United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Eastern States
20 M Street, SE Suite 950
Washington, DC 20003
http://www.es.blm.gov

In Reply Refer To:
9600(962)

Michael J. Romportl, Land Information Director
Oneida County Land Information Office
1 S Oneida Ave., P. O. Box 400
Rhinelander, Wisconsin, 54501-0400

Dear Mr. Romportl,

This letter is in response to your inquiry dated June 6, 2017, regarding the ownership of lands previously surveyed at Tamarack Lake, in section 27, T. 38 N., R. 9 E., 4th Principal Meridian, Wisconsin.

Discrepancies between the location of the original meander lines and the actual shore of a body of water fall into two classes; those that are merely technical differences and those constituting erroneous omission. The guidelines for determining the class of a particular case are laid down in court and departmental decisions.

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. The three specific factors pertinent to the analysis include:

1) The size of the parcel 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.

At the extremes there is little difficulty involved in making a determination. Such as in the situation where an area was meandered as a permanent body of water when it was an area temporarily flooded or was swamp and overflowed lands or when an area was meandered where no body of water existed or where an area was meandered where several lakes were meandered as one lake. These cases will be treated in the same manner as those where a discrepancy is due to grossly erroneous position of the record meander line. In the absence of prima facie evidence (evidence good and sufficient on its face) or an error so gross as to constitute fraud, the area returned in the original survey is deemed correct.

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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.

In Lawyers Title, the IBLA held that when the true area of surveyable public land was understated 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.

I calculated the percentages in the area of your inquiry and estimate an approximate understatement of 9% within the section. This is much less than the required 40.6 percent.
Considering other judicially evolved factors, it is concluded; there is nothing in the records of this office 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, the United States asserts no claim to the excess area between the record meander line and the actual shoreline of Tamarack Lake. Title to this area is presumed to have passed from the United States with the divesting of title to said adjoining lots.

In view of the above, it is apparent that the owners of the riparian lots are entitled to a portion of the excess area in Section 27. The establishment of partition lines over the excess area must be done in accordance with applicable State law. This office lacking any authority in the matter cannot comment as to the procedure to be employed in establishing said partition lines.

In the questions raised by landowners and/or parties concerned regarding the status of these apparent omitted lands, the ultimate question is whether or not the United States has an interest in the excess area. To address your inquiry regarding this office's procedures in such matters we must first discuss the three forms of inquiry that may be submitted to this office and the two possible responses for each. They are as follows:

1. A letter of inquiry about the status of a specific area of land.

    a) In the case where it is determined that the United States has no interest, the opinion of this office will be expressed in a letter.

    b) In the case where it is determined that the United States has an interest, the interested landowner would be requested to submit a completed Form 9600-2.

2. Form 9600-2 "APPLICATION FOR SURVEY OF ISLANDS OR OTHER OMITTED PUBLIC LANDS"

    a) In the case where it is determined that the United States has no interest, the opinion of this office will be expressed as a DECISION of the Eastern States Office.

    b) In the case where it is determined that the United States has an interest, the applicant will be informed and a field survey scheduled.

3. A Recordable Disclaimer of Interest in Land application filed in accordance with 43 CFR 1864 under Section 315 of the Federal Land Policy and Management Act (43 U.S.C. 1745).

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a) In the case where it is determined that the United States has no interest, and the application conforms to the regulations, a recordable disclaimer of interest will be issued.

b) In the case where it is determined that the United States has an interest, the applicant will be informed and a field survey scheduled.

Considering all of the forms of inquiry above, the easiest and most economical form of inquiry would be as outlined in (1) above. But as any of the foregoing forms of inquiry will generate a determination as to the United States interest or noninterest, the landowner and/or parties concerned, must decide which form of response will be sufficient to satisfy any local questions of title and recordation. This letter is considered a response under response 1(a).
If it is determined you would like to pursue this matter further please contact me at (202) 912-7760.

Sincerely yours,

Acting Deputy State Director Geosptial Services

cc: 7050 Reading Files

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