

Certified Federal Surveyors Certification Program



Course 1

History, Records & Administrative Systems

Version 3.0
January 2010

Course 1: History, Records & Administrative Systems Study Guide

COURSE DESCRIPTION:

This is an introductory series of videos that establishes the context of the CFedS Program. Topics covered in this course include:

- Brief history of surveying as it relates to the United States
- Cultural Awareness
- History of Indian Land Law
- Bureau of Land Management and Bureau of Indian Affairs structures and records that each may have
- Basics of federal survey authority

COURSE OBJECTIVES:

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

- Review administrative functions, structures, and process of the Bureau of Land Management and the Bureau of Indian Affairs
- Increase awareness of cultural and historical legal issues when working in Indian Country
- Identify records sources for survey projects in Indian Country









COURSE INSTRUCTOR(S):

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VIDEO LECTURE TITLE:

History of U.S. Surveying (40 minutes)

ICON LEGEND

 WEB COURSE	 EXERCISE	 DIAGRAM	 READING ASSIGNMENT	 PROBLEM	 HANDOUT	 2009 BLM MANUAL	 QUIZ
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HISTORY OF U.S. SURVEYING

A History of the Rectangular Survey System



READING ASSIGNMENT

Before you begin this topic, take a few minutes to read “A History of the Rectangular Survey System”, pages 10-15 and 54-55 which is located in the Reading Assignment section at the end of this study guide.

Introduction

Welcome to Course Number 1, Module Number 1, Video Lecture Number 1 of the CFedS Training.

I’m Dennis Mouland and you briefly met me along with Ron Scherler in a previous interview that we had done to get you started, to get you some information on what’s going on.

And its fallen my opportunity to bring you up to date on a few things here regarding historical prospective about surveying, about some background things that will be of help to lead into things that will be in this course as well as future courses that are a part of this program.

So that’s where we are going to go, but I thought I better start; I didn’t introduce myself all that formerly in the prior video and so just want to let you know. A lot of you probably know me, I did a tremendous amount of seminar work around the country for over 20 years and actually had over 50,000 people take classes from me during that time, so many of you may know me, and I may not know you by name, I might know your face.

But I have been surveying since 1972, started up in Prescott, Arizona, which is where I live now. It was kind of a long circuit to get back there. About half of my experience during that time has been in the private sector, of course coming up through the ranks of surveying but then even more those years in the private sector was running various survey departments, you know survey manager in various private civil engineering and surveying companies.

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The other half of my experience has been, though, with the federal government and the majority of that with the U.S. Forest Service, 17 years with them. And now with the BLM; my current job is the Cadastral Training Coordinator here at the BLM Training Center in Phoenix, Arizona.

And we are real glad to have you all, you're not here per se in Phoenix, if you're watching this in the dead of winter, you probably wish you were in Phoenix, but this was the best way, the best medium that we had to be able to reach so many people in so many different places, diversity, so we are in the television studios here at the National Training Center. That is where all, I believe, all of the videos that you are going to see has been produced.

So it has been my opportunity and a challenge really to design the training that initially is for the CFedS and then to also help produce it. I don't think I would call myself a producer, but training person, training designer, and we have some pretty talented people who have been helping us along the way to put these things together.

So, we'll get started here, get you started on subject matter and as we encouraged you in the previous lecture, the introductory interview, you know take lots of notes. One of the beauties of this is that you can always go back and listen to what we said. And if you didn't quite get it, go back and listen to it again or if it seems to not make sense or something someone else said, well go back and listen.

You have a permanent record of this training and all of the lectures that are here. So it should work well and we, of course, always welcome your feedback on those things.

Historical Perspective

So let's get started on historical prospective. This is kind of a generic subject. My objective really today is to help you become familiar with the historical aspects of surveying in America and especially how it lead to the creation of the **Public Land Survey System (PLSS)** which you will find referred to throughout our handouts in the course as the PLSS, Public Land Survey System.

As you know the Americas were basically inhabited by native

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peoples, and then various things happened and of course, there are arguments going on as to whether Columbus was really the first one or the Vikings or and now here recently there have been things about the Chinese had produced all kinds of maps that they provided to Marco Polo that are proof that they had been here even earlier than the Vikings. So, who knows?

But the bottom line is that Europeans did start to explore and visit this area. And you know a lot of times we like to say that is when history began, but not really, that may be when written history began in many cases, but the natives have been here for hundreds if not thousands of years prior to that and so you know there is a lot of history there and I will just mention that, and you'll hear more about this later in the program, but the natives, they look at land quite differently and they feel like it belongs to everyone and they are one with the land and those kind of concepts.

And I am not making fun of that because it is the foundation of why we have difficulty in talking to some of the Indians sometimes and getting them to understand the importance of certain documents or the importance of a survey even. Because they don't quite follow that.

Now even with that in mind there were still boundaries that the Native Americans, the Indians, recognized. I am here in Arizona so I will reference, you know up North, here of course we have the largest Reservation in the country, the Navajo Reservation, and they and a number of other tribes that inhabit Northern Arizona, they recognize, sometimes in conflict, but they recognize that our territory goes to that mountain peak, or goes to that river, usually a dry river in Arizona, but you know it went to there and so there were boundaries. And we would call these bounds, right?

A **bound** is some kind of limitation to what you own or that you control and so it can be any kind of a limitation. We will learn more about that later in one of the other courses. But the bottom line is that there were still boundary issues and there were violations of those boundaries issues.

There were tribes that were raiding others or that their resources were running thin and they moved on and invaded what some other group thought was their land and so, you know, we have always had boundary issues of one sort or another but it was never

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as complex or as intricate or as perhaps even sensitive as it was once the Europeans showed up because we were of European background here in the United States, especially, we write everything down, we had to record documents, we had to have surveys and we had plats of the surveys.

We made a lot of those things a lot more complicated and in many cases for good reason. But the point is that it is not something new. The Europeans did not bring boundaries to the colonies, but they did bring their brand of boundaries and it was much tighter, much more related to economics than it was just that we were part of the land and we enjoy the benefits of the land, which is how many of the Indian cultures look at it, and I'm no expert on that. I'm not claiming that. We have brought in experts to talk to you about that. But it's just to show that we have always had boundary issues and boundary concerns on this Continent.

Well, you know we have, it doesn't really matter what part of the United States you are in, some of you watching this are in public land states, some of you are in Colonial states, some of you are in Texas, which you know us public land guys kind of lump you in with Colonial, but you really weren't, you weren't part of the original colonies, you were part of another country and then you were your own country for a while, if you are watching this from Texas, and then we have Hawaii, which the United States acquired, I forget, 1898 somewhere in there, maybe a little earlier, but that was its own country and system of surveying and that sort of thing.

Similarities in Surveying

But here is my point, it doesn't matter which part of the United States you are in, you can be in the Colonial states, you can be in the Midwest, you can be up in the Great Lakes, down in the South, you can be here in the West, you can be up in Hawaii, you can be up in Alaska, it just doesn't matter, every one of those cultures had the same kind of land description systems and it is what we usually call **Metes and Bounds**.

Now, **metes**, of course, are measurements of any kind. A mete includes distance, bearing and even areas in some peoples' minds. Whereas a **bound**, is as I mentioned earlier is a limitation and that might include a monument or some record object and so we have

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metes and bounds descriptions and they were of varying of, how should we say it, varying quality early in time, of course land values were low, as the Colonists arrived here in the United States, hey it seemed like the land was unlimited. So that not only kept the value down, but also perhaps caused people to say I'm not going to worry about a 10 or 20 or 30 foot discrepancy between my land and somebody else because I've got more than I know what to do with anyway, so you know there were attitudes and economics and just even psychology that were involved that allowed surveying and legal descriptions to be sloppy. I think it was precise for the time, so don't misunderstand me, but it was sloppy by today's standards.

And you know we even come across things historically in some of the Colonial states, and you can find this a little bit in some of the Western states, where back in the day, you know, back 150 to 200 years ago or more they would exaggerate the acreages, either up or down.

I know of places where I have seen deeds where the parcel was 100 acres, but it wasn't very good land, so the surveyor (even though he measured something that came up 100 acres), he called it 80. He had given it a 20 percent discount right off the bat. So we had a lot of loose kind of operation and Metes and Bounds can run in a more effective and efficient manner, but the bottom line is the **land tenure** system, the ownership of land and how it was described, and sold and owned and documented and all those things, that's land tenure in a nutshell, that it was a very loose foundation upon which the Colonial states were built. Surveyors who are in Colonial States deal with that all the time, they are experts at it.

You know they know far more about much of that than I do because they have had a lot of experience with that, although you know I will mention that I did a lot of surveying in New Mexico and when you are working inside the land grants, you're dealing with people and land ownership, and occupation that predates the Pilgrims' landing and you need to keep that in mind and that many of us from the West have a considerable amount of Metes and Bounds experience, but I haven't had any on the East Coast where you have had certain flavors, certain record systems, all that sort of thing. So I'm just acknowledging, I don't claim to be an expert on the Metes and Bounds in its totality on the East Coast or in the

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Colonial States.

But you know the bottom line is that these surveys and legal descriptions many times without a survey, which still goes on today, you know they created certain future problems. Now you are familiar with these, you are familiar with a lot of these things.

We have what we call the seniority of calls and that is based on case law that the courts have given us and is very, very consistent as to which kind of calls are more important, and you know the reason for this is because anytime you have more than one call, you have the potential for and usually the likelihood of a conflict.

Seniority of calls

So you look at this list that is on the screen now this is generally, it depends on which textbook you are reading and there are certain differences here, but just go with me here on this.

We have monuments and some of the books we read divide natural over artificial. Then we have other record adjoiners calling for an adjoiner deed or something, a survey of record that may not even be of your parcel, and then we have distances, bearings, area, when it is used as an addendum, and we'll be covering some of this stuff in a later course in this program, but the area and then even in some places coordinates are down at the bottom of the list.

Now when you look at the list, let me highlight a couple of things here for you because what we need to remember or recognize is that these first three, I am just going to circle the dots there, those first three, this to me is more important than anything else on the list, those first three are bounds, aren't they? They are all bounds, yet these remaining ones are, you know distances, bearings, area, coordinates, those are all metes, and they are all measurements, right?

So, you know, I'll be discussing some of that in one of the other courses about boundary law where we will kind of go over that: some of the things we really don't want to be reading into the seniority of calls. But I am using that as an example to show you that conflicts exist almost always. I mean you call for a bearing, a distance and a monument; you are going to have conflict. It will not measure right.

Seniority of Calls

- Monuments (natural over artificial)
- Record adjoiner
- A record survey
- Distances
- Bearings
- Area (as an addendum)
- Coordinates

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The monument may not be the one that you were expecting and all those things. I am not here to talk about those now, but I am mentioning that because what we need to realize is that the courts have had to answer a tremendous number of questions for us over the last several hundred years, including some of our European background and the common law that came with us from there that helped us to understand Metes and Bounds because it has a lot of inherent problems in it.

Now let's understand that originally the Crown, the English Crown, especially the East Coast, they were handing out land in huge parcels to friends of the King or to giant corporations which were usually headed by friends of the King and almost immediately, those parcels that were being meted out, were in conflict.

Huge overlaps by 100 miles in some cases and it is just because they didn't have good maps and they weren't doing surveys. The King was just giving them land from this point on the ocean north or from this latitude south and not realizing that those are overlapping each other so right off the bat, because of not paying attention to good mapping, good surveying, good foundation for some of the reasons I've discussed we already have title issues, we already have boundary disputes, we already have situations that came up. And as I mentioned, there was very limited precision and I don't criticize the surveys or the quality of the ways that those surveys were done, although sometimes you could.

I have a great book at home that's got a collection, I forget, of 30 or 40 plats that George Washington drew and I got it, I think, from the Virginia Surveyors Association but it's a great book and you look at it and even here is one of the founding fathers of the United States who was at least a part time surveyor. I don't know how long he surveyed, but some of those plats are a little loose, a little poorly drawn and you know a lot of information missing and so you know I am not going to be overly picky about, I just want to say that attitudes at the time the paradigms that they were operating under, precision wasn't important.

We do know that for a tremendous amount of metes and bounds it really was just bounds. Sometimes they didn't even have metes in there, they just had bounds. They just said "go from the creek to

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the tree to the rock wall to the whatever” and that is a legitimate description, its not precise, it’s not mathematically containable or definable, but it’s still a valid description.

If somebody did a valid deed and that description was on it well they conveyed that title. And we have those same things here in the land grants and other metes and bounds situations here in the West. So you know that limited precision was one thing and then calls for a natural object, some of which don’t exist anymore, or there is confusion, you know, to the tree and you go out there and there are six trees there now, you just don’t know. These things can happen even in public lands; they have.

Lack of Standards

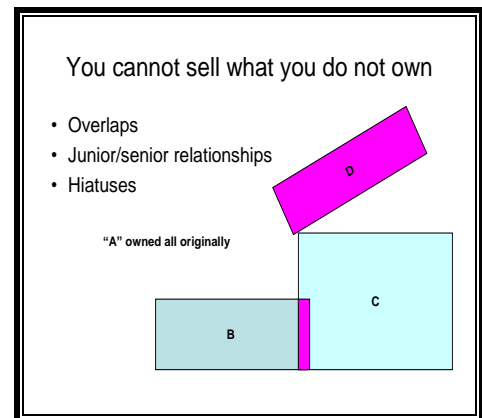
But there were a lot of historical issues there that surveyors in the Colonial states were dealing with. There were no standards; of course, there wasn’t any until the end of the early 1900s anywhere in the United States as far as real surveying standards and policies and procedures and recording of data, that sort of thing. It was pretty loose and as I mentioned earlier many parcels were created without a survey and even to this day that is done by developers and people and they don’t realize some of the risks they take and the problems that are potential there. And so what we see is the title issues that begin to arise.

They are not immune from, when you got a land description system that works like that, you don’t have control over a lot of situations because as you describe land and that’s what, the words in the deed, that is what conveys the land, but then when we go out and survey it later we come up against things, we start finding all sorts of issues, we have overlaps and hiatuses, and Junior/Senior rights and even unwritten rights.

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Now I have a Power Point here just to show you and you will see this one in a later part of the course or the program. But, you cannot sell what you do not own, that is really the foundation of **Junior/Senior rights** when it comes to title. Now you will learn about different kinds of Junior/Senior situations here when we talk public lands later in this program.

But you can't sell what you do not own. So here we have, say the whole slide here was owned by A and he owned everything originally then he sold something to B and then he sold something to C. Well, as it turns out, a strip as you can see there in pink and here I will circle it. That strip was sold twice. It was sold to B then it was sold to C.



And the general rule is that B is going to get it because he was first in time, first in right. And it is not just because he got to the courthouse first, although in some states there are issues there, and I am not going to discuss those. But what really matters is that when A sold it to C, he didn't own that strip, and he had already conveyed it. And you cannot sell what you do not own.

We call it the Brooklyn Bridge Principle. I don't know if that is just urban legend or if people were dumb enough to buy the Brooklyn Bridge. But I am sure there were people dishonest enough to try to sell someone the Brooklyn Bridge. So, you can't sell what you do not own.

Now going back to the slide then, we also have the other situation and that is where C was sold and then later D was sold, but we have a hiatus.

There was an assumption that this area in here that this was a common line but when you get out on the ground and you use the words in those deeds and you find the monuments that they had or whatever they gave you, you discover that those are not contiguous lines that there is a hiatus there.

These are some of the things that started occurring and have always occurred really in the Metes and Bounds world and especially if you just start using Metes and you don't mention enough Bounds, then you really get into trouble and most of you have experienced all of that.

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So we have a lot of **title issues** that started to rise because of that. We had other things unwritten rights, adverse possession, prescriptive easements, people using things, acquiescence, all those things. I am not here to discuss those things with you in this course but the bottom line is hey there was all these unwritten rights going on out there that were more controlled by what people were doing on the ground, irrespective of what their deed said.

And on top of all of that, then we also have words, and of course in the surveying, and deed, and realty business, words are very important and I am amazed at how sloppy some people are, surveyors, realtors, lawyers, others, you know title insurance companies even. How sloppy they are with words sometimes and not realizing that words are very important. Of course, we as surveyors primarily pay attention to the words in the legal description.

If you have ever read any books on this subject, in particular what I think is the best one by Gurdon Wattles, book entitled, *Writing Legal Descriptions*. If you have ever read any of those, you know they have a listing for you of terminology that you should use or that you should not use. And some of them are almost crazy; you know they are just silly. They're dumb, but we are going to list those for you when we talk about boundary law and title analysis.

But I am just mentioning those words because you see where the problem is when you are creating metes and bounds descriptions, which are essentially paragraphs of words, there is all these potentials for conflict of just the things you say, then there is the potential of conflict of the things you said and what is really on the ground, and how the adjoiner said theirs and then on top of that the words that you used may be construed by the courts to mean more than one thing or they are construed to mean more than one thing then the courts step in, barring any other evidence, here is what that means so we have a lot of potential confusion, a lot of issues and if you have ever worked with any Metes and Bounds situations, then you know how complicated, messed up and challenging they can be.

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A National Debt

Well, here we are in this new country that is all metes and bounded to death, and we have a Revolutionary War. And we finally expel the British and declare a victory and we have our new nation. And we are all familiar on July 4, 1776, signing of the Declaration of Independence, I am not going to give you a full history lesson, but you know not too many years after that, in fact 1784, the United States Continental Congress began to discuss a number of issues that they had. The war was finally over.

But they had a real problem; the country was broke. That sounds familiar..... you see I can safely say that because we always have a national debt in the United States. The nation was broke. We had a huge national debt. We had borrowed money from individuals, from corporations and especially from other foreign governments to help us finance the war against Britain. So we needed to pay this off.

We also had a tremendous number of soldiers who had fought in the war both American citizens who fought in the war and as well as even other conscripts from other nations who came and helped us fight the war and we needed to pay them, we didn't have the money to pay them. We didn't have a real economy at the time.

I wouldn't say that our economy was totally in shambles because it is not quite like it is today. It was very agrarian based at that time and although there was a lot of shipping and things going back and forth, the war had taken its toll on some of that, so we were not in the best of economic conditions and the Continental Congress wanted to resolve this.

Vast Lands to the West

Now they started thinking about all that land lying west of the Appalachians. There were people moving out there and they were having some skirmishes out there with the native peoples. But there were people who wanted to homestead out there. Great Britain was still claiming to control a portion of the upper Midwest and the United States wanted to secure its ownership of those, its control of those, the safety of those areas for homesteaders and they also wanted to take advantage of that tremendous asset.

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You know it was one of the few assets that the United States had. Now originally the Colonies that extended westerly, and you have seen some of those old maps where the map just kind of fades off as they get to the mountains there, you are never quite sure how far you know Tennessee or Virginia is going to go. Because you can't tell by the map because they really didn't know what was out there so they were just kind of it was like from here on out as if to the Pacific.

There was tremendous debate in the Congress about ceding those lands back to the Federal Government. You see, there was no federal land at that time. It was all state or colonies and then became states. And they were claiming all these vast lands of the West. And so a tremendous debate when on for quite a while and I forget I think it was Georgia was the one hold out and I think they waited a year or two before they ceded but eventually during a several month period, the states ceded their land to the Federal Government that was lying west of the Appalachians.

That is a very general boundary because there were some other things that went on, and the creation of a couple of new states and that sort of thing. But here is the bottom line: all of a sudden the Federal Government had ownership and control of what they felt was an unlimited asset, an unlimited amount of land that just went West to the western ocean, wherever that was. And you know we, at least Europeans, didn't have any real knowledge of where that was or how far that was until we sent Lewis and Clark.

And then we got a real good idea of how far it was and how difficult it was and especially how rugged it was: That it didn't all look like Missouri or Virginia, or the rolling hills or what they call the mountains of the East (which some are pretty cool), but it was quite a surprise for Lewis and Clark and Company went they got to the Rocky Mountains. Nobody knew how far that went so the government owns all of that so they decided that they were going to sell off that land.

And there were a lot of reasons for selling off that land, one was to raise money, two put people out there, homesteaders occupy the land so that if any other nation or anybody wanted to claim ownership, we could say well we are occupying it. That was in particular with the issues with the British up there in the upper

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Midwest. So you know we kind of had a plan there.

This would also help secure more people farming and producing which we could then tax. This also got our economy going because new people out farming and they are going to buy new stuff to help farm and then produce crops and that sort of thing and on top of all of this gave us a way to without even using cash in some cases pay off soldiers.

There were situations where soldiers were simply given 320 acres or something and said that's your payment for being in the war. So this was kind of a God-send in their minds. They just thought "well, all this vast land, let's start selling it".

Surveyors Input

Now before they started to sell it though, the surveyors in Congress (and let's face it there were several land surveyors in Congress back then), the surveyors in Congress said, "Whoa, Whoa, wait a minute, are we going to dispose of all of this land, are we going to continue the same problems that are inherent with Metes and Bounds?" and of course remember this is from their prospective of precision, their perspective of purpose, of value, of land, of all sorts of things. They said "wait, we don't want to continue with that. We want to do something different."

There was a committee put together that was originally headed by Thomas Jefferson, also a land surveyor. Jefferson had a lot of ideas but not all of his ideas were incorporated, that's for sure. But about part way through the process, he was sent off to France as our ambassador there.

So the committee was made up of people from each of the colonies and they had a lot of different ideas and what ended up being the Public Land Survey System really is quite a hybrid of different things from different states, but there were some basic things that they wanted to do that had to happen in order to change the foundation of the Land Tenure System of how it is described, how it is conveyed and how it is surveyed and so those surveyors jumped in with these ideas that stuck and I want you to think about this.

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First of all, we were going to survey it first. Brilliant idea, right? I mean even to this day we go out and survey something that someone already sold ten years ago they had to make assumptions when they wrote the legal description of that and we go out and we find that it is not the way they thought it was. And that happens all the time. So Jefferson said, (it was one of his ideas), “we are going to create this grid” and we’ll find out more about that here soon, but we are going to create this grid and it’s going to, when we say survey it, they were not saying that they were going to survey every parcel, every property corner of every person’s parcel because they didn’t know what shapes the people would choose to buy land in.

Using terminology that you and I would use today, this might help you to understand it better; they wanted to **control** the surveys. So originally it was section corners every two miles then it dropped down to section corners and quarter corners which is basically what most of the country ended up being and that most of us in public land states are familiar with.

But understand that it was that setting of the control in other words wherever you were in the public domain, wherever you were that you were going to homestead, you were never more than a half a mile from a corner that had been set by the government and you needed more than one to figure out where your land was but you had enough out there that you could do this and you didn’t have to rely on thence from the old tree to the creek and when you get out there the creek splits and goes around an island or which side do we go. You don’t have to worry about all that stuff. It was predetermined on the ground and on the plat as to what was being conveyed.

You had to survey it first, there was not going to be any Metes and Bounds in the legal descriptions that the government was going to convey. You know that we call them patents. A patent is really a government quit-claim deed. That is what it really is.

When the federal government would issue a patent, it would not have a legal description in the normal sense that everyone was used to, that being Metes and Bounds, beginning at the tree, thence around the rock wall and down to the creek and to the road and all of that. It’s not going to have any of that. It’s going to be based on this grid first of all and they are going to give every parcel a name

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and so they came up with the system, which if you are not familiar with it, you will have the opportunity to be familiar with it, of quarter sections and half of quarters, and quarters of quarters and all that stuff. They came up with this system so they could name every parcel. The land could be described and conveyed by the name and not be bound, if I can use that pun, to the Metes and Bound system.

On top of that, the plat, an official map filed by the government, would also give you the area. So there would be **official acreages**. They may not be very precise but there would be official acreages so there would be any arguing about how big is that piece of land and all that.

Congress set what the rate was initially, I think at first it was a dollar an acre then it went up to \$1.25 and then it eventually got to \$2.50 an acre on homesteading. But the point is this, Congress set the price but the surveyors for the general land office had to go out and define the boundaries with marks on the ground, monuments. And then produce a plat that gave the official acreages. So really what you have is the legal descriptions on the patents or what they include is a description by name and an official acreage.

And that official acreage is what you multiply by the \$1.25 an acre or whatever the price was at the time that he was buying it.

Sequential or Simultaneous Conveyances?

Now I want to draw an analogy for you that most of you surveyors, if not all of you, understand. You know in surveying we have what we call **sequential conveyances**. The example I showed you, you cannot sell what you do not own, that was a sequential conveyance.

A owned it all, he sold to B then C. There is a sequence there, a time, and a chronology. But we also have in land boundary law we have what is called a **simultaneous conveyances**. Although they are not actually conveyed at the same time, it is a simultaneous creation; I prefer to call it, where we create all of the parcels at the exact same time.

Now the most common of those that you and I are familiar with is the residential subdivision. Where I live it, it doesn't call for

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Metes and Bounds, it says Lot 4 of Block A of Shady Deal Estates. That is for sure in Arizona, Shady Deal Estates, you know, all of our land fraud history we have here in this state. So that is my legal description. Now what is that doing?

I am in a lot and block situation. So all the old lot block surveys, the residential subdivisions many of you watching this are in the business of creating. You are creating a simultaneous creation. All of the parcels in that subdivision are created at the same time and that time is when you sign the plat and record it, right? In the county or whatever jurisdiction you work with approves that plat or accepts it. All of the parcels on there are equal, is that right? So there is no Junior/Senior between lots in a subdivision, other than maybe on the exteriors because you are up against other owners there.

Because you own, I say you, the developer owns the whole parcel and then carves it up into 50 parcels. Well they are all created at the same time. That is what we call a simultaneous conveyance. I want to use that as an analogy, you see the Public Land Survey System, therefore, because of the way Jefferson and the rest of the committee designed it, became with very few exceptions, a giant simultaneous conveyance.

Because all of the parcels in there, you know the plat of a whole township is approved, everything in there was created at the same time. So you know somebody owns this section and somebody else owns the section next door, it didn't matter. There is no Junior/Senior relationship there. So you see that is just one example of how they were getting rid of the some of the inherent problems that Metes and Bounds brought or that they had brought with them from Europe that had plagued them and had plagued our land tenure system.

If you think about this, you realize that in a giant simultaneous conveyance, there is very little chance for overlaps, we have some and they are there because of mistakes because we didn't stick with the system. And we are not really covering much of that in the CFedS program although some of the continuing education CFedS courses will definitely go into that.

But you know, when you are a giant simultaneous conveyance you don't have a lot of chances for overlaps or hiatuses, and frankly

HISTORY OF U.S. SURVEYING

the Public Land System even thwarts unwritten rights. It doesn't eliminate them; there are still some issues there. But we will see more about that later. But what I am giving you is a historical prospective to see why the public land system was brought in and what was going on in the Colonial states to create that kind of a new atmosphere.

Now you will be going from this video lecture in this module to another one next that is taught by Dominica and she will be covering the basics of Public Land System and history of it itself and talk about some of the ins and outs of how that system works; especially the records that exist for that system because much of this course here is about administrative and records kinds of issues and later of course we will talk about what we are going to with those things.

I would just encourage you to read the 1785 Land Ordinance Act which is the law that Congress passed in 1785 to create the Public Land System and you will find a lot of other things in there and even some rather strange things to us today; like social issues addressed in there but it will give you an idea and it will give you a little more background and perspective as to why they wrote what they did in that law and where that takes us in the next lecture.

So Dominica will be taking over for me for the next portion of the course, so I appreciate your attentiveness and I will be talking to you later on some other subjects.



READING ASSIGNMENT

a really valid claim; the King and Parliament had issued the original charters and grants on which the colonies laid claim to the western lands, then through the 1763 Proclamation and Quebec Act they rescinded those grants. But that point was made moot by the war and subsequent independence from English rule.

EVENTS DURING AND FOLLOWING THE REVOLUTIONARY WAR

Land Confiscation

Immediately following the Declaration of Independence on July 4, 1776, the newly declared States confiscated the lands of those people who remained loyal to the English Crown, and declared such lands State property. Each state also declared all "Crown Lands" and the unpatented proprietors' lands State property. In this manner, the new States became owners of millions of acres of public domain within their own boundaries and under their jurisdiction. These confiscations included the "Crown Lands" in the western territory to which the States laid claim. They later sold the lands within their borders to pay debts and raise revenue. Much of the land was used to pay the soldiers who fought in the war.

Military Bounty Warrants

It was a common practice to grant lands as a reward for military service in the colonies, in the form of a warrant for a stated number of acres, ranging from as little as 20 acres for common soldiers to several hundred acres for officers. After the Declaration of Independence, each of the States granted bounty lands to her soldiers for military service. The Continental Congress had no land but still offered bounties of 100 acres for soldiers and over 500 acres for officers, which were given to Revolutionary soldiers and to men who deserted from the British army. Land warrants could not be sold until after the close of the war. Military bounty land warrants were issued for several million acres of land.

Currency Depreciation

The Continental Congress had no power to levy taxes and had no direct method of raising funds to pay for the war. The Congress issued bills of credit, somewhat similar to promissory notes, in the form of currency. Congress asked the States to levy taxes and redeem these bills, but the States failed to do so, and in addition, issued their own paper money. Since the Continentals were not backed with silver and were not redeemable, they soon depreciated in value. In 1780, one silver dollar was worth 40 continental dollars, and by 1782, the continental paper dollar was nearly worthless and speculators bought them for almost nothing, hoping that Congress would eventually redeem them for at least part of their face value. Much of this money was converted to securities, or bonds, and the bonds were later used to purchase public lands in the Ohio country.

Treaty With England

At the close of the Revolutionary War, the treaty to end the conflict was negotiated with England, Spain, and France. England was inclined to favor the United States at the expense of French and Spanish territorial claims. The final treaty was signed on September 3, 1783, and gave the United States jurisdiction over all the territory east of the Mississipi

pi River, south of the Great Lakes and north of Spanish Florida (31° north latitude). The United States also acquired full navigation rights on the Mississippi River; however, because New Orleans was held by Spain, navigation of the Mississippi was restricted and impeded settlement in the Ohio country until after 1800.

Land Cessions

The Continental Congress had made several requests, without success, of landed colonies to relinquish their claims to western lands. The western lands question was a hot political issue; the seven States with western land claims were opposed by the six States with definite boundaries. Maryland led the battle and refused to ratify the Articles of Confederation until the landed States ceded their claims. Maryland had been reduced by the Pennsylvania boundary settlement and by the Delaware counties; she especially disliked Virginia and that State claimed an enormous area. The smaller States feared the power of the larger States and the greater power they would have if allowed to retain their western land claims.

New York had a dubious claim to lands based on her sovereignty over the Six Nations. Since the Indians claimed lands in New York and to the west and southwest in Ohio, New York claimed those Indians lands. New York broke the deadlock in Congress by ceding her land claims to the Congress on February 19, 1780.

Connecticut followed New York's lead and ceded her claims on October 10, 1780, but reserved a total of 3,800,000 acres between 41° and 42° north latitude, extending 120 miles west from the west boundary of Pennsylvania. These lands were called the Connecticut Western Reserve and the "Firelands." Connecticut lost her claim to lands in the Wyoming Valley in Pennsylvania.

On January 2, 1781, Virginia agreed to cede most of her claims north of the Ohio River. In doing so, Virginia relinquished all of her claims northwest of the Ohio River except an area between the Scioto and Little Miami Rivers. This area, known as the Virginia Military Reserve, was used to pay military land bounties issued to soldiers by Virginia. Virginia retained Kentucky and also stipulated that 150,000 acres in Ohio be granted to George Rogers Clarke and his regiment, and that private land grants already made in Ohio by Virginia and France be confirmed.

Eight states, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, Virginia and South Carolina, had ratified the Articles of Confederation. When Virginia agreed to cede her claims, Maryland ratified on March 1, 1781, and thus completed the necessary two-thirds to put the Articles into effect.

Massachusetts and North Carolina ceded their claims in 1784. North Carolina ceded all of her lands in what is now Tennessee, except lands needed to satisfy her land grants and military bounties. After those reservations were satisfied, so little land remained that in 1841 Congress gave any remaining land to the State of Tennessee, so for all intents and purposes, Tennessee was not a public land State.

South Carolina did not cede her claims until 1787. Georgia was the last state to cede; her cession was ratified in 1802. After the New York, Connecticut, Virginia, and Massachusetts cessions and ratification of the Articles of Confed-

eration, the Congress of the Confederation had land but no money. The immediate question was how to sell the land to raise revenue to pay off the massive debts incurred during the war.

Land Companies

The land-speculating companies began early to petition the Congress for land grants. Wealthy and influential men held stock in these companies and also held large amounts of continental currency and treasury notes. These companies put forth various schemes to buy millions of acres, first in Kentucky and Tennessee, and then later in Ohio and Indiana. Since land companies had been very active and a large part of the land-settling system in the colonies, they were very persuasive in their plans for land grants and settlement in the Northwest Territory. The Ohio Company of Associates was the company that finally succeeded.

Need for Revenue

Congress under the Confederation was deeply in debt to France and other creditors. Millions of dollars in continental bills and treasury notes were outstanding and Congress had no power to levy taxes on the land or States.

The Northwest Territory loomed as the only asset the new country had which might be turned into hard money. If the vast public domain could be sold to settlers, it could return millions of dollars to the treasury and solve the pressing immediate need for money. The big question was how the sale of the western lands could be accomplished.

Small Farms Versus Large Grants

Politically there were two factions in the debate:

- (1) On one side were the advocates of sale to individual settlers in small parcels. The small farmers, frontiersmen, and merchants argued that an essential part of a democracy was the right to own property. They could not afford to buy land in large tracts, and if it were sold in huge blocks to wealthy men, the small man would be squeezed out or forced to pay high prices and interest.
- (2) The conservative group, generally made up of wealthy southern aristocrats and plantation owners, did not think the democracy advocates were capable of settling the land intelligently or capable of handling land ownership. The conservatives were in favor of large grants at low prices to companies or wealthy men who would then handle the business end of settlement, such as surveying and patenting.

Generally the democracy advocates were from New England and other northern States. The spokesmen for this group were John Adams and Thomas Jefferson. The conservatives were led by Alexander Hamilton and John Jay.

The Jefferson group advocated a system of rectangular survey before any sale or settlement, with land to be sold at auction with a minimum price and in small parcels, giving everyone a fair chance to acquire land. They argued that survey before sale was necessary to prevent overlapping claims and to simplify deeds and registering. A rectangular system would survey all the land, with no gaps or gores, make the buyer take the poor land along with the good land, and make every man's land have a common boundary with his neighbor. The thousands of boundary disputes already in the

courts made the rectangular system and prior survey sound attractive even to many of the conservative group.

Hamilton was in favor of indiscriminate location, the old metes and bounds system. This group thought that prior survey would never work and that people would settle and occupy the land faster if left free to do so. It had not been the general governmental policy in the colonies to sell land as a source of revenue prior to the war. The people were familiar with the free settlement system and would occupy and hold the territory faster if allowed free location.

In 1784, a committee headed by Jefferson drafted an ordinance which called for prior survey of tracts ten geographical miles square, which were called hundreds; they would be subdivided into lots one mile square. The lines would run due north and south, east and west and settlement would be by hundreds or by lots. This plan did not call for reservations for schools or churches. It is generally believed that Jefferson drafted the original ordinance. This draft was debated at length and was then referred to a committee composed of one man from each State. Jefferson was in Europe and Grayson from Virginia was named to replace him. This new committee made some alterations; they reduced the tract size to a seven-(statute) mile-square township with 49 lots. One lot in each township was reserved for schools, one lot for religious purposes and four lots to Congress for future disposal. One third of any gold, silver, lead, or copper which might be found was also reserved. The townships would be sold whole at auction for a minimum of \$1 per acre, minus the reservations of six lots.

This plan drew objections. The sale of whole townships would place most of it in the hands of land speculators and would also encourage widespread and scattered settlement affording little protection from the Indians. In debate the size of land sales was reduced to 640 acres, although attempts were made to get the size down to 320 acres. Many other points were debated and the final result was passage of the *Land Ordinance on May 20, 1785*.

LAND ORDINANCE OF 1785

The following is the text of the Land Ordinance as finally approved by Congress:

AN ORDINANCE FOR ASCERTAINING THE MODE OF DISPOSING OF LANDS IN THE WESTERN TERRITORY

Passed May 20, 1785.

"Be it ordained by the United States in Congress assembled, that the territory ceded by individual states to the United States, which had been purchased of the Indian inhabitants, shall be disposed of in the following manner:

"A surveyor from each state shall be appointed by Congress or a committee of the states, who shall take an oath for the faithful discharge of his duty, before the geographer of the United States, who is hereby empowered and directed to administer the same; and the like oath shall be administered to each chain carrier, by the surveyor under whom he acts.

"The geographer, under whose direction the surveyors shall act, shall occasionally form such regula-

tions for their conduct, as he shall deem necessary; and shall have authority to suspend them for misconduct in office, and shall make report of the same to Congress, or to the committee of the states; and he shall make report in case of sickness, death, or resignation of any surveyor.

"The surveyors, as they are respectively qualified, shall proceed to divide the said territory into townships of 6 miles square, by lines running due north and south, and others crossing these at right angles, as near as may be, unless where the boundaries of the late Indian purchases may render the same impracticable, and then they shall depart from this rule no further than such particular circumstance may require. And each surveyor shall be allowed and paid at the rate of two dollars for every mile, in length, he shall run, including the wages of chain carriers, markers, and every other expense attending the same.

"The first line, running due north and south as aforesaid, shall begin on the river Ohio, at a point that shall be found to be due north from the western termination of a line, which has been run as the southern boundary of the state of Pennsylvania; and the first line, running east and west, shall begin at the same point, and shall extend throughout the whole territory; provided, that nothing herein shall be construed, as fixing the western boundary of the state of Pennsylvania. The geographer shall designate the townships, or fractional parts of townships, by numbers progressively from south to north; always beginning each range with No. 1; and the ranges shall be distinguished by their progressive numbers to the westward. The first range, extending from the Ohio to the lake Erie, being marked No. 1. The geographer shall personally attend to the running of the first east and west line; and shall take the latitude of the extremes of the first north and south line, and of the mouths of the principal rivers.

"The lines shall be measured with a chain; shall be plainly marked by chops on the trees, and exactly described on a plat; whereon shall be noted by the surveyor, as their proper distances, all mines, salt-springs, salt-licks, and mill-seats, that shall come to his knowledge; and all water-courses, mountains and other remarkable and permanent things, over and near which such lines shall pass, and also the quality of the lands.

"The plats of the townships respectively, shall be marked by subdivisions into lots of one mile square, or 640 acres, in the same direction as the external lines, and numbered from 1 to 36; always beginning the succeeding range of the lots with the number next to that with which the preceding one concluded. And where, from the causes before-mentioned, only a fractional part of a township shall be surveyed, the lots, protracted thereon, shall bear the same numbers as if the township had been entire. And the surveyors, in running the external lines of the townships, shall, at the interval of every mile, mark corners for the lots which are adjacent, always designating the same in a different manner from those of the townships.

"The geographer and surveyors shall pay the utmost

attention to the variation of the magnetic needle; and shall run and note all lines by the true meridian, certifying, with every plat, what was the variation at the times of running the lines thereon noted.

"As soon as 7 ranges of townships, and fractional parts of townships, in the direction from south to north, shall have been surveyed, the geographer shall transmit plats thereof to the board of treasury, who shall record the same, with the report, in well bound books to be kept for that purpose. And the geographer shall make similar returns, from time to time, of every 7 ranges as they may be surveyed. The secretary at war shall have recourse thereto, and shall take by lot therefrom, a number of townships, and fractional parts of townships, as well from those to be sold entire, as from those to be sold in lots, as will be equal to one-seventh part of the whole of such 7 ranges, as nearly as may be, for the use of the late continental army; and he shall make a similar draught, from time to time, until a sufficient quantity is drawn to satisfy the same, to be applied in manner hereinafter directed. The board of treasury shall, from time to time, cause the remaining numbers, as well those to be sold entire, as those to be sold in lots, to be drawn for, in the name of the thirteen states respectively, according to the quotas in the last preceding requisition on all the states; provided, that in case more land than its proportion is allotted for sale in any state, at any distribution, a deduction be made therefor at the next.

"The board of treasury shall transmit a copy of the original plats, previously noting thereon, the townships, and fractional parts of townships, which shall have fallen to the several states, by the distribution aforesaid, to the commissioners of the loan-office of the several states, who, after giving notice of not less than two nor more than six months, by causing advertisements to be posted up at the courthouses, or other noted places in every county, and to be inserted in one newspaper, published in the states of their residence respectively, shall proceed to sell the townships, or fractional parts of townships, at public vendue; in the following manner, viz: The township, or fractional part of a township, No. 1, in the second range, shall be sold by lots; and No. 2, in the same range, entire; and so in alternate order through the whole of the second range; and the third range shall be sold in the same manner as the first, and the fourth in the same manner as the second, and thus alternately throughout all the ranges; provided, that none of the lands, within the said territory, be sold under the price of one dollar the acre, to be paid in specie, or loan-office certificates, reduced to specie value, by the scale of depreciation, or certificates of liquidated debts of the United States, including interest, besides the expense of the survey and other charges thereon, which are hereby rated at 36 dollars the township, in specie, or certificates as aforesaid, and so in the same proportion for a fractional part of a township, or of a lot, to be paid at the time of sales; on failure of which payment, the said lands shall again be offered for sale.

"There shall be reserved for the United States out of every township the four lots, being numbered 8, 11, 26, 29, and out of every fractional part of a township, so many lots of the same numbers as shall be found thereon, for future sale. There shall be reserved the lot No. 16, of every township, for the maintenance of public schools, within the said township; also one-third part of all gold, silver, lead and copper mines, to be sold, or otherwise disposed of as Congress shall hereafter direct.

[Here follow the terms of the deed to be given when a township or a lot is sold.]

"Which deeds shall be recorded in proper books, by the commissioner of the loan office, and shall be certified to have been recorded, previously to their being delivered to the purchaser, and shall be good and valid to convey the lands in the same described.

"The commissioners of the loan-offices respectively, shall transmit to the board of treasury every three months, an account of the townships, fractional parts of townships, and lots committed to their charge; specifying therein the names of the persons to whom sold, and the sums of money or certificates received for the same; and shall cause all certificates by them received, to be struck through with a circular punch; and shall be duly charged in the books of the treasury, with the amount of the money or certificates, distinguishing the same, by them received as aforesaid.

"If any township, or fractional part of a township or lot, remains unsold for 18 months after the plat shall have been received, by the commissioners of the loan-office, the same shall be returned to the board of treasury, and shall be sold in such manner as Congress may hereafter direct.

"And whereas Congress, by their resolutions of September 16th and 18th, in the year 1776, and the 12th of August, 1780, stipulated grants of land to certain officers and soldiers of the late continental army, and by the resolution of the 22nd September, 1780, stipulated grants of land to certain officers in the hospital department of the late continental army; for complying therefore with such engagements, Be it ordained, That the secretary at war, from the returns in his office, or such other sufficient evidence as the nature of the case may admit, determine who are objects of the above resolutions and engagements, and the quantity of land to which such persons or their representatives are respectively entitled, and cause the townships, or fractional parts of townships, hereinbefore reserved for the use of the late continental army, to be drawn for in such manner as he shall deem expedient, to answer the purpose of an impartial distribution. He shall, from time to time, transmit certificates to the commissioners of the loan-offices of the different states, to the lines of which the military claimants have respectively belonged, specifying the name and rank of the party, the terms of his engagement and time of his service, and the division, brigade, regiment or company to which he belonged, the quantity of land he is entitled to, and the township, or fractional part of a township, and range out of which his portion is to be taken.

"The commissioners of the loan-offices shall execute

deeds for such undivided proportions in manner and form herein before-mentioned, varying only in such a degree as to make the same conformable to the certificate from the secretary at war.

"Where any military claimants of bounty in lands shall not have belonged to the line of any particular state, similar certificates shall be sent to the board of treasury, who shall execute deeds to the parties for the same.

"The secretary at war, from the proper returns, shall transmit to the board of treasury, a certificate, specifying the name and rank of the several claimants of the hospital department of the late continental army, together with the quantity of land each claimant is entitled to, and the township, or fractional part of a township, and range out of which his portion is to be taken; and thereupon the board of treasury shall proceed to execute deeds to such claimants.

"The board of treasury, and the commissioners of the loan-offices in the states, shall, within 18 months, return receipts to the secretary at war, for all deeds which have been delivered, as also all the original deeds which remain in their hands for want of applicants, having been first recorded; which deeds so returned, shall be preserved in the office, until the parties or their representatives require the same.

"And be it further ordained, That three townships adjacent to lake Erie be reserved, to be hereafter disposed of in Congress, for the use of the officers, men, and others, refugees from Canada, and the refugees from Nova Scotia, who are or may be entitled to grants of land under resolutions of Congress now existing or which may hereafter be made respecting them, and for such other purposes as Congress may hereafter direct.

"And be it further ordained, That the towns of Gnadenhutten, Schoenbrun and Salem, on the Muskingum, and so much of the lands adjoining to the said towns, with the buildings and improvements thereon, shall be reserved for the sole use of the Christian Indians, who were formerly settled there, or the remains of that society, as may, in the judgment of the geographer, be sufficient for them to cultivate.

"Saving and reserving always, to all officers and soldiers entitled to lands on the northwest side of the Ohio, by donation or bounty from the commonwealth of Virginia, and to all persons claiming under them, all rights to which they are so entitled, under the deed of cession executed by the delegates for the state of Virginia on the first day of March, 1784, and the act of Congress accepting the same: and to the end, that the said rights may be fully and effectually secured, according to the true intent and meaning of the said deed of cession and act aforesaid, Be it ordained, that no part of the land included between the rivers called Little Miami and Scioto, on the northwest side of the river Ohio, be sold, or in any manner alienated, until there shall first have been laid off and appropriated for the said officers and soldiers, and persons claiming under them, the lands they are entitled to, agreeably to the said deed of cession and act of Congress accepting the same.

"Done by the United States in Congress assembled,

the 20th day of May, in the year of our Lord, 1785, and of our sovereignty and independence the ninth.

"RICHARD H. LEE, President."

"CHARLES THOMPSON, Secretary."

An examination and evaluation of the Land Ordinance reveal the basics of the system and some reasons for them.

- (1) Only the land that had been purchased from the Indians was to be surveyed. This provision would appease the Indians, follow the practice of purchase traditional in the colonies, and since only Congress could buy land from the Indians, would prevent private claims based on private purchases.
- (2) A surveyor from each State was to take an oath before the Geographer of the United States. The western lands had been won in a war fought by all the States, each of which had a common interest in the territory and would participate in the surveying. Many fraudulent surveys had been made during colonial times causing land disputes. The oath of faithful discharge of duty would hopefully cause honest work to be done. A Geographer of the United States, representing the federal authority to supervise the work, would be in charge of the surveyors.
- (3) The townships were to be six miles square (reduced from seven) with north and south lines crossed at right angles, as near as possible. It must have been recognized that surveying was not an exact science. Indian boundaries were also recognized as a limiting factor.
- (4) The survey was to begin on the Ohio River (presumably the north bank) due north of the western termination of the south boundary of Pennsylvania, which was the southwest corner of that state. The west boundary of Pennsylvania was not surveyed to the north bank of the Ohio until later in 1785. The first line was to run due "east and west," however, it could only run due west for there was no public land in Pennsylvania. The Geographer was to personally run the first line, running west, which would insure that a proper and correct line would be surveyed as the base for the townships to the south. Though not called a base line, the Geographer's Line (the boundary of the seven ranges) was just that in actual fact. The line was to "extend throughout the whole territory." Taken literally that would be all the way to the Mississippi River. The first range was to extend from the Ohio to Lake Erie.
- (5) The lines were to be measured with a chain, which didn't necessarily mean that a Gunter's link chain had to be used, just that the chain was the unit of measure. The chain unit was used throughout all of the colonies to measure land, but Jefferson had originally advocated a geographic mile (approximately 6,080 feet) be used. This would have made a lot about 849 acres, a very oddball figure, so the unit of measure was made part of the Ordinance to make it clear that the accustomed 80-chain mile was to be used.
- (6) The lines were to "be plainly marked by chaps on the trees, visible from a distance, and bounds system of indiscriminate location, the surveys were often very difficult to find

and poorly identified. This was remedied by law; the lines were to be clearly and plainly blazed (the monument of the survey itself) so that the survey could be found on the ground.

- (7) All major items of topography, including land quality, were to be noted at their proper distances. Topographic features, such as streams and mountains, would help to locate the survey. Mines, salt licks, salt springs, mill-seats and soil quality would greatly aid in knowing the value of the land for settlement. The lands were to be sold at auction hundreds of miles away, so it was necessary to know just what was being sold or bought.
- (8) The plats of each township were to be divided into 36 lots, now called sections, with number one in the southeast corner of a full township and number 36 in the northwest corner. The interior lines of the townships were not surveyed on the ground, only protracted on the plat, which must have been purely an economy measure to keep the surveying cost to a minimum.
- (9) After seven ranges were surveyed, the Geographer was to return the plats to the Board of Treasury because the whole purpose of the land sale was to raise money for the Treasury. The Secretary of War was to have recourse to the plats and draw from the hat one-seventh of the townships for use by the Continental Army. This made provision for granting lands to ex-soldiers to satisfy the military land warrants issued to them. Many warrants had been sold; thus it is unknown just how many actual veterans received land in those townships.
- (10) After one-seventh of the townships for soldiers were drawn, the remaining townships were to be distributed to the States by lot or drawing. The plats were to be sent to each State where they were to be sold at public auction to the highest bidder at not less than \$1 per acre. The first township in the first range was to be sold whole as one solid tract. The second township in the same range was to be sold by lot, the next township whole, and so on. This sale method would in theory satisfy the proponents of both the land speculators and the New England town system settlement. A religious group could band together and buy a whole township, subdivide it and settle on the land, forming their own community, or the land speculator could buy a whole township and sell the land to settlers, hopeful of a profit. An individual could also be satisfied by letting him purchase a lot for himself. The sales held in each State could give everybody a chance to buy without travelling all the way to Ohio, New York, or some other central point in those days of poor roads. The minimum price of \$1 per acre was also the going price of land in many of the colonies just prior to the war.
- (11) The price was to be paid in specie (hard-coined money) or in depreciated loan office certificates reduced to specie value or certificates of liquidated debts (treasury bonds) including interest, which assured a return for those who held continental dollars. Certificate of debt (bond) holders could get the face value plus interest for them. And the government could get out of debt.

In addition to the \$1 per acre minimum price, the expenses incurred were fixed at \$30 per township. Survey and sale expenses were also to be paid by the buyers.

The \$36 figure may not have covered the expenses but was obviously \$1 per lot, so a buyer of a single lot would have to pay a minimum of \$641 for it.

- (12) The money was to be paid immediately with no credit given. If a man bid on a section and then couldn't pay for it, the section was reoffered for sale.
- (13) Four lots were to be reserved for future sale. The reason Congress made this reservation is not immediately known, but it may have been to provide for government seats or for future educational or even religious grants. In the original draft of the ordinance, one lot in each township was reserved for religious purposes. Giving religious grants was the ordinary practice in colonial days, but these grants were deleted in the Ordinance as passed.
- (14) Lot 16 in each township was reserved for use in maintaining public schools and was located as near to the center of the township as possible. If a township was purchased and settled by a group and a school was built on this land, it would be centrally located, but, most importantly, governmental support of public schools was established. In colonial days grants were made for education, but the schools were usually available only to the affluent population. Now the common man would theoretically have access to an education.
- (15) The last reservation was for one-third of gold, silver, lead or copper found in the township and was almost automatic. The King had always reserved one-fifth of all gold and silver in his land grants, then the proprietor or settlement company reserved another one-fifth. Since no significant amounts of gold or silver had been discovered in the colonies, this reservation was a hedge against the possibility that it might be found somewhere.
- (16) The final paragraph of the Ordinance explicitly spells out that the Continental Army was to receive their lands. Years had gone by without the Army being able to cash in their land warrants and they were getting restless over the delay. The paragraph puts the anxiety to final rest.

It should be realized that this Ordinance was passed by a Congress which had limited powers under the Articles of Confederation. It left much to be desired in regard to how the surveys were to be executed, how field notes were to be written, how plats were to be constructed, how corners were to be monumented, and how townships were to be subdivided into lots of 640 acres. But it was a good basic start. Thomas Hutchins, the Geographer, was involved in land companies and was an experienced surveyor, and the details of executing the field operations were left to him to work out. Also, many Congressmen did not favor the rectangular system and prior survey. Some flexibility was necessary to bend with the political tide if experience proved faults in the system; fortunately, no great faults were found.

THE NORTHWEST ORDINANCE OF 1787

It wasn't sufficient to pass a law for the surveying and sale of land without providing for government in the territory being settled. In 1784 a committee headed by Jefferson sug-

gested in a report that the Northwest Territory be divided into states approximately 150 by 200 miles in area, but this report was never passed into law.

The Ohio Company of Associates, a land-speculating company led by Manasseh Cutler, Samuel Parsons, and Rufus Putnam, was pressing Congress for a land grant in Ohio. These men succeeded in getting Congress to pass the Northwest Ordinance which provided for establishing governments in the territories and was the basis for establishing territorial governments and later Statehood. It is basically still in effect. Some items of principal importance in the Northwest Ordinance of July 13, 1787 are:

- (1) It outlawed primogeniture and entails in land tenure by providing for inheritance by all the children and the widow. Land could be freely sold. In effect, it outlawed any feudal type of land tenure including quitrents.
- (2) It provided for appointment of territorial governors, secretaries, and judges. Each man appointed had to have a freehold estate of a specified number of acres in the territory which would prevent outsiders from being government officials. A provision was made for territorial legislatures and their election. These members also had to be residents and landowners, as did an elector. These provisions placed the local government and territorial affairs in the hands of the residents.
- (3) After providing for territorial government and laws, the Ordinance spelled out fundamental rights and policies in the form of Articles, similar to the Constitution, which was being drafted at that time.

ARTICLE 1: Complete religious freedom.

ARTICLE 2: Habeas Corpus, bail, trial by jury, property rights.

ARTICLE 3: Public schools, protection and rights of the Indians.

ARTICLE 4: States to be formed must become part of the United States, settlers subject to pay their share of the Federal debt, no property taxes on Federal land, nonresidents cannot be taxed higher than residents, navigable streams are public highways and forever free to everyone without taxes or duties for using them.

ARTICLE 5: Northwest Territory to be divided into three to five new States with Congress fixing the boundaries. When a territory contained 50,000 free inhabitants, it could be admitted as a new State.

ARTICLE 6: Slavery and involuntary servitude outlawed in the Northwest Territory.

Although the Northwest Ordinance contains nothing pertaining to surveying, it did outlaw entail estates, established fee simple estates as a national land tenure policy, provided government and protection of property rights, and provided for the establishment of new territories and States. These policies encouraged rapid settlement which in turn created the need for surveys and land offices. In the years to come, surveyors would be very busy men indeed.

remainder of the vast purchase was called the District of Louisiana. Sec. 14 of the act provides in part:

“And that if any citizen of the United States, or other person, shall make settlement on any lands belonging to the United States, within the limits of Louisiana, or shall survey, or attempt to survey, such lands, or to designate boundaries by marking trees, or otherwise such offender, shall, . . . forfeit a sum not exceeding one thousand dollars, and suffer imprisonment not exceeding twelve months. . . .”

These stiff penalties were supposed to halt squatters’ activities and to prevent the marking out of false private land claims. In fact, they did neither and false land claims would be a big problem for the land commissioners and deputy surveyors for years to come.

Act of March 27, 1804, 2 Stat. 303

This act added the Georgia cession lands to the Territory of Mississippi and extended the public land surveys to the additional territory.

Fig. 22 indicates the boundaries of the Mississippi and Orleans Territories as they were claimed by the United States after passage of this act.

Act of January 11, 1805, 2 Stat. 309

This act divided the Indiana Territory and created the Territory of Michigan; the south boundary of the Michigan Territory is described as a line drawn east from the extreme southern end of Lake Michigan until the said line intersected Lake Erie. The State of Ohio would later protest that line and create a boundary dispute wherein Michigan and Ohio nearly went to war. The so-called “Toledo Strip” eventually went to Ohio and part of the Michigan Meridian surveys are therefore in Ohio.

Act of February 11, 1805, 2 Stat. 313

The provisions of this act of Congress, now codified in Title 43 of the United States Code, are still the statute law of the land and brought the public land surveys to the basic system still in use, even though some of the provisions are obsolete. The entire act as taken from Volume II, Statutes at Large, follows:

Chap. XIV—An Act concerning the mode of surveying the Public Lands of the United States. (a)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the surveyor-general shall cause all those lands north of the river Ohio, which by virtue of the act, intituled “An act providing for the sale of lands of the United States, in the territory northwest of the river Ohio, and above the mouth of the Kentucky river,” were subdivided, by running through the townships, parallel lines each way, at the end of every two miles, and by marking a corner on each of the said lines, at the end of every mile; to be subdivided into sections, by running straight lines from the mile corners thus marked, to the opposite corresponding corners, and by marking on each of the said lines, intermediate corners as nearly as possible equidistant from the corners of the sections on the same. And the said

STATUTE II.
Feb. 11, 1805

Act of May 18, 1796
Ch. 29. Mode of surveying public lands north of the Ohio.

Corners to be marked.

surveyor-general shall also cause the boundaries of all the half sections, which had been purchased previous to the first day of July last, and on which the surveying fees had been paid, according to law, by the purchaser, to be surveyed and marked, by running straight lines from the half-mile corners, heretofore marked, to the opposite corresponding corners; and intermediate corners shall, at the same time, be marked on each of the said dividing lines, as nearly as possible equidistant from the corners of the half section on the same line: *Provided, that the whole expense of surveying and marking the lines, shall not exceed three dollars for every mile which has not yet been surveyed, and which shall be actually run, surveyed, and marked by virtue of this section.* And the expense of making the subdivisions, directed by this section, shall be defrayed out of the monies appropriated, or which may be hereafter appropriated, for completing the surveys of the public lands of the United States.

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 subdivision 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.

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. And the boundary lines, which shall not have been actually run, and marked 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.

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.

Sec. 3. And be it further enacted, That so much of this act intituled “An act making provision for

Half sections purchased before July 1, 1804, to be surveyed and marked.

Whole expense of survey not to exceed three dollars per mile. How the expense of making the surveys is to be paid.

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

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.

Surveys to be returned.

Part of former act repealed.

the disposal of lands in the Indiana territory, and for other purposes," as provides the mode of ascertaining the true contents of sections or subdivisions of sections, and prevents the issue of final certificates, unless the said contents shall have been ascertained, and a plot certified by the district surveyor, lodged with the register, be, and the same is hereby repealed.

APPROVED, February 11, 1805

Act of March 26, 1804,
Ch. 35.

Sec. 1. Enacts into law the method of subdividing the two-mile blocks and subdivision of sections which Jared Mansfield had issued to his district surveyors. The question of who is to pay for these surveys is answered — the government will.

Sec. 2. (1) The first clause fixes the corners established by the Surveyor General in position regardless of any errors and requires that any corners of the half or quarter section not established in the original survey must be established at midpoint and on line.
(2) The second clause fixes the lines actually run and marked as the true boundary lines, even if they were crooked, of the section or section subdivision. It establishes the length of the lines returned by the Surveyor General as being the true length. This provision is the basis of single and double proportion as the proper method of restoring lost corners and also fixes the method of subdividing sections, either whole or fractional.
(3) The third clause establishes the quantity or area of land returned as the true quantity and that a half section or quarter section of a full 640-acre section contains 320 or 160 acres. It provides for different areas in fractional sections or in the sections along the north and west boundaries of a township. But they will contain the quantity as returned by the Surveyor General. Mansfield had advocated these principles throughout 1804 and they are now law.

Sec. 3. Repeals the provision that district surveyors could ascertain the area of land in a section or section subdivision and the necessity of such a survey before a final certificate could be issued, which returned full authority and responsibility to the Surveyor General. The ill-thought-out provision in the *Act of March 26, 1804*, Sec. 13, lasted less than a year; Mansfield had never honored it anyway.

The most important parts of this act are:

- (1) All section lines will be surveyed and all quarter corners on those lines established.
- (2) The corners set by the Surveyor General are unchangeable.
- (3) The lines marked by the Surveyor General are unchangeable.
- (4) The lengths of the section lines are unchangeable.

- (5) The quantity or area of a section or fractional section is unchangeable. Of course, the Surveyor General, i.e., the government, could correct or change a survey up until such time as private rights were acquired based on the survey; however, that fact was established by case law in the courts.

Act of March 2, 1805, 2 Stat. 324

Sections 7 and 8 of this act extend the authority of the surveyor of the lands south of Tennessee to cover all the Mississippi and Orleans Territories, and the system of rectangular surveys is extended to cover all the lands in those territories. On *March 3, 1805*, 2 Stat. 331, the District of Louisiana was changed to the Territory of Louisiana.

Act of March 3, 1805, 2 Stat. 343

This act extends the public land surveys to the lands in the Indiana Territory in Illinois and Indiana ceded by the Kaskaskias and the Sac and Fox Indians in 1803 and 1804, and to the lands south and east of the Vincennes Tract ceded in November 1804. Indian cessions would be very frequent during the ensuing years, and laws were passed extending the land surveys to them. The rectangular surveys would proceed in an orderly fashion only so far as Indian cessions would allow. Many of the Indian boundary lines in these early cessions were surveyed by surveyors under contract with the Surveyors General.

1805 — A Busy Year

During 1805, the rectangular surveys were extended in Ohio and Indiana. As already noted, the Third Principal Meridian was run north from the mouth of the Ohio River and the Second Principal Meridian surveys extended into Illinois to determine the Third Principal Meridian Baseline.

In letters to Gallatin from Isaac Briggs dated February 10, 1804, and December 31, 1804, Briggs complained of the low maximum price for surveys (\$4 per mile) and that his deputies had been ruined trying to survey at that price. Apparently these deputies were Charles DeFrance and George Davis who helped him run the two trial meridian lines of the Washington Meridian in 1803. Between 1803 and 1805, Briggs had done nothing more with the rectangular surveys in the lands south of Tennessee; however, some private land claims may have been surveyed.

On February 20, 1805, Gallatin wrote to Briggs urging him to get the rectangular surveys underway. On March 13, 1805, Gallatin again wrote to Briggs, referring to the *Act of February 5, 1805*. That letter follows:

Sir,

"I have the honour to enclose an Act concerning the mode of surveying the public lands of the United States, which although principally intended to palliate the errors made in the surveys north of the Ohio, contains certain general principles, in relation to the mode of establishing corners and running interior lines, which apply to all of the public lands.

Permit me earnestly to repeat my request that you would take immediate measures for running the township lines & for executing generally all of the surveys within the tracts lying in the Mississippi Territory to which the Indian Title has been extinguished. The Legislature has fixed the price at four dollars per mile;

Course 1: History, Records & Administrative Systems Study Guide

COURSE DESCRIPTION:

This is an introductory series of videos that establishes the context of the CFedS Program. Topics covered in this course include:

- Brief history of surveying as it relates to the United States
- Cultural Awareness
- History of Indian Land Law
- Bureau of Land Management and Bureau of Indian Affairs structures and records that each may have
- Basics of federal survey authority

COURSE OBJECTIVES:

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

- Review administrative functions, structures, and process of the Bureau of Land Management and the Bureau of Indian Affairs
- Increase awareness of cultural and historical legal issues when working in Indian Country
- Identify records sources for survey projects in Indian Country









COURSE INSTRUCTOR(S):

Dennis Mouland, Bureau of Land Management
 Dominica Van Koten, Bureau of Land Management
 Pricilla Wilfarht, Office of the Solicitor
 Colleen Kelly, Office of the Solicitor
 Ron Applebaum, Bureau of Indian Affairs (Ret.)

VIDEO LECTURE TITLE:

Introduction to PLSS & Records Sources – Part 1 (28 minutes)

ICON LEGEND

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

INTRODUCTION TO PLSS & RECORDS SYSTEM – PART 1

Introduction

Hello and welcome to the next lecture in the CFedS Video Training Program. My name is Dominica Van Koten and I am going to be your speaker for this segment.

Let me introduce myself before we get into the topic. I am a BLM Cadastral Surveyor and I work in the Alaska State office. I have worked there now for 15 years and as far as my career as a professional surveyor is concerned, I guess you could say I have been born and raised at the BLM. I started working on the field crew in the summers when I was going to college then accepted a permanent job after my graduation.

Since that time I have worked in many different capacities, from my beginning in the field, running field survey crews, to my experience in pre-survey preparations, writing special instructions and into my current position where I am involved in the planning and budget process of all of our survey projects in Alaska. I have also been an instructor here at the training center for a few years now and thoroughly enjoy sharing my knowledge of BLM Cadastral program with others so I am very happy to be here today and be part of this program and I would like to thank Dennis and Ron for asking me to be a part of this endeavor.

Public Land Survey System
(PLSS)

How did we get to our current system?

Objectives

Now let's get started on the topic. We are talking about the history of the Public Land Survey System and how did we get to our current system from its beginnings.

INTRODUCTION TO PLSS & RECORDS SYSTEM – PART 1

Our objectives for this lecture are that by the end of the lecture you will be able to identify key concepts and goals of the Public Land Survey System. You will be able to identify some key factors in the evolution of the system and explain the role of the Manual and of instruction memorandums.

Objectives

- Identify key concepts and goals of the PLSS
- Identify the key factors in the evolution of the System
- Explain the role of the manual and instruction memorandums

To begin our discussion on this on this topic, I would like to start by placing our Public Land Survey System which is a rectangular system, into the bigger picture of being a part of a total **Land Tenure System** and if we look at the general definition for the term Land Tenure, “it is the relationship among people with respect to the land and it consists of a combination of social, legal, technical, economic, institutional and political aspects that all work together to form the land ownership and use within a society.”

And that is where our rectangular system falls; it is part of our Land Tenure System here in the United States.

Land Tenure

- The relationship among people with respect to the land.
- Consists of combination of social, legal, technical, economic, institutional and political aspects that work together to form the land ownership and use within a society

INTRODUCTION TO PLSS & RECORDS SYSTEM – PART 1

Again, the rectangular system is part of this collection of laws and policies that form the basis of the land ownership system in the United States. It is important to our overall social, political and economic structure.

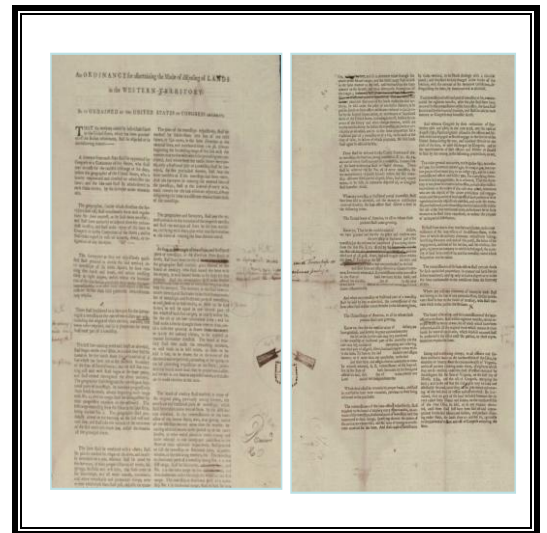
This rectangular system is not the only Land Tenure System that exists in our country. You heard in the previous segment from Dennis about other Land Tenure programs that used metes and bounds type systems and this new rectangular system when it was enacted was not a complete new idea away from any other systems, but it was a combination of the best parts of all of the existing systems that had come with us from England and were in existence at the time.

So, our rectangular system was enacted by Land Ordinance Act of 1785.

And to illustrate how important these concepts of land tenure and title are to the overall social factors of our country, I would like to put the date of this Act into context, and Dennis has already talked the history that happened before this was enacted, but if we think about in 1785 what had just happened, we had our Independence was declared in 1776 and we had the Revolutionary War ending around 1781 and then right away four years later we had an Act to deal with land issues and land title and legal descriptions in our country because the founders realized how important these issues were going to be for money reasons and for our total overall social structure.

Land Tenure

- The collection of laws and policies that form the basis of land ownership in the United States.
- Its important to our overall social, political and economic structure.



INTRODUCTION TO PLSS & RECORDS SYSTEM – PART 1

PLSS Principles

Let's look more closely at some of the principles that were contained in this Land Ordinance, some of the foundational principles and these principles stay the same throughout history and are reflected in our rectangular Survey System.

The principle of **Survey Before Patent**, this Act called for the surveys to be completed before the patents were issued so that the locations on the ground were known before the titles actually passed.

It also called for unique identifiers for each parcel within the system and each corner within those parcels. It created adjoining parcels **simultaneously** and alleviated some of the gaps and overlaps that were existing in the Metes and Bounds system. It created plats as public records, the concept of these plats being available to the public and assessable so that people knew where their parcels were and could get to those records. It was a control grid that was created so that small identifiable parcels could be located in order to meet the needs of the land disposal laws.

So it wasn't to be a system that was going to contain all the monuments that were necessary in an area right away, but it was that **control** grid to allow the entry men to locate themselves within reason on their parcels that they were going to claim. It called for the monuments on the ground to control the location of parcels over the records.

This gave certainty to the entrymen of where the location of their boundaries would be because they could physically see those monuments on the ground. And it combined the survey data and made it part of the conveyance document and this system was creating legal description that could be easily shown directly on the conveyance document and the plats and field notes could be made part of that conveyance document through its history.

Principles of the Land Ordinance of 1785

- Survey before patent
- Unique identifiers for each parcel
- Adjoining parcels created simultaneously
- Plats are public records
- Small enough parcels to be conveyed to individuals
- Evidence on the ground relates to record to allow entry
- Survey data made part of conveyance document

INTRODUCTION TO PLSS & RECORDS SYSTEM – PART 1

Plat Creates All Corners in a Section

I mentioned that the system created unique parcel identifiers and corner identifiers within its areas. So, now I would like to take a look at a diagram, and this diagram is in your handouts, and this diagram is showing, giving a reference to the naming of all of these points within the sections within this rectangular area that was created.

And not all of these points were necessarily monumented and most of them weren't actually, but by the creation of that plat at the time it was accepted, all of these points had a unique position on the face of the ground and were uniquely identifiable. And that is one of the foundational principles.

If we look at an enlargement of the northeast quarter on this diagram, we can see some of the different naming four points in the area from the quarter corners down to smaller pieces and again, not all of these positions were monumented but just by the creation of that plat all of these positions had unique locations and unique names and could be located following the rules of the system.

After the enactment of this new rectangular survey system, the surveyors headed to the field and started performing the very first rectangular surveys in our country. These surveys were much different than, were performed in much different ways than our surveys were today. They were monumenting township boundaries only and they were setting monuments every two miles.

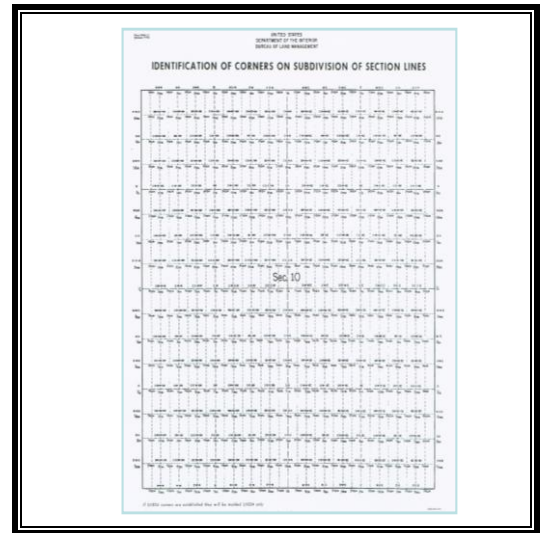


DIAGRAM A full size version can be found in the Diagram section at the end of this study guide.

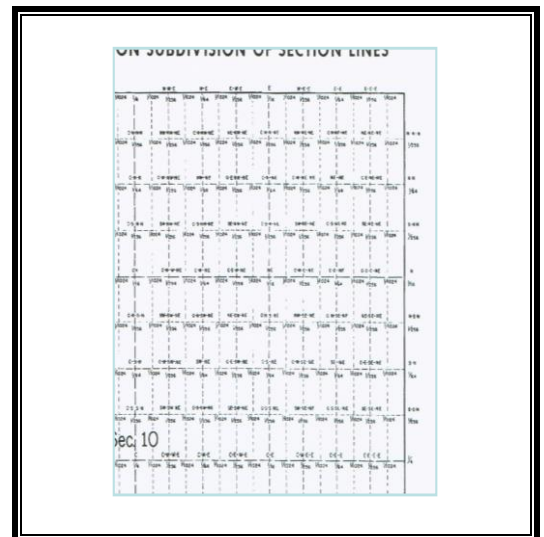


DIAGRAM A full size version can be found in the Diagram section at the end of this study guide.

INTRODUCTION TO PLSS & RECORDS SYSTEM – PART 1

They were supervised by the United States geographer and he was on the ground with them working to perform these surveys so there weren't written procedures and policies, they came from those very first surveys.

However, it did set up the structure that we still see in BLM today, having an office, a headquarters, in Washington and then having lead or chief surveyors in each of the geographic areas of our country that have public land surveys going on. And those original surveyors that were performing on those first surveys were from a representative from each of the original 13 colonies.



The accuracy of those very first surveys may not have been in today's standards viewed as very accurate surveys, but in consideration of the technology that was being used and the logistical problems that they had to overcome, they were very good surveys for the time when they were performed and they were setting the foundation for our system today.

And it was very evident after those surveys that there were many details that would need to be worked out on the execution of those surveys and the monumentation and the sale of parcels that would happen utilizing these surveys but the fact that this system was making the legal description so simplistic to be used in those conveyance documents it was very evident that this would be a system that would work for our country.

Right away, once these first surveys started, the system began evolving and there were a lot of changes and the monumentation scheme became different, we had monuments coming in at mile intervals and at half-mile intervals and this evolution of our system started as soon as it had begun.



INTRODUCTION TO PLSS & RECORDS SYSTEM – PART 1

Evolution of the System

Let's look at some of the key factors that were involved in this evolution. There were new laws regarding surveys and land disposal being passed throughout history that were influencing the way we would perform these surveys.

The survey laws would change the requirements for monumentation and for accuracy would change. These things would affect the way that our public land surveys were performed. The land disposal laws would change and the parcel sizes that needed to be conveyed and different configurations of parcels would change throughout history and these would also influence the system throughout its history.

There were formations of new government entities in the beginning they were dealing with territories and the United States' relationship to these territorial governments and then it evolved into state governments throughout the years and that also had an influence on how the system was created.

One of the other factors in this evolution was obviously technology, the technology changes, we all know if we go buy a new system or computer, by the time we get it off the shelf, there is already a new version in the works.

So the evolution of technology played a major role in this survey system from changing from a magnetic declination for a basis of bearing to using solar compasses and later on photogrammetry all the way through today's technology of using GPS, these have had an influence on the accuracy and the way these surveys were performed.

Another factor was location. The areas that needed to be surveyed and that were part of the public domain system to be surveyed under this rectangular system were getting further and further away and more separated and there was a need to keep this system consistent so that it would facilitate all of the land disposal laws that were enacted, and so the communication between the Washington office and the individuals in the areas in the different regions of the country and the distances that were involved in getting communication between those had a factor in how this system was created.

Key Factors in the Evolution of the PLSS

- New laws regarding surveys and land disposal
- Formation of new government entities
- Technology
- Location
- Organization

INTRODUCTION TO PLSS & RECORDS SYSTEM – PART 1

And by organizationally I'm talking about the organization of BLM and its location. Not the organization of BLM but the organization of Cadastral, and where Cadastral survey fit into the government organization.

It started in Treasury and then moved into the General Land Office involving all sorts of land actions and then into BLM and located under the Department of Interiors in later years. And these factors became political factors that would affect how our system was extended and to the land.

During this time there were multiple laws and memos and instructions from the Surveyor General that was located in Washington at that time that were being published and sent out to the different Chief Surveyors in each area and if you put them altogether there would be a huge stack of documents that had been formed, and not only the instruction memorandums that came from the Surveyor General, but the legislation that was passed and court cases that had been decided and the judicial opinion of the interpretation of these laws. These were all factors that the surveyor had to take into account when he was executing these surveys.

Origins of “The Manual”

By 1855 it became apparent that there was a need for a formal guidance document and that is when we had the first version of the Manual of Survey and Instructions for the Public Lands of the United States. However, having a formal instruction manual that would be the same and sent out to all of the different offices, was not the end of the change.

There continued to be new policies and procedures and instruction memorandums. So this Manual was re-issued at later dates, the 55 Manual was republished in 71. And again there was a new version in 1881, 1890, 1894, 1930, 1947, 1973 and to our current version of the Manual, which is the 2009 Manual of Surveying Instructions.

And this Manual was a compilation of all of these different aspects that the surveyor needed to know when he was in the field. It contained the legal history, the laws that were affecting the execution of these surveys and court cases, judicial opinions of the

INTRODUCTION TO PLSS & RECORDS SYSTEM – PART 1

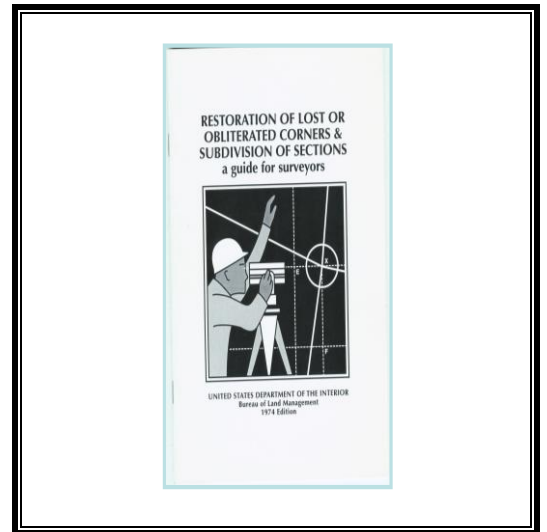
legal interpretation along with technical guidance and procedures to be used in the subdivision and survey of these townships. And it was all combined into this one document that the surveyor could use to have one place to go for all of this interrelated information.

There have been other publications since the Manual, such as the pamphlet that BLM published, titled, *Restoration of Lost or Obliterated Corners & Subdivision of Sections* which can be found in the Handout section of this study guide. Also there was an ephemeris published to give the astronomic information to be used in solar observations.

So these publications continued throughout all these years. And in fact BLM has a current effort under way to create a new manual. And you may be looking for that in the near future because these changes are still evolving and we have had many instruction memorandums and many different laws passed, so we are working on publishing a new manual that will incorporate all of those different rules into a new set of instructions.

These changes that happened throughout the years are very evident if you begin to look at some of our records and what our plats look like. And if we take a look at a plat that was created in the 1800s.

You can see right away that there is lots of information on this plat, there is topography and all sorts of physical characteristics of the land and that was because those very first surveys were really, sometimes the surveyors were the first people to go into those areas and they were really acting as explorers also and laying out what the land looked like so that the entry people and the entry men could take these documents and have a general idea of what the physical characteristics in an area looked like.



HANDOUT A full version can be found in the Handout section at the end of this study guide.

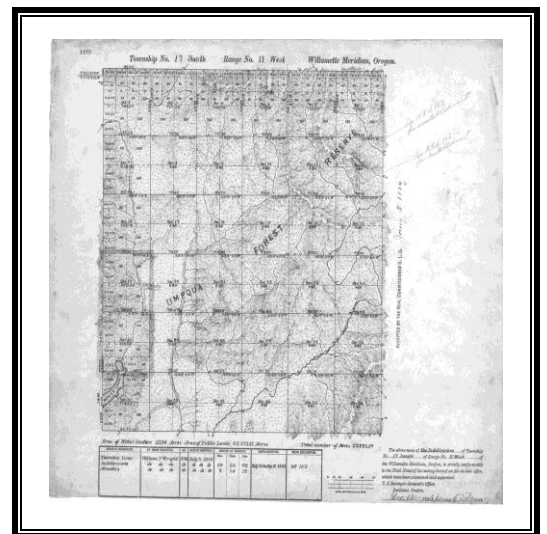


DIAGRAM A full size version can be found in the Diagram section at the end of this study guide.

INTRODUCTION TO PLSS & RECORDS SYSTEM – PART 1

Again, here is another plat that shows topography in an area. And as the system evolved, then you look at some of our new modern plats and they will look totally different. But all of these plats that we are creating are following the same foundational, fundamental principles that were outlined in that original Act in 1785 and although they may look different, they are still representing the foundation principles that were enacted in that original Act.

Being from Alaska, I am a first hand witness of the results of some of these changes as we have actually gone back to two mile monumentation that was used on those very original survey in order to convey the huge amounts of lands that were required under our Statehood Act and our Alaska Native Settlement Act so what goes around comes around, sometimes.

So our current Public Land Survey System through its evolution the current standards that are there are that townships will be extended from initial points, they contain 36 sections, and there is monumentation at half mile intervals on the section lines but no monumentation was done below the section level.

And that was because the subdivisional work was and that was part of the system and working as private surveyors, we are all part of this overall big system because that subsection level monumentation was called to be performed by local surveyors after the lands had been passed into private ownership.

PLSS Current System

- Townships extend from initial points
- Townships contain 36 sections
- No monumentation below the section level

INTRODUCTION TO PLSS & RECORDS SYSTEM – PART 1

There is no better illustration of how this system looks on the ground then if you are flying in a plane over any of the western states and you can see these squares laid out all over the country side and that is an illustration of the history of how this whole system has evolved and the large amount of area that it covers.

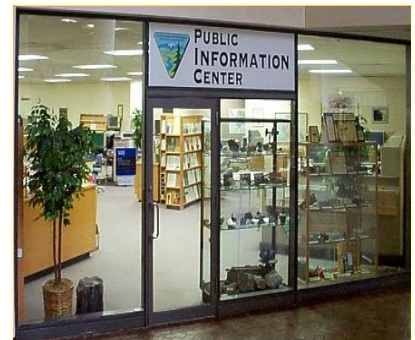
We've talked about a lot of history and there that were laws and instruction memorandums and manuals that were issued throughout history that have influenced our system.



Now I would like to touch on where you might find some of these historical documents.

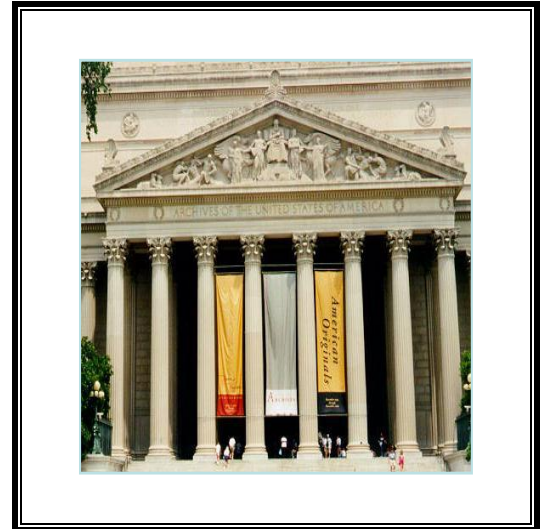
Generally when you go to perform a BLM Cadastral survey, the information that you need to perform that work will be given to you through whoever is asking you to do that work.

However, sometimes you may find it necessary to go back to some of the historical documents and locate more information in order to define the boundaries of your project, and if that becomes the case, you would work through your build surveyor and through the BLM to access some of these records, but the places you would look would be Public Information Centers, or public rooms of your BLM state office in your area.

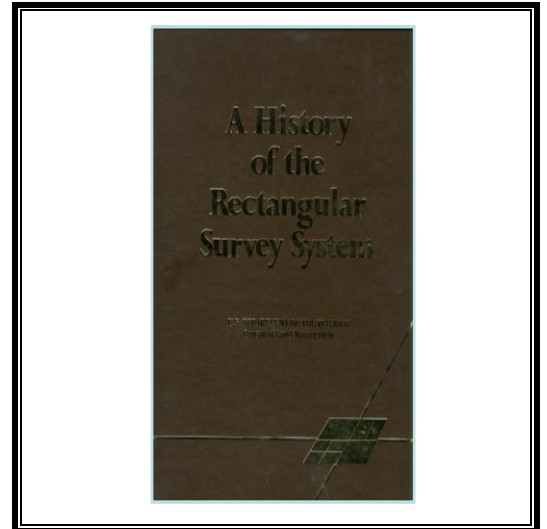


INTRODUCTION TO PLSS & RECORDS SYSTEM – PART 1

They can provide lots of information and if they don't have the information there they would certainly know where to find it. And again, the historical documents would be kept at the national archives and there is a system in place that those records could be viewed also.



Another great resource for a very detailed history of all of these Acts and what was going on at different times in history with the rectangular system is Al White's book, *A History of the Rectangular Survey System*. And that is a great resource that you can reference and it also contains the verbiage and written words from those manuals that were issued.



Non-PLSS Parcels

Now Dennis, in the previous segment talked about metes and bounds descriptions and irregular boundaries that did not fit into a rectangular pattern. And our rectangular system doesn't count for those parcels, and realize that not all boundaries were going to fit into a rectangular pattern.

INTRODUCTION TO PLSS & RECORDS SYSTEM – PART 1

So let's take a look at how our rectangular system accounts for **non-rectangular entities** and bounds. It allows for deviations from the rectangular system to fit these irregular boundaries, it will fit the same procedures as the rectangular plat and go through the same steps in order to be created and they will be filed in the same offices and located in the same places as the rectangular plats.

Non-Rectangular Entities

- Public Land Survey System allows for deviations to fit non-rectangular parcels
- Surveys follow same procedures as rectangular plats
- Records filed in same offices as rectangular plats

These nonrectangular parcels generally fit into two different categories or the reasons for them to fit into two different categories, they were created to recognize a prior title and an example of these are grants, or reservations or ranches that were conveyed and privately owned before the rectangular surveys came into the area or to comply with Land Disposal Legislation that created parcels or called for parcels that did fit into the rectangular system.

Such as Homestead Entry Surveys, Townsites, we have United States Surveys or US Surveys in Alaska and Mineral Surveys all fit into these categories. Some examples of what these plats would look like, here is an example of a US Survey Plat in Alaska. It is not rectangular. However, in this new system these parcels were given a unique identifier that could be used in the title documents when they were conveyed.

Categories of Non-Rectangular Parcels

- Created to recognize prior title
 - Examples Grants, Reservations or Ranches
- Compliance with Land Disposal Legislation
 - Examples Homestead Entry Surveys (HES), Townsites, United States Surveys (Alaska), Mineral Surveys

INTRODUCTION TO PLSS & RECORDS SYSTEM – PART 1

We talked about the different laws and so they had different identifiers depending on the laws they were being conveyed under.

But each one was sequentially given a number and in this case, US Survey 12899 and that would become that parcel's legal description. So the principles that were in place for the rectangular parcels were incorporated into these irregular metes and bounds type parcels.

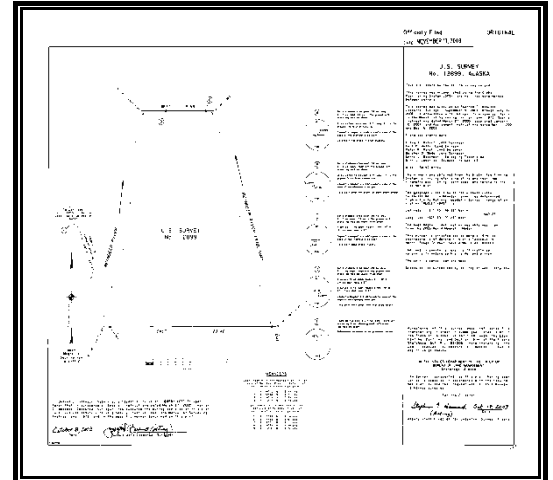


DIAGRAM A full size version can be found in the Diagram section at the end of this study guide.

Another example of an irregular boundary came be found in the back sleeve of the Manual with a sample Mineral Survey plat, shown here. Mineral surveys were to be located relative to the location of the minerals in an area.

So they were not going to fit into a rectangular survey system, so the system accounted for that and allowed for deviations and the way these irregular boundaries would be shown on our overall rectangular system were as exclusions. And you can see this is also the sample plat out of the back sleeve of the Manual and it shows a sample rectangular plat and you can see on here examples of how these irregular parcels would be shown.

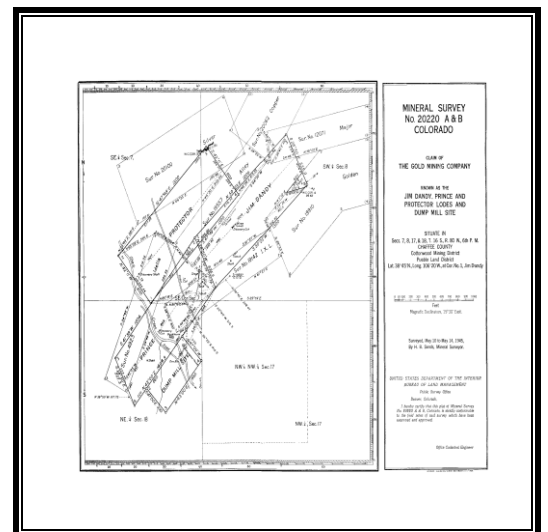


DIAGRAM A full size version can be found in the Diagram section at the end of this study guide.

INTRODUCTION TO PLSS & RECORDS SYSTEM – PART 1

Here there are some mineral surveys located up in this area and there is also a blow up of those down in the corner, and then there is also an example here.

So all of those parts those irregular boundaries were to be incorporated into the rectangular system and the rectangular system would be projected up to those boundaries that were either existing title before or conveyed under new land disposal laws without rectangular boundaries.

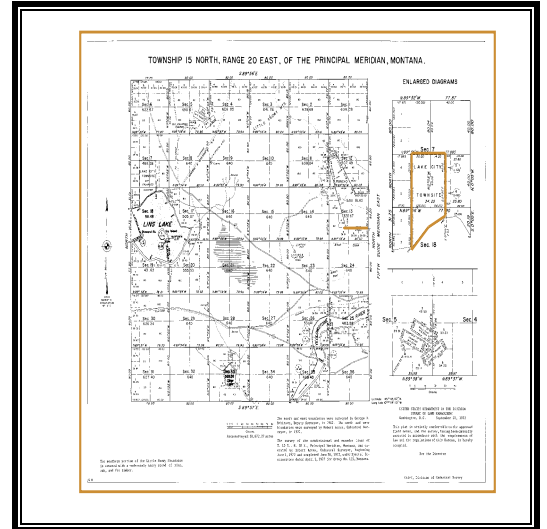


DIAGRAM A full size version can be found in the Diagram section at the end of this study guide.

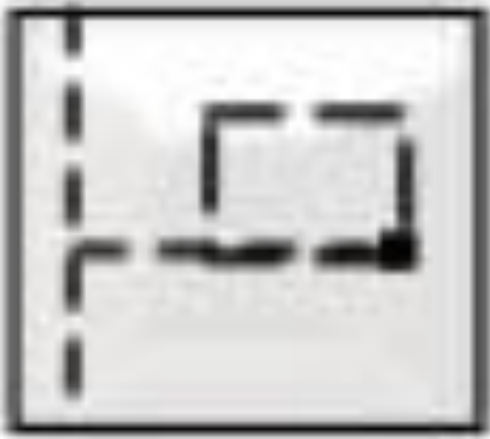
In summary, our Public Land Survey System is the rectangular system adopted in 1785 and this system is a living system that evolves, has evolved, and will continue to evolve to meet the changing needs of our Land Tenure System.

The Manual of Surveying Instructions gives guidance and direction for the surveying of this system and also includes reference to laws and judicial opinions that affect the way we perform our surveys. And our rectangular system allows for exceptions to the rectangular form of parcels by incorporated in smaller specialized surveys under different sequential numerical labeling.

Thank you for your attention and I look forward to sharing more information with you in further segments.

PLSS Summary

- Rectangular System adopted in 1785
- Living System that evolves to meet the changing needs of our land tenure system
- The Manual of Surveying instructions gives guidance and direction for surveying the Rectangular System
- Exceptions to the Rectangular System



DIAGRAM

Form 980-12
(January 1975)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

IDENTIFICATION OF CORNERS ON SUBDIVISION OF SECTION LINES

	W-W		W-E		E-W		E-E		W-E		E-E		E-E		
	1/1024	1/256	1/1024	1/64	1/1024	1/256	1/1024	1/64	1/1024	1/256	1/1024	1/64	1/1024	1/256	1/1024
N-N-N	SW-NW-NW	CW-NW-NW	NE-NW-NW	CW-NW-NW	SW-NE-NW	CW-NE-NW	NE-NE-NW	CW-NE-NW	SW-NW-NE	CW-NW-NE	NE-NW-NE	CW-NE-NE	SW-NE-NE	CW-NE-NE	N-N-N
1/256	1/1024	1/256	1/1024	1/256	1/1024	1/256	1/1024	1/256	1/1024	1/256	1/1024	1/256	1/1024	1/256	1/1024
N-N	CW-NW-NW	SW-NW	CW-NE-NW	CW-NW	CW-NE-NW	NE-NW	CW-NE-NW	CW-NW	CW-NW-NE	SW-NE	CW-NE-NE	CW-NW	CW-NE-NE	NE-NW	N-N
1/64	1/1024	1/256	1/1024	1/64	1/1024	1/256	1/1024	1/64	1/1024	1/256	1/1024	1/64	1/1024	1/256	1/1024
S-N-N	SW-NW-NW	CW-NW-NW	NE-NW-NW	CW-NW-NW	SW-NE-NW	CW-NE-NW	NE-NE-NW	CW-NE-NW	SW-NW-NE	CW-NW-NE	NE-NW-NE	CW-NE-NE	SW-NE-NE	CW-NE-NE	S-N-N
1/256	1/1024	1/256	1/1024	1/256	1/1024	1/256	1/1024	1/256	1/1024	1/256	1/1024	1/256	1/1024	1/256	1/1024
N	CW-NW-NW	CW-NW	CW-NE-NW	NW	CW-NE-NW	CW-NE	CW-NE	CW-NE	CW-NW-NE	CW-NE	CW-NE	CW-NE	CW-NE	CW-NE	N
1/16	1/1024	1/256	1/1024	1/16	1/1024	1/256	1/1024	1/16	1/1024	1/256	1/1024	1/16	1/1024	1/256	1/1024
N-S-N	SW-NW-NW	CW-NW-NW	NE-NW-NW	CW-NW-NW	SW-NE-NW	CW-NE-NW	NE-NE-NW	CW-NE-NW	SW-NW-NE	CW-NW-NE	NE-NW-NE	CW-NE-NE	SW-NE-NE	CW-NE-NE	N-S-N
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S-N	CW-NW-NW	SW-NW	CW-NE-NW	CW-NW	CW-NE-NW	NE-NW	CW-NE-NW	CW-NW	CW-NW-NE	SW-NE	CW-NE-NE	CW-NW	CW-NE-NE	NE-NW	S-N
1/64	1/1024	1/256	1/1024	1/64	1/1024	1/256	1/1024	1/64	1/1024	1/256	1/1024	1/64	1/1024	1/256	1/1024
S-S-N	SW-NW-NW	CW-NW-NW	NE-NW-NW	CW-NW-NW	SW-NE-NW	CW-NE-NW	NE-NE-NW	CW-NE-NW	SW-NW-NE	CW-NW-NE	NE-NW-NE	CW-NE-NE	SW-NE-NE	CW-NE-NE	S-S-N
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1/4	CW-NW-NW	CW-NW	CW-NE-NW	CW	CW-NE-NW	CW-NE	CW-NE	CW-NE	CW-NW-NE	CW-NE	CW-NE	CW-NE	CW-NE	CW-NE	1/4
	1/1024	1/256	1/1024	1/4	1/1024	1/256	1/1024	1/4	1/1024	1/256	1/1024	1/4	1/1024	1/256	1/1024
N-N-S	SW-NW-NW	CW-NW-NW	NE-NW-NW	CW-NW-NW	SW-NE-NW	CW-NE-NW	NE-NE-NW	CW-NE-NW	SW-NW-NE	CW-NW-NE	NE-NW-NE	CW-NE-NE	SW-NE-NE	CW-NE-NE	N-N-S
1/256	1/1024	1/256	1/1024	1/256	1/1024	1/256	1/1024	1/256	1/1024	1/256	1/1024	1/256	1/1024	1/256	1/1024
N-S	CW-NW-NW	SW-NW	CW-NE-NW	CW-NW	CW-NE-NW	NE-NW	CW-NE-NW	CW-NW	CW-NW-NE	SW-NE	CW-NE-NE	CW-NW	CW-NE-NE	NE-NW	N-S
1/64	1/1024	1/256	1/1024	1/64	1/1024	1/256	1/1024	1/64	1/1024	1/256	1/1024	1/64	1/1024	1/256	1/1024
S-N-S	SW-NW-NW	CW-NW-NW	NE-NW-NW	CW-NW-NW	SW-NE-NW	CW-NE-NW	NE-NE-NW	CW-NE-NW	SW-NW-NE	CW-NW-NE	NE-NW-NE	CW-NE-NE	SW-NE-NE	CW-NE-NE	S-N-S
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S	CW-NW-NW	CW-NW	CW-NE-NW	SW	CW-NE-NW	CW-NE	CW-NE	CW-NE	CW-NW-NE	CW-NE	CW-NE	CW-NE	CW-NE	CW-NE	S
1/16	1/1024	1/256	1/1024	1/16	1/1024	1/256	1/1024	1/16	1/1024	1/256	1/1024	1/16	1/1024	1/256	1/1024
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S-S-S	SW-NW-NW	CW-NW-NW	NE-NW-NW	CW-NW-NW	SW-NE-NW	CW-NE-NW	NE-NE-NW	CW-NE-NW	SW-NW-NE	CW-NW-NE	NE-NW-NE	CW-NE-NE	SW-NE-NE	CW-NE-NE	S-S-S
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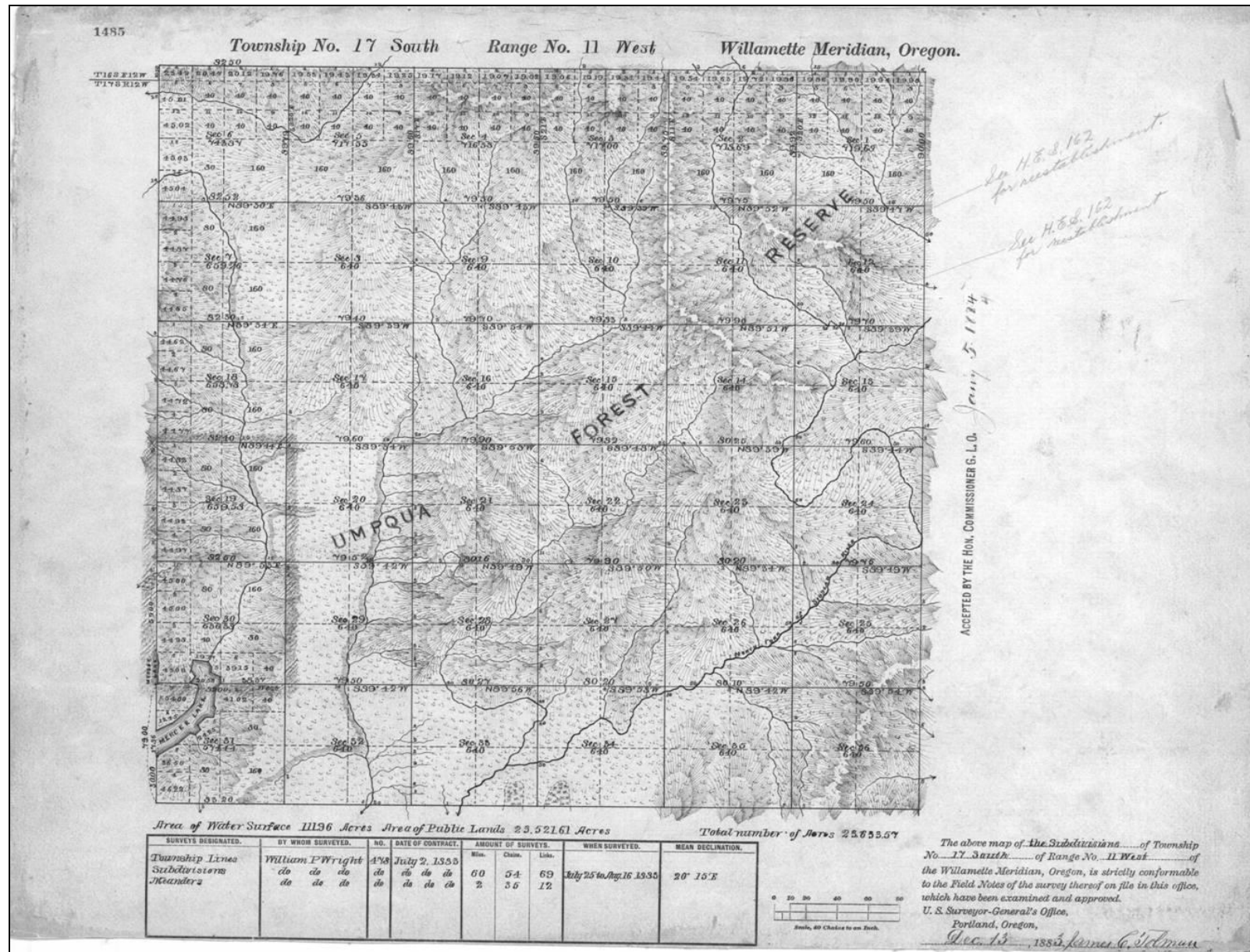
Sec. 10

If 1/1024 corners are established they will be marked 1/1024 only

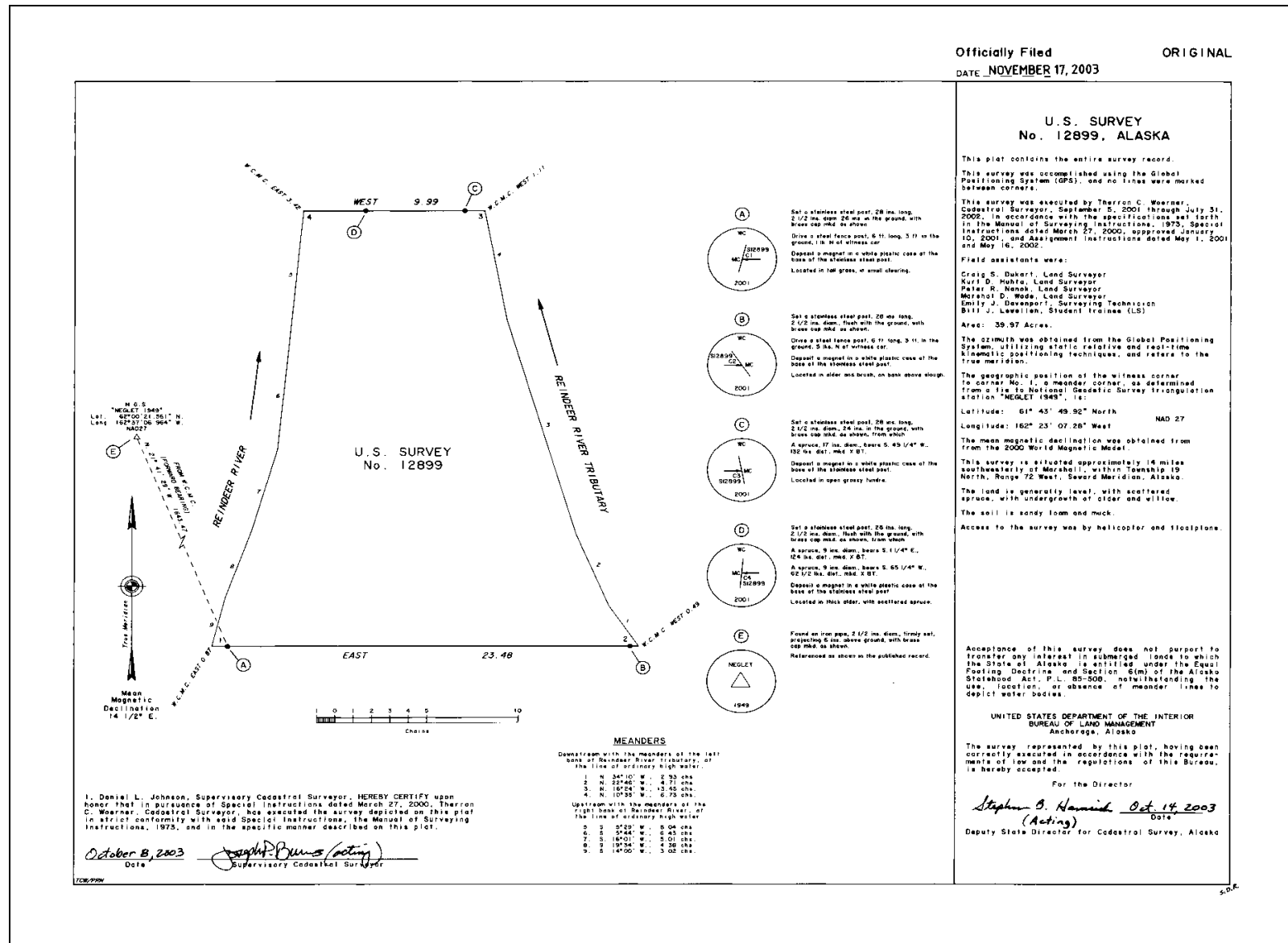
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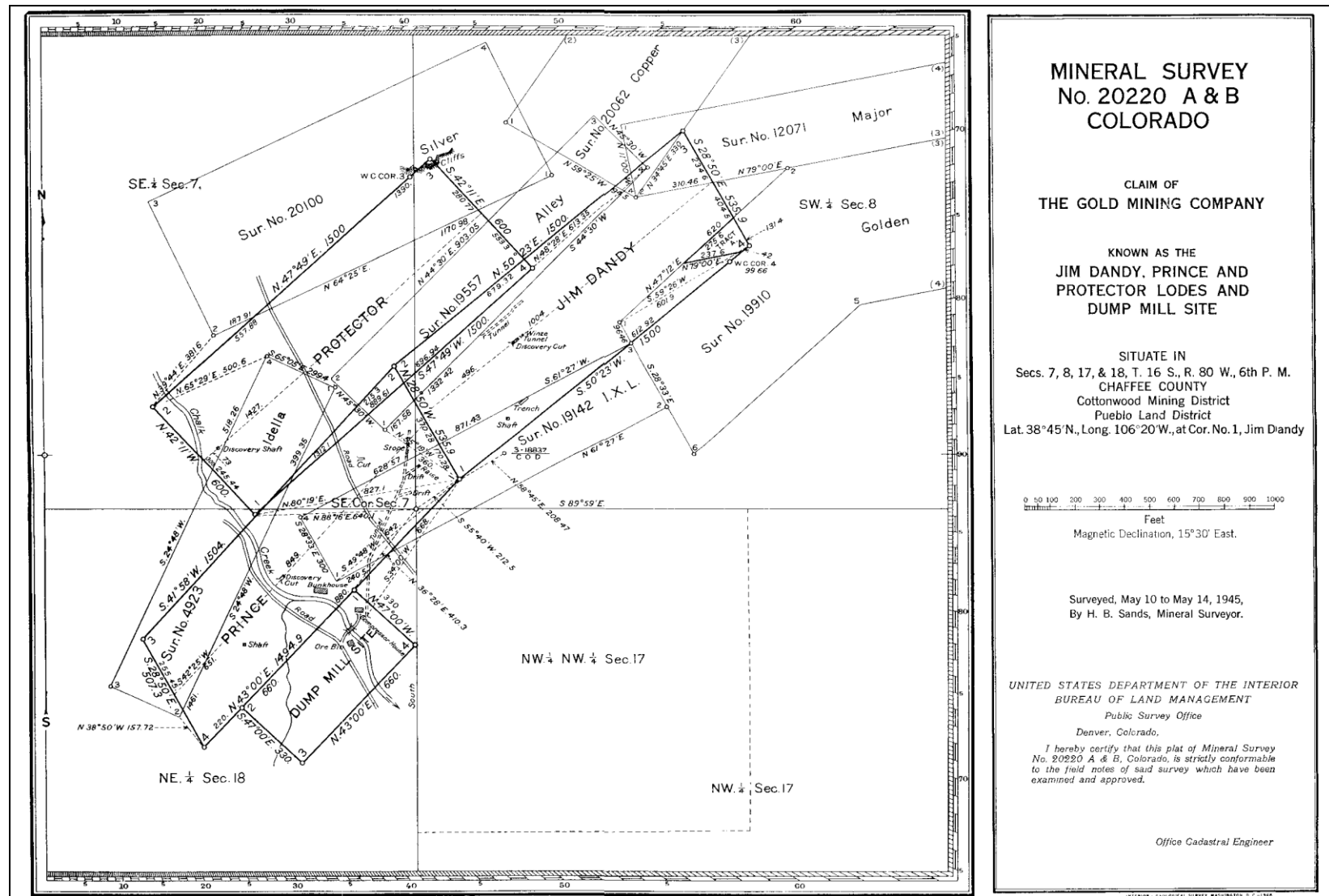
ON SUBDIVISION OF SECTION LINES															
		W-W-E		W-E		E-W-E		E		W-E-E		E-E		E-E-E	
$\frac{1}{1024}$	$\frac{1}{64}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{64}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{16}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{64}$	$\frac{1}{1024}$	$\frac{1}{256}$
	C-N-N-N		NW-NW-NE		C-N-NW-NE		NE-NW-NE		C-N-N-NE		NW-NE-NE		C-N-NF-NE		NE-NE-NE
$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$
	C-N-N		C-W-NW-NE		NW-NE		C-E-NW-NE		C-N-NE		C-W-NE-NE		NE-NE		C-E-NE-NE
$\frac{1}{1024}$	$\frac{1}{64}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{64}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{64}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{64}$	$\frac{1}{1024}$	$\frac{1}{256}$
	C-S-N-N		SW-NW-NE		C-S-NW-NE		SE-NW-NE		C-S-N-NE		SW-NE-NE		C-S-NE-NE		SE-NE-NE
$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$
	C-N		C-W-W-NE		C-W-NE		C-E-W-NE		NE		C-W-E-NE		C-E-NF		C-E-E-NE
$\frac{1}{1024}$	$\frac{1}{16}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{64}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{16}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{64}$	$\frac{1}{1024}$	$\frac{1}{256}$
	C-N-S-N		NW-SW-NE		C-N-SW-NE		NE-SW-NE		C-N-S-NE		NW-SE-NE		C-N-SE-NF		NE-SE-NE
$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$
	C-S-N		C-W-SW-NE		SW-NE		C-E-SW-NE		C-S-NE		C-W-SE-NE		SE-NE		C-E-SE-NE
$\frac{1}{1024}$	$\frac{1}{64}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{64}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{64}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{64}$	$\frac{1}{1024}$	$\frac{1}{256}$
	C-S-S-N		SW-SW-NE		C-S-SW-NE		SE-SW-NE		C-S-S-NE		SW-SE-NF		C-S-SL-NE		SE-SE-NE
$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{256}$
	C		C-W-W-E		C-W-E		C-E-W-E		C-E		C-W-E-E		C-E-E		C-E-E-E
$\frac{1}{1024}$	$\frac{1}{4}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{64}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{16}$	$\frac{1}{1024}$	$\frac{1}{256}$	$\frac{1}{1024}$	$\frac{1}{64}$	$\frac{1}{1024}$	$\frac{1}{256}$

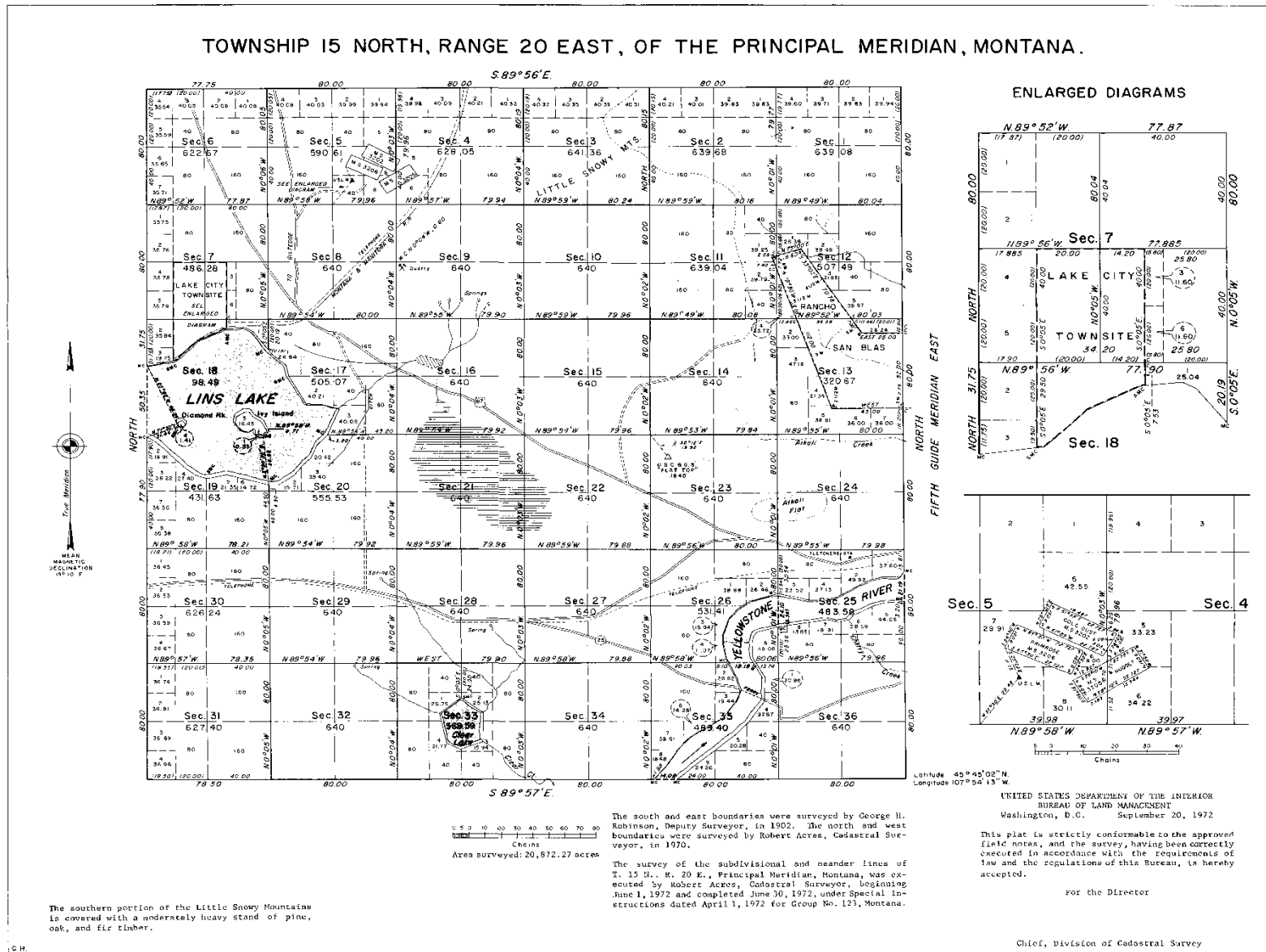
Certified Federal Surveyors (CFedS) Certification Training Program
Course 1: History, Records & Administrative Systems

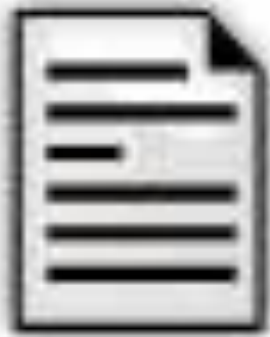


Certified Federal Surveyors (CFedS) Certification Training Program
Course 1: History, Records & Administrative Systems









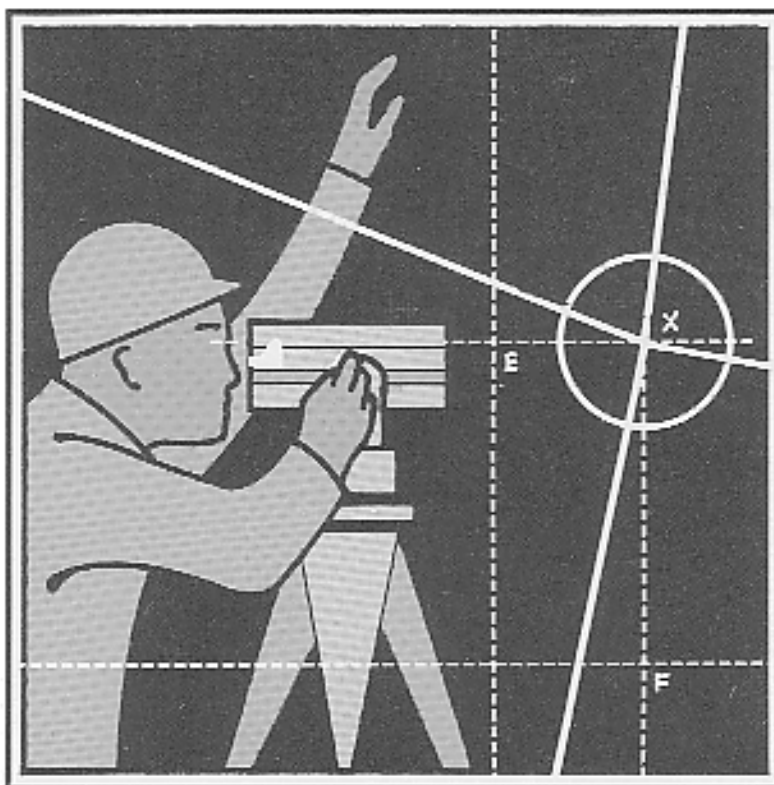
HANDOUT

DISCLAIMER

The following is a retyped electronic version of "RESTORATION OF LOST OR OBLITERATED CORNERS AND SUBDIVISION SECTIONS", a supplement to the Manual of Surveying Instructions, designed to be word searchable for ease in finding selected passages. There is no intent, expressed or implied, that this is an exact facsimile of the publication itself.

References are contained herein to certain publications available for sale by the Superintendent of Documents, which are now, in fact, out of print and may no longer be maintained as stock items by the U.S. Government Printing Office. Also, certain addresses are no longer current.

RESTORATION OF LOST OR
OBLITERATED CORNERS &
SUBDIVISION OF SECTIONS
a guide for surveyors



UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Land Management
1974 Edition

PENALTY FOR THE DESTRUCTION OF MONUMENTS

A penalty for the unauthorized alteration or removal of any Government survey monument or marked tree is provided in Title 18, U.S.C., SEC. 1858 (62 Stat. 789). It reads as follows:

Whoever willfully destroys, defaces, changes, or removes to another place any section corner, quarter-section corner, or meander post, on Government line of survey, or willfully cuts down any witness tree or any tree blazed to mark the line of a Government survey, or willfully defaces, changes, or removes any monument or bench mark of any Government survey, shall be fined not more than \$250, or imprisoned not more than six months, or both.

The Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, has for sale to the public the following publications of the Bureau of Land Management:

The Manual of Instructions for the Survey of the Public Lands of the United States, 1973.

Standard Field Tables, 1956 (a Supplement to the Manual of Surveying Instructions), containing traverse tables; stadia coefficients; five-place natural and six-place logarithmic sines, cosines, tangents, and cotangents; six-place logarithms of numbers; and other tables and data of particular application in land surveying practice.

The Ephemeris of the Sun, Polaris, and Other Selected Stars, published annually in advance (a supplement to the Manual of Surveying Instructions).

Copies of the approved field notes and plats of the public land surveys, excepting those in Illinois, Indiana, Iowa, Kansas, Missouri, and Ohio, may be procured from the Director, Eastern States Office, Bureau of Land Management, 7981 Eastern Avenue, Silver Spring, Maryland, 20910, and from State Offices of the Bureau. A charge is made for making copies of records furnished the public. The Bureau's copy of public survey records of the excepted States has been transferred to the National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

RESTORATION OF LOST
OR OBLITERATED CORNERS
AND
SUBDIVISION OF SECTIONS

A supplement to the Manual of Surveying Instructions, containing
a discussion of practices followed by the Bureau of Land
Management, prepared especially for the information
and guidance of county and local surveyor.

Prepared in the Division
of Cadastral Survey



UNITED STATES GOVERNMENT PRINTING OFFICE
WASHINGTON : REPRINTED - 1979

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402
Stock Number 024-011-00012-7

**UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management**

As the Nation's principal conservation agency, the Department of the Interior has basic responsibilities for water, fish, wildlife, mineral, land, park, and recreational resources. Indian and Territorial affairs are other concerns of America's "Department of Natural Resources".

The Department works to assure the wisest choice in managing all our resources so each will make its full contribution to a better United States--now and in the future.

OUTLINE OF SUBJECTS

	Page
Jurisdiction of the Bureau of Land Management.....	1
Original survey records.....	2
General practices	5
Restoration of lost or obliterated corners.....	9
Subdivision of sections.....	22
Retracements.....	29
Meander lines and riparian rights.....	38
Conclusion.....	40

Key to Citation of Authorities by Volume and Page or Section

Stat.: United States Statutes at Large.

R.S.: Revised Statutes of the United States; citation will include section number.

U.S.: United States Reports; decisions of the Supreme Court of the United States.

Fed.: Decisions of Circuit Courts of Appeals and District Courts of the United States.

U.S.C.: United States Code (The Code of Laws of the United States).

L.D.: Decisions of the Department of the Interior relating to the public lands.

I.D.: Decisions of the Department of the Interior after 1930.

**UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D.C. 20240**

This supplement to the Manual of Instructions for the Survey of the Public Lands of the United States has been in print since 1883. The purpose of the supplement is to provide an introduction to the rectangular system of public land surveying and resurveying and a compendium of basic laws relating to the system.

The information is of interest to county and local surveyors in retracing the lines of the public land surveys. Attorneys, title insurance company personnel and others who have professional interests in former or present public lands find this explanation of survey procedures valuable.

The pamphlet deals mainly with general practices and rules for the restoration of lost corners and the subdivision of sections. These procedures are used by the Bureau of Land Management in its surveys and resurveys of public lands. There has been little change in these procedures since their first publication in 1883. The presentation has been designed to answer many of the common questions arising in practical work. The pamphlet does not cover controversial questions or exceptional situations.

Included also is an explanation of methods generally successful in the retracement of lines and the recovery of corner evidence and other marks of the original public land surveys. Meander lines and riparian rights are discussed briefly at the close of the pamphlet.

Suggestions for the revision or improvement of later editions of this volume are welcomed.

Director

A handwritten signature in black ink, reading "Earl B. Becklund". The signature is written in a cursive, flowing style with a prominent initial "E".

RESTORATION OF LOST OR OBLITERATED CORNERS

JURISDICTION

The Director, Bureau of Land Management, under the Supervision of the Secretary of the Interior, has complete jurisdiction over the survey and resurvey of the public lands of the United States.

After title to a piece of land is granted by the United States, jurisdiction over the property passes to the State; the Federal Government retains its authority only with respect to the public lands in Federal ownership. Where the lands are in private ownership, it is a function of the county or local surveyor to restore lost corners and to subdivide the sections. Disputes concerning these questions must come before the local courts, unless settled by joint survey or agreement. It should be understood, however, that no adjoining owner can make a valid encroachment upon the public lands.

The various states were surveyed under somewhat different practices according to the date of survey. The earliest rules were in manuscript and printed circulars; regulations more in detail, improving the rectangular system, were issued in Manuals of 1855, 1881, 1890, 1894, 1902, 1930, 1947, and 1973.¹

RESURVEYS

Both the public and the privately owned lands may be resurveyed by the Bureau of Land Management in certain cases, under the following authority:

The act of Congress approved March 3, 1909, as amended by joint resolution approved June 25, 1910, provides:

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 (35 Stat. 845; 36 Stat. 884; 43 U. S. C. sec. 772).

The 1909 act is generally invoked where the lands are largely in Federal ownership, and where there may be extensive obligation or other equally unsatisfactory conditions.

¹ Manual of Instruction for the Survey of the Public Lands of the United States, 1973; Superintendent of Documents, Washington, D. C. 20402.

The act of Congress approved September 21, 1918, provides authority for the resurvey by the Government of townships, therefore held to be ineligible for resurvey by reason of the disposals being in excess of 50 percentum of the total area thereof (40 Stat. 965; 43 U. S. C. sec. 773).

The 1918 act may be invoked where the major portion of the township is in private ownership, where it is shown that the need for retracement and remonumentation is extensive, and especially if the work proposed is beyond the scope of ordinary local practice. The act requires that the proportionate costs be borne by the landowners.

PROTECTION OF BONA FIDE RIGHTS

Under the above laws, and in principle as well, it is required that no resurvey or retracement shall be so executed as to impair the bona fide rights or claims of any claimant, entryman, or owner of land so affected.

Likewise in general practice, the local surveyor should be careful not to exercise unwarranted jurisdiction, nor to apply an arbitrary rule; he should note the distinction between the rules for original surveys and those that relate to retracements. The disregard of these principals, or for acquired property rights, may lead to unfortunate results and prompts the suggestions herein that are intended to help avoid such troubles.

In unusual cases where the evidence of the survey cannot be identified with ample certainty to enable the application of the regular practices, the surveyor may submit his questions to the proper State Office of the Bureau of Land Management, or to the Director.

ORIGINAL SURVEY RECORDS

The township plat furnishes the basic data relating to the survey and the description of all areas in the particular township. All title records within the area of the former public domain are based upon a Government grant or patent, with description referred to an official plat. The lands are identified on the ground through the retracement, restoration, and maintenance of the official lines and corners.

The plats are developed from the field notes; both are permanently filed for reference purposes and are accessible to the public for examination or making of copies in the offices listed on page 4.

Many supplemental plats have been prepared by protraction to show new or revised lottings within one or more sections; these supersede the lottings shown on the original township plat. There are also many plats of the survey of islands or other fragmentary areas of public land which were surveyed after the original survey of the township.

These plats should be referred to as governing the position and description of the subdivisions shown on them.

RESURVEY RECORDS

The plats and field notes or resurveys which become a part of the official record fall into two principal classes according to the type of resurvey, as follows:

The *dependent resurvey* is a restoration of the original survey according to the record of that survey, based upon the identified corners of the original survey and other acceptable points of control, and the restoration of lost corners in accordance with proportional measurement as described herein. Normally, the subdivisions shown on the plat of the original survey are retained on the plat of the dependent resurvey, although new designations and areas for subdivisions still in public ownership at time of the resurvey may be shown to reflect true areas.

The *independent resurvey* is designed to supersede the original survey and creates new subdivisions and lottings of the vacant public lands. Provision is made for the segregation of individual tracts of privately-owned lands, entries, or claims that may be based upon the original plat, when necessary for their protection, or for their conformation, if feasible, to the regular subdivisions of the resurvey.

IMPORTANCE OF PLAT AND FIELD NOTES

The importance, or legal significance, of the plats and field notes is well stated in an opinion by the Department of the Interior (45 L. D. 330, 336) as follows:

It has been repeatedly held by both State and Federal courts that plats and field notes referred to in patents may be resorted to for the purpose of determining the limits of the area that passed under such patents. In the case of *Cragin v. Powell* (128 U.S. 691, 696), the Supreme Court said:

"It is a well settled principal that when lands are granted according to an official plat of the survey of such lands, the plat itself, with all its notes, lines, descriptions, and landmarks, becomes as much a part of the grant or deed by which they are conveyed, and controls so far as limits are concerned, as if such descriptive features were written out upon the face of the deed or the grant itself."

RECORDS TRANSFERRED TO STATES

In those states where the public land surveys are considered as having been completed, the field notes, plats, maps, and other papers relating to those surveys have been transferred to an appropriate State Office for safekeeping as public records. No provision has been made for the transfer of the survey records to the State of Oklahoma, but in the other States the records are filed in the following offices where they may be examined and copies made or requested:

Alabama: Secretary of State, Montgomery, Alabama 36104
Arkansas: Department of State Lands, State Capital, Little Rock, Arkansas 72201.
Florida: Board of Trustees of the Internal Improvement Trust Fund, Elliott Building, Tallahassee, Florida 32304.
Illinois: Illinois State Archives, Secretary of State, Springfield, Illinois 62706.
Indiana: Archivist, Indiana State Library, 140 North Senate Avenue, Indianapolis, Indiana 46204.
Iowa: Secretary of State, Des Moines, Iowa 50319.
Kansas: Auditor of State and register of State Lands, Topeka, Kansas 66612.
Louisiana: Register, State Land Office, Baton Rouge, Louisiana 70804.
Michigan: Department of Treasury, Bureau of Local Government Services, Treasury Building, Lansing, Michigan 48922.
Minnesota: Department of Conservation, Division of Lands and Forestry, Centennial Office Building, Saint Paul, Minnesota 55101.
Mississippi: State Land Commissioner, P.O. Box 39, Jackson, Mississippi 39205.
Missouri: State Land Survey Authority, P.O. Box 1158, Rolla, Missouri 65401
Nebraska: State Surveyor, State Capitol Building, P.O. Box 4663, Lincoln, Nebraska 68509.
North Dakota: State Water Conservation Commission, State Office Building, Bismarck, North Dakota 58501.
Ohio: Auditor of State, Columbus, Ohio 43215.
South Dakota: Commissioner of School and Public Lands, State Capitol, Pierre, South Dakota 57501.
Wisconsin: Department of Natural Resources, Box 450, Madison, Wisconsin 53701.

LOCAL OFFICES OF BUREAU OF LAND MANAGEMENT

The surveys are in progress in the other public-land states, where the records may be examined in, or copies procured from, the State Offices of the Bureau of Land Management, as follows:

Arizona: Phoenix.
California: Sacramento.
Colorado: Denver.
Idaho: Boise.
Montana: Billings.
Nevada: Reno.
New Mexico: Santa Fe.
Oregon: Portland.
Utah: Salt Lake City.
Washington: Portland, Oregon.
Wyoming: Cheyenne.
Alaska: Anchorage.

GENERAL PRACTICES

The basic Federal laws from which the rules for the original surveys and for necessary resurveys or retracements have been derived are set out in Revised Statutes, secs. 2395-2397; the acts of Congress approved March 3, 1909 (35 Stat. 845); September 21, 1918 (40 Stat. 965); and April 29, 1950 (64 Stat. 93), the provisions of which are amplified in the 1973 Manual.

The rules for the restoration of lost corners have remained substantially the same since 1883, when first published as such.¹ These rules are in harmony with the leading judicial opinions and the most approved surveying practice. They are applicable to the public land rectangular surveys, within the states listed above and to the retracement of those surveys, as distinguished from the running of property lines that may have legal authority only under State law, court decree, or agreement.

In the New England and Atlantic Coast States, except Florida, and in Pennsylvania, West Virginia, Kentucky, Tennessee, and Texas, jurisdiction over the vacant lands remained in the States. The public land surveys were not extended in these States and it follows that the practices outlined herein are not applicable there, except as they reflect sound surveying methods.

The practices outlined herein are in accord with the related provisions of the Manual; they have been segregated for the convenience of the reader in order to separate them from the instructions pertaining only to the making of original surveys.

For clarity, the practices, as such, are set in bold print. The remainder of the text is to be regarded as explanatory and advisory only, the purpose being to exemplify the best general practice.

In some states, the substance of practices for restoration of lost or obliterated corners and subdivision of sections, as outlined herein, has been enacted into law. It is incumbent on the surveyor engaged in practice of land surveying to become familiar with the provisions of the laws of the State, both legislative and judicial, as affecting his work.

¹ Restoration of Lost or Obliterated Corners, and Subdivision of Sections, March 13, 1883, 1 L.D., 339; 2d edition 1 L.D. 671; revised October 16, 1896, 23 L.D. 361; revised June 1, 1909, 38 L.D. 1; reprinted in 1916 and 1936; revised April 5, 1939; reissued May 8, 1952; reprinted with corrections July 11, 1955; reprinted in 1960; revised June 3, 1963; reprinted 1965 and 1968.

GENERAL RULES

The general rules followed by the Bureau of Land Management, which are controlling upon the location of all public lands, are summarized in the following paragraphs:

First: That the boundaries of the public lands, when approved and accepted, are unchangeable.

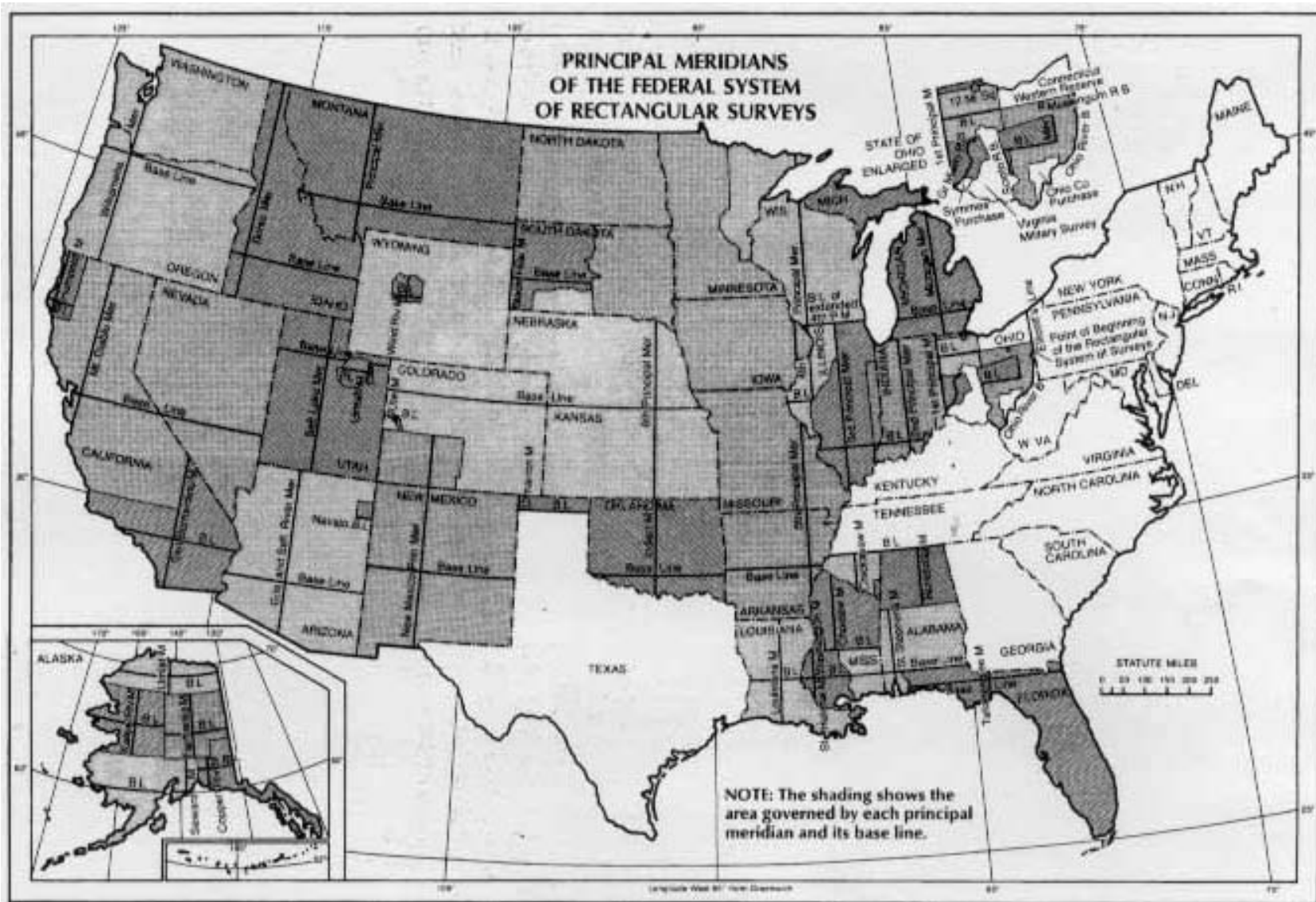
Second: That the original township, section, and quarter-section corners must stand as the true corners which they were intended to represent, whether in the place shown by the field notes or not.

Third: That quarter-quarter-section corners not established in the original survey shall be placed on the line connecting the section and quarter-section corners, and midway between them, except on the last half mile of section lines closing on the north and west boundaries of the township, or on the lines between fractional or irregular sections.

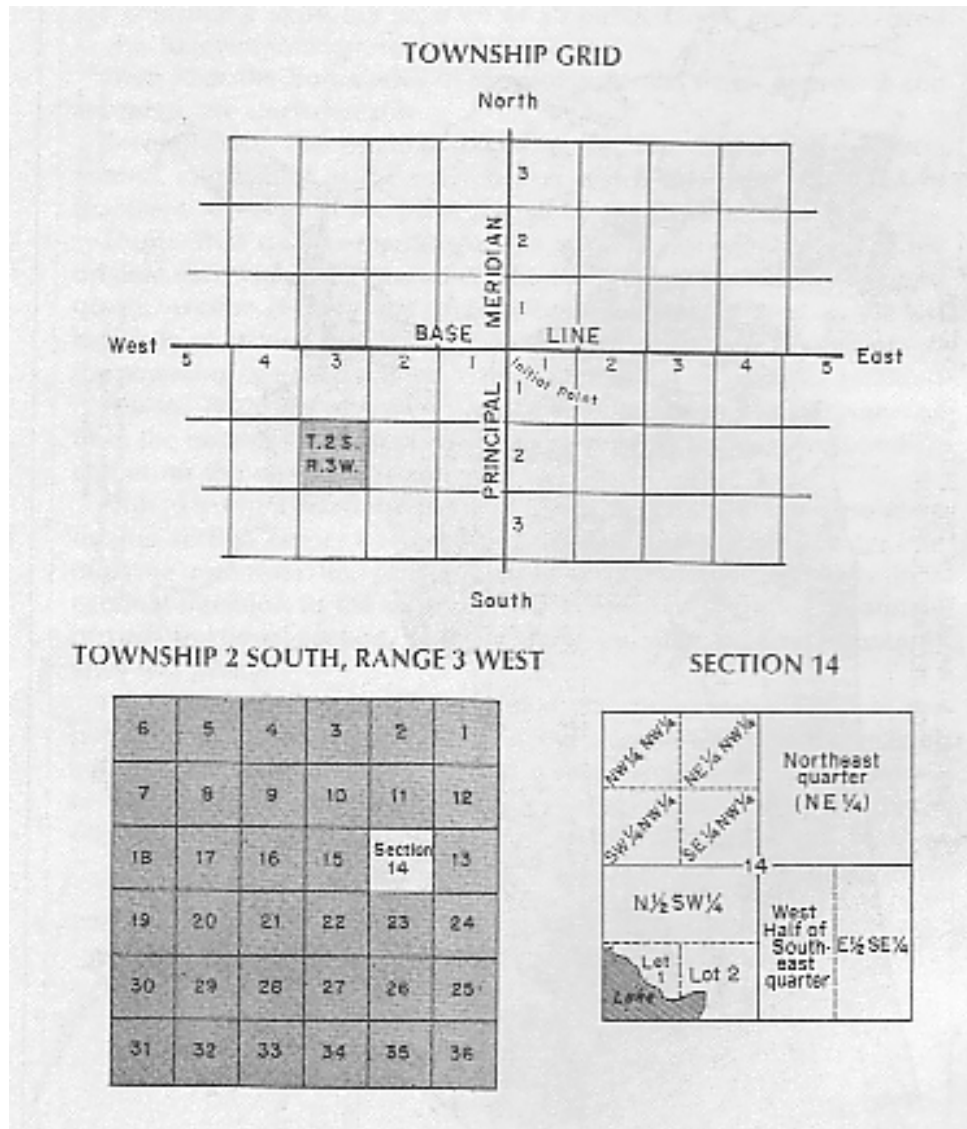
Fourth: That the center lines of a section are to be straight, running from the quarter-section corner on one boundary to the corresponding corner on the opposite boundary.

Fifth: That in a fractional section where no opposite corresponding quarter-section corner has been or can be established, the center line must be run from the proper quarter-section corner as nearly in a cardinal direction to the meander line, reservation, or other boundary of such fractional section, as due parallelism with the section boundaries will permit.

From the foregoing it will be evident that corners established in the public land surveys remain fixed in position and are unchangeable; and that lost or obliterated corners of those surveys must be restored to their original locations from the best available evidence of the official survey in which such corners were established.



GENERALIZED DIAGRAM OF THE RECTANGULAR SYSTEM OF SURVEYS

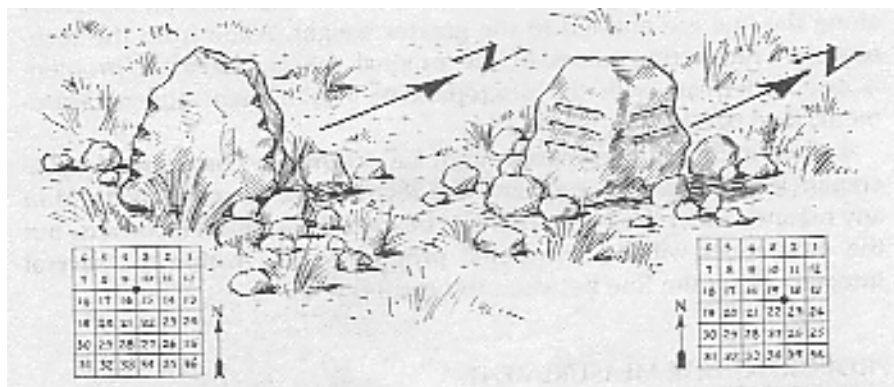


RESTORATION OF LOST OR OBLITERATED CORNERS

The restoration of lost corners should not be undertaken until after all control has been developed; such control includes both original and acceptable collateral evidence. However, the methods of proportionate measurement will be of material aid in the recovery of evidence.

1. An existent corner is one whose position can be identified by verifying the evidence of the monument, or its accessories, by reference to the description that is contained in the field notes, or where the point can be located by an acceptable supplemental survey record, some physical evidence, or testimony.

Even though its physical evidence may have 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.



Marks on old stone section corners. The notches or grooves indicate the number of miles from the south and east boundaries of the township, respectively.

2. An obliterated corner is one at whose point 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 beyond reasonable doubt, by the acts and testimony of the interested landowners, competent surveyors, or other qualified local authorities, or witnesses, or by some acceptable record evidence.

A position based upon collateral evidence should be 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 unquestionable testimony.

3. A lost corner is a point of a survey whose position cannot be determined, beyond reasonable doubt, either from traces of the original marks or from acceptable evidence or testimony that bears upon the original position, and whose location can be restored only by reference to one or more interdependent corners.

If there is some acceptable evidence of the original location of the corner, that position will be employed.

Decision that a corner is lost should not be made until every means has been exercised that might aid in identifying its true original position. The retracements, which are usually begun at known corners, and run according to the record of the original survey, will indicate the probable position for the corner, and show what discrepancies may be expected. Any supplemental survey record or testimony should then be considered in the light of the facts thus developed. A line will not be regarded as doubtful if the retracement affords recovery or acceptable evidence.

In cases where the probable position for a corner cannot be made to harmonize with some of the calls of the field notes, due to errors in description or to discrepancies in measurement developed in the retracement, it must be ascertained which of the calls for distances along the line are entitled to the greater weight. Aside from the technique of recovering traces of the original marks, the main problem is one that treats with the discrepancies in alinement and measurement. (See p. 33.)

4. Existing original corners cannot be disturbed; consequently, discrepancies between the new and the record measurements will not in any manner affect the measurements beyond the identified corners, but the differences will be distributed proportionately within the several intervals along the line between the corners.

PROPORTIONATE MEASUREMENT

The ordinary field problem consists of distributing the excess or deficiency in measurement between existent corners in such a manner that the amount given to each interval shall bear the same proportion to the whole difference as the record length of the interval bears to the whole record distance. After having applied the proportionate difference to the record length of each interval the sum of the several parts will equal the new measurements of the whole distance.

5. A proportionate measurement is one that gives concordant relation between all parts of the line, i.e.—the new values given to the several parts, as determined by the remeasurement, shall bear the same relation to the record lengths as the new measurement of the whole line bears to that record. Lengths of proportioned lines are comparable only when reduced to their cardinal equivalents.



Corner monuments of the public land surveys. Reading from top of page: (a) Modern iron post with brass cap, and mound of stone; (b) wooden posts, the one on left not much more than a twig; (c) wooden post, showing decay at ground line; (d) corner monument obliterated, remnants of stone mounds identify corner position; (e) corner monument obliterated, evidence of old pits fixes corner position.

Discrepancies in measurement between those recorded in the original survey and those developed in the retracements should be carefully verified with the object to placing each such difference properly where it belongs. This is quite important at times, because, if disregarded, the result may be fixing of a corner position where it is obviously improper. Accordingly, wherever possible, the manifest errors in the original measurements should be segregated from the general average difference, and placed where the blunder was made. The accumulated surplus or deficiency that then remains is the quantity that is to be uniformly distributed by the methods of proportionate measurement.

SINGLE PROPORTION

6. The term “single proportionate measurement” is applied to a new measurement made on a line to determine one or more positions on that line.

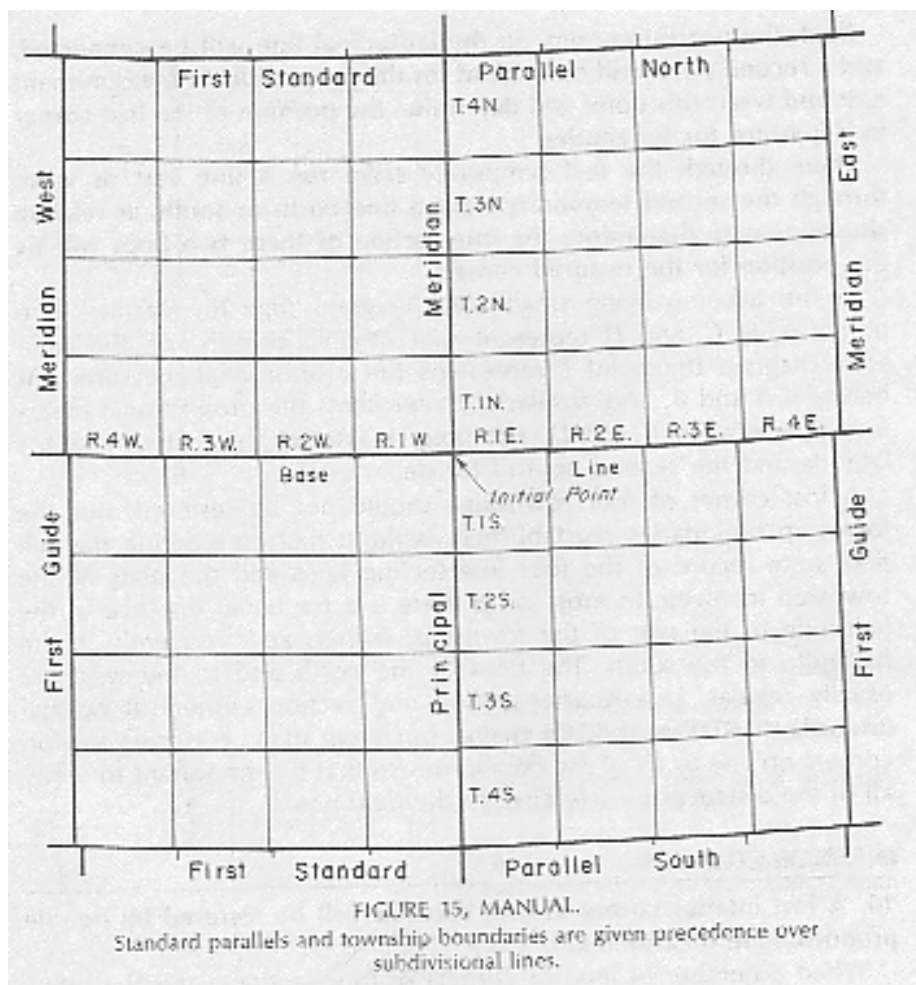
In single proportionate measurement, the position of two identified corners controls the direction of the line between those corners, and intermediate positions on that line are determined by proportionate measurement between those controlling corners. The method is sometimes referred to as a “two-way” proportion. Examples: a quarter-section corner on the line between two section corners; all corners on standard parallels; and all intermediate positions on any township boundary line.

DOUBLE PROPORTION

7. The term “double proportionate measurement” is applied to a new measurement made between four known corners, two each on intersecting meridional and latitudinal lines, for the purpose of relating the intersection to both.

By double proportionate measurement, the lost corner is reestablished on the basis of measurement only, disregarding the record directions. An exception will be found in those cases where there is some acceptable survey record, some physical evidence, or testimony, that may be brought into the control. The method may be referred to as a “four-way” proportion. Examples: a corner common to four townships, or one common to four sections within a township.

The double proportionate measurement is the best example of the principal that existent or known corners to the north and to the south should control any intermediate latitudinal position, and that corners east and west should control any intermediate latitudinal position, and that corners east and west should control the position in longitude.



As between single or double proportionate measurement, the principle of precedence of one line over another of less original importance is recognized, in order to harmonize the restoring process with the method followed in the original survey, thus limiting the control.

STANDARD PARALLELS AND TOWNSHIP BOUNDARIES

8. Standard parallels will be given precedence over other township exteriors, and ordinarily the latter will be given precedence over subdivisional lines; section corners will be relocated before the position of lost quarter-section corners can be determined.

9. In order to restore a lost corner of four townships, a retracement will first be made between the nearest known corners on the meridional line, north and south of the missing corners, and upon that line a temporary stake will be placed at the proper proportionate distance; this will determine the latitude of the lost corner.

Next, the nearest corners on the latitudinal line will be connected, and a second point will be marked for the proportionate measurement east and west; this point will determine the position of the lost corner in departure (or longitude).

Then, through the first temporary stake run a line east or west, through the second temporary stake a line north or south, as relative situations may determine; the intersection of these two lines will fix the position for the restored corner.

In the accompanying small scale diagram (fig. 70, Manual), the points A, B, C, and D represent four original corners; on the large scale diagram the point E represents the proportional measurement between A and B; and, similarly, F represents the proportional measurement between C and D. The point X satisfies the first control for latitude and the second control for departure.

A lost corner of four townships should not be restored, nor the township boundaries reestablished, without first considering the full field note record of the four intersecting lines and the plats of the township involved. In most cases there is a fractional distance in the half-mile to the east of the township, corner, and frequently in the half-mile to the south. The lines to the north and to the west are usually regular, i.e. --quarter-section and section corners at normal intervals of 40.00 and 80.00 chains, but there may be closing-section corners on any or all of the boundaries so that it is important to verify all of the distances by reference to the field notes.

INTERIOR CORNERS

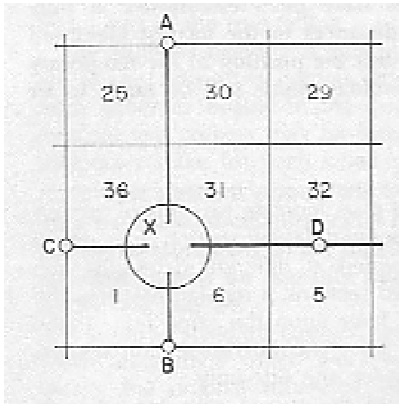
10. A lost interior corner of four sections will be restored by double proportionate measurement.

When a number of interior corners of four sections, and the intermediate quarter-section corners, are missing on all sides of the one sought to be established, the entire distance between the nearest identified corners both north and south, and east and west, must be measured. Lost section corners on the township exteriors, if required for control, should be relocated.

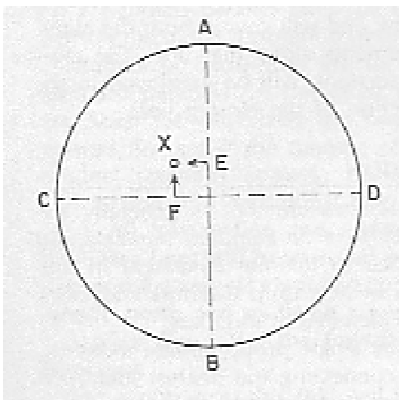
RECORD MEASUREMENT

11. Where the line has not been established in one direction from the missing township or section corner, the record distance will be used to the nearest identified corner in the opposite direction.

Thus, in the same diagram, if the latitudinal line in the direction of the point D has not been established, the position of the point F in departure would have been determined by reference to the record distance from the point C; the point X would then be fixed by cardinal offsets from the points E and F as already explained.

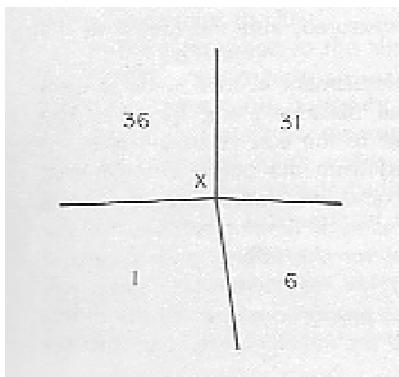


Lost township corner in vicinity of X



A, B, C, D,—Control corners
E—Proportionate point for X in latitude between A and B
F—Proportionate point for X in departure between C and D

Correct position of X is at intersection of lines extended East or West from E, North or South from F.



Restored corner showing true direction of township lines

FIGURE 70, MANUAL

12. Where the intersecting lines have been established in only two of the directions, the record distances to the nearest identified corners on these two lines will control the position of the temporary points; then from the latter the cardinal offsets will be made to fix the desired point of intersection.

TWO SETS OF CORNERS

In many surveys the field notes and plats indicate two sets of corners along township boundaries, and frequently along section lines where parts of the township were subdivided at different dates. In such cases there are usually corners of two sections at regular intervals, and closing section corners established later upon the same line, at the points of intersection of a closing line. The quarter-section corners on such lines usually are controlling for one side only.

In the more recent surveys, where the record calls for two sets of corners, those that are the corners of the two sections first established, and the quarter-section corners relating to the same sections, will be employed for the retracement, and will govern both the alinement and the proportional measurements along that line. The closing section corners, set at the intersections, will be employed in the usual way, i.e.--to govern the direction of the closing lines.

RESTORATION BY SINGLE PROPORTION

The method of single proportionate measurement is generally applicable to the restoration of lost corners on standard parallels and other lines established with reference to definite alinement in one direction only. Intermediate corners on township exteriors and other controlling boundary lines are to be included in this class.

In order to restore a lost corner by single proportionate measurement, a retracement will be made connecting the nearest identified regular corners on the line in question; a temporary stake (or stakes) will be set on the trial line at the original record distance, (or distances); the total distance will be measured, also the falling at the objective corner.

On meridional township lines an adjustment will be made at each temporary stake for the proportional distance along the line. The temporary stake then will be set over to the east or to the west for falling, counting its proportional part from the point of beginning.

On east-and-west township lines and on standard parallels the proper adjustment should be made at each temporary stake for the proportional distance along the line, for the falling, and to secure the latitudinal curve (see Manual¹); i.e.—the temporary stake will be either advanced or set back for the proportional part of the difference between the record distance and the new measurement, then set over the curvature of the line, and last corrected for the proportional part of the true falling.

¹Secs. 2-75 to 2-78, inclusive; the true latitudinal curve. Secs. 3-17 to 3-30, inclusive; the running of township exteriors. The term latitudinal curve as there employed denotes an easterly westerly line properly adjusted to the same mean bearing from each monument to the next one in regular order, as distinguished from the long chord or great circle that would connect the initial and terminal points.

The adjusted position is thus placed on the true line that connects the nearest identified corners, and at the same proportional interval from either as existed in the original survey. Any number of intermediate lost corners may be located on the same plan, by setting a temporary stake for each when making the retracement.

13. Lost standard corners will be restored to their original positions on a base line, standard parallel or correction line, by single proportionate measurement on the true line connecting the nearest identified standard corners on opposite sides of the missing corner or corners, as the case may be.

The term “standard corners”, as used above, will be understood to mean all corners which were established on the standard parallel during the original survey of that line, including, but not limited to, standard township, section, quarter-section, meander, and closing corners. Closing corners, or other corners purported to be established on a standard parallel after the original survey of that line, will not control the initial restoration of lost standard corners.

Corners on base lines are to be regarded the same as those on standard parallels. In the older practice the term “correction line” was used for what later has been called the standard parallel. The corners first set in the running of a correction line will be treated as original standard corners; those that were set afterwards at the intersection of a meridional line will be regarded as closing corners.

14. All lost section and quarter-section corners on the township boundary lines will be restored by single proportionate measurement between the nearest identified corners on opposite sides of the missing corner, north and south on a meridional line, or east and west on a latitudinal line, after the township corners have been identified or relocated.

An exception to this rule will be found in the case of any exterior the record of which shows deflections in alinement between the township corners (p. 20).

A second exception to the above rule is found in those occasional cases where there may be persuasive proof of a deflection in the alinement of the township boundary, though the record shows the line to be straight. For example, measurements east and west across a range line, or north and south across a latitudinal township line, counting from a straight-line exterior adjustment, may show distances to the nearest identified subdivisional corners to be materially long in one direction and correspondingly short in the opposite direction as compared to the record measurements. This condition, when supported by corroborative collateral evidence as might generally be expected, would warrant an exception to the straight-line or two-way adjustment under the rules for the acceptance of evidence, i.e.—the evidence outweighs the record. See RetrACEMENTS. The rules for a four-way or double proportionate measurement would then apply, provided there is conclusive proof.

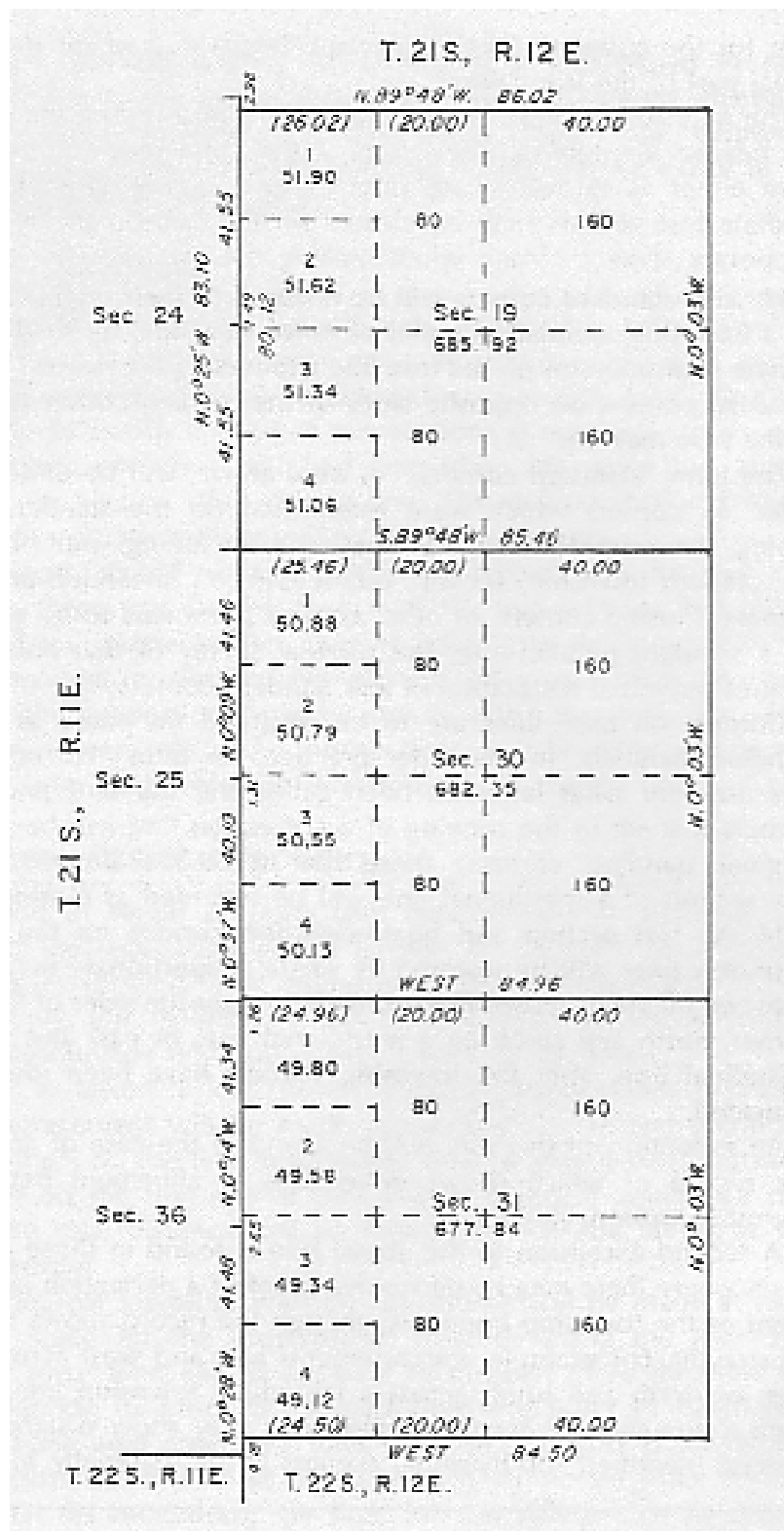


FIGURE 81,

Two sets of corners on an irregular township boundary.

MANUAL

15. All lost quarter-section corners on the section boundaries within the township will be restored by single proportionate measurement between the adjoining section corners, after the section corners have been identified or relocated.

This practice is applicable in the majority of the cases. However, in those instances where other corners such as meander corners, sixteenth-section corners, etc., were originally established between the quarter-section and the section corners, such minor corners, when identified, will exercise control in the restoration of lost quarter-section corners.

16. Lost meander corners, originally established on a line projected across the meanderable body of water and marked upon both sides will be relocated by single proportionate measurement, after the section or quarter-section corners upon the opposite sides of the missing meander corner have been duly identified or relocated.

Under ordinary conditions, the actual shore line of a body of water is considered the boundary of lands included in an entry and patent, rather than the meander line returned in the field notes. It follows that the restoration of a lost meander corner would be required only infrequently. Under favorable conditions a lost meander corner may be restored by treating the shoreline as an identified natural feature which controls the measurement to the point for the corner; this is particularly applicable where it is evident that there has been no change in the shore line.

17. A lost closing corner will be reestablished on the true line that was closed upon, and at the proper proportional interval between the nearest regular corners to the right and left.

In order to reestablish a lost closing corner on a standard parallel or other controlling boundary, the line that was closed upon will be retraced, beginning at the corner from which the connecting measurement was originally made, itself properly identified or relocated; a temporary stake will be set at the record connecting distance, and the total distance and falling will be noted at the next regular corner on that line on the opposite side of the missing closing corner; the temporary stake will then be adjusted as in single proportionate measure (p. 33).

A closing corner not actually located on the line that was closed upon will determine the direction of the closing line, but not its legal terminus; the correct position is at the true point of intersection of the two lines.

IRREGULAR EXTERIORS

Some township boundaries, not established as straight lines, are termed “irregular” exteriors. Parts were surveyed from opposite directions, and the intermediate portion was completed later by random and true line, leaving a fractional distance. Such irregularity follows some material departure from the basic rules for the establishment of original surveys. A modified form of single proportionate measurement is used in restoring lost corners on such boundaries. This is also applicable to a section line or a township line which has been shown to be irregular by a previous retracement. Figure 71.

In order to restore one or more lost corners or angle points on such irregular exteriors, a retracement between the nearest known corners is made on the record courses and distances to ascertain the direction and length of the closing distance. A temporary stake is set for each missing corner or angle point. The closing distance is then reduced to its equivalent latitude and departure.

On a meridional line the latitude of the closing distance is distributed among the courses in proportion to the latitude of each course. The departure of the closing distance is distributed among the courses in proportion to the length of each course. That is, after the excess or deficiency of latitude is distributed, each temporary stake is moved east or west an amount proportional to the total distance from the starting point.

On a latitudinal line the temporary stakes should be placed to suit the usual adjustments for the curvature. The departure of the closing distance is distributed among the courses in proportion to the departure of each course. Then each temporary stake is moved north or south an amount proportional to the total distance from the starting point.

Angle points and intermediate corners will be treated alike.

ONE-POINT CONTROL

18. Where a line has been terminated with measurement in one direction only, a lost corner will be restored by record bearing and distance, counting from the nearest regular corner, the latter having been duly identified or restored.

Examples will be found where lines have been discontinued at the intersection with large meanderable bodies of water, or at the border of what was classified as impassable ground.

INDEX ERRORS FOR ALINEMENT AND MEASUREMENT

Where the original surveys were faithfully executed, it is to be anticipated that retracement of many miles of the lines in a given township will develop a definite and consistent difference in measurement and in a bearing between original corners, such as to establish a characteristic of the original survey. Under such conditions it is proper that allowance be made for the average differences in the restoration of a lost corner where control is lacking on one direction. The adjustment will be taken care of automatically where there is a suitable basis for proportional measurement.

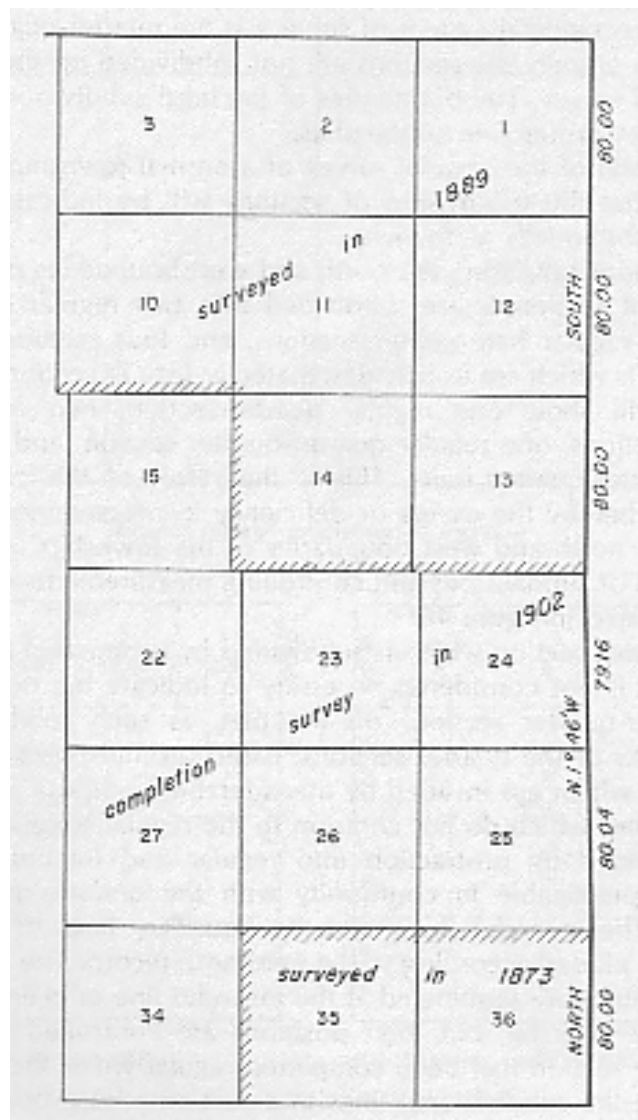


FIGURE 71, MANUAL
Irregular exterior resulting from the piecemeal survey of a township line.

SUBDIVISION OF SECTIONS

The fundamental principles for the subdivision of sections are derived from secs. 2396 and 2397, Revised Statutes (43. U. S. C., secs 752, 753). The ordinary unit of administration of the public lands under the rectangular system of surveys is the quarter-quarter section of 40 acres. Usually the sections are not subdivided on the ground in the original survey. The boundaries of the legal subdivisions generally are shown by protraction on the plats.

On the plat of the original survey of a normal township, it is to be expected that the subdivision of sections will be indicated, by protraction, substantially as follows:

The sections bordering the north and west boundaries of the township, except section 6, are subdivided into two regular quarter-sections, two regular half-quarter sections, and four fractional quarter-quarter units which are usually designated as lots. In section 6, the subdivision will show one regular quarter-section, two regular half-quarter sections, one regular quarter-quarter section, and seven fractional quarter-quarter units. This is a result of the plan of subdivision, whereby the excess or deficiency in measurement is placed against the north and west boundaries of the township.

The plan of subdivisions and controlling measurements employed is well illustrated in figure 46.

In a normal section which is subdivided by protraction into quarter sections, it is not considered necessary to indicate the boundaries of the quarter-quarter sections on the plat, as such subdivisions are aliquot parts of the quarter sections, based on mid-point protraction.

Sections which are invaded by meanderable bodies of water, or by private claims which do not conform to the regular legal subdivisions, are subdivided by protraction into regular and fractional parts as nearly as practicable in conformity with the uniform plan already outlined. The meander lines, and boundary lines of the private claims, are platted according to the field note record. The subdivision-of-section lines are terminated at the meander line or claim boundary, as the case may be, but their positions are controlled precisely as though the section had been completed regularly. For the purpose of protracting the subdivisional lines in a section whose boundary lines are partly within the limits of a meanderable body of water, or private claim, the fractional section boundaries are completed in theory; the protracted position of the subdivision-of-section lines is controlled by the theoretical points so determined. (See fig. 47.)

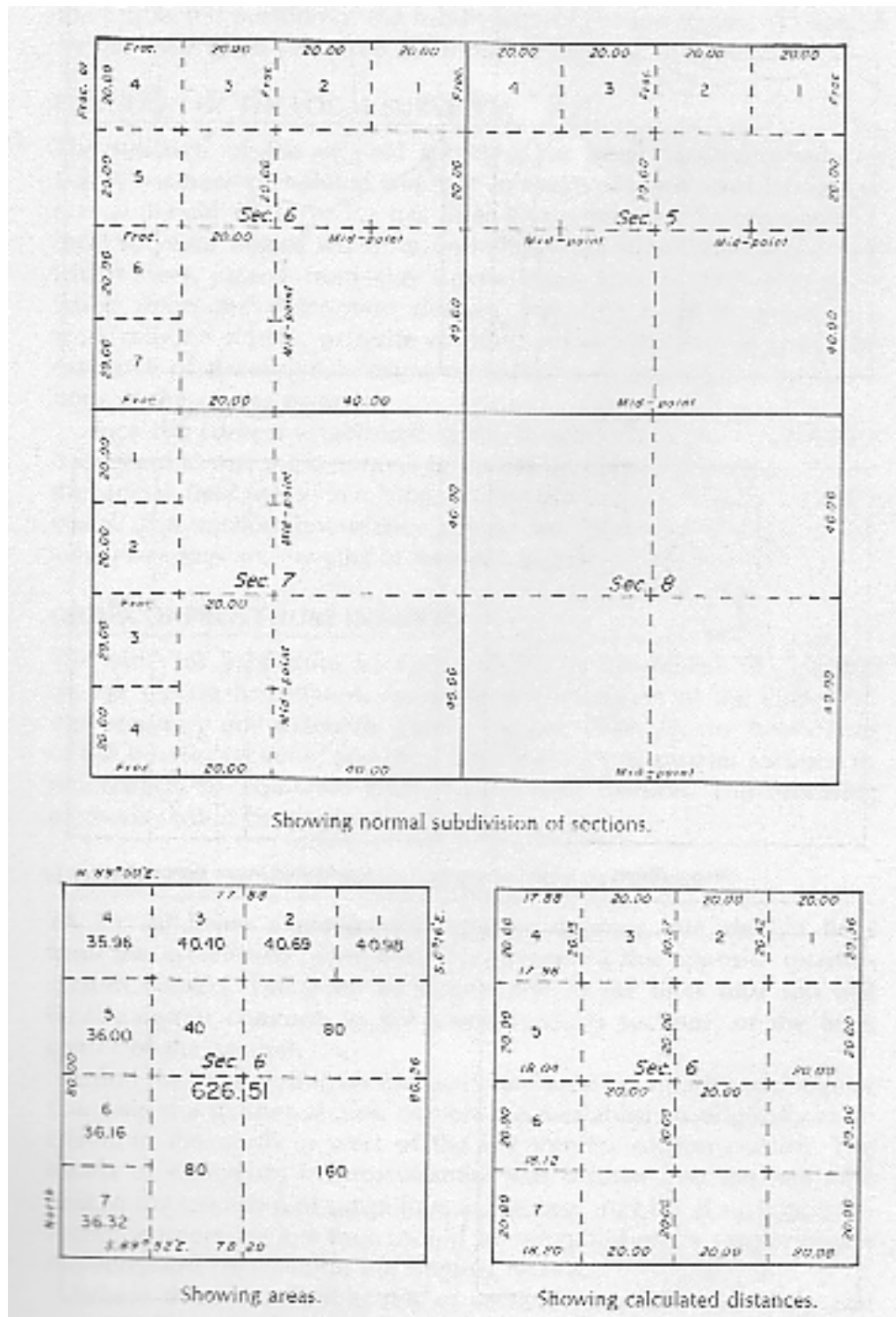
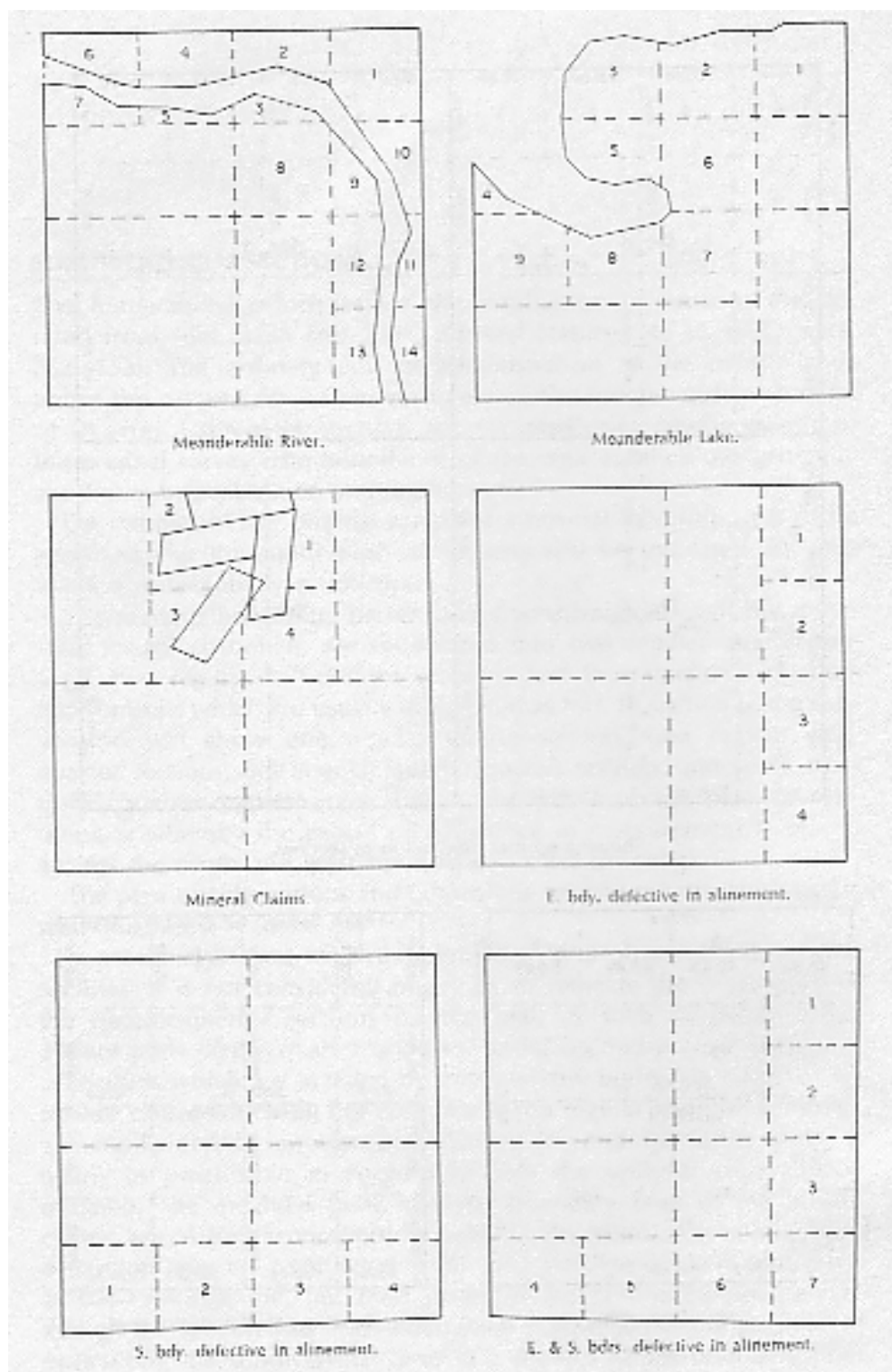


FIGURE 46, MANUAL
Examples of subdivision by protraction



FIGURE

MANUAL
Examples of subdivision of fractional sections

FUNCTION OF THE LOCAL SURVEYOR

The function of the original surveyor has been fulfilled when the survey has been completed and monumented properly, and the official plat and field note record has been prepared. The function of the local surveyor begins when he undertakes the identification of lands which have passed from the Government into private ownership, based upon the description derived from the original survey. His work may be simple, or quite complex, depending largely upon the existence of the original corner monuments or acceptable perpetuations of the corner positions.

Since the corners established in the original survey are controlling, it is essential that these corners be found, or properly restored, before the actual field work involving the subdivision-of-section is undertaken. The section boundaries should be retraced to develop the actual bearings and lengths of the lines between the corners.

ORDER OF PROCEDURE IN SURVEY

The order of procedure is: First, identify or reestablish the corners on the section boundaries, including determination of the points for the necessary one-sixteenth section corners. Next, fix the boundaries of the quarter sections; and then form the quarter-quarter sections or small tracts by equitable and proportionate division. The following methods should be employed:

SUBDIVISION OF SECTIONS INTO QUARTER SECTIONS

19. To subdivide a section into quarter sections, run straight lines from the established quarter-section corners to the opposite quarter-section corners. The point of intersection of the lines thus run will be the corner common to the several quarter sections, or the legal center of the section.

Upon the lines closing on the north and west boundaries of a regular township the quarter-section corners were established originally at 40 chains to the north or west of the last interior section corners. The excess or deficiency in measurement was thrown into the half-mile next to the township or range line, as the case may be. If such quarter-section corners are lost, they should be reestablished by proportionate measurement based upon the original record.

Where there are double sets of section corners on the township and range lines, the quarter-section corners for the sections south of the township line and east of the range line usually were not established in the original surveys. In subdividing such sections, new quarter-section corners are required, so placed as to suit the calculations of the areas that adjoin the township boundary, as indicated upon the official plat, adopting proportional measurements where the new measurements of the north or west boundaries of the section differ from the record distances (pp. 16 and 30).

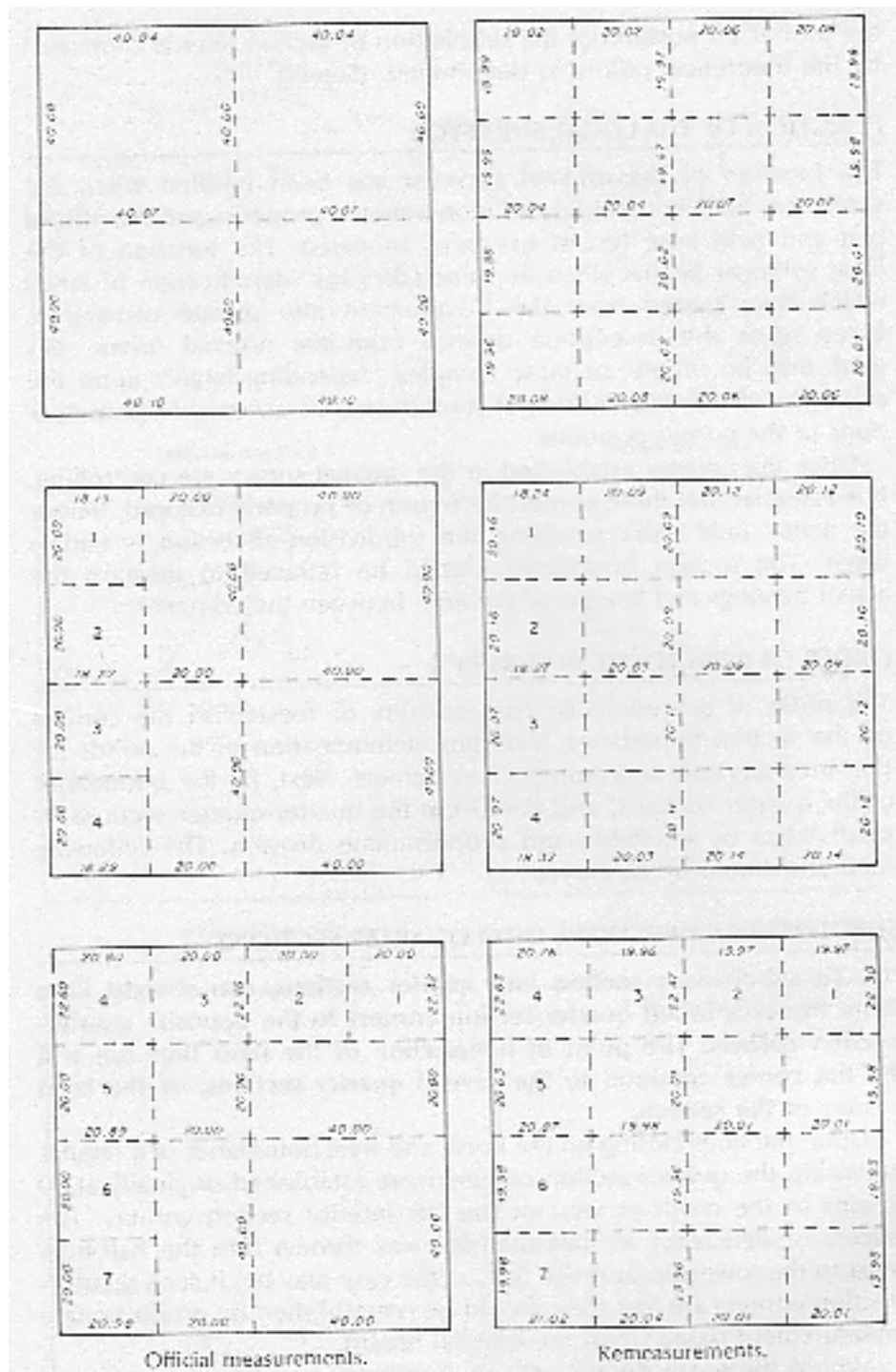


FIGURE 50, MANUAL
Examples of subdivision by survey showing relation of official measurements and calculated distances to remeasurements, and indicating proportional distribution of differences.

SUBDIVISION OF FRACTIONAL SECTIONS

20. The law provides that where opposite corresponding quarter-section corners have not been or cannot be fixed, the subdivision-of-section lines shall be ascertained by running from the established corners north, south, east, or west, as the case may be, to the water course, reservation line, or other boundary of such fractional sections represented upon the official plat.

In this, the law presumes that the section lines are due north and south, or east and west lines, but usually this is not the case. Hence, in order to carry out the spirit of the law, it will be necessary in running the center lines through fractional sections to adopt mean courses, where the section lines are not on due cardinal, or to run parallel to the east, south, west, or north boundary of the section, as conditions may require, where there is no opposite section line.

SUBDIVISION OF QUARTER SECTIONS

21. Preliminary to the subdivision of quarter sections, the quarter-quarter, or sixteenth-section corners will be established at points midway between the section and quarter-section corners, and the center of the section, except on the last half mile of the lines closing on township boundaries, where they should be placed at 20 chains, proportionate measurement, counting from the regular quarter-section corner.

The quarter-quarter, or sixteenth-section corners having been established as directed above, the center lines of the quarter section will be run straight between opposite corresponding quarter-quarter, sixteenth section corners on the quarter-section boundaries. The intersection of the lines thus run will determine the legal center of a quarter section. (See fig. 50.)

SUBDIVISION OF FRACTIONAL QUARTER SECTIONS

22. The subdivisional lines of fractional quarter sections will be run from properly established quarter-quarter, or sixteenth-section corners, with courses governed by the conditions represented upon the official plat, to the lake, water-course, reservation, or other irregular boundary which renders such sections fractional.

What has been written on the subject of subdivision of sections relates to the procedure contemplated by law, and refers to the methods to be followed in the initial subdivision of the areas, prior to development and improvement. It must be borne in mind that care should be exercised to avoid disturbing, satisfactory conditions as to roads, fences, or other improvements marking subdivision-of-section lines and which may define the extent of property rights.

RETRACEMENTS

Where the surveyor is called upon to retrace the lines of the rectangular public land surveys, the problem requires a careful study of the record data. The first step is to assemble copies of the field notes and plats, and determine the names of the owners who will be concerned in the retracement and survey. A thorough search and inquiry with regard to the record of any additional surveys that have been made since the approval of the original survey should be made. The county surveyor, county clerk, register of deeds, practicing engineers and surveyors, landowners, and others who may furnish useful information should be consulted as to such features.

The matter of boundary disputes should be carefully reviewed, particularly as to whether claimants have based their locations upon evidence of the original survey and a proper application of surveying rules. If there has been a boundary suit, the record testimony and the court's opinion and decree should be carefully examined insofar as these may have a bearing upon the problem in hand.

The law requires that the position of original corners shall not be changed. There is a penalty for defacing corner marks, and for changing or removing a corner. (See inside front cover.) The corner monuments afford the principal means for identification of the survey, and accordingly, the courts attach the greatest weight to the evidence of their location. Discrepancies that may be developed in the directions and length of lines, as compared with the original record, do not warrant any alteration of a corner position (p. 10).

Obviously, on account of roadways or other improvements, it is necessary frequently to reconstruct a monument in some manner in order to preserve its position. Alterations of that kind are not regarded as changes in willful violation of the law, but rather as being in complete accord with the legal intent to safeguard the evidence (p. 37).

Therefore, whatever the purpose of the retracement may be—if it calls for the recovery of the true lines of the original survey, or for the running of the subdivisional lines of a section, the practices outlined require some or all of certain definite steps, as follows:

- a. Secure a copy of the original plat and field notes;
- b. Secure all available data regarding subsequent surveys;
- c. Secure the names and contact the owners of the property adjacent to the lines that are involved in the retracement
- d. Find the corners that may be required:
 - First: By the remaining physical evidence;
 - Second: By collateral evidence, supplemental survey records, or testimony, if the original monument is regarded as obliterated, but not lost, or;
 - Third: By application of the rules for proportionate measurement, if lost;
- e. Reconstruct the monuments as required, including the placing of reference markers where improvements of any kind might interfere, or if the site is such as to suggest the need for supplemental monumentation;
- f. Note the procedure for the subdivision of sections where these lines are to be run and

g. Prepare and file¹ a suitable record of what was found, the supplemental data that was employed, a description of the methods used, the direction and length of lines, the new markers, and any other facts regarded as important.

A knowledge of the practices and instructions in effect at the time of the original survey will be helpful. These should indicate what was required and how it was intended that the original survey should be made.

The data used in connection with the retracements should not be limited to the section or sections under immediate consideration. It should also embrace the areas adjacent to those sections. The plats should be studied carefully; fractional parts of sections should be located on the ground as indicated on the plats.

DOUBLE SETS OF CORNERS

The technique of making field astronomical observations for determinations of the true meridian, and methods for establishment of the true latitudinal curve, were not developed so as to be generally applied for many years after the inception of the rectangular survey system. Without these refinements, and lacking accuracy in the measurement of lines, accumulated discrepancies were bound to develop.

As a result, in order to maintain rectangularity in some of the older surveys, two sets of corners were established on the township boundaries. The section and quarter-section corners established in the survey of the boundary itself are the corners to be adopted in retracement and for control of proportionate measurements. These corners control the subdivisions on one side only of the township boundary. The second set of corners on these boundaries are the closing section corners for the subdivisional surveys on the opposite side of the boundary. The descriptions of these closing corners, and the connecting distances to the regular township boundary corners, will be found in the field notes of the subdivisional survey in which they were established. These closing section corners should be considered and evaluated as evidence in the solution of the whole problem.

¹ In many of the states there is a well established practice for the filing of field notes and plats of surveys, usually in one of the county offices. Otherwise, the record ordinarily would be filed as an exhibit with a deed, or agreement, or court decree, etc.

Where the section corners on the township boundaries are of minimum control, the quarter-section corners have the same status for the same side of the boundary. In the older surveys, quarter-section corners usually were not established for the opposite side of the boundary. Subsequent to 1919 it has been the practice to establish the second set of quarter-section corners. These are at midpoint for distances between the closing section corners, except where the plan of subdivision dictates otherwise, in which event the quarter-section corner is placed at 40.00 chains from the controlling closing corner.

These conditions merit careful study of the plats to the end that the subdivisions shown on the plats be given proper protection. The plats will indicate whether these quarter-section corners should be at mid-point between the closing corners, or if they should be located with regard to a fractional distance. The surveyor should make sure that the position is determined for all corners necessary for control in his work.

There is nothing especially different or complicated in the matter of one or two sets of corners on the township boundary lines. It is merely a question of assembling the complete data and of making a proper interpretation of the status of each monument.

The same principles should be applied in the consideration of the data of the subdivisional surveys, where for any of several causes there may be two sets of interior corners.

THE NEEDLE COMPASS AND SOLAR COMPASS

It should be noted that very simple needle-compass equipment in the hands of men skilled as surveyors, coupled with natural woodcraft and faithfulness in doing their work, satisfied the requirements of the colonial and early public-land surveys.

From the start of the public-land surveys, it was intended that the directions of lines be referred to the true meridian. In the early days, there was a general lack of familiarity with exact methods necessary to attain that purpose. The solar compass was designed by William A. Burt, United States Surveyor of Michigan and Iowa, and introduced in 1836. The instrument was an outstanding improvement over the needle compass, and gave accurate determinations of the meridian in the hands of Burt and others closely associated with him. The solar compass did not come into general use for nearly 50 years. Beginning with the Manual of 1890, the use of the magnetic needle was prohibited except for subdividing and meandering, and then only in localities that were supposed to be free from local attraction. Beginning with the Manual of 1894, the needle compass was entirely discontinued on all public land surveys. Most surveys are now being made with the improved solar transit. Where it is practicable, even more modern instruments such as one-second theodolites, gyroscopic compasses, and electronic distance measuring devices are employed, often in combination with photogrammetry.

It is not the purpose here to supply instructions for the use of the needle compass, but rather to point out what may be expected regarding the directions of the

lines of the early needle-compass surveys when compared with the more dependable modern methods. A large proportion of surveys made prior to 1890 are of the needle compass type. It should be noted that retracements may be made, i.e.,—the evidence of the marks can be developed by needle-compass methods if properly employed. Some surveyors maintain that you can “follow the steps” of the original surveyor more closely by use of the needle compass than by more precise methods.

In addition to the uncertainties of local attraction and temporary magnetic disturbances, the use of the needle compass is exceedingly unreliable in the vicinity of power lines, pipelines, steel rails, steel framed structures of all kinds, and wire fences, etc. Its use is now much more restricted on account of these improvements. The needle compass is rapidly becoming obsolete as it fails to satisfy the present need for more exact retracements.

EXCESSIVE DISTORTION

The needle-compass surveys, before being discontinued, had extended into the region of magnetic ore deposits of the Lake Superior watershed in northern Michigan, Wisconsin, and Minnesota. Here many townships were surveyed, and the lands patented, in which the section boundaries are now found to be grossly distorted. There is no way in which to correct these lines, nor to make an estimate (except by retracement), of the extent of the irregularities, which involve excessive discrepancies both in the directions and lengths of lines.

Considerable experience is required in retracing and successfully developing the evidence of the lines and corners in these areas of excessive distortion. However, the procedure for restoration of lost corners and for the subdivision of sections is the same as in areas of more regularity.

Another feature to be considered in connection with the retracements is that the record may show that one surveyor ran the south boundary, a second the east boundary, and others the remaining exteriors and subdivisional lines. All of these lines may be reported on cardinal, but may not be exactly comparable, i. e. -- the east boundary may not be truly normal to the south boundary, etc. It was customary to retrace one or more miles of the east boundary of the township to determine the “variation” of the needle. This value was then adopted in the subdivision of the township. It follows that the meridional section lines should be found to be reasonably parallel with the east boundary. Under that plan of operation, it should be anticipated that the latitudinal section lines will be reasonably parallel with the south boundary; however, discrepancies in measurement on the meridional lines frequently affect such parallelism. For these reasons, the index corrections for bearings may not be the same for the east and west as for the north and south lines. The two classes should be considered separately in this respect.

Until after 1900, most of the lines were measured with the Gunter’s link chain. The present surveyor must realize the difficulties of keeping that chain at standard length, and the inaccuracy of measuring steep slopes by this method. It is to be expected that the retracements will show various degrees of accuracy in the recorded

measurements which were intended to reflect true horizontal distances.

It is well to call attention, at this time, to the need for segregation of the manifest errors or blunders in the original measurements in order to minimize the effect of such errors in the restoration of lost corners. (See p. 10.) If the original field note record contains sufficient references to natural topographic items encountered along the line(s) being retraced such data frequently will be adequate for localizing the error.

INDEX ERRORS

Where the original surveys were faithfully made, generally there will be considerable uniformity in the directions and lengths of the lines. Frequently this uniformity is so definite as to indicate "index errors" which, if applied, to the record bearings and distances, will place the trial lines in close proximity to the true positions and aid materially in the search for evidence. With experience, the present surveyor will become familiar with the work of the original surveyor and know about what to expect in the way of such differences.

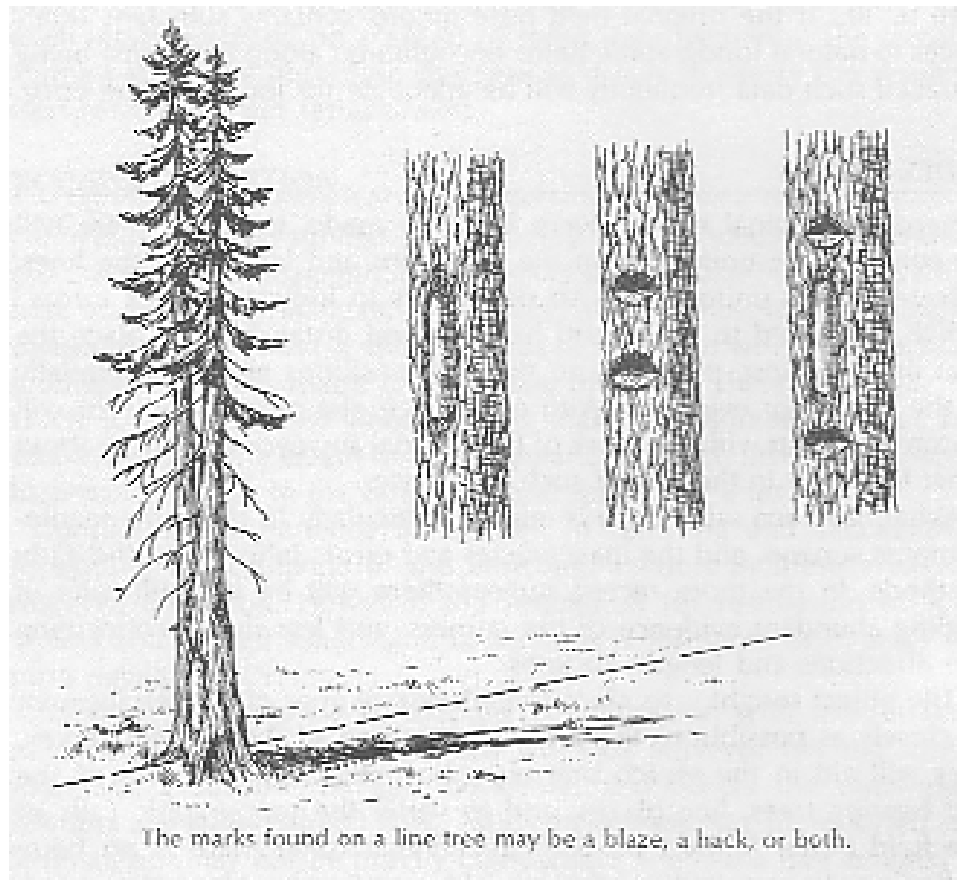
What has been said above is related particularly to the early needle-compass surveys, and the inaccuracies and errors inherent to the early methods. In the more recent surveys there will be less difficulty in finding abundant evidence of the corners, and less doubt concerning the directions and lengths of lines.

The object sought is to place the temporary lines of the retracement as closely as possible to the probable position of the original survey. This will aid in the search that must be made for the marks of the old bearing trees, line blazes, and to verify the topographic calls of the field notes. It must be emphasized that often there is no hope of finding obscure marks of the very old surveys except by experienced, intelligent search in the immediate vicinity of the lines.

COLLATERAL EVIDENCE

The identified corners of the original survey constitute the main control for the surveys to follow. After those corners have been located, and before resorting to proportionate measurement for restoration of lost corners, the other calls of the field notes should be considered. The recorded distances to stream crossings or to other natural objects which can now be identified often lead to the position for a missing corner. At this stage, the question of acceptance of later survey marks and records, the location of roads and property fences, and the reliability of testimony are to be considered.

A line tree, or a connection to some natural object, or to an improvement recorded in the original field notes, any of which can be identified, may fix a point of the original survey. The calls of the field notes for the various items of topography may assist materially in the recovery of the lines. The mean position of a blazed line, when identified as the original line, will place a meridional line for departure, or a latitudinal line for latitude. These are matters which require the exercise of considerable judgment.



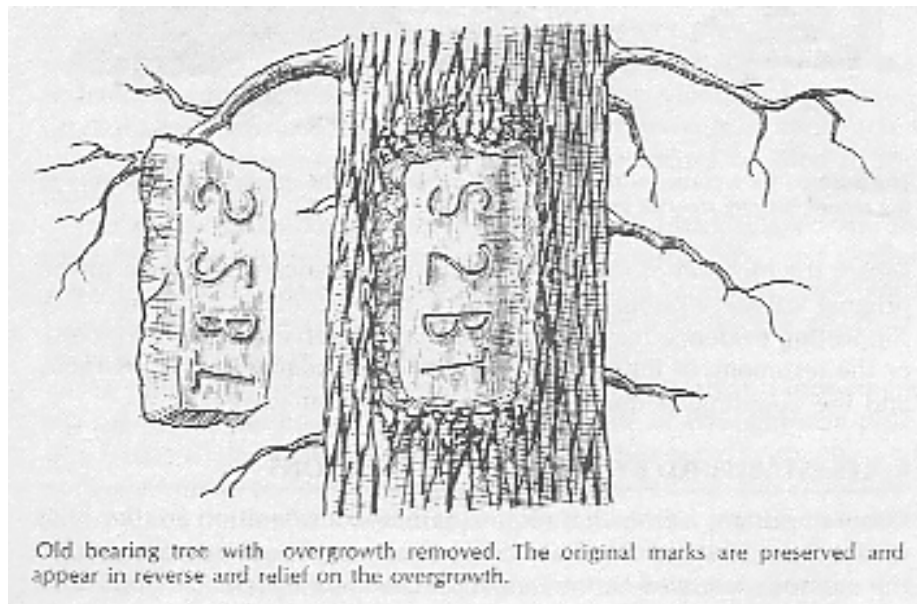
ORIGINAL MARKS

Original line-tree marks, off-line tree blazes, and scribe marks on bearing trees and tree corner-monuments whose age exceeds 100 years, are found occasionally. Such marks of later surveys are recovered in much greater number. Different surveyors used distinctive marks.

Some surveyors used hacks instead of blazes, and some used hacks over and under the blazes; some employed distinctive forms of letters and figures. All these will be recognized while retracing the lines of the same survey and will serve to verify the identification of the work of a particular surveyor.

The field notes give the species and the diameter of the bearing trees and line trees. Some of the smooth-barked trees were marked on the surface, but most of the marks were made on a flat smoothed surface of the live wood tissue. The marks remain as long as the tree is sound. The blaze and marks will be covered by a gradual overgrowth, showing a scar for many years. The overgrowth will have a lamination similar to the annual rings of the tree, which may be counted in order to verify the date of making, and to distinguish the original marks from later marks and blazes. On the more recent surveys, it is to be expected that the complete quota of marks should be found, clear cut and plainly legible. This cannot be expected in the older surveys.

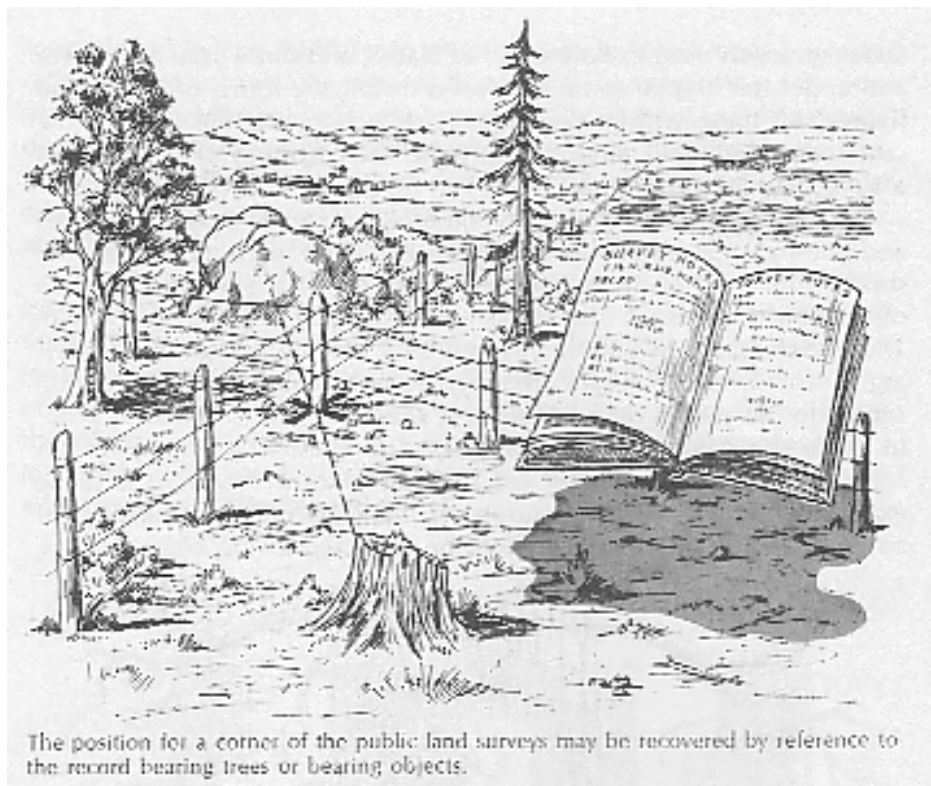
expected that the complete quota of marks should be found, clear cut and plainly legible. This cannot be expected in the older surveys.



It is advisable not to cut into a marked tree excepting as necessary to secure proof. The evidence is frequently so abundant, especially in the later surveys, that the proof is conclusive without inflicting an additional injury that would hasten the destruction of the tree.

The finding of the original scribe marks, line-tree hacks, and off-line tree blazes, furnishes the most convincing identification that can be desired.

It is not intended to disturb satisfactory local conditions with respect to roads and fences. The surveyor has no authority to change a property right that has been acquired legally. On the other hand, he should not accept the location of roads and fences as evidence *prima facie* of the original survey without something to support these locations. This supporting evidence may be found in some intervening survey record, or the testimony of individuals who may be acquainted with the facts, and the coupling of these things to the original survey.



RULES ESTABLISHED BY STATE LAW OR DECISIONS

Other important factors that require careful consideration are the rules of the State law and State court decisions, as distinguished from the methods followed by the Bureau of Land Management. Under State law, property boundaries may be fixed by agreement between owners, acquiescence, or adverse possession. Such boundaries may be defined by roads, fences, or survey marks, disregarding exact conformation with the original section lines. The rights of adjoining owners may be limited to such boundaries.

In many cases, due care has been exercised to place the property fences on the lines of legal subdivision. It has been the general practice in the prairie states to locate the public roads on the section lines. These are matters of particular interest to the adjoining owners. It is reasonable to presume that care and good faith were exercised in placing such improvements with regard to the evidence of the original survey in existence at the time. Obviously, the burden of proof to the contrary must be borne by the party claiming differently. In many cases, at the time of construction of a road, the positions for the corners were preserved by subsurface deposits of marked stones or other durable material. These are to be considered as exceptionally important evidence of the position of the corner, when duly recovered and verified.

The replacement of those corners that are regarded as obliterated, but not lost, should be based on such collateral evidence as has been found acceptable. All lost corners can be restored only by reference to one or more interdependent corners.

ADEQUATE MONUMENTATION ESSENTIAL

The surveyor will appreciate the great extent to which his successful retracements has depended upon an available record of the previous surveys, and upon the markers that were established by those who preceded him. The same will apply in subsequent retracements. It is essential to the protection of the integrity and accuracy of the work in hand, the reputation of the surveyor, and the security of the interested property owners, that durable new corner markers be constructed in all places where required, and that a good record be filed of the survey as executed.

The preferred markers are of stone, concrete block, glazed sewer-tile filled with concrete, cast-iron or galvanized-iron pipe, and similar durable material. Many engineers and surveyors, counties, and landowners employ specially designed markers with distinctive lettering, including various cast-iron plates or bronze tablets.

The Bureau of Land Management has adopted a standard monument for use on the public-land surveys. This is made of wrought iron pipe, zinc coated, 2 ½ inches diameter and 28 inches long, with one end split and spread to form flanges or foot plates. A brass cap is securely attached to the top, on which appropriate markings for the particular corner are inscribed by use of steel dies.

Frequently, on account of roadway or other improvements, it is advisable to set a subsurface marker and in addition to place a reference monument where it may be found readily, selecting a site that is not likely to be disturbed.

MEANDER LINES AND RIPARIAN RIGHTS

The traverse run by a survey along the bank of a stream or lake is termed a meander line. The meander line is not generally a boundary in the usual sense, as ordinarily the bank itself marks the limits of the survey.¹ All navigable bodies of water are meandered in the public-land surveying practice, as well as many other important streams and lakes that have not been regarded as navigable in the broader sense. All navigable rivers, within the territory occupied by the public lands, remain, and are deemed to be public highways. Unless otherwise reserved for Federal purposes, the beds of these waters vested in the States at time of statehood.² Under Federal law, in all cases where the opposite banks of any stream not navigable belong to different persons, the stream and the bed thereof become common to both (R.S. 2476; 43 U.S.C. sec. 931).

Grants by the United States of its public lands, including lands bounded by streams or other waters, are construed as to their effect according to Federal law. This includes lands added to the grants by accretion.³

The Government conveyance of title to a fractional subdivision fronting upon a nonnavigable stream, unless specific reservations are indicated in the patent from the Federal Government, carries ownership to the middle to the stream.⁴

Where surveys purport to meander a body of water where no such body exists or the meanders may be considered grossly erroneous, the United States may have a continuing public land interest in the lands within the segregated areas.⁵ Where partition

lines are to be run across accretions, the ordinary Federal rule is to apportion the new frontage along the water boundary in the same ratio as the frontage along the line of the record meander courses. This principle is derived from the opinion of the Supreme Court of the United States in the case of *Johnston v. Jones* (66 U.S. 117, 121). There are many variations to this rule where local conditions prevail and the added lands are not of great width or extent. The application of any rule, when surveying private lands, should, of course, be brought into harmony with the State law.

Where there is occasion to define the partition lines within the beds of nonnavigable streams, the usual rule is to begin at the property line at its intersection with the bank. From that point, run a normal to the medial line of that stream that is located midway between the banks. Where the normals to the medial lines are deflecting rapidly, owing to abrupt changes in the course of the stream, suitable locations are selected above and below the doubtful positions, where acceptable normals may be placed. The several intervals along the medial line are then apportioned in the same ratio as the frontage along the bank.

The partition of the bed of nonnavigable lakes, whether water-covered or relicted, presents a more difficult problem because of the wide range of shapes of lake beds. In the simplest case of a circular bed, the partition lines can be run to the centroid thus creating pie-shaped tracts fronting the individual holdings at the edge of the lake bed. Where odd shaped beds are concerned, ingenuity will be required to divide the lake bed in such a manner that each shore proprietor will receive an equitable share of land in front of his holding. Any consideration of riparian rights inuring to private lands should be brought into line with appropriate State laws or decisions.

¹ *Hardin v. Jordan* (140 U.S. 371). Meander lines, as shown by Government surveys of land bounded by a lake or river, are merely for the purpose of ascertaining the quantity of land to be conveyed, and do not constitute its boundary. The water is the real boundary.

² *United States v. Stotts, et al.* (49 Fed. (2d.) 619). United States, while holding land before admission of State, could grant, for appropriate purposes, titles or rights in land below high-water mark or tidewater.

³ *Hughes v. State of Washington* (389 U.S. 290). Held that the ownership of accretion gradually deposited by the ocean on adjoining upland property conveyed by the United States is governed by federal, not state, law, and under federal law the plaintiff is the owner of the accretions.

⁴ *Hardin v. Jordan*, *supra*.

⁵ *Lee Wilson & Company v. United States* (245 U.S. 24). If, in the making of a survey of public lands, an area is through fraud or mistake, meandered as a body of water or lake where no such body of water exists, riparian rights do not accrue to the surrounding lands, and the Land Department, upon discovering the error, has power to deal with the meandered area, to cause it to be surveyed and lawfully dispose of it.

CONCLUSION

It is not to be inferred that this discussion does more than bring out the fundamentals of the subject, and with reference only to the United States rectangular surveys. These practices and explanations are broadly applicable where the United States is the owner of the lands, in whole or in part. They also have been made applicable in many States by State law to privately owned lands within the area of the former public domain, except where specifically in conflict with the State law.

Many additional factors enter into the treatment of exceptional or controversial situations, such as where the conditions on the ground are found to be seriously at variance with the record field notes and plats, or if there is extensive obliteration. Such factors are altogether too numerous to be brought within the scope of this pamphlet. The explanations need to be suited to the specific problem, and in some cases the treatment may come within the practices herein outlined. Letters of inquiry, if addressed to the Bureau of Land Management, should include a description of the lines in question and the facts as developed by the retracement.

In all cases where no public lands are involved, the surveying procedure must necessarily be brought into harmony with the State law and court opinion. In such cases, the methods and explanations of the Bureau of Land Management must be regarded as advisory only, as that Bureau is without jurisdiction unless Federal lands are involved.

Course 1: History, Records & Administrative Systems Study Guide

COURSE DESCRIPTION:

This is an introductory series of videos that establishes the context of the CFedS Program. Topics covered in this course include:

- Brief history of surveying as it relates to the United States
- Cultural Awareness
- History of Indian Land Law
- Bureau of Land Management and Bureau of Indian Affairs structures and records that each may have
- Basics of federal survey authority

COURSE OBJECTIVES:

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

- Review administrative functions, structures, and process of the Bureau of Land Management and the Bureau of Indian Affairs
- Increase awareness of cultural and historical legal issues when working in Indian Country
- Identify records sources for survey projects in Indian Country









COURSE INSTRUCTOR(S):

Dennis Mouland, Bureau of Land Management
 Dominica Van Koten, Bureau of Land Management
 Pricilla Wilfarht, Office of the Solicitor
 Colleen Kelly, Office of the Solicitor
 Ron Applebaum, Bureau of Indian Affairs (Ret.)

VIDEO LECTURE TITLE:

Introduction to PLSS & Records Sources – Part 2 (16 minutes)

ICON LEGEND

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

INTRODUCTION TO PLSS & RECORDS SYSTEM – PART 2

Introduction

Hello and welcome to the lecture series on Records and Federal Land Title Records. I'm Dominica Van Koten and I was a previous instructor on the first video also. Today we are talking about specifically federal Title Records, and when we are talking about title records, we are answering the question basically of who owns the land? And where do we find that type of information in the federal records system?

Title Records

Who owns the land?

Objectives

Our objectives are that by the end of this lecture you would be able to identify common BLM title records, describe the types of information found on the BLM title records and describe common uses of those title records within the realm of the federal survey process.

Objectives

- Identify common BLM title records
- Describe the type of information found on BLM title records
- Describe common uses of title records within the Federal survey process

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The lecture is organized into different examples of different types of documents and the documents that we are going to look at today are **Master Title Plats** or **MTP's**, historical indexes, patents and certificates, and finally executive and secretarial orders. This is not meant to be an all-inclusive list of land title documents, but they are the most common ones that you would use on a regular basis.

Types of Title Records

- Title Records
 - MTP's
 - HI's
 - Patents and certificates
 - Executive and Secretarial Orders

Master Title Plats

So first let's talk about Master Title Plats. A Master Title Plat is a graphic display of the title and land survey actions within a township. And each township has its own Master Title Plat.

It shows the land status of particular parcels and it shows them by serial numbers and or by patents. And when we talk about **land status** in an area, what we are referring to is who has a claim or an application on a piece of land or who owns that land if the parcel has already been conveyed by a patent.

And I would like to talk about serial numbers a little more before we go on. And the serial numbers, any application when it comes to BLM it is immediately assigned a **serial number** and the serial numbers look different depending on the geographic area that you are located but that serial number is assigned to that case and is used to track that case all the way through the BLM processes of **adjudication** or making decisions about the legality of the application and then into the conveyance portion where the patent is actually issued. And the graphic display of the actions that are shown on the Master Title Plat are shown up until the point that that parcel leaves federal ownership.

Once the parcel has left federal ownership the BLM does not maintain information about that parcel. Also, this is a graphic display shown of how title documents and survey documents in a

Master Title Plats (MTP's)

- Graphic display of title and survey actions
- Show land status
 - Serial numbers
 - Patent numbers
- Supplemental sheets
- Some state have separate plats for oil and gas status only

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township are related and overlap each other. And it is to be used as a tool to quickly identify the survey status or who owns parcels in a township and is not the official record of those actions.

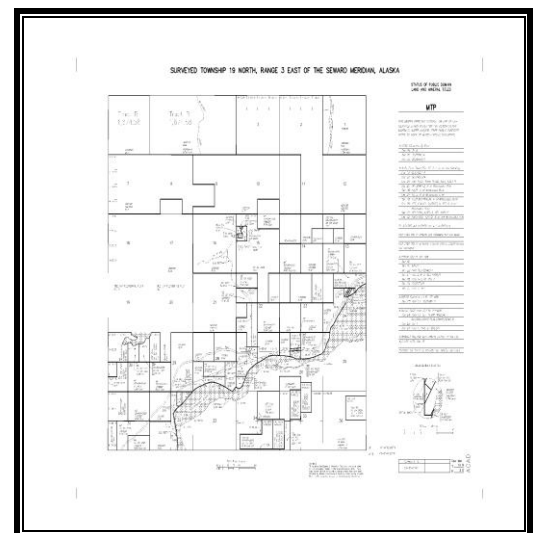
In order to find the official survey information, you go to the official filed survey plats or in order find the land status information; you would go to those files contained about that application.

Master Title Plats can have what we call **supplemental sheets**, and supplemental sheets are sheets that show areas of the township in more detail. Some areas, because you are not able to show the status of that area at a scale that is readable if there is a lot of land status or information in an area, then they will blow that information up and show it on a second sheet and sometimes there are many, many supplemental sheets.

I want to differentiate here for a moment that the difference between a supplement sheet of a Master Title Plat and a **supplemental survey plat**, because we are going to about those later in a later segment. But supplement survey plats are different items altogether and in this case for Master Title Plats you will see supplemental sheets, but they are not a survey document. Also, it should be noted that some states separate Master Title Plat documents that will show only oil and gas status. So you have to get familiar with the records in the area that you are working in to be able to know if you have that type of situation in your area. Let's take a look at an example of a Master Title Plat and I should mention that in your handouts you have a copy of this diagram and it may be easier to read the information on those handouts than on the video.

But I just want to look at the general information that is shown on the document and not specifics at this time. That will be covered in a later segment. So as we look at it you will notice right on the top is the title, and this is giving you the township, range, meridian that this document covers, this Master Title Plat covers.

And also you will notice right up in the right corner, there is a label, MTP, so you can tell that that is the Master Title Plat and the status document for the Bureau. One more area that I would like to mention is the **remarks column** and that is located here and in the



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remarks column is information that is related to or applies to the entire township area or special notes.

There is a lot of information that can be contained in there, and it is very important to look at that information first when you pick up the document so that you can know the general specifics about the entire township. If you look at the body of the document, you can see numbers and the designations are always in the middle and the lowest part of the parcel that was conveyed.

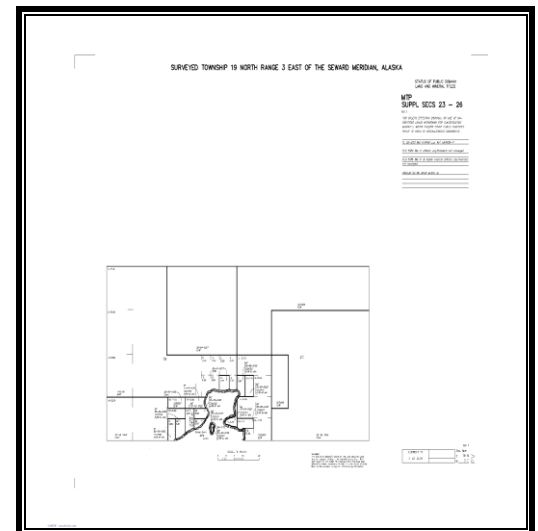
So you can see here there is a number, here there is a number. Those are all giving insight into what type of land actions have been taken on that parcel. Whether it has an application pending or whether a patent has been issued and it has left federal ownership.

And I think I also have, we'll look real quickly at a supplemental sheet for a Master Title Plat cause this township did have a blow up area, and you can right in the title here that it says supplemental of the sections that it is representing. And you can tell that it is a much larger scale.



DIAGRAM

A full size version can be found in the Diagram section at the end of this study guide.



DIAGRAM

A full size version of this can be found in the Diagram section at the end of this study guide.

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Here is another example of how a Master Title Plat can look and this one shows some areas and we will talk more specifically about the rectangular survey system in another segment. But you can see areas that are not part of a rectangular survey and are surveyed under some another method.

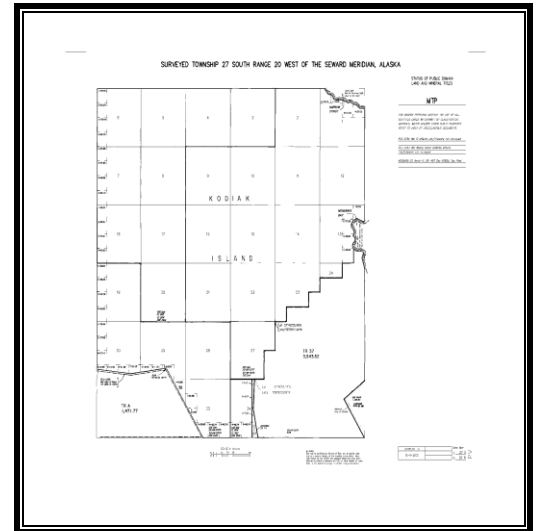


DIAGRAM A full size version of this can be found in the Diagram section at the end of this study guide.

Historical Index

Now we are going to talk about **Historical Index (HI)** and the Historical Index is related to the Master Title Plat and that it shows a sequential record of all the land status and survey actions for a township and it is shown in a tabular format.

The information that you can find on an HI that is not found shown on the Master Title Plat are land actions that have taken place historically because the Master Title Plat will always represent the most current status of a parcel, so if there were multiple applications and maybe some of those applications get rejected or go away for some other reason, that Master Title Plat is going to show the most current status of that parcel and if you want to find out actions that have happened on that parcel before that you would go here to the historical index and it would show all of those land actions that have ever taken place in that township.

Historical Index (HI)

- Shows sequential record of all land status and survey action for a township
- Tabular format

But you can see that it is a tabular format and it gives you the area of the township, the action that has taken place and then tells a little bit about the actions that had happened and it will link you to those serial numbers or patent numbers that have taken place in that area also.

[illegible]

This is the second sheet to that historical index. Some of them can be quite lengthy depending on the amount of land actions that have happened in that township.

[illegible]

January 2010

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Patents

And now we are going to talk about **patents**. I have mentioned patents already but now we want to really define what is a patent. And a patent is a federal deed. It is a deed that is issued from the federal government that conveys title to that parcel to another individual or entity. It can be recognizable on the Master Title Plat by its patent number.

One thing to remember when you are looking at patents is that you need to be careful and read exactly what was being conveyed at the time of that patent. Because they may have split estates, the patent may only convey the surface estate or only convey the sub-surface estate, depending on the laws that allowed or called for that conveyance. And the patent is going to be the origin of the title for that parcel conveyed.

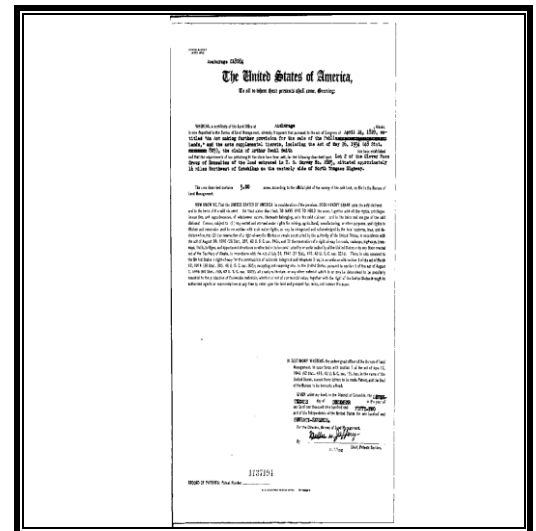
If the land began as federal land, public domain land, that patent is going to be the first action that happened in the sequence of title actions on that parcel for its entire history.

I have an example of a patent here and this, again, is in your handouts that you can look at and see the information more clearly.

But it states at the top the information about the parcel being conveyed and it is always signed by the appropriate official at the time that the patent was issued and then at the bottom it gives you the patent number. And that patent number that will be shown on the Master Title Plat that will link you back to these official documents.

Patents

- Federal deed
- Recognizable by numeric designation on MTP
- May have split estate
- Origin of title for parcel conveyed



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Certificates

Another type of title document that I am going to briefly talk about are **certificates**. And there two different instances in history when the BLM has used certificates for conveyance descriptions. The historical use was that certificates would be issued before patent to show our intent to convey that parcel. But then would be followed up by a patent at a later date.

And the current use is in Alaska and the title that is conveyed to individual native persons in Alaska is what we call a restricted title and those restricted title documents are called **certificates of allotment**. So that is the second time that we use that certificate. But the reality is that certificate of allotment is a type of a patent document but it represents a restricted title in that document and that title is restricted and administered by the BIA.

Certificates

- Historical use: issued before patent to show intent to convey
- Current use: in Alaska the restricted title to Native Allotment parcels are conveyed by certificate of Allotment

Orders

I am also going to mention **Executive and Secretarial Orders**. Because they will show up on Master Title Plats and can and do affect the land status and the land actions that can happen on a parcel. Executive and Secretarial Orders were issued to reserve certain lands for federal uses and there could be many federal uses that they would be reserved for.

Some common ones could be lighthouses, or military reserves or even FAA reserves for air navigation sites. The Executive and Secretarial Orders will be available in the Public Information Centers or public rooms at each BLM state office.

And all of these documents that we have been talking about Master Title Plats, historical indexes, patent documents, certificates and Executive and Secretarial Orders you would find located at the appropriate BLM state office for the area you would be working in. Some offices may have these documents on line and that would just depend on each individual office and you would have to find out if the area you are working in has these documents available on line.

Executive and Secretarial Orders

- Issued to reserve certain lands for Federal uses
- Available in Public Information Centers at each BLM state office

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So in conclusion, The Master Title Plat is a graphical representation that shows land and survey actions of the BLM. And remember that it is not the official document that made those actions, but it is a graphical representation that can be used as a tool for quick land status and survey status actions. Federal status documents can be found at the BLM state offices or Public Information Centers also known as public rooms.

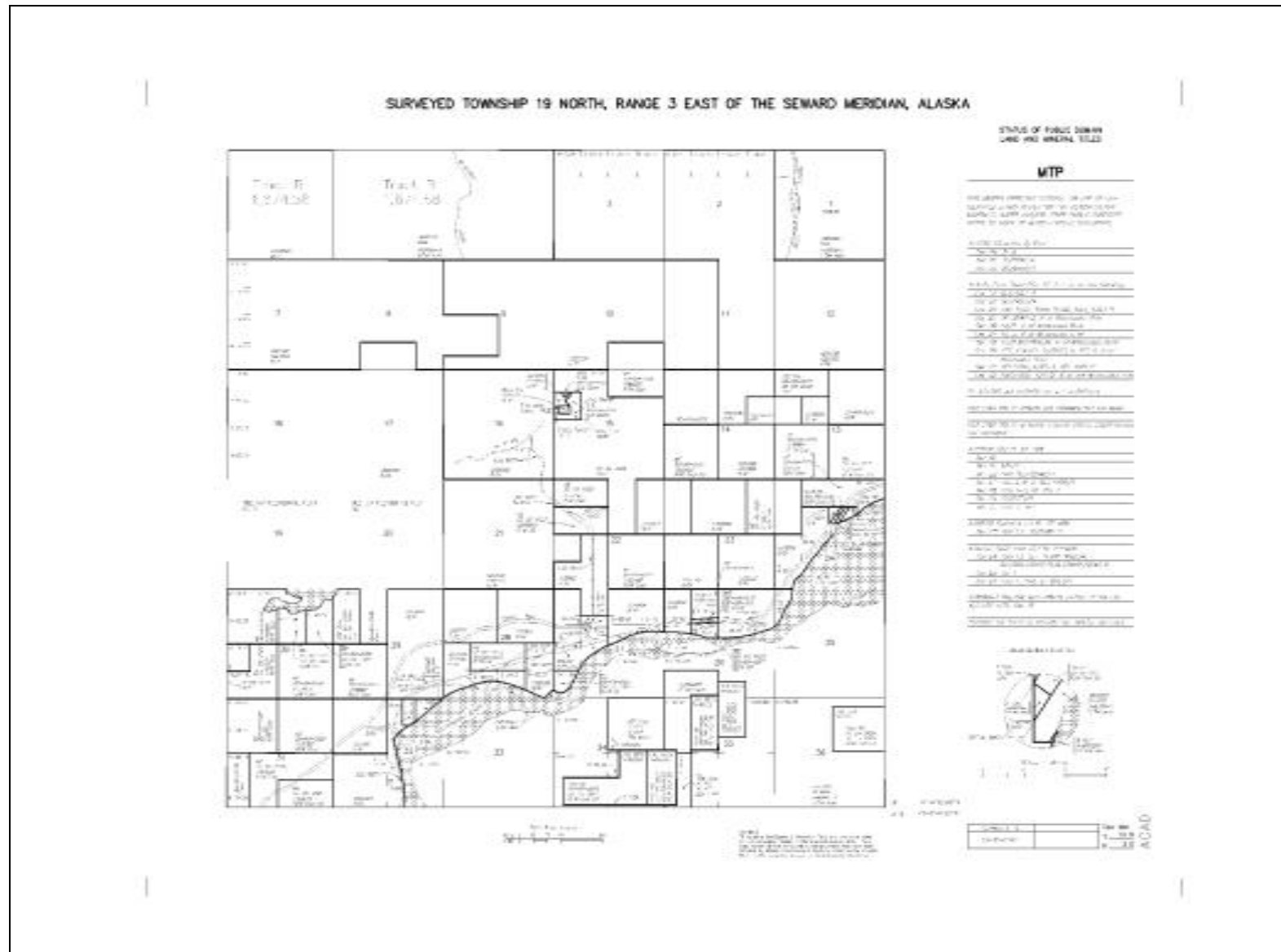
And the status of parcels can affect the way that we survey so these title documents are going to be an important part of the information that we want to have with us when we are surveying in an area that contains federal boundaries.

In Conclusion

- The MTP is a graphical representation that shows land and survey actions of the BLM
- Federal status documents can be found at the BLM state office public information centers
- The status of parcels can affect the way we survey



DIAGRAM



Certified Federal Surveyors (CFedS) Certification Training Program
Course 1: History, Records & Administrative Systems

PAGE 1 PARTIALLY SURVEYED TOWNSHIP 5 NORTH RANGE 7 EAST OF THE GILA AND SALT RIVER MERIDIAN, ARIZONA

SECTION	SUBDIVISION	ACRES	KIND OF ENTRY -OR- PURPOSE OF ORDER	SERIAL FILE -OR- ORDER NUMBER	DATE OF ACTION	DATE POSTED	REMARKS - E. G. DATE CLOSED, TERMINATED, REJECTED OR RESCINDED						
	NE ¼	NW ¼	SW ¼	SE ¼	LOTS	OTHER DESCRIPTION							
	NE1NWSWSE	NE1NWSWSE	NE1NWSWSE	NE1NWSWSE	FOR ORDERS EFFECTING DISPOSAL OR USE OF UNIDENTIFIED LANDS WITHDRAWN FOR CLASSIFICATION, MINERALS, WATER, AND/OR OTHER PUBLIC PURPOSES, AND INDIAN TREATIES, REFER TO INDEX OF MISCELLANEOUS DOCUMENTS								
						ENTIRE TOWNSHIP	13N 1E	50 Temp. Wd. Rio Verde Forest				Changed to Rio Verde N.W. Act 3/4/1907; Enlgt. Proc. 795 1/13/1908; Proc. 10/7/1980;	
						ENTIRE TOWNSHIP	19N 22W	50 Temp. Wd. Salt River Sur.		12/14/1901		Trfd. to Tonto N.F. Proc. 1672 8/14/1923;	
						M&B; See Remarks		50 Temp. Wd. Salt River Proj.		7/2/1902		Pt. Rev. SO 1/22/1916; Rev. O. 1/20/1956;	
										12/14/1904		A strip of land 1 mi. wide on each side of Verde River; 11N SE; Pt. Rev. SO 1/22/1916;	
						M&B; See Remarks		Proc. Enlgt. Tonto N.F.	795			O. Inter. 5/19/1964; O. Inter. 12/4/1967;	
2						A11				1/13/1908		Part lying E. of Rio Verde River; 7N 6E;	
16						A11							
32						A11							
36						A11		50	Act of Cong.	6/20/1910		Title to State to fix on approval of survey; subj. to prior rights;	
						M&B; See Remarks		Proc. Enlgt. Prescott N.F.		10/7/1910		Part lying W. of Rio Verde River; 16N 1E; Trfd. to Tonto N.F. Proc. 1672 8/14/1923;	
29						HES 512	160.00	50 Rev. Salt River Sur. SO					
								7/2/1902; Salt River Proj.					
								SO 12/14/1904		1/23/1916			
30													
31													
32						HES 512	157.37	HE Pat.	708802	9/27/1919			
2	X	X	X	X	X	HE 13W	560.00	IL Base	55	3/22/1922			
2						HE 14	80.00	IL Base	61	8/21/1922			
16			X	X	X	17S 9E	320.00	IL Base	64	10/25/1922			
16	X	X	X	X	X	16S 19E	280.00	IL Base	65	11/10/1922			
36						A11; 11N 3E	640.00	IL Base	83	5/6/1925			
16	X					16S 23E	40.00	IL Base	87	11/7/1925			
2						A11							
16						A11							
32						A11							
36						A11		50	Act of Cong.	1/25/1927		Extends Act of 6/20/1910 to Min. lands; subj. to prior rights;	
32	X	X	X		X	3N 6E	320.00	O. Wd. Central Ariz. Proj.		3/17/1952		O. Inter. 5/19/1964;	
4	X	X	X	X		51N14W2, 11N15W2							
5	X	X				11N15W2, 18N 6E	360.00	PLD Wd. F.S. Rec. Area	1161	6/6/1955			
						ENTIRE TOWNSHIP	11N 1E	O. Rev. Salt River Proj.					
						ENTIRE TOWNSHIP	13N 4E	SO 7/2/1902		1/20/1956		Open to Entry 3/12/1956;	
						ENTIRE TOWNSHIP	4N 7E	O. Opening to Entry		3/12/1956		Eff. 4/17/1956, 10AM;	
3	X	X	X	X	X	6N 7E, 2N 9E	320.00	Determination Area PL 167	AR-026074	7/5/1960	7/7/1960	Det. Comp. 3/26/1963;	
29	X	X	X	X	X	1 thru 6		Apn. Wd. Recl. Salt River Proj.	AR-032165	12/14/1962	12/17/1962	PLD 3930 2/2/1966;	
30	X	X	X	X	X	1 thru 8							
31	X	X	X	X	X	1,2,3							
32	X	X				1,5,6,7,8,10,11							
33	X	X	X	X	X	X		O. Inter. Temp. Wd. Salt River					
								Proj., SO 12/14/1904 & O. Wd.					
								Central Ariz. Proj. 3/17/1952		5/19/1964			
31	X	X	X	X	X	4N 7E	240.00	FX Pat.	02-65-0101	5/11/1965	5/11/1965		
3	X	X	X	X	X		320.00	PLD Wd. Recl. Salt River Proj.	3999	2/2/1966			
32						HES 512; 12N 4W	128.36	IL Base	346	6/3/1966	6/7/1966		
32	X	X		X	X	9N 7W	289.00	IL Base	372	6/5/1967	6/6/1967		
						Tr. 37	159.99	FX Pat.	02-68-0008	7/25/1967	7/25/1967	(A 185)	
32						1 thru 11	40N 16W	210.35	IL Base	389	9/13/1967	9/14/1967	
33	X	X	X	X	X	X		O. Inter. SO Temp. Wd. Salt					
								River Proj. 12/14/1967		12/4/1967			
						TP Deficiency; 22N 11E	21.29	IL Base	412	1/30/1968	2/2/1968		

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R-7E
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SECTION		SUBDIVISION								ACRES	KIND OF ENTRY -OR- PURPOSE OF ORDER	SERIAL FILE -OR- ORDER NUMBER	DATE OF ACTION	DATE POSTED	REMARKS - E. G. DATE CLOSED, TERMINATED, REJECTED OR RESCINDED		
NE 1/4	NW 1/4	SW 1/4	SE 1/4	LOTS	OTHER DESCRIPTION	NE 1/4	NW 1/4	SW 1/4	SE 1/4								
FOR ORDERS EFFECTING DISPOSAL OR USE OF UNIDENTIFIED LANDS WITHDRAWN FOR CLASSIFICATION, MINERALS, WATER, AND/OR OTHER PUBLIC PURPOSES, AND INDIAN TREATIES, REFER TO INDEX OF MISCELLANEOUS DOCUMENTS																	
31		X	X			1,2					169.56	FX Apn.	A-22116	6/23/1986	2/11/1988	Segregated from public land laws, Inc. mining laws but not mineral leasing laws.	
31											40.00	FX Apn.	A-22117	6/23/1986	2/11/1988	Segregated from public land laws, Inc. mining laws but not mineral leasing laws.	
31	X	X	X			1 thru 3	X	X	X			Per Rev. of Redl. Project Vol.	A-12954	1/12/1987	3/23/1987	This order partially revokes a reclamation project withdrawal affecting approximately 389.06 acres of national forest lands currently classified for exchange. After revocation of the withdrawal, the underlying lands will remain segregated from entry by a pending Forest Service exchange application.	
31		X				1,2					139.56	FX Pat.	02A86-0016	12/16/1987	2/12/1988	(A-22116)	
31											35.00	FX Pat.	02-88-0016	12/16/1987	2/12/1988	S1/4SW1/4, NE1/4SW1/4, NW1/4SW1/4; (A-22117)	
31						3						See Remarks	Forest Exchange Application	AZA-24517	4/30/1990	5/2/1990	S1/4SE1/4, S1/4SW1/4, S1/4SW1/4, S1/4SW1/4, NW1/4SE1/4; Segregates lands from the public land laws and mining laws except the mineral leasing laws. Seg. to term. 5/23/1992.
31							X	X	X	3	174.50	Forest Exchange Application	AZA-24517-A	10/13/1990	2/15/1991	S1/4SE1/4, S1/4SW1/4, S1/4SW1/4, S1/4SW1/4, NW1/4SE1/4, NW1/4SW1/4; Segregates lands from the public land laws and mining laws except the mineral leasing laws. Seg. to term. 10/18/1991.	
31							X	X	X	3		See Remarks	Forest Exchange Application	AZA-25291	4/26/1991	12/16/1991	S1/4SE1/4, S1/4SW1/4, S1/4SW1/4, S1/4SW1/4; Segregates lands from the public land laws and mining laws except the mineral leasing laws. Seg. to term. 4/25/1993.
31												See Remarks	Patent (FS)	02-92-0007	12/5/1991	12/16/1991	S1/4SW1/4, S1/4SW1/4, S1/4SW1/4, S1/4SW1/4, NW1/4SE1/4, NW1/4SW1/4; (AZA-25291)
31							X	X	X	3		See Remarks	Patent (FS)	02-92-0008	12/5/1991	12/16/1991	SE1/4SW1/4, E1/4SW1/4, S1/4SW1/4, S1/4SW1/4; (AZA-25291)

Course 1: History, Records & Administrative Systems Study Guide

COURSE DESCRIPTION:

This is an introductory series of videos that establishes the context of the CFedS Program. Topics covered in this course include:

- Brief history of surveying as it relates to the United States
- Cultural Awareness
- History of Indian Land Law
- Bureau of Land Management and Bureau of Indian Affairs structures and records that each may have
- Basics of federal survey authority

COURSE OBJECTIVES:

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

- Review administrative functions, structures, and process of the Bureau of Land Management and the Bureau of Indian Affairs
- Increase awareness of cultural and historical legal issues when working in Indian Country
- Identify records sources for survey projects in Indian Country









COURSE INSTRUCTOR(S):

Dennis Mouland, Bureau of Land Management
 Dominica Van Koten, Bureau of Land Management
 Pricilla Wilfarht, Office of the Solicitor
 Colleen Kelly, Office of the Solicitor
 Ron Applebaum, Bureau of Indian Affairs (Ret.)

VIDEO LECTURE TITLE:

Non-Federal Records (24 minutes)

ICON LEGEND

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

NON-FEDERAL RECORDS

Introduction

Well hello, this is Dennis Mouland again. Back with you for just a few minutes to fill in a little gap here to help us connect the things that you have been hearing already.

I want to talk about, you know, this Course number 1 is about a number of things, administration issues and history, but it is also about records. In the CFedS courses there are probably one or two principles you will hear so many times, you may think you are sick of it. But the one that I think is most important and the one I am mentioning here is this one, *research the record*.

We have to research the record. You know, I've worked in the private sector and I know there is a lot of pressure on us in that situation regarding profit and time management and that sort of thing and you know, you can bog down sometimes doing your records research and it reveals things that maybe you really didn't want to deal with. But the bottom line is: how you do a survey right, especially if you are doing something in Indian country, where it is going to be required to be right? So you are going to want to research that record very carefully.

And that is what I want to talk to you about just for a few minutes here. I actually discuss it from another prospective in a later course on corner evidence analysis; I'm one of the speakers in that. But I want to talk about just researching the record. First of all let's understand that the record, and that's a broad subject, that's a big umbrella, that term record.

Not Working in a Vacuum

The record is what everything that we do is based on. Unless you and I are creating a new parcel. And even then, say you've got a parcel that already exists and you are going to split it in half, well you are creating a new line but the two ends of that line are on lines of record.

So you and I are never working in a real vacuum, we are not involved in re-tracing some other property, a senior property perhaps, or maybe not, but we are re-tracing lines of record. And when we say a record, there is a vast source of record information.

NON-FEDERAL RECORDS

I wanted to run through just a few of those places and get you to thinking about the sources of record and later we talk about the uses of those records.

Obviously, if you are in the public land system, you are going to want to look at the General Land Office record and ultimately in 1946 was turned into the Bureau of Land Management and you need to know where to go for those records, and if you are in what we call an open state where the BLM still operates a state office, what we call a state office, and that is primarily the Western states, then the Public Land System record is housed with the Bureau of Land Management. They have it.

And you will hear other details here and there about duplicates and triplicates and all these things we have done to try to over the years compensate for this, that and the other such as a burning of the courthouse or actually not the burning of a courthouse, it was actually the burning of the land office which happened in the San Francisco earthquake, what was that 1906, I think, somewhere in there and you know we lost all the land office plats there but we had duplicates back in Washington, DC.

So you know you will learn some of those things as we go here just so you know when something is missing, what you might be able to ask the Bureau to help you do or where you might need to go to get something.

Open States vs. Closed States

But let's understand that for most of us, if we are in an **open state**, you can just go to the BLM and the records there. It may be on microfilm or I know some states have it on the internet, but that is not always available depending on the Department of Interior's problems with the courts and shutting us down on the internet at times, but it is available is what I am saying.

If you are in what we call a closed state, if you are in one of the states where the BLM may operate surveys and they do things primarily the eastern states and most of the Midwest. We may still work there, the Bureau still works there, but they are considered **closed**. We closed the land office and so all of the records were turned over to the state. Now, that is up to you, because we are dealing with 20 some states there so I don't know where all of

NON-FEDERAL RECORDS

those are. I do know some of them and you need to recognize that it is different in each of those states where that record went.

In Kansas, it went to the Historical Society, Illinois the Secretary of State's office has it. Missouri, I believe the State Land Survey Authority in Rolla has all of that. So we have a different mix and you need to know that if you are in a public land state. Where to go to get that record and how to research it. Again, I will be covering how to research it later.

Now it depends on what state you are in, most states have counties, we have a couple that have boroughs and parishes down in Louisiana. So when I say county recognize whatever the equivalent jurisdiction is for you and where you work. But recognize that the county is one of the greatest sources. First of all it is the source of all of the **private deeds** that are going on and probably the source in most states, it's the source of survey data not all and I will cover that here in a minute.

County Records

There are two different types of records that the county may have, one is records that by law or regulation private surveyors are required to record or provide copies of to the county. So you are gathering a lot of information there.

But a second one is things the county did as a political entity of and by itself. For instance, the county surveyor, he was out doing work in 1898 and found a corner that you are now looking for and he took new bearing trees to it or something. Well you know you want to have that record and you want to know what he or she did and how it affects and impacts your survey. So you have two sources of record really at the county. And in many counties, those records are in separate file systems too.

What the county surveyor did as a public employee or as the county as an entity may be separated from what the private surveyors are required to record or deposit in that county. But then let's also understand that some of the states organized it differently. I mentioned Missouri, I worked in Missouri a couple of years and in Missouri the State Land Survey Authority, things go there. Colorado is another good example, if you are going to record or deposit, that is another term they use there, a plat, you do

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it with the county, but if you are going to do a survey monument record, which is another form of record, these are 8- 1/2 by 11 or 8- 1/2 by 14 forms which surveyors fill out every time they visit a section corner or quarter corner, those in Colorado they go to the state, they go to the Board of Registration first and then after they are approved, then a copy is sent out to the counties for their record systems.

So you need to know where to go and whether it is at the state level or the county level. And even then folks, there are other survey records it could be maps, plats, not necessarily deeds, but other documents that could be of great use to you that are in other places, not officially with a state or county sort of recording or indexing system.

Other Governmental Agencies

For instance, there are many other federal agencies out there, not just BLM, who may have done surveys or have various records that are of use to you, that are not in the federal record and we will talk about survey authority here soon. They are not in the federal record and in some cases aren't even in the state record in the sense of filed with the county are wherever that would be. So we need to think about that.

There have been surveys and projects done by the Parks Service, the Fish and Wildlife Service, the Department of the Defense, the Navy you know has surveyors, the Corps of Engineers. There are all sorts of agencies. You know whenever you are working in an area on a project, really to me you just kind of look at the land ownership in the area, and you look at the topography and you look at what other things are in there and you just see, who has been in here, who would have had any reason to survey in here and I need to talk to them.

For instance you have a 345 kilovolt power line going through the middle of the property that you are working on, well, you know I'd talk to the power company and I'd see what survey was done when the easement was done because it may have tied corners you need. Right? So that's part of that record. But let me stick with government for a moment here. So there are other federal agencies. There are also state agencies.

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I will tell you an example in several states that I have worked in where the state has like a state land office or a state game and fish or I'm trying to think of other natural resources, a Department of Natural Resources type thing. And these folks go out and do surveys or do things that are of interest to surveyors and it doesn't get recorded. Sometimes it does and sometimes it doesn't. So you need to know your area and need to know who to get that from.

And it is also true in municipalities. I know when I worked in New Mexico. It was always interesting working in Albuquerque. New Mexico didn't have really any recording laws until very recent history. But the City of Albuquerque, their surveyor's office had a tremendous amount of files of plats, old maps and things and they were filed real weird.

And how they were indexed, it was by the owner's name and it made it very difficult to do your research, but if you were doing any surveying in the city limits of Albuquerque, the odds are there was something in the city's record system, that is **unrecorded**, but is going to be of not just interest, but that is going to answer your question, its going to solve the problem, or it may create another problem, but you know that is how it is with research.

So what I am saying is that the fact that you just go to the BLM to get the federal record, realize that there may be a lot of other federal surveys done. I'll give you an example, I was with the Forest Service and there is a big agency that has done a lot of surveying over the years.

You know sometimes it wasn't an official survey that was going to get recorded, maybe it was some photogrammetric work and topographic work that was done for engineering projects, but it ties monuments. Go in and talk to your local Forest Service office and you may be able to get some information there or what we call corner cards, little index cards, that said well I visited this corner in 1947 and here is what I found and there is all this information that you really need for your current survey. So recognize that there are other levels of federal, state and municipal government that may have records that are of extreme value to you.

Frankly, then you have these quasi government entities, I mentioned **utilities**. You know in some parts of the West here we have irrigation companies or irrigation districts; you even have

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sanitation districts for sewer and water districts. These utilities that might be government or partly government owned or privately owned. But they had **condemnation** powers and that sort of thing. Well, you just never know, they may have tremendous survey records that have be of use to you.

So you might want to take a look at what is going on in your area and ask the right questions. You know railroads are another good one. **Railroads** were out there before a lot of people were. Sometimes in surveying we kid around and say I hope the railroad didn't come anywhere near that corner, because the railroads had a habit of destroying a lot of evidence because they were in just a mad rush to get it built.

But you know there were surveys done and there has been a lot of surveying done on railroads since the tracks were first laid down. And you might be surprised what you find. And you kind of have to track those, pardon the pun, railroad tracks, if the track were where your sources were for railroads because I know that one certain railroad I went to Omaha to get their information and then they merged with another railroad and all those records were moved or whatever. You have to try to keep track of that and you know it's not the Santa Fe anymore; it's the Burlington Northern Santa Fe.

A good surveyor has contacts and you know makes the calls to find out where to go to talk to someone so you can get them to look up records. Also, you know this is more back with my previous discussion on state governments. But you know **State Highway Departments**, they didn't record their plans, yet they went down where that highway was going to go or where they were going to widen that highway and they tied all the section quarter corners they could find, or at least they thought they could find but you know all of that is information that you want.

I'll throw out a couple of more ideas here. I'll mention in a later course about what I will call the other record, that are **private survey records** that are records that are not recorded they are just in their private surveyor's office or home or basement or whatever, but that is another source of record data.

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But let's not also forget that there are large private companies or even individuals who have huge holdings of land who have paid for surveys and maybe even have their own surveyors. One of the more classic examples is the big **timber companies**, Weyerhaeuser and Boise Cascade. You know they have surveyors and realty divisions and they have got tremendous records that go back over a hundred years in some places, where they have owned that land, especially in the Pacific Northwest where it regenerates pretty quickly and just tremendous records.

I know that when I worked in New Mexico we had some of the big land grants there and there was one, the Vermejo Ranch was owned by Pennzoil and they had survey records of things that had gone on there. The Baca Land Company has all the Baca land grants. There are five of them. They are great big grants here in the southwest, Arizona and New Mexico.

The Baca Land Companies and their successors and assigns. They have had surveys done. They have information. They have filled out forms and information when they did their own fencing and found corners, and so there are things there to consider. So the bottom line with that one is that don't forget large private landholders, you may be surveying a little 10 acres of somebody right up against one of these other things, a big land grant or some other large ownership.

But I am amazed at how much money and effort wealthy large **landowners** are willing to put into it. And I know that two or three of the projects that I worked on just before I came back to the BLM, back to federal employment, were huge ranches that very wealthy people had bought, this was primarily in Colorado, and they would buy up 25 sections or portions of sections and we would be out there for weeks and weeks surveying that and you know most cases we probably deposited the plats because it was required by law, but these folks had all kinds of records when we started talking to them.

They had tremendous records that were not part of the public record that predated when we had to record things. And they got it from the people they bought the land from. So you know some of these larger ranches and landholding operations, they have records and first you want to go in and as you probably already do and know how to do you know go in and politically correct and be

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kind and don't demand things and get their permission to enter their land and all that sort of thing.

In many states you can be charged with **trespassing** for surveying out there. Some states you can be charged with trespassing unless you notify these people in writing 14 days or whatever your law says. I pay attention to those things and you should too. That permission to enter is very important. And especially on **Indian trust land** that is really important.

But that is your opportunity to make contact with these various individuals who have ownership or some interest or some governmental control or whatever over that land and or some of the uses or interest in that land. That is your opportunity to not only let them know that you are going to be on the property and ask them if is okay if you drive your 4-wheeler or whatever you are going to do. But then there is your chance to ask them a couple of other questions; do you know where any of the survey monuments are or corners or markers that they might have information? And you can also ask them "do you guys have any old surveys or maps or plats or anything?"

Use the word **map** because a lot of private citizens don't know what a plat is and that way you make sure you've asked them and they understood what it was you were asking.

In Indian Country

As you will hear in Ron Appelbaum's session, working in Indian trust lands in particular, you have totally different sources to go to for record information, primarily it is the **Land Title and Records Office**, the LTRO and Ron even shows you in what cities those offices are located in for various regions.

And we include on your research CD a **map of the BIA regions** so that you will understand which region you are (**add HO**) in and how that works. But recognize that that is primarily your source. You see what happens if some land belongs to Indians in trust and then when it leaves and goes to deed then something gets recorded in the county and then if it gets sold ten times to private individuals it is in the county.

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But then if it comes back into trust, the last deed you will see is that last one where it went back into trust. And then it may come into trust and then be sold two or three times amongst Indians or the Tribe or whatever. And those records are all going to be at the LTRO, so you have got to make sure that you link the LTRO records with the county records where that is applicable. In many cases you will have where neither titles link at all because the title doesn't do that as I have described. But be aware of that.

Tribal Records

And one of the other things that you heard Ron mention, is that some of the **Tribes**, now I don't know the percentage of that, I had asked him and he didn't know either, but some of the Tribes have their own records. That doesn't mean that the deeds are recorded there but they may have survey plats.

I know that here in the Phoenix area, where we are recording this, I have had contact with and done some work with the private firms you know that I worked for whatever where we worked on some of the Indian Reservations or communities that are in the area here and I have always be amazed at some of the records I would find there because all of the deeds might be at the LTRO but then they have a tremendous number of survey records that the road department had contracted and didn't get recorded or the lands department or other divisions within the Tribe or the community.

They've got all these records. So I always ask everybody I meet or can you know if you are aware of anything because you might be amazed what is out there at the Tribal level that the Tribe never sent up to the Bureau of Indian Affairs to be recorded in the LTRO because they either don't like them, they don't trust them or in many cases it is a survey plat they don't consider something that needs to go to BIA. BIA only requires usually that the deed be recorded in the LTRO.

There are exceptions to that. But my point is that this, this is another place where you are trying to link the record and follow the chain of title of whatever it is you are looking at is to realize that some of the Tribes have that.

So on Indian trust lands, it doesn't mean that it has always been trust, so potentially you may find some things in the county,

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maybe not. You may find some things at the LTRO, you probably will. And you need to link those and you may also find some other things, not deeds necessarily, but surveys and plats or other records that may help solve whatever your problem is out there on the ground for your project.

Well here's the bottom line of what I am saying with this brief segment here in this course that we have talked about all these official records that the federal government has and we have given you the information about what the BIA has and now what I have done is kind of bring us up to date on all these other sources of records too that we need to be familiar with and aware of.

Unfamiliar Territory

I want to make one other comment, I have moved around a lot over the years of my career in surveying and I have learned a number of things and everywhere you go things are different and you learn new things, that is part of the challenge and part of the fun. But there is also a real responsibility that comes with that.

If you are a surveyor and you are working in this state and you move or maybe you just work for a big corporation and you suddenly get a project in another state that you have never worked in or you may have a license in and I hope you do and you have never worked there. You need to, when you go there, you need to be aware that you are at incredible disadvantage to the local surveyors. And of course they don't like it because you're there and you are competition from out of town and you are in their territory whatever.

Some of them operate on a more professional and ethical level and will share the information with you them because they want your survey to be properly done and fully aware of the records that are available.

I mention this because if you move or if you work in a broad area, and you don't have a lot of experience in a local area, you have a tremendous disadvantage because you don't know whether the Tribes in your area do that, whether it is with the county, whether it is with the state, whether it is with other government entities, where the utilities are, you've never worked with that railroad, you don't know where their lands office is.

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You may even work in a state and you don't even know where the GLO record is. You need to ask questions so you need not be afraid to because you can't do your survey right without getting the record, without fully researching the record and frankly, that's a place where you need to make sure you have estimated your cost and time adequately because we can't just get a quad sheet out draw a circle around where the property is and go out and look for something, a pipe sticking out of the ground and do a survey and think that that is going to work. That is not a properly done survey, whether it is trust land or just private land, it doesn't matter, it is not a properly done survey.

So I suppose we can close with that: a properly done survey is one based upon full research of the applicable record, full research of the evidence on the ground, then linking that together to produce whatever your answer is.

Course 1: History, Records & Administrative Systems Study Guide

COURSE DESCRIPTION:

This is an introductory series of videos that establishes the context of the CFedS Program. Topics covered in this course include:

- Brief history of surveying as it relates to the United States
- Cultural Awareness
- History of Indian Land Law
- Bureau of Land Management and Bureau of Indian Affairs structures and records that each may have
- Basics of federal survey authority

COURSE OBJECTIVES:

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

- Review administrative functions, structures, and process of the Bureau of Land Management and the Bureau of Indian Affairs
- Increase awareness of cultural and historical legal issues when working in Indian Country
- Identify records sources for survey projects in Indian Country









COURSE INSTRUCTOR(S):

Dennis Mouland, Bureau of Land Management
 Dominica Van Koten, Bureau of Land Management
 Pricilla Wilfarht, Office of the Solicitor
 Colleen Kelly, Office of the Solicitor
 Ron Applebaum, Bureau of Indian Affairs (Ret.)

VIDEO LECTURE TITLE:

Working with Indian Cultures (28 minutes)

ICON LEGEND

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

WORKING WITH INDIAN CULTURES

Introduction of Speaker

Hello, I'm Priscilla Wilfarht; I'm the Field Solicitor, for the **Office of the Solicitor**, U.S. Department of the Interior. What you ask yourselves is a field solicitor or is a field solicitor, or a solicitor, is the archaic term from the English system for a lawyer who does everything but trial work.

In the federal system, the barristers are the attorneys in the Office of the U.S. Attorney. For reasons perfectly unclear to me, the Department of Interior has chosen to retain this terminology for its lawyers. The Solicitor's Office then is the Office of General Counsel to the Secretary of the Interior and to all of the various Offices and Bureaus of the **Department of the Interior**, such as the Bureau of Land Management, Fish and Wildlife Service, National Park Service, Bureau of Reclamation, and the Bureau of Indian Affairs.

I am a field solicitor because I work in a field office in Minneapolis, Minnesota. I supervise the Department of Interior's legal work for the Fish and Wildlife Service and Bureau of Indian Affairs in an 11-state area in the upper Midwest. I have been an attorney for the Department of the Interior since 1983 and my primary area of practice has been federal Indian law. Prior to becoming an attorney, I spent a couple of years working for a tribal government on the reservation, where I was born and raised and where I am an enrolled member of the tribe.

With every group of attorneys or every time I speak to a class, most of the time everybody in the class has a lawyer joke that they really like and one of my personal favorites is, Did you hear about the hijacker that took over a plane, a 747, full of lawyers? He threatened to turn one loose every hour if his demands were not met.

Objectives

Why, you ask yourself, should you want to listen to this section of the course? I think the answer to that is, if you are genuinely interested in establishing a successful working relationship with Indian tribes, this course will provide you with some pointers on

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how to avoid alienating a tribe before you are ever able to convince them that you have a skill or expertise that will be of some value to them.

This is the section of the course, which will address the tribal historical prospectives on land ownership, cultural differences regarding land tenure and cultural awareness in dealing with tribes. What is this session designed to teach? It is designed to make participants aware that tribal views on the nature of landholding may differ from **non-Indian** views.

Proper Titles

I drop a footnote here in your materials, which I want to point out to you. I use the term non-Indian to refer to persons not of American Indian descent. I acknowledge that there is not perfect agreement on the use of terminology.

Indian Affairs Council for the State of Minnesota has suggested to the state and Minnesota news media that it is inappropriate to refer to members of federally recognized tribes as Native American since anyone born in the United States is a Native American, but not necessarily American Indian, that members of federally recognized tribes would prefer to be referred to as American Indians or Indians.

The Indian Affairs Council is composed of representatives from 11 federally recognized tribes in the State of Minnesota and is the official liaison between the state and the tribes. I also use the term tribe throughout this course for ease of reference. Tribe is not an accurate term for every American Indian group.

The title for each American Indian group may vary depending on their history, culture, and sometimes on their interaction with the United States. There are a variety of possible terms that are appropriate such as community, band, pueblo, nation, Rancheria, or colony, which are used to describe a political unit of American Indians.

At the end of this lesson, I want you to be able to do three things. Number 1, I want you to be able to identify cultural differences; Number 2, I want you to be able to give an example of cultural differences; and Number 3, I want you to use these tips I am going

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to give you to contact and establish a successful working relationship with a tribe.

No Single Culture

The first thing one needs to understand when addressing questions of American Indian culture or historical perspective is that there is not a single tribal perspective.

There is no generic American Indian culture each tribe has its own unique history and culture. Tribal groups in America varied from nomadic hunters and gatherers to complex organized societies with sophisticated governments, which controlled large territories. The various tribes had and have extremely different cultures, languages and traditions. Tribal groups were and are as culturally diverse as ethnic groups in any other part of the world. Some were peaceful, others warlike, some nomadic, they were farmers, meat eaters, and vegetarians.

The distinctions among tribes have been blurred by mainstream media which has tended to portray a fictional stereotypical American Indian who is generally seen in films wearing a head-dress, carrying a primitive weapon, wearing war paint and a loin cloth and usually engaged in hunting or warfare. The common portrayal is either as a total savage or a noble savage. The fictional American Indian is usually a composite of cultural characteristics of many tribes and is a culturally accurate of none of them.

Any person working in Indian Country, and Indian Country is a legal term of ours, defined by statute, for criminal purposes at 18 US Code, Section 1151 and by a substantial body of federal case law and the term as I use in herein is consistent with that definition. It generally means land on or within the boundaries of an Indian reservation or land in which the tribe has a governmental interest or recognized as having regulatory jurisdiction.

I would recommend the tribe itself, as a source of cultural or historical information. State or tribal historic preservation offices, which are referred to as **SHPOs**, local historical societies, local libraries or the local Bureau of Indian Affairs, agency or regional offices, as possible sources of information about local tribes, and, of course, the internet.

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There is a wealth of information on the Internet and many tribes have established their own sites on the Internet, making it very easy to find out how to contact them or find reference material about them. Some tribes now have tribal historians or cultural resource offices, which may be able to provide such information or advise where other sources of information may be located. There are currently over 500 tribal governments recognized by the federal government and an updated list of recognized tribes is published annually in the **federal register**.

Secondly, even within tribes there is no generic tribal view. Tribal governments are exactly like any other form of government that we are familiar with in that the government's formal views are expressed by the elected officials or those persons who are acknowledged as tribal leaders by an accepted tribal process.

Within the cultural unit that comprises a tribe, there may be many views and opinions regarding land tenure. Just as with any other political unit of humans, there are probably competing theories about land use. Take care when you are dealing with the tribe that you are in fact dealing with a tribal representative who is authorized to deal with you and who in fact has the authority to authorize whatever business you propose to enact on behalf of the tribe. It would be an impossible, cultural, anthropological, and historical research task to try to survey all tribal historical views on land tenure.

Differing Viewpoints

And within the timeframe of this course what is possible is to give you a few vignettes as examples of the way some American Indians viewed everyday objects and interpreted them in a way completely unanticipated by non-Indians.

The first example is one that I came across when I was doing some research in on a treaty's rights case I worked on. We had retained experts, historical experts, and ethnicalogical experts, to provide reports for the United States, which went to the basic understanding of how the Indians understood the treaty at the time the treaty was entered. And the historical research showed that one unexpected source of conflict between non-Indian settlers and American Indians in the area ceded under the terms of the treaty and it arose over windows in dwellings built by the settlers.

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The settlers were disturbed to look up and find that Indians were coming and peering in the windows. Upon inquiry, they learned that the Indians thought that the windows were put in the dwellings so it would be possible to see in.

In their view, it was a courteous way to determine if someone was home. The settlers had put the windows in so that they would be able to see out. And by their cultural background, the courteous way to determine whether someone was home was to knock on the front door. It is a very simple, but graphic, example of how different cultures interpret the same information or objects very differently.

Another example that came to mind for me, again rose from treaty litigation, and it involved negotiations involving hunting black bear. The negotiations primarily took place between state negotiators and tribal representations for five different tribes, who were successors to the treaty hunting right. The state negotiators were very concerned about the numbers of black bear, which might be taken by tribal members under the treaty right to hunt and fish off the reservation. The tribal government indicated that it was also very concerned about the numbers of black bear, which might be taken.

When the matter was explored further, it was discovered that while both were concerned with the number of bear, which might be taken during a hunt, they were concerned from exactly opposite perspectives. The state was concerned that tribal hunters would want to take more bear than populations could safely sustain. The tribe did not want the state to permit any bear to be taken because the bear in that tribe's culture had had religious and cultural significance. Both sides were surprised by the other side's position.

The third example, regards land tenures specifically and with regard to differences in culture regarding land holding and land use. A study by cultural anthropologists at one reservation in the 1950s provides some insights to the differences between American Indian and non-Indian views. The tribal view of land use and land holding was described as reflecting the tribal perception of nature.

Interviews with tribal members described tribal history and land

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was included as an important entity, not a thing, but an entity in the tribe's history. Land was described as the place that people knew. They knew where each dwelling was; they knew where each fishing spot was; they knew where good water could be found; they knew where the squirrels were in the woods, where the cemeteries were; they knew where there was shade and quiet, where berries grew; and they knew where the pow-wow was held each year. It was a place of memories and described with great affection. It was not described by the tribal members in terms of investment, income production or ownership.

The land was described in tribal tradition as part of a balanced harmony of parts of the tribal universe, land with the animals and vegetation, the sky, the tribal people and the numerous supernatural forces. The tribe did not think in terms of controlling the land or subduing it to tribal will. The tribal history contained no references to any type of obligation to subdue or exploit land and assumed that the tribe's prior history of existence in harmony with the universe meant that it would always exist this way. The lands where the tribe was located had been ceded to the United States by treaty and had been surveyed and laid out in the precise rectangular manner. Most of the land, around the area owned by the tribe, was owned by non-Indians and was farmed.

The tribe had not received a reserve in the treaty and in fact had been scheduled to be removed to another area. But the people could not bear to leave their homelands and purchased some land in the area. Their land was surrounded by the land owned by the non-Indians. An examination of aerial photographs of the area taken in the 1950s revealed that the boundaries of tribal ownership could be traced on the photographs simply from the configuration of the land and the vegetation.

The idle and wooded land was the tribal land. And I stop here to define the term idle because the term itself reflects cultural influence and judgment. Idle is defined in the dictionary as not employed or inactive, avoiding employment, or lazy and shiftless, lacking foundation in fact, useless, worthless, or to pass time without working as in avoiding work, or to move lazily and without purpose.

The land farmed by tribal members lacked the sharp geometric precision of the non-Indian farms. Tribal fence rows were uneven

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and did not run along precise lines, the corners of tribal fields were rounded, the corn was not as tall, the fields were weedy, low areas were left flooded and were not drained, land was not cleared and precisely plowed and planted. The study described driving through non-Indian lands, which were clearly shaped and constrained by farmers. The shapes were sharp and precise, uniform patches of color depending on the crop. Trees and grass were not permitted to encroach on controlled space. That evident control of the environment evoked a sense of pride and the power of control to the cultural anthropologists.

In contrast, the tribal lands gave a sense of unconstrained nature. Trees grew in all directions, in large and small groups and in varying heights. In the spaces without trees, the grass, weeds, and brush flourished. The tribal lands evoked a feeling of being enveloped by the land, of co-existing with it, circumspect and harmonious. In accordance with tribal culture, the land was not idle. Berries grew. Game existed on it. Trees grew and tribal members took what the land naturally produced and gave freely.

The land was fully engaged in doing what it was supposed to do. Tribal members appeared to feel neither the need nor any sense of right to control the land. In keeping with their view that land was part of the harmonious universe, the tribal members were indifferent farmers. Interviews with the tribe's non-Indian neighbors indicated that they viewed the tribal members as unambitious. In their view, tribal members should have been working much harder to control their property in order extract more wealth from it.

The lack of ambition ascribed by the non-Indian neighbors from their perspective held very negative connotation about the character of tribal members. A failure to strive for wealth and status was simply incomprehensible to the non-Indian neighbors. The cultural perspectives between the non-Indian farmers and the tribe were simply very different.

The tribe's history taught it to use what the land freely offered in harmony with the seasons naturally occurring and which did not damage the land or require the re-shaping or control of it. The non-Indians' history taught them that everything was subject to exploitation for their benefit and that they could and should exploit it as much as possible. The two views are very different, neither

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one more right or wrong than the other, but simply different. No moral judgment should attach to cultural characteristics simply because they are different.

Strive to Understand the Differences

I would recommend, however, that when you are working in Indian Country, you need to understand the American Indian's perspective and cultural significance of land to the particular tribe you are working for to best understand how they wish to use their lands and why they may not wish to pursue what the non-Indian community would characterize as the highest and best use of a particular tract of land.

In most instances, highest and best use as defined by non-Indian standards assumes decisions based on an economic model. Highest and best use to the tribe may well incorporate historical and cultural beliefs, which dictate a use for land that non-Indians may consider idle or inefficient.

Proper Protocols

So we get to the third portion of the course, what does this mean to you? And what I offer is some suggestions for protocols for addressing tribes. First learning about the current organization of the tribe will educate you about how to contact approach and address the tribe. Tribal leaders are called by different terms depending on their culture.

For instance, just as we had different terms for tribe, and some of them might be nation, or colony, or community. Tribal leaders go by different titles. In some instances, they are called Chiefs, Principal Chiefs, President, Chairman, Governor, or Ogama. You need to know what the tribe calls itself.

The tribe's name for itself may differ from the federal reference to it or the commonly accepted non-Indian reference to it. For instance in the upper Midwest the Chippewa refer to themselves as the Ojibwe. A couple of tribes in the upper Midwest have formerly changed their names from those used by the federal government in its recognition of them.

The name changes reflect the tribe's terms for themselves, which

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have either been inaccurately translated by early interpreters or simply mis-heard or mis-pronounced but had been so frequently transcribed in treaties or by government negotiators that it became the accepted reference by the non-Indian settlers and so had become the accepted name by which the non-Indians referred to the tribe.

One example of that is in the Dakotas where a tribe, which referred to itself by a term, which in our language would have been interpreted as spiritual by the non-Indians and the earlier settlers at that time the interpretation, was devil. And so the tribe's name as it became accepted by the non-Indians of that area incorporated the term, devil, when they themselves interpreted it more accurately as something having to do with spirits rather than the devil. It's a small thing, but it is something that you have to be very much aware of. Learning something about a tribe's history and culture may help you to understand tribe use decisions.

Tribes vary widely in their level of sophistication of business acumen and business culture and in their encouragement or acceptance of non-Indian business culture. Find out what types of businesses the tribe has currently initiated or permitted on its lands. Determine what the tribe's primary natural resource is because the use or protection of that resource will affect the tribe's views in how it wants to use its land.

Value of an Open Mind

Probably the single most important point to take from this section is to approach Indian Country with an open mind, with the understanding that your assumptions regarding land and land use may not match the assumptions of the tribe with which you plan to work.

Finally, one of the primary lessons to be learned from this segment is that it is important for you to ask the tribe about its land use plans and to listen carefully when the tribe tries to explain to you what its goals and plans are. Remember that even while you are listening, you are hearing the information through your own cultural filters and that you have a much higher probability of correctly interpreting the message if you've learned something of the cultural background of the speaker.

WORKING WITH INDIAN CULTURES

In preparation for presenting this segment of training I solicited the views of a former tribal Chairman of a tribe in the upper Midwest as well as a Bureau of Indian Affairs tribal government specialist. I asked them what tips they would offer to persons who are unfamiliar with dealing with tribes when those persons wanted to make initial contact with the tribe. They offered some very good suggestions about how to approach tribes with tact and diplomacy and to enhance your chances of entering a successful working relationship with a tribe.

I have put the suggestions below to aid you in approaching a tribe to enter a successful working relationship.

I have also referred to a set of protocols that were suggested by the Minnesota Indian Affairs Council. First they highly recommended that you do your homework and learn as much as you can about the tribe. Most tribes have a website with information about themselves.

Take the time to go and look and read and learn as much as you can. It was recommended that it is a good protocol to introduce yourself and to first send a letter of introduction addressed to the tribal leader and make sure here that you use the appropriate title. Be prepared to explain who you are and what you want. Be direct and to the point and up front with your agenda.

Do not be patronizing! Statements such as, "I'm here to help you" and "I've always loved Indians" were found to be extremely offensive. The tribal leader may have a post-graduate degree or he may have an elementary school level education. The level of sophistication will vary from tribe to tribe, but keep in mind, that the tribal leader, regardless of the level of education, is an elected official of government and should be directed as such, until you are given leave to use a much less formal manner of address.

Tribal meetings commonly open or close with customary prayers. Ask in advance if there are any specific customs they would like you to either observe or participant in or to respectfully withdraw from. It may matter in how they deal with you whether the tribe is historically matriarchal or patriarchal. If so, ask whether the tribe has any specific meeting protocols arising from that cultural aspect.

WORKING WITH INDIAN CULTURES

Ask whether it is customary to give gifts when introducing oneself and if so, what type or nature. Do not assume that you should take gifts to the first meeting. Gifts may be exchanged later if you have developed a relationship with the tribe, but they were not deemed to be always appropriate at the first contact. Do not dress as you think Native Americans dress.

Your manner of dress should be the same that you would dress to appear before any other unit of government. If you are yourself of American Indian decent it should not be announced as part of your credentials. Parading your ancestors to establish your Indianess was deemed to be offensive. Do not assume what one tribal chairman termed the “A Man Called Horse” syndrome and if you recall, “A Man Called Horse” was an old movie probably from the early 70’s starring Richard Harrison, which he goes out to a tribe and he becomes the everything to the tribe. He saves them.

They are not looking for saviors and if you have contacted them to do some work for them, the assumption that you also get something back from the relationship. And this comment relates back to the point that I gave earlier, be up front about your agenda.

And finally, remember that the sense of time may be another cultural difference. Respect the tribe’s timeframe for making decisions and enactment of its business. Bear in mind that tribal governments are busy and usually have many other obligations.

This concludes this section of the course. I hope and I think it would be extremely beneficial to you to take the time to familiarize yourself with any tribe with whom you plan to do business, I think that you will find that the quality of the relationship is greatly enhanced by that effort.

Course 1: History, Records & Administrative Systems Study Guide

COURSE DESCRIPTION:

This is an introductory series of videos that establishes the context of the CFedS Program. Topics covered in this course include:

- Brief history of surveying as it relates to the United States
- Cultural Awareness
- History of Indian Land Law
- Bureau of Land Management and Bureau of Indian Affairs structures and records that each may have
- Basics of federal survey authority

COURSE OBJECTIVES:

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

- Review administrative functions, structures, and process of the Bureau of Land Management and the Bureau of Indian Affairs
- Increase awareness of cultural and historical legal issues when working in Indian Country
- Identify records sources for survey projects in Indian Country









COURSE INSTRUCTOR(S):

Dennis Mouland, Bureau of Land Management
 Dominica Van Koten, Bureau of Land Management
 Pricilla Wilfarht, Office of the Solicitor
 Colleen Kelly, Office of the Solicitor
 Ron Applebaum, Bureau of Indian Affairs (Ret.)

VIDEO LECTURE TITLE:

Indian Land Law – Part 1 (47 minutes)

ICON LEGEND

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

INDIAN LAND LAW – PART 1

Introduction

Hi, my name is Colleen Kelly and I am an attorney with the Department of Interior in the Portland Regional Solicitor's Office.

I have an undergraduate degree in history and I earned my law degree from the George Washington University way back in 1982. After law school, I joined the Department of the Interior Solicitor's office in Washington, D.C. for four years back there and then I moved back out West and to Portland and have stayed there since then.

My primary focus has always been Indian law and I am an advisor right now to the Bureau of Indian Affairs with respect to all its Indian matters in Oregon, Washington, Idaho, Western Montana, and one tribe in Alaska. I also sometimes help the Bureau of Land Management, the National Park Service, and Fish and Wildlife Service on their programs having to do with Indians.

Objective

This lecture today will be on Indian Land history and I am hoping that it will help summarize for you the continually changing relationship between the U. S. federal government and the Indians.

I want you to learn this history so that it will be easier to understand how and why what appears to be very confusing and contradictory policies, laws, and regulations that we now have relating to Indian lands.

Historical Eras

The history of Indian land tenure can be broken down into 6 general eras. Each era has unique defining characteristics. The time periods distinguishing the eras are not precise. Rather most cases they shift slightly and gradually from one era to the next. But each era, however, leaves its trace that can be identified in the current status of Indian land tenure. Understanding the historical basis helps interpret the sometimes seemingly inconsistent Character of Indian land tenure policies and laws.

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First Era

The first era is called the **Formative Era** and it begins appropriately enough in 1492 when Columbus entered North America and it lasts until approximately 1820. This era is the longest and extends from the first lasting European contact to early in the 19th century.

The era is first characteristic by an acknowledgement of the strength of the tribes and the desire of those non-Indian settlers to enter into relationships that protected them or establish allies with the tribes against competing European countries vying for control of North America.

For example, the first handout is a copy of the very first treaty that the United States entered into the 1778 treat with the Delaware.



HANDOUT A full version of this handout can be found in the Handout section at the end of this study guide. (Handout -1)

It includes provisions that called for peaceful relationships between the United States and the Delawares. Allowed the United States to move freely through the Delaware territory and called for the Delaware members to join the US in its fight against England. Finally, it reassured the Delawares that the United States would guarantee their territorial rights to the land described in earlier treaties.

The second important characteristic of this era is the centralization into the federal government of the power to deal with Indians. Both the Articles of Confederation and the U S Constitution reserve to the federal government, not the states or the colonies, the right to deal with and regulate all interactions with Indians. This includes trade and all land transactions with Indians.

The second handout in the materials is a copy of the **1790 Trade and Intercourse Act** and this is a perfect example of the federalization of control with the relationship between Indians and non-Indians.



HANDOUT A full version of this handout can be found in the Handout section at the end of this study guide. (Handout – 2)

It required all non-Indians to get a federal license to conduct trade with Indians; it established procedures to deal with non-Indians who committed crimes in Indian Territory; and it declared that any sale of land by an Indians or a tribe would not be valid unless it occurred consistent with rules and regulations set down by the

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federal government. This particular provision having to do with land sales and controlling land sales is one of the most important and lasting acts by the government during this era.

Second Era

The second era is called the **Removal Era**. It ran from approximately 1820 to 1887, most of the 19th century. This era actually began a little bit before 1820 and it was definitely dying out for almost 30 years from 1850 on.

One very important characteristic of the Removal Era is that unlike the earlier times, non-Indians and Indians were no longer encouraged to share space, to be neighbors. During the Removal Era it became the federal policy to take, like it says, removing the Indians from areas where there was pressure between non-Indian settlers and Indians. And it was also in this time that most reservations began to be created.

An example of this is in handout 3 that is the **1830 Treaty with the Choctaw**.

It begins by pledging perpetual peace and friendship between the United States and the Choctaws, presumably they were not getting along too well before that and the federal government went in and established a treaty with them, negotiated this treaty with the Choctaw leaders.

The critical provisions however are where the Choctaw tribe **cedes** to the United States all of the land that it held and it controlled east of the Mississippi River and it agrees to move from that land to the West of the Mississippi River on land provided by the United States. And, of course, this cession and this grant of lands somewhere west of the Mississippi was possible because from 1803 and on the United States claimed rights through the Louisiana Purchase and a number of other minor little things like the Mexican War, the control of the land West of the Mississippi.

Not surprisingly however, there were other Indian groups, and tribes, and bands living already in the land where in this example the Choctaws were intended to be moved to.



HANDOUT A full version of this handout can be found in the Handout section at the end of this study guide. (Handout-3)

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This resulted inevitably in conflicts over which the federal government then had to deal.

These conflicts were also troublesome to the non-Indian settlers who were following along in the mid-19th century and starting to establish homesteads and moving through to the far west, Oregon and California. As an example of the conflicts that were going on between the Indian groups in the middle part of this country, the Midwest, is some descriptions from an 1850 report. Indian affairs, in the middle of the 19th century, were generally the responsibility of an individual called the **Commissioner of Indian Affairs** and every year he had to tell Congress about what was happening in Indian Country.

This is an excerpt from his report in 1850 and it talked about the continual fighting and warring between Sioux Indians and Chippewa's in the upper Midwest area. And this will give an example of what the federal government in the mid-19th century thought about Indians, and I am quoting from this.

“Such occurrences,” meaning the wars between the tribes, “are not only revolting to humanity but they foster that insatiable passion for war, which in combination with the love of the chase is the prominent characteristic feature of our wilder tribes and presents a formidable obstacle in the way of their civilization and improvement.

We know not yet to what extent these important objects may be accomplished but the present and improving condition of some of our semi-civilized tribes affords ample encouragement for further and more extended effort. Experience however, has conclusively shown that there is but one course of policy by which the great work of regenerating the Indian race may be affected.”

He continued, “In the application of this policy to our wilder tribes, it is indispensably necessary that they be placed in positions where they can be controlled and finally compelled by stern necessity to resort to agricultural labor, or starve.” That's very harsh.

“Considering as the untutored Indian does, that labor is a degradation and that there is nothing of his worthy of his ambition

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of his prowess in war, success in the chase or eloquence in counsel. It is only under such circumstances that his haughty pride can be subdued and his wild energies trained to be more ennobling pursuits of civilized life. And this is where he makes his recommendation for policy.”

There should be assigned to each tribe for a permanent home, a country adapted to agriculture of limited extent and well defined boundaries, within which all with only an occasional exceptions should be compelled constantly to remain until such time as their general improvement and good conduct may supercede necessity of such restrictions.

In the meantime, the government should cause them to be supplied with stock, agricultural implements, and useful materials for clothing, encourage and assist them and in the erection of comfortable dwellings and secure to them the means and facilities of education, intellectual moral and religious. The application of their own funds to such purposes would be far better for them than the present system of paying their annuities in money which does substantial good to but few which to the great majority it only furnishes the means and incentive to vicious and depraving indulgence terminating in destitution and misery and too frequently in premature death.”

So what his policy was to push all the Indians into a well defined and bounded area and encourage them to either by positive encouragement or by telling them that they needed to labor hard at agriculture or starve. That was the Indian policy and solution in this mid 19th century era. Create reservations and keep the Indians on the reservations. In somewhat of a contrast to this seemingly harsh movement of Indians onto reservations to make due for themselves and fend for themselves.

It was during this era in the mid 19th century that was also the origin of what we now call today the **Trust Responsibility**. This was borne in most part from three Supreme Court cases that were authored by Justice Marshall and they set out the concept and described in words this unique relationship that was starting to occur between the federal government and the Indians in the United States. The case had to do with a fight between Indians and the state of Georgia. One of the issues was what exactly Indian

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tribes under our federal court system? Are they more like states? Are they more like foreign countries? Are they more like individual people? How should the courts treat tribes?

Justice Marshall came up with a solution that created a unique relationship for Indians. He said they may more correctly not like foreign or dependent sovereigns be denominated domestic, dependent nations is a state of pupilage that “their relation to their United States resembles that of a ward to his guardian”, thus a trust relationship. That was the origin of that term.

This era, as I said, was the highpoint for the creation of reservations for Indians across the country. But it was not by any means without its critics. Each of these eras ends as the criticism of the era develops and a new policy is established. Because what people found out is notwithstanding what the Commissioner was arguing for in 1850 putting the Indians on most of the reservations did not achieve what they wanted.

The pursuit of civilized life, as they termed it, did not occur. And the reality is that the small land base of those reservations did not support the traditional life of the Indian if they were engaged in hunting and constantly moving to follow their resources in some sort of cycle. That didn’t work.

On the other hand many of the lands set aside for the reservations were not appropriate for traditional agricultural development and so no one would have been successful on those lands to begin with. And it became apparent that life was not good for the Indians and many people believed that the government needed to change its policy towards them.

Third Era

And that leads of course to our third era, known as the **Allotment Era**.

It is traditionally bounded by the times of 1887 and 1934. Now the major characteristic of the Allotment Era is the division of the reservations into smaller tracts of land and the transfer of ownership interests from tribes to individual members of tribes. When the reservations were created they were communally held by the tribe for all of the members of the tribe and no individual

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member of the tribe had any right to any particular part of the reservation except through the tribal government process and traditional, cultural rules, nothing that would have been considered law under our federal system.

The Allotment Era changed that completely. It was intended, in fact, to wipe out the communal system and the traditional way of life on the reservation. People believe that was what was “holding Indians back from becoming civilized.” And what the policymakers believed was that it was time to take the land on the reservations break it up into smaller chunks of land called allotments and assign them to individual Indians and their families, very much like the homestead that and the Indians would be allowed to homestead in a sense on their own reservations.

This was thought at the time that it was going to encourage the Indians to assimilate into the majority culture and that they were going to fully participate and successfully participate in that society. Now different terminology has been used in various treaties and laws to describe this process of breaking up the reservations.

But most of the time people will talk about it in terms of allotments and that is because the first comprehensive law to achieve this change was 1887 under the **General Allotment Act** **sometimes called the Dawes Act** for one of the members of Congress who helped to push this through. There is a copy in the *handouts* also to give you a chance to read it if you would like.



HANDOUT A full version of this handout can be found in the Handout section at the end of this study guide. (Handout – 4)

Under that statute, generally, each head of household, and it was usually always a man, of course, was to receive the rights to live on 160 acres of land and each individual minor would receive 40 acres. Later that amount of land was changed, under the General Allotment Act, to make it smaller, 80 acres for agriculture land and 160 acres for grazing land.



HANDOUT A full version of this handout can be found in the Handout section at the end of this study guide. (Handout – 5)

On some reservations, the amounts were even smaller or divided between grazing land and agricultural land also. What would happen is that the Indians would go out and identify a piece of property, usually after an initial survey was done to create a land description for these allotments. They would be given that through something that is called a **trust patent**, very similar to **fee patents**

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that the United States and General Land Office gave to homesteaders except that the land would be **held in trust** for the allottee for 25 years. And by that we meant that the United States would remain owner in a way by preventing any alienation or any taxation of that property for the first 25 years.

This was intended to give the Indian an opportunity to learn how to use the property for agricultural purposes, get used to being an owner of his own property, how to work into the majority society systems and then after 25 years he would get a fee patent or any restrictions would be lifted.

Now that was the theory in 1887, for the next 40 years of course, like most social programs, Congress began to tweak it and change it a little bit. The first thing that happened is as people realized in some instances it was not a good idea to make that land fully unalienable meaning unable to be sold, used or mortgaged or anything like that for 25 years. So starting in 1910, the Secretary of the Interior was granted the authority to say yes to or approve the sales of those parcels of Indian lands. Also, in some cases, he was able to force the sale of those if he determined that an Indian was capable of managing their own affairs and no longer needed the protection or help of the United States.

Additionally, on the other side legislation was passed in the early 20th century allowing the Secretary to decide that 25 years was not long enough time to continue the trust relationship and trust protection and that inalienability and lack of taxation would last longer than 25 years.

Now one of the things that you really need to understand about the impact of the allotment process and what is still very fresh in the minds of many, many people in Indian country is that a major consequence of the allotment process was that land was lost from Indian hands.

In 1881, right before allotment got started, about 156 million acres of land was considered Indian lands, held by tribes on reservations across the United States. By 1890, a mere three years after the General Allotment Act was passed that had already been reduced to 105 million. By 1900, it was down to 78 million acres. And in 1934 when allotting was ended by law, there was only 48 million

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acres left in Indian hands. So in a mere 45 to 50 years, Indians lost two-thirds of their lands. And that has impacted them forever since.

Now the loss was both by the sale of land, sometimes highly fraudulently, after the 25 year trust period was lifted. It was also lost when in some cases the Indians had their protections involuntarily removed.

Additionally, on some reservations not all of the reservation was in fact allotted. When you added up the number members who were eligible to take an allotment, there was “surplus” land left over and in many cases that surplus land was opened to homesteading by non-Indians. Sometimes it was considered less valuable; maybe it was the timbered country or the high country. In some cases it was valuable valley land, very good for agriculture, and non- Indians, of course, moved right in and purchased those lands.

So a summary of the allotment process was that it was devastating to Indian land tenure. Tremendous amounts of lands went out of Indian hands and these were lands on their reservations. It also didn't work from the social policy goals that its advocates in the beginning hoped would happen.

It did not work to assimilate individual Indians generally into mainstream American society and this became quite clear in a very famous report from 1928, called **The Meriam Report** which went out and looked at the living and social conditions of Indians out in Indian country and it was found that they were still suffering. They still had tremendous amounts of poverty, deplorable living conditions, poor housing, poor healthcare, etc.

The policymakers then in the late 20's early 30's concluded that the allotment process was not a success Indians had not assimilated into the majority culture and their living conditions remained horrible. So once again the failure of an earlier Indian policy has lead to a new policy. And the new policy and our fifth era in Indian history, is called the Indian Reorganization Act and of course it is named again after new federal legislation.

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Fourth Era

The **1934 Indian Reorganization Act** was of course adopted in the middle of the depression and has some similarities with other depression era federal legislation in that it was very much focused on improving the day-to-day living conditions of the Indians out there on the reservations.

It was also very much an attempt to swing the other direction away from the allotment policy. Rather than focusing on individual Indians and improving their lifestyle by making them adopt the culture of the majority society, it instead emphasized tribes and the value that tribal governmental can bring to their communities.

So the first thing that this did is that it prohibited absolutely any further allotting or breaking up of reservations and it also extended the trust protections against alienation without approval and against taxation indefinitely for those remaining trust allotments that individual Indians held.

It also told the federal government that if there were any additional lands left on reservations that had not been allotted or given away to non-Indian settlers that those would be returned to tribal ownership. That was the restoration of the so-called surplus lands. It also authorized the acquisition of new lands in trust status for Indians and tribes to help them again acquire the lands on their reservations.

With respect to **tribal government**, it strongly supported and encouraged the development of modern tribal government organizations to be a force on their reservation. Now in many, many cases, these governments were modeled after some sort of form our majority society government structure. There sometimes was a division amongst the three branches of governments, more often it was maybe two branches. They may have had a Chief Executive Officer, a Chairperson or a Chief or a major leader who would be the administrator and in addition there were often groups that were representative groups such as tribal councils or boards of directors. In many cases those tribes took sort of a boilerplate document that became their constitution that formed that. Now this was not mandatory, this tribal government aspect to the IRA in any way shape or form.

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In some reservations, the local residents were highly suspicious of what this was and suspicious of the change, so the IRA could be rejected and there were elections held in 1935 and 1936 in which the residents of reservations could opt out of the IRA and some of them did. Those would be considered **non-IRA reservations**. Now you may have heard that term.

The most lasting provisions are the ones that I mentioned earlier. Section 2 extended the period of the trust restrictions and trust protections on those individual allotments those that remained. Section 5, which authorized the acquisition of lands, new lands. Tribes or individuals could go and purchase property and once they owned it they could then transfer it to the United States so that the United States would hold it in trust for them in the future.

Fractionation

However, there was another problem that had already been identified as a result of the allotment process, which was not particularly well addressed in the Indian Reorganization Act.

If you read some of the legislative history you will find that it was clearly identified as a problem and there was an attempt made, but those provisions in the Act were thrown away by Congress before it was adopted and they are coming home to roost now. That is something called **fractionation**. And you will hear that no doubt in your travels through Indian country. It is a major problem right now in terms of administration of land titles and it is slowly starting to be addressed by current federal legislation.

Fractionation comes about due to the natural fact that we all eventually die. When an individual Indian was granted an allotment, it was intended to be for him and his heirs. And so when that individual died the law provided that his heirs would inherit his ownership in that property.

Now most Indians, in fact probably a lot of people, did not write wills at that time and therefore if the Indian had for example 6 or 7 children at the turn of the century, when he died each of his 6 and 7 children became co-owners jointly of his parcel of land.

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Now under the law, when you are joint owner you do not own any particular portion of that property, you each own the entire property together. Those of you who are comfortable with math will quickly see what happens when you are talking about a 50 to 100 year period where birth rates were high and death rates were too and you see the exponential growth in ownership.

So even by the 1930s during the Indian Reorganization Act. It was recognized co-ownership of property and the failure for that to be an effective managerial circumstance arose. You would have parcels that may be 100 -- 120 acres, being owned by dozens, or scores, or hundreds of people in joint ownership.

Obviously, not all of them could make sufficient use of the land. Most of them couldn't even all live on the property together. And so in some cases, trying to make decisions about what was going to happen on there didn't occur, and nothing happened. And so it became inefficient use of the property to the extent that they wanted to make use of it as farming or grazing. That is what we mean by fractionation. And it will come up again and again throughout this course both this and the Indian law version of this section.

So the IRA did a great job in stopping further allotment and it changed the policy from one of trying to force individual Indian to become assimilated into the majority society and instead switched back to focusing on strong tribal governments and re-building the economies and the society on the reservations. And then of course we had World War II and many, many Indians participated in World War II.

I think if you looked at figures you would find that the proportion of American Indians who were servicemen was higher than almost any other ethnic group in the country. They went away and they came back to the reservation. They couldn't find jobs. There were problems again. Society sort of turned away from looking at foreign policy and decided to look internally and we found out that Indian Country was still suffering in terms of socioeconomic standing.

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Fifth Era

So what happens, we have a new era, a federal policy, new ideas about “How to deal with the Indian problems”. This is our fifth era, commonly called the **Termination and Disposal era**, running from approximately 1953 to 1975, again the years are pretty flexible for when you want to start it.

The key characteristic of this era in Indian policy is that it was an attempt by the federal government to break the relationship that had been established since the early 19th century of a trust relationship, a special relationship between the federal government and Indians. And it was also a strong effort to get Indian country into the mainstream of the economic system. They wanted development on Indian country. They didn’t want it to lie idle.

So for example, all those parcels of land that the IRA had been protecting and restricting in most cases were opened up for use, this is when legislation was passed to allow significant leasing, mineral development, rights of way, sales of lands on reservations by individual Indians who still held allotments or interest in allotments. This was also when Congress authorized the Secretary to issue **fee patents**.

An individual Indian could come in and say, “I no longer want my land held in trust, issue me a fee patent and I could sell it whenever I wanted to.” This era is most exemplified by a house concurrent resolution number 108. This was adopted in 1953. A copy of it is in your handouts, number six.



HANDOUT A full version of this handout can be found in the Handout section at the end of this study guide. (Handout – 6)

This resolution only stated a policy this was not a statute or a law. But the policy was, as rapidly as possible to make Indians within the territorial limits of the United States, subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States and to grant them all of the rights and prerogatives pertaining to American citizenship.

This is somewhat ironic because all American Indians no later than 1924 had in fact been citizens of the United States. This was clearly a political statement of what they believed should be

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happening. Indians already had a lot of rights however they also were the beneficiaries of certain programs which in the minds of the political operatives then were not successful.

So Congress quickly moved to end what they perceived to be an old fashioned and unnecessary trust relationship between Indians and the federal government. In fifteen cases they enacted legislation, which terminated federally recognized Indian tribes. And what was terminated was not the tribe itself, you can't terminate a group of people, but you terminated the relationship, the special relationship between the federal government and that tribe.

An example from my state, Oregon, is the Klamath's termination. Now before this occurred the Klamath's owned and had within their reservation a significant amount of land in southern Oregon, much of which was forested. That land was conveyed by the tribe under this termination legislation. It became part of the National Forest.

Now it was valued, appraised and assessed and the value of that land was divided amongst all of the various members of Klamath's tribe and each were given a payment. And the United States by statute said we will no longer consider you a federally recognized tribe. You will no longer be considered members. And anything special, any special programs will no longer be afforded to the Klamath's Indians. They also did the same for any individual lands still held by Klamath Indians. That eliminated any trust relationship and that became fee simple status land for those Klamath Indians. That was one example of termination and that happened in a number of other places across the country.

The other thing that occurred during this time was a transfer from federal government to state government of the power to deal with Indians. Up until this time all relationships with Indians were controlled by the federal government and solely the federal government. State law did not intrude upon the reservation, state courts had no authority to adjudicate matters that arose on reservations.

Much of the law enforcement that needed to be done and the prosecution of crimes needed to be done by the federal system on

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reservations and in many cases it was just not working very well. There were not enough resources spent to create what people believed to be a law abiding society and there were a lot of complaints about reservations being the last resort for the bad guy sort of thing. So again in line with and consistent with the idea of eliminating any trust relationships here there was a law passed called **Public Law 280** in the 1950s that authorized in certain instances states to take over criminal and civil jurisdiction in Indian country.

On some states it was mandatory without any consent of the tribes imposition of state jurisdiction on to those reservations. Some states it was done in a way that the state could if they wish to take jurisdiction on Indian reservations and could do it on a case by case basis. And in other states it didn't happen at all and it remained federal. That was a result of the politics going on in Congress at the time. So that was another instance of the federal government pulling back its relationship to tribes and trying to end its trust relationship to them.

Now by the end of the 1960s, this era was beginning to fade away. The 1960s brought a lot of minority groups in the United States started to become powerful, feel powerful. They started to exert their power you know Indian groups felt the same way and the whole emphasis moved away from making everybody the same and folks started to feel proud about their cultural heritage and started to feel open about that and gain power from that.

Sixth Era

That leads us to our last era, which is where we are right now the sixth era. I call it **self-determination**, self-governments, and trust responsibility.

Now you could say it started around 1975, there were actually some things that were occurring long before that, probably ten years before that, but it comes to its peak in 1975 because once again because the federal legislation had significantly changed things then.

Immediately prior to that though in 1970 President Nixon got this whole era started by a special message that he conveyed to

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Congress, again this wasn't legislation, it was more an expression of the new way the federal government was going to approach Indian matters. It began by criticizing the past policies all the way back. It then praised Indian's cultural history both its creativity and the fact quite frankly that it had in fact survived all the years and all the sways and back and forth that we had done to it.

It called for a rejection both of the extreme of termination which we had just been coming out of when the federal government would just completely obliterate its relationship to Indians and its special treatment of Indians and it called for the rejection of both that and the other extreme which we commonly call the paternalistic view, when Indians are so unsophisticated and unteachable, and unable to take care of themselves that the federal government has to be involved of every single aspect of their lives.

Both extremes of our relationship with the Indian community were rejected by President Nixon and instead, he urged Congress to start passing legislation that would repudiate both the termination policy and paternalism and instead look to the existing Indian communities that had in fact survived and empower them to take control over the operation of those federal programs that had always existed to benefit their members and their community.

Now Congress' response to this challenge is found in one of the most important pieces of legislation now in existence and still continuing and that is **the Indian Self Determination and Education Assistant Act**, passed in 1975. It is commonly known as either the ISDA for its letters or **Public Law 93 638**. So you will hear 638 contracts, you will hear a lot things about that or IDSA or self-determination. Those are all different terms that you will use.

What this law basically said is it is very important for there to be maximum participation in the direction of federal services to Indian communities by Indians. So that those services then become responsive to the needs and desires of those communities. Tying much closely what the program is going to do to the people who are going to receive those program services. It absolutely and positively asserts that it will be maintaining the federal government's trust relationship to Indians and our responsibilities under the law to Indians and tribes.

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However, it also establishes meaningful Indian self determination so that the federal programs that are currently being offered to Indian individuals will slowly be transferred to tribes to administer because tribes are closer to the beneficiaries of those programs and presumably have a much better idea on how to best to serve their Indian people.

And finally, the transfer of this organizational and administrative authority will strengthen tribal governments and tribal communities so that they can additionally provide support for their communities. So in a practical sense, what the IDSA does it allows tribes to take over the management and the delivery of federal programs that had previously been provided directly by Bureau Indian Affairs employees or Indian Health Service employees or in some cases other federal agencies such as BLM.

638 Contracting

This process is known as 638 from the law's number. **638 contracting** because the tribe enters into a contract with the federal agency in which it says we will now run the program that you previously use to run.

You provide us with the federal funding that you would have run that program with and we will now run the program for you. Now as the years went on from 1975 through the next couple of decades, as this became adopted in much of Indian country and became successful, the tribes pointed out to Congress certain things that they didn't like about the law and that they wanted to change.

And one of the major changes that have occurred is what's called the Self Governance Program and that is an extension of self determination contracting to allow all of the contracts to be combined into a single document, the money to be combined into a single amount and the authority granted to tribes to re-design and restructure those programs to better serve their Indian communities.

These programs are not just what you would consider the social services programs but include and will involve in your circumstances when you are out there doing surveys, natural

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resource programs such as the forestry programs and the realty programs, grazing and things like that that are very much tied to the land. This most recent era also emphasizes very much consultation with tribes before the federal government takes any action.

Handout seven is an Executive Order issued by President Clinton that establishes fundamental principles about consultation and it requires each federal agency to have a process that ensures meaningful and timely input by tribal officials into the development of regulatory policies and laws that implicate tribes. This document acknowledges that the United States has a unique relationship to tribes. We are not getting rid of that relationship but that tribes also have innate rights to self-government, sovereignty and self-determination.



HANDOUT A full version of this handout can be found in the Handout section at the end of this study guide. (Handout -7)

Finally and has been brought to mind most recently through quite a bit of litigation that has been going on now in the courts is that there has been a returned interest to and emphasis on the concept of trust responsibility in the federal government.

In 1994 Congress passed a statute that created a position called the **special trustee** and that is an entity within the Department of the Interior whose role and responsibility is to oversee some trust reform efforts to improve the delivery trust services to tribes and Indians and this focuses on those assets that are held in trust.

This is the program that focuses on the land based programs, realty, forestry, oil and gas and other mineral development, those things kinds of things that have an asset involved to them as opposed to the social programs. So this is focused very heavily on making sure that the responsibilities and the management that is being carried out federal government meets its trust responsibility.

And that covers all of the federal agencies that impact those assets. So for example its more than just the Bureau of Indian Affairs but the BLM through the surveying responsibility is involved. Entities like the minerals management may be involved if you are talking about oil and gas and mineral auditing and royalties.

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Results of Constant Change

So in summary, you can say that the situation we are in right now is really the child of the continuing changing federal policies. If you go all the way back to the very first era where it was very important for the federal government to establish its primacy in the relationship between the federal government in that 1790 Trade And Intercourse Act.

That Act is still on the books and that Act is still applicable and little bits and pieces of each of those eras remain even in the middle of termination which was completely discarded the laws that granted states some civil and criminal jurisdiction still exist. And yet imposed on top of that are the recent self-determination, self-government and trust responsibility policy initiatives. So all of these keep layering on, one on top of the other.

Now at its very core however what has never changed is that this system in this relationship has at its entity the federal role is primary, absolutely primary. And that basically is not going to change, I don't think.

What will change is how the Indian communities react to that federal role and that is continually changing to the extent they wish to take over federal programs or they don't wish to take over federal programs and the emphasis now is on their choice, their in charge of deciding how these federal programs are going to be run and it is less an imposition by the federal government as an establishment by the tribe as to how much of those programs they want to run and how they want to run them.

I'd like to close with a quote from an Indian anthropologist. Now this quote is nearly thirty years old, I guess it is thirty years old right now, 1975 is when the quote was. But it will last and it has lasting value as to his description of Indian communities.

After reviewing all of what had happened to and all they have been exposed to he says, "What was not anticipated, even by the early social scientist, was the tendency of human societies to regenerate themselves keeping what is useful from the past and fitting the new into the old patterns, sometimes incongruously to make a working system.

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Indian societies did not disappear by assimilating to the dominate white culture as predicted but assimilated to themselves bits and pieces of the surrounding cultural environment and they remained indubitably Indians whether their constitutes lived in a tight Indian community or whether they commuted between that community and the urban job market.” That was Darcey McNichol from *They Came Here First*.



HANDOUT

INDIAN LAND LAW HANDOUT #1

TREATIES.

TREATY WITH THE DELAWARES, 1778.

Articles of agreement and confederation, made and entered into by Andrew and Thomas Lewis, Esquires, Commissioners for, and in Behalf of the United States of North-America of the one Part, and Capt. White Eyes, Capt. John Kill Buck, Junior, and Capt. Pipe, Deputies and Chief Men of the Delaware Nation of the other Part.

Sept. 17, 1778.

7 Stat., 13.

ARTICLE I.

That all offences or acts of hostilities by one, or either of the contracting parties against the other, be mutually forgiven, and buried in the depth of oblivion, never more to be had in remembrance.

All offenses mutually forgiven.

ARTICLE II.

That a perpetual peace and friendship shall from henceforth take place, and subsist between the contracting parties aforesaid, through all succeeding generations: and if either of the parties are engaged in a just and necessary war with any other nation or nations, that then each shall assist the other in due proportion to their abilities, till their enemies are brought to reasonable terms of accommodation: and that if either of them shall discover any hostile designs forming against the other, they shall give the earliest notice thereof, that timeous measures may be taken to prevent their ill effect.

Peace and friendship perpetual.
In case of war, each party to assist the other.

ARTICLE III

And whereas the United States are engaged in a just and necessary war, in defence and support of life, liberty and independence, against the King of England and his adherents, and as said King is yet possessed of several posts and forts on the lakes and other places, the reduction of which is of great importance to the peace and security of the contracting parties, and as the most practicable way for the troops of the United States to some of the posts and forts is by passing through the country of the Delaware nation, the aforesaid deputies, on behalf of themselves and their nation, do hereby stipulate and agree to give a free passage through their country to the troops aforesaid, and the same to conduct by the nearest and best ways to the posts, forts or towns of the enemies of the United States, affording to said troops such supplies of corn, meat, horses, or whatever may be in their power for the accommodation of such troops, on the commanding officer's, &c. paying, or engaging to pay, the full value of whatever they can supply them with. And the said deputies, on the behalf of their nation, engage to join the troops of the United States aforesaid, with such a number of their best and most expert warriors as they can spare, consistent with their own safety, and act in concert with them; and for the better security of the old men, women and children of the aforesaid nation, whilst their warriors are engaged against the common enemy, it is agreed on the part of the United States, that a fort of suf-

United States to have free passage to forts or towns of their enemies.

Such warriors as can be spared, to join the troops of the United States.

ficient strength and capacity be built at the expense of the said States, with such assistance as it may be in the power of the said Delaware Nation to give, in the most convenient place, and advantageous situation, as shall be agreed on by the commanding officer of the troops aforesaid, with the advice and concurrence of the deputies of the aforesaid Delaware Nation, which fort shall be garrisoned by such a number of the troops of the United States, as the commanding officer can spare for the present, and hereafter by such numbers, as the wise men of the United States in council, shall think most conducive to the common good.

ARTICLE IV.

Neither party to inflict punishment without an impartial trial.

Nor protect criminal fugitives, etc.

For the better security of the peace and friendship now entered into by the contracting parties, against all infractions of the same by the citizens of either party, to the prejudice of the other, neither party shall proceed to the infliction of punishments on the citizens of the other, otherwise than by securing the offender or offenders by imprisonment, or any other competent means, till a fair and impartial trial can be had by judges or juries of both parties, as near as can be to the laws, customs and usages of the contracting parties and natural justice: The mode of such trials to be hereafter fixed by the wise men of the United States in Congress assembled, with the assistance of such deputies of the Delaware nation, as may be appointed to act in concert with them in adjusting this matter to their mutual liking. And it is further agreed between the parties aforesaid, that neither shall entertain or give countenance to the enemies of the other, or protect in their respective states, criminal fugitives, servants or slaves, but the same to apprehend, and secure and deliver to the State or States, to which such enemies, criminals, servants or slaves respectively belong.

ARTICLE V.

Agent to be appointed by the United States to trade with the Delaware Nation.

Whereas the confederation entered into by the Delaware nation and the United States, renders the first dependent on the latter for all the articles of clothing, utensils and implements of war, and it is judged not only reasonable, but indispensably necessary, that the aforesaid Nation be supplied with such articles from time to time, as far as the United States may have it in their power, by a well-regulated trade, under the conduct of an intelligent, candid agent, with an adequate salary, one more influenced by the love of his country, and a constant attention to the duties of his department by promoting the common interest, than the sinister purposes of converting and binding all the duties of his office to his private emolument: Convinced of the necessity of such measures, the Commissioners of the United States, at the earnest solicitation of the deputies aforesaid, have engaged in behalf of the United States, that such a trade shall be afforded said nation, conducted on such principles of mutual interest as the wisdom of the United States in Congress assembled shall think most conducive to adopt for their mutual convenience.

ARTICLE VI.

United States guarantee to them all territorial rights as bounded by former treaties.

Whereas the enemies of the United States have endeavored, by every artifice in their power, to possess the Indians in general with an opinion, that it is the design of the States aforesaid, to extirpate the Indians and take possession of their country: to obviate such false suggestion, the United States do engage to guarantee to the aforesaid nation of Delawares, and their heirs, all their territorial rights in the fullest and most ample manner, as it hath been bounded by former treaties, as long as they the said Delaware nation shall abide by, and hold fast the chain

of friendship now entered into. And it is further agreed on between the contracting parties should it for the future be found conducive for the mutual interest of both parties to invite any other tribes who have been friends to the interest of the United States, to join the present confederation, and to form a state whereof the Delaware nation shall be the head, and have a representation in Congress: Provided, nothing contained in this article to be considered as conclusive until it meets with the approbation of Congress. And it is also the intent and meaning of this article, that no protection or countenance shall be afforded to any who are at present our enemies, by which they might escape the punishment they deserve.

To have a representation in Congress on certain conditions.

In witness whereof, the parties have hereunto interchangeably set their hands and seals, at Fort Pitt, September seventeenth, anno Domini one thousand seven hundred and seventy-eight.

Andrew Lewis,	[L. S.]
Thomas Lewis,	[L. S.]
White Eyes, his x mark,	[L. S.]
The Pipe, his x mark,	[L. S.]
John Kill Buck, his x mark,	[L. S.]

In presence of—

Lach'n McIntosh, brigadier-general, commander the Western Department.
 Daniel Brodhead, colonel Eighth Pennsylvania Regiment,
 W. Crawford, colonel,
 John Campbell,
 John Stephenson,
 John Gibson, colonel Thirteenth Virginia Regiment,
 A. Graham, brigade major,
 Lach. McIntosh, jr., major brigade,
 Benjamin Mills,
 Joseph L. Finley, captain Eighth Pennsylvania Regiment,
 John Finley, captain Eighth Pennsylvania Regiment.

TREATY WITH THE SIX NATIONS, 1784.

Oct. 22, 1784.

7 Stat., 15.

Articles concluded at Fort Stanwix, on the twenty-second day of October, one thousand seven hundred and eighty-four, between Oliver Wolcott, Richard Butler, and Arthur Lee, Commissioners Plenipotentiary from the United States, in Congress assembled, on the one Part, and the Sachems and Warriors of the Six Nations, on the other.

The United States of America give peace to the Senecas, Mohawks, Onondagas and Cayugas, and receive them into their protection upon the following conditions:

ARTICLE I.

Six hostages shall be immediately delivered to the commissioners by the said nations, to remain in possession of the United States, till all the prisoners, white and black, which were taken by the said Senecas, Mohawks, Onondagas and Cayugas, or by any of them, in the late war, from among the people of the United States, shall be delivered up.

Hostages to be given till prisoners are delivered up.

ARTICLE II.

The Oneida and Tuscarora nations shall be secured in the possession of the lands on which they are settled.

Possession of lands secured.

INDIAN LAND LAW HANDOUT #2

TWENTY-THIRD CONGRESS. SESS. I. CH. 161. 1834.

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money in the treasury not otherwise appropriated, be, and is hereby, appropriated, and placed at the disposal of the Secretary of the Navy.

APPROVED, June 30, 1834.

STATUTE I.

CHAP. CLXI.—*An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers. (a)* June 30, 1834.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That all that part of the United States west of the Mississippi, and not within the states of Missouri and Louisiana, or the territory of Arkansas, and, also, that part of the United States east of the Mississippi river, and not within any state to which the Indian title has not been extinguished, for the purposes of this act, be taken and deemed to be the Indian country.

Parts of territory of United States to be deemed Indian country.

SEC. 2. *And be it further enacted,* That no person shall be permitted to trade with any of the Indians (in the Indian country) without a license therefor from a superintendent of Indian affairs, or Indian agent, or sub-agent, which license shall be issued for a term not exceeding two years for the tribes east of the Mississippi, and not exceeding three years for the tribes west of that river. And the person applying for such license shall give bond in a penal sum not exceeding five thousand dollars, with one or more sureties, to be approved by the person issuing the same, conditioned that such person will faithfully observe all the laws and regulations made for the government of trade and intercourse with the Indian tribes, and in no respect violate the same. And the superintendent of the district shall have power to revoke and cancel the same, whenever the person licensed shall, in his opinion, have transgressed any of the laws or regulations provided for the government of trade and intercourse with the Indian tribes, or that it would be improper to permit him to remain in the Indian country. And no trade with the said tribes shall be carried on within their boundary, except at certain suitable and convenient places, to be designated from time to time by the superintendents, agents, and sub-agents, and to be inserted in the license. And it shall be the duty of the persons granting or revoking such licenses, forthwith to report the same to the commissioner of Indian affairs, for his approval or disapproval.

Persons trading with Indians to be licensed.

SEC. 3. *And be it further enacted,* That any superintendent or agent may refuse an application for a license to trade, if he is satisfied that the applicant is a person of bad character, or that it would be improper to permit him to reside in the Indian country, or if a license, previously granted to such applicant, has been revoked, or a forfeiture of his bond decreed. But an appeal may be had from the agent or the superintendent, to the commissioner of Indian affairs; and the President of the United States shall be authorized, whenever in his opinion the public interest may require the same, to prohibit the introduction of goods, or of any particular article, into the country belonging to any Indian tribe, and to direct all licenses to trade with such tribe to be revoked, and all applications therefor to be rejected; and no trader to any other tribe shall, so long as such prohibition may continue, trade with any Indians of or for the tribe against which such prohibition is issued.

License may be refused, or, if granted, may be revoked.

SEC. 4. *And be it further enacted,* That any person other than an Indian who shall attempt to reside in the Indian country as a trader, or to introduce goods, or to trade therein without such license, shall forfeit all mer-

Forfeiture of goods and fine for trading without license.

(a) Notes of the acts for the preservation of peace with the Indian tribes, vol. ii. p. 6.
Notes of the regulations of intercourse with the Indian tribes, vol. ii. p. 139.
Notes of the decisions of the Supreme Court of the United States on the subject of the Indians, vol. ii. p. 146.

Note of obsolete acts relating to trading houses with the Indians, vol. ii. p. 652.

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	chandise offered for sale to the Indians, or found in his possession, and shall moreover forfeit and pay the sum of five hundred dollars.
Citizens only to be licensed.	SEC. 5. <i>And be it further enacted</i> , That no license to trade with the Indians shall be granted to any persons except citizens of the United States: <i>Provided</i> , That the President shall be authorized to allow the employment of foreign boatmen and interpreters, under such regulations as he may prescribe.
Proviso.	
Foreigners to obtain passports to go into the Indian country.	SEC. 6. <i>And be it further enacted</i> , That if a foreigner shall go into the Indian country without a passport from the War Department, the superintendent, agent, or sub-agent of Indian affairs, or from the officer of the United States commanding the nearest military post on the frontiers, or shall remain intentionally therein after the expiration of such passport, he shall forfeit and pay the sum of one thousand dollars; and such passport shall express the object of such person, the time he is allowed to remain, and the route he is to travel.
Indians only to barter with Indians.	SEC. 7. <i>And be it further enacted</i> , That if any person other than an Indian shall, within the Indian country, purchase or receive of any Indian, in the way of barter, trade, or pledge, a gun, trap, or other article commonly used in hunting, any instrument of husbandry or cooking utensils of the kind commonly obtained by the Indians in their intercourse with the white people, or any other article of clothing, except skins or furs, he shall forfeit and pay the sum of fifty dollars.
No other persons than Indians to trap in their limits.	SEC. 8. <i>And be it further enacted</i> , That if any person, other than an Indian, shall, within the limits of any tribe with whom the United States shall have existing treaties, hunt, or trap, or take and destroy, any peltries or game, except for subsistence in the Indian country, such person shall forfeit the sum of five hundred dollars, and forfeit all the traps, guns, and ammunition in his possession, used or procured to be used for that purpose, and peltries so taken.
Cattle not to be driven for forage on Indian lands.	SEC. 9. <i>And be it further enacted</i> , That if any person shall drive, or otherwise convey any stock of horses, mules, or cattle, to range and feed on any land belonging to any Indian or Indian tribe, without the consent of such tribe, such person shall forfeit the sum of one dollar for each animal of such stock.
Intruders may be removed.	SEC. 10. <i>And be it further enacted</i> , That the superintendent of Indian affairs, and Indian agents and sub-agents, shall have authority to remove from the Indian country all persons found therein contrary to law; and the President of the United States is authorized to direct the military force to be employed in such removal.
Settlers may be driven off by military force.	SEC. 11. <i>And be it further enacted</i> , That if any person shall make a settlement on any lands belonging, secured, or granted by treaty with the United States to any Indian tribe, or shall survey or shall attempt to survey such lands, or designate any of the boundaries by marking trees, or otherwise, such offender shall forfeit and pay the sum of one thousand dollars. And it shall, moreover, be lawful for the President of the United States to take such measures, and to employ such military force, as he may judge necessary to remove from the lands as aforesaid any such person as aforesaid.
Purchases or grants from Indians invalid.	SEC. 12. <i>And be it further enacted</i> , That no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the constitution. And if any person, not employed under the authority of the United States, shall attempt to negotiate such treaty or convention, directly or indirectly, to treat with any such nation or tribe of Indians, for the title or purchase of any lands by them held or claimed, such person shall forfeit and pay one thousand dollars: <i>Provided, nevertheless</i> , That it shall be lawful for the agent or agents of any state who may be present at any treaty held with Indians under the authority of the United States, in the presence and with the approbation of the commissioner or commis-
Proviso.	

sioners of the United States appointed to hold the same, to propose to, and adjust with the Indians, the compensation to be made for their claim to lands within such state, which shall be extinguished by treaty.

SEC. 13. *And be it further enacted*, That if any citizen or other person residing within the United States or the territory thereof, shall send any talk, speech, message, or letter to any Indian nation, tribe, chief, or individual, with an intent to produce a contravention or infraction of any treaty or other law of the United States, or to disturb the peace and tranquillity of the United States, he shall forfeit and pay the sum of two thousand dollars.

Penalty for sending any talk, &c. to disturb the peace.

SEC. 14. *And be it further enacted*, That if any citizen, or other person, shall carry or deliver any such talk, message, speech, or letter, to or from any Indian nation, tribe, chief, or individual, from or to any person or persons whatsoever, residing within the United States, or from or to any subject, citizen, or agent of any foreign power or state, knowing the contents thereof, he shall forfeit and pay the sum of one thousand dollars.

Persons carrying such talk, &c. fined.

SEC. 15. *And be it further enacted*, That if any citizen or other person, residing or living among the Indians, or elsewhere within the territory of the United States, shall carry on a correspondence, by letter or otherwise, with any foreign nation or power, with an intent to induce such foreign nation or power to excite any Indian nation, tribe, chief, or individual, to war against the United States, or to the violation of any existing treaty; or in case any citizen or other person shall alienate, or attempt to alienate, the confidence of any Indian or Indians from the government of the United States, he shall forfeit the sum of one thousand dollars.

Persons corresponding with foreign powers, with similar intent, to be fined.

SEC. 16. *And be it further enacted*, That where, in the commission, by a white person, of any crime, offence, or misdemeanor, within the Indian country, the property of any friendly Indian is taken, injured or destroyed, and a conviction is had for such crime, offence, or misdemeanor, the person so convicted shall be sentenced to pay to such friendly Indian to whom the property may belong, or whose person may be injured, a sum equal to twice the just value of the property so taken, injured, or destroyed. And if such offender shall be unable to pay a sum at least equal to the just value or amount, whatever such payment shall fall short of the same shall be paid out of the treasury of the United States: *Provided*, That no such Indian shall be entitled to any payment, out of the treasury of the United States, for any such property, if he, or any of the nation to which he belongs, shall have sought private revenge, or attempted to obtain satisfaction by any force or violence: *And provided, also*, That if such offender cannot be apprehended and brought to trial, the amount of such property shall be paid out of the treasury, as aforesaid.

Property of friendly Indians injured or destroyed to be paid for in twice its value.

Proviso.

Proviso.

SEC. 17. *And be it further enacted*, That if any Indian or Indians, belonging to any tribe in amity with the United States, shall, within the Indian country, take or destroy the property of any person lawfully within such country, or shall pass from the Indian country into any state or territory inhabited by citizens of the United States, and there take, steal, or destroy, any horse, horses, or other property, belonging to any citizen or inhabitant of the United States, such citizen or inhabitant, his representative, attorney, or agent, may make application to the proper superintendent, agent, or sub-agent, who, upon being furnished with the necessary documents and proofs, shall, under the direction of the President, make application to the nation or tribe to which said Indian or Indians shall belong, for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction, in a reasonable time, not exceeding twelve months, it shall be the duty of such superintendent, agent, or sub-agent, to make return of his doings to the commissioner of Indian affairs, that such further steps may be taken as shall be proper, in the opinion of the

Indemnification to be made for property taken or destroyed in certain cases.

Proviso.	President, to obtain satisfaction for the injury; and, in the mean time, in respect to the property so taken, stolen or destroyed, the United States guaranty, to the party so injured, an eventual indemnification: <i>Provided</i> , That, if such injured party, his representative, attorney, or agent, shall, in any way, violate any of the provisions of this act, by seeking or attempting to obtain private satisfaction or revenge, he shall forfeit all claim upon the United States for such indemnification: <i>And provided, also</i> , That, unless such claim shall be presented within three years after the commission of the injury, the same shall be barred. And if the nation or tribe to which such Indian may belong, receive an annuity from the United States, such claim shall, at the next payment of the annuity, be deducted therefrom, and paid to the party injured; and, if no annuity is payable to such nation or tribe, then the amount of the claim shall be paid from the treasury of the United States: <i>Provided</i> , That nothing herein contained shall prevent the legal apprehension and punishment of any Indians having so offended.
Proviso.	
Superintendents, &c., may take depositions.	SEC. 18. <i>And be it further enacted</i> , That the superintendents, agents, and sub-agents, within their respective districts, be, and are hereby, authorized and empowered to take depositions of witnesses touching any depredations, within the purview of the two preceding sections of this act, and to administer an oath to the deponents.
Arrest and trial of accused Indians.	SEC. 19. <i>And be it further enacted</i> , That it shall be the duty of the superintendents, agents, and sub-agents, to endeavour to procure the arrest and trial of all Indians accused of committing any crime, offence, or misdemeanor, and all other persons who may have committed crimes or offences within any state or territory, and have fled into the Indian country, either by demanding the same of the chiefs of the proper tribe, or by such other means as the President may authorize; and the President may direct the military force of the United States to be employed in the apprehension of such Indians, and also, in preventing or terminating hostilities between any of the Indian tribes.
Penalty for disposing of spirituous liquors to Indians.	SEC. 20. <i>And be it further enacted</i> , That if any person shall sell, exchange, or give, barter, or dispose of, any spirituous liquor or wine to an Indian, (in the Indian country,) such person shall forfeit and pay the sum of five hundred dollars; and if any person shall introduce, or attempt to introduce, any spirituous liquor or wine into the Indian country, except such supplies as shall be necessary for the officers of the United States and troops of the service, under the direction of the War Department, such person shall forfeit and pay a sum not exceeding three hundred dollars; and if any superintendent of Indian affairs, Indian agent, or sub-agent, or commanding officer of a military post, has reason to suspect, or is informed, that any white person or Indian is about to introduce, or has introduced, any spirituous liquor or wine into the Indian country, in violation of the provisions of this section, it shall be lawful for such superintendent, Indian agent, or sub-agent, or military officer, agreeably to such regulations as may be established by the President of the United States, to cause the boats, stores, packages, and places of deposit of such person to be searched, and if any such spirituous liquor or wine is found, the goods, boats, packages, and peltries of such persons shall be seized and delivered to the proper officer, and shall be proceeded against by libel in the proper court, and forfeited, one-half to the use of the informer, and the other half to the use of the United States; and if such person is a trader, his license shall be revoked and his bond put in suit. And it shall moreover be lawful for any person, in the service of the United States, or for any Indian, to take and destroy any ardent spirits or wine found in the Indian country, excepting military supplies as mentioned in this section.
Search may be made for such liquors.	
Liquors may be destroyed.	SEC. 21. <i>And be it further enacted</i> , That if any person whatever shall, within the limits of the Indian country, set up or continue any distillery
Penalty for setting up a distillery.	

for manufacturing ardent spirits, he shall forfeit and pay a penalty of one thousand dollars; and it shall be the duty of the superintendent of Indian affairs, Indian agent, or sub-agent, within the limits of whose agency the same shall be set up or continued, forthwith to destroy and break up the same; and it shall be lawful to employ the military force of the United States in executing that duty.

SEC. 22. *And be it further enacted*, That in all trials about the right of property in which an Indian may be a party on one side, and a white person on the other, the burden of proof shall rest upon the white person, whenever the Indian shall make out a presumption of title in himself from the fact of previous possession or ownership.

Trials about property, burden of proof to rest on the white person.

SEC. 23. *And be it further enacted*, That it shall be lawful for the military force of the United States to be employed in such manner and under such regulations as the President may direct, in the apprehension of every person who shall or may be found in the Indian country, in violation of any of the provisions of this act, and him immediately to convey from said Indian country, in the nearest convenient and safe route, to the civil authority of the territory or judicial district in which said person shall be found, to be proceeded against in due course of law; and also, in the examination and seizure of stores, packages, and boats, authorized by the twentieth section of this act, and in preventing the introduction of persons and property into the Indian country contrary to law; which persons and property shall be proceeded against according to law: *Provided*, That no person apprehended by military force as aforesaid, shall be detained longer than five days after the arrest and before removal. And all officers and soldiers who may have any such person or persons in custody shall treat them with all the humanity which the circumstances will possibly permit; and every officer or soldier who shall be guilty of maltreating any such person while in custody, shall suffer such punishment as a court-martial shall direct.

Apprehension of persons violating the provisions of this act.

Proviso.

SEC. 24. *And be it further enacted*, That for the sole purpose of carrying this act into effect, all that part of the Indian country west of the Mississippi river, that is bounded north by the north line of lands assigned to the Osage tribe of Indians, produced east to the state of Missouri: west, by the Mexican possessions; south, by Red river; and east, by the west line of the territory of Arkansas and the state of Missouri, shall be, and hereby is, annexed to the territory of Arkansas; and that for the purpose aforesaid, the residue of the Indian country west of the said Mississippi river shall be, and hereby is, annexed to the judicial district of Missouri; and for the purpose aforesaid, the several portions of Indian country east of the said Mississippi river, shall be, and are hereby, severally annexed to the territory in which they are situate.

Indian country annexed, for legal purposes, to the district of Missouri, &c.

SEC. 25. *And be it further enacted*, That so much of the laws of the United States as provides for the punishment of crimes committed within any place within the sole and exclusive jurisdiction of the United States, shall be in force in the Indian country: *Provided*, The same shall not extend to crimes committed by one Indian against the person or property of another Indian.

Laws of the United States in force in certain cases.

Proviso.

SEC. 26. *And be it further enacted*, That if any person who shall be charged with a violation of any of the provisions or regulations of this act, shall be found within any of the United States, or either of the territories, such offenders may be there apprehended, and transported to the territory or judicial district having jurisdiction of the same.

Offenders against this act may be arrested in any state or territory.

SEC. 27. *And be it further enacted*, That all penalties which shall accrue under this act, shall be sued for and recovered in an action of debt, in the name of the United States, before any court having jurisdiction of the same, (in any state or territory in which the defendant shall be arrested or found,) the one half to the use of the informer, and the other half to the use of the United States, except when the prosecution

How penalties shall be sued for.

shall be first instituted on behalf of the United States, in which case the whole shall be to their use.

Proceedings
against goods or
other property.

SEC. 28. *And be it further enacted*, That when goods or other property shall be seized for any violation of this act, it shall be lawful for the person prosecuting on behalf of the United States to proceed against such goods, or other property, in the manner directed to be observed in the case of goods, wares, or merchandise brought into the United States in violation of the revenue laws.

Certain acts
and parts of
acts repealed.
Act of May 13,
1800, ch. 68.
Act of March
30, 1802, ch. 13.

SEC. 29. *And be it further enacted*, That the following acts and parts of acts shall be, and the same are hereby, repealed, namely: An act to make provision relative to rations for Indians, and to their visits to the seat of government, approved May thirteen, eighteen hundred; an act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, approved March thirty, eighteen hundred and two; an act supplementary to the act passed thirtieth March, eighteen hundred and two, to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, approved April twenty-nine, eighteen hundred and sixteen; an act for the punishment of crimes and offences committed within the Indian boundaries, approved March three, eighteen hundred and seventeen; the first and second sections of the act directing the manner of appointing Indian agents, and continuing the "Act establishing trading-houses with the Indian tribes," approved April sixteen, eighteen hundred and eighteen; an act fixing the compensation of Indian agents and factors, approved April twenty, eighteen hundred and eighteen; an act supplementary to the act entitled "An act to provide for the prompt settlement of public accounts," approved February twenty-four, eighteen hundred and nineteen; the eighth section of the act making appropriations to carry into effect treaties concluded with several Indian tribes therein mentioned, approved March three, eighteen hundred and nineteen; the second section of the act to continue in force for a further time the act entitled "An act for establishing trading-houses with the Indian tribes, and for other purposes," (a) approved March three, eighteen hundred and nineteen; an act to amend an act entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," approved thirtieth of March, eighteen hundred and two, approved May six, eighteen hundred and twenty-two; an act providing for the appointment of an agent for the Osage Indians west of the state of Missouri and territory of Arkansas, and for other purposes, approved May eighteen, eighteen hundred and twenty-four; the third, fourth, and fifth sections of "An act to enable the President to hold treaties with certain Indian tribes, and for other purposes," approved May twenty-five, eighteen hundred and twenty-four; the second section of the "Act to aid certain Indians of the Creek nation in their removal to the west of the Mississippi," approved May twenty, eighteen hundred and twenty-six; and an act to authorize the appointment of a sub-agent to the Winnebago Indians on Rock river, approved February twenty-five, eighteen hundred and thirty-one: *Provided, however*, That such repeal shall not effect [affect] any rights acquired, or punishments, penalties, or forfeitures incurred, under either of the acts or parts of acts, nor impair or affect the intercourse act of eighteen hundred and two, so far as the same relates to or concerns Indian tribes residing east of the Mississippi: *And provided also*, That such repeal shall not be construed to revive any acts or parts of acts repealed by either of the acts or sections herein described.

Act of April
29, 1816, ch. 165.

Act of March
3, 1817, ch. 43.
1817, ch. 92.
Act of April
16, 1818, ch. 66.

Act of April
20, 1818, ch. 104.

Act of Feb.
24, 1819, ch. 43.

Act of March
3, 1819, ch. 67.

Act of March
3, 1819, ch. 79.

Act of May 6,
1822, ch. 58.

Act of May 18,
1824, ch. 89.

Act of May 25,
1824, ch. 146.

Act of May 20,
1826, ch. 126.

Act of Feb.
25, 1831, ch. 32.

Proviso.

1802, ch. 13.

Proviso.

Agents for the
Western territory
to execute
duties, &c.

SEC. 30. *And be it further enacted*, That until a western territory shall be established, the two agents for the Western territory, as provided in the act for the organization of the Indian department, this day ap-

(a) This act is entitled "An act to continue in force, for a further time, the act entitled 'An act for establishing trading-houses with the Indian tribes, and for other purposes,'" March 3, 1819, ch. 79.

proved by the President, shall execute the duties of agents for such tribes as may be directed by the President of the United States. And it shall be competent for the President to assign to one of the said agents, in addition to his proper duties, the duties of superintendent for such district of country or for such tribes as the President may think fit. And the powers of the superintendent at St. Louis, over such district or tribes as may be assigned to such acting superintendent, shall cease: *Provided*, That no additional compensation shall be allowed for such services.

APPROVED, June 30, 1834.

STATUTE I.

CHAP. CLXII.—*An Act to provide for the organization of the department of Indian affairs.* (a) June 30, 1834.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the duties of the governors of the territories of Florida and Arkansas, as superintendents of Indian affairs, shall hereafter cease, and the duties of the governor of the territory of Michigan, as superintendent of Indian affairs, shall cease from and after the establishment of a new territory, embracing the country west of Lake Michigan, should such a territory be established. And while the governor of the said territory of Michigan continues to act as superintendent of Indian affairs, he shall receive therefor, the annual sum of one thousand dollars, in full of all allowances, emoluments, or compensation for services in said capacity.

Duties of governors of Florida and Arkansas as superintendents to cease.
Duties of governor of Michigan to cease.
Salary.

SEC. 2. *And be it further enacted*, That there shall be a superintendency of Indian affairs for all the Indian country not within the bounds of any state or territory west of the Mississippi river, the superintendent of which shall reside at St. Louis, and shall annually receive a salary of fifteen hundred dollars.

A superintendent to reside at St. Louis.

SEC. 3. *And be it further enacted*, That superintendents of Indian affairs shall, within their several superintendencies, exercise a general supervision and control over the official conduct and accounts of all officers and persons employed by the government in the Indian department, under such regulations as shall be established by the President of the United States; and may suspend such officers and persons from their office or employments, for reasons forthwith to be communicated to the Secretary of War.

Duties of superintendents.

SEC. 4. *And be it further enacted*, That the following Indian agents shall

- (a) *Acts relating to the Indians, passed subsequent to June 30, 1834.*
 An act to regulate, in certain cases, the disposition of the proceeds of land ceded by the Indian tribes, January 9, 1837, ch. 1.
 An act to extend the jurisdiction of the district court for the district of Arkansas, March 1, 1837, ch. 16.
 Provision for the removal of the Creeks, act of March 3, 1837, ch. 31.
 An act for the appointment of commissioners to adjust the claims to reservations of land under the fourteenth article of the treaty of 1830, with the Choctaw Indians, March 3, 1837, ch. 39.
 An act to authorize and sanction the sales of reserves provided for the Creek Indians in the treaty of March 24, 1832, in certain cases, and for other purposes, March 3, 1837, ch. 41.
 An act to provide for the payment of the annuities which will become due and payable to the Great and Little Osages, in the year 1838, and for other purposes, January 16, 1838, ch. 3.
 An act to amend an act entitled "An act for the appointment of commissioners to adjust the claims to reservations of land under the fourteenth article of the treaty of 1830, with the Choctaw Indians," February 22, 1838, ch. 13.
 Choctaw lands reserved from sale or pre-emption, June 22, 1838, ch. 119, sec. 1.
 An act to authorize the issuing of patents to the last bona fide transferee of reservations under the treaty between the United States and the Creek tribe of Indians, which was concluded on the 24th March, 1832. July 5, 1838, ch. 161.
 An act to provide for the location and temporary support of the Seminole Indians removed from Florida, February 13, 1839, ch. 24.
 Brothertown Indians, March 3, 1839, ch. 83. Act of June 15, 1844, ch. 54.
 An act to provide for the satisfaction of claims arising under the fourteenth and nineteenth articles of the treaty of Dancing Rabbit Creek, concluded in September, 1830. August 23, 1842, ch. 187.
 An act supplementary to the act entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," passed 30th June, 1834. June 17, 1844, ch. 103.

INDIAN LAND LAW HANDOUT #3

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TREATY WITH THE CHOCTAW, 1830.

Wah-gho-num-pa, cotton wood on the neck, his x mark, [L. s.]	Cha-tun-kia, sparrow hawk, his x mark, [L. s.]
Zuyesaw, warrior, his x mark, [L. s.]	Ke-un-chun-ko, swift flyer, his x mark, [L. s.]
Tokun Ohomenee, revolving stone, his x mark, [L. s.]	Ti-ha-uhar, he that carries his horn, his x mark, [L. s.]
Eta-ga-nush-kica, mad face, his x mark, [L. s.]	Sin-ta-nomper, two tails, his x mark, [L. s.]
Womendee Dooter, red war eagle, his x mark, [L. s.]	Wo-con Cashtaka, the whiptspirit, his x mark, [L. s.]
Mucpea A-bar-ka, cloud elk, his x mark, [L. s.]	Ta Shena Pater, fiery blanket, his x mark, [L. s.]
To-ka-oh, wounds the enemy, his x mark, [L. s.]	
Pd-ta-sun eta womper, white buffalo with two faces, his x mark, [L. s.]	

In presence of—

Jno. Ruland, secretary to the commission.	David D. Mitchell,
Jon. L. Bean, special agent,	H. L. Donsman,
Law Taliaferro, Indian agent at St. Peters,	Wynkoop Warner,
R. B. Mason, captain, First Infantry,	Geo. Davenport,
G. Loomis, captain, First Infantry,	Wm. Hempstead,
James Peterson, lieutenant and adjutant,	Benjamin Mills,
H. B. M., Thirty-third Regiment,	Wm. H. Warfield, lieutenant, Third Infantry,
N. S. Harris, lieutenant and adjutant, regiment, U. S. Infantry,	Sam. R. Throokmoor,
Henry Bainbridge, lieutenant, U. S. Army,	John Connelly,
John Gale, surgeon, U. S. Army,	Amos Farror,
J. Archer, lieutenant, U. S. Army,	Antoine Le Claire, interpreter of Sacs and Foxes,
J. Dougherty, Indian agent,	Stephen Julian, United States interpreter,
Thos. A. Davies, lieutenant, infantry,	Jacques Mette, interpreter,
Wm. S. Williamson, sub-Indian agent,	Michel Berda, his x mark, Mohow interpreter,
And. S. Hughes, sub-Indian agent,	S. Campbell, United States interpreter.
A. G. Baldwin, lieutenant, Third Infantry,	

Witnesses to the signatures of the Yanc-ton and Santie bands of Sioux, at Fort Tecumseh, Upper Missouri, on the fourth day of September, 1830:

Wm. Gordon,
James Archdale Hamilton,
David D. Mitchell,
Wm. Saidlau,
Jacob Halsey.

Witnesses present at the signing and acknowledgment of the Yanc-ton and Santie Deputations:

Jno. Ruland, secretary to Commissioners.	William C. Heyward, U. S. Army,
Jon. L. Bean, sub-Indian agent for Upper Missouri,	D. J. Royster, U. S. Infantry,
Felix F. Wain, Indian agent for Sacs and Foxes,	Samuel Kinney, U. S. Army,
John F. A. Sanford, United States Indian agent.	Merewether Lewis Clark, Sixth Regiment Infantry,
	Jacques Mette.

TREATY WITH THE CHOCTAW, 1830.

Sept. 27, 1830.
7 Stat., 333.
Proclamation, Feb. 24, 1831.

A treaty of perpetual friendship, cession and limits, entered into by John H. Eaton and John Coffee, for and in behalf of the Government of the United States, and the Mingoies, Chiefs, Captains and Warriors of the Choctaw Nation, begun and held at Dancing Rabbit Creek, on the fifteenth of September, in the year eighteen hundred and thirty.

WHEREAS the General Assembly of the State of Mississippi has extended the laws of said State to persons and property within the chartered limits of the same, and the President of the United States has said that he cannot protect the Choctaw people from the operation

of these laws; Now therefore that the Choctaw may live under their own laws in peace with the United States and the State of Mississippi they have determined to sell their lands east of the Mississippi and have accordingly agreed to the following articles of treaty:^a

ARTICLE I. Perpetual peace and friendship is pledged and agreed upon by and between the United States and the Mingoes, Chiefs, and Warriors of the Choctaw Nation of Red People; and that this may be considered the Treaty existing between the parties all other Treaties heretofore existing and inconsistent with the provisions of this are hereby declared null and void.

Peace and friendship.

ARTICLE II. The United States under a grant specially to be made by the President of the U. S. shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian fork; if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning. The boundary of the same to be agreeably to the Treaty made and concluded at Washington City in the year 1825. The grant to be executed so soon as the present Treaty shall be ratified.

Country to be conveyed to Choctaws.

ARTICLE III. In consideration of the provisions contained in the several articles of this Treaty, the Choctaw nation of Indians consent and hereby cede to the United States, the entire country they own and possess, east of the Mississippi River; and they agree to move beyond the Mississippi River, early as practicable, and will so arrange their removal, that as many as possible of their people not exceeding one half of the whole number, shall depart during the falls of 1831 and 1832; the residue to follow during the succeeding fall of 1833; a better opportunity in this manner will be afforded the Government, to extend to them the facilities and comforts which it is desirable should be extended in conveying them to their new homes.

Country ceded to United States.

ARTICLE IV. The Government and people of the United States are hereby obliged to secure to the said Choctaw Nation of Red People the jurisdiction and government of all the persons and property that may be within their limits west, so that no Territory or State shall ever have a right to pass laws for the government of the Choctaw Nation of Red People and their descendants; and that no part of the land granted them shall ever be embraced in any Territory or State; but the U. S. shall forever secure said Choctaw Nation from, and against, all laws except such as from time to time may be enacted in their own National Councils, not inconsistent with the Constitution, Treaties, and Laws of the United States; and except such as may, and which have been enacted by Congress, to the extent that Congress under the Constitution are required to exercise a legislation over Indian Affairs. But the Choctaws, should this treaty be ratified, express a wish that Congress may grant to the Choctaws the right of punishing by their own laws, any white man who shall come into their nation, and infringe any of their national regulations.

Self-government secured to Choctaws.

ARTICLE V. The United States are obliged to protect the Choctaws from domestic strife and from foreign enemies on the same principles that the citizens of the United States are protected, so that whatever would be a legal demand upon the U. S. for defence or for wrongs committed by an enemy, on a citizen of the U. S. shall be equally binding in favor of the Choctaws, and in all cases where the Choctaws shall be called upon by a legally authorized officer of the U. S. to fight an enemy, such Choctaw shall receive the pay and other emoluments,

United States to protect Choctaws, etc.

^a This paragraph was not ratified.

<p>Offences against citizens of United States, etc.</p>	<p>which citizens of the U. S. receive in such cases, provided, no war shall be undertaken or prosecuted by said Choctaw Nation but by declaration made in full Council, and to be approved by the U. S. unless it be in self defence against an open rebellion or against an enemy marching into their country, in which cases they shall defend, until the U. S. are advised thereof.</p>
<p>Offences against Choctaws.</p>	<p>ARTICLE VI. Should a Choctaw or any party of Choctaws commit acts of violence upon the person or property of a citizen of the U. S. or join any war party against any neighbouring tribe of Indians, without the authority in the preceding article; and except to oppose an actual or threatened invasion or rebellion, such person so offending shall be delivered up to an officer of the U. S. if in the power of the Choctaw Nation, that such offender may be punished as may be provided in such cases, by the laws of the U. S.; but if such offender is not within the control of the Choctaw Nation, then said Choctaw Nation shall not be held responsible for the injury done by said offender.</p>
<p>Delivery of offenders.</p>	<p>ARTICLE VII. All acts of violence committed upon persons and property of the people of the Choctaw Nation either by citizens of the U. S. or neighbouring Tribes of Red People, shall be referred to some authorized Agent by him to be referred to the President of the U. S. who shall examine into such cases and see that every possible degree of justice is done to said Indian party of the Choctaw Nation.</p>
<p>Persons ordered from the nation, etc.</p>	<p>ARTICLE VIII. Offenders against the laws of the U. S. or any individual State shall be apprehended and delivered to any duly authorized person where such offender may be found in the Choctaw country, having fled from any part of U. S. but in all such cases application must be made to the Agent or Chiefs and the expense of his apprehension and delivery provided for and paid by the U. States.</p>
<p>Traders to require a written permit.</p>	<p>ARTICLE IX. Any citizen of the U. S. who may be ordered from the Nation by the Agent and constituted authorities of the Nation and refusing to obey or return into the Nation without the consent of the aforesaid persons, shall be subject to such pains and penalties as may be provided by the laws of the U. S. in such cases. Citizens of the U. S. travelling peaceably under the authority of the laws of the U. S. shall be under the care and protection of the nation.</p>
<p>Navigable streams, post-offices, and military posts.</p>	<p>ARTICLE X. No person shall expose goods or other article for sale as a trader, without a written permit from the constituted authorities of the Nation, or authority of the laws of the Congress of the U. S. under penalty of forfeiting the Articles, and the constituted authorities of the Nation shall grant no license except to such persons as reside in the Nation and are answerable to the laws of the Nation. The U. S. shall be particularly obliged to assist to prevent ardent spirits from being introduced into the Nation.</p>
<p>Intruders.</p>	<p>ARTICLE XI. Navigable streams shall be free to the Choctaws who shall pay no higher toll or duty than citizens of the U. S. It is agreed further that the U. S. shall establish one or more Post Offices in said Nation, and may establish such military post roads, and posts, as they may consider necessary.</p>
<p>Theft.</p>	<p>ARTICLE XII. All intruders shall be removed from the Choctaw Nation and kept without it. Private property to be always respected and on no occasion taken for public purposes without just compensation being made therefor to the rightful owner. If an Indian unlawfully take or steal any property from a white man a citizen of the U. S. the offender shall be punished. And if a white man unlawfully take or steal any thing from an Indian, the property shall be restored and the offender punished. It is further agreed that when a Choctaw shall be given up to be tried for any offence against the laws of the U. S. if unable to employ counsel to defend him, the U. S. will do it, that his trial may be fair and impartial.</p>
<p>Agent.</p>	<p>ARTICLE XIII. It is consented that a qualified Agent shall be appointed for the Choctaws every four years, unless sooner removed</p>

by the President; and he shall be removed on petition of the constituted authorities of the Nation, the President being satisfied there is sufficient cause shown. The Agent shall fix his residence convenient to the great body of the people; and in the selection of an Agent immediately after the ratification of this Treaty, the wishes of the Choctaw Nation on the subject shall be entitled to great respect.

ARTICLE XIV. Each Choctaw head of a family being desirous to remain and become a citizen of the States, shall be permitted to do so, by signifying his intention to the Agent within six months from the ratification of this Treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one half that quantity for each unmarried child which is living with him over ten years of age; and a quarter section to such child as may be under 10 years of age, to adjoin the location of the parent. If they reside upon said lands intending to become citizens of the States for five years after the ratification of this Treaty, in that case a grant in fee simple shall issue; said reservation shall include the present improvement of the head of the family, or a portion of it. Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity.

Choctaws wishing
to become citizens of
United States.

ARTICLE XV. To each of the Chiefs in the Choctaw Nation (to wit) Greenwood Laflore, Nutackachie, and Mushulatubbe there is granted a reservation of four sections of land, two of which shall include and adjoin their present improvement, and the other two located where they please but on unoccupied unimproved lands, such sections shall be bounded by sectional lines, and with the consent of the President they may sell the same. Also to the three principal Chiefs and to their successors in office there shall be paid two hundred and fifty dollars annually while they shall continue in their respective offices, except to Mushulatubbe, who as he has an annuity of one hundred and fifty dollars for life under a former treaty, shall receive only the additional sum of one hundred dollars, while he shall continue in office as Chief; and if in addition to this the Nation shall think proper to elect an additional principal Chief of the whole to superintend and govern upon republican principles he shall receive annually for his services five hundred dollars, which allowance to the Chiefs and their successors in office, shall continue for twenty years. At any time when in military service, and while in service by authority of the U. S. the district Chiefs under and by selection of the President shall be entitled to the pay of Majors; the other Chief under the same circumstances shall have the pay of a Lieutenant Colonel. The Speakers of the three districts, shall receive twenty-five dollars a year for four years each; and the three secretaries one to each of the Chiefs, fifty dollars each for four years. Each Captain of the Nation, the number not to exceed ninety-nine, thirty-three from each district, shall be furnished upon removing to the West, with each a good suit of clothes and a broad sword as an outfit, and for four years commencing with the first of their removal, shall each receive fifty dollars a year, for the trouble of keeping their people at order in settling; and whenever they shall be in military service by authority of the U. S. shall receive the pay of a captain.

Reservations for
chiefs.

Annuities.

Pay of chiefs, etc.

ARTICLE XVI. In wagons; and with steam boats as may be found necessary—the U. S. agree to remove the Indians to their new homes at their expense and under the care of discreet and careful persons, who will be kind and brotherly to them. They agree to furnish them with ample corn and beef, or pork for themselves and families for twelve months after reaching their new homes.

Removal of Indians.

It is agreed further that the U. S. will take all their cattle, at the valuation of some discreet person to be appointed by the President, and the same shall be paid for in money after their arrival at their

Cattle.

new homes; or other cattle such as may be desired shall be furnished them, notice being given through their Agent of their wishes upon this subject before their removal that time to supply the demand may be afforded.

Annuities under former treaties.

ARTICLE XVII. The several annuities and sums secured under former Treaties to the Choctaw nation and people shall continue as though this Treaty had never been made.

Further annuity.

And it is further agreed that the U. S. in addition will pay the sum of twenty thousand dollars for twenty years, commencing after their removal to the west, of which, in the first year after their removal, ten thousand dollars shall be divided and arranged to such as may not receive reservations under this Treaty.

Survey of ceded lands, etc.

ART. XVIII. The U. S. shall cause the lands hereby ceded to be surveyed; and surveyors may enter the Choctaw Country for that purpose, conducting themselves properly and disturbing or interrupting none of the Choctaw people. But no person is to be permitted to settle within the nation, or the lands to be sold before the Choctaws shall remove. And for the payment of the several amounts secured in this Treaty, the lands hereby ceded are to remain a fund pledged to that purpose, until the debt shall be provided for and arranged. And further it is agreed, that in the construction of this Treaty wherever well founded doubt shall arise, it shall be construed most favorably towards the Choctaws.

Reservations of land, for—

ARTICLE XIX. The following reservations of land are hereby admitted. To Colonel David Fulsom four sections of which two shall include his present improvement, and two may be located elsewhere, on unoccupied, unimproved land.

Certain individuals.

To I. Garland, Colonel Robert Cole, Tuppanahomer, John Pytchlynn, Charles Juzan, Johokebetubbe, Eaychahobia, Ofehoma, two sections, each to include their improvements, and to be bounded by sectional lines, and the same may be disposed of and sold with the consent of the President. And that others not provided for, may be provided for, there shall be reserved as follows:

Heads of families.

First. One section to each head of a family not exceeding Forty in number, who during the present year, may have had in actual cultivation, with a dwelling house thereon fifty acres or more. Secondly, three quarter sections after the manner aforesaid to each head of a family not exceeding four hundred and sixty, as shall have cultivated thirty acres and less than fifty, to be bounded by quarter section lines of survey, and to be contiguous and adjoining.

Third; One half section as aforesaid to those who shall have cultivated from twenty to thirty acres the number not to exceed four hundred. Fourth; a quarter section as aforesaid to such as shall have cultivated from twelve to twenty acres, the number not to exceed three hundred and fifty, and one half that quantity to such as shall have cultivated from two to twelve acres, the number also not to exceed three hundred and fifty persons. Each of said class of cases shall be subject to the limitations contained in the first class, and shall be so located as to include that part of the improvement which contains the dwelling house. If a greater number shall be found to be entitled to reservations under the several classes of this article, than is stipulated for under the limitation prescribed, then and in that case the Chiefs separately or together shall determine the persons who shall be excluded in the respective districts.

Captains.

Fifth; Any Captain the number not exceeding ninety persons, who under the provisions of this article shall receive less than a section, he shall be entitled, to an additional quantity of half a section adjoining to his other reservation. The several reservations secured under this article, may be sold with the consent of the President of the U. S. but should any prefer it, or omit to take a reservation for the quantity

he may be entitled to, the U. S. will on his removing pay fifty-cents an acre, after reaching their new homes, provided that before the first of January next they shall adduce to the Agent, or some other authorized person to be appointed, proof of his claim and the quantity of it. Sixth; likewise children of the Choctaw Nation residing in the Nation, who have neither father nor mother a list of which, with satisfactory proof of Parentage and orphanage being filed with Agent in six months to be forwarded to the War Department, shall be entitled to a quarter section of Land, to be located under the direction of the President, and with his consent the same may be sold and the proceeds applied to some beneficial purpose for the benefit of said orphans.

Orphans.

ARTICLE XX. The U. S. agree and stipulate as follows, that for the benefit and advantage of the Choctaw people, and to improve their condition, their shall be educated under the direction of the President and at the expense of the U. S. forty Choctaw youths for twenty years. This number shall be kept at school, and as they finish their education others, to supply their places shall be received for the period stated. The U. S. agree also to erect a Council House for the Nation at some convenient central point, after their people shall be settled; and a House for each Chief, also a Church for each of the three Districts, to be used also as school houses, until the Nation may conclude to build others; and for these purposes ten thousand dollars shall be appropriated; also fifty thousand dollars (viz.) twenty-five hundred dollars annually shall be given for the support of three teachers of schools for twenty years. Likewise there shall be furnished to the Nation, three Blacksmiths one for each district for sixteen years, and a qualified Mill Wright for five years; Also there shall be furnished the following articles, twenty-one hundred blankets, to each warrior who emigrates a rifle, moulds, wipers and ammunition. One thousand axes, ploughs, hoes, wheels and cards each; and four hundred looms. There shall also be furnished, one ton of iron and two hundred weight of steel annually to each District for sixteen years.

Stipulations by United States for the benefit of the Choctaws.

ARTICLE XXI. A few Choctaw Warriors yet survive who marched and fought in the army with General Wayne, the whole number stated not to exceed twenty.

Annuity to certain old warriors.

These it is agreed shall hereafter, while they live, receive twenty-five dollars a year; a list of them to be early as practicable, and within six months, made out, and presented to the Agent, to be forwarded to the War Department.

ARTICLE XXII. The Chiefs of the Choctaws who have suggested that their people are in a state of rapid advancement in education and refinement, and have expressed a solicitude that they might have the privilege of a Delegate on the floor of the House of Representatives extended to them. The Commissioners do not feel that they can under a treaty stipulation accede to the request, but at their desire, present it in the Treaty, that Congress may consider of, and decide the application.

Delegate to Congress.

Done, and signed, and executed by the commissioners of the United States, and the chiefs, captains, and head men of the Choctaw nation, at Dancing Rabbit creek, this 27th day of September, eighteen and thirty.

Jno. H. Eaton,	[L. S.]	Yobalarunehahubbee, his x mark,	[L. S.]
Jno. Coffee,	[L. S.]	Holubbee, his x mark,	[L. S.]
Greenwood Leflore,	[L. S.]	Robert Cole, his x mark,	[L. S.]
Musholatubbee, his x mark,	[L. S.]	Mokelareharhopin, his x mark,	[L. S.]
Nittucachee, his x mark,	[L. S.]	Lewis Perry, his x mark,	[L. S.]
Holartheroomah, his x mark,	[L. S.]	Artonamarstubby, his x mark,	[L. S.]
Hopiaunchahubbee, his x mark,	[L. S.]	Hopeatubbee, his x mark,	[L. S.]
Zishomingo, his x mark,	[L. S.]	Hoshahoomah, his x mark,	[L. S.]
Captainthalke, his x mark,	[L. S.]	Chuallahoomah, his x mark,	[L. S.]
James Shield, his x mark,	[L. S.]	Joseph Kincaide, his x mark,	[L. S.]
Pistiyubbee, his x mark,	[L. S.]	Eyarhocuttubbee, his x mark,	[L. S.]

Iyacherhopia, his x mark,	[L. S.]	Heshohomme, his x mark,	[L. S.]
Offahoomah, his x mark,	[L. S.]	John McKolbery, his x mark,	[L. S.]
Archalater, his x mark,	[L. S.]	Benjm. James, his x mark,	[L. S.]
Onnahubbee, his x mark,	[L. S.]	Tikbachahambe, his x mark,	[L. S.]
Pisinhocuttubbee, his x mark,	[L. S.]	Aholiktube, his x mark,	[L. S.]
Tullarhacher, his x mark,	[L. S.]	Walking Wolf, his x mark,	[L. S.]
Little leader, his x mark,	[L. S.]	John Waide, his x mark,	[L. S.]
Maanhutter, his x mark,	[L. S.]	Big Axe, his x mark,	[L. S.]
Cowehoomah, his x mark,	[L. S.]	Bob, his x mark,	[L. S.]
Tillamoer, his x mark,	[L. S.]	Tushkochaubbee, his x mark,	[L. S.]
Imnullacha, his x mark,	[L. S.]	Ittabe, his x mark,	[L. S.]
Artopilachubbee, his x mark,	[L. S.]	Tishowakayo, his x mark,	[L. S.]
Shupherunchahubbee, his x mark,	[L. S.]	Folehomo, his x mark,	[L. S.]
Nitterhoomah, his x mark,	[L. S.]	John Garland, his x mark,	[L. S.]
Oaklaryubbee, his x mark,	[L. S.]	Koshona, his x mark,	[L. S.]
Pukumna, his x mark,	[L. S.]	Ishleyohamube, his x mark,	[L. S.]
Arpalar, his x mark,	[L. S.]	Jacob Folsom,	[L. S.]
Holber, his x mark,	[L. S.]	William Foster,	[L. S.]
Hoparmingo, his x mark,	[L. S.]	Ontioerharcho, his x mark,	[L. S.]
Ispahoomah, his x mark,	[L. S.]	Hugh A. Foster,	[L. S.]
Tieberhoomah, his x mark,	[L. S.]	Pierre Juzan,	[L. S.]
Tishoholarter, his x mark,	[L. S.]	Jno. Pitchlynn, jr.,	[L. S.]
Mahayarchubbee, his x mark,	[L. S.]	David Folsom,	[L. S.]
Artooklubbetushpar, his x mark,	[L. S.]	Sholohommastube, his x mark,	[L. S.]
Metubbee, his x mark,	[L. S.]	Tesbo, his x mark,	[L. S.]
Arsarkatubbee, his x mark,	[L. S.]	Lauwechubee, his x mark,	[L. S.]
Issaterhoomah, his x mark,	[L. S.]	Hoshehammo, his x mark,	[L. S.]
Chohtahmatahah, his x mark,	[L. S.]	Ofenowo, his x mark,	[L. S.]
Tunnuppashubbee, his x mark,	[L. S.]	Ahekoche, his x mark,	[L. S.]
Okocharyer, his x mark,	[L. S.]	Kaloshoubé, his x mark,	[L. S.]
Hoshhopia, his x mark,	[L. S.]	Atoko, his x mark,	[L. S.]
Warsharshahopia, his x mark,	[L. S.]	Ishtemeleche, his x mark,	[L. S.]
Maarshunchahubbee, his x mark,	[L. S.]	Emtthohabe, his x mark,	[L. S.]
Misharyubbee, his x mark,	[L. S.]	Silas D. Fisher, his x mark,	[L. S.]
Daniel McCurtain, his x mark,	[L. S.]	Isaac Folsom, his x mark,	[L. S.]
Tushkerharcho, his x mark,	[L. S.]	Hekatable, his x mark,	[L. S.]
Hoktoontubbee, his x mark,	[L. S.]	Hakseche, his x mark,	[L. S.]
Nuknacrahookmarhee, his x mark,	[L. S.]	Jerry Carney, his x mark,	[L. S.]
Mingo hoomah, his x mark,	[L. S.]	John Washington, his x mark,	[L. S.]
James Karnes, his x mark,	[L. S.]	Panshastubbee, his x mark,	[L. S.]
Tishohakubbee, his x mark,	[L. S.]	P. P. Pitchlynn, his x mark,	[L. S.]
Narlanalar, his x mark,	[L. S.]	Joel H. Nail, his x mark,	[L. S.]
Pennasha, his x mark,	[L. S.]	Hopia Stonakey, his x mark,	[L. S.]
Inharyarker, his x mark,	[L. S.]	Kocohomma, his x mark,	[L. S.]
Mottubbee, his x mark,	[L. S.]	William Wade, his x mark,	[L. S.]
Narharyubbee, his x mark,	[L. S.]	Panshstickubbee, his x mark,	[L. S.]
Ishmaryubbee, his x mark,	[L. S.]	Holittankchahubbee, his x mark,	[L. S.]
James McKing,	[L. S.]	Oklanowa, his x mark,	[L. S.]
Lewis Wilson, his x mark,	[L. S.]	Neto, his x mark,	[L. S.]
Istonarkerharcho, his x mark,	[L. S.]	James Fletcher, his x mark,	[L. S.]
Hohinshamartarher, his x mark,	[L. S.]	Silas D. Pitchlynn,	[L. S.]
Kinsulachubbee, his x mark,	[L. S.]	William Trahorn, his x mark,	[L. S.]
Emarhinstubbee, his x mark,	[L. S.]	Toshkahemmitto, his x mark,	[L. S.]
Gysalndalra, bm, his x mark,	[L. S.]	Tethetayo, his x mark,	[L. S.]
Thomas Wall,	[L. S.]	Emokloshahopie, his x mark,	[L. S.]
Sam. S. Worcester,	[L. S.]	Tishoimita, his x mark,	[L. S.]
Arlartar, his x mark,	[L. S.]	Thomas W. Foster, his x mark,	[L. S.]
Nittahubbee, his x mark,	[L. S.]	Zadoc Brashears, his x mark,	[L. S.]
Tishonouan, his x mark,	[L. S.]	Levi Perkins, his x mark,	[L. S.]
Warsharchahoomah, his x mark,	[L. S.]	Isaac Perry, his x mark,	[L. S.]
Isaac James, his x mark,	[L. S.]	Ishlonocka Hoomah, his x mark,	[L. S.]
Hopaintushker, his x mark,	[L. S.]	Hiram King, his x mark,	[L. S.]
Aryoshkermer, his x mark,	[L. S.]	Ogla Enlah, his x mark,	[L. S.]
Shemotar, his x mark,	[L. S.]	Nultahubbee, his x mark,	[L. S.]
Hopaisketina, his x mark,	[L. S.]	Tuska Hollattuh, his x mark,	[L. S.]
Thomas Leflore, his x mark,	[L. S.]	Kothoantchahubbee, his x mark,	[L. S.]
Arnokechatubbee, his x mark,	[L. S.]	Evarpulubbee, his x mark,	[L. S.]
Shokoperlukna, his x mark,	[L. S.]	Okentahubbe, his x mark,	[L. S.]
Posherhoomah, his x mark,	[L. S.]	Living War Club, his x mark,	[L. S.]
Robert Folsom, his x mark,	[L. S.]	John Jones, his x mark,	[L. S.]
Arharyotubbee, his x mark,	[L. S.]	Charles Jones, his x mark,	[L. S.]
Kushonolarter, his x mark,	[L. S.]	Isaac Jones, his x mark,	[L. S.]
James Vaughan, his x mark,	[L. S.]	Hocklucha, his x mark,	[L. S.]
Phiлип, his x mark,	[L. S.]	Muscogee, his x mark,	[L. S.]
Meshameye, his x mark,	[L. S.]	Eden Nelson, his x mark,	[L. S.]
Ishteheka, his x mark,	[L. S.]		

In presence of—

E. Breathitt, secretary to the Commission,
William Ward, agent for Choctaws,
John Pitchlynn, United States interpreter,
M. Mackey, United States interpreter,
Geo. S. Gaines, of Alabama,
R. P. Currin,

Luke Howard,
Sam. S. Worcester,
Jno. N. Byrn,
John Bell,
Jno. Bond.

SUPPLEMENTARY ARTICLES TO THE PRECEDING TREATY.

Sept. 28, 1830.

7 Stat., 340.

Various Choctaw persons have been presented by the Chiefs of the nation, with a desire that they might be provided for. Being particularly deserving, an earnestness has been manifested that provision might be made for them. It is therefore by the undersigned commissioners here assented to, with the understanding that they are to have no interest in the reservations which are directed and provided for under the general Treaty to which this is a supplement.

As evidence of the liberal and kind feelings of the President and Government of the United States the Commissioners agree to the request as follows, (to wit) Pierre Juzan, Peter Pitchlynn, G. W. Harkins, Jack Pitchlynn, Israel Fulsom, Louis Laflore, Benjamin James, Joel H. Nail, Hopoyjahubbee, Onorkubbee, Benjamin Laflore, Michael Laflore and Allen Yates and wife shall be entitled to a reservation of two sections of land each to include their improvement where they at present reside, with the exception of the three first named persons and Benjamin Laflore, who are authorized to locate one of their sections on any other unimproved and unoccupied land, within their respective districts.

Reservations.

ARTICLE II. And to each of the following persons there is allowed a reservation of a section and a half of land, (to wit) James L. McDonald, Robert Jones, Noah Wall, James Campbell, G. Nelson, Vaughn Brashears, R. Harris, Little Leader, S. Foster, J. Vaughn, L. Durans, Samuel Long, T. Magagha, Thos. Everge, Giles Thompson, Tomas Garland, John Bond, William Laflore, and Turner Brashears, the two first named persons, may locate one section each, and one section jointly on any unimproved and unoccupied land, these not residing in the Nation; The others are to include their present residence and improvement.

Also one section is allowed to the following persons (to wit) Middleton Mackey, Wesley Train, Choclehomo, Moses Foster, D. W. Wall, Charles Scott, Molly Nail, Susan Colbert, who was formerly Susan James, Samuel Garland, Silas Fisher, D. McCurtain, Oklahoma, and Polly Fillecuthey, to be located in entire sections to include their present residence and improvement, with the exception of Molly Nail and Susan Colbert, who are authorized to locate theirs, on any unimproved unoccupied land.

John Pitchlynn has long and faithfully served the nation in character of U. States Interpreter, he has acted as such for forty years, in consideration it is agreed, in addition to what has been done for him there shall be granted to two of his children, (to wit) Silas Pitchlynn, and Thomas Pitchlynn one section of land each, to adjoin the location of their father; likewise to James Madison and Peter sons of Mushulatubbee one section of land each to include the old house and improvement where their father formerly lived on the old military road adjoining a large Prerarie.

And to Henry Groves son of the Chief Natticache there is one section of land given to adjoin his father's land.

And to each of the following persons half a section of land is granted on any unoccupied and unimproved lands in the Districts where they respectively live (to wit) Willis Harkins, James D. Hamilton, William

Juzan, Tobias Laflore, Jo Doke, Jacob Fulsom, P. Hays, Samuel Worcester, George Hunter, William Train, Robert Nail and Alexander McKee.

And there is given a quarter section of land each to Delila and her five fatherless children, she being a Choctaw woman residing out of the nation; also the same quantity to Peggy Trihan, another Indian woman residing out of the nation and her two fatherless children; and to the widows of Pushmilaha, and Pucktshenubbee, who were formerly distinguished Chiefs of the nation and for their children four quarter sections of land, each in trust for themselves and their children.

All of said last mentioned reservations are to be located under and by direction of the President of the U. States.

Exploring party.

ARTICLE III. The Choctaw people now that they have ceded their lands are solicitous to get to their new homes early as possible and accordingly they wish that a party may be permitted to proceed this fall to ascertain whereabouts will be most advantageous for their people to be located.

It is therefore agreed that three or four persons (from each of the three districts) under the guidance of some discreet and well qualified person or persons may proceed during this fall to the West upon an examination of the country.

For their time and expenses the U. States agree to allow the said twelve persons two dollars a day each, not to exceed one hundred days, which is deemed to be ample time to make an examination.

If necessary, pilots acquainted with the country will be furnished when they arrive in the West.

Reservation.

ARTICLE IV. John Donly of Alabama who has several Choctaw grand children, and who for twenty years has carried the mail through the Choctaw Nation, a desire by the Chiefs is expressed that he may have a section of land, it is accordingly granted, to be located in one entire section, on any unimproved and unoccupied land.

Debts to Glover and Gaines.

Allen Glover and George S. Gaines licensed Traders in the Choctaw Nation, have accounts amounting to upwards of nine thousand dollars against the Indians who are unable to pay their said debts without distressing their families; a desire is expressed by the chiefs that two sections of land be set apart to be sold and the proceeds thereof to be applied toward the payment of the aforesaid debts. It is agreed that two sections of any unimproved and unoccupied land be granted to George S. Gaines who will sell the same for the best price he can obtain and apply the proceeds thereof to the credit of the Indians on their accounts due to the before mentioned Glover and Gaines; and shall make the application to the poorest Indian first.

Reservation.

At the earnest and particular request of the Chief Greenwood Laflore there is granted to David Haley one half section of land to be located in a half section on any unoccupied and unimproved land as a compensation, for a journey to Washington City with dispatches to the Government and returning others to the Choctaw Nation.

The foregoing is entered into, as supplemental to the treaty concluded yesterday.

Done at Dancing Rabbit creek the 28th day of September, 1830.

Jno. H. Eaton,	[L. s.]	Robert Cole, his x mark,	[L. s.]
Jno. Coffee,	[L. s.]	Hopiaunchabubbee, his x mark,	[L. s.]
Greenwood Laflore,	[L. s.]	David Folsom,	[L. s.]
Nittucachee, his x mark,	[L. s.]	John Garland, his x mark,	[L. s.]
Mushulatubbee, his x mark,	[L. s.]	Hopiahoomah, his x mark,	[L. s.]
Offahoomah, his x mark,	[L. s.]	Captain Thalko, his x mark,	[L. s.]
Eyarhoeuttubbee, his x mark,	[L. s.]	Pierre Juzan,	[L. s.]
Iyaeherhopia, his x mark,	[L. s.]	Immarstarher, his x mark,	[L. s.]
Holubbee, his x mark,	[L. s.]	Hoshimhamartar, his x mark,	[L. s.]
Onarhubbee, his x mark,	[L. s.]		

In presence of—

E. Breathitt, Secretary to Commissioners,	R. P. Currin,
W. Ward, Agent for Choctaws,	Jno. W. Byrn,
M. Mackey, United States Interpreter,	Geo. S. Gaines.
John Pitchlynn, United States Interpreter,	

TREATY WITH THE MENOMINEE, 1831.

Articles of agreement made and concluded at the City of Washington, this eighth day of February, one thousand eight hundred and thirty-one, between John H. Eaton, Secretary of War, and Samuel C. Stambaugh, Indian Agent at Green Bay, specially authorized by the President of the United States, and the undersigned chiefs and head men of the Menomonee nation of Indians, fully authorized and empowered by the said nation, to conclude and settle all matters provided for by this agreement.

Feb. 8, 1831.
7 Stat., 342.
Proclamation, July 9, 1832.

THE Menomonee Tribe of Indians, by their delegates in council, this day, define the boundaries of their country as follows, to wit;

Boundaries of Menomonee country.

On the *east* side of Green Bay, Fox river, and Winnebago lake; beginning at the south end of Winnebago lake; thence southeastwardly to the Milwaukee or Manawauky river; thence down said river to its mouth at lake Michigan; thence north, along the shore of lake Michigan, to the mouth of Green Bay; thence up Green Bay, Fox river, and Winnebago lake, to the place of beginning. And on the *west* side of Fox river as follows: beginning at the mouth of Fox river, thence down the east shore of Green bay, and across its mouth, so as to include all the islands of the "Grand Traverse;" thence westerly, on the highlands between the lake Superior and Green bay, to the upper forks of the Menomonee river; thence to the Plover portage of the Wisconsin river; thence up the Wisconsin river, to the Soft Maple river; thence to the source of the Soft Maple river; thence west to the Plume river, which falls into the Chippeway river; thence down said Plume river to its mouth; thence down the Chippeway river thirty miles; thence easterly to the forks of the Manoy river, which falls into the Wisconsin river; thence down the said Manoy river to its mouth; thence down the Wisconsin river to the Wisconsin portage; thence across the said portage to the Fox river; thence down Fox river to its mouth at Green bay, or the place of beginning.

The country described within the above boundaries, the Menomonees claim as the exclusive property of their tribe. Not yet having disposed of any of their lands, they receive no annuities from the United States: whereas their brothers the Pootowottomees on the south, and the Winnebagoes on the west, have sold a great portion of their country, receive large annuities, and are now encroaching upon the lands of the Menomonees. For the purposes, therefore, of establishing the boundaries of their country, and of ceding certain portions of their lands to the United States, in order to secure great and lasting benefits to themselves and posterity, as well as for the purpose of settling the long existing dispute between themselves and the several tribes of the New York Indians, who claim to have purchased a portion of their lands, the undersigned, chiefs and headmen of the Menomonee tribe, stipulate and agree with the United States, as follows:

First. The Menomonee tribe of Indians declare themselves the friends and allies of the United States, under whose parental care and protection they desire to continue; and although always protesting that they are under no obligation to recognize any claim of the New York Indians to any portion of their country; that they neither sold nor

INDIAN LAND LAW HANDOUT#4

“Having failed to protect the Indians in the West from the onrush of white population, the federal government determined upon an all-out effort to turn the American Indians into Indian Americans, to destroy the tribal communities and to absorb the Indians as individuals into the mainstream of American society. Reforming groups like the Indian Rights Association, the Board of Indian Commissioners, and the Lake Mohonk Conference of Friends of the Indian campaigned mightily in the public press and in congressional halls to bring about the transformation. They insisted, above all, on breaking up the communal land holding patterns of the Indians and on the allotment of reservation lands as homesteads to individual Indian families in the pattern of white America. Thus individualized on his own parcel of land, encouraged to cultivate it for his livelihood and to improve it for his heirs, the Indian would be Christianized by zealous missionaries, educated in American customs at government schools, and soon disappear as a singular element in the body politic. ‘The Indian as a savage member of a tribal organization cannot survive, ought not to survive, the aggressions of civilization,’ the Indian Rights Association declared in a typical statement in 1884, ‘but his individual redemption from heathenism and ignorance, his transformation from the condition of a savage nomad to that of an industrious American citizen, is abundantly possible.’”

from Foreword by Francis Paul Prucha in Kenneth R. Philp's John Collier's Crusade for Indian Reform (Univ. of Arizona Press 1977).

INDIAN LAND LAW HANDOUT #5

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FORTY-NINTH CONGRESS. SESS. II. CHS. 105, 119. 1887.

Remedy by existing law not impaired.

SEC. 2. That nothing in this act contained shall prevent, lessen, impeach, or avoid any remedy at law or in equity which any owner of letters patent for a design, aggrieved by the infringement of the same, might have had if this act had not been passed; but such owner shall not twice recover the profit made from the infringement.

Approved, February 4, 1887.

Feb. 8, 1887.

CHAP. 119.—An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, either by treaty stipulation or by virtue of an act of Congress or executive order setting apart the same for their use, the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation or any part thereof of such Indians is advantageous for agricultural and grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed if necessary, and to allot the lands in said reservation in severalty to any Indian located thereon in quantities as follows:

Distribution.

To each head of a family, one-quarter of a section;

To each single person over eighteen years of age, one-eighth of a section;

To each orphan child under eighteen years of age, one-eighth of a section; and

To each other single person under eighteen years now living, or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-sixteenth of a section: *Provided*, That in case there is not sufficient land in any of said reservations to allot lands to each individual of the classes above named in quantities as above provided, the lands embraced in such reservation or reservations shall be allotted to each individual of each of said classes pro rata in accordance with the provisions of this act: *And provided further*, That where the treaty or act of Congress setting apart such reservation provides for the allotment of lands in severalty in quantities in excess of those herein provided, the President, in making allotments upon such reservation, shall allot the lands to each individual Indian belonging thereon in quantity as specified in such treaty or act: *And provided further*, That when the lands allotted are only valuable for grazing purposes, an additional allotment of such grazing lands, in quantities as above provided, shall be made to each individual.

Provisos.

Allotment pro rata if lands insufficient.

Allotment by treaty or act not reduced.

Additional allotment of lands fit for grazing only.

Selection of allotments.

Improvements.

Proviso.

On failure to select in four years, Secretary of the Interior may direct selection.

SEC. 2. That all allotments set apart under the provisions of this act, shall be selected by the Indians, heads of families selecting for their minor children, and the agents shall select for each orphan child, and in such manner as to embrace the improvements of the Indians making the selection. Where the improvements of two or more Indians have been made on the same legal subdivision of land, unless they shall otherwise agree, a provisional line may be run dividing said lands between them, and the amount to which each is entitled shall be equalized in the assignment of the remainder of the land to which they are entitled under this act: *Provided*, That if any one entitled to an allotment shall fail to make a selection within four years after the President shall direct that allotments may be made on a particular reservation, the Secretary of the Interior may direct the agent of such tribe or band, if such there be, and if there be no agent, then a special agent appointed for that purpose, to make a selection for such Indian, which election shall be allotted as in cases where selections are made by the Indians, and patents shall issue in like manner.

SEC. 3. That the allotments provided for in this act shall be made by special agents appointed by the President for such purpose, and the agents in charge of the respective reservations on which the allotments are directed to be made, under such rules and regulations as the Secretary of the Interior may from time to time prescribe, and shall be certified by such agents to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the General Land Office.

Allotments to be made by special agents and Indian agents.

Certificates.

SEC. 4. That where any Indian not residing upon a reservation, or whose tribe no reservation has been provided by treaty, act of Congress, or executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land-office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in this act for Indians residing upon reservations; and when such settlement is made upon unsurveyed lands, the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto; and patents shall be issued to them for such lands in the manner and with the restrictions as herein provided. And the fees to which the officers of such local land-office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them, from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Commissioner of the General Land Office, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior.

Indians not on reservations, etc., may make selection of public lands.

Fees to be paid from the Treasury.

SEC. 5. That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: *Provided*, That the President of the United States may in any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: *Provided*, That the law of descent and partition in force in the State or Territory where such lands are situated shall apply thereto after patents therefor have been executed and delivered, except as herein otherwise provided; and the laws of the State of Kansas regulating the descent and partition of real estate shall, so far as practicable, apply to all lands in the Indian Territory which may be allotted in severalty under the provisions of this act: *And provided further*, That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress, and the form and manner of executing such release shall also be

Patent to issue.

To be held in trust.

Conveyance in fee after 25 years.

Provided.

Period may be extended.

Laws of descent and partition.

Negotiations for purchase of lands not allotted.

Lands so bought to be held for actual settlers if arable.

Patent to issue only to person taking as homestead.

Purchase money to be held in trust for Indians.

Religious organizations.

Indians selecting lands to be preferred for police, etc.

Citizenship to be accorded to allottees and Indians adopting civilized life.

Secretary of the Interior to prescribe rules for use of waters for irrigation.

prescribed by Congress: *Provided however*, That all lands adapted to agriculture, with or without irrigation so sold or released to the United States by any Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers and shall be disposed of by the United States to actual and bona fide settlers only in tracts not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall prescribe, subject to grants which Congress may make in aid of education: *And provided further*, That no patents shall issue therefor except to the person so taking the same as and for a homestead, or his heirs, and after the expiration of five years occupancy thereof as such homestead; and any conveyance of said lands so taken as a homestead, or any contract touching the same, or lien thereon, created prior to the date of such patent, shall be null and void. And the sums agreed to be paid by the United States as purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of Indians; to whom such reservations belonged; and the same, with interest thereon at three per cent per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians or the members thereof. The patents aforesaid shall be recorded in the General Land Office, and afterward delivered, free of charge, to the allottee entitled thereto. And if any religious society or other organization is now occupying any of the public lands to which this act is applicable, for religious or educational work among the Indians, the Secretary of the Interior is hereby authorized to confirm such occupation to such society or organization, in quantity not exceeding one hundred and sixty acres in any one tract, so long as the same shall be so occupied, on such terms as he shall deem just; but nothing herein contained shall change or alter any claim of such society for religious or educational purposes heretofore granted by law. And hereafter in the employment of Indian police, or any other employes in the public service among any of the Indian tribes or bands affected by this act, and where Indians can perform the duties required, those Indians who have availed themselves of the provisions of this act and become citizens of the United States shall be preferred.

SEC. 6. That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property.

SEC. 7. That in cases where the use of water for irrigation is necessary to render the lands within any Indian reservation available for agricultural purposes, the Secretary of the Interior be, and he is hereby, authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such reservations; and no other appropriation or grant of water by any riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor.

25 Stat, 891

SEC. 8. That the provision of this act shall not extend to the territory occupied by the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, and Osage, Miamies and Peorias, and Sacs and Foxes, in the Indian Territory, nor to any of the reservations of the Seneca Nation of New York Indians in the State of New York, nor to that strip of territory in the State of Nebraska adjoining the Sioux Nation on the south added by executive order.

Lands excepted.

SEC. 9. That for the purpose of making the surveys and resurveys mentioned in section two of this act, there be, and hereby is, appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of one hundred thousand dollars, to be repaid proportionately out of the proceeds of the sales of such land as may be acquired from the Indians under the provisions of this act.

Appropriation for surveys.

SEC. 10. That nothing in this act contained shall be so construed as to affect the right and power of Congress to grant the right of way through any lands granted to an Indian, or a tribe of Indians, for railroads or other highways, or telegraph lines, for the public use, or to condemn such lands to public uses, upon making just compensation.

Rights of way not affected.

SEC. 11. That nothing in this act shall be so construed as to prevent the removal of the Southern Ute Indians from their present reservation in Southwestern Colorado to a new reservation by and with the consent of a majority of the adult male members of said tribe.

Southern Utes may be removed to new reservation.

Approved, February 8, 1887.

CHAP. 120.—An act to declare a forfeiture of lands granted to the New Orleans, Baton Rouge and Vicksburg Railroad Company, to confirm title to certain lands, and for other purposes.

Feb. 8, 1887.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the lands granted to the New Orleans, Baton Rouge and Vicksburg Railroad Company by the act entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes," approved March third, eighteen hundred and seventy-one, are hereby declared to be forfeited to the United States of America in all that part of said grant which is situate on the east side of the Mississippi River, and also in all that part of said grant on the west of the Mississippi River which is opposite to and coterminous with the part of the New Orleans Pacific Railroad Company which was completed on the fifth day of January, eighteen hundred and eighty-one; and said lands are restored to the public domain of the United States.

Certain lands granted to New Orleans, Baton Rouge and Vicksburg R. R. Co. forfeited. Vol. 16, p. 579.

SEC. 2. That the title of the United States and of the original grantee to the lands granted by said act of Congress of March third, eighteen hundred and seventy-one, to said grantee, the New Orleans, Baton Rouge and Vicksburg Railroad Company, not herein declared forfeited, is relinquished, granted, conveyed, and confirmed to the New Orleans Pacific Railroad Company, as the assignee of the New Orleans, Baton Rouge and Vicksburg Railroad Company, said lands to be located in accordance with the map filed by said New Orleans Pacific Railway Company in the Department of the Interior October twenty-seventh, eighteen hundred and eighty-one and November seventeenth, eighteen hundred and eighty-two, which indicate the definite location of said road: *Provided,* That all said lands occupied by actual settlers at the date of the definite location of said road and still remaining in their possession or in possession of their heirs or assigns shall be held and deemed excepted from said grant and shall be subject to entry under the public land laws of the United States.

Certain lands confirmed to New Orleans Pacific R. R. Co., assignee of New Orleans, Baton Rouge and Vicksburg R. R. Co.

Proviso. Lands of actual settlers at the time excepted.

SEC. 3. That the relinquishment of the lands and the confirmation of the grant provided for in the second sections of this act are made and shall take effect whenever the Secretary of the Interior is notified that

When grant to be in effect.

INDIAN LAND LAW HANDOUT #6

B132

CONCURRENT RESOLUTIONS—AUG. 1, 1953 [67 STAT.]

August 1, 1953
[H. Con. Res. 108]

INDIANS

Whereas it is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship; and

Whereas the Indians within the territorial limits of the United States should assume their full responsibilities as American citizens: Now, therefore, be it

Freedom from
Federal supervision.

Resolved by the House of Representatives (the Senate concurring), That it is declared to be the sense of Congress that, at the earliest possible time, all of the Indian tribes and the individual members thereof located within the States of California, Florida, New York, and Texas, and all of the following named Indian tribes and individual members thereof, should be freed from Federal supervision and control and from all disabilities and limitations specially applicable to Indians: The Flathead Tribe of Montana, the Klamath Tribe of Oregon, the Menominee Tribe of Wisconsin, the Potawatamie Tribe of Kansas and Nebraska, and those members of the Chippewa Tribe who are on the Turtle Mountain Reservation, North Dakota. It is further declared to be the sense of Congress that, upon the release of such tribes and individual members thereof from such disabilities and limitations, all offices of the Bureau of Indian Affairs in the States of California, Florida, New York, and Texas and all other offices of the Bureau of Indian Affairs whose primary purpose was to serve any Indian tribe or individual Indian freed from Federal supervision should be abolished. It is further declared to be the sense of Congress that the Secretary of the Interior should examine all existing legislation dealing with such Indians, and treaties between the Government of the United States and each such tribe, and report to Congress at the earliest practicable date, but not later than January 1, 1954, his recommendations for such legislation as, in his judgment, may be necessary to accomplish the purposes of this resolution.

Report to Congress.

Passed August 1, 1953.

August 3, 1953
[S. Con. Res. 36]

EAST GERMANY: FRIENDSHIP AND SYMPATHY OF AMERICAN PEOPLE

Whereas the brutal suppression by the Soviet Communist regime through the use of armed force and police terror of workers seeking the rights of free assembly and other rights assured to all in the free world; the persecutions of members of all religious faiths; the continuing servitude enforced upon the captive peoples; the systematic repression of all non-Communist political elements in the Soviet-dominated countries and most recently the acts against the people of Soviet-dominated countries, deserves strongest condemnation; and constitute (a) suppression of individual and human rights, and (b) persecution on account of race and religion; (c) violate the declarations in the Preamble to the Charter of the United Nations; and (d) violate the basic principles set forth in the American Declaration of Independence of 1776: “* * * that all men are created equal, that they are endowed by their Creator

59 Stat. 1031.
1 Stat. 1.

INDIAN LAND LAW HANDOUT #7

Ch. 14 MISCELLANEOUS

25 § 450

Pub.L. 103-413, Title I, § 101, Oct. 25, 1994, 108 Stat. 4250, provided that: "This title [enacting section 450l of this title and amending sections 450b, 450c, 450e, 450f, 450j, 450j-1, 450k, 450m, and 450m-1 of this title] may be cited as the 'Indian Self-Determination Contract Reform Act of 1994'."

Pub.L. 103-413, Title II, § 201, Oct. 25, 1994, 108 Stat. 4270, provided that: "This title [enacting sections 458aa to 458hh of this title and a provision set out as a note under section 458aa of this title] may be cited as the 'Tribal Self-Governance Act of 1994'."

1990 Amendments. Pub.L. 101-644, Title II, § 201, Nov. 29, 1990, 104 Stat. 4665, provided that: "This title [amending sections 450b, 450c, 450f, 450h, 450j, 450j-1 and 450k of this title] may be cited as the 'Indian Self-Determination and Education Assistance Act Amendments of 1990'."

1988 Amendments. Pub.L. 100-472, Title I, § 101, Oct. 5, 1988, 102 Stat. 2285, provided that: "This Act [enacting sections 450j-1 and 450m-1 of this title, amending sections 13a, 450a, 450b, 450c, 450f, 450g, 450h, 450i, 450j, 450k, and 450n of this title, sections 3371 and 3372 of Title 5, Government Organization and Employees, and section 2004b of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 450, 450f, and 472 of this title] may be cited as the 'Indian Self-Determination and Education Assistance Act Amendments of 1988'."

1975 Acts. Section 1 of Pub.L. 93-638 provided: "That this Act [enacting this subchapter and section 13a of this title and section 2004b of Title 42, The Public Health and Welfare, amending section

3371 of Title 5, Government Organization and Employees, section 4762 of Title 42, and section 456 of the Appendix to Title 50, War and National Defense, and enacting provisions set out as notes under sections 450f, 455, and 457 of this title] may be cited as the 'Indian Self-Determination and Education Assistance Act'."

Section 101 of Title I of Pub.L. 93-638 provided that: "This title [enacting part A of this subchapter and section 2004b of Title 42, The Public Health and Welfare, and amending section 3371 of Title 5, Government Organization and Employees, section 4762 of Title 42, and section 456 of Title 50, Appendix, War and National Defense] may be cited as the 'Indian Self-Determination Act'."

American Indian and Alaska Native Education

For provisions establishing an Interagency Task Force on American Indian and Alaska Native Education, to confer with the National Advisory Council on Indian Education and consult with representatives of American Indian and Alaska tribes and organizations, including the National Indian Education Association and the National Congress of American Indians, for the purpose of assisting the Federal Government in its commitment to improving the academic performance and reducing the dropout rate of American Indian and Alaska Native students by focusing on a series of stated goals, and describing Federal activities for the purpose of developing a long-term comprehensive Federal Indian education policy that will accomplish those goals, see Ex. Ord. No. 13096, Aug. 6, 1998, 63 F.R. 42681, set out as a note under section 7801 of Title 20, Education.

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 13084

Ex. Ord. No. 13084, May 14, 1998, 63 F.R. 27655, relating to consultation and coordination with Indian tribal govern-

ments, was revoked by Ex.Ord. No. 13175, Nov. 6, 2000, 65 F.R. 67249, set out as a note under this section.

EXECUTIVE ORDER NO. 13175

Nov. 6, 2000, 65 F.R. 67249

CONSULTATION AND COORDINATION WITH INDIAN TRIBAL GOVERNMENTS

By the authority vested in me as President by the Constitution and the laws of

the United States of America, and in or-

der to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

Section 1. Definitions. For purposes of this order:

(a) "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) "Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. Fundamental Principles. In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judi-

cial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. Policymaking Criteria. In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications: *67250

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian tribes to develop their own policies to achieve program objectives;

(2) where possible, defer to Indian tribes to establish standards; and

(3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. Special Requirements for Legislative Proposals. Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

Sec. 5. Consultation. (a) Each agency shall have an accountable process to

ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to

be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 6. Increasing Flexibility for Indian Tribal Waivers.

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 7. Accountability.

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. Independent Agencies. Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 9. General Provisions. (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 [5 U.S.C.A. § 601 note]

(Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform) [28 U.S.C.A. § 519 note], OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments [set out as a note under this section].

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

(c) Executive Order 13084 [May 14, 1998, 63 FR 27655 formerly set out as a note under this section] (Consultation and Coordination with Indian Tribal Governments) is revoked by Ex Ord 13175, Nov. 9, 2000, 65 FR 76251 at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

Sec. 10. Judicial Review. This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

WILLIAM J. CLINTON

MEMORANDA OF PRESIDENT

Apr. 29, 1994, 59 F.R. 22951

GOVERNMENT-TO-GOVERNMENT RELATIONS WITH NATIVE AMERICAN TRIBAL GOVERNMENTS

Memorandum for the Heads of Executive Departments and Agencies

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to

ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

Course 1: History, Records & Administrative Systems Study Guide

COURSE DESCRIPTION:

This is an introductory series of videos that establishes the context of the CFedS Program. Topics covered in this course include:

- Brief history of surveying as it relates to the United States
- Cultural Awareness
- History of Indian Land Law
- Bureau of Land Management and Bureau of Indian Affairs structures and records that each may have
- Basics of federal survey authority

COURSE OBJECTIVES:

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

- Review administrative functions, structures, and process of the Bureau of Land Management and the Bureau of Indian Affairs
- Increase awareness of cultural and historical legal issues when working in Indian Country
- Identify records sources for survey projects in Indian Country









COURSE INSTRUCTOR(S):

Dennis Mouland, Bureau of Land Management
 Dominica Van Koten, Bureau of Land Management
 Pricilla Wilfarht, Office of the Solicitor
 Colleen Kelly, Office of the Solicitor
 Ron Applebaum, Bureau of Indian Affairs (Ret.)

VIDEO LECTURE TITLE:

Indian Land Law – Part 2 (25 minutes)

ICON LEGEND

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

INDIAN LAND LAW – PART 2

Objectives

Hello again and welcome back. This lecture is going to be on Indian land laws and it will demonstrate that Indian trust land is treated differently from other federal government lands and also from private fee lands.

So understanding the current status of the law relating to Indian land requires an appreciation of the role that history plays and that I talked about in an earlier lecture and acceptance once again that the law is still changing and is still changing will probably change in the future. A key point to remember is that Indian land is managed for the benefit of the Indian owner and not for the benefit of the public or any federal agency's mission.

This section will also cover some issues that arise from the multi or fractional ownership character of much of the individually held Indian land and its going to end with a brief summary of some rules relating to management and preservation of Indian land records. I'm going to start by talking about the sources of Indian land laws. Sources include treaties, statutes, federal regulations and policies and the interpretation of all of those documents by the courts. All of those form the basis for our current Indian land law.

Treaties

Let's start with **treaties**. Now as I talked before in the Indian land history section, the earliest relationships were often expressed in treaties. And there were treaties between first the European powers, the different colonial powers and later by the United States and the tribes.

These treaties tend to focus almost exclusively on the acquisition of land for the non-Indian settlers and the comers to North America and focusing also on the preservation of peaceful relationships between Indians and non-Indians.

For the purpose for our discussion here about land law the treaties are primarily important because they often established **reservations** and they began the recognition of **Indian title** to

INDIAN LAND LAW – PART 2

land. Some treaties, in many cases, also reserved other rights that were either pertinent to lands on the reservation or off the reservation, such as the right to take fish, or harvest fish or hunt and gather in usual and accustomed areas.

Under the statute section of the sources of Indian law, we look first to the **U.S. Constitution**. Congress, in that Constitution, was authorized to exercise its power to regulate commerce with the Indian tribes. That is in Article 1, Section 8, Clause 3 of the Constitution.

And Congress quickly jumped into exercising that authority and enacted a series of statutes that focused on the regulation of non-Indian activity in the Indian territory. So this was soon after the Constitution was adopted. Under these statutes, trade with the Indians was restricted to licensed individuals and laws were established which dealt with crimes and trespasses against the Indians living there.

Of significance and lasting importance to land issues; in 1790 Congress enacted the first of a series of laws. You can now find it Volume 25 of the U.S. Code Section 177.



HANDOUT A full version of this handout can be found in the Handout section at the end of this study guide. (Handout – 1)

That is in handout two of the Indian land history class. And that sets the stage for all the other subsequent laws that Congress has passed relating to Indian lands. It is called the **Indian Non-intercourse Act** and it says, “no purchase, grant, lease or other conveyance of lands or of any title or claim thereto from any Indian nation or tribe shall be of any validity in law or equity unless the same be made by treaty or convention entered into pursuant to the Constitution.

” Now putting that into layman’s terms, it means that any land transaction, purchase, grant, lease or any other conveyance of a right or interest in land basically is void, invalid, of no effect unless the individual engaging in that transaction with the tribe does it pursuant to a statute that Congress has authorized them to use.

What it was intended to do was keep the federal government involved in every single transaction relating to Indian lands. The federal government wanted to know what was going on and

INDIAN LAND LAW – PART 2

wanted to control it.

Now the lasting power of that 1790 statute is demonstrated in lawsuits commonly known as the Eastern Indian Land Claims. And in those claims the tribes allege that their title to much of the land in states such as New York and New England states was never validly extinguished.

Because what happened of course is that after this statute was passed in some cases states entered into transactions in which the tribes conveyed their land to the states but they did it without the approval or involvement of the federal government.

The Supreme Court held in certain cases that those transactions were invalid. And the litigation is still going on in many cases and in other places after those lawsuits were first filed, Congress stepped in to settle the lawsuit by establishing a retro-active approval of that conveyance along with the conveyance of new lands to the tribes in recognitions of those tribes and in some cases money payments.

So this is still a very alive statute even from 1790. Now as a consequence of that if that's the starting point that you can't have a transaction related to Indian lands unless it is pursuant to another statute.

Since that time Congress has passed numerous statutes that do, in fact, allow transactions relating to Indian lands and what they are doing is allowing tribes and individual Indians to make economic use of their trust lands to the extent they want to. And of course these transactions also benefit the non-Indians that may be involved such as developers or mineral extraction companies, etc.

The other historical event that we spoke about briefly in the Indian land history section that has significantly changed Indian land law is the creation of individually held **Indian trust lands**.

So as we talked about in that section, originally all land was held communally by tribes and slowly through some treaties and then especially by the **General Allotment Act in 1887**, the tribal lands was in fact divided into allotments and ownership interest

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were conveyed to individual Indians and no longer did the tribe have an ownership interest in that property. So starting from the late 19th century, when Congress enacted legislation regarding Indian lands they began to distinguish between individual held trust lands and tribal trust lands in their legislation.

Rights-of-way

Complicating the situation, not only do we have two different types of Indian lands that we need to be concerned about, the fact of the matter is that Congress has rarely repealed laws relating to Indian trust lands; instead they tend to pass a new law which is in effect in addition to prior laws.

So one example is of course the Non-intercourse Act from 1790 and another more recent example from the 20th century is that having to do with rights of way and easements.

Prior to 1948, Congress had enacted a number of different very specific statutes relating to easements and rights of way. They would have a statute for railroads, and another statute for telegraphs and another statute for public roads and another statute for pipelines, etc.

Those all had slightly different requirements if you wanted to build a road across Indian land or lay a telegraph line or something like that. Having to do with how long the easement could be or how much they would have to pay or how much consent you would have to get from the Indians.

In 1948 in the era of opening up Indian lands for development, Congress enacted a general statute that authorized rights of way for any purpose across any Indian land. Now but a specific section within that statute expressly declined to repeal any of the existing prior rights of way authorities.

So since 1948, you have both very specific rights of way authorities and the general 1948 Act, which creates a very confusing situation for someone who wants to go out and build a pipeline or something across Indian land. They have to decide under which statute they need to comply. That adds to the confusion.

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Another source of Indian land law are regulations and policies. Now most of these are found in the Volume 25 of the Code of Federal Regulations, although a few can be found scattered through other regulations such as Volume 43, which has to do with mineral leasing and includes the rules that BLM, The Bureau of Land Management has imposed.

Federal Regulations

To digress a little bit and give you a little bit of knowledge about federal regulations, if you are not familiar with them.

Regulations are generally created by federal agencies. They are generally used to interpret and provide more detail with respect to statutes that Congress has enacted and regulations are first published in something called the Federal Register, which is published every single working day of the year, and so that is the first time when an agency says these are our final rules or our final regulations, they will be published on one day in the **Federal Register**.

And then each year the **Code of Federal Regulations** is published and it includes everything that is effective, once a year they look and decide what is effective, then they gather everything that has been published in the federal register during the year and they put it all in one bound series of books and they organize it according to topics. So all of the Indian regulations are in fact found in Volume 25.

Now sometimes it can be very helpful to go back to the daily version of the Federal Register when that regulation was first published in order to fully understand the purpose and the justification for the regulation.

And an example of that is in handout two of this session's handouts. It has an example of the first promulgation of a regulation having to do with entering into special agreements with tribes and it explains how Congress passed a new statute and how these regulations would be implementing that statute.



HANDOUT A full version of this handout can be found in the Handout section at the end of this study guide. (Handout – 2)

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The department also has other policies, some are written and some are unwritten, that describe how it will exercise its various authorities with respect to these. Those policies generally are not binding on people outside the government instead they are binding on the employees of the government.

So they may be handbooks that help describe how to implement the regulations or how to run this program. They may have general forms for how to do things. So that is something you could ask somebody if you have a need to know do you have standard forms to do certain transactions.

Court Decisions

The last source of Indian land law are **judicial opinions**. Now the way our system works of course is that Congress writes the laws and the courts sometimes are forced to interpret the laws and decide what is the correct interpretation of the law.

And that has played a very, very large role in the development of Indian land law because the early Congresses were not particularly good at describing the specifics of how they were going to do and certain issues came up that were not covered by statute and so the courts had to decide how they were going to resolve this real life conflict that came before their courts.

One of the most important concepts in Indian law is the **trust relationship** and the trust responsibility of the federal government to Indians and tribes. And that concept was not found in any original federal statute. Congress did not pass a statute saying we have a trust relationship. It was created through development of court opinions and court review of factual circumstances.

It was first articulated in a case in 1831 known as the Cherokee Nation v. Georgia and it had to do with the fight over who had jurisdiction within the Cherokee reservation in Georgia. This was back before they were removed to the Oklahoma territory. And the court was struck with the question of what is an Indian tribe under our system. It is not a state, there are individual

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people, but they are somehow different and the tribe is this other organization. Some people wanted to argue that the tribe should be treated like a foreign government, like a foreign country under the court system.

Justice Marshall did not chose to go that way, he instead forged a line down the middle and this is a quote from the Cherokee Nation case that helped describe how the idea of trust relationship and trust responsibility got started. He says, “The condition of the Indians in relation to the United States is perhaps unlike that of any other two people in existence. The relation of the Indians to the United States is marked by peculiar and cardinal distinctions, which exist nowhere else. They are in a state of pupilage.

Their relationship to the United States resembles that of a ward to his guardian.” So that is the origin of the idea of a trust relationship that the United States somehow needs to protect their ward, their beneficiary, the tribes.

The legal duties that flow from the existence of this Indian trust relationship have developed gradually over the 170 years since the Cherokee Nation was decided. Now sometimes these duties are clearly stated in statutory direction and directives that come from Congress that is the legislation says explicitly what those statutory duties and how to fulfill that trust responsibility is.

Scope of Trust Responsibilities

One example is found in 25 US Code Section 407 that is a section of federal law that talks about the development and sale of timber off of Indian trust lands. And that section authorizes the sale of timber from tribal lands “in accordance with the principles of sustained yield management or to convert the land to a more desirable use.”

So in that circumstance, Congress has said pretty precisely how they want tribal timber to be managed. They want it to be managed on a sustained yield basis. So it is easy for a federal agency to say we know what our trust responsibility is on tribal timber. It is to manage for a sustained yield basis.

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Now more recently, Congress has also legislated a little bit about a more general way and that was in 1994 in a statute that related primarily to the handling of individual accounts, money accounts that the United States holds for individual Indians and manages and invests on their behalf. Those are bank accounts that are generated from income off of trust lands, like timber sales for example. And in this case, most of the statutes discussed how those trust accounts were to be handled, and regular accountings, etc.

But there is a section that Congress added at the end talking about other trust duties, and there it says that the proper discharge of the trust responsibility will include but not be limited to “appropriately managing the natural resources located within the boundaries of Indian reservations and trust lands.” That is a much more general directive to the Bureau of Indian Affairs about how to manage resources. It is appropriately, which is of course open to all sorts of interpretations. And is an example of a less precise direction describing the scope of the trust responsibility.

Now when given something that is as general as that it is almost inevitable that you are going to have to have a court flush out and describe the bounds of that trust responsibility. What exactly does it mean to appropriately manage the natural resources? Now there have been the two most recent Supreme Court cases to talk about the scope of the trust responsibility, they were companion cases. They were both issued in the same year talking about two different specific situations, but helped sort of explain what the Supreme Court thinks the scope of trust responsibilities are.

Now both of these were issued in the context of some backdrop. In 1980 a case made it to the Supreme Court having to do with the management of timber on a reservation in the state of Washington. The first time it got to the Supreme Court, the tribe was arguing that the mere fact that the land was held in trust should be sufficient for it to file a claim against the United States and that alleging that the timber was not managed appropriately and that the tribe was owed money damages for that lack of responsible management of the timber development.

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This was the Mitchell 1 case, the Supreme Court said, no. The mere fact that the United States held the land in trust did not impose a duty to manage the timber appropriately. But when the case came back to the Supreme Court and they quoted that section I just quoted having to do with principles of sustained yield management when that was the issue before the Supreme Court, then the Supreme Court said, yes, if tribe, you can prove that the United States did not manage your timber consistent with those sustained yield management principles and you lost money as a result, then yes, there is a money damages claim that you can make against the United States.

So juxtaposition of one time no that's not good enough for trust responsibly duty to arise and yes that one is goes completely to the facts and the statute that the Supreme Court was looking at. Just holding land in trust was not enough for the money damages there but the specific directive to manage timber under a certain way is.

The two most recent cases that have followed from that sort of analysis, one was *United States v. White Mountain Apache* and in that case the Supreme Court found that there had been a problem with the trust responsibility not being fulfilled by the United States.

That had to do with a former fort, called Fort Apache, in Arizona where the statute had been enacted by Congress that allowed the United States to use the fort for its own facilities until it was no longer needed for a school or administrative purposes and then it would go back to the tribe.

And the Supreme Court decided after reading that statute, that it could be and should be fairly interpreted to authorize a claim against the United States when they found that the property, the buildings that had been constructed and were allegedly being used and under the responsibility of the United States were not being maintained, they were basically falling down. They said that yes the tribe could make a claim and the United States had a duty to maintain those buildings.

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That same year the court looked at a different situation off of the Navajo reservation in which there had been a coal lease between a big coal mining company and the Navajo Nation and they were renegotiating the royalty rate for that coal lease. And the Nation argued it was harmed because the Secretary had approved a rate that the tribe subsequently decided was too low and was unfair to it.

Now the Nation's claim was based on a 1938 statute authorizing the leasing of that coal and regulations that had been in effect in 1987 when the renegotiation had occurred. And the court looked very closely at the statute and very closely at the actual words in that regulation and they decided that it did not impose sufficient control on that renegotiation of the royalty rate situation by the Secretary. That is, the federal government was not so intimately controlled in that renegotiation process that they could be held liable, the United States could be held liable for the fact that the tribe felt that they didn't think that it got enough in their renegotiation of the royalty.

So those are two situations where it was extremely important that the court decided to look at the precise language in the regulations and the statute and it made a distinction between those two.

So trust responsibility is a hard concept to be able to say black and white how it is going to come out. It will depend on exactly what circumstance the trust responsibility is being alleged to have arisen. We know that it only applies to trust assets.

So that means you first have to find some land or assets that the US holds in trust and then you need to look for a statute or some regulation that imposes a duty on the part of the United States to manage that land in a certain way or to be involved to a certain extent in the development of resources on that property and then that will create the level or the duty or the expectation that is imposed on the United States.

There is no question that there is a trust relationship, the question usually comes down to and what the courts decide is whether there are specific trust duties that the United States has decided to undertake.

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Also informative if you would like to know some internal rules that the Secretary has handed down to all the department's employees, you can look at handout three which is from the departmental Manual and that explains and sets forth the department's guidance on the trust responsibility as it applies to all Indian trust assets and sets out what the responsibilities are of employees of this department.



HANDOUT A full version of this handout can be found in the Handout section at the end of this study guide. (Handout – 3)

That concludes my section and this portion of the lecture, and after a very short break, Priscilla Wilfarht will be back to talk about the rest of Indian land law.



EXERCISE Before moving on to the next topic, complete the History & Culture exercise which can be found in the Exercise section at the end of this study guide.



HANDOUT

INDIAN LAND LAW, PART 2, HANDOUT #1

TREATY WITH THE DWAMISH, SUQUAMISH, ETC., 1855.

669

Executed in the presence of us—

Cris. Taylor, assistant secretary.

Andrew Smith.

John Flett, interpreter.

We, the chiefs and headmen of the Clow-we-wal-la, or Willamette Tum-water band of Indians, being assembled in council, give our assent unto, and agree to the provisions of the foregoing treaty.

In testimony whereof we have hereunto set our hands and seals, at Linn city, Oregon Territory, this nineteenth day of January, eighteen hundred and fifty-five.

Lal-bick, or John, his x mark. [L. S.]

Cuck-a-man-na, or David, his x mark. [L. S.]

Executed in the presence of us—

Cris. Taylor, assistant secretary.

John Flett, interpreter.

We, the chiefs and headmen of the Santam bands of Calapooia Indians, being duly authorized by our respective bands, give our assent unto, and agree to the provisions of the foregoing treaty.

In testimony whereof we have hereunto set our hands and seals, at Dayton, Oregon Territory, this twenty-second day of January, eighteen hundred and fifty-five.

Tow-ye-colla, or Louis, first chief, his x mark. [L. S.]

La-ham, or Tom, third chief, his x mark. [L. S.]

Senegertta, his x mark. [L. S.]

Pul-i-can, his x mark. [L. S.]

Te-na, or Kiles, his x mark. [L. S.]

Pul-kup-ti-ma, or John, his x mark. [L. S.]

Sal-laf, or Silas, his x mark. [L. S.]

Hoip-ke-nek, or Jack, his x mark. [L. S.]

Yep-tah, his x mark. [L. S.]

Satinvose, or James, his x mark. [L. S.]

Executed in the presence of us—

Edward R. Geary, secretary.

Cris. Taylor.

Andrew Smith.

John Flett, interpreter.

TREATY WITH THE DWAMISH, SUQUAMISH, ETC., 1855.

Articles of agreement and convention made and concluded at Muckl-te-oh, or Point Elliott, in the Territory of Washington, this twenty-second day of January, eighteen hundred and fifty-five, by Isaac I. Stevens, governor and superintendent of Indian affairs for the said Territory, on the part of the United States, and the undersigned chiefs, head-men and delegates of the Dwámish, Suquámish, Sk-táhl-mish, Sam-áhmish, Smalh-kamish, Skope-áhmish, St-káh-mish, Snoquálmoo, Skai-wha-mish, N' Quentl-má-mish, Sk-táh-le-jum, Stoluck-whá-mish, Sno-ho-mish, Skágit, Kik-i-állus, Swin-á-mish, Squin-áh-mish, Sah-ku-méhu, Nook-whá-ha, Nook-wa-cháh-mish, Mee-sée-quá-guileh, Cho-bah-áh-bish, and other allied and subordinate tribes and bands of Indians occupying certain lands situated in said Territory of Washington, on behalf of said tribes, and duly authorized by them.

Jan. 22, 1855.

12 Stat. 927.
Ratified Mar. 8, 1859.
Proclaimed Apr. 11,
1859.

ARTICLE 1. The said tribes and bands of Indians hereby cede, relinquish, and convey to the United States all their right, title, and interest in and to the lands and country occupied by them, bounded and described

Cession of lands to
the United States.

Boundaries.

as follows: Commencing at a point on the eastern side of Admiralty Inlet, known as Point Pully, about midway between Commencement and Elliott Bays; thence eastwardly, running along the north line of lands heretofore ceded to the United States by the Nisqually, Puyallup, and other Indians, to the summit of the Cascade range of mountains; thence northwardly, following the summit of said range to the 49th parallel of north latitude; thence west, along said parallel to the middle of the Gulf of Georgia; thence through the middle of said gulf and the main channel through the Canal de Arro to the Straits of Fuca, and crossing the same through the middle of Admiralty Inlet to Suquamish Head; thence southwesterly, through the peninsula, and following the divide between Hood's Canal and Admiralty Inlet to the portage known as Wilkes' Portage; thence northeastwardly, and following the line of lands heretofore ceded as aforesaid to Point Southworth, on the western side of Admiralty Inlet, and thence around the foot of Vashon's Island eastwardly and southeastwardly to the place of beginning, including all the islands comprised within said boundaries, and all the right, title, and interest of the said tribes and bands to any lands within the territory of the United States.

Reservation.

ARTICLE 2. There is, however, reserved for the present use and occupation of the said tribes and bands the following tracts of land, viz: the amount of two sections, or twelve hundred and eighty acres, surrounding the small bight at the head of Port Madison, called by the Indians Noo-sohk-um; the amount of two sections, or twelve hundred and eighty acres, on the north side Hwhomish Bay and the creek emptying into the same called Kwilt-seh-da, the peninsula at the southeastern end of Perry's Island, called Sháis-quihl, and the island called Chah-choo-sen, situated in the Lummi River at the point of separation of the mouths emptying respectively into Bellingham Bay and the Gulf of Georgia. All which tracts shall be set apart, and so far as necessary surveyed and marked out for their exclusive use; nor shall any white man be permitted to reside upon the same without permission of the said tribes or bands, and of the superintendent or agent, but, if necessary for the public convenience, roads may be run through the said reserves, the Indians being compensated for any damage thereby done them.

Whites not to reside thereon unless, etc.

Further reservation for schools.

ARTICLE 3. There is also reserved from out the lands hereby ceded the amount of thirty-six sections, or one township of land, on the northeastern shore of Port Gardner, and north of the mouth of Snohomish River, including Tulalip Bay and the before-mentioned Kwilt-seh-da Creek, for the purpose of establishing thereon an agricultural and industrial school, as hereinafter mentioned and agreed, and with a view of ultimately drawing thereto and settling thereon all the Indians living west of the Cascade Mountains in said Territory. *Provided, however,* That the President may establish the central agency and general reservation at such other point as he may deem for the benefit of the Indians.

Tribes to settle on reservation within one year.

ARTICLE 4. The said tribes and bands agree to remove to and settle upon the said first above-mentioned reservations within one year after the ratification of this treaty, or sooner, if the means are furnished them. In the mean time it shall be lawful for them to reside upon any land not in the actual claim and occupation of citizens of the United States, and upon any land claimed or occupied, if with the permission of the owner.

Rights and privileges secured to Indians.

ARTICLE 5. The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands. *Provided, however,*

That they shall not take shell-fish from any beds staked or cultivated by citizens.

ARTICLE 6. In consideration of the above cession, the United States agree to pay to the said tribes and bands the sum of one hundred and fifty thousand dollars, in the following manner—that is to say: For the first year after the ratification hereof, fifteen thousand dollars; for the next two year, twelve thousand dollars each year; for the next three years, ten thousand dollars each year; for the next four years, seven thousand five hundred dollars each years; for the next five years, six thousand dollars each year; and for the last five years, four thousand two hundred and fifty dollars each year. All which said sums of money shall be applied to the use and benefit of the said Indians, under the direction of the President of the United States, who may, from time to time, determine at his discretion upon what beneficial objects to expend the same; and the superintendent of Indian affairs, or other proper officer, shall each year inform the President of the wishes of said Indians in respect thereto.

Payment by the United States.

How to be applied.

ARTICLE 7. The President may hereafter, when in his opinion the interests of the Territory shall require and the welfare of the said Indians be promoted, remove them from either or all of the special reservations hereinbefore made to the said general reservation, or such other suitable place within said Territory as he may deem fit, on remunerating them for their improvements and the expenses of such removal, or may consolidate them with other friendly tribes or bands; and he may further at his discretion cause the whole or any portion of the lands hereby reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable. Any substantial improvements heretofore made by any Indian, and which he shall be compelled to abandon in consequence of this treaty, shall be valued under the direction of the President and payment made accordingly therefor.

Indians may be removed to reservation, etc.

Lots may be assigned to individuals.

Ante, p. 612.

ARTICLE 8. The annuities of the aforesaid tribes and bands shall not be taken to pay the debts of individuals.

ARTICLE 9. The said tribes and bands acknowledge their dependence on the Government of the United States, and promise to be friendly with all citizens thereof, and they pledge themselves to commit no depredations on the property of such citizens. Should any one or more of them violate this pledge, and the fact be satisfactorily proven before the agent, the property taken shall be returned, or in default thereof, of if injured or destroyed, compensation may be made by the Government out of their annuities. Nor will they make war on any other tribe except in self-defence, but will submit all matters of difference between them and the other Indians to the Government of the United States or its agent for decision, and abide thereby. And if any of the said Indians commit depredations on other Indians within the Territory the same rule shall prevail as that prescribed in this article in cases of depredations against citizens. And the said tribes agree not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial.

Tribes to preserve friendly relations.

To pay for depredations, not to make war, etc.

To surrender offenders.

ARTICLE 10. The above tribes and bands are desirous to exclude from their reservations the use of ardent spirits, and to prevent their people from drinking the same, and therefore it is provided that any Indian belonging to said tribe who is guilty of bringing liquor into said reservations, or who drinks liquor, may have his or her proportion of the annuities withheld from him or her for such time as the President may determine.

Annuities to be withheld from those who drink, etc., ardent spirits.

Tribes to free all slaves and not to acquire others.

Not to trade out of the United States.

\$15,000 appropriated for expenses of removal and settlement.

United States to establish school and provide instructors, furnish mechanics, shops, physicians, etc.

Treaty, when to take effect.

ARTICLE 11. The said tribes and bands agree to free all slaves now held by them and not to purchase or acquire others hereafter.

ARTICLE 12. The said tribes and bands further agree not to trade at Vancouver's Island or elsewhere out of the dominions of the United States, nor shall foreign Indians be permitted to reside in their reservations without consent of the superintendent or agent.

ARTICLE 13. To enable the said Indians to remove to and settle upon their aforesaid reservations, and to clear, fence, and break up a sufficient quantity of land for cultivation, the United States further agree to pay the sum of fifteen thousand dollars to be laid out and expended under the direction of the President and in such manner as he shall approve.

ARTICLE 14. The United States further agree to establish at the general agency for the district of Puget's Sound, within one year from the ratification hereof, and to support for a period of twenty years, an agricultural and industrial school, to be free to children of the said tribes and bands in common with those of the other tribes of said district, and to provide the said school with a suitable instructor or instructors, and also to provide a smithy and carpenter's shop, and furnish them with the necessary tools, and employ a blacksmith, carpenter, and farmer for the like term of twenty years to instruct the Indians in their respective occupations. And the United States finally agree to employ a physician to reside at the said central agency, who shall furnish medicine and advice to their sick, and shall vaccinate them; the expenses of said school, shops, persons employed, and medical attendance to be defrayed by the United States, and not deducted from the annuities.

ARTICLE 15. This treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and Senate of the United States.

In testimony whereof, the said Isaac I. Stevens, governor and superintendent of Indian affairs, and the undersigned chiefs, headmen, and delegates of the aforesaid tribes and bands of Indians, have hereunto set their hands and seals, at the place and on the day and year hereinbefore written.

Isaac I. Stevens, Governor and Superintendent. [L. s.]

Seattle, Chief of the Dwamish and Suquamish tribes, his x mark. [L. s.]	Wats-ka-lah-tchie, or John Hobst-hoot, Sub-chief of Snohomish, his x mark. [L. s.]
Pat-ka-nam, Chief of the Snoqualmoo, Snohomish and other tribes, his x mark. [L. s.]	Smeh-mai-hu, Sub-chief of Skai-wha-mish, his x mark. [L. s.]
Chow-its-hoot, Chief of the Lummi and other tribes, his x mark. [L. s.]	Slat-eah-ka-nam, Sub-chief of Snoqualmoo, his x mark. [L. s.]
Goliah, Chief of the Skagits and other allied tribes, his x mark. [L. s.]	St'hau-ai, Sub-chief of Snoqualmoo, his x mark. [L. s.]
Kwallattum, or General Pierce, Sub-chief of the Skagit tribe, his x mark. [L. s.]	Lugs-ken, Sub-chief of Skai-wha-mish, his x mark. [L. s.]
S'hootst-hoot, Sub-chief of Snohomish, his x mark. [L. s.]	S'heht-soolt, or Peter, Sub-chief of Snohomish, his x mark. [L. s.]
Snah-talc, or Bonaparte, Sub-chief of Snohomish, his x mark. [L. s.]	Do-queh-oo-satl, Snoqualmoo tribe, his x mark. [L. s.]
Squush-um, or The Smoke, Sub-chief of the Snoqualmoo, his x mark. [L. s.]	John Kanam, Snoqualmoo sub-chief, his x mark. [L. s.]
See-alla-pa-han, or The Priest, Sub-chief of Sk-tah-le-jum, his x mark. [L. s.]	Klemsh-ka-nam, Snoqualmoo, his x mark. [L. s.]
He-uch-ka-nam, or George Bonaparte, Sub-chief of Snohomish, his x mark. [L. s.]	Ts'huahntl, Dwa-mish sub-chief, his x mark. [L. s.]
Tse-nah-talc, or Joseph Bonaparte, Sub-chief of Snohomish, his x mark. [L. s.]	Kwuss-ka-nam, or George Snatelum, Sen., Skagit tribe, his x mark. [L. s.]
Ns'ski-oos, or Jackson, Sub-chief of Snohomish, his x mark. [L. s.]	Hel-mits, or George Snatelum, Skagit sub-chief, his x mark. [L. s.]
	S'kwai-kwi, Skagit tribe, sub-chief, his x mark. [L. s.]
	Seh-lek-qu, Sub-chief Lummi tribe, his x mark. [L. s.]

S'h'-cheh-oos, or General Washington, Sub-chief of Lummi tribe, his x mark. [L. s.]	Tse-sum-ten, Lummi tribe, his x mark. [L. s.]
Whai-lan-hu, or Davy Crockett, Sub-chief of Lummi tribe, his x mark. [L. s.]	Klt-hahl-ten, Lummi tribe, his x mark. [L. s.]
She-ah-delt-hu, Sub-chief of Lummi tribe, his x mark. [L. s.]	Kut-ta-kanam, or John, Lummi tribe, his x mark. [L. s.]
Kwult-seh, Sub-chief of Lummi tribe, his x mark. [L. s.]	Ch-lah-ben, Noo - qua - cha - mish band, his x mark. [L. s.]
Kwull-et-hu, Lummi tribe, his x mark. [L. s.]	Noo-heh-oos, Snoqualmoo tribe, his x mark. [L. s.]
Kleh-kent-soot, Skagit tribe, his x mark. [L. s.]	Hweh-uk, Snoqualmoo tribe, his x mark. [L. s.]
Sohn-heh-ovs, Skagit tribe, his x mark. [L. s.]	Peh-nus, Skai-whamish tribe, his x mark. [L. s.]
S'deh-ap-kan, or General Warren, Skagit tribe, his x mark. [L. s.]	Yim-ka-dam, Snoqualmoo tribe, his x mark. [L. s.]
Chul-whil-tan, Sub-chief of Suquamish tribe, his x mark. [L. s.]	Twooi-as-kut, Skaiwhamish tribe, his x mark. [L. s.]
Ske-eh-tum, Skagit tribe, his x mark. [L. s.]	Luch-al-kanam, Snoqualmoo tribe, his x mark. [L. s.]
Patchkanam, or Dome, Skagit tribe, his x mark. [L. s.]	S'hoot-kanam, Snoqualmoo tribe, his x mark. [L. s.]
Sats-Kanam, Squin-ah-nush tribe, his x mark. [L. s.]	Sme-a-kanam, Snoqualmoo tribe, his x mark. [L. s.]
Sd-zo-mahtl, Kik-ial-lus band, his x mark. [L. s.]	Sad-zis-keh, Snoqualmoo, his x mark. [L. s.]
Dahtl-de-min, Sub-chief of Sah-kumeh-hu, his x mark. [L. s.]	Heh-mahl, Skaiwhamish band, his x mark. [L. s.]
Sd'zek-du-num, Me-sek-wi-guilse sub-chief, his x mark. [L. s.]	Charley, Skagit tribe, his x mark. [L. s.]
Now-a-chais, Sub-chief of Dwamish, his x mark. [L. s.]	Sampson, Skagit tribe, his x mark. [L. s.]
Mis-lo-tche, or Wah-hehl-tchoo, Sub-chief of Suquamish, his x mark. [L. s.]	John Taylor, Snohomish tribe, his x mark. [L. s.]
Sloo-noksh-tan, or Jim, Suquamish tribe, his x mark. [L. s.]	Hatch-kwentum, Skagit tribe, his x mark. [L. s.]
Moo-whah-lad-hu, or Jack, Suquamish tribe, his x mark. [L. s.]	Yo-i-kum, Skagit tribe, his x mark. [L. s.]
Too-leh-plan, Suquamish tribe, his x mark. [L. s.]	T'kwa-ma-han, Skagit tribe, his x mark. [L. s.]
Ha-seh-doo-an, or Keo-kuck, Dwamish tribe, his x mark. [L. s.]	Sto-dum-kan, Swinamish band, his x mark. [L. s.]
Hoovilt-meh-tum, Sub-chief of Suquamish, his x mark. [L. s.]	Be-lole, Swinamish band, his x mark. [L. s.]
We-ai-pah, Skaiwhamish tribe, his x mark. [L. s.]	D'zo-lole-gwam-hu, Skagit tribe, his x mark. [L. s.]
S'ah-an-hu, or Hallam, Snohomish tribe, his x mark. [L. s.]	Steh-shail, William, Skaiwhamish band, his x mark. [L. s.]
She-hope, or General Pierce, Skagit tribe, his x mark. [L. s.]	Kel-kahl-tsoot, Swinamish tribe, his x mark. [L. s.]
Hwn-lah-lakq, or Thomas Jefferson, Lummi tribe, his x mark. [L. s.]	Pat-sen, Skagit tribe, his x mark. [L. s.]
Cht-simpt, Lummi tribe, his x mark. [L. s.]	Pat-teh-us, Noo-wha-ah sub-chief, his x mark. [L. s.]
	S'hoolk-ka-nam, Lummi sub-chief, his x mark. [L. s.]
	Ch-lok-suts, Lummi sub-chief, his x mark. [L. s.]

Executed in the presence of us—

M. T. Simmons, Indian agent.
C. H. Mason, Secretary of
Washington Territory.
Benj. F. Shaw, Interpreter.
Chas. M. Hitchcock.
H. A. Goldsborough.
George Gibbs.
John H. Scranton.
Henry D. Cock.

S. S. Ford, jr.
Orrington Cushman.
Ellis Barnes.
R. S. Bailey.
S. M. Collins.
Lafayette Balch.
E. S. Fowler.
J. H. Hall.
Rob't Davis.

INDIAN LAND LAW, PART 2, HANDOUT #2

38918

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or loan programs or the rights and obligations of recipients thereof.

Regulatory Flexibility Act: In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), the agency has evaluated the effects of this action on small entities. Based on the evaluation, we certify that this action will not have a significant impact on a substantial number of small entities. States are the recipients of any funds awarded under the Section 405 program, and they are not considered to be small entities, as that term is defined in the Regulatory Flexibility Act.

Paperwork Reduction Act: This final rule contains information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, these requirements have been submitted previously to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). These requirements have been approved under OMB No. 2127-0600, through February 28, 2002.

National Environmental Policy Act: The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it will not have any significant impact on the quality of the human environment.

The Unfunded Mandates Reform Act: The Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits and other effects of final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. This final rule does not meet the definition of a Federal mandate, because the resulting annual expenditures will not exceed the \$100 million threshold. In addition, this incentive grant program is completely voluntary and States that choose to apply and qualify will receive incentive grant funds.

Executive Order 13132 (Federalism): This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Accordingly, the preparation of a Federalism Assessment is not warranted.

List of Subjects in 23 CFR Part 1345

Grant programs—Transportation, Highway safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, the interim final rule published in the **Federal Register** of October 1, 1998, 63 FR 52592, adding a new Part 1345 to chapter II of Title 23 of the Code of Federal Regulations, is adopted as final, with the following changes:

PART 1345—INCENTIVE GRANT CRITERIA FOR OCCUPANT PROTECTION PROGRAMS

1. The authority citation for Part 1345 continues to read as follows:

Authority: Pub. L. 105-178; 23 U.S.C. 405; delegation of authority at 49 CFR 1.50.

2. Section 1345.3 is amended by adding a new paragraph (f) to read as follows:

§ 1345.3 Definitions.

(f) *Targeted population* means a specific group of people chosen by a State to receive instruction on proper use of child restraint systems.

3. Section 1345.4 is amended by revising paragraph (a)(1)(iv) to read as follows:

§ 1345.4 General requirements.

(a) * * *

(iv) It will maintain its aggregate expenditures from all other sources, except those authorized under Chapter 1 of Title 23 of the United States Code, for its occupant protection programs at or above the average level of such expenditures in fiscal years 1996 and 1997 (either State or federal fiscal year 1996 and 1997 can be used);

4. Section 1345.5 is amended as follows:

a. A new paragraph (c)(4) is added;

b. Paragraph (d)(2) is amended by removing the word "police" and adding in its place "law enforcement officials"; and paragraph (d)(5) is amended by removing the word "police" and adding in its place "law enforcement";

c. Paragraph (e)(1)(iv) is revised; paragraphs (e)(1)(ii) and (e)(2)(ii) are amended by removing the term "police officers" each time it appears and adding in its place "law enforcement officials"; and paragraph (e)(2)(i) is amended by removing the word "targeted" and adding in its place "State's".

The addition and revision read as follows:

§ 1345.5 Requirements for a grant.

(c) * * *

(4) If a State has in effect a law that provides for the imposition of a fine of not less than \$25.00 or one or more penalty points for a violation of the State's child passenger protection law, but provides that imposition of the fine or penalty points may be waived if the offender presents proof of the purchase of a child safety seat, the State shall be deemed to have in effect a law that provides for the imposition of a minimum fine or penalty points, as provided in paragraph (c)(1) of this section.

(e) * * *

(1) * * *

(iv) The States's public information program must reach at least 70% of the State's total population. The State's clinic program must reach at least 70% of a targeted population determined by the State and States must provide a rationale for choosing a specific group, supported by data, where possible.

Issued on: July 13, 2001.

L. Robert Shelton,
Executive Director.

[FR Doc. 01-17993 Filed 7-25-01; 8:45 am]
BILLING CODE 4910-59-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 84

RIN 1076-AE00

Encumbrances of Tribal Land—Contract Approvals

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior, Bureau of Indian Affairs (BIA), is issuing a Final Rule that states which types of contracts or agreements encumbering tribal land are not subject to approval by the Secretary of the Interior under the Indian Tribal Economic Development and Contract Encouragement Act of 2000. The regulation also provides, in accordance with the Act, that Secretarial approval is not required (and will not be granted) for any contract or agreement that the Secretary determines is not covered by the Act. Finally, for contracts and agreements that are covered by the Act, the regulation sets out mandatory conditions for the Secretary's approval.

EFFECTIVE DATE: September 24, 2001.

FOR FURTHER INFORMATION CONTACT:
Duncan L. Brown, Department of the Interior, Office of the Secretary, 1849 C Street, NW., MS 7412 MIB, Washington, DC 20240, telephone 202/208-4582.

SUPPLEMENTARY INFORMATION:

I. Background

Under subsection (e) of the Indian Tribal Economic Development and Contract Encouragement Act of 2000 (25 USC 81) (referred to commonly and herein as "Section 81"), the Secretary is required to enact regulations establishing which types of agreements are not covered by Section 81. The preamble to the Proposed Rule, 65 FR 43874 (July 14, 2000), provides further background on the history of Section 81, including the contents of the 2000 amendments. The Final Rule was developed with attention to Secretarial Order 3215, "Principles for the Discharge of the Secretary's Trust Responsibility," of April 28, 2000, which was converted to and made permanent in the Departmental Manual on October 31, 2000. See 303 DM 2.

In a significant departure from past practice, the BIA distributed the preliminary drafts of the proposed regulation to the National Congress of American Indians (NCAI) and to tribes through BIA regional directors, with a request for comments and recommendations. Several subsequent meetings were held with an NCAI policies and procedures working group to discuss the evolving draft regulation prior to publishing the proposed regulation. These meetings included the Assistant Secretary—Indian Affairs, the Deputy Commissioner of Indian Affairs, staff of the Trust Policies and Procedures (TPP) project, trust program managers, and trust program attorneys from the Solicitor's Office. Notably, tribal representatives from each BIA region and BIA managers participated in a three-day meeting in Mesa, Arizona, in April 2000, to discuss the draft regulation.

The regulation was published in the *Federal Register* on July 14, 2000, (65 FR 43874) with a 90-day public comment period to solicit comments from all interested parties. The BIA received 19 written comments from tribes, tribal representatives, and tribal organizations. During the comment period, the BIA discussed the regulation and received oral comments on the record at seven formal tribal consultation sessions with tribal leaders, individual Indians, and other interested parties: Aberdeen, SD (August 7-8, 2000); Oklahoma City, OK

(August 10, 2000); Bloomington, MN (August 17, 2000); Albuquerque, NM (August 21 and 22, 2000 [two separate consultation meetings]); Billings, MT (August 24, 2000); and Reno, NV (August 28-29, 2000). Transcripts were made of these sessions in order to ensure that both oral and written comments were considered. Following the consultation meetings, several BIA regional and agency offices established informal local working groups with tribes to encourage discussion of the proposed regulations and submission of written comments. Throughout the comment period the BIA met on an informal basis to discuss the regulations with interested organizations, including the NCAI working group and the Inter-Tribal Monitoring Association. In sum, tribes and individual Indians have had an extraordinary opportunity to provide meaningful input on the proposed regulation through informal consultations on the early drafts, formal consultations, and the public comment period.

Comments were forwarded to a clearinghouse for compilation. The comments and compilation documents were carefully reviewed by the regulation drafting team, made up of BIA employees from the Central Office and trust program attorneys from the Solicitor's Office. Depending upon their merit, the Department accepted, accepted with revision, or rejected particular comments made on each part of the rule. Substantive comments and responses by the BIA are summarized below.

II. Response to Comments

As noted in the section-by-section analysis below, in direct response to comments the regulations have been clarified. No sections were deleted from the Proposed Rule to the Final Rule. One new section was added in the Final Rule at section 84.007 and the proposed section 84.007 was renumbered to section 84.008.

General Observations Regarding Changes From Proposed Rule

Overall, respondents recommended that we provide clarifications as to the types of agreements that do not require approval under Section 81. Therefore, in response to these comments, we revised definitions and language to make clearer the types of agreements that are not subject to Section 81. These revisions included corrections to the treatment of corporations under 25 USC 477 and contracts under 25 USC 450f or compacts under 25 USC 458aa. Several respondents recommended that we develop specific procedures for the

submission and review of contracts covered under this Part. The BIA does not intend to prescribe any particular format for submission of requests for approval. Additionally, internal procedures for BIA review are not appropriate for rulemaking, but will be addressed in the Indian Affairs Manual.

We also received comments concerning Section 81's repeal of our authority to approve tribal attorney contracts, except for those entered into by the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek, and Seminole) in Oklahoma. As noted in the preamble to the Proposed Rule, BIA will now only approve attorney contracts if required to do so under a tribal constitution. The criteria, if any, for approval of such contracts will be those in the tribal constitution and any relevant Federal law. As is its policy, BIA will defer to the tribe's interpretation of its own law regarding such approvals. Consistent with the repeal of our statutory authority for approval of tribal attorney contracts, we are today repealing relevant portions of the regulations for such approvals at 25 CFR Part 89.

Section-by-Section Analysis

Section 84.001 What Is the Purpose of This Part?

Summary of Section. Section 84.001 states the purpose of the rule as being the implementation of the Indian Economic Development and Contract Encouragement Act of 2000, Pub. L. 106-179.

Comments. We received no comments on this section and no changes were made.

Section 84.002 What Terms Must I Know?

Summary of Section. Section 84.002 contains terms necessary for understanding the rule. The term "encumber," which Congress did not define in the Act, refers, consistent with the Act's legislative history, to the possibility that a third party could gain exclusive or nearly exclusive proprietary control over tribal land. The "third party" in this definition refers to any party outside of the tribe who, under the terms of the contract or agreement, could gain exclusive or nearly exclusive proprietary control over tribal land, such as a lender or the holder of a secured interest in any improvements for a transaction involving a tribe and a potential lessee. We have defined "Indian tribe" as it is defined in the Act. The definition of "tribal lands" in the rule is the same as the definition of "Indian lands" in the

Act. We have used "tribal lands" to make it clear that the provisions of the Act and this rule do not apply to individually owned lands.

Comments. We received comments to revise the definitions of "encumber", "Indian tribe", and "tribal lands". We modified the definition of "encumber" to clarify that the terms of the contract or agreement will determine whether the contract or agreement encumber tribal lands. We did not accept the recommendations to change the definitions of "Indian tribe" and "tribal lands". These definitions are those provided by Congress. We did, however, modify the definition of "Indian tribe" to reflect the actual language of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e), as directed by Congress.

Section 84.003 What Types of Contracts and Agreements Require Secretarial Approval Under This Part?

Summary of Section. Section 84.003 indicates that, unless otherwise exempted, those contracts and agreements that encumber tribal lands for a period of seven or more years require Secretarial approval under this rule. As noted in the preamble to the Proposed Rule, the legislative history of Section 81 states, for example, that, if the default provision in a contract or agreement allows a third party (e.g., a lender) to operate the facility, that contract or agreement would "encumber" tribal land within the meaning of Section 81. If, however, the lender is only entitled to first right to the revenue from the facility, the contract or agreement would not "encumber" tribal land.

Comments. No comments were received for this section and no changes were made.

Section 84.004 Are There Types of Contracts and Agreements That Do Not Require Secretarial Approval Under This Part?

Summary of Section. Section 84.004 indicates that the following types of contracts or agreements are not subject to this rule:

- Contracts or agreements otherwise reviewed and approved by the Secretary under this title or other federal law or regulation. Congress did not repeal any other requirement for Secretarial approval of encumbrances, nor did it state that the Act imposed an additional approval process, separate from existing statutory requirements. This exemption is also consistent with previous opinions of both the Department of the Interior and the Department of Justice, judicial decisions, and legislative

history of the Indian Mineral Development Act, all of which consistently state that the requirements of Section 81 do not apply to leases, rights-of-way, and other documents that convey a present interest in tribal land. Note, however, that contracts and agreements that are similar to those approved under other federal law or regulation, but are not subject to that approval, such as a contract between a tribe and another party to lease a tract of tribal land at a future date, may be subject to approval under this Part.

- Leases of tribal land that are exempt from approval by the Secretary under 25 U.S.C. 415 or 25 U.S.C. 477. Currently, this exemption only applies to certain leases by the Tulalip Tribes, the Navajo Nation, and tribes with a corporate charter authorized by 25 U.S.C. 477.

- Subleases and assignments of leases of tribal land that do not require approval by the Secretary under Part 162 of this title. This provision will ensure maximum consistency with BIA policies concerning different types of leases.

- Contracts or agreements that convey temporary use rights assigned by tribes, in the exercise of their jurisdiction over tribal lands, to tribal members. Such assignments are internal tribal matters. We must approve any encumbrances of the assigned tribal land under this Part or another relevant regulation (e.g., 25 CFR Part 162).

- Contracts or agreements that do not convey exclusive or nearly exclusive proprietary control over tribal lands for a period of seven years or more. By definition, such contracts or agreements do not encumber the land under the Act. Such contracts or agreements may include contracts for personal services; construction contracts; contracts for services performed for tribes on tribal lands; and bonds, loans, security interests in personal property, or other financial arrangements that do not and could not involve interests in land.

- Contracts that are exempt from Secretarial approval under the terms of a corporate charter authorized under 25 U.S.C. 477.

- Tribal attorney contracts. However, as noted above, although the Act repealed the federal statutory requirements for approval of most attorney contracts, the BIA will still do so if required under a tribal constitution.

- Contracts or agreements entered into in connection with a contract under the Indian Self-Determination Act, 25 U.S.C. 450f, or a compact under the Tribal Self-Governance Act, 25 U.S.C. 458aa. This is to conform to the exemption of these contracts from

approval by the Secretary under 25 U.S.C. 4501(c)(15)(A).

- Contracts or governments that are subject to approval by the National Indian Gaming Commission. The Act specifically exempts these contracts and agreements from its provisions, and the National Indian Gaming Commission will continue to review and approve contracts that provide for management of a tribal gaming activity.

- Contracts or agreements under the Federal Power Act (FPA) relating to the use of tribal lands that meet the definition of a "reservation" under the FPA, with certain conditions. The FPA already provides for review of such contracts or agreements by the Secretary.

Comments. Several comments recommended that the rule provide specific examples of contracts that do not encumber tribal land. These comments were partially accepted and clarifications were provided in this section concerning certain types of agreements such as hydropower projects and assignments of tribal land to tribal members.

The preamble to the Proposed Rule stated that Section 81 did not apply by its terms to any contracts or agreements entered into by corporations chartered under 25 U.S.C. 477. Commenters noted that there was no support in either Section 81 or its legislative history for such a statement. We agree, and have narrowed the exemption to only those contracts or agreements entered into by those corporations that do not otherwise require Secretarial approval.

Conversely, commenters stated that the exemption in the Proposed Rule limited to attorney contracts entered into by Self-Governance tribes was too narrow, ignoring the broad exemption from Secretarial approval under 25 U.S.C. 4501(c)(15)(A) for any contract or agreement entered into under the Indian Self-Determination Act, 25 U.S.C. 450f, or a compact under the Tribal Self-Governance Act, 25 U.S.C. 458aa. We accepted the comments and broadened the exemption accordingly.

We rejected comments that recommended that the rule contain an exhaustive list of contracts or agreements that do not encumber tribal land. Such a list is not practicable because the determination of encumbrance is conducted on a case-by-case basis. For example, a restrictive covenant or conservation easement may encumber tribal land within the meaning of Section 81, while an agreement that does not restrict all economic use of tribal land may not. An agreement whereby a tribe agrees not to interfere with the relationship between

a tribal entity and a lender, including an agreement not to request cancellation of the lease, may encumber tribal land, depending on the contents of the agreement. Similarly, a right of entry to recover improvements or fixtures may encumber tribal land, whereas a right of entry to recover personal property may not.

Section 84.005 Will the Secretary Approve Contracts or Agreements Even Where Such Approval Is Not Required Under This Part?

Summary of Section. Section 84.005 makes it clear that the Secretary will return to the submitting tribes those contracts and agreements that do not require his or her approval. Therefore, we will no longer issue "accommodation approvals."

Comments. We received several comments recommending that the regulation specify a specific time frame when the Secretary will return contracts and agreements with a statement explaining why Secretarial approval is not required. We accepted these comments and added a time frame in this section that states that within thirty days after receipt of final, executed documents, the Secretary will return such contracts and agreements with a statement explaining why Secretarial approval is not required. We also received comments requesting provisions for appeal of determinations under this section. These comments were not accepted because Part 2 of this Title applies to all decisions made by the Secretary, including those under this section.

Section 84.006 Under What Circumstances Will the Secretary Disapprove a Contract or Agreement That Requires Secretarial Approval Under This Part?

Summary of Section. Section 84.006 establishes the criteria for disapproval of a contract or agreement under this rule. Specifically, the Secretary must disapprove those contracts or agreements that would violate federal law or those that do not contain provision(s) regarding the exercise of tribal sovereign immunity. As noted in the preamble to the Proposed Rule, consistent with the legislative history of the Act, these are the only criteria for Secretarial disapproval under this rule.

Comments. Many respondents provided comments that recommended that the Secretary consult with tribes prior to disapproving a contract or agreement so that tribes may have an opportunity to correct elements that may lead to disapproval. We accepted these comments and added subsection

(b) to this section to identify that the Secretary will consult with tribes for this purpose. We also received comments asking whether the Secretary will require particular kinds of remedies for a contract or agreement. Consistent with the purposes of Section 81, the Secretary will only identify whether remedies are addressed but will not disapprove a contract or agreement based on the types of remedies used.

Section 84.007 What Is The Status of a Contract or Agreement That Requires Secretarial Approval Under This Part But Has Not Yet Been Approved?

Summary of Section. This section provides that a contract or agreement that requires Secretarial approval under this Part is not valid until the Secretary approves it.

Comments. This section was added to the Final Rule in response to several comments. We also received comments recommending that we determine in the rule whether contracts can be approved retroactively by the Secretary. Decisions as to whether a particular contract or agreement may be approved retroactively will be made on a case-by-case basis. Such retroactive effect may be approved if the Secretary is satisfied that the consideration for the contract or agreement was adequate; that the tribe received the full consideration bargained for; that there is no evidence of fraud, overreaching, or other illegality in the procurement of the contract or agreement; and that the conditions of section 84.006 of this Part are met.

Wishkeno v. Deputy Assistant Secretary—Indian Affairs (Operations), 11 IBIA 21 (1982).

Section 84.008 What Is the Effect of the Secretary's Disapproval of a Contract or Agreement That Requires Secretarial Approval Under This Part?

Summary of Section. Section 84.008 states, consistent with section 2(b) of the Act, that the effect of disapproval of a contract or agreement under this Part (as opposed to return of a contract or agreement under section 84.005 of this rule) is that the contract or agreement is invalid.

Comments. There were no comments on this section. The section was renumbered from § 84.007 in the Proposed Rule to this section of the Final Rule.

III. Procedural Requirements

A. Review Under Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the BIA must determine whether the regulatory action is "significant" and therefore subject to

OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that ma

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" from an economic or policy standpoint. This rule is pursuant to a statutory mandate and is consistent with the Department's policy of encouraging tribal self-determination and economic development. The rule reduces the number of contracts the Department has to review each year. Prior to the amendments enacted under Pub. L. 106-179, tribes had to submit certain contracts for approval by the Secretary of the Interior for which Secretarial approval has now (through enactment of Pub. L. 106-179) been deemed unnecessary. Those tribes having contracts or agreements covered under the new law, however, must include a statement regarding their sovereign immunity or remedies. This is an intergovernmental mandate; however, it would not affect the rights of either party under such contracts and agreements, but would only require that these rights be explicitly stated. The cost burden on the tribes for including this provision would be minimal. Otherwise, the rule has no direct or indirect impact on any other agency, does not materially alter the budgetary impact of financial programs, or raise novel legal or policy issues.

B. Review Under Executive Order 12988

With respect to the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements:

- (1) Eliminate drafting errors and ambiguity;
- (2) Write regulations to minimize litigation; and

(3) Provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section (b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation:

- (1) Clearly specifies the preemptive effect, if any;
- (2) Clearly specifies any effect on existing Federal law or regulation;
- (3) Provides a clear legal standard for affected conduct while promoting simplification and burden reduction;
- (4) Specifies the retroactive effect, if any;
- (5) Adequately defines key terms; and
- (6) Addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department of the Interior has determined that, to the extent permitted by law, the rule meets the relevant standards of Executive Order 12988.

Review Under the Regulatory Flexibility Act

A Regulatory Flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) is not required for this rule because it applies only to tribal governments, not State and local governments.

D. Review Under the Small Business Regulatory Enforcement Act of 1996 (SBREFA)

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more. This rule will not result in a major increase in costs or prices. In fact, it is estimated that the Department will save time and resources through the rule because the number of contracts submitted for Secretarial approval will be reduced. Therefore, no increases in costs for administration will be realized and no prices would be impacted through the streamlining of the contract approval process within the Department and the BIA. The effect of the rule is to encourage and foster tribal contracting consequently, strengthen tribal determination and economic development. This rule will not result

in any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets. The impact of the rule will be realized by tribal governments in the economy of administration accorded contract negotiation between tribes and third parties. Unless the contracts contemplate an encumbrance of Indian lands or by their terms could otherwise lead to the loss of tribal proprietary control over such lands, the Department would not require such contracts and agreements to be submitted to the BIA for approval. The Department anticipates, therefore, that the impacts to small business or enterprises and the tribes themselves will be positive and, indeed, allow for greater flexibility in contracting for certain services on Indian lands.

E. Review Under the Paperwork Reduction Act

No information or record keeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

F. Review Under Executive Order 13132 Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

G. Review Under the National Environmental Policy Act of 1969

This rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq., because its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the Federal actions under this rule (i.e., approval or disapproval of contracts or agreements that could encumber Tribal lands for a period of seven years or more) will be subject at the time of the action itself to the National Environmental Policy Act process, either collectively or case-by-case. Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the Act, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. This rule will not result in the expenditure by the state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. The Department does take notice, however, that the rule (in response to Pub. L. 106-179) requires that a tribe entering into a covered contract include a specific statement regarding its sovereign immunity or remedies. This is an additional enforceable duty imposed on the tribes, and so would constitute an intergovernmental mandate under the Unfunded Mandates Reform Act. However, the cost of this mandate would be minimal.

I. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of May 14, 1998, "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655) and 512 DM 2, we have evaluated any potential effects upon Federally recognized Indian tribes and have determined that there are no potential adverse effects. No action is taken under this rule unless a tribe voluntarily enters into a contract or agreement that could encumber tribal land for seven years or more. As noted above, tribes were asked for comments prior to publication of this Final Rule.

J. Review Under Executive Order 13211—Energy

In accordance with the President's Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355), we have determined that this rulemaking is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This rulemaking simply clarifies those types of contracts or agreements encumbering tribal land that are not subject to the approval of the Secretary

of the Interior under the Indian Tribal Economic Development and Contract Encouragement Act of 2000. This is, therefore, an administrative clarification and would not otherwise have any impact on the Nation's energy resources.

List of Subjects in 25 CFR Part 84

Administrative practice and procedure, Indians—lands.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, amends 25 CFR chapter I by adding Part 84 to read as follows:

PART 84—ENCUMBRANCES OF TRIBAL LAND—CONTRACT APPROVALS

Sec.

- 84.001 What is the purpose of this part?
- 84.002 What terms must I know?
- 84.003 What types of contracts and agreements require Secretarial approval under this part?
- 84.004 Are there types of contracts and agreements that do not require Secretarial approval under this part?
- 84.005 Will the Secretary approve contracts or agreements even where such approval is not required under this part?
- 84.006 Under what circumstances will the Secretary disapprove a contract or agreement that requires Secretarial approval under this part?
- 84.007 What is the status of a contract or agreement that requires Secretarial approval under this part but has not yet been approved?
- 84.008 What is the effect of the Secretary's disapproval of a contract or agreement that requires Secretarial approval under this part?

Authority: 25 U.S.C. 81, Pub. L. 106-179.

§ 84.001 What is the purpose of this part?

The purpose of this part is to implement the provisions of the Indian Tribal Economic Development and Contract Encouragement Act of 2000, Public Law 106-179, which amends section 2103 of the Revised Statutes, found at 25 U.S.C. 81.

§ 84.002 What terms must I know?

The Act means the Indian Tribal Economic Development and Contract Encouragement Act of 2000, Public Law 106-179, which amends section 2103 of the Revised Statutes, found at 25 U.S.C. 81.

Encumber means to attach a claim, lien, charge, right of entry or liability to real property (referred to generally as encumbrances). Encumbrances covered by this part may include leasehold mortgages, easements, and other contracts or agreements that by their terms could give to a third party exclusive or nearly exclusive proprietary control over tribal land.

Indian tribe, as defined by the Act, means any Indian tribe, nation, or other organized group or community, including any Alaska Native Village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act, which is recognized as eligible for special programs and services provided by the Secretary to Indians because of their status as Indians.

Secretary means the Secretary of the Interior or his or her designated representative.

Tribal lands means those lands held by the United States in trust for an Indian tribe or those lands owned by an Indian tribe subject to federal restrictions against alienation, as referred to Public Law 106-179 as "Indian lands."

§ 84.003 What types of contracts and agreements require Secretarial approval under this part?

Unless otherwise provided in this part, contracts and agreements entered into by an Indian tribe that encumber tribal lands for a period of seven or more years require Secretarial approval under this part.

§ 84.004 Are there types of contracts and agreements that do not require Secretarial approval under this part?

Yes, the following types of contracts or agreements do not require Secretarial approval under this part:

(a) Contracts or agreements otherwise reviewed and approved by the Secretary under this title or other federal law or regulation. See, for example, 25 CFR parts 152 (patents in fee, certificates or competency); 162 (non-mineral leases, leasehold mortgages); 163 (timber contracts); 166 (grazing permits); 169 (rights-of-way); 200 (coal leases); 211 (mineral leases); 216 (surface mining permits and leases); and 225 (mineral development agreements);

(b) Leases of tribal land that are exempt from approval by the Secretary under 25 U.S.C. 415 or 25 U.S.C. 477;

(c) Sublease and assignments of leases of tribal land that do not require approval by the Secretary under part 162 of this title;

(d) Contracts or agreements that convey to tribal members any rights for temporary use of tribal lands, assigned by Indian tribes in accordance with tribal laws or custom;

(e) Contracts or agreements that do not convey exclusive or nearly exclusive proprietary control over tribal lands for a period of seven years or more;

(f) Contracts or agreements that are exempt from Secretarial approval under the terms of a corporate charter authorized by 25 U.S.C. 477;

(g) Tribal attorney contracts, including those for the Five Civilized Tribes that are subject to our approval under 25 U.S.C. 82a;

(h) Contracts or agreements entered into in connection with a contract under the Indian Self-Determination Act, 25 U.S.C. 450f, or a compact under the Tribal Self-Governance Act, 25 U.S.C. 458aa.

(i) Contracts or agreements that are subject to approval by the National Indian Gaming Commission under the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et seq., and the Commission's regulations; or

(j) Contracts or agreements relating to the use of tribal lands for hydropower projects where the tribal lands meet the definition of a "reservation" under the Federal Power Act (FPA), provided that:

(1) Federal Energy Regulatory Commission (FERC) has issued a license or an exemption;

(2) FERC has made the finding under section 4(e) of the FPA (16 U.S.C. 797(e)) that the license or exemption will not interfere or be inconsistent with the purpose for which such reservation was created or acquired; and

(3) FERC license or exemption includes the Secretary's conditions for protection and utilization of the reservation under section 4(e) and payment of annual use charges to the tribe under section 10(e) of the FPA (16 U.S.C. 803(e)).

§ 84.005 Will the Secretary approve contracts or agreements even where such approval is not required under this part?

No, the Secretary will not approve contracts or agreements that do not encumber tribal lands for a period of seven or more years. Within thirty days after receipt of final, executed documents, the Secretary will return such contracts and agreements with a statement explaining why Secretarial approval is not required. The provisions of the Act will not apply to those contracts or agreements the Secretary determines are not covered by the Act.

§ 84.006 Under what circumstances will the Secretary disapprove a contract or agreement that requires Secretarial approval under this part?

(a) The Secretary will disapprove a contract or agreement that requires Secretarial approval under this part if the Secretary determines that such contract or agreement:

(1) Violates federal law; or
(2) Does not contain at least one of the following provisions that:

(i) Provides for remedies in the event the contract or agreement is breached;
(ii) References a tribal code, ordinance or ruling of a court of competent

jurisdiction that discloses the right of the tribe to assert sovereign immunity as a defense in an action brought against the tribe; or

(iii) Includes an express waiver of the right of the tribe to assert sovereign immunity as a defense in any action brought against the tribe, including a waiver that limits the nature of relief that may be provided or the jurisdiction of a court with respect to such an action.

(b) The Secretary will consult with the Indian tribe as soon as practicable before disapproving a contract or agreement regarding the elements of the contract or agreement that may lead to disapproval.

§ 84.007 What is the status of a contract or agreement that requires Secretarial approval under this part but has not yet been approved?

A contract or agreement that requires Secretarial approval under this part is not valid until the Secretary approves it.

§ 84.008 What is the effect of the Secretary's disapproval of a contract or agreement that requires Secretarial approval under this part?

If the Secretary disapproves a contract or agreement that requires Secretarial approval under this part, the contract or agreement is invalid as a matter of law.

Dated: July 9, 2001.

Al A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 01-18475 Filed 7-25-01; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 89

RIN 1076-AE18

Attorney Contracts With Indian Tribes

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final Rule.

SUMMARY: We are issuing a final rule removing the text of certain sections and hereafter reserving those sections of the regulations pertaining to approval by the Secretary of the Interior of tribal attorney contracts, except for those entered into by the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek and Seminole) in Oklahoma. Congress repealed our statutory authority for such approvals of tribal attorney contracts as part of the Indian Tribal Economic Development and Contract Encouragement Act of 2000.

EFFECTIVE DATE: July 26, 2001.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Department of the Interior, Office of the Secretary, 1849 C Street, NW., MS 7412 MIB, Washington, DC 20240, telephone 202/208-4582.

SUPPLEMENTARY INFORMATION:

Background

In 1871, Congress enacted section 2103 of the Revised Statutes, codified at 25 U.S.C. 81 (Section 81). It placed several restrictions, including a requirement for approval by the Secretary of the Interior, on contracts between any person and any Indian tribe or individual Indians for

the payment or delivery of any money or other thing of value, in present or in prospective, or for the granting or procuring any privilege to him, or any other person in consideration of services for said Indians relative to their lands, or to any claims growing out of, or in reference to, annuities, installments, or other moneys, claims, demands, or thing, under laws or treaties with the United States, or official acts of any officers thereof, or in any way connected with or due from the United States.

Section 81 reflected Congressional concern that Indian tribes and individual Indians were incapable of protecting themselves from fraud in their financial affairs. To that end, it also required that the Secretary approve any contracts for legal services between an Indian tribe and an attorney. Congress later confirmed the requirement for Secretarial approval of tribal attorney contracts with the passage of section 16 of the Indian Reorganization Act (IRA) of 1934, 25 U.S.C. 476 (Section 476 does not apply to the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek, and Seminole) in Oklahoma. The Secretary has separate authority for approval of attorney contracts for the Five Civilized Tribes under section 1 of Pub. L. 82-440, 25 U.S.C. 82a.)

In March 2000, Congress enacted the Indian Tribal Economic Development and Contract Encouragement Act of 2000 (the Act), Pub. L. 106-179. The Act generally replaces Section 81 with a new provision that does not include the requirement to approve tribal attorney contracts. (We are publishing final regulations today at 25 CFR part 84 implementing the Act.) Subsection (f) of the Act repeals the portion of 25 U.S.C. 476 concerning approval of tribal attorney contracts. The Act does not address the separate requirement that attorney contracts by the Five Civilized Tribes must be approved by the Secretary.

Because the Act repealed much of our statutory authority for approval of tribal attorney contracts, we are today

repealing the corresponding regulations in 25 CFR part 89. We are not repealing the regulations concerning approval of tribal attorney contracts for the Five Civilized Tribes, since Congress left our authority for those approvals in place. We will, however, issue a separate proposed rule, in consultation with the Five Civilized Tribes, to revise these regulations, especially 25 CFR 89.30, in light of the amendments to section 81. We are also not repealing our regulations in part 89 for the payment of tribal attorneys fees.

Consistent with the long-standing principle that the federal trust obligation may not be unilaterally terminated, the Act does not alter those tribal constitutions that require federal approvals for specific tribal actions, such as attorney contracts. Thus, the Secretary must still approve or disapprove attorney contracts if a tribal constitution so requires. The criteria, if any, for approval of such contracts will be those in the tribal constitution and any relevant Federal law. As is its policy, BIA will defer to the tribe's interpretation of its own law regarding such approvals.

Notice and Public Procedure on This Final Rule

As noted above, this final rule is effective on the publication of this notice. Under 5 U.S.C. 553(b)(3)(B), notice and public comment on this final rule are impracticable, unnecessary, and contrary to the public interest. In addition, we have good cause for making this rule effective immediately under 5 U.S.C. 553(d)(3). Notice and public procedure would be impracticable and unnecessary because this rule is merely repealing regulations for which we now have no statutory authority.

Waiting for notice and comment on this final rule would be contrary to the public interest. Some of the comments on the proposed part 84 regulations expressed confusion as to the status of the part 89 regulations that we are repealing today. By making this a final rule effective immediately, we end such confusion.

Procedural Requirements

A. Review Under Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the BIA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

INDIAN LAND LAW, PART 2, HANDOUT #3

Department of the Interior Departmental Manual

Effective Date:

Series: Departmental Management

Part 303: Indian Trust Responsibilities

Chapter 2: Principles for Managing Indian Trust Assets

Originating Office: Assistant Secretary - Indian Affairs

303 DM 2

1. **Purpose.** This Chapter provides Department-wide guidance for carrying out the Secretary's trust responsibility as it pertains to Indian trust assets.
2. **Scope.** The provisions of this Chapter are applicable to all Departmental bureaus and offices.
3. **Authority.** This Chapter is issued under the authority of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. § 4001, *et seq.*), and its implementing regulations.
4. **General Provision.** This Chapter is intended to enhance the Department's management of the Secretary's trust responsibility. It is not intended to, and does not, create any right to administrative or judicial review, or any legal right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies, or instrumentalities, its officers or employees, or any other person.
5. **Definitions.** For purposes of this Chapter, the following definitions apply:
 - A. "Beneficial owner" means both Indian tribes and individual Indians who are the owners of Indian trust assets held by the federal government in trust or with a restriction against alienation.
 - B. "Persons who manage Indian trust assets" means Departmental employees who have been properly delegated specific authority to manage or administer Indian trust assets.
 - C. "Indian trust assets" means lands, natural resources, money, or other assets held by the federal government in trust or that are restricted against alienation for Indian tribes and individual Indians.
 - D. "Trust responsibility" as used in this Order only pertains to Indian trust assets.
6. **Responsibilities.**

A. **Office of the Special Trustee for American Indians** is responsible for ensuring compliance with the requirements of this Chapter.

B. **Assistant Secretaries** will ensure that bureaus and offices under their jurisdiction comply with this Chapter.

C. **Heads of bureaus and offices** are responsible for ensuring that the principles in Paragraph 7 of this Chapter are carried out by their organizations as they:

(1) Review, modify or promulgate new regulations, policy statements, instructions or manuals;

(2) Develop legislative and budgetary proposals; and

(3) Manage, administer, or take other actions directly relating to or potentially affecting assets held in trust by the United States for Indian tribes and individual Indians.

7. Trust Principles. It is the policy of the Department of the Interior to discharge, without limitation, the Secretary's Indian trust responsibility with a high degree of skill, care, and loyalty. The proper discharge of the Secretary's trust responsibilities requires that persons who manage Indian trust assets:

A. Protect and preserve Indian trust assets from loss, damage, unlawful alienation, waste, and depletion;

B. Assure that any management of Indian trust assets that the Secretary has an obligation to undertake promotes the interest of the beneficial owner and supports, to the extent it is consistent with the Secretary's trust responsibility, the beneficial owner's intended use of the assets;

C. Enforce the terms of all leases or other agreements that provide for the use of trust assets, and take appropriate steps to remedy trespass on trust or restricted lands;

D. Promote tribal control and self-determination over tribal trust lands and resources;

E. Select and oversee persons who manage Indian trust assets;

F. Confirm that tribes that manage Indian trust assets pursuant to contracts and compacts authorized by the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450, et seq., protect and prudently manage Indian trust assets;

G. Provide oversight and review of the performance of the Secretary's trust responsibility, including Indian trust asset and investment management programs, operational systems, and information systems;

H. Account for and timely identify, collect, deposit, invest, and distribute income due or held on behalf of beneficial owners;

I. Maintain a verifiable system of records that is capable, at a minimum, of identifying: (1) the location, the beneficial owners, any legal encumbrances (i.e., leases, permits, etc.), the user of the resource, the rents and monies paid, if any, and the value of trust or restricted lands and resources; (2) dates of collections, deposits, transfers, disbursements, third party obligation (i.e., court ordered child support, judgements, etc.), amount of earnings, investment instruments and closing of all trust fund accounts; (3) documents pertaining to actions taken to prevent or compensate for any diminishment of the Indian trust assets; and (4) documents that evidence the Department's actions regarding the management and disposition of Indian trust assets;

J. Establish and maintain a system of records that permits beneficial owners to obtain information regarding their Indian trust assets in a timely manner and protect the privacy of such information in accordance with applicable statutes;

K. Invest tribal and individual Indian trust funds to make the trust account reasonably productive for the beneficial owner consistent with market conditions existing at the time the investment is made;

L. Communicate with beneficial owners regarding the management and administration of Indian trust assets; and

M. Protect treaty-based fishing, hunting, gathering, and similar rights of access and resource use on traditional tribal lands.



EXERCISE

Exercise 1- History/Culture

A. *History*

The history of Indian land tenure in the U.S. is generally broken down into six general eras. Each era has unique defining characteristics. The time periods, however, are not precise. In most cases the shift from one era to the next is gradual, but each era leaves its trace of things that can be identified in the current status of Indian land tenure.

Question One –

Can you place these eras in their proper order and assign approximate dates to each?

1. Allotment Era
2. Formative Era
3. Indian Reorganization Act Era
4. Removal Era
5. Self-Determination and Governance Era
6. Termination and Disposal Era

Question Two –

In which era do you think the following events took place?

1. Early peace treaties
2. Indian Self-Determination and Education Assistance Act
3. Trail of Tears
4. Give individual Indians land to farm
5. Elimination of allotments, return non-allotted lands to Tribal/Reservation status
6. Cease to recognize the Klamath Indian Tribe and Reservation

Question Three –

Which of the following would you consider to be part of the Secretary of Interior's "Trust Responsibilities" to American Indians?

1. Maintenance of a land records system
2. Allow Indians unlimited access to National Parks
3. Review and approve all land transactions involving trust land
4. Assume Indians are "incompetent"
5. Proper management of natural resources on Indian land
6. Manage all probate-related issues
7. Burden of proof issues when land rights are in a lawsuit

ANSWERS:

Questions 1 and 2-

Correct Order of Historical Eras in Indian land tenure and corresponding events are:

- | | | |
|----------------------------------|--------------|---|
| 1. Formative Era | 1492-1820 | 1 |
| 2. Removal Era | 1820-1887 | 3 |
| 3. Allotment Era | 1887-1934 | 4 |
| 4. Indian Reorganization Act Era | 1934-1953 | 5 |
| 5. Termination and Disposal Era | 1953-1975 | 6 |
| 6. Self-Determination Era | 1975-Present | 2 |

Question 3 -

The “Trust Responsibility” is a complex and sometimes confusing role, and the courts and Congress have often attempted to clarify it. There are literally thousands of situations where the Secretary is required to be involved protecting the Indian rights. Of the list in the question, all of them apply EXCEPT number 2.

B. CULTURE

Which of the following activities do you think would be a good idea before approaching an Indian Tribe for potential work or operating as a CFEDS for an individual Indian?

1. Do some research on the internet or elsewhere on tribal customs
2. Do some research on the internet or elsewhere on tribal governance
3. Do some research on the internet or elsewhere on tribal dress for yourself
4. Say “ I love Indians, and I’m here to help you”
5. Always take a gift to present to the Tribal leader (s)
6. Mention your Indian ancestry, if any
7. Find out what other permits or licenses may be needed besides your contract
8. Assume most things are the same as the last Indian Tribe you worked for
9. Establish a tight schedule to accomplish things as quickly as possible
10. Become aware of what the Tribe actually calls itself

ANSWER:

While some of these may seem obvious or even ridiculous, each of these subjects was addressed in the video lecture by Priscilla Wilfarht of the Solicitor’s Office. The correct list of “good ideas” would be numbers 1, 2, 7, and 10.

Course 1: History, Records & Administrative Systems Study Guide

COURSE DESCRIPTION:

This is an introductory series of videos that establishes the context of the CFedS Program. Topics covered in this course include:

- Brief history of surveying as it relates to the United States
- Cultural Awareness
- History of Indian Land Law
- Bureau of Land Management and Bureau of Indian Affairs structures and records that each may have
- Basics of federal survey authority

COURSE OBJECTIVES:

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

- Review administrative functions, structures, and process of the Bureau of Land Management and the Bureau of Indian Affairs
- Increase awareness of cultural and historical legal issues when working in Indian Country
- Identify records sources for survey projects in Indian Country









COURSE INSTRUCTOR(S):

Dennis Mouland, Bureau of Land Management
 Dominica Van Koten, Bureau of Land Management
 Pricilla Wilfarht, Office of the Solicitor
 Colleen Kelly, Office of the Solicitor
 Ron Applebaum, Bureau of Indian Affairs (Ret.)

VIDEO LECTURE TITLE:

Current Status of Indian Land Law (31 minutes)

ICON LEGEND

 WEB COURSE	 EXERCISE	 DIAGRAM	 READING ASSIGNMENT	 PROBLEM	 HANDOUT	 2009 BLM MANUAL	 QUIZ
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CURRENT STATUS OF INDIAN LAND LAW

Introduction

Hello, I'm Priscilla Wilfarht, you saw me earlier giving a presentation on the cultural perspective of Indian land ownership.

Now I am going to give you a brief overview of the current status of Indian land law. In a previous presentation you heard of about the history of Indian land law.

Objectives

There are two objectives I want you to learn from this course. The first one is that I want you to know that any transaction involving Indian land held in trust may involve approval by the Bureau of Indian Affairs. The second one is that the measure of any transaction, which should be approved, is judged by the impact on the Indian beneficial owner.

As a general matter, most land transactions occurring with respect to Indian land requires Secretarial approval to be valid. I think it is worth noting here that most statutes will say that the Secretary of the Interior must approve a land transaction because it would be impossible for the Secretary of the Interior to personally review every document, her authority or his authority, to approve such land transaction has been delegated to various Bureau of Indian Affairs' officials, usually the Regional Director or the Superintendent of the local agency with jurisdiction over the land.

I thought this was worth noting for you because I recently handled a case in front of the Interior Board of Indian Appeals where the Bureau's action was challenged by a county because a document did not contain the signature of the Secretary of the Interior and the county declined to believe that the document had actually been approved because it believed that the signature that was required was actually that of the Secretary of Interior. A lease of Indian land will not be valid or enforceable unless the BIA has approved it.

However, there are exceptions to this rule, for example at the Tahlequah reservation, the tribe can lease its land for a limited term except for the exploitation of natural resources, under its own regulations, approved by the Bureau of Indian Affairs. And

CURRENT STATUS OF INDIAN LAND LAW

authority for that is given at 25 United States Code Section 415, Subsection B. Under what circumstances BIA approval will be granted is governed by statute, regulation and the trust responsibility.

While it is important to refer to the statutes directly, due to the overlapping layers of statutory provisions, it is often easier and clearer to refer to the regulations, which summarize the various statutory duties. You've just heard me mention the trust responsibility and you heard Colleen Kelly talk about the trust responsibility in an earlier section of this course.

I think that it might be useful for your purposes for me to tell you a little bit more about the trust responsibility and how it is actually administered because it is a profoundly important concept to tribal relations to the federal government and to the federal government's government-to-government relationship in its administration of Indian affairs. So I am going to detour briefly from the materials that you were given as part of the training materials.

The federal trust responsibility is a confusing, much litigated and discussed but generally not really very well understood topic. Most federal agencies find it confusing and struggle with its application in their day-to-day work.

It is not defined by statute, although many statutes refer to it. It is a concept arising with case law in the 1830's commonly referred to as the Marshall Trilogy and they were mentioned in the previous lecture. It applies only to recognized tribes and their members. The Bureau of Indian Affairs publishes a list of recognized tribes annually. It was last published in 2005. A recognized tribe, and that is also a term that you may have heard us use previously in these discussions, a recognized tribe is one with whom the United States has acknowledged a formal government-to-government relationship.

Groups or organizations, which are not recognized, do not receive the benefits of the trust relationship with the federal government. The government's trust responsibility may only be enforced against it by Indians. Non-Indians may not enforce the trust responsibility.

CURRENT STATUS OF INDIAN LAND LAW

The **Indian Self Determination Act**, and you have heard it mentioned before, it's the statute under which tribes contract with the federal government to perform services for themselves, which the Bureau of Indian Affairs would otherwise have performed for them. And they also have self-governance compacts or there are self governance compacts which by the precise terms of the statute even though the functions and duties are now being performed by the tribes themselves, both statutes are very clear and state explicitly that the trust responsibility is not diminished by the existence of a contract or a compact.

The trust responsibility extends to the federal government as a whole not just the Bureau of Indian Affairs, although the Bureau of Indians Affairs has the most explicit statutory responsibilities and the administration of it. The Bureau of Indian Affairs frequently finds itself in the position of making administrative decisions between competing Indian interests. For instance, the lease of individual Indian land to the tribe or of tribal land to an individual member. In that instance, you have Indians on both sides of the transaction.

The Bureau of Indian Affairs trust responsibility runs to the owner of the land. The trust responsibility is no broader than the responsibility set forth by statute or regulation. One of the most commonly asked questions I hear regarding the trust relationship between the federal government and tribes or individual Indians, is why it does not violate the laws mandating equal protection. This is because it is based on the political relationship between the United States and Indian tribes.

This was explained in a Supreme Court case entitled, *Morton v. Mancurry* from the mid 1970s. No other ethnic group in the United States has a governmental relationship with the United States. Neither the Bureau of Indian Affairs nor tribes have the authority to sell tribal trust land or take it out of trust absent specific statutory authority. Individuals may take their trust land out of trust with the approval of the Bureau of Indian Affairs and tribes may not prohibit them from doing so. Individuals may sell their land pursuant to specific statutory authority found at 25 US Code Section 483 and they may mortgage their lands pursuant to 25 US Code Section 483a.

CURRENT STATUS OF INDIAN LAND LAW

There are regulations governing the following types of transactions and they can be found in the code of federal regulations and there is a list of them which will be shown to you both in your materials and is a Power Point presentation as part of this presentation and it includes the rules governing:

- probate of Indian trust land located at Part 15;
- land records and title documents, Part 150;
- the acquisition of land into trust status, Part 151;
- sales, exchanges, mortgages of trust land, Part 152;
- leasing, Part 162;
- timber sales, Part 163;
- grazing, Part 166;
- easements and rights of way across trust land, Part 169; and
- mineral development, Parts 211, 212, 216 and 225.

25 C.F.R. Citations:

- Probate of Indian Trust Land (Part 15)
- Land Records and Title Documents (Part 150)
- Acquisition into Trust Status (Part 151)
- Sales, Exchanges, Mortgages (Part 152)
- Leasing (Part 162)
- Timber Sales (Part 163)
- Grazing (Part 166)
- Easements, ROW (Part 169)
- Mineral Development (Parts 211, 212, 216, 225)

I mention these specific parts of the Code of Federal Regulations for your attention and information because while you are reviewing land transactional documents relating to trust lands, these are the regulations you are most likely to run into they involve land transactions and documents which will be recorded as a result of those transactions.

Federal regulations are periodically updated and amended to reflect the changes in law. You should always be careful to make sure that you have the most recent copies of the Code of Federal Regulations which are published annually and between amendments to the Code of Federal Regulations, new amendments to the Regs are published in the Federal Register which is published daily.

The Federal Register can also be found on the Internet so it is readily accessible. I would recommend that if you do have occasion to look at the regs that it is worth your time to go look to make sure you are looking at the most recent version of the Regs.

Land records and title documents which are governed by the regulations at 25 Code of Federal Regulations, Part 150, BIA land titles and records offices are the designated offices of record for land records and title documents for Indian trust lands and the Bureau of Indian Affairs is charged with the responsibility to record, provide custody and maintain records that affect titles to Indian lands.

CURRENT STATUS OF INDIAN LAND LAW

They examine titles and they provide title status reports which function like abstracts in the private sector. Instruction on how to acquire and how to read title status reports is going to be provided later in this course and I think you will find it very useful because they look like computer printouts and there is quite a bit of code on them and abbreviations so unless you understand the code, you will have a very difficult time reading a title status report.

Regulations that are specific to certain tribes are also found in other parts of Volume 25 of the Code of Federal Regulations. A theme consistent throughout all the regulations is that transactions may only be approved if they are in the interest of the Indian beneficial landowner. Thus, most transactions will not be approved unless the Indian owner receives a fair return for the use of his or her land. Exceptions are those, which you might expect for example, transactions with close family members may be approved for less than fair market value when the owner or owners knowingly consents.

Additionally, more leeway is given to transaction on tribal land. As governments, tribes may have goals other than maximizing the economic return of their property. For example, leases for housing to members or for civic purposes can be for less than fair market value. However, even though title to Indian trust land is held by the United States, absent consent by the beneficial owner, it cannot be used for general public purposes without payment of just compensation.

This brings me to another question that I frequently hear when I teach this course another common question I hear is the difference trust land and restricted title, and if you have had much occasion to review Indian titles you will have run across both of those terms.

You will see land held in trust by the United States for a tribe or individual, or you may see a trust patent, or you will see a patent issued with a restriction on alienation. And the difference between trust and restricted title is this, for trust property, the United States actually holds the title, the title reads, United States in trust for the Crow tribe or for some named individual.

With a restricted title, the title of the property is held by the individual, and tribes generally do not have restricted title that

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may not be true, I believe Oklahoma may have some exceptions to that. But in general restricted title is typically individual title and title to the property is actually held by the individual with a restriction on alienation.

The restriction will say something like, subject to the approval of the Secretary of the Interior. The thing that you need to remember about trust and restricted land is for administrative purposes they are treated almost synonymously, for almost all administrative purposes that I can think of they are treated exactly the same. And it is common practice within the Bureau of Indian Affairs and this I think is a slightly confusing point, which I think is also useful to clarify for you.

Individual lands whether they are actual allotments by the true technical meaning of that term, meaning there was an allotment given either under a treaty or under the General Allotment Act, or under some agreement with the tribal government. The Bureau of Indian Affairs refers to all individual land as allotment. That is not a technically accurate term and it may confuse you because you may believe that they are referring back to the original allotments.

But any individual land held in trust, even if it has been acquired in trust subject to the Indian Reorganization Act which provides the Bureau's general authority to acquire land in trust are referred to as allotments. And so you should just keep that in the back of your mind so that when you hear the Bureau speak generically about allotments, they are using that term in a catch-all category which may include land that is actual allotments given under the General Allotment Act or it could refer to acquired trust land.

Indian land also benefits from other certain special protections. For example, under an Act passed in 1834, which is still in effect today, it states, "in all trials about the right of property in which an Indian may be a party on one side and a white person on the other side, the burden of proof shall rest upon the white person whenever the Indian shall make out a presumption of title in himself from the fact of previous possession or ownership.

This rule was applied as recently in litigation as 1979 in a case entitled *Wilson v. Omaha Indian Tribe* in which a non-Indian farmer sought a quiet title against some accreted lands against an

CURRENT STATUS OF INDIAN LAND LAW

Indian tribe. Another example of special protection is the Quiet Title Act; it is 28 US Code Section 2409a. It provides that the United States may be named as a party defendant in a civil action to adjudicate disputed title to property in which the United States claims an interest other than a security interest or a water right.

However, the statute explicitly excludes from this waiver of sovereign immunity all trusts or restricted Indian lands. Consequently, an individual claiming an interest in land that is identified by the United States as Indian trust land does not have a forum in which to adjudicate the disputed title. And the United States is not required under that statute to prove its title; it need only claim an interest in the land on behalf of Indians in order to present the jurisdictional bar.

Another area where there has been increasing emphasis expressed through legislation is the effort to address land fractionation. As was discussed earlier, much Indian land is held in undivided multiple ownership. This is largely the result of inheritance law governing Indian lands.

This however poses significant challenges for the beneficial owners and for the Department of the Interior as its trustee and the present day administration of those lands. In 1983 Congress enacted the first version of the Indian Land Consolidation Act which is now codified at 25 US Code Sections 2201 through 2219. Using various techniques it was intended to support the consolidation of small undivided interests into tribal ownership. One controversial provision relating to the smallest interest was found unconstitutional. That provision provided that very small interest would escheat to the tribes but made no provision for the tribes to pay for them.

The Supreme Court found that that provision created a taking of those interests without compensation in violation of the U S Constitution. And declared that the Indian Land Consolidation Act was unconstitutional. Amended in 2000, the Act is still controversial and not yet a fully implemented piece of legislation.

It was amended substantially again in the year 2004 by the American Indian Probate Reform Act which enacted a federal probate code for Indian trust property, created a fairly complex scheme for land consolidation which permits the forced sale of

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small fractional interests in certain circumstances but requires compensation for those interests in order to avoid the constitutional violations the Supreme Court found in the original Land Consolidation Act. Regulations are being drafted to implement all of the 2004 provisions.

One other thing that is going on that should be of interest is that the other policy decision that has been made to try to deal with fractional land interests is a pilot project to purchase those land interests back, not merely to let tribes purchase them by a forced sale, but to let individuals come forward and voluntarily sell those interests back to the Bureau of Indian Affairs, who is running the pilot project and at last count \$20 plus Million had been appropriated to acquire these small fractional interests and the pilot project began on reservations in the upper mid west.

It has now been expanded to tribes on the Great Plains, in the Dakotas and I believe also a few of the western tribes. It is believed that it will be in the long run less costly for administration of those lands to simply purchase them back than it would be to continue to try to administer them in the fractionated condition that they are in now.

Another law, important law that relates indirectly to Indian land law is the Indian Self Determination and Education Assistance Act, commonly referred to as Public Law Number 93 638 or just as 638 contract law. And you heard about this in one of the earlier sessions. It was first enacted in 1975 and has been extensively amended in the years since. It authorizes tribes or consortiums of tribes with the agreement of all of the tribes that are part of the consortium to contract with the Bureau of Indian Affairs and other Department of Interior agencies to plan and conduct and administer programs, functions, services and activities that were formerly provided by the agency for the benefit of Indians.

The decision to enter into one of these 638 contracts is not discretionary on the part of the Bureau of Indian Affairs. If a tribe indicates, by resolution, that it wants to enter a contract to perform services for itself, the Bureau of Indian Affairs must enter into such a contract, unless one or more of five specific circumstances exists. The Act is to facilitate the orderly transition from the federal domination of programs for and services to Indians and to effective and meaningful participation by the Indian people in the

CURRENT STATUS OF INDIAN LAND LAW

planning, conduct and administration of those programs and services.

One of the programs that is commonly contracted by tribes is the real estate services program and under that the tribes are able to effect all of the ministerial parts of the Bureau's duties affecting land transactions. That means they can draft deed, they can draft agreements, they can draft leases, but they cannot approve them for themselves. They must still be presented to the Bureau of Indian Affairs for approval. And that is called the inherently federal function aspect of 638 contracting.

Inherently federal functions are not contractible under 638 or self governing compacts. It reflects current policy of the United States that it is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities. Regulations governing self-determination contracts are found at 25 Code of Federal Regulations, Part 900.

In 1994, the related self governance project was made a permanent part of the law. The department now has a program known as the Tribal Self Governance Program that allows tribes to take self-determination one step further. Under this program, tribes enter into a long term compact with the Secretary of the Interior that identifies those programs, functions and services that it intends to perform. Each year the tribe and the department agree on an annual funding agreement referred to as an AFA that sets forth the total amount of money to be transferred to the tribe to perform all identified programs.

The primary difference between a 638 contract and a self governance compact an AFA is that under the self-governance program tribes have more freedom to consolidate and redesign the programs they run by reallocating funds among the programs. However, if the tribe receives funds that would otherwise be spent for trust services to individual members, the tribe must provide those same services to the individual Indians.

Self governance compacts and annual funding agreements can also include programs operated by non Bureau of Indian Affairs agencies and the regulations implementing the Self Governance

CURRENT STATUS OF INDIAN LAND LAW

Program are found at 25 Code of Federal Regulations, Part 1000. As tribes enter into self determination contracts and self governance compacts, many of the Bureau of Indian Affairs' programs that impact Indian lands are being administered by tribal employees.

In most situations, the only remaining function performed by the federal officials are those determined to be inherently federal. In a land transaction, that is normally the final approval or disapproval decision. The federally inherent function is most generally defined as any action, which requires an exercise of the Secretary of the Interior's discretion. For example, the tribes can prepare the documents relating to land transactions, such as leases and deeds but must be approved by an official of the Department of the Interior to be effective.

Records management and preservation. Under the records laws relating to all federal agencies, each office or program has determined applying general rules what documents to save and for how long. With respect to records related to Indian trust assets, additional rules apply. All employees that have documents or data relating to Indian trust money, trust funds, and individual Indian trust assets, have been instructed to retain records, documents and data necessary to complete an accounting to individual Indian trust beneficiaries.

A list of documents subject to this directive was distributed under a memorandum dated August 27, 1999 from the Chief of Staff for the Department. The release of information or documents related to Indian trust land is treated no differently under the Privacy Act or Freedom of Information Act than other federal records. And the Freedom of Information Act is a general statute applied to all agencies government wide of the federal government, which requires a federal agency to release documents if requested by a member of the public unless the agency can articulate a specific exemption which exempts them from releasing those documents.

And the general rule is you release the document unless you can find a specific exemption in the statute, Freedom of Information Statute Regulation, which permits you to withhold that document. Other such information is contained in a system of records. So the rules of the Privacy Act may also apply. There is one additional law.

CURRENT STATUS OF INDIAN LAND LAW

The Indian Land Consolidation Act that has a provision relating to the release of information about Indian land. It provides that upon written request the names and mailing addresses of Indian owners, the location of the parcel, and each owner's percentage of ownership in that parcel shall be made available, notwithstanding any other provisions of law to:

1. Indian owners of trust land within the same reservation this is so that Indian owners can consolidate their land interest if they want to; and
2. The tribe that exercises jurisdiction over that land parcel and any of its members, and that again is for consolidation purposes so that a tribe can get that information so that if it wishes to acquire those interest by purchase, it can obtain the information which enables it to do that; and
3. Prospective applicants for leasing use or consolidation of trust land.

And this statute is found at 25 US Code Section 2216e. And I recommend to you that you make yourself at least passingly familiar with the Freedom of Information Act and the Privacy Act because if as you are dealing with Indian trust lands, most of the information you are going to be looking for is going to be held by some federal agency either the Bureau of Indian Affairs, Mineral Management Service.

It is going to be in federal hands, and in order to know how to request that information under the Freedom of Information Act you need to be familiar with it and I am relatively certain that there is a vast body of information about the Freedom of Information Act on the Internet and I recommend that you take a look at it because your request has to cite that it is made under the Freedom of Information Act.

It has other specific requirements that if it is not made correctly, it is not that it will be ignored, it is just that in order to fall under the Freedom of Information Act which then kicks in required time frames within which the agency must respond and if you are trying to get information in a timely fashion, it is in your best interest to make that request in such a way that it is done properly and the appropriate time frames kick in.

CURRENT STATUS OF INDIAN LAND LAW

This completes this section of this session of the current status of Indian land law. I strongly recommend that if you have questions regarding the administration of Indian lands you contact the Bureau of Indian Affairs and or the tribe itself or the Bureau of Land Management Indian Land Surveyor, the Bureau of Land Management Indian Land Surveyor the acronym is BILS and they are referred to as BILS and there is one located in each regional office of the Bureau of Indian Affairs.

Thanks very much.

Course 1: History, Records & Administrative Systems Study Guide

COURSE DESCRIPTION:

This is an introductory series of videos that establishes the context of the CFedS Program. Topics covered in this course include:

- Brief history of surveying as it relates to the United States
- Cultural Awareness
- History of Indian Land Law
- Bureau of Land Management and Bureau of Indian Affairs structures and records that each may have
- Basics of federal survey authority

COURSE OBJECTIVES:

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

- Review administrative functions, structures, and process of the Bureau of Land Management and the Bureau of Indian Affairs
- Increase awareness of cultural and historical legal issues when working in Indian Country
- Identify records sources for survey projects in Indian Country









COURSE INSTRUCTOR(S):

Dennis Mouland, Bureau of Land Management
 Dominica Van Koten, Bureau of Land Management
 Pricilla Wilfarht, Office of the Solicitor
 Colleen Kelly, Office of the Solicitor
 Ron Applebaum, Bureau of Indian Affairs (Ret.)

VIDEO LECTURE TITLE:

Indian Land Record System (30 minutes)

ICON LEGEND

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

INDIAN LAND RECORD SYSTEM

Introduction

Hi, my name is Ron Appelbaum and I am here today about the Bureau of Indian Affairs Real Estate. I graduated from Ohio State University with a major in real estate, degree in Business Administration. After that I worked for the Ohio Department of Natural Resources and for the National Park Service, both in land acquisition.

For the last twenty-six years I worked for the Bureau of Indian Affairs in the northwest regional office in Portland, Oregon. There I did various aspects of real estate and I would like to tell you today some of the objectives that we plan on having as a result of this lesson.

Objectives

So by the end of the lesson today, you will be able to identify where land records are located for Indian reservations, identify the different types of land transactions, identify key BIA organizations and tribal positions, identify and explain the different components of a title status report and explain the importance of the title status report to surveying.

Objectives

- By the end of the lesson today you will be able to:
 - Identify where land records are located for Indian Reservations
 - Identify the different types of land transactions
 - Identify key BIA organizations and tribal positions
 - Identify and explain the different components of a Title Status Report (TSR)
 - Explain the importance of the TSR to surveying

INDIAN LAND RECORD SYSTEM

There are three main topics that I will be discussing. The first is historical issues; the next is land status records and third is the BIA structure and its responsibilities.

Without this information you would be looking for records in the wrong location. You would not be able to understand the information you were presented and you could get in trouble with tribes.

We are going to try to avoid these problems with my presentation. When I took real estate law in college, there were many instances where the book would say this is the case in all states except for California and Louisiana. That exclusion should also have included Indian lands because many laws are unique to them.

In this session I will talk about Indian lands, ownership types and types of conveyances.

Topics

- Historical Issues
- Land Status Records
- BIA Structure and its Responsibilities

Importance

- Without this information:
 - You would be looking for records in the wrong locations,
 - You would not be able to understand the information you were presented, and
 - You could get in trouble with tribes

INDIAN LAND RECORD SYSTEM

Historical Background

Originally, the entire United States belonged to the Indians. The United States government entered into treaties with various tribes establishing reservations. The Indians were moved to the reservations, sometimes voluntarily, sometimes forcibly.

Sometimes, I am asked what the United States was called before the white man came; the Indians called it “Ours”. It was decided that Indians should become farmers.

Basis of Indian Ownership

- Originally the entire United States belonged to the Indians
- The United States Government entered into treaties with various tribes establishing reservations. Indians were moved to the reservations.

So in 1887, the **Dawes Act** was enacted resulting in each tribal member receiving an allotment of a given number of acres. This basically continued into the early 1920s.

After then, the **Reorganization Act** was passed in 1934. The allotting process was formally ended. In different parts of the country, there were different numbers of acres, which were allotted to each individual. In the northwest our reservations typically had allotments of 80 acres. But some reservations only had 10 acres allotted to each individual.

The land that was not allotted to individual Indians either went to the tribe, open for public homesteading or both.

Basis of Indian Ownership

- In 1887 the Dawes Act was enacted resulting in each tribal member receiving an allotment of a given number of acres. This continued until the early 1920's.
- Land that was not allotted to individual Indians either went to the Tribe, opened for public homesteading, or both.

INDIAN LAND RECORD SYSTEM

Until recently, an Indian who died without a will would have their estate probated in accordance with state law. This resulted in **fractionation** of the allotments. Many tribes are now trying to purchase these small interests to consolidate the ownerships.

Basis of Indian Ownership

- Until recently, an Indian who died without a will would have their estate probated in accordance with state law. This resulted in fractionation of the allotments.
- Many Tribes are now trying to purchase these small interests.

Reservations could also be created by Executive or Presidential order and since the **Indian Reorganization Act, the IRA of 1934**, reservations can be proclaimed by Secretarial orders.

Basis of Indian Ownership

- Reservations could also be created by Executive (Presidential) Order.
- Since the Indian Reorganization Act (IRA) of 1934 reservations can be proclaimed by Secretarial Orders.

INDIAN LAND RECORD SYSTEM

Types of Indian Land Ownership

There are basically three different types of ownership on reservations that Indians have. On the reservations you can have fee simple land, trust or restricted land, and government land. I will explain each of these types of ownership.

Types of Ownership

On a Reservation you can have:

- Fee Simple Land
- Trust or Restricted Land
- Government Land

Fee simple title is the way most non-Indian land is owned. It is an estate in land, which is absolute and unrestricted.

The owner is entitled to dispose of the entire property or various interests in the property during his lifetime, without hindrance, subject to legal restrictions. Upon the owner's death, the land or the owner's remaining interest, passed to his or her heirs or to those to whom the owner has given it by will.

Fee Simple

- Estate in land which is absolute and unrestricted.
- Owner is entitled to dispose of the entire property or various interests in the property during his lifetime without hindrance.
- Upon the owner's death, the land (or owner's remaining interests) pass to heirs or those to whom owner has given it by will.

INDIAN LAND RECORD SYSTEM

Restricted land is where title to the land is held by a tribe or an individual Indian subject to restriction, alienation or encumbrance.

The wording in the patent would be, To Greg Norton, subject to restriction on alienations and encumbrance. What they mean by alienation is the removal of the restrictions on the ownership so that the BIA would no longer be involved in decisions affecting the land.

Typically, this type of title is how lands on the public domain is held. But some reservations were allotted that way. Such as the Fort Hall Reservation in Idaho. If the owner no longer wants the restrictions, the BIA issues an order removing restrictions, a certificate of competency, or a deed approved by the Bureau of Indian Affairs to a non-Indian.

Trust land is how most Indian land is classified. It is any tract of land or interest therein that the United States holds in trust status for the benefit of a tribe or individual Indian.

The wording on the trust patent would be, “To the United States of America in trust for Greg Norton.” To end the trust status, a fee patent is issued by the Bureau of Land Management to the applicant or to a non-Indian heir in the case of a probate.

Alternatively, a deed may be approved by the Bureau of Indian Affairs and that deed would not have the trust language in it. So instead of saying “to the United States in trust for Greg Norton”, it would say “to Greg Norton.”

Restricted Fee Land

- Title to land which is held by a tribe or an individual Indian subject to restrictions on alienation or encumbrance.

Trust Land

- Any tract or interest therein, that the United States holds in trust status for the benefit of a tribe or individual Indian.

INDIAN LAND RECORD SYSTEM

There are unique ownership situations on Indian lands. The first that I will discuss is undivided, **fractional interests**.

This happens when an interest is held by a co-owner in the property that is not divided out from the whole parcel. In the past, if an individual died without a will, the estate would be divided according to state law.

Depending on the state where the property was located, this could mean that the property would be divided between the spouse, children, parents, brothers and sisters. Many Indian people believe that if they make out a will they will soon die thereafter.

Although the BIA encourages Indians to have wills, it is not commonplace. Also many Indians who make out wills in the past could not decide who to give their land to so they gave it to all of their children to share and share alike. The new Indian probate laws limited this practice but due to this practice in the past, which continued for many years, the numbers of owners on allotments have grown astronomically large.

Many Indians and non Indians believe that an undivided fractional interest can be divided out. For example, if you own one quarter interest in 160 acres, you do not own 40 acres.

You own an undivided one-quarter interest in the whole 160 acres because your one quarter interest has not been portioned out usually by a survey. The division is also based on value not size.

So in this example, if the property is subdivided, you could end up with more or less than forty acres. An example is depending on the topography of the land, if one portion of the property has more road frontage, then that portion would probably have a higher value than the rest.

When a partition is requested by the land owners, they generally will have all of the owners get together and on a plat draw out where they think the subdivision should be. Then that subdivision draft is submitted to the appraisal branch to do an appraisal to see if the parts are of equal value, and if not, the appraiser might go ahead move the line one way or another until the values are pretty close.

Undivided Fractional Interest

An interest held by a co-owner in a property, that is not divided out from the whole parcel.

Undivided Fractional Interest

- **Example:** If you own $\frac{1}{4}$ interest in 160 acres, you do not own 40 acres. You own an undivided $\frac{1}{4}$ interest in the whole 160 acres because your $\frac{1}{4}$ interest has not been partitioned out (surveyed).

INDIAN LAND RECORD SYSTEM

Then that plat would be given back to the land owners and asked if they agree with the way that it is going to be subdivided, and if so a surveyor would be hired to actually survey out those portions.

Many non Indians think that a reservation consists entirely of tribal land. While this is possible, it is not typical.

The tribe can hold fee title or the United States can hold a title in trust on behalf of the tribe. **The Land Titles and Records Office** commonly referred to as LTRO or title plant, will record fee lands owned by the tribe upon request.

The Bureau of Indian Affairs generally must approve all transactions for them to be valid. This applies whether the BIA or a tribe under a contract or a compact processes a transaction. A best interest determination must be made based on an appraisal and other factors and the owner must generally consent.

Tribal Land

- The Tribe can hold fee title or the United States can hold the title in trust on behalf of the Tribe.
- The LTRO will record fee lands owned by a Tribe upon request.

Approval

- The Bureau of Indian Affairs generally must approve all transactions for them to be valid.
 - This applies whether the BIA or a Tribe under a Contract/Compact processes the transaction.
 - A "best interest" determination must be made based on an appraisal and other factors.
 - The owner must generally consent.

INDIAN LAND RECORD SYSTEM

If an Indian or tribe owns fee land, it can be transferred to trust status. The process is referred to as fee to trust.

The regulations in Title 25 of the Code of Federal Regulations, Part 151 covers this type of transaction. Generally, only the land within the boundaries of a reservation may be converted to trust status. The deed must be approved by the Bureau of Indian Affairs and this may require a survey.

Types of Conveyances

- Fee to Trust
 - Covered by 25 CFR 151
 - Generally only land within the boundaries of a reservation can be converted to trust status.
 - Must be approved by the BIA

Land Conveyance Issues

The most common conveyance is trust to trust where one Indian sells or gifts his property to another Indian. This includes exchanges, partitions and gifts and again the transaction must be approved by the BIA.

Types of Conveyances

- Trust to Trust
 - Most transfers of trust land
 - Includes exchanges, partitions, and gifts
 - Must be approved by the BIA

INDIAN LAND RECORD SYSTEM

When an individual no longer wants his property in trust or when a non Indian inherits a property there is a trust to fee transaction.

This can be accomplished by a deed to non trust status issued by the Bureau of Indian Affairs, the issuance of a fee patent by the Bureau of Land Management, a certificate of competency being issued by the BIA, in the case of a restricted fee patent, or an order removing the restrictions by the BIA, again in the case of a restricted fee patent.

When an individual owning land passes away, there will be a probate. Probate hearings are by a judge or an attorney decision maker. These individuals' works for the Office of Hearings and Appeals. If there is no will, descent will be by the federal rules of intestacy found in the Indian Land Consolidation Act amendments.

Types of Conveyances

- Trust to Fee
 - Deed to non-trust status by BIA
 - Issuance of Fee Patent by BLM
 - Certificate of Competency by BIA
 - Order Removing Restrictions by BIA

Types of Conveyances

- Probates
 - Probate hearings by Judges or Attorney Decision Makers under the Office of Hearings and Appeals
 - If no will, descent will be by Federal Rules of Intestacy found in the Indian Land Consolidation Act (ILCA) amendments.

INDIAN LAND RECORD SYSTEM

Many of the allotments on a reservation are leased often to non Indians. This can be for residential, business and mineral purposes. There are different authorities requiring different percentages of consent before a lease can be approved.

Types of Conveyances

- Leases and Permits
 - Includes Residential, Business, and Minerals.
 - Different authorities require differing percentages of consent.

Under certain circumstances land can be condemned through eminent domain. However, tribal land cannot be condemned.

Individually owned land, owned by Indians, can be condemned however, the BIA must represent the individual interest and condemnation must be done in federal court.

Types of Conveyances

- Condemnation
 - Tribal Land cannot be condemned
 - Individually owned land can be condemned
 - BIA represents the individual interests
 - Condemnation must be done in Federal Court

INDIAN LAND RECORD SYSTEM

Rights of way are rights created by grant, reservation, agreement or prescription. Although title cannot be obtained by adverse possession on trust land, a trust landowner could actually claim adverse possession against fee land.

A right of way grants the right to use the land of another for a specific purpose and the right of way can be for a specified term or for an indefinite period.

It is important to realize that Indian people have a different concept of land ownership than non Indians.

They believe that the land belongs to everyone and they also believe that aside from picking berries or for digging roots is more for important than a site that will generate income.

So you must be very sensitive to certain religious and cultural beliefs that the Indian people have.

Rights-of-Way

- Rights created by grant, reservation, agreement, or prescription.
- Grants the right to use the land of another for a specific purpose.
- Can be for a specified term or for an indefinite period.

Cultural Issues Impacting Land Ownership

- Indian people have a different concept of land ownership than non-Indians.
 - Land belongs to everyone.
 - Believes that a site for picking berries or roots is more important than a site that will generate income.

INDIAN LAND RECORD SYSTEM

Finally, you may be aware that there are **master title plats** at the Bureau of Land Management that have the ownership of all federal lands including reservations.

However, the Bureau of Land Management does not keep the master title plats up to date for reservation lands and the county records stop at the point when a property becomes trust or restricted.

The official BIA records are at the Land Titles and Records Office and we will talk about that in another session.

In summary, in this session, we spoke about the basis of Indian ownership, the types of title on Indian land, various types of conveyances and cultural issues impacting ownership of land.

Land Status

- Master Title Plats (MTP) at BLM have ownership of all Federal lands, including reservations.
 - BLM does not keep the MTPs up to date for reservation lands.
 - County Records stop at the point when a property becomes trust or restricted.
 - Official BIA records at the Land Titles and Records Office.

Summary

- In this session we spoke about:
 - The basis of Indian ownership
 - Types of title on Indian land
 - Types of conveyances
 - Cultural issues impacting ownership of land

INDIAN LAND RECORD SYSTEM

Land Status

The next topic will be land status, which I alluded to earlier. In the white man's world, if I want to know who owns a piece of property, I would go to the county court house or a title company. In the Indian world, we have Land Titles and Records Offices. These are also referred to as LTROs or title plants.

LTROs are offices within the Office of Indian Affairs, which are charged with the recording, maintenance and custody of official records, including Indian land records for Indian reservations and public domain lands within their jurisdictions.

They are charged with the issuance of title status reports for trusts and restricted Indian land and for federal government owned land within reservation boundaries. They also certify copies of land documents.

Land Titles and Records Office

- LTRO's are BIA offices charged with:
 - Recording
 - Maintenance
 - Custody
- Official Records include Indian land records for :
 - Indian reservations
 - Public Domain lands within their jurisdiction

Land Titles and Records

- LTROs are BIA offices charged with:
 - Issuance of Title Status Reports
 - For trust lands
 - For restricted Indian lands
 - The certification of copies of land documents.

INDIAN LAND RECORD SYSTEM

Throughout the country the BIA operates the LTROs with two exceptions, the Confederated Salish and Kootenai tribes, the Flathead reservation in Montana and the Confederated Tribes of the Colville reservation in Washington have compacted and contracted the functions for their specific reservations.

Exception to BIA LTROs

- The Confederated Salish and Kootenai Tribes of the Flathead Reservation
- The Confederated Tribes of the Colville Reservation

Except for the two locations just mentioned, this slide shows the title plant locations and the regions, which they serve.

Some locations serve just one region. These are Alaska title plant which is located in Juneau, Eastern Oklahoma title plant which is located in Muskogee, Oklahoma; the northwest title plant which is located in Portland, Oregon; the Pacific title plant which is located in Sacramento, California; and the Rocky Mountain title plant located in Billings, Montana.

Those title plants serving multiple regions are the Great Plains title plant in Aberdeen, South Dakota, which serves the Great Plains region and the Midwest region; the southern plains title plant in Anadarko, Oklahoma which serves the southern plains region and the eastern region.

Finally, the southwest title plant in Albuquerque, New Mexico serves the southwest region, the western region and the Navajo region.

LTRO Locations / Regions Covered

Single Regions Served

- Alaska
- Eastern Oklahoma
- Northwest
- Pacific
- Rocky Mountain

Multiple Regions Served

- Great Plains
 - Great Plains
 - Midwest
- Southern Plains
 - Southern Plains
 - Eastern
- Southwest
 - Southwest
 - Western
 - Navajo

INDIAN LAND RECORD SYSTEM

Titles and records receive documents from agencies and tribes and record and stores the documents on microfilm. This includes all ownership, encumbrance and probate documents. Examples are deeds, leases, mortgages and survey plats.

The security copy of the microfilm is stored off site. A pilot project is scheduled to start soon to electronically store documents. In the past the National Archives has always insisted on microfilm because it doesn't become obsolete with new technology.

For example, remember 8 inch floppy discs, how about 5-1/4 inch ones? Most new computers don't even have 3 1/2 inch floppy drives. Original probates are stored within the Land Titles and Records offices until archived with the National Archives and Records Administration.

After recordation, the original documents are returned to the applicable agency or tribe. The agencies and tribes typically have allotment files, which contain documents affecting the property.

Although the title plant is the official depository of title documents, there have been instances where a document or a survey was just placed in the file at an agency and never sent in for recording. It is therefore important for you to look in all locations when doing your search, prior to surveying.

Documents

All documents are recorded and stored on microfilm, including all ownership, encumbrance and probate documents (i.e. deeds, leases, mortgages...).

A security copy of the microfilm is stored off-site.

Original probates are stored within the LTRO's until archived with the National Archives and Records Administration (NARA).

Documents

- Original Documents are returned to the Agency/Tribe after recordation.
- Agencies/Tribes typically have allotment folders which contain documents affecting the property.

INDIAN LAND RECORD SYSTEM

LTRO Functions

In many ways the LTRO is like a county recording office. It records title documents, it prepares and maintains land status maps of all reservations somewhere within its jurisdiction and it certifies land records and title documents.

It is also like a title insurance company but not quite. It evaluates documents and it creates title status reports, which are like title policies but without the insurance.

The LTRO acts as the office of record for Indian land records and title documents. It carries out the federal trust responsibility to record, provide custody and maintain records that affect titles to Indian land.

What the LTRO is all About

- Like a County Recording Office:
 - Records Title Documents
 - Maintains Land Status Maps
 - Certifies Land Records and Title Documents
- Like a Title Insurance Company, but not quite
 - Evaluates Documents
 - Creates Title Status Reports

What Does an LTRO Office Do?

- Office of record for Indian land records and title documents
- Charged with the Federal responsibility to record, provide custody, and maintain records that affect titles to Indian land

INDIAN LAND RECORD SYSTEM

The LTROs can also take curative action to correct title defects. These are broken down into two categories.

First there are non probate defects. If the error is based on a defective title document, the LTRO notifies the originating office of the defect. This could be to correct a bad legal description or an erroneous ownership.

At the present time there is no easy way of correcting title where the grantor has either passed away or cannot be located.

If the error is the result of a probate, the LTRO can issue an administrative modification to include any Indian land that was omitted from the inventory, if such property is located in the same state and takes the same line of decent as that shown in the original probate decision.

For example, an individual might end up with two different identification numbers, if one of those IDs was not picked up, the land under that ID number would not have been included in the inventory of lands prepared for the probate. Also the LTRO can correct wrong ID numbers and typographical errors.

If the modification would change ownership such as when new errors are determined where the modification would delete or lessen interest, then a modification is prepared for the administrative law judge. The judge would review the modification and if he agrees, he would sign the documents.

What Does an LTRO do? (con't)

- Takes Curative Actions to Correct Title Defects

Non-Probate Defects

- If based on a defective title document LTRO notifies the originating office of the defect.

What Does an LTRO do? (con't)

Probate Errors

- LTRO issues an administrative modification to include any Indian land omitted from the inventory if such property is located in the same state and takes the same line of descent as that shown in the original probate decision.
- If the modification would change ownership, delete lands or lessen interests, then a Modification is prepared for the Administrative Law Judge.

INDIAN LAND RECORD SYSTEM

One of the most important functions of the LTRO is the preparation of title status reports. These are prepared upon request and provided to those persons authorized by law to receive such information.

I will tell you how to read a title status report later on but it is important to know that the title status report includes the legal description of the property, any encumbrances affecting it and the names of the landowners and the respective ownership interest.

Requests for title status reports are generally submitted by the BIA or tribal office that has administrative jurisdiction over the land but mortgage companies can also request them. All requests must clearly identify the tract of Indian land. For example, a description that says that property along Highway 57 owned by Cecil or tax lot number 35 is not adequate. Titles and records does not keep tract of county tax lot numbers. The LTRO can also generate tract history reports, which lists every transaction affecting a tract. You can use this to identify earlier surveys.

The LTRO can also certify documents. The copy or reproduction can be admitted into evidence the same as the original from which it was made. Fees may be charged for furnishing certified copies.

What Does an LTRO do? (con't)

- Prepare Title Status Reports (TSR's)
 - Prepared Upon Request and provided to those persons authorized by law to receive such information
 - Usually the requests are submitted by the BIA/Tribal office that has administrative jurisdiction over the Indian land
 - All requests must clearly identify the tract of Indian land.

What Does an LTRO do? (con't)

- Certifies Land Records and Title Documents
 - The copy or reproduction can be admitted into evidence the same as the original from which it was made.
 - Fees may be charged for furnishing certified copies.

INDIAN LAND RECORD SYSTEM

We are about to learn how to read a title status report, but first it is important to know a certain distinction. There are two types of reports, which look very similar.

An informational title report or ITR is a non signed, non certified report. It can be printed out at the BIA agency and certain tribal offices or at the titles and records offices. There is no check to ensure that all records have been included, but the legal description should be correct, absent any sales or subdivisions since the last certified title status report.

The title status report or TSR is the result of research into all records that have recorded for a specific tract since the last certified title status report.

Once the research is completed, the TSR is signed by the researcher and certified by the LTRO. This document can only be prepared by a land titles and records office. The copies can generally be found at the agency and or tribal offices.


ITR v. TSR

- Informational Title Report (ITR):
 - Non-signed/non-certified.
 - Available from the BIA agency, Tribe or Titles and Records.
 - May not list all recorded documents.

ITR v. TSR

- Title Status Report (TSR):
 - Full research is conducted.
 - Signed/Certified by LTRO.
 - Will have Cover/Summary page.
 - Prepared by LTRO, with copies at Agency/Tribal Office

The next heading is Document, which has three subheadings. CLS is the class of the document. In the example on the screen ten is listed. This refers to a deed. Other common numbers are 11 for probate, 01 for a trust patent, and 02 for a restricted fee patent. The package you will be receiving will indicate all of the code numbers that you will find in this column. TYP can list surveys, rights of ways and other types of non deed transactions.



HANDOUT A complete list of Code Numbers can be found in the Handouts Section at the end of this study guide.

INDIAN LAND RECORD SYSTEM

The Number is a number that has been assigned to the transaction by either the land titles and records office or an administrative law judge. The name in which acquired is the name of the individual who currently owns the interest. If an individual leader changes his or her name, such as by getting married, the name does not change on the title. The listing is by the family name followed by the first name on the second line.

In this sample, the individual listed is the sole owner of the property. He acquired the entire property by deed. However, this is not the typical situation. Some tracts may have a thousand landowners, then rather than list the fraction of the tract is acquired one over one as in this case, the actual fraction would be listed.

For example, if Fred owned the entire property and then died, leaving half of his property to his wife, Wilma, and the other half to his daughter, BAM BAM, Wilma would be listed as having acquired one-half interest and BAM BAM would be listed as having acquired the other half interest.

This would then be listed under the aggregate share converted to the lowest common denominator as one half for each of them and the aggregate decimal is .500000 for each of them. If Wilma already owned an interest in the property, her interest could be listed together and then totaled in aggregate share converted to the lowest common denominator.

If there were any special interests such as a life estate, these would be listed under the ownership interest down here. After the listing of all of the ownerships, there is a statement that says, title is subject to the following encumbrances and oaths.

The expiration date of the encumbrance is the next column, followed by the document information. The last column describes the encumbrance by including information gleaned from the document.

[illegible]

The last page of the title status report has a certification. It lists the date of the certification, here is as of the 6th day of March 2006, the foregoing consists of three pages, it is a true and correct report of the status of the title to the real estate described herein according to the official land records maintained in this office.

PAGE: 3
 DATE: 3/15/2004
 OTY TIME: 15:29:34

REQUESTOR: BUREAU
 REQUESTOR: BUREAU

UNITED STATES DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT
 TITLE STATUS REPORT
 TITLE INTERESTS BASED ON FILE OF TRUST

-----DATE OF LAST-----
 RED OFF NUMBER OFF PLANT STATE MEXICAN LAND AREA RESOURCES CERTIFICATION /OVERSIGHTION
 124 2948 -A PORTLAND WASHINGTON Willamette YATINA Surface 3/16/2004

AS OF THE 4TH DAY OF MARCH, 2016, THE FOREGOING CONSISTING OF 3 PAGES, IS A TRUE AND CORRECT REPORT OF THE STATUS
 OF THE TITLE TO THE LAND OFFICE DESCRIBED HEREIN ACCORDING TO THE OFFICIAL LAND RECORDS MAINTAINED IN THIS OFFICE.

THEIR REPORT DOES NOT COVER ENCUMBRANCE, OR OVERTHROW OF LOCATION, RECORDS, ADVERSE SURVEY OR RECORDS, RIGHTS
 OR CLAIMS TO BE IN PUBLICATION, EMINENT DOMAIN, DISCREPANCY, BUT ARE LIMITED TO INFORMATION CHANGES, SURVEY
 CLAIMS, WITH AND NOT FILED FOR RECORD IN THIS OFFICE. ANY OTHER RIGHTS MENTION MUST BE PRISTINE SUBSECTION OF THE
 PARCELS.

MARCY EAGLESTAFF
 RECORDS BY

DONALD K. HENDEL
 POWER, LAND TITLES AND RECORDS OFFICE
 PORTLAND, OR

***** END OF REPORT *****



January 2010

INDIAN LAND RECORD SYSTEM

Okay, I wanted to show you an example of a title status report where there were numerous owners. This is only one page, and if you will look to see the lowest common denominator, in this case is 403,200, giving you an idea of how many total owners there are.

The largest interest in this one is a one tenth interest in the property. But as you go down, you can see one thirtieth interest. There is one over one hundred twenty; one over fifteen. So you can have many, many ownerships on a piece of property on Indian trust land.

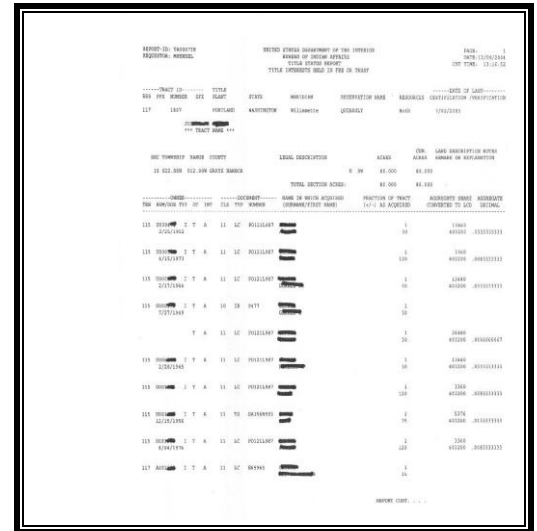


DIAGRAM A full size version of this diagram can be found in the Diagram section at the end of this study guide.

So in summary, in this session we learned what records are at the Land Titles and Records Office and how to read a title status report. Our next session will deal with administrative items.

Summary

- In this session we learned:
 - What records are at the LTRO
 - How to read a TSR



Indian Land Record System

Ron Applebaum

CODE NUMBERS

READING A TITLE STATUS REPORT (TSR)

From the Bureau of Indian Affairs

1. **HEADING:** The heading identifies whether it is a **Title Status Report** (available only from the Land Titles and Records Office (LTRO) or an **Informational Title Report** (available from BIA Agency offices). Additionally, it identifies who requested it, the date and time (Central Standard Time) it was ordered (which is *not* the date it is "certified"), and page number.
2. **GENERAL INFORMATION:** The first part of the TSR, starting at the top on the left-hand side and reading across to the right, are seven columns for: "TRACT ID", "TITLE PLANT", "STATE", "MERIDIAN", "RESERVATION NAME", "RESOURCES" and "DATE OF LAST CERTIFICATION/VERIFICATION".
 - 2.1. "TRACT ID" has four sub-headings:
 - 2.1.1. "RES": This is a unique numeric code assigned to a particular **Indian Reservation**.
 - 2.1.2. "PFX": This is a **prefix** used to identify whether the tract is tribally or individually owned. A "T" indicates tribal ownership. A blank field indicates the tract is owned by an individual. An "M" indicates minerals only. There are codes specific to certain reservations. Contact the LTRO in your region for detailed information.
 - 2.1.3. "NUMBER": The **allotment** or **tract number** for a particular tract-of land.
 - 2.1.4. "SFX": This is a **suffix**, used when tracts of land are partitioned or portions are split out from the original tract.
 - 2.2. "TITLE PLANT": This is where the official BIA records are maintained, e.g. Portland.
 - 2.3. "STATE": The **state** in which the land is located.
 - 2.4. "MERIDIAN": This is referencing the meridian in the **Public Land Survey System (PLSS)**. For example, "WM" is the Willamette Meridian in Oregon.
 - 2.5. "RESERVATION NAME": This refers to the Indian reservation the tract is affiliated with.
 - 2.6. "RESOURCES": "**Both**" means surface and minerals; "**Surface**" is surface only; "**Mineral**" is minerals only.
 - 2.7. "CERTIFICATION": This is the date the TSR was certified.
 - 2.8. "VERIFICATION": This is the date the TSR was verified.
 - 2.9. "TRACT NAME": This is the original allottee. In the case of a tribally-owned tract, this won't appear.
3. **LAND DESCRIPTION:** This is the second section of the TSR and identifies the section, township, and range based on the Government Land Survey where the property is located. The tract could cover several sections, and each would be listed separately. It also identifies the county (or counties) the land is located in.
 - 3.1. "SEC" refers to the section the tract is in based on the PLSS.
 - 3.2. "TOWNSHIP" is the township based on the PLSS.

- 3.3. "RANGE" refers to the range based on the PLSS.
- 3.4. "COUNTY" is the county the property is located in.
- 3.5. "LEGAL DESCRIPTION" refers to aliquot parts. For example, "E SE" would mean the east half of the southeast quarter of the section. If the property is further described by a metes and bounds description, it will be found under the "LAND DESCRIPTION NOTES REMARKS OR EXPLANATION" column. Government Lots will identified between the columns for "LEGAL DESCRIPTION" and "ACRES"
- 3.6. "LAND DESCRIPTION NOTES REMARKS OR EXPLANATION" is the area where the metes and bounds description and any remarks or further explanations are located.
4. **OWNERSHIP:** The third part of the TSR has five columns reading from left to right and show "OWNER", "DOCUMENT", "NAME IN WHICH ACQUIRED (SURNAME/FIRST NAME)", "FRACTION OF TRACT (+/1) AS ACQUIRED", "AGGREGATE SHARE CONVERTED TO LCD", and "AGGREGATE DECIMAL".
- 4.1. "OWNER" has five sub-headings:
- 4.1.1. "TRB": This is the code number of the **Tribe** showing where the individual Indian is enrolled.
- 4.1.2. "NUMB/DOB": This is the individual Indian's **enrollment number** and **date of birth**. The date of birth will not always be shown on the TSR. In the case of a Tribe, this would be the three-digit reservation number and type of ownership. Ownership types for this column are as follow:

Code	Explanation
"xxx-10"	Tribal (original).
"xxx-20"	Tribal (reserve).
"xxx-30"	Tribal (acquisition of allotted lands).
"xxx-38"	ILCA (tentative as of this writing).
"xxx-40"	Tribal (purchased in trust with tribal funds).
"xxx-50"	Tribal (purchased in trust with appropriated funds).
"xxx-52"	Tribal (other).
"xxx-55"	Tribal (owned in fee).
"xxx-60"	US Government (school).
"xxx-61"	US Government (sub-marginal).
"xxx-62"	US Government (other).

Example: If the designation showed as "141-40", it would mean the owner was the Grand Ronde Tribe of Oregon and they purchased it with tribal funding with the United States holding the property in trust.

4.1.3. "TYP": This is the **Owner Type Code**. Owner Type codes that you may see in this portion and their description are as follow:

<u>Code</u>	<u>Description</u>
C	CORPORATION
G	GOVERNMENT
I	INDIAN
M	MISSING PERSON
N	NON-INDIAN
R	REMOVED (TERMINATED) INDIAN
T	TRIBE
U	UNKNOWN
Y	ESCHEAT

4.1.4. "OT": This is the **Ownership Type Code**. This code shows how the individual or tribe holds the property. Ownership Type Codes that you will see in this portion of the TSR are as follows:

<u>Code</u>	<u>Description</u>
B	RESTRICTED FEE AND TRUST
F	FEE
R	RESTRICTED FEE
T	TRUST

4.1.5. "INT": This is the **Interest Type Code**. This code shows how the individual or tribe holds the acquired interests. In this portion of the TSR you will find a "T" or an "A". The description of these two code types are as follows:

<u>Code</u>	<u>Description</u>
A	ALL (ACTUAL & MONETARY)
T	TITLE (ACTUAL)

When an individual or tribe owns a "T" interest that indicates that the interest is subject to some type of **Special Interest** (see Section 5.0).

4.2. "DOCUMENT" has three sub-headings:

4.2.1. "CLS": This is the **Document Class Code**. This code shows the type of document by which the individual or tribe acquired the property. Document Class Codes are listed on page 6.

- 4.2.2. "TYP": This is the **Document Modifier**. This code shows the modifiers for document types. Document Modifier Codes are listed on page 7.
- 4.2.3. "NUMBER": This is the **Document Number**. The Document Number is a number assigned to a particular document. These numbers are assigned by the Land Titles and Records Office or in the case of a probate by the Administrative Law Judges.
- 4.3. "NAME IN WHICH ACQUIRED - (SURNAME/FIRST NAME)": This is the **name** that appears on the document/probate. All names are shown exactly as they appear in a document/probate.
- 4.4. "FRACTION OF TRACT - (+/-) AS ACQUIRED": This is the **interest** or **fractional interest** acquired by the individual.
- 4.5. "AGGREGATE SHARE CONVERTED TO LCD": This is the **aggregate share** acquired, converted to the **lowest common denominator**.
- 4.6. "AGGREGATE DECIMAL": This is the **aggregate decimal** for the total aggregate share acquired.
5. **SPECIAL INTEREST**: The fourth part of the TSR lists interests where there would be a 'conveyance' document involved (i.e., life estate, joint tenancy, etc.). This section utilizes the same columns as the ownership portion of the report. For information on the columns, please refer to Section 4.0. For an explanation of the codes, please see the "TAAMS Codes at a Glance" section in the back of this document.
- 5.1. "INT": This is the **Interest Type Code**. This code shows how the individual or tribe holds the acquired interests. The description of these code types you will see in this portion of the **TSR** are as follows:

<u>Code</u>	<u>Description</u>
C	CURTESY (MONETARY)
D	DOWER (MONETARY)
J	JOINT TENANCY (ACTUAL & MONETARY)
L	LIFE ESTATE (MONETARY)
R	RIGHT OF USE
S	SPECIAL INTEREST (UNSPECIFIED)

- 5.2. "NAME IN WHICH ACQUIRED - (SURNAME/FIRST NAME)" Same as Section 4.3.
- 5.3. "FRACTION OF S.I. (+/-) AS ACQUIRED": This is the interest or fractional interest of the **Special Interest** acquired by the individual.

5.4. "AGGREGATE SHARE CONVERTED TO LCD": Same as Section 4.5.

5.5. "AGGREGATE DECIMAL": Same as Section 4.6.

6. ENCUMBRANCES: The final part of the TSR states "TITLE IS SUBJECT TO THE FOLLOWING ENCUMBRANCES AND NOTES". This section shows five columns:

6.1. "NATURE OF ENCUMBRANCE": Shows the type of encumbrance. Encumbrance types are listed in the "TAAMS at a Glance" tables at the end of this document.

6.2. "ENCUMBRANCE HOLDER": Shows who the encumbrance holder is (example: State of Washington).

6.3. "EXPIRATION DATE": Shows the **date** the encumbrance expires if the document contains an expiration date.

6.4. "DOCUMENT": This includes three items: the **Document Type** (see below; these are not the same as in Section 4.2.1, above), the **Document Modifier** (see below; these are not the same as in Section 4.2.2 above) and (3) the **Document Number** (see Section 4.2.3 above).

DOCUMENT AND TYPE MODIFIERS

<u>Document</u>	<u>Class</u> <u>Type</u>	<u>Doc. Type</u> <u>Modifier Code</u>	<u>Name/Value</u>
13		FL	FLOWAGE
23		AS	ASSIGNMENT, TRIBAL LANDS
23		BS	BUSINESS
23		HS	HOMESITE
23		SS	SUBSURFACE
23		TM	TIMBER
23		DE	DELETION
06		IU	IRRIGATION UNIT
ANY		MO	MISCELLANEOUS OTHER
13		RR	RAILROAD
13		TT	TELEPHONE-TELEGRAPH
13		WL	PIPELINES, WATER; CANALS
13		HW	ROADS; HIGHWAYS; CONDEMNATIONS
13		OG	PIPELINES; OIL AND GAS
13		EL	ELECTRIC AND POWER

6.5 "DESCRIPTION/EXPLANATION": Cites information contained within the document.

7.0 The end of the TSR will show the certification by the BIA, including the date (the same as in Section 2.7 above) and the examiner's name.

TAAMS CODES AT A GLANCE

Page 6

DOCUMENT CLASS CODES					
01	TRUST PATENT	15	MORTGAGES/LEASEHOLD MORTGAGE	29	NON COMPOS MENTIS DECLARATION
02	RESTRICTED FEE PATENT	16	FEE PATENT	30	AGREEMENT
03	DEED TO NON-TRUST STATUS	17	HOMESTEAD PATENT	31	PERMIT
04	EXECUTIVE ORDER	18	CERTIFICATE OF COMPETENCY	32	COURT ORDER
05	TREATY	19	ORDER REMOVING RESTRICTIONS	33	PARTIAL RELEASE
06	ACT OF CONGRESS	20	ALLOTMENT SCHEDULE	34	LIEN
07	SECRETARIAL ORDER	21	DECLARATIONS OF TAKING/CONDEMNATION	35	ASSIGNMENT
08	ORDER TRANSFERRING INHERITED INTEREST	22	MORTGAGE SATISFACTION/RELEASE	36	MODIFICATIONS/AMENDMENTS
09	DEED TO RESTRICTED STATUS	23	LEASE/CONTRACT	37	CANCELLATION/TERMINATION RELINQUISHMENT
10	DEED TO TRUST STATUS	24	MEMORANDUM OF SALE ALLOTTED LAND (DEFERRED PAYMENT CONTRACT)	38	ALLOTMENT CERTIFICATE/PATENT
11	PROBATE ORDER	25	FEDERAL REVESTING ORDER	39	TITLE OPINION
12	PROBATE MODIFICATION	26	MISCELLANEOUS	40	TITLE INSURANCE POLICY/ABSTRACT
13	EASEMENT/RIGHT OF WAY	27	TITLE STATUS REPORT	98	LRIS CONVERSION - DATA CLEAN UP
14	SURVEY/SUPPLEMENTAL PLAT	28	DEATH NOTICE/CERTIFICATE		

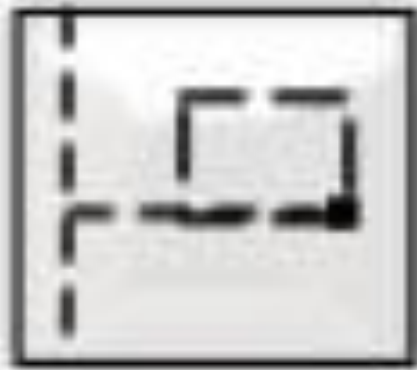
ENCUMBRANCES		
AGREEMENTS (OTHER)	FISSIONABLE MATERIALS	PERMIT
AGRICULTURAL LEASE	FLOWAGE EASEMENT	PROSPECTING PERMIT
APPURTENANT EASEMENT	GOVERNMENT (OTHER)	RADIO/TELEPHONE/COMMUNICATION
ASSIGNMENT	GRAZING LEASE	RAILROAD
AVIATION EASEMENT	GRAZING PERMITS	RANGE UNIT
BUSINESS LEASE	HIGHWAYS/ROAD	RESTORATION
CABLE LINE R/W	HOMESIDE LEASE	REVERSIONARY INTEREST
CERTIFICATION OF SURVEY	HOMESTEAD	RIGHTS OF WAY
CHURCH/RELIGIOUS	ILCA CONVEYANCE RESTRICTIONS	RIPARIAN RIGHT
COAL RESERVE (NON U.S.)	INGRESS/EGRESS	SAND & GRAVEL
COAL RESERVE (U.S.)	IRRIGATION UNIT	SERVICE LINE AGREEMENT
CONGINGENT LIFE ESTATE	JOINT TENANCY	SEWER LINE R/W
CONTRACT FOR DEED	LEASE (GAS, COAL, OIL)	SUBJECT TO PURCHASE BY TRIBE
CONTRACT FOR SALE	LIFE ESTATE	SUPPLEMENTAL AGREEMENT
COVENANT	MINERALS RESERVE	TELEPHONE/TELEGRAPH
CURTESY RIGHTS	MISCELLANEOUS	TIMBER CONTRACTS
DAMS/DIKES/LEVEES	MISSING PERSONS	TIMBER LEASE
DITCHES & CANALS	MORTGAGE	TIMBER PERMIT
DOWER RIGHTS	OIL & GAS PIPELINES	TITLE DEFECT NOTICE
ELECTRIC LINE	OPTION TO REPURCHASE	TRIBAL NOTIFICATION CONV APPL
ENCUMBRANCES (OTHER)	ORIGINAL ALLOTTEE	TRIBAL RESERVES
ESCHEAT	OTHER SPECIAL AUTHORITY	WATERLINE/PIPELINE/CANAL
FIBER OPTIC LINE	PARTIAL RELEASE	WHARF CONST/OPERATION RIGHT

TAAMS CODES AT A GLANCE

Page 7

DOCUMENT MODIFIERS					
AA	ASSIGNMENT OF LAND	FC	FORECLOSURE	RH	REHEARING
AI	ASSIGNMENT OF INCOME	FH	ACT OF 4/11/70	RO	REVOCATION (OTHER)
AL	ADDS LAND	FL	FLOWAGE EASEMENT	RR	RAILROAD
AM	ASSIGNMENT OF MORTGAGE	FP	OIL & GAS PIPELINES	RS	RESTORATION
AN	ADDS INTEREST	FT	FEE TO TRUST	RU	RANGE UNIT
AS	ASSIGNMENT OF (OTHER)	GA	AGREEMENTS (OTHER)	RV	ACT OF 06/30/1932
AU	AGRICULTURAL LEAS/GRAZING	GE	GEOPHYSICAL	RW	RIPARIAN RIGHTS (WATER)
BS	BUSINESS LEASE	HS	HOMESITE LEASE	SD	SUBDIVISION DESIGNATION
CA	COMMUNITIZATION AGREEMENT	HW	HIGHWAYS/ROADS	SF	SATISFACTION OF MORTGAGE
CD	CADASTRAL SURVEY	IC	ILCA (ACT OF 01/12/1983)	SK	SPIRIT LAKE (PL97-459)
CH	REDETERMINES HEIRS	IF	ACT OF 04/12/1974	SM	SUPPLEMENT AGREEMENT/PROBATE
CI	CORRECTS INTEREST	IL	ILCA REVESTING ORDER OF 02/19/1999	SO	SPECIAL AUTHORITY
CK	CORRECTS DEED	IR	ACT OF 06/18/1934	SP	SPECIAL ALLOTMENT PATENT
CL	CORRECTS LAND DESCRIPTION	IT	INTESTATE	SR	STANDING ROCK (PL96-274)
CN	CORRECTS NAME	IU	IRRIGATION UNIT	SS	SUBSURFACE
CP	CORRECTS PERSON	JD	JUDGEMENTS	ST	TRUST DEED SPECIAL FORM
CS	CERTIFICATE OF SURVEY	LC	LRIS CONVERSION-DATE CLEANUP	SU	SUBORDINATE LIEN
CV	COVENANT	LH	LEASEHOLD	SW	SISSETON WAPHETON (PL 98-513)
DC	DEED OF RECONVEYANCE	MG	MORTGAGE	TR	TRIBAL RESERVES
DD	DEFERRED PAYMENT	MO	MISC. OTHER/COAL RESERVES 206	TS	TESTATE
DL	DELETES LAND	NP	NOTICE OF PRODUCTION	TT	TELEPHONE/TELEGRAPH R/W
DR	DENYING REHEARING	OG	OIL & GAS LEASE	VR	VERIFICATION
EL	ELECTRIC LINE AND POWER	OW	ACT OF 06/26/1936	WL	WATER PIPELINE
EO	ENCUMBRANCES (OTHER)	PG	PERMITS (OTHER)	ZZ	LEASES (GENERAL)
ES	ESCHEAT	RE	RESIDENTIAL		
EX	EXAMINATION	RG	RIGHT OF WAY (GENERAL)		

Notes:



DIAGRAM

Certified Federal Surveyors (CFedS) Certification Training Program
Course 1: History, Records & Administrative Systems

REQUESTOR: HEADLEST

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
TITLE STATUS REPORT
TITLE INTERESTS HELD IN FEE OR TRUST

PAGE: 1
DATE: 3/15/2006
CST TIME: 13:29:34

RES	PPX	NUMBER	SFX	TITLE PLANT	STATE	MERIDIAN	LAND AREA	RESOURCES	DATE OF LAST CERTIFICATION /VERIFICATION
124		2948	-A	PORTLAND	WASHINGTON	Willamette	YAKIMA	Surface	3/06/2006

BILL CLACKINAS
*** TRACT NAME ***

OWNERSHIP ONLY

SEC TOWNSHIP RANGE COUNTY
16 009.00N 021 00E YAKIMA

LEGAL DESCRIPTION

ACRES
.380

CUM. LAND DESCRIPTION NOTES
ACRES REMARK OR EXPLANATION
.380 PART SE NE 1/4

METES & BOUNDS DESCRIPTION:
THAT PART OF THE SE 1/4 NE 1/4 DESCRIBED AS: BEGINNING AT A POINT 35 FEET
SOUTH OF THE NW CORNER OF THE SW 1/4; THENCE SOUTH ALONG SECTION LINE
(CENTER OF FOSTER ROAD) COMMON TO SECTIONS 15 AND 16, A DISTANCE OF 96
FEET; THENCE WESTERLY ALONG FENCE LINE 172 FEET; THENCE NORTHERLY
ALONG FENCE LINE 96 FEET; THENCE EASTERLY ALONG FENCE LINE 172 FEET TO
POINT OF BEGINNING, CONTAINING .38 ACRE, MORE OR LESS.

TOTAL SECTION ACRES: .380 .380

TRB	NUM/DOB	TYP	OT	INT	CLS	TYP	NUMBER	NAME IN WHICH ACQUIRED (SURNAME/FIRST NAME)	FRACTION OF TRACT (+/-) AS ACQUIRED	AGGREGATE SHARE CONVERTED TO LCD	AGGREGATE DECIMAL
		I	T	A	10		14607	MANISE JOE	1 1	1	1 1.0000000000

IN TRUST:	1 1 1.0000000000
IN FEE:	0 1 .0000000000
TOTAL:	1 1 1.0000000000

NO SPECIAL INTEREST SEPARATELY RECORDED

TITLE IS SUBJECT TO THE FOLLOWING ENCUMBRANCES AND NOTES:

REPORT CONT.

VERIFIED

Certified Federal Surveyors (CFedS) Certification Training Program
Course 1: History, Records & Administrative Systems

REQUESTOR: MEAGLEST

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
TITLE STATUS REPORT
TITLE INTERESTS HELD IN FEE OR TRUST

PAGE: 2
DATE: 3/15/2006
CST TIME: 19:29:34

TRACT ID	TITLE	STATE	SERIAL	LAND AREA	RESOURCES	DATE OF LAST CERTIFICATION / VERIFICATION		
124	2948	-A	PORTLAND	WASHINGTON	Willanette	YAKIMA	Surface	3/06/2006

NO TRACT NOTES FOUND.

NO REALTY DOCUMENTS FOUND.

NATURE OF ENCUMBRANCE	ENCUMBRANCE HOLDER	EXPIRATION DATE	DOCUMENT CLS	TYP NUMBER	DESCRIPTION/ EXPLANATION
MINERALS RESERVE	TREMASAT, [REDACTED]	PERPETUAL 10	881	IMAGE NO.: 0	RESERVATION OF AN UNDIVIDED 1/2 INTEREST IN ALL MINERALS INCLUDING OIL AND GAS.
HOMESITE LEASE	YAKIMA NATION HOUS AUTH	PERPETUAL 23	HS 14174	IMAGE NO.: 0	HOMESITE LEASE NO 1-4054 FOR 25 YRS BEGINNING ON 2-1-1985 WITH OPTION TO RENEW FOR ADDITIONAL 25 YRS APPROVED 2-1-1985.
MORTGAGE	YAKIMA CONF TRIBES	PERPETUAL 15	HS 14787	IMAGE NO.: 0	MORTGAGE MADE BY JOSEPH [REDACTED], APPROVED 1-29-88, TO SECURE NOTE IN THE AMOUNT OF [REDACTED]
MISCELLANEOUS	U S	PERPETUAL 10	13641	IMAGE NO.: 0	53 LHM
MORTGAGE	YAKIMA INDIAN NATION	PERPETUAL 15	HS 14787	IMAGE NO.: 0	MORTGAGE MADE BY JOSEPH [REDACTED], APPROVED 1/29/1988, TO SECURE NOTE IN THE AMOUNT OF [REDACTED]

REPORT CONT. . . .

Certified Federal Surveyors (CFedS) Certification Training Program
Course 1: History, Records & Administrative Systems

REQUESTOR: MEAGLEST

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
TITLE STATUS REPORT
TITLE INTERESTS HELD IN FEE OR TRUST

PAGE: 3
DATE: 3/15/2006
CST TIME: 19:29:34

RES	PFX	NUMBER	SFX	TITLE PLANT	STATE	MERIDIAN	LAND AREA	RESOURCES	DATE OF LAST CERTIFICATION / VERIFICATION
124		2948	-A	PORTLAND	WASHINGTON	Willamette	YAKIMA	Surface	3/05/2006

AS OF THE 6TH DAY OF MARCH, 2006, THE FOREGOING CONSISTING OF 3 PAGES, IS A TRUE AND CORRECT REPORT OF THE STATUS OF THE TITLE TO THE REAL ESTATE DESCRIBED HEREIN ACCORDING THE OFFICIAL LAND RECORDS MAINTAINED IN THIS OFFICE.

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MARYKAY EAGLESTAFF
EXAMINED BY

MICHELE K. HEISEL

MANAGER, LAND TITLES AND RECORDS OFFICE
PORTLAND, OR

* * * * END OF REPORT * * * *

Certified Federal Surveyors (CFedS) Certification Training Program
Course 1: History, Records & Administrative Systems

REPORT-ID: TA00071R
REQUESTOR: MHENSEL

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
TITLE STATUS REPORT
TITLE INTERESTS HELD IN FEE OR TRUST

PAGE: 1
DATE: 12/09/2004
CST TIME: 13:16:52

-----TRACT ID-----	TITLE	STATE	MERIDIAN	RESERVATION NAME	RESOURCES	-----DATE OF LAST-----
RES PFX NUMBER SFX PLANT						CERTIFICATION /VERIFICATION
117 1807	PORTLAND	WASHINGTON	Willamette	QUINULT	Both	7/02/2003

JOS [REDACTED]
*** TRACT NAME ***

SEC TOWNSHIP RANGE COUNTY	LEGAL DESCRIPTION	ACRES	CUM. ACRES	LAND DESCRIPTION NOTES
10 022.00N 012.00W GRAYS HARBOR	E SW	80.000	80.000	REMARK OR EXPLANATION
	TOTAL SECTION ACRES:	80.000	80.000	

-----OWNER-----				-----DOCUMENT-----		NAME IN WHICH ACQUIRED (SURNAME/FIRST NAME)	FRACTION OF TRACT (+/-) AS ACQUIRED	AGGREGATE SHARE CONVERTED TO LCD	AGGREGATE DECIMAL
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115	U0005 [REDACTED] 4/15/1973	I	T A	11	LC	PO121L987 [REDACTED]	1 120	3360 403200	.0083333333
115	U0006 [REDACTED] 2/17/1944	I	T A	11	LC	PO121L987 [REDACTED] DORRIS JR	1 30	13440 403200	.0333333333
115	U0007 [REDACTED] 7/27/1949	I	T A	10	IR	9477 [REDACTED] GEORGE	1 30		
			T A	11	LC	PO121L987 [REDACTED]	1 30	26880 403200	.0666666667
115	U0008 [REDACTED] 2/20/1945	I	T A	11	LC	PO121L987 [REDACTED]	1 30	13440 403200	.0333333333
115	U001 [REDACTED]	I	T A	11	LC	PO121L987 [REDACTED]	1 120	3360 403200	.0083333333
115	U001 [REDACTED] 12/15/1956	I	T A	11	TS	SA356N993 [REDACTED]	1 75	5376 403200	.0133333333
115	U001 [REDACTED] 8/04/1976	I	T A	11	LC	PO121L987 [REDACTED]	1 120	3360 403200	.0083333333
117	A0010 [REDACTED]	I	T A	11	LC	B65965 [REDACTED]	1 15		

REPORT CONT. [REDACTED]

Course 1: History, Records & Administrative Systems Study Guide

COURSE DESCRIPTION:

This is an introductory series of videos that establishes the context of the CFedS Program. Topics covered in this course include:

- Brief history of surveying as it relates to the United States
- Cultural Awareness
- History of Indian Land Law
- Bureau of Land Management and Bureau of Indian Affairs structures and records that each may have
- Basics of federal survey authority

COURSE OBJECTIVES:

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

- Review administrative functions, structures, and process of the Bureau of Land Management and the Bureau of Indian Affairs
- Increase awareness of cultural and historical legal issues when working in Indian Country
- Identify records sources for survey projects in Indian Country









COURSE INSTRUCTOR(S):

Dennis Mouland, Bureau of Land Management
 Dominica Van Koten, Bureau of Land Management
 Pricilla Wilfarht, Office of the Solicitor
 Colleen Kelly, Office of the Solicitor
 Ron Applebaum, Bureau of Indian Affairs (Ret.)

VIDEO LECTURE TITLE:

BLM Administration (36 minutes)

ICON LEGEND

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

BLM ADMINISTRATION

Introduction

Hello and welcome to the Administrative Procedures of the BLM portion of the CFedS video training. In this segment, we are going to be talking about are what it actually takes to create a Cadastral survey.

Administrative Procedures of the BLM

What it takes to
create a
Cadastral Survey

Objectives

Our objectives in this segment is that by the end of this lecture, you will be able to explain the role of the **BILS**, or Bureau of Indian Land Surveyor; you will be able to differentiate between state authority surveys and federal authority surveys; and you will be able to identify the procedures required to create an official BLM survey.

Objective

- Explain the role of the BILS surveyor
- Differentiate between State authority survey and Federal authority surveys
- Identify the procedures required to create an official BLM survey

BLM ADMINISTRATION

This lecture is organized into four different parts. We are going to first cover the organizational structure of the department and how Cadastral and those BILS surveyors fit into the overall organization and then we will take about the survey authority, the general survey authority, and the survey authority on Indian lands and then move into those procedures.

And the first three are background information that we are going to need to be able to talk about the procedures in detail. So let's get started.

Department of Interior and its Bureaus

So let's look at the overall department organization table, I am going to mention before we get started.

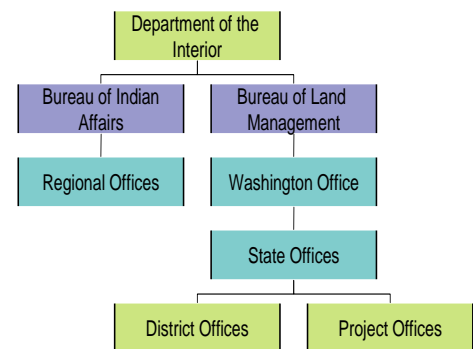
The Department of the Interior has other agencies within in but because we are looking at BLM and we are dealing with the CFedS program and our interaction with BIA, I am also mentioning the Bureau of Indian Affairs here. So we are just showing the two Bureaus.

The Bureau of Indian Affairs has underneath it, regional offices and they are located throughout the country. On the BLM side underneath the department, we have a Washington office, and underneath that we have the state offices and we have offices in twelve different state locations and they may have project offices or district offices within those state offices. So this is our overall departmental structure of how we are organized.

Overview

1. Organizational structure of the Department of the Interior
2. General survey Authority
3. Survey Authority on Indian Lands
4. Procedures of a federal authority survey

Department Organization Table

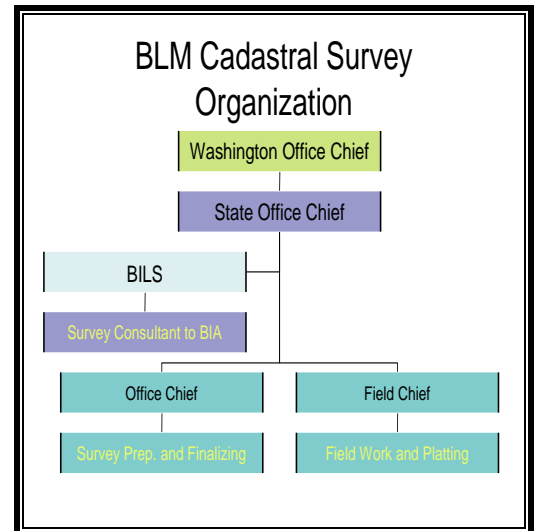


BLM ADMINISTRATION

Cadastral

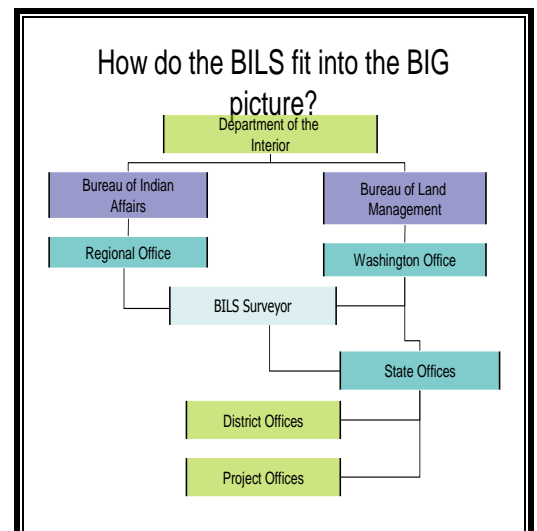
If we look at how the Cadastral surveyor program is located within that department organization, from our Washington office level, we have our Chief Washington office surveyor, we have then a state office chief located at each state office and then normally in most states we'll have an office chief who handles most of the office work, including survey preparation work, and finalizing and filing the plats and we will have a field chief who is in charge of the whole process of the field work, including logistics all the way through the final platting.

This site also shows the relationship of the BILS surveyor to our Cadastral Survey Program and they are technically located under the supervision of the state office chief in each state and that BILS surveyor, we are going to look at them, their specific duties more in a moment, but they are the survey consultant to BIA, they work for BLM, but they are located at the BIA offices.



I want to show a little bit more about how that BILS surveyor fits into the overall structure now. We talked about that they are located technically located under the state offices so this is where their technical supervisor is but they also have duties and responsibilities to the BIA regional office and to the fiduciary trust manager at our Washington office.

So they are really the coordinator and consultant between BLM and specifically the Cadastral survey functions at BLM and the BIA regional offices and helping them with their survey needs.



BLM ADMINISTRATION

Let's talk about what these specific duties are and what functions they are performing at BIA and they would be the first point of contact for Indian trust land survey issues at BIA.

So they are going to coordinate the surveys that are pending and are being planned to be performed for BIA and they will consult for Cadastral survey services, so they can let people at the BIA know the different types of services that Cadastral can provide and the different avenues that problems can be solved.

They will give assistance in preparing requests for survey and can provide a determination of even when a survey is even necessary and it is expected that they will be the first point of contact for CFedS surveyors when they are coming in asking questions.

I talked about that there are twelve BLM state office locations and I have a list here that shows where those offices are located and the additional areas of administrative jurisdictions in states that administer areas in more than in just the one state and they are located in Springfield, Virginia and that is all eastern states, and by all eastern states, we are talking about all the states east of and bordering on the Mississippi River so that covers all the public lands in those states.

We have one in Anchorage, Alaska; Phoenix, Arizona; and Sacramento, California and they also administer the public lands in Hawaii. We have a state office in Boise, Idaho; Billings, Montana and they cover administrative areas of public lands in Montana and North and South Dakota, and we have an office in Reno, Nevada; Santa Fe, New Mexico, which also includes lands in Texas and Oklahoma; the Portland office also administers lands in Washington; Salt Lake City, Utah; and Cheyenne, Wyoming and the Cheyenne office also administers lands in Kansas and Nebraska.

So those where all of our offices are located. And make note that these are not the same areas necessarily where the BIA regional offices are located and sometimes those BILS surveyors sometimes have long distances to cover to get between the offices that they are coordinating between.

BLM Indian Lands Surveyor's Duties

- Point of contact for Indian Trust Land Survey issues
- Coordination of Indian Trust Surveys
- Consultant for Cadastral Survey Services
- Assistance with preparing Requests for survey
- Determination of when a survey is necessary`

BLM State Office Locations and Additional Administrative Jurisdictions

- | | |
|-----------------------------------|----------------------------------|
| • Springfield, Virginia | • Reno, Nevada |
| – All eastern States | • Santa Fe, New Mexico |
| • Anchorage, Alaska | – New Mexico, Texas and Oklahoma |
| • Phoenix, Arizona | • Portland, Oregon |
| • Sacramento, California | – Washington |
| – Hawaii | • Salt Lake City, Utah |
| • Boise, Idaho | • Cheyenne, Wyoming |
| • Billings, Montana | – Wyoming, Kansas and Nebraska |
| – Montana, North and South Dakota | |

BLM ADMINISTRATION

So where you would find location of records for Cadastral surveys, we are talking about survey plats and notes, we want to talk specifically about the difference between where you would find records in an open state versus where you find them in a closed state.

An open state is a state that has a state office in it and still has pending cases and public land they are administering.

A closed state is a state where all of the files have been closed and those records in the closed state are sent to the state record entity and a copy is also kept at the General Land Office. In the open state the records are kept at the appropriate BLM state office and again the duplicates are sent to the GLO, so the GLO office would have copies of them also.

Location of Records

- | Open State | Closed State |
|--|--|
| <ul style="list-style-type: none">• Records kept at appropriate State Office of the BLM• Duplicates sent to GLO for archiving | <ul style="list-style-type: none">• Records sent to State Record Entity• Copy kept at General Land Office• List of web links to State record sites on GLO web site |

Survey Authorities

Moving into talking about survey authorities and generally there are two different survey authorities.

They are **federal authority** and **state authority**. Sometimes you will hear of a third category that is called a no authority survey and I am not going to talk more specifically about those.

The important thing to remember is that there are two main categories of survey authority.

Survey Authorities

- Federal Authority
- State Authority
- No Authority

BLM ADMINISTRATION

And what we are talking about with BLM specifically is the federal authority and the federal authority was granted by Congress to the Secretary and the Secretary has further delegated that authority to the Director who has further delegated that authority to the Chief Cadastral surveyor in each state.

The field work for federal authority surveys can be performed by either BLM surveyor or by a private surveyor by contract or agreement but BLM prepares the special instructions, which we will talk about more in a moment, but prepares the pre survey work and reviews and approves that plat. And that is really the key with our federal authority surveys.

They are approved and accepted by the BLM and go through our BLM process. This federal authority also extends to Indian trust land and the cite to that is located in 25 US Code 176 and that gave extended the BLM the federal survey authority onto Indian land and that is one of the reasons we are working together with BIA to perform these Cadastral survey functions.

The state authority is the authority that all of you as private surveyors have been performing under and that you are very familiar with.

It is surveyed under the authority of the state by a person licensed under the laws of the state usually it is surveys between parcels that have passed into private ownership. Those are the main key points.

Survey Authorities

- Federal Authority
 - Authority granted by Congress to the Secretary, delegated to the director of BLM and further delegated to the Chief Cadastral Surveyor.
 - Field work can be performed by BLM surveyor or private surveyor, but BLM reviews and approves the plat
 - Extends to Indian Trust Lands (25 U.S.C. 176)

Survey Authorities

- State Authority
 - Survey performed under the authority of the state by a person licensed under the laws of the state.
 - Surveys between parcels that have passed into private ownership

BLM ADMINISTRATION

Federal Survey Process

So having said that, now we want to look at what does it take to actually create a federal authority survey, and what are the processes and how are they sequenced in order to be able to get to that final point of having an approved Cadastral survey.

What does it take to create a Federal Authority Survey?

Overview of the Process that must occur to have a BLM Federal Authority Survey

The elements of a survey. The first step in any BLM Cadastral survey is a written request. The request comes into our office, it states the legal description of the parcels to be surveyed and it contains any particular supplemental information that may be necessary to go forward with the survey, including conveyance documents and other information.

Once Cadastral receives that request the first step that we take internally is to create **special instructions**, and special instructions are a physical document and part of the Cadastral survey record and contain lots of information that is important to the surveyor and are sent to the surveyor to be used in the field.

The types of information you would find in special instructions include the authority that that survey is being asked for under so it gives you a link to the authority that allows BLM to go and do that survey and by authority we are talking about either a legislation or whatever piece of information allowed for that parcel to be conveyed to an individual.

The special instructions would also include who would pay for the survey and a historical overview of all the surveys that are located at or near that survey and it includes any particular information, I like to call red flag information, to the surveyor, any items that in

Elements of a Survey

- Written request, special instructions and assignment instructions



BLM ADMINISTRATION

the research and looking at all the different documents, any issues that came up that might affect how the survey might be performed in the field. They also include information about the platting standards and what is expected after the field work is completed.

Also during the special instructions phase of the survey work, it is worth mentioning that with rectangular surveys, and I am going to talk about two different categories of surveys, rectangular and non-rectangular surveys and the rectangular surveys, whenever a group of townships is being prepared for a survey area, they would be assigned a group number, so a group is a collection of townships that are going to be surveyed all as one project and that number is important because it links you to the files and indexing system that we use at BLM to keep track of information related to that survey project.

So a group of rectangular townships in an area were assigned a group number at the special instructions stage and then those special instructions are written for that group number survey. Nonrectangular parcels would be assigned a number also, but it would be in a different numbering system and it would depend on the type of survey that that parcel is being surveyed for.

It could be a US survey so that it would be a sequentially United States survey number or it may be a mineral survey number or homestead entry survey number. So those are the indexing systems that we use to be able to link the particular fieldwork being performed to our office files and to be able to track that project through the process. Once the special instructions are written.

A set of assignment instructions will be written. Those assignment instructions basically tell which surveyor or who the surveyor would be whose is going to perform the survey and authorizes that surveyor to go ahead and proceed with the field work in an area. So the request, the special instructions and the assignment instructions are the procedures that need to happen and the things that BLM needs to do pre field survey in order to be able to get a survey started.

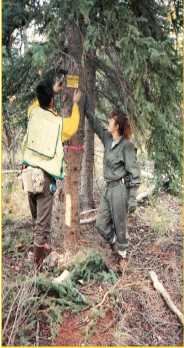
BLM ADMINISTRATION

The next major step in the procedures of a survey include the field monumentation and the preparation of records.

This would be done by whoever that survey was assigned to as the surveyor and it includes the actual field survey, and calculations that happened, monumentation and physical evidence that is left and then the preparation of the final records, and when we talk about the final records would be the plat and or the field notes.

Elements of a Survey

- Written request, special instructions and assignment instructions
- Field survey, monumentation and preparation of records



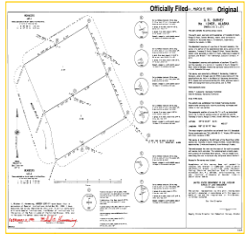

The next step we are going to talk about is the approval, acceptance, publication, and the official filing of the survey plat. And these are all very important parts of this process.

The first part of this process is the surveyor's certification and we will look at this area and you can see on this plat right here, the surveyor's signature is here. And what that statement is saying basically is that that survey was performed under all of the rules in the Manual and that it was performed correctly. And this particular example is shown in a plat only style.

If there had been field notes with this survey, the surveyor's signature certificate would be in the field notes. And you learn more about particulars of plats and field notes in further segments. But for now the important thing to know is that those are the official records that are produced out of the Cadastral survey process.

Elements of a Survey

- Written request, special instructions and assignment instructions
- Field survey, monumentation and preparation of records
- Approval, acceptance, publication and official filing



BLM ADMINISTRATION

The next step in the approval and acceptance realm is the approval by the Cadastral Chief in each state and that the Cadastral Chief in the state puts his signature on that plat and approves it and says this is now a federal plat and can be used. It was done correctly.

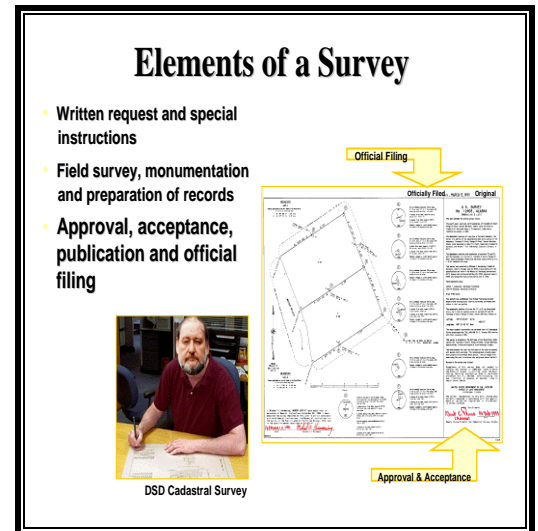
And here it is, it is an approved Cadastral survey plat and that signature will show up somewhere on the right hand corner of the document and again in the field notes if there were field notes with a plat that signature would also be in the field notes. And that signature is really the essence of the federal authority survey.

That signature is signing through that authority that has been delegated down from the Secretary to the Director of BLM and then finally to that Cadastral Chief and put on the plat.

Once that signature is on the plat there is still one other step that needs to happen before that plat can be used for administrative and land actions and that is officially filing.

Officially filing happens once the plat is accepted by the Cadastral Chief as a federal plat, it needs to be put in our records and available to the public, published so that all of the public can know that this is a federal record and can be put on notice that this record exists. And that happens through our process and once the plat is officially file date and once the plat is officially filed, the plat is finished, complete and can be used for any land actions, land decisions that need to be made including conveyances.

So that was a synopsis of the whole process in general terms of what projects need to go through to get through our Cadastral survey process.



BLM ADMINISTRATION

Now what we want to talk about is once we have an officially filed plat other actions that may happen to it that can affect its status as the officially filed plat and we have already talked about officially filing and what that means, but the next thing we are going to talk about is suspensions and a suspended plat and suspended plats will be noted on the face of the plat when you go to that document, it will say suspended and give the date. When a plat is suspended what it means is that BLM for some reason needs to take a closer look at that survey and we don't want any land actions being made on the survey at this time.

It is still an approved Cadastral federal survey but it is removed from being able to be used for administrative land decisions. Once those issues have been taken care of and the plat is determined to either be sound the way it is or maybe if changes need to be made, then the suspension will be lifted once all of those issues have been cleared up. And once the suspension has been lifted, that the plat can again be used for administrative actions.

Sometimes we may need to say that this plat is not an official record anymore and once it has gone to that process, the plat is labeled as cancelled and is actually removed from the federal record system and that is regardless of whether there may be monuments still located on the ground and from that survey, but once that survey is cancelled, it is no longer an officially approved federal survey and is taken out of the records and can't be used for any land decisions or actions.

Supplemental Plats

And finally, in this section, we are going to talk about **supplemental plats**. Supplemental plats are specific types of BLM Cadastral survey plats that have some very unique characteristics.

Supplement plats are plats that are generally created in the office with little fieldwork. They are generally used to combine existing records in an area and show the lands around it and give unique land identifiers for all the land lots that are around a particular parcel. They are a tool that can also be used in the Cadastral process to bring in some cases private records into the federal system.

Plats can be....

- Officially Filed
- Suspended
 - Suspension Lifting
- Cancellations
- Supplemental Plats

BLM ADMINISTRATION

There is a whole process for that but that is one place where we can do that or to exclude lands that have been previously conveyed from rectangular areas. And we are going to look at some examples of some of these different kinds of plats here, including the supplemental plats in a moment.

So this is an example of an officially filed Cadastral survey plat. It is located in Washington and it is a typical looking plat, and the reason I am showing some of these different examples is to show how in the first video you learned how the system evolved through the years with technology and with changing the laws, and I am giving you some examples of what officially filed plats can look like, that illustrate how these changes have happened, also.

This plat is a fairly old plat and it is from around 1900 and one of the things that it shows is lots of topography, it shows lots of information that you may not see on some of our current day plats but that is an indication of the time that it was being made in and the policies that were in place at that the time.

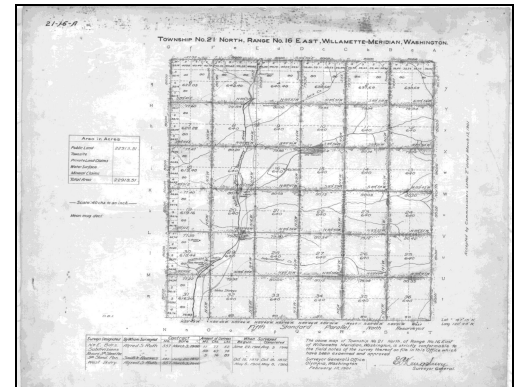


DIAGRAM A full size version of this diagram can be found in the Diagram section at the end of this study guide.

So another example of a plat, this one happens to be dependent resurvey and you can see that this plat looks totally different but it still is one of our federal **officially filed plats**. And this one in particular shows only one section, so in this case the work that we were performing was only in one section and it is just good to know that all plats are not going to look the same and they may not contain the entire township even.

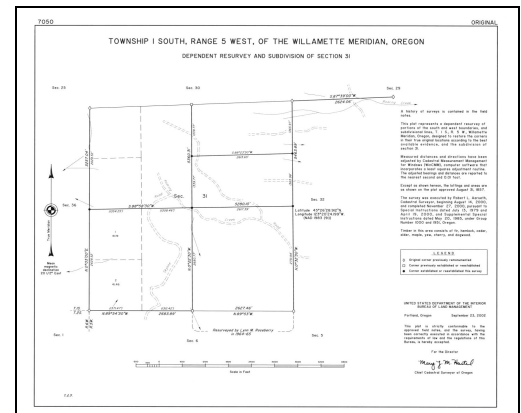


DIAGRAM A full size version of this diagram can be found in the Diagram section at the end of this study guide.

There is another example of how policies and the evolution of the system, this one is a very typical looking plat from Alaska, where I am from and you will notice that it looks different from some of

BLM ADMINISTRATION

those older plats also. And it illustrates how we have adapted the system and how the system has changed throughout the years to be able to accommodate the different land disposal laws and changes in technology.

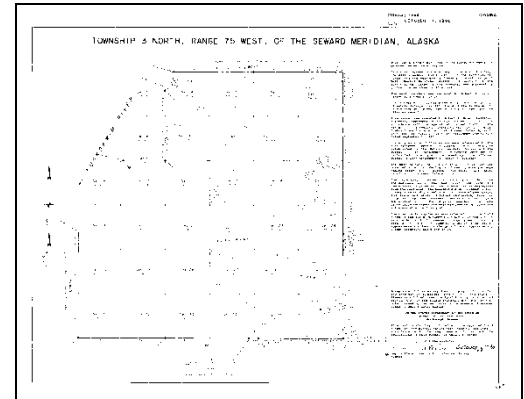


DIAGRAM A full size version of this diagram can be found in the Diagram section at the end of this study guide.

Now I would like to take a moment and illustrate the principles that I was talking about earlier when I was talking about supplemental plats. I will give you an example of a situation of information of a particular supplemental plat and what went into the creation of it.

We are looking on the screen at an example of a supplemental plat and what I want to emphasize about supplemental plats is that generally they are the combination of office records.

So if we look at this particular township, 17 North 69 West Seward Meridian, there was a rectangular plat and you are going to hear way more specifics in later segments about the specific information that is found on these plats. I just want to show the combination of these records.

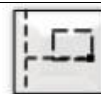
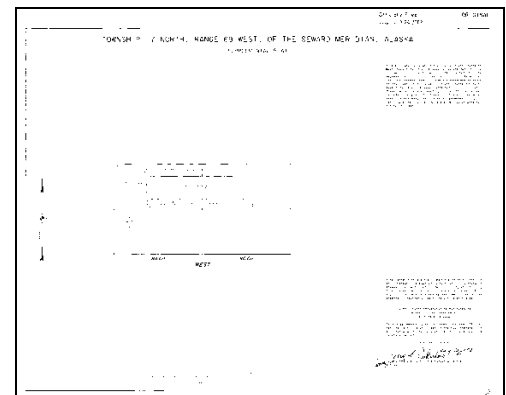


DIAGRAM A full size version of this diagram can be found in the Diagram section at the end of this study guide.

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So I am not going into the information that is on here. But the area that is of concern here is in the section 34 because that is where that supplemental plat that we just looked at is from and this is another federal record of a US survey and it is located down there in that section 34 area and what we did is combine that original rectangular plat information with the information on this document combined them together with computations and all field work to produce this final result which was a supplemental plat.

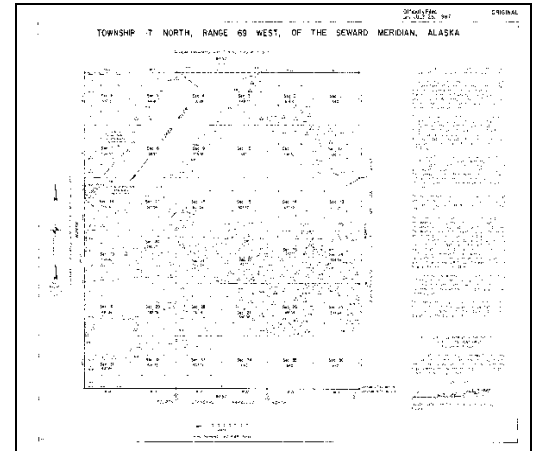


DIAGRAM A full size version of this diagram can be found in the Diagram section at the end of this study guide.

And that is an illustration of one of the uses of supplemental plats. And we can do the same type of process also to bring in private records and to exclude areas that have been conveyed previously.

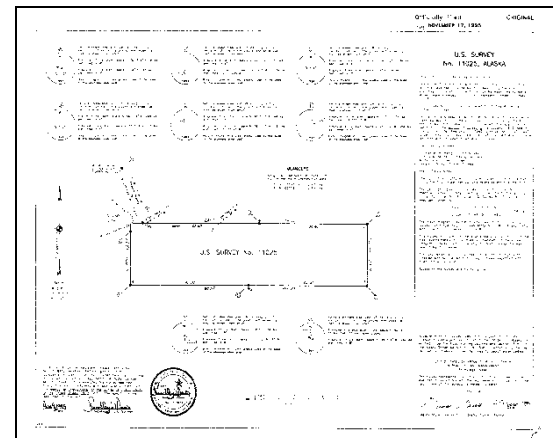


DIAGRAM A full size version of this diagram can be found in the Diagram section at the end of this study guide.

BLM ADMINISTRATION

So now we have been talking about and looking at examples of some survey plats and now I am going to move on and talk a little bit about field notes also. And just to give you some idea of what kind of information is in the field notes and what it looks like and where to find examples.

Generally field notes are going to be in a format of running field notes and they are going to show the narrative information of the survey fieldwork, monument description and all of that narrative information that is collected at the time of the survey.

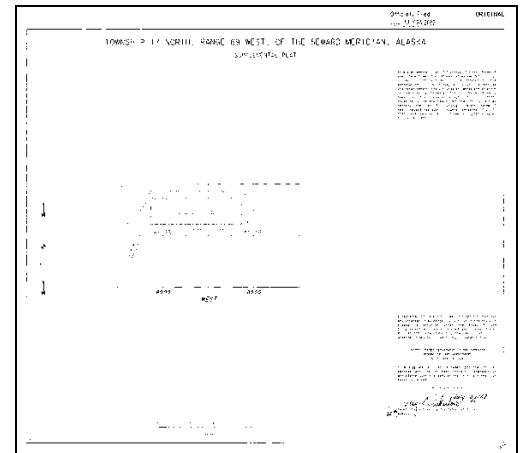


DIAGRAM A full size version of this diagram can be found in the Diagram section at the end of this study guide.

Another form of notes are re-monumentation notes and the particular thing about re-monumentation notes is that there is no line information in those notes, it is describing only areas where new monumentation was set.

And finally we have **descriptive notes**, and descriptive notes were really a third set of notes that were created that were forwarded on to the local land offices and they were not part of that official record, but they were many times used and sent to that local land office as another source of information and that may be another source of information and another source of information that you may look.

Now if we take a moment, I am going to move to the elmo, a place where you can find many examples of different situations that have happened in the field is in the Manual. In Appendices, I, II, and III of the Manual has specimen field notes and shows many different examples of different field note styles and different information and just to look briefly, most times field notes will have an index page showing you the area that the survey covered and then they begin the running line notes.

Again, you will hear much more in depth information detailed

Field Notes

- Remon notes
 - No lines
 - Describe only new monumentation
- Descriptive notes

BLM ADMINISTRATION

about field notes in the future, this just gives you a place to look to find some examples and gives you a start on getting familiar with federal field notes. Again, field notes are not especially in our current practices today, field notes are not always created with a survey.

Many times in our current practices, we will fit all the information that is necessary to be recorded for that survey all on the plat and we would call that a plat only survey. So those surveys are not going to have field notes. But many of the historical surveys and even some of the more complex surveys of today will have those field notes, so you just need to be aware of the information that you are looking at and make sure you have the total record when you make your field decisions.

Other Records

Now I am going to talk briefly about some other records that Cadastral survey produces. They are not part of the official Cadastral survey record but they are other official documents that we create that can be used for other purposes.

The first one that I am going to talk about is protraction diagrams and we have two different styles of **protraction diagrams**.

We have conventional protraction diagrams that were used and the original purpose of protraction diagrams were to act as a plan of survey in an area when the rectangular system gets projected across that land area. That was the plan that was used and we will look at an example in a moment and it shows coordinates and latitude and longitude and gives us a plan for extending that rectangular survey across an area.

The amended protraction diagrams are fairly new creations and they were specifically designed to be able to depict large unsurveyed areas that were likely to remain unsurveyed so that they could be used for legal descriptions in leasing and other actions.

Another type of record that Cadastral creates is our Geodetic Coordinate Database, otherwise known as GCDB, and this program is actually BLM's version of a GIS system and it is a

Other Records

- Protraction Diagrams
 - Conventional
 - Amended Protraction Diagrams (APD)
- GCDB

BLM ADMINISTRATION

digital system and depending in which state you are in and the area you are looking, you would have to find out how much of the information is available there but it is a tool and can be used to extract coordinates for corner searching and recovering of monuments.

It is a coordinate based GIS layer that is based on record survey information. So you can use that to extract coordinates for record location and monuments to be used in a field investigation and if you are going to find an area.

So let's take a look at an example of a protraction diagram.

This particular protraction diagram is from Alaska and you can see just by looking at this picture that the protraction diagrams were shown on a 24 mile square area, they were four townships by four townships and that was because this area is represented between the corrected rectangular lines that were run and between the standard parallels.

There were reasons for that but you will get that information about standard parallels and guide meridians in a future segment. But for now we are just looking at this diagram, as I mentioned earlier, it is a planner survey and it is showing how the rectangular system was to be extended over a particular area.

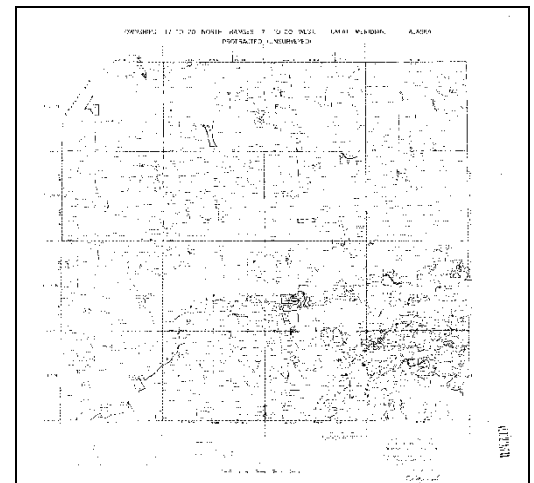


DIAGRAM A full size version of this diagram can be found in the Diagram section at the end of this study guide.

BLM ADMINISTRATION

If we zoom in on one township, you can see on the edges that it gave the coordinates and latitude and longitude of those lines and those were the coordinates that when the original survey was done those were the coordinates that that surveyor was going to.

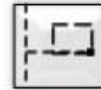
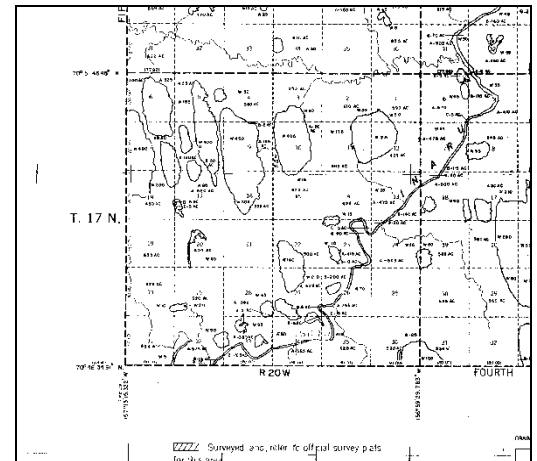


DIAGRAM A full size version of this diagram can be found in the Diagram section at the end of this study guide.

Here is an example of an **amended protraction diagram**, which I also had mentioned earlier, and this is again just giving you an idea of what they look like.

It is the same principle as the conventional style protraction diagrams and the general idea of them is that they are to be used as the plan of survey and to protract the rectangular system over the area that they are representing and this one has a blow up one particular township where it had other information in there.

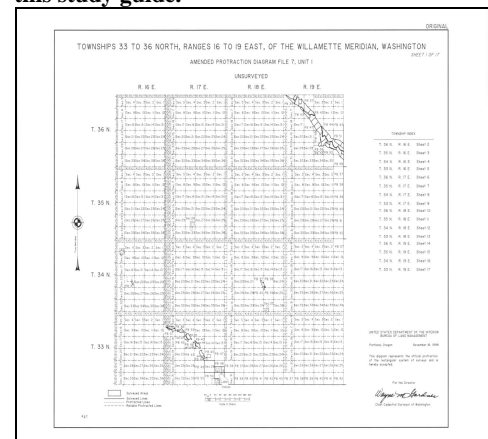


DIAGRAM A full size version of this diagram can be found in the Diagram section at the end of this study guide.

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TOWNSHIP 33 NORTH, RANGE 17 EAST, OF THE WILLAMETTE MERIDIAN, WASHINGTON

AMENDED PROTRACTOR DIAGRAM FILE 7, UNIT 1

UNINSURED

Legend:

- Shaded Area
- Boundary Line
- Section Line
- EAS-1

Scale: 1" = 40' 0"

North Arrow

Parcel Data:

Parcel	Bearing	Distance	Acreage
1	N 89° 00' 00" E	100.00	2.31
2	N 89° 00' 00" E	100.00	2.31
3	N 89° 00' 00" E	100.00	2.31
4	N 89° 00' 00" E	100.00	2.31
5	N 89° 00' 00" E	100.00	2.31
6	N 89° 00' 00" E	100.00	2.31
7	N 89° 00' 00" E	100.00	2.31
8	N 89° 00' 00" E	100.00	2.31
9	N 89° 00' 00" E	100.00	2.31
10	N 89° 00' 00" E	100.00	2.31
11	N 89° 00' 00" E	100.00	2.31
12	N 89° 00' 00" E	100.00	2.31
13	N 89° 00' 00" E	100.00	2.31
14	N 89° 00' 00" E	100.00	2.31
15	N 89° 00' 00" E	100.00	2.31
16	N 89° 00' 00" E	100.00	2.31
17	N 89° 00' 00" E	100.00	2.31
18	N 89° 00' 00" E	100.00	2.31
19	N 89° 00' 00" E	100.00	2.31
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22	N 89° 00' 00" E	100.00	2.31
23	N 89° 00' 00" E	100.00	2.31
24	N 89° 00' 00" E	100.00	2.31
25	N 89° 00' 00" E	100.00	2.31
26	N 89° 00' 00" E	100.00	2.31
27	N 89° 00' 00" E	100.00	2.31
28	N 89° 00' 00" E	100.00	2.31
29	N 89° 00' 00" E	100.00	2.31
30	N 89° 00' 00" E	100.00	2.31
31	N 89° 00' 00" E	100.00	2.31
32	N 89° 00' 00" E	100.00	2.31
33	N 89° 00' 00" E	100.00	2.31
34	N 89° 00' 00" E	100.00	2.31
35	N 89° 00' 00" E	100.00	2.31
36	N 89° 00' 00" E	100.00	2.31
37	N 89° 00' 00" E	100.00	2.31
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39	N 89° 00' 00" E	100.00	2.31
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48	N 89° 00' 00" E	100.00	2.31
49	N 89° 00' 00" E	100.00	2.31
50	N 89° 00' 00" E	100.00	2.31
51	N 89° 00' 00" E	100.00	2.31
52	N 89° 00' 00" E	100.00	2.31
53	N 89° 00' 00" E	100.00	2.31
54	N 89° 00' 00" E	100.00	2.31
55	N 89° 00' 00" E	100.00	2.31
56	N 89° 00' 00" E	100.00	2.31
57	N 89° 00' 00" E	100.00	2.31
58	N 89° 00' 00" E	100.00	2.31
59	N 89° 00' 00" E	100.00	2.31
60	N 89° 00' 00" E	100.00	2.31
61	N 89° 00' 00" E	100.00	2.31
62	N 89° 00' 00" E	100.00	2.31
63	N 89° 00' 00" E	100.00	2.31
64	N 89° 00' 00" E	100.00	2.31
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66	N 89° 00' 00" E	100.00	2.31
67	N 89° 00' 00" E	100.00	

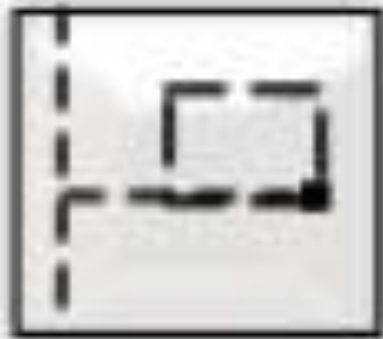


And that all federal authority surveys must follow a set of procedures administered by BLM to become an official record. We talked about the set of procedures that are in place that need to happen in order for us to create an official Cadastral survey record.

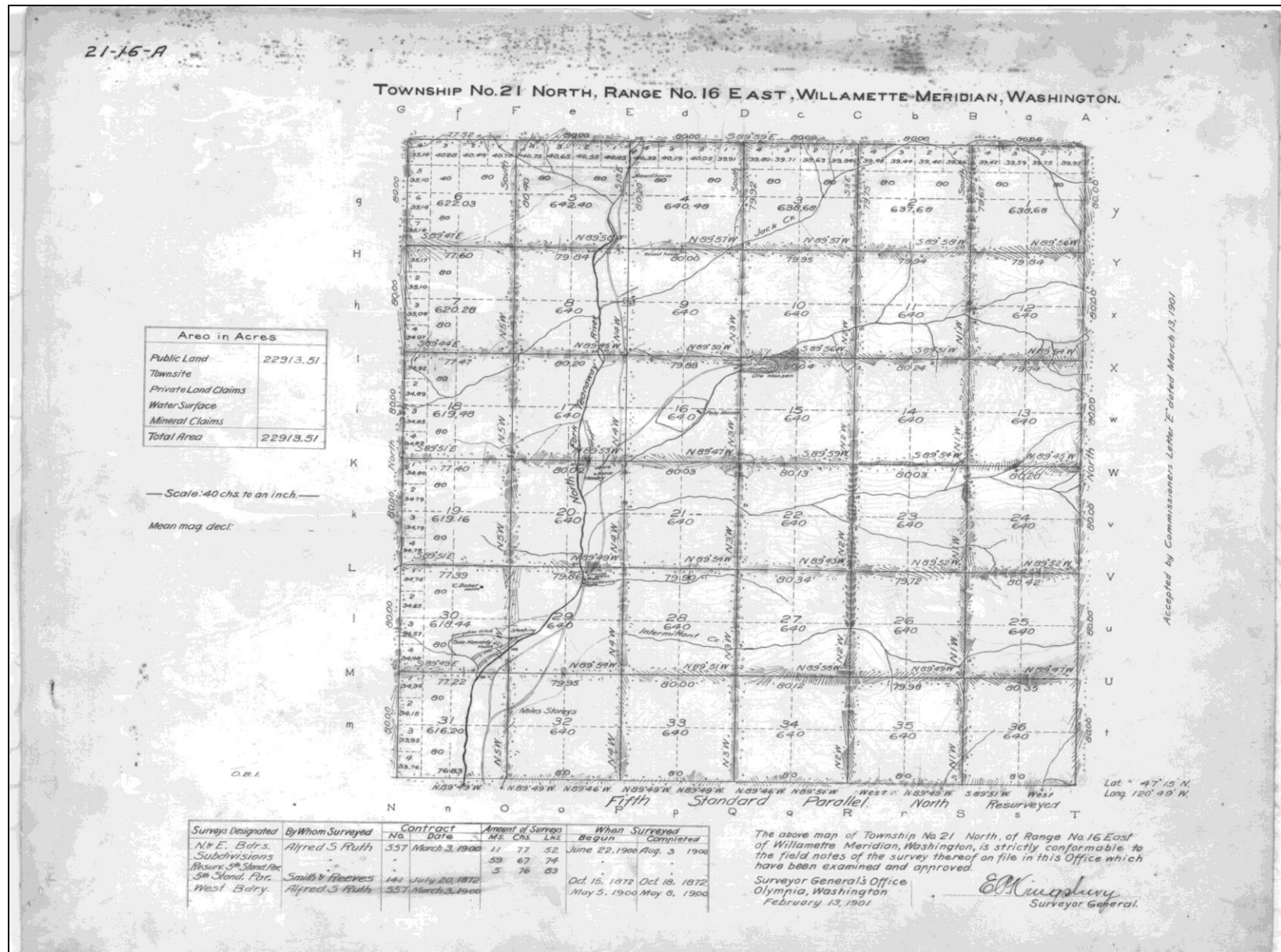
- BILS is a connection between BLM and BIA
- Federal Survey authority lies within the Secretary of Interior
- All Federal authority surveys must follow a set of procedures administered by BLM to become an official record

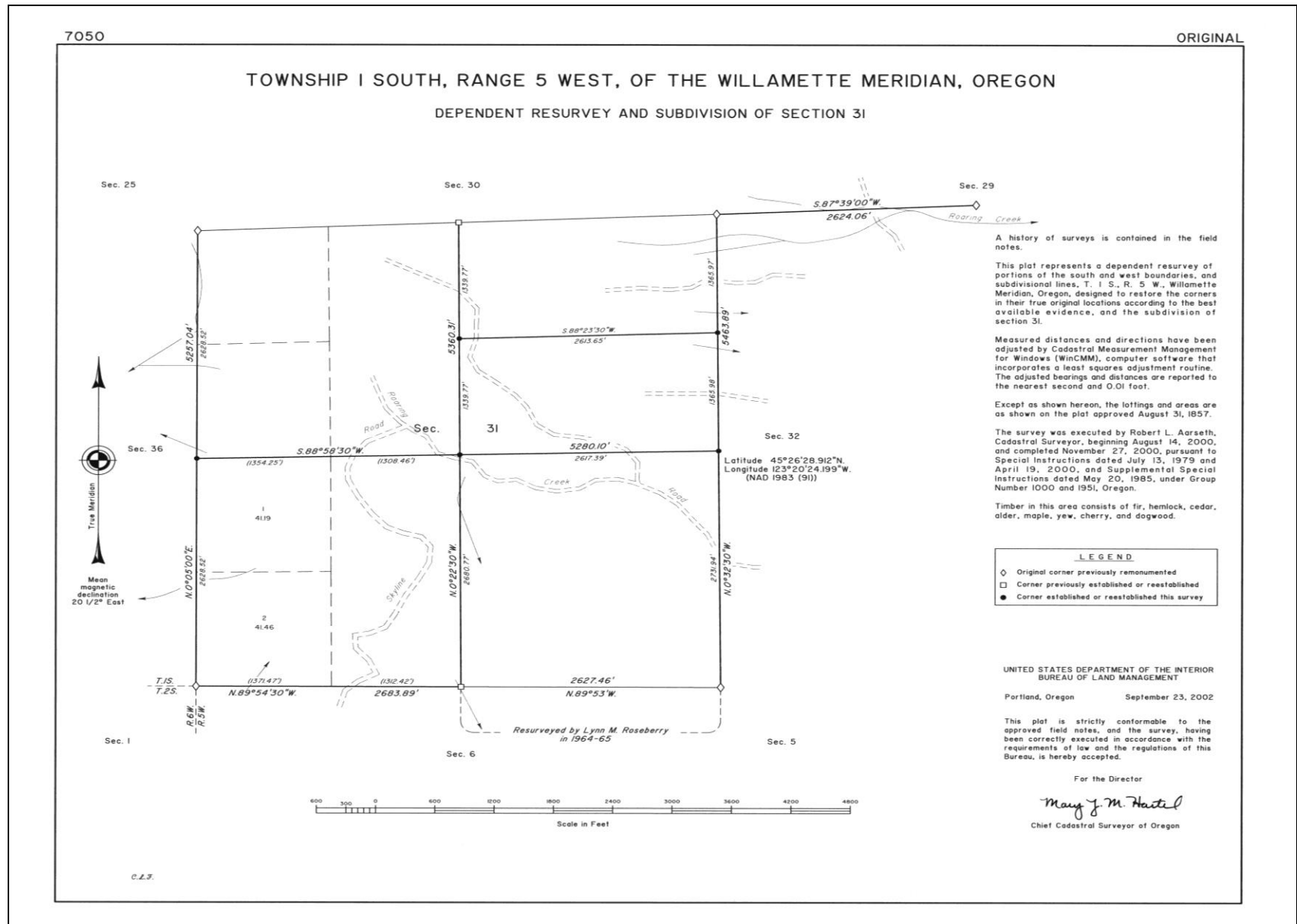
BLM ADMINISTRATION

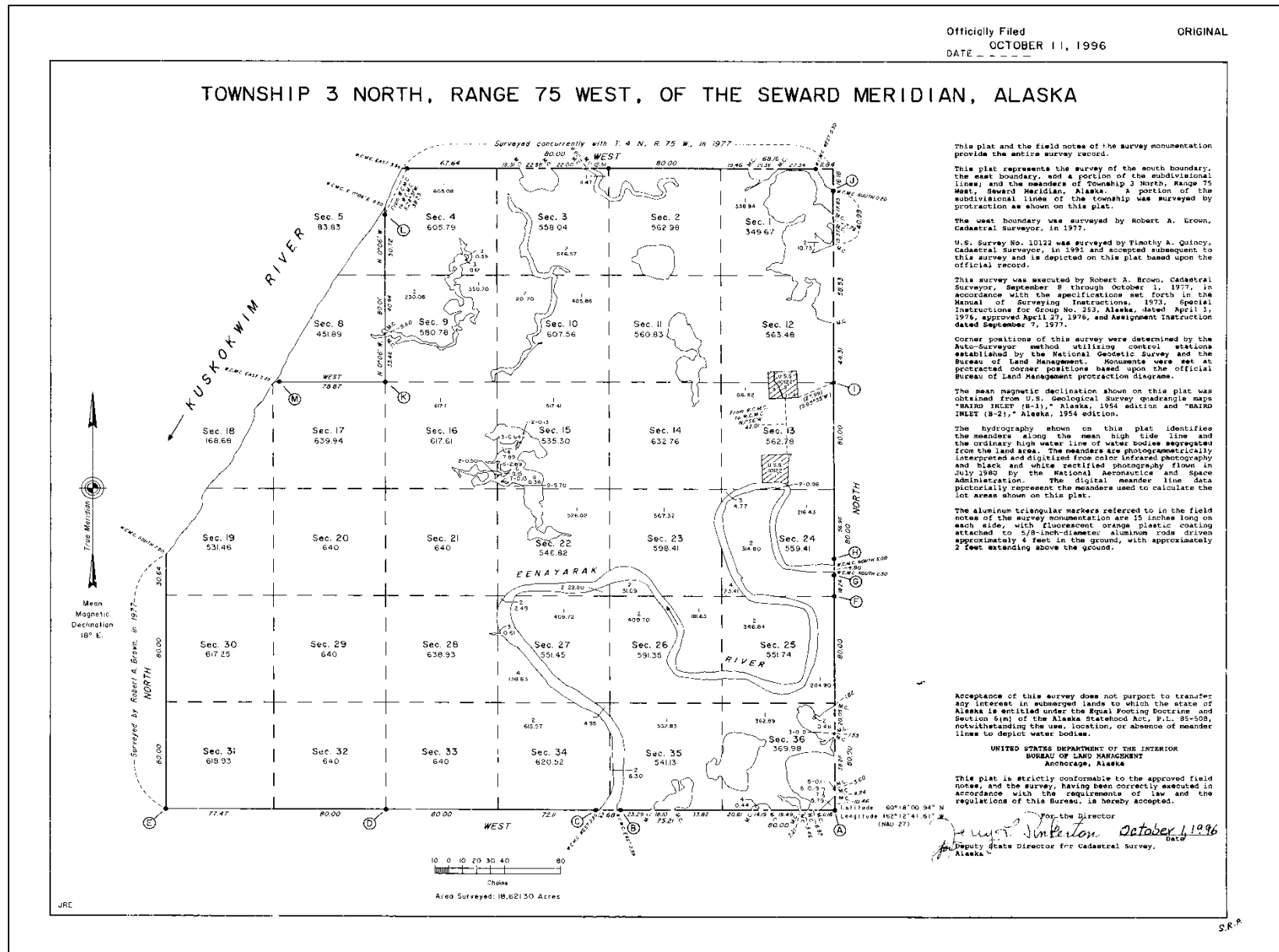
And again, my name is Dominica Van Koten and it has been a real pleasure being here and sharing with you during this CFedS training program. This is the conclusion of my presentations in the program. So good luck with the rest of the program and maybe I will see you around.



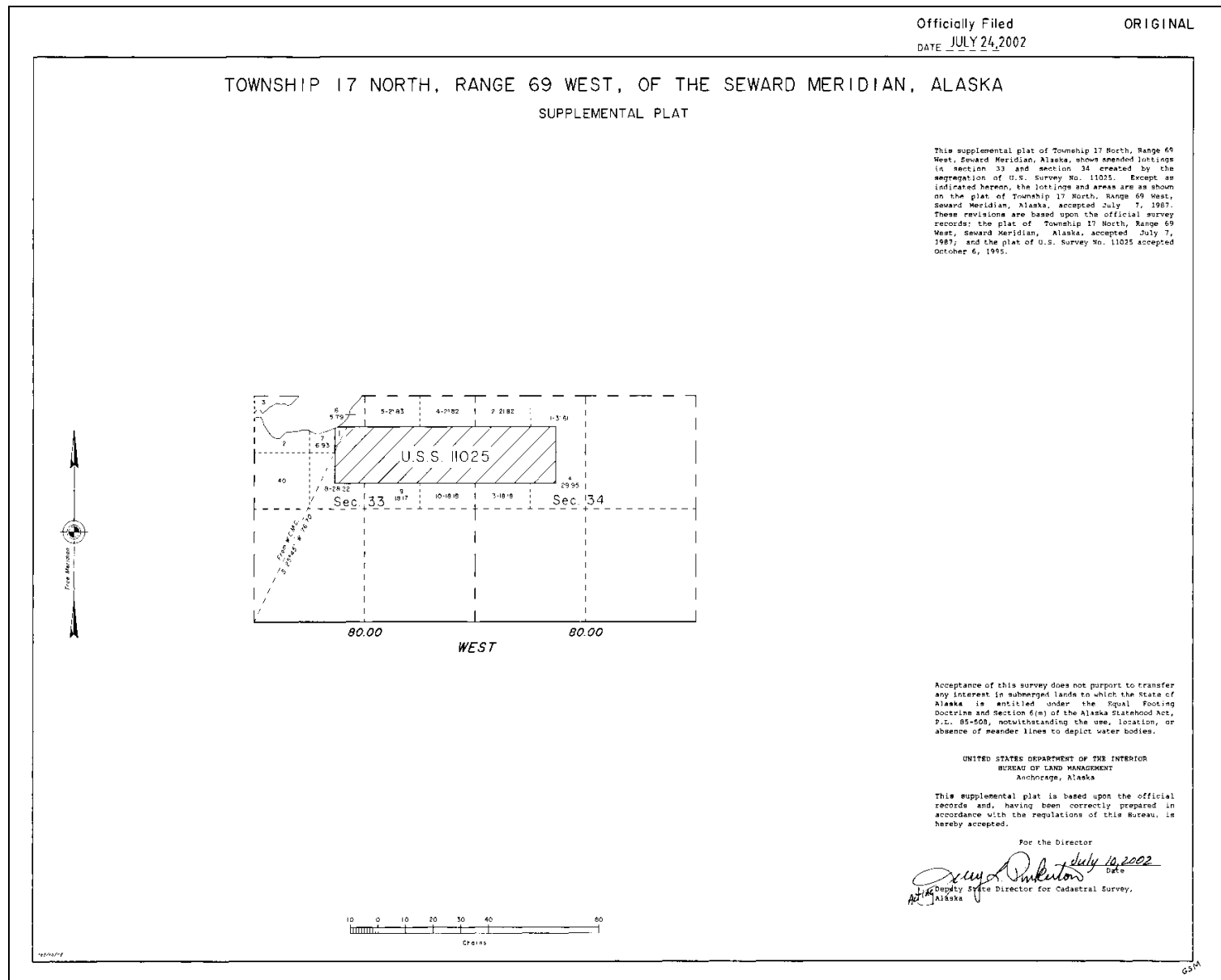
DIAGRAM

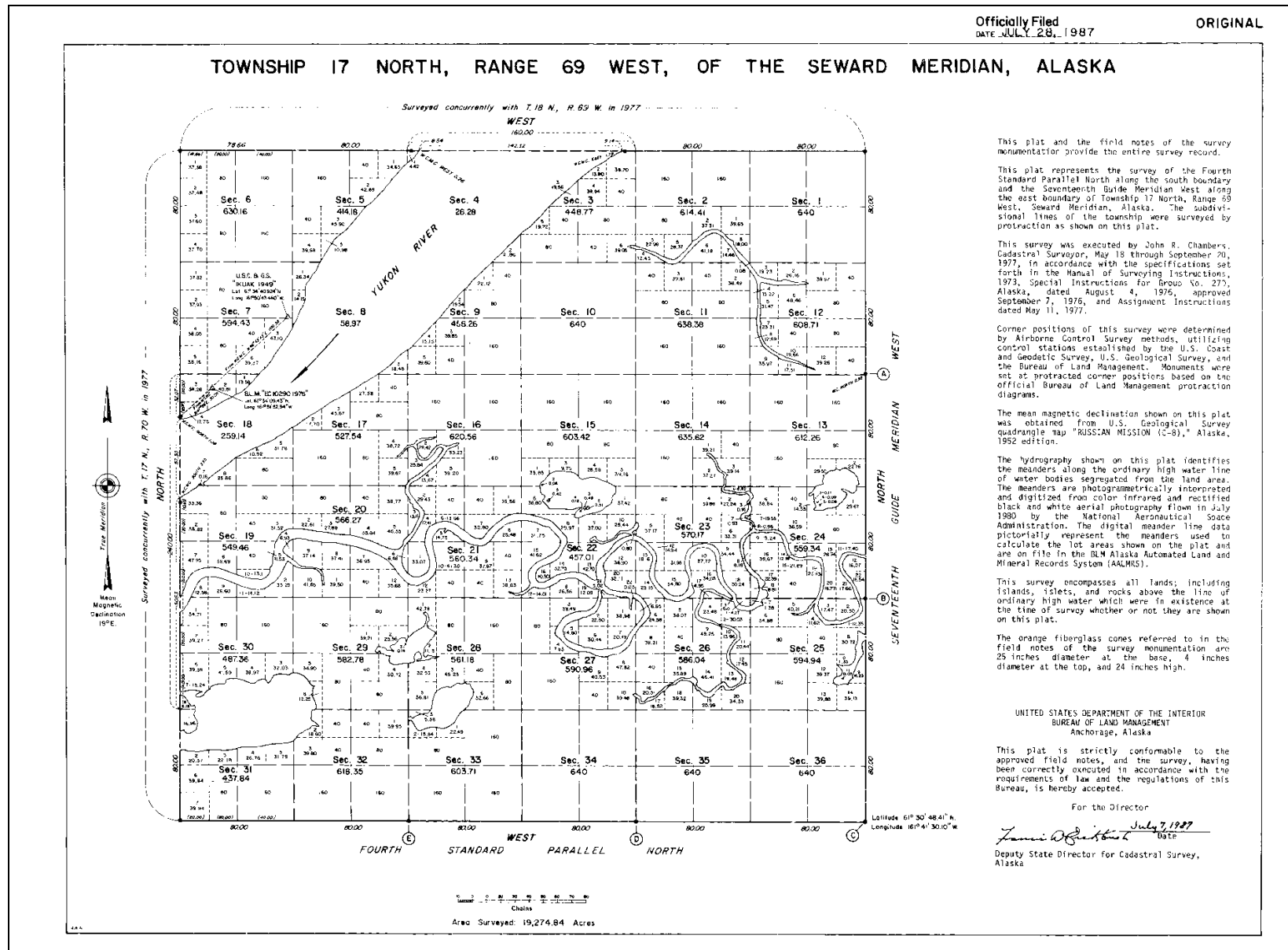




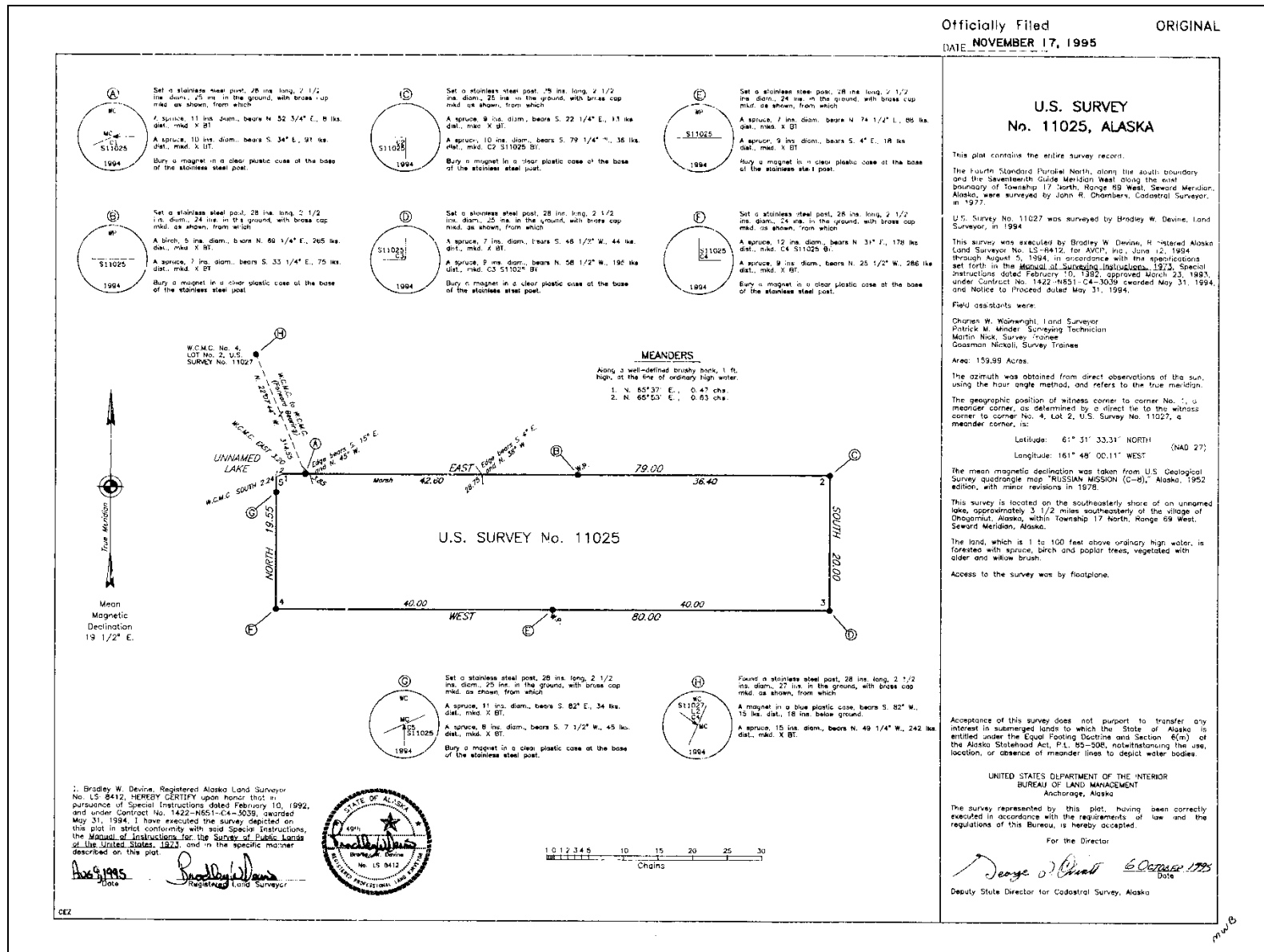


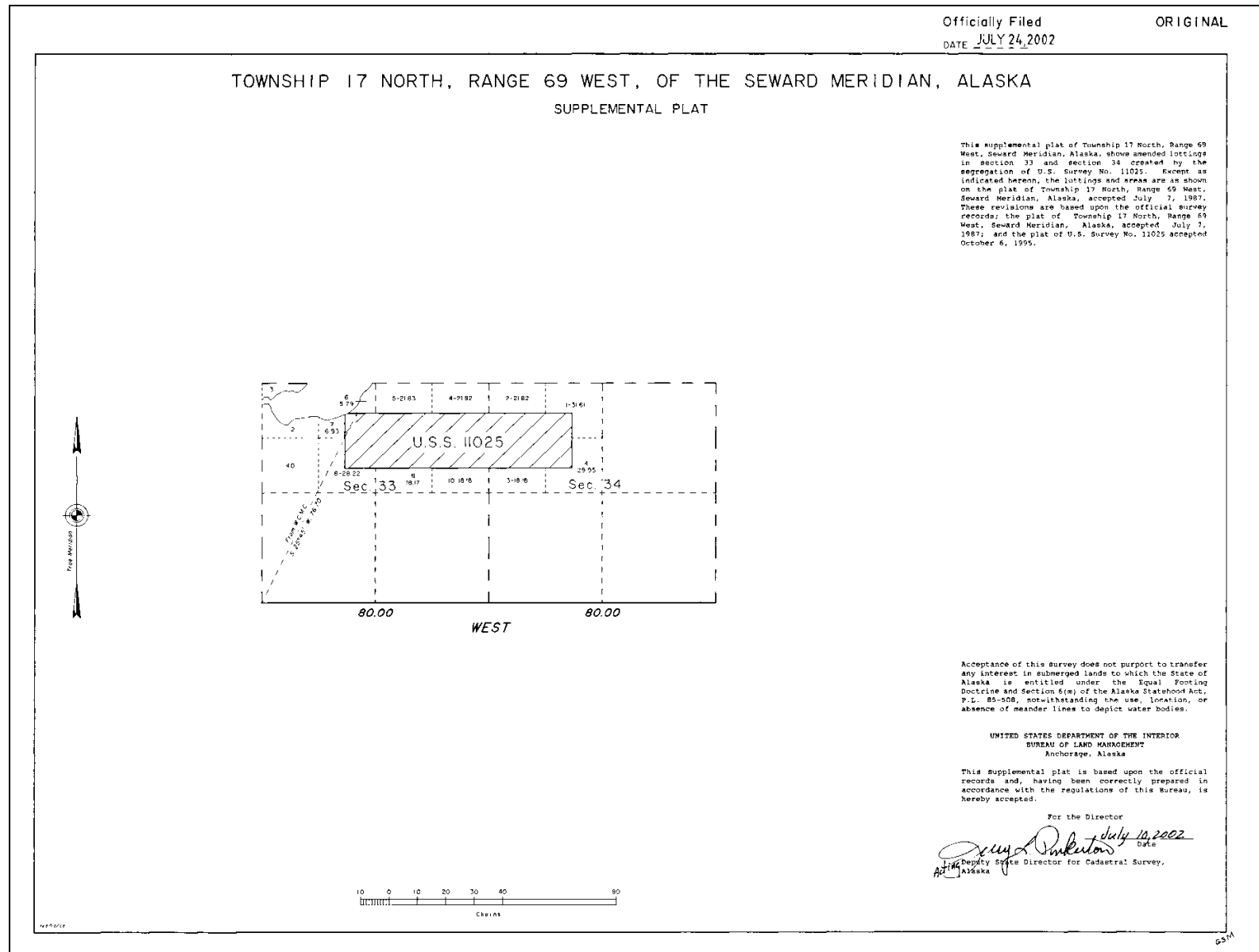
Certified Federal Surveyors (CFedS) Certification Training Program
Course 1: History, Records & Administrative Systems





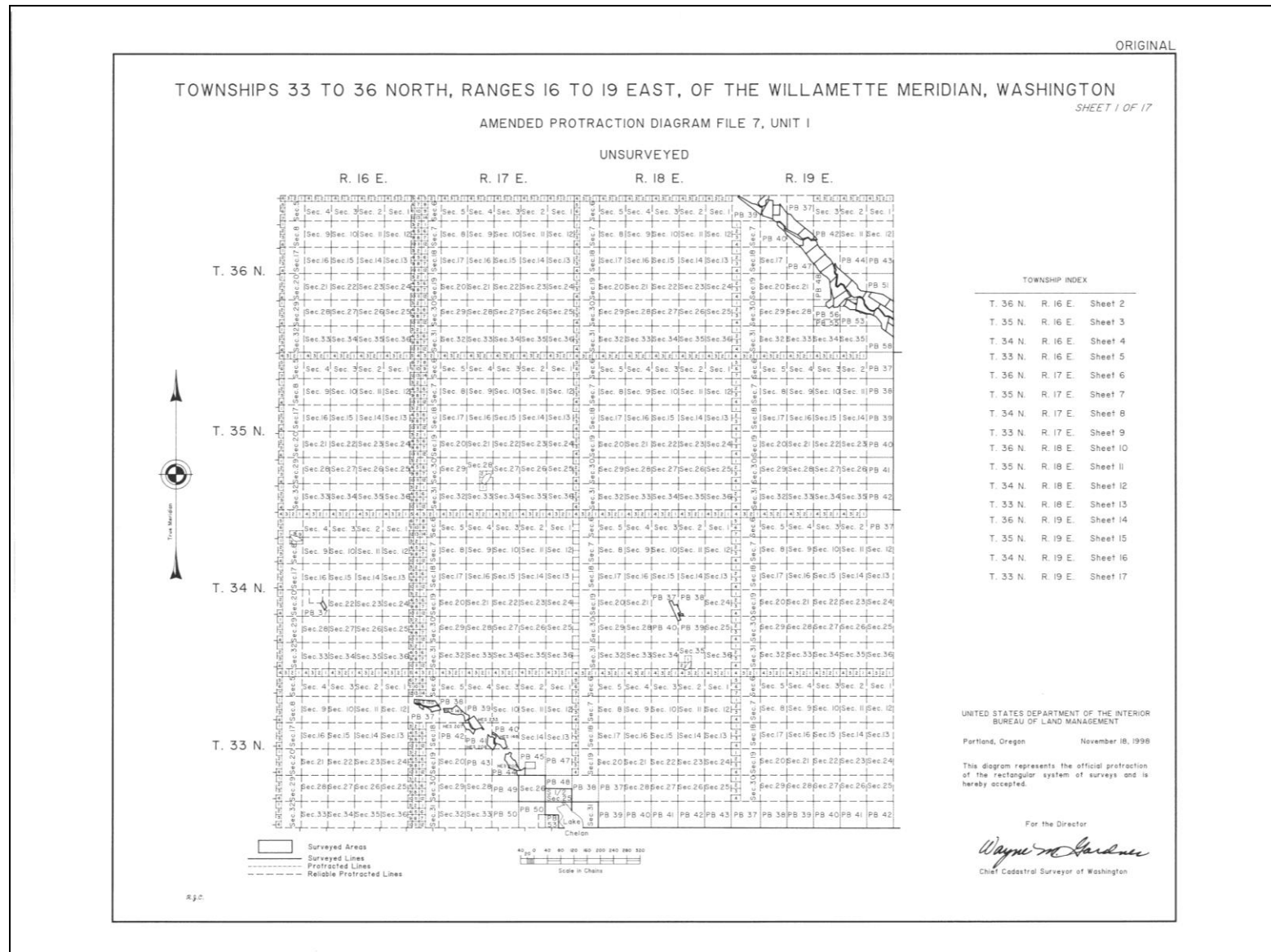
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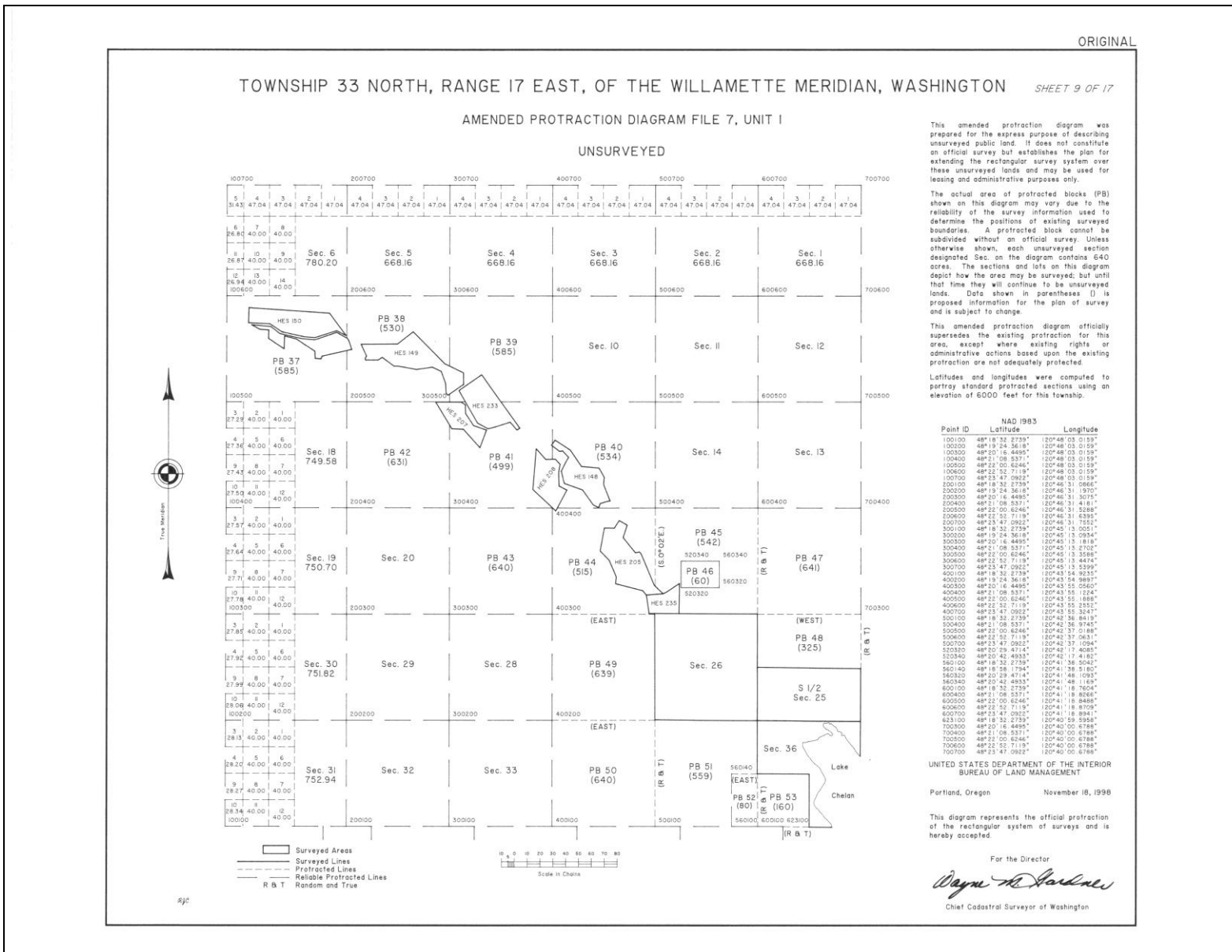




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Course 1: History, Records & Administrative Systems Study Guide

COURSE DESCRIPTION:

This is an introductory series of videos that establishes the context of the CFedS Program. Topics covered in this course include:

- Brief history of surveying as it relates to the United States
- Cultural Awareness
- History of Indian Land Law
- Bureau of Land Management and Bureau of Indian Affairs structures and records that each may have
- Basics of federal survey authority

COURSE OBJECTIVES:

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

- Review administrative functions, structures, and process of the Bureau of Land Management and the Bureau of Indian Affairs
- Increase awareness of cultural and historical legal issues when working in Indian Country
- Identify records sources for survey projects in Indian Country









COURSE INSTRUCTOR(S):

Dennis Mouland, Bureau of Land Management
Dominica Van Koten, Bureau of Land Management
Pricilla Wilfarht, Office of the Solicitor
Colleen Kelly, Office of the Solicitor
Ron Applebaum, Bureau of Indian Affairs (Ret.)

VIDEO LECTURE TITLE:

BIA Administration (9 minutes)

ICON LEGEND

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

Central and Regional Offices

BIA is broken up into several different organizations. The central office is located in Washington, D.C.

Its job is to write policy and regulations but it also retains certain approval authority such as off reservation fee to trust acquisitions. They also prepare reports for Congress.

Under the BIA central offices there are twelve regional offices scattered throughout the country.

The Alaska regional office is in Juneau, Northwest regional office is in Portland, Rocky Mountain in Billings, Midwest in Minneapolis, Eastern in Nashville, Western in Phoenix, Eastern Oklahoma in Muskogee, Pacific region is in Sacramento, Great Plains region in Aberdeen, South Dakota; Southern Plains region in Anadarko, Oklahoma; the Southwest region in Albuquerque, New Mexico; and the Navajo region is located in Window Rock, Arizona.

The regional offices provide technical advice to agencies. They perform reviews for compliance and they also retain some approval authorities and these will vary from region to region. There is a Regional Director who is the top man or woman at that location.

There is a Regional Realty Officer and there is also the staff of realty personnel.

BIA Structure

- Central Office – Washington, D.C.
 - Writes Policy and Regulations
 - Retains Certain Approval Authority
 - Prepares Reports for Congress

BIA Structure (Con't)

- 12 Regional Offices:

Alaska – Juneau	Eastern OK – Muskogee
Northwest – Portland	Pacific – Sacramento
Rocky Mountain – Billings	Great Plains – Aberdeen
Midwest – Minneapolis	Southern Plains – Anadarko
Eastern – Nashville	Southwest – Albuquerque
Western – Phoenix	Navajo – Window Rock

Provides Technical Advice to Agencies
Performs Reviews for Compliance
Retains Some Approval Authorities

BIA ADMINISTRATION

Agencies and the Tribes

Under the twelve regional offices there are multiple agency offices. These are located usually on the reservations and they perform the day-to-day work and they approve most transactions.

The superintendent has that delegated authority. So the superintendent is the main person at that location, there is a realty officer who is in charge of the realty operation and there is usually several realty specialists.

BIA Structure (Con't)

- Multiple Agency Offices
 - Superintendent
 - Realty Officer

Generally located on Reservations
Performs day to day work
Approves most transactions

Some tribes have contracted or compacted the realty function. In that case they perform the work of the realty office as if they were an agency. However, the transactions must be approved by the BIA. Agencies always have a realty officer and realty staff but tribes may have a different name for that, they may be a natural resources office or a lands office. It will vary from location to location.

BIA Structure (Con't)

- Contracted/Compacted Tribes

Performs Work of Realty Office
Transactions Must be Approved by BIA

Unique relationship with Indians on their land

One of the most difficult parts of my job was explaining what I did. The closest comparison I could think of in the non Indian world was when you have an incompetent person who has land; they often set up a bank as a trustee.

The individual could go to that bank and say I want to sell my land and I want to lease it and the bank would go ahead and get an appraisal to see how much it should be sold for or leased for. They would advertise it to see if somebody wanted to lease it or

BIA ADMINISTRATION

buy it and then they would take care of the whole transaction.

The individual though since he was considered incompetent for his land dealings could not go ahead and sell or lease the property on his own. Well in the Indian world, the regulations are written as if the Indian people are incompetent with respect to their land dealings. So for purpose of real estate, the BIA acts like the bank in the white man's world.

They acquire appraisals, they review transactions and they approve or deny various transactions.

BIA's Role

- Acquire Appraisals
- Review Transactions
- Approve Transactions

Records Access

At some point in time, you are going to need access to records in the land titles and records offices. The current situation is access to the records is limited except for our government employees. And even the government employees must have a security clearance before they can go ahead and get into the records. Regulations are currently proposed that would make the title plants offices of public record and it would be similar to the county where you could just go in and obtain records on your own.

If you need records from land titles and records office, have the BIA or tribe that is hiring you to write a letter to the LTRO indicating that you will be doing a survey for them and will need certain documents.

LTRO

- Access to Records
 - Current Situation
 - Limited Access except by Government Employees
 - Must have security clearance
 - Proposed Regulations
 - Title Plants to become offices of public record

BIA ADMINISTRATION

While most tribes do not require a permit for a surveyor to work on their reservations, it is always best to check with the tribe before entering the reservation to do the survey.

So if you want to go on to a reservation, I can't give you a straightforward answer as to what each tribe will require, but let me give you an idea.

Since it varies from location to location, I would suggest that you first notify the tribal council that you have been hired to do a survey and that you notify tribal realty, if applicable, and notify the BIA agency Superintendent that you will be doing that survey and when.

All of these people want to know and they often have questions from landowners as to what somebody is doing out on their property. So don't assume that if you have been hired by tribal realty that the tribal council knows that you are operating on the reservation.

There is often a lack of communication between various branches.

Permitting Issues

- Most Tribes do not require a permit for a surveyor to work on their reservations
 - Best to check with the Tribe before entering the reservation to do the survey

Access to Survey

- Varies from Location to Location
 - Notify Tribal Council
 - Notify Tribal Realty, if applicable
 - Notify BIA Agency Superintendent
- Don't assume that if you were hired by Tribal Realty that the Tribal Council knows that you are operating on the reservation.

BIA ADMINISTRATION

Generally, when you do a survey in the white man's world, you have contact with the landowner, because of Privacy Act issues; you probably will not be provided the names and addresses of landowners.

Also since there are so many landowners, sometimes more than a thousand, you probably don't have the time to contact them even if you wanted to.

For purposes of contact, the agency or the tribal realty office in charge is responsible for contacting the landowners.

Access to Survey

- Contact with the landowner(s)
 - Privacy Act issues
 - Numerous owners
 - Assistance by Agencies/Tribal Realty

Tribal Governments

In general, tribal governments have an organization where there is a Chairperson, a President or a Chief, and in some cases more than one position whose is in charge of the governing body. Then underneath them is a tribal council or committee, such as a business committee.

Sometimes a business committee has authority to do real estate transactions. It will vary from tribe to tribe. There is a general council, which is basically the voting population of the tribes. So anybody who is enrolled of a certain age would be part of the general council.

A tribe can have special councils or committees such as a planning committee, a lands committee or anything else. A tribe can pass ordinances regarding their lands and on some reservations they even have zoning.

Certain tribes also have tribal court systems on their land to resolve disputes. But this will vary from tribe to tribe. Smaller tribes generally do not have a tribal court.

How Tribal Governments Operate

- Tribal Governments Generally Have:
 - Chairperson, President, or Chief
 - Tribal Council or Committee
 - General Council
 - Special Councils or Committees
 - Tribal Ordinances/Zoning
 - Tribal Court

BIA ADMINISTRATION

I want to talk a little bit about government relationships. First the tribes can contract or compact federal programs and this does not include just the BIA programs.

If Fish and Wildlife Service has a fish breeding program, the tribe could go ahead and possibly contract or compact that program and start running it themselves. The tribes are sovereign governments so basically you can go ahead and sue them in federal or state court. And tribes negotiate with the federal government on a government to government basis.

So the tribe is like a state government in that the tribe is the legislative body with various departments operating the day to day business of the tribe.

In summary, in this section we learned how the BIA is structured especially for realty, the BIA's role in land transactions, access to LTRO records, working on Indian lands, and how tribal governments operate.

Again, my name is Ron Applebaum and it has been a pleasure to be able to present this session to you.

Government Relationships

- Tribes can contract or compact federal programs (not just BIA programs)
- Tribes are sovereign governments
- Tribes negotiate with the federal government on a government-to-government basis

Summary

- In this section we learned:
 - How the BIA is structured, especially for Realty
 - The BIA's role in land transactions
 - Access to LTRO records
 - Working on Indian lands
 - How Tribal Governments Operate



QUIZ

**It's time to take the Course 1 Quiz
which you can access from the CFedS website.**