

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 12 (90 minutes)

ICON LEGEND

 WEB COURSE	 EXERCISE	 DIAGRAM	 READING ASSIGNMENT	 PROBLEM	 HANDOUT	 2009 BLM MANUAL	 QUIZ
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EVALUATING CORNER EVIDENCE – PART 12

Introduction

Welcome back. Before we start going down path of exceptions to the general rules and special cases I just want to recap a little bit of what I believe is important in the material that we have covered. I believe we have covered the role of the Secretary of the Interior in the surveys of federal interest lands including Indian lands. I believe we have talked about the significance of the Bureau of Land Managements Manual of Surveying Instructions.

I believe we have talked about the role of the local surveyor and the surveys on the Public Land Survey System. I believe we've talked about the importance of knowing the land status and proper jurisdiction in evaluating local surveys.

I believe we have talked about the inviolate rules of resurveys meaning the constitution and federal statute law. I believe we have touch upon the basic principles of resurveys all in the context of, how do we go about evaluating local surveys to accept or reject what has been done previous to us and subsequent to the original survey.

We touched upon the general rules of resurveys and now we're going to head down through the exceptions to the general rules for resurveys and specials cases involving resurveys. One of the things we need to keep track of is, how do we know when to apply the general rules, the exceptions to the rules or the special cases? And the best way I found to figure out which set of rules I should be reading about and depending on where we're at and the situation we have.

Three Original Survey Types

I've broken down into three categories three types of original surveys. First type where the general rules are generally applicable are where the surveys were faithfully executed and well monumented and those types of situations most of the corners are out there there's a good relationship between the corners and the general rules are written for those cases. How to proportion? How to sub divide sections?



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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Those are the general rules those are applicable when you have a faithfully executed and well monumented original corner.

The second type of original survey where you begin to migrate from the general rules to the exceptions to the general rules or where the original surveys may be were made faithfully but less than workmen like and or poor monumentation. And there are significant differences between the original record and measured values between corners. And there is use occupancy and improvements by the settlers located often without a rigorous application of corner evidence standards, without a rigorous application of restoration of lost corner procedures and without a rigorous application of sub division of section rules.

That's the second type and when you find yourself in those where generally there is the PLSS net on the ground but there's gaps in it or its obvious where the original surveyor stubbed out and so that the record may show things being perfect but the reality is they're far from perfect. Followed by the settlers coming in and trying to do business the best they could based on what they knew, they weren't surveyors but they were going to do business and they have done business and now you're coming in later 150, fifty years later to do a resurvey.

What does the law and the Manual talk about when you find yourself in that type of original survey scenario?

Then the third type is where the original surveys were fictitious, fraudulent or grossly erroneous. These townships will be evidenced by lack of corners. Where corners are found there are large discrepancies between the corners and there is use occupancy and improvements by the settlers located without a rigorous application of corner evidence standards, restoration of lost corner procedures and sub division of section rules. These latter ones are what I've categorized and what the Manual has categorized are special cases where the general rules are not applicable, the exceptions to the general rules really don't apply and then you have special cases.

So now lets talk about the second type where the original surveys were made faithfully but less than workman like or with poor

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monumentation and there are significant differences in original record and there is use and occupancy and in this case there has been local surveyors as well as local landowners attempting to locate the Public Land Survey System and now you're coming in to do a resurvey. Exceptions to the general rules. The Manual provides exceptions to the general rules where rigorous application of them, the general rules, would be contrary to the legal requirement to protect bona fide rights as to location. Earlier we reviewed about the definition of **bona fide rights**, good faith. And concept of bona fide in the Public Land Survey System is a key component to understand the principles underlying the rules and regulations governing the location of property rights and the public land survey system.

Let's go to what the Manual talks about good faith location rule exception. Manual section 6-34 and 6-36 the good faith location rule. It may be held generally that entry man has located his land by the good faith location rule if, such care was used in determining his boundary as might be expected by the exercise of ordinary intelligence under existing circumstances.

Good faith rule location, exercise of ordinary intelligence under existing circumstances, is that subjective or an objective criteria? Extremely subjective isn't it? This is boundary survey this is not geodesy. Good faith location referred to here in as satisfactory location of a claim or of a local point is when it is evident that the interpretation of the record of the original survey as related to the nearest corner existing at the times the lands were located is indicative of such a degree of care and diligence upon the part of the entry man or that of his surveyor in the ascertainment of his boundary as might be expected for the time and place.

The relationships of the lands to the nearest corners existing at the time the lands were located is often defined by his, meaning the settlers, fences, culture or other improvements. Lack of good faith is not necessarily chargeable if the entry man has not located himself according to a rigid application of the rules laid down for the restoration of lost corners where there are complicated conditions involving a double set of corners often of which may be regarded as authentic.

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There's two sets of monuments along the section next exterior, there's a completion survey in the interior that's an the example of what the Manual's talking about on that point. Second point, there is no existing corners in one or more directions for an excessive distance. Three existing marks are improperly related to an extraordinary degree. Improperly related meaning the record tells you there is a certain relationship, the reality, your resurvey relationship between the corners shows something extraordinarily different. Four, all evidence of the original survey which have been adopted by the entry men as a basis for a his location have been lost before the resurvey is undertaken.

How much weight to do give to the settler who was there 100 years ago when more evidence of the original survey existed than when you go there today? That's what they're talking about. Lack of good faith is not chargeable when you have these conditions. Section 3-92 good faith location and sub division of sections. This previous section that we talked about was generally about how did the settler or the local surveyor handle the work around a section exterior? Now we're going to talk about good faith location and sub division of sections. Lack of good faith is not necessarily chargeable if the entry man has not located himself according to a rigid application of the rules laid down for the subdivision of sections.

The law pre-proposes, pre supposes the fact taught by experience that measurements of land can be repeated with absolute precision and that that the work of no two surveyors will agree exactly. A decision to set aside previously located legal subdivisions must be supported by evidence that go beyond a mere demonstration of technical error such as in measurement or non conformity to strict adherence to reestablishment of corners or subdivisions of section rules.

The concept of technical error, don't confuse that with random error or accounting for systematic error, we're talking about boundary surveys here. A technical error not only is in measurement but also a technical error in, did he rigorously follow the method of proportioning, yes or no? Did they rigorously follow the rules for a subdivision of a section? If they didn't rigorously follow them were they close to following them? Was the difference a technical error? We're going to explore that train

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a little more as we go along and try to fill in some ground that you can stand on there we'll see.

The Manual goes on to say were the federal government obligated to open to adjudication the question as to the location of a particular tract or tracts over technical differences controversies would be constantly arising and resurveys and re-adjudications would be interminable. For proof of impairment a bona fide rights has to do with location. When making legal subdivisions as defined by **43 USC 7772**.

Some of the folks working in metes and bound states are dealing with blocks and blocks and metes and bounds descriptions that are off the PLSS there's a different set of rules. My context here is 43 USC 7772, impairment of bona fide rights as to location as it pertains to the Public Lands Survey System. The system, not Public Lands, the system. For proof of an impairment of bona fide rights as to location when making legal subdivisions there must be positive evidence of an intentional departure from the legal principles governing recovery of an original corner location, reestablishment and establishment of corner location or subdivision of section.

Now there's a lot said in there, who carries the burden the person that wants to over turn existing conditions or the person that wants to accept existing conditions? This seems to say the person that wants to over turn satisfactory local condition, satisfactory conditions to the landowner not to the surveyor whose learned the rules and techniques from a survey book. Satisfactory locations to the landowners now there are requirements there that landowners don't have free reign to do whatever they want, no that's not where we're going to either. We are trying to find where the law has found as medium of what is acceptable for the purpose of boundary adjudication and boundary location.

The other thing I wanted to point out in that section is there must be positive evidence of an intentional departure from the legal principles governing the Public Land Survey System. Note that the term didn't say the legal mythology, it's the legal principles. Its one thing to the statute describes the mythology and the Manual Survey Instructions fill out the policy with mythology of double proportioning or determining the true corner point from an on line

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witness corner. And that's the prescription but those rules, those premises have a underlining principle, stabilization of property corners minimize questions of title. A simplified system so citizens can do business without the fear of people coming along many, many years later and upsetting what they believed they owned.

The legal intent of stability of monuments and title to lands would've been met when the evidence of an extant subdivision of section survey indicates. An existing subdivision of survey if it indicates this, you probably can make a finding that the legal intent of stability of boundaries and titles have been met. Judgment call; but your call. When the local survey indicates on the subdivision of section the use of correct exterior controlling monuments, conformance to legal subdivision principles, reasonable accuracy standards for the time and place, sufficiency for identification of the legal subdivisions, are they marked? The work was conducted without fraud or gross error and followed by usage by landowners and others.

I want to go to the index, on March 13th 1805 less than ten years after the birth of the Public Land Survey System, Albert Gallitin Secretary of the Treasury, remember from 1785-1849 the business of the Public Land Survey System was within the Department of Treasury so the Secretary of the Treasury was in responsible charge of the administration of the Public Land Survey System. Albert Gallitin wrote to Isaac Briggs, surveyor of the land south of Tennessee, referring to the just enacted act of February 5th 1805 now codified at 43 USC 752. Quote the "The principle objective which Congress has in view is that corners and boundaries of the sections and subdivisions of sections should be definitely fixed and that the ascertainment of the precise contents of each is not considered as equally important. Indeed it is not so material either for the United States or for the individuals that purchasers should actually hold a few acres more than or less than they surveys call for as it is that they should know with precision and so as to avoid any litigation what are the certain boundaries of their tracts." End of quote.

These fundamental principles while addresses to yesterday's original surveyors also pertain to today's re-surveyors. It is far better for the landowner to know where his boundary is than

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exactly how much he owns. You have to remember if you go back to 1805 prior to February 5th 1805 when this was enacted the original corner will control how to subdivide sections, they had done a lot of surveys between 1785 and then they enacted the act in 1796 and there was some intervening acts of governing how to survey that are no longer on the books.

And then in 1803 Jared Mansfield became the Surveyor General in Ohio and Jared Mansfield had been out on the land in Indiana and Ohio about a year by now. And Jared Mansfield who superseded Rufus Putnam and was very acquainted with Rufus Putnam and they talked and Jared Mansfield had a over a year on the ground he had and Gallatin had an extensive amount of correspondence about issues and problems that were coming out based on the system developed to date. And when you go back and look at the correspondence Jared Mansfield and Albert Gallatin probably wrote the language for the act of 1805 and so to really understand what they were trying to get at, what was the problem trying to be solved?

You can read the correspondence between Mansfield and Gallatin and then you can see why that language was written the way it was written, what was the problems that they were trying to solve? And part of the problems they were trying to solve is surveyors are going in after the original survey and locating the patent lands in a multiple different ways. And they were disputing each other on measurements and starting from different points and it was evolving into a chaotic system. They were redoing the original surveys without thinking of the consequences of over turning existing acceptable conditions even as imperfect as they were the plan was perfect but it was implemented by men it was not going to be a perfect plan.

So what were going to be the controlling principles in this society and Gallatin and Mansfield were talking about them. These provisions recognize the fact taught by experience that measurements of lands can not be performed with precise accuracy and that the work of no two surveyors would exactly agree. Gallatin points that the very purpose of the declarations of the law was to obliterate any inquiring and contention in respect to survey inaccuracies.

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In petition 49 LD 583 Volume 49 land description page 583 decided by the Secretary of Interior in 1923. The Secretary of the Interior decision 1923 equivalent to a Interior Board of Land Appeals decision today. In Snibley, speaking to the same law, the Secretary declared “Doubtless the wise purpose of the law was to forestall and preclude vexatious disputes as to the actual area of land. If such transactions were not made final controversies would constantly be arising concerning patented lands and resurveys and re-adjudications would indeterminable.”

The original surveys and monuments of the Public Land Survey System form an enduring basis upon which depends the security of title to all lands acquired there under.

Resurveyor number two must exercises the greatest care so that resurvey will relieve existing difficulties as far as possible without introducing new complications. Moving corners relatively short distance is less important than maintaining the stability of boundaries. To me that helps me understand the underlying principles that I need to follow if I’m going to be a dependent resurveyor. And one of the basis’s here is implicit with this is original surveyors followed by use and occupancy and people doing business.

Now if you don’t have that set of conditions the rules will be a little different. If you have original surveys and nothing has happened and there is no use and occupancy then the general rules will be applicable even though you have distortion. But as soon as you put the layer of people attempting to make good faith location other property rights based upon what evidence of original surveys they could locate that was prudent and ordinary care under existing circumstances then the survey technique inquiry takes a different complexion.

The law gives these activities **repose**, repose, finality let it rest. The doctrine of repose is interweaved throughout boundary law in this country in fact it goes back thousands of years. A resurveyor needs to understand that doctrine and how it is to applied when they conduct a resurvey. Along this same line of reasoning the IBLA in a recent case in 1996 Longview Fiber 135 IBLA 170 said in some instances bona fide rights are protected where BLM departs from a rigid application of resurveying principles to ensure

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that long accepted survey lines are not disturbed so that property boundaries are stabilized and title is secured.

After a long period in time when acquired rights and boundary recognition have become established, boundary should become fixed. Lines long accepted should not be lightly cast aside for greater conformity to recent surveys. How old is old? How long is long? Of course there sort of begging the question and they're not going to say "We'll if it's been used and occupied for seventeen years and three months that's long and then you have to accept it if its shorter than that then you don't have to give it weight." No, it's always going to a sliding scale. And to begin a get feel or a sense so you don't feel like some arbitrary pull it out of the air kind of answer your going to have to read case law and IBLA decisions and land decisions that speak to the factual situations and also the BLM has had numerous case studies.

The BLM Case Study book is a good example of taking actual cases, applying their principles, the rules, the exceptions to the rules to actual case and coming up in the case of the BLM the Secretary of the Interiors opinion on the limit of the federal lands. That's good study that's what certified federal surveyors need to get a handle on when they're out there evaluating the local surveys.

Let's continue in what else the Manual talks about in good faith location rules exception. The Manual part 6-35 and 6-36 the extent of recognition given by neighboring claims to a local point used for the control of the location of claims very often carries with it the necessity for the consideration of its influence in the manner of acceptability of such locations under the good faith location rule. Manual 6-37 the surveyor should neither rigorously apply the rules for restoration of lost corners nor the rules for subdivision of sections without regard to effect on location of improvements nor accept the position of improvements without question regardless of their relation or ill relation to existing evidence of the original survey and the description contained in the entry.

Yes you need to know where the rules for restoring a lost corner would put a corner position. Yes you need to know how the rules to subdivide a section would locate a subdivision of section corner. Does your job stop there? Do you say "Well, that's the

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survey rules? I'll tie in a fence corner or use an occupancy line or county road center line and say "There I'm done. I've laid out the legal subdivisions." Well when you're working for the Secretary of the Interior when you're on Indian country that's not acceptable. You need to then go into a evaluate the use an occupancy. Let's flip it. "Oh well I'm just looking for the nearest fence corner or the nearest center line road intersection there I'll hang my head on that. I'm done this is easy."

No you have to go back and evaluate what is the source of that fence? Who built the fence? What did they know when they built the fence? What was the condition of the original survey when they built the fence? All of those things will go into coming into a conclusion, was it located in good faith based on existing conditions for the time and place it was? And if the conclusion is yes then the accepted would be to accept bona fide rights to reject it would impair bona fide rights as to location.

Between these extremes of whether to accept nothing or accept everything in terms of evidence in use and occupancy between these extremes will be found the basis for determination of whether improved lands have been located in good faith or not. No definite specific set of rules can be laid in advance until you author the book that writes about every possible factual scenario that ever be, there will not be a rule written down for everyone will there? The solution to the problem must be found on the ground by the surveyor it is upon his judgment primarily that the responsibility to resolve the question of good faith as to location.

Remember we talked about the Manual written for the federal authority surveyor and there were five federal authority surveyors, the Cadastral Chief, the draftsmen, the reviewer, the special instructions writer and the field surveyor. Which one of those is this part of the Manual talking to? The field surveyor, that cadastral chief will be dependent upon the field surveyor to resolve the question, to do the research to do the analysis to get to the bottom of to the best of your ability the question of good faith as to location. And I'm going to talk about the 1947 edition of the Manual which was the edition previous to the 1973 edition and the edition previous to the 47 was the 1930 edition of the Manual Surveying Instructions and prior to that it was the 1902 edition of the Manual of Surveying Instructions.

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Well between 1902 and 1930 two big events took place, what were they? One in 1910, Congress decided to move from the contract system to the direct system. In other words for general rules there's always exceptions there's always overlap in 1910 Congress enacted by law that instead of letting contracts to private surveyors to do the surveys on a public land survey system that the General Land Office will hire a surveyors those same surveyors and put them on salary to do the survey.

This is not the place to go into why they did that there is an extensive history and it's a fascinating read as to why it finally got to the condition that Congress has changed the law that was enacted in 1796. That's one major change between 1902 and 1930. The second major change is that nature of the work of the General Land Office was evolving from almost 100 percent original surveys to an increasing amount of resurveys. Remember the act of 1909, the General Resurvey Act gave the Secretary of the Interior authority anytime certain findings was made the Secretary could authorize a resurvey without getting special legislation from Congress.

Well during that period of the 1902 Manual to the 1930 Manual what the General Land Office did was that in 1919 they issued what often called advanced sheets, 1919 advanced sheets. In general terms these are chapters one through six of what became the 1930 Manual. And in 1928 they issued advanced sheets for chapter nine which is plats. So I'm going to make reference to section 4-14 of the 1947, 1930 and 1919 Manuals when you compare the language between the three Manuals there very close to be the same but there some differences.

The question to be determined is whether the position of the lands claimed, are occupied or improved is to be adopted under the good faith location rule? And rather is so adopted the claims thus acceptably located can all be properly protected by the dependent plan of resurvey. What should be the dependent plan of resurvey? Well it's tough to write the dependent plan of resurvey until you understand the conditions on the ground. If the position of any claim fails to qualify under the good faith location rule it may be disregarded as to the affect produced thereon by the plan of dependent resurvey. If the surveyor makes a finding that the fence

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corner was located with total disregard of the Public Land Survey System that's what they're talking about. It fails to qualify under the **good faith location** rule, don't use it.

On the other hand if these claims are held to be acceptably located under the same rule they may be adopted as the determining factor in the position of the missing corner or corners. What was your finding? Your finding will lead to your next step. You got to document your finding but I'm getting ahead of myself documentation is going to be so critical. If the claims are in such concordant relation to each other and to the identified evidence of the originals as to receive full protection by the dependent plan of resurvey the surveyor may proceed with full assurance of the adequacy of the plan. Of course what the Manual is talking to you there about is the special instructions aren't they?

Typically the **special instructions** are created in an office setting after the request for survey comes in then; remember there's five parts the Manual is written to five federal authority surveyors the special instructions writer and special instructions is another word for plan of survey.

The special instructions writer typically will research the records that are on hand the official records that are on hand they may or may not research the local records or just cream the local records, depends and then they'll write a plan of survey.

And of course one of the bottom lines in everyone of the special instructions to the field surveyor who's assigned under assignment instructions assigned to conduct the field work is if you find conditions that make these special instructions inapplicable don't apply them, contact the office for further instructions that's what the Manual saying there. Otherwise the question of other processes analogous to those of special case claim, independent resurvey, correction of conveyance document 43 US Code sections 1746 or Quiet Title Act must be considered.

What they're saying there is if you don't have a township that falls into exception to the general rule you don't have township that falls into the general rules you don't have a township that falls in the exception of the general rules then you have a special case township, come back to the office.

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More Special Cases

We're going to talk a little bit more about special case townships a little bit but let's continue to look at; do I have a township in which the good faith location rule is applicable? Cause it's a heck of a note to apply the right rule to the wrong factual situation. Good faith location rule isn't applicable to every township that has a few idiocentricity.

If two or more claims are acceptably located but are discordantly related to each other to considerable degree by virtue of irregularities in the original survey it will be clear that the general plan of dependent resurvey may not afford protection to such claims. In this case as before stated some other process must be adopted to protect the acceptably located claims. If the general rules aren't applied because you have a large discrepancy or irregularities in the original survey then you go to an exception to the general rule.

Manual 6-39 in cases involving extensive obliteration at the date of entry at the factual situation you should be able to answer the question every dependent survey and every local surveyor you're evaluating do you have this case? Was there extensive obliteration at the date of entry or selection, yes or no? That in itself isn't going to answer any questions but it is going to weigh on what answer you're going apply.

The entry man or his successor in interest should understand that the boundary of the claim will probably be subject to adjustment in the event of a resurvey. A general control applied to the boundaries of groups or claims must be favored as far as possible in the interest of justice, equal fairness to all and a simplicity of resurvey.

A claim can not generally be regarded as having been located in good faith if no attempts have been made to relate it in some manner to the original survey. What's the standard there of a claim making an attempt to relate itself to the original survey? Is it the standard of the best surveyor in the county in 1910 when that attempt was made? The average surveyor in 1910 in that county the worst surveyor in 1910 not even a surveyor a landowner an

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interested party most of the land subsequent to the original survey in improvements they built were located by settlers doing good faith efforts to locate and mark used what they were entitled to. Can they be wrong? Yes. Are they wrong because they don't follow the, if you laid out the PLSS grid today and they don't fall on top of it? No. Somewhere in between somewhere in between those extremes is the answers.

Cases will arise when the lands have been occupied in good faith but whose boundaries is occupied disagree with the position of the legal subdivision called for in the description.

For instance, this is a part of good faith and bona fideism that the surveyor is out of their realm. The surveyor deals with bona fide rights as to location, good faith location not bona fides as to "Well the guy thought he owned but he was in the wrong township."

No, an example of this one where they have occupied something in good faith but they may not fall under bona fide rights as to location is they located themselves to a mining claim corner thinking it was the section quarter corner. And then they laid out their forty acres and they followed it up by use and occupancy. In that type of factual situation the good faith location rule can not apply these are a not a survey issue but a title issue and relief must be sought through the process of amended entry, correction of conveyance document, quiet title action, tentative approval relinquishment or interim **reconveyance** or **relinquishment** to cover the legal subdivisions actually earned rather than through an alteration of the position of established survey lines.

A case of this character should be regarded as an erroneous location and precisely the same manner as if the question of resurvey were not involved. These are matters for adjudication by the BLM after the resurvey has been accepted and the plats filed in the land office. And that's another way of say that is the case when you do have a case where the person has occupied something in good faith but there is evidence that they did not locate it in any manner in relation to the original survey but there are occupying it in good faith followed by use and occupancy. That is the case where your role is to tie in their boundaries, their lines and return it on your survey.

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Now you have laid the facts along with your research and your documentation in front of the decision maker because at this point the survey process the **BLM Cadastral Chief** is not going to be the final decision maker of “Well, where do they own? Where is the limit of the federal lands?”

We’re going to continue to talk exceptions to the general rules, lets remember now we’re looking at a township that the original survey was may be faithfully made but a less than workman like manner and/or with poor monumentation and/or there are significant differences between the original record and measured value between the corners and followed by use and occupancy improvements by the settlers.

The second exception to the general the Manual has is satisfactory local conditions exception. Manual 6-41, “It is not intended to disturb satisfactory local conditions with respect to roads, fences and other evidence of use and occupancy. The surveyor has no authority to change a property right that has been acquired legally nor can he accept the location of roads, fences and other locations of use or occupancy as evidence prima facie of the original survey.” Clearly they’re just stating the law that the surveyor doesn’t have authority to change of property right to change the location of a property right. And also prima facie means “on the surface” the surveyor needs something other than just the fact that it looks like it was in the vicinity of a section line before you accept a fence or probably need a little more evidence than that.

Something is needed in support of these locations, talking about fences, roads, use and occupancy lines which may or may not be the best available evidence of the section line or subdivision of section line. Something is needed in support of these locations this will come from whatever intervening record there may be a testimony of individuals who may be a acquainted with the facts and the coupling of these things to the original survey. It’s a mystery you’re piecing together the pieces.

Many cases due care has been exercised to place the boundary fences and other evidence of use and occupancy on the lines of legal subdivision and locate the public roads on the section or the subdivision lines. These are matters of particular interests to the adjoining owners and it is a reasonable presumption that care and

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good faith would be exercised with regard to the evidence to original survey in existence at the time. Do you have to prove this fence corner or do you have to disprove this fence corner? Who carries the burden? Well the Manual there in this part says “It is a reasonable presumption that care a good faith would be exercised with regard to the evidence of the original survey in the existence at the time.

The burden of proof to the contrary must be borne by the party claiming differently. Knowledge regarding the construction of a purported property line fence can be obtained from long time landowners and community members and could provide positive evidence whether they were located in conformity with the good faith location rule evidence gathered.

A property corner or a user occupancy position should exercise a regular control upon the retracement only when it was placed with due regard to location of the original survey or agreement is so close as to constitute the best available evidence.

More State Law Issues

Rules of the state laws and the state court decisions as distinguish from the rules laid down by the BLM. The latter applicable to the public land surveys in all cases. Under state law and matters of agreement between owners, acquiescence or adverse possession property boundaries may be defined by roads, fences, use or **occupancy lines** or survey marks disregarding exact confirmation with the original survey subdivision lines. These may limit the rights as between adjoining owners.

Of course what the Manual is talking about there is alerting the surveyor to have his or her eyes open to the possibility that property rights have vested to a location that is contrary to the legal subdivision lines. And the state law will govern whether that in fact has happened and then to recognize that. Just don't accept every fence corner you find out there until you've researched as best you can evidence of the original survey and evidence of the construction of the fence after you've done that research then you can begin to come to some conclusion.

In cases where the federal government has acquired interest and

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rights have vested to a location by state law prior to the acquired interest disregarding exact confirmation with the title lines or original legal subdivisions the resurvey or must not impair the location of such rights. At the beginning of that they said in the case of the federal government well I'm going to suggest that there are probably exceptions in the case where a federally recognized tribe has acquired interest. Or in the case where an individual member of a federally recognized tribe has acquired an interest and the rest of the sentence would still read true.

The **conflicting title** lines and ownership lines are surveyed and monumented and the conflict area is returned upon the plat. Each intersection of conflicting boundaries is determined upon ground and recorded in the field notes. Now you are recording the facts. The **returns** will describe and show the limits of federal ownership and the limits of the federal title. Ownership and the in some cases aren't identically in the same location. The survey field notes will document the findings of facts duly supporting the conclusion arrived at. Documentation, Documentation, Documentation. You already have recognized you have an exception to the general rule if you're not going to apply the general rule you better document. Why you're not applying the general rule and what exception to the general rule you are applying? And what facts on the ground makes you're exception applicable to this set of facts?

That's got to be written out not only to get your survey agreed to by the BLM but that resurveyor thirty years from now, fifty years from now.

Local Points of Control

We talked the good faith location, satisfactory local conditions the third exception to the general rule that the Manual speaks to is local points of control exception.

When the retracement shows that the principle resurvey problem is one of obliteration with a comparative absence of large discrepancies. That is the official survey had been made faithfully, the official survey was followed by local use and perpetuation then the official survey can be reconstructed or restored, the official survey being the original survey, as it was in the beginning based

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upon identified existing corners of the original survey and other recognized and accepted local points of control.

Manual 6-45 thru 6-49 local point of control “The acceptance of duly qualified and locally recognized points of control should aid materially in obtaining stability of the public land surveys.” We’re looking at evaluating local surveys and we’re looking at presumptions, burdens, and standards.

Locally recognized points of control should maintain simplicity of the resurvey, don’t add unnecessary complexity. Should avoid the conflicts that would differ only slightly in position in this manner a flexibility will be introduced in the plan of the re survey at least to the point of protecting satisfactory local adjustments.

The surveyor can not however abandon the record of the original survey in favor of a indiscriminate adoption of points not reconcilable with it. Indiscriminate adoption of points “Well the client didn’t pay me enough to do it right to do my full research so I just accepted local conditions. Or the client didn’t pay me enough to do it right so I didn’t research the fences I just proportioned it in. Or I set the center quarter at statutory position.” Do you suppose the court of the IBLA would find that an indiscriminate adoption of points especially if you documented what you did, I think that’s what they’re getting at there.

Among this class of evidence forming the basis of the recognized position of land boundaries are recorded monuments established by local surveyors duly agreed upon by the interested property owners. The position of boundary **fences** determined in the same manner and the lines of public roads, drainage or irrigation ditches and timber lines when intended to be located on the sub divisional lines. The local record in these cases when available may furnish evidence of the original survey.

If a point qualifies as above the presumption is strong that its position bears satisfactory relation to the original survey and its correctness can not be successfully disputed. Sounds like the Manual is saying you have to disprove a local point of control that has these characteristics. Points which can actually qualify may be accepted as the best available evidence of the true position of the original survey. Once it is accepted in the course of an original

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survey a local point of control has all the authority and significance of the identified original corner. Many situations will arise where we'll be manifest that is better to accept a position based upon local interpretation rather than to disturb satisfactory existing conditions.

Rigid application of the survey rules versus acceptance of local conditions by landowners. The surveyor will endeavor to avoid disturbing the position of locally recognized lines when such action may adversely affect improvements. At the same time the surveyor must use extreme caution in adopting local points of control. These may range from authentic perpetuations of original corners down to marks which were never intended to be more than approximations. The age, position and degree to which a local corner has been relied on by affected landowners may lead to its adoption as the best remaining evidence to the position of the original corner.

I want to talk about a couple of things there we've covered a lot of ground. Let's remember we're reading from the Manual Survey Instructions, who's the intended audience for the author of the Manual of Survey Instructions? When they say "the surveyor will endeavor", who are they speaking to? They're speaking to the surveyor that's going to conduct a federal authority survey but also agreed that private licensed land surveyors will be surveying in situations where the Manual is applicable, is the controlling rule.

So in that case the surveyor will endeavor, example on twelve, in that case that is the private surveyor will endeavor to avoid. The other thing to remember is land status in general terms when the Manual is talking about this type of guidance the presumption is they're on a boundary that has federal interests' lands.

Non-Federal Interest Lands

Now if you're on lands that is no federal interest on a boundary with no federal interest or a section with no federal interest or multiple sections of proportioning with no federal interests a different set of rules may kick in. But if you're survey will affect federal interest lands these rules may govern.

So you've got to understand the land status to know which rule

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book to go to and you've got to understand the context and the audience that the Manual is writing for. But I'm going to suggest if you're a certified federal surveyor and your client is a federally recognized tribe or a member of a federally recognized tribe there is going to be federal interest land involved. Now that doesn't mean that there may still be cases there where the Manual is not applicable.

If it's about a housing development with a subdivision and now you're dealing with internal lots inside the subdivision clearly the Manual is probably not going to be the definitive guide. But if you're dealing with particularly portions of the Public Land Survey System Manual will be a guide and I'm going to suggest all the use and occupancy out there in Indian country is relevant here and is being taught to you the surveyor of what to look for so you can serve your client. So the Secretary can serve the beneficiary trust individuals out there.

When a local reestablishment of a lost corner or a local establishment of a minor sub division of corner has been made by proper methods without gross error it will ordinarily be acceptable. Proper methods, gross error ordinarily be acceptable.

Proper method, a rigorous application of the survey rules don't read it that narrow folks. Gross error "Well gee by my RTK system is gross." Well what was gross in 1912 in the Helin Wind River reservation? For the time and place it was done when monuments of unknown origin must be judged on their own merits but they should never be rejected out of hand without careful study. The recognition of the principle that the restoration of corner may be influenced by the position of one or more existing claims warrants within suitable limits the acceptance of an unofficial determination which would not necessarily agree with that resulting from a rigid application of the general rules laid down for the restoration of lost corners or subdivisions of sections. Thus where the **bona fide rights** are found to a definitely established.

Bona fide rights are rights located in good faith are found to have been definitely established with reference to location of lands by existing evidence, not every possible evidence by existing evidence, age plays a factor. By existing evidence of the original

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survey the theoretical point determined by the general rules will be set aside in favor a nearby duly qualified corresponding point the position of which has been agreed upon by the adjoining property owners. Such a point may then recognized as the best available evidence of a true position for the corner.

The burden of proof to the contrary must be born by the party claiming differently. Who carries the burden? The underlying principle of stability if you're advocating upsetting the stability you carry the burden. And carry it, if that that's appropriate carry it, document it and do it. All such acceptations to the general rules adopted during the resurvey are subdivision of section must be fully documented on the plat or in the field notes. So important documentation, you got to leave your foot steps.

I want to accept what you've done, give me reasons give me handles so I can accept what've done. I want to just go back to something else that was touched upon. It's all about context, its all about the Manual as a whole. You talk about intent. The four corners of a deed, well the four corners of the Manual, and the four corners of the statute. The principles underlying the reason for the statute. Fourteen is an interesting one, the age, position and degree to which a local corner has been relied on by affected landowners.

A sliding scale if you're looking for an equation is probably not going to be there a sliding scale. Age, how long has that local position been in place? The older it is in general terms, in general terms there's an exception in every case, in general terms the older it is the more weight you're going to give it to. The newer it is, if it was set last week, how could bona fide rights vest to it in a week? Maybe they can in some extreme circumstances but you see the drift. Age, use; how has it been used? Who has used it? To what degree?

Clearly the more extensive the use, the older the use, the more obvious the use the more weight you're going to give it. And again the presumption is because fences and roads and use and occupancy are important to the settlers the presumption is they located in good faith in some manner to the original survey. Now you can always prove the contrary and if can prove it, prove it. Age and use. Even if it wasn't a local corner and you've got

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evidence that he didn't the rules to subdivide the section properly and be careful here I'm not just saying excepting the first surveyor out there original survey, I'm not saying that. But the longer it has been used the more its been used, how its been used the courts and the Manual is going to give guidance to you to generally accept it. Age, use and position; how far is too far?

How far is too far? Well there is no answer to that but the older a position has been the more it's been used the further out of its mathematical position that the courts will accept it as bona fide rights as to location and to locate it somewhere else that you would be found to have impaired. The newer it is, the less use it has and may be even a relatively tight for a position there may be no rights vested to it. Another example is " Yeah you've got this very old, old rusted old pipe out there your not sure where it came from it's in the vicinity of a original corner or its in the vicinity of a legal subdivision corner but there is absolutely no evidence of use to occupancy." Now pick that same rusted old pipe and put it over in the next section and it's been followed by extensive use and improvement, you see the two differences?

One you may be inclined to accept the other seemingly the same arithmetic, the same relationship to the other existing evidence to the original corner point but there is no use and occupancy. There is no set answer. Those are the three exceptions to the general rules and knowing when those exceptions are applicable is a big part of our job.

Now I want to, now again there is no bright line between these conditions in these townships to tell which set of rules are applicable. You know that it's a constant grey across the spectrum of the type of townships original surveys that we have to survey behind. I want the make the transition from the exception to the general rule kind of townships to what I call the third category of townships where the original surveys were fictitious, fraudulent or grossly erroneous evidenced by lack of corners or where corners are found there are large discrepancies between the corners, between the record and measured, and there is use occupancy and improvements by the settlers.

When you find yourself in those types of factual situations you've got to go a little deeper into the Manual. Corner positions based on

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the protection of bona fide rights as to location, **34 USC 7772** “the administration, settlement and usage of the public domain was and still is heavily influenced by the bona fide doctrine.” Bona fide is Latin for “Good faith” what is or is not bona fide rights as to location is usually stated in the form of a question. Did the claimant or entry man act in good faith when locating or marking the claim, entry or improvement? Did he or she make a good faith to follow the public land laws and policies?

Were the actions made in good faith without gross error, fraud or deceit? In some sense you are the judge in your quasi judicial capacity. And I suggest when you’re in these factual situations that I just described, these are the type of question you want to be framing. And then if you ask the right question then you know what evidence to go gather to prove or disprove the question. The application of bona fide rights as to location, I always use the term bona fide rights as to location which means the where- w-h-e-r-e.

The surveyor deals with bona fide rights as to where bona fide rights are located, this is within the realm of the surveyor. The bona fide rights have to the what, what is the interest own in a parcel? Or the who, the bona fide rights as to who owns the parcels those both have bona fideism involved is not within the realm of the surveyor those are in the reality specialists and attorneys.

The application of bona fide rights as to location establishes that bona fide rights as to location does not exist in lieu of acceptable evidence of the original corner in a different position. Somebody in 1930 declared the interior section corner lost they double proportioned it in. Somebody comes along in 2007 and find the original section corner in a different location. But in 1930 the settlers were located based on that erroneous resurvey monument. Can bona fide rights vest to an erroneous resurvey monument?

Well you’ve got to ask yourself two things, what was the authority of the surveyor? Was it a federal authority resurvey, a state authority resurvey or a no authority resurvey? I’m going to get to the bottom answer of this but I’m going to lead down a path of the things you need to actually ask. The application of bona fide rights as to location established that bona fide rights as to location does not exist in lieu of acceptable evidence of the original corner and

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the different position. And the exception to this may be in the case of an official action by the federal government that represented a corner position as an original corner by mistake followed by long acceptance and usage by local landowners and others.

The Public Land Survey System has not had ninety-year old erroneous General Land Office resurveys that's a fairly new phenomenon. What is the guidance given to the resurveyor today when you have that factual situation? In the current Manual, what guidance if any should be the next edition of the Manual? In addition the following conditions warrants the protection of bona fide rights as to location with the possibility of departure from the general rule.

These are warrant the protection of bona fide rights as to location but to protect the bona fide rights you as a surveyor are going to have to depart from the general survey rules. In some cases rights will trump rules some cases they won't.

When there exists gross error or inadequate original evidence to the extent that the application of the normal methods for restoration of lost corners or subdivision of section will impair bona fide rights as to location as evidenced by usage or improvements. Gross error, inadequate original evidence. Another condition where you may depart there are complicated conditions involving a double set of corners both of which may be regarded as authentic which results in irreconcilable conflicting evidence of the original corner positions or in conflicting positions when these positions are used for the restoration of lost corners or subdivisions of sections.

There are complicated conditions involving a double set of corners. How much more complicated can you get when you go out there and the record says there is one section corner and there's two? Both of them are official one of them may be original one of them may be an official resurvey. I can't think of a much more complicated situation both of which may be regarded as authentic as the government's representation of where the government thinks its land begins and ends or the government's representation of the section corner.

And they are conflicting and then people have used one or the

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other. That's what these general rules, these exceptions to the general rules and these exceptions to special cases are about.

I touched upon and I'm going to have to leave but I touched upon the area where I talked about a ninety-year old erroneous GLO resurvey monument followed by somebody found the original monument of which all the patents are based on the original monument. And then followed by improvements meaning somebody's built a house and now when you locate to the original monument the house is across the boundary.

Whether you can have that where that resurvey the erroneous resurvey is a local resurvey or an official resurvey. Where the improvements are federal improvements across on private lands or private improvements across federal lands. These are so complex and hopefully rare that the recommendation is that when you discover that you are one of those factual conditions you should immediately contact your BILS , the Bureau of Land Management, Indian lands surveyor in that region and/or the Chief Cadastral surveyor for the state office in the jurisdiction your working in because you have an extreme case that is very complex and probably no single surveyor is going to be able to resolve it anyway.

Its going to take a team effort an interdisciplinary effort to sort out and settle if that's right word where people's property rights are legally based upon this conflicting factual situation. So I'm not going to go into the detail of that with you today other than recommending that you recognize when you have that situation and seek consultation.

I want to talk about are not applicable in the townships where there's adequate control where the grid of the Public Land Survey System is land down on the ground and is easily and readily apparent. Special cases that I'm going to talk about these are not applicable when you have that or when you get into the exception to the general townships where the grid is torn a little bit there are gaps, disconnects but for the most part the grid is kind of there and people have pieced together and been doing business that's exception to the general rules.

Now that third type is where the grid maybe never was really laid

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down on the ground or it was laid down on the ground in a manner with total disregard of how it was supposed to be laid down. Special case claims, fictitious fraudulent or grossly erroneous original surveys the record field notes and plat representing the original survey are fictitious fraudulent or grossly erroneous beyond any tolerable limit.

Now you know to make a finding like that somebody is going to have to do extensive amount of resurvey, extensive amount of searching for original evidence, searching for subsequent local activities before you can even begin to make a finding like this original survey was fictitious, fraudulent or grossly erroneous. And in the township there is use or occupancy, boundary lines or other improvements so the special case is when you have this extreme original survey and you have use and occupancy.

People have made an effort to do something in almost impossible situation. Do you suppose coming in fifty to a hundred years later and say “Oh, sorry landowners you didn’t do it right, you’re wrong. Your property lines are wrong, your fences are wrong.” You think society, the law and the judges will tolerate that? I don’t think so. Now you can have the same type of condition of the original survey and there’s no use or occupancy. Well that’s a totally different situation, you’ve changed the facts. Here were talking about those special case townships where there have been use and occupancy located in good faith.

Your question is has bona fide rights vested to those locations? Then to resurvey and mark those locations in the remaining land in many cases will be federal lands. Special case resurveys provides methods adapted to areas of considerable alienated lands, patented lands or considerable federal lands. Special cases are more applicable is where you have a township with a few patented parcels or a township with these survey conditions with just a few government parcels. The exception to the general resurvey rule and special cases applicable when it has been determined not to identify the alienated lands by tract segregations.

Tract segregations is concept in independent resurveys we’re going to talk about independent resurveys but clearly what I’m talking about here if you’re finding yourself in this type of situation you’re going to want to talk to the Cadastral Surveyor

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and your BILS. These special cases resurveys will be applicable when there will be no projection of new subdivision lines and the original plat will not be cancelled. Special case resurveys are applicable where the original survey can not be identified with any degree of certainty in accordance with the representations of the approved plat in field notes or the prevailing conditions are such that strictly restorative when applied as an inflexible rule between monuments are adapted local corner positions are either inadequate or lead to unsatisfactory results.

That's where I'm going to stop my lecture on special case resurveys. Clearly if you find yourself in one of those types of townships you have an exception to the general rule, you'll have a special case resurvey but the Manual does treat them. And when look through the remaining of the outline you'll see where the Manual has talked about these situations.

Next Edition

I'd like to step back here and just two things I want to do to wrap up. One, I want to share with you while I have this opportunity on this screen here I've shown the next edition website. If you want to follow the activity of the development of the next edition of the Manual of Survey Instructions that top website address there will get you to the next edition website.

That way you can follow the development of the next edition of the Manual. We'll post activities, we'll let public and everybody know when it is time for comments that sort of thing. And general presentations cause there will be presentations on the development of the next edition of the Manual as well as talking about the content of the next edition of the Manual.

Also that address on the bottom there is a good source of patent records. If patent records and trust allotment, trust patents as well as fee patents that lower address is a good one. Let's see if we did it or not.

Let's look back at our objectives when we started out in local surveys. In this course we have described what a local survey is and the importance of obtaining records of local surveys. We have described how the status the lands may influence the evaluation of

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local surveys. We have compared and contrast the authority of the local surveyor with authority of an official federal authority surveyor. We have recognized the proper jurisdiction and applied the controlling law regulation policy when evaluating local surveys. We have described the significance of United States Code Title 43 sections 7772 with relationship to evaluation of local surveys.

We have recognized situations when nothing can be done by any BLM surveying procedure to correct a conflict caused by a local survey. So that's the end of my discussion on local surveys and evaluation of local surveys. I hope you found some information that will be useful to you. I hope you found some tips where you can go to further educate yourselves and I want to wish the certified federal surveyors good luck and welcome aboard. That's the end of this video lecture, thank you.