

**TESTIMONY OF DWIGHT "D.R." PALMER**  
**SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND PUBLIC LANDS**  
**HEARING ON H.R. 3299, LEGISLATION TO ADJUST THE NATIONAL**  
**FOREST BOUNDARY IN CRYSTAL LAKES NINTH FILING**

**JULY 10, 2008**

Mr. Chairman,

I thank you for the opportunity to present my views regarding H.R. 3299. I also thank Congresswoman Musgrave for introducing the legislation, Congressman Bartlett for co-sponsoring the legislation and Congressman Udall for supporting the request for this hearing.

Crystal Lakes Subdivision Ninth Filing borders the Roosevelt National Forest on three sides. It was created in 1976 for private mountain homes and recreation with lot sizes of approximately 2.5 acres. In 2004 the Bureau of Land Management resurveyed the forest boundary in preparation for a forest fire abatement project. The BLM surveyors found what they claim is an error in the 1976 survey, affecting primarily the western boundary of the Ninth Filing, including lot 132, which my wife and I own. They claim that 1.46 acres of our 2.5 acre property, including most of the house, is actually located within the forest boundary. A total of twenty landowners are affected by the new survey, with the four landowners on the western border of the subdivision losing the most land. A net total of about seven acres is now claimed to be part of the national forest.

From our point of view, the United States government is seizing property which we have purchased and improved in good faith. We purchased our property in 2000 as a family retreat and legacy for our children. Our neighbors have had their property since 1976 and built their house themselves, and used it for many years. It is very hard to believe that our own government is trying to take it from us. The proposed legislation will correct this injustice. There are several reasons why H.R. 3299 is the best solution to the problem.

**The Small Tracts Act does not offer justice in this case.**

The Forest Service suggests that we apply the Small Tracts Act to repurchase the land on which improvements have been made at current market value. This is grossly unfair to landowners who have already purchased the land once. No one will tell us whether "current market value" is based on unimproved land (as it was in 1976 when the error was made) or on the land as we have improved it by building houses. Even with repurchase, the Act does not provide for the restoration of original property boundaries, only for the land underneath the improvements themselves. Landowners who have not improved their property have no recourse to recover any of their land under the Small Tracts Act.

**The Ninth Filing surveys are in question.**

There are several questions about the 2004 BLM survey and the 1976 private survey that established the subdivision boundaries.

First, there are several potential errors in the recent BLM survey. Jon Platt (son-in-law of our neighbors) has filed a protest with the BLM detailing the problems. The surveyor claims to have discovered an original stone from the 1881 survey that determined the section boundaries, which the 1976 survey did not find. However, the description of this stone from the 2004 survey field notes does not match the description from the 1881 field notes. They are not the same size, they are not marked in the same way, they are not in the same position relative to witness trees, and so on. If the stone is not the original one, then the 1976 boundary remains correct.

Second, the survey that established the boundaries of the Ninth Filing in 1976 used a 70-chain mile instead of the more accepted 80-chain mile. If the 80-chain mile had been used instead, then about 30 acres of what is now forest land would have been part of the Ninth Filing. Looked at this way, the Ninth Filing as surveyed in 2004 does not encroach on public land. The seven acres we are asking for is only a small portion of what might be considered "rightfully" part of the Ninth Filing if its survey had been based on the accepted 80-chain mile.

**The boundary has been accepted for more than 30 years.**

No one has questioned the boundary since 1976. If we were sharing a border with a private party, there would be no question that the established boundary would not be changed after so much time. It is only fair that the federal government behave the same way. Because so much time has passed, the landowners have no recourse to recover damages from the developer or surveyor who made the alleged mistakes. The statute of limitations has passed. Landowners who are not responsible for the alleged errors are being forced into the expense of solving the problem. This is not right.

**The alleged error was made in good faith.**

The surveyor in 1976 followed accepted surveying practices when he was unable to find the original stone that was allegedly found in 2004. The land was then bought and sold, and improvements were made in good faith based on that allegedly erroneous survey. No one was attempting to "steal" land from the government or do anything unscrupulous. Current landowners should not be made to pay for an honest mistake that has not harmed anyone.

**The area in dispute is an insignificant portion of the National Forest.**

The net seven acres in dispute is about 0.0005% of the 1.3 million acres in the Arapaho and Roosevelt National Forest. The public will not be harmed by the loss of this tiny bit of land. However, the loss of that same land has a significant impact on the landowners. The public interest is better served by restoring the 1976 boundaries and so avoiding hardship of the affected landowners.

The Ninth Filing landowners ask that you approve this legislation to restore the boundaries as they were originally drawn in 1976. Please correct this injustice. The United States government should not be seizing property that was purchased and improved in good faith.