

L 2766



United States Department of the Interior

Bureau of Land Management

Eastern States
7450 Boston Boulevard
Springfield, Virginia 22153
<http://www.es.blm.gov>



IN REPLY REFER TO:
9600(956)

MAR 07 2010

received
5/14/2010 MAR

Michael J Romportl
Land Information Director
Oneida County
Land Information Office
PO Box 400
Rhineland, Wisconsin 54501-0400

MAP #	L 2766
DATE FILED	6/2/11
BY	LA
DESCRIPTION FILED	
ONEIDA CO. SURVEYOR'S OFFICE	

Dear Mr. Romportl,

This replies to your letter dated April 9, 2010, concerning possible omitted land in Section 14, Township 35 North, Range 11 East, 4th PM, Oneida County Wisconsin.

It is not uncommon to find discrepancies between the location of original meander lines and the actual shore of a body of water. These discrepancies 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 described in court and departmental decisions.

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 on the patent from the United States.

In Lawyers Title Insurance Corp. v Bureau of Land Management, 117 IBLA 63, it was held that where the Bureau of Land Management (BLM) attempts to establish that lands were omitted from an officially filed original survey as a result of gross error or fraud, it must prove by clear and convincing evidence that the original survey was grossly in error. The Interior Board of Land Appeals (IBLA) went on to state that analysis of whether a particular omitted lands case falls within the general rule or the gross error exception requires the application of various judicially evolved factors to the specific facts of the case.



WILD HORSES & BURROS • CADASTRAL SURVEY • GENERAL LAND OFFICE RECORDS • MINERALS • RENEWABLE RESOURCES



L 2766

The three specific factors pertinent to the analysis include:

- 1) the size of the involved; including the size of the parcel as shown by the original surveyor, the relative size of the new area disclosed by the more recent survey, and the magnitude of the original surveyor's error as measured by the amount of land in the surrounding area as a whole, with the greatest weight being given to the relative size of the omitted tract.
- 2) The intent of the original surveyor.
- 3) The nature and value of the land at the time of survey.

In the absence of prima facie evidence (evidence good and sufficient on its face) or an error so gross as to constitute fraud, the original survey is deemed correct.

In *Lawyers Title*, the IBLA held that when the true area (the area returned in the original survey plus the omitted area) of surveyable public land was understood in the original survey, an understatement of 40.6 percent was not sufficient to be considered gross error. Thus, the first test that a particular situation would need to pass is the 40.6 percent rule. If, when comparing the area returned by the original survey, the apparent omitted areas amount to less than 40.6 percent of the true area, then the original survey is considered to be without gross error.

In *U.S. V. Zager et al.*, 338 F. Supp. 984 (1972) it was held that in order to constitute gross error, the true area must have been understated by substantially more than 1/3. True area is defined as the area returned in the original survey plus the alleged omitted area.

An examination of the area in question reveals that the difference between the actual shore line of the lake, taken from an aerial photo dated 2006 and the original meanders of the same fall within the general rule announced in *Lane v. United States* C.C.A. La. 1921, 274 F. 290, affirmed 43 S. Ct. 260 U.S. 662, Ed. 448, which held that an omission of this nature and extent does not constitute a gross error in the original survey.

Considering other judicially evolved factors, it is concluded that there is nothing in the records of this office or in the information submitted with your letter to indicate fraud by the original surveyor in the placement of the original meander line. There is also nothing of record to indicate that the omitted area was any more valuable than the surrounding surveyed lands, necessitating a more accurate meander line.

Accordingly, it is the opinion of this office that it could not be proven by clear and convincing evidence that the original survey was grossly in error. Therefore, it is our opinion that the United States (on the basis of an erroneous omission of public domain) asserts no claim to the area between the record meander line and the actual shoreline of the lake in front of Lots 1, 2, 3, 4, 5 and 6 of Section 14, Township 35 North, Range 11 East, 4th PM. Title to this area is presumed to have passed from the United States with the divesting of title to said adjoining lots.



L2766

If you have any questions concerning this or any other matter, do not hesitate to contact this office at 703-440-1674.

Sincerely,



Dominica VanKoten
Chief Cadastral Surveyor
Eastern States Office



WILD HORSES & BURROS • CADASTRAL SURVEY • GENERAL LAND OFFICE RECORDS • MINERALS • RENEWABLE RESOURCES



L2766