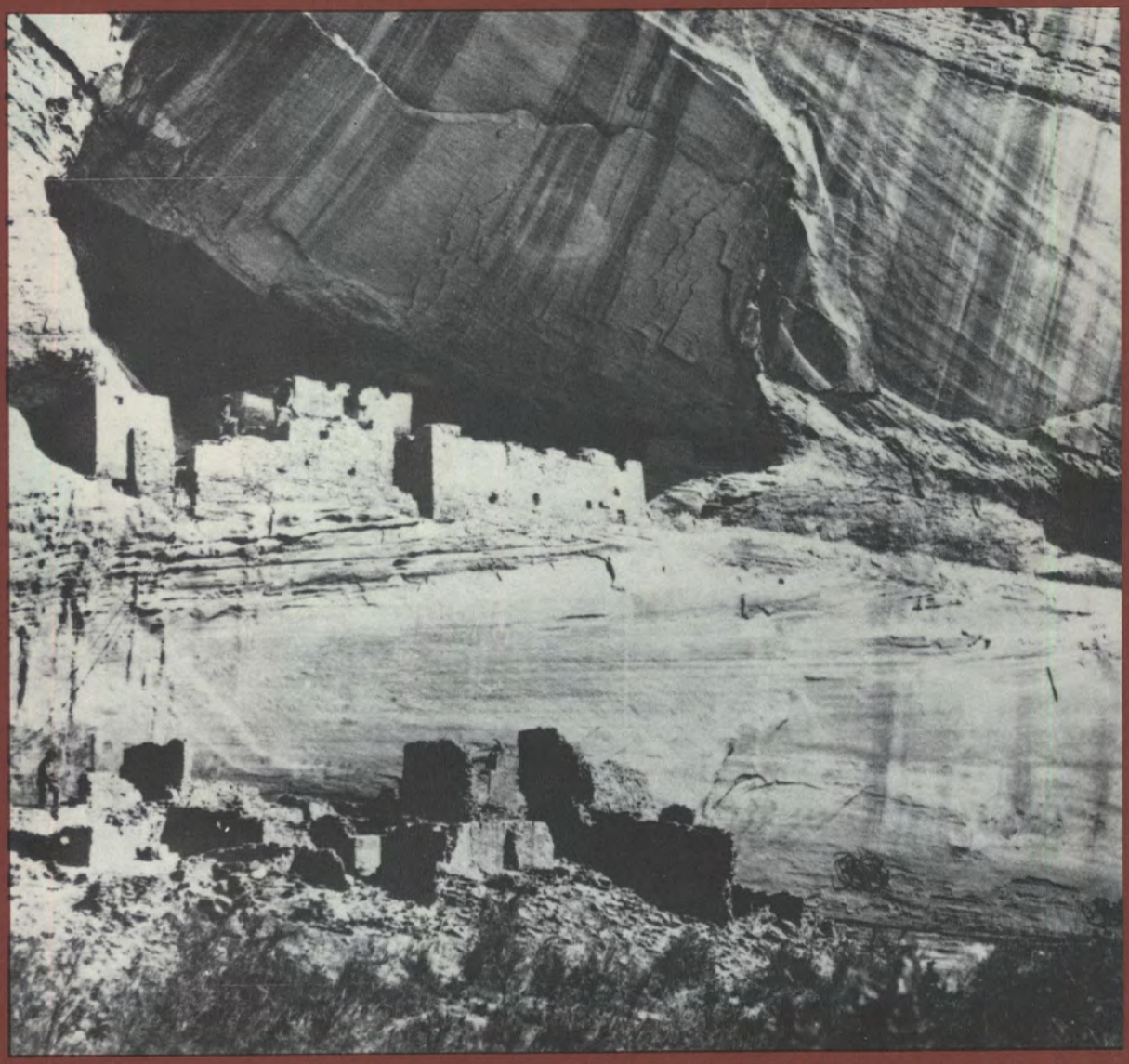
November 1981

TITLE NEWS



"White House" pueblo ruins, Canyon de Chelle National Monument, Arizona. (Denver Public Library, Western History Dept.)

SPECIAL FEATURE: Titlewoman's Testimony Aids Outlook for Solving Forest Survey Jumble

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TITLE NEWS

Volume 60, Number 11

Managing Editor: Maureen Whalen Stotland

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Features

Departments

Front Cover

This photograph is a reproduction of "Ancient Ruins in the Canon de Chelle, N.M./ In a niche 50 feet above present Canon bed," a stereograph produced by Timothy H. O'Sullivan during the Corps of Engineers' third western survey in 1873, which was led by Lt. George Montague Wheeler. (From Eugene Ostroff, Curator of Photography, National Museum of American History, Smithsonian Institution, *Western Views and Eastern Visions*, Washington, D.C.: Smithsonian Institution Traveling Exhibition Service, with the cooperation of the U.S. Geological Survey, 1981, page 30. The original is at the Denver Public Library.) The "White House" pueblo ruins depicted are in the west Canyon de Chelle, at the present-day Canyon de Chelle National Monument, Apache County, Arizona.

Besides being the setting for the boundary disputes discussed in the special feature (page 6), a local issue that has national significance, the Southwest is the location for P. C. Templeton's article on title problems posed by Spanish and Mexican grants (page 13).

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A Message From The Chairman, Abstracters and Title Insurance Agents Section

I was highly honored, and a bit excited, to have been elected chairman of the Abstracters and Title Insurance Agents section. I appreciate your vote of confidence and will truly endeavor to justify it through the coming year.

I do not take this position lightly. I feel that it is my responsibility to fully represent each abstracter and agent, as well as the entire association, to the best of my ability. I pledge to you my fullest attention and capability.

My first thought was to correspond with each abstracter and agent member to determine the general feelings of each as to the image of ALTA, both internally and externally. I also wanted to ascertain just who was willing to give their time and energy on behalf of ALTA as members of our very important committees. Returns from this letter are still coming in, but I am encouraged to find that many of you are ready, willing, and able to give your time to our industry and its growth. After all returns are in, I feel that I will have a grasp of how to best represent each ALTA member.

The ALTA has been in my blood since I was born. My dad, Jack Rattikin Sr., talked our industry every waking moment. I began to love this strange animal called the "title business," and by the time I finished law school I was ready to tackle it. Since then, I have had the good fortune to work with many wonderful people throughout the United States.

I am convinced that our industry is made up of caring, dedicated, and unselfish people who work very hard to make certain that the basis of our democracy, "home ownership," can continue to be a reality. Unfortunately, it appears that there are opposing forces who feel that inflation can be curbed only by slowing down, or cutting out entirely, the flow of mortgage money into real estate. The interest rates on available money make it almost impossible for anyone but the wealthy to buy a home. Your association is fighting this method of stopping inflation because it is our opinion that our country can "slay the beast" without "killing the hunter" at the same time. We hope that there will be a turnaround in the near future, and we can once more be part of a real estate industry that is moving forward on behalf of all people everywhere who dream of owning a home someday.

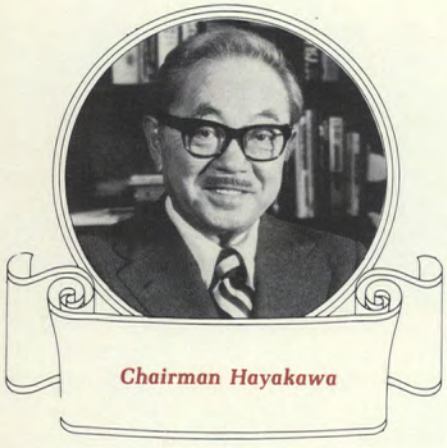
The ALTA is your association. It was formed for one purpose: to organize all members of the title industry into a visible and strong force that can support or oppose those issues that concern us most. Consequently, we need the help of each member to provide the "peoplepower" to keep our association going. ALTA is now well respected by our peer industries, by all government agencies dealing with the real estate industry, and, yes, by the United States Congress. This respect did not just happen. It had to grow through the years. We have proved to all that we are an industry that is professional and can be trusted to look after the best interests of the consumer. We are here to stay, but we need your help. Please accept when called upon for help, and let us hear from you anytime you have a suggestion that would be helpful to our industry or to the people we serve.

Let us all move forward this year with renewed vitality and vigor and do everything we can to make the American Land Title Association even greater.

Jack Rattikin Jr.

Jack Rattikin Jr.

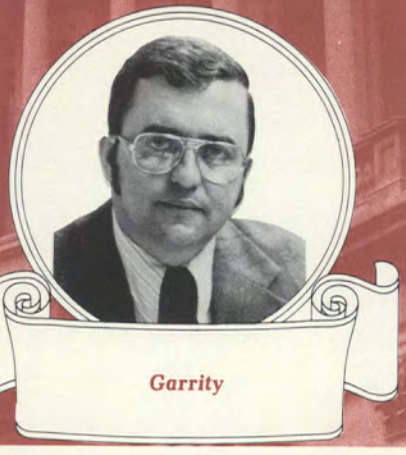
Titlewoman's Testimony Aids Outlook for Solving Forest Survey Jumble



Chairman Hayakawa

Sen. Domenici

Ward



Garrity

McAuliffe

Late in October, Charlene Ward journeyed from her land title business in southern New Mexico to present important testimony at Senate hearings in Washington on a bill designed to help resolve serious survey problems affecting private land ownership near U.S. Forest areas in various states.

Details of the federal survey jumble are reported in an article appearing in the February 1981 *Title News*. (See page 6 of that issue.) Many difficulties first surfaced in Mrs. Ward's home county of Otero—and in neighboring Lincoln County—after the U.S. Forest Service and Bureau of Land Management began work to retrace the old original General Land Office survey in Lincoln National Forest. The retracing is in connection with federal law requiring the Forest Service to cut as much timber as is grown on its land each year—meaning that the agency must be certain of the property that it owns.

During retracing work in 1967–69 involving certain section and township corners in Lincoln National Forest, many original corners could not be found but locations were reconstructed by various accepted survey methods and standard brass monuments were set to mark them. The retracing was abandoned because of inadequate funds late in 1969 with the brass monuments still in place but the survey not certified by the Bureau of Land Management.

After the monuments remained for as long as 14 years in some instances, the Bureau of Land Management within the past three years again received funding and began retracing the 1967–69 resurvey and relocating many of the corners to what then were determined to be the proper locations. According to reports, federal certification has not been issued for the latest federal survey. Over the 14-year period, the brass markers—although uncertified—have been utilized as established points of reference for surveys in connection with private land transactions.

Compounding the problem has been the relatively recent advent of laser survey techniques that, in the eyes of the Forest Service, have brought out inaccuracies in long-standing surveys conducted by older methods.

The results have been deeply disturbing to private land owners in the affected areas. Unexpected changes in boundaries have threatened loss of privately owned land and improvements. Owners have abruptly found themselves facing the defense of their titles and boundaries perfected earlier when property was acquired by using the best available licensed surveyors and information. Land titles in the area have become clouded and prospects for resale of affected private property difficult if not impossible.

According to one Forest Service estimate, as many as 90,000 title claims could emerge from similar survey problems in U.S. Forest areas in different states.

In response to the difficulty, Senator Pete Domenici (R-N.M.) last March introduced S. 705, a bill designed to resolve related survey problems and remove the need for possibly several thousand "special bills" to clear up individual land owner disputes. During the October hearings before the Subcommittee on Forestry, Water Resources, and Environment of the Senate Committee on Agriculture, Nutrition, and Forestry, Mrs. Ward spoke as president-elect of the New Mexico Land Title Association and member of a steering committee of concerned New Mexicans in supporting S. 705 as introduced.

Serving with Mrs. Ward on the Public Land Survey Steering Committee are its chairman, Dorsey Bonnell, an artist and property owner; State Senator Charlie Lee, a rancher; former State Senator Aubrey Dunn, business manager for the Alamogordo *Daily News* and currently a candidate for governor of the state; Otero County Commissioner Bill Mershon, manager of engineering services for Otero County Electric Co-op; Otero County Surveyor Quinton Daniel, president of Daniel Engineering Company; and Wayne Stewart, president, First National Bank, Alamogordo.

As introduced, S. 705 would authorize the Secretary of Agriculture to sell or exchange by quitclaim deed all rights, title, and interest of the federal government in National Forest System lands as described below. As consideration for such lands, the Secretary could accept other land, interests in lands, or cash, equal in value to the fair market value of the land.

Defined as lands that may be sold or exchanged under S. 705 are:

- Parcels of 40 acres or less interspersed with or adjacent to mineral patents, which the Secretary determines are not subject to efficient administration, and which have a fair market value of no more than $150,000
- Parcels of 10 acres or less that are encroached upon by improvements occupied or used by persons who in good faith, and without advance notice that the improvement would encroach upon the parcel, relied upon an erroneous federal survey, title search, or other land description
- Road rights-of-way that are substantially surrounded by lands not federally owned and that are no longer needed

S. 705 would require that persons receiving land conveyed or sold under its authority bear reasonable costs of administration, survey, and appraisal incident to the conveyance, except that the Secretary can waive payment of these costs if he determines that a waiver is in the public interest. Persons receiving conveyance of any rights-of-way must reimburse the federal government for any improvements thereon, and conveyance of any rights-of-way must not permit any use inconsistent with state or local law.

Working closely with ALTA staff in Washington, Mrs. Ward developed testimony that provided revealing insight into local aspects of the federal survey problem from the vantage point of Otero and Lincoln counties, where she and her husband, Al Ward, own Alamogordo Abstract and Title Company, Alamogordo, and Guaranty Abstract and Title Company, Ruidoso, in those counties respectively.

Before it was Mrs. Ward's turn to testify, Subcommittee Chairman S. I. Hayakawa (R-Calif.) asked her to comment on a Forest Service recommendation being discussed in oral testimony by R. Max Peterson, chief of that agency, that S. 705 be amended to apply to owners of up to 5 acres. She pointed out that the number of federal land survey problems involving owners of between 5 and 10 acres presently is unknown in New Mexico and elsewhere and recommended inclusion of owners of up to 10 acres to remove the need for coming back later and deciding what to do about owners in this category. Mr. Peterson then said he has no serious objection to leaving the provision at 10 acres.

Also recommended by the Forest Service is amending the bill to provide for what was described as "interchange" in addition to the existing provision to sell or exchange National Forest System land.

"In effect, it is an expedited form of exchange and would thus avoid the attendant costs and time requirements," Mr. Peterson said. "For example, a land owner involved in an encroachment situation on federal lands could agree with the government to exchange titles to the small parcel of federal land being occupied and a similar parcel of land, usually adjacent, which that person owns. Lands involved would normally be of

about equal size and approximately equal value.

"This simple transaction would clear up the encroachment situation quickly and with minimal costs by avoiding the formal appraisal and processing procedures," Mr. Peterson continued. "The expense to the land owner would be limited to the costs of the survey, if any, and deed preparation and filing."

During her testimony later in the hearings, Mrs. Ward said that any expensive survey costs in connection with "interchange" should be shared fairly by the federal government.

In outlining her local perspective on the federal survey problem, Mrs. Ward said she personally knows of more than three dozen instances where private property owners are experiencing difficulty and said "the most sobering assessment of damage is in the effects of land owners who have relied on the integrity of our system of real estate transfer."

Mrs. Ward said the federal survey retracing places the private land owner in a no-win situation when his boundary is moved and a fence is involved.

"If, for example, a boundary line is moved 60 feet along the edge of a full section of land and the owner declines to buy the property back from the federal government, he still must move his fence to the new boundary at his expense," she said. "For a 3-strand barbed wire fence, the cost for doing this on flat land would be in the neighborhood of $5,000. So the owner loses either way: he buys land back for which he has already perfected title or he pays for moving his fence."

Mrs. Ward cited one example of an owner of a farm for which boundaries initially were established in the 1880s, long before the first surveys. After completion of the first surveys, he laid out boundaries to the best of his ability. Following the recent federal survey retracing, the owner was advised that his orchard and plowed fields within the bottom of a canyon were public land and that he now owns a tract of similar size on a rugged, brush-laden hillside.

Another example involves former State Senator Dunn, who sold mountain farmland he owned to a subdivider after survey work to perfect title dating back to the farmer who owned the property in 1935. The survey work was updated in the 1950s. Without Mr. Dunn's knowledge or permission, a private surveyor contracted by the Forest Service came upon his property within his fences and previously surveyed lines—and placed markers along a line cut within his land. Mr. Dunn then was faced with a clouded title to land he had sold under contract after he previously had perfected title.

As the result of moving a corner marker in an Otero County subdivision, the owners of some 300 subdivision homes have newly designated boundary lines. Among the one and one-half acre lots in the subdivision, some are 60 feet wide, and more than 10 owners of these are threatened with loss of their homes or property unless they buy the real estate back from the federal government.

In Lincoln County, the retracing threatens to completely take away the water from a rancher who has owned a large cattle ranch there for some 30 years. As Mrs. Ward pointed out, a cattle ranch without water is a desert.

"Based on my knowledge of these current cases, I would estimate that about 80 per cent of them could be cleared up if S. 705 were enacted as introduced," Mrs. Ward said in her testimony.

In addition to Mrs. Ward and Mr. Peterson of the Forest Service, all the other witnesses presenting testimony joined Senator Domenici—who was the leadoff witness at the hearings—in calling for enactment of S. 705. While there were some recommendations for amendment, all the witnesses were substantially in agreement with the basic direction of the bill. Also testifying in addition to those previously mentioned were Gene Bergoffen of the National Forest Products Association and Rosmarie Craven, representing land owners in National Forest System areas.

As the hearings ended, there were reports that Senator Domenici is seeking prompt consideration of his bill in the Senate and House and enactment of the measure during the present session of Congress. Chairman Hayakawa complimented Mrs. Ward on her testimony and said he personally is delighted to see such "practical" legislation under consideration in his subcommittee, especially in view of overloaded court dockets across the nation. The outlook for passage of S. 705 thus far was optimistic.

In discussions involving New Mexico Land Title Association President Mike Currier and ALTA Executive Vice President Bill McAuliffe and Vice President—Public Affairs Gary Garrity before the hearings, it was agreed that Mrs. Ward with her local perspective in the federal survey problem would be an impressively effective witness on behalf of S. 705. As the hearings were completed and Mrs. Ward headed back to her home in Alamogordo, the record of a United States Senate hearing reflected that this was a sound decision.

Photo Credit Due

Title News regrets that in the October 1981 issue, credit was not given to Gordon Bishop and the *Newark Star Ledger* for the photographs that appeared on pages 6, 7, and 9 in John R. Weigel and Joseph M. Clayton Jr.'s "Public Use Challenges Private Rights to Bay Head Ocean Beach."

Colorado Elects Brockman

The 61st annual meeting of the Land Title Association of Colorado was held June 25–27 at Steamboat Springs, Colorado.

Jack W. Brockman, executive vice president of Security Title Guaranty Company, Lakewood, Colorado, was elected president. Nicholas J. Copeland was elected first vice president, Ronald J. Cecil was elected second vice president, and Harry L. Paulsen was elected secretary-treasurer.

Betty Lynde was honored with the Annual Colorado Title Person of the Year Award in appreciation for her dedicated, loyal, and meritorious service to the title industry.

Guest speakers highlighting the meeting included Chester Grubin, president of Premier Associates, Denver, and Donald P. Kennedy, chairman of the Title Insurance and Underwriters section of the American Land Title Association.

New York State LTA Meets

The New York State Land Title Association held its 60th annual meeting and convention September 1–3 at The Otesaga in Cooperstown, New York.

Clarence R. Castel, vice president and regional manager of American Title Insurance Company, was elected president. Other new officers include Michael A. Lewis, vice president; John C. McGuire, vice president, central section; Owen Mangan, vice president, western section; and John E. Maddie, treasurer.

James L. Boren Jr., then ALTA president, presented a report from Washington. Other guest speakers were William L. K. Schwarz, vice president–economist, Manufacturers Hanover Trust Company, New York; James M. Pedowitz, member, Marshall, Bratter, Greene, Allison & Tucker, New York; and James M. Hartman, member, Harris, Beach, Wilcox, Rubin & Levey, Rochester.

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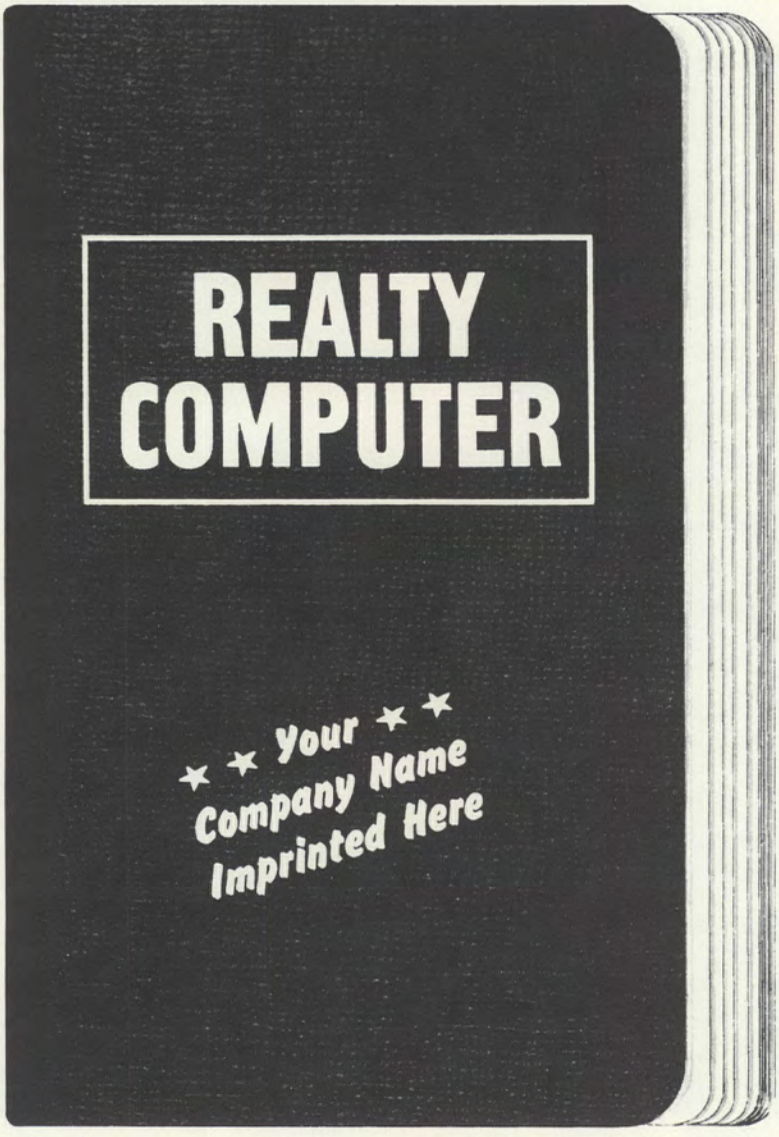

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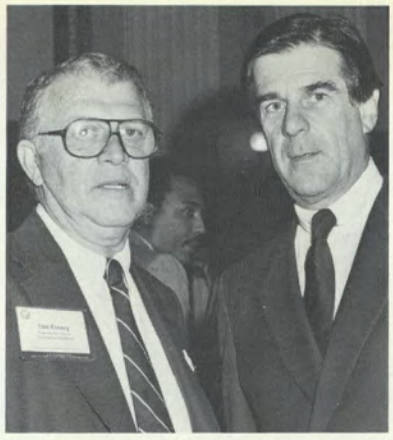
Rep. Bobbi Fiedler (R-Calif.) (left), John E. Flood, TICOR Title (center), and Dorthy Flood (right).



Tom Kenney, Transamerica Title (left), and Rep. Fortney H. (Pete) Stark (D-Calif.) (right).

ALTA President Fred B. Fromhold, Commonwealth (left), ALTA Vice President—Government Relations Mark E. Winter (center), and Rep. William F. Goodling (R-Pa.) (right).

Rep. John G. Fary (D-Ill.) (left), Richard P. Toft, Chicago Title (center), and Rep. John E. Porter (R-Ill.) (right).

Donald P. Kennedy, First American (left), and Rep. David Dreier (R-Calif.) (right).

Thomas S. McDonald, Lawyers Title (left), Sen. Lawton Chiles (D-Fla.) (center), and Mary Lou McDonald (right).

Bruce H. Zeiser, Lawyers Title (left), Rep. Barney Frank (D-Mass.) (center), and ALTA Executive Vice President William J. McAuliffe Jr. (right).

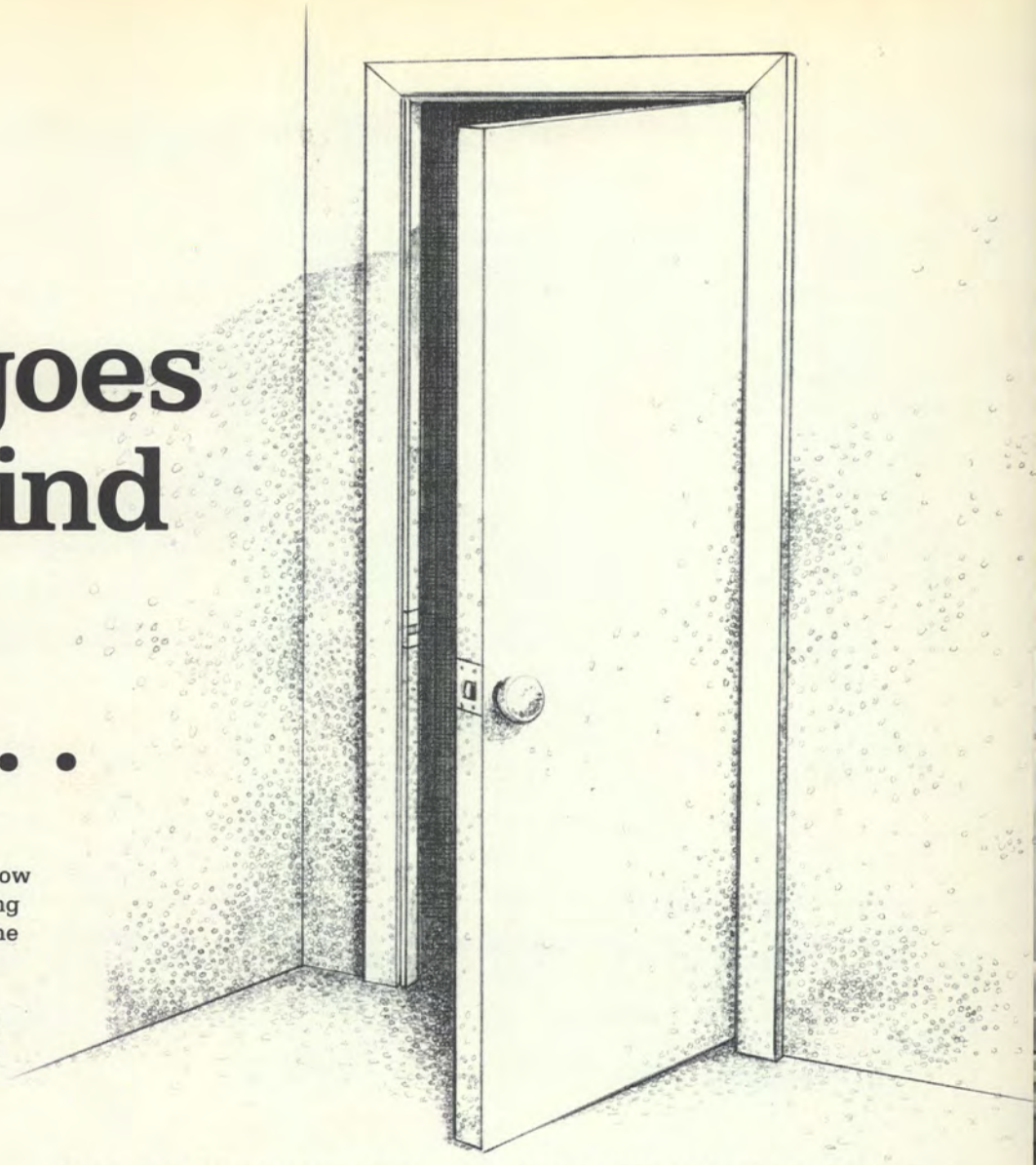
ALTA Holds Fifth Federal Reception

The American Land Title Association sponsored its fifth annual federal reception Wednesday, October 14, in the Caucus Room of the Cannon House Office Building in Washington, D.C. According to Mark Winter, ALTA vice president—government relations, more than 325 Washington dignitaries, including members of Congress, committee staff, and federal agency personnel, attended this year's reception, the largest to date.

ALTA President Fred B. Fromhold and President-elect Thomas S. McDonald, along with association representatives James Robinson, American Title Insurance Company (Miami, Florida), F. Earl Harper, Southern Abstract Company (Bartlesville, Oklahoma), John E. Flood Jr., TICOR Title Insurers (Los Angeles, California), Donald P. Kennedy, First American Title Insurance Company (Santa Ana, California), Thomas Kenney, Transamerica Title Insurance Company (San Francisco, California), and Richard Toft, Chicago Title Insurance Company (Chicago, Illinois), greeted reception guests. Congressional guests included House Banking Committee members Frank Annunzio (D-Illinois), Jerry M. Patterson (D-California), David Evans (D-Indiana), Ed Weber (R-Ohio), and Bill Lowery (R-California). Senators Lawton Chiles of Florida and Charles Grassley of Kansas also attended the reception.

Each year, the ALTA federal reception attracts new faces from both houses of Congress and from various federal agencies, providing a congenial atmosphere in which ALTA members can exchange views and ideas with their elected leaders.

What goes on behind closed doors . . .



in the title industry? Do your customers really know? The brochures and visual aids listed below can be a tremendous help in advising the public and your customers on the important and valuable services provided by the title industry.

These materials may be obtained by writing the American Land Title Association.

Brochures and booklets

*(per hundred copies/shipping and/or postage additional)

House of Cards.

This promotional folder emphasises the importance of owner's title insurance $17.00*

Protecting Your Home Ownership

A comprehensive booklet which traces the emergence of title evidencing and discusses home buyer need for owner's title insurance $24.00*

Land Title Insurance — Consumer Protection Since 1876

Tells the story of the origin in 1876 in Philadelphia. $15.00*

Closing Costs and Your Purchase of a Home

A guidebook for homebuyer use in learning about local closing costs. This booklet offers general pointers on purchasing a home and discusses typical settlement sheet items including land title services. $25.00*

Things You Should Know About Homebuying and Land Title Protection

This brochure includes a concise explanation of land title industry operational methods and why they are important to the public. $17.00*

The Importance of the Abstract in Your Community

An effectively illustrated booklet that uses art work from the award-winning ALTA film, "A Place Under the Sun" to tell about land title defects and the role of the abstract in land title protection. . . $30.00*

Blueprint for Homebuying

This illustrated booklet contains consumer guidelines on important aspects of homebuying. It explains the roles of various professionals including the broker, attorney and titleperson. $35.00*

ALTA full-length 16mm color sound films

A Place Under The Sun (21 minutes)

Animated film tells the story of land title evidencing $140.00

1429 Maple Street (13½ minutes)

Live footage film tells the story of a house, the families owning it, and the title problems they encounter. $130.00

The American Way (13½ minutes)

Live footage film emphasizes that this country has an effective land transfer system including land recordation and title insurance. $130.00

The Land We Love (13½ minutes)

Live footage documentary shows the work of diversely located title professionals and emphasizes that excellence in title services is available from coast to coast. $105.00

Miscellaneous

ALTA decals . . . . . $ 3.00
ALTA plaque $2.75

'Shaking the Fleas' Out of Spanish and Mexican Grants

by
P. C. Templeton

Bounded on the East by the Rio Grande; on the West by the Rio Puerco; on the North by a line drawn from said Rio Grande opposite the site of the Barranca de Juan de Pera West to the crest of the Ceja del Rio Puerco and thence along the said crest to a point East of a point two leagues South of the center of the site of the old town of San Fernando and thence West to the said Rio Puerco; on the South by a line running West from the said Rio Grande along the North boundary of the lands of Captain Antonio Baca mentioned in the grant in this clause, to the said crest of the Ceja del Rio Puerco and thence along said crest to a point due East of the site of the Alamo Gacho, also mentioned in said grant and near the Cerro Colorado and thence West to the Rio Puerco.

This paragraph is a pretty fair description—for its day. The area described is 82,728.72 acres of land. The description appeared in a U.S. patent in 1905, but originated in a Spanish grant in 1701.

When dealing with titles to Spanish and Mexican grants, you cannot just read the documents. To understand the documents, you must understand the people who made them. Land does nothing to its own title—everything relating to title is done by people.

To deal with grant titles, you must rely on your intuition to recognize potential losses. The best way to approach grant titles is to trace the actions and reactions of the people involved from the genesis of the grants.

Centuries ago, the Spanish and Mexican governments granted vast areas of land in the southwestern United States to communities and individuals to encourage colonization. Land was just as attractive to people in the sixteenth and seventeenth centuries as it is to people today, and many present-day Southwest urban areas developed from these grants.

Most title problems with grant lands arise from legal descriptions. Land descriptions that were adequate in the sixteenth century when the land was almost worthless are the sources of some monumental title losses today. Conveyancing practices and methods of describing land that were acceptable when exact boundaries were not important create sometimes violent controversies as land values increase. "Harmless kittens often grow up to be tigers."

P. C. Templeton is president of First American Title Company of New Mexico, Albuquerque.

All or a great portion of the trade area of many title agents lies within grants. These agents have learned to recognize and deal with grant problems. For the searcher and examiner who encounter grant titles only occasionally, however, the danger of heavy title losses is a constantly lurking specter.

Because the subject of Spanish and Mexican land grants and title problems is so complicated, I will "paint with a broad brush" and give a general overview. A look at the origin of the land grants, their purpose, the methods of granting, the people involved, and the manner in which the land was occupied and used will to some extent show why description problems are built into grant titles. The insight gained from such an outline can help title persons develop an attitude in which problems are presumed rather than wondered about.

The Spanish crown, having reaped the vast benefits and wealth of Cortez's conquest of Mexico, quickly conjured up a vision of an empire exceeding any in the history of the world. The conquest of Mexico was a monumental human adventure. Accompanied by several hundred men and a few horses, Cortez burned his ships upon landing and proceeded to conquer a civilization of millions and loot a land of mind-boggling wealth.

While awaiting the report from his C.P.A. of the final count on the shiploads of gold brought back by the expedition, the king no doubt reevaluated his concept of the new world. The staggering amount of gold returned by the (now) honorable Cortez had been obtained from a relatively small portion of this new world. Thousands of leagues of land were known to exist both to the north and south of the conquered area. It was logical to assume that these vast unexplored areas would be just as lucrative as Mexico City and that the Cortez experiment could be repeated many times. Good news traveled fast, and a number of self-financed candidates arrived at the king's door to explore, conquer, and tap the wealth of the new world.

Twenty-two years after Cortez first stepped ashore on the mainland of the new world (to trade, he said), Francisco Vasquez Coronado mounted a privately financed expedition to search for the fabled cities of gold known as *Cibola*, rumored to lie somewhere to the north. In early autumn 1540, a conquering army consisting of about 20 bedraggled, foot-

sore, disillusioned Spanish soldiers found themselves at the fortress-pueblo of *Cicuye* (Pecos pueblo in north-central New Mexico*). Stopping occasionally to bury a comrade who had died from hunger or thirst, they had marched some 1,800 miles from the jungles of Mexico across the high, semiarid areas of New Mexico to receive homage and tribute from inhabitants of the largest pueblo of that day. They had endured the hardships of an 1,800-mile trip to receive a few buffalo robes, flint knives, and native shields. Their disappointment was profound. One member, Melchoir Perez, later complained that he had gambled a small fortune of 2,000 gold *castellanos* to outfit himself and his servants for the venture. The financial disaster of the expedition is best illustrated by a statement of one of its members, Hernando de Alvarado, in 1549, which translates as follows:

> *Hernando de Alvarado states that he came to New Spain nineteen years ago [in 1530] with the Marques del Valle [Hernan Cortez] and that he has spent these years in the service of His Majesty in the first discovery of the South Sea, on the expedition that the Marques made, and on the expedition to* Cibola. *Under the command of the general [Coronado] he discovered and conquered more than two hundred leagues in advance, where he discovered the buffalo. On all these expeditions he served with the rank of captain at his own cost, providing many horses and servants without receiving pay from His Majesty or any other person. He has not been remunerated and as a result lives in poverty.*

The Coronado expedition and several others—equally nonproductive—convincingly demonstrated that the grand dream of a wealthy new world empire was not to be realized. Philip II then decided to colonize the land and let the benefits to the crown accrue. In 1573, he issued a decree setting forth the ground rules for pacifying and settling the new land. The final sentence of the decree, to the effect that the colonization was to be undertaken "without a thing being expended from my treasury," provided the foundation for land grants.

Other than personal glory, religious zeal, and a possible escape from his mother-in-law, the only real inducement for a colonist to undertake the costly and arduous ordeal was land. Typical of the several propositions laid before the king was that of Juan Bautista de Lomas y Colmenares. As payment for founding a colony, Lomas asked not only for the esteemed feudal title *adelantado* for his family in perpetuity, the office and authority of governor and of captain general for six heirs in succession, and the noble rank of *marques* but also for 40,000 vassals in perpetuity and a private reserve of 24 square leagues (120,000 acres). Philip II could agree with the request for the vassals and the land, but the titles and authorities were too much. He did not want New Spain that badly.

The appropriation of title to New Spain by the crown was prolonged, but was finally formalized by Don Juan de Onate y Salazar. On October 21, 1595, Viceroy Mendoza signed a contract with Onate, appointing him "governor, captain, general, caudillo, discoveror and pacifier" of New Spain. Under the contract, Onate committed himself to provision and take to New Spain at least 200 men (some with their wives, but no count of the women was required), livestock, 20 carts, and an extensive list of specific supplies and equipment—all at no cost to the crown. In December 1597, a representative of the crown made the final inspection of the soldiers and colonists, as well as a detailed inventory of supplies and equipment, which included items such as carts, farm implements, weapons, tools, livestock, horseshoe nails, laxative pills (some problems seem to be eternal), and beef jerky. The group passed inspection and moved out in March 1598, years behind schedule.

The party slowly headed north in a miles-long, narrow, dusty procession. When it reached the Rio del Norte, just south of present-day Juarez, the fearless leader nailed a cross to a living tree, gathered his flock around him, and made the following proclamation:

> *Open the door of heaven to these heathens, establish the church and altars where the body and blood of the Son of God may be offered, open to us the way to security and peace for their preservation and ours, and give to our King, and to me in his royal name, peaceful possession of these kingdoms and provinces for His blessed glory, Amen.*

These words constitute the source of title to most of the United States west of the Mississippi, a verbal conveyance of which the grantors were not even aware. Is it any wonder that there may be a few title problems now and then?

In due course, Onate and his followers founded a colony at San Juan. The colony was subsequently moved to Santa Fe, which became New Spain's capital.

Colonization proceeded slowly in the middle and lower Rio Grande valley for the better part of a century. Villas (small villages) were developed in areas that could easily be irrigated, but they were informal; very few land grants were made to villas until after the 1680 pueblo revolt.

After nearly a century of exploitation, serfdom, and actual slavery, the pueblo tribes began to take a dim view of the arrangement. The Spanish colonists, always professing a deep concern for the spiritual welfare of the natives, finally concluded that the pueblo *kivas*, the ceremonial centers, were "places of idolatry where apostates offered to the devil the grain and other things they possess." Forty-seven alleged sorcerers were rounded up and hustled off to Santa Fe for trial. They were immediately found guilty. Three were hanged, one hanged himself, and the others were whipped. The pueblos organized and laid siege to the capital. Leading the rebellious pueblos was a Spanish-speaking *Tano* named Juan. He presented the besieged Spaniards with an ultimatum: Leave the country or be killed. The Spaniards did not pack fast enough, and the Indians attacked. The Spaniards were defeated and retreated south, picking up residents of the ranchos and *estancias* along the Rio Grande as they went. Regrouping as they retreated south, the colonists, less some 390 dead, finally ended their inglorious 280-mile trek at El Paso.

Reconquest under the leadership of Diego de Vargas did not occur until 12 years later, in 1692.

If you think it was tough for Onate to recruit the original colonists, ponder for a moment the prospects awaiting the candidates for Diego de Vargas's recolonization:

> Pay your own way.
>
> Walk or ride 280 miles.
>
> Take with you only what you escaped with.
>
> Go back to face a vast number of hostile Indians still celebrating their victory—all for the privilege of grubbing out a bare existence and living off what you can produce from the land (because the nearest supermarket is at Chihuahua, 600 miles to the south.)

THE ONLY INDUCEMENT WAS LAND!

*Here and elsewhere in this article, New Mexico and New Spain are mentioned. The fluctuating boundaries of this large area encompassed much more land than present-day New Mexico and, in fact, included most of today's southwestern United States.

With the recolonization, land grants as they now exist came into being, and the chains of title that led to present ownership commenced.

To help you understand the structure of grant titles through history, I will trace a typical land grant from its inception to the date of application for title insurance that is on someone's desk today. I have selected the Atrisco grant as representative. It was a community grant, the original descriptions were vague and elastic, it is now a populous area, and some of the land is very valuable.

Don Fernando Duran y Chavez, who lived at Atrisco before the Indian revolt and returned with Diego de Vargas, petitioned for "a new grant at Angostura and another at Atrisco where my father once lived." Diego de Vargas granted the request with the stipulation

That his children, heirs and successors may possess them with the condition that when it shall be the will of the King our Master that his Kingdom shall be settled, the said Don Fernando de Chavez shall be one of the settlers and if he does not do this then the grant shall be void. (Restrictions, covenants, and conditions are not a new innovation.)

Don Fernando served his hitch in the army and moved onto the land. In October 1701, he asked the governor to formalize his possession of the grant. The conveyance took place in 1702 in the following manner:

The governor took him by the hand, gave him royal and personal possession of the said tract and led him over the land, and he plucked up grass, threw dirt, and performed other demonstrations in sign of true possession.

That's all there is folks; the original documents were lost. When you consider that this simple ceremony created the source of title to more than 80,000 acres of land, some of which is worth more than $10 per square foot today, you can see why the title industry might have a few apprehensions.

Having obtained the grant, the Atrisco residents proceeded to establish their community. Almost immediately, they began to squabble over boundaries and launched the long, convoluted series of family feuds and legal proceedings that were to plague the grant for many generations.

The Atrisquenos farmed the land near the river and raised sheep on the remainder of the land known as "common lands." Their sheep, not overly concerned with boundaries, found the grass a little greener in an area west of the original grant, near the Rio Puerco. The occupants of this area, known as San Fernando, protested to no avail and finally resorted to force and undertook direct, effective eviction proceedings.

The Atrisquenos petitioned the governor, stating that the San Fernandinos had never settled the disputed area and had plenty of room in other directions. The poor petitioners, on the other hand, needed the governor's intervention, "else we shall be utterly lost, our families ruined and we rendered worthless for the service of the King and Sovereign in the constant attacks made by the enemy [Indians]."

The Atrisquenos obviously had more political clout than the San Fernandinos, and the governor immediately granted the petition and commissioned the chief *Alcalde* and war captain of Albuquerque to make the investiture. The people of San Fernando were ordered to appear before the *Alcalde* on May 7, 1768. It seems that the dockets were not too crowded at that time, and on May 9 the *Alcalde* ruled in favor of the Atrisquenos, the grant was documented, and the appropriate ceremonies took place.

In 1848, the Treaty of Guadalupe Hidalgo was signed, ending the Mexican War. The treaty drew up a boundary between the United States and Mexico at the Rio Grande and Gila River.

For $15 million, the United States received more than 525,000 square miles of land, an area including present-day Arizona, California, western Colorado, Nevada, New Mexico, Texas, and Utah. In return, the United States agreed to settle the more than $3.25 million in land claims made by U.S. citizens against the Mexican government.

The treaty also provided that the United States honor Spanish and Mexican land grants, declaring that Spanish-speaking residents holding land under these grants remain the lawful owners of such land.

Under articles VIII and IX of the treaty, residents of territories previously belonging to Mexico were given the choice of either retaining Mexican citizenship or becoming U.S. citizens. Article VIII required, however, that these residents make their choice within a year of the date of the treaty; those who did not were considered to have elected U.S. citizenship.

In the latter half of the nineteenth century, the Atrisquenos began to notice that an increasingly large percentage of the sheep grazing on their common lands belonged to others. Rather than suffer the same fate that they had imposed on the San Fernandinos in 1768, they decided to take advantage of the provisions of the Treaty of Guadalupe Hidalgo to solidify their holdings. In December 1884, they organized and appointed a commission to obtain confirmation of their grant and a U.S. patent. On December 14, 1885, the commission formally petitioned the surveyor general for confirmation, asking that the original grant of 1701 and the additional grant of 1768 be consolidated and a patent issued. The description of the land set forth on the petition read as follows:

On the North the "Barranca de Juan de Perea" a straight line to the boundary of San Fernando, the Westerly going

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There were two basic types of land grants: community grants and individual grants.

Community grants **were parcels of land given to newly settled towns or pueblos by the king or governor for communal purposes ("common lands"). These lands were given without an act of grant from any government. The pueblos or towns were usually founded beside rivers or streams for irrigation purposes; each settler received a narrow strip of farmland bordering the waterfront and extending inland.**

Many Spanish and Mexican land holdings were *individual grants*, given while either Spain or Mexico held sovereignty. Most grants conveyed by these governments were acquired by individuals who wished to settle and farm in the provinces. If an individual's tract of land was large enough, he usually divided it into smaller parcels, either renting these lots to tenants, or distributing them among his workers. In the latter case, the individual usually paid his workers by sharing the harvest with them.

To obtain an individual grant, a petition was prepared, usually accompanied by a map of the land in question, and presented to either the king or the governor. A grant was then issued to the individual. This entire process cost about $12.

Both types of grants were limited in size, according to Spanish or Mexican laws. These laws were, however, extremely flexible, and even individual grants could range from 20,000 to 50,000 acres each.

Defining Accretion, Avulsion and Reliction

by
James Dunlavey

Accession, as it relates to the law of real property, is sometimes defined as a method of addition to or acquisition of title to real property by one or more of several methods. Three of those methods of accession to real property are the doctrines of accretion, avulsion and reliction. It is intended here to acquaint the reader with the doctrines, with some basic applications of each, and to advise that the importance and scope of these doctrines are more far reaching and active in American law than might be anticipated.

Initially, a word of caution is necessary. Although the subjects of accretion, avulsion and reliction are not widely known in the law as parts of real property law, they are within themselves very complex and diverse. Except where specifically mentioned hereafter, no attempt can be made in this, a general discussion of the doctrines, to separate the applications of statutory laws of each jurisdiction (including the federal), to explore the overlay of the application and interpretation of the tidelands trust or other public coastal rights, or to discuss the application of the three doctrines when the facts of the situation involve an actual water course change.

Definitions

Accretion is an English word, the outgrowth of the Latin *accrescere*, loosely interpreted as meaning ". . . to grow to; be united with; to increase." [1] As further defined in American law, accretion is the name placed on or given to the doctrine which recognizes that increases or additions to one parcel of foreshore land, *gradually* and *imperceptibly* moving from another parcel or parcels by natural action, become a portion of the foreshore land, and hence, add to the ownership of the foreshore to which the deposited material becomes affixed or adjoins[2] (Foreshore is intended throughout this writing to be a synonym for the words riparian, littoral, shore line, bank, waterfront, etc., all variously used by the courts to indicate land contiguous to a body of water).

Although exact definitions differ from jurisdiction to jurisdiction, it may be fairly said that accretion is the process by which foreshore land is increased by a gradual and imperceptible deposit of soil, dirt, mud or other similar sediment caused by the natural flow of a stream, lake, tidal or other addition process of a body of water.[3] The product of this action is most often referred to as alluvion (or sometimes alluvium).[4]

In Louisiana, this accumulation sometimes appears to be referred to as batture, where an accumulation of soil, dirt, mud, rock or other material has risen above the surface of a body of water and has reached the height of an adjoining bank or the outside of the bank (levee). In general, the laws of accretion seem to be applied as to the ownership of these accumulations of solid materials if the sufficient height has been reached.[5]

To further refine the definition, it is to be reemphasized that to be subject to the doctrine of accretion, the foreshore increase must be gradual and imperceptible,[6] although the increase, to be sure, does become perceptible after periods of time and buildup:[7] that though it may be perceived from time to time to be happening, it is not perceived from moment to moment as the process is taking place, and it can be recognized after a distinct passage of time and buildup of material.[8]

It has been held that accretion as a doctrine of the law, allowing for a claim to be made by the foreshore owner of the alluvion, does not occur when a deposit of material increases only below the surface of the body of water, but comes into play only when the materials deposited break the surface of the body of water and can be visibly seen to be additions to the foreshore land.[9]

Following logically from this reasoning, it has been held that a sandbar, submerged at high water and exposed at low water, is not (at least in that condition) subject to the foreshore ownership.[10] It is to be noted, however, that this reasoning has not been so rigidly applied, in another jurisdiction, to be sure, when the subject sandbar was only occasionally covered by high water, and then not by a great depth.[11]

Avulsion, as distinguished from accretion, can be best defined by that which appears in *Ballentine's Law Dictionary* (Third Edition, page 116), to wit ". . . a *sudden* and *perceptible* loss from one property or addition to another foreshore property caused by the action of water, including a sudden change in the bed or course of a stream." [12]

It is a necessary aspect to the definition that the loss or addition occur by sudden and perceptible action;[13] speed of the change is the factor which must be present for this doctrine to apply, and speed of the change distinguishes avulsion from the doctrine of accretion.[14] For example, the doctrine of avulsion has been applied when certain floodwaters suddenly and perceptibly cut away a bank of a stream, while at the same time deposits of alluvion appeared on the opposite side of the stream; the Oklahoma court deciding the case found that to have the doctrine of avulsion apply, it was not necessary that the alluvion be identified as the same material that had washed away from the opposite bank of the stream (i.e., specific and actual identification of each composite part not required).[15]

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However, at least without the sudden and perceptible tests having been met, it has been held that a mere increase in the volume of water of a given body of water is not generally sufficient to call into play the doctrine of avulsion.[16] It has been ruled that if the evidence of deposits and facts is not sufficient to allow the court to determine which of the doctrines is applicable, i.e., avulsion or accretion, then accretion is to be favored and presumed.[17]

Additions to foreshore land truly caused by avulsion are generally said to belong to the foreshore owner to which the additions or extensions have attached (as where the accretion doctrine applies) but, in many states, this claim of ownership by the foreshore owner is subject to the right of the upstream foreshore owner to identify and reclaim the deposits lost, assuming the upstream foreshore owner acts within a reasonable length of time after the loss or, in some states, within an allowed statutory period (see, for example, California Civil Code section 1015, "... within a year after the owner of the land to which it has been united takes possession thereof.").

Finally, *reliction* (sometimes, dereliction) is the term and doctrine for the process of creation of exposed land caused by the withdrawal of water from land that was previously covered by the water—the land added to the foreshore by the *permanent* uncovering of land or the laying bare of the bottom of a course or body of water by the *permanent* disappearance of the waters.[18] Generally, additions to the foreshore land caused by the application of the doctrine of reliction belong to the owner of the foreshore as the foreshore existed prior to the withdrawal or disappearance of the waters.

Temporary reductions in the volume of water, or temporary volume reductions caused by the seasons—i.e., the coming of waters in winter and their staying in spring, their goings in summer and autumn—do not bring the doctrine of reliction into play, allowing a foreshore owner to make a provable claim of ownership. Similarly, where waters periodically rise and fall, the doctrine does not apply.[19]

Justifications—Law, Doctrines

It has been said by some courts that the rationale behind the doctrines of accretion, avulsion and reliction can be best laid to the maxim *de minimis non curat lex*;[20] it appears that the more reasoned opinions give justification to the existence of these doctrines for one or more of three reasons.

First, it has been written that the principles of natural justice account for the doctrines, i.e., that one who sustains the burden of losses and maintenance imposed by foreshore land should in a like manner gain whatever benefits may be brought to his or her door by the action of water.[21] Also, it has been said that additions or extensions to the foreshore should follow the ownership of the foreshore because this result in ownership is the most convenient public policy to assure certainty in the law.[22]

Behind all of the justifications stated, however, there appears a common ground of justification and what appears to be the most compelling rationale for the existence of the doctrines, that being the absolute desire on the part of the courts to preserve to a foreshore owner his or her right to continue to have riparian rights in and to a body of water once adjoining the land.[23] Riparian rights of foreshore owners seem so protected and honored that it has been held that a riparian right once existent cannot be made nonriparian by any application or accretion, avulsion or reliction.[24] Similarly, it has been held that if a conflict arises between the rule that the foreshore owner to whom accreted matter first attaches gains title, and the rule that a riparian owner cannot be made nonriparian, the latter has been found to prevail.[25]

What Law Is Administered

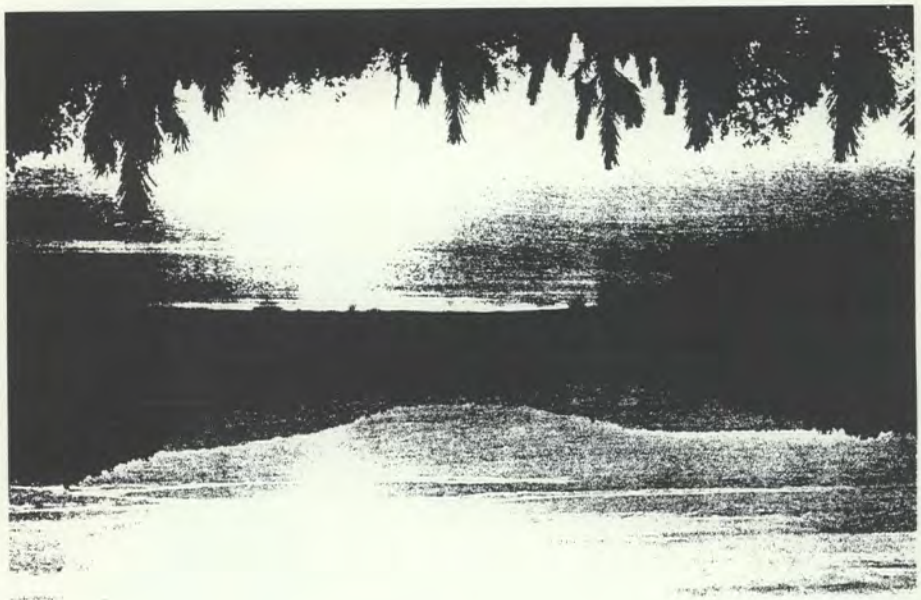
Largely, it is to be said that the law of the state in which the water action has taken place is the forum law to be applied, whether the subject doctrine to be interpreted be accretion, avulsion or reliction.[26] The principle is required to give way, however, to federal law where the stream or other body of water is navigable *and* is part of interstate commerce.[27]

An additional exception to the stated general rule exists (where it has been held that federal rather than state law controls—yes, Virginia, there is a federal common law) when the question of accreted material, gradually deposited by action of the ocean on foreshore property, is at issue. It has been held that, under federal common law, an owner who can trace original title of the foreshore to a federal grant, said grant dated and effective prior to statehood of the state of the instant foreshore, is entitled to ownership of additions rather than the state which claimed ownership.[28]

Applying a similar type of exception, where the foreshore owner traced title to his foreshore land to a Mexican land grant, it was determined that additions to the foreshore were to be determined by the laws of Mexico in effect at the time of the grant.[29]

When the laws (conflicting) of two states were involved by reason of accreted matter being carried across a state line by the action of waters, it was held that the deposits of the alluvion belonged to the owner of the bed of the stream pursuant to the law of the downstream state and not to the foreshore owner pursuant to the law of the upstream state.[30]

In some civil law jurisdictions, the doctrines have been limited to land which is found to border on rivers and streams only and not to apply to land which borders on what are found by the court to be lakes, ponds, the sea or other large bodies of water.[31]



The doctrines have often been applied to the Mississippi and Missouri rivers, even though the courses of these two rivers are very constantly in change, whether as to location of the course itself or as to the depth of the channel, and notwithstanding that each river is a state border for several states along its course.[32]

"Accretion, avulsion and reliction, as doctrines of accession and real property law, are important to know of, and it should be understood that they are determinative in many situations where the ownership of substantial as well as small deposits of land in water courses, lakes, ponds, and the sea is at issue."

Contiguity of Foreshore

It is a rather obvious, case-imposed requirement that an owner who claims accreted matter as his or her own, or who claims matter which has been deposited by avulsion or exposed by reliction, must, in fact, own the foreshore to the boundary of the body of water in the preexistent condition of the foreshore. Unless actual ownership extends to the water, no matter how narrow be any intervening strip of land, the doctrines do not apply:[33] the additions, extensions or exposure of land previously covered by a body of water must operate to produce a continuous addition to the foreshore outward to the water.[34]

Ordinarily, a deposit of alluvion may not first arise in the body of water, extend itself to the shore, and thereby become attached to the foreshore.[35] The addition manner has been said to entitle the owner of the bed of the body of water to the addition and not the foreshore owner (if not, in fact, under the laws of the particular state, the same owner).[36] This ruling, though, is further subject to an exception in those jurisdictions that have been called upon to rule, i.e., that if the result of a bar or island extension to the land of the foreshore owner closes off an existing access to the body of water from the foreshore land, then the addition or extension will be divided in ownership in such a manner as to continue to the foreshore land its riparian nature existent before the deposits joined the foreshore.[37]

Artificially Caused Alluvion

Because this writing is intended, as aforementioned, to limit itself to accretions, avulsions or relictions that are caused by natural forces only, it would be a reasonable thing to exclude any reference to additions that are caused by forces other than natural ones. Because, however, it is felt that artificial causes are probably as common as natural causes in creating the material or alluvion, some mention is demanded.

Generally, additions or extensions to land bordering on waters caused by actions of others than the foreshore owner claiming follow the same rules as those additions or extensions discussed here with reference to natural causes:[38] the general rule seems to be followed *only* when the action creating the additions or withdrawals of water is caused by someone or something other than the actions of the foreshore owner who claims the additions or extensions.[39] As an example, it has been determined that breakwaters built by public authorities which, at least, aided a natural process of accretion did not change the general rule that the alluvion addition belonged to the foreshore owner claiming.[40]

The reasoning of the courts in so ruling seems to be that a foreshore owner, not himself or herself at fault in the creation of the condition, is equally entitled to the additions or extensions whether caused by nature or by a third party or action, and again, so long as the foreshore claimant in no way is the cause.[41] (This reasoning seems particularly compatible with the belief that foreshore and/or riparian water rights should not be lost by natural action.)

At least one jurisdiction seems to have departed from the general rule cited, and it bears noting. The owner of a foreshore lot on the waterfront of San Francisco did not become the owner of additions and extensions to that lot and lying in the waters beyond it, where such additions had been caused by action of the ocean but where the actual "proximate" cause was found to be a purpresture or encroachment in the form of a man-made wharf in the public harbor.[42] There are numerous other California decisions that support that state's departure from the general rule; those decisions award "artificial" alluvion to the owner of the bed [see *Carpenter* v. *Santa Monica*, 63 C.A. 2d 772, 147 P.2d 964 (1944)].

Islands, Bars, Sandbars

It has long been recognized that the doctrines apply to additions and/or extensions of islands and bars located in bodies of water; the question of extent of the ownership of those additions or extensions has not been so clearly recognized, however.[43]

A general rule can be formulated where the addition or extension touches no foreshore; the owner of the island or bar may claim ownership, as may any other mainland, foreshore owner.[44] If the owner of the stream bed (and hence, the island or bar) be the state, then the state, as owner of the island or bar, is entitled to the additions or extensions caused by the application of any of three doctrines.[45]

In those jurisdictions, however, where a foreshore ownership extends to the center of the body of water, several different fact situations have arisen, and from them several different interpretations are found. An addition to an island located entirely on one side of the median of the stream has been found to belong to the owner of the foreshore to the median line (and if the island or bar sits astride the median, division of the additions can be made).[46]

But if ownership of an island or bar on one side of the median has been separately transferred to a grantee, and thereafter additions form to the island or bar on the side facing the foreshore (grantor's), then those additions have been held to belong to the island or bar grantee to the midpoint of the body of water between the island (bar) and the foreshore (at least, where the foreshore is not by such a division foreclosed from riparian right).[47]

If an island or bar has accretions or alluvion growing toward the foreshore, and the foreshore has accretions or alluvion growing toward the island or bar, it has been held that the courts will divide ownership after the two meet, at the point of meeting or at the midpoint, depending on the relative equities of the situation and the parties.[48]

Several Ownerships

Alluvion deposits, created in a manner described here, often affect and influence more than one owner of foreshore property. In a similar manner, reliction of lake or pond waters will lead to diverse claims of rights of the exposed lands; in these circumstances, a general set of rules has

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Graphics courtesy of Bohannan-Huston, Inc., Albuquerque, New Mexico.

Spanish and Mexican Grants—
from page 15

thereof reaching the bank of the Rio Puerco; on the South by the Colorado Peak and from the Colorado Peak in a straight line to the southerly of Sitios with Captain Baca straight line to the Rio Del Norte and "Los Esteros," said boundaries are well known by said Sitio. (The description suffers somewhat in the translation.)

It was claimed that this description included 67,491 acres. Even though documentation for the original grant was not to be found, the surveyor general discovered that "the facts and circumstances stated are sufficient to warrant the presumption of a grant" and recommended approval. He was overruled by the General Land Office.

Damn! Back to square one.

On March 3, 1891, the Court of Private Land Claims was created. In November 1892, the commissioners of the Atrisco grant filed suit in the new court, presenting documentation for the 1768 grant and vast amounts of hearsay evidence as a substitute for documents on the 1701 grant. On September 4, 1894, the decree was issued in favor of the town of Atrisco for title to 67,491 acres. There was no survey, and the court decree contained the same old vague description. Can you imagine a court decree on 67,491 acres with such a description?

The most dramatic illustration of the casual regard for legal descriptions that led to some traumatic problems with grant titles is the subsequent action by the Court of Private Land Claims. In May 1896, the commissioner of the General Land Office authorized an official survey of the grant. The survey was completed in October by George H. Pradt for $813.59. The Pradt survey showed an area of 82,728.72 acres, which the court found to be "in substantial accordance with the decree of conformation." A 15,237.72-acre disparity is substantial accordance!

A patent to the 82,728.72 acres was signed by Theodore Roosevelt on May 5, 1905. By this time, the boundaries of private holdings within the grant were such a mess that litigation was constant. The common lands of the grant were "nibbled at" by the heirs and occupants. It was not until the mid-1970s that title to the remaining common lands was laid to rest.

Looking back, you see that for a period of more than 270 years this grant was plagued by a steady progression of title disputes and conflicts that resulted in much litigation and probably more than a few tombstones in local cemeteries.

Having seen the atmosphere in which the original grants were created and the practices and procedures that make title problems inevitable, let me take up the "broad brush" again and look at the manner in which title to individual private holdings within grant boundaries came into being.

Land uses in the grants fell into several categories. The villa, where the residents clustered for mutual protection, consisted of cultivated areas that could be served by irrigation and arid lands used for common grazing areas. Each family appropriated a parcel of farmland. For the most part, parcel size was determined by the amount of land that could be cultivated by the family.

At first, there was an abundance of land. The first settler appropriated the land of his choice; later immigrants chose land a little farther from the villa. Private appropriations followed a consistent pattern in that they extended from the river or the main irrigation ditch to the common lands. Thus, each farm parcel had access to both water and grazing areas. The river bottoms were covered with cottonweed trees and *bosque* (brush). A strip of trees or *bosque* was left between each two parcels and constituted a natural boundary. The boundaries tended to be parallel to each other and perpendicular to the river or ditch. The boundary strips became narrower as the years went by, and usually a few large cottonwood trees were all that was left to denote boundaries. There was almost no conveyancing of land, and written descriptions were not needed. Boundaries were traditional, and everyone in the community knew the limits of each cultivated parcel. As immigration increased and families grew larger in the early nineteenth century, avarice was a problem, and it was occasionally necessary to document ownerships and inheritances. A typical legal description would read something like this:

A tract of land in Alameda, 420 varas in width, bounded on the north by a large cottonwood tree on the boundary of Jose de la Luz Sanchez, on the south by the contra-acequia *[lateral irrigation ditch], on the east by the Rio Del Norte and on the west by hills.* (This description was in Spanish; we are still translating such documents today.)

When the patriarch of a family died and the land was divided among the heirs, it was done solely on the frontage width, each parcel running from the river to the hills. The result was long, narrow strips of land. This pattern is readily visible today in aerial photographs. The deficiencies of such a system of land division are many. First, depending on the time period in which measurements were made, the *vara* ranged from 31 to 34 inches in length; no one seems to know just when the fluctuations occurred. Second, there was a strong tendency to round off, usually on the optimistic side. When Don Francisco died and left 120 *varas* to each of his four sons, the four strips would not quite fit into the 473-*vara* parcel that the Don owned. Meanwhile, the large cottonwood trees that marked the north and south boundaries had been used for firewood, so the four heirs tried to move the north and south boundaries enough to accommodate their combined 480 *varas* of land. This practice was sometimes regarded with disfavor by the neighbors and precipitated family feuds that still exist and, of course, litigation in later years.

To establish boundaries of such tracts by survey and quiet title actions (it is strongly suggested that this be done before insuring title rather than after), the location of the old cottonwood tree and the *contra-acequia* must be determined. The only way to do this is to visit an old-timer or two. To accomplish your purpose, you must follow a specific, inflexible procedure. Arrange an introduction and make an appointment. Remember that you are playing on someone else's home court, so wear faded blue jeans and worn cowboy boots, and arrive in a pickup truck with a gun rack in the rear window (for show only). If you show up in a suit and tie, you are severely handicapped. If you wear a three-piece suit and carry a briefcase, you will probably be met by a pack of vicious dogs. If you survive their attack, you will find that the old-timer is not home.

Having arrived in the prescribed manner, be prepared to treat your host with the respect and dignity to which he is entitled. You too will then be treated with dignity, and after a visit on the front porch for several hours, you will acquire a lifelong friend and leave with affidavits that are admissible in court.

Besides determination of boundaries of the original irrigated tract, another situation requires title investigation beyond the specific tract being searched.

This situation was created by MUTTON STEW!

During the early colonial period in New Mexico, the Navajo and Apache tribes were hunters. Their main sources of meat were deer, antelope, elk, and buffalo. The deer, antelope, and elk ran very fast, and the buffalo tended to fight back when pierced by arrows. One day, an unknown

warrior discovered that the colonists' sheep neither ran fast nor fought back. The tribes' appetite for mutton stew made such inroads on the flocks of sheep grazing in the remote areas of the common lands that colonists were forced to bring their sheep closer to the villas, where they could be guarded. The common lands fell into disuse and became almost worthless. It then became customary to include in an irrigated strip's conveyance the words "together with the westerly or easterly extension thereof," and the former common lands were divided and ran with the occupied land. As areas near the cities became attractive to those wishing to live in a rural environment where they could keep horses, the irrigated land was developed to its limit, and expansion into the strips began. These strips that had been worthless for many years became valuable, and title companies were called upon to insure title to them. The projection of known boundaries in such cases would seem to be a fairly simple matter were it not for the fact that the river to which they were perpendicular curved.

The line drawing accompanying this article depicts an actual situation in present-day Sandoval County, New Mexico. The area is now a highly desirable one, within the environs of the largest city in the state. The solid lines indicate ownership of the farmlands, title to which was peaceful for more than a century. Title to the regions shown by dotted lines was included in the chains of title by a vague addendum to the description that typically read "together with the westerly extension thereof." In the late 1950s and early 1960s, development expanded into these extensions. Land in the extensions is now valued at approximately $20,000 per acre. The irrigated portions are more than half a mile apart. A title search on any single extension would fail to reveal the conflicting strips unless the overall region was considered. There have been few title losses in this specific area of conflict, because most of the local searchers and examiners understand the nature of grants as I have outlined it in this article.

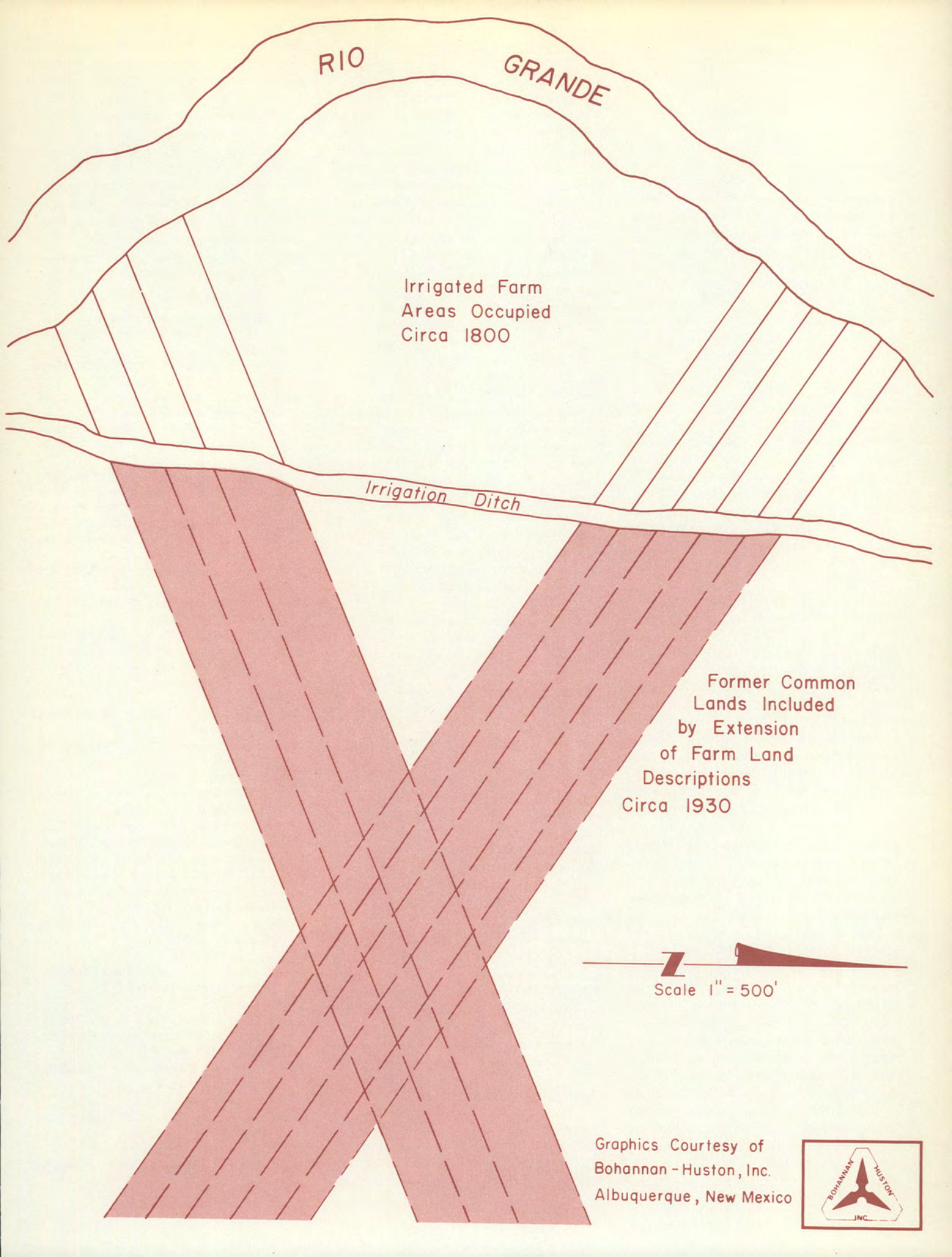
I have given a broad outline of Spanish and Mexican grants. There are a number of differences among the various kinds of grants that I have not discussed, but the following points should apply to almost all grants that you may encounter:

- Original descriptions were vague, and many conflicts are still unresolved.
- When the grants were finally surveyed, only the perimeters were established; no attempt was made to determine the boundaries of any private holdings within the grants.
- In community grants, centuries of adverse possession have made the titles to most individual holdings secure. For example, the core areas of Albuquerque, Santa Fe, and several other cities have title sources that originated solely from adverse possession. In grants to individuals, ownerships derive from heirs to those individuals.
- Grants that were confirmed and patented were done so under the provisions of the Treaty of Guadalupe Hidalgo. Treaty provisions cannot be altered by statutes. The Treaty of Guadalupe Hidalgo provided that irrigation ditches in use at the time are permanent. Even though a particular ditch may not have been used for more than a hundred years and is obliterated, the right of way for that ditch exists and will continue to exist.
- Very specific procedures for administering the grants are statutory. Failure to adhere to these procedures can create a fatal title defect.

Because of the many variables in land grant titles, it is not possible to present in underwriting manuals a specific list of procedures and precautions that will protect the title industry from losses. Even though there are no set procedures and each case has to be handled individually, you can recognize and deal with potential problems if you imagine yourself in that long, dusty caravan that suffered constant hardship for more than three months during the trek from Chihuahua to claim land, and then imagine yourself in succeeding generations of colonists who toiled on the land. You might develop insight into the people and the period, and the next time you face a grant title search and examination, you will at least know which windows to peek into.

Am I suggesting that, in a field as pragmatic as title insurance, we title professionals resort to imagination, instinct, and understanding?

I guess I am. It works for some of us.



Graphics Courtesy of
Bohannan - Huston, Inc.
Albuquerque, New Mexico

Accretion, Avulsion and Reliction—from page 19

also evolved but, again, subject to local interpretations and/or statutory law.

Alluvion which has formed in front of and adjoining several foreshore ownerships has been found to belong to each and all of the foreshore owners and it has been definitely found that the land to which the alluvion first attaches is not entitled per se to all of the addition.[49] According to most of the jurisdictions that have been called upon to rule, these additions are to be divided "equitably" among the foreshore properties, basically so that each foreshore property is granted a pro rata part according to his or her ownership and, most strongly, to assure the riparian water right to each.[50] The cases indicate many processes of division with a basic premise of equity being observed, specifically that mere extensions of property lines from the preexistent boundary angles may not be correct; that, rather, right angles from the foreshore ownerships may be the most appropriate method of division.[51]

When the courts have ruled upon divisions of former lake, bay or cove property, generally it has been said that if the body is long and narrow (as a stream configuration), apportionment should be made as would be applicable to a stream.[52] If the body be irregular, though, then the courts seem to have treated and apportioned the several parts as independent from the other parts, attempting to do "equity" in each division.[53]

If reliction is the doctrine applicable, and if all of the body of water has disappeared, the courts seem generally to have apportioned to the center of the body (much as cutting a pie),[54] or if the body be irregular in shape, to have considered and apportioned the several parts from the rest of the body of water.[55]

In brief mention of the seashore, foreshore (upland) owners and the application of these three doctrines, great care has to be taken to distinguish the rights of the public, the statutory laws of the several states which border on the seas and, to some extent, the application of federal or other law (as previously mentioned, all of these subjects are beyond the scope of this writing). As a vast, prevalent statement, it can be said that the usual rules applicable in the instance of the seashores and upland owners are the same as those mentioned as applicable to streams, lakes, etc.[56]

Doctrine Result—Boundaries

When accretion is applicable to a given addition or extension, and where the location of the edge or median of a stream or other body of water which is a boundary of a parcel is gradually and imperceptibly changed or shifted, the edge of median of the stream or body as so changed remains the boundary of the parcel. The owner of the foreshore acquires all title to the additions and extensions, and the foreshore owner from whence the additions and extensions came loses title thereto.[57] In most jurisdictions, it is not relevant or material that the body of water be navigable or not, tidal or not, to have the doctrine apply.[58]

However, where the parcel of land in the preexisting condition has been granted as running by metes and bounds, or from known monument to known monument, or by lot number without reference to whether or not it be a water line, it has been held that accretions outside the boundary stated do not belong to the foreshore owner.[59] It is a necessary correlation that where land fronting on a body of water is granted after accreted matter has attached to it, the deed carries the alluvion with the foreshore land, so long as the foreshore be described as "to the water."[60]

When avulsion is applicable to the given addition or extension, the same result as to boundary appertains as that of the doctrine of accretion, except for the common law or statutory right that may apply (mentioned herein before) to allow recovery of the material.[61] Where a sudden and perceptible movement removes a portion of the upstream foreshore, and if not thereafter recovered (pursuant to the respective laws of the states which grant such a right), the downstream foreshore owner gains title to the deposit and the upstream foreshore owner is most often allowed to retain title to the land now covered by water, subject to the rights of the public to a use of the expanded water area created.[62]

When reliction is applicable to the given addition or extension, ordinarily the same rules apply as those of accretion, that is, withdrawal of the waters adds to the foreshore if the description is "to the water" or does not add to the foreshore if the description is stated as in metes or bounds, monument to monument, etc.[63]

Determinative Doctrines

Accretion, avulsion and reliction, as doctrines of accession and real property law, are important to know of, and it should be understood that they are determinative in many situations where the ownership of substantial as well as small deposits of land in water courses, lakes, ponds, and the sea are at issue.

It is easily as important to know that many other factors than just the general doctrines may come into play in a given situation, such as statutory law, state common law, federal common law, the rights of the public, coastal area protections and rights, the tidelands trust applications, and that this study of general law is necessarily limited to an attempt to acquaint the reader with the doctrines.

1. *Humble Oil and Refining Company* v. *Sun Oil Company*, 190 F.2d 191, 196 (5th Cir. 1951).
2. *Conran* v. *Girvin*, 341 S.W. 2d 75, 86 (Mo. 1960).
3. *Bauman* v. *Choctaw-Chickasaw Nations*, 333 F.2d 785, 789 (10th Cir. 1964).
4. *Michaelson* v. *Silver Beach Improvement Association*, 342 Mass. 251, 173 N.E. 2d 273 (1961).
5. *Morgan* v. *Livingston*, La. 6 Mart. 19 (1828); *Municipality Number Two* v. *Orleans Cotton Press*, 18 La. 122 (1841); *Barre* v. *New Orleans*, 22 La. Ann. 612, 614 (1870).
6. *Bonelli Cattle Company* v. *Arizona*, 414 U.S. 313, 325 (1973).
7. *Warren* v. *Chambers*, 25 Ark. 120, 122–123 (1867).
8. *Crow* v. *Johnston*, 209 Ark. 1053, 194 S.W. 2d 193, 196–197 (1946).
9. *Hess* v. *Muir*, 65 Md. 586, 5 Atl. 540 (1880).
10. *St. Louis etc., R. Company* v. *Ramsey*, 53 Ark. 314, 13 S.W. 931, 932–933 (1890).
11. *State* v. *Richardson*, 140 La. 329, 72 So. 984 (1916).
12. *Nebraska* v. *Iowa*, 143 U.S. 359, 361 (1892).
13. Supra, note three, at 789.
14. *Nolte* v. *Sturgeon*, 376 P.2d 616, 620–621 (Okla. 1962).
15. Ibid., at 622.
16. *Purvine* v. *Hathaway*, 238 Ore. 60, 393 P.2d 181, 183 (1964).
17. *Hall* v. *Brannan Sand and Gravel Company*, 158 Colo. 201, 405 P.2d 749, 750 (1965).
18. *Rutten* v. *State*, 93 N.W. 2d 796, 798–799 (N.Dak. 1958). *Utah State Road Commission* v. *Hardy Salt Company*, 26 Utah 2d 143, 486 P.2d 391, 392 (1971).
19. *Sapp* v. *Frazier*, 51 La. Ann. 1718, 26 So. 378, 380–381 (1899).
20. Supra note seven.
21. *Jefferis* v. *East Omaha Land Company*, 134 U.S. 178, 192–193 (1890).
22. Ibid., at 193.
23. *St. Louis* v. *Rutz*, 138 U.S. 226, 250–251 (1891); *Lamprey* v. *Metcalf*, 52 Minn. 181, 53 N.W. 1139 (1893).
24. *United States* v. *1629.6 Acres of Land*, 335 F.Supp. 255, 268 (D. Del. 1971).
25. Ibid., at 268–269.
26. Supra note twenty-three, *St. Louis* v. *Rutz* at 242, 250.
27. Supra note twenty-four and 273.
28. *Hughes* v. *Washington*, 389 U.S. 290, 294 (1967).

29. *Luttes* v. *State*, 159 Tex. 500, 324 S.W. 2d 167, 176 (1958).
30. Supra note twenty-three, *St. Louis* v. *Rutz*.
31. *Ker and Company* v. *Couden*, 223 U.S. 268, 276–277 (1912); *State* v. *Cockrell*, 162 So. 2d 361, 365 (1964).
32. *Philadelphia Company* v. *Stimson*, 223 U.S. 605 (1912).
33. *Speckrels* v. *Brown*, 212 U.S. 208 (1909).
34. *Fowler* v. *Wood*, 73 Kans. 511, 85 Pac. 763 (1906).
35. *Peterson* v. *St. Joseph*, 348 Mo. 954, 156 S.W. 2d 691, 694 (1941).
36. *Wilson* v. *Watson*, 144 Ky. 352, 138 S.W. 283 (1911).
37. *Waring* v. *Stinchcomb*, 141 Md. 569, 119 Atl. 336, 340 (1922).
38. *County of St. Clair* v. *Lovingston*, 90 U.S. 46 (1874).
39. Supra note thirty-eight; supra note twenty-four and 273.
40. Supra note four.
41. *Harrison County* v. *Guice*, 244 Miss. 95, 140 So. 2d 838, 842 (1962).
42. *Dana* v. *Jackson Street Wharf Company*, 31 Cal. 118, 120–121 (1866).
43. Supra note one at 196.
44. *State* v. *Johnson*, 278 N.C. 126, 179 S.E. 2d 371, 385 (1971).
45. *Dartmouth College* v. *Rose*, 257 Iowa 533, 133 N.W. 2d 687, 689–690 (1965).
46. Ibid.
47. Supra note thirty-six at 290.
48. *Hogue* v. *Bourgois*, 71 N.W. 2d 47, 54–55 (N. Dak. 1955); supra note thirty-six; *McGill* v. *Thrasher*, 221 Ky. 789, 299 S.W. 955, 956–957 (1927).
49. *Jones* v. *Hogue*, 241 La. 407, 129 So. 2d 194, 198 (1960).
50. *Peoria* v. *Central National Bank*, 224 Ill. 43, 79 N.E. 296, 298–301 (1906).
51. *Stark* v. *Meriwether*, 98 Kans. 10, 157 Pac. 438, 441-442 (1916); *Johnston* v. *Jones*, 66 U.S. 209, 223 (1862).
52. *Blodgett and Davis Lumber Company* v. *Peters*, 87 Mich. 498, 49 N.W. 917, 918–919 (1891); *Hammond* v. *Shepard*, 186 Ill. 235, 57 N.W. 867, 868 (1900); supra note seven.
53. *Scheifert* v. *Briegel*, 90 Minn. 125, 96 N.W. 44, 47 (1903); *Ashby* v. *Eastern R. Company*, 46 Mass. 368, 371 (1842).
54. *Rhodes* v. *Cissell*, 82 Ark. 367, 101 S.W. 758, 759 (1907).
55. Supra note fifty-three.
56. *Stevens* v. *Arnold*, 262 U.S. 266 (1923); *International Paper Company of Moss Point* v. *Mississippi State Highway Department*, 271 So. 2d 395, 398–399 (Miss. 1973); supra note four.
57. *Oklahoma* v. *Texas*, 268 U.S. 252, 258 (1925); *Arkansas* v. *Tennessee*, 246 U.S. 158, 175 (1918).
58. *Shively* v. *Bowlby*, 152 U.S. 1, 57–58 (1894).
59. Supra note twenty-one at 197.
60. Ibid.
61. *Rand* v. *Miller*, 250 Iowa 699, 95 N.W. 2d 916, 918–920 (1959).
62. *Commissioners of Lincoln Park* v. *Fahrney*, 250 Ill. 256, 95 N.E. 194, 198 (1911).
63. *Wright* v. *Council Bluffs*, 130 Iowa 274, 104 N.W. 492, 493 (1905).

Pennsylvania Association Honors James G. Schmidt

James G. Schmidt, retired chairman of the board and former president of Commonwealth Land Title Insurance Company, and a past president of the Pennsylvania Land Title Association, was presented with a Revere silver bowl at a luncheon held in his honor on June 18 by the Pennsylvania Land Title Association, which recognized him as the first recipient of the Pennsylvania Distinguished Service Award.

PLTA President F. Victor Westermaier Jr. (left) and Selection Committee Chairman Marvin H. New (center) presented the award to Schmidt (right) and noted his uniquely valuable contributions to the land title insurance industry, which spanned more than half a century of outstanding service. New said, "Mr. Schmidt is the most distinguished of many notable Pennsylvania titlemen and he is most deserving of this signal honor."

Schmidt is also well known on the national scene, having served the American Land Title Association as an officer and as a spokesman on numerous occasions. In 1977, the Board of Governors voted him into the ranks of other title insurance industry leaders by naming him an Honorary Member.

The June 18 luncheon was attended by present and past PLTA officials, as well as friends and executives from the member underwriting companies.

Schmidt is still actively involved in the title industry as chairman and president of the Pennsylvania Land Title Institute, a nonprofit organization that offers training and education to land title personnel.

Missouri Elects Ashcroft

The Missouri Land Title Association held its 74th annual convention at the Lodge of the Four Seasons, Lake Ozark, Missouri, September 11–13. Guest speakers included William J. McAuliffe Jr., executive vice president of the American Land Title Association.

C. Wesley Ashcroft was elected president. He is vice president of Hogan Land Title Company of Springfield, Missouri. Other officers elected are Sam C. Sherwood Jr., first vice president, and Hugh B. Robinson, second vice president.

J. E. Barnes Jr. was appointed secretary-treasurer.

Forest Use Volume Ready

The Conservation Foundation recently released a new publication to acquaint researchers and others interested in forest land use with the major policy issues and significant research directions developed during the seventies.

Forest Land Use: An Annotated Bibliography of Policy, Economic, and Management Issues, 1970–1980 presents annotations of 52 books, reports, and conference proceedings. The bibliography addresses a variety of land use issues, including general policy, forestry research, and international forestry.

For information about ordering the bibliography, write The Conservation Foundation, 1717 Massachusetts Ave., N.W., Washington, D.C. 20036.

Names In The News . . .

Robert Schramm was promoted to assistant vice president and director of advertising and public relations at Commonwealth Land Title Insurance Company.

Schramm served as Commonwealth's advertising manager since 1978. He now supervises the company's advertising, sales promotion, and public relations programs, and edits the corporate newspaper. He also manages the company's in-house advertising agency, Second Century Advertising, Inc., established in early 1981.

Before joining Commonwealth, he worked with the New York office of Dan River, Inc., a leading textile manufacturer.

Howard A. Hemphill was appointed assistant to the title counsel of Transamerica Title Insurance Company. Hemphill is responsible for reviewing the company's high-liability transactions and major claims for all operations. Before assuming this position, he served as assistant to the counsel for Transamerica's northern California operations.

First American Title Guaranty Company announced the appointment of **Robert N. Sbranti** to division manager of the company's Solano County, California, operations. Sbranti formerly served another title company, where he was the assistant county manager for San Francisco County.

Mark W. Sachau was appointed vice president and division manager of First American's Santa Clara County, California, operations. Before assuming this position, Sachau worked as assistant county manager for Transamerica Title Insurance Company.

USLIFE Title Insurance Company of Dallas named **Sid W. Terry** president and chief executive officer of the Houston company. Terry has been with the Dallas organization for eight years, most recently serving as vice president and assistant to the president.

USLIFE also announced the appointment of **John D. Tamburello** as vice president of the parent company in Dallas. He will also serve as senior vice president and general counsel of the Houston company.

Ronald Whitty was appointed treasurer of American Title Insurance Company. Whitty was formerly a controller with Raleigh Manufacturing Company in Miami, Florida. Before that, he rose from cost manager to corporate analyst with the Fort Lauderdale–based firm of Houdaille Industries, Inc. Whitty is also a member of both the Financial Planning Executives Institute and the American Accounting Association.

Edith B. Ulrich was appointed vice president and national marketing manager for Ticor Title Insurers. In her new position, Ulrich is responsible for all marketing functions, including market research, pricing/forecasting, advertising, promotion, and convention activities.

Ulrich joined Ticor in 1979 as a market research specialist and in 1980 became manager, market research.

Pioneer National Title Insurance Company announced the promotion of **J. Kent Loosemore,** vice president, to division manager. In his new position, Loosemore manages both direct and agency operations for the states of Indiana, Kentucky, Michigan, and Ohio.

Before assuming his present position, Loosemore served as Indianapolis area manager for Pioneer.

Ulrich

Whitty

Title Insurance and Trust Company announced the appointment of **David Davison** to subdivision account manager. Davison serves as liaison between the company's corporate and subdivision customers and also develops marketing programs to meet the specific needs of major accounts.

Before joining TI, Davison was active in the realty business in Ventura, California.

TI also announced that **David L. Tibbet** was appointed advisory title officer. Tibbet is responsible for claims administration, underwriting decisions, and approval of liabilities for large title insurance policies. Before assuming this position, Tibbet was manager of the company's data-processing department in the Fresno, California, office.

William J. Senyak was appointed trust administrator of TI's Newport Beach office. Senyak manages funds for intervivos trust, probate estates, testamentary trusts, and guardianships.

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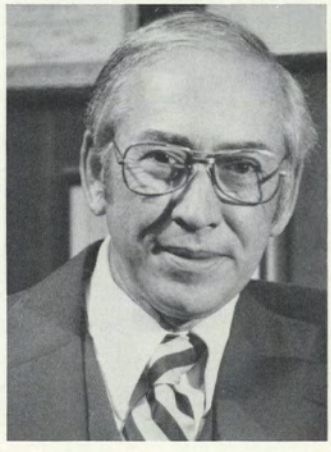

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Calendar of Meetings

November 11-14
Florida Land Title Association
Hotel Royal Plaza
Lake Buena Vista, Florida

December 2
Louisiana Land Title Association
Royal Orleans
New Orleans, Louisiana

American Land Title Association
1828 L Street, N.W.
Washington, D.C. 20036