

Course 3: Survey Evidence Analysis Study Guide

COURSE DESCRIPTION:

This set of videos and other teaching aids addresses one of the most complex tasks in cadastral surveying, the analysis of the field evidence and it's correlation with the written record. The course is essentially presented with three unique sessions on the subject from instructors of varying backgrounds and experiences. Practical on-the-ground advice is offered, as well as a thorough discussion of the legal concepts and issues involved in the analysis of corner evidence.

COURSE OBJECTIVES:

Upon completion of this course, students will be able to:

- Provide legal and historical backgrounds for evidence analysis procedures
- Discuss proper use of evidence, including confusing evidence situations
- Practice reading of and interpretation of field notes and plats
- Present proper markings on monuments

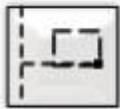
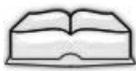
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VIDEO LECTURE TITLE:

Evaluating Corner Evidence – Part 10 (78 minutes)

ICON LEGEND

 WEB COURSE	 EXERCISE	 DIAGRAM	 READING ASSIGNMENT	 PROBLEM	 HANDOUT	 2009 BLM MANUAL	 QUIZ
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EVALUATING CORNER EVIDENCE – PART 10

Introduction

Welcome back. Let's talk about local surveys, official surveys, and **bona fide rights** as to location. But before we start talking more specifics about the statutes and the laws, common and statutory laws, and the administrative rules governing those areas, let's speak to something more fundamental.

This is sort of a conclusion that I hope as we go through this process, I'll keep coming back to and you'll see why I put this out there as fundamental. By fundamental law upon the issuance of a patent for land by the Federal Government it is just as if the monuments, survey plat, and field notes, and the laws, regulations, and rules governing how to survey the land described in the patent are stapled to the face of the patent. That's one of the principles in our Public Land Survey System, one of the fundamental laws, it's just as if when you have a patent from the United States Government, it's just as if stapled right to it is the plat, field notes, the laws, rules, and regulations governing how to locate that legal description.

That is basically came from a U.S. Supreme Court case **Cragin v. Powell**, 1888 out of Louisiana. The facts of that case are not particularly exciting but the principles of the Public Land Survey System are well stated in that U.S. Supreme Court case, and it's one that everybody should read at one time or another.

The survey rules then based on that portion of the survey rules as if they're stapled to the patent, what are we talking about when we're talking about survey rules? The survey rules are spelled out in the manuals, circulars, instructions, and regulations issued by the GLO, General Land Office, and later by the BLM.

Those are sort of conclusions to summarize of where I'm going to go through and we'll see if I go through there and when we get to the end you'll see if you can agree with my opinion on that.



HANDOUT A copy of Bob Dahl's presentation that he uses during topics 9-12 can be found in the Handout section at the end of the Evaluating Corner Evidence –Part 9 study guide.

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Administrative Issues

Now, let's talk about the government's regime; administrative, management, organization, the system for the survey rules. Again, I'm talking about for the Public Land Survey System. Perspective when conducting a resurvey on the Public Land Survey System, Federal survey, and Federal Resurvey Authority, who is the Secretary of the Interior and why do we care if she has an opinion about surveying on the public lands?

Why do we care what the Secretary of the Interior says about surveying on land that is now private land, but is part of the Public Land Survey System? Who cares? That's what I'm going to try to talk about to put into context in this legal system the role of the Secretary of the Interior and her designated officials.

So, let's look at Federal statute law first. Federal statute law, **United States Code USC, Title 43, Public Lands, Chapter 18, Survey of Public Lands, Section 2 often written down as 43USC2**; the Secretary of the Interior or such officer as he may designate shall perform all executive duties appertaining to the surveying and sale of the public lands. I think you want to circle two things in that summary of that statute law; by the way that law was passed in 1812 initially. Executive duties, all executive duties you should circle that, and public lands.

Let's speak a little bit; in 1812 when this act was first enacted, what lands was the Congress thinking about? Some people suggest today reading that act that, oh public lands, well then that means this authority to perform all executive duties appertaining to surveying only pertains to the lands under the administration of the Bureau of Land Management, and only the public lands that's administered by the Bureau of Land Management. I'm going to suggest to you in 1812 they never even heard of the BLM. In 1812, the clear intention of Congress was to include, what? All land with a Federal interest.

They basically started the system in 1785, by the time they got to 1812, they realized they were going to have to consolidate this land business that they were in and they consolidated, of course, the Secretary of the Interior didn't exist in 1812; but they created the General Land Office within the Department of Treasury because the whole system was about raising money, conveying land.

It wasn't about surveying; it was about raising money and conveying land,

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getting the land into the hands of the landowners. Surveying was almost a secondary by-product of it. They decided that they wanted to have a survey prior to the conveyance because it was easier to administer. That way the settlers knew where they were getting, where their land they were going to get, there was not going to be gaps and overlaps in the system as designed.

So, in 1812 it was the Commissioner of the General Land Office that was given all these executive duties. In 1849 when the Department of the Interior was created, then that duty was transferred to the Secretary of the Interior where it's been ever since. My point is, on interpreting public lands there, you will find the reading through it for the duties of surveying that you should read any land with a Federal interest, any land with a Federal interest.

That's probably the interpretation that's going to get you closer to the reality when you look at the expanse of 43-2. **43-USC-1201**, the Secretary of the Interior is authorized to enforce and carry into execution by appropriate regulations every part of the public land statutes. Congress has delegated significant amount of authority to and through the Secretary of the Interior, now I'm going to relate that eventually down to surveying on Federal Interest Lands and the role that the Secretary plays.

The Secretary of the Interior may in his discretion cause to be made such resurveys or retracements of the surveys of the public lands as he may deem to be essential to properly mark the boundaries of the public lands remaining undisposed of. Again, be careful. Don't try to narrow that definition of public lands as lands administered by the Bureau of Land Management because many, many court cases and administrative rulings have said it is much broader than that, any land with a Federal interest.

What **43-USC-772** is generally called the **General Resurvey Act**. It was enacted in 1909. You have to remember, prior to 1909, every time the Federal Government wanted to do a resurvey they had to go to Congress for special legislation. By the time they got up to 1909, Congress was tired of the General Land Office coming to them for authorization to do a resurvey. So they said, "We're going to settle this. We're just going to give you, the Secretary of the Interior, general resurvey authority." When you make certain findings, now you have the authority go forth and do resurveys.

That act is still relevant today and that is where most of the resurvey

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authority comes from. The Secretary of the Interior, upon application of the owners of three-fourths of the privately owned lands or by any court of competent jurisdiction accompanied by a deposit, may make a resurvey or retracement of any or all of the lines of said township; and to set permanent corners and monuments of private or Federal lands in accordance with the laws and regulations governing surveys and resurveys of the public lands. In essence in 1918 Congress expanded the general resurvey authority and says, “Secretary of the Interior, if the private landowners want you to come in, and there’s certain regulatory process they have to go through, then you too can go and resurvey private lands.”

Indian Country Applications

And finally, let’s talk about Indian land, Indian country. Whenever it becomes necessary to survey any Indian or other reservations or any lands, the same shall be surveyed under the direction and control of the Bureau of Land Management, and as nearly as may be in conformity to the rules and regulations under which other public lands are surveyed.

Couple different things are going on there in **25-USC-176**. That was enacted in 1864. What was happening prior to 1864 is you still had the Department of State doing Indian land surveys, and you still had the Department of War doing Indian land surveys, and you still had the Department of the Interior doing Indian land surveys, and believe it or not, when a couple Federal agencies start doing stuff that’ll overlap there can be confusion.

So Congress says, “We’re going to roll this all up into the General Land Office.” The Commissioner of the General Land Office will have the authority to survey any and all Indian lands. And then the General Land Office was reorganized into the Bureau of Land Management in 1946, and this authority has been within the BLM ever since.

Some more about what we’re talking about is the Federal laws, Federal statute laws, governing the surveying of Federal Interest Lands. We need to know the Federal regime, and then of course, later we’ll learn the State regime and then under those now you begin to get the picture of what’s going to govern you when you are out there surveying. And what the judges are going to look at when they are looking over your shoulder.

In general terms, these are the statutes that you should be familiar with. I

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want to point particularly to 751, 752 and 753. Those are the ones that the general survey rules. Those were enacted in 1796, 1805, 1820, and 1832. By 1832, the rules for surveying were generally in place.

For example, the original monument will control, 1896; the statutory method to subdivide a section, 1805; the statutory method of how to subdivide a quarter section, 1820. You see the drift? Those are the statutory laws governing the rules to survey and locate lands that have descriptions based on the Public Land Survey System. So, these you have to be familiar with. These are the fundamentals.

We've identified that Secretary of the Interior has been given the authority by Congress to survey Federal Interest Lands. Now when you go into the Department of the Interior Delegation of Authority Manuals, every bureaucracy has a Delegation of Authority Manual, the Secretary of the Interior clearly is not going to go out and conduct the surveys herself. All executive duties appertaining to the surveys of the Federal Interest Lands has been delegated to the Director of the Bureau of Land Management, and the Director of the Bureau of Land Management you'll notice on the plat of an official survey the Chief Cadastral Surveyor is signing for the Director. That's what it is.

The Director of the BLM has been delegated this survey authority. Further, that authority has been further parsed to the Director of the BLM has delegated the authority to approve official surveys to the Chief Cadastral Surveyor for the state. There are, of course in the Public Land Survey System, there are 30 states from Ohio west. The BLM has organized itself into 12 states. Clearly some of the BLM State offices have jurisdiction over more than one state. You always should be aware of, when you're dealing on Federal lands, which BLM State has jurisdiction in the state you're working in. What I'm getting at there's 12 BLM offices, there's 12 Chief Cadastral Surveyors State office Chief Cadastral Surveyors. Those are the individuals that the people that sit in those seats have been delegated the authority to approve surveys.

Role of The Manual

I want to talk about one other delegation of authority that comes down through the Secretary and the Director of the BLM. The other delegation of authority I want to talk about is to make the final interpretation of the Manual of Survey Instructions. What does the Manual really say? Who has final interpretation of it within the Department of the Interior? That

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authority has been delegated to the **Chief Cadastral Surveyor** of the BLM. That's the one cadastral chief in the Washington office, the current incumbent is Don Buhler.

So, now that we see where the Secretary of the Interior fits into this scheme of carrying out the public mandate of survey duties and the delegations of authority, now lets dive into a little bit of how the General Land Office, and the BLM, and the Department of the Interior conducts that business. One of the things lets look at the Manual of Survey Instructions.

What is the Manual of Survey Instructions? So what? Who cares? Well, I'm a private surveyor I don't need to know the about the Manual of Survey Instructions that's dealing with the government guys and the BLM guys. That don't pertain to me. Well, let's see what the BLM Manual calls itself. The Manual of Survey Instructions describes how cadastral surveys, Federal Authority Surveys, official surveys of the public lands, Federal Interest Lands, are made in conformance to statutory law and its judicial interpretation. That's the Manual's representation to you. It's saying that if you follow what's in the Manual, the Manual believes that the instructions are in conformance to statutory law and its judicial interpretation. Let's see what else it says.

By the way, could the Manual be wrong? Absolutely, if the Manual is not in conformance to statutory law or their judicial interpretation, the Manual's wrong. The Manual does not trump statute law. What else does the Manual call itself? It is within the province of the Director, the Director of the Bureau of Land Management, to determine what are public lands? What lands have been surveyed? What are to be surveyed? What have been disposed of? What remains to be disposed of? And what are reserved? When you step back and look at that sentence that says a lot. That the Director, it's within the province of the Director, via the Secretary of the Interior via the United States Congress to determine if a piece of ground has been surveyed.

One of the ways the government determines if a piece of ground has been surveyed is, has it been returned on an official plat? Returned meaning, does it show up on an official plat? If land is not returned on an official plat it's unsurveyed. Where is the boundary of that surveyed land? Does it go to here or does it go to here? Who determines for the government? That's what this is saying, one official making the determination. They have to boil it down to one person. They come through there.

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Let's talk about the Manual of Survey Instructions a little bit more. Who's the Manual of Survey Instructions written for? Who's the intended audience for the Manual of Survey Instructions? In general terms, the intended audience is a Federal Authority Surveyor. What is a Federal Authority Surveyor? We talked about that early up. You have all of those ingredients. What was it? 7 or 8 ingredients, if you didn't have every one of those you didn't have a Federal Authority Surveyor. So, in general terms, the Manual's intended audience is that individual that's going to conduct the Federal Authority Survey. But you know what? I found out there's 5 types in that audience. Can you name the 5 types that the Manual is intended for?

Well, of course, the easy one is well the field surveyor. The person that's going to go out and conduct the field part of the survey. The Manual is a compilation of general instructions. Does the Manual give you minute specific detailed instructions for every possible factual scenario you can ever dream up? No, course not. It can't. How thick a book would that be?

The Manual of Survey Instructions is a compilation of general instructions. There's 5 intended audiences. The field surveyor, the other person is the special instructions writer. To have a Federal Authority Survey you have to have special instructions. There are instructions how to prepare special instructions in the Manual. The reviewer, the person that's going to review the returns by the field surveyor. There are instructions to that person. The drafts person, the person that's going to create the plat.

You know those silly looking BLM plats that have just one or two, three narrow little lines and just a couple dimensions that look like there's nothing on them? There's enormous amount of information coded in there and it takes an expert to develop those plats and part of what we need to work on is being able to how to interpret what's the information on the plat. That's the fourth kind. The fifth person is the Chief Cadastral Surveyor that's going to approve it. That person should get and does get some general instructions.

There's another thing about the Manual of Survey Instructions that has occurred to me as I've had the opportunity to work on developing the next edition of the Manual. Which by the way, I just going to talk about the current process of the development of the next edition of the Manual. I believe in the current edition of the Manual which is 1973 as we're

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speaking today is the current edition of the Manual of Survey Instructions.

I believe most of the content in there is good, solid language. And the worst thing the BLM can do is just wordsmith to be a wordsmith, and changing something to be changing something. That's the worst thing the BLM can do. I believe most of that language is good and solid and nothing needs to change on it. But I also believe that the law has changed and moved in some areas, for instance water boundaries, the Federal courts have decide a lot of cases since 1973 pertaining to water boundaries so that needs to be updated, for instance. That's the process of developing the next edition of the Manual which will be very little change from this current Manual with some areas that needs to be updated. Some areas that the law has changed and therefore we need to remove some stuff.

Chasing the Law

But what I was getting at in terms of developing the next edition of the Manual and thinking about it is there's kind of two parts to the Manual. And I think some of us forget this when we pick up the Manual. This is the current edition of the Manual, the 2009 edition.

When we pick it up and start reading that there's kind of two parts to it. One is what I call chasing the law, chasing the law. This is where there is statute law. There is Federal common law, U.S. Supreme Court decisions. There is regulations governing surveying. Those are laws. There's the United States Constitution. Those are laws that are in place that are inviolate to the Manual of Survey Instructions. So, part of what the Manual is attempting to do is compile and condense those laws into a language that surveyors can understand and relate to, general instructions. Now if the Manual does not interpret those laws correctly, does that make the law wrong or the Manual wrong? Well of course, the Manual's wrong.

So, when you pick up and read your Manual you have to be thinking about, now am I reading where they're chasing the law and they're trying to interpret and give you like they said their conformists to statutory law and its judicial interpretation? Or the second type of part of the Manual. The second type is where and put it in quotes the Manual is "making" the law. And what I mean by making the law, well think about it, I just pretty much outlined all the Federal statue laws pertaining to surveying on the rectangular system.

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Well where do I go in those statutes to find how to determine the true corner point for an offline witness corner? Congress didn't treat that. But by Congress delegating the authority for all executive duties appertaining to the surveys of the public lands, they left it to the Commissioner of the General Land Office, and now to the Bureau of Land Management, to write the rules for all those myriad of factual situations necessary to administer the surveying, and sale, and management of the Federal Interest Lands.

So, when you're picking up and reading the Manual, you sorta have to make sure you know which part of the Manual you're reading. Are you reading the part where it's chasing the law? Which then you can be well, gee, I don't think that they followed the law right here. Or are you reading a part where they're quote "making" the law. If they're within their statutory responsibility, the courts are going to give the BLM wide deference on making the rules.

Like to give an example of what I meant by the Manual is either chasing the law or making the law. How to subdivide a section, when the Manual gives general instructions on how to subdivide a section is it chasing the law or making a law? Well, it's chasing a law because Federal statute law 43-USC-752 enacted in 1805 by statutory says you'll connect the exterior quarter corners and at the intersection will be the center quarter.

How about the primary method to reestablish a lost interior section corner? Is that chasing the law or making the law when the Manual of Survey Instructions gives general instructions of the primary method reestablish a lost section corner? Well, you won't find first of all you have to look at the statute law. There's no statute law describing how to reestablish a lost section corner. So that is making the law. The Commissioner of the General Land Office had the discretionary authority to come up with a system to deal with the factual situation. A lot of the Manual is about that.

The other thing about the Manual of Survey Instructions on the part of, well they're making the law well that's just the BLM procedures, that doesn't pertain to me. Well, if it was the accepted procedure and most that the materials in the Manual has been held in high regards by the judicial system. It has been given great deference in the judicial system on many of its points. It is the policy of the Bureau of Land Management and for most of the land in the 30 western states, that land was conveyed based upon the survey rules compiled in the Manual of Survey Instructions.

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So, you want to be very, very careful when you choose to disregard the instructions in the Manual. Just be careful when you're ready to go that route. There's times when that's the appropriate route but just I think it's very important that if you're going to go down that route that you be able to document why the Manual is not applicable here and then do what's necessary.

Inherently Federal

Let's talk a little bit more about the Federal regime. We talked about the statute laws and we're talking about the Manual. Section 6-3 of the current edition of the Manual, when Federal lands including Indian lands are involved the final authority to approve or disapprove the official resurvey procedures rest with the Secretary of the Interior acting through the Director of the BLM.

Another way to put that is you've probably will if you haven't already heard the terms inherently governmental activities and the term commercial activities. By the survey statutes that I've cited and other Federal statutes not pertaining to surveying, Congress has basically told the executive branch there are certain decisions appertaining to Federal interests that cannot be delegated, cannot be contracted.

Those activities are called inherently governmental activities. And within an Official Authority Survey which covers many, many activities there's many activities within an Official Authority Survey some of those activities fall in the area of inherently governmental, meaning non-contractible, and some of them are falling in commercial activities, meaning contractible.

For example, to determine whether a scratch on a rock is the original 1883 section corner and whether that rock is in its original position, is an inherently governmental function because, not because the BLM wants it to be, because that will be the final opinion; remember the BLM has been delegated the authority to determine the limits of the Federal interest, that will be the final administrative opinion always subject to appeal higher up, but this is the delegated authority the final opinion of where the limits of Federal property begins and ends. That's the decision that is inherently governmental is that decision of where the Federal property begins and ends. That decision cannot be contracted. That decision is inherently governmental.

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An example of a commercial activity, once the Federal Government through its authorized official, Chief Cadastral Surveyor, through the cadastral surveyor that's under special instructions, once that person has made a decision that this is point A and this is point B, to develop the relationship between them as to measure them, that's a commercial activity. Because that's not determining where the Federal interest lies, that's developing an existing mathematical relationship. You get the idea of inherently governmental/commercial activities tied back the 6-3 portion of the Manual.

Let's talk about something else about the Manual. The failure to conform the resurvey, any resurvey, to the requirements of the Manual of Survey Instructions constitutes gross error. The date there's 1987. 99IBLA; IBLA, Interior Board of Land Appeals, Volume 99 Page 104; **Peter Paul Groth**, in and of its self is not particularly outstanding but it does illustrate the point that in this case the BLM did not follow its own Manual. That was the finding, and if the finding is the Manual was not followed, then that constitutes gross error.

In that case it was a lost section corner, there was some grossly erroneous original surveys, if not frauds, some of the lines weren't run, some of the corners weren't established, and the BLM adopted a 1 point control to reestablish a lost interior section corner. The landowner that was affected appealed that decision, and persuaded the Interior Board of Land Appeals judges that a 2 point method of restoration was the proper method with that factual situation.

So, therefore IBLA says, "BLM when you had this factual situation this is what the Manual says, 2 point, you did not follow the Manual you used 1 point that constitute gross error. Go do it again."

Another area about the Manual, besides the Manual of Survey Instructions which in essence is a technical Manual, every Federal agency has what they call administrative Manuals different from a technical Manual. Administrative Manuals is more how you keep your time, reporting requirements on weekly progress, those administrative issues.

BLM Administrative Manual 1203, delegation of the authority, the Washington office Chief Cadastral Surveyor will provide the final interpretation of the Manual of Survey Instructions. In preparing the next edition of the Manual of Survey Instructions, I work for Don Buhler

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who's the Chief Cadastral Surveyor and he will decide if my draft is pertinent and whoever's in that position will have final say on what it does say.

I want to wrap up a little bit here. And there's a lot more to cover and we will, but everyone once in a while let's summarize a little bit and see if we can agree to where we're at. And if you're finding that you're just not getting here where I'm at then it's time to call me, call other relevant BLM and public land surveyors, call the BLM office, and talk about it. I think one of the great opportunities in the Certified Federal Surveyor Program is this opportunity to increase the communication painlessly, if that's possible, between surveyors who're going to practice in Indian country and the Bureau of Land Management cadastral surveyors. Private surveyors, you aren't on your own out there.

You have public employees whose job it is to assure that surveys on Indian country are done properly. You have an opportunity to tap into that to help you with your decision.

Therefore, when a boundary location is to be run and marked or a boundary location becomes unclear then the Manual is the guidance, the rules, governing, one, the running and marking of lines and corners, and two, the relocation of boundaries and corners. Now, notice that I used guidance in the rules. In conformance to, because the Manual just can't dream this up to do one and two, there has to be in conformance to the controlling monuments, surveyed plats, field notes, rules, regulations, and laws. You see how it all cascades down.

Now, what percentage of the western 30 states of the Public Land Survey System has been surveyed under the Public Land Survey System? A very significant portion of it. What percentage of those 30 states were surveyed under Federal survey rules? A very significant proportion of it. What percentage of those boundaries and corners today are still governed by some portion of the Federal rules, and regulations, and guidance? Of course, that's the \$64,000 dollar question. A significant portion of it is, clearly. Whether in your local situation it is or is not site specific. Now, let's see if we can begin to narrow this down a little bit.

Let's talk about one more thing here before we get too narrow. It is settled law that the United States may survey what it owns and thereby establish and reestablish boundaries, but what the government does in this regard is for its own information and cannot affect the rights of owners on the other

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side of the existing boundary. The principle here is where there is not an existing boundary of another's interest, meaning it's all Federal interest, the government can mark its land, plat its land, describe its land, convey its land by its own rules.

However, it cannot affect the rights of owners on the other side of an existing boundary. Basic 101 resurvey principles that we've all been taught. If it's all under one ownership that owner can survey it and parse it up any way they feel like it. But as soon as it butting a boundary of another, then these rules and regulations begin to kick in. Society wants to have a say.

Limit of jurisdiction of the Federal Authority Surveyor, remember part of it is public domain land, land status surveyed under Federal rules. Federal Authority Surveyor, State Authority Surveyor, No Authority Surveyor. Let's begin to parse those out and get some space between them.

Limit of jurisdiction of the Federal Authority Surveyor, for the most part I'm going to be talking about different parts of the Manual. When was the first Manual of Survey Instructions? The first known one is Jared Mansfield 1804 Instructions of Survey, survey instructions. When was the first Manual issued that had jurisdiction country-wide? The 1855 Manual was the first Manual that was adopted for all the public lands. Since 1855 Manual of Survey Instructions, you have the 1864 instructions, the 1871 Manual, the 1881 Manual, the 1890, 1894, 1902, 1919 advance sheets, 1928 advance sheets, 1930, 1947, 1973, and now the 2009.

Those are all Manuals of survey instructions and when you begin to read them you can see where they all roll into the next one. Very little has changed. It has evolved, like we said the Public Land Survey System, society is always changing and evolving. And this Manual is a part of putting that together. You know, it's been suggested the Bureau of Land Management the country doesn't even need a Manual of Survey Instructions. It could be one page long.

All it has to do is say follow the law and do good. That's all. But, the Manual of Survey Instructions, I believe, it's easy for me I believe the Manual of Survey Instructions has served a greater public good. It's nothing new in the Manual of Survey Instructions or particularly unique, but what it's done is it compiled into one fairly convenient place the rules and regulations, general guidance pertaining to the surveys of the Public Survey System including in Indian country.

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The other thing I think is relevant to the Manual is it's a good way to pass on to the next generation of surveyors the knowledge.

I don't know about you, you know its one thing to come up as a young surveyor and have your party chief tell you well that's the way we do it because we've always done it that way, you know. And you say, "Well that's fine, and boy, I'm going to do it your way because I'm working for you." But you know I'd like to read it myself. Where can I go to read it myself? And the Manual serves that purpose, too. Now, within the Manual, let's see what it says about limit of jurisdiction of the Federal Authority Surveyor. Three types of surveys, three types of land status, we have to know which one we're on.

Manual Section 5-19, in the resurvey process the surveyor would determine whether or not the surveyor will determine. Now, who's the Manual talking about? Again, we talked about who's the intended audience of the Manual, the Federal Authority Surveyor. But you say, "Well, gee, that's not relevant to me, I'm a private surveyor, I'm going to survey on private land.

The Manual's not relevant to me." Well, are you surveying in a state that has implicitly or explicitly included the Manual in either their statutes, regulations, or by common law? If you're in one of those states, the Manual is relevant. And in fact even if you can't make that finding, how is most of the land in the 30 states been conveyed and defined by and the legal descriptions made based upon these rules and regulations that's captured in the Manual? So, when you read the Manual you sorta have to have two lights on. You have to recognize that it's written for the Federal Authority Surveyor, but you're a private surveyor and it still may be, depending on your factual situation, your jurisdiction, relevant to you. In the resurvey process, the surveyor will determine whether or not lands embraced within a claim as occupied, as occupied, have been correctly related in position to the original survey. The surveyor will interpret the evidence with respect to its effect upon the matter in which the survey shall be extended to protect valid rights acquired under the original survey.

Valid rights claim as occupied. Get ready folks, we're going to get into areas that's not about measuring, it's not about mathematics. It's about boundary surveying. Continuing in the same section, it comes within the realm of the surveying process as defined by the public land surveying

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process because that's what the Manual is speaking to. To identify and mark out on the ground the various legal subdivisions of the Federal interest including Indian lands. In the resurvey process, the surveyor will determine whether or not lands embrace within a claim as occupied have been correctly related in position to the original survey.

Who will determine? The surveyor will determine. Who's the intended audience of the Manual? Federal Authority Surveyor, there's 5 Federal Authority Surveyors, one of them of course being the Chief Cadastral Surveyor for that state.

States Regulate Surveying too

One of the compare and contrasts between the authority of a Federal Authority Surveyor and a private practicing land surveyor, is sometimes the rules governing the practice of the craft not the rules of how to survey but who can practice the craft.

What's the definition of the practice of land surveying? You have to remember all 50 states regulate the practice of land surveying. All 50 states have a definition of the practice of land surveying. Is that the same definition as given by the Secretary of the Interior and Congress? No, it's a different definition.

I think for private practicing surveyors it's sometimes its difficult to realize that the Federal Authority Surveyor is speaking for the Secretary of the Interior and will go much further in ultimately rendering an opinion where the limit of the Federal ownership is. Notice I said ownership. I didn't say "Well, I just locate where the D boundary is and I just stop. I just develop the facts and then I report them to some other decision maker, either the land owner, or a judge, or attorney."

Well, the Secretary of the Interior is told to define the limits of the Federal interest and they have delegated that to the Federal Authority Surveyor. Under official surveys, they will locate, render an opinion subject to judicial review, of where the limit of the Federal ownership is and they will mark it. That's a little bit different than the definition of practice of land surveying in Arizona. So, you have to keep track here.

What authority are you surveying under? Is there a difference? And so what in your case and the case of the resurveyor you're following behind. Where the demonstration of this question of determining where the claim

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is, may be one involving more or less uncertainty, believe it or not there's uncertainty in boundary location out there, as is often the case the surveyor will examine and weight the evidence, examine and weight the evidence relating strictly to the surveying problem involved. Weighting evidence is part of the surveying process.

It is a judicial question beyond the function of the surveyor, so there is a limit to what the Federal Authority Surveyor is, to determine whether or not specific lands have been dually earned under a certain entry. Meaning, well John Smith made an entry for the southeast quarter and Harry Thompson made an entry for that same legal description. That determination, that who has bona fide rights, is not within the realm of surveying process. That's a different process.

The **Quiet Title Act** is the basis now that is the basis to adjudicate a disputed title to real property in which the United States claims an interest. Challenges to the United States title to real property, of which location may be one of the considerations, are authorized by the Quiet Title Act of 28USC2409A. If the Federal Authority Surveyor is to determine where the limits of the Federal interest is at the minimum you're going to have to be able to recognize when you may have a factual situation where the Quiet Title Act is relevant and not Title 43USC751, how to subdivide a section. Both of them are part of the surveying process.

When you get out there in Indian country and there's been a hundred years of activity and of course you have to decide is your roll, is your job, to determine the limit of the trust land, or the restricted fee land, or something less than that. A Federal Authority Surveyor is thinking about all those things when evaluating a local survey. It is within the realm of the survey approval and filing process to provide a record upon which the court of competent jurisdiction in a Quiet Title suit or other reasons may clearly and accurately determine the boundaries of the United States claim of interest and may with security accept the boundaries thus determined in so far as they represent the true location of the Federal Interest Lands. If I can do that, I've done my job.

If I can provide a record to the court of competent jurisdiction that clearly and accurately determines the boundaries of the Federal interest which that court may with security accept, then I done my job.

Let's go to the Manual Section 5-21. Authority to decide boundary

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disputes, we're kind of looking for some parameters and fences here. What's the realm of surveying and what's the realm outside of surveying? The surveyor employed by the BLM, or surveying by BLM assigned special instructions, is to bear in mind that his work is professional, legal, and equitable in character.

The surveyor is not a referee as to the justice or injustice of a situation. The surveyor can only act upon the equities or inequities that may appear to be involved, if they fall within the Secretary of the Interior's duties to do justice appertaining to the survey and location of Federal interest including Indian lands under the law. The surveyor is not clothed with authority to decide boundary disputes, but may be regarded as one qualified by training and experience to testify in such cases. Sometimes your testimony is your written survey record.

The statutory authority to decide boundary disputes is vested in the court. Remember, just because the BLM say, "Oh well," beats their chest, "we're the final survey authority; here's our survey, that decides it." No, they don't really mean they have the final say. They may use that language, but that's not really what they're saying. The statutory authority to decide boundary disputes, because the BLM can render the opinion of the Secretary of the Interior in a boundary dispute, here we're talking about to decide boundary disputes is vested in the court by virtue of its legal capacity to weight the evidence, the facts being shown by the testimony of the witnesses including the surveyors, and by exhibit of the official records.

The court is qualified to weight the evidence, to exercise the discretion as to the preponderance of the evidence, its acceptability, and by court decree to enforce its opinion.

Let's see, if I'm doing my job would I want to know how the court that's going to have final jurisdiction in my case is going to weight the evidence? Would I be interested in how they're going to exercise their discretion as to the preponderance of the evidence, its acceptability? You bet I would. That's the second set of foots following in the footsteps. Fact, we're out ahead.

We're leading with the footsteps and we're hoping that court will follow in our footsteps and we want to leave big enough footsteps with good enough documentation they just end up reading it and say, "Yeah, yeah...you got it." That's the goal. That's the goal. The court will

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determine the facts as to the sufficiency of the control or extent of the monuments; and other marks of the official survey that can be relied upon, and how that control is to be applied.

The court's opinion will be binding in fixing the boundaries of privately owned property and would seldom be contested as to acceptability and affixing the boundaries between Federal lands including Indian lands and the alienated lands, or private lands, or patented lands, accepting as a preponderance of the evidence showing may be made that the monuments of the official survey had been disregarded, overlooked, or otherwise ignored in a testimony in the case, the court itself possessing no authority to set aside the official survey. So, there's even a limit on what the courts can do.

I'm reading out of different parts of the Manual pertaining to trying to find the parameters, the limits, of whose authority where. We're starting to use language that you need to be familiar with because this same kind of language is sounding sorta high-falutin' you know well, gee, just tell me if I can accept the iron pipe or not. You're going to end up couching your answer in this kind of a language. Because that's the law, boundary surveying is about the law and people's property rights.

Section 3-76, subdivision of section by local survey; let's see what the Manual says to the Federal Authority Surveyor when they're out there inside of a section that there's been a surveyor in there. The work of the local surveyor usually includes the subdivision of the section into the part shown upon the approved plat. Approved plat, of course, they're talking about the official plat. In this capacity the local surveyors performing a function contemplated by law. We talked about earlier under the general system, 1785, 1796, 1805, the Federal rule was to determine the section exteriors and stop in terms of surveying. But they were going to convey smaller parcels in sections.

Who was contemplated to survey and locate those boundaries? Local and county surveyors. He, being the local surveyor, cannot properly serve her client or the public unless she is familiar with the legal requirements concerning the subdivision of sections. In the event that the original monuments have become lost or obliterated, the surveyor cannot hope to effectively recover said corners without a full understanding of the record concerning their original establishment, and evidence of location after their original establishment. Nor can the surveyor hope to legally restore the same. These are lost corners or obliterated corners.

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Legally restore the same or properly weight the evidence of subsequent location, use, or occupancy until she has mastered not only the principles observed in the execution in the original survey and subsequent local practices; but also the principles upon which the courts and administrative boards such as IBLA, having jurisdiction over such matters, have based their findings. BLM, still reading from the same section, BLM assumes no control or direction over the acts of local and county surveyors in the manner of subdivision of sections, evaluation of evidence of corner locations, and reestablishment of lost corners of original surveys where lands have passed into private ownership. Neither does the bureau assume control or direction over the acts of Federal employees performing or administering surveys not authorized by the designated Chief of Cadastral Surveys. These are all local surveys. So, the Manual gives a lot of weight to the activity by local surveyors. I think that's significant.

Secretarial Authority

We talked about the authority of the local surveyor; let's talk about the authority of the Secretary of the Interior. The Secretary of the Interior and the BLM cannot assume jurisdiction over or responsibility for the acts or results of surveys made by county, local, or private surveyors or by surveyors or engineers who may be employed by other branches of the Federal Government or Indian tribes and not conducted under the direction and control of the Chief Cadastral Surveyor.

Let's say you become a Certified Federal Surveyor and you are requested by an Indian tribe or an individual Indian of a federally recognized tribe to locate their boundaries. Because you're working for that sovereign or that individual and the land status is trust lands or restricted fee lands, will the BLM assume jurisdiction over your work and assume responsibility? No, no. You're not conducting a Federal Authority Survey. Remember the definition what all the ingredients for a Federal Authority Survey. We hope, it is the CFed program hope, that at a minimum you will conduct a State Authority Survey.

Talking about the authority of the Secretary of the Interior, Manual Chapter 6 Section 3, on the other hand in the subdivision of sections and in the location of private property lines, generally, it falls to the county or other local surveyor to mark the official corners, and where a required corner is missing, the local surveyor will be called upon to recover the point. Thus it will be seen that the county or other local surveyors, as well

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as cadastral surveyors of the BLM, are constantly called upon to search for existing evidence of original monuments, and in this work, the surveyors will be guided by the same general methods.

Whether you're a BLM Federal Authority Surveyor or local surveyor, both are going to be guided by the same general methods. Should the search for a monument or corner location result in failure, lost corner, the appropriate restorative surveying process to be observed by either surveyor will be based upon the same rules as hereinafter outlined. This presentation draws little distinction; the Manual draws little distinction, between the duties of the two classes of surveyors.

Private disputes: where a corner marks the boundary between or in any manner controls the location of lines that form the boundary of privately owned property, dissatisfaction on the part of or dispute between the private owners may be brought before the local court of competent jurisdiction. The Manual is just stating the obvious there. In that case, the Secretary of the Interior will not be bound by a court decision.

If the United States is not a party to a suit affecting Federal Interest Lands when evidence of the official survey was disregarded or there was some other departure from good surveying practice. In general terms, the Federal Government can choose if they're not a party to a local dispute whether they will be bound by the local dispute. Imagine a section, and there's mixed ownership of private and Federal Interest Lands, and down in the lower southwest portion the two landowners had a boundary dispute, and they went to court, and they settled a local decision on how the southwest of the southwest was to be located; which could potentially impact the BLM land or the Acoma Indian land in the northeast of the northeast of the same section. Does that local court decision bind the Federal Government up there? Not necessarily. If the Federal Government was not party to the suit, and particularly if the Federal rules or the proper appropriate rules were not applied or if they overlooked the Federal Original Survey in arriving at their conclusion, in those cases, particularly, it may not be binding on the Federal Government.

Let's talk a little bit about State statutes, State administrative regulations, and State case law. Most states within the Public Land Survey System have incorporated the rules set forth in the Manual of Survey Instructions. The Manual supplements and the circulars governing the weight given original evidence of corner locations, procedures to reestablish lost GLO or BLM corners, and procedures for subdivision of sections. Many states

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have explicitly incorporated the Manual.

Now, I'm not going to go into examples of State statutes, or State regulations, or State Supreme Court cases where they have incorporated the principles examined in the Manual of Survey Instructions. There are numerous ones of them and if you are licensed to practice in your state, which means that's the state you can get your certification in, it's incumbent upon you to know the relationship of the State surveying regime with the Federal survey regime. That's just basic surveying 101 knowledge, that it's expected for you to understand.

Let's talk about the role of local surveyor when conducting a resurvey on the Public Land Survey System. The function of the local surveyor, again this is part of 3-76, 2009 Manual Chapter 3 Section 76, the function of the local surveyor begins when employed as an expert to identify lands which have passed into private ownership. An expert, ok, the expert testimony by local surveyors, who may have identified the original monument prior to its destruction, who protected bona fide rights as to location by a reasonable application of the good faith rule, we will talk further about bona fide rights good faith rule; or have marked the corners of legal subdivisions by law using the accuracy standards for the time and local followed by use and occupancy is by far the most reliable expert testimony.

Manual Section 6-18, acts and testimony of original corner recovery, a corner is not considered as lost if its position can be recovered satisfactorily by means of the reliable **testimony**, reliable testimony has a specific meaning, and acts of witnesses having knowledge; what kind of knowledge? What's a burden? Of the precise location, what's the definition of precise location of the original monument? The expert testimony of surveyors who may have identified the original monument prior to its destruction, and recorded new accessories or connections is by far the most reliable; though landowners are often able to furnish valuable testimony.

So, the BLM is going to give a lot of weight to the reliable testimony, typically, the reliable testimony of a local surveyor is his/her survey plat. Now, you document the bejeesus on your survey plat, right? You give that next surveyor that's going to come along behind you 20, 30 years from now all kinds of reasons and analysis why you did what you did because, why? Because you want him or her to accept you. Why? Because you want to contribute to the stability of the property corners in the United

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States. Why? So people can do business for domestic tranquility.

This pertains to local surveyors, Federal statute. All subdividing of surveyed lands, surveyed lands remember in the Federal context, generally, section exteriors, all subdividing of surveyed lands into lots less than 160 acres may be done by county and local surveyors at the expense of claimants. This law was a section of the 1870 Mining Act.

It was directed towards Placer Mining Claim Patent Applications described by legal subdivisions. You folks from mineral country, placer claims, what's the size of a placer claim? 20 acres, if it's on surveyed lands the legal description will be by legal subdivisions. An association can include up to 8 parties meaning 160 acres meaning a quarter section. In 1870, they passed the first mining act in 1866, well it took them four years to realize that the Federal Government didn't have enough surveyors, there wasn't enough contract surveyors, available to meet the needs and the demands of the claimants, these are mining claimants, big business.

So then they opened it up and says ok for placer claims located by legal subdivisions, then the local and county surveyors can do that, and what that really means is they can survey it, in essence, their subdivision, and again the facts will tell you this, it is an original survey if a patent, in this case a Placer claim patent is issued, subsequent to and reference to that local county survey plat.

That was 43USC766, Federal statute law pertaining to the activity of local surveyors. That's an example of when you're evaluating a local survey, what was the authority that the local surveyor had? That may govern your decision to accept or reject, that's an example.

Constitutional Guidance

Let's talk about some inviolate rules, rules that cannot be broken if you will, governing resurveys. The Constitution of the United States, Congress shall have the power to regulate commerce with the Indian tribes, that's Article 1, Section 8, Clause 3, the Commerce Clause. Congress shall have the power to dispose of and make all needful rules and regulations respecting the territory belonging to the United States, Article 4, Section 3, Clause 3.

The Constitution and the laws of the United States shall be the supreme

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law of the land, Article 6, Clause 2, Supremacy Clause. If you have a Federal law governing how to subdivide a section and you have a State law subdividing a section and they are in conflict, which one trumps? In general terms, when a State law is in conflict with a Federal law by the Supremacy Clause, the United States Constitution, the Federal law will prevail. No person shall be deprived of property without due process of law. I want you recircle due process of law, that will come back in over and over and over again.

The surveyor needs to know about due process of law, because a surveyor is out there doing work that can violate somebody's due process of law. No person shall be deprived of property without due process of law, nor shall private property be taken for public use without just compensation. That's the 5th amendment.

We talked briefly about some of the Federal statutes. I'm not going to belabor them. You can look them up and in fact you should always have a copy of them in your files. Federal statute law 43 USC 752, you can read there, the position of existent and obliterated corners returned by the Secretary of the Interior are unchangeable, and are the corner locations of the described inured or patented lands.

The boundary lines actually run and marked in the surveys returned by the Secretary of the Interior are the property boundary lines of the sections or subdivision for which they were intended, and the lengths of such lines is returned are the true length thereof. Original monument will control 80 change is the official distance. Each section or subdivision of sections returned by the Secretary of the Interior is considered as containing the exact quantity expressed, and the half section and quarter sections the contents thereof shall not have been thus returned shall be held in considered as containing the one-half or the one-fourth part respectively of the returned contents of the sections of which they may take a part.

The Secretary returned the plat that showed the southeast quarter containing 160 acres. That's the official acreage. That's what the settler paid for, whether it turns out to be 158 or 162 the Secretary doesn't care. More than that Congress doesn't care. You hear the term official acreage. Official acreage has a specific statutory meaning. Don't confuse official acreage with GIS Acreage, county acreage, **GCDB** Acreage; you know, pick any acreage you want there's one official acreage on the latest official plat describing the parcel is the official acreage. It may not be the most accurate acreage, that's a different issue.

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And then, 43 USC 752 and 753, the corners of half and quarter sections not marked by the Secretary of the Interior shall be placed as nearly as possible equal distance from those two corners which stand on the line. How do you locate a north-sixteenth in a regular section? Equal distance, midpoint, well did the BLM dream that up? No, that's Federal statute law. The BLM is attempting in different parts in here to talk about that. How many different variations of a sixteenth corner can there be out there? How many different variations of the controlling corners in that establishment of sixteenth can there be out there?

Almost an infinite number, the BLM Manual is an attempt to give you some general guidance under general conditions. If you have an exception to the rule, then it's our recommendation is that you contact your local BLM office to discuss it. The boundary lines which have not been actually run and marked shall be ascertained by running straight lines from the established corners through opposite corresponding corners. All this language will lead us and will be pertinent when we're evaluating local conditions.

And then of course, 43USC772, general resurvey authority. Congress told the Secretary of the Interior, yes, go forth and do resurveys provided, provided that no such resurvey or retracement shall be so executed as to impair the bona fide rights. What are bona fide rights? We're going to talk about that. Why is bona fide rights so significant that Congress put it in the statute governing resurveys? We're going to talk about that. Executed as to impair the **bona fide rights**, or claims, of any claimant, entryman, or owner of lands affected by such resurvey or retracement.

That outlines some of the constitutional framework, some of the Federal statute law framework, both for original surveys and resurveys. And we read different parts of the Manual that talked about the role of the local surveyor in many cases is almost identical with the role of the Federal Authority Surveyor. We need to know that when we're getting down to evaluation of a local corner. This is a good place for a break in this video lecture.