 7, contain similar restrictions but the regulations are more definitive and broader in scope than 43 U.S.C. 11. Department regulations in this area are discussed not only in Waskey but in Gray v. Milner Corp., 64 I.D. 337 (1957), and in the matter of Ronald Eugene Tyree. 1/ The two opinions indicate conditions under which a mineral surveyor may fall outside the statutory and regulatory prohibitions. Whether the activities of a U.S Mineral Surveyor concerned with a specific cadastral survey contract are in violation of

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1/ Memorandum February 28, 1975, Associate Solicitor Garner, Division of Energy and Resources, to Chief, Division of Cadastral Survey (420), BLM, Subject: Mineral Surveyor--Ronald Eugene Tyree

statutory or regulatory restrictions or are outside these provisions within the guidelines laid down in Gray and Tyree would depend upon the factual circumstances in a particular case. However, Waskey and the two Department opinions do not deal with the applicability or non-applicability of what are commonly referred to as the Federal conflict of interest laws, 18 U.S.C. sections 203, 205, 207, 208, and 209. Nor do they deal with the applicability of standards of conduct for Government officers under E.O. 11222 and implementing Civil Service Commission regulations (5 C.F.R. Part 735) and Department regulations, 43 C.F.R. Part 735.

The enclosures to your memorandum 2/ indicate that those who are appointed U.S. Mineral Surveyors pursuant to 30 U.S.C. 393/ are considered "special Government employees," as the term is used in 18 U.S.C. 202, and subject to the pertinent conflict of interest statutes and standards of ethical conduct as set out therein. There is no indication as to whether U.S. Mineral Surveyors are subject to E.O. 11222, and in particular implementing Department conduct regulations, 43 C.F.R. Part 20.

Although not referred to in the question, enclosures to your memorandum indicate that the Bureau considers Federal conflict of interest laws (18 U.S.C. 202 et seq.) applicable to Mineral Surveyors. We believe that this view is supported by the rationale enunciated by the Supreme Court in Waskey. As you know, the Federal conflict laws are criminal laws which carry severe penalties, as such they are to be strictly construed. However, as the Attorney General, in discussing a criminal law from which 18 U.S.C. 208 was derived states: ". . . the rule of strict construction must not be applied to defeat the manifest purpose of the statute. United States v. Corbett, 215 U.S. 233. "4/ Argument can be made that the Mineral Surveyor who negotiates a cadastral survey contract with the Bureau acts in an independent capacity and is outside the statutory prohibitions. To sustain the argument would be to ignore his status as an appointed employee and the relationship which exists between him and the Government (see preceding quote from Waskey) and the purpose of the Federal conflict laws. As to the

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2/ In addition to the enclosures we have before us additional and relevant documents furnished by Mr. Orin Collier, Division of Cadastral Survey.

3/ 30 U.S.C. 39 is authority for appointment by the BLM of competent surveyors to survey mining claims. As to the duties of mineral surveyors, see 43 CFR § 3361.3-1. As to surveys of public lands, which include certain procedures to be followed by "deputy surveyors," see 43 U.S.C. 751, et seq. For purposes of this memorandum we draw no distinction between a cadastral or mineral survey by U.S. Mineral Surveyor so long as the survey involves public lands of the United States.

4/ 40 Op.A.G. 168, 169 (1942). In construing section 41 of the U.S. Criminal Code, from which 18 U.S.C. 208 is derived, the Attorney General pointed out that an Army officer could not be assigned to maintain liaison with a company in which he is an officer without running afoul the statutory prohibition.

latter, the Supreme Court, discussing 18 U.S.C. 434, now 18 U.S.C. 208, and related conflict laws, points out that these ". . . were designed to prohibit government officials from engaging in conduct that might be inimical to the best interests of the general public." United States v. Mississippi Valley Generating Co., 364 U.S. 520, 548 (1961). In the same case, the Court states:

> The obvious purpose of the statute [18 U.S.C. 434, now 18 U.S.C. 208] is to insure honesty in the Government's business dealings by preventing federal agents who have interests adverse to those of the Government from advancing their own interests at the expense of the public welfare. United States v. Chemical Foundation, 272 U.S. 1, 18. The moral principle upon which the statute is based has its foundation in the Biblical admonition that no man may serve two masters, Matt. 6:24, a maxim which is especially pertinent if one of the masters happens to be economic self-interest. . . the statute establishes an objective standard of conduct, and that whenever a government agent fails to act in accordance with that standard, he is guilty of violating the statute, regardless of whether there is positive corruption. The statute is thus directed not only at dishonor, but also at conduct that tempts dishonor. This broad proscription embodies a recognition of the fact that an impairment of impartial judgement can occur in even the most well-meaning men when their personal economic interests are affected by the business they transact on behalf of the Government. To this extent, therefore, the statute is more concerned with what might have happened in a given situation than with what actually happened. It attempts to prevent honest government agents from succumbing to temptation by making it illegal for them to enter into relationships which are fraught with temptation. Rankin v. United States, 98 Ct. Cl. 357. At pages 549, 550.

As to the preventive nature of conflict of interest statutes, see also Michigan Steel Box Co. v. United States, 49 Ct. Cl. 421.

The U.S. Mineral Surveyor who negotiates or assists in the negotiation of a cadastral survey which involves the public lands is an officer of the United States. No matter how high his motives he is likely, as a realistic matter, to be consciously or unconsciously influenced by the fact that his actions may benefit him as contractor. Such self-dealing, in our opinion, is intended to be avoided. Cf., 40 Op. A.G. 168, 169-70 (1942).

For reasons, not unlike those stated above, we are of the opinion that a U.S. Mineral Surveyor, regardless of whether he is called a "special Government employee" or a "full-time" or "regular officer or employee" of the Department, as such terms are used in the Federal conflict laws, is also subject to E.O. 11222 and Department conduct regulations, 43

CFR, Part 20. However, because of the nature of the appointment, the uniqueness of the relationship between the Bureau and the surveyor and the highly specialized nature of the profession, the Order and implementing conduct regulations should be given reasonable application. It is not unlikely that the appointed surveyor may, as a private citizen, seek to have business relations with the United States or the Bureau which are entirely unrelated to survey of public lands. Review of the appointed surveyor's disclosure statement following established procedures should result in a proper determination as to whether there is a potential for conflict. Such review, in conjunction with the established appeal process, conducted on a case-by-case basis should result in reasonable application of the regulations. Should you feel that existing Department conduct regulations are deficient in dealing with U.S. Mineral Surveyors and should be amended to clarify their applicability as to these employees, please let us know and we shall work with you and the Department Counselor on an appropriate change.

In regard to the preceding views as such relate to the applicability of the Federal conflict of interest laws, you are advised that these are Federal criminal laws which are to be construed and enforced by the Department of Justice. It follows that in this area our opinion is advisory only and would not be binding upon that Department.

2. If the first question is answered in the affirmative, would a Mineral Surveyor appointment to a senior partner or senior member of a firm of land surveyors prohibit the firm of surveyors from negotiating for a cadastral survey contract?

In general, yes. However, each case should be resolved based upon the particular facts submitted. Argument may be made that the contract is not an acquisition of a property interest in public land and therefore is outside the prohibitions of 43 U.S.C. 11 and Department regulation 43 CFR Part 7. Whether the argument is sustainable would depend upon the facts involved. See, Gray v. Milner Corp., 64 I.D. 337 (1957) and the matter of Ronald Eugene Tyree. 5/ The Federal conflict law must be considered on the question of whether the Mineral Surveyor is to participate personally and substantially as a Government officer in approval, advice, etc., in regard to the contract. See, 18 U.S.C. 208. Should a potential violation of 18 U.S.C. 208 be noted, consideration could be given to effecting the procedures in 208(b). Assuming there is no indication of violation of the Federal conflict laws, negotiation of the contract could give rise to a conflict or appearance of conflict within the prohibitions of E.O. 11222 and implementing Department conduct regulations, 43 CFR Part 20.

As you will note, the statutory and regulatory restrictions are upon the employee and not upon the business entity of which he is a member. As a partner in the firm he would share in the profits of the partnership. There should be no doubt that the contract would result in a financial benefit to the firm and a direct or indirect benefit to the Mineral Surveyor. In other words the Mineral Surveyor has a direct or indirect financial interest in the contract.

5/ Footnote 1, supra

In addition to the conflict problem raised by the question, negotiation of the contract could raise ethical questions based upon prohibitions in both E.O. 11222 and Department conduct regulations, 43 CFR Part 20. As examples, employees of the Government are to avoid action which will result in, or create the appearance of using public office for gain, or which affects adversely the confidence of the public in the integrity of the Government. Sec. 201(c), E.O. 11222; 43 CFR § 20.7350-32(d)(1) and (6). These and other problems raised by the negotiation of the cadastral survey contract would be considered in the light of the facts submitted in a particular case. In addition, your attention is invited to Interior Procurement Regulations § 14-1.302-3 and Federal Procurement Regulation, 41 CFR § 1-1.302-3 regarding proposed contracts and contracts with Government employees or business concerns substantially owned or controlled by them.

3. If the first question is answered in the affirmative, would a Mineral Surveyor appointment to a junior partner or junior member of a firm of land surveyors prohibit the firm of surveyors from negotiating for a cadastral survey contract?

We submit the same answer as to question 2, above. As a junior partner the Mineral Surveyor would still share in the profits of the partnership, and as a junior member of a firm his income from the firm may be less than that of senior members. Nevertheless he has a financial interest in the contract because of his association with the firm, granted the interest may be more remote and to a less degree than that of senior members.

4. Under the authority established in 30 U.S.C. 39, our United States Chief Cadastral Engineer has treated the appointment of each qualified Mineral Surveyor as being subject to the rules and regulations applicable to a formal full-time Federal employee. We believe this is in the best interest of the public, and we ask you for your opinion.

We agree in substance that Mineral Surveyors should be treated as full-time, or regular, Bureau of Land Management or Government employees for the purpose of applying 43 U.S.C. 11, 43 CFR Part 7, the Federal conflict of interest laws (18 U.S.C. 203, 205, 207, 208 and 209), E.O. 11222, and implementing regulations, in particular 43 CFR Part 20. However, as indicated in the answer to question 1, Mineral Surveyors are also referred to by the Bureau as "special Government employees" as that term is used in 18 U.S.C. 202. These "special Government employees" are distinguished from regular Government employees, and, in some instances, are subject to less restrictive prohibitions in the federal laws (18 U.S.C. 203, et seq., E.O. 11222 and implementing regulations) than regular employees. By calling mineral surveyors "special Government employees" while treating them as full-time, or regular employees is inconsistent. For consistency, we recommend that Mineral Surveyors be categorized and called "special Department employees," for example, without reference to 18 U.S.C. 202. In conjunction with this change you may want to consider appropriate amendments to existing Department regulations (43 CFR Part 7 and 43 CFR Part 20) to provide that Mineral Surveyors as "special Government employees" are considered as subject to the same conflict laws and

conduct regulations (43 U.S.C. 11, 43 CFR, Part 7, 18 U.S.C. 203, 205, 207, 208 and 209, E.O. 11222 and 43 CFR Part 20) that apply to Bureau of Land Management and full-time, or regular, Department employees. We shall be glad to assist you, and perhaps the Department Counselor or his representative, in framing appropriate amendments to the regulations.

Timothy S. Elliott

Townsites

* Hall v. North Ogden City

Gamble v. Sault Ste. Marie

O. P. Pesman

* Ruth B. Sandvik

U.S. Surveys (Alaska)

Misc. file

Statutes

Hall v. North Ogden City
175 P 2d 703 (1946)

--An occupant of public lands at the time a townsite was entered cannot be divested of his vested right in the land under regulations of local legislative authority, acting under the Federal Townsite Act, even where such occupant failed to file his claim to the occupied lands, as long as occupant remained in possession of the property.

Gamble v. Sault Ste. Marie
10 LD 375 (1890)

--The proceedings under the Act of 9/26/1850, whereby a cemetery was designated as a lot reserved for a public purpose on the approved plat of survey, constitute a statutory dedication to the village of Sault Ste. Marie of the tract set apart for cemetery purposes, thus passing title from the U.S. and, upon incorporation of the village, resting it in the municipal authorities.

--By such a statutory dedication, the Government parted with the title to the tract and control thereof.

O. P. Pesman
52 LD 558 (1929)

--The adoption of a townsite plat and the sale of lots by reference thereto constitutes an actual dedication to public use of the tracts or strips designated thereon as streets or alleys. The Land Department is thereafter without authority to vacate those streets and alleys.

Ruth B. Sandvik
IBLA 76-391 (1976)

A townsite lot applicant is not precluded from settlement on and improvement of a townsite lot until the date of approval of final subdivisional survey, except by prior adverse settlement and occupancy.

A city does not initiate such an adverse claim by posting lots as their property without otherwise using or improving the lots.

U.S. Surveys

--Alaska Townsite Surveys - combining exteriors with subdivisions

U.S.S. 2096

--Riparian rights defeat dedication

U.S.S. 3303 4/19/57

--New survey numbers for tracts held under color of title within boundary of townsite

U.S.S. 3247 10/31/55

Misc. File

--Dedication of streets and alleys and public reservations on the plat

#2144824 5/1/47-4/30/47

--Alaska townsite surveys - combining exteriors with subdivisions

#1198269 and 1455409 6/7/32

--Pocatello, Idaho townsite

#1843351 10/16/40

--Authority in special instructions for townsite survey

#1972382 4/17/46

--Survey of townsite lots reimbursable

#1503275 2/8/34

--Segregation of Government reserves in Alaska townsites and costs

#1086848 10/7/23

--Survey of Indian villages

#1144670 7/17/24

Statutes

--Act authorizing issuance of deeds to certain Indians and Eskimos for tracts set apart to them in surveys of townsites in Alaska, and to provide for the survey and subdivision of such tracts and of Indian or Eskimo towns or villages.

Act of May 25, 1926
44 Stat. 629

--Provision for entry of townsites in Alaska for use and benefit of occupants thereof, survey of the land into lots and disposal of such lots in the townsite.

43 U.S.C. 732

--Provision for tracts occupied by Indians or Eskimos to be set aside on the survey of the townsite.

43 U.S.C. 733

State and Reservation Boundaries

Edwin J. Keyser

Oklahoma v. Texas (261 U.S. 345)

* Oklahoma v. Texas (261 U.S. 340)

* Handly's Lessess v. Anthony

* Indiana v. Kentucky

Scott v. Lattig

Maxwell and Sangre de Cristo Land Grants

* Michigan v. Wisconsin

Boundary of San Carlos Indian Reservation

* Ernest M. Pellkofer

Conkling Mining Co. v. Silver King Coalition Mines Co.

Uhlhorn v. U.S. Gypsum Co.

Franzini v. Layland

Nebraska v. Iowa

* Hogue v. Stricker Land and Timber Co.

Alabama v. Georgia

Fort Apache Indian Reservation IBLA 6/12/67

* Texas v. Louisiana

Arkansas v. Tennessee

U.S. v. Hutchings

Statutes - Executive Orders

Boundary Dispute

State and Reservation Boundaries

Edwin J. Keyser
61 ID 327 (1954)

Where the boundary of an Indian reservation is the middle of the channel of a river, the boundary shifts with the middle of the channel.

Oklahoma v. Texas
261 US 345 (1923)

Where tracts were not riparian when surveyed but were patented after they had become riparian, such disposals carried the title to the medial line of the river.

Oklahoma v. Texas
261 U.S. 340 (1923)

--The boundary between the two States is on and along the cut bank--the watershed and relatively permanent elevation or acclivity where the bed is separated from the adjacent upland--at the mean level attained by the waters of the river when they reach and wash the bank without overflowing it.

Handley's Lessee v. Anthony
5 Wheaton 374 (1820)
18 U.S. 374

The boundary of Kentucky extends only to the low water mark on the northwestern side of the Ohio River, and does not include a peninsula, or island, on the northwestern bank, separated from the mainland by a channel or bayou which is filled with water only when the river rises above its banks, and is at other times dry.

Where a river is the boundary between two states; if the original property is in neither and there is not convention respecting it, each holds to the middle of the stream.

If one state is the original proprietor and grants the territory on one side of the river only, it retains the river within its own domain and the newly created state extends to the river only.

If the tide of the river regularly ebbed and flowed the entity bounded by the river would extend to the low-water mark.

Indiana v. Kentucky
136 U.S. 479 (1890)

The dominion and jurisdiction of a State, bounded by a river, continue as they existed at the time when it was admitted into the Union, unaffected by the action of the forces of nature upon the course of the river.

Long acquiescence of one State in the possession of territory by another State, and in the exercise of sovereignty and dominion over it, is conclusion of the title and rightful authority of the latter State.

Scott v. Lattig
227 U.S. 229 (1912)

--riparian proprietors are owners of the bed of a stream to the center of the channel.

--Government, as original proprietor, has the right to survey and sell any lands, including islands in a river.

--purchasers of fractional interests of subdivisions on the bank of a navigable stream do not acquire title to an island on the other side of the channel merely because the island was omitted from the survey.

Maxwell and Sangre de Cristo Land Grants
48 LD 87 4/23/21

--When the boundary is described as a topographic feature, the natural formation of the terrain controls rather than a surveyed line.

Michigan v. Wisconsin
270 U.S. 295 (1926)

--long acquiescence by one State in the possession of territory, and in the exercise of sovereignty and dominion over it, by another State, is conclusive of the latter's title and rightful authority.

Boundary of San Carlos Indian Reservation
55 ID 560 5/29/36

--in determining the boundaries of an Indian reservation, the recognition by the Interior Department of a boundary as such for more than 60 years will be deemed controlling.

Ernest M. Pellkofer
A-29832

--the fact that the U.S. has surveyed a line as the boundary between two existing States and closed the public land surveys on that line does not establish that line as the boundary between the States, where the States have never accepted that line but have accepted a later different line.

Conkling Mining Co. v. Silver King Coalition Mines Co.
230 F. 553 (1916)

The corner of a mining claim has no extralateral rights beyond the end lines of his claim extended vertically downward, except when he has mistakenly located his claim across, rather than along, his discovery vein.

Uhlhorn v. U.S. Gypsum Co.
366 F 2d 211 (1966)

--The "rule of thalweg" holds that where a navigable river is the boundary between States, the true line is middle or thread of the main channel of the river.

--The thalweg rule acknowledges a change in boundary only if accomplished by slow, gradual, imperceptible processes of erosion and accretion, or if thalweg has shifted around an island.

Franzini v. Layland
97 NW 499 (1903)

--The boundary line between Wisconsin and Minnesota where the Mississippi River divides them is not the center line of the river measuring from shore to shore, but is the center line of the main channel of the river, regardless of the distance thereof from either shore. It is not referable to the condition of the channel at the time the State was admitted into the Union, it is a shifting line.

Nebraska v. Iowa
143 U.S. 359 (1892)

--When the boundary stream suddenly abandons its old bed and seeks a new course by the process known as avulsion, the boundary remains as it was in the center of the old channel, and this rule applies to a State when a river forms one of its boundary lines.

Hogue v. Stricker Land and Timber Co.
69 F. 2d 167 (1934)

--Glasscock Island

--In determining state boundaries, where the main channel changes from one side of an island to the other, the rules applying in cases of avulsion are applicable, at least to the extent that the filling up of the old channel is considered attributable, not to accretion, but to the change of conditions wrought by the new channel, in which case the old channel remains the boundary.

--Where the main channel of the Mississippi River, the boundary between Louisiana and Miss., gradually changed from east to west side of Glasscock Island, and the eastern channel remained in its bed until it became empty, Glasscock Island remained in Louisiana and batture land between it and the western channel was accretion to the island, and batture land to south of island between old eastern chute and river also belonged to Louisiana.

Alabama v. Georgia
64 U.S. 505 (1859)

--Georgia ceded to the U.S. all of her lands west of a line beginning on the western bank of the Chattahoochee River, which line must be traced along the western bank or on the line of the river bed, as that is made by the average and mean stage of the water.

--The bed of a river is that portion of its soil which is alternately covered and left bare, and which is adequate to contain the water at its average and mean stage during the entire year.

Texas v. Louisiana
410 U.S. 702 (1973)

States entering the Union acquire title to the lands under navigable waters within their borders, but title to islands and other fast lands located within such waters remain in the U.S. unless expressly granted along with the stream bed or otherwise.

The boundary between Texas and Louisiana is the geographic middle of Sabine Pass, Lake and River, and not the west bank or the middle of the main channel; all islands in the east half of the Sabine at time of Louisiana's admission as a State, or thereafter formed, belong to Louisiana.

Arkansas v. Tennessee
246 U.S. 158 (1918)

When 2 states are separated by a navigable stream and their boundary is described as "a line along the middle of the river" or as "the middle of the main channel of the river," the boundary must be fixed (by the rule of Thalweg) at the middle of the main navigable channel, subject to change by erosion and accretion, so that each state may enjoy an equal right of navigation.

U.S. v. Hutchings
252 F. 841 (1918)

Where the original government survey indicated an island in the river which bounded an Indian reservation, the fact that the island was not meandered or surveyed did not affect the claim of the tribe to the island; even if island had been totally ignored, title would not be affected.

The division line between opposite riparian owners on a nonnavigable stream would be the middle of the stream, and if that line falls upon an island, a division of the island is required.

An island in the Arkansas river is included in the Indian reservation bordered by the river, where reservation was described by Act of Congress as extending to the main channel of the river, which at time of survey was on the further side of the island from the reservation.

Statutes

--school grant to Nevada

Act of June 16, 1880
21 Stat. 287

--delegation of authority to Secretary of the Interior to issue public land orders

43 USC 141

--authority for BLM to survey Indian reservation boundaries

25 USC 176

Executive Orders

--Delegation to the Secretary of the Interior of the authority of the President to withdraw or reserve lands of the U.S. for public purposes.

Executive Orders #10355
May 26, 1952

Misc. File

Bdy Dispute #6626 12/22/47

Bdy changes due to change of medial line of river #1925283 3/3/43

Case of conflict of monuments and courses plus distances # 57979 7/11/50

State and Reservation Boundaries

Florida Reserves, Key West, etc., Misc. File No. 1921369 - 8/12/42

N. bdy. Quinault Ind. Res., Wash. Misc. File No. 1357033, 11/11/29

Texas and Oklahoma Boundary (Red River) Misc. File No. 17152 - 11/6/47

Alabama - Miss. Boundary. Misc. File Nos. 1071464 - 1/10/23, 2120254 - 8/26/46

Arizona - California Boundary, Misc. File No. 2002389 - 9/24/44

Arkansas boundaries, Misc. File No. 1773315, 6/6/39

Choctaw Indian Boundary in Miss., Misc. File No. 1906389 - 3/25/42

East Boundary of Texas, Misc. File No. 1856226 - 1/29/41

State and Reservation Boundaries (Continued)

Missouri - Kansas Boundary, Misc. File No. 1821235 - 5/22/40

Sullivan Line, Iowa and Missouri, Misc. File No. 1797412 - 1/9/40

North Boundary of Texas Panhandle, Misc. File No. 1855371 - 1/30/41

Boundaries of Kansas, Oklahoma, Texas, Colorado, and New Mexico, Misc. File No. 1662275 - 3/28/41

Modification of boundary of Texas, Misc. File No. 17575 - 1/28/48

Texas - Oklahoma Land, Misc. File No. 1262797 - 6/8/27

South Boundary of Kansas, Misc. File No. 2015260 - 5/30/45

Yakima Ind. Res. Boundary, Misc. File No. 1776988 - 6/20/39

Boundary between Calif. and Arizona and Arkansas and Tennessee, Misc. File No. 1593868 - 3/20/35

Position of Bedloe Island, N.Y. and N.J., Misc. File No. 2137951 - 2/27/47

Boundary between Michigan and Wisconsin (270 US 295)

Pottawatomee Ind. Res., Misc. File No. 59926 - 1/9/51

Conflicts between States as to river boundary changes, Misc. File No. 1990136 - 5/13/44

River boundaries between States (5 Wheat 374) (136 US 479) (227 US 229) Misc. File No. 1443999 - 2/8/32

100th Meridian, Texas and Oklahoma, Misc. File No. 1830252 - 7/26/40

Boundaries of Cherokee, Choctaw and Creek Indians Nations, Misc. File No. 1416999 - 5/13/31

Louisiana - Texas boundary, Misc. File No. 1897375 - 1/5/42

Ohio River as State boundary, Misc. File No. 1443991 - 2/8/32

School grant to Nevada, Act of 6/16/80 (21 Stat. 287)

Cimarron Line, Misc. File No. 2079610 - 11/19/45

San Carlos Indian Res., Bdy., Arizona (55 ID 560)

Private Land Disputes

* Act of March 3, 1851 (9 Stat 41)
* U.S. v. Fossatt
* U.S. v. Halleck
* Higueras v. U.S.
* Beard v. Federy
* Snyder v. Sickles
* Adams v. Norris
* People v. City and County of San Francisco
* Act of March 3, 1891 (26 Stat 854)
* Ainsa v. U.S.
* Ely's Administrator v. U.S.

  DeGuyer v. Banning
* Ainsa v. New Mexico & Arizona Railroad Co.
* U.S. v. Conway
* Las Animas Land Grant Co. v. U.S.
* U.S. v. Peralta
* U.S. v. Baca
* Ely's Administrator v. Magee
* Hugh Stephenson
* Santa Teresa Grant
* Sanchez v. Deering

  Joseph Cherami
* Santa Teresa Land Co.
* Richard Grainger v. U.S.

  Mercantile Trust Co.

Private Land Disputes

1. Sangre de Cristo Grant - Summit is boundary, Misc. File Nos. 1590404, 1591030 - 5/25/35

2. Boca Float, Misc. File No. 1800804 - 1/10/40
   Decision regarding validity of survey of private land claims
   54 LD 434 - 608

3. F.P. Fatio Grant in Florida, Misc. File No. 16695 - 1/12/48

4. Mora Grant Bdy., Misc. File No. 5616 - 9/25/47

5. Francesca Ferrara Grant Boundaries, Florida Misc. File No. 60904 - 5/18/51

6. Lomas de Santiago Grant, Misc. File No. 1181578 - 6/29/25
   Mining Claim Occupancy Act of October 23, 1962 (76 Stat. 1127)

U.S. v. Fossatt
21 Howard 445 (1858)

The jurisdiction of the board of commissioners for the settlement of private land claims in California, and at the courts on appeal, extends not only to the authenticity of the title, but also to questions of locations and boundaries, and does not terminate until issuance of patent conformably to the decree.

U.S. v. Halleck
1 Wallace 439 (1863)

Where a decree of the Board of Commissioners confirming a claim under a Mexican grant gives the boundaries of the tract, the survey of the tract made by the Surveyor-General of California must conform reasonably to the lines designated in the decree.

Higueras v. U.S.
5 Wallace 827 (1864)

Interpreting Act of March 3, 1851

Beard v. Federy
3 Wallace 478 (1865)

Nature of a patent issued by the U.S. upon the confirmation of claim under a Mexican grant.

Snyder v. Sickles
98 U.S. 203 (1878)

Survey of land made under a confirmed Spanish land grant. Having been disapproved by the Secretary before patent issuance, has no binding effect, and the question of its correctness was not for determination by the court.

Adams v. Norris
103 U.S. 591 (1880)

A patent issued under a confirmed Mexican grant is in the nature of a quit-claim, conclusive only between the parties thereto.

Where a survey and a patent thereon are founded upon a superior Mexican grant, the rights of a claimant thereunder are not concluded by prior survey to other claimants.

People v. City & County of San Francisco
17 P. 522 (1888)

Where the survey of a Mexican grant has been confirmed by the general land office, a patent issued in pursuance thereto, setting out such survey, cannot be impeached on the ground that the survey does not conform to the boundaries fixed in the decree of court confirming the grant.

Ainsa v. U.S.
161 U.S. 208 (1895)

In confirmation of Mexican grant by Court of Private Land Claims, monuments control over courses and distances, and courses and distances control quantity, but where there is uncertainty in the description, the quantity named may be of decisive weight.

Ely's Administrator v. U.S.
171 U.S. 220 (1898)

Upholding rule of Ainsa v. U.S. (161 U.S. 208)

DeGuyer v. Banning
167 U.S. 723 (1897) 27 P. 761 (1891)

Where decree of District Court and the survey made in execution of the decree differ as to the inclusion of a small island within a bay in the surveyed tract of land, and the patent is issued based on the survey, the patent and survey are held to be controlling over the decree in determining whether the island was included in the grant of land.

Ainsa v. New Mexico & Arizona Railroad Co.
175 U.S. 76 (1899)

Under Act of March 3, 1891, the courts of the territory of Arizona have jurisdiction as between private parties, to determine whether a title under a Mexican grant which has not been acted upon by Congress, was complete and perfect at the time of cession of the land from Mexico.

U.S. v. Conway
175 U.S. 60 (1899)

When a title to public land has been confirmed by Congress, it should be respected by the Court of Private Land Claims.

Las Animas Land Grant Co. v. U.S.
179 U.S. 201 (1900)

No claim shall be allowed to land the right to which has been acted on or decided by Congress.

See U.S. v. Conway.

U.S. v. Peralta
99 F 618 (1900)
102 F 1006 (1900)

--A decree of a district court affirming a decision of the board of land commissioners, which itself was affirmed by the Supreme Court, is conclusive as to claimant's title, and a final decree after survey, fixing and determining the location and boundaries of the grant, when not appealed and when carried into effect by issuance of patent,is final and conclusive as to such boundaries. The court is without further jurisdiction to modify those boundaries.

U.S. v. Baca
184 US 653 (1902)

--The court of private land claims has no jurisdiction to confirm or reject, or to pass upon the merits of a claim to any land, the right to which has been lawfully acted upon and decided by Congress.

Ely's Administrator v. Magee, et al.
34 LD 506 (1906)

--The Commissioner of the GLO is without authority to determine whether the survey of a private land grant conforms to the decree of the court confirming the grant, but has simply to perform the ministerial duty of issuing the patent for the land according to the lines of the survey as approved by the court.

Accord

Santa Teresa Grant
37 LD 480 (1909)

Hugh Stephenson
36 LD 117 (1907)

--Confirmation by Congress of a private land grant according to a survey made under court order does not deprive the land department of authority to make a survey thereof, according to the boundaries of the grant as confirmed, in order to segregate the grant from the public domain.

--The land department has jurisdiction to approve the official survey of a private land grant confirmed by Congress, even though the grant conflicts with the survey of another grant upon which patent has issued.

Santa Teresa Grant
37 L.D. 480 (1909)

The Court of Private Land Claims has sole and exclusive jurisdiction to determine whether a survey is in conformity to its decree.

Sanchez v. Deering
270 U.S. 227 (1926)

--Delay of 70 years after issuance of patent bars relief.

Joseph Cherami
54 LD 434 (1934)

--A U.S. patent in the name of claimant, his heirs, devisees, and assigns may issue following and adjudication confirming a private land claim under section 4 of Act of March 3, 1807 and a survey of the land.

Santa Teresa Land Co.
54 L.D. 608 (1934)

The General Land Office is without authority to pass upon the validity or extent of a private land grant confirmed and surveyed under decree of Court of Private Land Claims, or to determine the validity of the decree or survey, after its approval by the court.

Richard Grainger, et al. v. U.S.
197 Ct. Cl.1018 (1972)

Boundaries of land recited in a patent, even if incorrect, are conclusive upon the U.S. and the patenters and their successors.

A survey, even if incorrect, which is incorporated in a land patent becomes a part of the patent and is conclusive despite contrary or conflicting descriptions also incorporated in the patent.

In determining boundaries of land, ordinarily natural objects control over courses and distances, but an official government survey of lands prerequisite to patent issuance is considered controlling as to boundaries over broad, vague descriptions referring in general terms to natural objects.

Mercantile Trust Co.
49 L.D. 663

It is not appropriate to consider after a lapse of many years whether the survey of a boundary of a Mexican land grant was well-executed, and such survey will not be disturbed on account of inaccuracies, where it accomplished the purpose of establishing the boundaries with reasonable and approximate accuracy.

Islands

Joseph Tomalino v. August Sobotka

Fisher v. Haldeman

Serrin v. Grefe

Fuller v. Dauphin

Wigginhorn v. Kountz

Frank Chapman

Chandos v. Mack

St. Louis v. Rutz

James C. McLaughlin

Naylor v. Cox

Benjamin E. Peterman

L. F. Scott

Patrick Brazil et al.

Grand Rapids and Indiana R.R. Co. v. Butler

Goff v. Cougle

Benecke v. Powell

Steinbuchel v. Lane

McBride v. Whitaker

Widdicombe v. Rosemiller

U.S. v. Mission Rock Co.

Franzini v. Layland

Robert L. Sheppard

Sliter v. Carpenter

Hobart v. Hall

Emma S. Peterson

Islands

Whiteside v. Norton

Scott v. Lattig

State v. Nolegs, et al.

Moss v. Ramey

Randolph v. Hinck

U.S. v. Hutchings

Bode v. Rollwitz

Payne v. Hall

Oklahoma v. Texas

Michigan v. Wisconsin

U.S. v Chandler-Dunbar Water Power Co.

State of Washington

State of Oregon

Conran v. Girvin

Grape v. Laiblin

State of Iowa v. Raymond

Uhlhorn v. U.S. Gypsum Co.

Giles R. and Juanita Leonard

Bernard J. and Myrle A. Gaffney

J. M. Jones Lumber Co., et al.

Burgess v. Pine Island Corp.

Wisconsin Michigan Power Company

Chester H. Ferguson et al.

R. A. Mihelson

R. A. Mihelson

Group Numbers

Islands

Statutes

General Information Letter re: Application for Survey (Island)

Islands

ISLANDS

An island is generally defined as a piece or body of land surrounded by water. Conran v. Girvin, 341 S.W. 2d 75 (1960); Payne v. Hall, 185 N.W. 912 (1921). To constitute an island in a river, the formation or body must be of a permanent character, not merely surrounded by water when the river is high, but permanently surrounded by a channel of a river. Payne v. Hall, supra. It is not necessary that the formation be suitable for agricultural purposes in order to constitute an island. Fowler v. Wood, 85 P. 763 (1906).

The erroneous omission of an island in a navigable stream from the field notes and plat of a government survey of public lands does not divest the U.S. of title or interpose any obstacle to surveying it at a later time, when the island was in existence both at the time when the survey of the banks of the stream was made and on the date when the State within which it is situated was admitted to the Union. Scott v. Lattig, 227 U.S. 229 (1913); Moss v. Ramey, 239 U.S. 538 (1916); Emma S. Peterson, 39 L.D. 566 (1911). The Bureau of Land Management take the position that the United States has the authority to survey and dispose of an island lying between the meander line and the thread of a stream, navigable or nonnavigable, which was omitted from survey at the time of survey, where it clearly appears that at that time the island was a well-defined body of public land left unsurveyed. Emma S. Peterson, 39 L.S. 566 (1911). * A patent conveys only the land which is surveyed, and not necessarily an adjoining unsurveyed tract which ought to have been, but which was not in fact, surveyed. Horne v. Smith, 159 U.S. 40 (1895). Where it appears that an island in a navigable lake was in existence at the date of the original survey but was omitted therefrom, a survey of such an island may be properly allowed. Patrick Brazil et al., 17 L.D. 326 (1893). Three islands, measuring 8.99, 1.29, and .84 acres respectively, which were in existence at the time of survey and were omitted therefrom, were held not to have passed with the grant of the mainland where the precise acreage computation in the plat indicated that the boundary was the lake's edge and that no outside land was included. Ritter v. Morton, ___ F. 2d. ___ (9th Cir. 1975).

If land is properly surveyed as an island, the government's jurisdiction is not affected by the fact that such land subsequently ceases to be an island. Benecke v. Powell, 27 L.D. 47 (1898). The acceptance of the survey of islands in a navigable stream does not preclude a state or its grantees from showing in an appropriate judicial proceeding that the survey was inaccurate and embraced land over which the U.S. had no power. State of Washington, 57 L.D. 228 (1940). An island formed in a river after the survey and disposition of the adjoining shore lands does not belong to the U.S., and the government is without jurisdiction to undertake its survey. L.F. Scott, 14 L.D. 433 (1892).

*But see, Hobart v. Hall, 174 F. 433 (Minn. 1909), aff'd, 186 F. 426 (holding that a riparian owner in Minnesota on a navigable stream has the exclusive right to reclaim, occupy, and use any island between his shore line and the middle thread of the stream, whether such island existed at the time of survey and was omitted therefrom in good faith and without palpable mistake, or was afterward formed by the gradual action of the waters.); U.S. v. Hutchings, 252 F. 841 (1918) (holding that an Indian tribe whose reservation bounded a nonnavigable river acquired title to an unsurveyed island which was a well-defined body of land at the time of survey).

The title to islands is ordinarily vested in the owner of the bed of the waters out of which they arise, provided there has been no separation of such ownership by grant, reservation, or otherwise. St. Louis v. Rutz, 138 U.S. 226 (1891); Wallace v. Driver, 33 S.W. 641 (1896). Where, under state laws, a grant of land bounded by a stream, whether navigable in fact or not, carries to the center of the thread, a patent from the U.S. describing land as bounded by the stream carries with it title to islands lying between the mainland and the thread of the current. U.S. v. Chandler-Dunbar Water Power Co., 209 U.S. 447 (Mich. 1908); Grand Rapids and I.R. Co. v. Butler, 159 U.S. 87 (Mich. 1895). But a patent describing a boundary as commencing at a point on the bank of a navigable river, along its margin, does not embrace an island within it, and does not carry the title of the patentee beyond the edge of the stream. Packer v. Bird, 137 U.S. 661 (1886).

Where the title to an island has become vested in a riparian proprietor by virtue of its location on his side of the channel of the stream, his title is not divested by a subsequent change in the channel from any cause. St. Louis v. Rutz, 138 U.S. 226 (1891); Whiteside v. Norton, 205 F. 5 (1913), cert den 232 U.S. 726 (1913), app dismd 239 U.S. 144 (1915). Nor does an owner lose title to an island by reason of its total submergence for a considerable period of time, where the land reappears and is capable of identification by its original description. Randolph v. Hinck, 115 N.E. 182 (1917). Where an island forms in the bed of a river so as to divide the channel and to form partly on each side of the thread of the river, and the land on the opposite sides of the river belongs to different proprietors, the island will be divided between them according to the original thread of the river. St. Louis v. Rutz, 138 U.S. 226 (1891); Wiggenhorn v. Kountz, 37 N.W. 603 (1888). But where the boundary line of riparian proprietors extends only to the water margin, the title to islands arising out of the adjacent waters is ordinarily vested in the state or its grantee. Fisher v. Haldeman, 61 U.S. 186 (1857); State v. Raymond, 119 N.W. 2d 135 (1963).

Where land has been surveyed, sold, and patented by the Federal Government, the subsequent gradual erosion of the soil, resulting in the formation of an island in a navigable stream occupying the area formerly surveyed and sold, does not operate to vest title to the newly formed island in the Government. James C. McLaughlin, 12 L.D. 681 (1891). But where a riparian owner's land eroded and then an island emerged in the part of a navigable river where the state owned the bed, the title to the island vests in the state or its grantee. Grape v. Laiblin, 314 P. 2d 335 (1957).

The admission of a state into the Union does not necessarily operate to transfer to such state title to islands resting on the bed of navigable waters within the state. Moss v. Ramey, 239 U.S. 558 (1916); Scott v. Lattig, 227 U.S. 229 (1913); Giles R. and Juanita Leonard, A-30503 (3/23/66); Donald P. Campbell, A-26311 (May 2, 1952). Although a state acquires absolute sovereignty over soils under navigable waters within its borders upon admission to the Union, islands formed prior to admission remain property of the U.S., subject to disposal as public land,

Emma S. Peterson, 39 L.D. 566 (1911); Donald P. Campbell, A-26311 (5/2/52), regardless of its relative worthlessness at that time. State of Oregon, 60 I.D. 314 (1949). But where the portion of an island in a navigable lake outside a meander line which crosses the island is small and inconsequential in area, the entire island -- rather than that part within the meander line -- passes with the mainland. Donald P. Campbell, A-26311 (5/2/52).

In some instances, however, the act of admission has been held to pass title to unsurveyed islands formed prior to admission of the state to the Union. Where the U.S. patent described the granted land as bounded by a certain river, such patent was held to carry with it the title to small, unsurveyed islands where, under the laws of the state (Michigan), a grant of land bounded by a stream, whether navigable in fact or not, carried with it the bed of the stream to the center of the thread. U.S. v. Chandler-Dunbar Water Power Co., 209 U.S. 447 (1908).

The ownership of an island carries with it the usual riparian rights. Whitaker v. McBride, 197 U.S. 510 (1905); Whiteside v. Norton, 205 F. 5 (1913), app dismd 259 U.S. 144 (1915).

As a general rule, where the title of the owner of riparian or littoral lands extends to the center of the adjacent waters, a grant or conveyance of such lands presumptively includes any islands then owned by the grantor within the outer boundaries of the grant, in the absence of any reservation or exception. U.S. v. Chandler-Dunbar Water Power Co., 209 U.S. 447 (1908); Hardin v. Jordan, 140 U.S. 371 (1891); Sliter v. Carpenter, 102 N.W. 27 (1905); Franzini v. Layland, 97 N.W. 499 (1903); Goff v. Cougle, 76 N.W. 489 (1898); Fuller v. Dauphin, 16 N.E. 917 (1888). But where there is a clear reservation of islands in a grant of mainland adjacent to a river, either expressly or by necessary implication, such islands do not pass to the grantee, and the filum aquae which the grant is the center thread between the shore and the island. Wiggenhorn v. Kountz, 37 N.W. 603 (1888).

Proprietors of land bordering on nonnavigable streams, unless restricted by the terms of their grant, hold to the center of the stream. Frank Chapman, 6 L.D. 583 (1888), and an island formed on one side of the dividing line belongs to the owner of the bank on that side. Serrin v. Grafe, 25 N.W. 227 (1888). A request for the survey of an island in a nonnavigable stream must be denied where the island belongs to the proprietor of the land on the nearest main shore opposite the island, and such a survey would interfere with vested rights. Grand Rapids and I.R. Co., v. Butler, 159 U.S. 87 (1895); Frank Chapman, 6 L.D. 583 (1888). Where the division line between opposite riparian owners on a nonnavigable stream would be the middle of the stream, and if that line falls upon an island, a division of the island is required. U.S. v. Hutchings, 252 F. 841 (1918).

If the government has surveyed an island as an independent tract and has conveyed it separately from the mainland, a grant or conveyance of the mainland confers no title to the island. Wiggenhorn v. Kountz, 37 N.W. 603 (1888). In the absence of survey or express reservation, title to an island vests in the owner of the opposing mainland. Grand Rapids and I.R. Co. v. Butler, 159 U.S. 87 (1895).

If it appears that an island is embraced within the limits of a former survey and that the land, as surveyed, has been disposed of by the government, the application for the survey of the island will be denied. James C. McLaughlin, 12 L.D. 304 (1891). But if an island was omitted from the survey of the adjacent land, and has not been disposed of by the government, an application for the survey thereof should be allowed. Benjamin E. Peterman, 14 L.D. 115 (1892).

Joseph Tomalino
August Sobotka

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Fisher v. Haldeman
61 U.S. 186 (1857)

In Pennsylvania, title to islands is vested in the State or its grantee, not in the riparian owner of the adjacent land.

Serrin v. Grefe
25 NW 227 (1885)

(Note 228-232)

--Exhaustive discussion on rights of riparian owners and title to the soil under navigable waters.

--Islands on an unnavigable river, if altogether on one side of the dividing line, belong to him who owns the bank on that side; if formed in the middle of a river they are appropriated to the owners of the bank in severalty, according to their original dividing line, the filum aquae.

Fuller v. Dauphin
16 N.E. 917 (1888)

Where in a government survey of a fractional quarter bounded on the west by a slough which was a navigable arm of the Mississippi River, a meander line was run along the east bank of the slough but was not marked on the Government plat, and the slough was marked on the map as the west boundary of the land, patent to such fractional quarter included an island lying between meander and middle of slough; such island never being surveyed or platted by the U.S. Government.

Wiggenhorn v. Kountz
37 N.W. 603 (1888)

--While the general rule is that a grant of land on a nonnavigable stream includes all islands or parts of islands between the shore and center thread of the stream unless reserved, where there is a clear reservation of the islands -- either expressly or by necessary implication -- they do not pass to the grantee; the filum aquae which bounds the grant is the center thread between the shore and the island.

Frank Chapman
6 L.D. 583 (1888)

--Proprietors of land bordering on nonnavigable streams, unless restricted by the terms of their grant, hold to the center of the stream.

--The survey of an island, in a nonnavigable stream, must be denied where the island belongs to the proprietor of the land on the nearest main shore opposite the island, and such a survey would interfere with vested rights.

Chandos v. Mack
46 N.W. 803 (1890)

Where the Government leaves a small island in a Navigable river, lying between the shore and the middle of the stream, unsurveyed, and sells all the surveyed islands and all the lands on both sides of the river without any reservation as to such island, title to such island passes to riparian owner on river's bank.

St. Louis v. Rutz
138 U.S. 226 (1891)

--Where land has been patented as a part of the mainland, a change in the course of the river from any cause, whereby the patented land becomes an island, does not change the ownership of the island.

James C. McLaughlin
12 L.D. 681 (1891)

--Where land has been surveyed, sold, and patented by the Government the subsequent gradual erosion of the soil, resulting in the formation of an island in a navigable stream occupying the area formerly surveyed and sold, does not operate to vest title to the newly formed island in the Government.

James C. McLaughlin
12 L.D. 304 (1891)

--An application for the survey of an island will be denied, where it appears that said island is embraced within the limits of a former survey, and that the land as surveyed has been disposed of by the government.

Naylor v. Cox
21 S.W. 589 (1892)

--If, after the original survey, a part of a fractional section is washed away by the river, and the main channel of the river covered the place where it originally stood for any considerable length of time, and afterwards accretions to a nearby island formed, and gradually extended over what was originally the fractional section, the accretions belong to the owner of the island.

Benjamin E. Peterman
14 L.D. 115 (1892)

--An application for the survey of an island should be allowed where it appears that the island was omitted from the survey of the adjacent land, and has not been disposed of by the Government.

L. F. Scott
14 L.D. 433 (1892)

--An island formed in a river after the survey and disposition of the adjoining shore lands does not belong to the U.S., and the Land Department is without jurisdiction to undertake its survey.

Patrick Brazil et al.
17 L.D. 326 (1893)

--A survey may be properly allowed of an island in a navigable lake, where it appears that such island was in existence at the date of the original survey, but was omitted therefrom.

--On application for the survey of such an island, the adjacent shore owners are not entitled to notice, as they have no interest in the island.

Grand Rapids and Indiana R.R. Co. v. Butler
159 U.S. 87 (1895)

--In Michigan, a grant of land bounded by a stream, whether navigable in fact or not, carries with it the bed of the stream to the center of the thread thereof.

--When the government has surveyed its lands along the bank of the river and has sold them, its patent conveys title to all islands lying between the meander line and the middle thread of the river, unless previous to such patent it has surveyed such islands as governmental subdivisions or expressly reserves them when not surveyed.

--Title to an island vested in the owner of the opposing mainland in the absence of survey or express reservation.

Benecke v. Powell
27 L.D. 47 (1898)

--The jurisdiction of the Land Department over a tract of public land, properly surveyed as an island, is not affected by the fact that such land subsequently ceases to be an island, in consequence of a change in the channel of the river.

Steinbuchel v. Lane
51 P 886 (1898)

--Where an island lying between well-defined channels of the river was not surveyed when lines were run along the banks and was not noted on the official plat, the patentee claiming under this survey did not take title to the island where eight years later the island was surveyed and patented to another party, regardless of the navigability of the river. (S. Ct. Kansas says it is unimportant whether the river was navigable or not; jury found river to be navigable, but it was nonnavigable at time of appeal.).

--Whether islands are intended to be reserved or to pass must be determined from their situation and extent, and the action of the land department.

McBride v. Whitaker
90 N.W. 966 (1902)

A grant of land upon a non-navigable river, made by the U.S. with reference to the plat of the survey, which shows a meandered line along the river bank, conveys to the grantee title to such unsurveyed islands or part of islands as be within that limit.

Widdicombe v. Rosemiller
118 F. 295 (1902)

Where island, surveyed by the U.S., was submerged and a portion of it washed away, and subsequently a portion of such island reappeared, and at no time was it washed away to the level of the bed of the river, title of the U.S. to the island was not last by erosion or submergence.

By conveyance of island after reliction of waters, patentee took title thereto with any additions made by accretion and alluvion.

U.S. v. Mission Rock Co.
189 U.S. 391 (1903)

--Where two rocks or islands lying in navigable water which were in existence at the time California was admitted to the Union, measuring 14/100 and 1/100 of an acre, respectively, were patented by the State to a company who filled portions of the submerged lands, thereby making the now 14.69 acre property extremely valuable, only the two islands passed to the U.S. under a Presidential order permanently reserving the land for naval purposes which specified the exact acreage of the land reserved.

Franzini v. Layland
97 NW 499 (1903)

--Unsurveyed islands in navigable rivers in Wisconsin are presumed to be appurtenant to the surveyed land nearby, and where there is no indication to the contrary such an unsurveyed island is presumed to pass with a conveyance of the surveyed land to which it is so appurtenant.

Robert L. Sheppard
32 L.D. 474 (1904)

--Notice of applications for the survey of islands not designated upon the township plats of survey must be served on the owners of the opposite shores and upon the authorities of the state within which such islands are situated.

Sliter v. Carpenter
102 N.W. 27 (1905)

--Original grant by the Government of the bank of a navigable river carries with it an unsurveyed island between the bank and the thread, and such island passes as an appurtenance, by subsequent conveyances of the bank, unless separated therefrom by the deed.

Hobert v. Hall
174 F. 433 (1909)

A riparian owner in Minnesota on a navigable stream has the exclusive right to reclaim, occupy and use for any purpose not inconsistent with public right such land under water or any island or part thereof between his shore line and the middle thread of the stream, whether such island existed at the time of survey and was omitted therefrom in good faith and without payable mistake, or was afterward formed by the gradual action of the waters.

Exhaustive discussion of Minnesota cases regarding riparian rights on navigable waters.

Emmas S. Peterson
39 L.D. 566 (1911)

--Although a state acquires absolute sovereignty over soils under navigable waters within its borders upon admission to the Union, islands formed prior to admission remain the property of the U.S., subject to disposal as other public lands.

--The U.S. has authority to survey and dispose of an island lying between the meander line and the thread of a stream, navigable or nonnavigable, omitted from survey at the time of survey, where it clearly appears that at that time, the island was a well-defined body of public land left unsurveyed.

Whiteside v. Morton
205 F. 5 (1913)
cert. den. 232 U.S. 726

Where title to an island in a navigable stream has become vested in a riparian proprietor by virtue of its location on his side of the main channel of the stream, his title to such island is not divested by a subsequent change in the channel from any cause (in this case, by the U.S. Government, in the exercise of its power to improve navigation, dredging a new main channel between island and land of riparian owner.).

Norton v. Whiteside
239 U.S. 144 (1915)

The mere fact that Congress directed the improvement of a new channel in a navigable river does not destroy riparian rights existing under state law and create new ones under Federal law.

Scott v. Lattig
227 U.S. 229 (1913)

--An island within the public domain in a navigable stream and actually in existence at the time of the survey of the banks of the stream, and also in existence when the State within which it was situated was admitted to the Union, remains property of the U.S. and even though omitted from the survey it does not become part of the fractional subdivisions on the opposite bank of the stream.

State v. Nolegs et. al.
139 P. 943 (1914)

An oversight in omitting an island in a navigable stream from the field notes and plat of the government survey of 1872 did not divest the U.S. of the title thereto, or interpose any obstacle to a survey thereof being made in 1908.

Where a government patent to land describes the same by lots, and refers to the official plat of the survey thereof, and such plat shows that the land conveyed is bounded by a navigable river, the title extends no further than the edge of the stream, and does not include an island, though the channel between that and the mainland may not be navigable.

Moss v. Ramey
239 U.S. 538 (1916)

Where an island of 120 acres does not appear in the field notes or on the plat of the official survey, but evidence shows that the island was in its present condition of fast, dry land at time of survey, and was not inconsequential in area or value at that time, such land is unsurveyed land of the U.S.; and error of the surveyor in failing to extend survey over the island does not exclude it from the public domain.

Fast, dry land, which is neither a part of the bed of a river nor land under water, being part of the public domain, did not pass to State upon admission to Union, but remained public land.

Patents to lots of land abutting on a river do not include actual islands of fast, dry land and of stable foundation lying between the lots and the thread of the stream.

Randolph v. Hinck
115 N.E. 182 (1917)

Where the main channel of the Mississippi River, constituting the boundary between Illinois and Missouri, was by sudden avulsion transposed from one side of plaintiff's island to the other, and the island remained intact and in such condition as it was still capable of identification, it remains vested in its former owner and under the dominion of the state to which it originally belonged.

Where island which was totally submerged at one time, and remained so for a considerable length of time, subsequently reappeared and was capable of identification by its original description, owner before time of submergence retains title.

U.S. v. Hutchings
252 F. 841 (1918)

Where the original government survey indicated an island in the river which bounded an Indian reservation, the fact that the island was not meandered or surveyed did not affect the claim of the tribe to the island; even if island had been totally ignored, title would not be affected.

The division line between opposite riparian owners on a nonnavigable stream would be the middle of the stream, and if that line falls upon an island, a division of the island is required.

An island in the Arkansas river is included in the Indian reservation bordered by the river, where reservation was described by Act of Congress as extending to the main channel of the river, which at time of survey was on the further side of the island from the reservation.

Bode v. Rollwitz
199 P. 688 (1921)

Surveyor's error in failing to extend his survey over islands in a river did not make them less a part of the Government domain; that administrative government officers, before discovering surveyor's error, had treated such a meandered tract as subject to the riparian rights of abutting owners, could not stop the U.S. from asserting its title even as against such an owner, who had acquired his property before the mistake was discovered.

Payne v. Hall
185 N.W. 912 (1921)

An island is a body of land entirely surrounded by water, but land in a navigable stream which is only surrounded by water in times of high water is not an island within the rule that the state takes title to newly formed islands in navigable streams.

Where land of a riparian owner on a navigable stream was worn away by erosion, and thereafter an island was formed in the channel of the stream where the land of the riparian owner had been, such island belonged to the state, and not to the riparian owner.

Oklahoma v. Texas
261 U.S. 345 (1923)

--The patenting and allotting of lands bordering on the river did not give any right to islands in the river which were in existence at that time.

Michigan v. Wisconsin
270 U.S. 295 (1926)

--Where part of the boundary between two states was described in the enabling act of the one senior in time of admission, as the center of the main channel of a river, but, in the enabling act and act of admission of the junior state, as the river, with specific provision that the line be so run as to include within the jurisdiction of that junior state all the islands in a designated stretch of the river, the junior state has color of title so that her original and long continued possession of, and assertion and exercise of dominion and jurisdiction over, most of the islands on the other side of the channel extended her adverse possessions to all of them, in the absence of possession by the other state.

U.S. v. Chandler-Dunbar Water Power Co.
209 U.S. 447 (1905)

By the law of Michigan, a grant of land bounded by a stream whether navigable in fact or not, carries with it the bed of the stream to the center of the thread thereof, and under this rule the patentee of government land bordering on the Sault Ste. Marie, takes to the center line; nor are the rights or riparian owners to the center affected by the fact that the stream is a boundary.

State of Washington
57 L.D. 228 (1940)

--The acceptance of the survey of islands in a navigable stream does not preclude the State or its grantees from showing in an appropriate judicial proceeding that the survey was inaccurate and embraced land over which the U.S. had no power.

State of Oregon
60 I.D. 314 (1949)

--An island in existence when the state was admitted into the Union is public land, regardless of its relative worthlessness at that time.

Conran v. Girvin
341 S.W. 2d. 75 (1960)

When a navigable river cuts a new additional channel, not by eroding away intermediate lands but by jumping over them or running around them and leaving a part of the land of a riparian owner intact and identifiable, then the title to land so cut off remains in the riparian owner; it does not pass to the State or County as owner of the bed of the stream

Title to an island is in the one upon whose land it appears.

Grape v. Laiblin
314 P. 2d. 335 (1957)

Where an owner loses a part of this land by a process of gradual and imperceptible erosion by the stream adjoining his land, and subsequently a bar or island formed in the bed of the river which was extended into the original boundaries of owner's land by accretions, with a slough separating owner's remaining land from said accretions, owner's boundary is at slough, and he has no title to accreted lands.

State of Iowa v. Raymond
119 N.W. 2d. 135 (1963)

State, in absence of conveyance thereof, is owner of bed or channel of navigable stream from center or thread thereof to high water mark; if an island is formed upon the bed, it is the property of the state.

Uhlhorn v. U.S. Gypsum Co.
366 F. 2d 211 (1966)

Where a navigable river is the boundary between two States, the true line is the middle or thread of the main channel of the river subject to its gradual migration through accretion and erosion, or its shifting from one side of an island to the other.

Giles R. and Juanita Leonard
A-30503 3/23/66

--An island in existence in a navigable river on the date that a State is admitted to the Union remains public land of the U.S. until disposed of by the U.S.

Bernard J. and Myrle A. Gaffney
A-30327 Oct. 28, 1965

--Islands in existence at the time a State is admitted to the Union, whether surveyed or not, remain public land of the U.S., and the owner of a riparian lot does not own such public land within unsurveyed islands in a navigable stream lying between the riparian lot and the thread of the stream.

--Where the banks of a river are meandered and the area within the meander line is segregated from the survey, an otherwise unsurveyed island within the meander lines is not surveyed public land.

J.M. Jones Lumber Co. et al.
74 I.D. 417 (1967)

--Where an island which was once public land owned by the U.S. is gradually eroded away in its entirety and then fast land is formed on the site formerly occupied by the island by accretion to a bank of the river which is privately owned, the U.S. cannot assert title to such land as public land.

Burgess v. Pine Island Corp.
215 So. 2d 755 (1968)

--Where disputed land was separated from the mainland by a nonnavigable water course and the deed conveyed all of the grantor's interest on the mainland, the disputed land was part of the mainland and was conveyed therewith when the area was bordered by mangrove swamps containing a number of small water courses.

--High land is not an island where the water is one foot deep during high tide in the 250 foot wide area separating the claimed island from the mainland.

Wisconsin Michigan Power Company
A-31037 Dec. 18, 1969

--The owner of a riparian lot does not own public land within an unsurveyed island either in a navigable or nonnavigable stream lying between the riparian lot and the thread of the stream, when it is established that the island was in existence when the State was admitted to the Union.

Chester H. Ferguson et al.

IBLA 74-330 May 13, 1975

20 IBLA 224

R. A. Mihelson
IBLA 76-12

The omission of an island from a survey does not divest the U.S. of the title to the island or interpost any obstacle to surveying it at a later date if the island existed at the date of the original survey (or at the date of a State's admission to the Union in the case of an island in a navigable river.)

Title to such an island remains in the U.S. despite the disappearance of the channel separating the island from the lots which were formerly riparian.

R. A. Mihelson

IBLA 76-12 6/6/76

26 IBLA 1

Group Numbers

--parts of island which have become river bed lost all rights
Gp. 23, Oklahoma

--island partially within record meanders, part outside too small to be public land
Gp. 67, Michigan

--islands in Idaho
Gp. 350, Idaho

Statutes

--Act authorizing State of Wisconsin to sell or exchange any of islands granted to it by Act of Aug. 22, 1912 (37 Stat. 324), which are not valuable for forestry purposes, on condition that proceeds from any such sale be devoted to State forestry purposes.

52 State. 1208
Act of June 28, 1938

--Act granting unsurveyed and unattached islands to State of Wisconsin for forestry purposes. If islands are used as anything other than additions to the forest reserves, the islands shall revert back to the U.S.

37 Stat. 324
Act of Aug. 22, 1912

General Information Letter
re: Application for Survey (Islands)

Frequent inquiries are received by this Bureau relative to the leasing or purchasing of a small island for which there is no apparent record or survey by the Federal Government. Due to the very description of the particular island, as submitted by the inquiror, it is usually impossible to tell whether this island may be public lands of the United States or whether such ownership rests with the State. Whether the United States may hold the island as unsurveyed public domain, subject to survey and sale or other disposition under the public land laws and regulations, or whether ownership is controlled by State laws, depends upon the island's date of information.

If the island was in existence, separate and distinct from the opposing mainland and above the mean high-water elevation of a meandered body of water, navigable or non-navigable, on the date of that State's admission into the Union, then it may be held as public lands of the United States even though the United States may have parted with its title to the opposing mainland. That is because such an island was not a part of the bed of these waters and therefore its title remained in the United States after admission of the State. It would therefore be subject to survey and disposal when so identified. If the island has formed since that date by the depositing of materials, either by man or nature, or has been uncovered by the lowering of the mean, high-water elevation of the body of water, then it may not be so held. Its ownership would then rest in the State and be governed by State laws the State's inherent sovereign rights to the beds of navigable waters.

The proof of time of the formation of an island is often difficult. In this connection, the species, size and age of any timber growth on an island is quite pertinent; the general character and elevation of the

island as compared with the opposing surveyed mainland shores is also relevant; old maps or charts of the lake may also be of benefit as well as the personal knowledge of persons living in the general vicinity who have known the island for a good number of years and have observed any fluctuations in the water level and the possible emergence of the island by reliction.

If it be determined that the island has the attributes of unsurveyed public lands, then this office will upon request, issue instructions on how to apply for an official survey. Such a survey if approved, is made at a later date but without cost to the applicant. However, if it is found that the island was not in existence at the time the State was admitted into the Union, then one should look to the appropriate State land agency for its availability as State lands.

No action looking to the sale or other disposition of a public land island can be taken until it has been officially surveyed by this Bureau and classified for administrative or disposition in accordance with an appropriate public land law.

No preference right is given through the filing of an application for survey.

Islands

San Clemanti Islands, Calif., Misc. File No., 1075141 - 2/7/23

Leasing of island on sand bar in Miss. River, Misc. File No. 1070485 1/4/23

Riparian rights by reason of ownership of land opposite island, Misc. File No. 1260859 6/8/27

Rejecting application for survey of island, Misc. File No. 654057 7/9/17 and 9/28/17 also survey of island in Green Bay, Wisc., where no appropriation exists and land is not eligible for survey under deposit.

Survey of islands in meandered lakes in Mich. and Wisc. - also Lakes Superior and Huron, Misc. File No. 1610522 8/7/35

Jurisdiction over islands, Misc. File No. 2127583 - 11/14/46

Dismissing protest against island survey, Misc. File No. 2017095 6/25/45

Authorizing island survey in Florida, old plat shows swamp symbol, Misc. File No. 2096418 - 6/24/46

Unsurveyed island where the question of riparian ownership for adjacent owners is raised, Misc. File No. 1434475 - 11/20/31

Gravel bars in lakes, 58 NW 295; 54 US 381; Misc File No. 1959880 9/1/44

Island in Missouri River, Misc. File No. 1800807 - 1/22/40

Federal Power Commission and islands (Kirwan v. Murphy), Misc. File No. 176185 - 6/22/45

Survey of islands in navigable and nonnavigable streams, Misc. File No. 19573 - 12/11/47

Dept. within authority to order a corrective survey notwithstanding the tract area in excess

Dismissal of protest by State of Minn. against survey of island, Misc. File No. 1728267 - 10/10/41

Islands 39 LD 566

Island North of Int. Bdy., Misc. File No. 1631702 - 5/29/36

Islands in Miss. River involving swamp lands, Misc. File No. 1647593 7/6/36 and 7/14/36

Authority of U.S. to survey islands - 39 LD 566, Misc. File No. 1498469 7/21/33, 17 Stat. 333

Hiatus and Overlap

HIATUS

* U.S. v. Macmillan
* U.S. v. Weyerhouse Co.
* The Signal Companies, Inc.
* MMW Land Co.
* O. O. Cooper

  Schwartz v. Dibblee

OVERLAP

* Van Amburgh v. Hitt
* U.S. v. Brightwood Lumber Co.
* U.S. v. Paul Reiman
* Adams v. C.A. Smith Co.
* Waldron v. U.S.
* Gleason v. White

Possessory Rights

State of Florida

Circular re Indian Occupants

* Buxton v. Traver

* Washington & I.R.R. Co. v. Osborn

State of Wisconsin

Northern Pacific R.R. Co. v. Osborn

* Butte v. Northern Pacific Railroad

* Sparks v. Pierce

* Johnson & Graham's Lessee v. M'Intosh

* Beecher v. Wetherby

* U.S. v. Hurlburt

Schultz v. Northern Pacific RR Co.

Ruth B. Sandvik

Navigable Waters in Alaska

Statutes

Misc. File

State of Florida
26 LD 117 (1898)

--The status of the remining Seminole Indians in Florida, after the trive was removed to country west of the Mississippi River, is too indefinate to accord them a right of occupancy in any lands passing to the State of Florida under the Swamp Land Act.

--Lands occupied and cultivated by the Indians do not, however, qualify as swamp lands, and if lands so occupied and improved appear to have been certified to the State under the swamp land grants, the certification thereof should be revoked.

Circular re Indian Occupants
3 LD 371 (1884)

--Instructions to registars to refuse entries and filing by persons other than Indian occupants upon lands in the possession of Indians who have made improvements of any value whatever thereon.

Circular re land in possession of Indian Occupants
6 LD 341 (1887)

Instructing that the circular of 1884 be strictly obeyed and that Indian lands be protected.

Buxton v. Traver
130 US 232 (1889)

--No portion of the public domain, unless in special cases, is open to sale until it has been surveyed and an approved plat of the township has been returned to the local land office.

--A settlement upon public lands in advance of survey is allowed to parties who in good faith intend to apply for their purchase when survey is made.

--A settler acquires no estate in the land until he properly files a declaratory statement after a survey has been made and performs other required acts, at which time he acquires a right of preemption to the land.

Washington & I RR Co. v. Osborn
160 US 103 (1895)

--A settler upon public unsurveyed land, who had made improvements thereon with the intention of acquiring a title under the preemption laws once the land was surveyed, had a possessory claim that was protected against intrusion by a RR company claiming a right-of-way under congressional act.

State of Wisconsin
19 LD 518 (1894)

--The State of Wisconsin acquired title, under the swamp land grant, to swamp land within an Indian reservation, subject to the right of Indian occupancy. No action should be taken under this grant to disturb the Indian right.

Northern Pacific R.R. Co. v. Ostlund
5 LD 670 (1887)

--The rule of adjustment, as applied to the rights acquired on lands lying along Goose River, which formerly constituted the northern boundary of Indian country, recognizes that approved settlement north of the stream draws to it, on release of the Indian tribe, the constituent portion of the legal subdivision on which it was made.

Buttz v. Northern Pacific Railroad
119 US 55 (1886)

--The grant by an act of Congress to a railway co., of lands to which Indian title had not been extinguished, operated to convey the fee to the company subject to the right of occupancy by the Indians.

--The manner, time, and conditions of extinguishing such right of occupancy were exclusively matters for the consideration of the Government, and could not be interfered with by private parties.

Sparks v. Pierce
115 US 408 (1885)

--Mere occupancy of public lands and the making of improvements thereon give no vested rights as against the U.S. or any purchaser from them.

Johnson and Graham's Lessee v. M'Intosh
5 U.S. 503 (1823)

--A title to lands derived solely from a grant made by an Indian tribe to private individuals cannot be recognized in the courts of the U.S.; ultimate title and dominion is in the U.S.

Beecher v. Wetherby
95 US 517 (1877)

--The right of Indians to their lands in Wisconsin was only that of occupancy, and subject to that right, the State was entitled to every section 16 (for school use) within the limits of those lands.

--The U.S. may dispose of the fee of lands occupied by Indians, but where land has passed to the State under a school grant, such land is not included in a Congressional Act authorizing the sale of Indian land.

U.S. v. Hurlburt
72 F 2d 427 (1934)

--One entering, residing, and improving upon unsurveyed public land, with intention to file thereon as homestead, acquires no vested rights or claim thereto, but only preferential right to secure land after it is surveyed and offered for settlement.

--One entering and residing on unsurveyed public land, filing a settlement claim, and doing everything required to secure patent before land was included in lands reserved by Executive Order, made valid settlement excepting land from withdrawals from settlement.

Shultz v. Northern Pac. RR Co.
14 LD 300 (1892)

--No settlement rights can be acquired on land subject to Indian occupancy, and where lands in such condition fall within the grant to Northern Pac. the title thereto passes subject to such occupancy.

Ruth B. Sandvik
IBLA 76-391 (1976)

A townsite lot applicant is not precluded from settlement on and improvement of a townsite lot until the date of approval of final subdivisional survey, except by prior adverse settlement and occupancy.

A city does not initiate such an adverse claim by posting lots as their property without otherwise using or improving the lots.

Navigable Waters in Alaska
M-36596 March 15, 1960

The question whether or not water within a State, including the State of Alaska, is navigable is a federal question but the State is a necessary party to any proceeding to determine the question.

Statutes

--Creating Northern Pac. RR Co. and granting of public lands thereto to and in construction of a RR-sec. 2--provides for rapid extinguishing of Indian titles to all lands falling under operation of this act.

13 Stat. 366 (sec. 3) Act of 6/2/64

--Provisions re compensation for transportaiton furnished by a RR having received a grant of lands from the U.S. to aid in construction of the RR shall remain in effect until such carrier files a release of any claim to lands which have been granted as stated above.

49 USC 65 (b)

Possessory Rights Misc. File

--Rights on unsurveyed islands

#2090047

Jurisdiction and Sovereignty Misc. File

--Jurisdiction of BLM for making surveys or resurveys in closed out States.

#1676465 - 1/16/48

--Jurisdiction where lands are in private ownership

#40677 (7/23/48)

--Passing of jurisdiction over patented surface land and right to prospect for reserved minerals under patented S.H.C.

#1976269 2/9/44

Color of Title and Adverse Possession

* Yosemite Valley (Hutching v. Low)
* Merrill v. Tobin

  Sparks v. Pierce

  Buxton v. Traver

  Jones v. Arthur

  Northern Pacific Railway Co. v. Townsend

* Russian-American Packing Co. v. U.S.

  Burtis v. State of Kansas

* Lyle v. Patterson

  Leslie A. Reinovsky

  Central Pacific Railway v. Droge

* Denee v. Ankeny

  Bode v. Rollwitz

  Earl Baughn & Charles Lord

  U.S. v. Eldredge

* Nelson Jay

  Conran v. Girvin

  Storm Brothers

  Bernard & Myrtle Gaffney

* Henry & Eugene Warbasse
* Virgil H. Menefee
* Mina Oliver Selders

Color of Title and Adverse Possession

* Wisconsin Michigan Power Co.

* H.F. Gerbaz	IBLA	665-D	A-31039	4/24/70
* Margaret C. More	IBLA	70-331	3/23/72	5 IBLA 252
* James E. Smith	IBLA	73-368	10/31/73	13 IBLA 306
* Ben J. Boschetto	IBLA	75-427	7/28/75	21 IBLA 193
* Southern Pacific Trans. Co., Jay Fogal, Lloyd Hayes	IBLA	75-429	1/9/76	23 IBLA 232

* Ivie G. Gerry

* Estate of John C. Brinton

  Mable M. Farlow

* Validation of Erroneously Located Boundaries by Adverse Possession

* Act of June 30, 1948

* Occupancy of the Public Lands

Color of Title

Misc. File

-- Omitted lands and color of title # 1773030 3/7/45

-- Color of title, Wisconsin # 1828506 8/16/40

-- Color of title # 1237739 9/4/28

Circulars

-- Color of title in Michigan, Circular 1783

-- Omitted lands and color of title, Circular 1186

Group Nos.

-- Color of title in Michigan, Gp. 57, Michigan

-- Agreement between claimants as to possessory rights in color of title claims, Gp. 65, Wisconsin.

The Yosemite Valley Case (Hutchings v. Low)
82 U.S. 77 (1872)

--Mere settlement upon unsurveyed public lands with a declared intention to obtain title thereto under the pre-emption laws does not confer a vested interest in the premises to such a party.

--Congress has the power to regulate and dispose of public lands and that power ceases only when the land is patented and paid for; prior to payment and entry, the preemption laws give to the settler only the privilege to purchase the lands first in the event of their sale.

Merrill v. Tobin
18 F. 609 (1883)

Where the lands in question are, by reason of overflow, unfit for cultivation except for the raising of grass and hay, the use of the land for that purpose openly for the statutory period is sufficient to constitute adverse possession under color-of-title.

Sparks v. Pierce
115 US 408 (1885)

--Mere occupancy of public lands and the making of improvements thereon give no vested rights as against the U.S. or any purchaser from them.

Buxton v. Traver
130 U.S. 232 (1890)

--No portion of the public domain, save in special cases, is open to sale until it has been surveyed, and an approved plat of the township embracing the land has been returned to the local land office.

--A settler upon unsurveyed public land acquires no estate in the land which he can devise by will or which will pass to his heirs until the necessary acts prescribed by law have been performed in a timely manner following survey and return of the township plat.

Jones v. Arthur
28 LD 235 (1899)

--Land in the actual possession to occupancy of one holding under claims and color of title is not subject to homestead entry.

--Where a State has sold a tract as school indemnity land, and it subsequently appears that the record discloses no selection thereof, the State may be permitted to select such tract where such action is necessary for protection of its vendee.

Northern Pacific RRs v. Townsend
190 U.S. 267 (1903)

--Once a right-of-way through public domain is granted by the U.S. to a railroad, an individual cannot acquire by adverse possession any portion of the right-of-way, although it may be amenable to the police power of the State in which it is located.

Russian-American Packing Co. v. U.S.
199 U.S. 570 (1905)

--Although the occupation and cultivation of public lands with a view to preemption confers a preference over others in the purchase of such lands by the bona fide shelter which will enable him to protect his possessions against other individuals, it does not confer any vested rights as against the U.S.

--Under the preemption laws, a purchaser availing of the provisions of the Act of March 3, 1891 (providing for the purchase of not more than 160 acres by occupiers of public lands in Alaska for purpose of trade or manufacture), acquires no vested rights by the mere deposit for the survey or until the purchase price is paid. Until this is done, Congress may withdraw the land from entry and sale even though inchoate rights of settlers may be defeated.

Burtis v. State of Kansas et al.
34 L.D. 304 (1905)

--Where public lands of the U.S. are purchased in good faith from a State in the belief that the State has acquired title thereto under its school grant, and are held and occupied for many years, entry by a third party should not be allowed without first affording the State an opportunity to make good the title purported to be conveyed by it or affording such claimant an opportunity to protect his rights by himself making entry under the public land laws.

Lyle v. Patterson
228 U.S. 211 (1913)

--A possessory title to lands of the public domain acquired in good faith from a RR company afterwards held not to have earned the land, by a purchaser who cultivated and improved the property, is good as against all except the U.S.

Leslie A. Reinovsky
41 L.D. 677 (1913)

--Settlement, residence, and improvement of unsurveyed public land under the homestead law do not confer a vested right in the settler as against the U.S., and do not prevent the U.S. from devoting the land to any public purpose.

Central Pacific Railway Co. v. Droge
151 P. 663 (1915)

--Title to a strip acquired by a railroad company for a right-of-way under a grant by Congress cannot be lost by adverse possession by a private individual, no matter how long the possession has continued.

--A Congressional Act allowing prescription to such part of the right-of-way granted to the Union Pacific Railroad as shall be in the adverse possession of individuals long enough to acquire title by prescription, cannot be extended by implication to the right-of-way granted to another railroad company, and is not retroactive.

Denee v. Ankeny
246 U.S. 208 (1918)

--An enclosure of public land, accompanied by actual possession under claim of right and color of title in good faith is not subject to be broken and entered to initiate a homestead claim.

Bode v. Rollwitz
199 P. 688 (1921)

Although islands in a stream were in possession of plaintiff and her predecessor for over 30 years, no title to them was thereby acquired; they being government land.

Earl E. Baughn and Charles Lord
50 LD 239 (1924)

--Public land occupied by one under claim of title is not subject to homestead entry.

Adverse Poss.

U.S. v. Eldredge
33 F. Supp. 337 (1940)

--Title cannot be secured against the Government by adverse possession.

Nelson D. Jay
A-27468 (Dec. 4, 1957)

--Land within a hiatus between two land grants, revealed by a resurvey after both grants were patented under approved and accepted plats of survey, is not public land subject to claim under color of title.

Conran v. Girvin
341 S.W. 2d. 75 (1960)

The party asserting title by adverse possession has the burden of establishing each and every element to establish such title, namely, the possession must be hostile, that is, under a claim of right, and the possession must be actual, open and notorious, exclusive, and continuous.

There can be no adverse possession of wild land without actual possession.

While payment of taxes is evidence of a claim of ownership, it does not alone constitute evidence of possession.

Storm Brothers
A-29023 (October 8, 1962)

A color of title claim may not run to land outside the area described in the deed on which the claim is based, even though the claimant and his predecessors in title believed in good faith that it was covered by the description in the conveyance. Where a dependent resurvey established the original lines of the survey so as to exclude the land applied for from land described in the patent, such application must be rejected.

Color of Title

Bernard J. & Myrle A. Caffney
A-30327 Oct. 28, 1965

--A color of title application is properly rejected when it lacks the basic element of a color of title claim, i.e., possession under some claim or color of title derived from a source other then the U.S.

--A mistaken belief that lands were included in a patent is insufficient to support a claim under the Color of Title Act.

Henry and Eugenia Warbasse
A-30383 Aug. 19, 1965

--A "claim of title" under the Color of Title Act does not include the mere occupancy of public lands by a mistake as to the boundary, without any other basis for believing that such occupancy could give rise to acquisition of title.

A-30620 Decided Nov. 23, 1966

Color of Claim of Title: Improvements

A "valuable improvement" recognizable under the Color of Title Act must be ascertainable and must enhance the Value of the land; a jeep trail on land used for grazing purposes which provides access to the land from a claimant's adjoining lands and which he may use to check cattle and to carry salt to them meets these criteria.

Color of Title Wisconsin Michigan Power Company
A-31037 December 18, 1969

--A claim of color of title to an island cannot be based on an original patent describing only mainland, and adverse possession based on a mistaken belief that the patent to a riparian lot included an unsurveyed island is not a claim of title derived from a source other than the U.S.

Ivie G. Berry
IBLA 76-467 (1976)

A quiet title decree of a state court does not constitute color of title to a tract of land when it was rendered after the plaintiff in quiet title action learned that the title to the land was in the federal government.

A quit claim dead in which the grantor grants all his real property which he held of record in the county at the time of the deed constitutes color of title to a tract of federal land in the county which the grantor held, despite the lack of specific description of the land in the deed (and absent of any evidence of record to the contrary).

Failure or refusal of applicant to submit relevant tax and title data in support of his application, as required by regulation is adequate bases for rejection of the application.

Estate of John C. Briton
IBLA 76-291 (1976)

A color of title claim cannot be initiated on federal land which has been conveyed to U.S. as a base for forest lieu selection rights, and which has not been opened to the operation of public land laws.

Mable M. Farlow
IBLA 75-523 (1977)

Obligation of proving a valid color-of-title claim is upon the claimant.

A color-of-title claim must be based on a document or documents, from a source other than the U.S., which on their face purport to convey title to the land applied for, but which is not good title. Mistaken belief that the land applied for was included in the description set forth in the claimant's deed is insufficient to establish color-of-title.

Act of June 30, 1948
62 Stat. 1171

--Authorizing the Secretary of the Interior to issue patents for lands in Monroe County, Michigan, not exceeding the aggregate sum of 160 acres, held under color of title, upon which improvements have been made or some part of which has been reduced to cultivation.

Swamp and Tidelands

Granger v. Swart

* Instructions to Surveyor General

* Opinion of the Attorney General

* Weber v. Harbor Commissioners

* Central Pacific R.R. v. State of California

* San Francisco Savings Union v. Irwin

Wright v. Roseberry

Poweshiek County

* Mann v. Tacoma Land Co.

* San Francisco v. LeRoy

* Knight v. Land Assn.

* Healt v. Wallace

Illinois Central R.R. v.Illinois

Shively v. Bowlby

Kean v. Roby

State of California

Michigan Land & Lumber v. Rust

Hardee v. Horton

* U.S. v. Minnesota

State of Missouri

* Borax Ltd. v. Los Angeles

* Tidal Boundaries

Mineral Leasing Act (ID)

U.S. v. California

Swamp and Tidelands

Pexco, Inc.

* Effects of Artificial Fill on Title to Alaska Tidelands

* Thomas Connell

* State of Louisiana

* State of Louisiana v. Lorene Shipp

* State of California

Trustees of Internal Improvement Fund v. Wetstone

Burns v. Forbes

* South Venice Corp. v. Casperson

* Pan Alaska Fisheries Inc.

* State of California

Sandra Lough, Damon Blackburn

Group Nos.

Definitions

U.S. Surveys (Alaska)

Granger v. Swart
10 Fed. Cases 961 (Case No. 5, 685) (1865)

If, at time of entry, between a meander line of the official survey and the bank of the body of water, there was a body of swamp, or waste land, or flats, such land was not included within the entry.

Weber v. Harber Commissioners
85 U.S. 57 (1873)

--Upon admission of California into the Union on equal footing with the original States, absolute property in and dominion and sovereignty over all soils under the tidewaters within her limits passed to the State, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper, subject only to the paramount right of navigation over the waters of the Federal Government.

San Francisco Savings Union v. Irwin
28 F. 708 (1886)

--The act of Sept. 28, 1850, granting to each state its swamp and overflowed lands, effected an immediate transfer of interest and title, which cannot be defeated or impaired by the delay or refusal of the Secretary of the Interior to have the required list made and patent issued.

--In the absence of any action of the Secretary of the Interior which would be conclusive in the determination of the nature of the land involved as against collateral attack, the testimony of knowledgeable witnesses as to the character of the land was admissible.

--Swamp lands are those which require drainage to fir them for cultivation; overflowed lands are those which are subject to such periodic or frequent overflows as to require levees or embankments to keep out the water and render them suitable for cultivation.

--When drainage, reclamation, or leveeing is necessary to fit the lands for use, the lands are within the terms of the act of Congress, and title passed by it to the State.

Wright v. Roseberry
121 U.S. 488 (1887)

The grant of swamp and overflowed lands to the several states by Act of September 28, 1850, is one in praesenti passing title to the lands of the character therein described, from its date, and requiring only identification thereof to render such title perfect.

Poweghiek County
9 L.D. 124 (1889)

--The Swamp Land Act of 1850 granted not only swamp lands, but also those which were so "wet" as to be unfit for cultivation.

Mann v. Tacoma Land Co.
44 F. 27 (1890)

The act of Congress, providing for the issuance of Valentine scrip, and for its location upon unoccupied and unappropriated public lands, cannot be so construed as to authorize the entry with said scrip of mud flats bare at low tide, but subject to daily overflow, situated in one of the harbors of a territory, and which has been omitted from the surveys made of public lands surrounding such harbor.

San Francisco v. LeRoy
138 U.S. 656 (1891)

--To render lands tidelands, which the State by virtue of her sovereignty could claim, there must have been such continuity of the flow of tidewater over them as to prevent their use and occupation.

Knight v. U.S. Land Association
142 U.S. 161 (1891)

--The doctrine that, on acquisition of the territory from Mexico, the U.S. acquired the title to lands under tidewaters in trust for the future states that might be created from the territory, does not apply to lands that had been previously granted to other parties by the former Government or had been subjected to trusts that would require their disposition in some other way.

Heath v. Wallace
138 U.S. 573 (1891)

The question whether or not lands shown as "subject to periodic overflow" in the survey plat are "swamp and overflowed lands" within the meaning of the Swamp Land Act, is a question to be determined by the Land Department.

Decisions of the Land Department on matters of fact within its jurisdiction are, in the absence of fraud, conclusive and binding on the courts, and not subject to review.

Illinois Central RR v. Illinois
146 U.S. 387 (1892)

--The ownership of lands covered by tidewaters within the units of the several States belong to the respective States within which they are found, subject to Congress' paramount right to control their navigation for the regulation of commerce.

Shively v. Bowlby
152 U.S. 1 (1894)

The title and dominion of tidewaters and lends beneath them are vested in the several States.

The U.S. may lawfully dispose of tidelands while holding a future state's land "in trust" as a territory.

Kean v. Roby
42 N.E. 1011 (1896)

The original survey, despite fact that it meandered a body of water within the area encompassed by such survey, held to have been a sufficient survey; therefore patent in 1853, under Swamp Land Act of 1850, conveyed all land dry or covered by water within the lines of such sections: land which was meandered by original survey is not unsurveyed land.

State of California
23 L.D. 230 (1896)

--Under R.S. 2488, passed by Congress to provide California a method for the speedy adjustment of the Swamp Land Grant, the designation of land as swamp and overflowed by the U.S. Surveyor-General for California is conclusive evidence as to the character of land so represented on the approved township surveys and plats.

Michigan Land and Lumber Co. v. Rust
168 U.S. 589 (1897)

--The Swamp Land Act of 1850 was a grant in praesenti, passing title to all lands which at that date were swamp lands, but leaving to the Sec. of the Interior to determine what lands were and were not swamp lands.

--Although a survey had been made of the lands in controversy which indicated that they were swamp lands, the land office had power to order a resurvey at any time prior to the issue of a patent and to exclude the lands from the grant.

Hardee v. Horton
108 S.W. 189 (1925)

In the purchase of swamp or overflowed lands that have not been surveyed the vendees take them with notice that the lands described are to be located by and authorized survey, and that all property in the state is acquired and held subject to the due exercise by the state of its police power.

U.S. v. Minnesota
270 U.S. 181 (1926)

--Lands which have been reserved or appropriated for a lawful purpose are not public, and lands within Indian reservations were excepted from the swamp land grant as extended to Minnesota.

State of Missouri ex rel. Hemphill Lumber Co.
50 L.D. 307 (1928)

--Where swamp lands abutting a meander line are patented to a State, the State does not acquire title under the swamp land grant to lands beyond the meander line which are subsequently uncovered by the recession of the waters; the State takes such riparian rights in accordance with local law.

Borax Ltd. v. Los Angeles
296 U.S. 10 (1935)

--Ordinary high-water marks is the boundary of the tidelands, as determined by the course of the tides.

--High-water mark means the average heights of all high waters at that place over a considerable period of time, not a physical mark made upon the ground by the water.

Mineral Leasing Act
60 I.D. 26 (1947)

--The Mineral Leasing Act does not authorize the issuance of oil and gas leases with respect to the submerged lands below low tide off the coasts of the U.S. and outside the inland waters of the states.

U.S. v. California
332 U.S. 19 (1947)

--Submerged land off the coast of California between the low-water mark and the three-mile limit belongs to the Federal Government rather than to the State, and the Federal Government has paramount rights in and power over that belt, including the oil therein.

--The fact that the state has been authorized to exercise local police power functions in the part of the marginal belt within its declared boundaries does not detract from the Federal Government's paramount rights therein.

Pexco, Inc. et al.
66 I.D. 152 (1959)

--Upon admission of Alaska into the Union, title to lands beneath tidal and nontidal navigable waters passed to it, leaving the U.S. without authority to issue oil and gas leases to such lands.

--Section 6 of the Act of July 3, 1958, gave a preference right to oil and gas lease to land under nontidal navigable waters only to those whose leases (or applications) included public lands otherwise available for leasing adjacent to such lands.

THOMAS CONNELL

A-29036 Decided October 16, 1962

Swamplands--Oil and Gas Leases: Generally

Where a State swampland selection conflicts with a prima facie valid oil and gas lease, the swampland application will not be allowed until the State has established the swamp character of the land either in a contest brought against the oil and gas lease or at a hearing ordered by the Department at which the State will have the burden of proof.

STATE OF LOUISIANA

A-29124 Decided Jan 14, 1968

Swamplands

When field notes of a survey submitted by a State to show the swampy character of land selected under the act granting swamplands to the States show only the low or swampy character of other subdivisions in the

area of the selected land, and that the bearing threes marking the boundaries of the selected land are kinds that are associated with uplands, with no indication of the nature of the selected land, the application is properly rejected because of the State's failure to sustain the burden of proving that the selected land falls within the terms of the grant.

STATE OF LOUISIANA

A-29124 Decided Jan. 14, 1963

Swamplands

When field notes of a survey submitted by a State to show the swampy character of land selected under the act granting swamplands to the States show only the low or swampy character of other subdivisions in the area of the selected land, and that the bearing trees marking the boundaries of the selected land are kinds that are associated with uplands, with no indication of the nature of the selected land, the application is properly rejected because of the State's failure to sustain the burden of proving that the selected land falls within the terms of the grant.

Oil and Gas Leases: Generally (Swamplands) 3120
Swamplands: Generally (Oil and Gas Leases) 2222.5

> Where in a contest proceeding involving a conflict between an outstanding oil and gas lease and a subsequent swampland selection application the State of Louisiana sustained its burden of proof of showing the swamp character of the land concerned in the proceeding, the State is entitled to a patent for the swampland in issue and the oil and gas lease is to be cancelled as to such land.

State of Louisiana v. Lorene Shipp, BLM 040633 etc. October 26, 1964

Swamplands 2222.5

> The swamp land acts do not include lands which the Government had sold, reserved, or disposed of prior to confirmation of title to the State.

State of Louisiana, BLM 080215 (February 25, 1965)

Swamplands 2222.5

The swamp-land laws do not apply to lands which have been disposed of and patented by the Government prior to passage of such acts.

Where Bureau records show that all of the lands in a certain section had been disposed of by the Government, a swamp-land application for any lands in that section must be rejected.

State of Louisiana, Eastern States 0626 (July 7, 1967)

Swamplands 2222.5

The State has the burden of proving that the applied-for lands were swamp or overflowed at the time of the grant to the State. Where the survey notes do not establish the swamp character of the lands sought, an application based upon ecological inferences and deductions from the conditions of other land in the area is properly rejected.

State of California, Los Angeles 0164001 (September 30, 1964)

A-30387

IN THE MATTER OF LAND CLASSIFICATION
STATE OF CALIFORNIA, APPLICANT

(Amended)
A-31022 Decided Oct. 27, 1969

Swamplands

Under the Swamp Land Act of 1850, 43 U.S.C. §§ 982-984 (1964), as amended, 43 U.S.C. § 987 (1964), the Secretary of the Interior has no authority to determine conflicting claims to land claimed by a state; his sole function under the act being to determine the physical character of the land and whether the land applied for was in esse at the later of the date of the act or the date of the state's admission to the Union.

Land Classification State of California A-31022, August 13, 1968 and January 23, 1969, overruled to extent inconsistent, A-31022, October 14, 19969, as amended Oct. 27, 1969.

Trustees of Internal Improvement Fund v. Wetstone
222 So. 2d 10 (1969)

--The meander line may be considered the boundary separating swamp and overflowed land from sovereignty lands, where the line of mean high tide circumscribing the swamp lands could not be located but the meander line could be determined through use of the original field notes.

Burns v. Forbes
412 F. 2d. 995 (1969)

Where tidewater is the boundary of land in the Virgin Islands, title of the grantee appears to extend to the low-water mark at time of conveyance and to those portions of the bed of adjacent waters subsequently becoming fast land above low-water mark by accretion or reliction.

Where tidewater is the boundary of lands in Virgin Islands, the doctrine of accretion extends to accretions artificially created by a third party, but not where accretions were made by upland owner.

The right of the owner of littoral land access to tidewater is a fundamental riparian right.

Where riparian owner of tidewater property filled in swamp interfering with his access to water, he had right to use filled land for access to water, subject to such regulations that the U.S., as owner of the land, would make to protect public interest.

Tidelands (Trade and Manufacturing Sites)

Title to tidelands is vested in the State within whose boundaries they are situated, and the Federal Government has no power to convey tidelands which have vested in a State. Where the record fails to contain sufficient information upon which to conclude whether or not lands applied for are tidelands, the case record will be remanded for an investigation and determination of the facts as to the character of the land. If it is found that the application includes any lands determined to be tidelands, the application must be rejected to that extent.

Pan Alaska Fisheries, Inc., Anchorage 062496 (June 15, 1970)

South Venice Corporation v. Casperson
229 S. 2d. 652 (1969)

Generally, land does not pass under a deed as an appurtenance to land; swamp, boggy and marsh land is properly treated as land, and does not pass under a deed as an appurtenance.

Riparian rights do not attach to land bounded by swamp or overflowed land.

State of California
IBLA 70-15- (1972)

The burden of proof as to the character of lands applied for under the Swamp and Overflowed Lands Act falls upon the applicant state.

Land not in ease within the State of California at the date of the Swamp Lands Act is not subject to application by the State under the Act.

Land subject to periodic overflow of a temporary nature is not "swamp and overflowed land" within the meaning of the Swamp Land Act.

State of California
IBLA 76-371 (1977)

Land, which in its natural condition, quite apart from any overflow of water, is uncultivable, is not land of the character described in the grant of swamplands to the respective States.

Sandra L. Lough IBLA 75-614 (1976)
Damon M. Blackburn IBLA 76-93 (1976)

Ownership of tidelands created subsequent to date of Statehood by avulsive action remains in those persons or entities, including the Federal Government, who held title to the land prior to the avulsive action.

Bdy Disputes
Adverse Poss.

Group Nos.

--Boundary changes due to change of medial line of river--Gp. 401, Montana.

Group Numbers

--Cancelling of State swamp land patents on account of erroneous showing on plats of Indian Reservation Boundary.

Group 40, Minnesota

Tidelands Definition
Submerged Lands Definition
43 USC 1301

A. Land beneath navigable waters
B. Boundaries
C. Coast line
D. Grantees, lessees
E. Natural resources
F. Land beneath navigable waters

43 USC/1311

--Rights of States re lands beneath navigable waters with State boundaries.

48 USC/455(a)(b)

Alaska Tidelands Act - Granting to the U.S. title to Alaska and providing for management and disposal of tidelands.

Now enacted by legislature of Alaska and omitted from 48 USC.

U.S. Surveys

Tidelands in Alaska

U.S. Survey No. 3151 (4/2/52)

Artificially filled tidelands in Alaska

U.S. Survey No. 3844 (3/31/61)

Rights-of-Way

E.A. Crandall

Joseph Williams

Consolidation of National Forests

Regulations Relating to Rights-of-Way

Statutes

E. A. Crandall
43 LD 556 (1915)

--Upon abandonment of a right-of-way, the title thereto reverts to the U.S. as grantor and does not pass to the owners of the subdivisions through with the R/W runs.

Joseph Williams
42 LD 111 (1913)

--The fact that an application for a reservoir easement upon unsurveyed lands has been accepted and filed will not prevent the acceptance and filing of a like application by a different party for the same land.

Consolidation of National Forests--Special Surveys
53 LD 434 (1931)

--Special surveys are not required to describe excepted rights-of-way involved in a land exchange where the possibility of elimination of lands from a national forest is remote.

Regulations relating to rights-of-way for canals, ditches, and reservoirs, as granted under Act of March 3, 1891 (26 Stat. 1095)
34 LD 212 (1905)

--Including texts of the Acts granting rights-of-way for canal or ditch companies (26 Stat. 1095); permitting use of rights-of-way for tramroads, canals, and reservoirs (30 Stat. 404); providing for rights-or-way on reservoir sites (29 Stat. 599); granting right-of-way for pipelines (29 Stat. 127); providing for location and purchase of public lands for reservoir sites (29 Stat. 484); relating to right-of-way through parks, reservations and other public lands (31 Stat. 790); and permitting use of right-of-way for tramroads.

Statutes

--Act providing for the disposition of abandoned portions of rights-of-way granted to railroad companies to owners of the land through which the rights-of-way traverse. (42 Stat. 414 - March 8, 1922)

Statutes, etc.

--Right-of-way for construction of highways over public lands.
43 USC 932

--Authorization for the Secretary of the Interior to acquire interest in land for construction or improvement of interstate highways.
23 USC 107

--Authorization to acquire such interests for future construction of interstate highways.
23 USC 108

Railroad Rights-of-Way

St. Paul, Minnesota & Manitoka Ry Co. v. Maloney

* H.A. & L.D. Holland Co. v. Northern Pac. Ry. Co.

Mary G. Arnett

Dunlap v. Shingle Springs & Placerville RR Co.

* Railroad Co. v. Baldwin

Santa Fe Pacific RR Co.

* Central Pacific Ry. Co. v. Droge

* Great Northern RR v. U.S.

St. Paul, Minn. and Mauitoba Ry Co. v. Maloney et al.
24 LD 460 (1897)

--The actual use of lands as station grounds prior to survey by a company that has filed its articles of incorporation and has constructed a railroad over unsurveyed land, entitles that company to an approval of a plat as against an intervening homestead entry, if the use antedates the settlement of the homesteader.

H.A. and L.D. Holland Co. v. Northern Pac. Ry. Co.
214 F 920 (1914)

--Under a Congressional grant of right-of-way for a railroad through the public lands, the land is acquired on the implied condition that it be used for railroad purposes, subject to reversion for non-use. The RR company may not vest any public or private person with any interest therein which would prevent the land's use for a railway purpose, or to abandon possession to an adverse claimant.

Mary G. Arnett
20 LD 131 (1895)

--The question of whether a railroad company has forfeited its right-of-way by failure to construct its road within the time provided by the Act is not within the jurisdiction of the land department; it is a question for the courts.

--Where the company's rights are protected without a reservation, a clause reserving the right-of-way should not be inserted in final certificates for a homesteader's entry for lands over which a R/W has been granted, where it appears that there has been a breach of conditions imposed by the Government, but no reassertion of ownership by the Government.

Dunlap v. Shingle Springs & Placerville RR Co.

--A RR right-of-way is fully protected by the terms of the Act of March 3, 1875, against subsequent adverse rights; thus, a reservation of such R/W in final certificates and patents for lands traversed thereby is not necessary and should not be inserted.

Railroad Co. v. Baldwin
103 U.S. 426 (1880)

--A grant of a railroad right-of-way under the Act of July 23, 1866 (14 Stat. 210) is absolute and in praesent, and a party subsequently acquiring a parcel of such lands takes it subject to that right.

--"It may be doubted" that a State subsequently created out of the territory could prevent the railroad's enjoyment of such right.

Santa Fe Pacific R.R. Co.
27 LD 322 (1898)

--The grant of necessary lands for station and other purposes, outside the limits of the general right-of-way, does not relate back to the date of making the grant, as does the grant of a general right-of-way, hence no rights are acquired as against an adverse claimant.

R/W
RR

Central Pacific Railway Co. v. Droge
151 P. 663 (1915)

--Title to a strip acquired by a railroad company for a right-of-way under a grant by Congress cannot be lost by adverse possession by a private individual, no matter how long the possession has continued.

--A Congressional Act allowing prescription to such part of the right-of-way granted to the Union Pacific Railroad as shall be in the adverse possession of individuals long enough to acquire title by prescription, cannot be extended by implication to the right-of-way granted to another railroad company, and is not retroactive.

Great Northern RR v. U.S.
315 U.S. 262 (1942)

--The Right-of-way Act of March 3, 1875, granting to railroads the right-of-way through public lands, grants an easement only, not a fee, and confers no right to oil and minerals underlying the right-of-way.

Miscellaneous

Private Exchanges

*

School Sections

State of Michigan

U.S. v. State of California

* U.S. v. Wyoming

* U.S. v. Morrison

Dorothy P. Soeth

Louisiana Furs, Inc. v. State of Louisiana

F.A. Hyde & Co.

Emily W. Thurston

J.P. HInds et al.

Russell v. U.S. Borax Co.

Withdrawals

Ira J. Newton

Lizzie Trask

Survey of Lands withdrawn while unsurveyed

J.P. Hinds et al.

Rule Of Approximation

Santa Fe Pacific RR Co.

Trade and Manufacturing

Clayten & Racca

* David P. Henley

Acquired Lands

J.C. Babcock, J.C. Shipp

Miscellaneous

Lieu Selections

School Section

White v. Swisher

Forest

Estate of John C. Brinton

F.A. Hyde & Co.

Timber

* Consumers Coop. Ass'n. v. U.S.

* Medford corp. v. Olson-Lawyer Lumber Co. & E.F. Burrill Lumber Co.

Survey-Forest Reserve

Forest Exchanges

Homestead Entry

* Rune E.S. Safve

Indian Allotment

* Benjamin F. Sanderson, Sr.

Water Quality Standards

Abolishment of surveyor-General's Office

Taylor Grazing Act

* Ben J. Boschetto

Statutes

U.S. Code

Misc.

U.S. Survey Nos.

--Confirmation of approval of special instructions 2539

--Proper showing by applicant in connection with approval of special instruction 2709

--Type of certificate of acceptance for computed U.S. surveys 3814

--Trailers in field notes and on plats 4081

--Outmoded certificates of survey--Alaska 4394 (10/6/66)

Misc. File

Alaska Surveys in withdrawals - 4925 6/30/47

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School Sections in forests - 2004183 9/2/44

--Authority to survey and assign designations and areas to lands patented without survey - 1234286 12/28/49

Misc.
School Sections

State of Michigan
8 LD 560 (1889)

--Irregularity in form and place of section 16 will not defeat operation of school grant.

U.S. v. State of California
55 LD 121 (1935)

--Title to school land does not pass prior to acceptance of survey officially identifying the land.

U.S. v. Wyoming
331 U.S. 440 (1947)

--Title to unsurveyed sections of the public lands designated as school lands does not pass to State upon its admission into the Union but remains in the Federal Government until the land is surveyed.

--If the Federal Government is found to have made a previous disposition, the State is entitled to select lien lands as indemnity.

U.S. v. Morrison
240 U.S. 192 (1916)

--Title to school sections does not vest in State until lands have surveyed, even where lands have been granted prior to survey.

Dorothey P. Soeth
60 LD 1 (1947)

--Title to school sections does not pass to State until an approved plat of survey is on file.

Louisiana Furs, Inc., v. State of Louisiana
53 LD 363 (1931)

--Unsurveyed school sections in protracted townships passed to the State of Louisiana without further surveys under the Act of April 23, 1912.

F.A. Hyde & Co.
37 LD 164 (1908)

--Title does not vest in a State under its school grant until the granted sections have been surveyed, and where, subsequent to survey, but prior to its approval by the Commissioner of the G.L.O., the area is withdrawn, no rights to the school sections therein accrue to the State, and such sections do not therefore constitute a valid base for the selection of lien lands.

Emily W. Thurston
28 L.D. 264 (1899)

--Once title to school sections has vested in a state, a subsequent resurvey which changes the designation of such sections by number cannot defeat the State's title.

J.P. Hinds et al.
IBLA 76-370 (1976)

When title to an entire in-place school section has passed to the state, the U.S. no longer has a property interest therein and the land is no longer subject to location under the mining laws.

Russell v. U.S. Borax Co.
48 LD 418 (1922)

Lands within a school section are not subject to mineral entry unless and until exchange thereof for other lands has been perfected.

Ira J. Newton
36 L.D. 271 (1908)

--A withdrawal erroneously made to include lands not intended to be embraced therein is nevertheless effective as to such lands, and until released from withdrawal, no inconsistent rights will be recognized.

Lizzie Trask
39 L.D. 279 (1910)

--Where a homestead entry is allowed subsequent to a temporary withdrawal of the land, based on a valid settlement right initiated prior to survey, such entry excepts the land from a later proclamation including the land within a national forest, notwithstanding the facts that: (1) more than three months from the filing of the township plat had elapsed at the time the entry was made, or (2) it is the settler's widow who was asserting the right to make entry.

Survey of Lands Withdrawn while Unsurveyed Instructions
42 L.D. 318 (1913)

--Once a survey is made and accepted, any judgement of areas previously withdrawn by reference to the legal subdivisions shall be made and the local land offices shall be advised of such adjustment.

--Any withdrawal otherwise valid shall be valid notwithstanding a failure to make the notation on the tract books or to give such information to local land officers.

J.P. Hinds et al.
IBLA 76-370 (1976)

Mining claims and millsites located on lands previously withdrawn from entry under the mining laws by a first-form reclamation withdrawal are null and void ab initio.

Santa Fe Pacific R.R. Co.
49 L.D. 161 (1922)

--The rule of approximation is an equitable remedy and may not be invoked to justify a lieu selection of land approximately twice the area of the tract tendered as a base.

Clayton E. Racca
72 I.D. 239 (1965)

--Whether an applicant is entitled to purchase all the land he claims is a factual issue; application of the statutory provision (43 U.S.C. Sec. 687 - a - 2 (1970)) that a trade and manufacturing site on navigable water cannot exceed 80 rods of the shore line.

David W. Henley
IBLA 71-16 Sept. 13, 1972

--The statutory provision that "no entry shall be allowed under this Act on lands abutting on navigable water of more that 80 rods..." (43 U.S.C. Sec. 687 a - 2 (1970)) was designed to prevent a greater acquisition along one shore line.

--An application for a site consisting of two lots, each one of which extends 1073.82 feet along separate and discrete bodies of water, may not be rejected on the basis that it extends more than 80 rods (1320 feet) along the shore of any navigable water.

J.C. Babcock
J.G. Shipp
IBLA 76-517 (1976)

Patented lands which are subsequently acquired by the United States are not, by mere force of reacquisition, open to disposal under the public land laws.

In the absence of specific statutory direction to the contrary, acquired lands remain closed to location under the mining claim laws.

White v. Swisher
36 L.D. 22 (1907)

Where an indemnity selection was made and approved in lieu of lands in a school section supposed to be lost to the State by being included in a Mexican grant, but later found not to be within such areas, the lands in the school section became part of the public lands of the U.S.

Where such base land is in the possession of one claiming under a patent from the State, such possessions will confer no right as against the U.S., but if bona fide and notorious, should be recognized as reasonable ground for according the claimant priority of right to secure title under the public land laws, or for affording the State an opportunity to make the title good.

Estate of John C. Brinton
IBLA 76-291 (1976)

A color of title claim cannot be initiated on federal land which has been conveyed to U.S. as a base for forest lieu selection rights, and which has not been opened to the operation of public land laws.

F.A. Hyde and Co.
48 L.D. 132 (1921)

--A valid forest lieu selection of unsurveyed lands is not defeated by reason of their subsequent survey as part of a school section.

Consumers Cooperative Association v. U.S. Court of Claims 552-58
January 12, 1962

--Where defendant contracted to sell plaintiff timber on a section of land whose boundaries were erroneously ascertained by a cruiser hired by defendant and were not surveyed, and plaintiff-buyer was forced to pay private parties whose timber it consequently and mistakenly cut, the defendant-seller is liable for the excess money it received.

Medford Corp. v. Olson-Lumber Co. and Eugene F. Burrill Lumber Co.
IBLA 74-298 16 IBLA 321 (Aug. 14, 1974)

--The BLM may reserve or set aside timber for sale to small businesses without utilizing another Federal agency's formula, without announcing such sales at the beginning of the fiscal year, and by including two timber units in the same marketing area.

Survey -- Forest Reserve
28 L.D. 293 (1899)

--Act requiring GLO to survey the public lands does not preclude U.S. Geological Survey from completing a survey of a township, begun under authority of a prior act.

Forest Exchanges
60 L.D. 232 (1948)

--The Secretary of the Interior cannot delegate any of his official functions to personnel of the Forest Service.

Rune E. S. Safve
IBLA 71-273 Oct. 10, 1973

--Where an entryman seeks commutation of his homestead entry without having complied with citizenship, residence, and cultivation requirements, most or all of which deficiencies could have been corrected by the entryman's continuing efforts or excused upon proper application for relief, the homestead entry will be cancelled and equitable relief denied.

Benjamin F. Sanderson, Sr.
IBLA 74-166 July 8, 1974

--An application for an Indian allotment will be rejected where: 1) the land is subject to flooding and an Executive Order has established a policy against the disposal of public land located on a flood plain; 2) it is under study for possible inclusion in the Wild and Science River system; 3) it has value for watershed, recreation and scenic backdrop purposes; and 4) it has only marginal value for agriculture and grazing.

Water Quality Standards
M-36690 June 13, 1966

--Waters which flow into a State from an adjoining State but which do not subsequently flow across or from State boundaries are, within the meaning of the Federal Water Pollution Control Act, "interstate waters".

--"Coastal waters" mean the sea within the territorial jurisdiction of the U.S. and inland waters subject to the ebb and flow of the tide, even if nonnavigable.

--Tributaries of interstate waters are not per se interstate waters; only those tributaries which either flow across or form a part of boundaries are interstate waters.

Abolishment of Surveyor General's Office -- Reorganization of Surveying Service pursuant to Act of March, 3, 1925

51 L.D. 112 (1925)

Taylor Grazing Act: General Explanation
54 I.D. 524 (1934)
48 Stat. 1269

Statutes

--National Environmental Policy Act

83 Stat. 852
Jan. 1, 1970
P.L. 91-190

--Act abolishing contract surveys.

Act of June 25, 1910
36 State. 740 (P.L. 266)

--Act amending sec. 3 of the Administrative Procedure Act, ch. 324, of the Act of June 11, 1946 (60 Stat. 238), to clarify and protect the right of the public to information.

Act of July 4, 1966
80 Stat. 250 (P.L. 89-487)

--Act codifying the public information section of the Administrative procedure Act, amending 5 U.S.C. 552.

Act of June 5, 1967
81 Stat. 54 (P.L. 90-23)

--Act providing for state application for withdrawal and survey of unsurveyed townships, with a view to satisfy the public land grants made by the Acts admitting Washington, Idaho, Montana, North and South Dakota, and Wyoming into the Union.

Act of August 18, 1894
28 Stat. 394

--Creation of surveyor-general's Office in California.

Act of March 3, 1851
9 Stat. 617

Statutes

--Act providing for the Alaskan homesteader's right to purchase a tract of land, not to exceed 5 acres, after having occupied the tract of three years.

Act of May 26, 1934
48 Stat. 809 (P.L. 260)

--Act authorizing the acquisition or use of public lands by States, counties, or municipalities for recreational purposes.

Act of June 14, 1926
44 Stat. 741 (P.L. 386)

--Act amending the Recreation Act of June 14, 1926, to include other public purposes and the permit nonprofit organizations to purchase or lease public lands for certain recreational or public purposes consistent with their articles of incorporation.

Act of June 4, 1954
68 Stat. 173

--Act conferring jurisdiction on the Court of Claims to hear and determine certain claims of the Eastern and Western Cherokee Indians against the U.S. Official letters, documents, records, maps, or copies thereof may be used in evidence and the attorney(s) of the Indians shall have access thereto.

Act of April 25, 1932
47 Stat. 137 (P.L. 105)

--Transportation Act of 1940 to regulate commerce and to provide for the unified regulations of carriers by railroad, motor vehicle, and water.

Act of Sept. 18, 1940
54 Stat. 898 (P.L. 785)

Executive Orders

--Delegation of authority to the Secretary of the Interior to issue Public Land Orders.

E.O. #10355 May 26, 1952

United States Code

--departure from rectangular surveys

43 USC 770

--issuance of patents of school sections

43 USC 871a

--authorization for U.S. Geological Survey to survey certain public lands (national forests)

16 USC 474

--withdrawal and reservation of lands for water-power sites or other purposes

43 USC 141

--criminal sanctions for interruption of surveys

18 USC 1859

--public information section of administrative procedure act.

5 USC 552

--Federal Regulations and Development of Power -- Public lands included in project

16 USC 818

--completion of surveys; delivery to states

43 USC 54