



Why a Federal Surveying Manual is Relevant to the States

Why would the various General Land Office (GLO) and Bureau of Land Management (BLM) *Manual[s] of Surveying Instructions* be relevant to the state licensed land surveyor? What if the lands in a state were surveyed prior to when even the first official federal *Manual* was introduced? After the land passes from federal to private ownership, does state law solely control land surveys?

Let's use Alabama as an example. I am not licensed there, and most of what I know about surveying there comes from legal research. My field experience in Alabama is limited to a BLM Retracement Seminar that I once attended. During this seminar, we recovered original evidence from circa 1830's surveys by the GLO, so I know that original evidence does exist in at least parts of Alabama.

The 1973 *Manual* states in 1-1, "*The Manual of Surveying Instructions describes how cadastral surveys are made in conformance to statutory law and its judicial interpretation.*"¹ The *Manual* is generally binding for surveys adjoining federal interest lands, including

Indian country, when the original survey was executed in conformance with the *Manual*, (i.e., an official GLO/BLM survey). The private surveyor that follows methodologies and procedures found in the *Manual* when surveying lands that were originally surveyed under the Public Land Surveying System (PLSS) has firm footing should his survey ever be contested in a court of law. The *Manual* cannot provide an answer for every survey situation, but offers general guidance for a broad variety of issues.

Alabama is replete with PLSS case law that defers to federal law. For instance, Alabama courts have stated that "*The government survey created sections and boundaries and did not merely identify them.*"² They also say "*All disputes over the location of the lines of sections are controlled by the government survey and located by reference to the original survey.*"³

In addition, "...while the boundary line between adjacent land owners may be fixed and changed by agreement or by adverse possession, they cannot relocate a section line as surveyed by the Government surveyors,"⁴ and "...when the land is described by Government numbers, the deed does not purport to convey an area outside of such described land."⁵

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The textbook *Clark on Surveying and Boundaries* says “*The Congress of the United States having provided a system for the survey of the public lands, the boundaries and limits of sections and subdivisions thereof must be determined in conformity with the principles laid down in Federal statutes. Errors of location, once established, cannot be corrected by the courts or by a surveyor who is employed to locate government corners or line, said the court.*”⁶

When lands in Alabama adjoin an originally-surveyed government-surveyed line, then the first thing that the retracing surveyor would need to do is reestablish the original government survey. If ownership is not coincident with the government line, then State law remedies for ripened unwritten rights exist. The original government line remains unchanged. “... [I]f a party claims property by adverse possession beyond a government survey line, the government survey line does not change, but the boundary line between the landowners may be changed or relocated so that the government survey line is no longer the boundary line.”⁷

When one is tasked to perform a resurvey of land described by the PLSS, then using federal rules allows the surveyor to restore those lines back to their original location based upon the best available evidence. The *Manual* promulgates federal surveying and resurveying rules. Why would any surveyor not want a standard set of survey rules to follow for the PLSS? The initial decision on how to complete a private boundary survey is up to the individual surveyor. If the decision is contested, then the courts are the decider. State courts would defer to federal law and procedures on PLSS issues, as applicable, and State law would control on other boundary issues, such as unwritten rights, etc.

If an Alabama surveyor is tasked to locate an aliquot part description, then the original lines need to be determined before the section can be properly subdivided. “*Our cases are clear that no agreement or act (e.g., adverse possession) of adjacent landown-*

ers can relocate the section lines, or interior subdivision lines established by government survey, for they are certain in legal contemplation.”⁸ After the original lines are restored, then the section would be subdivided by federal rules going back to the Act of February 11, 1805. (43 U.S.C. § 752)

If an original government corner is determined to be lost, and proportionate measurement methods for restoration need to be employed, then federal resurvey rules would apply. “*It is apparent that the trial judge and the surveyor, on whose survey the judge relied, applied to the situation a mathematical formula for the ascertainment*



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of the lost corner, so that the question really is whether or not there was error in doing so. We find that such formula under the circumstances here disclosed is an established principle of surveying. We quote as follows from Clark on Surveying and Boundaries, section 349: ‘When new measurements are made on a single line to determine the position of a lost corner, it will almost invariably happen that such line overruns or falls short of the distance given in the notes. When this is the case, the surveyor should always fix the point by proportional measurement on lines conforming to the original field-notes. There

can be no departure from this rule.”⁹ Why would a surveyor not want a standard and repeatable procedure when dealing with proportionate measurement methods of corner restoration?

From the previous citations from Alabama case law, it is clear that federal surveying regulations and procedures have a place in state surveying practices, whether or not the original surveys were performed prior to when the first *Manual* was published. Federal surveying and resurveying rules do pertain sometimes, even after land has passed into private ownership.

Whether or not the most current *Manual* is codified into state law, it remains the single best text on PLSS methodologies and procedures. It is the closest thing that the affected PLSS states have to a uniform national surveying code. The *Manual* remains relevant.

The *Manual of Surveying Instructions* is directed at federal authority land surveyors. But private land surveyors would behoove the profession and their clients by utilizing the principles and practices found in the *Manual* when surveying in PLSS or Indian lands. If surveyors regard it as only a nice book on the shelf, then they have not done their research.

An essential book for private surveyors is the *Restoration of Lost or Obliterated Corners and Subdivision of Sections* circular. The circular is an early GLO restatement of regulations governing resurveys and subdivision of sections. Versions of this circular were published in 1883, 1896, 1909, 1939, 1952, 1963 and 1974. The *Manual[s] of Surveying Instructions* were prepared for the federal surveyor, while these circulars were directed especially toward county and private surveyors performing resurveys in the PLSS. 

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References:

1. *Manual of Surveying Instructions* 1973, U. S. Department of the Interior, Bureau of Land Management, sec. 1-1 at page 1.
2. *White v. Berrey*, 266 Ala. 379, 96 So. 2d 725 (1957); *Nolen v. Palmer*, 24 Ala. 391 (1854); *Walters v. Commons*, 2 Port. 38 (Ala. 1835).
3. *Sims v. Sims*, 273 Ala. 103, 134 So. 2d 757 (1961); *Golden v. Rollins*, 266 Ala. 640, 98 So. 2d 409 (1957).
4. *Dial v. Bond*, 849 So. 2d 189 (2002).
5. *Alford v. Rodgers*, 242 Ala. 370; 6 So. 2d 409 (1942).
6. *Clark on Surveying and Boundaries*, 7th Edition, 1997, sec. 5.33, page 150, citing *Vaught v. McClymond*, 115 Mont. 542, 155 P2d. 612 (1945).
7. *Nelson v. Garrard*, 403 So.2d 230 (Ala. 1981).
8. *Guyse v. Chappel*, 367 So. 2d 944 (1979) citing *Sims v. Sims*, 273 Ala. 103, 134 So.2d 757 (1961); *Upton v. Read*, 256 Ala. 593, 56 So.2d 644 (1952); *Alford v. Rodgers*, 242 Ala. 370, 6 So.2d 409 (1942).
9. *McLaurine v. Knowles*, 257 Ala. 8; 57 So. 2d 543 (1952).