



November 2021

BACKSIGHTS & FORESIGHTS

SDSPLS 39th Annual Convention

January 5, 6, & 7, 2022

The Lodge at Deadwood – Deadwood, SD



IN THIS ISSUE:

Why Continuing Education?

The Fantastic Pheasant Canteen

**2022 Membership
Registration Form**

**2022 SDSPLS 39th Annual
Convention Registration Form**

**The Land Surveyor's Guide
to the Supreme Court
of South Dakota Part 36**



Frontier Precision helps you re-imagine what's possible. Welcome to the Trimble R12i GNSS System. Its Trimble ProPoint™ RTK positioning engine and Trimble TIP™ tilt compensation technology allows you to measure or stake out points faster and in more places, without ever having to level the survey pole. Even on sites that were once inaccessible — like the edge of an open excavation or around building corners. Make the move to being even more productive. To get started, visit: www.frontierprecision.com/trimble-r12i.



**THE WORKSITE IS RARELY ON YOUR SIDE.
THE FIELD IS NOW TILTED IN YOUR FAVOR.**

Want more information? Contact:

Nathan Kuprer, Geospatial Sales Representative
nathank@frontierprecision.com
701.222.2030 or 800.359.3703 [Toll Free]



Frontier Precision
1713 Burlington Drive
Bismarck, ND 58504



PRODUCTS | TRAINING | REPAIR | RENTALS

LEARN MORE www.frontierprecision.com/trimble-r12i

2021 SDSPLS BOARD OF DIRECTORS

PRESIDENT

Jon Collins
SD DOT
4624 Lahinch
Rapid City, SD 57702
605-484-4750

PAST PRESIDENT

Travis Jacobson
IHS
PO Box 148
Ft. Pierre, SD 57532
605-222-3333

PRESIDENT-ELECT

Kary Gregoire
IHS- Great Plains Area
409 Ruth St
Yankton, SD 57078
605-661-7496

SECRETARY

Andrew Kangas
Civil Design Inc
609 Main Ave S
Brookings, SD 57006
605-696-3200

TREASURER

Cory Biegler
Helms & Associates
PO Box 111
Aberdeen, SD 57401
605-216-2426

NSPS DIRECTOR

Linda Foster
Ferber Engineering Co.
729 E. Watertown St.
Rapid City, SD 57701
605-390-1526

WEST RIVER CHAPTER

Brad Limbo
All Aspects, Inc.
444 St. Joe St.
Spearfish, SD 57783
605-490-2944

BIG SIOUX CHAPTER

Beau Koopal
Infrastructure Design Group
3241 E Bison Trl
Sioux Falls, SD 57108
605-680-4156

MISSOURI RIVER CHAPTER

Donald Jacobson
111 W. Park Ave.
Ft. Pierre, SD 57532
605-222-4041

2021 COMMITTEE CHAIRPERSONS

EDUCATION

Kristi Goehring
Goehring Surveying
27172 421st Ave.
Parkston, SD 57366
605-928-7653

MEMBERSHIP

Adam Thompson
Interstate Engineering
120 Industrial Dr.
Spearfish, SD 57783
605-642-4772

PUBLIC INFORMATION

Ruthie Wetzel
Clark Engineering
1410 W. Russell St
Sioux Falls, SD 57104
605-331-2505

LEGISLATION

Gary Andersh
Schmitz, Kalda & Assoc.
320 N. Main Ave.
Sioux Falls, SD 57104-6043
605-332-8241

STANDARDS

Dean Scott
DS Scott Surveyors, Inc.
3153 Anderson Rd.
Rapid City, SD 57703
605-393-2400

DPC REPRESENTATIVE

Donald Jacobson
111 W. Park Ave.
Ft. Pierre, SD 57532
605-222-4041

TRIG-STAR

Chad Dodds
5610 Doubletree Road
Rapid City, SD 57702
605-661-3016

EXECUTIVE DIRECTOR

Alesha Limbo
444 Saint Joe Street
Spearfish, SD 57783
DirectorSDSPLS@hotmail.com
605-645-5128

ADVERTISING FEES

<i>Size</i>	<i>Rates</i>
3 1/2" x 5"	\$25 per issue
7 1/2" x 5"	\$50 per issue
7 1/2" x 10"	\$90 per issue

Backsights and Foresights accepts advertising from equipment suppliers and others offering surveying related services. There is no charge for help wanted or positions wanted, employment ads or equipment for sale by practitioners whose main business is not equipment sales or rental.

PUBLICATION DEADLINES

<i>Material Cutoff</i>	<i>Publication</i>
January 15	February 1
April 15	May 1
July 15	August 1
October 15	November 1

Backsights and Foresights

Backsights and Foresights is the official publication of the South Dakota Society of Professional Land Surveyors. It is published quarterly. Material published is not copyrighted and may be reprinted without written permission as long as credit is given. All material must be submitted by the middle of the month preceding the issue date, and should be directed to: The Executive Director.

Articles and columns appearing in the publication do not necessarily reflect the viewpoint of SDSPLS but are published as a service to its members, the general public and for the betterment of the surveying profession. No responsibility is assumed for errors, misquotes or deletions.

SDSPLS – Board of Directors Meeting
(Virtual – Zoom Meeting)
Friday, October 8, 2021 – 11:00am (CST)

In Attendance: President Jon Collins, Past President Travis Jacobson, President-Elect Kary Gregoire, NSPS Director Linda Foster, Treasurer Cory Biegler, Secretary Andrew Kangas, West River Chapter President Brad Limbo, Big Sioux Chapter President Beau Koopal, Missouri River Chapter President Don Jacobson, Executive Director Alesha Limbo, and Public Information Committee Ruthie Wetzel

1. Meeting called to order at 11:03 a.m. (Central) by Jon Collins.
2. Acceptance of Agenda: No new business added. Motion by Gregoire to approve the agenda as presented, 2nd by Brad Limbo - Motion approved.
3. Secretary's Report – presented by Andrew Kangas: Written minutes from the Board of Directors Meeting on July 16, 2021 were submitted. Motion by Brad Limbo to approve meeting minutes, 2nd by Jacobson - Motion approved. Minutes are attached.
4. Treasurer's Report – presented by Biegler: Written report submitted. Motion by Foster to approve treasurer's report, 2nd by Brad Limbo - Motion approved.
5. President's Report – Jon Collins: No written report submitted.
6. Committee Reports:
 - a) Education – Kristi Goehring (absent): No report submitted.
 - b) Legislation – Gary Andersh (absent): No report submitted.
 - c) Design Professionals' Coalition – Don Jacobson: No report submitted.
 - d) Professionalism & Practice – Dean Scott (absent): No report submitted.
 - e) Public Information – Ruthie Wetzel: No report submitted.
 - f) Membership – Adam Thompson (absent): No report submitted.
 - g) NSPS – Linda Foster: Written report submitted. Foster gave a summary of the written report.
 - h) Young Surveyors – David Feilmeier (absent): No report submitted.

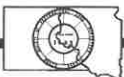
- i) Trig Star – Chad Dodds (absent): No report submitted.

7. Chapter Reports

- a) West River – Brad Limbo: No report submitted. Brad Limbo reported they have been having monthly meetings for planning the 2022 Convention. Still working with the City of Deadwood on re-monumentation of US Locating Monuments 1 and 2. The landowner isn't on board with granting public access to Monument Number 1 so they are shifting their efforts and focus to Monument Number 2.
- b) Big Sioux – Beau Koopal: No report submitted. Met on September 7th. Discussion on planning LSIT sessions at the convention. Big Sioux Chapter is helping plan LSIT sessions for the 2022 convention. Planning to meet on November 3rd.
- c) Missouri River – Don Jacobson: No report submitted. Planning to discuss the future of the Missouri River Chapter at the 2022 Convention.

8. Old Business

- a) Corner Records/On-line Records System – Linda Foster: Linda has been in contact with ESRI to get pricing quote and has not received much response. The system SDSPLS is trying to implement is unique to ESRI. Discussion on options for making the system public and having access to upload corner records to the system. Linda will have the demo version available for members to review again at the 2022 Convention.
- b) Low Distortion Projection (LDP's) and 2022 Datum Change: There have been very few comments or feedback from NGS on the model. NGS is reviewing the design and should have review complete by the end of the year.
- c) Legislative Planning: The DOT has drafted the bill and shared it with the DPC for review. Discussion on setting up a meeting with a couple of West River Representatives to review the bill.
- d) 2022 Convention – Alesha Limbo reported they have made good progress and have most of the agenda filled. Alesha sent out a draft agenda. Jessica with JT Virtual Meetings will assist with the virtual convention but will not be able to attend the convention in person. The next planning meeting is scheduled for the end of October in Rapid City.



9. New Business:

a) Community/Membership Outreach

i) Kummer Donation/Scholarship: Discussion on donating to the Kummer memorial from the hardship fund. Travis Jacobsen made a motion to grant permission for Kary Gregoire to fill out an application to grant \$500 to the Kummer memorial. Second by Foster - motion approved.

ii) Past President memorials: Past-President Francis Brink has passed away. NSPS has a final point monument for deceased Past Presidents available for purchase. The monument has the latitude and longitude of the grave. Alesha will order the monument.

iii) Southeast Tech & Rod Breitling: Koopal commented that Southeast Tech won't be able to fill the position at the salary they are willing to pay. They are looking for private donations for bridging the salary gap (\$30,000).

b) Changing fiscal year from January to October: Alesha stated that the proposed changes to the by-laws will be published in the newsletter and then voted on at the annual meeting. Alesha reviewed the by-law changes. Travis Jacobsen made a motion for Alesha to proceed. Second by Biegler – motion approved.

c) Remove 9 year requirement on life membership: Alesha stated that the proposed changes to the by-laws will be published in the newsletter and then voted on at the annual meeting. Alesha reviewed the by-law changes. Travis Jacobsen made a motion for Alesha to proceed. Second by Biegler – motion approved.

d) Awards Committee: Discussion on setting up a committee to nominate award recipients since nominations have been limited in recent years. Collins suggested tasking an existing committee with the duty. Collins appointed the membership committee with making the nominations.

e) GPS on Bench Marks: Foster said that the end of the year is the deadline for submitting data on bench marks.

f) DPC Budget: Hand out was submitted. Koopal made a motion to increase the DPC membership cost. Second by Foster – motion approved.

g) Nominations for President – Elect & Treasurer: Nominations were discussed.

10. Next Board of Directors Meeting: Wednesday, January 5, 2022 at 9:00 am, at the 2022 Convention in Deadwood.

11. Meeting adjourned at 1:33 pm (Central) by Jon Collins

Respectfully Submitted

By: Andrew Kangas, Secretary

Annual Membership Meeting
Wednesday January 6, 2022 at 4:00 pm

Please join us for the annual SDSPLS Membership meeting. Two items on the agenda include proposed Bylaw changes.

Changing the fiscal year from January – December to October – September.

Changing the life membership requirement by removing the 9 years of continuous membership.

Current and proposed Bylaws read:

Article 1 – Members

Section 2 Classes of Members

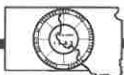
Life Members:

Any person who has attained 60 years of age and has retired from active practice as a land surveyor ~~and who has paid dues for each of the nine years preceding and also in the year which he or she attained such age or so retired, whichever is later.~~ Charter members are ~~exempted from the nine-year requirement.~~

Article VII-Finances

Section 1 Fiscal Year

The fiscal year of SDSPLS shall commence on the first day of ~~January~~ (October) in each year and shall end on the last day of ~~December~~ (September) in the same year.



What Is Continuing Education And Why Is It Important?

Mark Lynch Featured Life-Balance, & Personal Development Author

<https://www.lifehack.org/870691/what-is-continuing-education>

In our world of information overload, the question “what is continuing education?” is a very common one. Depending on the individual and situation, it can also mean a variety of things that range across the education spectrum.

What Is Continuing Education?

Continuing education is an all-encompassing term that describes a variety of formal and informal learning activities and methods.

For example, at one end of the spectrum, we have courses and certifications that enabled you to further develop your skills and knowledge in specific areas of your career or profession. At the other end of the spectrum, we have much simpler activities such as reading or attending seminars which you can also utilize to great effect to continue educating yourself.

There is no right or wrong option here. The real goal is figuring out which option works best for you and how you can apply it to your daily life.

In the end, self-education comes down to your pursuit of acquiring knowledge or developing skills.

Keep in mind that continuing education ranges from getting the requirements to take that next step in your professional life, to

learning and pursuing research based on your interests.

Throughout the process of education, we begin to adopt the idea that we can only learn from authority figures, such as people with the appropriate credentials and accolades, or those who are given the title of teacher or professor.

This is an outdated opinion, especially given the contemporary world where most people already have access to so much relevant information at the tip of their fingertips.

There is something that can be learned from everyone and every experience that you have in your life. But to begin grasping those lessons, you first need to appreciate them.

Imagine this scenario:

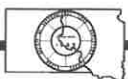
You are walking down the street in your home town and somebody stops you to have a quick conversation. However, you think you are busy so you avoid them. This is an unfortunately common occurrence for a lot of individuals.

If you walk around thinking that you are better than other people, or as though you are too busy to make time for them, you are going to miss out on many potentially important lessons.

This is why an attitude of gratitude is becoming increasingly important. **If we can learn to adopt an attitude of gratitude, we are going to become more receptive to the lessons around us.**

This enables us to better answer the question we started with:

What is continuing education?



It is being open to the opportunities that the universe presents us so that we can continue to learn.

Imagine if you could not only retain what you were learning every day but also build on that knowledge. Think about the impact that would have on your life.

Why Is Continuing Education Important?

Now that we have a better understanding of the answer to the two questions mentioned earlier, it is time to discuss why all of these are important.

After all, if we do not understand why continuing education is important, we are more likely to lose motivation, which is an obstacle that we would prefer to avoid.

Compliance With Professional Standards

For professionals and workers who are required to stay up to date with their knowledge and skillsets, the need for continuing education is quite clear. This type of education enables them to comply with the laws, standards, and certifications that allow them to remain licensed and working within their profession.

They need these opportunities to start a career in their field of interest. Continuing education allows them to become more qualified so that they can progress to higher levels within their profession and gain more income, freedom, or responsibility.

Learning More About What You Are Passionate About

However, for other individuals, continuing education has another importance. Continuing education enables people to

learn more about the things they are passionate about.

This impact can take effect in a variety of different ways. Continually educating yourself could give you the confidence boost you need and serve as a foundation for the next step you want to take in a given area of knowledge.

Sometimes people are not yet fully aware of their passions in life. Reading this article can help you find yours: [How To Find and Develop Your Passions](#).

Opportunities to Meet People

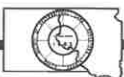
Another significance of continuing education is that it presents opportunities to meet other people. In a world that puts high importance on having a wide social network, continuing education becomes very useful. Even if you are just making new friends in your field, it can have a significant impact on your path towards your education.

Finally, and possibly the most important reason is that continuing education allows you to learn about the things that you have an innate curiosity for. It allows you to begin pursuing your passions and directing yourself towards the future that you would enjoy bringing into reality.

Develop an Attitude of Gratitude for Continuous Learning

Now let us shift from our original question of “what is continuing education?” to “how do we develop attitudes of gratitude?” for a brief moment.

In the next section, we will quickly examine why this is an important component of our answer to the first question.



There are a few ways to begin working towards embodying an attitude of gratitude, and you can pick and choose the attitudes that resonate with you the most.

Here are a few examples that you may consider:

1. Take the Time to Meditate

Meditation is one way for people to begin developing more gratitude within themselves. This may seem counterintuitive at first. But how does doing nothing develop a grateful attitude? You are right, it does not.

However, it does put us in a great headspace, which encourages us to become more mindful in our daily practices and make us more receptive to gratitude.

If you want to learn more about meditation, this quick guide may help you: [The 5-minute Guide to Meditation: Anywhere, Anytime.](#)

2. Express Your Gratitude Verbally

Another straightforward way to begin developing an attitude of gratitude is to begin talking about it more and expressing your gratefulness. You can express it to someone for something as simple as them opening up a door for you. Saying thank you goes a long way for you and others.

By acting gratefully, you will begin having these emotions more regularly, which can eventually integrate into your normal actions.

3. Create a Daily Gratitude Journal

Another method is to keep a gratitude journal. This brings your gratitude from your mind to your external environment where you can more effectively visualize what it is that you are thankful for.

For example, say you are thankful for your family. The next time one of them gets on your nerves, read your journal so you will be more reminded of how you are grateful for them, even though they annoyed you.

Overall, these activities instill the mindset of being receptive to the lessons around you so that you can fully absorb them and grow into a better person.

If you like more tips on how to develop an attitude of gratitude, check out this article: [40 Simple Ways To Practice Gratitude](#)

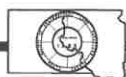
Final Thoughts

Hopefully, you now have a better answer to the question of continuing education now that you have read this article.

By now, you should not only understand what an attitude of gratitude is, but also how you can begin developing it in your own life. Hopefully, through these efforts, you will prime yourself to become more receptive to new learning experiences in your daily life and never miss another opportunity to grow as an individual.

Finally, you should now know the importance of continual education, both from a professional standpoint and a personal one. Through this, you can truly take your life wherever you would like it to go and become whatever type of person you wish to become.

Your future is in your hands.



SDSPLS 2022 ANNUAL CONVENTION

JANUARY 5, 6, & 7, 2022

THE LODGE AT DEADWOOD, DEADWOOD, SD

Topics and Speakers include:

Geodesy David Zenk	Retirement and Beyond Marc Stacey
A (Re)Survey of One Hundred Stones Gene Kooper	FEMA
Expert Witness Knud Hermansen	CFEDS
Right-of-Way Joel Gengler	LSIT Sessions
Next Level Leadership Gordon Decker	Michael Headley
	Paul Horsted
	Marty Jackley

Exhibits

Scholarship/Fundraising Live Auction

Banquet

Photo Contest

(Prizes given to the top 3 photos)

New this year! A day of fun and adventure, Thursday January 6th, there will be planned activities for the spouses. More details to come soon!

Big Thank you to our SDSPLS Convention Sponsors!



thrivent

Marcus A Stacey, RICP
marcus.stacey@thrivent.com

**Helms
& ASSOCIATES**
CIVIL ENGINEERS & LAND SURVEYORS

THE
**LODGE AT
DEADWOOD**
Gaming Resort

If you are interested in sponsoring the SDSPLS Convention, please contact Alesha Limbo at directorsdspls@hotmail.com

Register online at www.sdspls.org

Annual
SDSPLS

Survey *Photo* Contest



**Bring a print of your
favorite survey project
photograph to the
convention with your name
and a short description of
the photo or project.**

(8x10 maximum please)

**Top 3 photos
will win a
prize!**

SDSPLS reserves the right to post entries on the SDSPLS website
and/or print in Backsights & Foresights (with appropriate credit)

The Fantastic Pheasant Canteen

Wall Drug has ice water; Aberdeen had pheasant sandwiches.

The Red Cross/United Service Organization's canteen at the Milwaukee Road depot in Aberdeen became known as "the world's standout for a handout" for offering a free lunch and showing hospitality to more than half a million servicemen and women during the two and a half years the canteen operated.

"During its existence the canteen became famous the world over for its pheasant sandwiches. In 1945 the canteen cooked more than 9,000 ringnecks," stated a Monday, March 25, 1946, article in the Aberdeen American-News.

What became known as the Pheasant Canteen opened on Aug. 19, 1943, in the Milwaukee Road depot to troops traveling through the Hub City on trains. Because the Milwaukee Road (the Chicago, Milwaukee, St. Paul and Pacific Railroad) ran from Chicago to Seattle and back, this line was used to help move troops across the United States during World War II.

"The Pheasant Canteen benefited Aberdeen by giving a sense of pride and community spirit as the troop trains would roll in. The community of Aberdeen would band together to serve the troops," said Casey Weismantel, executive director of the Aberdeen Area Convention and Visitors Bureau.

Offering food and hospitality was something Aberdeen and area residents could do to support war efforts, he said.

Initially, ground ham sandwiches were served, along with cake, cookies, doughnuts, fresh fruit, pie, milk and coffee. Birthday cakes were given to every soldier having a birthday that day.

In December 1943, farmers brought pheasants to the canteen workers and the pheasant salad sandwich became a significant part of the menu. The sandwich consisted of finely chopped

cooked pheasant, chopped hard-cooked eggs, grated carrots, chopped onion, sweet pickle relish, salt, pepper and mayonnaise or salad dressing mixed together, chilled and spread on sandwich bread.

Pheasant hunts were organized to keep the canteen supplied with South Dakota's state bird. Pheasants were plentiful in the state, as the South Dakota Game, Fish and Parks Department estimated a pre-hunting season population of 11 million pheasants in 1943, 15 million in 1944 and 16 million in 1945.

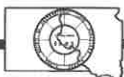
The birds were taken to local locker plants where they were cleaned, processed and stored for future use.

The canteen was operated by volunteers, with Mrs. Max Stokes as chairwoman of the canteen corps. Women were trained as supervisors for the canteen workers. People in Aberdeen and the area pooled their efforts and resources to keep the canteen operating during a time when food, gasoline, tires and other items were rationed.

"Women from towns throughout the Aberdeen trade territory served on special 'out-of-town' canteen days, and individuals throughout northern South Dakota, southern North Dakota and western Minnesota contributed money, pheasants and other food-stuffs," according to the March 25, 1946, Aberdeen American-News. "Monday afternoon the canteen had served 580,902 servicemen and women since its doors were first opened."

"The Pheasant Canteen became so popular because of the efforts of the volunteers that served the pheasant sandwiches to the troops," Weismantel said. "In South Dakota, and especially Aberdeen, hospitality goes a long way!"

A photograph in the Sunday, March 31, 1946, Aberdeen American-News shows two servicemen at the Milwaukee Road depot raising glasses in a farewell toast. Volunteers met their last train on March 30, and the canteen ceased operating. The 16 Hub City women who were on



duty on Aug. 19, 1943, when the canteen served its first servicemen, were there to serve sandwiches, as well as three other women who had perfect attendance on the days assigned them to assist.

The pheasant sandwiches and Pheasant Canteen did not fade into history.

In the 2000s, a team of Red Cross members and volunteers started creating the Pheasant Canteen display in the same building where the troops were served. The team received two awards for its work from the American Association for State and Local History in 2012.

Articles in the Aberdeen American-News at various times reported that programs about the history of the Pheasant Canteen were presented at club meetings, and that pheasant sandwiches were served at events, meetings and to Honor Flight veterans. Honor Flights transport military veterans to Washington, D.C., to see the memorials of the wars in which they fought at no cost to the veterans.

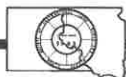
When Weismantel joined the Aberdeen Area Convention and Visitors Bureau 15 years ago, the CVB started welcoming pheasant hunters flying into the Aberdeen Regional Airport by offering them pheasant sandwiches. The CVB office is housed in the former Milwaukee Road depot, with the Pheasant Canteen display located nearby.

Weismantel last year offered a pheasant salad sandwich to a veteran who had flown into the Aberdeen Regional Airport, saying it was the same recipe used during World War II. The man said he hadn't had a pheasant sandwich since he passed through Aberdeen on a troop train.

Tasting the sandwich, the veteran said it brought back a lot of memories.

This year, hunters arriving at the Aberdeen Regional Airport will not be offered pheasant salad sandwiches because of the coronavirus. They will still receive a taste of the legendary hospitality shown to travelers with greetings from CVB representatives.

This moment in South Dakota history is provided by the South Dakota Historical Society Foundation, the nonprofit fundraising partner of the South Dakota State Historical Society at the Cultural Heritage Center in Pierre. Find us on the web at www.sdhsf.org. Contact us at info@sdhsf.org to submit a story idea.



The Land Surveyor's Guide to the Supreme Court of

South Dakota – Part 36 – 1980

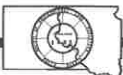
This article represents the thirty-sixth in a series of excerpts from a book prepared by South Dakota licensee Brian Portwood. The complete book can be obtained in PDF form at no charge, either from SDSPLS or directly from the author (bportwood@mindspring.com). It covers 120 years of historic South Dakota cases, answering fundamental land rights questions of potential interest to land surveyors, which are being presented in chronological order here in Backsights & Foresights.

Can a well easement be created by implication?

Wiege v Knock (1980)

Although the most commonly encountered easements in our society are those which were created for purposes of access to specific tracts of land, or transportation across multiple tracts of land, and the vast majority of easement controversies result from disputes over access rights, ranging from driveways and alleys to highways and railroads, easements can be created in association with practically every other form of land use as well. As has already been noted in reviewing many previous easement cases, every easement constitutes a benefit to at least one party or property, while also forming a serious legal burden, often judicially termed an encumbrance or servitude, upon other property, but beyond that, easements display little uniformity, and they can appear in a virtually infinite variety of shapes and sizes, sometimes impacting only a tiny fraction of a given tract, while in other instances covering an entire tract. Though issues concerning easements can become very intricate and complex, particularly where multiple easements overlap each other, or where the true scope or extent of one or more easements is not clearly known, understood or described, the same basic principles of easement law are nevertheless consistently applied by the Court to resolve all such conflicts. Perhaps somewhat surprisingly to land surveyors, who are frequently required to deal with location issues involving easements, most litigation over easements is not centered upon the size, shape or boundaries of the contested easement, but upon the nature, character or scope of the rights embodied by the easement. Defining the activity or object that the easement exists to enable or protect is always an essential element in resolving issues associated with easements containing ambiguity of any kind, as the Court invariably strives to adjudicate the relevant rights of the parties in a manner that allows the purpose for which the easement exists to be accomplished, provided of course that the existence of the easement itself is justified. In the case we are about to review, the exact location of the alleged easement is not a factor, but the fact that it lies within the property that is owned by the party who claims the right to benefit from the easement adds an interesting twist to the scenario, demonstrating that under certain unusual conditions one can hold an easement that lies entirely within one's own boundaries. Key to understanding the outcome of this case is the visualization of the distinction between ownership of objects and ownership of land, and to that end it is important to observe that a deed reservation, such as the one presented here, cannot be presumed to represent a reservation of land, if the language of the reservation makes no specific reference to land. From the result produced here, we also learn that easements do not always conform to real property itself, they can also attach directly to objects that amount to fixtures upon the land, regardless of where such objects may be located with reference to existing boundaries of the underlying land. With regard to the ultimate justification for the very existence of the disputed easement here, which like many fully valid and legally binding easements is undocumented, the equitable doctrine of inquiry notice proves to be the decisive factor, once again illustrating the stern burden that the law places upon all those who step into the shoes of a party who has previously conveyed some portion of their land, without insuring that all of the rights being conveyed and reserved are spelled out with complete clarity.

Prior to 1975 - The Piebenga family owned a tract of unspecified size, shape and location, in Pennington County. No details regarding how or when they had acquired this tract are known, but it had evidently been platted and divided into an unspecified number of lots of unknown size and shape prior to their arrival. This tract was evidently not vacant at the time they acquired it, the land already bore an unspecified number of buildings, including some residential dwellings, presumably cottages or cabins. The Piebengas converted an unspecified number of the lots within this tract into a campground, which presumably occupied most of the platted tract, but



no further details relating to their use of that portion of their tract are known. A well, which was the sole source of water for the entire tract, was situated on one particular lot within the platted tract, but who had built the well, and when it was built, are both unknown. A water distribution system, evidently serving all of the buildings situated on the platted tract, was also built at some unknown point in time, and put into operation, but there is no indication that either the well or the water system were shown on the plat, presumably because the well did not yet exist when the tract was platted. After having utilized this entire tract as a family, in sole ownership, for an unspecified length of time, the Piebengas deeded the lot containing the well to their son, along with a house that was situated upon that lot, which was connected to the water system. Apparently realizing that rights pertaining to the water system and the water itself could become an issue in the future, when deeding the well lot to their son, the Piebengas reserved the right "to keep, repair and maintain thereon a water well, pumps, holding and pressure tanks, and other such equipment as may be necessary and required to keep, operate and maintain the same, and to draw the water therefrom, and to otherwise have a right of ingress and egress thereto.". The Piebengas and their son then continued to use their respective tracts for an unspecified length of time, during which no concerns relating to either the use or the location of the well arose.

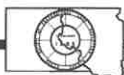
January 1975 - Wiege acquired the well lot, and used water from the well, just as the previous occupant of the well lot had done, and no issues concerning the well or the water ever arose between Wiege and the Piebengas.

August 1975 - Knock acquired the Piebenga property and took responsibility for operating and maintaining the water system, just as the Piebengas had always done. Wiege and Knock agreed that the existing water system was adequate to meet all of their needs, and the terms of use pertaining to it were reasonable, so the mutual use of the well and the water continued, on the same shared basis under which the well and the rest of the water system had always functioned.

1976 - For unknown reasons, relations between the adjoining land owners evidently soured, and Knock informed Wiege that Knock held exclusive control over the water supply to the Wiege residence, threatening to cut off Wiege's water supply. Wiege believed that Knock had no right to prevent him from using water from the well, so Wiege filed an action against Knock, seeking to have his rights pertaining to the well judicially confirmed and upheld. Knock responded by filing an indemnity action against the Piebengas, which was then judicially merged into the legal action that had already been initiated by Wiege.

Wiege conceded that Knock held the right to control the operation of the well and water system, and that Knock held the right to freely obtain water from the well for use on Knock's land, but Wiege argued that he was equally entitled to the use of water from the well, either as the servient owner of the lot bearing the well, or by means of an easement appurtenant to his lot, if Knock was in fact the owner of the well, or held exclusive control over it, and in either event Knock could not legally prevent him from using the well. Knock argued that he was not merely the holder of an easement allowing him to use the well and control the water system, he was in essence the owner of the whole water system, because the Piebengas had not just reserved an easement relating to the well when they deeded the well lot to their son, they had reserved exclusive control amounting to ownership of the entire water system, so Knock had complete control over all use of the water coming from the well, and he had the right to terminate all use of it by Wiege. The trial court agreed with Knock that he had acquired exclusive control over the entire water system, including the well and the other equipment located on Wiege's lot, as the successor of the Piebengas, but also held that Wiege was the holder of an easement created by implication, as a result of the use of water from the well by his grantor, which bestowed upon Wiege the right to use water from the well, so Knock could not legally terminate any reasonable use of the well that was being made by Wiege. The trial court then also went on to adjudicate the details of some additional matters, such as water rates and the specific allocation of the water itself between the parties, which had no effect upon the existence of the easement that protected Wiege's rights relating to the well.

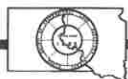
The Court began its evaluation of this situation by clarifying the legal implications of the facts that were revealed by the evidence relating to the historical events that formed the background of this controversy, realizing that the sequence of events would be highly relevant to the outcome. The Piebengas had owned the entirety of the subject property for an



unspecified but clearly substantial period of time, and there was no evidence that any water from the well in question was ever used, or intended to be used, by anyone other than the Piebenga family and their guests using the campground, so no other properties or other land owners were involved, and the most essential aspect of the scenario was the intent of the Piebengas regarding the use of the well and the water when they deeded the well lot to their son. The most critical event, the Court indicated, was the severance of the well lot from the remainder of the Piebenga tract, when it passed into the ownership of their son, making the Court's interpretation of the reservation made by the Piebengas in their deed to their son crucial to the outcome of the current dispute, since both Wiede and Knock stood in the shoes of their respective grantors, and for that reason their rights were no different than those that had been previously held by the Piebengas and their son, as separate land owners. The first issue to be addressed by the Court therefore was the interest that had been created by the Piebengas deed reservation, which involved not only land, but also the objects on the lot being conveyed, that comprised part of the water system, most notably the well itself. Exactly where the well was situated on the Wiede lot was unspecified, and this may have been unknown, but the well was evidently either understood or agreed to be located on that lot, so if no deed reservation had been made, Piebenga's son would have acquired ownership and control over the well, along with his house and lot. The deed reservation, the Court found, was obviously intended only to insure that the elder Piebengas retained control over the water supply, so with respect to the portion of the well lot that was occupied by the well and the other components of the water system, the reservation represented only an easement, regardless of who owned the physical objects comprising the water system. Knock maintained however, apparently based on the language in the reservation stating that it included the right "to draw the water therefrom" that he was the holder of an exclusive right to control the well and the water, which was tantamount to either an exclusive easement over the relevant portion of the well lot containing the water system, or outright ownership of both the equipment and the portion of the well lot upon which it sat. Knock thereby sought to negate the existence of any rights to the water, or the well, or the land beneath it, that Wiede might claim on the basis that he was the servient owner of the well lot, but the trial court had very wisely and artfully rendered this argument set forth by Knock moot, by holding that an implied easement had been created, in addition to the deed reservation, by the actions of the Piebengas, which now operated in favor of Wiede. Citing Iowa, Nebraska, North Dakota and Pennsylvania easement cases, and pointing out that private easements by implication had been approved by the Court in the Homes Development case of 1955, the Court explained the justification for the trial court's easement decree:

"One lot, on which a well had been dug and equipped, was sold ... a perpetual water easement in the well was reserved to the grantors ... The reservation of an easement in land conveyed does not of itself import a use to the exclusion of the owner ... where the owner of property, one part of which has been subjected to such a use for the benefit of another part, sells both parts to different purchasers, the respective portions granted are subject to, or benefitted by, as the case may be, an easement corresponding to such use ... the Piebengas intended ... to vest permanent rights to water from the well on the lot burdened with the servitude ... before there was a separation of title to the property, the use of the well had so long continued and was so obvious and manifest as to show it was meant to be permanent. It follows that all of the elements essential to create an easement or servitude by implication of law ... were present in this case ... Notice of an easement is generally imputed to a purchaser where the easement is of such character that a purchaser acting with ordinary diligence would know or learn of its existence. Thus, where the easement is open and visible, the purchaser will be charged with notice, even though the easement was created by a grant which was not then recorded. The grantee is bound where a reasonably careful inspection of the premises would disclose the existence of the easement or where the grantee has knowledge of facts sufficient to put a prudent buyer on inquiry ... appellants were aware when they purchased the campground that the Wiede house was supplied by the well ... the Wiedes have a permanent transferable water right to the use of the water from the well."

Under the judgment issued by the trial court, and accepted as appropriate by the Court, concluding that an implied easement had been created when the Piebengas sold the well lot to their son, which had then passed to Wiede, as an appurtenance to his acquisition of that lot, Knock's argument that he had acquired ownership or exclusive control over the



water system was effectively silenced. In reality, it made no difference who owned the well or the water system, in the view of the Court, because Wiege had the right to use those objects either way, if Knock did not own the system, then Wiege had the right to use it as the servient owner of both the lot and the well, if Knock did own the system, then Wiege held an appurtenant easement allowing him to use the well and the water coming from it to the same extent. At this juncture, it may well be pointed out that this result appears to have awarded Wiege an easement located upon his own land, contrary to the well known rule that no land owner can create, obtain or hold an easement for his own benefit, or the benefit of his own land, lying anywhere within the boundaries of his own land. The principle embodied in that concept is a perfectly valid one, the legitimacy of which is fully acknowledged by the Court, and it is true that any existing easement in land is conclusively destroyed when the easement holder acquires the servient estate, but the easement created here does not stand in violation of that principle, because it is not an easement in land. As will be recalled, the Court determined that the Piebengas reserved, and Knock therefore acquired from them, only an easement over the relevant portion of the well lot, so Wiege was the sole fee owner of the well lot, and as such he needed no easement upon his own land, what he needed was an easement relating to the water produced by the well. Ironically, Knock's insistence that he was the owner of the entire water system actually invited the imposition of an easement relating to the use of the water system and the water itself, regardless of where the well was located, based on the historic use of the water, independent of the land itself. In addition, it was a suggestion by Knock that Wiege's easement was invalid, simply because it was unwritten, that triggered the discussion of the relevance of the powerful concept of notice quoted above, in which the Court observed that Knock was on inquiry notice of all of the rights held by Wiege, since Wiege was in the position of a prior grantee, and Knock was in the dubious position of being the subsequent grantee of a grantor's remainder. The involvement of Piebenga in the litigation proved to be inconsequential, because he had done nothing wrong and he bore no culpability or liability to anyone, contrary to what Knock had believed and unsuccessfully asserted, so the Court fully disposed of the dispute over the well by upholding the decision of the lower court on that issue. The Court did reverse the decision of the lower court in part, on the unrelated issues of water rates and allocation, which had no impact on the result pertaining to the easement held by Wiege, insuring that his rights to the well and the use of the water could never be terminated, as long as his water usage remained normal and reasonable in character. This case illustrates that an easement by implication simply locks all existing rights that are visible and intended to be permanent in place at the time of a conveyance, making it an effective means of enforcing the essential principle of physical notice, and it also clarifies that implied easements can apply to items other than land itself. This outcome also demonstrates that it is not impossible for an owner of land to hold an easement in favor of himself or his own land, lying either partially or entirely within the boundaries of his own land, if the easement relates to objects or rights that are owned or exclusively controlled by others within those boundaries.

Can the presence of a river constitute an enclosure of land?

Cuka v Jamesville Hutterian Mutual Society (1980)

Returning to the topic of adverse possession, here we encounter a case in which the Court established or clarified several important basic parameters of that doctrine, as it has come to be applied in modern times, making this one of the most frequently cited South Dakota cases ever on that topic. Much like the last adverse possession case featured herein, the 1962 Sioux City Boat Club case, this controversy also involves riparian land lying along a river, and once again a change in the river location plays a vital role in the creation of the physical conditions that eventually result in this litigation. In this case however, the details of the relevant movement of the river are undocumented, since all of that movement evidently took place long before the events that represent the source of the conflict which plays out here, yet as will be seen, the highly controversial re-emergence doctrine forms a central factor in the development of this dispute. Aside from the unusual scenario presented by that shift in the location of the river, the principal point of emphasis driven home by the Court on this occasion is that the only purpose of all of the standard requirements associated with adverse possession is to bring land use to the attention of the record owner of the subject property, so if the owner of record has actual knowledge of any use of land by others within his boundaries, that purpose is fulfilled, and any necessity for such land use to meet stringent requirements falls away. Another 1980 adverse possession case, decided by the Court just 2 months prior to the case we are about to review, again demonstrates that adverse possession can take place even between



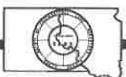
members of the same immediate family, a brother and sister in this instance. In *Andree v Andree*, the mother of the litigants, who was an illiterate widow and an invalid, was the owner of a 240 acre farm. On her deathbed in 1966, their mother had initialed a deed conveying the entire 240 acres to her daughter with only an X, in the presence of both of her two children, in fact they physically supported her and even guided her hand as she made her feeble mark upon the signature line of the deed, as her dying act. It was understood at that time by the two siblings that their late mother had indicated verbally that she wanted 160 acres to go to her daughter and 80 acres to go to her son, and accordingly the daughter conveyed 80 acres to her brother shortly after their mother's death. In 1978 however, after the daughter had occupied her 160 acres for over 10 years, based upon the deathbed deed, the son decided to challenge the validity of that deed, claiming that he was legally entitled to 120 acres, representing an equal share of his late mother's land, rather than the mere 80 acres that he had gotten, so he filed an action against his sister, seeking either an additional 40 acres or payment from her for the value of that 40 acres. A trial court agreed with the assertion made by the son that the deed in question was invalid and had conveyed no good title, but also held that the deed was nevertheless sufficient to constitute color of title, so the daughter had possessed the 160 acres in good faith, and she was therefore entitled to the 160 acres that she had occupied, by virtue of adverse possession, rendering the fact that her deed was legally invalid inconsequential. The Court upheld that lower court ruling, expressly confirming that good faith is always presumed, and bad faith on the part of a party holding color of title must be proven, again illustrating the highly valuable role of all evidence of actions taken in good faith, in the adjudication of land rights of every kind.

1952 - Jamesville Hutterian (JH) acquired 4 adjoining riparian government lots, all of which had been platted by the GLO within the same section, containing a total of approximately 150 acres, lying along the east bank of the James River in Yankton County. Whether or not JH was the original patentee of these lots is unknown, but this land was apparently vacant, and it had evidently been used very little prior to this time, due to being situated in a highly flood prone area, if it had ever been previously owned or used at all. Presumably unknown to JH, this section of the James River had relocated itself in past decades, and was now substantially west of its originally platted location, but being unaware of this situation, JH naturally viewed and treated the river as their westerly property boundary. JH began using their lots as cropland and pasture, but there is no indication that any structures, or even any fences, were ever erected anywhere in this area, either by JH or by anyone else. The majority of the land comprising these lots was not wooded, and the open area was put under cultivation at this time by JH, but a substantial portion of the land was wooded, and JH also began harvesting and clearing the trees that were growing along the edges of the cultivated fields. The wooded area consisted of the western portion of these lots, lying closest to the river, which formed a bend bulging to the west in this area, so the woods bordered the fields on the north, the west and the south.

1953 to 1958 - During this period JH gradually expanded its use of the lots that it had acquired, by removing the trees that stood closest to the edges of the fields, steadily enlarging the fields by extending them farther westward toward the river, but a very substantial wooded area still remained between the fields and the river at the end of this period. JH was actually already making use of all of the land however, extending all the way west to the river bank, because livestock owned by JH was using the wooded area as a pasture, on an apparently regular if not constant basis.

1959 to 1965 - The tree clearing operations being conducted by JH accelerated, and by the end of this period most of the trees, if not all of them, had been removed from the lots that were owned by JH. Whether or not JH knew where any of the boundaries of their lots were located however, is unknown, and in fact their tree clearing operations had extended well beyond the boundaries of their own lots, so by the end of this period the fields being cultivated by JH extended well into 2 adjoining riparian lots lying to the west of the lots that had been acquired by JH. The owners of these 2 adjoining lots, that were being encroached upon by JH, had apparently never made any use of their land, and they were evidently unconcerned about the use of their land that was being made by JH, although they were aware that it was taking place. No one had ever given JH permission to use these adjoining lots, but neither had anyone ever confronted JH about this situation.

1966 to 1969 - The use of all of the land lying along the east bank of the river bend by JH continued, just as it had



previously, without objection from anyone. At an unspecified date, the tree clearing being conducted by JH ceased, but by the end of this period only about 13 acres of especially low and wet land lying along the edge of the river remained wooded, while all the rest of the land comprising these 6 lots was being cultivated and harvested in the typical manner by JH.

1970 - Cuka, who evidently owned an unspecified amount of land on the west side of the river bend, acquired one of the 2 lots adjoining the 4 lots that were owned by JH. Cuka was fully aware that JH had been using the lot that he had just acquired for several years, but he did not contact JH and he took no other action. Cuka never made any attempt to access the land that he acquired at this time from the east, he did however walk across the river from time to time during the winter when the river was frozen, and walk around on the land that he had acquired, but in so doing he apparently never encountered anyone.

1971 to 1973 - The use of all of the land lying along the east bank of the river bend by JH continued, without any objection from anyone.

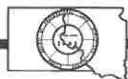
1974 - Cuka was planning to buy the other lot that was being used by JH, so he ordered a survey of both that lot and the lot that he had already bought in 1970. No details relating to how this survey was performed are known, but the survey indicated that these two lots contained a total of 35 acres, including 21.6 acres that was under cultivation by JH, and 13.4 acres of woods.

1975 - Cuka proceeded to acquire the second lot that was being used by JH, and he then informed some of the members of JH that they were trespassing on his land, but they simply rejected this assertion and refused to vacate the premises.

1976 - Cuka filed an action against JH, and all other potentially relevant parties, known and unknown, seeking to quiet his title to the 2 lots that he had purchased in 1970 and 1975, so he could legally force JH off those lots. JH responded by filing an action against a group of several other parties, who were presumably all former owners of the lots in question, seeking to quiet title to those lots in JH against all possible claimants. These two legal actions were judicially merged into a single action and went to trial as one case.

In an effort to combat the adverse possession claim upon which JH stood, Cuka argued that grazing is insufficient to support adverse possession and only cultivation can represent a genuine adverse use, so JH could not prevail on adverse possession, because the clearing of the trees that had been started by JH had never been completed, therefore JH had never adversely used all of the land which comprised the 2 lots that had been purchased by Cuka. Cuka further argued that JH had not adversely possessed any portion of his lots for the full 20 years required by the applicable statute, because the use of those lots by JH had not been continuous, since he had walked across the lots himself and seen no one there at those times, and he also maintained that his visits on foot across the river to his lots represented an assertion of ownership of those lots on his part, which had broken the continuity of the possession of those lots by JH. Cuka also argued that his lots had never been enclosed by JH, since no fences had ever been built anywhere upon those lots, so the adverse possession claim being made by JH failed on that basis as well, therefore title to those lots should be quieted in him. JH argued simply that their use and possession of the two lots that had been acquired by Cuka had been fully adverse in all respects, to all the world, including Cuka, and they had used the entirety of those lots productively for the full 20 year period, so title to those entire lots should be quieted in JH. The trial court ruled that JH had successfully acquired the two lots, in their entirety, by means of adverse possession, quieting title accordingly in JH, against all parties, as requested by JH. All of the other parties, aside from Cuka, conceded defeat and chose not to appeal the trial court's decision. Cuka however, chose to appeal the matter to the Court, but he reduced the size of his claim on appeal, limiting it to the 13.4 acre wooded area, conceding the 21.6 acre cultivated area to JH.

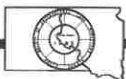
Cuka had chosen a path of acquisition that was both very daring and quite dangerous, because he had knowingly acquired land that would require him to engage in a legal battle in order to obtain any benefit from it, which is a course of action that never finds favor in the eyes of the Court, because the shadow of bad faith invariably falls upon those who deliberately choose to provoke litigation, so Cuka must have been highly confident about his chances at the outset. By the



time his case reached the Court however, Cuka's confidence had been fractured, by the trial court ruling against him, and he had dropped the majority of his claim, clinging desperately to the hope of salvaging a small chunk of land as a compromise, but in so doing he was essentially asking the Court to use adverse possession to partition the lots at issue, whereas JH placed no such burden upon the Court, as they simply continued to assert ownership of both lots in full. Cuka's gambit was played out, and now all that remained was for the Court to seal his defeat, by expounding upon the reasons why none of his arguments held any legal validity. The Court readily disposed of Cuka's claim that grazing and clearing trees could not support adverse possession, on the basis that any use of land at all, even a very minimal use such as grazing, is sufficient, if the owner of record is conscious of it, or has a legitimate opportunity to observe it, because all such use of land simply serves to provide notice, and once an awareness that the use is taking place exists in the mind of the record owner, the nature and details of the use become irrelevant. Likewise, the Court held that the tree clearing that had been done by JH had also represented a valid adverse use of the 2 lots, from the moment it first began in 1952, regardless of whether or not it was ever completed, and regardless of how much of the area was ever cleared, so both the clearing and the grazing stood as legitimately adverse activities by JH, marking 1952 as the beginning of the adverse period. The Court next explained that continuous use is not equivalent to constant use, because any use that takes place at the will of the occupant of the land, whenever he wishes to make use of the area, however infrequently that may be, represents a continuous use of the land being adversely claimed. Only when the occupant of the land wishes to make use of it, but is physically prevented from doing so by the party claiming to be the record owner of the land, is the adverse use effectively interrupted, and only then is the adverse possession clock reset to zero. The basis for this concept is the fact that no land owner is required to make use of his property, he can simply rest at idle, as long as he observes that no adverse use of his land is taking place, and only when he observes an adverse use in progress is he legally compelled to act in defense of his land rights, or risk forfeiting them. Therefore, an adverse claimant need only make enough use of the land to give the owner of record notice that the land is in use by another party, because the adverse claimant, in physically acting as the possessor and owner of the land, cannot be either legally or equitably required to do anything more than a typical record owner would be expected to do with the same land. Even though Cuka visited the land that he claimed to own, and he walked through the area when no one was around, he made no effort to prevent JH from using the land whenever they wished to do so, therefore the use being made of the land was never interrupted in any sense, the Court concluded, finding that Cuka's covert and surreptitious visits to his own land were of no benefit to him whatsoever. Quoting in part from North Carolina and Oregon adverse possession cases, along with the relevant statutes, the Court indicated to Cuka that it was, ironically enough, the river itself which negated his final argument, concerning the absence of any enclosure of the lots in question:

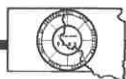
“Appellant can reach the disputed land directly from his land only during wintertime, since he can then walk across the frozen river ... to establish by adverse possession ownership and title which is inconsistent with the record title, the proof must be by clear and convincing evidence ... a person may claim title to property which he has adversely held, even though he does not have claim to said title upon a written instrument ... the adverse claimant must either protect the land by a substantial enclosure or usually cultivate or improve the land ... Only that portion of land which has been actually and continuously occupied may be claimed ... appellee had improved and cultivated the land since 1952 ... The James River formed a natural barrier around the disputed land ... The river in this instance was as much of a substantial enclosure as any fence ... because of the water boundary, the peninsula can be considered for all practical purposes as enclosed ... the James River formed a substantial enclosure around the land, the same as if a fence had in fact been erected around it ... A wooded area such as this need not be entirely cleared before the statutory twenty year adverse possession period begins to run ... The possession need not be unceasing ... appellee had established ownership of the 13.4 acres of wooded area by adverse possession ... by continuous clearing and improving of the land, and then by farming it or using it to graze cattle, all without interruption.”

Cuka was evidently a very clever individual, who understood the prior rulings of the Court on riparian boundary law, and set out to take advantage of the law, as it had been established by the Court, making it most ironic indeed that the



Court chose to turn to the river itself, to silence his claim to any portion of the 2 lots in controversy. The two riparian government lots that Cuka had acquired, on the east side of the river, were in fact originally platted by the GLO on the west side of the river in 1863, but because Cuka either knew, or was informed, that the Court had adopted the re-emergence doctrine, he knew that as the river had migrated westward over the decades, those two lots had not been destroyed, they had survived their complete immersion, and had emerged as dry land on the opposite bank of the river. Secure in this knowledge, he had acquired the 2 lots, in the apparent belief that the Court would be legally compelled to uphold his ownership of them, because in order to deny the existence of the lots, the Court would have to reverse its own well established position, in support of the re-emergence of all PLSS lands from wandering rivers. It was no doubt this notion that had made Cuka optimistic about his chances of prevailing over JH, since JH was innocently occupying all of the land east of the river, in the belief that it was all part of their 4 lots, apparently never realizing or understanding that the 2 lots being claimed by Cuka had emerged on the east side of the river, and in so doing those 2 lots had blocked the natural progressive growth of the 4 JH lots by accretion, many decades earlier. Cuka's ingenious claim was precisely the kind of claim that the judicial recognition of water boundaries, centuries before, had been intended to eliminate and prevent, but the Court's acceptance of the re-emergence doctrine had left it in a position which forced the Court to resort to adverse possession, just to maintain a river as a boundary, illustrating yet another instance in which adverse possession can become a controlling factor in the realm of boundary law. Rather than striking down the re-emergence doctrine, by holding that the lots acquired by Cuka could not exist on the bank of the river opposite the side upon which they had been platted, the Court elected to equate the river to a fence, which allowed the Court to effectively extinguish Cuka's legal interest by means of adverse possession, leaving all of its prior decisions in riparian boundary cases involving the re-emergence doctrine intact, instead of overturning all of those previous rulings, dating back to the Allard case of 1918. This was a pivotal stance taken by the Court, since JH had no color of title to the lots acquired by Cuka, thus he could have successfully retained ownership of them under the doctrine of re-emergence, if not for the activities upon those lots by JH, so the Court's acknowledgement that they had become legally enclosed and fatally isolated from Cuka's other land by the river held great significance. Once again the Court had approved the use of adverse possession to vanquish a position set forth by a party who had attempted to leverage the law for purposes of his own personal gain, thereby placing himself behind a curtain of bad faith, from the Court's perspective, despite his obvious intelligence, since the Court sees its role as providing justice, in the protection of the innocent, rather than rewarding artful legal tactics. Cuka actually did prevail on one point, he insisted that the standard of proof applicable to adverse possession should be "clear and convincing" and the Court was in complete agreement with him on that, thus in fully upholding the result produced by the lower court in favor of JH, the Court here announced that this would be the recognized standard for adverse possession in all future cases. This did not represent any actual change however, in either the burden of proof or the law itself, it merely stood as a formal judicial reiteration or clarification of the same standard that the Court had always applied, in resolving title conflicts of all kinds.

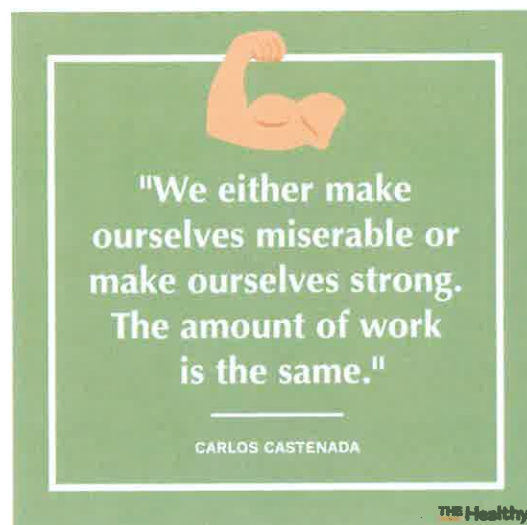
Two additional adverse possession cases from this same time period serve to demonstrate some of the key evidentiary factors that can derail an adverse possession claim. In the 1981 case of *Bartels v Anaconda*, a large tract situated in Lawrence County, that included several mineral lode claims and at least two mineral surveys, which had been patented in 1896, was acquired by Anaconda in 1973, although to what extent Anaconda or its predecessors ever used any of the land in this area for mining purposes or for anything else is unknown. In 1942, the site of a cabin, surrounded by a rag-tag fence embracing about 4 acres, lying somewhere within this mining region, had been quitclaimed by one miner to another, and after a long succession of such conveyances, this 4 acre parcel had been conveyed to Bartels in 1972. In 1979, Anaconda accused Bartels of trespassing and ordered him to vacate the premises, but instead Bartels filed an action against Anaconda, claiming that he had acquired the 4 acre parcel by means of the long standing possession of his several predecessors and himself. A trial court decided the matter in favor of Bartels, on the grounds of adverse possession, unfortunately for him however, the Court took a more intense look at the evidence, with a stern view of the origin of his claim, and came to the conclusion that the lower court ruling in his favor could not stand. The Court found it necessary to reverse the lower court decision in this case for at least 4 distinct reasons, the significance of each of which had been overlooked or neglected by the trial court. Shortly after acquiring his parcel, Bartels had mortgaged it, and he had openly conceded at that time that the parcel was located on mining ground that he did not own, then when expressly questioned



by an employee of Anaconda, he lied about his rights, telling the employee that he had a lease covering the parcel in question. In addition, in 1974 Bartels offered to buy the parcel from Anaconda, and finally, during the trial he effectively negated his own principal argument, by testifying that he never had any intention of making any claim to the land at issue on any adverse basis, although he may well have been illiterate and simply not understood the legal significance of what he was saying. Given the presence of all of these negative factors, the Court naturally found the claim made by Bartels to be utterly unpalatable. In 1983, in *Forest Home v Dardanella*, a substantial portion of a certain section, surrounding a platted 5 acre cemetery, was acquired by Dardanella, with the intention of creating a residential subdivision on the site. The cemetery had been created in 1892 and had been active only until 1906, but several bodies were believed to still be buried there. Dardanella claimed that the cemetery had been abandoned, since no burials had taken place there in over 70 years, and claimed ownership of the 5 acre parcel based upon adverse possession of that area by the predecessors of Dardanella. A trial court awarded the contested parcel to Dardanella on that basis, but the Court reversed that ruling, quieting title to the old graveyard in Forest Home, declaring that adverse possession of any burial site is impossible, because once even one body is buried in any given location, that ground is perpetually occupied by that individual, leaving any adverse claimant incapable of proving that he occupied the land in an exclusive manner.



Photo Credit: James Karrels
Boulder Canyon, SD



January 4, 2022

10:30am – 5:30pm | The Lodge at Deadwood

\$50 / Per Person

TO REGISTER, VISIT OUR WEBSITE:

www.frontierprecision.com/events/event/2022-sd-user-group

2022 CONFERENCE AGENDA

LOCATION

The Lodge at Deadwood
100 Pine Crest Lane
Deadwood, SD 57732

AGENDA

TRICKS & TIPS ON USING:

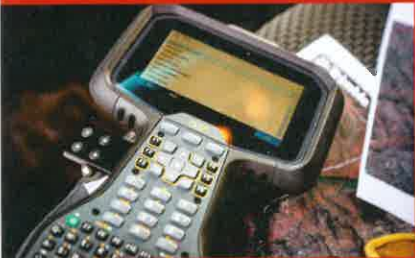
- Trimble GNSS Solutions
- Trimble Robotic Total Stations
- Trimble Access Software v2021.x
- Trimble Business Center v5.5x

WHAT'S NEW?

- Trimble R12i GNSS Receiver
- Trimble MX50 Mobile Mapping System
- Trimble TSC7/TSC5 Controller
- Trimble T100/T10x Tablet
- FPVision
- On-demand Training



Sponsored by Trimble
& Frontier Precision



REGISTRATION FEE INCLUDES:

Frontier Precision / Trimble gadgets & refreshments throughout the day - lunch is **NOT** included.

Have Questions? Contact Nathan Kupfer, at Frontier Precision: 800.359.3703 or email: nathank@frontierprecision.com

Join us following the User Forum for Frontier Precision's Annual Customer Appreciation Event from 6:00pm - 9:00pm!

[LOCATION TO BE ANNOUNCED]

The Trimble® R12i GNSS System expands the capabilities of the ground-breaking Trimble ProPoint™ RTK positioning engine by incorporating Trimble TIP™ tilt compensation technology so you can measure or stake out points faster and in more places without leveling the survey pole.





AWARD NOMINATION

Outstanding Contribution to the Land Surveying Profession

Mail or email completed nomination form (see reverse) to:
SDSPLS, 444 St Joe St, Spearfish 57783
Phone: 605-645-5128
DirectorSDSPLS@hotmail.com

CANDIDATE:

Last First Middle

Address:

NOMINATED BY:

Last First Middle

Address:

Phone: _____ Date: _____

Email address: _____

Nomination may only be made by an SDSPLS member in good standing. Current members of the Board of Directors are not eligible. The SDSPLS Board of Directors will select the winner and present the award at the SDSPLS annual convention. If you have questions regarding the nomination form or selection process, please contact Alesha Limbo, Executive Director at 605-64-5128 or the address shown above.

PLEASE COMPLETE THE INFORMATION ON THE REVERSE

PLEASE COMPLETE THE FOLLOWING INFORMATION:

Attach additional sheets as necessary

ACTIVITIES CONTRIBUTING TO SDSPLS AND THE LAND SURVEYING PROFESSION:

(What beneficial events or accomplishments have occurred due to this person's efforts?)

RECOGNITION OUTSIDE OF THE LAND SURVEYING PROFESSION:

(Has this person brought recognition of the land surveying profession to individuals or organizations unrelated to it?)

RECOGNITION:

(Is this person's honesty, integrity and reputation of estimable character?)

SUMMARY OF QUALIFICATIONS:

(Why, in your opinion, is this person qualified to receive this award?)



AWARD NOMINATION

SDSPLS - Surveyor of the Year

Mail or email completed nomination form (see reverse) to:
SDSPLS, 444 St Joe St, Spearfish SD 57783
Phone: 605-645-5128
DirectorSDSPLS@hotmail.com

CANDIDATE:

Last First Middle

Address: _____

NOMINATED BY:

Last First Middle

Address: _____

Phone: _____ Date: _____

Email Address: _____

All members of the South Dakota Society of Professional Land Surveyors (except current members of the Board of Directors) are eligible for nomination. Nominations may only be made by an SDSPLS member in good standing. The SDSPLS Board of Directors will select the winner and present the award at the SDSPLS annual convention. If you have questions regarding the nomination form or selection process, please contact Alesha Limbo, SDSPLS Executive Director at 605-645-5128 or the address shown above.

PLEASE COMPLETE THE INFORMATION ON THE REVERSE

PLEASE COMPLETE THE FOLLOWING INFORMATION:

Attach additional sheets as necessary

SURVEYING ACHIEVEMENTS:

(Professional experience, current position, responsibilities, accountability, awards, etc.)

PROFESSIONAL SOCIETY ACTIVITIES:

(Offices held, committee assignments, accomplishments, contributions, etc.)

CIVIC AND HUMANITARIAN ACTIVITIES:

(Community service and support)

SUMMARY OF QUALIFICATIONS:

(Why, in your opinion, is this person qualified to receive this award?)



SOUTH DAKOTA SOCIETY of PROFESSIONAL LAND SURVEYORS

Affiliate of the National Society of Professional Surveyors
444 Saint Joe St, Spearfish, SD 57783 * 605-645-5128 * www.SDSPLS.org

SPECIAL OFFER FOR SDSPLS MEMBERS ONLY!

The SDSPLS website (www.sdspls.org) continues to generate interest and inquires from the public looking for assistance in locating surveyors in South Dakota.

SDSPLS Full Members have the opportunity to provide their name and contact information on the website for public reference. This information is located under “Find A Surveyor” and “Surveying Resources” tabs.

For the 2022 calendar year you are invited to list your name (and/or designated contact) on the website for the fee of only \$50! If you would like to be included please complete the following information and return this form along with your check payable to SDSPLS.

2022 WEBSITE BUSINESS LISTING

Name: _____

Designated Contact: _____

Company: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Email: _____

Website: _____

SDSPLS - Alesha Limbo, Executive Director
444 Saint Joe St, Spearfish, SD 57783
605-645-5128 * DirectorSDSPLS@hotmail.com



SOUTH DAKOTA SOCIETY OF PROFESSIONAL LAND SURVEYORS

Affiliate of the National Society of Professional Surveyors

2022 APPLICATION FOR MEMBERSHIP

Complete the following

Name:

Last:

First:

Preferred Mailing Address:
Business _____ or Home _____

Business:

Name:

Address:

City:

State: Zip:

Phone:

Cell:

Email:

Home: (Required)

Address:

City:

State: Zip:

Phone:

Email:

Check one and sign below

Member (In-State w/NSPS):	___ \$195	Technician:	___ \$85	Life Member (In-State w/NSPS):	___ \$75
Member (Out of State):	___ \$145	Associate:	___ \$60	Life Member	___ \$35
LSIT:	___ \$115	*Student:	___ \$35	Sustaining:	___ \$275

In-State classifications are determined by the home mailing address.
Fees for In-State Members (\$195) include NSPS membership.
Fees for Out-of-State Member (\$145) do not include NSPS membership. In-State Life Members have the option of selecting NSPS membership (\$65)

Member:

- a) Any person licensed to practice the profession of surveying, according to state or provincial statutes;
- b) A GS-1373 employee classified as a Land Surveyor or Supervisory Land Surveyor;
- c) An academician holding a bachelor's or higher degree and the rank of assistant professor or higher rank and teaching in an ABET accredited or a state land surveying registration board surveying program;
- d) A practicing surveyor or surveying teacher who has attained a minimum of six years experience in responsible charge of surveying activities or four years of education and two years of experience may submit credentials for consideration.

LSIT:

Any person who has successfully completed the LSIT examination according to state or pro-vindial statutes.

Technician:

Any person who has successfully completed any level of the Certified Surveying Technician program as administered by and through the National Society of Professional Surveyors.

Associate:

- a) Pre-Professional: Any person who by their employment is actively engaged in a program leading to a career in the profession of surveying;
- b) Subscriber: Any person with an associative interest in Surveying whose qualifications do not meet the requirements of Member, LSIT, or Technician.

***Student:**

Any person who is a full-time student studying surveying or related fields.

Sustaining:

Any person or organization, either individuals, partnerships or corporations, who or which are engaged either in the manufacture or distribution of surveying instruments, equipment or supplies, or in the compilation or reproduction of maps, or in the performance of services for land surveyors.

Life Members:

Any person who has attained 60 years of age and has retired from active practice as a land surveyor and who has paid dues for each of the nine years preceding and also in the year which he or she attained such age or so retired, whichever is later.

Signature of Applicant

I certify that I qualify for the class of membership I have applied for as outlined below.

Date

*Signature of Faculty Member (required for students)

I certify that the applicant is a full-time student. (12hrs or more)

Date

Institution

Send complete application & payment to: SDSPLS - 444 St Joe St - Spearfish, SD 57783
(phone) - 605-645-5128 • (email) - DirectorSDSPLS@hotmail.com



**SOUTH DAKOTA SOCIETY of
PROFESSIONAL LAND SURVEYORS**
Affiliate of the National Society of Professional Land Surveyors

444 Saint Joe St, Spearfish, SD 57783 605-645-5128 www.SDSPLS.org

39th ANNUAL CONVENTION REGISTRATION

January 5-7, 2022

(Wednesday – Friday)

The Lodge at Deadwood, Deadwood, SD

Last Name _____ First Name _____

Company _____

Preferred Mailing Address _____

Preferred Phone Number _____ Alternate Phone Number _____

Preferred Email _____

Dues are NOT included in registration fee. Please complete the SDSPLS membership form.

SDSPLS Members <small>(2022 dues must be current)</small>	Fee	Late Fee <small>(After 12/20/2020)</small>	LSIT Courses <small>Place an "X" in this column to register!</small>	TOTAL
SDSPLS Member <small>(15 PDH)</small>	\$230	\$50		\$
SDSPLS LSIT & Technician	\$180	\$50		\$
SDSPLS Associate & Lifetime	\$155	\$50		\$
Non-Member <small>(15 PDH)</small>	\$430	\$50		\$
Banquet Guest	\$30	\$0		\$
Virtual Option Add-on	\$150	\$0		\$

Please make your check payable to SDSPLS. You may pay by credit card by completing the following:

Name on card _____

Billing Address for card _____

Card Number _____

Expiration Date _____ CVV Code _____

Please return this form & payment to:

SDSPLS, 444 St Joe St, Spearfish, SD 57783 (605) 645-5128

Or, email completed form to: DirectorSDSPLS@hotmail.com

REGISTER ONLINE at www.SDSPLS.org

For Office Use Only: Check # _____ Amount \$ _____ Date ____/____/____ Record _____



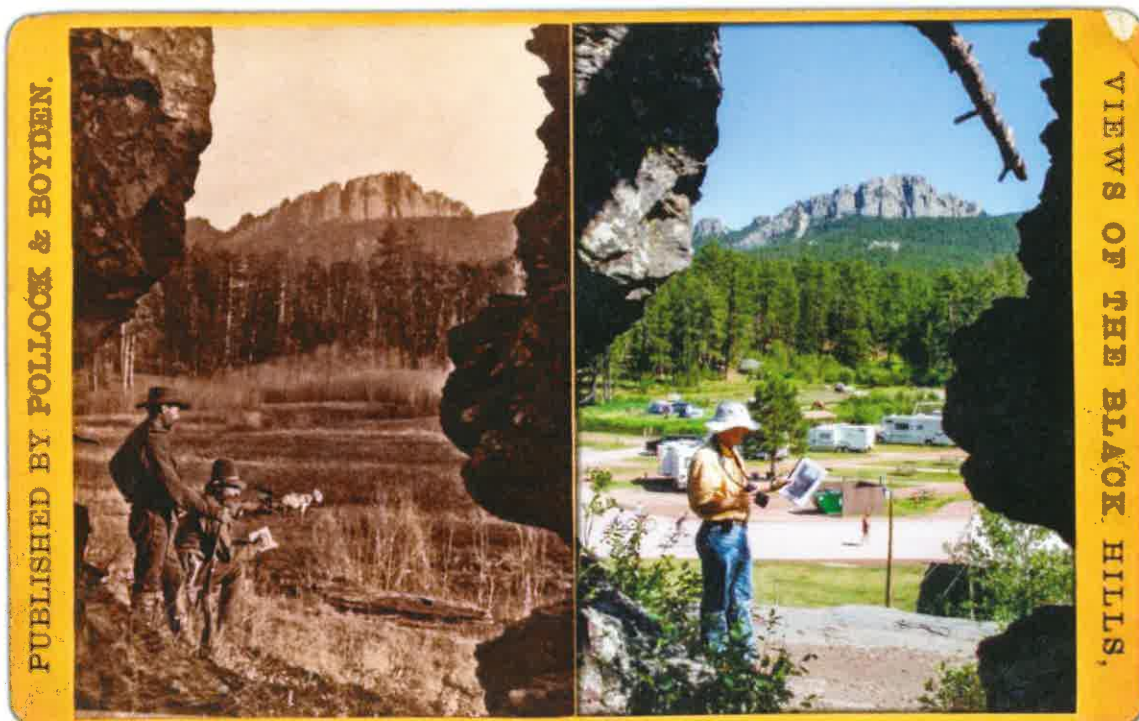
SDSPLS 39TH ANNUAL CONVENTION KEYNOTE SPEAKER – PAUL HORSTED

Paul Horsted has been photographing South Dakota's people and places for 40 years. In recent times Paul has specialized in finding the sites of historic photographs and then creating a precisely-matched modern image, to show the beauty and history of our country "then and now" in an entertaining and informative way. These photopairs inform our understanding of history, the environment, and development of our country.

Paul's best-known book is **The Black Hills Yesterday & Today**, with more than 150 then-and-now images of this beautiful and historic region. Paul has also applied this technique to images of the 1874 Black Hills "Custer" Expedition, and more recently in books about 24 of our National Parks. He's currently using this technique with historic images across the state of South Dakota for an upcoming book. His presentation will touch on all of these projects.

Visit www.paulhorsted.com for more information about Paul's current work and published books.

Paul Horsted
www.facebook.com/AuthorPaulHorsted
www.paulhorsted.com



Technology to advance your business: **RDO does that.**



RDO Integrated Controls specializes in finding the right technology to advance your business. We have a diverse portfolio of products: UAV's, total stations, data collection, and machine control options.



Contact Dalton Kelley to see what we can do for you.

Rapid City, SD
Dalton Kelley
605-939-4175
dkelley@RDOIC.com

RDO
INTEGRATED
CONTROLS
RDOIC.com

South Dakota Society of Professional Land Surveyors
444 St. Joe St.
Spearfish, SD 57783

STANDARD
US POSTAGE
PAID
PERMIT #618
RAPID CITY SD

SUSTAINING MEMBERS

These 2021 Sustaining Members support YOUR Society.
Show your appreciation and call a Sustaining Member first!



Marcus A Stacey, RICP[®]
marcus.stacey@thrivent.com



BACKSIGHTS & FORESIGHTS

