

CFEDS CONTINUING EDUCATION FINDING THE LAW

A workshop on legal research for laypersons

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Certified Federal Surveyor (CFedS) Training Program

You may be interested in the CFedS training program if:

- Perform work on or near federal interest lands.
- Want to ensure such surveys comply with regulations and policies decreasing the chance and expense of rework.

The training program consists of 7 learning modules and additional continuing education courses

- Records Investigation, History of the PLSS, Administrative Procedures, Indian Land Law & Cultural Awareness
- Federal Boundary Law and Title Examination
- Survey Evidence Analysis
- Restoration of Lost Corners
- Introduction to Water Boundaries
- Subdivision of Sections
- Federal Boundary Standards and Business Practices

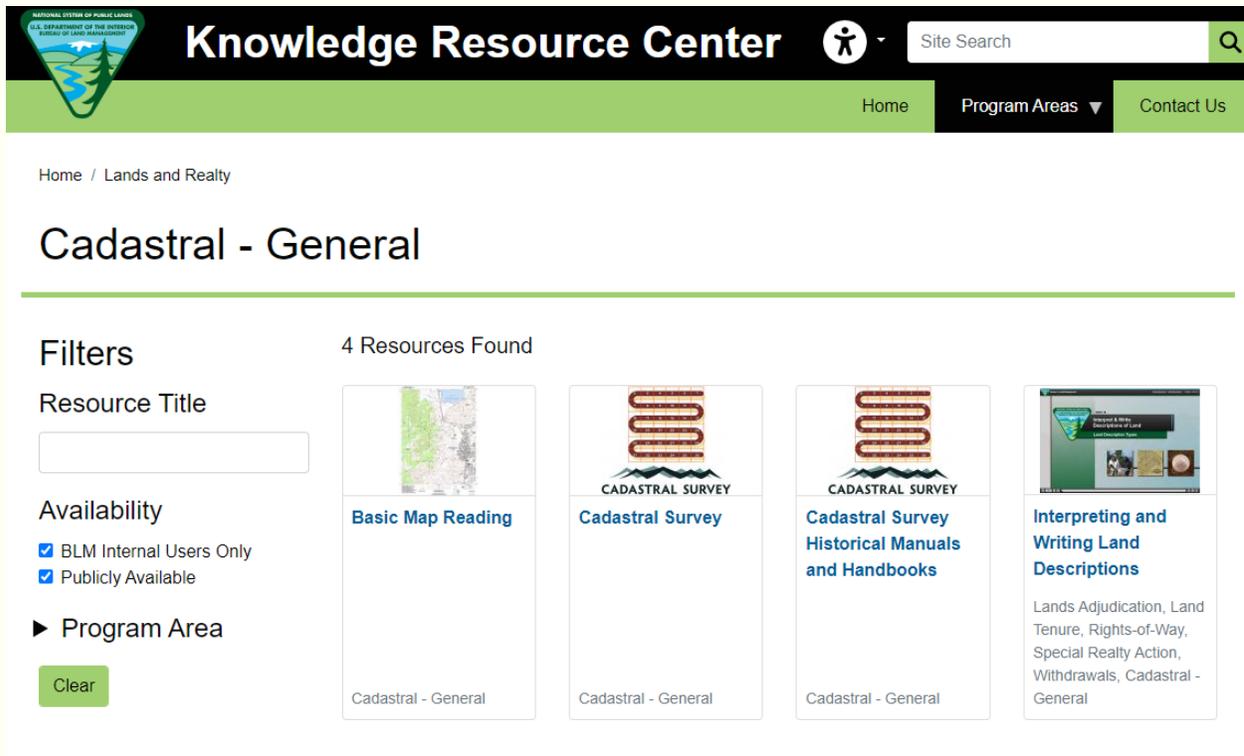
If you are a CFedS – this course counts at continuing education!

Sign-in Sheet – Make sure your name gets on it

CFedS CE fee – payable to ...

Additional Training available – self-study - free

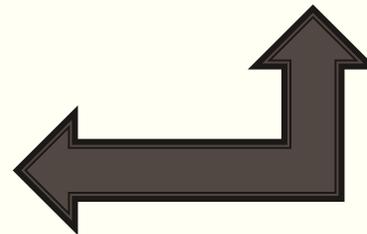
BLM Knowledge Resource Center (KRC) Interpreting and Writing Land Descriptions



The screenshot shows the BLM Knowledge Resource Center website. The header includes the BLM logo, the text 'Knowledge Resource Center', a search bar, and navigation links for 'Home', 'Program Areas', and 'Contact Us'. The breadcrumb trail reads 'Home / Lands and Realty'. The main heading is 'Cadastral - General'. Below this, it indicates '4 Resources Found'. On the left, there are filter options for 'Resource Title' (with an empty search box), 'Availability' (with checkboxes for 'BLM Internal Users Only' and 'Publicly Available'), and 'Program Area' (with a 'Clear' button). The search results are displayed as four cards, each with a thumbnail image and a title: 'Basic Map Reading', 'Cadastral Survey', 'Cadastral Survey Historical Manuals and Handbooks', and 'Interpreting and Writing Land Descriptions'. The last card also lists sub-topics: 'Lands Adjudication, Land Tenure, Rights-of-Way, Special Realty Action, Withdrawals, Cadastral - General'.

Module 1 - Introduction, History and Types
Module 2 - The PLSS
Module 3 - Metes and Bounds
Module 4 - Other Types of Land Descriptions
Module 5 - Non-compliant Descriptions of Land
Basic Boundary Law

Land Status Lesson 1
Land Status Lesson 2
Land Status Lesson 3



Search keywords: BLM KRC Cadastral



Finding the law



This presentation will cover the methodologies a surveyor can employ in researching federal and state court cases concerning boundary issues. While **not intended as a substitute for obtaining professional legal advice**, the course will equip the surveyor to find and read relevant case law relevant to boundary determination, keeping in mind the axiom “Where boundaries are is a matter of facts; What boundaries are is a matter of law.”

How to locate and analyze appropriate Interior Board of Land Appeal (IBLA) cases, as well as federal and state cases, will be considered.

Objectives: To acquaint the surveyor with tools and procedures for researching relevant court cases.

Learning Outcomes: The participant will have a better understanding of how to perform legal research

“The land surveyor is not a lawyer but must be able to locate boundaries so that their positions will withstand review by the courts.”

Donald A. Wilson, Boundary Retracement Processes and Procedures





By the end of the session, you should feel comfortable ...

Gather critical information about your legal issue

Establish your legal issue and your goal

Learn and understand the precedent in your jurisdiction

Determine the type of legal sources you need

Begin your legal research with secondary sources



Tips to keep in mind during today's session

Evaluate Authority

Check for Good Law

**There is never only one path or a “right path”
when doing research**

**Legal Research is never finished, but the
experienced researcher knows when to stop**

Course Route



Refresher – How laws are made



Federal Statutes and Regulations



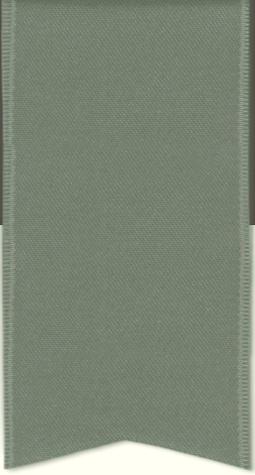
Case Law and Administrative Law



Protests and Appeals Process



IBLA Decisions



REFRESHER

How laws are made



Legislative

By Senate/House

Slip Law

STAT/RS

U.S.C.

United States Code

Judiciary

By Courts

Case Law

Sets Precedent

Executive

By Agencies

Rules/Regulations

Federal Register

C.F.R.

Code of Federal
Regulations

L.D. 1881-1929

I.D. 1930-1970

IBLA 1970-Present

Manuals

Handbooks

I.M.'s – directives

I.B.'s



Sources of Law

- Primary
 - Court decisions, statutes, and regulations - Legal rules that govern our society
 - Primary sources of federal law include:
 - U.S. Constitution, the enactments of the U.S. Congress
 - Decisions of the U.S. Supreme Court and of the lower federal courts (i.e., Courts of Appeals and District Courts)
 - Regulations and rulings of the federal administrative agencies, and the executive orders and proclamations of the President of the United States.
 - Treaties
 - Primary sources of law for each state include:
 - State constitution, the enactments of the state legislature
 - Decisions of the state courts
 - Regulations and rulings of the state administrative agencies, and the orders of the states' governors.
 - Other sources of primary law include tribal laws passed by Indian sovereign nations and international laws



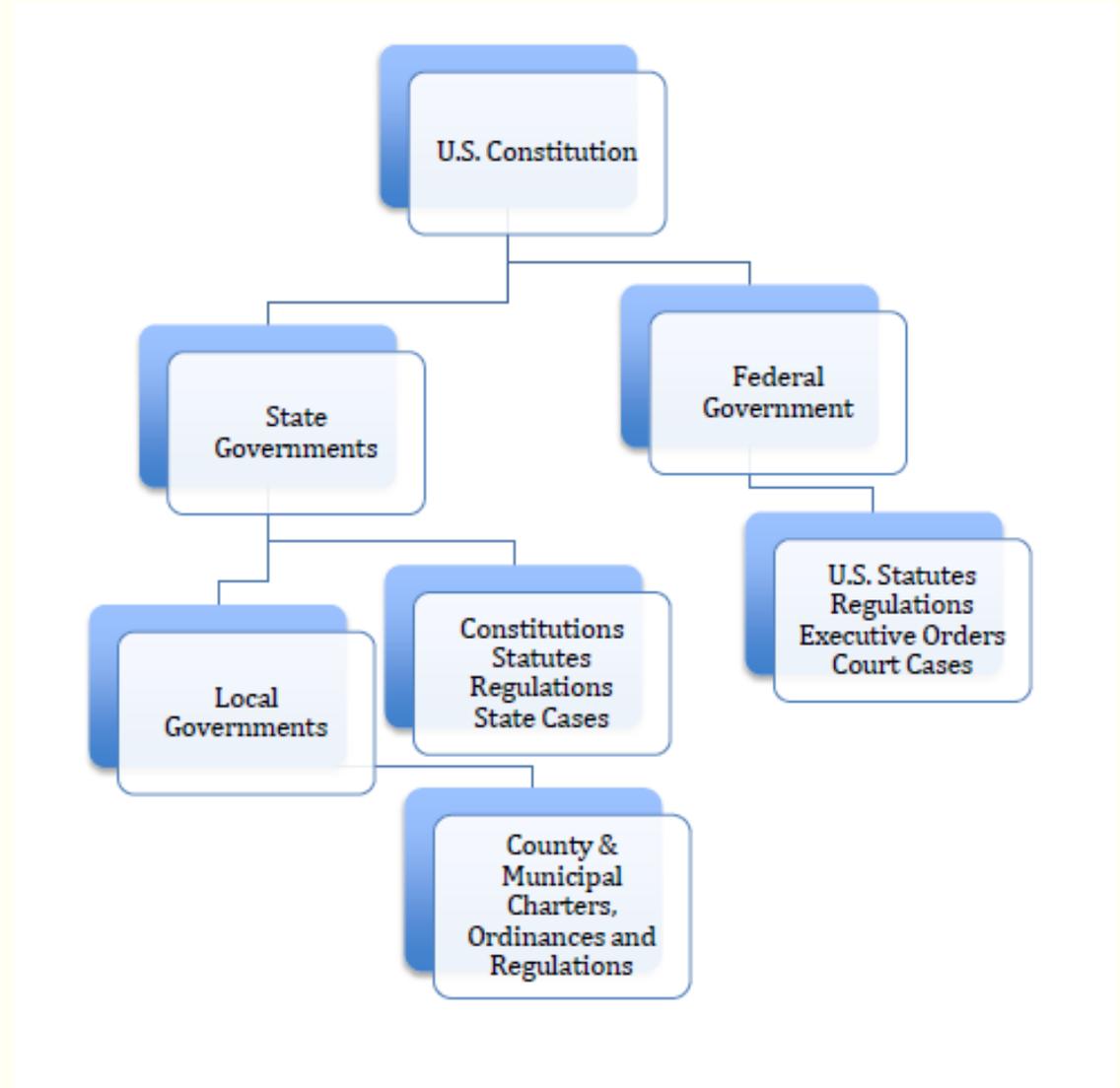
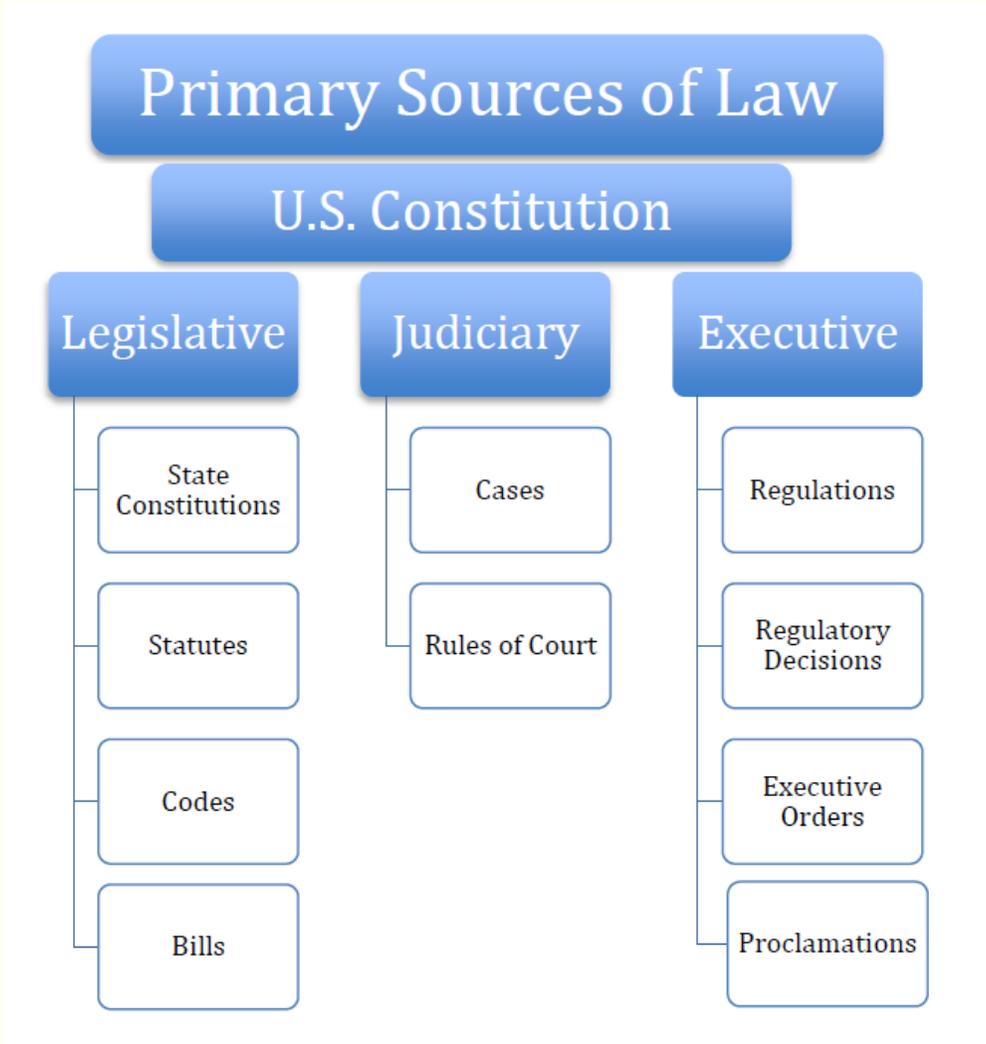


Sources of Law

- Secondary
 - Describe the law, discuss a legal problem or set out a model piece of legislation.
 - Often used to educate oneself on an unfamiliar area of law, or as a method to quickly identify relevant primary authorities on a given topic.
 - Secondary sources of law include:
 - Legal Dictionaries -
 - American Law Reports (ALRs) - Useful to start research on narrow topics and for jurisdictional comparisons.
 - Restatements - In-depth coverage on areas of traditional common law.
 - Model Codes & Uniform Acts - Focus on areas governed by statutory law and provide extensive annotations to relevant caselaw.
 - Treatises - Comprehensive texts on a narrow legal subject.
 - Law Review & Journal Articles - In-depth treatment on a narrow area of law; not updated once published.
 - Other examples: Legal encyclopedias and practice manuals
- Finding Tools or Aids
 - Facilitate access to primary and secondary sources of law
 - Indexes, digests, and citators.



How it all fits together





How a Bill becomes Statutory Law

- Federal laws are enacted by congress
- A bill is introduced by either the Senate or House of Representatives
- Each bill is read by title and assigned a bill number (example: S.123 or H.R.456)
- If a bill goes to committee there may be hearings. Many hearings are published.
- After hearings, the committee submits a report and recommendation whether the bill should pass or not.
- If a bill passes it goes to the other house.
- After the bill passes in one house it is called an Act.
- The Act goes through the same steps in the second house.
- Often the Act is amended, and returned to the originating house for vote on amendments
- The Act becomes law if it is signed by the president, or if it is not vetoed withing 10 days
- The new law is generally referred to a “public law” or “statute”

Legislative History

- The various steps in the process generate many publications which becomes the “legislative history” of the law.
- Legislative history is the background information – hearings, committee reports, debates, etc. compiled during its enactment.
- Legislative history shows the intent or meaning of Congress before the law was passed.
- When a bill is traced from the original introduction to the final enactment, there are many changes in language.
- The final law is seldom in its original language.





How a Regulation (or Rule) becomes effective

- Federal administrative agencies are created by Congress
- Regulations, orders, etc., created by Federal agencies have as much authority on citizens as statutes
- Agencies get rule making authority from federal statutes or from Presidential Executive Orders
- Proposed rules written by federal agencies are published in the Federal Register
 - FRN will include notices of public hearings on the proposed rules
- Final rules and effective dates are published in the Federal Register
- Rules may be affected by the agencies or federal courts





How a lawsuit or case becomes Case Law

- A case is filed, and jurisdiction is determined.
- Two categories of courts:
 - Trial courts (lower courts)
 - Appellate Courts (higher courts or courts of review)
- A trial is held. A jury may be requested by either party.
- Most decisions and opinions of appellate courts are published.

1. COURT SYSTEM			
	Type Court	Federal	State
Trial	Trial Courts (Lower Courts)	U.S. District Courts	Municipal Justice of the Peace County District Special, e.g., Probate
	Intermediate Appellate Courts	U.S. Courts of Appeal (Circuit Courts)	Courts of Appeal (not all states have this intermediate court)
Appellate	Highest Appellate Court	U.S. Supreme Court	State Supreme Court



Knowledge Check

The two categories of law are ...

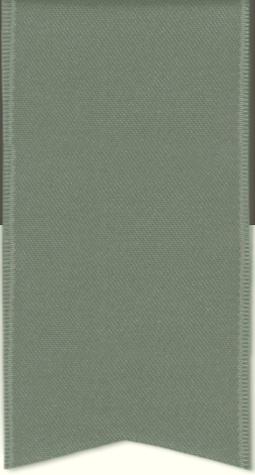
- Statutory Law
- Case Law

True or False

Legislative history is often very important as it shows the intent of Congress (or legislature) before a law is passed.

TRUE





FEDERAL STATUTES AND REGULATIONS





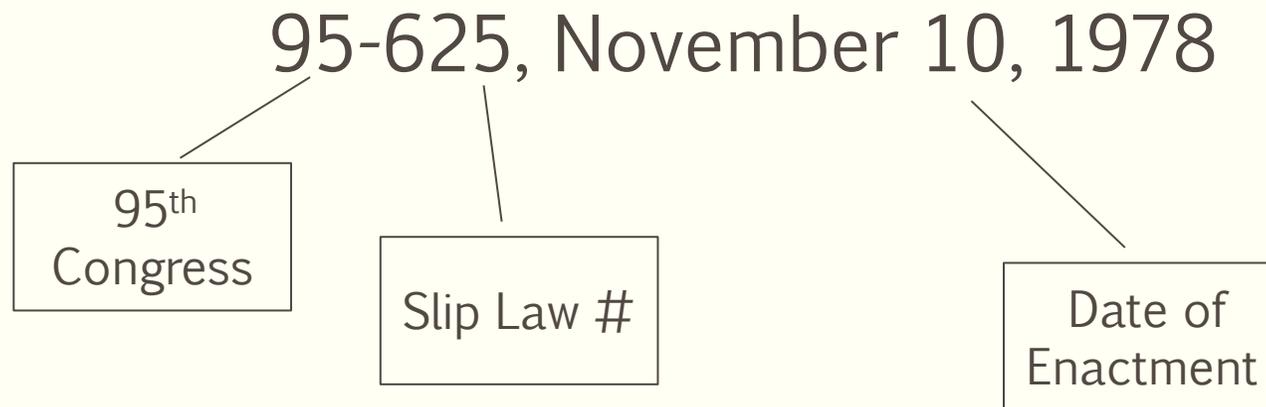
What's the Difference between Statutes and Regulations?

- The major difference between statutes and regulations is how they are created.
- **Statutes** (also referred to as codes) are laws written and enacted by the legislative branch of government (e.g, U.S. Congress, state legislators).
- **Regulations** also referred to as rules, are written by agencies to supplement laws that were passed by the legislature.
- If a dispute arise over the meaning of a statute or regulation general the court intervenes to issue court rulings that interpret statutes more clearly.



Federal Statutes – Slip Law

- Federal Statute is a public law that potentially affects most U.S. citizens.
- A new federal public law will be published as a “slip law”
 - A “slip law” is an individual publication of the law enacted by Congress
 - Issued in chronological order by the public law number





Statutes at Large (STAT) – Revised Statues (RS)

- Slip Laws are later compiled in a set of volumes known as **The United States Statutes at Large (STAT)**
- The United States Statutes at Large is the collection of every law, public and private, ever enacted by the Congress, published in order of the date of its passage.
- These laws are codified every six years in the United States Code, but the Statutes at Large remains the official source of legislation
- Revised Statutes (RS) is a collection of statutes that have been revised to incorporate amendments, repeals and consolidations. It is not a change to the law. It is designed to make the body of statutes more accessible.





Federal Statutes – United States Code (U.S.C.)

- The United States Code is specific to statutory law, and is organized by subject
- Each subject is assigned its own title.
 - For example, Title 43 concerns Public Lands



- 43 USC 2 grants the Secretary of the Interior the authority to survey the public lands and determine the relationship between those lands and adjoining private lands. This authority is then redelegated to the Director of the BLM, the State Director, and the Chief Cadastral Surveyor
- 25 USC 176 Whenever it becomes necessary to survey any Indian or other reservations, or any lands, the same shall be surveyed under the direction and control of the Bureau of Land Management, and as nearly as may be in conformity to the rules and regulations under which other public lands are surveyed.





Federal Administrative Regulations

- Federal administrative agencies are created by Congress.
 - Their regulations, orders, etc., have as much impact on citizens as statutes
 - Their decisions have the same weight as case law
 - Agencies get their rule making authority from federal statutes or Presidential Executive Orders (remember 43 U.S.C. 2)
- Agencies can do the following
 - Write rules and regulations
 - Issue orders
 - Issue licenses (permits) to operate or act under agency control
 - Issue advisory opinions (advise) about their regulations
 - Conduct hearings
- Agency hearings are conducted by administrative law judges or review boards
 - e.g. Interior Board of Land Appeals (IBLA)





Federal Register (FR)

- The Federal Register is a daily publication.
- The FR is akin to the Statutes at Large for federal statutes, as is the collection of every regulation and legal notice issued by Federal agencies.
 - Includes: Presidential Proclamations, Executive Orders, and Federal agency documents having general applicability and legal effect, and other Federal agency documents of public interest.
- Federal Register citations look like





Code of Federal Regulations (CFR)

- The CFR is specific to regulatory law
 - (not to be confused with the United States Code, which represents statutory law)
- The Code of Federal Regulations (CFR) contains all the regulations by executive agencies
- The CFR is to the FR what the U.S.C. is to the Statutes at Large



Knowledge Check

CFR means

Code of Federal
Regulations

and is a codification of
rules from the

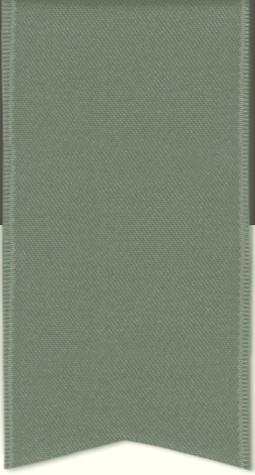
Federal Register

True or False

The *United States Code* is
a codification of Public
Laws from the *Statutes at
Large*

TRUE





CASE LAW & AGENCY DECISIONS



Case Law

- Body of law based on judicial decisions.
- Precedent is a court decision that is considered as authority for deciding subsequent cases involving identical or similar facts, or similar legal issues.
 - Precedent may be changed by the originating court, or by a higher court.



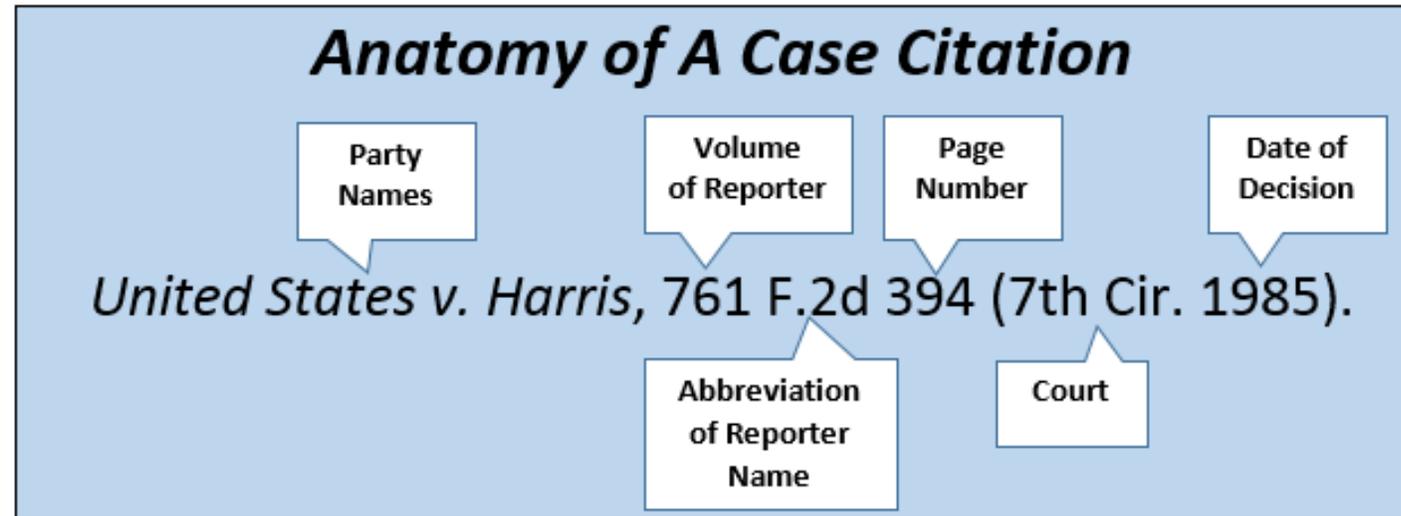


Case Law

- Manual of Surveying Instructions (2009) cites 171 case decisions
 - Is that all? No, but it's a good place to start
- Precedent setting case law for surveying
 - Cragin v. Powell, 128 U.S. 691 (1888)
 - Upon the issuance of a patent for land by the Federal Government, it is just as if the monuments, survey plat, field notes, laws, regulations, and rules governing how to survey the land described in the patent, are attached to the face of the patent
 - A proper retracement survey must follow the footsteps of the original surveyor of the subdivision in order to define the line on the ground.
 - The Daniel Ball, 77 U.S. 557 (1870)
 - Those rivers are public navigable rivers in law which are navigable in fact. Rivers are navigable in fact when they are used or are susceptible of being used in their ordinary condition as highways for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water.



Case Citations



Abbreviations for the major federal case reporters

Reporter Abbreviations	Name of Reporter	Court(s) Covered
F. F.2d F.3d F.4th	<i>Federal Reporter</i>	U.S. Courts of Appeals
F. Supp. F. Supp. 2d F. Supp. 3d	<i>Federal Supplement</i>	U.S. District Courts
L. Ed. L. Ed. 2d	<i>U.S. Supreme Court Reports, Lawyers' Edition</i>	U.S. Supreme Court
S. Ct.	<i>Supreme Court Reporter</i>	U.S. Supreme Court
U.S.	<i>United States Reports</i>	U.S. Supreme Court





Agency Decisions

- Created by an agency decision-making body, not a state or federal court.
- The binding nature of an administrative decision is somewhat less than that of case law. However, the decisions are binding on the parties and often persuasive elsewhere.



Land Decisions - LD

- Land Decisions (L.D.'s) were published from July 1881 through December 1929 in volumes 1 through 52 of Decisions of the Department of the Interior and General Land Offices in Cases Relating to the Public Lands(L.D.).
- Cases reported in these volumes pertained almost exclusively to matters under the jurisdiction of the General Land Office. In addition, this publication included important Administrative ("A") Decisions.
- Citation to a Land Decision looks like this:
Walter Maine, 52 L.D. 510 (1928).



Interior Decisions- ID

- In 1930, beginning with volume 53, the title of Department of the Interior and General Land Offices in Cases Relating to the Public Lands was changed to the slightly more manageable Decisions of the Department of the Interior (I.D.). The I.D.'s run from volume 53 through 101.
- In addition to certain important decisions issued by IBLA current volumes include opinions from other boards within the Office of Hearings and Appeals, such as Interior Board of Indian Appeals (IBIA), Interior Board of Contract Appeals (IBCA), and certain Solicitor's Memorandum Opinions ("M" Opinions).
- From 1930 to 1970, important Administrative ("A") Decisions were published in the I.D.s.



Administrative Decisions- A

- Administrative Decisions (also called Solicitor's Opinions) were unpublished opinions that resulted from appeals of the Director's opinions. "A" decisions were issued before the creation of IBLA in 1970. Important "A" decisions were published in L.D. volumes 1-52 and I.D. volumes 53-77.
- Unpublished "A" decisions can be found at Department of Interior libraries.
- Citation to an "A" decision looks like this:
William P. Surman, A-31010 (December 1, 1969).





Solicitor Decisions- M

- “M” opinions are matters involving an interpretation of a law or regulation without a specific set of facts, or for a particular case.
- Many opinions are written by the solicitor's office, but “M” opinions are the important ones.
- Citation to an “M” decision looks like this:
William P. Surman, A-31010 (December 1, 1969).

<https://www.doi.gov/solicitor/opinions>
<https://www.oha.doi.gov:8080/index.html>





Interior Board of Land Appeals Decisions- IBLA

- The Interior Board of Land Appeals (IBLA) was created on July 1, 1970
- IBLA is an appellate review body that is separate and independent from the bureaus and offices whose decisions it reviews. The IBLA's mission is to provide an impartial forum within the Department of the Interior for the resolution of disputes involving public lands and natural resources under the Department's jurisdiction.
- IBLA acts on behalf of the Secretary of the Interior, and decisions are usually final concerning the Department's position. BLM can not appeal IBLA decisions.
- IBLA's decisions may be reviewed by the United States district courts.
- Citation to IBLA decisions looks like this:

Longview Fibre Co., 135 IBLA 170

<https://www.doi.gov/oha/about-interior-board-land-appeals>

<https://www.oha.doi.gov:8080/index.html>





BLM Policy – Manuals, Handbooks, IM's and IB's

- The Bureau of Land Management publishes public manuals, handbooks and directives that direct day-to-day operations. Use the links below to search our publicly available policies and procedures.
- Manuals contain policy and procedures to manage programs
 - [MS-9600 Cadastral Survey Program Manual](#)
 - [MS-9687 Certified Federal Surveyor \(CFedS\) Program Manual](#)
- Handbooks provide detailed instructions for implementing policy and directions described in the BLM Manuals
 - [H-9600-1 Cadastral Survey Management of Land Boundaries](#)
 - [H-9687 Certified Federal Surveyor \(CFedS\) Program Handbook](#)
- Instruction Memorandums are directives that supplement manuals and handbooks
- Information Bulletins disseminate information of interest to BLM employees



Additional sources for FREE legal research

- [*Case Law Access Project \(Harvard Law\)*](#) Provides access to all U.S. official published case law from 1658 to June 2018.
- [*FindLaw for Legal Professionals*](#) (Thomson Reuters) Includes case law, case summaries, statutes, legal search engine, legal news, RSS court updates, and practice information.
- [*Government Publishing Office \(Govinfo\)*](#) Access to official Federal Government publications, including authenticated PDF documents.
- [*Guide to Law Online*](#) (Law Library of Congress) Annotated Portal containing selected links to United States, Foreign, and International law resources, many offering primary, full-text legal materials.

Additional sources for FREE legal research

- [Justia](#) Includes case law, statutes, regulations, articles, opinion summaries (newsletter), and limited access to Federal District Court dockets.
- [Law Guru](#) Free legal advice forum with a network of more than 8,000 specialized attorneys in all legal areas
- [Law Stack Exchange](#) Question-and-answer forum for legal professionals, students, and others with an interest in law
- [Legal Information Institute \(LII\)](#) (Cornell University Law School) Provides primary legal materials, legal encyclopedia, and the Supreme Court Bulletin.
- [Online Legal Information Resources](#) Locate free online primary legal materials for all U.S. states, the District of Columbia, U.S. territories, U.S. Federal Government, and Canada.
- [PublicLegal by Internet Legal Research Group](#) Categorized index of select legal websites, thousands of legal forms, and helpful legal resources and documents

Additional sources for FREE legal research

These sources limit web searching to law-specific resources.

- [Google Scholar](#) Search Federal and State legal opinions and journals.
- [Legal Web Search](#) (Justia) ([Justia](#) > [Search](#) > Legal Web Search)
- [USA.gov](#) Search federal and state government websites.

Knowledge Check

True or False

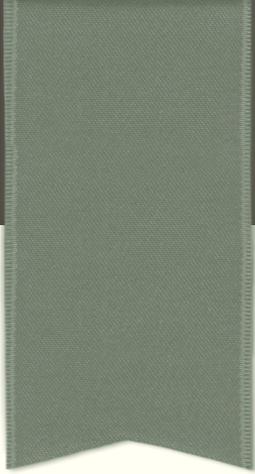
IBLA is an abbreviation for

L.D.'s and I.D.'s report important opinions of the Department of Interior

Interior Board of Land Appeals

TRUE





PROTEST AND APPEALS PROCESS





Federal Protests and Appeals

- Savvy cadastral surveyors understand that there is a potential to have your survey work overturned by the IBLA or a federal court.
- To avoid having your survey overturned, it must be technically correct, legally defensible and backed up by a great administrative record.



Administrative Appeals Process



DOI administrative protest and appeal procedures allows the Department to correct its own mistakes “before it is haled into federal court.” It also promotes efficiency by resolving disputes before the agency rather than through litigation in federal court.





Interior Board of Land Appeals (IBLA)

- The Interior Board of Land Appeals (IBLA) is an appellate review body that exercises the delegated authority of the Secretary of the Interior to issue final decisions for the Department of the Interior. Its administrative judges decide appeals from bureau decisions relating to the use and disposition of public lands and their resources, Located within the Department's Office of Hearings and Appeals (OHA), IBLA is separate and independent from the Bureaus and Offices whose decisions it reviews.
- IBLA has the authority to consider the following types of cases:
 - Appeals from a variety of decisions of the Bureau of Land Management, including but not limited to decisions regarding mining, grazing, energy development, royalty management, timber harvesting, wildfire management, recreation, wild horse and burro management, cadastral surveys, Alaska land conveyances, rights of way, land exchanges, and trespass actions;





Interior Board of Land Appeals (IBLA)

- The Interior Board of Land Appeals (Board) decides appeals of final agency decisions for the Department of the Interior. The Board currently consists of six administrative judges, including the Chief and Deputy Chief Administrative Judges.
- The Board generally sits in panels of two administrative judges who decide each matter. Most matters are decided based on applicable law and the filings submitted by the parties. In addition to decisions, the Board also issues procedural orders, which require only one judge's signature, and final orders that are not binding precedent.





Interior Board of Land Appeals (IBLA)

- Largest Board in Appellate Division of DOI's Office of Hearing and Appeals with Jurisdiction over BLM decisions
- Adjudicates way a court would “quasi-judicial”
- IBLA appeals are ordinarily decided on the basis of the administrative record without a hearing.
- Complex cases of disputed issues of material fact, the IBLA may refer the matter for a hearing before an Administrative Law Judge within the Hearings Division. These judges hold hearings that are conducted like a trial, utilizing testimony and evidence.



Mechanics of a Protest

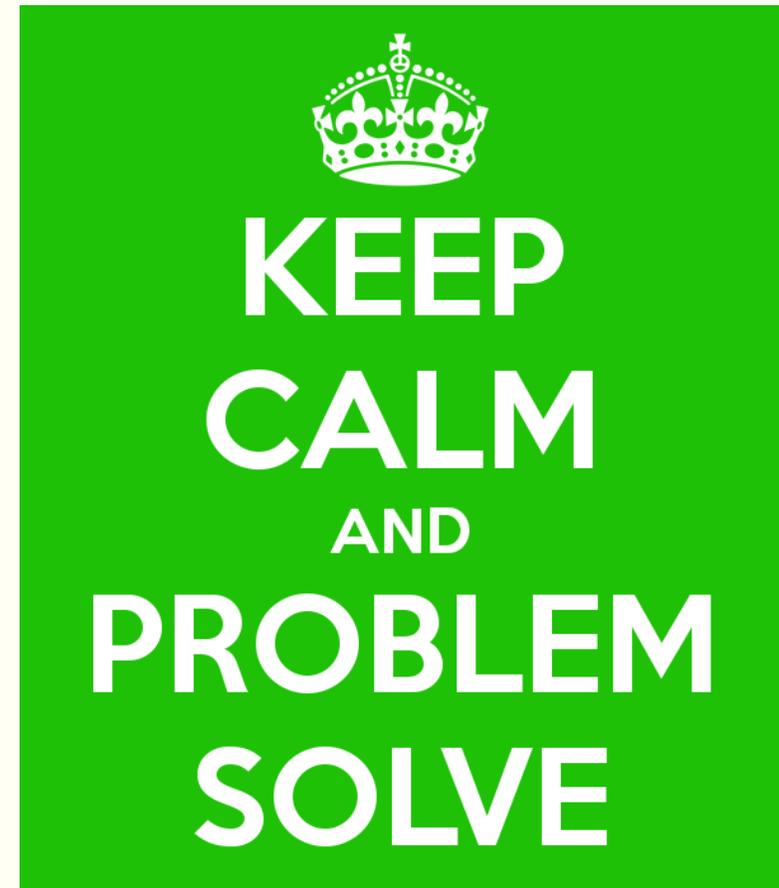
- A protest is any objection raised by any person to any action proposed to be taken in any proceedings before the Bureau (43 CFR 4.450-2).
- The BLM Cadastral Survey Section has the legal authority, responsibility, and expertise to respond to all inquires concerning the Public Land Survey System.





Mechanics of a Protest

BLM prefers the opportunity to respond to and resolve potential survey problems before they escalate into an official protest.





Mechanics of a Protest

Protests must be made in writing and addressed to the State Director. 43 CFR 4.450-3

43 CFR 4.450-4 Contents of Protest

- Names and address of each party interested
- Legal Description of area covered
- Any pending conveyances of title
- History of any Land Surveys
- Statement in clear and concise language of the facts constituting the grounds for the protest, as it relates to the survey
- State of witnesses

43 CFR 4.450-5 (a) Summary dismissal

- If protest does not meet the requirements of 43 CFR 4.450-4 the protest will be summarily dismissed, and no answer need be filed

43 CFR 4.450-4 (e) Waiver of Issues

- Any issue not raised which was known or could have been known by the exercise of reasonable diligence, shall be deemed to have been waived by protestor and shall be barred from raising such issue





Mechanics of a Protest

- Once filed an acknowledged receipt of the protest is required within 10 working days by BLM
- In reply Cadastral Survey will
 - Explain intention & immediate actions taken
 - Official Filing Stayed in Federal Register
 - Review process (Field investigation, Research)
 - State when further reply can be expected
- The protest is either affirmed or denied by the State Director, and a written explanation is provided.
 - If affirmed, outline actions to be taken may include field work to correct issues, and/or revisions to the plat and field notes
 - If denied, the protestant is advised of the Appeals Procedure.





Mechanics of an Appeal

▶ If denied, the Protestant is advised of the Appeals procedure 43 CFR 4.40 et. seq.

- Appeal must be filed within 30 days from date of service of denial letter
- 10 Day Grace Period for Appeal - 43 CFR 4.401
- Notice of Appeal filed with same BLM office
- BLM transmits appeal and case file to IBLA
- Notice of Appeal to Interior Solicitor (43 CFR 4.413)
- Appellant has burden of proof that an error was committed in the BLM survey





Mechanics of an Appeal

What IBLA looks at when Appeal Docketed

- Was Notice of Appeal Timely filed
- Is a copy of decision in file
- Petition for Stay per 43 CFR 4.21
- Is the decision an appealable decision
- Have adverse parties been timely served
- Is party adversely affected per 43 CFR 4.410
- Statement of Reasons (SOR) filed
- Any documents obviously missing





Mechanics of an Appeal

43 CFR 4.410 - Who may appeal

- (a) Any party to a case who is adversely affected by a decision of an officer of the BLM shall have a right to appeal to IBLA
 - (b) Subject of the decision on appeal
 - (c) Participated in process leading to Decision
 - (d) Cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest
- The IBLA has ruled that to have standing to appeal, Appellants must be “parties to the case” and have a legally cognizable interest that is “adversely affected” by BLM’s Decision. Mark Einsele, Et Al., 147 IBLA 1(1998).
 - Appellants must show they possess a right, claim, title to, or interest in land adjacent to a boundary of public land to have standing to appeal a cadastral survey.





Mechanics of an Appeal

- Licensed private surveyors have no standing to appeal a BLM cadastral survey decision unless they can demonstrate they have a legally cognizable interest that is adversely affected by BLM's decision.
- Robert M. Sayre, 131 IBLA 337 (1994).
- John D. Wayne d/b/a Surveying, Inc., 161 IBLA 40 (2004).
- In the above cases, the IBLA dismissed the private surveyors appeals for lack of standing. Merely having an interest in the impacts of surveys of the public lands is an insufficient basis for standing.





Mechanics of an Appeal

- BLM has 30 days from filing of the Statement of Reasons (SOR) at IBLA to “answer” the allegations and arguments made in SOR and state why its decision should be affirmed
- BLM failure to file an answer will not result in a default. Agency’s decision will stand or fall on the contents of its case record and decision.
- BLM is obliged to submit the complete, original administrative record and documentation concerning the decision to the Board
- Case file should include any documents relevant to appeal collated in reverse Chronologic Order



Standard of Evidence

The IBLA standard of review for Cadastral Surveys:

- A person challenging a BLM survey has the burden of establishing, by a *preponderance of the evidence*, that the survey was grossly erroneous or fraudulent.
- See, Rudy Hillstrom, 180 IBLA 388, 399 (2011)(citing Peter Paul Groth, 99 IBLA 104, 111(1987).
- See also, State of Oregon, 78 IBLA 13, 21 (1983). “Surveys of the United States after acceptance, are presumed to be correct and after a long lapse of time from the acceptance will not be disturbed except upon clearest proof of an evident mistake or fraudulent conduct.”





Standard of Evidence

If a BLM survey is challenged **prior to the official filing of the resurvey plat**, the appellant bears the burden of establishing by a *preponderance of the evidence*, that the resurvey is **not an accurate retracement and reestablishment of the lines of the original survey.**

- *See, Howard Vagneur*, 159 IBLA at 278, *John W. Yeargan*, 126 IBLA 361, 363 (1993).
- Rationale: BLM must afford appellants and others notice and opportunity to object to a survey prior to the official filing of the plat.
- This is why the BLM publishes a notice of the official filing of the plat in the federal register stating that anyone desiring to protest the filing of the plat should do so by a certain date.





Burden of Proof

A party's job of convincing the decision maker in a trial that the party's version of the facts is true

Beyond a Reasonable Doubt

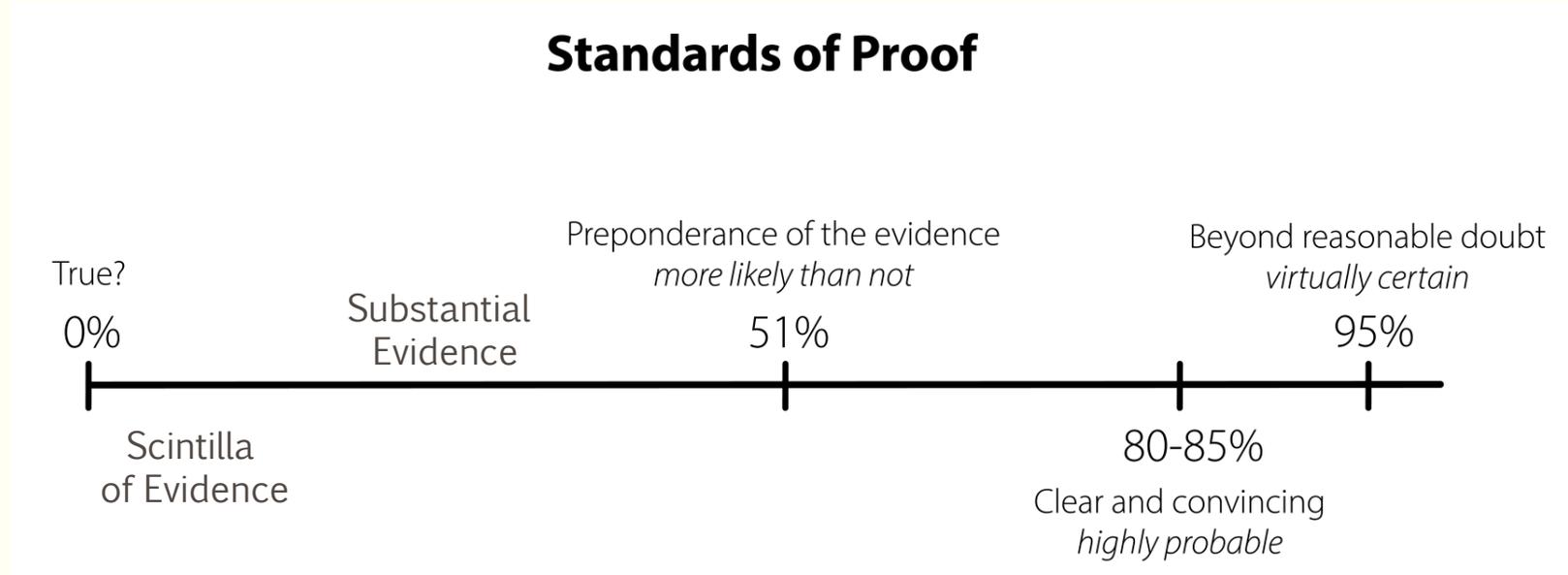
Highest level of proof that law requires. The evidence is so strong that there is only a remote possibility (and no probability) of an extenuating circumstance

Preponderance of Evidence

"The greater weight of the evidence; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue instead of the other."

Substantial Evidence

"more than a mere scintilla as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."



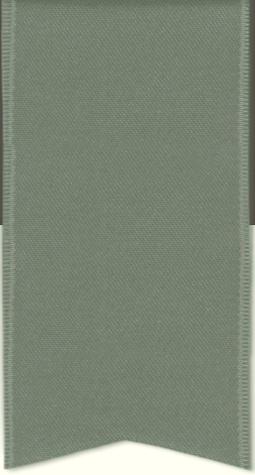


Standard of Evidence

2009 Manual – Standard of Evidence

- “New” definition of evidentiary standard for proof of the identification of the Existent, Obliterated, & Lost Corner (6-5, 6-9,& 7-2)
- “Beyond Reasonable Doubt” replaced with “Substantial Evidence”
- Such relevant evidence as a reasonable mind might accept as adequate to support a conclusion
- 17 IBLA Cases – “Substantial Evidence”
 - See STODDARD JACOBSEN AND ROBERT C. DOWNER 103 IBLA 83 (1988) and MR. and MRS. JOHN KOOPMANS 70 IBLA 75 (1983)





IBLA DECISIONS



How do I read an IBLA decisions

- Look at the date – indication of which manual will be referenced
- Read first line – tells you what's going on (Affirmed, Rejected, Remanded)
- Head notes – usually added after, as a summary. Make sure to read the opinion itself.
- Appearances - determine who is involved
 - Appellant provides statement of reasons
 - Office of Solicitor, along with support of Cadastral Chief for the state providing response
- Careful to differentiate between judge assertions, verses judge citing appellant assertions – it is easy to get mixed up
- Analysis/Opinions – conclusions of law – important to understand findings of fact, this is how the judge has been informed of and understands to be relevant evidence
- Highlight any references to cited cases – read other decisions
- Conclusion – some are longer than others – make sure to read dissent if there is one
- Read case multiple times



Exercise – IBLA cases

- Mr. and Mrs. John Koopmans, 70 IBLA 75
 - This case includes the Statement of Reasons provided by the appellants and the reply by BLM which gives some insight into the type of information the Board must review in making their decisions.
- Howard Vagneur, 159 IBLA 272
 - This decision has some good information about what constitutes “substantial evidence” and what should be included in the survey record.
- Theodore Vickman, 132 IBLA 317
 - This case involves bona fide rights.
- Domenico A. Tussio and Malyle Tussio, 37 IBLA 135
 - This case involves a decision reversed, and a new survey ordered.





Exercise – IBLA cases

- What is the issue before the court?
- What is the analysis/opinion of the judge?
Conclusions of Law?
- What is the final decision of IBLA?





Course Route



Refresher – How laws are made



Federal Statutes and Regulations



Case Law and Administrative Law



Protests and Appeals Process



IBLA Decisions



By the end of the session, you should feel comfortable ...

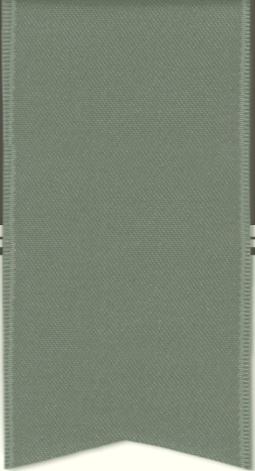
Gather critical information about your legal issue

Establish your legal issue and your goal

Understand the precedent in your jurisdiction

Determine the type of legal sources you need

Begin your legal research with secondary sources



FINDING THE LAW

A workshop on legal research for laypersons

Tasha Huhta, BLM, CFedS Program Manager

Glen Thurow, CFedS

