



# Editor's Corner



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## Disclaimer!

**L**ike many of you, I cut my licensed surveyor teeth on the PLSS, and have always considered it to be one of the finest examples of land distribution on the planet. It is held in this regard all over the globe. It is not surprising, therefore, that a growing sense of irritation surfaced last summer as I read the following newspaper article that appeared in a July 2004 issue of the *Washington Times*:

### Sam's Garage

*Recent land surveys conducted by contractors to the U.S. Army Corps of Engineers are found to be so severely flawed by states and private landowners that Congress has been forced to intervene.*

*Two companion bills introduced in both houses seek to deal with disputed boundaries. A landowner would notify the agriculture secretary of a boundary in question, prompting a new land survey. If the secretary determines the boundary is in error, the land in dispute will be returned to the private property owner.*

*The Senate bill, which passed this week, specifically addresses a number of boundary conflicts in the vicinity of the Mark Twain National Forest, which encompasses several counties in Missouri.*

*"Don Ayers of Shell Knob in my district tells me that the Forest Service showed up on his property and moved his boundary by 30 feet," notes Rep. Roy Blunt, Missouri Republican.*

*"When they did that, they essentially repossessed his driveway, took part of his garage and an outbuilding on the land that he had every reason to believe he owned and clearly not only had paid taxes on, but had made improvements, including those improvements that the Forest Service said now would belong to them once that boundary line was moved."*

"Here we go again," I thought, recalling a similar article that appeared in a survey magazine back in 1996. Written by Mike Harbin, LS, the Cadastral Survey Field Section Chief/Geodesist for the Montana/Dakota office of the BLM, the article detailed an incredible set of facts that resulted in the passage of the Crow Boundary Settlement Act of 1994 (CBSA).

The Treaty of Laramie in 1868 created the Crow Indian Reservation and established its eastern boundary as "...commencing where the 107th degree of longitude...crosses the south boundary of Montana Territory; thence north along said 107th meridian to the mid channel of the Yellowstone River..." By 1891, the GLO had established the 107th meridian on the ground, using the best equipment, methods and techniques available at the time (this was 12 years after the Battle of Little Big Horn). Beginning in the 1920s, discrepancies in the actual location of the line versus the theoretical the location became known. To address these discrepancies, over the years federal legislation was periodically introduced, but failed to pass.

This was no small discrepancy: one 24-mile long parcel was 900 feet wide at one end, and 4,300 feet wide at the other. Moving the line by congressional mandate had accomplished something that flies in the face of one of our most cherished guidelines: *an original monument has no error in position*. So when I

read about the legislation that applied to Missouri, I groaned; surveying problems can't be solved simply by legislative fiat. Granted, the Montana legislation is different than the Missouri legislation in that the first one "cured" a "problem" in the original work, whereas the second one merely recognizes that a discrepancy exists between the work of two federal agencies and enacts a cure for specific landowners.

Of course, the Missouri situation is not a new problem within the PLSS. The August 1981 issue of the ACSM *Bulletin* contained an article from the ALTA *Title News* about a similar situation in New Mexico.

From this problem and others like it throughout the western United States, Congress enacted the Small Tracts Act in 1983 to allow the Forest Service to either sell or trade lands with private property owners in specific situations. Many of you surveyors in the West have likely done STA surveys since that time. But the difference between the STA and the legislation passed for Missouri is critical in one respect: under the STA, the landowner has to pay for the survey; with the Missouri "solution," the government has to pay. Funds have not been appropriated for this.

Upon reading the *Washington Times* article I immediately initiated an e-mail discussion with my colleagues throughout the industry. The upshot of all this resulted in articles in this issue by retired Missouri State Surveyor Bob Myers, retired Forest Service surveyor Fred Roeder, and my friend and mentor Stan Coalter. Bob's article lays out the facts in the Missouri situation. The other two articles contain distinct points of view on the PLSS. Suffice it to say that the opinions may surprise you.

It is not my intention to attack anyone or any institution. Things are the way they are. In defense of the federal stewards of public land, some property owners *do* deliberately encroach. In defense of the property owners, the feds have occasionally added to the problem

by setting, and then moving corners, and in a few instances, moving the corners back to where they were. And many times the feds have ignored corners that have been accepted and used by surveyors and landowners for nearly a century. We are all familiar with the importance of the doctrine of original corners which allows land owners to improve their property without fear of the corners moving. The Blue Book contains what might appear to be "goofy" rules, but we all have learned these rules and attempt to abide by them. It would be easy to attack the Corps of Engineers, but I've done work as a COE subcontractor, and the one constant in all that work was that there was never enough money. I'm not accusing anyone of taking shortcuts, and Lord knows the Ozarks are a difficult place in which to survey!

But there is a lesson here. In the near future, federal money will be made available to survey Indian Lands, much like what's been done in Alaska. Anybody who's been doing boundary surveying for any length of time knows that it's almost impossible to estimate the money required to perform boundary surveys (unless you've done work in the neighborhood) because one never knows how much work will be involved. But there's only one way to do a boundary survey, and that's the correct way. On the last Corps project I worked on, we spent

more than twice the amount of money the Corps allotted, but we did the work correctly, and I can sleep at night knowing we did. It is my hope that government subcontractors will receive sufficient funding for any future boundary surveying.

## History in the Marking

Speaking of boundaries, in addition to this month's article on Oregon's Willamette Stone by Karla Powell and Tim Kent, many of you will recall the excellent article Angus Stocking wrote about Berntsen

International in our September/October 2004 issue. We are pleased to announce that Berntsen and Stocking have teamed up again, this time to create a book that celebrates the amazing utilitarian art form of survey markers. Says Berntsen president Rhonda Rushing, "*Surveyors have been making their mark on America for generations, and their monuments are a link to the past, little gems and treasures that tell special stories and create unexpected beauty in out-of-the-way places. Survey monuments are the punctuation marks of our country's history. It's time to showcase the art and the stories, and to pay tribute to surveyors who have been marking the past—and the future—of our country for generations.*"

Tentatively titled *History in the Marking*, the book will be built around photographs of unique, beautiful, historically significant monuments, together with notes on their history. Berntsen is asking you, the surveying community, for help in acquiring high quality photographs of monuments from around the country. They are hoping that surveyors everywhere will contribute to this project. If your submission is approved, you and your organization (if desired) will be credited on the same page that the photo appears, and you will get a free copy of the book when published, signed by Rhonda Rushing. For detailed instructions on photo submissions for this project, please visit their website at [www.berntsen.com](http://www.berntsen.com). *A*

