

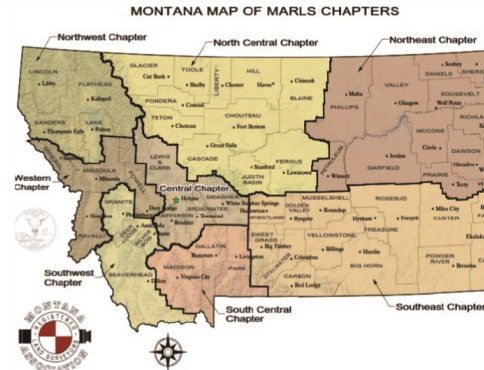
Treasure State Surveyor

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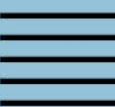
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Co-editor: Jonathan Ries

Co-editor: Kay McDonald

The Montana Association of Registered Land Surveyors is a statewide organization of professional land surveyors licensed to execute land surveys in the state of Montana and dedicated to improving the quality of professional land surveying and land records in the state of Montana. MARLS motto is:

"WE MEASURE UP"

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VOLUME LVI

TREASURE STATE SURVEYOR

APRIL 2019

ISSUE II

Table of Contents

MARLS Board of Directors and Committee Chairs-----	4
2019 - 2020 President Darryl Magnuson's Message -----	5
About the cover by Jim Flansburg -----	5
MARLS Mission Statement-----	6
Support Sustaining Members -----	6
The Elusive Corner Section 21 - Zancanella -----	7
NSPS Membership Applications - Life & Student -----	8
NSPS Lobby Day-----	8
NSPS Spring Meeting Report-----	10
2019 Conference pictures and awards -----	13
Developments in MT Title Law Vol. XIX, Issue I -----	18
MARLS Endorsed Illinois Mutual Disability Insurance-----	22
35 Below and 20 Knots - Robert Brown -----	23
Where is Surveying Going - Bill Weikel-----	25
MSF 1st and 2nd year Scholarship Applications-----	26 & 27
MARLS 2019 - 2020 Membership Application-----	28
Marketplace -----	29
Stewart Nash Books -----	29
MT Road Law Book -----	29
Surveyors Business For Sale-----	29
Life Member Qualification-----	29
Breakfast on the Bighorn prints -----	30
MSF Surveyors Assistance Fund-----	30
MSSLR Book order form & MSF Surveyors Asst Fund -----	30

Advertisers

Frontier Precision -----	31
RDO Integrated Controls -----	2
Selby's Essco-----	32
Surv-Kap -----	19



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President's Message

Darryl Magnuson, PLS

Dear MARLS Members,

I hope this letter finds everyone well. It has been an extremely busy Spring as everyone I talk to seems to have a lot of activities going on. Surveying has picked up and it appears that everyone is going to have a busy Summer and Fall this year.

As MARLS president and from the Southeast chapter, I would like to thank everyone for their support and for attending the MARLS conference this year in Billings. We had great speakers and exhibitors as well as an exceptionally good attendance. The auction brought in a near record amount of monetary support for our scholarship foundation. I would also like to thank all those that stepped up, both past and present to serve on our board of directors and committees.

I attended the NSPS conference this April 9th through April 13th and participated in the "Day on The Hill" campaign on Wednesday with Kay. Unfortunately, Matt Morris the Montana- NSPS Director was unable to attend the Day on the Hill due to unforeseeable travel complications. Kay and I had the opportunity to meet with aides from Senators Steve Daines' and John Tester's offices. We also had the opportunity to meet personally with Representative Greg Gianforte. The subject to our visits was infrastructure and the importance of the survey profession in building infrastructure. We had multiple talking points one being the role of surveying in America's infrastructure. We requested that our delegations adopt the Draft 2019 Infrastructure Act Provision in any bills, which included four paragraphs which defined surveying and specified certain verbiage and wording supporting the survey profession. There were also 4 bills or proposed bills that we asked for action on from them. This included the 3D Elevation Program (3DEP), NOAA's Digital Coast Act, the Flair Act for the DOI, and the Images Act for FEMA the National Flood Insurance Program (NFIP Reform). See pages 8 and 12 for more information.

During the NSPS BOD meetings on Thursday, Friday and Saturday, I attended many of the board meetings including committee meetings for Trig-Star and Western States Directors Council with Matt Morris as the chairman, the State Executive's meeting as well as the NSPS regular business meeting.

One subject that came up in the NSPS regular meeting was the foot definition. Michael Dennis with NGS gave a presentation on the history of the US Survey Foot and the International Foot. After Michael's presentation he recommended that NSPS adopt the International Foot as the standard in the United States. Much to my surprise after a straw poll of all of the state directors, it was unanimous to convert to the International Foot. At the next day's meeting a motion was made to adopt the International Foot and request that it be adopted by the National Institute of Standards and Technology (NIST). Although many of the directors agreed, they tabled the motion until the next meeting so that they could go back to their state associations and get their blessings. I believe that a national standard should be adopted and whatever that standard is, Montana should follow.

For now, I wish everyone a good and productive Summer and as always, be safe out there.

Respectfully,

Darryl Magnuson, PLS
MARLS President



About the cover...

**Artwork by
James A. Flansburg, PLS**

Jim's art is for sale.

He specializes in bronzes,
ink sketches and watercolors.

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MONTANA ASSOCIATION OF REGISTERED LAND SURVEYORS MISSION STATEMENT

PREAMBLE:

The true merit of a profession is determined by the value of its services to society. Therefore, the Montana Association of Registered Land Surveyors does dedicate itself to the promotion and the betterment of the profession of land surveying as a social and economic element vital to the welfare of society.

The objectives of the association are:

- ◆ To promote the common good and welfare of its members and the public in the profession of land surveying.
- ◆ To advance the study of land surveying and the education of land surveyors.
- ◆ To promote public knowledge, faith, and reliance in licensed professional land surveyors and their work.
- ◆ To foster and maintain high standards of professional ethics in the practice of land surveying.
- ◆ To foster and support legislation generally beneficial to the profession and to the citizens of the state of Montana.
- ◆ To promote closer relations, understanding, and cooperation within the profession.
- ◆ To establish better relations between the land surveyor and other professions interested in land surveying.
- ◆ To aid and encourage the interest of associate and student members of the association.

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**The Elusive NW Corner of Section 21 or;
The SE Corner of Section 17
Not “Lost” but Not Found
By: Mike Zancanella, PLS**

This is a tale not completely about survey work, but more about that constant thought process which is deep inside us once we become Land Surveyors.

The forest was dense and the terrain, with just a few chances to catch your breath, was rapidly gaining elevation towards the crest of the mountains. I was carrying my equipment with me, which in this instance was a 65lb. Bingham Archery Re-curve Bow, a supply of Bear razor tipped cedar arrows and some sustenance. Oh Yeah, I did have my resident Elk license with me also.

This was late September, 1978, a typical Rocky Mountain September day—color all around and a cooling breeze to ease the mid-day heat.

My two brothers were also on the mountain with the intent of stalking Elk through the woods, each following his own “sure to run onto them” well-thought-out strategies. We did not hunt together, as there would be no bragging rights that way. We believed in rugged individualism.

I had started my Land Surveying career a few years earlier and had brought along on the hunt, the best tool in my arsenal- the USGS Topo. map. And as the intrigues of surveying had by that time permeated by being, I had taken the time the night before to pick out some rectangular survey corners that I would casually look for while on the hunt. Part way up the slope of the mountain which we were now hunting, I pulled a map from my small hiking pack and sat down on a fallen log to see where I was. After looking down at the map and up at the terrain a number of times I could see that I was relatively near a corner that would be interesting to locate. The GLO described stone itself was unique and the bearing trees were 6” and 8 “diameter at the time of blazing and scribing, and therefore should still be growing. I continued the hunt, of course, and I also began hunting set stone and scribed trees. As laymen, the brothers would not really appreciate that later stated endeavor, but I had to do it.

Not having a photographic memory, I had to stop several times and consult the map and pick out contours or small streams to guide me to the vicinity of this section corner. The breeze had abated somewhat and the sun, even in the pines, was brutal. As I topped a small ridge and started slowly down the other side -the sought after section corner should be real close now- I saw something that I did not expect to see at elevation 9,000+ feet and also deep into the woods and aspens. I saw what I see on the job day after day; the bright fluttering of orange flo flagging.

I stopped dead in my tracks. My mind could not quite grasp what was happening here. This was a corner well within the National Forest boundary that would not be necessary for many, if any survey projects. How was it that someone had

beaten me by a few days-maybe even a day-to the joy of finding a set stone that had not been seen since it was set over a hundred years before? Well, I accepted defeat and approached the flagging and the large, probably scribed, old trees to which it was tied.

It staggered the mind what I saw next. As I got within 20 feet of the corner location, there it was. Just under a scrubby piece of brush, a spike elk; dressed and propped open to air. I sat down with wide eyes. This was a recent kill-very recent.

Sometimes I am slow to put two and two together, but finally it dawned on me. This was just like my own Flo flagging. I had given my brothers each a roll and here it was, hanging all over the place, very near the NE corner of Section 20, which I was hoping to find. This incongruous display of florescent color in these pristine woods was meant to guide my brother, the successful hunter, and whichever brother he could locate, back to the spike to transport it back to camp. Ahha!—a sinister plan began to develop in my inadequately-oxygenated-at-9,000+ feet- brain.

I did have my pulley system with me and a plot was hatched. I worked harder than was necessary for a practical joke. I dragged the spike over a small rise, and behind a very large pine I hoisted the elk into the cooling air. Then I sat down to wait. It took a while. I even dozed off for a time. Soon I heard them coming up a trail laughing, and one of them somewhat bragging, and then all-out bragging—I hid. As they arrived at the still-hanging flagging, they could not believe their eyes. The spike was gone. “Sure!” the recruited pack- animal brother said, “I don’t see any elk”. No response to that from the successful hunter brother. Then they moved the scrubby piece of brush aside and found the entrails and were really stymied and irked. “Had to be a bear”-- then a few cuss words. “Dragged him off somewhere”- more cuss words. “That SOB, we’re going to get my spike back!” After a time, they finally found the drag trail and located the elk neatly hanging and cooling in the tree.

Sometimes they are slow to put two and two together, but finally it dawned on both of them at once. “MIKE”-- My name reverberated loudly through the still mountains. I had to reveal myself then, but was laughing so hard I could not speak. The three of us, after some lively bantering, gathered up the liver, heart and the spike and got him back to camp just after the sun set. There were shots and beers and a campfire late into the night that successful night. There were also revealed, tales of bravado of how each brother would have retrieved that elk from the thieving bear, each had conjured up as they were perplexedly searching. There was also lots of laughter rising into the starry night skies.

In all that densely wooded and rugged terrain, it is hard to believe that my brother would shoot an elk at the SW corner of State Section 16 and that I would just happen to stumble upon it there. We were in very close proximity to it at the time, but darkness was descending and that corner is still waiting to be found. Maybe next hunting season.



NSPS Lobby Day Congressional Meeting Discussion Topics

Infrastructure

Infrastructure projects require quality and accurate surveying, mapping and geospatial data, products and services. Infrastructure-the physical framework of transportation, energy, communications, water supply, and other systems-and construction management-the overall planning, coordination, and control of a project from beginning to end-are critical to the Nation's prosperity. Surveying, mapping and geospatial data and their applications provide valuable productivity, safety, and cost-saving benefits to infrastructure improvement projects and associated construction management. NSPS would like to discuss the role of the surveying profession for the various kinds of infrastructure projects as well as the inclusion of a legislative provision leveraging the expertise of the surveying profession.

3D Elevation Program (3DEP) via the U.S. Geological Survey

3DEP will satisfy the growing demand for consistent, high-quality topographic data and a wide range of other three-dimensional representations of the Nation's natural and constructed features. The USGS has identified more than 600 applications that would benefit from enhanced elevation data. Data procured from 3DEP can be applied to flood risk management; infrastructure; landslides and other hazards; water resources; aviation safety; telecommunications; homeland security; emergency response; precision agriculture; energy; pipeline safety; and other areas. 3DEP will promote economic growth, facilitate responsible environmental protection and resource development and management, assist with infrastructure improvement, and generally enhance the quality of life of all Americans. A [House letter](#) was delivered to the House Appropriations Committee requesting \$146 Million for USGS 3DEP, cosigned by 38 Members of Congress. A Senate letter is being organized with the same request of Senate Appropriators. NSPS was one of 40 organizations making the same request of Congressional Appropriators for FY 2020.

House offices are being asked to contact the House Appropriations Committee to request full funding at \$146 Million for 3DEP. **Senate offices** are being asked to cosign a letter to the Senate Appropriations Committee to request full funding at \$146 Million for 3DEP.

NOAA's Digital Coast Act

Balancing economic development with ecological management requires accurate data and integrated information that enable coastal communities to address many coastal and emergency management issues. NOAA's [Digital Coast](#) project is designed to meet this need. The Digital Coast is providing a constituent-driven, information resource that enables access to critical data, decision support tools, training, and best practices for integrating surveying and geospatial information in support of policy priorities. Legislation, known as the Digital Coast Act, is needed to authorize this project into an official program. Bipartisan legislation will soon be introduced in Congress similar to [H.R. 4062/S. 110](#) from the 115th Congress which would authorize the Secretary of Commerce, through NOAA,

to establish a constituent driven program that collects priority coastal geospatial data and supports an information platform capable of efficiently integrating coastal data with decision support tools, training, and best practices to inform and improve local, State, regional, and Federal capacities to manage coastal regions. *House and Senate offices* are asked to cosponsor this legislation.

FLAIR Act for DOI

GAO reports highlight the lack of a current, accurate inventory of Federal Real Property. On the other hand, the Federal government funds a variety of single-purpose databases. Since 1980, the National Academy of Sciences (NAS) has been calling for the development of a multipurpose cadastre, or land registry. The FLAIR Act authorizes the Department of the Interior to develop and manage a single multipurpose, uniform Federal GIS database to track and account for all Federal Real Property, as called for by GAO and recommended by the National Academy.

House and Senate offices are asked to cosponsor this legislation modeled after [H.R. 2199](#) in the 115th Congress.

IMAGES Act for FEMA NFIP Reform

The statutory authority for the National Flood Insurance Program (NFIP) of the Federal Emergency Management Agency (FEMA) expires on May 31. Flood maps identify areas at greatest risk of flooding and provide the foundation for NFIP. Accurate geospatial information is essential to all aspects of flood insurance risk assessment and emergency management (preparedness, prevention, protection, detection, response, recovery). The Improvement of Mapping, Addresses, Geography, Elevations and Structures (IMAGES) Act similar to [H.R. 4905](#), from the 115th Congress, will soon be introduced to reform FEMA's NFIP through: 1) Lidar data collection and coordination between FEMA's NFIP and USGS 3DEP; 2) National Structure Inventory; 3) USGS National Streamflow Information; and 4) National, geo-enabled, web access to maps. *House offices* are asked to cosponsor the IMAGES Act. *Senate offices* are asked to sponsor a companion bill.

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The Role of Surveying in America's Infrastructure

Infrastructure is critical to our nation's prosperity. President Trump and Congress are planning a major infrastructure program of an estimated \$1.5 trillion for roads, bridges, airports, and other types of infrastructure. All of these projects require quality and accurate surveying, mapping and geospatial data, products and services.

A strong infrastructure means a strong America an America that competes globally, supports local and regional economic development, facilitates commerce, and creates jobs. Infrastructure - the physical framework of transportation, energy, communications, water supply, and other systems are critical to the Nation's prosperity.

Surveying, mapping and geospatial data and their applications provide valuable productivity, safety, and cost-saving benefits to all infrastructure projects. Geospatial data applications in infrastructure investments include: boundary, land acquisition, route, grade, line-of-sight, and utility surveys and corridor mapping; terrain and other obstruction identification for aviation; dam, levee, and coastal-structure failure modeling and mitigation; hydraulic and hydrologic modeling; evaluations of geologic, coastal, and other natural hazards, and geotechnical evaluations; permit application and construction plan development and evaluation; drainage issues and cut-and-fill estimate requirements; vegetation, topographic, and geomorphologic feature analysis; as-built model development; preliminary engineering, estimate development, and quantity estimation activities; and base-map and elevation model creation.

For business uses related to infrastructure improvements, the value of geospatial data is estimated to be in the billions of dollars. For example, aerial photography is 0.011% of a project cost, but leverages a downstream economic effect multiplier of 9074. This also results in thousands of American jobs.

Surveying, mapping and geospatial data are critical for the planning, design, construction, operation, and maintenance for all related infrastructure projects. Data needs include: Elevation; Boundary; Topography; Planimetrics; As-Built; Asset Management; Inventory and Location Data, and others. Overall, America's "National Spatial Data Infrastructure" is not sufficient to meet the needs of a physical infrastructure investment program, earning just a grade of B-, according to a recent report card at www.cogo.pro

NSPS respectfully urges sponsorship of provisions enabling the utilization of surveying and mapping technologies and applications in infrastructure legislation in the 116th Congress.

In addition to being an essential part of a comprehensive infrastructure bill, surveying, mapping and geospatial data provisions are needed to support --

- ◆ 3D elevation (LiDAR) data
- ◆ A current, accurate inventory of Federal land
- ◆ A "Digital Coast" of data for shoreline and coastal management
- ◆ Location and other data for pipelines and other underground utilities
- ◆ FEMA flood mapping

ACTION REQUESTED:

NSPS respectfully urges Congress to include a provision enabling for improved utilization of surveying and mapping technologies and applications in infrastructure-related legislation. For more information, contact John Byrd, NSPS Government Affairs Representative, at jbyrd@jimpa.us or (703) 787-6665.

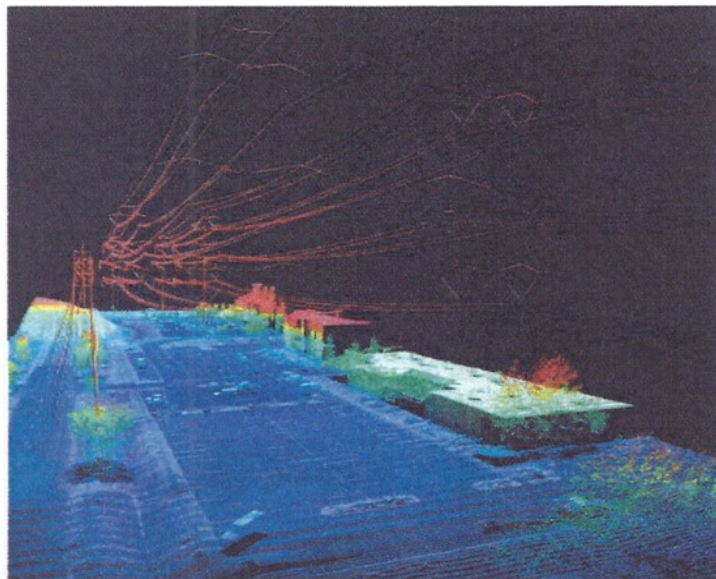
Draft 2019 Infrastructure Act Provision

(a) Each project authorized to be carried out under this Act shall utilize contracts for current and accurate surveying, mapping and geospatial data and services for research, planning, development, design, construction, alteration, operation or maintenance of new or existing infrastructure in accordance with applicable and appropriate private or governmental standards.

(b) The term "surveying, mapping and geospatial" shall include such activities as measuring, locating, and preparing maps, charts, surveys, aerial photographs, satellite images, or other graphical or digital presentations depicting natural or man made physical features, phenomena, and legal boundaries of the Earth, including but not limited to elevation, planimetric, boundary, parcel, geodetic, and hydrographic data.

(c) Any contract or subcontract to be carried out using funds in whole or in part made available by this Act for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping and geospatial, or architectural related services shall be negotiated in the same manner as a contract is negotiated under chapter 11 of title 40, United States Code, or an equivalent State qualifications-based statute.

(d) Nothing in this Act shall preempt the laws of any State relating to the performance of services of a surveying, mapping, or geospatial nature which, to any extent, are required to be performed or approved by a person licensed, registered, or certified to provide such services under such State law.



NSPS Directors Spring Meeting Report Arlington, VA April 2019

By: Matt Morris, MARLS Director

On behalf of fellow members of the Montana Association of Registered Land Surveyors, I attended the Spring NSPS meetings held in Arlington, VA.

With the intent of actively participating in the NSPS- Day on the Hill; I secured appointments with the offices of Senator Daines, Senator Tester, and Congressman Gianforte. As with all good plans, sometimes they are subject to change due to unforeseeable factors. Arriving at the Great Falls airport prepared to depart Tuesday morning, the plane had mechanical issues and I was unable to leave Great Falls. After multiple conversations with Delta agents, I was unable to re-route into Washington until the next day. Knowing that the land surveyors of Montana would be well represented by Kay McDonald, and Darryl Magnuson I returned to my office, and promptly sent notice to the three offices. That evening Darryl and I discussed the protocol and that Cotton Jones from Wyoming would be able to help between his appointments. Reading Darryl's draft message, I feel he did well recapping the events of that day.

The Spring Meetings were held in conjunction with the NSPS Student Competition. I arrived late Wednesday afternoon in time to observe a few of the Student Competition presentations. Again, I would like to explore sending a team from Montana to the Student Competition.

Results of the 2019 NSPS Student Competition:

Two-Year College Program

- First Place: Central New Mexico Community College, Albuquerque, NM

Four-Year College Program

- First Place: Akron University, Akron, OH
- Second Place: Texas A & M - Corpus Christi, Corpus Christi, TX
- Third Place: Kennsaw State University, Marietta, GA
- Honorable Mentions:
 - Alfred State University, Alfred, NY
 - Great Basin College, Elko, Nevada
 - Idaho State University, Pocatello, ID

- New Mexico State University, Las Cruces, NM
- New Jersey Institute of Technology, Newark, NJ
- Oregon Institute of Technology, Klamath Falls, OR

Thursday morning, I had the opportunity to chair the Western States Directors Council, and we discussed business for an hour, prior to recessing until the following day. The recess was planned to accommodate a discussion about the future of the surveying profession. That discussion took place from 9 am until lunch and was a panel format with instructors from Fresno State, Utah Valley, Dunwoody College of Technology, Idaho State, New Mexico State, Texas A&M and Northern Illinois. The discussion focused on how to facilitate preparing more candidates for licensure. It was also discussed that the majority of the educational institutions have a noteworthy lack of enrollment. Some noteworthy discussion focused on that we as surveyors love our profession; however, are guilty of propagating a lack of excitement in the profession that we hold dear.

It should be stated that most states and the Departments (such as the Department of Labor), recognize the shortage of licensed Land Surveyors, and that this is a real issue at the national level. It was mentioned multiple times that if **WE** as the Survey community, cannot facilitate interest in the profession that we hold so dear to our hearts, the profession is in jeopardy of ceasing to exist. A trend to deregulate is upon us, failure to recognize this is ignorant. The State of Texas, Board of Land Surveyors, no longer exists. That board did not pass a sunset review, and now the Professional Land Surveyors of Texas have (I believe) 2 members on the Engineers licensure board similar to Montana. Understand that the Texas Board was in existence from 1919 until 2019. The fear of a national trend to deregulate the Land Surveying Profession is a not paranoid statement, but a reality that NSPS is working through each state to quash. Kurt Wurm, PhD of New Mexico State University discussed the New Mexico program in detail and how he is working to facilitate growth in enrolment. It is noteworthy that the New Mexico program is showing growth.

Returning to NSPS business meetings I have decided to offer my assistance with the ALTA/NSPS rule committee and am excited to be engaged on that committee with others.

The NSPS Board of Director's Spring Business Meeting was held at the Arlington Hilton in Arlington, Virginia on Friday, April 12 and Saturday, April 13, 2019.

DAY 1 (COMMITTEE REPORTS):

Opening Proceedings:

- Approval of the Spring 2019 Meeting Agenda
- Confirmation of the Board Quorum
- Silent Auction Announcement – proceeds to the "Get Kids in Survey" fund
- Recognition of various guests and dignitaries

Special Presentations:

Department of Defense – Mike Miller - Mike's presentation discussed the efforts to bring the returning veterans back into the workforce through additional training and employment opportunities through public and private industry.

(Continued on page 11)



(Continued from page 10)

Association of Professional Pipeline Surveyors – Aaron Grau - Aaron's presentation introduced this newer group of surveyors specifically trained and employed for pipeline work. He spoke of similar technical knowledge and training techniques used to ascertain specific data regarding pipeline design, installation and record drawing creation. APPS would like to work with NSPS to further our relationship and help cross train future surveyors for more employment opportunities.

North American Datum of 2022 – Michael Dennis - This presentation provided background on the origins of various datums and how the upcoming 2022 datum shift will need to be embraced by the surveying and mapping community. Michael talked about the different units of measurement set by legislation throughout the United States and NGS efforts to help standardize both the coordinate system and measurement unit.

Board Reports:

Hydrographic Board – no report

CST Board – no report

NSPS Foundation – verbal report by Wayne Harrison - Revision of bylaws to address number of trustees

Committee Reports:

Admissions – no report

NSPS Fellows – no report

Bylaws & Resolutions/Policy Review – no report

Membership – verbal report by Wayne Harrison - Motion forthcoming on Wisconsin MOU

Nomination – written report submitted

Government Affairs – written and verbal report summary by Pat Smith - See written report for full text of committee activity

NSPS Political Action Fund (PAC) – verbal report by Jon Warren - Challenge to double number of Jefferson Club members

Railroad R/W – written report submitted

State and Local Government – No report

Certification – no report

Floodplain Surveyors– No report

Education – written report submitted

ABET – no report

Scholastic Activities – no report

Professional Practice – no report

Private Practice – no report

Government Practice – no report

Nat. Council for Engr. & Surv. (NCEES) – no report

Professional Standards – no report

ALTA/NSPS Land Title Surveys – no report

Unmanned Aerial Systems – written report submitted

Public Relations – no report

Youth Outreach – no report

Communications Task Force – no report

Trig Star – verbal report by Jerry Juarez - This program still seems to be regionally successful and would like to see more participation by our members.

Workforce Development – verbal report by Tim Murphy - Taking the Chair over from Emily Pierce, Tim asked the group to recognize her for her achievements during her leadership. Group is very active and will continue to partner with state affiliates on more opportunities.

Future of Surveying – no report

External Affairs – written report submitted



American Association for Geodetic Surveying (AAGS) – no report

American Bar Association (ABA) – no report

American Consulting Engineers Council (ACEC) – no report

Association of Petroleum Surveying and Geomatics (APSG) – no report

American Society of Photogrammetry and Remote Sensing (ASPRS) – no report

Bureau of Land Management (BLM) – no report

Cartography and Geographic Information Society (CAGIS) – no report

National County Surveyors – no report

Federal Emergency Management Agency (FEMA) – verbal report by Dan Martinez - Bulletin board is ready to be operational pending an agreement with NSPS (by motion to follow)

International Federation of Surveyors (FIG) – verbal report by John Hohol - Potential for NSPS to host FIG Working Week 2023 in Florida

Geographical and Land Information Society (GLIS) – no report

International Right-of-Way Association (IRWA) – no report

Assoc. of Photogrammetry, Mapping, & Geospatial Firms (MAPPS) – no report

National Geodetic Society (NGS) – no report

Past Presidents Council – no report

POLC – no report

Professional Surveyors of Canada (PSC) – no report

Society of Mining Metallurgy & Exploration (SMME) – no report

Surveyors Historical Society (SHS) – verbal report by Rich Leu - Short presentation on last gather given during final closing of business

NSPS Young Surveyors North America – verbal report by Chris Glantz - Small turnout of YSN but still positive results. Consider more interaction with full Board of Directors

Motions Distributed for Consideration:

[Motion 1: State DOTs Promotion of CST Program \(CST\)](#)

Motion 2: Inquiry into ASCE Survey Standards (Coan/Graham)

Motion 3: NSPS Dues Increase (Akins/Burch)

Motion 4: Amendment to 100% Membership MOU (Membership)

(Continued on page 12)

(Continued from page 11)

Day 1 recessed at 5:50pm, scheduled to reconvene the next day at 8AM

All submitted written committee and State reports can be found here:

<http://www.nsps.us.com/page/Reports>

DAY 2 (BUSINESS MEETING AND VOTING OF MOTIONS):

Opening Proceedings:

CALL TO ORDER at 8:00am

ROLL CALL was made with the establishment of a quorum

INTRODUCTION OF GUESTS

PRESIDENT VAN HORN'S OPENING COMMENTS

APPROVAL OF CONSENT AGENDA - Approval of Minutes for Board of Directors Minutes, College Park, MD (October 20, 2018). Motion by Director Brooks to limit specific discussion to three speakers for and against on motions brought in front of the group, seconded by Director Schneider. Passed by voice vote.

ADOPTION OF ORDER OF BUSINESS

Executive Committee Reports:

President – Looking forward to continuing our progress as a great group of professionals

President-Elect – Voiced appreciation for those who have invited him to participate at their organizational conferences and looks forward to more progress

Vice President – Continuing with “Get Kids in Survey” program and growing workforce development

Treasurer – Budget will remain based upon \$40/each dues until majority of monies starts coming in (end of 2019, first of 2020)

Secretary – Excused from attending

Past President – Appreciative to all for supporting him during his presidency and looks forward to remaining active

Executive Director – Thanks to those who participated with the Chinese Competition

Old Business:

Catahoula Basin – Amicus Brief - A short presentation was



given by President Van Horn and Elizabeth Schleif, an attorney/surveyor from Wisconsin who helped with the creation of the brief. They went through the timeline of when the case started, how NSPS become involved and what are the next steps. At the end of the presentation, President Van Horn provided Liz with a plaque thanking her for the tireless effort in writing and coordinating this important document.

Promotional Videos - The Board was shown

new promotional videos from the Tennessee and Texas surveyors societies depicting surveyors and the great career opportunities ahead.

New Business

Motion 1: Wisconsin MOU (Membership) - Passed

Motion 2: Travel Reimbursement (Bylaws) - Passed

Motion 3: Revised Bylaws Policies (Bylaws) - Passed

Motion 4: NSPS Foundation Trustees (Foundation) – Passed by Roll Call Vote

Motion 5: NSPS Foundation Bylaws Article III, Section 4 (Foundation) – Passed

Motion 6: NSPS Foundation Bylaws Article III, Section 3 (Foundation) – Passed

Motion 7: NSPS Foundation Bylaws Article II (Foundation) – Tabled

Motion 8: Adoption of the International Foot (T. Brooks/Warren) – Tabled

Motion 9: FEMA Electronic Bulletin Board (FEMA) – Tabled (Copies of the motions attached)

NSPS ExCom Elections – Two Directors for a two-year term From the floor:

Dan Martinez (NE), Bob Neathamer (OR), Alan Dragoo (MD)

Results by written ballots tallied by teller's committee: Dan Martinez & Bob Neathamer

Hydrographic Board Appointments - Passed

Chair – Jon Dasler

Deputy Chair – Gary Davis

Secretary – Paul Donaldson

Full Board Member – Olivia Hauser

Associate Members – Kate Mildon, Ben Hocker, and Jason Creech

Key Director Ballot & Previous Award - The 2018 Fall NSPS Business Meeting Key Director was presented to Bob Akins.

The recipient for the 2019 Fall Business Meeting Key Director by written vote is Rich Vannozzi.

Service Awards

10 Years – Troy Hayes

5 Years – **Matt Morris**, Randy Rambeau, Patti Brooks, Tony Gregory

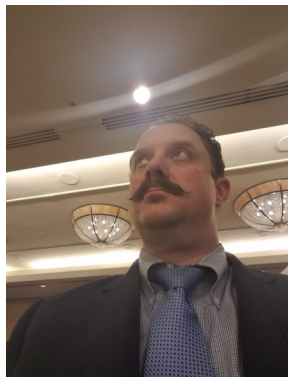
Meeting adjourned at 11:33am.

Next Meeting:

To Be Held at the Hilton Bonnet Creek in Orlando, FL on September 26-28, 2019

Respectively submitted,

Matt Morris, MARLS NSPS Director



MARLS

The MARLS 2019 conference held in Billings at the Doubletree Hotel on February 20 - 22, 2019 was a huge success thanks to each and everyone that participated. Yes that includes attendee, exhibitors, speakers, guests, and our south central chapter's conference committee! You make MARLS a profession to be proud of!

The MARLS Scholarship Auction was also a huge success and we want to thank all of those that participated in another great auction night. Our scholarship recipients have been so appreciative of their awards and a huge thank you goes out to our MARLS members for the continued support of our foundation and it's endeavors.

Welcome to our 2019 - 2020 MARLS Board of Directors. They are listed on page 3 of the Treasure State Surveyor: Officers elected are: President Darryl Magnuson; Vice President Steve Slotve; Past President Mark Larson; President Elect Jonathan Roen; and Secretary - Treasurer Joe Kauffman; 8 chapter presidents; NSPS Director Matt Morris; West Fed Reps Dick Smith and Russ Kluesner.

Thank you to all our speakers who gave such great presentations for our attendees. Thank you to all our exhibitors for their continued

**President Darryl Magnuson
at the Capitol in April**



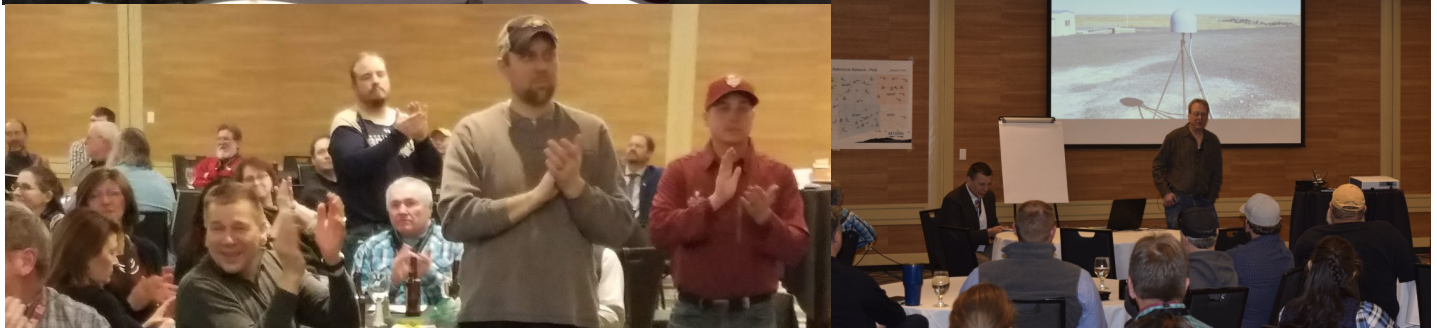
**President Darryl Magnuson
and Kay McDonald with Repre-
sentative Greg Gianforte in Wash-
ington D.C. at NSPS Lobby Day**

support of MARLS. We appreciate all of you and we are looking forward to a great and prosperous year ahead for everyone in the surveying profession.

Please enjoy the following pictures of the 2019 conference.

Kay McDonald, MARLS Executive Director

MARLS INSTALLATION OF THE 2019 - 2020 BOARD OF DIRECTORS BY NSPS PRESIDENT LISA VAN HORN





**MARLS
OUTSTANDING SURVEYOR AWARDS
Presented to:
David Dorsett, PLS
and
Robert Rux, PLS**



Thank you to the MARLS Board of Directors for recommending, and the membership for approving me as a MARLS Fellow Member.

It is an honor and privilege to be included in this membership class.

This signifies a milestone in my career, not a conscious goal, but an appreciated recognition. It is truly an honor to be affiliated with others in this membership class.

Linda Smith

PRESENTATIONS



**Thank you to
all our
Speakers!**

**Thank you
South Central
Chapter
Volunteers!**





**Auction night
Presentations
Exhibitors
Entertainment
Raffles
Speakers
Awards
Volunteers
Guests**

**THANK YOU
EVERYONE!**



Developments in Montana Title Law, Vol. XIX, Iss. I

By Gregory Schultz, P.C.

April 26, 2019

Dear Fellow Member of the Montana Land Title and Survey Industries:

In this first (late) Issue of the year, we address two public road opinions (one of which alters precedent), injunctive protection of an asserted prescriptive easement, and the risks of real property auctions with no reserve.

1. Letica Land Company, LLC, v. Anaconda-Deer Lodge County, 2019 MT 30 (decided February, 2019). This is the follow-up to the opinion of the same name at 2015 MT 323, addressed in Vol. XV of this report. This opinion is short, but not so sweet, for Letica. Modesty Creek Road consists of two sections, an upper and lower, both on Letica's property. In the last episode, in 2012, the County Commissioners had voted to reaffirm the Road as County in response to Letica's gating of the Road. The County cut the locks on the gates and removed a dirt berm from the upper branch. Letica sued. The District Court held that an historic petition had established the lower branch of the Road and that public prescriptive use had established the upper branch and that the upper branch easement had not been extinguished by "reverse" adverse possession. On appeal, the Montana Supreme Court affirmed the ruling as to the lower branch but found that the public's prescriptive easement on the upper branch had been extinguished.

On remand, the District Court addressed Letica's constitutional property takings claims and dismissed them. Letica appealed again. Letica argued that the County's removal of the dirt berm from the upper branch, and encouraging public use of that road, amounted to an unconstitutional taking of property which required compensation. The County responded that the temporary physical invasion of Letica's property was done under a claim of right and therefore did not amount to a taking.

The Federal and State constitutions, of course, mandate compensation for the taking of private property for public use. The Montana Supreme Court noted that the United States Supreme Court has held that, if the government mistakenly asserts the right to use what it considers to be its own property, and the property in fact belongs to another, then the property owner's remedy is in tort (i.e., trespass?) and the mistake does not amount to a constitutional taking. ¶ 12. "When agents of the United States wrongly believe that the government owns some land, and occupy it under a claim of right, the occupation is a noncompensable tort rather than a taking." In the Matter of the Chicago, Milwaukee, St. Paul and Pacific R. Co., 799 F.2d 317, 326 (7th Cir. 1986). In other words, "[m]istaken applications of law are inevitable, but no principle of constitutional law requires compensation for every mistake." Matter of Chicago, 799 F.2d at 327.

Here, the County had acted under a claim of right when it removed the berm. It relied on County records, maps, surveys, and other evidence related to the historic use of the upper branch. Although the County was wrong, its actions were reasonable. The County's good faith reliance on the available evidence precluded Letica's taking claim.

¶ 14. From the "real world" department, the Court added that the County-caused damage to the upper road resulting from berm removal and encouraging people to drive over the road (thereby allegedly spreading weeds) did not amount to any significant burden or substantially interfere with Letica's use of its property. The effect on the land was deemed "insignificant." ¶ 15. So much for the measure of damages for trespass.

2. Davidson and Ide v. Barstad, 2019 MT 48 (decided February, 2019). Why would one sell real estate, or anything else of value, by a no-reserve auction? It is difficult to see how a reasonable reserve discourages bidding and the "downside risk" of a no-reserve auction is steep, as we'll see here. More particularly, why would one auction real estate at no reserve when its apparent market value equals the debt on the property?

Sellers Barstad owned a half-section near Ovando. They contracted with an Alabama auction company to sell the property at no reserve. In the listing agency agreement, the Barstads appointed the auctioneer as their "sole and exclusive agent" with the "exclusive right to sell" the property. The agreement specified that, upon auction sale, the Barstads would convey the property free and clear of all encumbrances, including the mortgage debt of \$550,000.00.

The brochure and website for the auction stated that the Barstads would sell the property either as a whole or in two separate 160-acre parcels. On auction day, the Auctioneer distributed an information sheet describing the required preliminary bid deposit: \$50,000.00 to bid on the whole, \$30,000.00 to bid on Parcel 1, or \$20,000.00 to bid on Parcel 2. The Auctioneer also distributed a document entitled Real Estate Auction Terms and Conditions (REATC) specifying the terms of the auction and the subsequent sale transactions. The REATC was to be attached to, and become part of, any subsequent buy-sell. The REATC specified that, as a condition of bidder registration, bidders were required to make a bid deposit in certified funds or "other funds acceptable to the Seller and/or Auction Company." The REATC also specified that the successful bidder would have to execute the written buy-sell immediately following the auction and make an earnest money deposit of 10% of the purchase price by personal check.

(Continued on page 19)

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(Continued from page 18)

At the auction, Davidson appeared and offered to register with a \$50,000.00 bid deposit in the form of a personal check and a letter from his Ohio bank confirming funds on deposit. The Auctioneer accepted Davidson's bid deposit. Ide appeared and offered a \$50,000.00 cashier's check as bid deposit, although the Auctioneer later testified that the Ide bid deposit was in cash. At the auction, Davidson successfully bid \$341,000.00 for Parcel 1. Ide successfully bid \$154,000.00 for Parcel 2. Needless to say, since the total of the sales did not even cover the mortgage, the Barstads felt remorse. However, after the auction, the parties executed the buy-sell agreements which identified the buyers as the highest "bona fide" bidder, incorporated by reference the REATC, and acknowledged that the seller accepted the purchaser as the successful bidder and that a binding contract of sale existed. The buy-sells also included the usual integration clause stating that the buy-sell was the entire agreement and that it replaced any prior oral agreements.

Davidson gave the Auctioneer the 10% earnest money in the form of a personal check, which immediately cleared. Davidson and the Barstads communicated by phone and e-mail and the Barstads made no objection to the conduct of the auction or the sufficiency of Davidson's pre-auction bid deposit or his post-auction earnest money. Ide made his 10% earnest money deposit in the form of cash, which the Auctioneer converted to a cashier's check and deposited with the title company.

All this seems unfortunate for the Barstads, but bullet-proof. Then the Barstads notified the buyers that they would not perform and would not close due to alleged non-compliance by the buyers with the pre-auction bid deposit and post-auction earnest money requirements. The Barstads now asserted that Davidson's pre-auction bid deposit was not by certified or guaranteed funds as supposedly required by the REATC. The Barstads now asserted that Ide's pre-auction bid deposit was not made in funds "acceptable to the Seller" as required by the REATC and because he supposedly did not make his earnest money payment timely on the day of execution of the buy-sell. Davidson and Ide sued for specific performance of the buy-sells and the District Court gave them summary judgment. The Barstads appealed.

The Barstads made various flimsy arguments on appeal which the Montana Supreme Court dignified by over-analysis. The Barstads asserted that a correct pre-auction bid deposit was a condition precedent to a bidder's eligibility and, in turn, to the formation of an enforceable buy-sell. As to Davidson, the Barstads argued that his personal check and bank verification letter did not satisfy the bid deposit requirement. As to Ide, the cash bidder, the Barstads argued that there was a question whether his bid deposit was satisfactory because of a discrepancy in the Auctioneer's affidavits as to whether Ide made his pre-auction deposit in

(Continued on page 20)

(Continued from page 19)

cash or by cashier's check. Gentle reader: If your editor often feels thoroughly depressed by his profession, surely you see why?

The Court first indulged in a discussion of the idea of a condition precedent to the formation of a contract versus a condition precedent to the parties' performance after contract formation. "[A] condition precedent to contract formation is a specific condition, usually an extraneous event or circumstance or third-party act, the occurrence upon which the reciprocal promises constituting the contract consideration depend." ¶ 20. By contrast, "[a] condition precedent to a contract performance, duty, or right, is a specific post-formation act or forbearance by a promisor, the occurrence upon which the reciprocal performance or forbearance of the other party depends." *Id.* The failure of a condition precedent to contract formation renders the contemplated contract non-existent as never formed. ¶ 21. By contrast, the failure of a condition precedent to performance "generally effects or constitutes a breach of an enforceable contract promise subject to remedy" depending on whether the breach is deemed material or non-material. *Id.*

Upon a material breach, the non-breaching party can either rescind the contract without requirement for further performance or, alternatively, enforce the contract. ¶ 22. On the other hand, a non-material breach does not relieve the non-breaching party from performance but merely entitles the party to enforce the contract. *Id.* A breach of contract is not material if the breaching party substantially performed all essential contract requirements. ¶ 23. Substantial performance occurs when the breaching party has performed all "major aspects of the contract but has deviated in insignificant particulars that do not detract from the benefit" expected by the non-breaching party. *Id.* Whether a breach is material is measured by a legal standard of "objective reasonableness" rather than by the non-breaching party's subjective viewpoint. *Id.*

Here, held the Supreme Court, neither the REATC nor the buy-sells specified "any extraneous or third-party occurrence as a threshold condition precedent to triggering the parties' mutual or reciprocal promises under the buy-sell agreements." ¶ 24. In other words, neither the REATC nor the buy-sells conditioned the parties' performance under the buy-sells upon strict compliance with the pre-auction bid deposit requirements. Again in other words, the pre-auction bid requirements were not a condition precedent to formation of enforceable buy-sells.

As to post-contract formation conditions precedent to the Barstads' performance, Davidson's tendered personal check and bank verification letter indeed were not certified funds. However, the Auctioneer was the "actual and manifestly ostensible" agent of the sellers and the REATC expressly authorized bidders to make their bid deposits either in certified funds or other funds acceptable to the Seller or Auction Company. Here, it was beyond dispute that the Auctioneer had in fact accepted Davidson's bid deposit.

The Barstads nonetheless argued that they would not have accepted Davidson's bid deposit had they known about it and that the auction registration form required the Barstads' written approval of any non-certified deposit. However, the Auctioneer's agency authority prevailed. ¶ 26. There was no real issue that Davidson was an authorized bidder under the REATC and the subsequent buy-sell which incorporated it. And, even if there had been a requirement of the sellers' written authorization regardless of the Auctioneer's approval, there was no evidence that the lack of such authorization deprived the sellers of their "essential contract expectancy" under the terms of the buy-sell. In sum, neither the form of Davidson's pre-auction bid deposit nor his post-auction earnest money deposit amounted to a failure of any condition precedent to the Barstads' duty to perform.

As to *Ide*, held the Court, cash is cash. Whether his bid deposit was made in cash or cashier's check is immaterial because a cashier's check constitutes "certified funds" as referenced in the REATC. "Cold, hard cash is not yet anything less than the substantial equivalent of a cashier's check," ¶ 28, and the Auctioneer held *Ide*'s bid deposit and earnest money deposit at all times until deposited with the title company. Thus, likewise, the form of *Ide*'s pre-auction bid deposit and post-auction earnest money did not amount to a failure of a condition precedent to forming the buy-sell agreement or a failure of a condition precedent to the Barstads' duty to convey the property. ¶ 28.

3. Skelton v. Gibson, 2019 MT 58 (decided March, 2019). This is a public road opinion worth some consideration. Soup Creek Road, in Lewis and Clark County, begins at a County road and travels three miles across BLM and private land before traversing the Skelton Lot 7 and ending at the Gibson parcel, which apparently sits on Hauser Reservoir. (The opinion could have used a map). The Road is the only access to the Gibson parcel. The Road is what is known as a "GLO road," as it first appears on an 1868 GLO Township Survey. Historically the Road was used to access the Missouri River and several homestead parcels. Since 1869, the Road also has been depicted and referenced in various surveys and public records and used, episodically, by the public.

In 1894, when the Road was located in what was then Meagher County, the Commissioners rejected a petition to make the Road a County road. While the Road is repeatedly referenced "in Lewis and Clark County records" (the Court does not specify how or where), it was never included in the official County road book. It was the subject of a 1907 petition to the Commissioners to extend it on a different route but the Commissioners again declined the petition. In 1910, Gunn, the Gibsons' predecessor-in-interest, petitioned the Commissioners to abandon that portion of the Road which crosses what is now the Gibson parcel, on the River, and the Commissioners did grant that petition.

Another GLO survey from 1914 shows Soup Creek Road running from the County road to the River over what is now the

(Continued on page 21)

(Continued from page 20)

Skeltons' Lot 7 and the Gibson parcel, which presumably were (and are) contiguous. Several Homestead Entry Surveys (Nos. 489 and 177), also completed at that time, depict the Road and label it as a "road right-of-way." Lot 7 went to patent in 1917 with reference to GLO Survey No. 489. Tracts A and B, now part of the Skelton ownership, went to patent in 1918, which referenced Survey 177 and which, again, labeled the Road as a "right-of-way."

The Road continued in use through the 1920s, serving private landowners including the homesteads on Lot 7. A 1931 GLO revised survey again depicted the Road as running through Lot 7. Landowners continued to use the Road through the 1960s, when the Skeltons purchased Lot 7. The Skeltons and the Gibsons thereafter used the Road, although access in some places was extremely difficult, to put it mildly.

The Skeltons built their cabin on Lot 7 and thereafter took measures to stop public use of the Road. This made matters tense with the Gibsons, whose Lot apparently was still unimproved, and the Gibsons cut locks, disabled gates, and removed obstructions placed by the Skeltons. In 2009, the Skeltons sued for a declaration that the portion of Soup Creek Road which traverses their land was a private road over which the Gibsons had no easement. The Gibsons counterclaimed that the Road is a public highway established prior to 1895 through prescriptive use. The District Court found that the Road indeed had been used as described above but found no easement over the Skelton Lot 7, concluding that any public prescriptive easement had been extinguished by reverse adverse possession by the Skeltons and acts of other road users inconsistent with a claim of prescriptive right. The Gibsons appealed. They argued that the Road is a public highway that has never been abandoned. The Skeltons countered that the County had abandoned the Road in 1895 when it declined the petition to designate it as a County road.

The Supreme Court first addressed what the parties seemed to agree upon: The Road at least had been a public highway under Montana statute. Prior to July, 1895, a public highway was established in one of four ways: By act of the authorities as provided by statute (that is, by petition); by public prescriptive use; by private dedication; or by partition. In 1895, the Legislature passed § 2600, which provided that "[a]ll highways, roads, streets . . . laid out or erected by the public, or now traveled or used by the public, or if laid or erected by others, dedicated or abandoned to the public, or made such by the partition of real property, are public highways." The Court previously had concluded that the intention of § 2600 "was to declare those only to be public highways which had been established by the public authorities, or were recognized by them and used generally by the public, or which had become such by prescription or adverse use at the time the provision was enacted." ¶ 23, quoting McCauley v. Thompson-Nistler, 2000 MT 215,

¶ 23. Soup Creek Road had existed, and had been continuously used, since 1868, which was far more than the five years required for prescriptive use by 1895. The District Court had so found but then concluded that the Road was not a public highway because the Commissioners had declined to grant the 1894 petition to make it a County road. According to the District Court, this meant that the Road had been abandoned.

The Supreme Court agreed that the Road had been established as a public highway prior to 1895. It then considered abandonment. Section 2601, the companion to § 2600, in 1895 required that "[a]ll public highways, once established, must continue to be public highways until abandoned by order of the Board of Commissioners of the county in which they are situated, or by operation of law, or judgment of a court of competent jurisdiction." In construing this Section, the Supreme Court previously has concluded "that no public highway established by public use prior to 1895 should be vacated except by the public authorities." ¶ 25, quoting McCauley, ¶ 29. There was no Court judgment of abandonment or any argument for abandonment by law, so the Court addressed abandonment by the public authorities. This requires a clear showing of intent to abandon by conduct "decisive and conclusive" of such intent: "The conduct must be some affirmative official act, and not mere implication. Mere nonuse, even for extended periods of time, is generally insufficient, by itself, to indicate an intent to abandon." ¶ 25, quoting McCauley, ¶ 30.

The Court then takes a little detour into § 2631 of the 1895 Codes, which required the Commissioners to maintain a County road book and separately to "cause to be recorded as highways such roads as have become such by usage or abandonment to the public." Soup Creek Road never made it to the County road book but, according to the Court, the Commissioners continued to "record it as a highway" elsewhere in County records. The opinion does not explain this -- Where would such public highway designation appear in County records?

But, back to abandonment: It means "[a] voluntary act involving a concurrence of act and intent." ¶ 27. The act "is the relinquishment of possession and the intent is a manifestation not to resume beneficial use of it." Id. The Skeltons argued that the Road was abandoned when the County Commissioners declined to make it a County road in 1895. However, held the Supreme Court, "refusal to adopt a public highway as a county road does not equate to abandoning that public highway." ¶ 28. The Court noted that if the Road had been abandoned by the Commissioners' 1895 decision, then it made no sense for those same Commissioners to consider the 1907 petition to extend the Road as a County road or to continue to include it as a public highway "in the records." Furthermore, the 1910 petition to abandon the Road where it ran over the Gibson parcel, which petition was granted, did not amount to an abandonment of the Road as it ran up to the Gibson parcel. "Contrary to the District Court's finding that Soup Creek Road became a road to nowhere upon the abandonment of the portion crossing what is now Gibsons' parcel, it continued to be a road to Gibsons' parcel, available through use by the parties, their family and friends, and others." ¶ 29. Obviously, if the Road had been abandoned by the Commissioners' 1895 decision, then Gunn's 1910 request for abandonment of the Road through the Gibson parcel would have been superfluous.

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In sum, “[r]ejection of a petition to declare Soup Creek Road a county road is not the same as a formal act of abandoning a public highway and is insufficient to demonstrate a decisive and conclusive intent to abandon the road,” as required by McCauley. ¶ 32. The Court closed by re-examining McCauley and clarifying that decision. The disputed language from McCauley, that is, that “mere nonuse, even for extended periods of time, is generally insufficient, by itself, to indicate an intent to abandon,” admittedly implied that there may be times when an exception applies to the general rule that nonuse is insufficient to abandon. The Court now rejected this possibility: “The requirement is clear, existing both in statute and the McCauley decision, that a public highway cannot be abandoned by anything short of an order by the commissioners, operation of law, or court order. Non-use is not sufficient to prove intent to abandon.” ¶ 32.

Justices Rice and Baker dissented, arguing that the majority had cherry-picked the evidence and altered the precedent established by McCauley. “The clear implication of [McCauley] is that there can be exceptional cases where the facts of nonuse are extreme enough to demonstrate the requisite intent to abandon a road.” ¶ 37. The dissent agreed with the District Court’s findings that the facts were indeed extreme. The Road had been washed out and impassable to vehicles between 1964 and 1993. The Road frequently had been locked off by gates. There had been virtually no “public” use for decades. Furthermore, the 1910 abandonment of the Road across the Gibsons’ parcel voided that portion of the Road which served its main purpose: public access to the water. Thus, continued designation of the Road as public “will not fulfill the Road’s original purpose of providing public access to and from Hauser Reservoir.” ¶ 40. The Gibsons effectively had been awarded designation of a public road leading to the border of their parcel, but no further, giving them “the benefits but not the obligations of public access.” ¶ 40.

4. BAM Ventures, LLC, v. Schifferman, 2019 MT 67 (decided March, 2019). This opinion concerns the applicable standard for a preliminary injunction protecting an asserted prescriptive easement when the party claiming the easement has alternative access. In 2003, the Schiffermans purchased a parcel in Wise River which lacked physical access. (The opinion is vague -- Does this mean the parcel also lacked a right of access, that is, it was landlocked?) In 2004, Highway 43 was widened in the direction of the Schifferman parcel and the adjacent parcel which would be owned by BAM. In 2004, the Schiffermans took advantage of the widening and built an elevated driveway from the widened Highway to their parcel. They thought the driveway was on their parcel. In 2017, BAM purchased the adjacent lot and, concluding that the Schiffermans’ driveway was on the BAM parcel, fenced it off. In response, the Schiffermans removed the fencing and began driving across another portion of their Lot to get to their elevated driveway. This other route did not provide comparable access and would take substantial funds to build it to the standard of the improved driveway. BAM sued to quiet title. The Schiffermans counterclaimed for a prescriptive access over their improved route.

The Schiffermans sought preliminary injunctive relief based on their prescriptive claim to bar BAM from restricting access to their Lot over the improved route. BAM argued that the Schiffermans had to show “irreparable harm” to justify such relief. The District Court held that the “irreparable harm” requirement applied only to one of the several statutory grounds for a preliminary injunction, which did not apply here. BAM appealed. The Supreme Court acknowledged that the case law was confusing as to whether “irreparable harm” was required under all standards for such injunctive relief or only for one subsection of the preliminary injunction statute, that is, § 27-19-201(2), MCA. The Schiffermans argued that the District Court had properly granted them a preliminary injunction because they had made a prima facie showing of their prescriptive easement claim and because a finding of irreparable injury was not necessary under subsections (1) and (3) of the injunction statute.

The Supreme Court agreed that only subsection (2) of the statute required the showing of “irreparable harm.” However, some harm or damage must be shown under all subsections of the statute. “While our cases have not always used precise language, collectively they stand for the principle that all requests for preliminary injunctive relief require some demonstration of threatened harm or injury, whether under the “great or irreparable injury” standard of subsection (2), or the lesser degree of harm implied within the other subsections of § 27-19-201, MCA.” ¶ 16. Here, the Schiffermans, by their prima facie showing of a prescriptive easement, had sufficiently established that “they would suffer continuing harm by not being able to access their property . . . by way of the access route they had used for many years, and thus had satisfied subsection (1).” ¶ 18.

We will continue to keep you informed of all developments of interest to the Montana title, survey, real estate, and banking industries.

Sincerely,

CROWLEY FLECK, PLLP

/s/

Gregory G. Schultz

GGG/rh

MARLS - Illinois Mutual Disability Insurance Plan

The MARLS BOD recognizes Illinois Mutual as a preferred carrier for individual disability insurance. As part of the Illinois Mutual Association Program active members would be eligible for a 5% discount when they purchase disability insurance from Illinois Mutual through Raymond Kojetin.

[Illinois Mutual Quoting Tool](#) can be found on the MARLS website in the member site.

You then have the option of emailing the agent Ray Kojetin at raykojetin@gmail.com with your contact information if interested in this valuable member benefit. You may also view this at www.marls.com in the MARLS member's only site.

Thirty Five Below And 30 Knots

By Robert Brown, PLS

Prelude: Everyone has a cold weather story such that the first liar hasn't got a chance. Here's my turn.

It was just getting light enough to fly, 10:30 AM or so, and the North Slope wind hadn't let up all night. "It's blowing 30 knots," the pilot said, glancing at a little chart he had just pulled from his wallet, "and at -35° Fahrenheit, that makes it an even 100° below zero, chill factor."

We had been waiting for flyable weather in Deadhorse for three days now to do a three hour survey job and the prospects of spending New Year's Eve in a camp trailer had gone from a bad joke to a certainty.

"If you can fly in this, I can turn angles," I flatly stated. It wasn't meant to be a challenge, but the pilot seemed to take it as one.

"Okay, boys, it's your nickel," he answered, "but the helicopter stays running. It will all have to be done on one fuel load - three hours, tops."

That would be about all the daylight we would have, anyway, I was thinking. In good weather, no problem, but in this cold, a gamble at best. Waiting for better weather after spending three days cooped up in camp did not even get a second thought.

Climbing out of a running helicopter in a rotor blast of swirling ice and snow is never any fun, but in the intense cold it becomes a bleak chore. The wind made it seem like the rotor wash was still lingering long after the ship was just a tiny black speck on the horizon. It was difficult setting up the instrument with heavy mittens on and I knew I could never operate the small buttons and knobs without fingers, so I slipped off the mittens and pulled on the space liners with heavy rag wool gloves. This was about the most I could have on my fingers and still have the necessary touch to operate the instrument.

As usual, the wind was blowing from the direction that I had to face. A wool mask took most of the sting off my face, but the open space just above the eyes of the mask was starting to give me a headache. It was the kind of headache I got when I'd eat ice cream and hold the big bite to the roof of my mouth.... an instant hard hurt. I pulled my ski goggles up to cover my forehead and the sharp pain in my head subsided while the tingling pain in my fingers began.

"We are over the control station," boomed out from the handheld radio in my coverall pocket. I stared out at what I thought was the right direction, while some 4 miles away, the helicopter was hovering over a small brass disc, awaiting my reply.

"Turn on your landing lights and hover higher," I called back on the radio. All I could see was white and wind. It's a strain on good days, but in the intense cold, it was hard to concentrate. A sharp, burning sensation hit me just above my eye. I jumped back and stared in disbelief, rubbing my eyebrow. I had accidentally touched the cold metal eyepiece and it had burned to me like a hot stove.

"Have you spotted us yet?" The radio squawked.

"Not yet," I called back, "go higher and swing your nose back and forth." Although the scope was 30 power, I did not know if it was pointing in the right direction. I was looking over the top of the instrument scope trying to see with my naked eyes. I was starting to get the feeling of my eyelids freezing open when I spotted the light. I quickly turned the scope on it and locked it in place.

"I've got you now," I called out on the radio. "Set up a ground light."

I was getting colder. I could not believe my trusty Refrigawear suit was letting me down. Poly-pro tops and bottoms, one piece heavy wool long johns, wool shirts, down vest - layers of clothes and the wind was driving the cold right through it all. My feet were beginning to get cold now. I began to regret wading through some water with my bunny boots two weeks earlier in Kodiak. After 10 hours with a hairdryer, the vapor boots still have moisture in them and froze solid in my pack during the ride from the airport to camp. My backup Sorrel packs with extra felt liners, space socks, and heavy wool socks were okay for walking in, but were not doing their job while I was standing around. I tried running in place, waiting for the helicopter to get on the line I had previously calculated from the control station.

"How are we doing," the radio squawked, "are we close?"

I grudgingly pulled my hands from my suit pockets - they were so cold that the task of pushing the talk button on the radio was a chore. "Not yet," I called back, "keep heading north."

I could not see the helicopter with my naked eyes so I had to track it with the scope. My forefingers were screaming for relief.... I was starting to shiver now. My teeth rattled uncontrollably as I squinted through the instrument. "Just great," I said aloud to myself, "hypothermia." In the 12 years of surveying in Alaska, I had been to a couple of survival courses, so I knew all the signs. For some reason, I remembered a butt chewing I gave a survey helper one summer. He was new to the country and showed up at the heliport with only a bright, new wool coat and a smile on his face. I told him to take more clothes - there would probably be wind on the mountaintop stations. He assured me that his Filson coat was the best money could buy, so he would have no trouble with the weather. He hadn't been on the hilltop two hours before he started to stammer on the radio - short, choppy phrases, and finally, "too cold, can't work...!"

I had the pilot fly over and warm him up and give him a garbage bag for a windbreak to put over that fancy wool coat. Later, I read him the riot act about how many of those coats I could've bought with the helicopter time it took to warm him up.

Now here I was, stammering over the radio like some rookie from down south. Maybe I should call the helicopter over for a warm-up, I thought to myself, after all, I am the boss-nobody is going to chew my butt.... No, not enough jet fuel, thing going too slow as it is," I told myself, "hang in there ... will make it."

I looked down and stared at my legs. I had the sudden, sinking feeling that I had forgotten to put on my Refrigawear suit, thinking how insane it was to be out in this cold in just blue jeans. No, my legs were covered with green nylon not blue jeans. I wasn't crazy yet, and then I began to doubt that too. My fingers quit hurting... It was such a relief that I put it out of my

(Continued on page 24)

(Continued from page 23)

mind that something was not quite right. Maybe I had just gotten used to the pain... My fingers did not function right... Stiff, no touch. Just part of the hypothermia, I told myself.

My mind started to play "what if" games. What if the helicopter quits running out there? It wouldn't have to be anything drastic, like a crash... just a simple electrical problem would do it. Too far to walk back, too cold to stand around, nothing to burn, just ice, cold, and wind. It would be dark before they missed us and noon tomorrow before they could retrieve the bodies.

I remembered an 8 mile walk out on Kougarok Mountain, some 70 miles north of Nome two years earlier. We had dropped through the snow on a landing and the tail rotor hit the snow ... it snapped the shaft like a twig. Eight miles doesn't sound like much, but the deep snow drifts without any survival gear made for a long day. If it would have been colder or more wind... like this... I wouldn't be here suffering now.

Then there was that time 50 miles south of Bethel on the Kuskokwim River. Of all the times for a starter-generator on the helicopter to go out – me on a tidal mud flat and the tide coming in. That's when I found out that all my instrument cases did indeed float! Our other helicopter plucked me from the river, just as the water was reaching the tops of my hip boots.

"Let's measure the distance," the radio blared out, snapping me back to the painful work. I stared hard through the scope, turning and tweaking, trying to coax a reading from the instrument. It took both hands to turn one tangent screw, like rubbing twigs together. The fully charged batteries had worn out already, and it appalled me to look at how long it took me to change the battery out. I found myself thinking, maybe I should time myself, and figure out a cold weather factors on how much longer it took to do a simple job under duress, like deep-sea divers working under great pressure. Maybe it would help the boys back at the office get a better handle on bidding these icy jobs.... No, I told myself, they might think I was losing my grip... over the hill at 35

"Did you get a distance yet?" The radio blared.

"No!" I stammered back. "I can't see the light, I'm not getting enough signal return."

"The lights gone dead," the radio answered.

Suddenly there was a flicker of signal strength, so I pushed the measure button. After about 10 seconds and still no reading, I figured the 3820 was just not handling the cold. I grabbed the radio to tell them to pack it up – we would have to come back with a different instrument, more batteries, brighter lights, and definitely more clothes.

Before I keyed the mike, I noticed a blink from the display and there was a bright red digital distance flashing at me. I pulled the yellow notebook pad on which I had the computed distances from my outside suit pocket to check how close the figures were. The paper shattered into several pieces as I unfolded it, just like thin, brittle candy. I've had gear fall apart on jobs before but this was the first time I had ever seen broken field notes. I finally found the piece of paper with the right distance and called over the radio, "2 feet away."

"It's already in," the radio answered. "I bet the oil company has got a little communication problem on who is doing what and where. I will pull a few distances between some of these stakes to make sure and we will pick you up in a bit."

It took me a long time to box up my equipment, fumbling around trying to put round pegs in square holes. I watched myself as if from a distance, thinking I would not last one day on one of my own crews, then I started making excuses for myself... Cold, wind, hypothermia. Nothing to do but wait now. I pulled the goggles down over my eyes, jammed my hands into my pockets, and started running diagonally to the wind, back and forth like a wild dog on a long chain.

Finally, the helicopter returned, another white blast of rotor wash and warm air at last. It was starting to get dark now – I had been on station less than two hours but it seemed like the longest day of my life. I could not buckle my seat belt... My fingers would not bend, so I took off my gloves to give them a blast of warm air. I was not prepared for what I saw when I took off the space liners... My fingers were dead white from my second knuckles to my fingertips on both hands.

I instinctively moved to touch them to each other and they clunked together! "Frozen!" I cursed and the haunted feeling I had when they first quit hurting came back to me. Frozen flesh and blood does not hurt like freezing flesh and blood. I managed to unzip my coveralls and get my hands under my armpits and it took several minutes to start to feel anything at all.

My fingertips went from a numbness, to a tingling sensation, to a searing pain far worse than anything I remembered out in the cold. I pulled my hands out from my armpits and started to beat them on my knees, anything to change the pain. Tears were welling up in my eyes and starting to stream down my cheeks. The pain was getting worse so I put my hands back under my armpits and tried to crush them.

By the time we got back to Deadhorse. It was pitch dark. My fingers were no longer icy white but bright, salmon pink. That night, sleep came hard... there was a different kind of pain now, like both hands had been slammed in a car door. The next morning all my fingers were swollen and my fingernails were black and blue. Within a couple of weeks all the skin on my fingers and my fingernails had come off and the new growth was sensitive for a weeks. A month later, both my hands looked good as new... but they were not. My fingertips were a lot more sensitive to temperature changes. I notice it when I'm washing my hands or holding a cup of coffee. Some old-timers told me that the freezing had constricted the blood vessels in my fingertips and not as much blood would get to them anymore. They would always be a weak link.

I use heavy mittens in cold weather now, I have to. I poke at the instrument buttons with the back of a pencil, yes it slows me down a little, but nobody complains... I'm still the boss.

Robert A Brown Kalispell Surveyor

A little about the author. Attended the first class in surveying at FVCC in 1971. Four year degree in Surveying technology from Oregon Institute of Technology in 1976. First student to become a registered Land Surveyor from FVCC, (Alaska 1979. LS 4840) Cadastral Surveyor for BLM Alaska from 1976 to 1979 doing original rectangular surveys. Returned to Montana in 1989. Owner and Angle turner for RAB Surveys. Still turning angles after 48 years. "It's not work if you enjoy what your doing."



Where is Surveying Going?

By: Bill Weikel

I wrote the following for the summer 1980 MARLS Newsletter, when I was the editor. Little did I know the radical changes that would take place during the next 40 years.

In the 1800's, surveyors began laying out townsites, mining claims, and the rectangular survey system in Montana. They performed their surveys using instruments and methods that today would be considered very primitive. Using a compass or a transit, and a Gunter's chain, these surveyors ran property lines by following directly down the lines. They chained most distances flat due to the difficulties of converting slope distances to horizontal distances. Their plats reflected their field measured distances, since it was a long tedious process to compute closures and adjustment. Even so, with the old methods and instruments, they achieved a fair degree of accuracy, that was more than adequate for the times.

During the first half of the 20th century, surveying methods and instruments had undergone very few changes, mechanical calculators and trig tables had sped up the process of computing closures and adjustments, and reducing slope distances.

Then in about the last 30 years, thing began to change. The development of the theodolite, the E.D.M., and electronic computers revolutionized the surveying profession. Surveying, along with the rest of life, had gone into the space age.

As I began my own land surveying career in 1972, I jumped into the middle of a period of rapid change. The first surveys I performed were with a one-second theodolite, a 300 foot wide band chain, and 40 pounds of backbreaking E.D.M, called a MA 100. I searched pins with a dip needle, and calculated with a trig book and note pad. The following year, my employer purchased a Schonstedt pin locator, and I soon had more pins than I was sure what to do with. That same year we got our first light weight E.D.M., an HP 3800, and the possibilities for long distance shots became endless.

The next 7 years brought us many more useful tools. Hewlett Packard, Texas Instruments, and



MARLS Conference 2019 - Pictured left to right: Bill Weikel, NSPS President Lisa Van Horn, and Billings Mayor Bill Cole.

others developed hand held calculators that could perform any calculation needed by a surveyor in the office, or in the field. A number of companies came out with E.D.M.s of all styles and price ranges, office computers were improved with TV screens, memory banks and plotters. Even the steel band chain was changed with the narrow band chain.

All of these improvements in instrumentation have been a boon to surveying. No longer tied to tedious calculations and measurements, the surveyor has more time available for record research and self-improvement.

Now as we enter the 1980's, I wonder if the changes will be as massive and rapid as in the 1970's. Already, designers are developing the "black box" which gives a 3-dimensional positioning wherever you take a reading. Theodolites, E.D.M.s, and computers are being combined in packages to do everything except set themselves up and take a pointing. Many pieces are out of date 6 months after they are purchased.

I think the future of surveying looks very exciting. There may be equipment and procedures developed that we have not even dreamed of. I am grateful that I am going to be involved in surveying during the coming years, and I hope all of you will enjoy the excitement of the profession as I know I am going to.





MARLS Scholarship Foundation, Inc.
P.O. Box 359
Columbia Falls, MT 59912
406-892-4579

MARLS Scholarship Foundation, Inc. (MSF)

First Year Surveying Student Scholarship Application Requirements

MSF has scholarship funds available for students who have graduated or are anticipating graduating from a Montana High School and are interested in pursuing an education in surveying.

A number of scholarships of up to \$2,000 may be awarded for the 2018-2019 school year to students entering the 1st year of a 2-year surveying curriculum or a 4-year surveying focused curriculum, either of which is recognized by the Montana Board of Engineers and Land Surveyors as meeting the requirements for a person to eventually become a Licensed Professional Land Surveyor. A Montana High School Graduate attending a comparable curriculum at an out of Montana institution will be eligible for a 1st year scholarship, providing they can offer proof that the curriculum meets the requirements for becoming a Licensed Professional Land Surveyor in the State in which the curriculum is offered. A person entering a 4-year curriculum will need to be registered in at least one surveying related course during their first year.

A number of scholarships of up to \$700 may be awarded for the 2018-2019 school year to students entering a curriculum at a Montana Institution which will provide a surveying technician level of education. A number of Montana community colleges and branches of State of Montana Universities offer surveying programs.

Application: Scholarship awards will be determined based on a combination of academic achievement, financial need, work history, course of study, and a submitted essay. To apply for scholarship funds please supply the following information in a neat and orderly format (It is important for you to recognize that the Foundation takes into consideration how well the requested information is presented):

1. Type of scholarship being applied for.
2. Full name, address, telephone number, and email address.
3. Description of financial need.
4. Work experience, especially any surveying experience.
5. The name and location of the high school you are attending, or you attended. Include the month and year you graduated or are anticipating graduating.
6. Your high school grade transcript to date.
7. The name of the school you are planning to attend and the program you will enroll in.
8. A one-page essay describing what interested you in pursuing an education in surveying, and your career goals.

Your application packet should include the following statement along with your signature and the date.

"I hereby certify that all the information on this application is true and correct. I understand that any false information in, or deliberate omissions from, this application may be grounds for rejection of the application and withdrawal of any scholarship award offer. I agree that I will abide by the decisions of the MARLS Scholarship Foundation Board of Directors as they relate to this Scholarship application".

All applications must be postmarked no later than May 31, 2019.

All decisions regarding scholarship awards for the 2019-2020 school year will be made by the MSF Board of Directors.

Awards of scholarship funds will be made after receipt of proof of enrollment.

Submit application materials to: MARLS Scholarship Foundation, Inc.
Attn: Kay McDonald
PO Box 359
Columbia Falls, MT 59912

Phone: 406-892-4579
Email: kay@marls.com

Applications may be downloaded at www.marls.com



MARLS Scholarship Foundation, Inc.
P.O. Box 359
Columbia Falls, MT 59912
406-892-4579

MARLS Scholarship Foundation, Inc. (MSF)

Second Year Surveying Student Scholarship Application Requirements

MSF has scholarship funds available for students entering the 2nd year of a two-year surveying curriculum or the 3rd year of a four-year curriculum with a surveying emphasis.

A number of scholarships of up to \$3,000 may be awarded for the 2018-2019 school year to students entering the 2nd year of a 2-year surveying curriculum or the 3rd year of a 4-year surveying focused curriculum, either of which is recognized by the Montana Board of Engineers and Land Surveyors as meeting the requirements for a person to eventually become a Licensed Professional Land Surveyor. A Montana High School Graduate attending a comparable curriculum at an out of Montana institution will be eligible for a 2nd year scholarship, providing they can offer proof that the curriculum meets the requirements for becoming a Licensed Professional Land Surveyor in the State in which the curriculum is offered. The applicant must be at a minimum in the 2nd semester of a 2-year surveying program or the 4th semester of a four-year program with a surveying emphasis.

Application: Scholarship awards will be determined based on a combination of academic achievement, financial need, work history, course of study, and a submitted essay. To apply for scholarship funds, please supply the following information in a neat and orderly format (It is important for you to recognize that the Foundation takes into consideration how well the requested information is presented):

1. Type of scholarship being applied for.
2. Full name, address, telephone number, and email address.
3. Description of financial need.
4. Work experience, especially any surveying experience.
5. The name and location of the institution you attended for your 1st year (or 2nd year if appropriate) of surveying education.
6. Your post high school grade transcript to date.
7. Name and location of the institution you are planning on attending for your 2nd or 3rd year of surveying education.
8. If necessary, proof that the curriculum of an out of Montana institution meets the requirements for becoming a Licensed Professional Land Surveyor in the State in which the curriculum is offered.
9. A one-page essay describing what you have learned about surveying to date and how that knowledge will assist you in achieving your career goals.
10. A letter of recommendation (sent directly to the MSF) from a school counselor or Surveying Instructor who you had contact with at the institution of your 1st year (or 2nd year if appropriate) of surveying education. The letter should include the writer's opinion as to your qualifications, character, and attitude. All recommendations are confidential.

Your application packet should include the following statement along with your signature and the date:

"I hereby certify that all the information on this application is true and correct. I understand that any false information in, or deliberate omissions from, this application may be grounds for rejection of the application and withdrawal of any scholarship award offer. I agree that I will abide by the decisions of the MARLS Scholarship Foundation Board of Directors as they relate to this Scholarship application".

All applications must be postmarked no later than May 31, 2020.

All decisions regarding scholarship awards for the 2019-2020 school year will be made by the MSF Board of Directors.

Awards of scholarship funds will be made after receipt of proof of enrollment.

Submit application materials to: MARLS Scholarship Foundation, Inc.
Attn: Kay McDonald
PO Box 359
Columbia Falls, MT 59912

Phone: 406-892-4579
Email: kay@marls.com

Applications may be downloaded at marls.com



Montana Association of Registered Land Surveyors 2019 – 2020 Membership Application

Applicant's Name _____
Company Name _____
Home Mailing Address _____
City _____ State _____ Zip Code _____
Work Mailing Address _____
City _____ State _____ Zip Code _____
Daytime Telephone _____ Cell Phone _____
Email _____
Date of Birth ____/____/____
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- \$125** ____ **Emeritus Membership** - Any person who has been registered in the State of Montana as a PLS, and who otherwise complies with the requirements for Emeritus status as specified by the PELS Board of Registration, State of Montana.
- \$20** ____ **Student Membership** - Any person who is enrolled as a student in a higher education surveying curriculum.

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Membership applications are available at marls.com



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Mail application to:

**Montana Association of Registered Land Surveyors
P.O. Box 359, Columbia Falls, MT 59912**

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The articles that appear in the Treasure State Surveyor have been selected to assist you in the advancement of not only the profession of land surveying at large, but also in your pursuit to better offer professional services individually, to better your company's integrity level, to hopefully increase your financial success and to promote the public health, safety, and general welfare for your clients. It is time for you to get involved through your articles, ideas and involvement. Please submit your articles of interest, humor and experiences to be included in the next issue of YOUR publication of the Treasure State Surveyor to kay@marls.com.

Stewart Nash's Online Books

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- Any person who has reached the age of sixty (60) years and who has been an Active Member in good standing for at least fifteen (15) years shall be a Life Member.
- Any person who is or who has been a Licensed Professional Land Surveyor in the State of Montana for a minimum of twenty-five (25) years and who has been an Active Member of the Association, in good standing, for at least fifteen (15) years may apply for Life membership. Approval of such application must be given by a majority of the Board of Directors.

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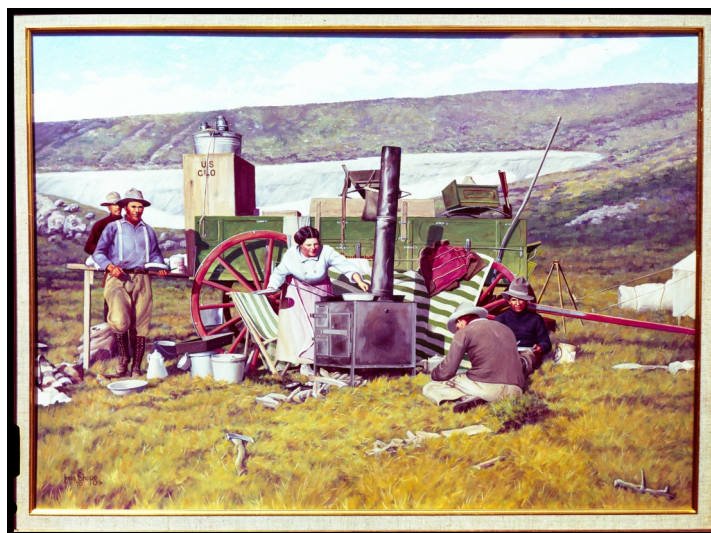
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