

May 2018

# BACKSIGHTS & FORESIGHTS



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First Place – Chad Dodds**

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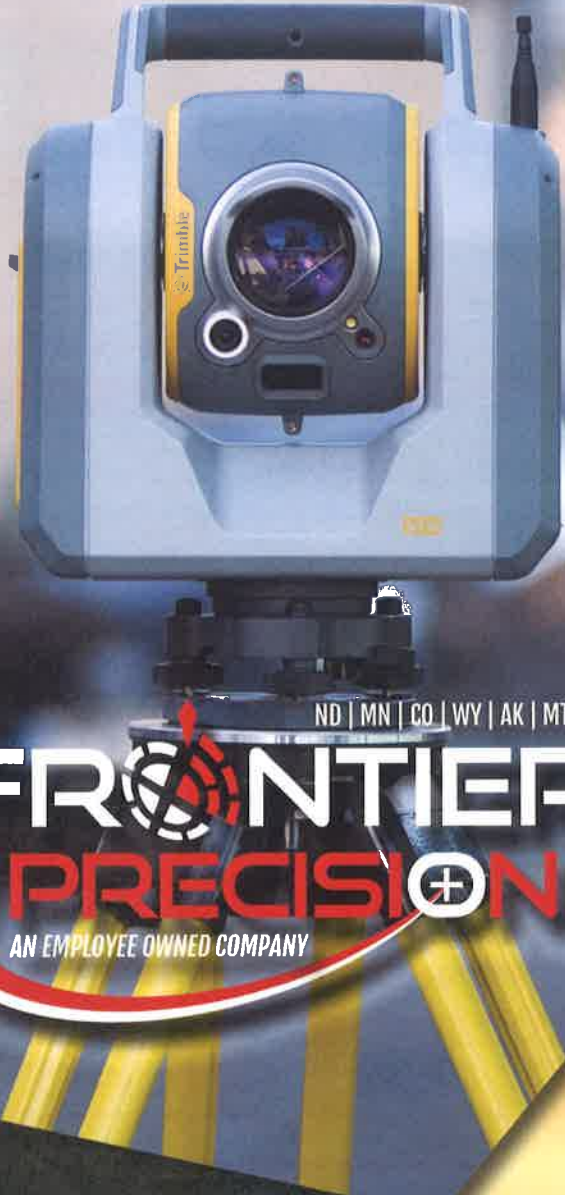
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**Life is too challenging for external rewards to sustain us.  
The joy is in the journey.**  
*- Bradley Whitford*

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## **PUBLICATION DEADLINES**

| Material Cutoff | Publication |
|-----------------|-------------|
| January 15      | February 1  |
| April 15        | May 1       |
| July 15         | August 1    |
| October 15      | November 1  |

### **Backsights and Foresights**

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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.



## From The Executive Director:

It has been a few years since I have written an Executive Director's Report for the newsletter and as my time is limited this is one of my last opportunities.

I hope that everyone is busy with summer projects. Remember to be safe out there – stay hydrated - wear your sunscreen – use your insect repellent – wear your safety vests and hard hats – set up your traffic signs when working in or near the right-of-way – be observant of your surroundings – and be careful out there.

There are several items from the past few months that deserve some comment and update. I will start with DPC. Fresh off the heels of a major victory in defeating the Temporary Licensure Compact which would have significantly impacted how South Dakota provides licensure opportunities for registrants from other states for land surveyors and other design professionals we had some unfortunate news. It appears that SDES and ACEC decided to not renew their contract with their Executive Director (Gail Boddicker). Gail also served as the Executive Director for DPC and without the renewal of the SDES and ACEC contracts she was unable to stay on as the Executive Director for DPC. This leaves DPC in search of a new Executive Director as well. We are uncertain if an offer of service might be forthcoming when SDES and ACEC (possibly even SDSPLS) select their new Executive Directors or whether someone else will step forward to help manage this very important entity. I personally have no doubt that without DPC and those that serve in that organization (Don Jacobson in particular) that we would not have been successful in opposing the legislation proposed and strongly promoted by Governor Daugaard. DPC provided its member organizations with administrative assistance and a central point of contact for the coordination of efforts and responses by our individual organizations and members in addition to their regular services and watchdog duties. I hope that in the coming months those that are still serving on DPC will find a way forward with new leadership. If you are interested in assisting or serving with DPC please either contact Don Jacobson or an SDSPLS Board member.

Plans are under way for the 2019 convention. Our feature speaker will be John Matonich from Wisconsin. John is a former NSPS President and someone that I have had the pleasure of meeting. He spoke to the Executive Director's group in Phoenix several years ago. He is an enthusiastic and personable speaker and I think (and hope) that you will really enjoy his presentations.

Based in part on some of the comments from the questionnaires that you completed this year at convention and some individual suggestions as well – your Board of Directors is working on a few changes that will hopefully enhance the convention experience for everyone. We will be encouraging entries for the NSPS Map/Plat Contest so keep that in mind as you complete drawings for your

projects this year. Look for more information in the November newsletter and with your convention registrations.

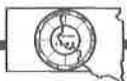
Probably the most important item of the past few months has been the search for a new Executive Director. The position was opened late last year and there were four very qualified applicants. The Board of Directors selected one of the applicants and will be offering the position and a contract for services. If accepted they will be able to introduce you to their selection in the August newsletter – so stay tuned. The plans are for the new candidate to come on board in early October and work with me through the 2019 convention. That will provide a bit of time to learn more about the workings of the organization, its members and the Board of Directors. The training period will also include a newsletter, membership renewals, and the details of putting the convention together and working through an actual convention.

In addition to those items, discussions and work are continuing on the Corner Record project (thanks largely to the efforts of Linda Foster). Dean Scott is working on some of the final modifications to the Recommended Guidelines. The BOD is in search of a chairman for the Membership Committee if anyone is interested. The duties are not onerous, but might include helping to welcome new members and considering ideas to help promote individual and sustaining membership. The BOD is also in search of a Trig Star Committee Chair as Steve Thingelstad has indicated an interest in retiring.

Speaking of Trig Star, the 2018 contest was held May 7 at the SDSM&T campus. The winner this year had a perfect score of 100 (see page 20 for more details). On an interesting note – the winner this year was female and half of the contestants were young women. That is an exciting trend for a science related field. Way to go girls!

On a closing note – please give some attention to the article on Page 16 regarding monument destruction. Although there are differences in how we monument right-of-way – the concern regarding the destruction of property corners during street and utility reconstruction projects is very real. With every construction season we see the destruction and loss of property corners during these reconstruction projects. The identification of property monuments prior to design and construction and the preservation of those locations (either by protecting the monuments or reestablishing lost monuments) should become a mandate for design and construction contracts. Those of you who work for or with design firms need to introduce this topic and those of you who are PE/LS members and responsible for design projects need to step up and address this issue.

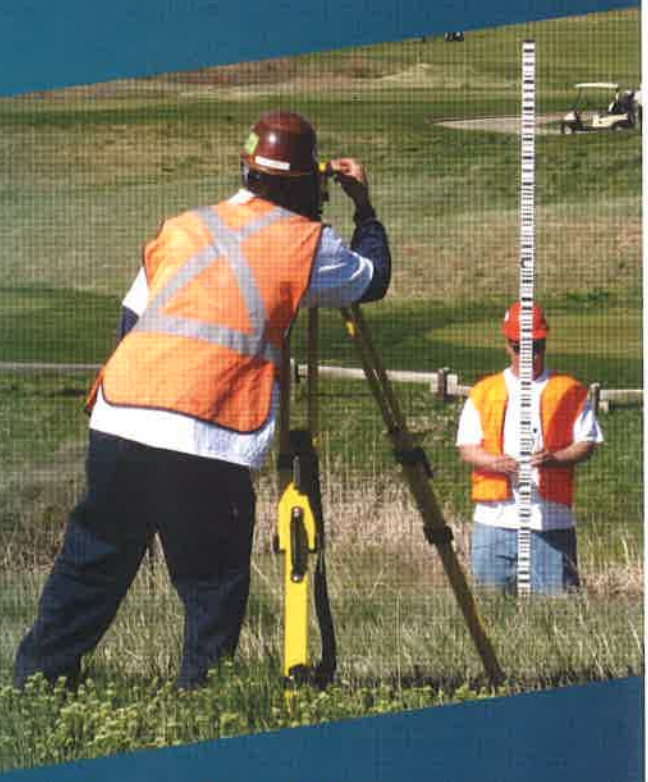
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# Elements of Successful Project Management for Surveyors

By: Peter Brennan, PLS

The role of the Professional Land Surveyor is becoming increasingly complex. A land surveyor is expected to be an expert in many diverse fields. Everyone expects the surveyor to be an expert in measurement, but few realize the many other skills that are required to produce a finished survey product. Surveyors must have a thorough understanding of boundary law. If measurement is a science, then the application of boundary law can only be described as an art. It takes years of experience and studying law books and court cases to develop this expertise. In addition to this, surveyors are also expected to act as land designers. Knowing the intricacies of the local land development ordinances and all regulatory restrictions of a parcel of land is necessary for successful subdivision projects. As important as these skills are, perhaps more important is project management skills.

A colleague of mine explained it like this: "the only thing we have to sell is our time." Successfully managed projects make the difference between a profitable company and one that is headed for hard times. How a project is or isn't managed is the determining factor. The Project Management Institute describes a project as follows: "a project consists of a temporary endeavor undertaken to create a unique product, service or result." For most of this article, we are going to use a survey for a mortgage as an example. The specific objective of the mortgage project is the delivery of a map for a real estate closing. The unique set of interrelated activities may include deed research, field surveys and mapping. The utilization of resources refers to the time and materials it takes to perform all the required activities. A few example of resources are CAD Technician time, field crew time, computers, field equipment, stakes and flagging. Typically, survey projects do not require a tremendous amount of materials.

Project success is dependent on a few factors among these are: scope, quality, schedule, budget, resources, risk and customer satisfaction. Let's review each of these.

Land surveying is a unique mix of advanced mathematics, nuances of law and industry jargon. Surveyors become experts in these matters by study and experience. Many potential clients have never been involved with surveying projects in depth and have difficulty "speaking the surveyor's language." Subsequently, project scopes written by clients, even engineers, can sometimes be unclear, or inadequate. If

a client does not understand the complexities of the survey requirements, they will focus on the one thing they do understand, the fee. I have seen survey proposals with low fees that do not meet the accepted standards. These proposals contain clauses such as "the surveyor will locate any boundary corners easily found." These types of agreements not only demonstrate a lack of professionalism but also open both parties up to contract disputes. A well-defined scope of work should address the client's specific needs and not be a boilerplate template from previous projects.

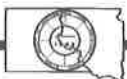
It is very important that the surveyor know his client, and more importantly his client's needs prior to preparing a scope, or proposal. Understanding both a client's goals and also their "pain points" can help guide the proposal writing. To effectively write a comprehensive proposal, it is extremely important to make sure a project scope is prepared and communicated well. Does the survey include a flood hazard area determination? Will the property lines be staked in the field? Having a well-defined scope can reduce confusion and delays.

For land surveyors in North Carolina, guidance for project quality is readily available. The North Carolina Board of Examiners for Engineers and Surveyors has established minimum standards through administrative code. Additional quality standards may be required by the lender, such as American Land Title Association and National Society of Professional Surveyors, Inc. (ALTA/NSPS) requirements. All survey firms should have standard procedures that staff follow to ensure conformance with quality standards. Failure to meet quality standards can result in project delays, unnecessary costs, and potential professional liability.

The project budget is the amount the client is willing to pay for the services. There are many factors that go into determining the budget. Labor costs and materials are the primary factors. Some other factors may include market conditions, difficulty of site conditions or a compressed "turn around" time. Understanding your client and their needs is essential when pricing the job. A client who is pressed for time may be perfectly fine with paying a premium for service on a tight deadline. Sometimes the opposite is true and a client may feel that he is being take advantage of. A strong relationship and good communication will help to ensure that everyone's needs are met and the project is profitable for all parties.

There will always be pressure to price a job low. Many prospective clients are only interested in entertaining low fees. Many times, surveyors will take little compensation to "keep people busy". This is especially true during down times in the economy. The responsibility of the project manager is to price projects to meet the overhead costs and provide a decent standard of living for the company's employees. The fee should also be developed with the idea that the company will need to make a profit. This profit is essential if the company is

*(Continued on page 7)*



going to grow, replace or add new technology or equipment, or to weather the economic downturns.

There will always be someone cheaper in the marketplace. Those companies have lower overhead, less material wants and needs, or no clue how to run a business. Building relationships with clients is essential for receiving adequate fees. If a client's needs are being met, if the project manager communicates well, and if the client feels that they are valued, a strong business relationship can be built. The strength of this relationship will result in frank negotiations on fees that will protect everyone's interests. If a client perceives the surveyor as an essential member of the team, and not just a service provider, then better fees can be justified and will likely be agreed to.

As discussed earlier, the project resources are typically related to labor and a small amount of materials. Understanding the existing and future demands on resources can have a major effect on project scheduling. Land transactions, whether development or sales, typically involve financing from banks or investors. This puts an urgency on getting to the closing table and a rush on the survey. Because survey technicians can only work on one project at a time, the manager must be careful not to allocate the same personnel to multiple projects at once.

One of the easiest mistakes to make is to insert a new project into the schedule at the expense of projects that are already on the books. It may be that the new project will be a lucrative or high-profile project. Additionally, the client may be a repeat customer or a customer that you have been courting for some time. These may be perfectly good reasons to add the project, but considerations must be made to accommodate the schedule change. Adding staff, hiring subcontractors, or approving overtime are all decisions to consider. Adding the project and "hoping everyone works hard to get it done" is not project management, it's wishing. It's also a very common and easy mistake to make.

Another factor that must be considered is exposure to risk. Implementing new equipment, procedures or staff can cause delays due to the learning curve. These types of changes can be positive, but care should be taken during implementation. If a new piece of equipment is added, and the implementation is well supported, the survey technicians will likely take to it well and there will be an increase in productivity and morale. If the technology change is poorly supported, the opposite might be true resulting in slower productivity and decreased morale.

Weather can also have a big impact on a project. If a crew must make multiple trips due to rain or snow, it can affect both the budget and the schedule. Before making scheduling commitments, consideration should be made for weather forecasts and leaving some "slack time" in

the schedule. Rain or snow days should not be entirely wasted. Equipment checks and adjustments, supply restocking and reordering, and file management are effective uses of that time. Taking care of these tasks during "downtime" will help maximize time on-site during the good weather work days.

Perhaps the most important factor is customer satisfaction. It's obviously very desirable to have projects with high profit margins. However, if those profits are obtained by providing poor quality work, it is very unlikely that the client will be a repeat customer. The adage "bad news travels fast" applies here, and a few poorly executed projects can seriously harm a company's reputation and long-term prospects. Meeting minimum survey standards and complying with a development ordinance should not be a project goal. These are expected. If a firm meets these requirements it is not a guarantee that the customer will be entirely satisfied. There are many ways to determine customer satisfaction.

At the completion of a project, the surveyor should review the project for lessons learned. Some examples might be, did we make all our promised deadlines, if not, why, and how can we avoid those delays in the future? Were our submittals adequate and did they represent the best solutions? Was our original scope and proposal clear and comprehensive? Did we communicate well with the client? Many times, customer dissatisfaction is not a result of the poor work, it is a result of poor communication or poor attitudes.

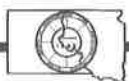
These project elements: scope, quality, schedule, budget, resources, risk and customer satisfaction, have one common thread. High marks in any of these areas is directly tied to the level of communication between the client, project manager and resource people working on the project. Effective communication prior to the start, during the performance of and after the completion of a project can lead to a stronger client base, engaged and effective employees and a profitable endeavor.

*Peter Brennan graduated from Wake Technical Community College with an A.A.S. degree in Surveying Technology; while working for NCDT. He has been the City Surveyor in Wilmington, NC since 2011.*

As seen in The Tarheel Surveyor, Spring 2018

*Books are a uniquely  
portable magic.*

*- Stephen King -*







# NSPS Young Surveyors Network

South Dakota  
Spring 2018

## The Purpose

The NSPS YSN is a social network of young surveyors across the nation working together to give a voice to young surveyors in their profession. The network provides support and networking opportunities for young surveyors to connect and communicate their needs, concerns, and ideas for the future of surveying. Working with NSPS and state organizations, the network is a bridge to connect generations of surveyors to ensure the history, importance, and standards are upheld for future generations.



Dani Huewe  
SD YSN Representative

## What is the Young Surveyors Network?

By: Dani Huewe

The NSPS Young Surveyors Network is a group that is comprised of the younger land surveyors across the United States. There are groups across the globe like the NSPS Young Surveyors Network, including the International Federation of Surveyors (FIG) Young Surveyors. The YSN is here to support and assist the younger generation of land surveyors. As the younger generation of land surveyors is the future, we feel this group is a good way to reach out and connect with the younger students enrolled in school. We also need to make sure that they are prepared and knowledgeable, about all aspects of land surveying.

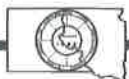
### Who

The NSPS Young Surveyors are defined by surveyors aged 35 years or under, students of surveying, or those surveyors within 10 years of graduating from a Bachelor or Master's Degree.

Every surveyor is welcome to join to the group; however, the focus is to provide support for those individuals that meet the definition above.

### How it started

- The first FIG Young Surveyors North American Meeting was held on April 2014 in San Diego, CA.
- 25 surveyors from 15 different states decided to try and establish a national group within North America.
- At this FIG meeting, NSPS started discussing how they would support and encourage the formation of the YSN nationally.
- Amanda Askren - the founding NSPS delegate of YSN - and a team of young surveyors worked together to organize the group, bylaws, officers, mission, and vision for the group.
- Once the organization was created, Amanda was able to go to the NSPS Board of Directors for the YSN to become affiliated with NSPS.
- The NSPS Board announced the approval in the Spring of 2016, and the formal acceptance letter was presented at the NSPS 2016 Fall meeting in Arizona.





## State Level Group

In South Dakota the group focus is really on survey technicians, LSIT and recently licensed PLS individuals. I feel that as we get more members active and together, it will hopefully fill a gap between the active student groups and the well-established PLS members within our state society. This group pursues activities to further professional development through our state land surveying profession. Our goals include focusing on professional exam prep, social events, and connecting young surveyors with seasoned mentors to further the profession and continue traditions.

## Goals of Getting Started

In January I was able to present a power point at the 2018 SDPLS conference at Cedar Shores resort in Oacoma, South Dakota. I produced much of the same information as you've read in this newsletter, to inform people of the NSPS Young Surveyors Network. Such a new group, is still so unknown to many.

In October of 2017, I attended my first NSPS Young Surveyors Network meeting. It was there that I officially stepped into the position as the representative for the state of South Dakota as the Young Surveyor representative.

Fortunately, at this meeting I was able to meet and connect with some incredibly motivating individuals. Their drive, ambition, dedication, and passion led me to come up with a timeline of goals that I feel is a good way to get our state YSN started.

- ▶ 2017 - Getting Started: Come up with a main outline of where I want the group to go and how to move forward
- ▶ 2018 - Find Regional Officers: Set up social media pages, schedule some meetups and socials in areas around the state (use help offered from local chapters)

- ▶ 2019 - Building the Group: Keep pushing forward to add more members. Possibly more advertising at SDSPLS annual conference.
- ▶ 2020 - Networking the Group: Get the younger members out of their comfort zone. Connect them with people in other areas or groups that they can turn to for advice or basic questions.
- ▶ 2021 - Creating an Impact: the NSPS YSN has talked about once state organization are developed to participate in charity events or find small ways to benefit communities. This is another goal of the SD Young Surveyors

## Regional Coverage

I work in the southeast corner of South Dakota, in Sioux Falls. This leave a clear majority of the state quite a distance to drive for me to reach. I'm looking toward local chapter members or individuals in areas to head up local meetups and try to spur more sign up or members in those areas that I would not be going to as often.

We would still all communicate as a state but there would be more regional meetups to make it easier for individuals to attend and be involved.

## Local Meetups

These are to be held in local areas for the members of the SD Young Surveyors Network to get together and communicate openly. These can be pre-arranged to go over on specific topic, or they can be an event held to gather individuals to gain membership, and to just get to know one another and to gain comradery between one another.

Specific topics may entail a subject that is found on the Fundamentals of Surveying Exam, or something in general that plays a large part in day-to-day surveying work that someone may have a better way to do, or tips on a process.

If nothing else, the point of these meetups is to just get the young surveyors together. Make them feel connected, involved, important. The realization that their voice is important, or that the work they do every day is important, even though being younger may seem as if they get overlooked in the work scene.

I'm hoping that with all this information it stirs interest in everyone. I'm more than ready to push forward as this year continues, and get our state group of young surveyors interested, signed up, and active within the group.

## Become a Member

- When members join the YSN, it is important for them to feel like they are part of a wider community of professional surveyors, both locally and throughout the whole state.
- It is a great opportunity for members to be proactive in communicating and marketing the young surveyors' messages, ideas, and concerns.
- 4-5 members that want to be more involved, would help manage their local area. (Western, Northern, Southern, Northeast, Southeast)
- Social Media platform connections (In the process of being created)
- Sign up: Name, email address, phone number

To Sign-Up email Dani Huewe at [sd\\_yns@outlook.com](mailto:sd_yns@outlook.com) or [dani.huewe@dgr.com](mailto:dani.huewe@dgr.com)



# Summer Safety

By Joe BreauX, RPLS, TSPS Safety Committee Chair

Summer is here again. The days are longer, the nights are warmer and we're all more active, at work and at play. It is hot and getting hotter, still. Longer days means more time to work, but also more time for recreation and travel, more time for fishing, camping, boating, and many other activities. Also more driving, more time in the sun, exposure to heat, and hazards such as fatigue, traffic and distracted driving.

To avoid the problems previously mentioned and to be able to get the most out of work and recreation during the summer, here are some tips and ideas that may help.

More work or activity in the summer sun and higher temperatures almost certainly causes us to sweat more. To avoid dehydration problems stay hydrated. Drink plenty of water and sport drinks before you begin work or activities. Don't wait until you become thirsty to begin replenishing fluids, begin before and keep it up. Waiting means you are already behind schedule. Sources say that strenuous activity or work outdoors, in the sun and heat calls for drinking 16 or more ounces of water per hour. Individual needs and the particular conditions may vary this rate.

And don't forget about providing water for pets while traveling too. Hotter temperatures and hot cars as well as more activities cause pets to be more thirsty than usual. Be sure to provide ample water for them, too.

Use sun screen and protect your skin from the burning, drying effects of the sun. This also applies for cloudy days, too, due to ultraviolet (UV) rays which are almost always present. Use sun screen with an SPF of 30 or above. Some sources say higher SPF numbers don't help, but regardless, reapply sunscreen according to the directions on the container. Often the reapplication rate is at about a 2 hour interval. Reapply it often, especially if you are in the water or if you have fair skin. It is difficult to stay out of the sun when working, but during other activities protection is possibly more important. In addition to sunscreen, wearing a large brim hat and a light colored and long sleeved shirt is good protection. Much of the outdoor clothing today is SPF rated. Continued overexposure to the sun can be harmful, not only now, but especially later in life. It can cause skin problems that can be as serious as skin cancer. Protection is critical.

Don't forget about bug repellent during summer time, also. Bugs are far more active during warmer months and are most active in early morning or late evening times. Mosquitoes are most active during these times and are more than annoying. Mosquitoes can cause

red, itchy bumps on most people and carry diseases which can easily affect pregnant women, infants and those with weaker immune systems. There's also ticks and chiggers. Ticks can carry Lyme disease as well as cause infection where they have penetrated the skin and left body parts when you pull them off. Chiggers may only cause red, itchy bumps, but these can last for a week or more and be quite annoying, at the least. For any of the bites, scratching can lead to infection.

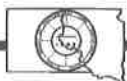
Use a quality bug repellent that offers protection against mosquitoes, ticks and chiggers. A repellent with DEET is easy to find and offers good protection. Other repellents such as natural remedies may only offer limited protection or may not work, depending on the ingredients. These may also require more frequent application. Either way, be prepared if working in the field or participating in recreational activity that puts you in tall grass or wooded areas. Make certain to spray exposed skin and spray clothing, too. Especially around pants cuffs, your belt area and shirt cuffs. Chiggers and ticks often make their way onto your skin at these locations.

While driving, refrain from using a cell phone or handheld device. Many employers have policies that limit or forbid such use unless you are stopped. In fact many towns and cities, at least 98% of them, have some form of ordinance that prohibits use of a cell phone or handheld device while driving. Research shows that when using a cell phone while driving, one can miss up to 50% of the driving environment (surrounding conditions.). Hands-free devices are said to be no safer than holding and using a cell phone, either. That goes for texting and driving, too. At 55 miles per hour, the average text message causes the driver to look away from the road for 5 seconds, enough time to travel the length of a football field (100 yds./300ft.). If you must text, or take or make a call, pull off of the road and into a parking lot, a much safer place. Don't use the shoulder of the road as a safe place, park away from the travel lane(s). Cities with ordinances that restrict use of a cell phone while driving also have fines that may range up to \$500.

Use your seat belt, at all times while the vehicle is moving. Besides being a law for all vehicle occupants, it is the best practice. Seat belts do save lives. This is a proven fact and the single most effective means of reducing traffic deaths and injuries. 63% of traffic related deaths result from failure to use A SEAT BELT. In a crash a driver or occupant who didn't buckle up has little, if any, chance of survival when thrown from their vehicle. It is the law, so what more is necessary to say?

When riding a motorcycle or an ATV, wear a helmet. Sure, it's not as cool looking, but head injuries are the primary cause of death in motorcycle/ATV/UTV accidents, too. Make sure that your UTV has a roll cage for driver and passenger protection. And if your off road vehicle has seat belts, use them when in motion.

*Continued on page 11*



When boating, there are two main issues: 1) not wearing life jackets while running (at all times is even better for maximum protection) and 2) alcohol impaired operators. Alcohol is seldom a problem at work, but it is more common for recreational boating. In the event of a boating accident, an unconscious person can't swim or hold onto a floatation device. And boat operators who are impaired in any way are slow to react to danger and may even be the cause of an accident. Drink responsibly or better yet, don't drink while operating a boat.

When in the field, whether working or for fun, watch out for snakes. Snakes are on the move in summer, so always be alert for them. Use a walking stick if you can, or make a bit of noise while walking. Be cautious in high grasses, near shady bushes that are cool spots for snakes to rest, and be especially cautious reaching into brush or wood piles or onto rock ledges that you can't see.

These are just simple reminders given in hopes of making your summer, whether for work or pleasure, a far safer one. Have, fun, work hard and please be safe.

As seen in The Texas Surveyor, July 2017

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# Turkeys, Topples and Tumbleweeds

History is often made when things don't go quite as expected. Consider these incidents in South Dakota history that, while maybe serious at the time, are now cause for amusement.

In March 1973, the first Farmers Day celebration in Gettysburg did not go as organizers planned. The plan was for a pilot to maneuver his Super Cub over downtown Gettysburg the afternoon of Saturday, March 24. Another man would push live turkeys out of the airplane. Whoever caught a turkey would get to keep it.

"One Gettysburger who appears to know something about the aerodynamics of this particular feathered species, seems to think they'll go into a long glide without particular difficulty. But how far, and where?" wrote Randall Braden in the March 22, 1973 Potter County News.

The question was answered when the first turkey left the airplane. "Right then I knew it would be a bad day," wrote Jerry Larson in his Larsony column in the March 29, 1973, Potter County News. "At 75 miles or so an hour, before the first turkey could get oriented he had already hit ground – No flying, no gliding, just thud – The plane went higher for the remaining ones – (thankfully only six in all). Whoever said the turkeys would glide was right – Like a projectile they came down – legs back and head stretched out – They became living battering rams."

Two turkeys hit power lines, two fell on roofs and two landed near Main Street. "I am sorry it happened – And I am sure it will be a long time before anyone brings up a 'turkey drop' again," Larson wrote.

Another "drop" where the outcome was different than expected took place in Sioux Falls.

"OOPS!" proclaimed the Sioux Falls Argus Leader headline on Dec. 4, 2005. The Zip Feed Tower had refused to fall after an attempted demolition the previous day.

The Zip Feed Tower was a 202-foot grain elevator and feed mill in Sioux Falls. Built in 1956 and closed in 2000, the mill was scheduled for demolition to make way for new construction.

According to an article in the Nov. 25, 2005, Argus Leader, "This one is a slam dunk. This is about as easy as they come," said demolition crew chief Jim Wutzke. Crowds gathered at various locations throughout Sioux Falls on Saturday, Dec. 3, to watch the implosion of the tallest building in Sioux Falls, and possibly, the state.

At the scheduled time, there was a siren, a *boom* and the realization that the building was not coming down. "Groans gave way to laughter as soon as it became apparent that the thing wasn't coming down and within moments, the jokes started," read an article in the Argus Leader.

"'We came up with the Leaning Tower of Zip within 15 seconds,' said Rick Knobe, the KSOO radio anchor and Sioux Falls celebrity who emceed the event.

"'I'm standing there watching the building,' Knobe said, 'and I turned back and looked at the crowd, and I wish I had a camera. Everybody's mouths were open, and their eyes were the size of silver dollars, and immediately they all started laughing.'"

The concrete tower had fallen into its own basement and the now 150- to 160-foot building tipped eastward. The great Zip tip became fodder for newspapers, websites and talk shows worldwide. The building did eventually come down, by crane and wrecking ball.

Mobridge was attacked from the west in November 1989.

"Darlene Zahn of Mobridge was awakened Wednesday morning by what sounded like rocks striking against the side of her mobile home," read a Mobridge Tribune article about a Nov. 8 event.

"When she turned on her light, she saw her deck full of tumbleweeds, blown off the shores of Lake Oahe by wind gusts of 50 mph." Low water had exposed ground that had been formerly under water. Plants such as Russian thistle typically die in late summer or early fall. They break away from their roots and are blown about by the wind. The tumbleweeds blocked streets and alleys and buried homes and vehicles.

Mobridge residents turned lemons into lemonade.

Customers at Rick's Cafe were invited to "tumble in" for a taste of tumbleweed chili. The Palace Lounge created a tumbleweed drink. High school juniors were given the assignment to come up with uses for the tumbleweeds.

The tumbleweed invasion made national and international news. The broadcasts and printed articles about the event were presented, for the most part, with good-natured humor that laughed with Mobridge residents, not at them, according to Mobridge Tribune editor/publisher Larry Atkinson.

Atkinson's own tongue-in-cheek ideas for the famous tumbleweeds included tumbleweed riding at the annual Sitting Bull Stampede Rodeo and changing the city's motto from "Walleye Capital of the World" to "Tumbleweed Capital of the World."

*Continued on page 13*



“Keep laughing, Mobridge, it’s good medicine,” he wrote.

*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](http://www.sdhsf.org). Contact us at [info@sdhsf.org](mailto:info@sdhsf.org) to submit a story idea.*

## Keep Licensure Relevant

By: Keith Simila, P.E.

The relevance of licensure is being questioned by many at the state and federal levels. It is easy for member boards to think that we can continue to conduct business as usual and keep our same processes, regardless of how different they are from our neighboring states.

Comity, or multistate, licensure applicants find it difficult to navigate the various state-to-state differences. Some antagonists to licensure use these differences and the resulting difficulties as a means to attack licensure. In January, South Dakota Governor Dennis Daugaard introduced draft legislation to establish reciprocity compacts for all occupations and professions. At present, he has contacted four governors of neighboring states about adopting similar legislation to become a member state in the compact. The proposed Compact for Temporary Licensure of professionals mandates that an 18-month temporary license be issued within 30 days for an applicant in good standing who holds a license in any occupation or profession in another state. Member states could opt to make temporary licenses for any and all occupations renewable by statute if they choose. What this tells me is that we are losing relevance in the minds of the governors and legislators tasked with improving trade and commerce and lowering barriers to entry into our professions. Why are we losing relevance? Because we are viewed as being inflexible. We use our existing laws, rules, and processes as reasons that comity licenses cannot be issued efficiently, effectively, or in some cases, at all.

The Committee on Member Board Administrators (MBA) has been charged this year to develop a long-term strategy to increase licensure mobility and reduce barriers to licensure. NCEES has model laws, rules, and policies that are designed to improve the legal framework commonality. That’s the theory, but in practice, many states do not adopt them. Instead, they have unique pathways to licensure. Last year, the MBA Committee analyzed survey data and identified 58 difference pathways to engineering licensure and 69 pathways to surveying licensure among the NCEES

member boards. These boards cover 55 unique jurisdictions in the United States. The differences are across the board, with pathways varying in requirements for education, examination, and experience. All jurisdictions appear to accept Model Law Engineer status, but not all jurisdictions accept Model Law Surveyor status. About half of the jurisdictions will license P.E. applicants with four-year technology degrees. The education standards for P.S. licensure vary from high school to four-year bachelor degrees.

When governors and legislators hear about the barriers to multistate licensure, they cannot understand why they exist since each of us has a common goal – to set standards for minimum competency to safeguard public health, safety, and welfare. NCEES was established in 1920 to build a common framework for licensure. As we near the 100<sup>th</sup> anniversary, it is imperative that member boards understand that the attacks on licensure will not abate. In fact, they will likely intensify, as this is a political issue. If we are to remain relevant with those to whom we are accountable, we must take action to improve multistate licensure. Otherwise, we will face more legislative fixes like South Dakota’s proposed compact for temporary licensure.

How do we build relevance? We can seek incremental change and be proactive in addressing the barriers that concern our governors and legislators. We can examine our laws, rules, and procedures and evaluate if they still make sense and how well they align with our neighboring states and the model laws, rules, and policies of NCEES. We can seek more legal flexibility in granting waivers to those who have demonstrated competency over many years of licensed practice, even though they may not meet our initial licensure requirements. We may not be able to change everything to perfectly align with the models or our neighboring states, but we can do something. And more importantly, we can demonstrate that we share the concerns of our governors and legislators.

Between now and the NCEES centennial celebration in 2020, the MBA Committee will share more ideas about what we can do to improve multistate licensure. One hundred years of NCEES is a milestone that significantly demonstrates what can be accomplished when we come together for common benefit. The more we agree on common standards and implement those standards, the more credible we will be in the minds of our governors and legislators. It is important that we win the race to remain relevant. Let’s not miss this opportunity.

*Simila is the Executive Director of the Idaho board and a member of the 2017-18 NCEES Committee on Member Board Administrators.*

As seen in the NCEES [Licensure Exchange](#), February 2018



# Land Surveyors Insurance Program

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# Monument Destruction

## Why Does It Continue? Why Do We Allow it?

By Landon Blake

### INTRODUCTION

I'd like to start this article with a couple of short stories. The stories illustrate that monument destruction has become pervasive in California.

Just a few months ago I was doing an initial monument search for a small residential parcel in Modesto. The parcel was in a 1960's era subdivision not far north of my office. It was one of several hundred parcels in this part of town. A handful of subdivision parcels defined all those parcels. The subdivision maps marked the parcel boundaries with centerline monuments. The surveyor placed the centerline monuments at regular intervals, at angle points, and at curve ends. The handful of subdivision maps set a couple hundred centerline monuments.

My initial corner search started with the subdivision that contained my subject parcel. It quickly revealed no centerline monuments left in place. I expanded my search in phases, moving outward from my subject parcel. As I searched for corners on adjacent subdivision maps, I came to a disturbing realization. The centerline monuments on those adjacent maps were also gone.

At the end of my search, I was only able to locate 4 centerline monuments. These were in close together, far from my subject parcel. I found only four monuments out of a couple hundred originally set. What happened in this neighborhood?

I later determined that a municipal sewer project was constructed after the subdivisions. The sewer project installed sewer trunks down the center of each street. The sewer project had completely eliminated the centerline monuments. They were never reset or witnessed with other monuments. The sewer project had left several hundred parcels, and millions of residential real estate, with no marks on the ground. To survey my parcel, I would tie in the 4 monuments I found and I would split curb and sidewalks to determine right-of-way centerlines. This was less than ideal.

About the same time I was working on a boundary survey as part of a land development project in Sacramento. This parcel was in an industrial area. Several of the properties south of my subject parcel had been developed as warehouse space and light industrial facilities in the last ten years. My subject parcel was

shown on an older parcel map. The surveyor who created the parcel map set monuments on all the parcel corners in the subdivision, and also tied out centerline monuments on the two adjacent public streets. (The north and east side of my subject parcel bordered railroad right-of-way.)

Based on my research, there were around 20 monuments I could search for and tie as part of my boundary survey. This included monuments set on the controlling parcel map and centerline monuments in the public streets.

After two days of diligent searching, I was only able to recover three monuments. Two of the monuments I found were on my undeveloped subject parcel, and had been set on the controlling parcel map. The third monument I found was a railroad spike in a small hole in the pavement on the adjacent public street. I determined as part of my field work that all the other monuments had been destroyed. The majority of the monuments in the controlling parcel map had been removed during the recent site development, likely obliterated with the construction of the block walls that separated each industrial site from the next. The monuments along the railroad right-of-way on my subject parcel's west side had been removed during the clean-out of the drainage ditch that ran parallel to the tracks. All the other centerline monuments in the public streets had been wiped out as part of paving projects. I had several million dollars worth of industrial parcels with only two controlling monuments. The destruction of the remaining eighteen monuments had been entirely preventable, and their protection had been required by state law.

Other land surveyors in California have similar stories. We've been destroying monuments in our state for decades, and the resulting damage is widespread. Monument destruction is pervasive. This raises important questions:

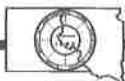
- 1) How are these monuments destroyed?
- 2) Why does monument destruction continue decade after decade?
- 3) Why do we, as a profession, allow monument destruction to continue?

### HOW ARE MONUMENTS DESTROYED?

How are monuments typically destroyed? Based on my experience, I've identified three major causes of monument destruction.

#### #1: Site Development/Redevelopment

The first major cause of monument destruction is site development activity. This is the conversion of undeveloped land (vacant land, open space, or agricultural land) into residential, commercial or industrial use. The development of the vacant land in Sacramento to light industrial facilities is an example of



this cause. Why are monuments destroyed during site development? Most frequently, the monuments are removed when site improvements are constructed. This includes walls, fences, and sidewalks along parcel boundaries. It can also include the installation of new underground utilities serving the parcel.

Site redevelopment occurs when land is redeveloped for more intense use or reconfigured use. An example would be the removal of old single family homes near a downtown to allow for the construction of high-density residential structures. The destruction of monuments during redevelopment is similar to that with new site development, with the added risk that monuments are destroyed during site demolition.

### **#2: Infrastructure Projects:**

The second major cause of monument destruction is the construction of infrastructure. This includes roads, bridges, railroads, canals, pipelines, and levees. Why are monuments destroyed during infrastructure projects? The construction of the physical features of these infrastructure projects often obliterate monuments, like a tornado clearing a swath of land. The destruction of the centerline monuments in Modesto for the placement of the sewer trunk lines is an example of this cause.

### **#3: Maintenance of Right-of-Way & Infrastructure:**

The third major cause of monument destruction is maintenance of right-of-way and infrastructure. I find that cities, counties, and utility companies are the guilty parties behind this cause of monument destruction. Why are monuments destroyed during maintenance activities? They are buried, bent or removed by site grubbing and grading. Or they are covered and capped by paving and sealing. (There are places in San Joaquin County, my home county, where centerline monuments can be found 3 or 4 feet beneath the current paved surface of the road, buried by multiple road lifts and paving projects.)

Monuments are also lost to minor construction, maintenance, and agricultural operations by land owners. However, the number of monuments destroyed in this manner pales in comparison to the number of monuments destroyed by the three major causes I've listed above.

## **WHY DOES MONUMENT DESTRUCTION CONTINUE DECADE AFTER DECADE?**

Talk to many experienced surveyors in California, and they will tell you the problem of monument destruction has persisted for many decades. Why does it continue? Why is the destruction of monuments so rampant?

I've identified what I believe are five main factors why we have been unable to stop monument destruction. They are factors based both on ethics and economics.

### **FACTOR #1: Ignorance**

Although almost all land surveyors I talk to understand monument preservation, and the related requirements of state law, I still regularly interact with civil engineers who are totally ignorant about the issue. They don't understand what monument preservation is, how it impacts their projects, or what state law says about their responsibility to preserve monuments as part of design and construction.

### **FACTOR #2: A Misunderstanding of Monument Value**

Many non-surveyors fail to understand the value of property corner monuments. They don't perform boundary surveys, and as a result, have never experienced the extra costs that are incurred when a lack of monumentation hampers resolution of a parcel or right-of-way boundary. As the number of monuments in an area is reduced because of destruction, the cost of each destroyed monument grows.

### **FACTOR #3: Willful Disregard For The Law**

In my own practice I have encountered both land surveyors and civil engineers, in both private and public practice, that have a full knowledge of monument preservation requirements, but who willfully disregard the law. They repeatedly fail to contract with reputable surveyors for monument preservation efforts, with the realization that the risk of being caught is low, and the consequences for violating the law are small compared to the cost savings of non-compliance.

### **FACTOR #4: Lack of Meaningful Enforcement**

We have a huge problem with meaningful enforcement of monument preservation laws in California. This problem has 2 causes at its root. The first is a reluctance of land surveyors to inform the board when there has been a violation of monument preservation. The second is a failure of the board (for a number of reasons) to swiftly and clearly punish flagrant monument destruction, especially when the guilty party is a public agency.

### **FACTOR #5: Diffuse & Gradual Distribution of Costs**

The last factor in continued monument destruction is primarily economic. The costs that result from monument destruction are easy to ignore because they are:

- 1) Realized long after the initial act of destruction. The period between the act of destruction and the imposition of costs can be years or decades.

*(Continued on Page 20)*





# From the Mailbox...

SDSPLS Board of Directors:

*I would like to express my appreciation for the tuition reimbursement I received for my land surveying educational coursework. I am diligently making progress on my coursework, and looking forward to a career change into a land surveying field. This is a great program to assist a student like myself in reaching my goals. Thank you.*

*Jim Pond*

Dear SDSPLS:

I would like to Thank You for selecting me as a scholarship recipient. The money will be put towards my tuition and is greatly appreciated. I would also like to Thank You for inviting me to attend this year's convention. It was an amazing opportunity to learn about surveying and to meet my fellow surveyors. I am looking forward to returning next year.

Sincerely,  
Cory Smith

SDSPLS Committee:

I would like to thank the committee for awarding me a scholarship in 2018. It was an honor to be invited to come to the SDSPLS Convention and also the accommodation of our rooms. The speakers this year were full of excellent knowledge and did a great job continuing the education of the best surveyors the state has to offer. This scholarship money will help offset some of the cost of tuition for education this year at Southeast Technical Institute. Also, thank you to Janelle over the years as the Executive Director. She has done a great job.

Thank you again.  
Eric Kor

SDSPLS Board

I would like to say thank you to the SDSPLS Board for the scholarship money I received at the convention. It was a great honor to receive the award from your outstanding organization.

Thanks again,  
Took Gustin

*I would like to express my gratitude in receiving the Scholarship at the 2018 SDSPLS convention. It was an honor to be one of the few chosen to attend the banquet. The Scholarship was a big help in paying for tuition and books. The level of hospitality and welcoming all of us students received was completely unparalleled. It was such a pleasure meeting and exchanging ideas with the different Land Surveyors. Not only did I receive a helpful scholarship, I gained an abundance of useful knowledge in the LSIT classes. I am excited for what is to come in future conventions! It is clear that Janelle works very hard and helps put together a great convention. We greatly appreciate everything!*

*Thanks Again,  
Marshall Beynon*

SDSPLS Board,

Thank you for giving us the opportunity to attend a great convention and for the Scholarship. It was nice to get the chance to meet other professionals from South Dakota and the surrounding area. I look forward in taking part at the SDSPLS convention in the future!

Thank you all,  
Matt Fischer



## From the Mailbox...

Dear SDSPLS Board,

As one of the 2018 scholarship winners, I would like to say thank you for the award. The award has been a big help this semester with the cost of school bills and other bills. As you all know being in school is a tall order in itself, so every little bit helps. I also would like to thank each and every one of you for the hospitality you showed me while I attended the convention, being a young up and coming surveyor can be intimidating not to mention being in a room filled with seasoned surveyors. For that reason alone I greatly appreciate everyone's kindness. It was a great honor to be chosen for one of the scholarships, and also being allowed to sit in on all of the presentations to listen to the knowledge so many of the members have. Last but not least I would like to extend a big thank you to Janelle for all the hard work she does organizing all the events, and making sure things run smooth.

Sincerely,  
Connor Vlasman

Dear SDSPLS,

I would like to give a huge thank you for selecting me as one of the scholarship winners. I put the money to good use, as it helped me so much. I had a great time at the convention and learned so much. I think it's great what you all are doing for our program. Again, thank you all for the golden opportunity. I'm so grateful!

Sincerely,  
Jake Brandt

SDSPLS:

*Thank you so much for the very generous gift in support of Kili and our family. It was so kind of you all to think of us.*

Love,  
Andy, Lindsay & Kili Scott



This is little Kili Scott (almost 8 months old). Kili is the daughter of Andy and Lindsay Scott and granddaughter of Dean and Kathy Scott. Kili was born a few weeks early last fall and had a heart condition that needed to be repaired. She spent a few months in the NICU at Rapid City Regional gaining enough weight to be able to travel to Omaha Children's Hospital for her surgery. As you can see by her picture – the surgery went well and Kili is doing fine.

Andy is an SDSPLS member and was nominated (by an SDSPLS member) for an SDSPLS Hardship Grant. The Hardship Grant is available to SDSPLS members, spouses and their dependent children in a time of medical or other hardship. The grant is designed to provide minor assistance with costs associated with an illness, injury or medical condition/treatment – or personal/professional loss associated with an event such as fire, flood or tornado. The grants are intended to provide assistance for travel related expenses (mileage, lodging, meals), medical expenses, rehabilitation equipment such as a walker, wheelchair, or other items, replacement of personal or professional items lost due to fire, flood or tornado, etc. For more information on the SDSPLS Special Hardship Grant please go to the SDSPLS website at: [www.sdspls.org](http://www.sdspls.org)





- 2) Slowly accumulate. The last monument to be destroyed in a neighborhood has a much greater cost than the first monument destroyed.
- 3) Not clearly communicated in the cost of current surveys. What would happen if all land surveyors started to break out the costs of monument destruction as a separate line item in all of their cost estimates? The cost is there, but it is typically hidden. There are also costs related to legal disputes over uncertain boundary locations that are rarely (if ever) attributed to the destruction of monuments.

**WHY DO WE (as a Profession) ALLOW MONUMENT DESTRUCTION TO CONTINUE:**

Why do we (as a profession) continue to tolerate a practice that is so detrimental to a fundamental service (boundary surveying) that we provide our clients? I believe there are 4 reasons we allow monument destruction to continue at a pervasive level:

**Reason #1: We Let Civil Engineers Dictate The Terms of Our Work**

All too often we bow to the demands of the civil engineers we work with. We let civil engineers dictate our scope-of-services and we allow them to toss out our monument preservation tasks when they believe it is unnecessary or too expensive.

**Reason #2: We Put Profit Ahead Of Protecting The Public**

We would rather compromise on monument preservation efforts than say no to a client or potential project. We perform the boundary survey and stake the site improvements with full knowledge that property corner monuments will be destroyed, but we turn a blind eye and keep quiet because we want the work.

**Reason #3: We Are Soft On Enforcement**

We know the organizations and companies in our area that repeatedly destroy monuments, but we don't say anything because they are our friends and business partners. Nobody wants to be a snitch or a squealer. As a result, we rationalize and make excuses for the bad behavior of our peers.

**Reason #4: We Turn A Blind Eye To Government Violations**

Many of us have government agencies as our clients. We perform boundary, topography, and construction surveys on government projects. As a result, we turn a blind eye to government violations of monument preservation requirements. We don't want to "rock the boat" with our local jurisdictions.

**CONCLUSION**

I'd like to write more in the future about ideas and suggestions for how to overcome the challenges in this article. I'd also like to hear your ideas. What do we do to fight ignorance and willful disregard for the law? How do we more clearly communicate to the public and our civil engineering partners the real and significant costs of monument destruction? How do we strengthen the monitoring and enforcement of monument preservation efforts and give it real teeth?

*Note: The opinions expressed in this article are my own, and don't necessarily represent those of the California Land Surveyors Association or the majority of its members.*

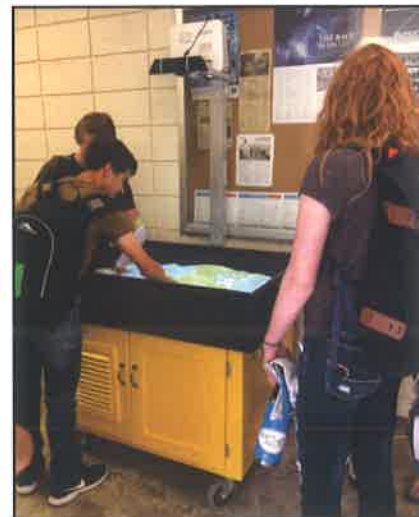
[www.redefinedhorizons.com](http://www.redefinedhorizons.com)

As seen in California Surveyor, Issue #186 and reprinted with permission from the author.

**2018 TRIG STAR**

The 2018 South Dakota Trig Star Competition was held on May 7, 2018 at SDSM&T in conjunction with the West River Math Contest. There were 34 contestants this year from five schools and including one Home School student. This year's winners were:

- 1<sup>st</sup> Place - Katherine Achbach (St. Thomas More)**
- 2<sup>nd</sup> Place – Logan Smith (Spearfish)**
- 3<sup>rd</sup> Place - Spencer Lund (St. Thomas More)**



A special "thank you!" to Dr. Kurt Katzenstein Associate Professor of Geological Engineering at SDSM&T for setting up their Augmented Sandbox for the Trig-Star contestants to check out. It was a **BIG** hit!





# NEBRASKA - SOUTH DAKOTA - WYOMING

## COMMON CORNER PROJECT

June 9, 2018

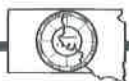


The NW Corner project will take place on Saturday, June 9, at 10:00 a.m. We will rebuild the damaged fence, place a new sign post, do general cleanup, and dedicate the new bronze plaque. If you would like to carpool, meet at the Crawford High School parking lot between 8:30-9:00 a.m., Saturday morning, June 9. The high school is located near the southeast portion of town at 908 5th Street.  $42^{\circ}40'49.7''\text{N}$   $103^{\circ}24'28.4''\text{W}$

Bring your own food and drink.

On Sunday, June 10, at 9:00 a.m., we will place and dedicate the historical marker sign within Fort Robinson for the transcontinental bench mark. The location is in the southeast portion of the park next to the Red Cloud Campground.  $42^{\circ}39'47.6''\text{N}$   $103^{\circ}27'44.0''\text{W}$ .

If you intend to camp at Fort Robinson for these events, it might be wise to plan ahead and make reservations accordingly.



The following information is taken from meeting minutes of the

## South Dakota Board of Technical Professions

complete meeting minutes can be found at:  
<http://dlr.sd.gov/btp>

**January 19, 2018**

Approve the following examinee passing the Principles of Surveying ( PS) exam:

Cory Biegler ↑ LS 13554

Denial of the following examinee to take the Fundamentals of Land Surveying (FS) Exam :

Austin Michael Bruba

Denial of the following examinee to take the Principles of Surveying (PS) Exam:

David Alan Feilmeier

Approve the following Land Surveyors (LS) by Comity application:

Matthew Mark ↑ LS 13667  
James Andrew Schlieman ↑ LS 13668

**March 23, 2018**

Approval the following examinee passing the Fundamentals of Surveying (FS) Exam:

Aaron David Boock

Approve the following examinee passing the Principle of Surveying (PS) Exam:

Jeremy Alan Woolbrink ↑ LS 13714

Approve the following examinees to take the Fundamental of Surveying (FS) Exam:

|                 |                     |
|-----------------|---------------------|
| Marshall Beynon | Matt Fischer        |
| Troy Fromm      | Jonathan Geffre     |
| Dallas Gjertson | Christopher Grassel |
| Isaac Gully     | Gust in Ruttanaporn |
| Eric Kor        | Michael Severson    |
| Cory Smith      | Connor Vlasman      |
| Cody D. Wika    |                     |

Approve the following Land Surveyor (LS) by Comity application:

Dennis Patrick Sullivan ↑ LS 13727

## In Remembrance

### Douglas "Doug" Joel Ochs

Date of Birth - July 17, 1952

Died - February 14, 2018

Memorial services for Douglas "Doug" Joel Ochs (65) of Aberdeen were held on Tuesday, February 20, 2018 at Carlsen Funeral Home and Crematory in Aberdeen, SD.

Inurnment was at Sunset Memorial Gardens.

Doug died Wednesday, February 14, 2018 at his home.

Douglas Joes Ochs, son of Casper and Virginia (Bartz) Ochs was born July 17, 1952 in Aberdeen, SD. He grew up in Aberdeen, graduating from Central High School with the class of 1970. He then attended South Dakota State University and earned a bachelor's degree in civil engineering. Doug then became employed with Stellner Engineering Co. where he worked his entire career and was still working at the time of his death. He purchased the business in 1983.

Doug was a member of Ducks Unlimited. He had a strong love of hunting and the outdoors. He deeply enjoyed his get-away trips to Las Vegas. Over the years, Doug was a referee for softball, high school football and high school basketball.

Survivors include his children and grandchildren, Benjamin Ochs of Fargo, ND and Patricia (Anthony) Kunz and their children, Mason and Easton of Eureka, SD; mother, Virginia Ochs of Sun City, CA and brother Owen Ochs of Sioux Falls, SD.

He was preceded in death by his father.

Doug had been an SDSPLS member since 1992.



# The Land Surveyor's Guide to the Supreme Court of South Dakota – Part 22 – 1937 to 1939

*This article represents the twenty-second in a series of excerpts from a book prepared by South Dakota licensee Brian Portwood. The complete book can be obtained in PDF form by double clicking on the link in the lower left portion of the SDSPLS Homepage. 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 dry lakebed be restored to navigable status? Hillebrand v Knapp (1937)

Resuming our review of the Court's perspective on riparian rights, and the boundary issues associated with such rights, here we watch as the Court declares a lake that actually contains no water whatsoever to be navigable for purposes of title, reflecting a dramatic shift in the Court's position on such matters involving public rights, when contrasted with the nineteenth century Olson case, previously reviewed herein, which also featured a lake that had basically disappeared. A great irony that attends the scenario presented here stems from the fact that the defendant's claim requires him to insist that the lake remains viable as a body of water, although the specific benefit that he personally derives from it, and which he successfully defends, can be obtained only when the lakebed is dry. While there are clearly valid grounds upon which to challenge the outcome of this case, the wisdom of the Court's decision would seem to have been verified, to some extent at least over the long term, by the fact that the lake did survive and return to existence, yet whether or not classifying it as navigable, even when filled to its historically normal level, is truly justifiable, represents a more complex question. Also in 1937, just a few months prior to deciding the case that we are about to review, and also pertaining to riparian rights, the Court had formally announced that "riparian rights are property", in *Parsons v City of Sioux Falls*, which was a water pollution case, making any demonstrable taking of riparian rights from a private party for any public purpose essentially equivalent to a taking of private land, requiring proper compensation to the riparian property owner. It was not until nearly half a century later however, in *South Dakota Wildlife Federation (SDWF) v Water Management Board (WMB)* in 1986, that the Court was called upon to adjudicate the specific location of a riparian boundary that was governed by statutes which had codified the early rulings of the Court on riparian boundary determination,

such as those handed down by the Court in the *Flisrand* and *Anderson* cases, previously reviewed herein. The subject of that case was *Waubay Lake*, and extensive evidence, including the conflicting testimony of numerous experts, made the outcome highly contentious. In a 3 to 2 split decision, the Court held that the legally controlling ordinary high water mark (OHWM) had been properly established by WMB, about 12 feet below the elevation asserted by SDWF, as the majority took the position that the lake level known to have existed at the time of statehood, set forth by SDWF, had been rendered inapplicable, by the installation of 2 permanent drainage structures that prevented the water from ever again reaching its historically normal level. Then in 1991, in the *Matter of Beaver Lake*, the Court was confronted with a situation in which a slough, covering about 40 acres, had been split off from the lake at issue by a roadway since 1934, although it remained aquatically connected to the lake by culverts, and the question was whether the slough was privately owned, or was part of the lake itself, which was acknowledged as being public. After clarifying that physical conditions created by human actions can alter the location of the OHWM only once such human alterations to the landscape have existed long enough to become "the equivalent of natural conditions", the Court struck down the conclusion reached by WMB that the slough was not part of the lake. Upon finding that the presence of the road was potentially irrelevant, since the OHWM that was applicable to the lake was also applicable to the slough, the Court remanded the matter, to be resolved on the basis that the location of the true boundary of the lake must be established by determining whether or not the slough "is capable of use by the public for public purposes".

**Prior to 1937** - During the original GLO surveys, a certain particularly shallow and flat bottomed lake, which would come to be known as *Rush Lake* in *Day County*, was meandered and found to cover about 3000 acres. Whether this lake was situated within one township or extended into two or more townships is unknown, but apparently the extent of the area covered by the lake remained approximately the same for several decades. No details are known about the settlement or original ownership of the land surrounding this lake, but *Hillebrand* eventually came to own some, if not most, of the riparian government lots that had been platted all around the lake. What actual use he made of these lands, if any, or of the lake itself, is unknown, and he may or may not have lived anywhere near the lake, but his title to the adjoining lots was unquestioned. During the 1930s, *South Dakota*, along with several other plains states, experienced severe drought conditions that would come to be known as the *Dust Bowl*, and *Rush Lake* was evidently among the victims of this sudden and extreme climatic alteration. At an unspecified date, presumably during the early 1930s, the lake dried up

*(Continued on Page 24)*





completely and appeared to be destined never to return to existence. Knapp evidently noticed that the lake bed had dried up completely, and he also saw that a substantial crop of prairie hay was growing where the lake had been, so he decided to harvest the hay, and he proceeded to do so at least once, and perhaps repeatedly. Whether Knapp owned any land fronting upon the lake, or anywhere nearby, is unknown, it appears that he did not however, since he claimed only the right to enter the lakebed as a member of the public, and not as an owner of any adjoining property. Whether or not any public roads existing at this time ran directly to the lake is unknown, so whether or not Knapp crossed any private lands owned by Hillebrand or others in reaching the lake is unknown, but there is no indication that he was ever stopped by anyone when entering or exiting the area, and apparently no one ever expressly challenged his right to access the lake. Whether or not any other parties ever used any portion of the dry lakebed, or attempted to make any use of it, is unknown, Knapp may have been the only party who ever actually did so. For unknown reasons, Hillebrand evidently became very aggravated about the presence or activity of Knapp upon the land that had comprised the lake bed, so he filed an action against Knapp, seeking to have him judicially compelled to cease his use of the lakebed and return to the lake no more for any purpose.

Hillebrand argued that Rush Lake had never been navigable, based primarily upon the fact that it had vanished, but also upon the absence of any evidence that it had ever been put to any substantial or meaningful use by the public, so he owned not only the upland portion of his lots as platted, but also those portions of the lakebed bordering his lots, extending all the way to the centerpoint or centerline of the lake, which evidently amounted to a very substantial part of the lakebed, if not the majority of it. Alternatively, Hillebrand argued that if the lakebed should be deemed to be navigable, then its disappearance should be treated as permanent, and the entire lakebed should therefore be classified as relict land, which he had acquired as it attached to his riparian lots. Knapp argued just the contrary, that the lake in question was indeed navigable, and it had always been navigable, and it remained navigable in theory at least, despite being dry, because there was no conclusive evidence that the dry conditions were permanent, and no public rights can be lost solely upon speculation that such a lake might never return to its former useful condition and again become a valuable public asset. The trial court found that the lake could no longer be properly considered navigable, being apparently extinct, and thus held that Hillebrand owned whatever portion or portions of the lakebed could be legitimately claimed by him, so he had the right to exclude or eject Knapp, or anyone else, from any such portions of the former lakebed.

In analyzing the scenario presented by this conflict, the Court engaged in a review of many of its own previous riparian decisions, all of which we have already discussed herein, and since many of those cases were quite comparable and highly relevant to the matter at hand, the Court was naturally inclined to follow in the footsteps of the previous generation of Justices in reaching its conclusion here. Once again the principal issue was the navigability status of the body of water at the heart of the controversy, but in this instance the Court paid little attention to the relevant GLO plat or plats, and did not concern itself with either the location or the significance of the meanders that the GLO had run around the lake, instead focusing exclusively on its view of how navigability should be evaluated, though in reality the Court may well have taken the presence of the meander line as a tacit invitation to declare the lake navigable. The treatment of this situation by the Court reveals the serious concern that it has for the proper protection of public rights, as demonstrated in the Anderson case of 1916, in which the Court deemed a lake that was subject to frequent and severe fluctuations in water level to be nevertheless navigable, in contrast to the lake that appeared in the Olson case of 1894, which the Court had deemed to be non-navigable, on the grounds that there was no evidence that it might ever refill and return to a useful condition. One might suspect that the Court would find the utter emptiness of Rush Lake in 1937 to be more directly comparable to the conditions of the Olson case, than those of the Anderson case, in which the specific history of the lake at issue was especially well known and documented, but in fact those two former cases actually stood on opposite sides of a great judicial divide, which the Court had no intention of crossing back over. The judicial trend toward enhanced protection of public rights of many kinds had found traction and gained momentum around the turn of the century, and the judicial perspective on navigability had been drawn along for the ride, into the modern era of advanced technological capabilities, so the influence of the Olson case upon the Court was limited, and the trend toward broadening the definition of navigability, which was well illustrated by the Anderson case, was destined to carry the day. The timing of this case, taking place as it did during the Dust Bowl years was also very likely critical to the outcome, since the Court may well have been cognizant that the extreme weather conditions made proper judgments on such matters practically impossible at this time, creating the possibility that skewed results drawn from this time period would be misleading to those reading case law in the future. Knapp and his legal team very wisely did not attempt to dispute any of the well recognized legal principles relating to either navigability or riparian ownership that the Court had previously adopted, instead they simply emphasized the public value of navigability, and maintained that the Court's prior decisions on navigability must logically be applied to Rush Lake, regardless of its dryness at the moment, knowing that the Court is always highly reluctant to allow public rights to be extinguished, leading the Court to



opine that:

*"the term "navigable" has been extended and includes waters that are not navigable in the ordinary sense ... whether or not waters are navigable depends upon the natural availability of waters for public purposes ... division of lakes and streams into navigable and non-navigable is the equivalent to a classification of public and private waters ... The state holds title to the bed of such lake or stream not in a proprietary capacity, but in trust for the people ... The owner of land bounded upon navigable waters has certain rights ... as incidents to the right of soil, itself contiguous to, and attingent on, the water. In such ownership they have their origin, and not out of the ownership of the bed ... Such owner has ... the title to the reliction caused by the gradual recession of the waters, and to the accretion caused by the deposit of sand, dirt, or sediment thereon ... Plaintiff contends that when waters recede so far as to be capable, no longer, of any beneficial use to the public, the lake is no longer public or navigable and becomes the property of the riparian owners ... temporary subsidence of the waters ... does not constitute reliction ... we cannot concede that temporary non-navigability divests the state of title to the lake bed ... plaintiff has acquired no vested or prior right to the portion of the lake bed ... in controversy."*

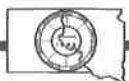
As can readily be seen, the Court was so intent upon protecting the public value of the water itself, even in it's complete absence, that the Court looked to the future as the primary justification for bestowing navigable status upon Rush Lake, instead of looking to the past, and assessing the historic navigability status of the waters in question at the moment of statehood, in accord with the federal test for title navigability, which requires that it be determined on an objective historical basis. Valuable land rights had become legally locked in place when each entryman obtained a patent, and also when each state came into existence, the Court realized, yet the Court had already taken the position that potential public use of waters is a valid factor, open to consideration, in deciding the troublesome question of navigability, as had many other states, and at this point there was simply no turning back from that established course. This public oriented view of the navigability determination process would gradually come to dominate riparian jurisprudence during the twentieth century, as the pressure to protect or even increase opportunities for public recreation sites to be opened ramped dramatically upward during the latter portion of the century, driven by major technological advances in modes of transportation. Drawing no distinction between navigability for purposes of inherently aquatic activities, such as boating, swimming and fishing, which take place in the water and are typically regulated, controlled or licensed, and navigability for title purposes, which implicitly stipulates utilitarian uses, that equate the

land beneath the water to the land beneath a public highway, the Court could not accept the lower court's decision in favor of Hillebrand and reversed it, declaring Rush Lake navigable, leaving Knapp free to harvest the bounty of it's bed. Adhering to the concept that the benefits to be derived from any bodies of water which can potentially support recreational activities are inherently public, and therefore justify protection through title navigability, first set forth by the Court in the Flisrand case 22 years earlier, as we have observed, the Court again circumvented the federal mandate specifying that navigability for title purposes is to be reserved for the beds of waterways which can be shown to have had demonstrable commercial value upon the arrival of statehood. The Court had effectively discarded the assessment of early historic use, or susceptibility to use at the moment of statehood, as requisite elements of navigability, in deference to the public trust doctrine, emphasizing the potential for future public use of any and all waters, distinctly contrary to the federal test for title navigability established by the United States Supreme Court, which in fact has very often been thus deviated from by the various states. Interestingly, here again the Court stated the right of riparian parties to remain in connection with water, but only if originally riparian, which highlights the fact that in the Walker case, just previously reviewed, Sorenson did not obtain the disputed portion of Section 23 on any riparian basis, he originally acquired it through adverse possession, it just happened to be situated in a riparian zone, which is why he was able to recover it under the doctrine of re-emergence, after it had become property of the state, when it was merged into the riverbed. The rationale of the Court in resolving this case was wise in one sense, as the Dust Bowl era ended during the 1940s and the lake did indeed return to existence, yet the idea that any lake that can disappear entirely, even under extreme conditions, can be properly classified as navigable is highly questionable, leading one Justice to dissent from the direction chosen by the majority in ruling that no reliction was manifested even in the bone dry lakebed. Still, the wisdom of the Court invariably prevails, as Rush Lake did in fact survive the rigors of the Dust Bowl, and it remains a viable aquatic resource today.

#### **Does the doctrine of re-emergence apply to islands? Waldner v Blachnik (1937)**

Less than a month after the conclusion of the Hillebrand case, which we have just reviewed, the Court found itself called upon to deal with riparian boundaries once again, this time in the context of an island, for the first time since the Flisrand case of 1915. The circumstances of this controversy were very different from those presented by the Flisrand case however, which as will be recalled featured a relatively small unsurveyed island situated in a lake, and the primary issue in play on that occasion was the navigability status

*(Continued on Page 26)*



of that body of water. By contrast, the source of the dispute that resulted in the case we are about to review is the obstreperous movement of the mighty Missouri River, which in times of peak activity, prior to coming more or less under human control, routinely created and then destroyed untold numbers of islands, such as the one in focus here, which was deemed to be large and stable enough to be surveyed and platted by the GLO. Although detailed analysis of GLO plats is outside the scope of this book, its notable that the 2 original plats of this township provide an interesting view of the treatment of islands during the early surveys, as the first plat indicates the existence of the island, but only as an amorphous shape, while the second plat documents the completion of 3 partially surveyed sections that reach across the river channel and extend onto the island, as well as the initial surveys of those parts of 5 other sections that contain no land beyond the island. Once an island is thus platted into riparian lots for conveyance to private parties, the same riparian principles and rules that apply to such platted land elsewhere become generally applicable to the island, and the Court expressly acknowledges that on this occasion, in recognition of the fact that the owners of islands which were identified as potentially productive land by the GLO deserve the same protection afforded to all other PLSS entrymen and their legitimate successors. Beyond merely extending the basic concept of accretion to islands however, the Court takes the additional step of explaining that either accretion or reliction can form a boundary between tracts that are situated on opposing sides of a river channel, when the channel gradually ceases to flow, as the last drop of water that completes it's journey down the full length of the defunct channel, prior to the channel's closure, traces the new boundary, at the meeting place of the 2 converging masses of accretion. Although the outcome of this conflict is ultimately inconclusive, and somewhat unsatisfying in that regard, due to a lack of survey evidence, which the litigants and their counsel apparently failed to realize would be required to point to any specific location as a justifiable boundary, the Court stipulates that any resulting boundary would be impacted by the doctrine of re-emergence, most diligently championed by the Court, ever since the Allard case brought it to the Court's attention in 1918. The Court's intense desire to maintain the integrity of original PLSS boundaries, as established by the GLO, we learn here, extends even to effectively perpetuating the lifespan of platted islands, once they have been swept away or fully submerged, upon the subsequent appearance of another body of land, arising to occupy the originally platted location.

**1861** - The GLO surveyed and platted a certain township through which the Missouri River runs. The river flows in a southeasterly direction through this area and there were some large islands in the river in this area at this time, which were shown in a rough form on this plat, but they

were not surveyed, so no government lots were created on any of the islands by this plat.

**1863** - A different GLO surveyor performed the subdivision of the largest island in the township, producing another plat, which covered parts of 8 sections, and numerous riparian government lots were thereby created upon this island. The upstream end of the island was located in the northwest quarter of Section 19, and 5 government lots were platted in that section, 3 of which were situated along the northerly edge of the island, across the north river channel from the riparian lots that had been platted in 1861 along the south edge of Section 18, as the entire line between Sections 18 & 19 fell within the north channel of the river. The river was apparently in a high state of flux at this time however, and the island was evidently undergoing constant change, because the overall shape of the island was distinctly different at this time from what it had been just 2 years earlier. There is no indication that anyone had yet settled on or near this island at this time.

**1870** - Settlement of this area began, and a townsite was surveyed and platted in the southeast quarter of Section 13 in the next township to the west, just a few hundred feet northwest of the northwest end of the platted island. A levee was built along the north edge of the river in the southeasterly portion of Section 13 to protect the townsite, and both the town and the island came to be known as Bon Homme.

**1881** - By this time, a substantial amount of the northwest end of the island had eroded away, and accretion to the north bank of the river had extended Sections 13 & 18 an unspecified distance to the south.

**1900** - Blachnik acquired an unspecified number of the lots that had been platted in the townsite lying along the north edge of the levee. How Blachnik used his lots, if he used them at all, is unknown, but no one else ever used any portion of the levee or any of the accreted land that had developed along the south edge of the levee, directly south of Blachnik's lots.

**1901 to 1936** - At an unspecified time, presumably during the early part of this period, the north river channel filled with sediment and closed, joining the island with the lands lying to the north of it. Whether or not the island had been settled or acquired by anyone prior to becoming attached to the north bank is unknown, but at some point in time, presumably toward the end of this period, the Hutterische Society evidently acquired the northwesterly portion of the island, if not the entire island. By the end of





this period, Blachnik had been using all of the accreted land lying directly south of the levee for over 30 years, harvesting trees from that area, presumably for firewood, and after the channel had closed, his activity had apparently extended southeast into the area formerly covered by the northwestern tip of the island, at the time it was platted. Waldner, who was a trustee of the Society, accused Blachnik of cutting trees that belonged to the Society, but Blachnik evidently disagreed and refused to cease his use of the area, apparently unconvinced that the area being claimed by Waldner was part of the former island, so Waldner filed an action against Blachnik, seeking damages for the trees that Blachnik had cut, and seeking to quiet title in the Society to the land lying between the former island and the levee, on the basis that it was accretion to the island.

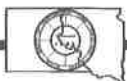
Waldner argued that since the levee had been constructed, and since it represented a public structure, and Blachnik had never acquired the land that was occupied by the levee, the land rights of Blachnik ended at the north edge of the levee and his land had never extended down to the river, therefore Blachnik was not entitled to any of the accretion that had developed south of the levee, nor was he entitled to any portion of the former river channel, so all of the land between the levee and the former island had legally become attached to the island. Waldner further argued that since Blachnik did not own the levee, none of the accretion was directly connected to Blachnik's land, so he could not successfully claim adverse possession of it, therefore Blachnik had acquired nothing by virtue of his use of the area south of the levee, and in addition, Blachnik was liable to the Society for all of the trees he had cut in that area. Blachnik made no effort to prove that his title, as originally acquired, included or extended beyond the levee, he argued instead that he had acquired title to all of the land that he had been using south of the levee based on adverse possession, regardless of whether the land in that area represented accretion or was part of the platted island itself. The trial court declined to accept Blachnik's assertion of adverse possession and quieted title to all of the land in controversy south of the levee in the Society, as requested by Waldner, while also awarding the damages against Blachnik that Waldner had requested, for all the wood that Blachnik had harvested from the area south of the levee.

At the outset, it should be noted that the lack of historical information presented by the litigants in this case shows just how difficult it can often be to obtain potentially key evidence in riparian boundary disputes, as well as boundary cases of other kinds, and the Court very much appreciates that difficulty, making it an important factor in the Court's use of adverse possession as a means of boundary resolution, even where no title conflicts exist, as previously noted in our review of earlier cases. In this instance however, the Court did not find it

necessary to address Blachnik's adverse possession claim in order to resolve the matter at hand, because he was the defendant, and the initial burden of proof always falls upon the plaintiff, not to conclusively prove that his allegations must prevail, but merely to show that a genuine issue has arisen that needs to be resolved, and that the resolution of that issue in the plaintiff's favor could be justifiable, either in law or in equity. This legal hurdle faced by all plaintiffs is typically a fairly low one, and it does not often prevent a plaintiff from proceeding to develop a potentially successful land rights case, but in situations such as the one seen here, in which the relevant evidence covered a period of 75 years, during which time the use of the land at issue was very minimal, and the boundaries in question were in a state of constant flux, that hurdle can become a serious obstacle to a plaintiff's chances of success. Waldner made at least 3 critical mistakes in that regard, he failed to present any evidence of any kind of use of any of the land that he was claiming by any of his predecessors, he failed to present any expert witnesses to testify concerning the dramatic changes in the configuration of the island, the accretion, or the river itself, and perhaps most importantly, he failed to obtain a land survey, which would have illustrated to the Court where the original boundaries of the island in question, as they had been platted by the GLO, were actually located on the ground. Blachnik did not bring a survey into Court either of course, but that was no handicap to him, because the legal burden was on Waldner, as the party who was asking the Court to quiet title to a specific area, to provide evidence that the boundaries he was seeking to have judicially confirmed had some legitimate basis, and without a survey, this turned out to be impossible for him to accomplish. Since Waldner's claim was based solely upon the record location of the original island, and he had no basis for any claim through occupation or use of any of the land in controversy, in order to prove that his rights to the land that had once comprised the extinct river channel were potentially superior to those of Blachnik, he needed to present not only evidence of where the boundaries of the platted island had been, but also evidence showing that the land he was claiming as accretion had actually attached to the island, rather than the shorelands. Before Waldner could successfully attack Blachnik's use of the contested area, the Court stated, minimal though Blachnik's use was, Waldner had to demonstrate some degree of validity in his own assertions of ownership, and the Court concluded that his title to certain portions of the island alone, was entirely insufficient to support his allegations of ownership extending beyond the platted boundaries of the island, because it could not be presumed that any portion of the abandoned channel had accreted to the island.

*"where a tract of land that is riparian to a river is completely washed away and is restored when the river thereafter receded, the land belongs to the original owner. We believe that such principle*

*(Continued on Page 28)*



*applies where an island is washed away in whole or in part and then reappears ... The owner of an island is entitled to land added thereto by accretion ... The fact that accretions to the island and to the mainland eventually meet affords no reason for varying the ordinary rule that accretions belong to the land upon which their formation begins, and from which it extends. The line of contact becomes the boundary line between the respective riparian owners ... the accretions to the island and to the mainland have met ... Blachnik has been in possession ... for more than 30 years ... Plaintiffs are asserting no title by possession ... there was a restoration of land within the original boundary of the island and ... accretions thereto. It is not possible with any reasonable accuracy to ascertain the quantity of the accreted land, or the boundary or line of contact between the accretions to the island or sand bar and the mainland ... plaintiffs ... established no title to accretions in themselves."*

Purely through his own failure to present sufficient evidence to properly illustrate the scenario being adjudicated well enough to have a persuasive effect in his favor upon the Court, Waldner had lost his opportunity to not only secure the boundaries of the island as originally platted, but also to quiet his title to the centerline of the former north river channel, and quite possibly beyond, if he had been able to present evidence showing that the line of contact was actually closer to the shore than to the island. So even though the actual conditions on the ground very likely supported Waldner's claim to at least some significant extent, and the location of the line of contact, which was the crucial missing piece of information, in the view of the situation taken by the Court, could very likely have been discerned with reasonable certainty on the ground, and accurately shown on a survey, making a convincing presentation for Waldner's use in this litigation, the Court found itself compelled to reverse the lower court decision in Waldner's favor. The legal effect of this result, the Court indicated, was that the litigation had accomplished nothing, because title to the area in dispute could not be quieted in Blachnik either, since he had not proven adverse possession, nor had he proven that he was entitled to any portion of the extinct river channel as accretion, but since Waldner had proven nothing, the Court struck down the damage award, on the basis that Blachnik's use of the accreted land must be presumed to be justified, until such time as the contrary had been shown. Nonetheless, despite the hollow outcome of this case, which left both parties very much uncertain as to the actual extent of their ownership rights on the ground, due to their own negligence in gathering satisfactory evidence or obtaining support from professionals who could have supplied key testimony, the Court did take advantage of this opportunity to enumerate and adopt 3 important riparian boundary principles pertaining to

islands. First, the Court acknowledged that the fundamental riparian principles of accretion, reliction and erosion apply equally to islands as to all other kinds of land, so islands can, and obviously do, often shrink or grow, sometimes very dramatically, through the operation of these elementary riparian boundary principles. Second, the Court pointed out that islands do not merge with shorelands, or with other islands, as a result of either accretion or reliction, so the disappearance or extinction of any stream or river channel does not operate to destroy or eliminate existing boundaries, it merely cements the previously mobile boundary in place, locked down in perpetuity at the location where the last active water ran, which as we have seen, the Court denominates as the line of contact, meaning the line up to which the opposing land rights extended, in following the receding water. Lastly, the Court decided that the doctrine of re-emergence must be treated as absolute, so it applies wherever PLSS boundaries exist, and it applies equally to platted islands as to all other platted land. Interestingly, given the position on re-emergence taken here by the Court, if a platted island in a navigable river were to be entirely submerged by river action, and a different island were to subsequently arise from the river in a nearby location, and the new island then grew by accretion or reliction until it covered the platted location of the extinct island, ownership of the portion of the new island lying within the platted island location would be lost to South Dakota, and restored to the last private owner of the extinct platted island, or the heirs thereof.



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