



Utah Boundary Law

Through the Lens of an
 Attorney/Surveyor 

Mark Gregersen

Utah State Bar, Real Estate Section

Thursday, October 18, 2018

Alta Club, Salt Lake City

© 2018 Gregersen Law
no claim of copyright to images, drawings, and quotations

Biography of Mark Gregersen

- Graduate of B.Y.U. Law School, and licensed Attorney in Utah (1994) and California (1989 inactive).
- Graduate of S.L.C.C., and licensed Professional Land Surveyor (2004).

- Contact information:

Mark Gregersen
Gregersen Law
8 E. Broadway, Suite 338
Salt Lake City, UT 84111
801-747-2222

To learn more about
Boundary Law, visit resources
at the Boundary Law Library:

www.boundarydispute.com

Today's Goals:

- Help you understand boundary law.
- Help you work with land surveyors.

Road Map

1

Follow the Footsteps

2

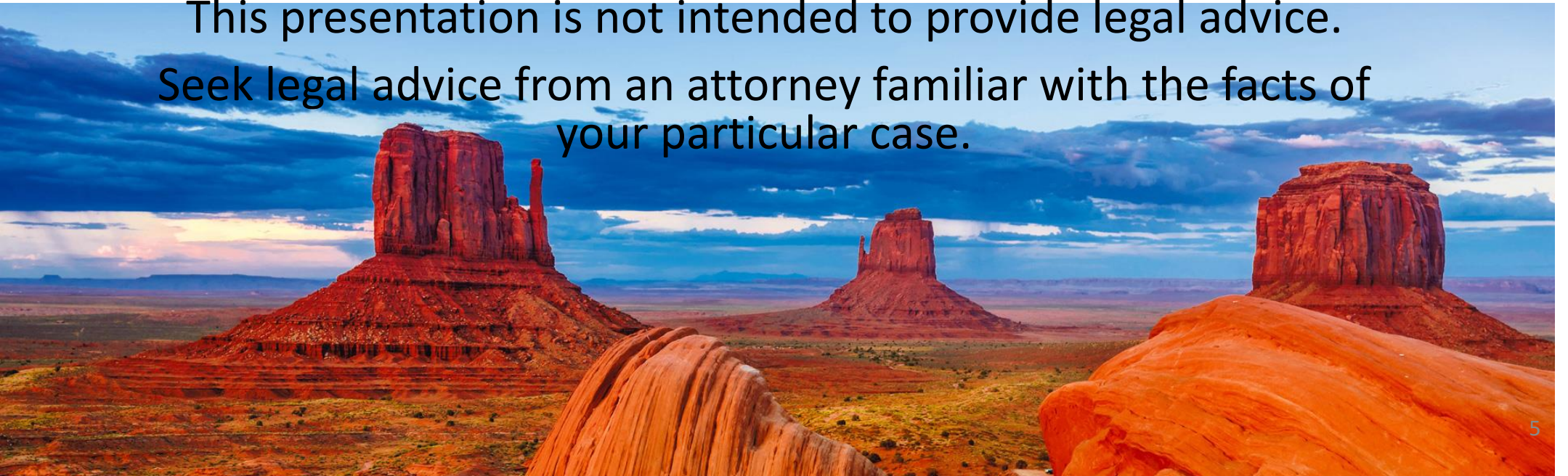
Dinosaur Bones

3

Is the Fence the
Boundary?

I am not your attorney nor land surveyor

This presentation is not intended to provide legal advice.
Seek legal advice from an attorney familiar with the facts of
your particular case.



My Journey into Surveying and Boundaries

- BYU Law School 1988: no instruction in boundary law.
- Ventura, CA 1989: writing threatening letters. Not know to hire surveyor.
- UT 1997: boundary law class from a land surveyor. Then other classes.
- 2001: surveying exam, 14 hours over 2 days. Lots of trigonometry.
- 2004: license, after showing 4 years' experience.

①

Follow the

Footsteps

Your client has a dispute, as to a boundary created by a 1906 deed, in which the Grantor has preserved the legal description.

41

STATUTORY FORM—WARRANTY DEED.

Entry No. 216240

WARRANTY DEED

Maggie B. Thomson grantor
of Salt Lake City, County of Salt Lake, State of Utah, hereby CONVEYS AND WARRANTS to Josephine Christensen
grantee of Salt Lake City, Utah,
for the sum of Eight Hundred and Fifty DOLLARS,

Commencing at the South West corner of the North West 1/4 of Section Thirty-five (35) Township One (1) South Range Two (2) East, Salt Lake Meridian, and running thence East Eighty (80) rods, thence North to the South line of County road, Thirty-four (34) rods more or less, thence Westerly along the South line of said County road Eighty-(80) rods more or less to a point direct North of the point of beginning, thence South to point of beginning Twenty-eight (28) rods more or less, containing about Fifteen (15) Acres of land.

WITNESS, the hand of said grantor, this Seventeenth day of December, A. D. nineteen hundred six.
Signed in presence of
James M. Smith }
Maggie B. Thomson

STATE OF UTAH, }
COUNTY OF Salt Lake } ss. On the seventeenth day of December A. D. nineteen hun-
dred six, personally appeared before me Maggie B. Thomson
the signer of the above instrument, who duly acknowledged to me that she executed the same.

My commission expires April 18th 1909
James M. Smith
Notary Public.

Recorded at request of James Thomson,
in Book "7-M" of Deeds and Transfers, page 41, Records of Salt Lake County, Utah. Abstracted in D2, page 188, line 7.
Recording fee paid 70¢. (Signed.) P. O. Perkins, Recorder, Salt Lake County, Utah.

By L. P. Palmer, Deputy.

See Section 1322 of 1917 U.S.C. in 73, page 414.

Today there is Survey-grade **GPS**,
to measure locations precisely



Can we combine these,
to precisely locate the boundary?

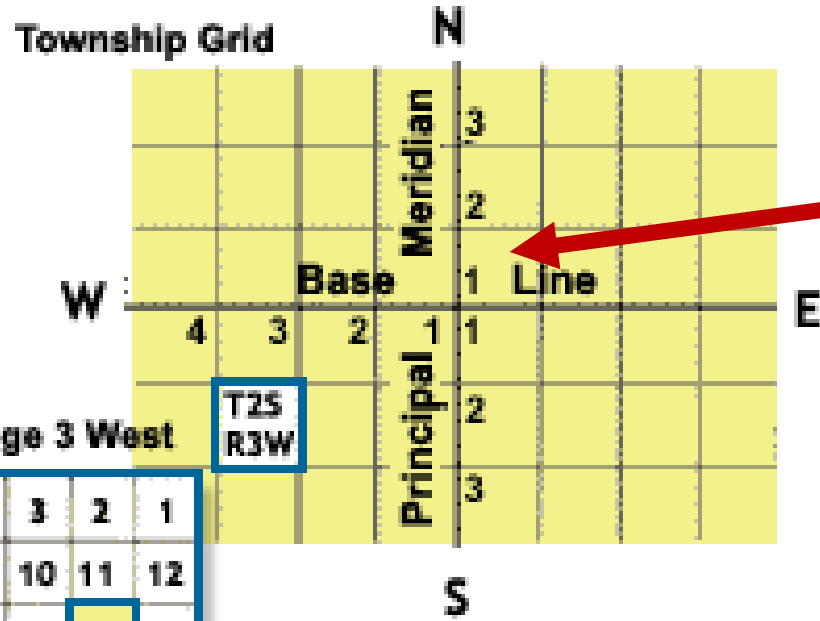
1906 Description

Commencing at the South West corner of the North West 1/4 of Section thirty-five (35) Township One (1) South Range Two (2) East, Salt Lake Meridian, and running thence East Eighty (80) rods, thence North to the South line of County road, Thirty-four (34) rods more or less, thence Westerly along the South line of said County road Eighty (80) rods more or less to a point direct North of the point of beginning, thence South to point of beginning Twenty-eight (28) rods more or less, containing about Fifteen (15) Acres of land.

GPS



Public Land Survey System (PLSS)

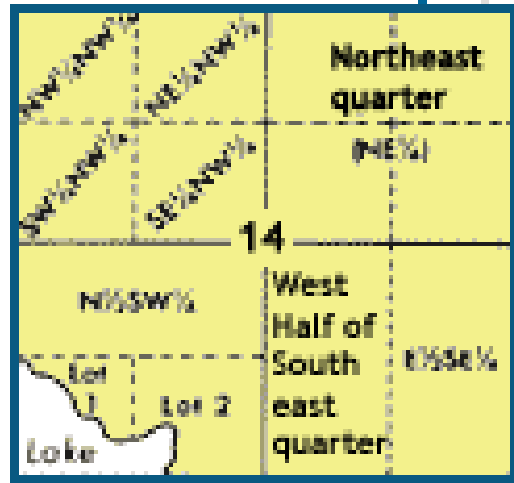


Township is Big Square.

Township 2 South Range 3 West

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
30	21	22	23	24	
9	28	27	26	25	
2	33	34	35	36	

Section 14



Section is Little Square.

Illustration from National Map website.

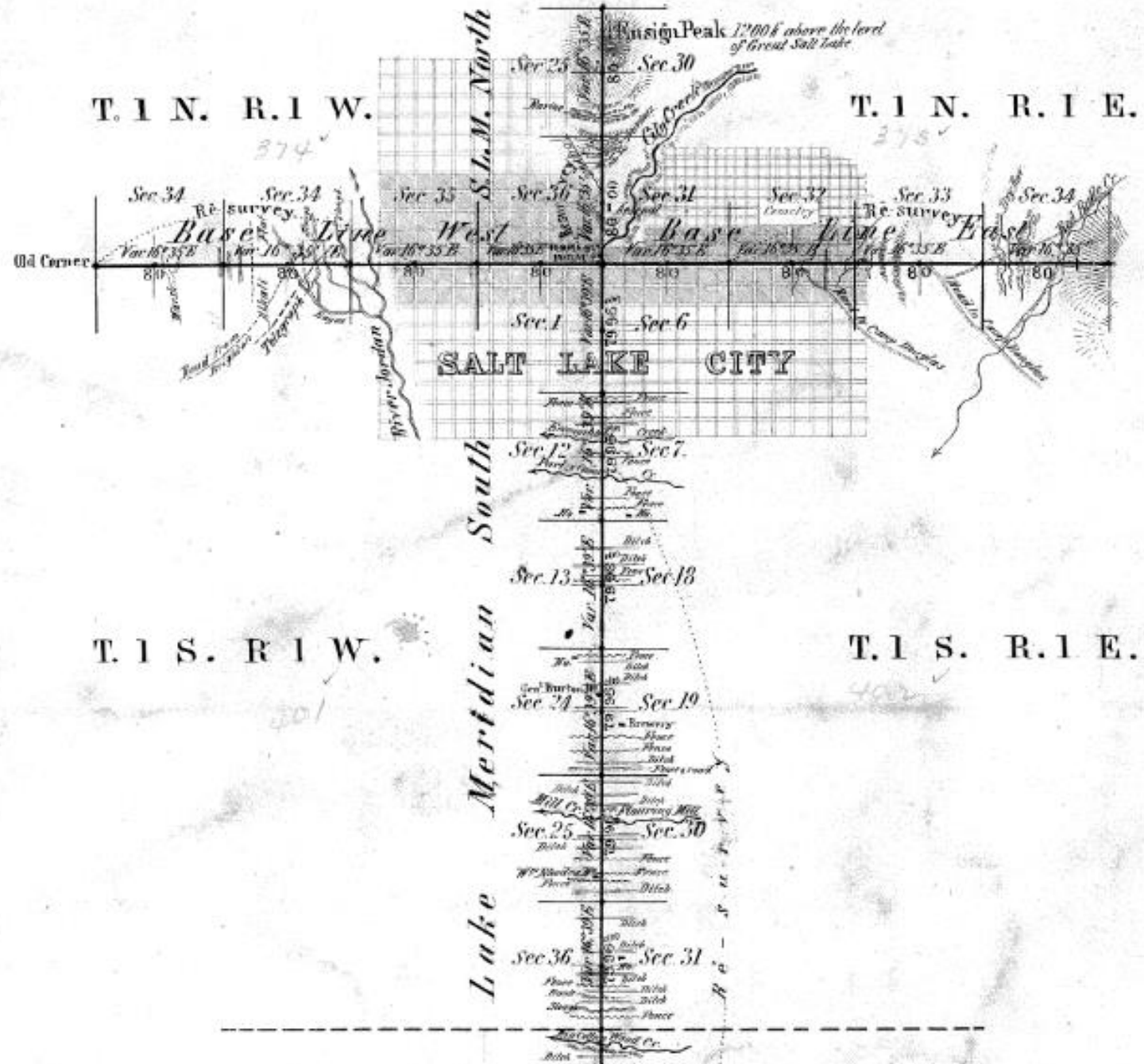
Section 14 shows both normal division of the section into aliquot parts and the fractional division into government lots.

#1 Salt Lake Meridian



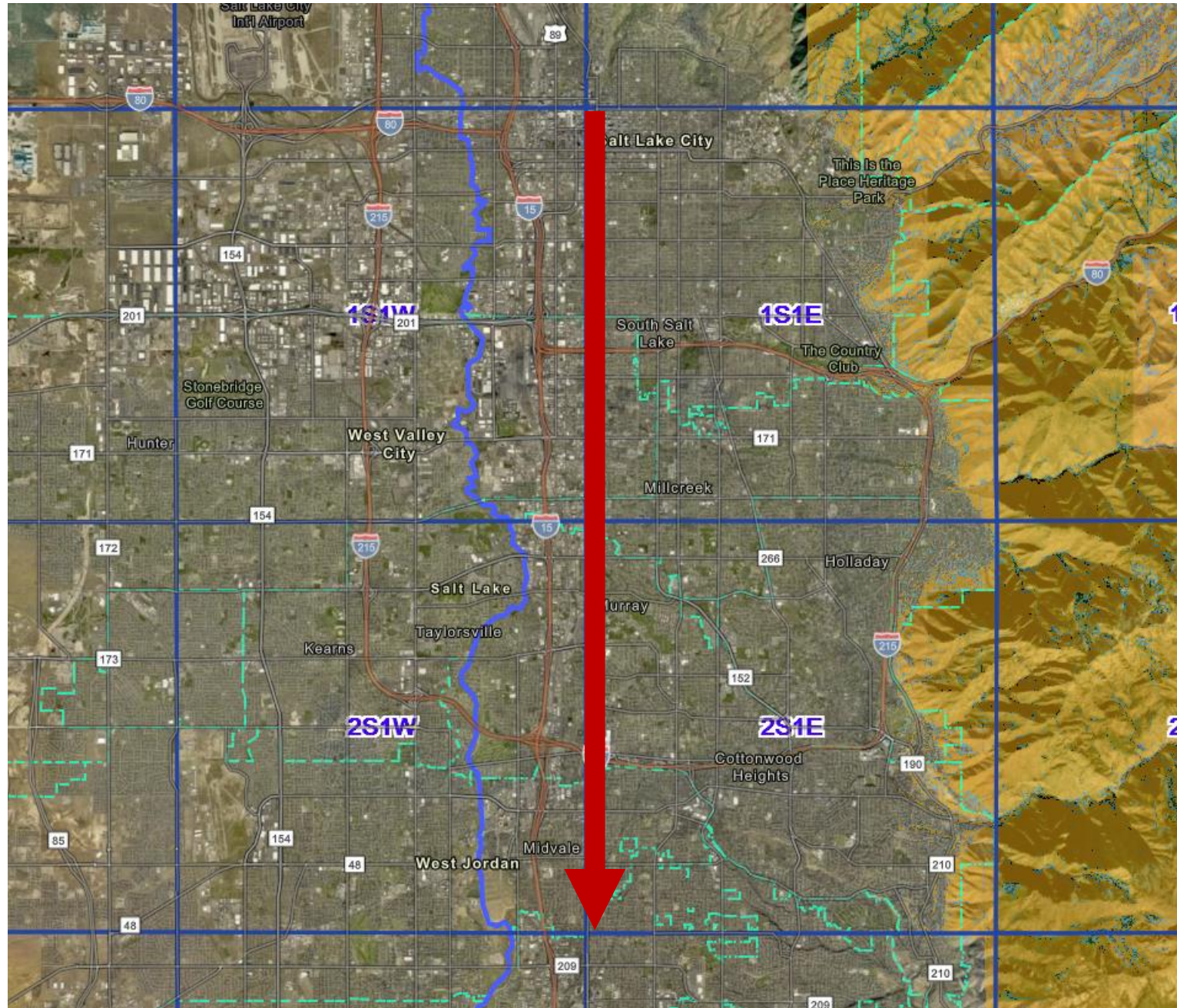
We have their
measurements

1896 Plat



#2

Township
2 South
(12 miles
south)



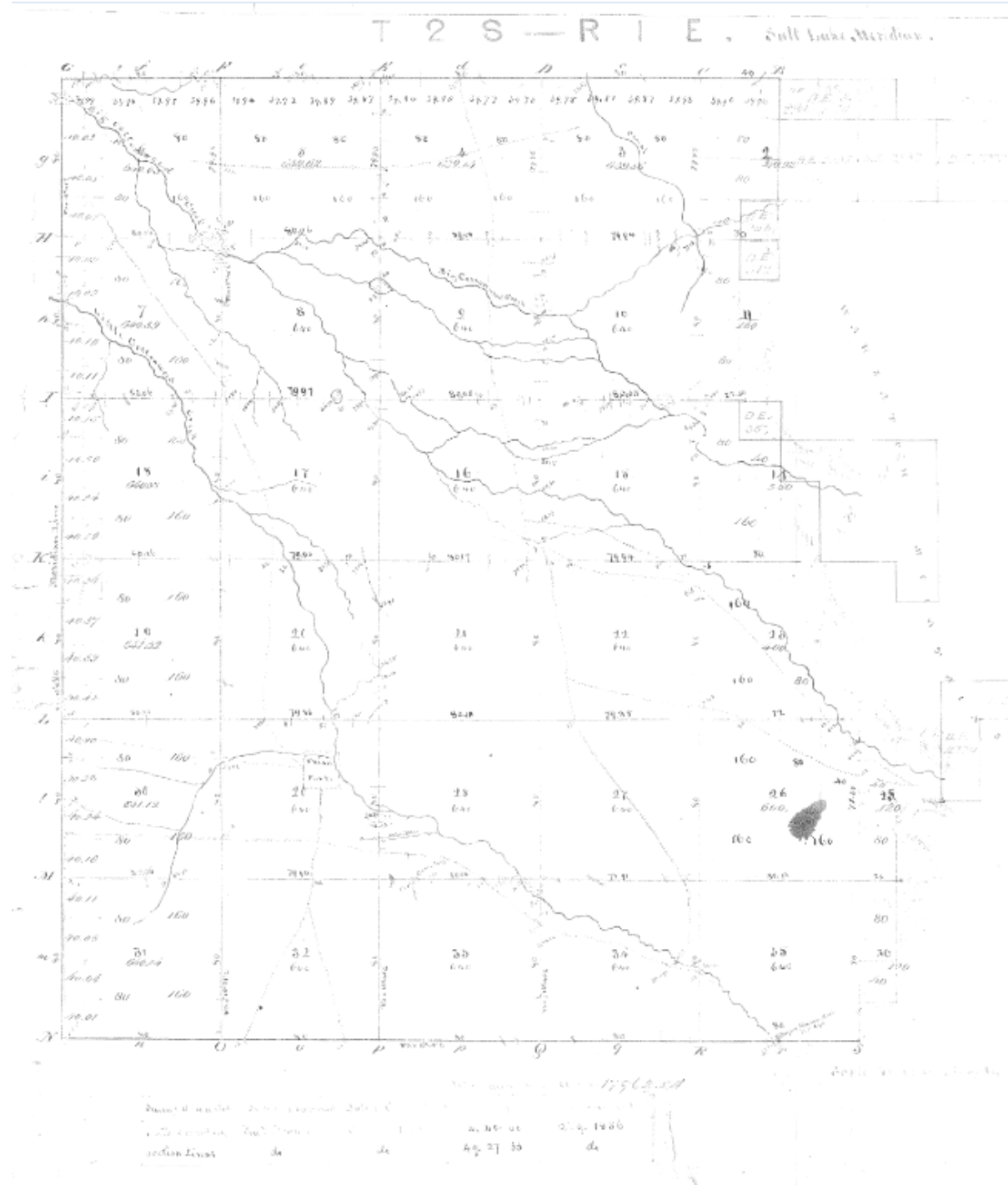
#3

Section 35

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

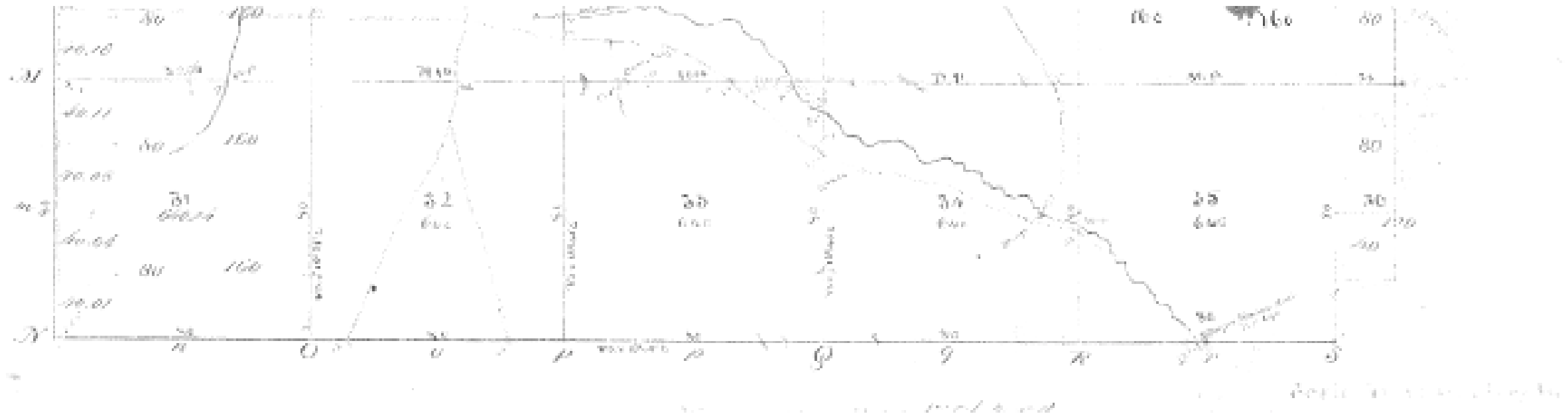
#3

Section 35,
per 1856 plat



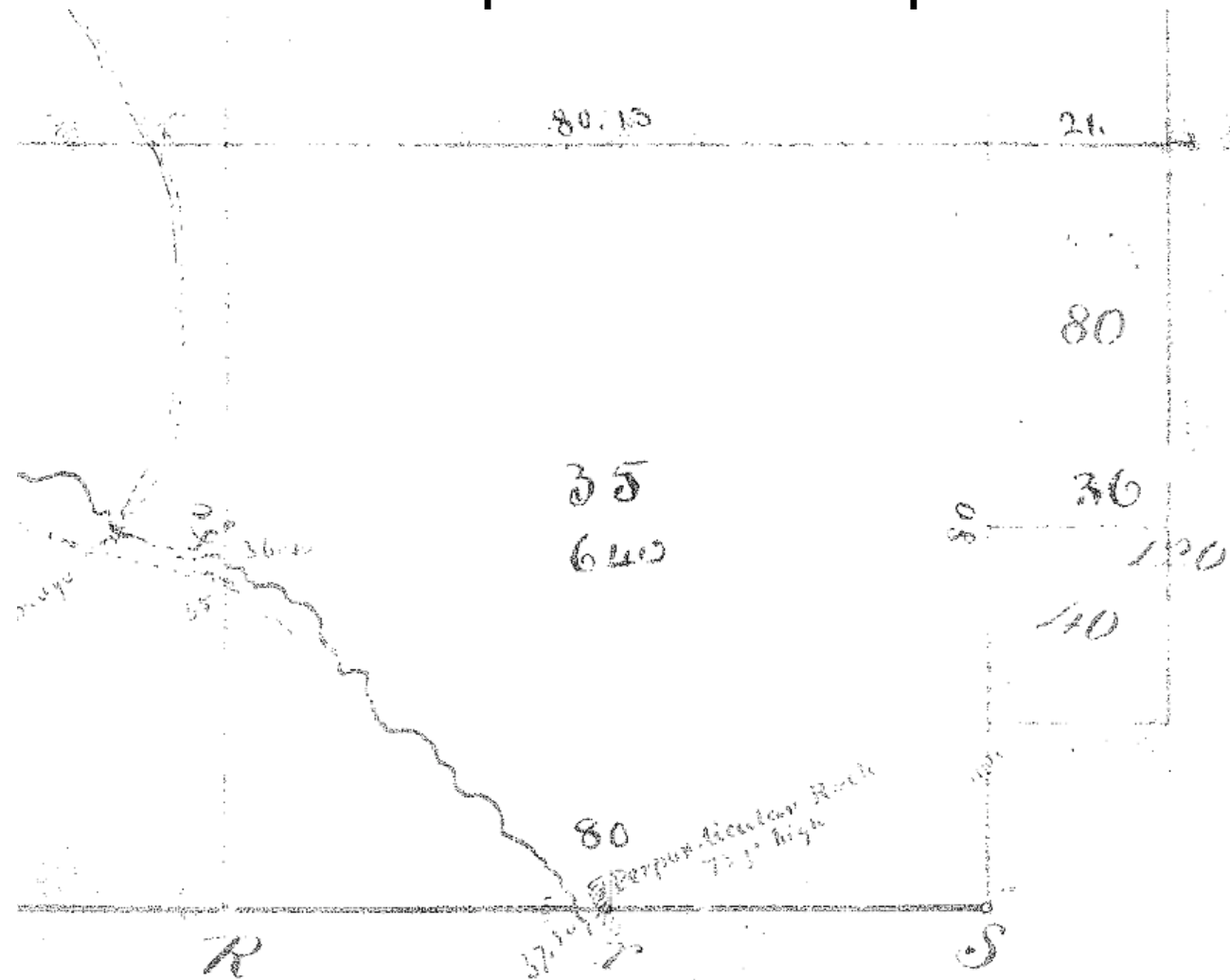
#3

getting to Section 35 per 1856 plat



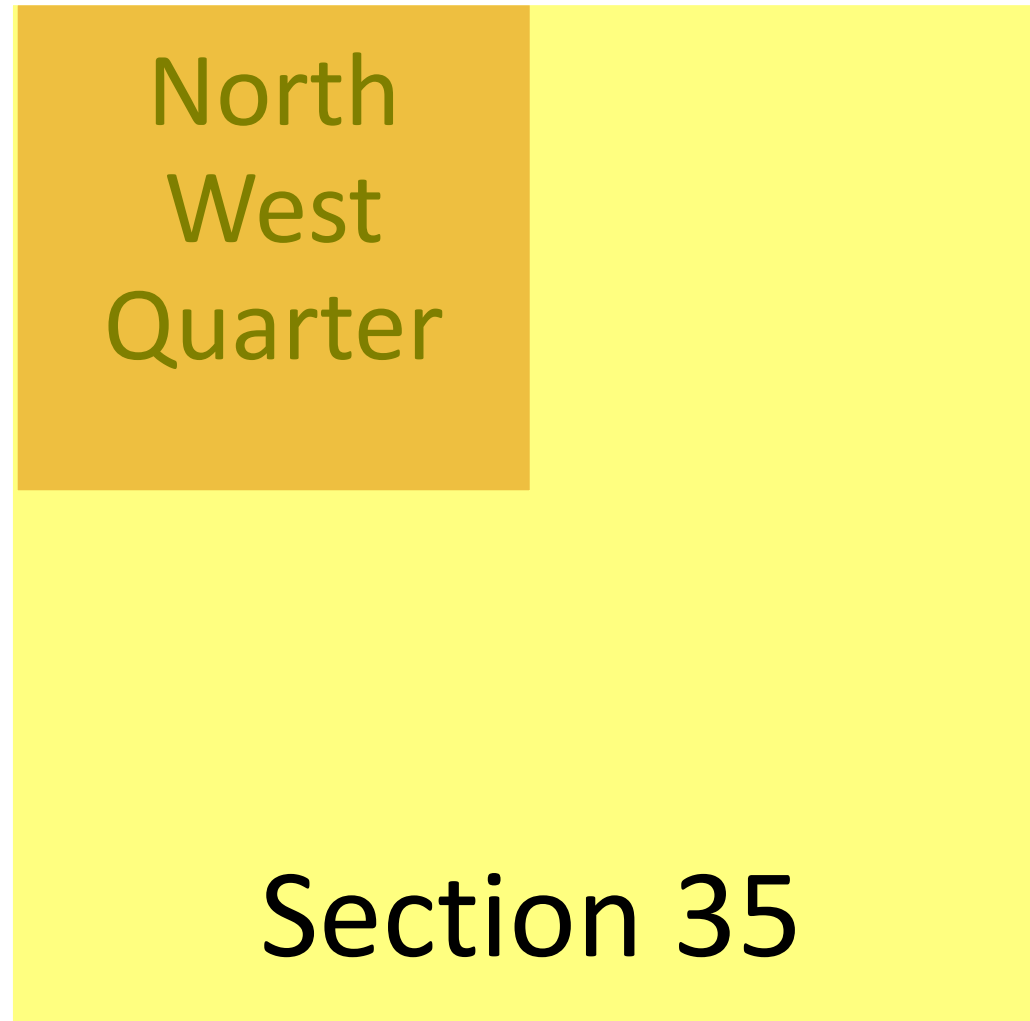
#3

Section 35 per 1856 plat



#4a

Section 35: North West quarter.

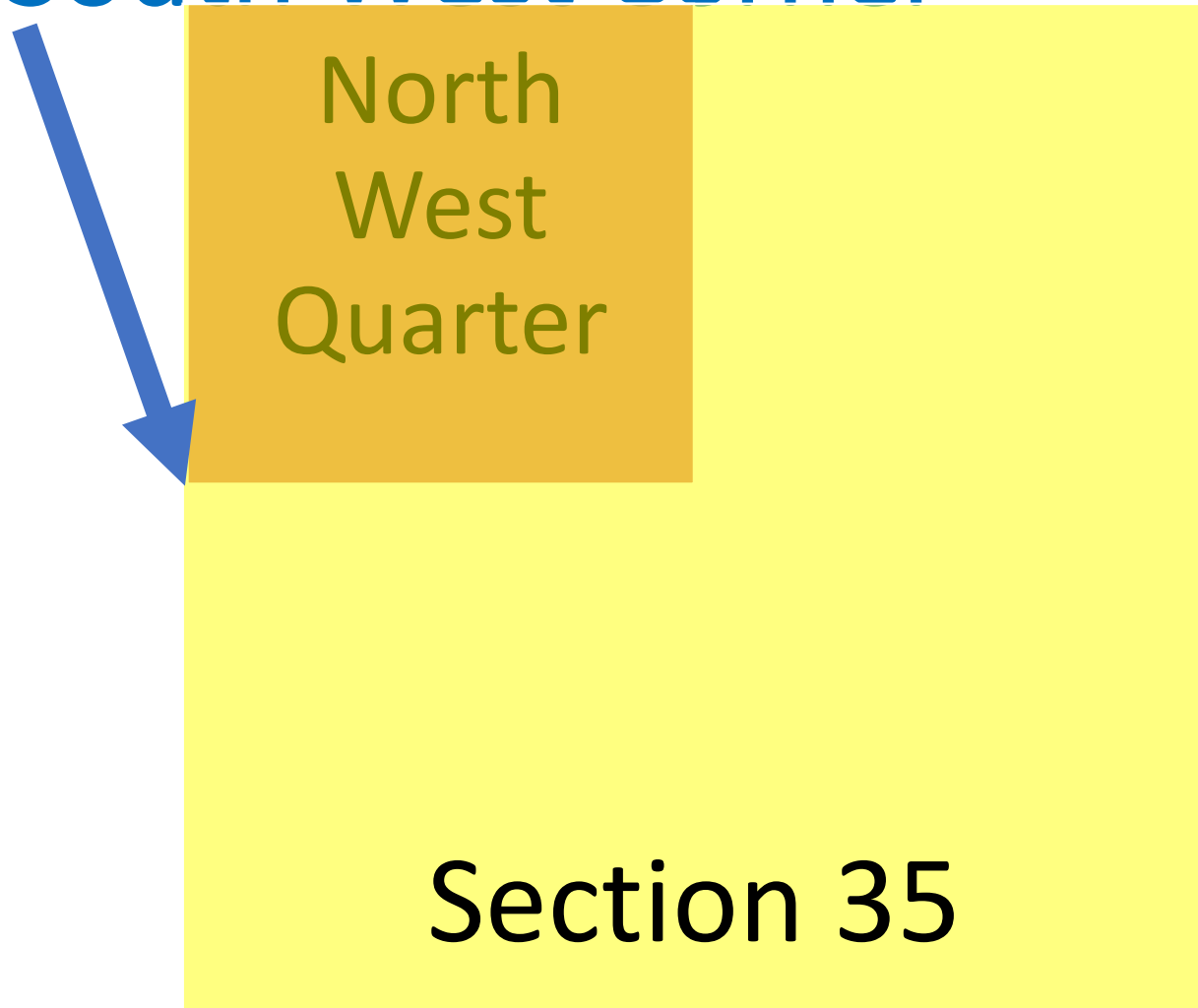


Commencing at Southwest corner of Northwest quarter of section 35.

#4b

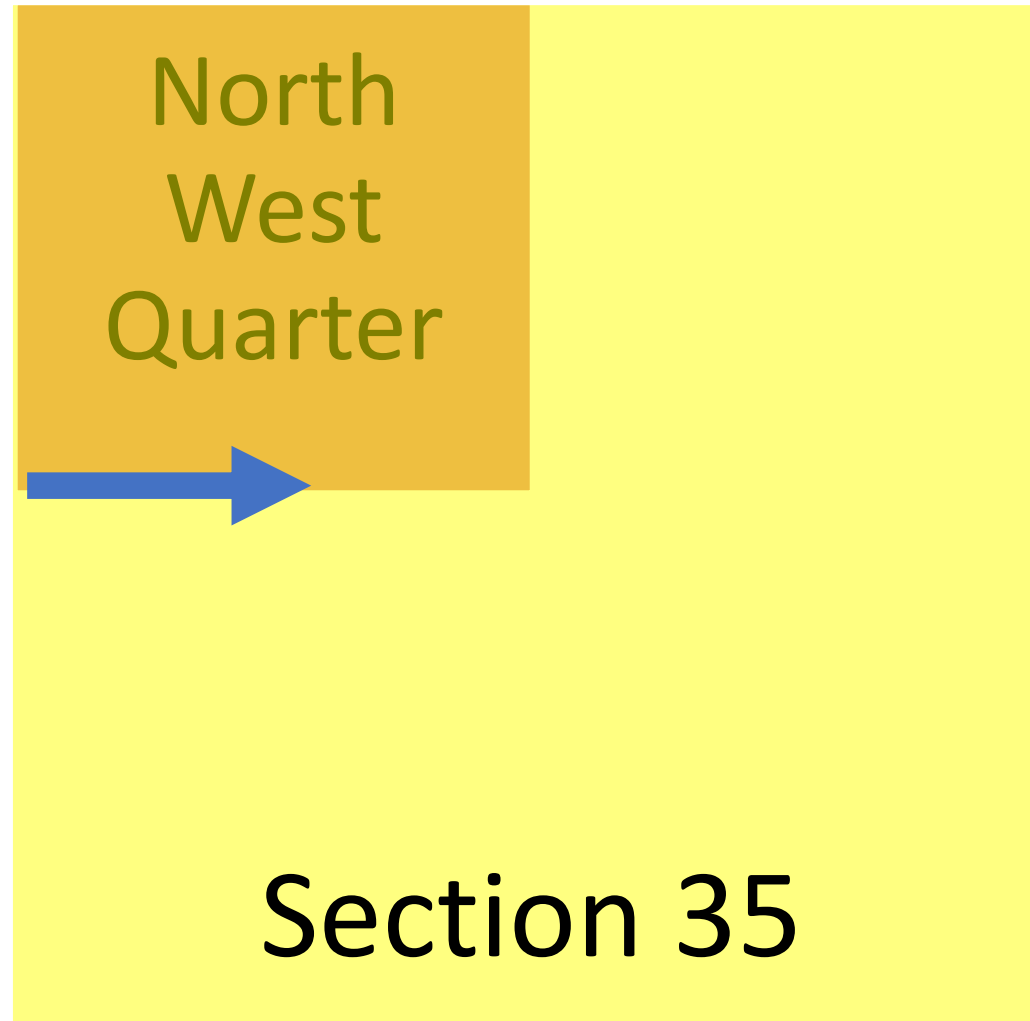
Section 35: North West quarter.

South West Corner



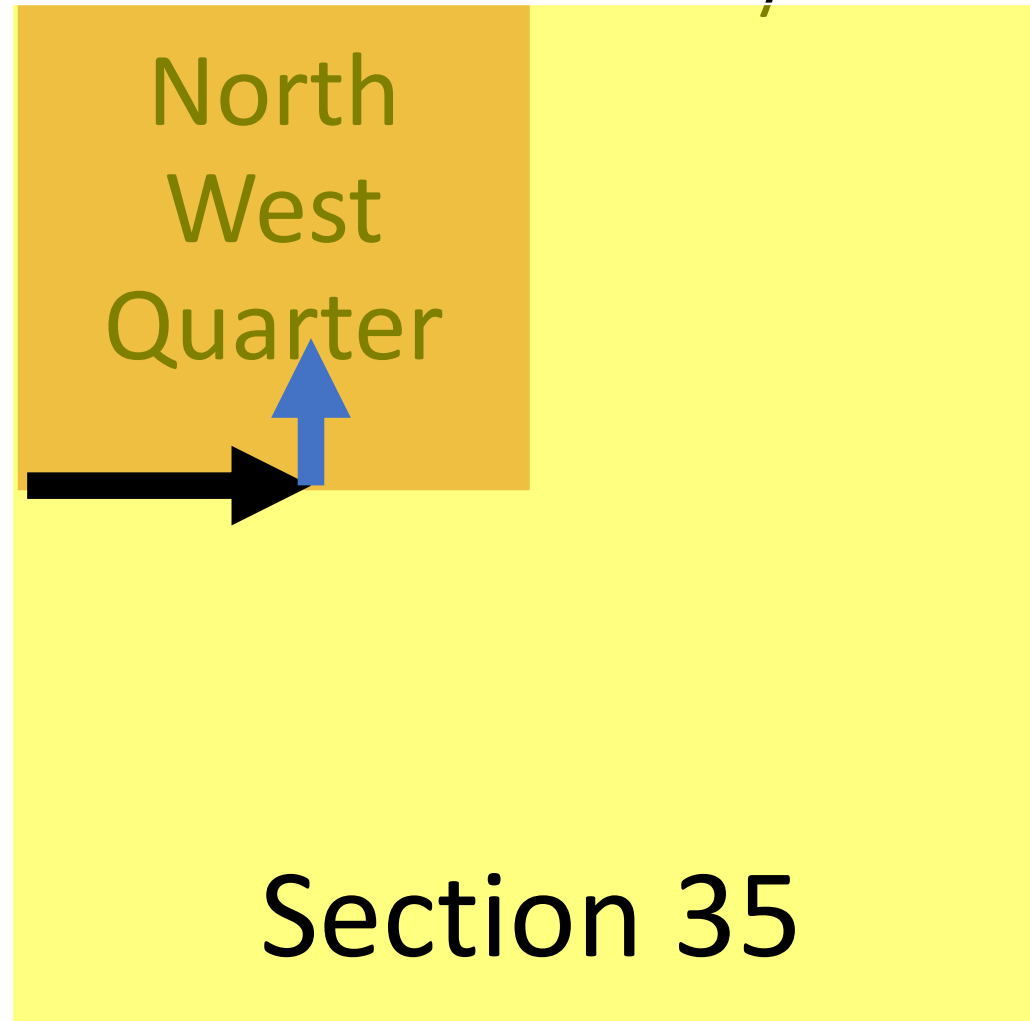
#5

east 80 rods (X 16.5 feet = 1320 feet)



#6

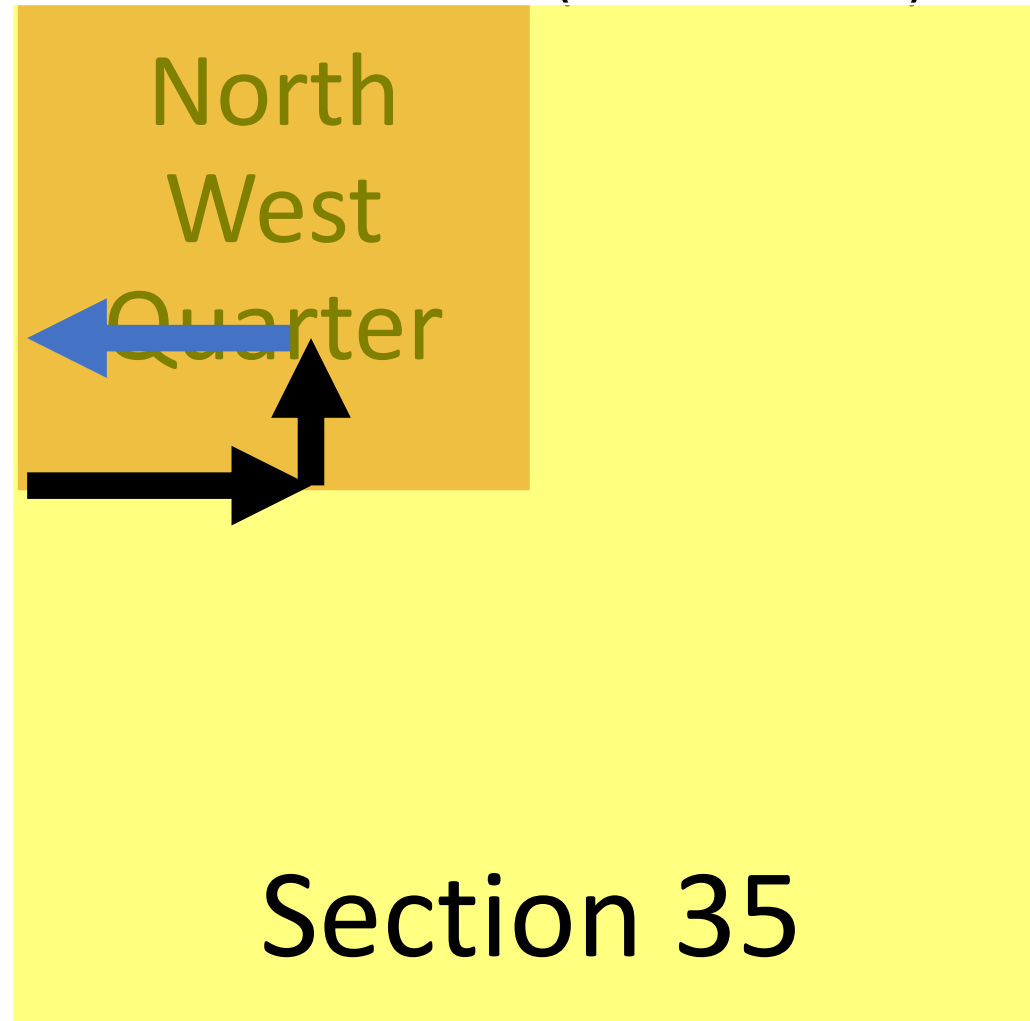
north 34 rods more or less (561 feet)
to south line of county road



Section 35

#7

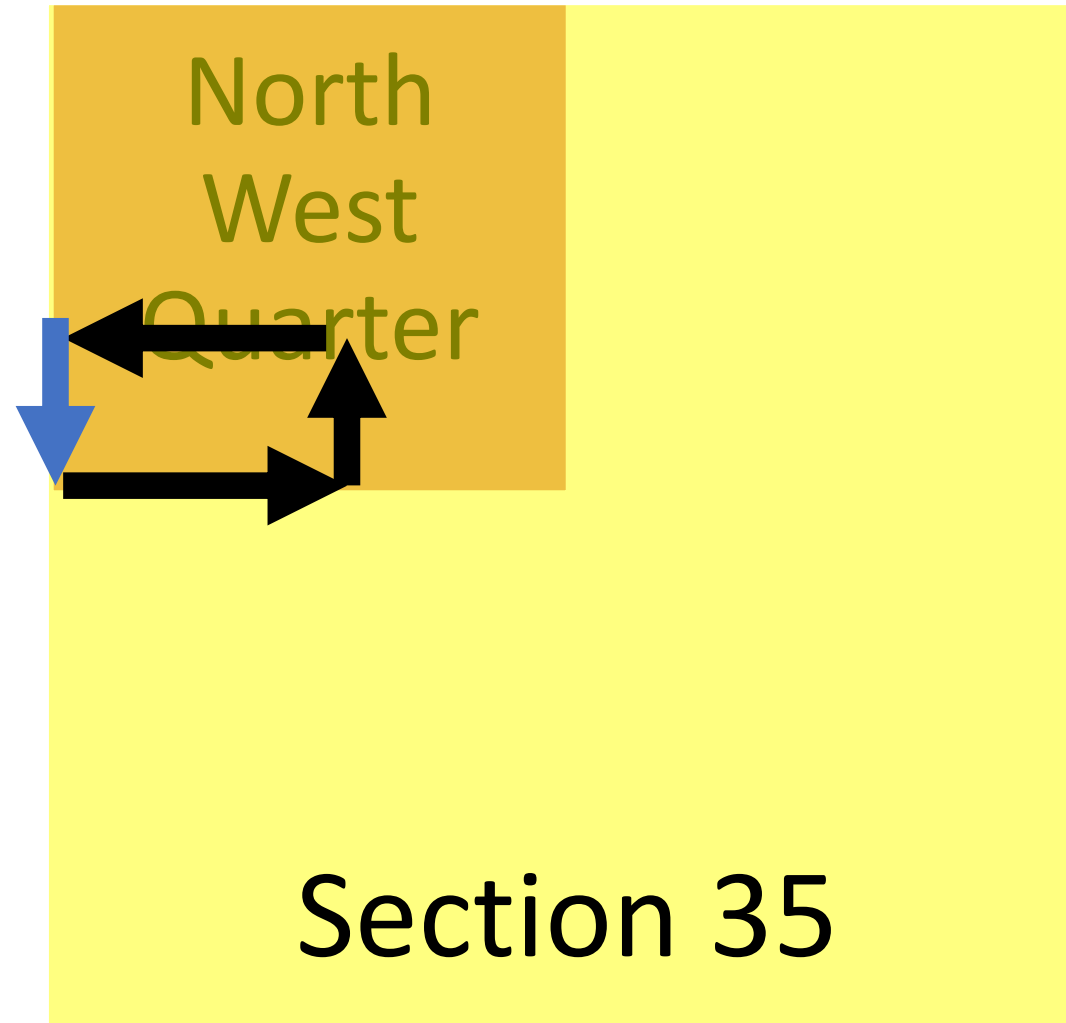
westerly along south line of county road
80 rods more or less (1320 feet).



Note: A map in
the county
recorder's office,
shows the county
road runs directly
east/west.

#8

south to the point of beginning



Again:

Can we combine these,
to precisely locate the boundary?

1906 Description

GPS

Commencing at the South West corner of the North West 1/4 of Section thirty-five (35) Township One (1) South Range Two (2) East, Salt Lake Meridian, and running thence East Eighty (80) rods, thence North to the South line of County road, Thirty-four (34) rods more or less, thence Westerly along the South line of said County road Eighty (80) rods more or less to a point direct North of the point of beginning, thence South to point of beginning Twenty-eight (28) rods more or less, containing about Fifteen (15) Acres of land.



Precision v. Accuracy



Using GPS, we locate the **precise** location described by the 1906 deed, a location which is far from **accurate** and is not the true location of the boundary on the ground.

1856 Direction error:
magnetic declination.

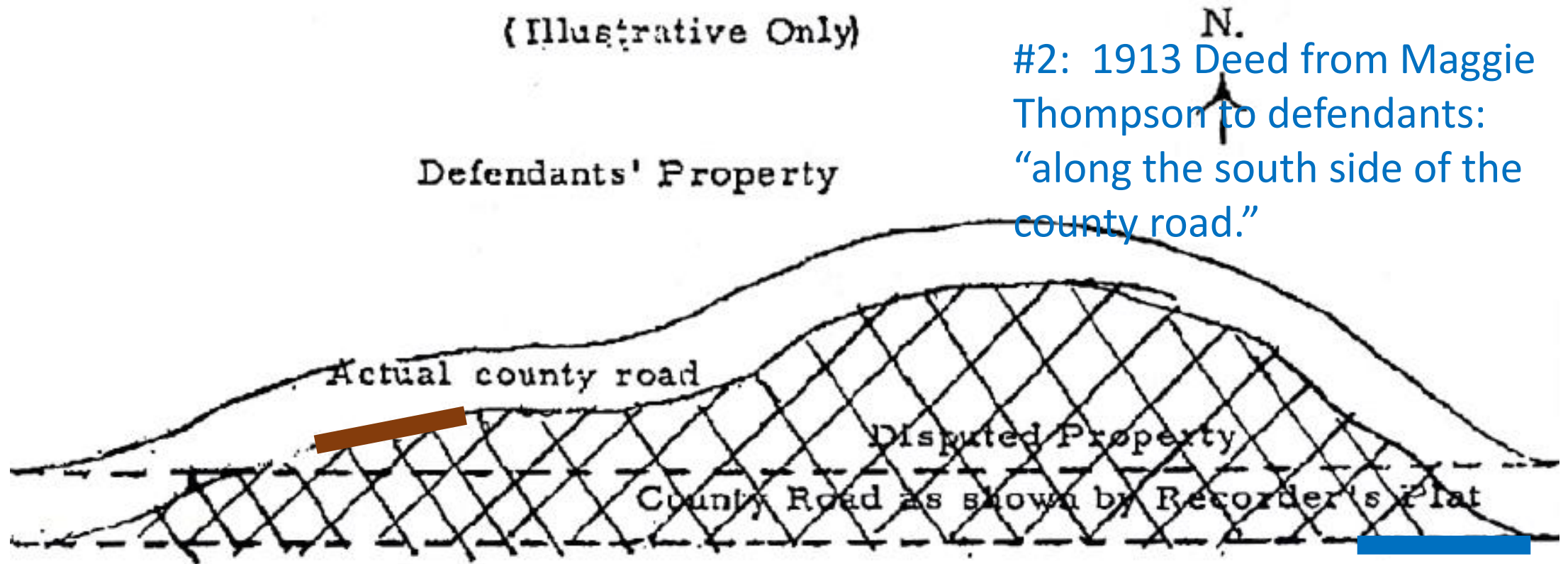
1856 Distance error:
chain calibration,
slope v. horizontal distance.

This description was addressed in

Scott v. Hansen

422 P.2d 525 (Utah 1966).

Scott v. Hansen: deeds from common grantor. Who wins?



#1: 1906 Deed from Maggie Thompson to plaintiffs:
"along the south side of the county road." Plaintiffs' Property

Scott v. Hansen: Determine intent of parties

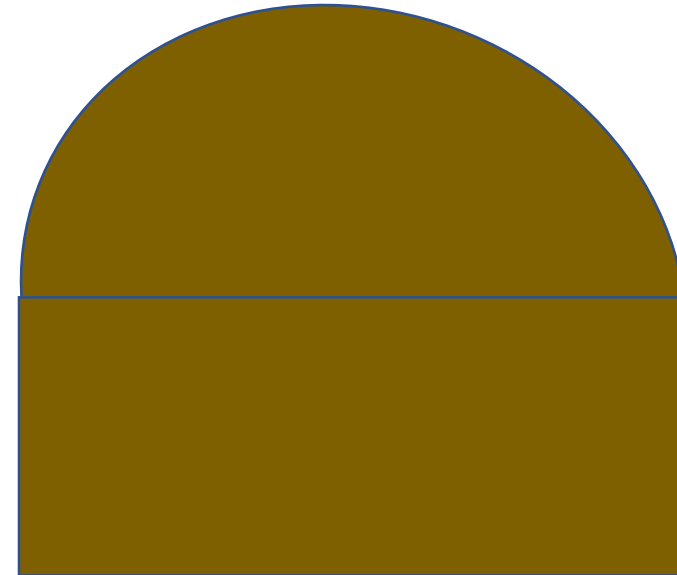
- Rules of construction, to assist in determining intent:
 - Fixed **monuments or markers** of a permanent nature which can be definitely identified and located take precedence over **calls of courses or distances, or plats, or amounts of acreage**.
 - This is so because it is reasonable to assume that the parties are more apt to be familiar with such **monuments or markers** than with **precise measurements, or with recorder's plats**.

Scott v. Hansen:

- Applying this principle, in specifying the **county road** as the boundary, the reference was to **the county road** as it actually existed and was observable by the parties involved,
- rather than to **the theoretical county road** shown by the straight line on the county plat.

Note:

- The face of the 1906 deed describes a rectangle.
- But the court decided that evidence on the ground showed the boundary is not a rectangle.



Returning to the question:

Can we combine these,
to accurately locate the boundary?

No. So of what use are these?

1906 Description

Commencing at the South West corner of the North West 1/4 of Section thirty-five (35) Township One (1) South Range Two (2) East, Salt Lake Meridian, and running thence East Eighty (80) rods, thence North to the South line of County road, Thirty-four (34) rods more or less, thence Westerly along the South line of said County road Eighty (80) rods more or less to a point direct North of the point of beginning, thence South to point of beginning Twenty-eight (28) rods more or less, containing about Fifteen (15) Acres of land.

GPS



Can we combine these,
to accurately locate the boundary?

No. So of what use are these?

They define the search area.

1906 Description

GPS

Commencing at the South West corner of the North West 1/4 of Section thirty-five (35) Township One (1) South Range Two (2) East, Salt Lake Meridian, and running thence East Eighty (80) rods, thence North to the South line of County road, Thirty-four (34) rods more or less, thence Westerly along the South line of said County road Eighty (80) rods more or less to a point direct North of the point of beginning, thence South to point of beginning Twenty-eight (28) rods more or less, containing about Fifteen (15) Acres of land.



Evidence on the ground: Brass cap showing quarter-corner



Horizontal Datum:
**State Plane, Utah Central Zone,
NAD83 Meters**

Northing **2251939.571**
Easting: **473331.971**

Latitude (Dec. Degrees) **40.60217262**
Longitude(Dec. Degrees)
-111.81508388

Last Observed Date
07/02/1999

Khalsa v. Ward, 2004 UT App 394, 101 P.3d 843.

- 1987 Deed from common grantor to Ward, describing boundary as running along a ditch.
- 1999 Deed to Khalsa, same metes & bounds but not refer to ditch.
- Court of Appeals agreed with trial court: ditch is boundary.



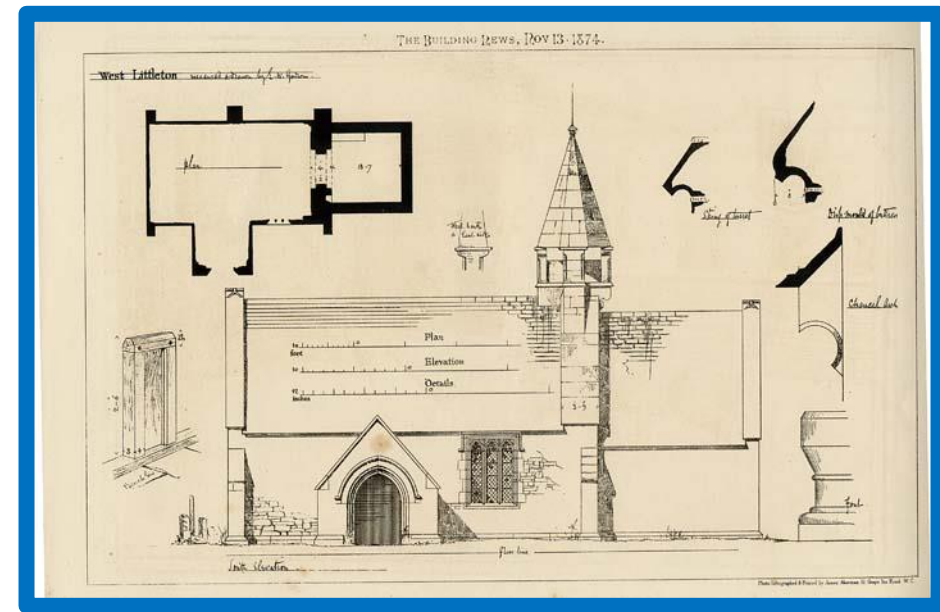
If 2018 GPS measurement,
discovers error
in 1856 compass & chain measurement,
should we now correct this error?

“The question is not how an entirely accurate survey would locate these lots, but how the original stakes located them. ... If the lines were now subject to correction on new surveys, ... the mischiefs that must follow would be simply incalculable, and the visitation of the surveyor might well be set down as a great public calamity.”

Diehl v. Zanger, 1878 Mich.LEXIS 375 (Mich 1878) (Opinion by Cooley).

Tyson v. Edwards,

433 S.2d 549 (Fla. App. 1983).
slide 1 of 4

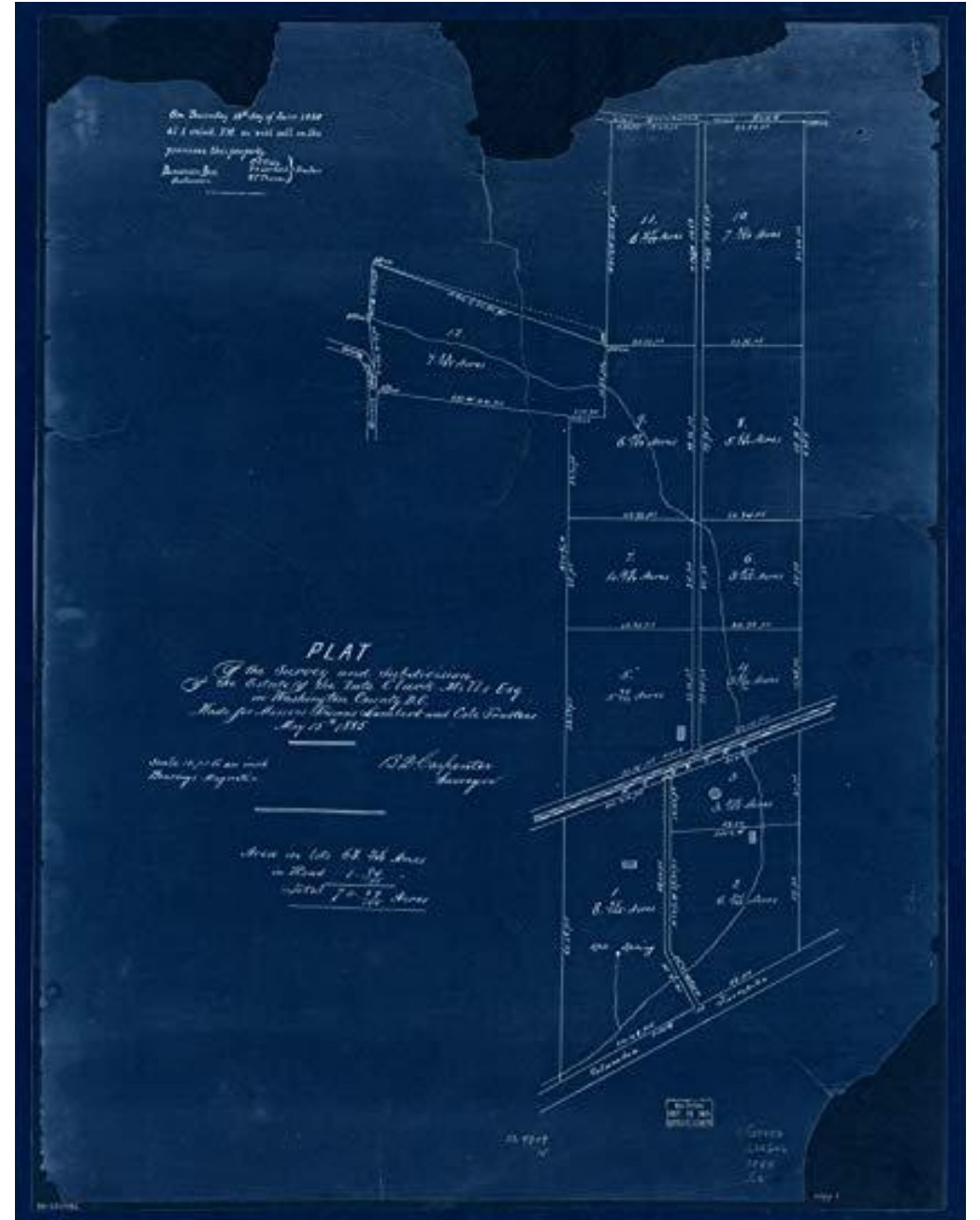


- **Lawyers**, architects and design engineers are accustomed to achieving objectives by first conceiving of abstract ideas or plans, then reducing those ideas (intentions) to paper, and then using the written document from which to construct a physical object or otherwise tangibly achieve the original goal as written.
- When this is done, the written document is always considered authoritative and any deviation or discrepancy between it and what is actually done pursuant to it is resolved by considering the deviations and discrepancies as being defects or errors in the execution of the original plan to be corrected by changing the physical to conform to the intention evidenced by the writing.

Tyson v. Edwards

slide 2 of 4

- In only one situation does the surveyor play a similar role and that is when he, in the first instance, lays out boundaries in the original division of a tract which has theretofore existed as a single unit.
- Thereafter the surveyor's function radically changes. It is not the surveyor's right or responsibility to set up new points and lines establishing boundaries except when he is surveying theretofore unplatted land or subdividing a new tract.



Tyson v. Edwards

slide 3 of 4



- Where title to land has been established under a previous survey, the sole duty of all subsequent or following surveyors is to locate the points and lines of the original survey.
- Later surveyors must only track and "trace the footsteps" of the original surveyor in locating existing boundaries.
- They cannot establish a new corner or line nor can they correct erroneous surveys of earlier surveyors, even when the earlier surveyor obviously erred in following some apparent original "over-all design" or objective.

Tyson v. Edwards

slide 4 of 4

- The **reason** for this lies in the historic development of the concept of land boundaries and of the profession of surveying.
- Man set monuments as landmarks before he invented paper and still today the **true survey is what the original surveyor did on the ground** by way of fixing boundaries by setting monuments and running lines ("metes and bounds"), and the paper "survey" or **plat of survey is intended only as a map of what is on the ground**.
- The surveying method is to establish boundaries by running lines and fixing monuments on the ground while making field notes of such acts.



A helpful distinction:

On the Gound

Boundary

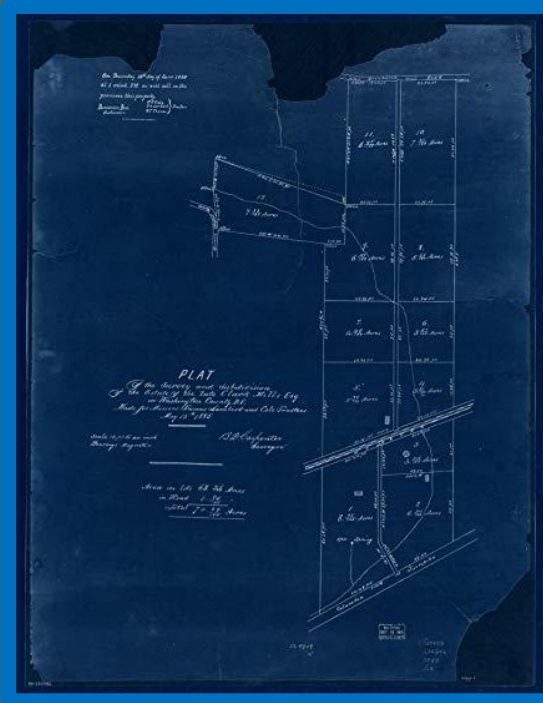
Survey



On the Paper

Description of Boundary

Plat of Survey



Rivers v. Lozeau,

539 So.2d 1147 (Fla.App. 1989).

- In short, an original surveyor can establish an original boundary line only for an owner who owns the land on both sides of the line that is being established and that line becomes an authentic original line only when the owner makes a conveyance based on a description of the surveyed line and has good legal title to the land described in his conveyance.
- The following surveyor, rather than being the **creator** of the boundary line, is only its **discoverer** and is only that when he correctly locates it.

Take aways:

Working with a Surveyor to re-trace a boundary.

- Don't hire a surveyor who says: "Yes, I can retrace your boundary exactly, because I have GPS! I can find it by tomorrow, for only \$800." Then your client spends \$100,000 to defend this line in the sand, and loses at trial.
- Don't wait until snow covers the ground, and then direct the surveyor to go look for evidence on the ground immediately because the expert report is due next week.
- Do discuss with the surveyor who will locate records, to include deeds of adjoining property.

examples of

Failure to Hand off the Baton

[the hot potato you thought you got rid of?
The boomerang which you thought you got rid of.]



#1 Attorneys, parties, and judge, all assume the boundary litigation nightmare is finally over. The attorney fails to work with surveyor, to obtain language which calls to objects on ground, for placement in the settlement agreement or findings of fact. Attorney failed to douse the fire, and it lights up anew.

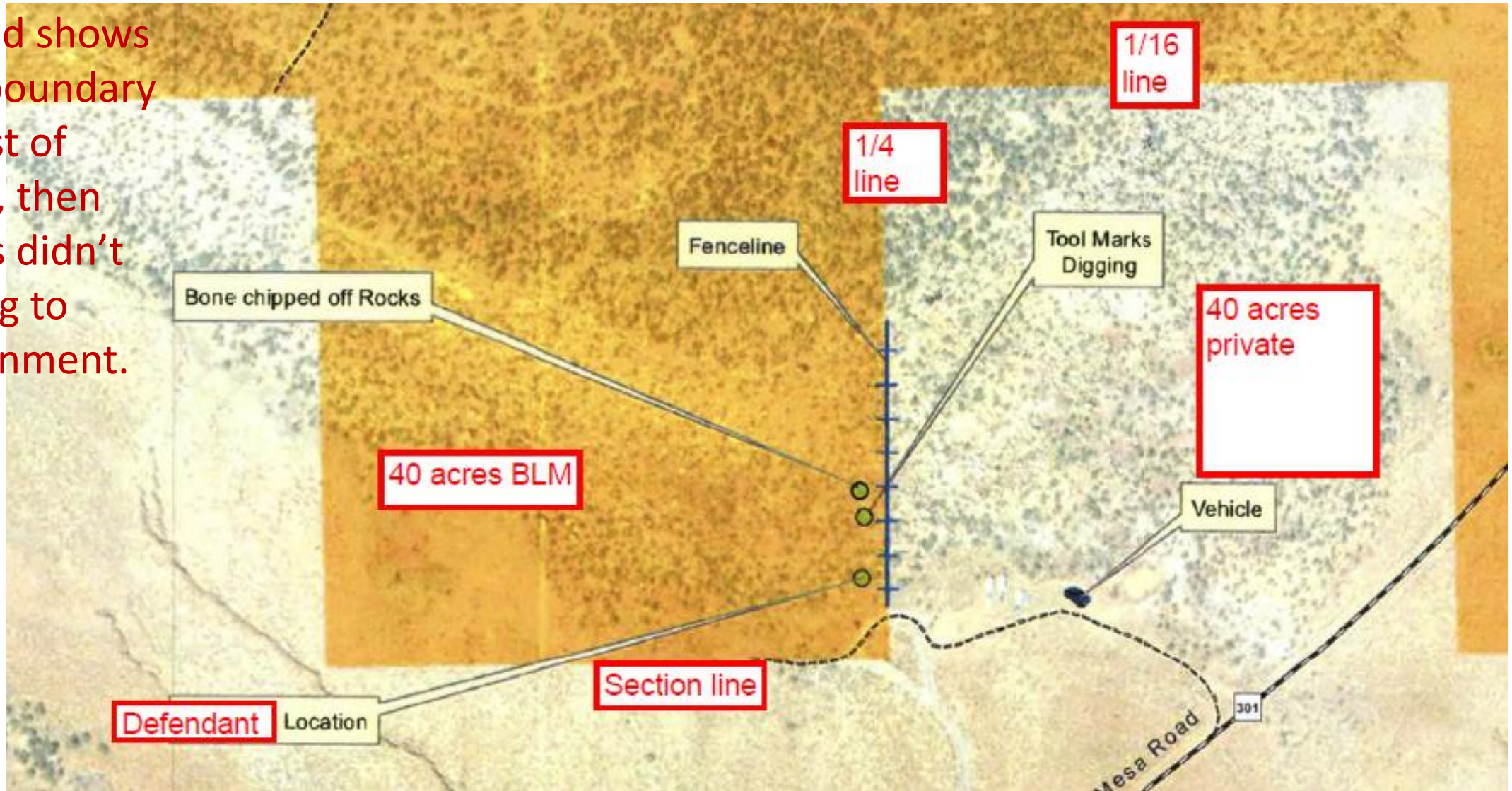
#2 Surveyor reads court opinions as to boundary law, and observes that these were produced by those trained in the law. Surveyor concludes that trial judges and attorneys are the experts at land boundaries, and that surveyor is just a measurer who passes along any hard questions to them. Surveyor sees a “conflict” in record descriptions, and tells client, “you just need a quiet title action.”

2

Dinosaur Bones

GIS Map from Government

If evidence on ground shows that boundary is west of fence, then bones didn't belong to government.



Boundaries of public lands, 43 U.S. Code section 752.

“The boundary lines, **actually run and marked** in the surveys returned by the Secretary of the Interior or such agency as he may designate, **shall be established as the proper boundary lines** of the sections or subdivisions ...”

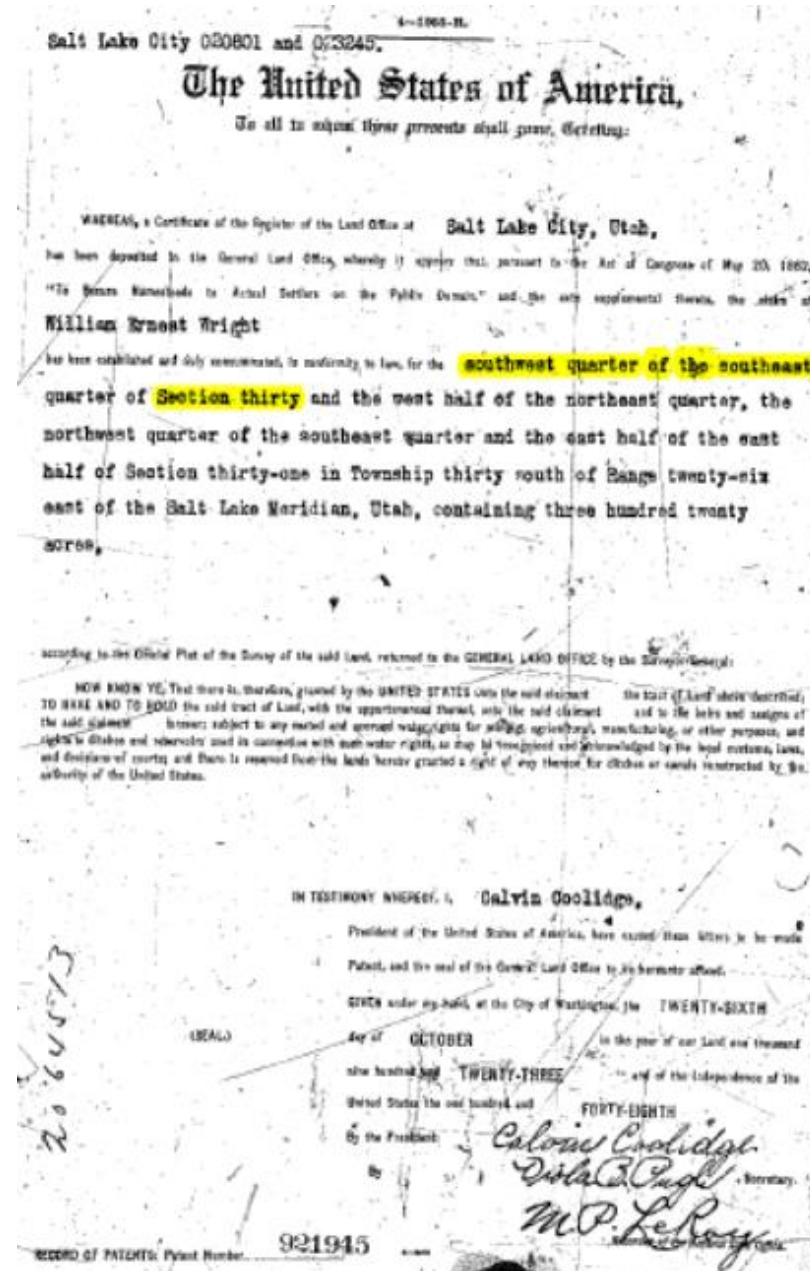
Where government said corner is.



Patent incorporates evidence on ground

- Upon the issuance of a patent for land by the Federal Government, it is just as if the **monuments**, survey plat, **field notes**, laws, regulations, and rules governing how to survey the land described in the patent, are attached to the face of the patent.

Cragin v. Powell, 128 U.S. 691 (1888).



Field Notes refer to Bearing Trees

- Field notes from 1916 Original survey: Surveyor set brass cap, and measured distance to 2 trees (“bearing trees”) to guide future surveyors if brass cap ever lost.
- Field notes from 2014 Resurvey: Brass cap was lost. Trees still there, but not used in restoring position of Brass cap, because 2014 surveyor concluded that 1916 surveyor must have
 - 1) blundered in using these trees since they would show a position about 66 feet (1 chain) to west of mathematically correct position
 - 2) discovered this blunder, and
 - 3) therefore did not actually use these as bearing trees.
- Yet, the 1916 field notes make no mention of discovering a blunder then disregarding the trees.

Field notes as to 1916 bearing trees.

#1

A juniper snag, 16 inches diameter, bears S. 79° W., 242.0 links distance, marks BT visible on a partially healed blaze
(Record: S. 38 1/2° W., 145 links distance, marked 1/4 S31 BT).

#2

A juniper, 17 inches diameter, bears N. 48° W., 131 links distance, marks BT visible on a partially healed blaze
(Record: N. 5° E., 89 links distance, marked 1/4 S30 BT).

Bearing tree #1,
145 links X 0.66 = 95.70 feet to corner.



Bearing Tree #2,
89 links X 0.66 =
58.74 feet from
corner.



Distance-distance intersection from 2 bearing trees.
Shows corner about 66 feet west of where gov. says.

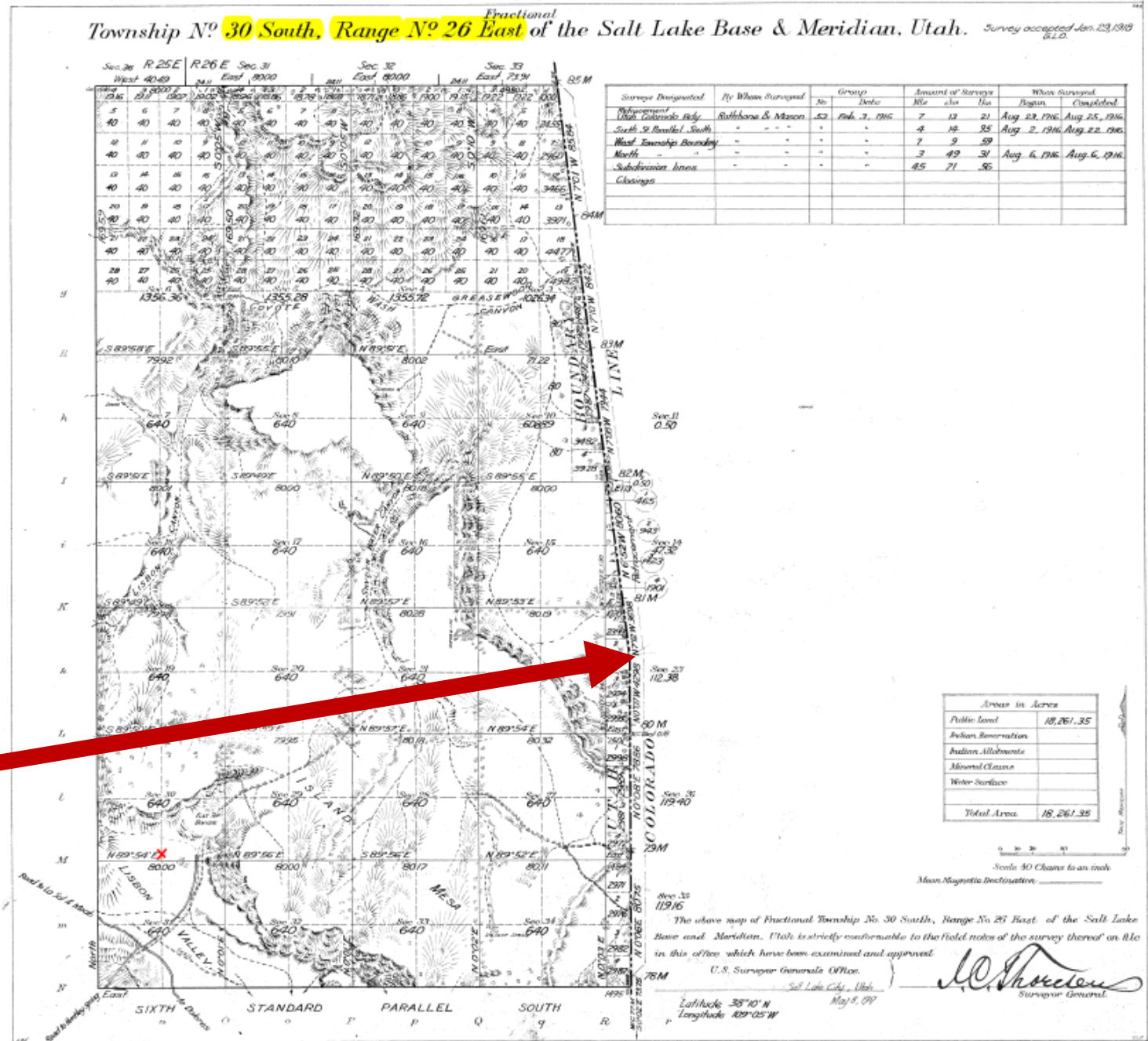


Case concluded Favorably



An Aside

- Utah Constitution says east state boundary is straight (32 degrees west longitude from Washington, per Art.II Sec.1).
- 1917 Plat shows that **on ground**, east state boundary bends.



3

Is the Fence
the Boundary?

Is it true that after so many years, the fence becomes the boundary?



- Some are called “fence surveyors” because they think every fence is a boundary.
- Others ignore fences.

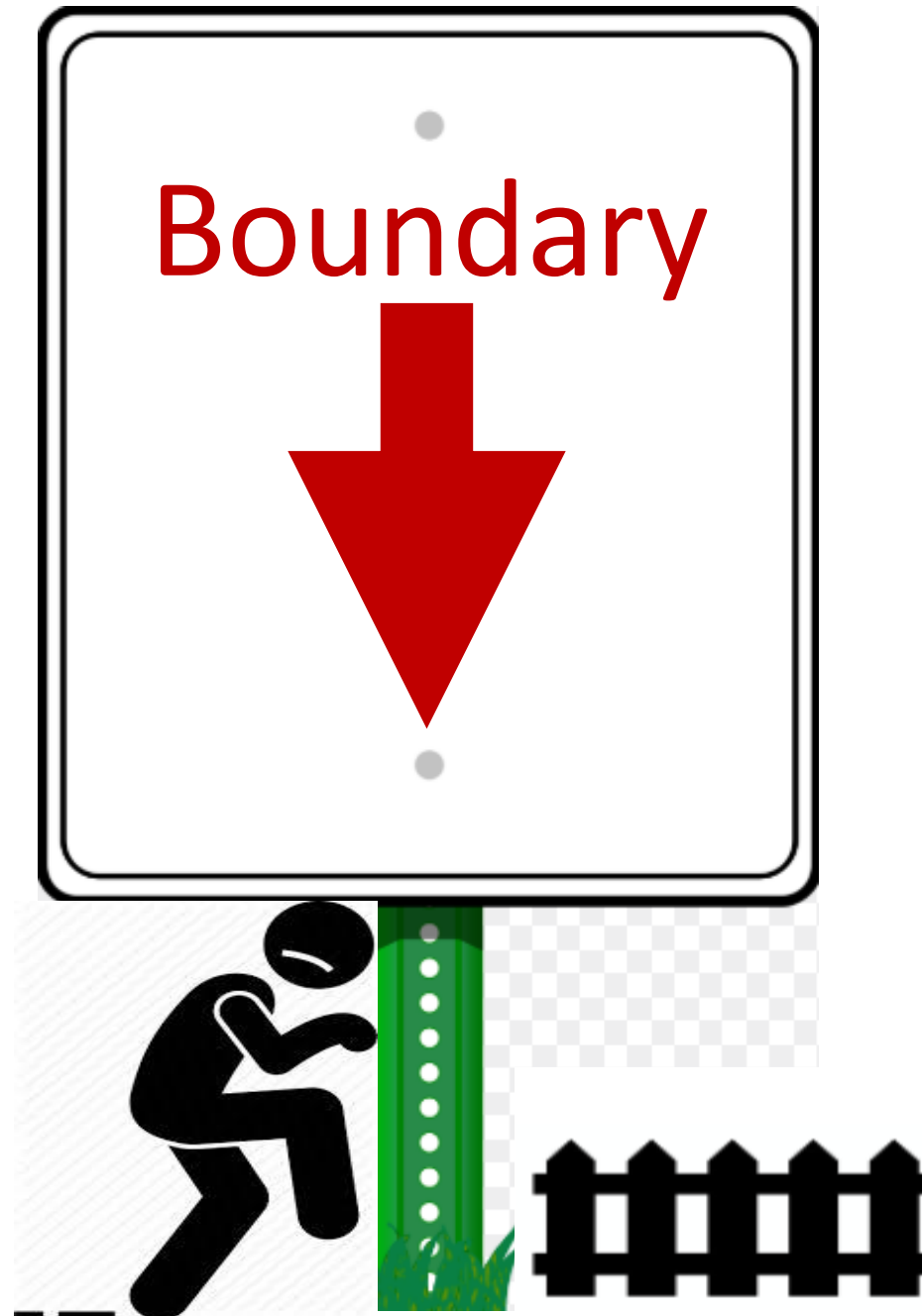
Overview:

The Fence (or other object) could tend to show:

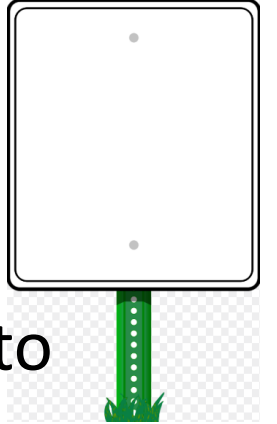
- Where the boundary was originally created.
- What has become the boundary, through:
 - Acquiescence.
 - Estoppel.
 - Boundary by Agreement (deemed to determine where line was all along).
- Nothing.
 - Example: Fence of convenience to keep in cows, never intended as boundary.

Just before Surveyor arrives, I plant this sign right by fence, which I want surveyor to accept as boundary.

- What should surveyor do, upon seeing this fence and sign?
- Does this sign become evidence on the ground, as to the location of the boundary?



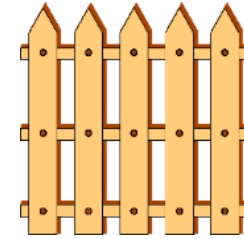
Is everything on the ground evidence?



- **WHAT WAS ALWAYS THE BOUNDARY:** Consider items which tend to show intent of common grantor when line created.
 - Old fence which existed when boundary was created.
 - Old fence which created in relation to original monuments which then existed.
 - New fence which constructed at location of old fence.
- **WHAT BECAME THE BOUNDARY:** Consider items which tend to show what has become the boundary. (Bahr v. Imus, 2011 UT 19.)
 - Fence to which neighbors acquiesced as boundary for 20 years.
 - Fence which neighbors agreed (expressly even if orally) was boundary, to settle dispute.
 - Fence which party said is boundary, and other party relied.

Elements of Acquiescence

(1) visible line marked by monuments, fences, buildings, or natural features;



(2) the claimant's occupation up to line;



(3) mutual acquiescence in the line by adjoining landowners;



(4) for at least 20 years.



Anderson v. Fautin, 2016 UT 22.

Does acquiescence confer title? At what point in time?

“We therefore hold that the boundary by acquiescence doctrine **confers** title ~~by operation of law~~ at the **time** the elements of the doctrine are **satisfied** and that a judicial adjudication of a boundary dispute does not grant title, but merely recognizes the title that has already **vested**.”

Utah Supreme Court:

Q-2 LLC v. Hughes, 2016 UT 8, par 24 (2016).

Driving the title industry crazy!
Deed says 100 feet; surveyor says no.

The usual crazy:

Deed v. Monuments

- Determine where **ownership line** has been all along, by locating **record line** with reference to monuments relied on by parties when line created.

Today's crazy:

Acquiescence

- Whether **ownership line** later **shifted** from old **record line** to new **occupation line**



Resolving Issues

- **THERE ALL ALONG:** Is **record line (with reference to monuments)** the **occupation line**, so both are **ownership line**.
 - Example: The evidence shows that **line now occupied by fence** was built on **line formerly occupied by monuments**.
- **SHIFTING LINE:** If the landowners sign deeds that recognize the **occupation line**, then this may become the **record line**, such that they both coincide as the **ownership line**.

- Written
Boundary Line
agreement

Terminology

- **Boundary Line Agreement.**
 - Utah Code sec. 57-1-45.
 - 10-9a-524.
 - 17-27a-523.
- **Parcel Boundary Adjustment.**
 - 10-9a-103(39) & (57)(c)(vi). 10-9a-523.
 - 17-27a-103(40) & (60)(c)(vii). 17-27a-522.
- **Lot Line Adjustment.**
 - 10-9a-103(33).
 - 17-27a-103(35).

Utah Statutes

- **Municipal** Land Use, Development, and Management Act (M-LUDMA).
 - **Title 10** **Chapter 9a.**
- **County** Land Use, Development, and Management Act (C-LUDMA)
 - **Title 17** **Chapter 27a.**

Comparing Statutes

Boundary Line Agreement.

Utah Code section 57-1-45(1):

If properly executed and acknowledged as required under this chapter, an agreement between property owners designating the boundary line between their properties, when recorded in the office of the recorder of the county in which the property is located, shall act as a quitclaim deed and convey all of each party's right, title, interest, and estate in property outside the agreed boundary line that had been the subject of the boundary dispute that led to the boundary line agreement.

Lot Line Adjustment.

Utah Code section 10-9a-103(33):

“Lot line adjustment” means the relocation of line in a subdivision.

If oral **agreement**, then all finished?

- Seek to **memorialize** (& place in record) the prior oral **agreement**.

Be clear that the oral agreement already exists.

- What if landowners won't sign?

Surveyor can document oral **agreement** in **narrative** of survey.

How choose which?

	When line is uncertain or disputed (Ascertaining location).	When line is not uncertain and not disputed (Moving location).
When outside of subdivision.	Boundary Line Agreement. 57-1-45(1).	Parcel Boundary Adjustment. 10-9a-103(39).
When inside of subdivision.	Boundary Line Agreement?	Lot Line Adjustment. 10-9a-103(33).

Definition of practicing Law v. Surveying:

Which best includes Boundary Line Agreements?

Utah Definition of Practicing Law,

Utah Code of Judicial Admin., Rule 14-802

- (b)(1) The “practice of law” is the representation of the interests of another person by informing, counseling, advising, assisting, advocating for or drafting documents for that person through application of the law and associated legal principles to that person’s facts and circumstances.
- (c) ... the following activity by a non-lawyer ... is permitted:
 - (12) (B) ... title insurance agent ... may ... prepare deeds

Utah Definition of Practicing Surveying,

Utah Code section 58-22-101(11)

"Professional land surveying" or "the practice of land surveying" means a service or work, the adequate performance of which requires the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence to the act of measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water for the purpose of determining areas and volumes, for the monumenting or locating of property boundaries or points controlling boundaries, and for the platting and layout of lands and subdivisions of lands, including the topography, alignment and grades of streets, and for the preparation and perpetuation of maps, record plats, field notes records, and property descriptions that represent these surveys and other duties as sound surveying practices could direct.

Other

Construe (interpret) v. Reform (change) the deed description

- Surveyor can CONSTRUE description in deed.
 - Evidence on ground is parol, to resolve latent ambiguity.
 - Parol can show existence of ambiguity in language (Ward v. IFA), but not do violence to language.

Avoid unintended consequences of tinkering:

- Surveyor cannot REFORM deed description to match ground.
 - Continuity of title.
 - "As surveyed" description?
- Surveyor cannot "REFORM" ground to better "match" deed.
 - Violates basic boundary principles.

Conclusion

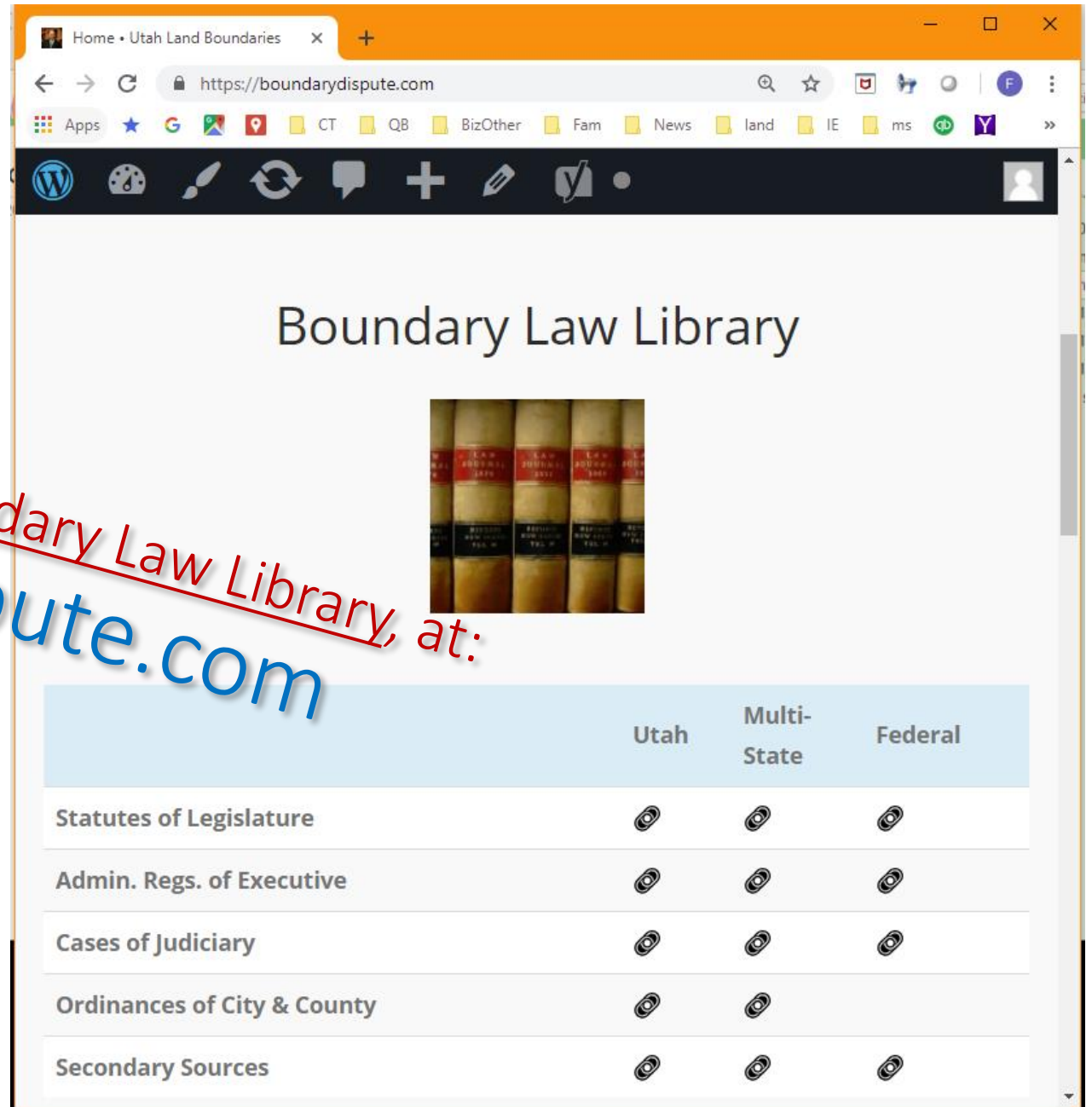
The boundary is
not always as it looks
on the map or the deed.

(The End)

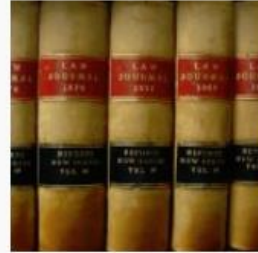
Utah Boundary Law












Through the Lens of an Attorney/Surveyor
Mark Gregersen
801-747-2222

Find this Slide Show, and the Boundary Law Library, at:
www.boundarydispute.com



Boundary Law Library



	Utah	Multi-State	Federal
Statutes of Legislature			
Admin. Regs. of Executive			
Cases of Judiciary			
Ordinances of City & County			
Secondary Sources	