

Rights Act. Moreover, the resurvey at issue in Fadem was performed by this very office. Although this last noted realization (that the resurvey was performed by this office) had no bearing on the court's ruling, it remains that the court's decision upheld our resurvey without ever inquiring into the correctness of its corners -because the time for inquiry had expired under the limitation specified at 2409a(g). To quote the Fadem court, at 1382:

[The] Quiet Title Act applies to all boundary disputes with the Federal Government. 43 USCA § 772.

[The] Bona Fide Rights Act did not create express or implied cause of action...in connection with dispute over proper boundaries of private property which was bordered by federal lands, even though dispute arose from allegedly improper survey by Bureau of Land management. 43 USCA § 772.

(Underscoring added to emphasize the court's recognition that the Quiet Title Act applies equally to disputes with the government over boundaries (i.e., "location") as to the question of who holds actual "title" to the lands within those boundaries.)

As I interpret this, the court is saying, essentially, that since the Bona Fide Rights Act does not create a remedy in itself, at least not since the 1972 enactment of the Quiet Title Act, that any cause of action arising from the Bona Fide Rights Act must be pursued through the Quiet Title Act, which applies, said the court, exclusively to "all" boundary disputes with the government, and that the time bar found in that statute is applicable to all such actions, including those arising from erroneously located corners. This view finds considerable support in the realization that Mr. Fadem had argued tenaciously that his property rights had been violated as a direct result of a BLM resurvey which had erroneously located several corners which controlled both the quantity and location of his land. Yet the court held, per curiam, that his claim was untimely under 2409a(g). From this it must follow that the time bar is equally applicable to both title and location.

Though perhaps unnecessary, in light of Fadem, it would not be inappropriate to additionally point out that 5 years earlier, in United States v. Webb, 655 F.2d 977 (1981), Judge Norris, speaking for the Ninth Circuit, explained, at 979:

There is no statute of limitations for judicial review of an administrative decision by the [Department's Interior Board of Land Appeals]. Thus, [an IBLA] decision is ordinarily reviewable in a subsequent action for ejectment regardless of how much time has elapsed. See Coleman v. United States, 363 F.2d 190 (9th Cir. 1966), reversed on other grounds, 390 US 599 (1968).

It would seem, therefore, that if the 12 year period at 2409a(g) applied only to the issue of who held actual "title" to the lands in question, and not to a Departmental decision (i.e., an approved survey) which claims to have located those lands, then Mr. Fadem would surely have been able to pursue an ejectment action against the Government under the Bona Fide Rights proviso of 43 USC 772, because, notwithstanding the rules of pleadings which include the general principles of estoppel, an administrative determination is reviewable by the courts in an action for ejectment, said Mr. Norris, "regardless of how much time has elapsed." Webb *supra*