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Congressional Land Actions

While there are times we complain that government gets in our way, at other times Congressional intervention may be the only means of resolving land problems. While checking a bill on the Library of Congress website recently, curiosity drew me to some other bill summaries that included references to “land” and “boundaries”, words that are a magnet to any surveyor.

One of them made me pause to contemplate the extreme measures necessary to correct some problematic surveys. Apparently the Bureau of Land Management uncovered errors in a private 1960 survey while conducting its own survey in November 2007, errors that affected about 27 residents of the Mountaineer Subdivision in Arizona who suddenly became aware that improvements to “their land” were actually built on federal land. As a result, Representative Paul Gosar introduced House Resolution 1038 on March 11, 2011, summarized as follows: “To authorize the conveyance of two small parcels of land within the boundaries of the Coconino National Forest containing private improvements that were developed based upon the reliance of the landowners in an erroneous survey conducted in May 1960.”

The bill itself is, as of this writing, still awaiting approval. During Subcommittee Hearings, in December 2011, testimony by Matt Ryan of the Coconino County Board of Supervisors and Gregory Smith, Acting Deputy Chief of Staff of the US Department of Agriculture, shed light on the situation leading to the proposed legislation. Ryan noted



that the 1960 survey misidentified the boundaries of the State Forest, a discrepancy that impacts 26 properties and 27 property owners. While the cumulative area of encroachment encompasses less than 3 acres, in some instances the correct boundary goes through houses, and those homeowners trying to sell their lands since the revelation of the error have been facing difficulties due to questions about ownership. Smith’s testimony was similar, although he stated that 19 properties were affected with a cumulative 2.67 acres of encroachment. Smith noted that while the United States Forest Service (USFS) does have the right to transfer land title under the “Small Tracts Act” (see *16 USC 521c et seq.* for details of how USFS can sell tracts of less than 40 acres), the process outlined in Representative Gosar’s bill would be a quicker and more efficient remedy.

The proposal is for a legal entity representing these homeowners to pay \$20,000 to the Secretary of Agriculture (which encompasses USFS) in exchange for clear title to the clouded 2.67 acres. The Secretary would then use these funds to acquire other lands in Arizona to add to the National Forest System.

Why all this legal activity over two small parcels that have been privately used for over 50 years? Here is where our understanding of adverse possession comes into play: public lands that are held and used for public purposes are not subject to adverse possession claims by private individuals or entities. Certainly national forests fall into the category of publicly owned and publicly used property. Because the system of national forests and parklands was created by Congress and is under Congressional protection, unless there

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Lathrop, continued from page 56 is legislation (also by Congress) that permits federal agencies to dispose of those lands, the final recourse is another Congressional action to do it directly.

How often does Congress become involved in such private land matters? The answer is: probably more often than we are generally aware of. Nearly every session of Congress hears at least one if not multiple proposals for changes in boundaries of one sort or another, or for changes in jurisdiction. The 111th session of Congress (2009–2010) became embroiled in hearings about the federal government's reversionary rights in about 60 acres in Salt Lake City, Utah. This land was the subject of prior Congressional action in January 1909, when it was conveyed to the Mount Olivet Cemetery Association. Prior to that, Congress had authorized the Secretary of War first to set aside land at Camp Douglas in Salt Lake City (1874) and the Secretary established regulations regarding its use in 1877. After the 1909 Act, Congress allowed non-government use of the premises in 1914 when it


granted a railroad right-of-way over the cemetery land "so far as the United States is concerned", and "authorized" the Association to sell a small portion of the cemetery land to the City of Salt Lake to expand a road bordering the cemetery. In 1952, Congress waived its rights to reversion from the 1909 Act, provided that the City use the land for street or highway purposes.

Falling on lean times, the Association leased 15 acres to Salt Lake City Board of Education in 1993 for use as a football stadium, and the following year leased another portion of its lands to Careage, Inc. to build a skilled nursing facility. At this point, Salt Lake City objected, claiming that in light of restrictions on the premises, the only allowable uses were open space or recreation. Careage, Inc. then declined to develop its facility due to opposition. Another year later, the City's zoning restrictions became effective, designating the Association's property as open space.

But the Association claimed that it was beyond local regulation and restriction due to federal interests in the land, referring to prior reversionary rights, and

ended up airing its arguments (unsuccessfully) before the US Court of Appeals for the 10th Circuit in 1998 (*Mount Olivet Cemetery Association v. Salt Lake City*, 164 F. 3d, 48). The Association clearly owned the land, and possible future federal interests didn't make it federal property beyond the reach of local regulation, particularly when there was no conflict between federal and local laws.

Congress once again became involved: As a result of this litigation, *Public Law No. 111-168* of 2009 (also known as *124 Stat. 1190*) directed the Secretary of the Interior to convey the federal reversionary interests arising from the Act of 1909 to Mount Olivet Cemetery Association if the Association offers to acquire it within one year of an appraisal of the premises.

Remembering that most members of Congress are not familiar with real property law, we should closely monitor and comment on proposals affecting land rights that come up for hearings. Our expertise and professional insight can thereby affect those land actions undertaken by our Senators and Representatives. 

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