

# Waterfront Titles in Washington

## WLTA Education Seminar

Lynnwood, Washington

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# Disclaimer:

When it comes to water  
and title insurance – the  
operative term is:

"CYA"

**"Control your  
assumptions"**

# WATER

- ❖ What is it?
- ❖ Who owns it?
- ❖ Who controls it?
- ❖ Who owns the land under it or next to it?
- ❖ Do title insurers care about any of these things?





# WATER

- ❖ Is *not* owned by the land owner or other individuals
- ❖ Is a natural resource owned/managed by State



# WATER

Water is a physical substance that can be next to, on or under land. However, in Washington it is not part of the "land" as defined in a title insurance policy

That is why title insurers have  
a general ("standard")  
exception in Schedule B in  
policies =

*"Water rights, claims or title  
to water"*

We don't insure title to *water*



## *NOTE:*

The general exception in  
Schedule B in policies does  
not mean it is an issue of

*standard coverage vs.  
extended coverage*

Water not insured, but it  
does affect:

- ❖ *Title* to the land
- ❖ *Boundaries* of the land
- ❖ *Use* of the land

These are title insurance issues

# Land

- ❖ Title insurance deals with *land* that is affected by water.
- ❖ Three kinds:
  - ❖ *Uplands* - Not under water - but maybe abutting water
  - ❖ *Submerged land* - Under water all or part of the time
  - ❖ *Wetlands* - affected by water

# SUBMERGED LANDS

Four categories in  
Washington:

# 1 - Tidelands

Beds of *navigable* waters: applies to  
Puget Sound, ocean



State owns since 1/11/1889

# Tidelands

Puget Sound, ocean *and certain rivers* - subject to ebb and flow of tides

- ❖ Some conveyed to private owners. If so:
  - ❖ Separate chain of title from adjoining uplands
  - ❖ But included in the legal description

If not conveyed by State, still in State Ownership

Boundary is line of *ordinary high tide*



# TIDELANDS

## Tide Lines in Washington State

(↓ Denotes boundary lines of title ownership)

There are two *high tides* and two *low tides* each day

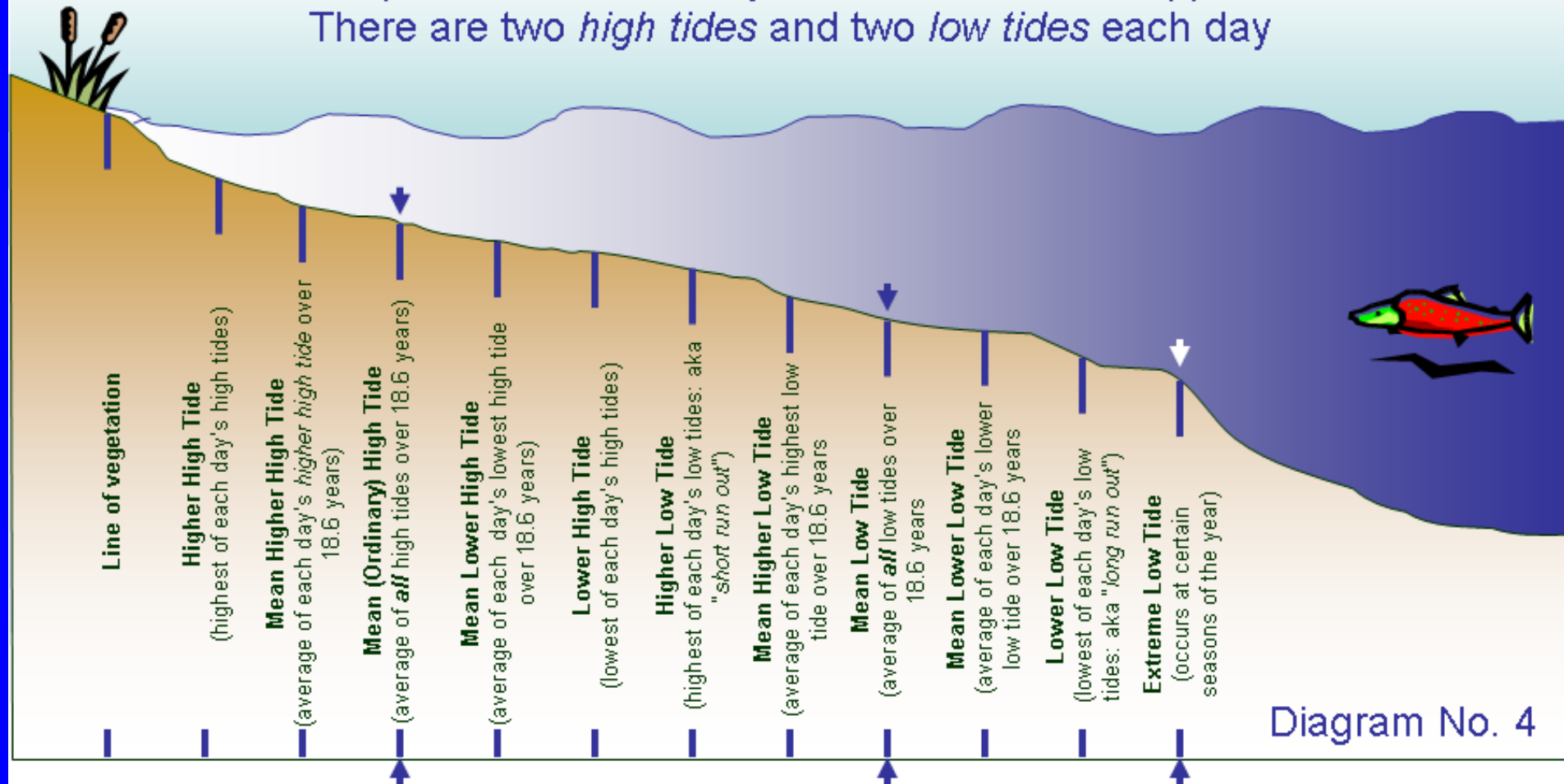
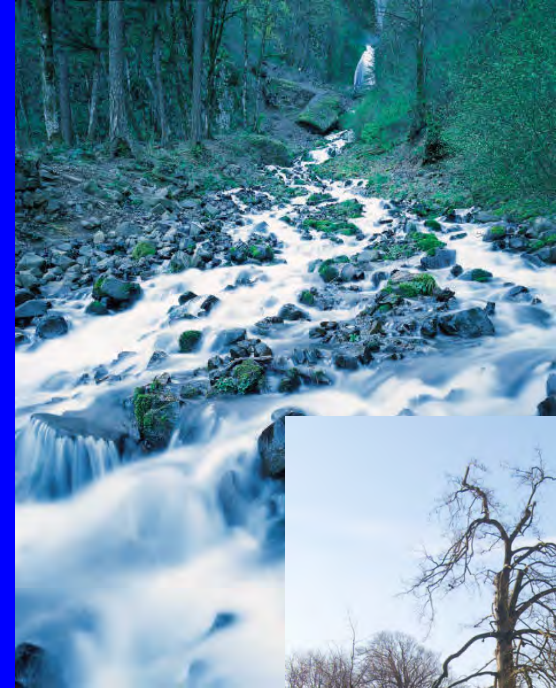


Diagram No. 4

## 2 - Shorelands

Beds of *navigable*  
waters: applies to  
lakes, rivers,  
streams

State owns since 1/11/1889



# Shorelands

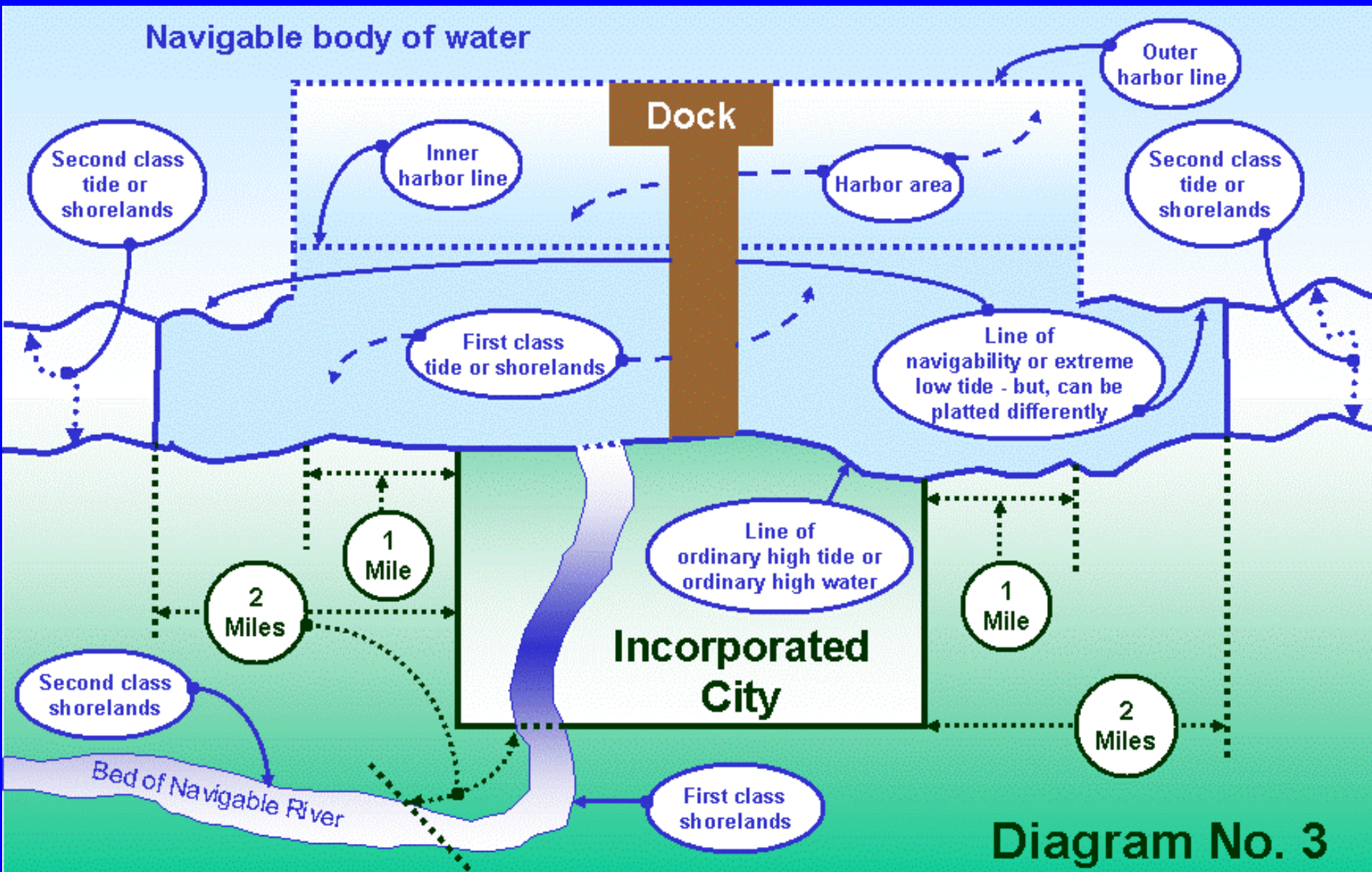
Lakes, rivers, streams - *not* subject to tidal flow - but *navigable*

- ❖ Some conveyed to private owners. If so:
  - ❖ Separate chain of title from adjoining uplands
  - ❖ But *must be* included in the legal description

Unless conveyed by State, still in State Ownership

Boundary is Line of *ordinary high water*

# FIRST CLASS TIDELANDS & SHORELANDS





### 3 - Bed of *non-navigable* bodies of water

- ❖ Applies to small lakes & streams
- ❖ Title *not* in State
- ❖ Title included in uplands  
description *without mentioning*  
it

4 - Land beyond the outer limits of tidelands or shorelands (line of *navigability*)

- ❖ cannot be in private fee ownership
- ❖ portions (harbor areas) can be leased from the State



# TITLE EXCEPTIONS

These exceptions apply  
across the state -

Not just limited to the  
"wet" side of the  
mountains

# TITLE EXCEPTIONS

- ❖ The nature of the land determines what exceptions we show in our commitments and policies
- ❖ And - the description might not mention water

## TITLE EXCEPTIONS

- ❖ Some deal with *TITLE* to submerged land
- ❖ Others deal with *BOUNDARY* questions
- ❖ Others deal with *USE* questions

## TITLE EXCEPTIONS

They are shown because:

- ❖ We don't know  
and
- ❖ We don't care

# 1 Public and Private Riparian Rights

Any prohibition or limitation on the use, occupancy, or improvements of the land resulting from the rights of the public or riparian owners to use any waters which may cover the land or to use any portion of the land which is now or may formerly have been covered by water.

*USE* of submerged (or formerly submerged)  
land

Includes "*Public Trust*" Doctrine

# 1 Public and Private Riparian Rights

Covers, among other things

- ❖ rights of downstream owners to water that crosses upstream *riparian* land
- ❖ Rights of *other owners* to use the surface of the water (Bitter Lake)
- ❖ Rights of the *public* to use the surface (Lake Chelan)
- ❖ rights of the state to regulate uses of *tidelands*, *shorelands* and adjoining *uplands* under the *Shoreline Management Act* ("public trust")
- ❖ Shown whether *standard coverage* or *extended coverage*



# 1 Public and Private Riparian Rights

## *When to show*

- ❖ tidelands
- ❖ shorelands
- ❖ land between high tide and seaward meander line if patent before statehood
- ❖ current or former lake beds, navigable or not
- ❖ current or former beds of rivers, streams or sloughs, navigable or not
- ❖ harbor areas
- ❖ uplands abutting such lands
- ❖ oyster lands

# PUBLIC TRUST DOCTRINE

Government authority to

- ❖ protect the public interest, and
- ❖ regulate development, commerce, navigation and environmental protection
- ❖ essentially, zoning
  - ❖ tidelands & shorelands
  - ❖ *wetlands*
  - ❖ uplands within 200 feet of these lands

# PRIVATE RIPARIAN RIGHTS

- ❖ Abutting upland owner is a *riparian* owner
  - ❖ In *addition* to any title to the bed
- ❖ Riparian owner has right, along with all riparian owners
  - ❖ to reasonable use of the surface of a lake
- ❖ Riparian rights of abutters are owned in common
  - ❖ Thus: each upland owner can use entire surface of lake
    - ❖ not just the area over the bed owned by the riparian abutter

## RIGHTS OF THE PUBLIC

- ❖ General public has rights to use the surface of water for recreational purposes
- ❖ Title insurers take exception to such rights, whether navigable or non-navigable

## 2 State of Washington ownership

Rights of the State of Washington in and to that portion of said premises, if any, lying in the bed or former bed of the *[insert the name of the body of water]*, if it is navigable.

*TITLE* exception - affects *riparian or littoral* land abutting or under *navigable water*

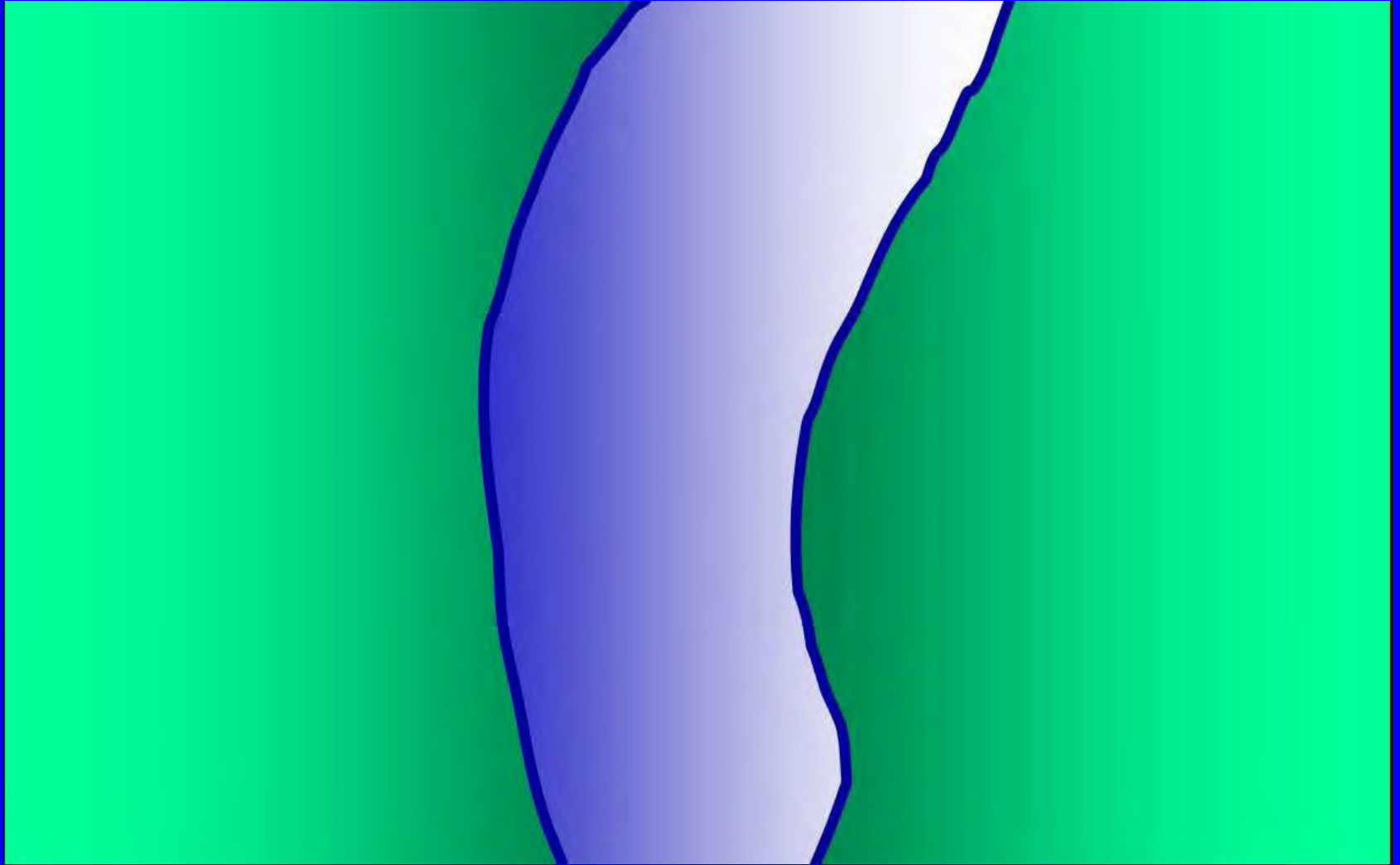
## 2 State of Washington ownership

### *TITLE* exception – *riparian* land

- ❖ *Navigable* water flows through, covers, or adjoins the insured property
- ❖ Can delete if water *adjudicated* non-navigable
- ❖ Applies even if stream is “boundary”
- ❖ Applies to *current, former or future* bed



# STATE OWNERSHIP



### 3 River or Stream Boundary

Any question that may arise due to shifting or change in the course of the *[insert the name of the body of water]* or due to the *[insert the name of the same body of water]* having shifted or changed its course.

**BOUNDARY** (survey) exception  
- applies to *riparian* land

### 3 River or Stream Boundary

#### *BOUNDARY* exception

- ❖ Similar to the *general survey exception* in *standard coverage policies*
  - ❖ But *never* deleted even in *extended coverage title policy*
- ❖ Applies when description ties to either the thread or the bank of a river, stream, brook, creek, etc.
- ❖ *All water* - Navigable or non-navigable

### 3 River or Stream Boundary

Doesn't make any difference  
whether the boundary is  
the center of the river or  
stream, or the high water  
mark

### 3 River or Stream Boundary

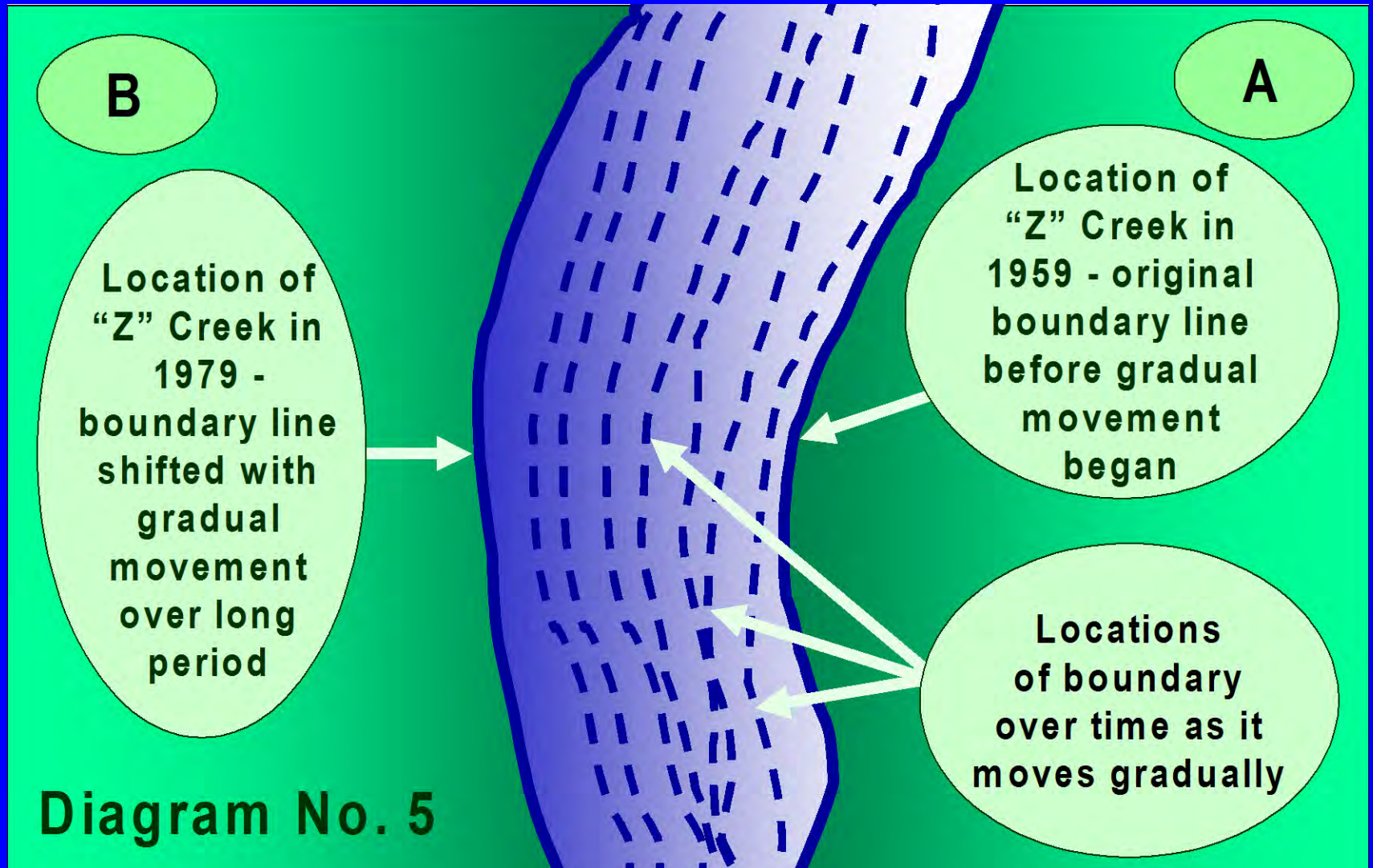
- ❖ If change in river is
  - ❖ natural but *avulsive* (sudden), and/or
  - ❖ man-made - then:
- ❖ Original (not current) location of river may be property boundary
- ❖ Land might no longer touch the water, or
- ❖ The water could be
  - ❖ farther away from the property, or
  - ❖ entirely within the property lines

### 3 River or Stream Boundary

- ❖ If change in river is gradual
- ❖ Boundaries of parcels on either side of the river may *shift* with the movement of the river
- ❖ Insurer will not insure
  - ❖ exact location of the water, nor
  - ❖ whether it has moved or might move in the future, nor
  - ❖ the nature of any past movement

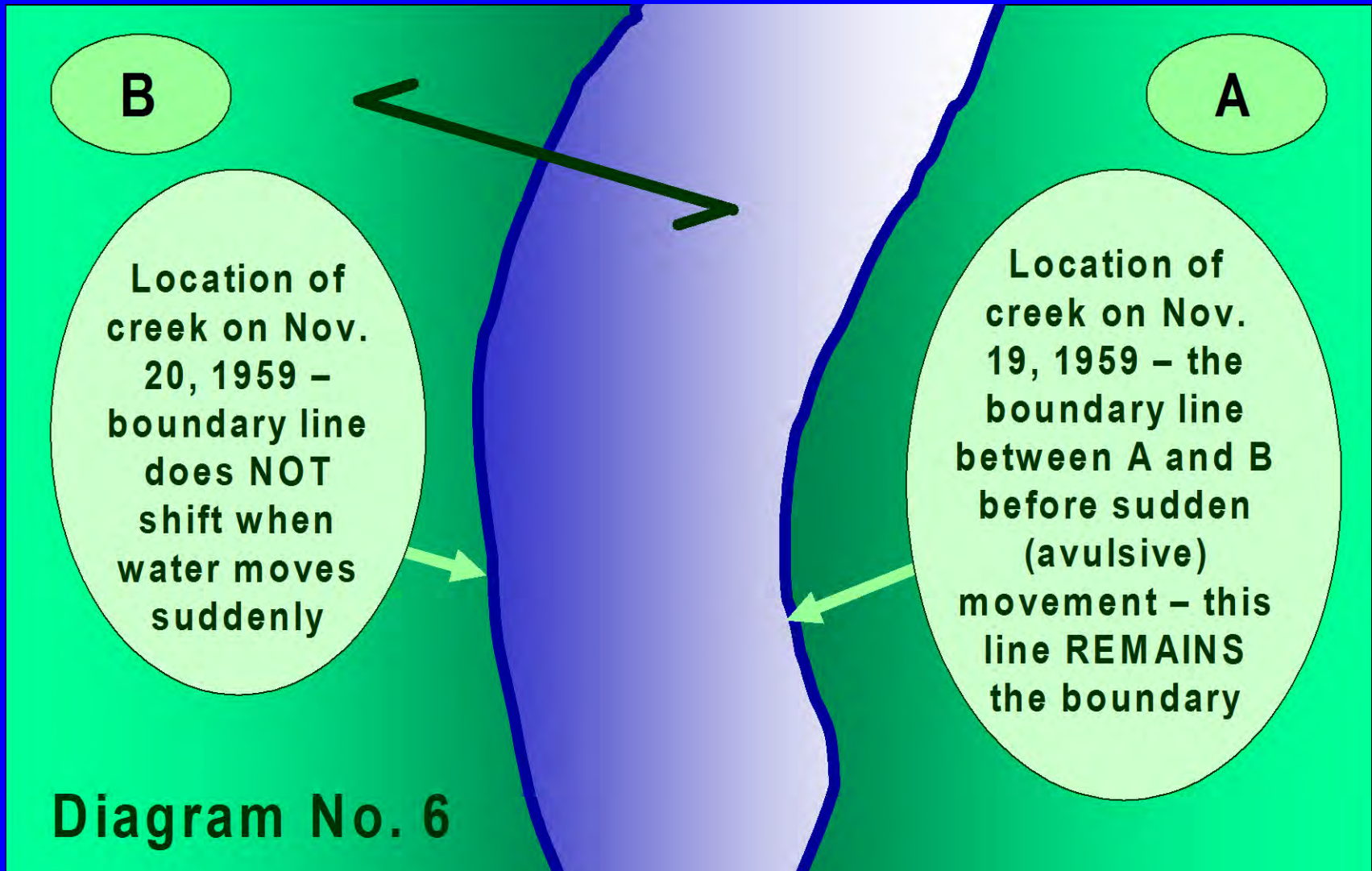
# CHANGES IN WATER BOUNDARIES

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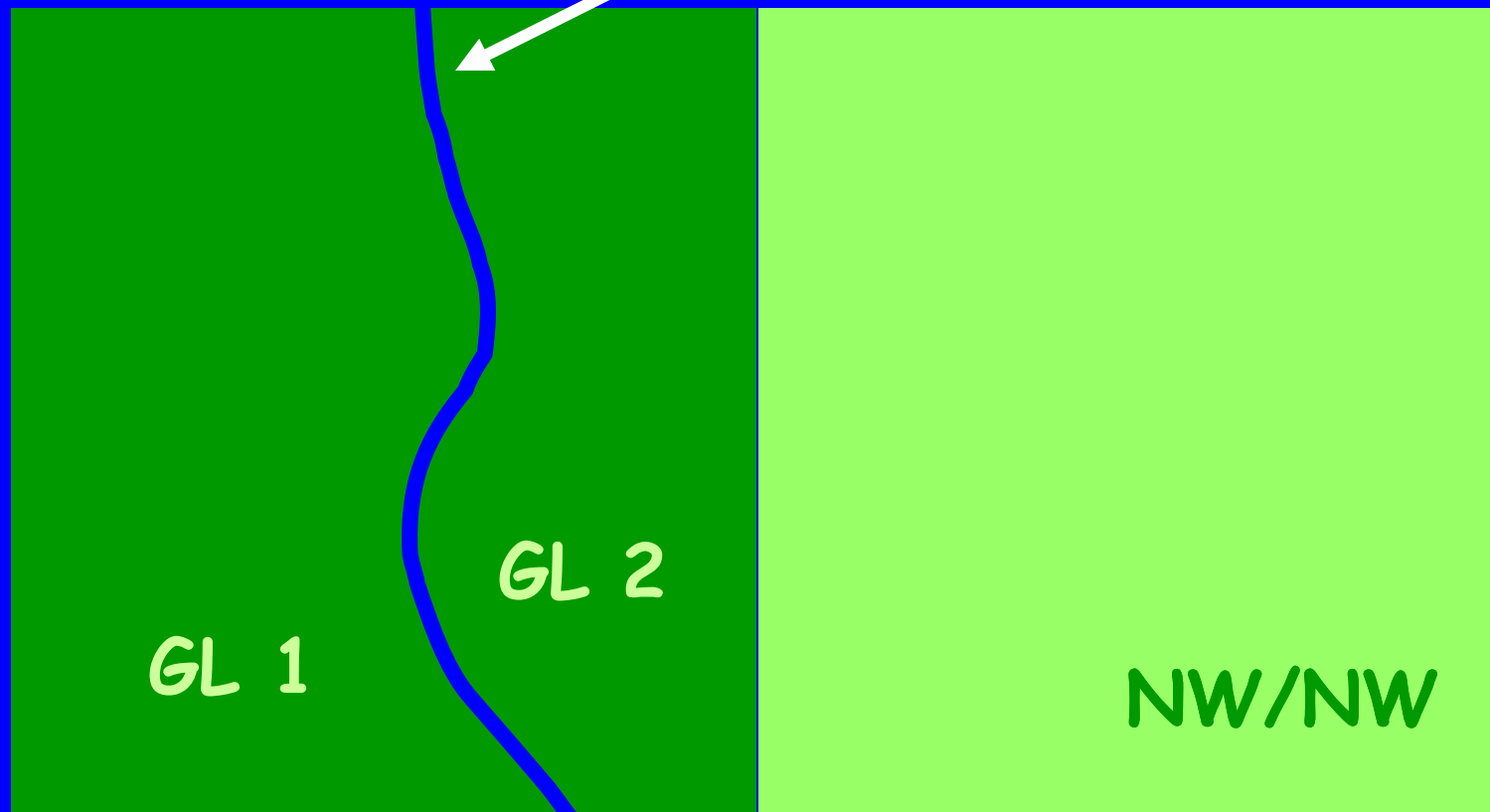




# CHANGES IN WATER BOUNDARIES

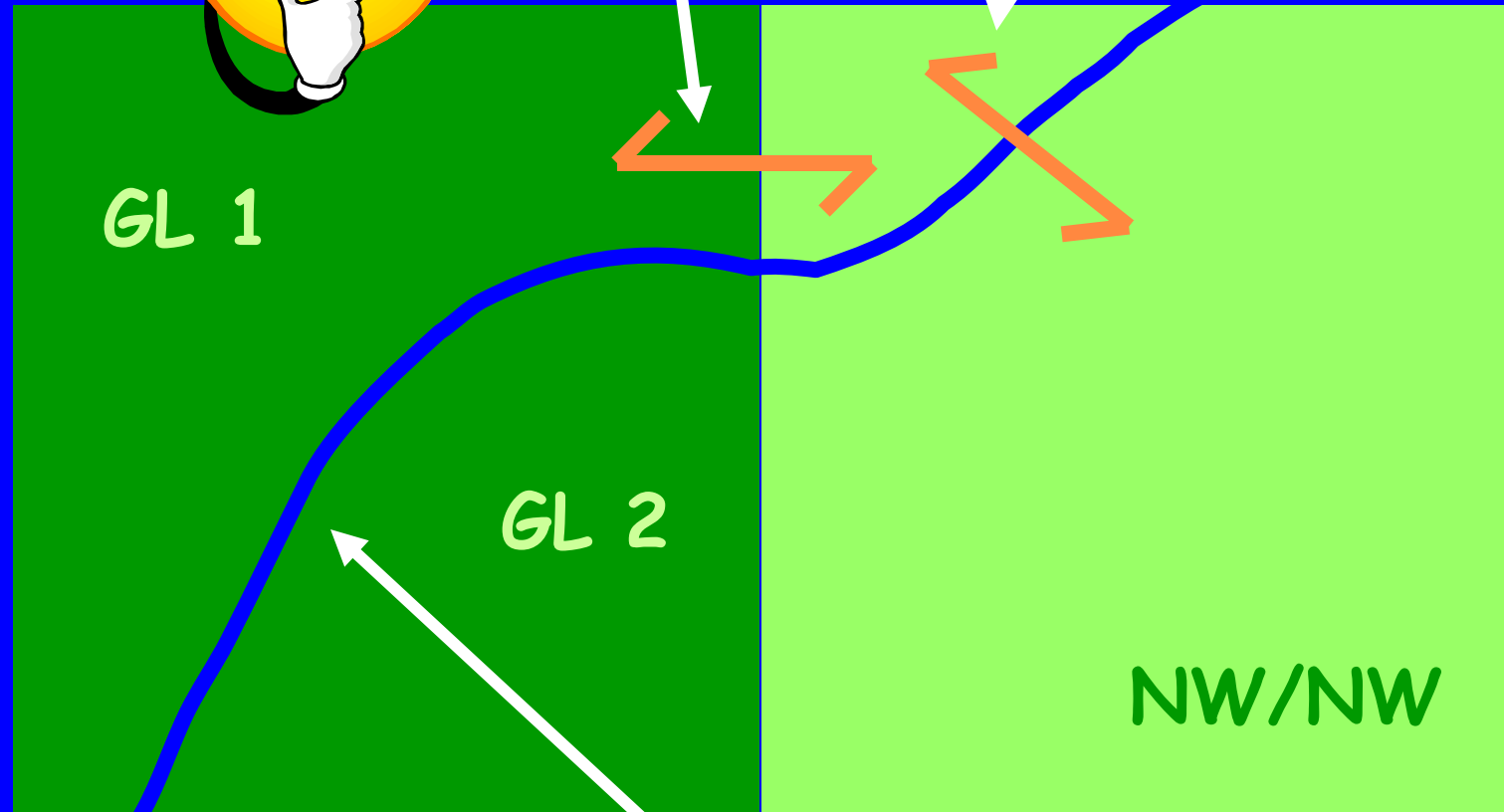


Original Location



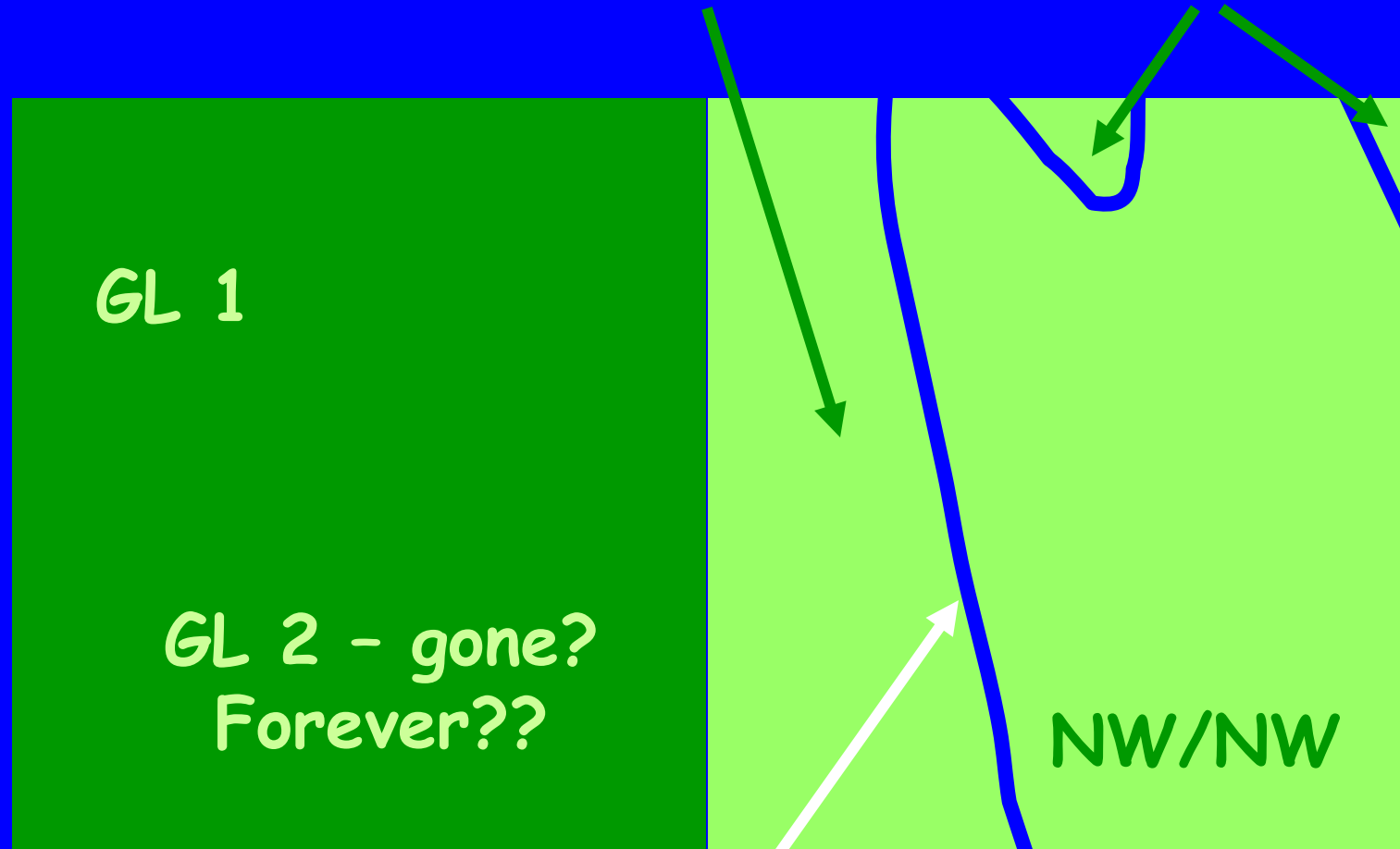


GL 1 - or NW/NW?



New Location (gradual)

GL 1? Or GL 2? or NW/NW? or w/adjoining?



New Location (gradual)

GL 1? GL2? NW/NW?

GL 1 - Gone?  
Forever? Or  
way east?

GL 2 - gone?  
Forever? Or  
way east?



NW/NW - gone?  
Forever?? Or  
way east?

New Location (gradual)

You can't go back again...or can you?



Newer - new many years later - location  
(gradual)

## 4 Lake, Sound, Bay or Ocean Boundary

Any questions that may arise due to shifting or change of the line of high water of the *[insert the name of the body of water]* or due to the *[insert the name of the same body of water]* having shifted or changed its line of high water.

**BOUNDARY** (survey) exception -  
applies to *riparian* or *littoral* land

## 4 Lake , Sound, Bay or Ocean Boundary

### *BOUNDARY* (survey) exception

- ❖ Not removed for *extended coverage* title policies
- ❖ Similar to Exception 2 (rivers) but usually because of *reliction* and maybe *accretion*
- ❖ Shown if land bounded by lake or similar body water



## 4 Lake , Sound, Bay or Ocean Boundary

- ❖ Applies to

- ❖ *uplands only, or*

- ❖ *uplands with submerged lands (shorelands), or*

- ❖ *submerged lands (shorelands) only*

- ❖ *Whether or not* the description mentions body of water

## 5 Lateral Boundaries of Submerged Lands

Any question that may arise as to the location of the lateral boundaries of the [tidelands] [shorelands] described herein.

*BOUNDARY (survey) exception - applies to tidelands or shorelands that are included in the legal description*

## 5 Lateral Boundaries of Submerged Lands

### *BOUNDARY* (survey) exception

- ❖ Added as special exception if *tidelands* or *shorelands* are in description
- ❖ Example:
  - ❖ "...together with the tidelands of the second class adjoining."

## 5 Lateral Boundaries of Submerged Lands

- ❖ Assessor's maps or surveys not reliable
- ❖ Exception can be deleted if
  - ❖ adjoining owners mutually establish boundary, or
  - ❖ submerged lands platted if platfor owned all
  - ❖ State platted *tidelands* or *shorelands*.
- ❖ Caution with older plats

# LATERAL LINES

- ❖ No title insurance on location of lateral lines unless
  - ❖ court decree establishes lines
    - ❖ presumably confirming the title of each owner on either side of the lines, or
  - ❖ a plat created by a common owner, or
  - ❖ an agreement between adjoining owners establishes lateral boundaries
    - ❖ including mutual conveyance between the owners confirming title according to agreed upon boundaries

# LATERAL LINE BOUNDARIES ON LAKES

# NON-NAVIGABLE LAKES

REMEMBER - All water assumed navigable  
unless court determines otherwise

- ❖ Even if
  - ❖ the body of water is not shown on the Government Survey, and/or
  - ❖ no meander lines were shown on that survey, and/or
  - ❖ the adjoining uplands are not described as government lots
- ❖ So title insurance will presume the State owns the bed

## NON-NAVIGABLE LAKES

- ❖ As to the beds of *known* non-navigable lakes:
  - ❖ they are submerged lands
  - ❖ but are not shorelands, and
  - ❖ State has no interest (title) in them
- ❖ Such beds owned by the adjoining property owners



# NON-NAVIGABLE LAKES

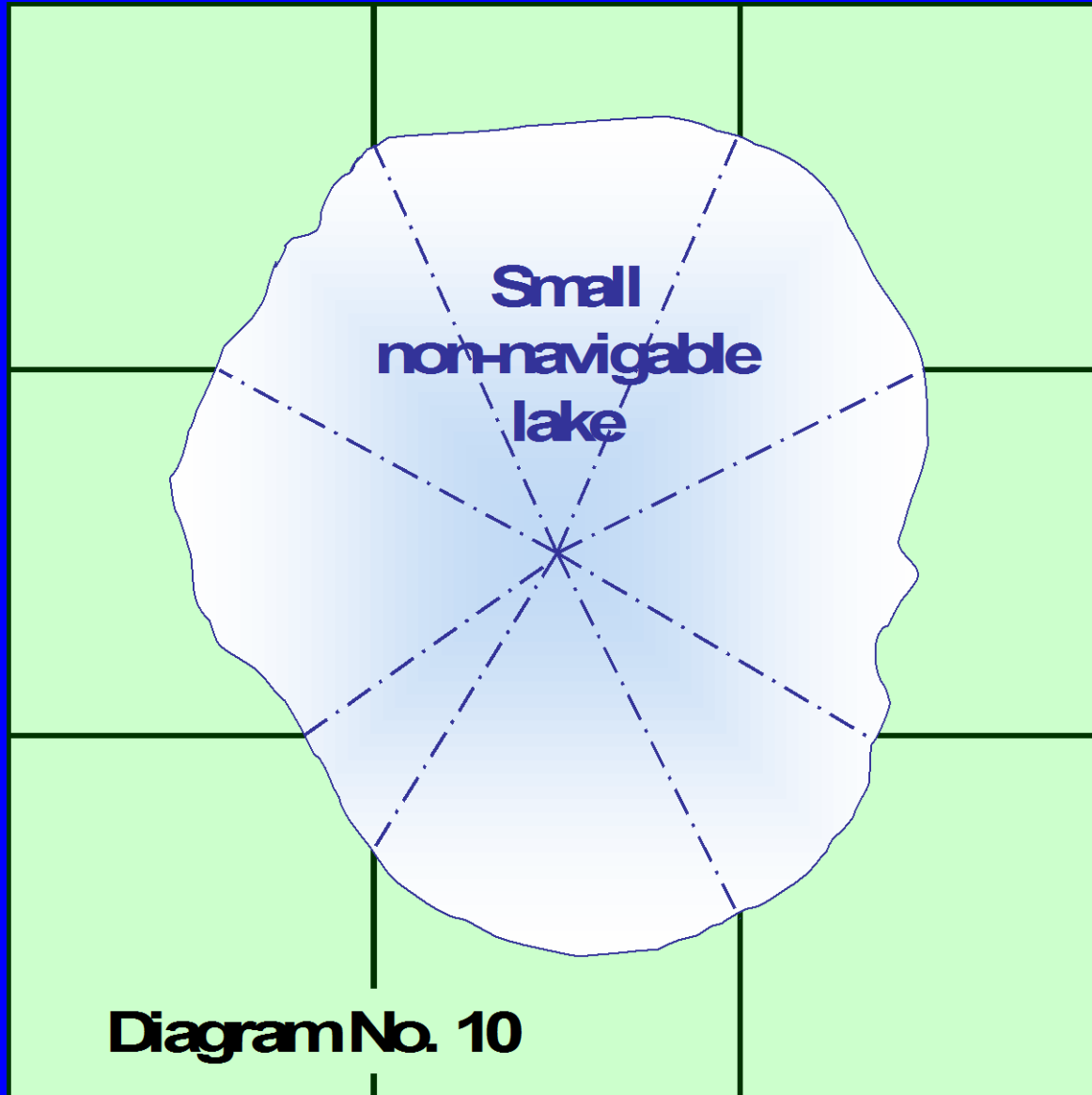
- ❖ If all land surrounding a small, non-navigable lake owned by one person
  - ❖ that person also owns the bed of the lake
- ❖ If multiple owners around the lake
  - ❖ the rules for *lateral lines* are not clearly drawn by court decisions
  - ❖ as they have been for tidelands and shorelands

# NON-NAVIGABLE LAKES

Property owners may

- ❖ agree to each own an undivided interest in the entire lake, or
- ❖ divide the bed of *round* lakes by making pie-shaped connections to the center of the lake
  - ❖ Each with title to abutting pie-shaped parcel of the bed
- ❖ See Diagram No. 10
- ❖ BUT AGAIN: No title insurance as to the location of *lateral lines*

# LATERAL LINES - Round Lake



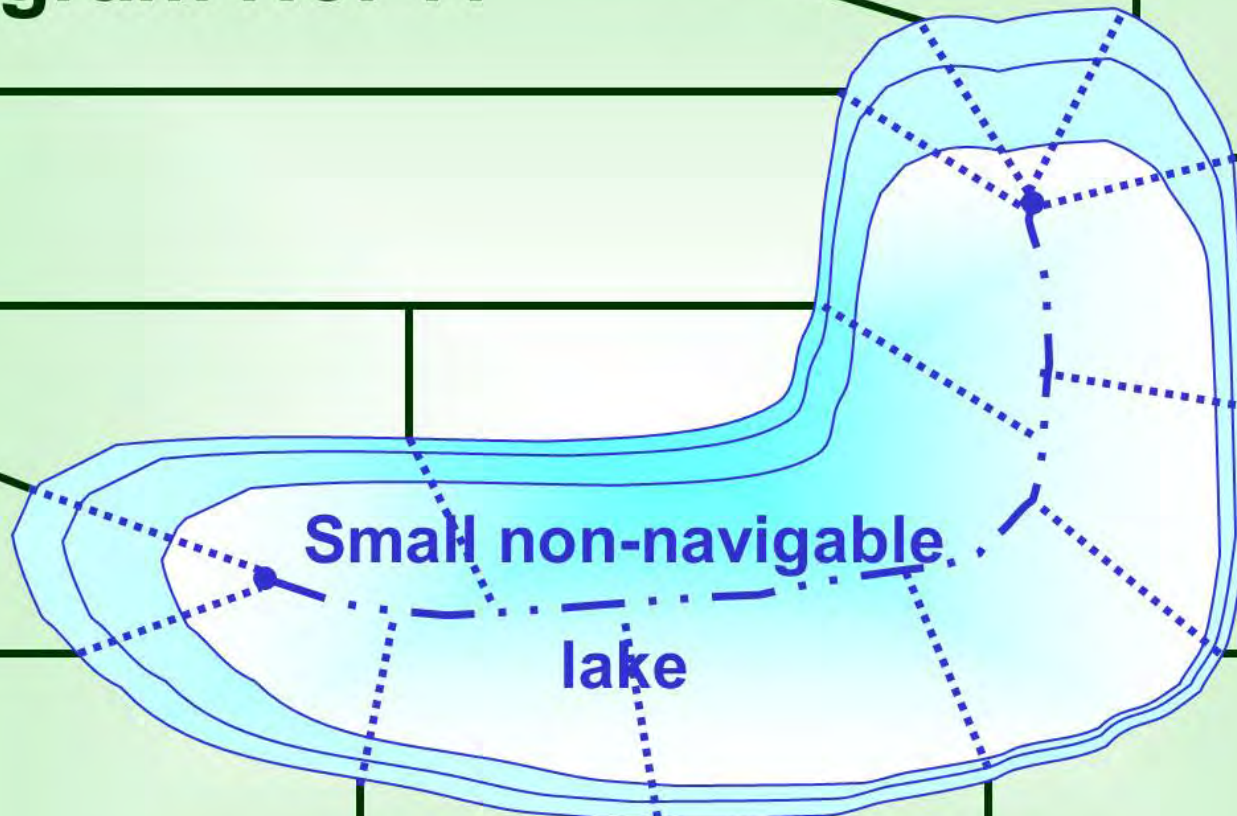
# NON-NAVIGABLE LAKES

Property owners may

- ❖ Divide the bed of non-round lakes in common sense allocation of beds
  - ❖ using center lines along the long lengths of the lake
  - ❖ Example: See Diagram No. 11
- ❖ BUT AGAIN: No title insurance as to the location of *lateral lines*

# LATERAL LINES - Odd-Shaped Lake

Diagram No. 11



# LATERAL LINES

- ❖ How do property lines extend out into owned shorelands?
  - ❖ These boundaries commonly called *lateral lines*
- ❖ may have no relationship to the boundaries of the upland parcel
- ❖ Owner cannot unilaterally project the upland boundaries out into the shorelands

# LATERAL LINES

- ❖ No statutes defining the direction of lateral lines through shorelands
- ❖ No helpful language in the original deeds from State
  - ❖ State deeds simply convey all shorelands

Example:

"...all shorelands of the second class lying in front of and abutting Government Lot 3, Section [ ], Township [ ] North, Range [ ] East, W.M."

# LATERAL LINES

What rules *might* apply?

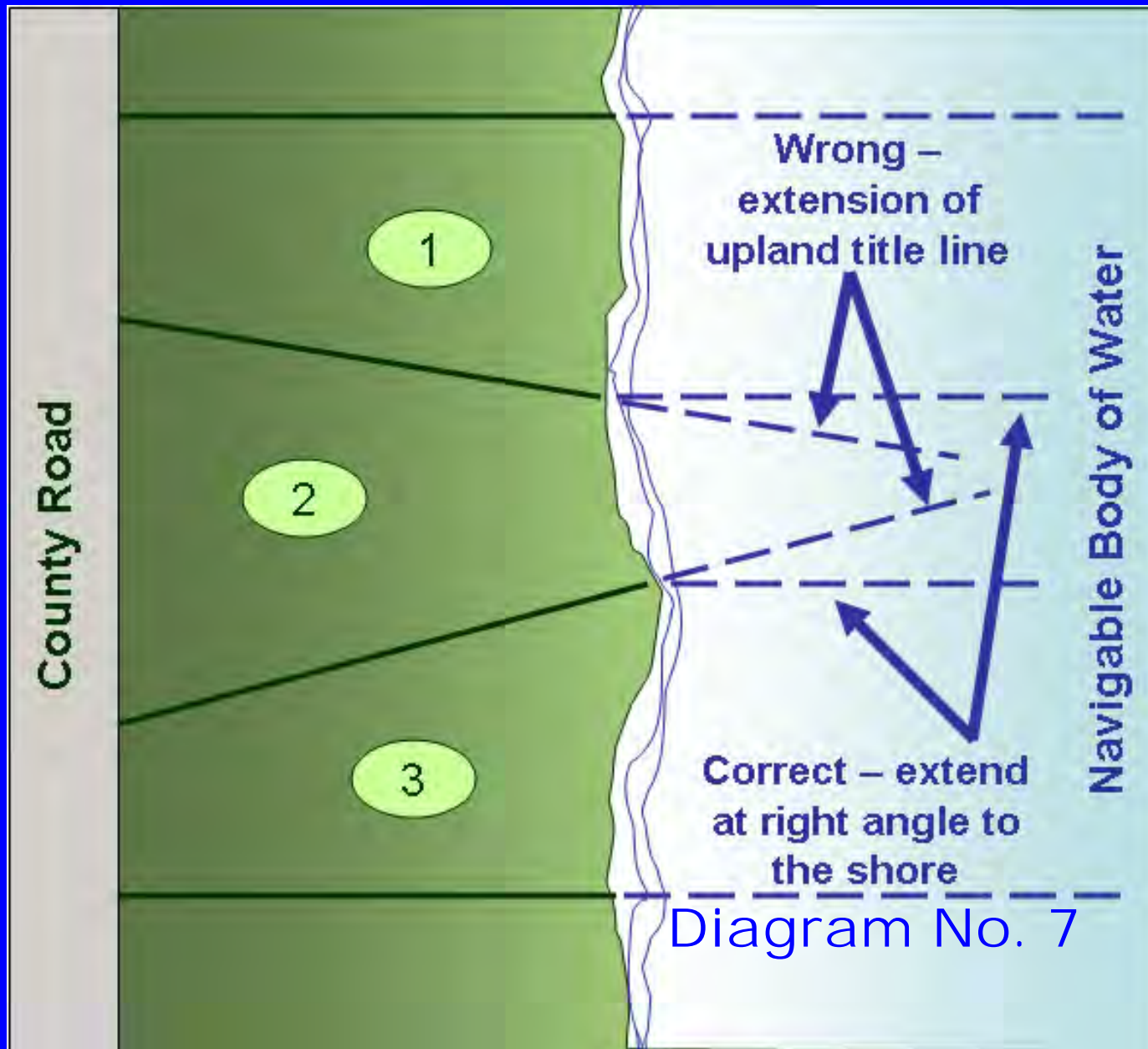
- ❖ Decisions by State Supreme Court interpreting word "*abutting*"

The basic rule

- ❖ beach is a relatively straight line
  - ❖ Lateral lines are projected into the water at right angles to the line of ordinary high water
- ❖ See Diagram No. 7



# LATERAL LINES



## LATERAL LINES - COVE

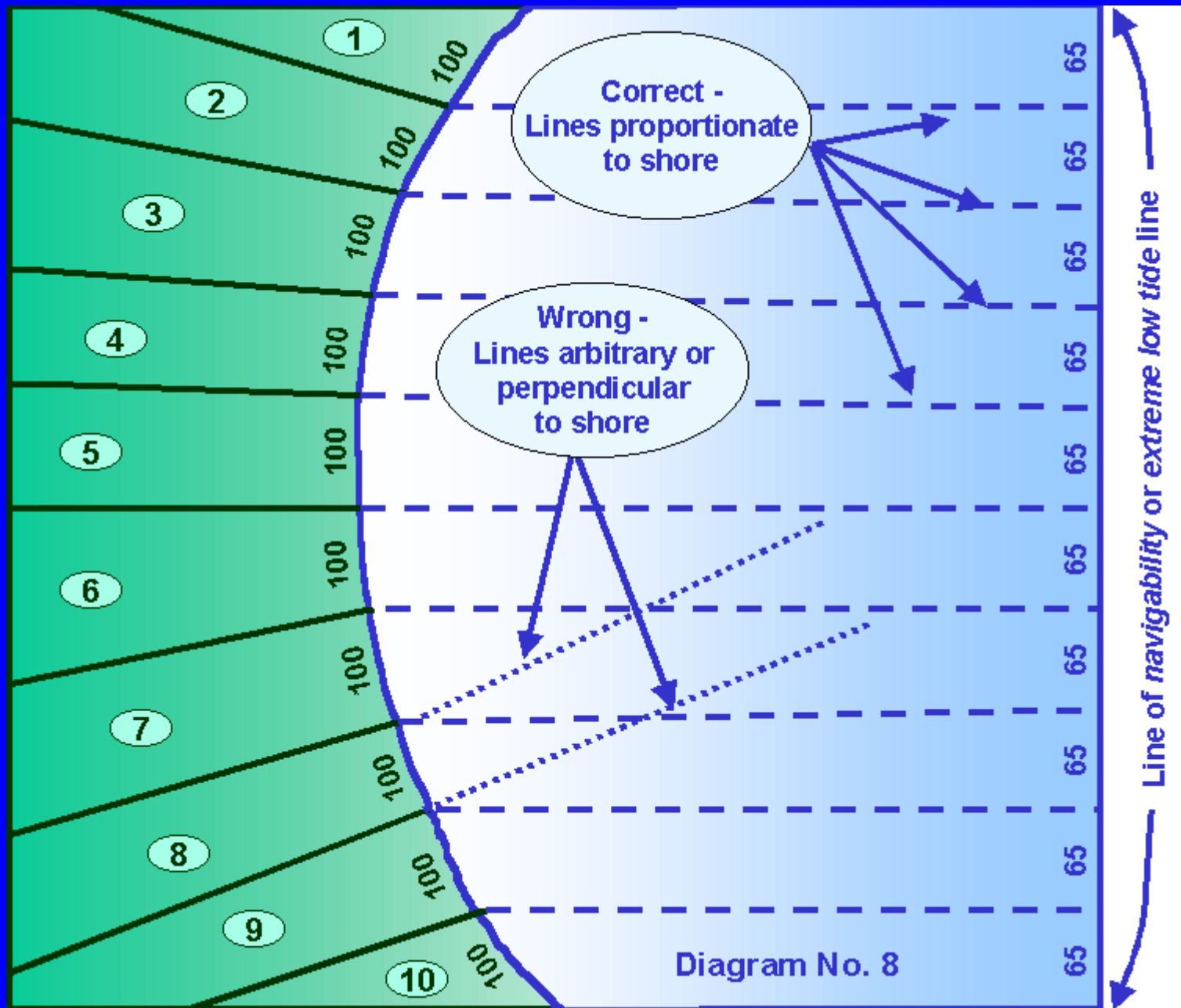
### Different rule

- ❖ “Right angle” rule *is not* equitable division

### Example:

- ❖ Connect property line at shore line to proportionate lengths of frontage at line of navigability
- ❖ See Diagram No. 8

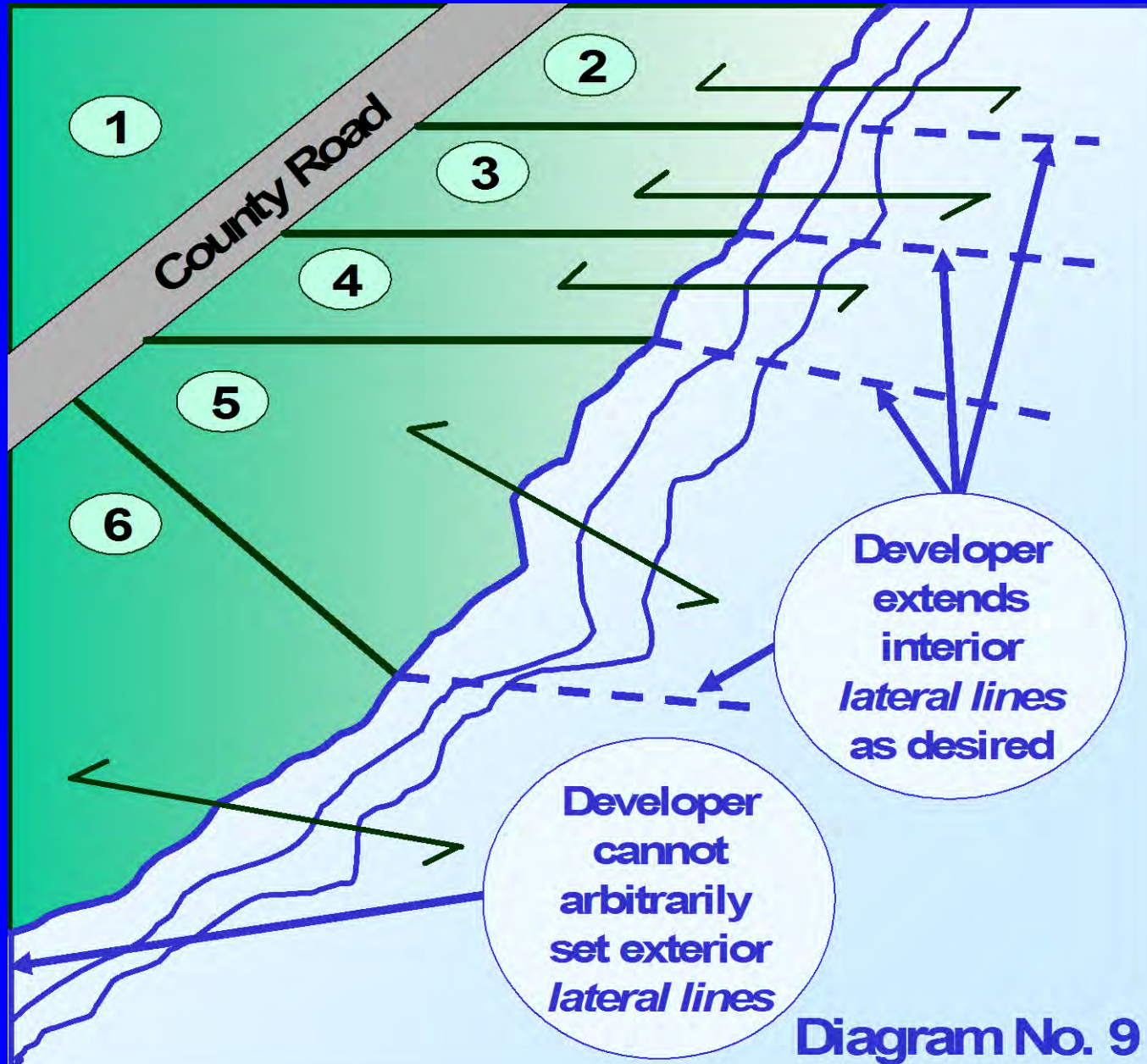
# LATERAL LINES - COVE



# LATERAL LINES - PLAT

- ❖ Owner of submerged land can subdivide and delineate specific locations of the *interior* lateral lines in any manner
- ❖ Example in Diagram No. 9
- ❖ BUT exterior boundary lines (either end of entire submerged parcel) cannot be fixed without
  - ❖ agreement *and*
  - ❖ conveyanceinvolving adjoining submerged land owners

# LATERAL LINES - PLAT



# BOUNDARIES ON STREAMS

# NON-NAVIGABLE STREAMS

REMEMBER - All water assumed navigable  
unless court determines otherwise

- ❖ Even if
  - ❖ the body of water is not shown on the Government Survey, and/or
  - ❖ no meander lines were shown on that survey, and/or
  - ❖ the adjoining uplands not described as government lots
- ❖ So title insurance will presume State owns the bed

# NON-NAVIGABLE STREAMS

- ❖ Boundary line between two properties divided by non-navigable stream
  - ❖ unless the descriptions clearly recite otherwise!
- ❖ is the thread of that stream
- ❖ Bed owned by the abutting uplands owners
  - ❖ whether or not it also constitutes a boundary between separate ownerships
- ❖ Not vested in the State of Washington



# ISLANDS

- ❖ Present special problems - especially in *rivers* and *sloughs*
- ❖ Might be shown on the original Government Survey as *government lots*
  - ❖ Elusive boundaries
- ❖ Or might have been created after Government Survey
- ❖ Title presumed in State (bed of river navigable)
  - ❖ May not be possible to describe
    - ❖ constant accretion and reliction action

Section Line



Clover Island

**Section Line**



**Government  
Survey No. 1**

Section Line



Government  
Survey No. 2

# ISLANDS

- ❖ Additional problems
- ❖ Dam built downstream
- ❖ Land condemned (*fee* or *easement*) for raising the river
- ❖ How is the "land" described?

# Water Level Lowers

GL 1



Which Gov Lot is the  
island in? 1 or 2?

GL 2

GL 1



Which Gov  
Lot is the  
island in? 1  
or 2?

GL 2

River moves

Other exceptions:

6. Navigation Rights

7. Reservations and Reversions

8. Water and Water Rights

9. Certificates of Water Rights



NAVIGABILITY



# NAVIGABILITY

Navigability determined on Statehood

November 11, 1889

THUS:

- ❖ *Current* appearance of a stream or lake (even dried up) does not determine status
- ❖ If navigable at the date of statehood, the bed (or former bed) was and is owned by the State



Definition?

- ❖ Common misconceptions

# NAVIGABILITY

Title insurers presume:

- ❖ navigability of all water, and
- ❖ the bed therefore owned by the State
- ❖ unless a court determines otherwise

# NAVIGABILITY

1. Meander line = navigable

NOT SO!

- ❖ Meander lines laid out solely to comply with the requirements of the US Rectangular Survey Act
  - ❖ A lake of more than 25 acres, or
  - ❖ A stream of over 198 feet in width
    - ❖ *WHETHER OR NOT NAVIGABLE!*

# NAVIGABILITY

2. State has issued deeds for shorelands on a particular lake = navigable

NOT SO!

❖ DNR takes position:

❖ Supreme Court determination needed

❖ Has issued deeds for shorelands on *small* lakes and rivers before court determination

# NAVIGABILITY

3. A stream floats logs = navigable

NOT SO!

- ❖ A case does provide that stream which floats logs is navigable for that purpose

BUT

- ❖ it does not follow that stream is capable of commercial navigation
- ❖ the bed of such a stream does not necessarily belong to the State

# ACCRETION AND RELICTION

## ❖ *Accretion*

- ❖ build-up of soil deposited on one bank forces the water to move, or shift, its location

## ❖ *Reliction*

- ❖ gradual movement of water
  - ❖ erosion of land on one bank
- ❖ exposes formerly submerged land on the other bank

# ACCRETION AND RELICTION

- ❖ Gradual shift changes location boundary between two parcels
- ❖ River or stream (navigable or non-navigable) could
  - ❖ shift its location
  - ❖ have already shifted its location
- ❖ So: title can't be insured without an exception
- ❖ See Diagram No. 5.



# ACCRETION AND RELICTION

Same natural processes apply to

- ❖ tidelands on
  - ❖ the Ocean
  - ❖ Puget Sound or
  - ❖ rivers emptying into them
- ❖ shorelands on a river or lake

# ACCRETION AND RELICTION

## General rule

- ❖ *Accretion or reliction* shifts the boundary between the upland parcel and the submerged land
  - ❖ Thus, newly *added or exposed* land becomes part of upland parcel
- ❖ BUT - accretions, even abutting previously sold submerged lands, are still claimed by the State (willing to sell to the abutting private owner)

# ACCRETION AND RELICTION

- ❖ No title insurance as to
  - ❖ boundaries between uplands and submerged lands, nor
  - ❖ Title to exposed land, nor
  - ❖ *whether movement was avulsive or gradual*
- ❖ Even newly permanently created or exposed lands are claimed by State
- ❖ Theory: Title of the underlying submerged land was vested in the State, so accretion or reliction does not divest that title

# AVULSION

- ❖ Stream changes or shifts location *suddenly*
  - ❖ natural event (earthquake, landslide, etc.) or
  - ❖ man-made activity
    - ❖ construction of dam, or
    - ❖ re-channeling of river
- ❖ the property lines normally do not shift
- ❖ Each owner continues to own to the original location of their property boundaries
- ❖ See Diagram No. 6.

# AVULSION

## EXAMPLE

- ❖ Dam construction covers land with water
  - ❖ Land must be
    - ❖ conveyed by the owner
      - ❖ fee or
      - ❖ easement
    - ❖ or taken by condemnation.

# AVULSION

- ❖ No title insurance as to
  - ❖ boundaries between uplands and submerged lands, nor
  - ❖ Title to exposed land, nor
  - ❖ whether movement avulsive or gradual
- ❖ This is the same as with accretion or reliction