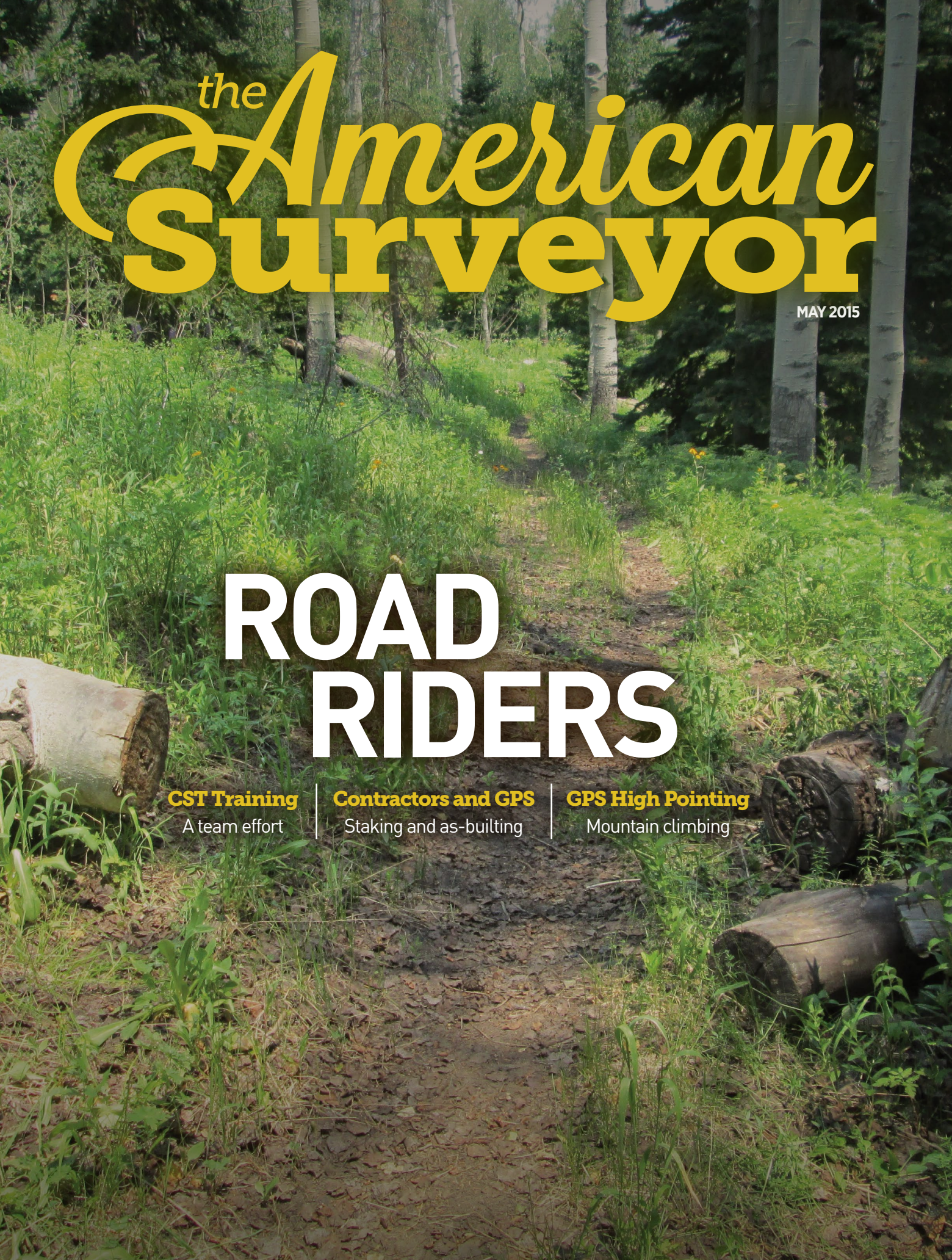




the American Surveyor

MAY 2015

ROAD RIDERS

CST Training

A team effort

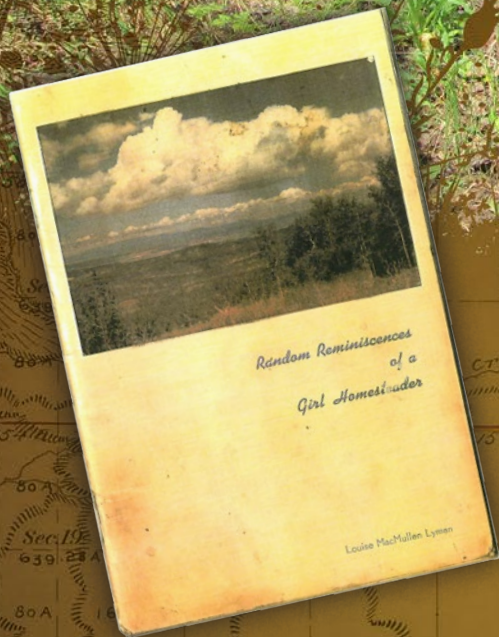
Contractors and GPS

Staking and as-building

GPS High Pointing

Mountain climbing

Road Riders



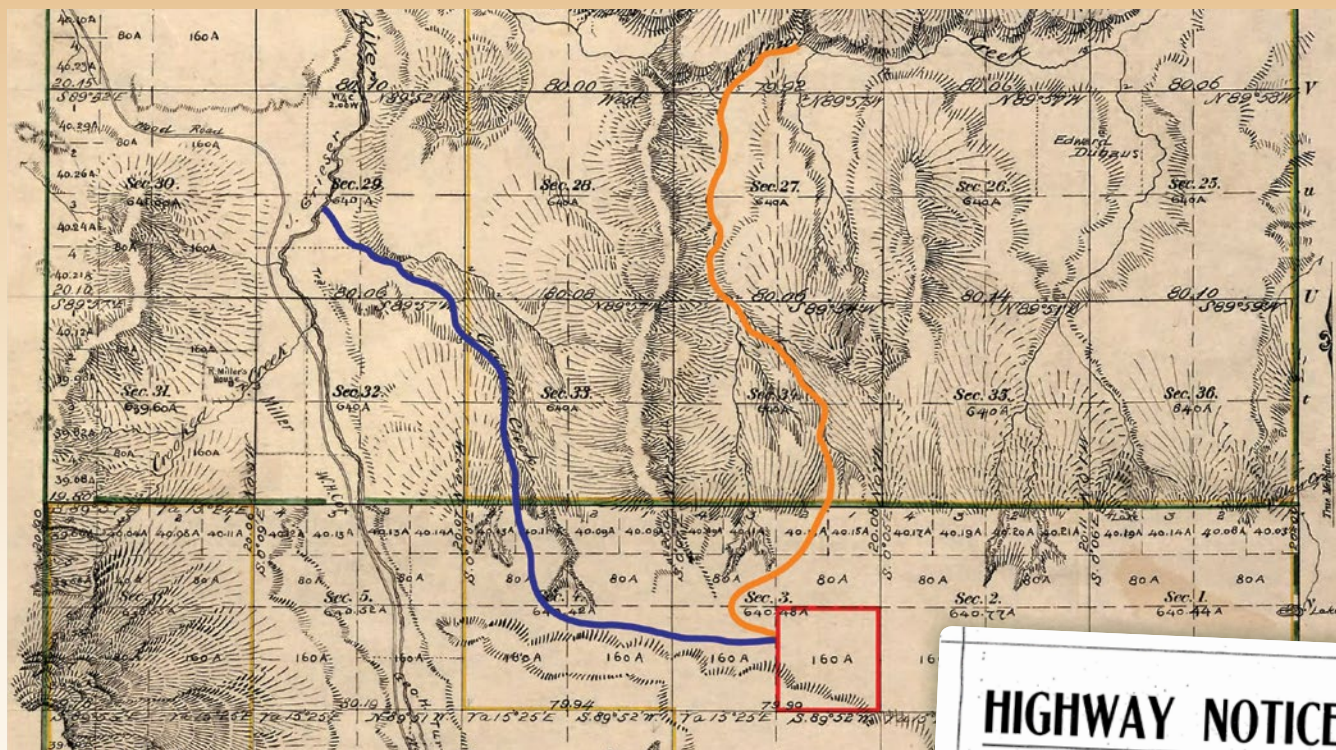
A

ccess disputes are exasperating. The claims are typically based on an unwritten conveyance and are clouded with ambiguities and unknowns. I was engaged in a case that demonstrated the value the land surveyor brings to the legal team in clarifying those cloudy issues.

Plaintiff's access to County Road 29 was on a trail over defendant's property. The trail had been used intermittently for years. In the early 2000's plaintiff began developing his property as a vacation/hunting lodge. Defendant objected to the increased traffic and locked the gate. Plaintiff filed a Complaint in District Court seeking to formalize the access right.

Plaintiff's property had been homesteaded by Louise MacMullen who took up residence in 1918, left in 1928 but held title. She leased the property for grazing for 44 years prior to plaintiff's acquisition in 1972. The defendant's property was acquired in 1992.

» JAMES JONES, PS, PE



Plaintiff alleged that MacMullen traveled north (orange) along the disputed route but the land surveyor's sleuthing proved she went west (blue).

The MacMullen property had been vacant most of the time from 1928 to the early 2000's. The Plaintiff claimed that MacMullen had used the trail for access. If that were true then some use would have existed for at least 72 years lending credence to Plaintiff's claim.

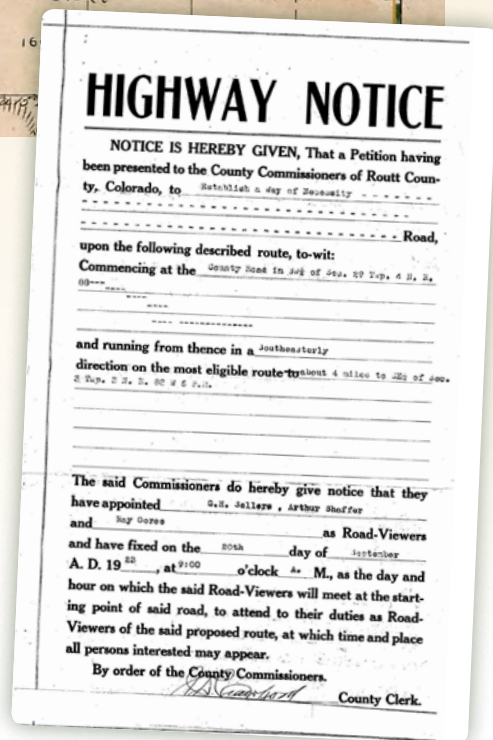
MacMullen's destination was the town of Hayden located 25 miles to the north. She might have traveled north to CR 29. Or she might have traveled west to CR 55 and then north to the intersection with CR 29. CR 55 parallels East Williams Fork Creek and CR 29 parallels Willow Creek. The MacMullen homestead sits on top of the ridge defining the two watersheds. Did MacMullen go west or north?

The answer depended on circumstances that are unknown today. I was asked to figure it out.

I knew from experience that a paper trail may exist in the Road Rider book. Here's how that works.

Designating section lines for public roadways is unworkable in mountain communities where access is driven typically by drainage ways. In that case, a public right-of-way might be established by submitting a petition to the county commissioners signed by "ten freeholders residing within two miles of the proposed road."

If the commissioners believed the public would benefit they appointed "Road Viewers" to ride the route and estimate the costs for a public road. The viewing date and location was posted publicly. The Road Viewers and interested parties traveled the route and made a report at a public hearing. If the commissioners voted to approve the petition, the public-right-of-way was considered established.



Public posting of the Road Viewer's route.

ever saw the inside of a clerk's office.) I continued, "but the books do exist and, in my experience, are somewhere in the clerk's records." (Hinting: I'm old and I know what I'm doing. Get it?)

She didn't get it.

"That may well be Mr...?" I told her my name—again.

"That's fine Mr. Jones. I have no idea what you found in other counties but there are no Road Rider books in this office. So again, I recommend you try the assessor's office. That's probably where they are ... assuming they exist."

Okay, I did get it. The assessor office wild goose chase was required.

"Right, Sarah. I'll check with the assessor. Thanks."

I hustled back to the assessor office and explained the circumstances to a wide-eyed clerk. She told me she had no idea what I was talking about and I was back to Sarah in under a quarter of an hour. Not bad. The best wild goose chase is a brief wild goose chase.

Sarah approached, "Any luck?"

"Well, no. No luck at all."

"Too bad."

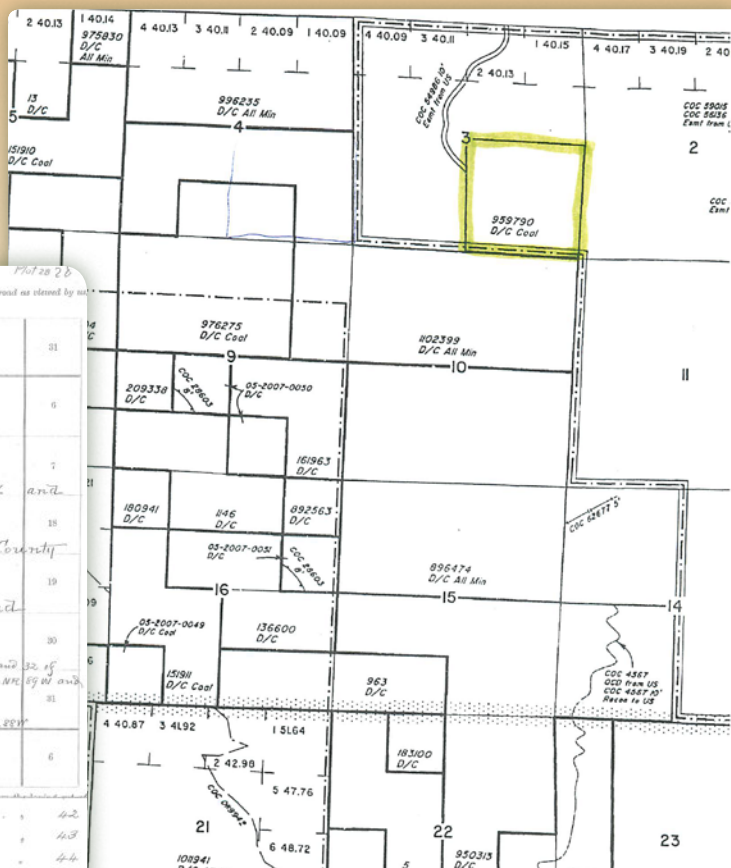
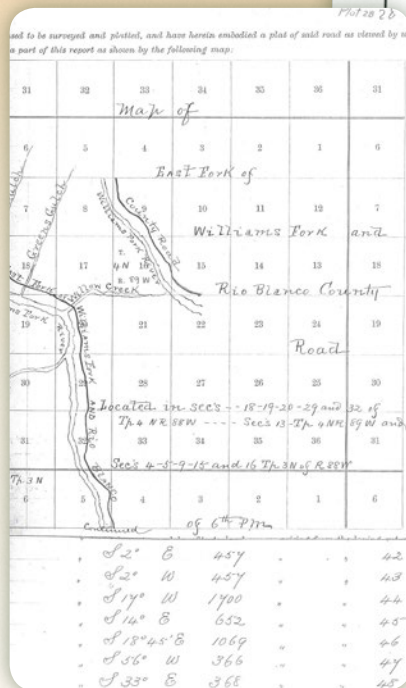
She waited for my next effort.

"Okay, how about this? How about if I look through the commissioner's minutes and see what I can find?"

"Impossible."

"How come?"

"Because all the books prior to 1972 are archived and available only to county personnel. Fill out this form explaining what you're looking for and we'll have someone do the research."



The Road Rider book—mapping in the pre-digital age. The disputed route in the national forest.

She had me there. It was impossible to fill out the form with the little I knew. There was no way I could delegate the research to someone working in the clerk's office.

"Actually Sarah, I don't know enough to fill out the form in any meaningful way."

"Oh, I see. Well, that is too bad." She resumed smiling and waiting patiently.

I was really in trouble this time. I knew the books existed. Sarah was convinced they didn't. She wasn't about to let me go prowling around unchained. I thought about reporting to the attorney and letting him deal with it. Then I considered Sarah's age, my reputation, and pressed on.

Partly out of desperate hope, and partly to buy time, I asked,

"Do you have a public works department?"

"Of course."

"Where is it?"

"You mean the Road and Bridge Department," correcting me, "it is located in that building north of the parking lot. Right out that door," pointing, "behind you."

Having shown me the door, Sarah returned to her desk satisfied.

Bloodied but unbowed I strode across the parking lot. The counter area was vacant so I rang the bell and from a back office ... Linda emerged. She was a well-dressed, attractive old darling (about my age) with a matter-of-fact attitude.

"Good afternoon, can I help you?"

For the third time that day I explained the circumstances. This time my request was more general,

"So do you have any information, maps or anything that would help develop a better understanding of the county rights-of-way in this area?"

Linda looked down thoughtfully for a moment and said, "What you need is the Road Rider book."

When I got up from the floor, I asked Linda to marry me—just kidding. Actually, I recounted my recent experience.

"Oh, those girls" rolling her eyes, "I...wait" Interrupting herself she shouted, "Ellen, I'm going over to the clerk's for a few minutes."

She came around the counter, said "Come" and was out the door. I grabbed up my maps and jogged after her. I arrived in the Clerk's office in time to hear Sarah say, "Oh Hi Linda, what are you ...?"

Linda interrupted, "You..." pointing at Sarah, "... follow me."

"Can I come?" I called loudly at her back. "Yes. Both of you."

Now Sarah and I jogged together behind Linda down some stairs and into a large, empty room with a walk-in vault. We went through the open door and walked along a narrow passage stacked with dusty toms. Linda walked looking up and down, stopped, pointed down and said, "There!"

There indeed. Three leather volumes—the Road Rider books!

Linda said, "They don't get much use. Never have. Anyway you," looking at me, "are free to copy whatever you need at 25 cents per page."

"Thank you"

"You are very welcome." She glanced at Sarah but said nothing and left. Sarah followed wordlessly.

I looked through the books and found my township. CR's 55 & 29 were depicted but there was nothing showing an access to the MacMullen homestead. But there was a notation that read "MacMullen petition" with a date. I made copies and headed back upstairs to show Sarah.



The plaintiff's route but, did MacMullen use it almost 100 years ago? That's a question for a land surveyor.

Thanks to Linda, Sarah had been transformed from adversary to ally. Curiosity now triumphed over suspicion. Sarah went immediately to the archives and returned within the hour with a copy of MacMullen's petition and a copy of the "Highway Notice" that had been posted. The notice included a description of the route. The beginning point was described as a "County Road" in a quarter section in the East Williams Fork watershed. That was conclusive evidence that MacMullen had traveled west directly to CR 55 and not north on the disputed route to CR 29.

So what is the lesson?

There is an ongoing discussion within the profession about the future, or direction, of survey practice. My primary concern is that the land surveyor's influence in the legal arena is not where it once was, or should be. This case demonstrates that the land surveyor's work can be valuable even when there are no measurements taken, calculations made or maps drawn.

Opportunities for this type work will continue to be available. It's up to the surveyor to make the most of every

opportunity. It is essential to understand the land surveyor's role on the legal team.

The primary responsibilities are maintaining professional integrity, exercising sound logic, reaching good conclusions and communicating effectively. The land surveyor also has the responsibility to build productive relationships within the legal team and anyone else involved. That group might include developers, attorneys, title clerks, realtors, planners, government officials, engineers or architects. Successful survey practice requires effective team-building among all those disparate interests. Team-building begins with establishing mutual respect.

Map-making and construction staking will in all likelihood continue to be the primary source of the survey community's income but, the profession will be done a disservice if practice in the legal aspects is allowed to fade.

It is up to us "older-hands" to see to it that doesn't happen. ■

James Jones PS, PE has been in private practice in Colorado since 1971.