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United States Department of the Interior



BUREAU OF LAND MANAGEMENT
EASTERN STATES OFFICE
350 SOUTH PICKETT STREET
ALEXANDRIA, VIRGINIA 22304

IN REPLY
REFER TO:

ES 7050 (940)
Wisconsin

February 13, 1990

Mr. Lucius A. Taylor III
P.O. Box 101
Pelican Lake, Wisconsin 54463

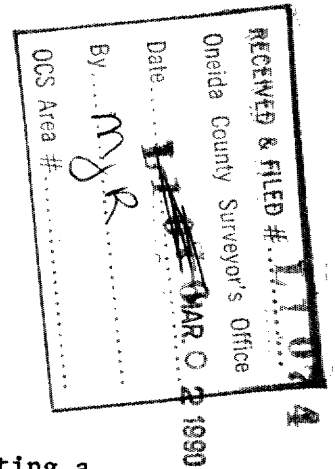
Dear Mr. Taylor:

This is in response to your letter dated January 30, 1990, requesting a determination of the status of certain lands lying between the record meander line and the present shore line of Pelican Lake, adjacent to Lots 1, 2, and 3 of Section 19, Township 35 North, Range 11 East, Fourth Principal Meridian, Wisconsin, as it pertains to the United States.

Discrepancies between the location of original meander lines and the actual shore of a body of water fall into two classes, those that are merely technical differences and those that constitute erroneous omission. The guidelines for determining the class of a particular case are laid down in court and departmental decisions. Leading decisions have considered the following factors in determining whether or not lands have been erroneously omitted from the original surveys:

1. The area of omitted land as compared to the area of patented land.
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.
4. The distance between the original meander line and the actual water line.

In U.S. v. Zager et al., 338 F. Supp. 984 (1972), the court held that gross error is chargeable when the true area of surveyed public land was understated in the original survey by substantially more than 1/3. (True area is defined as the area returned in the original survey plus the omitted area.)



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Applying the above to the area between the original meander line and the present shore of Pelican Lake we find:

<u>Original Area</u>	<u>Area between Original Meanders and Shore</u>
Lot 1 = 58.30	+ or - 94.85 acres (CAD system)
Lot 2 = 46.58	
Lot 3 = 59.90	
Lot 4 = 38.15	
Lot 5 = 27.60	
Total <u>230.53</u>	

True Area = 230.53 + 94.85 = 325.38
1/3 of true area = 108.46

In the instant case the apparent excess area amounts to less than 1/3 of the true area.

There is nothing to indicate that the area between the original meander line and the present shore line of Lake Pelican was any less valuable than the surrounding surveyed lands returned in the original survey.

An inspection of U.S. Geological Survey Quadrangle maps "Elcho WI 1973" and "Monico WI 1965" give no indication that the actual shore of the lake was so difficult to define at the area in question or that the nature of the terrain was such as to make a more accurate delineation of the lake shore unfeasible.

A comparison of the actual lake shore as depicted on the previously mentioned quadrangle maps, with the original meander line plotted as the same scale, demonstrates that the original meander line deviates from the actual shore line by as much as 1200 feet.

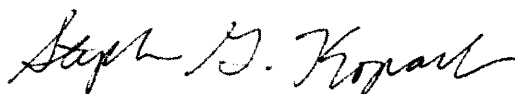
Three out of four of the major factors considered in leading decisions where it was determined that lands had been erroneously omitted from the original survey have been satisfied. However, the courts have relied heavily upon the acreage comparison and as demonstrated above, the excess area in this case is not of sufficient magnitude to substantiate a charge of gross error.

A meander line is surveyed to determine the sinuosities of a body of water for the purpose of calculating the acreage of adjoining riparian lots. In the absence of prima facie fraud or an error so gross as to constitute fraud, the courts have ruled that the boundary of riparian lots extends to the actual shoreline and is not limited to the acreage recited in the patent from the United States.

In view of the above, it is the opinion of this office that the excess area in Section 19, Township 35 North, Range 11 East was included in the patents for the adjoining riparian lots.

If we can be of further assistance, please do not hesitate to contact this office.

Sincerely,



Deputy State Director
for Cadastral Survey