



Landon Blake is currently project manager and project surveyor for a small civil engineering and land surveying company in California's Central Valley. Licensed in California and Nevada, his many activities include speaking and teaching at group conferences around the state.

A Review of *Knapp vs. Hughes*

In this installation of Footsteps we'll briefly consider a boundary dispute between two residential property owners in New York State. This case has interesting lessons for the boundary surveyor on land description interpretation and on water boundaries.

Before we can examine the legal questions raised in the case, we need to take a look at the timeline for the events related to the case and look at the language contained in the land descriptions involved in the dispute.

Timeline

1968: Furlano received a deed that conveys land "along the edge of Perch Pond".

1973: A deed from Furlano to the Knapp's predecessor in title is recorded.

1993: A deed from Furlano to the Hughes for "all remaining lands" not conveyed to Knapp's predecessor is recorded.

????: Knapp seeks legal action to prevent Hughes from using the pond.

2006: A preliminary court decision in favor of Knapp, and barring Hughes from using the pond, is issued.

The Deed Land Descriptions

The 1968 deed's land description to Anthony Furlano contains the call "along the edge of Perch Pond". The grantor further conveys "...any rights he may have in and to the lands under the waters of Perch Pond which bound and abut onto the lands herein conveyed."

The 1993 deed's land description contained the first statement "along the edge of Perch Pond", but without the second statement also conveying rights to the land under the waters of Perch

TIMELINE	
1968	Furlano receives property by deed.
1973	A deed from Furlano to the Knapp's predecessor recorded.
1993	A deed from Furlano to the Hughes recorded.
????	Knapp seeks legal action to prevent Hughes from using Perch Pond.
????	A Dispute arises between Nicoll and Rudnick over water supplied by the ditch.
2006	A preliminary court decision in favor of Knapp issued.

Pond. The land description did contain a statement intending to convey "all remaining lands of the grantors".

The Legal Issues

The legal issues to be decided by the appeals court in this decision were:

- Was the statement about the land under Perch Pond included in the Knapp deed but missing from the Hughes deed significant?
- Did Hughes have the right to use Perch Pond?

The Court's Decision

The court states there is a presumption that a purchase of waterfront property includes the adjacent underwater land. The party conveying waterfront property has the right to restrict their conveyance to only the upland on the dry side of the shore, but this

is requires very plain and obvious language in the deed or land description.

Several previous court cases are discussed in this court decision. In these previous cases small changes in the wording of deeds were interpreted to exclude the underwater lands adjacent to the waterfront property from the conveyance.

The appeals court in this decision, however, overturns this precedent. It said: "...we conclude, however, that this and similar dictums were mistaken."

That is a powerful statement.

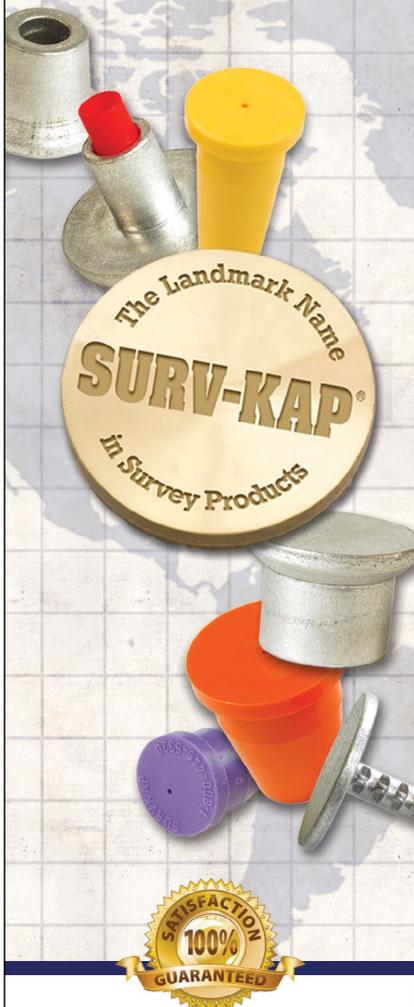
The court went on to explain that adjacent underwater lands are included in the conveyance of waterfront property unless:

- The deed contains a clear and explicit reservation of those lands.
- In unusual cases when the type of conveyance and circumstances around it show the opposite intent.



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Questions

This court decision leaves us with these interesting questions:

- Why was the language regarding the land under the pond that was contained in the deed to Furlano dropped in the deed to Hughes? Was this exclusion intentional, or accidental?
- Was the language in the deed related to Perch Pond created by a land surveyor as part of the land description, or by an attorney as part of the deed “jacket”? Which professional removed it from the Hughes deed?
- Where would the court have us put the division line between Hughes and Knapp under the pond? The court is absolutely silent on this survey problem in its decision.
- Can Hughes legally use the pond only on his side of the property boundary, or does the pond have some sort of special “common area”? Are both property owners free to enjoy the entire surface of Perch Pond?

Lessons

What are the lessons we can learn from this boundary dispute and the related court decision?

- What we put in and take out of a land description or deed is very important. The removal or modification of a single phrase can have large implications for the property owner and his or her neighbors. If a land surveyor was involved in the preparation of the Hughes deed, and he failed to catch the omission of the statement regarding Perch Pond, he failed to protect his client.
- We need to be very careful when dealing with water boundaries. This extra caution is needed because water boundaries add a difficult layer of complexity to land use issues and boundary surveying.
- There is value in a good chain of title for boundary surveying work. Although the changes in the land title industry previously described in this column make it more difficult to obtain a good land title chain, its value was evident in this case. The court needed to consider the prior transactions and adjacent land transactions to come to its conclusion in this case. *A*