

feedback

The Fading Hand Writing on the Wall

Great article, my grandson just informed us that they are not instructed to write or read cursive in school. Seems like there is going to be a need for people that can decipher Cursive Documents. Might be a good retirement job.

Ed Hulseberg, CPE
Via the Internet

RE: Feedback to Chaos, Confusion, and Carelessness

In Mr. Pallamary's recent article, he seeks to bolster the position he put forth in The Supreme Court Introduces Confusion and Conflict (March, 2015) and dismisses my discussion of the subject in November's TAS (What Conflict?) as making "no substantive contribution to addressing the problems". If what he meant to say was that I did not contribute to correcting the problems he imagines are insurmountable, then he would be correct, but I certainly did address them. Perhaps he believes that dismissing an opposing opinion as non-substantive is a way to avoid addressing the substance of the points made. I believe that TAS readers are intelligent enough to detect avoidance of direct discussion.

Mr. Pallamary seems to have missed the central point—the problems with the description aren't nearly as substantive as Mike has and continues to suggest. He continues to assert that the description is unusable unless one applies "tortured survey procedures". I'd like to know what those procedures are because those employed at the California State Lands Commission are pretty straightforward.

Mike provides a good definition of precedent (*stare decisis*), but doesn't explain how it applies to principles found in this decree. In his March 2015 article, he suggested that the decree set a precedent of placing coordinates above monuments, and that in fixing the offshore boundary, somehow that fixed the onshore boundary. He doesn't connect his explanation with what precedent is with his previous assertions.

Part of the definition Mike provides demonstrates that no precedent could be found in this decree: "A case which establishes a novel legal principle to a certain set of facts, coming to a certain conclusion, and which is thereafter authoritative, to be followed from that point on, when similar or identical facts are before a court."

What were the facts? The federal and California state governments came before the Court pursuant to §1301(b) of the *Submerged Lands Act* to have their boundary line agreement approved. §1301(b) prescribes that an offshore boundary by agreement will be fixed by coordinates under a final decree by SCOTUS. No novel legal principles involved. The facts are so specific that there is only one possible application of the statute that addresses the facts. No opinions needed or offered by SCOTUS.

Mr. Pallamary cites the letter from AAGS, ASPRS, NSPS, GLIS, and ASCE GMD to bolster his positions, ignoring that their letter was likely in reaction to the alarm he sounded. I hope that after considering the nature of the boundary in question, its use, and the actual amount of uncertainty in re-establishing the points, they would realize the cause for concern isn't nearly so great as they were first informed.

Mike cites the letter as to positional accuracies of the original coordinates. OK, so the resultant line would be 3 nautical (geographic) miles, or 5556 meters, ±23 meters from the mean lower low water mark. The *Submerged Lands Act* does not state that the line fixed by coordinates must be *exactly* 3 geographic miles from shore, but in fact acknowledges that it would be more or less. Once the coordinates are established and reflected in a SCOTUS decree, they control the boundary. The shoreline continues to move but no longer controls the offshore boundary. Nor do the coordinates control any boundary other than the offshore boundary.

The actual positional uncertainty in establishing the coordinates today is that which would result from not knowing the datum epoch, or up to 1.4 meters. A little

research to determine the correct epoch removes that uncertainty as well.

We all agree that the description could have been written better. Had State Lands surveyors been given the opportunity to review, it undoubtedly would have been less confusing. Not every deed containing ambiguities requires correction. Correcting a deed requires the consent of the affected parties and filing at the County Recorder's office. Fairly simple. Even so, it's generally only done when the description is so defective that a competent surveyor cannot locate it.

To achieve the corrections that Mr. Pallamary insists are necessary, it would need to be taken back to SCOTUS. That entails great time and expense for each of the agencies involved. It would also be necessary to show that the description contained in last year's decree is utterly unusable. Since there are surveyors at California State lands, the BOEM and other federal agencies, and working for the energy and resource companies that hold leases who are able to work with these coordinates, proving the description unusable would be very difficult at best.

Mike, I responded the substance of each of your points, even those which did not appear to be well considered. Your article may have had more meaning if you had the courtesy to address the points in the article rather than avoiding them altogether. I really did like the photo you provided with the article, although it might have even been better with a wooden grade school ruler and a jar of Elmer's paste instead of a scale and Scotch tape.

Evan Page

Rebuttal

I am chagrined, again, to find myself responding to an article I wrote some time ago, relating to problems I saw in a recent decree issued by the Supreme Court of the United States (SCOTUS).

Prior to drafting this article, and out of courtesy, I contacted the California State Lands Commission (CSLC) to seek their input as I felt their concerns would merit

consideration, particularly given the fact that they were involved with the preparation, review and approval of the SCOTUS decree. Lamentably, my overtures were rejected as I was informed, the CSLC had no interest.

After I published my article, I was subjected to an endless stream of criticism from the CSLC including the absurd and extraordinary assertion that I had the ability to influence a large number of independent organizations by raising a flag of alarm. It sure would be nice to have such power and influence.

As can be seen in the never ending “rebuttals” by my colleague, Mr. Page speaking on behalf of the CSLC, they are of the opinion that they have been dealt with unfairly. I am merely a messenger. Indeed, to the extent that a simple person like me could cause such trauma for the CSLC is either a declaration of strength or one of weakness, depending on which side of the boundary one stands. Such an admission is absurd and unfounded. As I have stated several times, since TAS published my article, an overwhelming number of surveyors from across the country, from both the public sector and private sector have contacted me to express support for my position and the merits of the concerns I raised.

Mr. Page is the only person who has criticized me and my article.

Without belaboring the merits of the decree, once again, as is evident, there are a few points I would raise. I will preface my rebuttal as it were by noting it is not my intent nor is it my desire to enter into a debate founded on the notion that one's ego or intellect has been impugned. I am sorry but the Emperor rides, on occasion, sans his garments, through the village.

It is clear and undisputed that the work done on the decree is defective, deficient, deplorable, and destitute. At the risk of incurring the wrath of those in the public sector, many of which are quite competent and capable, there are certain public agencies where the old adage, “Close enough for government work” applies. This appears to be the case.

I have been in the private sector for 45 years and in my experience, it has never been acceptable, nor will it ever be acceptable to perform such shoddy work. Indeed,

there is no excuse to defend work like this. It is simply inexcusable.

Over the years, I have employed a great many people and I can assure you if a person in my employ prepared something like this, I would discharge them. A more matured course of action would be to do as my mother taught me. When you make a mistake, you stick your hand up, and let everyone know it was you and then you correct it. It is that simple. To continue on this path is embarrassing and I, for one will be moving on. The CSLC should do the right thing. There are plenty of garments for the Emperor to don.

-Mike Pallamary

Addressing questions in *The U.S. Supreme Court Introduces Confusion and Conflict in Boundary Law*, by Michael J. Pallamary, PS

I have been the Chief of the Bureau of Ocean Energy Management's (BOEM) Mapping and Boundary Branch since 2010. I was directly involved in the efforts that ultimately resulted in the immobilization of California's Submerged Lands Act (SLA) boundary. Specifically, I provided technical assistance during the preparation of the draft supplemental decree presented before, and ultimately adopted by, the Supreme Court of the United States.

In March 2015, *The American Surveyor* published an article titled *The U.S. Supreme Court Introduces Confusion and Conflict in Boundary Law*. In it, the author, Michael J. Pallamary, posed several questions regarding the method by which California's SLA boundary was permanently immobilized. BOEM is currently working with other states towards fixing their respective SLA boundaries and, because of it, has decided to post a more complete description of the legal and technical processes by which California's SLA boundary was permanently immobilized. The document - which benefited from the technical and historical input of Richard Naito, a BOEM cartographer who worked on the California SLA boundary project in the 1990s, provides a useful account that can be shared with a wide audience.

To the readers of *The American Surveyor* who read the first article, and/or the June 2015 article by Chuck Karayan, PS, titled *U.S. Supreme Court Reduces Confusion and Conflict in Boundary Law*, and/or the November 2015 article by Evan Page, PS, titled *Conflict? What Conflict?*, I now invite you to read the BOEM position paper, titled *Fixing California's Submerged Lands Act Boundary: A Federal-State Success Story* which can be found on the BOEM website at: www.boem.gov/Boundary-Policies-and-Procedures.

Last, but not least, in my official capacity as the Chief of the Mapping and Boundary Branch for BOEM, I would like to thank Mr. Pallamary for writing the article and acknowledge the editor and staff of *The American Surveyor* magazine for recognizing the importance of this subject.

Douglas L. Vandegrift
Chief, Mapping and Boundary Branch
Bureau of Ocean Energy Management



Editor's note: On behalf of the magazine, we applaud Mr. Vandegrift for responding to the article written by our staff writer, Mike Pallamary. Mr. Vandegrift's reply provides the surveying community with some much needed explanations with regards to how California's boundary line is to be determined, these being the crux of Mike's concerns.

We here at the magazine take great pride in bringing issues such as this forward as it indeed has merit, and is of great importance to surveyors across the country. We are particularly pleased that because of Mike's insight into this problem, the Bureau of the Ocean Energy Department will be implementing new procedures as it moves forward in defining the federal government's common boundary with other states across the Union.

As always, *The American Surveyor* encourages thoughtful commentary and welcomes articles of a similar nature.

Got some feedback?

Contact us via www.amerisurv.com, or send a letter to: The American Surveyor, P.O. Box 4162, Frederick, MD 21705-4162. We reserve the right to edit letters for clarity and length. ■