

## 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









### COURSE INSTRUCTOR(S):

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### VIDEO LECTURE TITLE:

Evaluating Corner Evidence – Part 9 (59 minutes)

#### ICON LEGEND

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| WEB COURSE  | EXERCISE  | DIAGRAM   | READING ASSIGNMENT  | PROBLEM   | HANDOUT   | 2009 BLM MANUAL   | QUIZ  |

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### Introduction

Hello, my name is Bob Dahl. And I'm here to talk today about local surveys as they relate to the certified federal surveyor program. The certified federal surveyor program, or CFedS, is part of the Secretary of the Interior's fiduciary trust model.

Before I get started in the content of the course, I'd just like to share with you a little bit about my background and who I am and my experience. I learned what a plum bob was in 1969 for the forest service doing p-line surveys, timber access, and the Oregon coast. I surveyed for private surveyors in the forest service for 3 or 4 years as a technician. Then I went to Oregon Institute of Technology. I have a Bachelor's Degree in Surveying. I'm licensed lands surveyors in Oregon, Washington, and California. I'm a certified water rights examiner in Oregon.

My first job with the Bureau of Land Management was in 1977. Until 1997, I did dependent resurveys in Oregon, Washington and California. That was my goal to be as good as dependent resurveyor as I could be. Then I had an opportunity, I applied and was selected to be on the staff of the Chief Cadastral Surveyor, Don Buhler in Washington, DC. And that's where I'm currently am assigned to the BLM's headquarters in Washington, DC.

Among my other duties, one of my duties is I'm currently working on the development of the next edition of the Manual. So, that's a little bit about who I am and where I'll be coming from when we talk about this today.

### Course Objectives

Let's get into the objectives of what we're going to try to accomplish today and we'll see how it goes. All right, local surveys, the objectives, upon completion of this lesson the student should be able to:

1. Describe what a local survey is and know the importance of obtaining records of local surveys.
2. Describe how the status of the lands may influence the evaluation of local surveys.
3. Compare and contrast the authority of the local surveyor with the authority of an official Federal Authority Survey.
4. Recognize the proper jurisdiction and apply the controlling law



**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 this study guide.

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regulation policy when evaluating local surveys.

5. Describe the significance of **United States Code Title 43, Section 772** with relationship to evaluation of local surveys, and
6. Recognize situations when nothing can be done by any BLM surveying procedure to correct a conflict caused by a local survey.

That will be our objectives today. There was lots of terms in there and we will spend time defining what those terms mean because we have to make sure we have an understanding of how we're using the terms and that way we can communicate better.

### “Local Surveys” vs. Federal Authority Surveys

I'm going to talk about an introduction here and then a little bit about definitions of local surveys. The purpose of this presentation is to discuss the role that local surveys play in the establishment and reestablishment of monuments that define the boundaries of areas in which there is a federal interest.

You will hear me today use the term federal interest quite often and I will define it more clearly as this course goes along. General terms, federal interest, any land with a federal interest including Indian land with a trust status, or a restricted fee status, or a tribal fee, or individual Indian fee status. But again, we'll get into that in more detail as we go.

Let's get into the definitions of a **local corner**. Some of these terms I'm going to be talking about is a glossary of BLM surveying and mapping terms. It's a publication that the cadastral survey puts out. It's on the BLM national website, cadastral website, and many of the terms that I'll be using will come out of this and this is a good handy definition book. Let's talk a little bit about local surveys and what I mean by using the term.

In general terms, there's three types of surveys. There's a Federal Authority Survey. There's a State Authority Survey. And there's a No Authority Survey. These are my working definitions, these are not a legal definitions by any means, but in my years of surveying on the public lands, the federal lands, Indian lands, private lands, this is a rule of thumb that has helped me in classifying the type of survey I'm looking at because I need to know what type of survey I'm looking at before I can evaluate it such as a local monument. How much weight should I put on it?

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So, three types of survey, **Federal Authority Survey**, and I'm going to be very specific when I use the term Federal Authority Survey. A Federal Authority Survey must have every one of these ingredients. It must have a request for survey. There must be a special instructions approved by the appropriate official. There must be assignment instructions to a surveyor. There must be field work including monumentation. There must be preparation of field notes and/or plats as appropriate. There will be a review of those field notes and plats. There'll be approval of the final field notes and plats by the appropriate official, and there'll be the official filing in the federal official records. To have a Federal Authority Survey, often times called a cadastral survey or an official survey; you have to have every one of those ingredients. If you're missing any one of those ingredients, you do not have a Federal Authority Survey. I'll put the importance of the significance of a Federal Authority Survey into the discussion as we go on today.

Second type of survey, because I'm looking at a survey on the ground and I'm going to evaluate it, I'm trying to figure out how much weight to put on it. **State Authority Survey**, any survey that meets every state rule, law, regulation at the time it was done. When a survey has all those ingredients, then it rises to the level of a State Authority Survey.

Third type, **No Authority Survey**, that's easy. The type of survey that if it's not a Federal Authority Survey, it's not a State Authority Survey; it's No Authority Survey. So, one of the processes you're going to do when you evaluate local surveys is you're going to want to be able to classify what type of survey you're looking at. Now, just because you know what type of survey you're looking at doesn't mean you know the answer yet. But it's one of the questions in most of the cases you want to find the answer to.

Now I'd like to talk a little bit about perspective and overview as we go along here. Here we go. The function of the local surveyor begins when employed as an expert, to identify lands which have passed into private ownership. Now, I'm starting to build a background for you of how I begin to think about and process local surveys or the evaluation of local surveys. And this is some perspectives and overview that I have found to be helpful.

The function of the local surveyor begins when employed as an expert to identify lands which have passed into private ownership. This may be a

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simple or a most complex problem depending largely upon. One, the condition of the original monuments as affected principally by the lapse of time since the execution of the original survey.

What kind of conditions is the original monumentation? Two, the use and occupancy of the land, yes use and occupancy is relevant to the evaluation of whether to accept or reject a monument or a point that is purportedly representing a property corner. Three, the degree to which local surveys conform or do not conform with law and proper procedures. You want to underline degree. That's not an absolute. Degree, there will always be sliding scales. Four, the presence of any nonofficial survey administered by federal agencies or employees, what I'm getting there is circle nonofficial federal agency.

If it's not a Federal Authority Survey and it's not a State Authority Survey it's a No Authority Survey. If a federal agency did a survey and it did not have all the ingredients of a official survey it's not a Federal Authority Survey. If that same federal agency did not do all that was required for the date and time it was at of meeting the state requirements it's not a State Authority Survey. Then it falls into the category of No Authority Survey but that doesn't mean that it has no weight. Don't connect that dot. It may be very relevant and you may have to give it weight, but just because the surveyor was a federal employee doesn't make it a Federal Authority Survey. That may or may not be relevant to your evaluation.

Perspective and overview, I'm going to talk a little bit about the local surveyor in the federal context. The General Land Office and the BLM has been working behind local surveyors for many, many years. Most of this country was surveyed by local private surveyors often as contractors for the General Land Office. And most of the work today in America is done by private and local surveyors. The BLM itself has 260 cadastral surveyors. Not all of them are out running crews every day. What is there? 50,000 licensed land surveyors in the country today? Of course, not all of them are out there doing boundary surveys. Most of this country has been surveyed by local surveyors, and most surveys today are being done by local surveyors. It is very relevant to the federal authority surveyor and to the private surveyor to understand where in the context of the law, how our legal system has evolved with this set of facts.

Let's explore that a little bit. The work of the local surveyor usually includes the subdivision of the section, the official unit of subdivision into the part shown upon the approved plat. In this capacity, the local

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surveyors performing a function contemplated by law, he can not properly serve his client or the public unless he is familiar with the legal requirements concerning the subdivision of sections.

In the event that the original monuments have become lost or obliterated along the section exterior, because generally the federal government generally just surveyed the township exteriors and the section exteriors in general terms, there's always exceptions. And then they patented the legal subdivisions the subdivision parts of the interior of the subdivisions. The federal laws, Congress never intended for the federal government to actually survey and monument those legal subdivisions, those patent corners, inside the section.

The system always has contemplated that the county or other local surveyors would do that type of surveying. This system allows for that. Now we've got to decide how much weight, how much importance of value, is put upon that activity by our legal system, by the surveyors.

In the event that the original monuments around the section exteriors have become lost or obliterated, the surveyor cannot hope to effectively cover said corners without a full understanding of the record concerning their original establishment. Do you know how original surveys were conducted? If you don't know how they were conducted you're going to have a difficult time determining how to reestablish them, how to look and search for them, and evidence of location after their original establishment. Did somebody come along after the original survey and do some activity?

Nor can the surveyor hope to legally restore the same or legally weight evidence of subsequent location use or occupancy. Properly weight evidence of subsequent location use or occupancy until he or she has mastered not only the principles observed in the execution of the original survey and later local practices, but also the principles upon which the courts having jurisdiction over such matters have based theirs.

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### Following Footsteps

We often hear about what one of the things you want to read in there is they're telling you, you got to follow the footsteps of the original surveyor and I'm going to suggest that you have to follow the footsteps of any subsequent surveyor or person that is perpetuating or purported to perpetuate the original conditions, the original corners, the original lines, following in the footsteps. The other thing that I think there's two sets of footsteps that we as surveyors have to follow in.

One is of course the traditional one that we've been brought up on following the footsteps of the field surveyor. Learning about how he was supposed to do his work. How she did her chaining and got her meridian, that sort of thing.

The second set of footsteps that we have to follow is, who is going to evaluate your survey to determine if you did it right? What's the court of competent jurisdiction for the area where you're surveying? A federal court, a federal judge, a state court, state judge, for example. Where will a federal judge go to? What will they read? What will be their guidance when they determine and look over the shoulder of you and your survey plat in a local corner situation? Where will that judge go for guidance? That's the second set of footsteps that we have to get smart at. We have to understand those, where's the judge going to go so I can actually get out ahead of him so when he comes along to look over my shoulder to evaluate, he's actually walking in my footsteps because I have done the research of the law.

I have gathered the facts and I've brought them together and documented them in a manner that makes sense to an attorney, a landowner, and a surveyor, and ultimately the judge. Two sets of footsteps.

Along that same vein, we need to know what type of monument we're looking at, in general terms. In general terms, there's two types of monuments. And again, this is about evaluating a local monument. Let me just back up a little bit, evaluating a local monument.

For my purpose, when I use the term local monument I mean any monument that was not established during a Federal Authority Survey; three types of surveys, Federal Authority, State Authority, No Authority. So, for this discussion when I use the term local survey, I'm talking about any survey or any corner that was established as not being a part of a

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Federal Authority Survey. Two types, federal monument, original monument, federal monument, or local survey, local monument.

And of course I'm coming to you from the perspective of a federal authority surveyor. When I receive special instructions from my cadastral chief from the state office, and I'm to go out and conduct a survey along and identify the limits of the federal interest, I'm going to keep track of the evidence that I'm gathering. Is it part of the official federal record or not? And then that helps me put the evidence in certain categories and it helps me as we get into weighting that evidence.

What is an **original corner**? Original corner is a monumented position which when recovered contains zero error. Examples may be an original section, one quarter meander and witness corner, line tree and witness point established during an official Federal Authority Survey Monumented corners of a cadastral original survey in place prior to entry being made or patent being issued. A monument in place by the official and approved by the appropriate official prior to the issuance of a entry, paper, or patent is an original corner. It contains zero error and we'll get into why that is.

No matter how far out of its platted position, it is correct. The principle behind this are the stabilization of property corners and lines, and a simplified system intent upon minimize questions and title. I'm going to elaborate on those principles as they go through, but they will come out again, and again, and again. I'm going to get into and we're going to walk through where the concept of original corner, and zero error, and correct where it was established, came from and how that has impacted us today.

What is a **resurvey corner**? There's two types of corners, original corner and a resurvey corner. I want to give one more example of an original corner. Step back into just a private practice residential subdivision. An interior corner, an interior lot corner, a corner to a lot corner, interior of a residential subdivision has the characteristics of an original corner. It was set prior to the approval of the plat. It contains zero error.

The legal description is based on its location, not the plat. When you go out and find it, zero error. Original corner. What is a resurvey corner? A monumented position which can contain error. Examples would be a reestablished corner, center one quarter, and one-sixteenth section corners; a monumented corner of a local or cadastral survey not in place prior to entry being made or patent being issued. Be very clear. You can



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have an official survey that is a resurvey meaning it can contain error. What was the characteristic? It was put in place subsequent to an entry being made or the patent being issued.

A component of the evaluation process of acceptance or rejection of a resurvey corner is how far it is from its platted or theoretical position. It's error based on your, because you're resurveyor number 2 because the first resurveyor is resurveyor number 1, you're resurveyor number 2, is how far it is from its platted or theoretical position. It's error based on resurveyor number 2's numbers. So, when I'm looking and evaluating a corner position or a monument, am I looking at an original corner or a resurvey corner? I need to know that.

The definitions I gave you are not necessarily legal or official. They are working definitions that I have found. There are always exceptions to the rules. But I think if these definitions have helped me simplify this clutter that we have when we get into these complex situations where we have a hundred years of use and occupancies, and surveys, and resurveys. We have to begin to break it down into its component parts and then from that we can come back and hopefully come to a conclusion, often times called our opinion. Enough about original corner and a resurvey corner.

And we did talk about the perspective of given to the local surveyor because the system has always set up that the local surveyor will play a part. But, most of the local surveying that's done in the public land survey system, (PLSS); most of the local survey activity is done in the resurvey manner, isn't it? Because the local surveyors didn't do the original surveys. Local surveys almost exclusively are resurveys; they can contain error. What's the process to evaluate?

Another thing that we need to know when we talked about what kind of corner do we have, is we need to know about the land status. The land status will determine the court a competent jurisdiction, federal court, state court, or federal court applying state law. I need to know which set of rules I should be surveying by, or what is the court a competent jurisdiction? Is my survey going to be drug into a federal court or a state court? Which set of rules will be applied? State rules or federal rules?

And I'll make some distinctions in cases where federal rules are different than state rules that may impact and affect your conclusion in terms of is, that the corner?

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### Land Status

Three types of land statuses, I got to know the land status to know the jurisdiction, three types of land status. One, **public domain land**, two, **acquired lands**, three, **patented lands**. Now let's step back a little bit, again, working definitions for survey and surveyor purposes. These aren't legal definitions for title purposes, for management purposes, for which code of federal regulation is pertinent because it's a wilderness area. No. This is land status that affects the surveyor's corner evaluation.

Public domain land, federal land today and always has been federal land. Federal land today always has been federal land. Which set of rules will be applicable when you have the status of public domain land? Federal rules, federal rules will be applicable. There's always exceptions, but in general rules if you have public domain land, federal land today and always has been federal land, then federal rules will be your guidance.

Acquired lands, federal land today but at some period of time was not federal land. Example, General Land Office went out and did the original survey across the unsurveyed land, laid out the public land survey systems, the rectangular survey typically; followed by monumentation, field notes, plats, official filing, then once it was officially filed, then the federal government says, "Now we can do business on this plat."

Until it's officially filed, the federal government will not do business on the plat. The plat doesn't exist officially. Once it's officially filed then they'll issue patents. The original conveyance document of title from the government to somebody else, could be a state, could be a private individual, could be a tribe.

Acquired lands, it is gone to patent so now there was public domain before it was surveyed, it was federal land. It went to patent. It became not federal land but then some period of time later the federal government acquired a right back, maybe the fee simple right, maybe less than fee. But that whatever right or interest is acquired back is an acquired lands status.

Which set of rules will you use to survey when you have an acquired lands situation, federal or state? Well, this is an easy one. It depends and on a lot of different factual scenarios. It depends if whether federal rules will be applicable or state rules will be applicable. And I'm going to get into helping you sort out that depends.

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For example, unwritten rights, is there in the federal legal system, statute law, case law, is there federal adverse possession? The answer, in general terms, is no. Unwritten rights, adverse possession, acquiescence, practical location, etcetera is state law driven. There is no unwritten right statute in federal law, general terms. There are some exceptions there. So, if you have acquired lands and unwritten rights vested during that period of time that the land was in private hands, then that landowner can only convey what they own and if that title has vested to the person that holds the unwritten rights it wasn't conveyed to the federal government. If you have that factual situation you probably are going to apply state rules.

The third type, I call it patented lands or private lands or nonfederal lands. Pick however you want to describe it. Here's the definition, nonfederal land, today's nonfederal land. Doesn't matter if it was a Mexican rancho which never was federal land or the Southeast quarter of Section 32 that at one time was part of the public domain and was federal land, but the definition is today nonfederal land. There is no federal interest. Which set of rules will govern the survey when you're in a nonfederal land status? State rules, general terms. And you're also going to find that some state rules will lead you right back to the federal rules. That's where you need to know the state laws in your state where you're going to practice. Three types of land statuses, to know the land status tells me which set of rules to go to. Enough on land status.

Let's continue talking about a perspective and overview to sort of set the stage for when we are found in the situation of evaluating local corners, local evidence. The Bureau of Land Management assumes no control or direction over the acts of county and other local surveyors in the manners of subdivisions of sections, evaluation of evidence of corner locations, and reestablishment of lost corners of original survey where the lands have passed into private ownership. Nor will the bureau issue instructions in such cases. It follows the general rule that disputes arising from uncertain or erroneous location of monumented or protracted corners originally established by the United States are to be settled by the proper local authorities or by amicable adjustment.

The Bureau desires that the rules controlling the acts of its own cadastral surveying service and of surveyors under the latter's direction be considered by all other surveyors as merely advisory and explanatory of the principles which should prevail in performing such duties; neither does the Bureau assume control or direction over the acts of federal

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employees performing or administering surveys not authorized by the designated chief cadastral surveyor. That gives you a little context of the BLM's perspective and the courts perspective of local surveys and the relationship to the BLM. The BLM assumes no control or direction and at the same time they're not held by them.

### Proper Historical Perspective

Let's continue to look at perspectives and overview. "I believe it is only when we have ignored the objects of the past, and have disregarded the consequence of the future in our preoccupation with the present; that we have failed as a profession." That's by Ken Witt, former chief cadastral surveyor in Colorado. I think that sums it up. We need to know our past, we need to know the rules and regulations and the history that led up to the situation you're looking at, and we need to understand the consequence of our behavior for the future.

The future consequences and sometimes we get so involved with and preoccupied with the present, and if we fall into that trap we are going to fail as a profession. We will not have served the public. Society is changing, laws are changing, surveying is changing. The public land survey system is evolving and maturing. Here's another and those are that summary there.

Another perspective, what I label foundation principles of the public land survey system. When I use the term public land survey system that's the whole system all together, of which a part of the public land survey system is the rectangular surveys, the mineral surveys, the Indian allotment surveys, etcetera. But all of those are under the umbrella of the public land survey system and I'll talk a little bit more specific about the specific rules and regulations governing the development and administration of the public land survey system, and how they affect and impact private practicing land surveyors, and how they affect and impact land owners in Indian country.

One of the foundation principles of the public land survey system, stabilization of property corners and a simplified system intent upon minimize questions of title. Are the foundation principles of the law of boundaries on the public land survey system? Stabilization of property corners and a simplified system of minimize questions of title.

It is far better for the settler to know where his or her boundary is then

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exactly how much land they owned. For example, I'm going to skip ahead. **43 USC 751 and 752**, the Acts of 1796 and 1805 basically said the original monument will control. What's the principle behind the original monument will control statute? Stabilization, this didn't start with the United States this is 3 to 4 thousand years worth of history, evolution of ownership of land, the dividing and partializing of land.

Stabilization of property corners trumps adjustments and measuring over precision. That's what has been one of the foundation principles of the public land survey system, and that will influence the law that we read that will govern surveying practice when we get in an area that has complexity of multiple uses, multiple boundaries, multiple use and occupancy and improvements with seemingly with quote "sloppy surveys". What's going to control? How do you weight the evidence? That's what we're going to get into.

I found after many years of surveying this seems to me to be a statement of what I do, the job of the resurveyor and of resurveying. This is what I think I do, again this is my experience what I have found. One, to determine the true and correct location of the legal subdivision boundary then determine the property boundary. What I mean by that is true and correct location of the legal subdivision. Where is the statutory location of the Southeast quarter, the Southeast quarter by the technical and rigid application of the rules governing the location of legal subdivision of a section? I want to know where that falls. But that may not necessarily be where the property boundary is.

Two, the surveying profession is not a static profession. It changes over time as laws, standards of practice, and technology change. What was applicable in the 1930's in the timberland country of Western Oregon and the type of due care that was acceptable in 1930 in that type of country, probably is not acceptable today. What has changed? The value of the land has changed. The use and occupancy probably has changed. The technology has changed. Surveying is not static even boundary surveying.

Boundary surveying is one of the slowest evolving parts of the legal profession, but it is evolving and we need to keep track of what has been historically accepted, what changes has begun that society has expect and accepted a different expectations, and to think a little bit about what the future's going to hold. That is what you're going to pull together when you're evaluating acceptance and rejection of local evidence. That's what I think the job of the resurveyor is.

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The role of the resurveyor, when you find yourself in these positions these are the kinds of things that I begin to think about. You know, you got to ask the right questions if you don't ask the right questions you're probably not going to get the right answer. The big part of dependent resurveying is have I considered everything? Have I asked all the right questions? This is just an attempt I use to stimulate me to make sure I thought about all the possibilities, and then weed them out to come back to my opinion.

I call it the most reliable method of predicting. We talked about two sets of footsteps. Who am I trying to predict here? Not the past, not the surveyor that came before me but that judge is going to come ahead of me, or is out ahead of me and he's going to tell me if I did it right or wrong. So, I need to get into his footsteps ahead of time and I'm going to predict what laws, what rules, how he's going to weight the evidence. Evaluate your Supreme Court's and/or Interior Board of Land Appeals' and Interior Board of Indian Appeals' decisions.

Under similar circumstances in the past, gauge the strength of current legal policy trends in your own and other jurisdictions, and then predict a result from that information. I find after many years of surveying this seems to me to be a statement of what I do. To be able to recognize the potential of the situation, point out the possibilities, and render an opinion.

I mention evaluate your Supreme Court's decisions. If it's a federal court, what are the federal courts doing? If it's state jurisdiction, state jurisdiction, they are the court of last resort for the land status that you're dealing in. **Interior Board of Land Appeals**, are a board that sit in Washington, DC, they are made up of federal employees most of them attorneys. They are administrative law judges, administrative judges.

Whenever a citizen disagrees with a decision by a, and let's just stay inside the BLM; let's just stay inside of cadastral surveys, Federal Authority Survey. Whenever a citizen disagrees with the opinion, my opinion as a Federal Authority Surveyor of where the federal interest is, they can protest that and they can appeal the decision. The appeal process will take that jurisdiction out of the chief cadastral surveyor's hands because the chief cadastral surveyor has rendered his or her opinion based on the approved plat and field notes. He'll remove the jurisdiction from the chief cadastral surveyor, and put it in the hands of these administrative law judges. These administrative law judges speak for the Secretary of the Interior.

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### Resurveyor Guides

I'm jumping ahead a little bit. I'm going to get back to the role of the Secretary of the Interior, and his or her position in this scheme of who is the Secretary of the Interior and why should I care when I'm evaluating this local corner out here in who knows where.

The Interior Board of Land Appeals speak for the Secretary of the Interior and, in fact, when their decision is rendered it sets BLM policy. So, I need to know how the IBLA evaluates local evidence, because that gives me a method to predict the future.

On that last bottom line on that overhead, to be able to recognize the potential of the situation, point out the possibilities, and render an opinion. I got to ask the right questions. I got to know what questions to ask.

The resurveyor's guides to begin to get there here's what I've developed with resurveyor's guide, and when I say I, I don't mean just me. I've stood on the shoulders of many, many fine surveyors and I always have this saying, I steal from the best. So, a lot of this isn't original. I've culminated it from different sources and resources, and this seems to help me when I'm evaluating evidence in local conditions, the resurveyor's guides.

I need to know what the original surveyor was supposed to do. How can I evaluate and search for corners, reestablish corners unless I know what the original surveyor was supposed to do? Where do I find out what the original surveyor was supposed to do? Special instructions, or survey orders, contract or group file, federal statute laws, federal regulations, survey manuals, information from subject matter books, classroom education, self-study, on the ground training, what Manual was he surveying under? What Manual was the original surveyor surveying under? That's the book I want to study and read so I can understand what the original surveyor was supposed to do. What restoration pamphlet was in effect? What federal laws were in effect?

The second resurveyor's rules, what the original surveyor said he did. It may be, believe it or not, different than what he was supposed to do. How do I find out what the original surveyor said he or she did? I get that information in plats, field notes, contract or group file, correspondence associated with the survey job. Clearly in the federal system, the original surveyor tells us what he or she did in the field notes, the plats, but there's

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three parts of an official survey. Field notes, plats, and sometimes those can be combined onto a plat only but they'll be a plat with field notes, and the third part of an official survey is the contract or group file.

The contract or group file. For every contract let by the General Land Office and every survey group let by the General Land Office and the BLM, there is a file. They're numbered sequentially by state. For example, Contract 37 Colorado, Group Number 987 California. On the face of that field notes and the plats, they will tell you what contract and/or group is involved. So, if you just read the field notes and plats you're getting a part of what the original surveyor said he did, but until you get the contract and group file you don't have the whole story.

Now, you don't need the contract and group file for every resurvey job, but if you start to get into areas where it's dicey and it doesn't make sense. Why did the original surveyor do it this way when the Manual says do it this way? Then the group file may be an explanation. The group file will contain correspondence from the field surveyor to the office. Sometimes there will be an explanation. Oh, that's why they did it that way.

Second thing, what the original surveyor said he did. And third, and probably most important, what the original surveyor actually did. And believe it or not, believe it or not, it may not be what they are supposed to do and it may not be what they said they did. In fact, we have rich evidence that occasionally some of the original surveyors didn't do what they were supposed to. Believe it or not, I know it's hard to believe.

Where do we find out information about what the original surveyor actually did? I don't know, it seems to me you got to go on the ground. The conditions on the ground, you got to walk the ground, you got to feel it, touch it, smell it before you can begin to get a sense of what the original surveyor actually did. Why is it significant about what the original surveyor actually did? Back to the principle of the original monument will control. If you don't get in the footsteps of the original surveyor, you're going to be embarrassed.

The other places you can find out information about what the original surveyor actually did is occasionally there'll be **field tablets**. Don't confuse field tablets with field notes. Field notes are the official record, a narrative, a descriptive narrative, a textual of what the surveying process was. Those are typically prepared by the contract surveyor or the cadastral



## EVALUATING CORNER EVIDENCE – PART 9

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surveyor, reviewed and approved by the chief cadastral surveyor or the surveyor general, depending on what era you're in. That's field notes.

Field tablets, general terms, are what the surveyor had in his hand when she was in the field and was making notations on them. And from the field tablets when they got back to the office, either that winter or that night, then they would transcribe the abbreviations and the shorthand into field note format.

Field tablets, occasionally original surveyors field tablets are still around, because under the contract system the field tablets were under the ownership of the contract surveyor. So, you can still find those in some places. A lot of county surveyors got contracts with the surveyor general, with the General Land Office, and you go into the county surveyor's office or a county that has done a good job of keeping old county surveyor's records often times there'll be a field tablet of when the county surveyor had the original contract. And you'll get a little more insight into what the original surveyor actually did. Is that part of the official record? No, it's not. But that's a whole different issue about knowing what is a part of the official record and what is not a part of the official record and then that gets into admissibility of evidence. We won't go there just yet, but ok.

Another place you can find out about what the original surveyor actually did is an examination of surveys. In general terms, in general terms an examination of surveys mean under the contract system, which basically went from 1796 to 1910, the federal government hired private surveyors and paid them by the mile to do the original surveys of the public land survey system, contract system.

Subsequent to 1910, they went to the direct system where they did it with federal employees that were hired and paid by salary to conduct the surveys. There's overlap, there's never clean but that from 1910 to present is called the direct system. That's all it is. It just helps us gives us handles on how to call the different eras. And there's always overlap.

Under the **contract era**, believe it or not, even the commissioner of the General Land Office back in Washington, DC was getting the word that some of the contractors weren't doing what they're supposed to, and believe it or not some of the surveyor generals were in cahoots with them. So, one of the remedies, administrative remedies, to stop that is to send out another surveyor, pay them by per diem so they weren't under the

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pressure of by mile, to examine or audit a portion of the field work.

This was done after the contract surveyor was done and had turned in his draft field notes and sketch plat to the surveyor general, and after the surveyor general had prepared the plat and prepared the field notes and sent it back to the commissioner of the General Land Office in Washington. Then the commissioner General Land Office would send another surveyor out to examine it. That's one of the reasons why they went from the contract system to the direct system.

Can you see the bureaucracy they built up? There were complaints about timeliness. So, the examiner of surveys went out and examined and audit and then his or her, I don't know of any woman examiner of surveys, his return was sent back to Washington, DC and based on that examination the contract surveyor either got paid or was told to go back in the field and correct something. Those examinations of surveys are a set of field notes detailed. He ran, he might have went out in the middle of the section, found a corner and he retraced a mile East. And he describes each section corner and quarter corner as he goes. He gives you some more topography.

Do you suppose evidence of a second surveyor out there within a year of the original survey might be useful data to find the original evidence? I think so in some cases. So, that's another way of finding what the original surveyor actually did.

Conditions on the ground, field tablets, examinations of survey, read the ground, the condition, the integrity, and the history of the original survey is how you tell that.

I'm going to do a few more of these and then this we'll be the end of this segment of this lecture. This is a good one. You all know what that means, right? Stare at a decision till you're not quite know what to do and don't move at all. And you know what that one means. Do little or nothing at all. Relax. That's probably not a direct interpretation. But these are principles at law that are pertinent to a resurveyor because a resurveyor is dealing with property law is dealing with title boundaries. We're going to get back to these two principles here in a little bit.

We talked about the resurveyor guides. How about the resurveyor-resurveyor guide? The resurveyor guide is based on the premise that there was an original survey then there was a resurveyor, resurveyor number 1.

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Well how often are you in the situation where you're resurveyor number 1? You're the first surveyor after the original survey. It's almost a luxury to be that resurveyor number 1. How often are you resurveyor number 2 or 3 or 8? What I mean by that is there was an original survey then there was subsequent survey activity. I call them "resurveys" quotes. And there may be numerous one of these, so you're just get in the line, pull a number, you're resurveying of a resurvey.

Let's look at some guides. What resurveyor number 1 was supposed to do. Where do you find out what resurveyor number 1 was supposed to do? Special instructions, or survey order, contract or group file, federal statute law, federal regulations, survey manual, information for subject matter books, classroom education, self-study, on the ground training, what Manual was he surveying under? What restoration pamphlet was relevant? What resurveyor number 1 said he did. You can find that information in plats, field notes, contract or group file, correspondence associated with a survey job. What resurveyor number 1 actually did. This sounds familiar doesn't it? Conditions on the ground, field tablets, examination of survey, read the ground, the condition, integrity, and history of the original survey and of the resurvey.

The resurveyor guides and the resurveyor of the resurveyor guides are very similar. Very many of the same principles are involved and you have to understand both of them. You have to understand what rules the person ahead of you was supposed to do, what he said he did, and what he actually did. Here's that stare at the decision. This is a resurveyor-resurveyor guide. This is a common-law principle. That's Latin for, to adhere to precedence and not to unsettle things which are established, to adhere to precedence and not to unsettle things which are established.

The law does not care for or take notice of very small or trifling matters. It's been my experience that these two principles, common-law principles, are applicable and relevant to the public land survey system as it has been developed. And I hope in these lectures that I can bring that home in a way that proves it to you as best as I am capable of doing it. I believe these general principles are the presumption behind and are the principles behind the letter of the law.

And then just, finally, final thing for this lecture portion, real property boundary location. It's cool. It is a strange and satisfying fact that having none of the privileges of a lawyer, judge, or court, the property boundary can and does exert the influence of all. A common-law principle, you all

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can read that, you all know what that means, right? No one is bound to do what is impossible, and I know it seems like sometimes when you're out there on the ground you have been dealt an impossible situation. There is so much confusion and bad information, bad surveys, bad locations, people not acting in good faith, and sometimes you feel like you are bound to do what is impossible. And I think sometimes I feel that way, too.

And I hope the next lecture part will help you to begin to pick apart and undo the knot so we can begin to see what pieces are relevant to where we're going. So, thank you.



**HANDOUT**

***LOCAL SURVEYS***  
***Applying the BLM***  
***Manual of Surveying Instructions***

*Presented by*  
*Bob Dahl*  
*Cadastral Surveyor*  
*Washington Office*  
*Bureau of Land Management*

*Presented for:*  
*Certified Federal Surveyors Training Program*

*Bureau of Land Management*  
*National Training Center*  
*Phoenix, AZ*  
*February 27 & 28, 2006*

## LESSON PLAN OUTLINE

**INSTRUCTOR:** Bob Dahl, RLS, CWRE

**COURSE:** BLM National Training Center

**UNIT:** Certified Federal Surveyors Training Program

**LESSON:** Local Surveys – Applying the BLM Manual of Surveying Instructions

**SUGGESTED TIME:** 4 hours

**TRAINING AIDS NEEDED:** 2009 BLM Survey Manual, 1974 Restoration Supplement, BLM Glossary of Surveying Terms, U.S. Code Title 43.

**ADVANCED READING:** 2009 Manual, Chapter 1: Sections 1, 3, 7, 20 & Chapter 3: Section 131 thru 136, 94 & Chapter 6: Section 18, 20 thru 26, 35, 36, 37, 39, 40 thru 43, 45, 46, 48, 49 & Chapter 5: Section 10, 18, 19, 21, 23, 24, 25, 28, 29, 36, 56 Chapter 7: Section 50.

**OBJECTIVES:** Upon completion of this lesson the student should be able to:

1. Describe what a local survey is and know the importance of obtaining records of local surveys.
2. Describe how the "status of lands" may influence the evaluation of local surveys.
3. Compare and contrast the authority of the local surveyor with the authority of an official (federal authority) survey.
4. Recognize the proper jurisdiction and apply the controlling law/regulation/policy when evaluating local surveys.
5. Describe the significance of United States Code Title 43 Section 772 with relationship to evaluation of local surveys.
6. Recognize situations when nothing can be done by any BLM surveying procedure to correct a conflict caused by a local survey.

## I. Introduction

The purpose of this presentation is to discuss the role that local surveys play in the establishment and reestablishment of monuments that define the boundaries of areas in which there is a federal interest.

## II. Local Survey

BLM Glossary  
Page 30

### A. Definition of a local corner

### B. Our working definition of a local survey will be: Any survey NOT containing ALL of the following;

43 USC 2 & 1201  
BLM Glossary  
(Cadastral Survey  
approval/authority)  
Page 9

1. Conducted under authority granted by Congress to the Secretary of the Interior, delegated to the Director, Bureau of Land Management, and further delegated to the Chief Cadastral Surveyor.

(Official Cadastral  
Survey)  
Page 38

2. Initiating documents:

a. Written request with proper justification,

b. Special Instructions,

c. Assignment Instructions.

2009 Manual  
Sec. 5-15

3. Actual survey in the field and the preparation of the official record of the field work, field notes, and plat.

4. Official approval of the field notes and acceptance of plat of survey by the Cadastral Chief of Cadastral Survey, public notification, and plat filing.

## III. Criteria to be considered when evaluating a local monument.



- A. Original monument - Any monument which contains zero error - when found in its original position.
- B. Resurvey monument - Any monument which can contain error.
- C. What legal authority was the "local surveyor" surveying under? The land status will determine the court of competent jurisdiction; federal court, state court or a federal court applying state law.

BLM Glossary  
Page 43

1. Public Domain Land.

Page 2

2. Acquired Land.

Page 40

3. Patented Land.

43 USC 766  
2009 Manual  
Sec. 5-15

- D. Authority of local surveyor in the establishment and reestablishment of monuments that define the boundaries of areas in which there is a federal interest.

2009 Manual  
Secs.3-131 thru 3-136

- E. The weight given the expert testimony of local surveyors. The weight given testimony of individuals. What local records may affect the position of a corner of public lands.

2009 Manual  
Sec. 6-41 thru 6-43  
and 7-50

- F. Was the local corner placed with due regard to the location of the original survey, or agreement is so close as to constitute the best available evidence?

43 USC '772

- G. Would acceptance of the local survey impair the bona fide rights of the entered or patented land?

Key Points  
& Aid Cues

Outline

2009 Manual  
Sec. 6-45, 6-46,  
6-48, and 6-49

- H. Was the local reestablishment of a lost corner, done by proper methods, without gross error and officially recorded? If a monument of unknown origin, what is its age and degree to which it has been relied upon by all affected landowners?

2009 Manual  
Secs. 6-12  
to 6-18

- I. Was the local survey executed with such care as might be expected by the exercise of ordinary intelligence under existing conditions?

IV. After acceptance or rejection of local survey.

2009 Manual  
Sec. 5-12

- A. Obligation to affected landowners and local surveyors.  
B. Procedure to follow within the field notes and on the plat.

LOCAL SURVEYS – OFFICIAL SURVEYS  
AND  
BONA FIDE RIGHTS - AS TO LOCATION

V. Perspective when conducting a resurvey on the Public Land Survey System (PLSS).

A. Federal Survey and Federal Resurvey Authority.

1. Federal Statute Law - United States Code, Title 43 Public Lands, Chapter 18 Survey of Public Lands, Section 2 (43 U.S.C. § 2). The Secretary of the Interior (SOI) or such officer as he may designate shall perform all executive duties appertaining to the surveying and sale of the public lands.
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 Lands statutes.
3. 43 USC ' 772. The Secretary of the Interior may in his discretion cause to be made such resurveys or retracements of the surveys of public lands as he may deem to be essential to properly mark the boundaries of the public lands remaining undisposed of.
4. 43 USC § 773. 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 public lands.
5. 25 USC § 176. 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 (BLM), and as nearly as may be in conformity to the rules and regulations under which other public lands are surveyed.

B. Manual of Surveying Instructions.

1. *Manual of Instructions for the Survey of the Public Lands of the United States* 2009 edition, Chapter 1, Section 3 and 7 (Manual 1-3 and 1-7). The Manual of Surveying Instructions describes how official (aka federal authority and aka cadastral) surveys identifying the boundaries of the federal interest lands are made in conformance to statutory law and its judicial interpretations.
2. Manual 1-15 It is within the province of the Director of the BLM to determine what lands have a federal interest, 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.
3. Manual 6-3, 6-4. Where federal lands, including Indian lands, are involved, the final authority to approve or disapprove the official resurvey procedures rests with the SOI, acting through the Director, BLM.
4. The failure to conform the resurvey to the requirements of the Manual of Surveying Instructions constitutes gross error. *Peter Paul Groth*, 99 IBLA 104, 119 (1987).
5. BLM Administrative Manual 1203 – Delegation of Authority: The Washington Office Chief Cadastral Surveyor will provide the final interpretation of the Manual of Surveying Instructions.

C. Limit of Jurisdiction of the Federal Authority Surveyor.

1. Manual 5-19. Limit of Authority of Surveyor and the Quiet Title Act.
  - a) In the resurvey process, the surveyor will determine whether or not lands embraced within a claim as occupied have been correctly related in *position* to the original survey.
  - b) The surveyor will interpret the evidence with respect to its effect upon the manner in which the resurvey shall be executed to protect valid rights acquired under the original survey.
  - c) It comes within the realm of the surveying process to identify and mark out on the ground the various legal subdivisions of the federal interest, including Indian, lands.

- d) In the resurvey process the surveyor will determine whether or not lands embraced within a claim as occupied have been correctly related in position to the original survey.
- e) Where the demonstration of this question may be one involving more or less uncertainty, as is often the case, the surveyor will examine and weight the evidence relating strictly to the surveying problem involved.
- f) The surveyor has no authority to enter into an agreement concerning the exchange of one subdivision for another or to bind the Bureau of Land Management in this particular.
- g) It is a judicial question beyond the function of the surveyor to determine whether or not specified lands have been duly earned under a certain entry.
- h) The Quiet Title Act 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 maybe one consideration, are authorized by the Quiet Title Act; 86 Stat. 1176; 100 Stat. 3351; 28 U.S.C. 2409a, as amended.
- i) 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 may clearly and accurately determine the boundaries of the United States claim of interest and may, with security, accept the boundaries thus determined insofar as they represent the true location of the federal interest.

2. Manual 5-21. Authority to Decide Boundary Disputes.

- a) 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 equity in character.
- b) The surveyor is not a referee as to the justice or injustice of a situation.

- c) The surveyor can only act upon the equities or inequities that may appear to be involved if they fall within the SOI's duties to do justice appertaining to the survey and location of federal interest, including Indian, lands under the law.
- d) 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.
- e) The statutory authority 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.
- f) The court is qualified to weight the evidence, to exercise discretion as to the preponderance of the evidence, its acceptability, and by court decree to enforce its opinion.
- g) The court will 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.
- h) The court's opinion will be binding in fixing the boundaries of privately-owned property, and would seldom be contested as to acceptability in fixing the boundaries between the federal lands and the alienated lands excepting 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 the testimony in the case, the court itself possessing no authority to set aside the official survey.

D. BLM Relation to Local Surveys.

1. Manual 3-76. Subdivision of Section by Local Survey.

- a) The work of the local surveyor usually includes the subdivision of the section into the parts shown upon the approved plat.

- b) In this capacity the local surveyor is performing a function contemplated by law.
- c) He cannot properly serve his client or the public unless he is familiar with the legal requirements concerning the subdivision of sections.
- d) 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.
- e) Nor can the surveyor hope to legally restore the same or legally weigh evidence of subsequent location, use or occupancy, until he has mastered not only the principles observed in the execution of the original survey, and subsequent local practices, but also the principles upon which the courts and administrative boards having jurisdiction over such matters have based their rulings.
- f) BLM assumes no control or direction over the acts of:
  - i. Local and county surveyors in the matter of subdivision of sections, evaluation of evidence of corner locations and reestablishment of lost corners of original surveys where the lands have passed into private ownership.
  - ii. Neither does the Bureau assume control or direction over the acts of Federal employees performing or administering surveys not authorized by the designated Chief Cadastral Surveyor.
  - iii. These are all local surveys.

2. Manual 6-3 & 6-4. Authority of the Secretary of the Interior.

- a) The SOI and the BLM cannot assume jurisdiction over or responsibility for the acts or results of surveys made by:
  - i. County, local, or private surveyors, or
  - ii. By surveyors or engineers who may be employed by other branches of the Federal Government and not conducted under the direction and control of the chief cadastral surveyor.

- b) 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.
- c) Thus it will be seen that county and other local surveyors as well 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.
- d) Should the search for a monument or corner location result in failure, the appropriate restorative surveying process to be observed by either surveyor will be based upon the same rules as hereinafter outlined.
- e) This presentation draws little distinction between the duties of the two classes of surveyors.

3. Manual 6-7. Private Disputes.

- a) Where a corner marks the boundary between, or in any manner controls the location of the lines that form the boundary of privately-owned property, dissatisfaction on the part of or dispute between private landowners may be brought before the local court of competent jurisdiction.
- b) The SOI will not be bound by a court decision if the United States is not a party to a suit affecting federal lands when evidence of the official survey was disregarded or there was some other departure from good surveying practice

4. State Statutes, Administrative Regulations and Case Law.

- a) Most states within the PLSS have incorporated the rules set forth in the Manual of Surveying Instructions, the manual supplements and the circulars governing the weight given original evidence of corner locations, procedures to reestablish lost General Land Office (GLO) or BLM corners, and procedures for subdivision of sections.
- b) Many states have explicitly incorporated the Manual.



- c) One example of incorporation by state statute: Oregon Revised Statutes, ORS § 209.200. In the resurvey of lands surveyed under the authority of the United States, the county surveyor or a registered professional land surveyor shall observe the following rules: (1) Section and quarter-section corners, and all other corners established and approved by the GLO or its successors, must stand as the legal and permanent corners. (2) They must be reestablished at the identical spot where the original corner was located by the government survey, when this can be determined. (3) When this cannot be done, then such corners must be reestablished with reference to the current United States Manual of Surveying Instructions.
- d) One example of incorporation by state regulation: Washington Administrative Code, WAC § 332-130-030. The following requirements apply when a land boundary survey is performed. The reestablishment of lost GLO or BLM corners and the subdividing of sections shall be done according to applicable GLO or BLM plats and field notes and in compliance with the rules as set forth in the appropriate GLO or BLM Manual of Surveying Instructions, manual supplements and circulars. Methods used for such corner reestablishment or section subdivision shall be described on the survey map produced. Monuments placed shall be magnetically locatable and include a cap stamped with the appropriate corner designation as defined in the current BLM Manual of Surveying Instructions.
- e) One example of incorporation by state common law: “The parties are in agreement that this publication [BLM Survey Manual] together with a BLM circular entitled “Restoration of Lost or Obliterated Corners and Subdivisions of Sections, A Guide for Surveyors” (1974), are the applicable guides for a legally valid survey in Idaho. In order to be admissible in court, a survey must conform to the BLM manual.” *State of Idaho v. Barnett*, 776 P.2d 438 (Idaho 1989).

E. Role of Local Surveyor when Conducting a Resurvey on the PLSS.

- 1. Manual 3-76. The function of the local surveyor.

- a) Begins when employed as an expert to identify lands which have passed into private ownership.
  - b) 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, 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.
2. Manual 6-18. Acts and Testimony of Original Corner Recovery.
  - a) A corner is not considered as lost if its position can be recovered satisfactorily by means of the reliable testimony and acts of witnesses having knowledge of the precise location of the original monument.
  - b) 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.
3. 43 USC § 766. All subdividing of surveyed lands into lots less than one hundred and sixty 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.

## VI. Inviolate Rules – Resurveys.

### A. Constitution of the United States.

1. Congress shall have the power to regulate commerce with the Indian tribes. Article I, sec. 8, clause 3; Commerce Clause.
2. Congress shall have the power to dispose of and make all needful rules and regulations respecting the territory belonging to the United States. Article IV, sec. 3, clause 3.

3. The Constitution and the laws of the United States shall be the supreme law of the land. Article VI, clause 2; Supremacy Clause.
4. No person shall be deprived of property without due process of law; nor shall private property be taken for public use without just compensation. 5<sup>th</sup> Amendment.

B. Federal Statute Law.

1. 43 USC § 752.
  - a) The position of existent and obliterated corners returned by the SOI are unchangeable and are the corner locations of the described entered or patented lands.
  - b) The boundary lines, actually run and marked in the surveys returned by the SOI, are the proper boundary lines of the sections, or subdivisions, for which they were intended, and the length of such lines as returned, are the true length thereof.
  - c) Each section or subdivision of section, returned by the SOI, is considered as containing the exact quantity expressed; and the half sections and quarter sections, the contents whereof shall not have been thus returned, shall be held and considered as containing the one-half or the one-fourth part, respectively, of the returned contents of the section of which they may make part.
2. 43 USC §§ 752 and 753.
  - a) The corners of half and quarter sections, not marked by the SOI, shall be placed as nearly as possible equidistant from those two corners which stand on the same line.
  - b) The boundary lines which have not been actually run and marked shall be ascertained, by running straight lines from the established corners to the opposite corresponding corners.

- D. 43 USC § 772. “Provided, that no such resurvey or retracement shall be so executed as to impair the bona fide rights or claims of any claimant,

entryman, or owner of lands affected by such resurvey or retracement.”

1. Basic Principles – Resurveys.

1. Manual 5-10. Dependent Resurvey Defined.

- a) A dependent resurvey is a retracement and reestablishment of the lines of the original survey in their true original positions according to the best available evidence of the positions of the original corners.
- b) In legal contemplation and in fact, the lands contained in a certain section of the original survey and the lands contained in the corresponding section of the dependent resurvey are identical.

2. Manual 5-28. Bona Fide Rights and Dependent and Independent Resurveys.

- a) The basic principles of protecting bona fide rights in the resurvey is to show the original position of alienated lands included in the original description.
- b) The resurvey is an official demonstration by the BLM according to the best available evidence of the former survey.

3. Manual 5-29. Corner of Original Survey Unchangeable.

- a) The position of a tract of land, described by legal subdivisions, is absolutely fixed by the original corners and other evidences of the original survey and not by occupation or improvements unrelated to the original survey, or by the lines of a resurvey which do not follow the original.
- b) Under fundamental law the corners of the original survey are unchangeable.
- c) Even if the original survey was poorly executed, it still controls the boundaries of land alienated under it.

4. Manual 5-36. Resurvey Restores Original Conditions.

- a) A resurvey is an official re-marking of the original lines upon a plan whereby existing evidence of the original survey is given primary control over the position of the lines to be reestablished.
- b) The resurvey is designed to restore the original conditions of the official survey according to the record.
- c) A resurvey is based:
  - i. Upon identified original corners and other acceptable points of control;
  - ii. Upon the restoration of lost corners by proportionate measurement in harmony with the record of the original survey, and
  - iii. Upon some flexibility allowable in applying the rules of proportionate measurement in order to protect the bona fide rights of claimants, particularly in those cases where no objection is found to adopting a point acceptably located under the rule of good faith, and only slightly at variance with the theoretical position.

5. Manual 6-3 & 6-4. Authority of the SOL.

- 1. The principles of a resurvey of an original survey, apply to the resurvey of an official resurvey, and generally to the resurvey of a local survey.
- 2. Prior official resurveys, and local surveys subsequent to the original survey, must be considered in context of the objects of each government resurvey. The objects of a government resurvey are:
  - a) The adequate protection of the existing rights acquired under an original survey and faithfully located by subsequent survey in the matter of location on the earth's surface; and
  - b) The proper marking of the boundaries of the remaining federal interest lands.

VII. The General Rules – Resurveys. These General Rules are accepted as a means of protecting bona fide rights in the execution of resurveys.

- A. The General Rules are applicable in cases:
1. Showing fairly concordant relation between conditions on the ground and the record of the original survey.
  2. The original survey was made faithfully, and is supported by a reasonably good field-note record.
- B. Existent, Obliterated and Lost Corners. The Manual provides guidance on acceptability of physical evidence and testimony.
1. Manual 6-11. *An existent corner is one whose original location can be identified by substantial evidence of the monument or its accessories, by reference to the description in the field notes, or located by an acceptable supplemental survey record, some physical evidence, or reliable testimony.*

{Comments for existent corner definition: The term “original” is inserted in response to Stoddard Jacobsen and Robert C. Downer v. Bureau of Land Management (On Reconsideration), 103 IBLA 83, 89 Dissent (1988) keying on the location of the corner versus the position of the monument.

Corner location – space marked by a feature. Corner position – space occupied by an object; a subset of corner location; more specific than corner location

The term “substantial evidence” is inserted in response to Stoddard Jacobsen and Robert C. Downer v. Bureau of Land Management (On Reconsideration), 103 IBLA 83, 85 (1988) citing the proper standard to consider a corner existent.

See *Howard Vagneur*, 159 IBLA 272, 282 (June 27, 2003); *Robert W. Delzell, Betty Simpson*, 158 IBLA 238, 245 (January 29, 2003); *Mark Einsele et al.*, 147 IBLA 1, 11 (December 10, 1998); *Stoddard Jacobsen and Robert C. Downer v. Bureau of Land Management (On Reconsideration)*, 103 IBLA 83, 86 (July 8, 1988).}

- a) A corner is existent (or found) if such conclusion is supported by substantial evidence.
  - i. The substantial evidence standard of proof is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
  - ii. Substantial evidence is defined by the courts as more than a scintilla of evidence but less than a preponderance of the evidence.
- b) Even though its physical evidence may have entirely disappeared, a

corner will not be regarded as lost if its location can be recovered through the reliable testimony of one or more witnesses who have dependable knowledge of the original location.

- c) Manual 6-12. The need for corroborative evidence is in direct proportion to the uncertainty of any original feature in doubt or dispute.
  - d) Manual 6-13. Discrepancies in the Record.
    - 1) Allowance for ordinary discrepancies should be made in considering the evidence of a monument and its accessories.
    - 2) No set rules can be laid down as to what is sufficient evidence.
    - 3) Much must be left to the skill, fidelity, and good judgment of the surveyor, bearing in mind the relation of one monument to another and the relation of all to the recorded natural objects and items of topography.
    - 4) The records of official surveys fall under the doctrine of **presumption** of regularity; that is the official record is correct unless it is established by a preponderance of the evidence otherwise.
  - e) Manual 6-16. The retracements will indicate the probable position and will show what discrepancies are to be expected. Any supplemental survey record or testimony should then be considered in the light of the facts thus developed.
2. Manual 6-17. *An obliterated corner is one at whose original position there are no remaining traces of the monument or its accessories, but whose location has been perpetuated or the point for which may be recovered by substantial evidence by the acts or reliable testimony of the interested landowners, competent surveyors, other qualified local authorities or witnesses, or, by some acceptable record evidence.*

{ Comments for obliterated corner definition - In *Kendal Stewart*, 132 IBLA 190, 195 (1995) the Board found: “[2] In

[Jacobsen & Downer v. BLM \(On Reconsideration\), 103 IBLA 83, 86 \(1988\)](#), aff'd, [Downer v. Hodel](#), No. 88-513-HDM (D. Nev. Oct. 12, 1989), we found that "the proper standard for BLM to apply in the course of a resurvey is to consider a corner existent (or found) if such a conclusion is supported by substantial evidence." Where physical evidence has entirely disappeared, a corner will not be regarded as lost if its position can be recovered through the testimony of one or more witnesses who have a dependable knowledge of the original location (Manual, 6-11 at 130). However, there must be substantial evidence of a perpetuated corner location in order to consider the corner obliterated, rather than lost. [James O. Steambarge, 116 IBLA 185, 191 \(1990\).](#)"

In [James O. Steambarge](#), 116 IBLA 185, 191 (1990) the Board found: "For either an existent corner or an obliterated corner there must be some evidence of the original corner location. Consistent with our decision in [Stoddard Jacobsen, supra](#), are no remaining traces of the monument or its accessories we hold that a corner is shown to be obliterated if there is substantial evidence of a perpetuated corner location. Accord [Boise Cascade Corp., 115 IBLA 327 \(1990\).](#)"

In [Robert W. Delzell, Betty Simpson](#), 158 IBLA 238 (2003) the Board found: HN3. "Surveys of Public Lands: Dependent Resurveys. An obliterated corner is one at which there, but whose location has been perpetuated or may be recovered beyond reasonable doubt based on the acts or testimony of the interested landowners, competent surveyors, or other qualified local authorities, or witnesses, or by some acceptable record evidence. Where evidence does not support that a particular location is an obliterated corner, the Board will not reverse BLM's determination that the corner is lost." }

- a) A position or location that depends upon the use of collateral evidence can be accepted only as duly supported, generally through proper relation to known corners, and agreement with the field notes regarding distances to natural objects, stream crossings, line trees, and off-line tree blazes, etc., or reliable testimony.
  - b) Manual 6-18. The greatest care is necessary in order to establish the bona fide character of the record intervening after the destruction of an original monument.
  - c) Full inquiry may bring to light various records relating to the original corners and memoranda of private markings, and the surveyor should make use of all such sources of information.
  - f) The matter of boundary disputes should be carefully looked into insofar as adverse claimants may base their contentions upon evidence of the original survey. If such disputes have resulted in a boundary suit, the record testimony and the court's decision should be carefully examined for information which may shed light upon the position of an original monument.
3. Manual 7-2. *A lost corner is one whose original location cannot be determined, by substantial evidence, either from traces of the original marks*



*or from acceptable evidence, or reliable testimony that bears upon the original position, and whose location can be restored only by reference to one or more interdependent corners.*

{ Comments for lost corner definition: See *Howard Vagneur*, 159 IBLA 272, 278 (June 27, 2003); see section 360, 1947 Manual.

Implicit with this paragraph is the test – If the corner is lost does the restorative method and the position of the restored corner protect bona fide rights as to location. }

- a) Thus, if substantial evidence of the location of the original corner exists that position will be employed in preference to the rule that would be applied to a lost corner.
- b) In addition once a corner is considered lost, it is the surveyor's responsibility to assure that the restoration method and the restored position comply with the statutory protection of bona fide rights requirements delineated in 43 USC 772.
- c) Manual 7-1 thru 7-7. Rules for lost corners. Proportionate measurement harmonizes surveying practice with legal and equitable considerations.
- d) Manual 7-8, 7-16, 7-53, 7-54, 7-56. Proportionate measurement methods.
- g) Manual 7-5 The manifest errors in measurement are removed from the general average difference and placed where the blunder was made prior to proportionate measurement.
- h) Manual 7-57 Index correction.

C. Manual 5-46. Identification of Exceptions to The General Rules.

- 1. It is an axiom among experienced cadastral surveyors that the true location of the original lines and corners can be restored, if the original survey was made faithfully, and was supported by a reasonably good field-note record.
- 2. That is the condition for which the basic principles have been outlined, and for which The General Rules have been laid down.

3. The General Rules cannot be elaborated to reconstruct a grossly erroneous survey or a survey having fictitious field notes.

VIII. Exceptions to The General Rules. The Manual provides Exceptions to The General Rules where rigid application of them (The General Rules) would be contrary to the legal requirement to protect bona fide rights.

A. Good Faith Location Rule Exception:

1. Manual 6-35. The Good Faith Location Rule.

- a) It may be held generally that the entryman has located his lands by The Good Faith Location Rule if; such care was used in determining his boundaries as might be expected by the exercise of ordinary intelligence under existing conditions.
- b) Good faith location (referred to herein as a 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 corners existing at the time the lands were located is indicative of - such a degree of care and diligence upon the part of the entryman, or that of his surveyor, in the ascertainment of his boundaries as might be expected for the time and place.
- c) The relationship of the lands to the nearest corners existing at the time the lands were located is often defined by his fencing, culture, or other improvements.
- d) Lack of good faith is not necessarily chargeable if the entryman has not located himself according to a rigid application of the rules laid down for the restoration of lost corners where:
  - i. Complicated conditions involve a double set of corners, both of which may be regarded as authentic;
  - ii. There are no existing corners in one or more directions for an excessive distance;
  - iii. Existing marks are improperly related to an extraordinary degree; or
  - iv. All evidences of the original survey which have been adopted by the entryman as a basis for his location have been lost

before the resurvey is undertaken.

2. Manual 6-35. Good Faith Location and Subdivision of Section.

- a) Lack of good faith is not necessarily chargeable if the entryman has not located himself according to a rigid application of the rules laid down for the subdivision of sections.
- b) The law presupposes the fact taught by experience that measurements of lands can not be repeated with absolute precision, and that the work of no two surveyors will exactly agree.
- c) A decision to set aside previously located legal subdivisions must be supported by evidence that go beyond mere demonstration of technical error, such as in measurement, or nonconformity to strict adherence to reestablishment of corners or subdivision of section rules.
- d) Were the Federal government obliged to open to readjudication the question as to the location of a particular tract or tracts over technical differences, controversies would be constantly arising and resurveys and readjudication would be interminable.
- e) It is unlawful for the Federal authority surveyor to impair bona fide rights as to location.
- f) For proof of impairment of bona fide rights as to location when marking legal subdivisions, as defined by 43 USC 772, there must be positive evidence of an intentional departure from the legal principles governing:
  - i. Recovery of original corner location;
  - ii. Reestablishment and establishment of corner location, or
  - iii. Subdivision of a section.
- g) The legal intent of stability of boundaries and title to lands will have been met when the evidences of an extant subdivision of section survey indicates:
  - i. The use of correct exterior controlling monuments;
  - ii. Conformance to legal subdivision principles;

- iii. Reasonable accuracy standards for the time and place;
- iv. Sufficiency for identification of the legal subdivisions, and
- v. Without fraud or gross error.

{Comments on above: When discussing the Act of February 11, 1805; RS 2396, now codified as 43 USC 752, the Department said; "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. While the alleged shortage in the instant case presents a discrepancy of unusual proportion, yet the very purpose of the declarations of law above mentioned, was to obviate inquiry and contention in respect to survey inaccuracies.

The evidences of the Government survey in this case appear to be sufficient for identification of the boundaries, and therefore, no proper case for resurvey is presented. In denying the former application for resurvey the Department stated in part as follows:

It is to be presumed that Congress, in enacting the law above quoted, and this Department in its interpretation, had in mind that the stability of surveys and the title to lands described by reference thereto should be unassailable by parties finding differences in measurements and areas from those returned. In the present case, the evidences of survey are now found with sufficient certainty, to permit the grantees of these lands to determine the boundaries thereof and to deduce therefrom the deficiency in area. It must therefore be held that these evidences were at least as good when entries were made as they are now and there can be no proper complaint that the grantees were not chargeable with the knowledge that the deficiencies then existed.

Recognition of right to resurvey and repayment in this case would establish a most far-reaching precedent because it would afford a basis for a similar claim by anyone who had purchased Government land and found the area short of that indicated by the plat of survey. And yet the Government would have no sort of basis for claim to further payment in those cases of patented lands where there was an excess of acreage over that paid for in harmony with the survey returns at the time of disposal. Doubtless the wise purpose of the law was to forestall and preclude vexatious disputes as to the actual area of lands disposed of according to the survey returns. If such transactions were not made final, controversies would be constantly arising concerning patented lands and resurveys and readjudications would be interminable." *Scott K. Snively (on Petition)*, 49 LD 583 (May 5, 1923).

When discussing the Act of February 11, 1805; RS 2396, now codified as 43 USC 752, the Department said; "In denying the State's claim for credit on account of the alleged deficiency, the Commissioner held that Section 2396, Revised Statutes, contemplated that in the disposal of public lands the official surveys are to govern, and that each section or sectional subdivision, the contents whereof have been returned by the surveyor general shall be held as containing the exact quantity expressed in the return that the design and purpose of this statute was to establish beyond dispute all lines and monuments of accepted official surveys; to obviate inquiry and contention with respect to survey inaccuracies and place a statutory bar against attempts to alter the same or to set up complaints of deficiency of areas as a basis for resurvey. The Commissioner observed that aside from this statutory limitation, administrative reasons precluded the granting of the State's claim; that the stability of surveys and the title to lands described by reference thereto should be unassailable by parties finding differences in measurements and areas from those returned, and if transactions involving the disposition of public lands were not made final, and the Government was obliged to open up for readjudication the question as to the area of a particular tract or tracts granted and patented, controversies would be constantly arising and resurveys and readjudications would be interminable. The appeal presented by the State, while in effect admitting the correctness of the Commissioner's conclusion as a matter of law, insists that this statutory rule can not be universally applied; that the circumstances and conditions here are exceptional; that the surveys are grossly inaccurate; that the State is equitably entitled to an adjustment and should be allowed to take the full quantity of land granted by Congress.

The Department has carefully considered the matter and finds no reason to differ with the conclusion reached by the Commissioner. The provisions of section 2396, Revised Statutes, 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. True, the alleged shortage in this case looms to a figure of impressive proportions, but the very purpose of the declaration of law above referred to was to obviate inquiry and contention in regard to survey inaccuracies. Moreover, the recognition of right to an adjustment in this instance would establish a far-reaching precedent and afford a basis for similar claims by other States, and a multitude of claims by individuals who had purchased Government lands and found the area short of that expressed on the plat of survey. Also, the rule works both ways, in favor of and against the United States. Manifestly the Government has no basis for claim to readjustment of boundaries or for further payment, or for restitution in those cases of certified or patented lands where there was an excess of acreage over that paid for or taken in harmony with the survey returns at the time of disposal. And if the returns are conclusive against the Government they must also be conclusive in its favor. Take the present case; the Government can not inquire into the contents of the school sections and subdivisions assigned by the State as basis for its indemnity selections, but accepts them as containing the exact quantity expressed in the return. Examination might disclose a deficiency in the area of these sections; frequently, no doubt, exchanges have been made of unequal areas, the discrepancy being in favor of the State, but the law gives these transactions repose and they can not be disturbed. Otherwise endless confusion would ensue.” *State of New Mexico*, 51 LD 409 (March 18, 1926). Repose – cessation of activity.

“In some instances, bona fide rights are protected only where BLM departs from a rigid application of resurveying principles to ensure that long-accepted survey lines are not disturbed, so that property boundaries are stabilized and title is secured.” “After a long period of time, when acquired rights and boundary recognition have become established, boundaries should become fixed.” “Lines long accepted should not be lightly cast aside for greater conformity to recent surveys.” *Longview Fibre Co.*, 135 IBLA 170, 183 (April 10, 1996). }

- h. The law gives these activities repose.
- 3. Manual 6-36. The extent of recognition given by neighboring claimants to a local point used for the control of the location of claims very often carries with it the necessity for a consideration of its influence in the matter of the acceptability of such locations under the good faith location rule.
- 4. Manual 6-37. The surveyor should neither rigidly apply the rules for restoration of lost corners nor the rules for the subdivision of sections (the preface to 43 USC 752 states the principles upon which the boundaries are to be ascertained pertains to section exterior lines and section interior lines) without regard to effect on location of improvements nor accept the position of improvements without question regardless of their relation or irrelation to existing evidence of the original survey and the description contained in the entry.
  - a) Between these extremes will be found the basis for the determination of whether improved lands have been located in good faith or not.

- b) No definite specific set of rules can be laid down in advance.
  - c) The solution to the problem must be found on the ground by the surveyor.
  - d) It is upon his judgment primarily that the responsibility to resolve the question of good faith as to location.
5. 1919, 1930 & 1947 Manuals, section 414: The question to be determined is whether the position of the lands claimed, occupied or improved is to be adopted under the good faith location rule, and whether, if so adopted, the claims thus acceptably located can all be properly protected by the dependent plan of resurvey.
- a) If the position of any claim fails to qualify under the good faith location rule it may be disregarded as to the effect produced thereon by the plan of dependent resurvey.
  - b) 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, or establishment of new corners.
  - c) If the claims are in such concordant relation to each other and to the identified evidences of the original survey as to receive full protection by the dependent plan of resurvey, the surveyor may proceed with full assurance of the adequacy of the plan.
  - d) Otherwise, the question of other processes analogous to those of a special case claim, independent resurvey, correction of conveyance document (43 U.S.C. § 1746), or Quiet Title Act must be considered.
6. If two or more claims are acceptably located, but are discordantly related to each other to a 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.

7. Manual 6-39. In cases involving extensive obliteration at the date of entry or selection, the entryman or his successors in interest should understand that the boundaries of the claim will probably be subject to adjustment in the event of a resurvey.
    - a) A general control applied to the boundaries of groups of claims must be favored as far as possible in the interest of justice, equal fairness to all and of simplicity of resurvey.
    - b) A claim cannot 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.
  8. Manual 6-40. Cases will arise where lands have been occupied in good faith, but whose boundaries as occupied disagree with the position of the legal subdivision called for in the description.
    - a) The good faith location rule cannot apply.
    - b) These are 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 conveyance reconveyance or relinquishment. to cover the legal subdivisions actually earned, rather than through an alteration of the position of established lines.
    - c) This is a process of adjudication rather than one of resurvey.
    - d) A case of this character should be regarded as erroneous location in precisely the same manner as if the question of resurvey were not involved.
    - e) These are matters for adjudication by the BLM after the resurvey has been accepted and the plats filed in the land office.
- B. *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 or occupancy.

1. 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.
  - a) Something is needed in support of these locations.
  - b) This will come from whatever intervening record there may be, the testimony of individuals who may be acquainted with the facts, and the coupling of these things to the original survey.
2. In many cases due care has been exercised to place the property fences and other evidence of use or occupancy on the lines of legal subdivision, and locate the public roads on the section or their subdivision lines.
  - a) These are matters of particular interest to the adjoining owners, and it is a **reasonable presumption** that care and good faith would be exercised with regard to the evidence of the original survey in existence at the time.
  - b) The **burden of proof** to the contrary must be borne by the party claiming differently.
  - c) Knowledge regarding the construction of a purported property line fence, or other use or occupancy line 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.
3. A property corner or a use or occupancy position should exercise a regular control upon the retracement only when it:
  - a) Was placed with due regard to the location of the original survey; or
  - b) Agreement is so close as to constitute the best available evidence.
4. Other factors to be considered are the rules of the State law and the State court decisions, as distinguished from the rules laid down by the BLM (the latter applicable to the public land surveys in all cases). Under State law in 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 conformation with the original legal subdivision lines. These may limit the rights as between adjoining owners.

5. In cases where the federal government has an acquired interest, and rights have vested to a location by state law prior to the acquired interest disregarding exact conformation with the title lines or original legal subdivisions, the surveyor must not impair the location of such rights.
  - a) The conflicting title lines and ownership lines are surveyed and monumented and the conflict area is returned upon the plat.
  - b) Each intersection of conflicting boundaries is determined upon the ground and recorded in the field notes.
  - c) The returns will describe and show the limits of the federal ownership and the limits of the federal title.
  - d) The survey field notes will document the findings of fact duly supporting the conclusion arrived at.

C. *Local Points of Control Exception.* When the retracements show that the principal resurvey problem is one of obliteration, with comparative absence of large discrepancies, i.e. – that is:

1. The official survey had been made faithfully.
2. The official survey was followed by local use and perpetuation.
3. Then the official survey can be reconstructed or restored, as it was in the beginning, based upon identified existing corners of the original survey and other recognized and acceptable local points of control.
4. Manual 6-45. Local Point of Control. The acceptance of duly qualified and locally recognized points of control should:
  - a) Aid materially in obtaining stability of the public land surveys,
  - b) Obtain simplicity of resurvey, and

- c) Avoid the conflicts which would differ only slightly in position.
- 5. In this manner a flexibility will be introduced in the plan of the resurvey, at least to the point of protecting satisfactory local adjustments.
- 6. The surveyor cannot abandon the record of the original survey in favor of an indiscriminate adoption of points not reconcilable with it.
- 7. Chief among this class of evidence forming the basis of the recognized position of land boundaries are:
  - a) Recorded monuments established by local surveyors,
  - b) Duly agreed upon by the interested property owners;
  - c) The position of boundary fences determined in the same manner; and
  - d) The lines of public roads, drainage or irrigation ditches, and timber cutting lines when intended to be located on the subdivisional lines.
- 8. 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 that its correctness can not be successfully disputed.
- 9. Points which actually qualify may be accepted as the best available evidence of the true position of the original survey.
- 10. Once it is accepted in the course of an official survey, a local point of control has all the authority and significance of the identified original corner.
- 11. Many situations will arise where it will be manifest that it is better to accept a position based upon local interpretation rather than to disturb satisfactory existing conditions.
- 12. The surveyor will endeavor to avoid disturbing the position of locally recognized lines when such action may adversely affect improvements.

13. 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.
14. The age, position and the degree to which a local corner has been relied on by affected landowners may lead to its adoption as the best remaining evidence of the position of the original corner.
15. When a local reestablishment of a lost corner or a local establishment of a minor subdivisional corner has been made:
  - a) By proper methods;
  - b) Without gross error;
  - c) It will ordinarily be acceptable.
16. Monuments of unknown origin must be judged on their own merits, but they should never be rejected out of hand without careful study.
17. The recognition of the principle that the restoration of a 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 subdivision of section.
18. Thus where the bona fide rights are found to have been definitely established with reference to the location of lands by existing evidence of the original survey, the theoretical point determined by the General Rules will be set aside in favor of a near-by duly qualified corresponding point, the position of which has been agreed upon by the adjoining property owners. Such a point may then be recognized as the best available evidence of the true position for the corner. The **burden of proof** to the contrary must be borne by the party claiming differently.
19. All such Exceptions to the General Rules adopted during the course of the resurvey or subdivision of section must be fully documented on the plat or in the field notes.

- IX. Corner Positions Based on the Protection of Bona Fide Rights as to Location; 43 U.S.C. § 772. 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 entryman act in good faith when locating or marking the claim, entry or improvement? Did he or she make a good faith effort to follow the public land laws and policies? Were the actions made in good faith without gross error, fraud or deceit?
- A. The application of bona fide rights as to location (The Where of bona fide rights – is within the realm of the surveyor, in contradistinction from The What or The Who of bona fide rights – which is within the realm of realty specialist and attorney) establishes that bona fide rights as to location does not exist in lieu of acceptable evidence of the original corner in a different position.
- B. In addition the following conditions warrants the protection of bona fide rights as to location with the possibility of departure from the General Rules:
1. When there exists gross errors 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, or
  2. 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 restoration of lost corners or subdivision of sections.
- C. Additional Methods for the Protection of Bona Fide Rights as to Location.
1. Section 426; 1947, 1930 & 1919 Manuals: Erroneous local resurvey followed by improvements located onto federal lands. In the execution of a resurvey there may possibly arise rare cases where locally established or recognized corners controlling valuable improvements are so discordantly related to the existing authentic evidences of the original survey that such local corners can not qualify for adoption as acceptable collateral evidence, either by the good faith location rule, satisfactory location, or as a local point of control.

- a) There is no legal authority for a disregard of the identified evidence of the original survey or acceptance of a fraudulent or grossly erroneous corner position.
- b) These cases are decidedly exceptional in any township where regular control has been developed by careful retracement and thorough search.
- c) No general survey remedy has been devised.
- d) A title remedy may be the only solution. Title remedies include amendment of entry or correction of conveyance document to the occupied legal subdivisions.
- e) Whether such method appears to be impracticable or not, the surveyor will submit a detailed report of the conditions found, with recommendation for procedure suited to the particular situation to be dealt with and designed for protection to the claimant's improvements, but on a plan that will not disturb those who have acquired legal rights in the matter of consistent location.
- f) A metes-and-bounds survey of an erroneous location cannot have the legal effect of a title remedy such as an amendment of the entry or correction of conveyance document.
- g) No legal title can be established by the occupancy of lands outside of the subdivisions named in the entry or selection, except where the adjoining lands is or has been alienated lands.
- h) By law adverse possession does not run against lands under title to the United States.
- i) Sooner or later the claimant would find himself without a complete legal title to the lands upon which he had spent his labors.
- j) A title remedy such as an amendment of entry or correction of conveyance document, when the occupancy and improvement do not conform to the lines and subdivisions of the original survey, is the

only safe course.

- k) The surveyor should work closely with the realty and legal professionals to assure compatibility between the conditions on the ground, the official survey and the title documents.
2. Erroneous location of an official resurvey and improvements located onto federal lands. A different situation may arise in the execution of a resurvey where fraudulent or grossly erroneous located monuments from a prior official resurvey have been used to control placement of valuable improvements onto lands under title to the United States.
- a) In these rare cases the official resurvey monuments are so discordantly related to the existing authentic evidences of the original survey that such resurvey monuments can not qualify for adoption.
  - b) There is no legal authority for the SOI to disregard the identified evidence of the original survey nor to accept a fraudulent or grossly erroneous corner position. To do so is an impairment of the bona fide rights or claims as to location of the claimant, entryman or owner of the lands affected by a resurvey.
  - b) An appropriate treatment of this situation, where possible of application, consists in a title remedy. This would consist of an adjustment to the title so as to include the occupied legal subdivisions in terms of the original survey, or to a metes-and-bounds tract.
  - c) These cases are decidedly exceptional in any township where regular control has been developed by careful retracement and thorough search.
  - d) No general survey remedy has been devised.
  - e) Title remedies include that of recordable disclaimer of interest in land, 43 USC 1745.
  - f) Whether such title remedy method appears to be impracticable or not, the surveyor will submit a detailed report of the conditions found, with recommendation for procedure suited to the particular situation

to be dealt with and designed for protection to the claimant's improvements, but on a plan that will not disturb those who have acquired legal rights in the matter of consistent location.

- g) A metes-and-bounds survey of an erroneous location cannot have the legal effect of a title remedy such as a recordable disclaimer of interest in land.
  - h) Equitable legal title may be established by the occupancy of lands outside of the subdivisions named in the entry or selection, and sooner or later the claimant would find himself without a complete legal title to the lands upon which he had spent his labors.
  - i) A recordable disclaimer of interest in land, when the occupancy and improvement do not conform to the lines and subdivisions of the original survey, is a possible title conflict remedy.
  - j) The surveyor should work closely with the realty and legal professionals to assure compatibility between the conditions on the ground, the official survey and the title documents.
3. Erroneous location of a local or official resurvey and federal improvements located onto alienated lands. In these cases the resurvey can be either a local resurvey where the locally established or recognized corners, or an official resurvey, where the fraudulent or grossly erroneous located monuments, have been used to control placement of valuable federal interest improvements beyond the boundaries of lands under title to the United States.
- a) Issues arise when the monumentation is so discordantly related to the existing authentic evidences of the original survey that such local monuments, or fraudulent or grossly erroneous located official monuments can not qualify for adoption as acceptable collateral evidence, either by the rule of good faith or as an local point of control for the local monuments; or in the case of an official resurvey they can not qualify for adoption as to do so would impair bona fide rights or claims of a claimant, entryman, or owner of land.
  - b) The usual appropriate treatment of this situation, where possible of application, consists in the removal of the federal improvements from

the occupied alienated legal subdivisions.

- c) However, when it is determined to assert an interest to the occupied legal subdivisions in terms of the original survey, or by a metes-and-bounds tract, the usual appropriate treatment of this situation, where possible of application, consists in a conveyance document or quiet title action.
- d) These cases are decidedly exceptional in any township where regular control has been developed by careful retracement and thorough search.
- e) No general survey remedy has been devised
- f) There are title remedies including the federal government can acquire ownership by written and unwritten title.
- g) Whether such method appears to be impracticable or not the surveyor will submit a detailed report of the conditions found, with recommendation for procedure suited to the particular situation to be dealt with and designed for protection to the claimant's bona fide rights as to location and to the federal interest improvements, but on a plan that will not disturb those who have acquired legal rights in the matter of consistent location.
- h) A metes-and-bounds survey of an erroneous location cannot have the legal effect of a title conveyance document.
- i) The federal government can obtain legal title to lands established by the use or occupancy of lands inside of the subdivisions named in an entry or selection, by state law, as adverse possession does run for the United States.
- j) Sooner or later the federal government would find itself without a complete legal title to the lands upon which it had spent its labors.
- k) A written title transaction, when the occupancy and improvement do not conform to the lines and subdivisions of the original survey, is the only safe course.



- l) The surveyor should work closely with the realty and legal professionals to assure compatibility between the conditions on the ground, the official survey and the title documents.

X. Special Case Claims – Fictitious, Fraudulent or Grossly Erroneous Original Surveys

A. Section 401(1); 1947 Manual. Special case conditions exist when:

1. The record field notes and plat representing the original survey are fictitious, fraudulent, or grossly erroneous beyond any tolerable limit, and
2. In the township there is use or occupancy boundary lines or other improvements.

B. Special case resurveys provides methods adapted to areas of considerable alienated land or considerable federal lands. This exception to the General Rule resurvey is applicable when:

1. It has been determined not to identify the alienated lands by tract segregations;
2. There will be no projection of new subdivision lines, and
3. The original plat will not be cancelled.

C. Special Case Resurveys are applicable where:

1. The original survey cannot be identified with any degree of certainty in accordance with the representations of the approved plat and field notes, or
2. The prevailing conditions are such that strictly restorative processes, when applied as an inflexible rule between existing monuments or adopted local corner positions, are either inadequate or lead to unsatisfactory results.

D. Generally, special case resurveys can be avoided by restoring the section boundaries in which the claim is situated, using the same control that would have been employed to govern the resurvey, which in certain cases may be three-point, two-point, or even one-point control.

1. In effect this may employ the traces of the original survey, the good faith rule or a combination in the same township.
  2. This type of resurvey provides for the segregation of individual claims in conformation to the subdivisions of the resurvey.
- E. Special case claim segregations will be necessary only in those unusual cases where unrelated control prevents the reconstruction of sections and legal subdivisions by usage of existent corners and accepted local points of control that would adequately protect the alienated lands.
- F. Section 401(2); 1947 Manual. These processes are found to be more flexible in their application than those of the strictly dependent type, but at the same time they are intended duly to protect all private rights which have been acquired upon the basis of the original survey and plat. The special case resurvey also perpetuates the record of the original survey with respect to the identification and description of the remaining federal lands.
- G. Manual 6-60. Special Case Claim Resurveys.
1. The special instructions should designate the sections containing alienated lands which will be dependently resurveyed.
  2. Where there is acceptable evidence of the original survey, the identification of the areas that have been disposed of must be the same as would ordinarily be derived by the regular subdivision of the section.
  3. The special case claims which are to be segregated by resurvey are those areas that;
    - a) Cannot be so identified, nor conformed satisfactorily;
    - b) Where correction of conveyance document appears not to be an available remedy, and
    - c) The disposals are found to be in conflict by overlap.
  4. Every corner of these claims common with federal land within the survey

group is to be monumented.

H. Manual 6-61 and Section 446; 1947, 1930 & 1919 Manuals. Complete Land Status Necessary.

1. An abstract of pertinent records and a status diagram will be furnished to the surveyor showing lands whose boundaries cannot legally be disturbed. These include patented lands, valid entries or claims, school sections, land grants, tentative approvals, interim conveyances, disposals, reservations, or selections of lands whose position and description are based upon the original survey and plat subject to the resurvey plan.
2. The resurvey will not be complete until each claim described by the special instructions has received full protection in the matter of location.
3. Each must be protected by the assignment of subdivisions of the resurvey.
4. It is necessary to furnish to the surveyor the status of all claims in the adjacent sections or of adjoining townships ungrouped for resurvey which might affect the resurvey procedure. The abstract will be included with the other data to accompany the special instructions for the resurvey.

I. Section 436(2); 1947 Manual. Reconstructed Claims.

1. Before making an identification of alienated subdivisions it is necessary to make certain the discrepancies are such that no adequate or satisfactory basis can be shown for the restoration of the former section-line boundaries as a whole.
2. The plan of the special case resurvey must be such that all lines, monuments, and plat representation will duplicate the description of all previous sections where disposals have been made.
3. The alienated lands described by official field notes and plat now regarded as fictitious, fraudulent, or grossly erroneous beyond any tolerable limit must be reconstructed using the best available evidence of the original survey based upon good faith locations, rules for restoration of lost corners and principles of section subdivision.

- J. Manual 6-63. The jurisdiction of the Bureau of Land Management, the limit of the authority of the surveyor, and the bona fide rights of claimants, where alienated lands are involved, remain absolutely the same whether the resurvey is to be made upon the traces of the original survey, the good faith rule or a combination.
1. Identified corners of the original survey in the immediate vicinity of alienated lands to be conformed or segregated are employed for the control of the location of such lands.
  2. The question of the good faith of the entryman is fully considered, as previously outlined.
  3. Where the evidence of the original survey is so obliterated that lack of good faith in location cannot be charged against the entryman, whose claim boundaries may differ from a theoretical location determined by more rigid surveying rules and principles, the available collateral evidence is to be regarded as the best indication of the original position of the claim included in the original description.
  4. This available collateral evidence is employed as far as consistent for the control of the section boundaries and subdivisions within which such claim is located.
- K. Manual 6-64. Consult with Claimant.
1. Where the surveyor cannot definitely locate a claim by identification of the original survey, he should ask the claimant to point out his boundaries.
  2. The boundaries of the alienated land, so determined, are fixed as between private and federal lands, subject to official acceptance and filing of the resurvey.
  3. The surveyor should explain that an acceptably located claim must:
    - a) Have a form agreeing with the original entry;
    - b) Approximately regular boundaries;
    - c) An area not widely inconsistent with that shown on the original plat,

and

- d) A location as nearly correct as may be expected from the existing evidence of the original survey.
- L. Manual 6-65. Dispute may arise over adjustment of the line between adjoining entered, selected, approval, conveyance or patented lands, each acceptably located. If it cannot be reconciled by the surveying process, the claims are surveyed in conflict and so shown on the resurvey plat.
- M. Manual 6-66. Conformance to Improvements.
- 1. The surveyor cannot change materially the configuration of a special case claim as shown by its original description in order to indemnify the owner against deficiencies in area, to eliminate conflicts between entries, or for any other purpose.
  - 2. If improvements have been located in good faith, the special case claim resurvey should be so executed, or the conformation to the lines of the resurvey as indicated, as to cover as nearly as possible these improvements and at the same time maintain substantially the form of the entry as originally described. No departure from this rule is allowed.
- N. Manual 6-67. Consult with Absentee Landowner.
- 1. An attempt should be made to consult an absentee owner so that he may point out the lands subject to a resurvey.
  - 2. If the owner cannot be found and there is no indication of the boundaries of a claim, the surveyor should locate it from the nearest original point of control or from a point of a neighboring claim, or assign to the alienated lands the appropriate subdivisions of the resurvey.
  - 3. The controlling factors are individual and neighborhood improvements (such as buildings, wells, springs of water, cultivated lands, public roads, fences, corners of recognized private surveys, etc.) which indicate the evident intention of the claimant, entryman or patentee as to the position of his land.
- O. Manual 6-68. The following rules will be observed in executing the resurvey of

designated special case claims:

1. Each acceptably located claim which is at variance with the lines of the resurvey is surveyed and monumented at each angle point.
2. Where the limiting boundary of the resurvey has been reestablished in its original position, the portion of a special case claim lying outside the limiting boundary is not surveyed. It is located in an area where the original conditions cannot be disturbed. The portion of the special case claim lying within the area of the resurvey has at least one identifiable original boundary. It should be defined by conformation to the lines of the resurvey in a position which is properly related to the identified or restored corners on the limiting boundary.
3. Where the boundaries of a special case claim are unacceptably located as pointed out by the claimant, the claim is surveyed and monumented in a suitable relation to the original survey. If the claimant protests the location, the surveyor should request that the protest be made in writing. The written protest will be submitted with the returns of the resurvey. Accurate ties should be made to the corners of the claim as unacceptably located. The surveyor should make a complete report of the facts with reference to the question of location. Further protection to the entryman may be sought by an amendment of entry or correction of conveyance document.
4. Where the boundaries of a claim conformation to the lines of the resurvey does not cover the lands occupied, improved, or claimed, the claimant may express a desire to amend his entry or seek a correction of the selection or conveyance document. The fact should be stated in the field notes. A separate full report is made by the surveyor describing the subdivisions actually occupied and those sought under the amended entry or correction of selection or conveyance document which are not within the special case claim as surveyed, all looking to the protection of the title to the lands actually earned. (See current regulations relating to the amendment of entries, correction of conveyance documents, tentative approval relinquishments, interim conveyance reconveyance or relinquishment, or quiet title action.)
5. Where the regular quarter-quarter sections within a special case claim fall in approximately the same position as the regular quarter-quarter sections of the resurvey, the claimant, entryman or patentee may desire to conform his claim

to the resurvey. If no apparent objection is found by the surveyor, the facts should be stated in the field notes and the claim so indicated upon the resurvey plat. The desire by the claimant, entryman or patentee to conform his claim to the resurvey should be documented as testimony and included in the field notes. However, where a claim includes a fractional lot as originally described or where any part of a claim falls upon a fractional lot of the resurvey, the claim must be resurveyed as a whole, even though some or all of the lines of the claim may coincide with certain subdivisional lines of the resurvey.

No special case claim should be conformed to the lines of a resurvey under an involved amended or correction of conveyance document description which includes numerous subdivisions smaller than the regular quarter-quarter section, excepting as completely surveyed and monumented.

6. Conflicting special case claims, each acceptably located, are surveyed and monumented and the conflict shown upon the resurvey plat. Each intersection of conflicting boundaries is determined upon the ground and recorded in the field notes. The number of acres in conflict with each other will be shown in the field notes or plat, or both.
7. The corners of a special case claim are designated by the appropriate aliquot part or lot number consistent with the controlling tentative approval, interim conveyance, claim, entry or patent.
8. Accessories are required with the monuments at the corners of the special claims.
9. Where special case claim lines intersect, a connection is made to the nearest claim corners on each side of the intersection and recorded in the field notes of the section line. This is considered a satisfactory connection to all adjoining claims located within the special instructions. Where an extensive system of special case claims has been resurveyed, the interior claims of the block do not require connections.
10. All recovered monuments of the original survey not otherwise reported upon are connected by course and distance with a corner of the resurvey. The connection and a description of the traces of the original corner as identified are recorded in the field notes of the resurvey. The old monument is

amended and buried if practical and the accessories are effaced unless the point may be needed to control the position of a claim.

What is an original corner? A monumented position which when recovered contains zero error. Examples would be an original section, 3, meander and witness corner, line tree and witness point. Monumented corner of a cadastral/original survey in place prior to entry being made or patent being issued. No matter how far out of its platted position, it is correct. The principles behind this are the *stabilization of property corners and lines*, and *a simplified system intent upon minimized questions of title*.

What is a resurvey corner? A monumented position which can contain error. Examples would be a reestablished corner, center 3 and 1/16 section corner. Monumented corner of a local or cadastral survey not in place prior to entry being made or patent being issued. A component of the evaluation process of acceptance or rejection of a resurvey corner is how far it is from its platted or theoretical position, its error, based on Resurveyor's No. 2 numbers.

There are many who seem to argue; if a resurvey monument contains error, seemly to the exclusion of all other considerations, it can not be the legal subdivisional corner for which it was set. From this line of reasoning, the inescapable conclusion seemly is that any attempt to monument a resurvey corner is a legal fiction. Because every measurement contains error, it is an impossibility to monument a position that is mid-point and on line between two monuments or, to monument a position at the intersection of two straight lines. Every new surveyor who attempts to monument the resurvey corner will find error in the previous Resurveyor's monument. Now, both surveys have



been executed "with due regard to the location of the original survey", both surveys "faithfully executed", both surveys "following proper procedures", both surveys "meeting a duty of care which a surveyor of ordinary skill and prudence would exercise under similar circumstances." Therefore under this logic; Resurveyor No. 2 rejects Resurveyor's No. 1 monument as marking the aliquot part corner and sets a new monument or worse yet does not set a monument but calls for a new "correct" or "theoretical" position, with reference to Resurveyor's No. 1 monument. This approach hardly *stabilizes property corners and lines*.

There are seemly just as many who seem to argue; accept Resurveyor's No. 1 monumented position, not as the aliquot part corner it was intended to mark, but as a "possible" property corner because, Resurveyor No. 2 is suggesting since the title owner is not in possession to his title line, a new title has been created in favor of the possessor and the previous owner's title is extinguished, by a legal doctrine, adverse or agreed, which of course can only be pursued and determined through a judicial proceeding. Or they advocate attempting to get and record boundary line agreements between adjoining landowners, in seemly ever resurvey situation. This hardly is *a simplified system intent upon minimized questions of title*.

On March 13, 1805, less than ten years after the birth of the Public Land Survey System, Albert Gallatin, Secretary of the Treasury, wrote to Isaac Briggs, Surveyor of the Lands South of Tennessee, referring to the just enacted Act of February 5, 1805 (43 USC ' 752), "the principal object which Congress has in view is that corners and boundaries of the sections and subdivision of sections

should be definitively fixed; and that 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 or less than their surveys may 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 tract." These fundamental principles, while addressed to yesterdays original surveyor, also pertain to today's Resurveyor No. 2.

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 out the very purpose of the declarations of the law, was to obviate inquiry and contention in respect to survey inaccuracies. In Scott K. Snively (On Petition) 49 LD 583 (1923), speaking to the same law, 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 be constantly arising concerning patented lands and resurveys and readjudications would be interminable."

The original surveys and monuments of the Public Land Survey System form an enduring basis upon which depends the security of the title to all lands acquired there under. Resurveyor No. 2 must exercise the greatest care so that the resurvey will relieve existing difficulties as far as possible without introducing new complications. Moving corners relatively short distances is less important than maintaining the stability of boundaries.

43 U.S.C. ' 772

**Resurveys or retracements to mark boundaries of undispensed lands.**

The Secretary of the Interior may, . . . , in his discretion cause to be made, . . . , such resurveys or retracements of the surveys of public lands . . . to properly mark the boundaries of the public lands . . . : **Provided**, That no such resurvey or retracement shall be so executed as to impair the bona fide rights or claims of any claimant, entryman, or owner of lands affected by such resurvey or retracement: . . .

Black's Law Dictionary:

Bona fide: In or with good faith; honestly, openly, and sincerely; without deceit or fraud. Truly, actually; without simulation or pretense. Innocently; in the attitude of trust and confidence; without notice of fraud, etc. Real, actual, genuine, and not feigned.

Bona fide error: Mistake made unintentionally; inadvertently; in good faith.

Bona fide possessor: One who not only supposes himself to be the true proprietor of the land, but who is ignorant that his title is contested by some other person claiming a better right to it.

Bona fide purchaser: One who has purchased property for value without any notice of any defects in the title of the seller. One who pays valuable consideration, has no notice of outstanding rights of others, and acts in good faith.

Good faith: Good faith is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage, and an individual's personal good faith is concept of his own mind and inner spirit and, therefore, may not conclusively be determined by his protestations alone. Honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. An honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious. In common usage this term is ordinarily used to describe that state of mind denoting honesty of purpose, freedom from intention to defraud, and, generally speaking, means being faithful to one's duty or obligation. Webster's New Collegiate:

Bona fide: Made in good faith without fraud or deceit. Made with earnest intent, neither specious nor counterfeit.

Good faith: Honesty or lawfulness of purpose.

*Manual*, ' 5-25: Bona fide rights are those acquired in good faith under the law. A resurvey can affect bona fide rights only in the matter of *position or location* on the earth's surface. The surveyor will be concerned only with the question of whether the lands covered by such rights have been actually *located* in good faith.

*Manual*, ' 5-28: Bona fide rights are protected in a resurvey by showing "the original position of entered or patented lands included in the original description."

*Manual*, ' 6-37: The surveyor should neither rigidly apply the rules for restoration of lost corners without regard to effect on location of improvements nor accept the position of improvements without question regardless of their relation or irrelation to existing evidence of the original survey. Between these extremes will be found the basis for determining whether improved lands have been located in good faith or not. No definite set of rules can be laid down in advance. The solution to the problem must be found on the ground by the surveyor. It is his responsibility to resolve the question of good faith as to location.

Dan Ogle, 131 IBLA 129, 130-31 (1994): "This case is one where improvements were apparently placed in reliance on an unapproved survey that did not follow the original official survey. Bona fide rights are protected only where they were established in accordance with an official survey. Therefore, the suggestion that the dependent resurvey is void because it impairs bona fide rights is without merit because appellants have failed to show that the dependent resurvey is not an accurate retracement and reestablishment of the original survey."

John W. & Ovada Yeargan, 126 IBLA, 370 (1993): " The proper execution of the dependent resurvey serves to protect the bona fide rights of appellants in this case because a dependent resurvey traces the lines of the original survey. In the absence of evidence from appellants to the contrary, it must be concluded that the dependent resurvey is an accurate retracement and reestablishment of the lines of the original survey."

UNITED STATES CODE  
TITLE 43. PUBLIC LANDS  
CHAPTER 1. BUREAU OF LAND MANAGEMENT  
43 USC § 2 (2005)

§ 2. Duties concerning public lands.

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 of the United States, or in anywise respecting such public lands, and, also, such as relate to private claims of land, and the issuing of patents for all grants of land under the authority of the Government.

**History:**

(R. S. § 453.)

2 Stat. 716; Act of April 25, 1812.

**STATUTE I.**

April 25, 1812. **CHAP. LXVIII.**—*An Act for the establishment of a General Land-Office in the Department of the Treasury.*(a)

|                                  |   |
|----------------------------------|---|
| Office estab-<br>lished.         | <i>Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be established in the department of the treasury an office, to be denominated the General Land-Office; the chief officer of which shall be called the commissioner of the general land-office, whose duty it shall be, under the direction of the head of the department, to superintend, execute and perform, all such acts and things, touching or respecting the public lands of the United States, and other lands patented or granted by the United States, as have heretofore been directed by law to be done or performed in the office of the Secretary of State, of the Secretary and Register of the Treasury, and of the Secretary of War, or which shall hereafter by law be assigned to the said office.</i> |
| Commissioner<br>to be appointed. |   |
| His duties.                      |   |
| Chief clerk to                   |   |

5 Stat. 107; Act of July 4, 1836

**CHAP. CCCLII.**—*An Act to reorganize the General Land Office.*(a)

**STATUTE I.**

July 4, 1836.

|  |   |
|--|---|
| <i>Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act, the executive duties now prescribed, or which may hereafter be prescribed by law, appertaining to the surveying and sale</i> | <i>Duties relating to public lands under supervision of the commissioner.</i> |
|--|---|

**of the public lands of the United States, or in anywise respecting such public lands, and, also, such as relate to private claims of land, and the issuing of patents for all grants of land under the authority of the Government of the United States, shall be subject to the supervision and control of the Commissioner of the General Land Office; under the direction of the President of the United States.**

UNITED STATES CODE  
TITLE 43. PUBLIC LANDS  
CHAPTER 28. MISCELLANEOUS PROVISIONS RELATING TO THE PUBLIC LAND  
SUBCHAPTER IX - ENFORCEMENT OF PROVISIONS  
43 USC § 1201 (2005)

§ 1201. Power of Secretary or designated officer

The Secretary of the Interior, or such officer as he may designate, is authorized to enforce and carry into execution, by appropriate regulations, every part of the provisions of title 32 of the Revised Statutes not otherwise specially provided for.

**History:**

(R. S. § 2478.)

Revised Statute § 2478.

The Commissioner of the General Land-Office, under the direction of the Secretary of the Interior, is authorized to enforce and carry into execution, by appropriate regulations, every part of the provisions of this Title not otherwise specially provided for.

UNITED STATES CODE  
TITLE 43. PUBLIC LANDS  
CHAPTER 18. SURVEY OF PUBLIC LANDS  
43 USC § 772 (2005)

§ 772. Resurveys or retracements to mark boundaries of undisposed lands.

The Secretary of the Interior may, as of March 3, 1909, in his discretion, cause to be made, as he may deem wise under the rectangular system on that date provided by law, such resurveys or retracements of the surveys of public lands as, after full investigation, he may deem essential to properly mark the boundaries of the public lands remaining undisposed of: *Provided*, That no such resurvey or retracement shall be so executed as to impair the bona fide rights or claims of any claimant, entryman, or owner of lands affected by such resurvey or retracement.

**History:**

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Certified Federal Surveyors Training Program  
BLM National Training Center  
Phoenix, Arizona - February 27 & 28, 2006

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(Act of Mar. 3, 1909, Ch. 271, 35 Stat. 845, 36 Stat. 884, and Title VII, § 705(a), 90 Stat. 2792.)

35 Stat. 845

**CHAP. 271.**—An Act Authorizing the necessary resurvey of public lands.

March 3, 1909.  
[H. R. 24835.]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior may in his discretion cause to be made, as he may deem wise under the rectangular system now provided by law, such resurveys or retracements of the surveys of public lands as, after full investigation, he may deem essential to properly mark the boundaries of the public lands remaining undisposed of: Provided, That no such resurvey or retracement shall be so executed as to impair the bona fide rights or claims of any claimant, entryman, or owner of lands affected by such resurvey or retracement: Provided further, That*

[Public, No. 324.]  
Public lands.  
Necessary resurvey's  
authorized.

Proviso.  
Bona fide rights not  
impaired.

Amount for, limited

UNITED STATES CODE  
TITLE 43. PUBLIC LANDS  
CHAPTER 18. SURVEY OF PUBLIC LANDS  
43 USC § 773 (2005)

§ 773. Resurveys or retracements of township lines, etc.

Upon the application of the owners of three-fourths of the privately owned lands in any township covered by public-land surveys, more than 50 per centum of the area of which townships is privately owned, accompanied by a deposit with the Secretary of the Interior, or such officer as he may designate, of the proportionate estimated cost, inclusive of the necessary work, of the resurvey or retracement of all the privately owned lands in said township, the Secretary, or such officer as he may designate, shall be authorized in his discretion to cause to be made a resurvey or retracement of the lines of said township and to set permanent corners and monuments in accordance with the laws and regulations governing surveys and resurveys of public lands. The sum so deposited shall be held by the Secretary of the Interior or such officer as he may designate, and may be expended in payment of the cost of such survey, including field and office work, and any excess over the cost of such survey and the expenses incident thereto shall be repaid pro rata to the persons making said deposits or their legal representatives. The proportionate cost of the field and office work for the resurvey or retracement of any public lands in such township shall be paid from the current appropriation for the survey and resurvey of public lands, in addition to the portion of such appropriation otherwise allowed by law for resurveys and retracements. Similar resurveys and retracements may be made on the application, accompanied by the requisite deposit, of any court of competent jurisdiction, the returns of such resurvey or retracement to be submitted to the court. The Secretary of the Interior is authorized to make all necessary rules and regulations to carry this section] into full force and effect.

**History:**

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Certified Federal Surveyors Training Program  
BLM National Training Center  
Phoenix, Arizona - February 27 & 28, 2006

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40 Stat. 965; Act of Sept. 21, 1918

## SIXTY-FIFTH CONGRESS. SESS. II. CHS. 175, 176. 1918.

965

**CHAP. 175.**—An Act Authorizing the resurvey or retracement of lands heretofore returned as surveyed public lands of the United States under certain conditions.

September 21, 1918.  
[H. R. 8004.]

[Public, No. 216.]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That upon the application of the owners of three-fourths of the privately owned lands in any township covered by public-land surveys, more than fifty per centum of the area of which townships is privately owned, accompanied by a deposit with the United States surveyor general for the proper State, or if there be no surveyor general of such State, then with the Commissioner of the General Land Office, of the proportionate estimated cost, inclusive of the necessary work, of the resurvey or retracement of all the privately owned lands in said township, the Commissioner of the General Land Office, subject to the supervisory authority of the Secretary of the Interior, shall be authorized in his discretion to cause to be made a resurvey or retracement of the lines of said township and to set permanent corners and monuments in accordance with the laws and regulations governing surveys and resurveys of public lands; that the sum so deposited shall be held by the surveyor general or commissioner when ex officio surveyor general and may be expended in payment of the cost of such survey, including field and office work, and any excess over the cost of such survey and the expenses incident thereto shall be repaid pro rata to the person making said deposits or their legal representatives; that the proportionate cost of the field and office work for the resurvey or retracement of any public lands in such township shall be paid from the current appropriation for the survey and resurvey of public lands, in addition to the portion of such appropriation otherwise allowed by law for resurveys and retracements; that similar resurveys and retracements may be made on the application, accompanied by the requisite deposit, of any court of competent jurisdiction, the returns of such resurvey or retracement to be submitted to the court; that the Secretary of the Interior is authorized to make all necessary rules and regulations to carry this Act into full force and effect.

Public lands.  
Resurveys of privately owned lands at request of owners.

Deposit for cost, etc.

Field and office work.

On application of court.

Approved, September 21, 1918.

UNITED STATES CODE  
TITLE 25. INDIANS  
CHAPTER 5. PROTECTION OF INDIANS  
25 USC § 176 (2005)

§ 176. Survey of reservations.

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.

**History:**

(R. S. § 2115.)

13 Stat. 41; Act of April 4, 1864.

**SEC. 6.** *And be it further enacted,* That hereafter, when it shall become necessary to survey any Indian or other reservations, or any lands, the same shall be surveyed under the direction and control of the general land-office, and as nearly as may be in conformity to the rules and regulations under which other public lands are surveyed. Reservations, how to be surveyed.

UNITED STATES CODE  
TITLE 43. PUBLIC LANDS  
CHAPTER 18. SURVEY OF PUBLIC LANDS  
43 USC § 766 (2005)

§ 766. Geological surveys, extension of public surveys, expenses of subdividing.

There shall be no further geological survey by the Government, unless hereafter authorized by law. The public surveys shall extend over all mineral lands; and all subdividing of surveyed lands into lots less than one hundred and sixty acres may be done by county and local surveyors at the expense of claimants; but nothing in this section contained shall require the survey of waste or useless lands.

**History:**

(R. S. § 2406.)

16 Stat. 217 and 281; Act of July 9, 1870

**CHAP. CXXXV.** — *An Act to amend "An Act granting the Right of Way to Ditch and Canal Owners over the public Lands, and for other Purposes."* July 9, 1870.  
1866, ch. 262.  
Vol. xiv. p. 251.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the act granting the right of way to ditch and canal owners over the public lands, and for other purposes, approved July twenty-six, eighteen hundred and sixty-six, be, and the same is hereby, amended by adding thereto the following additional sections, numbered twelve, thirteen, fourteen, fifteen, sixteen, and seventeen, respectively, which shall hereafter constitute and form a part of the aforesaid act. Sections to be added to former act.

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| lands.<br>Surveyed<br>lands how subdivided into lots, &c. | lands: <i>Provided,</i> That all subdividing of surveyed lands into lots less than one hundred and sixty acres may be done by county and local surveyors at the expense of the claimants: <i>And provided further,</i> That nothing herein contained shall require the survey of waste or useless lands. |
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UNITED STATES CODE  
TITLE 43. PUBLIC LANDS  
CHAPTER 18. SURVEY OF PUBLIC LANDS  
43 USC § 752 (2005)

§ 752. Boundaries and contents of public lands; how ascertained.

The boundaries and contents of the several sections, half-sections, and quarter-sections of the public lands shall be ascertained in conformity with the following principles: First. All the corners marked in the surveys, returned by the Secretary of the Interior or such agency as he may designate, shall be established as the proper corners of sections, or subdivisions of sections, which they were intended to designate; and the corners of half and quarter sections, not marked on the surveys, shall be placed as nearly as possible equidistant from two corners which stand on the same line.

**History:**

(R. S. § 2396.)

2 Stat. 313; Act of February 11, 1805.

**SEC. 2. And be it further enacted,** That the boundaries and contents of the several sections, half sections, and quarter sections of the public lands of the United States, shall be ascertained in conformity with the following principles, any act or acts to the contrary notwithstanding:

1st. All the corners marked in the surveys, returned by the surveyor-general, or by the surveyor of the land south of the state of Tennessee, respectively, shall be established as the proper corners of sections, or subdivisions of sections, which they were intended to designate; and the corners of half and quarter sections, not marked on the said surveys, shall be placed as nearly as possible equidistant from those two corners which stand on the same line.

Principles upon which the boundaries and contents of the public lands are to be ascertained.

43 USC 752(2)

Second. The boundary lines, actually run and marked in the surveys returned by the Secretary of the Interior or such agency as he may designate, shall be established as the proper boundary lines of the sections, or subdivisions, for which they were intended, and the length of such lines as returned, shall be held and considered as the true length thereof. And the boundary lines which have not been actually run and marked shall be ascertained, by running straight lines from the established corners to the opposite corresponding corners; but in those portions of the fractional townships where no such opposite corresponding corners have been or can be fixed, the boundary lines shall be ascertained by running from the established corners due north and south or east and west lines, as the case may be, to the water-course, Indian boundary line, or other external boundary of such fractional township.

2d. The boundary lines, actually run and marked in the surveys returned by the surveyor-general, or by the surveyor of the land south of the state of Tennessee, respectively, shall be established as the proper boundary lines of the sections, or subdivisions, for which they were intended, and the length of such lines, as returned by either of the surveyors aforesaid, shall be held and considered as the true length thereof.

Boundary lines run and marked by the surveyor south of the Tennessee river to be the proper boundaries of sections.

Boundary lines not actually run to be ascertained.

And the boundary lines, which shall not have been actually run, and marked as aforesaid, shall be ascertained, by running straight lines from the established corners to the opposite corresponding corners; but in those portions of the fractional townships, where no such opposite corresponding corners have been or can be fixed, the said boundary lines shall be ascertained, by running from the established corners, due north and south, or east and west lines, as the case may be, to the water-course, Indian boundary line, or other external boundary of such fractional township.

#### 43 USC 752(3)

Third. Each section or subdivision of section, the contents whereof have been returned by the Secretary of the Interior or such agency as he may designate, shall be held and considered as containing the exact quantity expressed in such return; and the half sections and quarter sections, the contents whereof shall not have been thus returned, shall be held and considered as containing the one-half or the one-fourth part, respectively, of the returned contents of the section of which they may make part.

Surveys to be returned.

3d. Each section, or subdivision of section, the contents whereof shall have been, or by virtue of the first section of this act, shall be returned by the surveyor-general, or by the surveyor of the public lands south of the state of Tennessee, respectively, shall be held and considered as containing the exact quantity, expressed in such return or returns: and the half sections and quarter sections, the contents whereof shall not have been thus returned, shall be held and considered as containing the one half, or the one fourth part respectively, of the returned contents of the section of which they make part.

### UNITED STATES CODE TITLE 43. PUBLIC LANDS CHAPTER 18. SURVEY OF PUBLIC LANDS 43 USC § 753 (2005)

§ 753. Lines of division of half quarter sections; how run.

In every case of the division of a quarter section the line for the division thereof shall run north and south, and the corners and contents of half quarter-sections which may thereafter be sold, shall be

ascertained in the manner and on the principles directed and prescribed by section 752 of this title, and fractional sections containing one hundred and sixty acres or upwards shall in like manner as nearly as practicable be subdivided into half quarter-sections, under such rules and regulations as may be prescribed by the Secretary of the Interior, and in every case of a division of a half quarter section, the line for the division thereof shall run east and west, and the corners and contents of quarter quarter sections, which may thereafter be sold, shall be ascertained as nearly as may be, in the manner, and on the principles, directed and prescribed by the section preceding; and fractional sections containing fewer or more than one hundred and sixty acres shall in like manner, as nearly as may be practicable, be subdivided into quarter quarter sections, under such rules and regulations as may be prescribed by the Secretary of the Interior.

**History:**

(R. S. § 2397.)

3 Stat. 566; Act of April 24, 1820.

566

**SIXTEENTH CONGRESS. Sess. I. Ch. 51. 1820.**

**STATUTE I.**

April 24, 1820.

**CHAP. LI. — *An Act making further provision for the sale of the public lands.***

Act of March 3, 1819, ch. 92.  
Act of March 2, 1821, ch. 12.  
Act of March 3, 1823, ch. 57.  
Public sale of lands in half quarter sections, after 1st July, 1820.

At private sale, in entire, half, quarter, or half quarter sections.

Act of Feb. 11, 1805, ch. 14.

Fractional sections, less than 160 acres, to be sold entire.

Proviso.

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That from and after the first day of July next, all the public lands of the United States, the sale of which is, or may be authorized by law, shall, when offered at public sale, to the highest bidder, be offered in half quarter sections; and when offered at private sale, may be purchased, at the option of the purchaser, either in entire sections, half sections, quarter sections, or half quarter sections; and in every case of the division of a quarter section, the line for the division thereof shall run north and south, and the corners and contents of half quarter sections which may thereafter be sold, shall be ascertained in the manner, and on the principles directed and prescribed by the second section of an act entitled, "An act concerning the mode of surveying the public lands of the United States," passed on the eleventh day of February, eighteen hundred and five; and fractional sections, containing one hundred and sixty acres, or upwards, shall, in like manner, as nearly as practicable, be sub-divided into half quarter sections, under such rules and regulations as may be prescribed by the Secretary of the Treasury; but fractional sections, containing less than one hundred and sixty acres, shall not be divided, but shall be sold entire: *Provided*, That this section shall not be construed to alter any special provision made by law for the sale of land in town lots.*

4 Stat. 503; Act of April 5, 1832

**TWENTY-SECOND CONGRESS. SESS. I. CH. 65, 66. 1832.****503****STATUTE I.****April 5, 1832.****CHAP. LXV.—An Act supplementary to the several laws for the sale of public lands. (a)**

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That from and after the first day of May next, all the public lands of the United States, when offered at private sale, may be purchased at the option of the purchaser, either in entire sections, half sections, quarter sections, half-quarter sections, or quarter-quarter sections; and in every case of a division of a half-quarter section, the line for the division thereof shall run east and west, and the corners and contents of quarter-quarter sections, which may thereafter be sold, shall be ascertained as nearly as may be, in the manner, and on the principles, directed and prescribed by the second section of an act, entitled “An act concerning the mode of surveying the public lands of the United States,” passed on the eleventh day of February, eighteen hundred and five; and fractional sections, containing fewer or more than one hundred and sixty acres, shall in like manner, as nearly as may be practicable, be subdivided into quarter-quarter sections, under such rules and regulations as may be prescribed by the Secretary of the Treasury:

All public lands offered at private sale may be purchased in fractions of sections, &c.

Act of Feb. 11, 1805, ch. 14.

UNITED STATES CODE  
TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE  
PART VI. PARTICULAR PROCEEDINGS  
CHAPTER 161. UNITED STATES AS PARTY GENERALLY  
28 USCS § 2409a (2005)

§ 2409a. Real property quiet title actions.

(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under sections 1346, 1347, 1491, or 2410 of this [title \[28 USCS §§ 1346, 1347, 1491, or 2410\]](#), sections 7424, 7425, or 7426 of the Internal Revenue Code of 1954, as amended ([26 U.S.C. 7424](#), [7425](#), and [7426](#)), or section 208 of the Act of July 10, 1952 ([43 U.S.C. 666](#)).

(b) The United States shall not be disturbed in possession or control of any real property involved in any action under this section pending a final judgment or decree, the conclusion of any appeal therefrom, and sixty days; and if the final determination shall be adverse to the United States, the United

States nevertheless may retain such possession or control of the real property or of any part thereof as it may elect, upon payment to the person determined to be entitled thereto of an amount which upon such election the district court in the same action shall determine to be just compensation for such possession or control.

(c) No preliminary injunction shall issue in any action brought under this section.

(d) The complaint shall set forth with particularity the nature of the right, title, or interest which the plaintiff claims in the real property, the circumstances under which it was acquired, and the right, title, or interest claimed by the United States.

(e) If the United States disclaims all interest in the real property or interest therein adverse to the plaintiff at any time prior to the actual commencement of the trial, which disclaimer is confirmed by order of the court, the jurisdiction of the district court shall cease unless it has jurisdiction of the civil action or suit on ground other than and independent of the authority conferred by section 1346(f) of this [title \[28 USCS § 1346\(f\)\]](#).

(f) A civil action against the United States under this section shall be tried by the court without a jury.

(g) Any civil action under this section, except for an action brought by a State, shall be barred unless it is commenced within twelve years of the date upon which it accrued. Such action shall be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.

(h) No civil action may be maintained under this section by a State with respect to defense facilities (including land) of the United States so long as the lands at issue are being used or required by the United States for national defense purposes as determined by the head of the Federal agency with jurisdiction over the lands involved, if it is determined that the State action was brought more than twelve years after the State knew or should have known of the claims of the United States. Upon cessation of such use or requirement, the State may dispute title to such lands pursuant to the provisions of this section. The decision of the head of the Federal agency is not subject to judicial review.

(i) Any civil action brought by a State under this section with respect to lands, other than tide or submerged lands, on which the United States or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments or on which the United States has conducted substantial activities pursuant to a management plan such as range improvement, timber harvest, tree planting, mineral activities, farming, wildlife habitat improvement, or other similar activities, shall be barred unless the action is commenced within twelve years after the date the State received notice of the Federal claims to the lands.

(j) If a final determination in an action brought by a State under this section involving submerged or tide lands on which the United States or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments is adverse to the United States and it is determined that the State's action was brought more than twelve years after the State received notice of the Federal claim to the lands, the State shall take title to the lands subject to any existing lease, easement, or right-of-way. Any compensation due with respect to such lease, easement, or right-of-

way shall be determined under existing law.

(k) Notice for the purposes of the accrual of an action brought by a State under this section shall be--

(1) by public communications with respect to the claimed lands which are sufficiently specific as to be reasonably calculated to put the claimant on notice of the Federal claim to the lands, or

(2) by the use, occupancy, or improvement of the claimed lands which, in the circumstances, is open and notorious.

(l) For purposes of this section, the term "tide or submerged lands" means "lands beneath navigable waters" as defined in section 2 of the Submerged Lands Act ([43 U.S.C. 1301](#)).

(m) Not less than one hundred and eighty days before bringing any action under this section, a State shall notify the head of the Federal agency with jurisdiction over the lands in question of the State's intention to file suit, the basis therefore, and a description of the lands included in the suit.

(n) Nothing in this section shall be construed to permit suits against the United States based upon adverse possession.

**History:**

(Added Oct. 25, 1972, ♦ [P.L. 92-562](#), § 3(a), 86 Stat. 1176; Nov. 4, 1986, ♦ [P.L. 99-598](#), 100 Stat. 3351.)