

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240
<http://www.blm.gov>

August 19, 2010

In Reply Refer To:
9683 (350) P

EMS TRANSMISSION 08/25/2010
Instruction Memorandum No. 2010-187
Expires: 09/30/2011

To: All State Directors

From: Assistant Director, Minerals and Realty Management

Subject: Chapters III and VIII Notes Prefaces, and Chapter VIII Erroneously Meandered
Ferry Lake Case Study, *Manual of Surveying Instructions* (2009)

Program Area: Cadastral Survey and Fluid Minerals.

Purpose: The following clarification pertains to similar factual situations found during the execution of Official Surveys.

Policy/Action: It has been determined that the language below is necessary to clarify certain portions of chapters III and VIII notes prefaces, as well as the chapter VIII case study, Erroneously Meandered Ferry Lake, in the *Manual of Surveying Instructions* (2009) (Manual). Upon issuance, the Instruction Memorandum (IM) will be posted to appropriate Bureau of Land Management websites. This IM transmits information that will be incorporated into the reprint of the Manual.

(1) Pertinent to the prefaces for chapter III notes, page 97, and chapter VIII notes, page 225, the addition of a second paragraph to each:

These case studies are provided as training tools, and must be viewed in their historical context. Please be aware that to the extent they refer to case law or legal analyses, such references have been provided in order to explain why certain surveys were conducted in the manner they were. Such case law may, however, have been subsequently superseded and/or may not be applicable outside the particular circumstances and timeframe of that case. Questions in this regard should be directed to the Office of the Solicitor.

(2) Pertinent to the introductory paragraph, second to last sentence, in the Erroneously Meandered Ferry Lake case study, page 266. The emphasis currently in this sentence on “the artificial” is unnecessary and misleading. The sentence should read:

Only lands above the OHWM before reliction were considered in determining if there had been an erroneous omission from the original survey.

(3) Pertaining to the Attorney General of the United States' letter, dated September 11, 1916, in the Erroneously Meandered Ferry Lake case study, page 266, it should be noted that while the views expressed by the Attorney General may explain why the survey was conducted in the manner it was—i.e., only to determine the lands omitted from the original survey—the Attorney General was not entirely correct in his views. It has long been clear within the Department that the State might not necessarily have prevailed in a swamp and overflowed land grant claim. For instance, there was a 1908 mineral withdrawal in this area, and since the lands claimed were mineral in character, the State's claim would have not been approved. See *Swamp-Land Grants and Mineral Lands*, 46 Pub. Lands Dec. 389, 393 (1918); *State of Louisiana*, 47 Pub. Lands Dec. 366, 367, 369-70 (1920); and *Hatcher (On Petition)*, 49 Pub. Lands Dec. 452, 457 (1923). In addition, approval of swamp and overflowed land selection were based on the factual condition of the land. The Attorney General had incomplete knowledge of the facts on the ground that may have qualified or disqualified those claims. No conclusions can be drawn from the Attorney General's passing reference to the State's title by virtue of its sovereignty.

Timeframe: The guidance contained in this IM is effective immediately.

Budget Impact: None.

Background: Recent litigation in the State of Louisiana pertaining to ownership of Federal interest lands and their water boundaries resulted in the Office of the Solicitor's determination that the subject portions of the Manual did not completely state the Federal Government law on the subject matter. It was determined a clarification would help and prevent further confusion in similar factual situations in the future.

Manual/Handbook Sections Affected: None.

Coordination: The BLM Washington Office Division of Lands, Realty and Cadastral Survey - Branch of Cadastral Survey, in consultation with the Office of the Solicitor Division of Mineral Resources – Branch of Petroleum Resources and the Division of Land and Water – Branch of Public Lands, prepared this IM.

Contact: If you have any questions concerning the content of this IM, please contact me at 202-208-4201, or your staff may contact Don Buhler, Chief Cadastral Surveyor, at 202-912-7353. For specific questions relating to the Manual, please contact Bob Dahl, Cadastral Surveyor, at 202-912-7344 or email at robert_w_dahl@blm.gov.

Signed by:
Timothy R. Spisak
Acting, Assistant Director
Minerals and Realty Management

Authenticated by:
Robert M. Williams
Division of IRM Governance, WO-560