

JOE H. COX
County Surveyor, Upshur County, Texas
P. O. Box 357
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Gilmer, Texas 75644
903-762-6262

28
August 15, 2000

General Land Office
Austin, Texas

Re: Anisita Lumbrera Survey, A-3, and adjoining surveys thereto,
Upshur County, Texas

Gentlemen:

This will certify that on the ^{28th} ~~15th~~ day of August, 2000, at 1:15 pm
o'clock P.M., duplicate originals of the attached field notes,
plats and other documents relating to the captioned lands were
filed with me as County Surveyor of Upshur County, Texas, and
recorded in Vol. X, page 124-144, in the County Surveyor's Records
located in the County Clerk's Office, Gilmer, Texas.

As of this date I have generally reviewed said documents, but I
have not yet closely examined and verified everything detailed in
same. I am conducting an independent field examination of the
monuments, references and markers involved. At this time and
subject to the completion of my independent field work, I generally
concur with and have no contrary opinion concerning the contents of
the attached documents and the conclusions expressed therein that
no vacancy exists. However, if my additional independent field
work changes my opinion, I will promptly supplement this letter for
your files.

I am forwarding a duplicate original of said documents to your
office for filing and informational purposes.

File No. Sketch File 21

UPSHUR County

ANISITA LUMBRERA Sur: A-3, and adjoining
surveys

Date Filed: SEPTEMBER 5, 2000

Yours truly,

Joe H Cox

Joe H. Cox, County Surveyor

David Dewhurst, Commissioner
By Douglas Howard

See Rolled Sketch 5

Joe H Cox
8/28/2000

FILED
REX A. SHAW
COUNTY CLERK
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UPSHUR COUNTY, TX.
DEPUTY

counter 38794

Shine & Associates

REGISTERED SURVEYORS TEXAS AND LOUISIANA
D. D. SHINE, RPLS, LSLs, RLS
NEDRA J. FOSTER, RPLS, LSLs

UPSHUR County Surveyors
Records Book "X" pg 125

FILE NO. SKETCH FILE 21

UPSHUR County

ANISITA LUMBRERA SURV. A-3, and adjoining surveys.

Date Filed: SEPTEMBER 5, 2000

By: David Dewhurst, Commissioner
Bonnie Lee Howard

August 23, 2000

Commissioner David Dewhurst
Texas General Land Office
1700 N. Congress, 8th Floor
Austin, Texas 78701-1495

Re: Aniseta Lumbrera and adjoining surveys in Upshur County, Texas

Dear Commissioner Dewhurst:

This area along with several adjacent areas in Upshur County has recently been subjected to a number of vacancy filings, apparently based on distance discrepancies. In view of the rather extensive record research and on the ground surveys accomplished, it may be advantageous to include this work in the files of the GLO for informational purposes. After the examination of the General Land Office records and on the ground field work, it is our opinion that no vacancy can exist between the surveys shown on our accompanying working sketch, retracement survey map, and covered by this report. The following is a summary of the record research and field work upon which this opinion is based.

Upshur County was created in 1846 out of the Nacogdoches and Shelby Land Districts and also partially taken out of Harrison County. Land records were mapped and maintained separately in these different places and were supposed to be copied and sent to Austin. This method left much room for discrepancies, as seen in the following excerpt from an April 25, 1857, letter from J. M. Glasco to S. Crosby, found in the General Land Office Upshur County File 8. "...There are no doubt but there are many surveys not represented on my map for the Transcript records of Harrison are very imperfect and there are many location made on the same certificate and different certificates on the same survey. "

The following history accounts for many null and void surveys and the confusion noted by Surveyor J. M. Glasco in 1857. In 1831 John Thomson Mason (1787-1850) was the confidential agent of Galveston Bay & Texas Land Company, which was organized to take over the holdings of empresarios Lorenzo de Zavala, David Burnet, and Joseph Vehlein. In 1833 Mason resigned after being instrumental in repealing the law of Mexico which banned a foreign company from owning Mexico's land and forbade colonization from the United States. He was given an empresarial

contract on June 19, 1834, and then proceeded to obtain vast lands, including the eleven leagues in our area which were granted through Mason to George Pollett (See G.L.O. Sketch File No. 19). Following the Texas Revolution, in the Constitution of the Republic of Texas, the two acts passed on behalf of Mason in 1834 and March 14, 1835, were both declared null and void and "each and every grant founded thereon, is, and was from the beginning, null and void; and all surveys made under pretense of authority derived from said acts, are hereby declared to be null and void..."¹ The Constitution states that the protection of the public domain from unjust and fraudulent claims, and quieting the people in the enjoyment of their lands is one of the most important functions of the convention. Evidently the public needed protection from Mason.

Haden Edwards (1771-1849) on April 15, 1825 received an empresario contract from Mexico to settle 800 families in the Nacogdoches area with the eastern border on the old Neutral Ground.² Frost Thorn (1793-1854) received a contract at the same time further north than Edwards'. During the same year Frost Thorn also married Susan Wroe Edwards, daughter of Haden. Thorn did not settle families on his area, and his contract expired at the end of six years.

They were required to respect the claims of the original owners in the area; however, Edwards conducted his business in a high-handed, dictatorial manner. He told long-term settlers they must present their claims and gave no preference to squatters. Resentment against him mounted among the settlers of the area, and the trouble came to a head when during his absence in May 1826, his brother, Benjamin W. Edwards launched the Fredonian Rebellion³. This effort to form their own republic

¹Constitution of the Republic of Texas, Gammel, *The Laws of Texas*, Vol. I, p. 1080-1081.

²The Neutral Ground came about because Texas and Louisiana could not settle their common boundary following the Louisiana Purchase. In order to avert a battle, it was agreed in 1806 to have a neutral area generally between the Arroyo Hondo on the east and the Sabine River on the west. Settlers were not supposed to claim this land, but people from both sides did move into the area including quite a few outlaws. Both countries sent expeditions in 1810 and 1812 to clean out the area. Ownership of this area went to the United States by the Adams Onis Treaty of 1819. *The Handbook of Texas*, V. II, p. 270, 1952.

³The Fredonian Rebellion began on December 16, 1826, when Benjamin Edwards and some thirty followers rode into Nacogdoches, seized the Old Stone Fort, and proclaimed the Republic of Fredonia. They made an alliance with local Indians for help in battle in return for land. The rebellion did not gain local support nor did the Indian help materialize, and when the Mexican militia, including members of Austin's colony,

failed, and Haden Edwards' contract was ultimately nullified by the government of the state and he was ordered expelled. However, he did return to Texas, continued dealing in lands, and was in Nacogdoches at the time of his death.

Even though Frost Thorn allowed his contract to expire, he acquired land on his own from individuals, which altogether amounted to hundreds of thousands of acres. He is reported to be the first millionaire in Texas. He was a philanthropist, donating land for church sites, serving on the board of health of Nacogdoches, and aided in establishing the University of Nacogdoches and served on its board of trustees. He was chairman of the committee of vigilance and safety during the Texas Revolution, elected to the state legislature of Coahuila and Texas, and had many business enterprises.

Frost Thorn was attorney for George Pollett, and he acquired Pollett's eleven leagues shown on the attached G.L.O. Sketch File No. 19. This land is in our area of interest, and adjoining surveys note the marking of the lines as being Thorn's.

The surveys laid in place of these null and void eleven leagues were properly awarded following the Constitutional convention and the reopening of the General Land Office in February 1838. Valid titles from Mexico were recognized by the Republic, but not these in our area of interest that came through George T. Mason. Attached is a copy of the current GLO map with the areas outlined that show where the null and void Pollett/Thorn three and eight sitio grants laid.

At the time of his death, Frost Thorn claimed parcels of land in thirty-seven counties. In our area of interest, his family partitioned the Maria del Pilar Torres and the Maria Finolia Flores. Included are copies out of the Nacogdoches County Clerk's Office listing the approximate holdings in these grants and a plat of the Torres and Flores partitions.

Research and information uncovered to this point has revealed nothing that will change the positions of the surveys as laid out and recognized by the Republic and the State of Texas.

In order to analyze the surveys involved in this area, we have to take a look at the surveys that are enclosed on three sides by grants made by Coahuila and Texas. On the west is the J. B. B. Davenport four league grant, on the north is the Aniseta Lumbrera, and on the east the Maria Torres. All of these were surveyed in September 1835 by colonist surveyor William Roark. All of these grants were connected to each

reached Nacogdoches, the revolutionists quickly fled across the Sabine River. This was on January 31, 1827 - a rebellion of six weeks. *The Handbook of Texas*, Vol. I, p. 643, 1952.

other. Using the distances recited in the Davenport and the Lumbrera Grants, we find that Surveyor Roark had 15,000 varas between the southwest corner of the Lumbrera (in the east line of the Davenport) and the southeast corner of the Davenport. Adding the west line distances of the following surveys beginning at the southeast corner of the Davenport results in:

Robert Raiford	1390 varas
Juan Justamente	2886.7 varas
Leino Gonzales	2886.7 varas
Robert Burton	1900.8 varas
Simpson Brown	3534 varas
M. Thornton	1900 varas
G. W. Crow	<u>308 varas</u> (which calls to join the southwest corner of the Lumbrera)
	14,806.2 varas

The combined length of these Republic of Texas grants is 14,806.2 varas, which is 193.8 varas short of the Coahuila and Texas grants. I would like to call your attention to Harris v. O'Connor, 185 SW2d 993 (1944), where it is stated, "Any vara in use for land measurement in Coahuila and Texas in 1834 was necessarily a Mexican vara, and the Mexican vara prescribed by statute by the Coahuila and Texas Statutes of that period was actually longer than the vara in customary use in Texas for the past one hundred twenty years." In our instance assuming that the Republic of Texas surveyors were using a 33.3333 inch vara (of which we have evidence showing the 33.3333 inch vara was in use at that time and was later adopted as the official unit of measure in 1919), this would make the Mexican vara 33.7696 inches by proportion which is less than one-half inch difference. This small difference is typical of what I have found in dealing with similar surveys throughout Texas.

The above is not offered as an explanation to all the distance discrepancies, but it is a reality and must be taken into consideration in the construction of ancient surveys. When determining distance between corners set by the original surveyor, our distances measured today by electronic distance measuring devices and G.P.S. in no way compare to the distances measured by the locating surveyor using link chains. The first steel tape was not patented until 1867 and was not in use until long after these surveys were laid out.

When plotting field notes of this era, one always finds many discrepancies and the question that must be answered by the draftsman of the map is where to show the excesses. These excesses could be located in many different places depending upon where the draftsman begins the plotting. These discrepancies are apparent on the official maps of the General Land Office. See attached 1857, 1897, and the current 1945 maps which all show this excess distance which is being shifted to various areas because of the different beginning points of the draftsmen. Also see working sketch of

portion of Upshur County dated August 23, 2000 prepared by Nedra J. Foster. These distance discrepancies are merely that. They in no way indicate vacancies, which could be located in several places according to a draftsman's interpretation. It is necessary to show these discrepancies because distances are merely guides to get you to the corner or line called for. This allows the surveyor locating an ancient grant to look in either place for the object called for because the distance on the ground may be at variance with the call made in the field notes. Also, the distance on any given line may be different in a set of field notes on the north from the field notes describing the tract adjoining on the south.

The rules for the construction of grants and for ascertaining their boundaries are all designed to carry out the intention of the grantor; when that intention is manifest, all else must yield to and be governed by it. Woods v. Robinson, 58 Texas 655 (1883).

Without exception, the surveys in our area call to adjoin the surrounding senior surveys, while at the same time fulfilling the acreage requirements set out in the individual certificates. A good example is the C. B. Powell Survey, which wraps around the northeast corner of the Thornton Survey and adjoins the south line of the Lumbrera. But its east line falls short of reaching the west line of the Torres because its 320 acres was fulfilled before reaching the Torres. Powell's grant was located by virtue of a third class headright certificate, which was issued to immigrants who came to Texas after October 1, 1837 and prior to January 1, 1843. The holder of this certificate could locate his land on any unappropriated domain in Texas. Glasco, the surveyor for Powell, located this certificate by adjoining the Thornton and the Lumbrera and fulfilling his acreage requirements on his east line, not calling for the Torres. This area between the east line of the Powell and the west line of the Torres was later filled by the Reynolds Survey which called to adjoin all of the surrounding senior surveys, the Powell, the Lumbrera, the Torres, and the Johnson.

The following is an analysis of the individual surveys. The surveyors in the Mexican colonies were Anglo-English speaking people (in the instant case, William Roark), and they made their field notes in English. These field notes were later translated into Spanish for inclusion in the title from Coahuila and Texas. In many instances the Spanish archives in the General Land Office have both the English field notes and the titles in Spanish. In our case we have the English field notes on the Flores, Torres, and Lumbrera; whereas, the Davenport is a translation of the Spanish title in which the field notes have gone through a translation from English to Spanish and back to English. In our area of interest the oldest titled Mexican survey is the four league Juan Bernardo Benigno Davenport grant which was surveyed by William Roark and titled on September 18, 1835. Mr. Roark also surveyed the Aniseta Lumbrera League with title date shown as September 21, 1835, the Maria Finolia Flores League with title date shown as September 22, 1835, and the Maria del Pilar Torres League also titled on September 22, 1835. The English field notes of the Lumbrera, Flores, and Torres show a survey date of September 12, 1835. (See working sketch.)

On February 12, 1846, Thomas D. Brookes surveyed the Robert Burton grant. This was numbered as 275 on the original field notes from the General Land Office. It was not uncommon for surveys to already be accomplished on the ground and identified by numbers, and then have the grantee added later when someone settled on that particular tract. One will often find different handwriting for the name of the person receiving the grant than that found in the description of the land. The Burton calls to begin at the northwest corner of a survey numbered 274 and runs north. Survey 274 (Wm. Carleton Grant) actually bears a later survey date than the Burton; however, it must have been on the ground in 1846 for Mr. Brookes to call for it. The Burton grant also calls to join the east line of the Davenport.

Mr. Brookes also surveyed number 339 (the Robert Polley Grant) on August 11, 1848, and called to begin at the northeast corner of survey number 338 (Simpson Brown). Adjoining the Polley on the north he surveyed number 340 (Malinda Thornton Grant) and caused it to adjoin the Polley and the Simpson Brown on the south and the Davenport on the west. Once again, the Simpson Brown (as patented) was surveyed in 1852 by J. M. Glasco; therefore, Mr. Brookes was relying on earlier work when he called to begin at the northeast corner of number 338.

J. M. Glasco was the next surveyor in the area, and he surveyed the George Torrance on April 10, 1851, and called to adjoin survey number 272 (the Samuel Gillespie Grant) on the east, survey numbers 273 (the Jesse Bullock Grant) and 274 (the Carleton) on the south, and survey number 275 (the Burton) on the west.

On the northeast corner of the Malinda Thornton, Mr. Glasco surveyed number 54 (the C. B. Powell grant (3-3-1851), calling to begin at the northeast corner of the Thornton and reciting the same bearing trees as called by Mr. Brookes. He called to join the Lumbrera on its south line. The Powell 320 acre grant did not extend easterly to the Torres line because the acreage was fulfilled before reaching the west line of the Torres. The remaining 95-vara strip was ultimately taken up by the Reynolds Survey in 1903.

Surveyor Glasco on December 16, 1851 surveyed the Obadiah Hends, which lay between the Lumbrera and Thornton. He found Mr. Brookes' 1848 northwest corner of the Thornton and began his survey there. Going north for 308 varas, he called for Mr. Roark's black jack at the southwest corner of the Lumbrera and recited another black jack witness but failed to record bearing and distance. The combined length of the Hends and the Powell totaled 3801 varas with the adjoining north line of the Thornton being 3800 varas or just one vara different. The Hends Survey was later cancelled because it was issued as a conditional certificate and evidently the conditions were not met. The four current surveys west of the Powell occupy the same area as the cancelled Hends, all calling to adjoin the Thornton on the south and the Lumbrera on the north. When David Hearn surveyed the G. W. Crow on September 7, 1872, at the southwest corner of the Lumbrera he found a black jack and called it to be East 5 varas. I feel this is the same tree marked originally by Mr. Roark (called 8" Jack Oak N 70° E 5.6 varas), found in 1851 by Glasco, and in 1872 by Hearn.

Three different surveyors (J. M. Glasco, David Hearn, and John Denton) put in the Crow, the Silas Smith, the W. McClanahan, the Samuel S. Spencer, and the C. B. Powell. All of these surveyors obviously knew and agreed on the location of the south line of the Lumbreira and the north line of the Thornton. They all called the north/south distance to be 308 varas and called to adjoin the Lumbreira to the north and the Thornton to the south. In 1889 when John Denton surveyed the Samuel S. Spencer, he found Glasco's witness tree at the northwest corner of the Powell in the south line of the Lumbreira and used this as his beginning point.

Mr. Glasco also surveyed the Jesse H. Miller (9/10/1851) and called to begin at the southwest corner of the Maria del Pilar Torres Grant, reciting the same bearing trees as marked by Mr. Roark in 1835. When Mr. Glasco surveyed the Patmus Tuel on June 30, 1857, he began at the northeast corner of the Polley and recited the same bearing trees as marked by Mr. Brookes in 1848. He also called to join the Thornton on the north, the Johnson, the Torres, and the Miller on the east.

The following table shows corners as originally marked and found by subsequent surveyors.

SW/C A. Lumbreira

Original 1835 call
 by Wm. Roark:
 4" Jack Oak for corner
 12" Jack Oak S54°E 28 v.
 8" Jack Oak N70°E 5.6 v.

1851 survey by
J. M. Glasco:
 Black Jack for corner
 Black Jack witness but
 no bearing & distance

1872 survey by
David Hearn:

 Black Jack E 5 v.

NW/C M. Thornton

Original 1848 call
 by Thomas Brookes:
 stake
 10" Black Jack N61°W 1.2 v.
 10" Black Jack N 53°E 10 v.

1851 survey by
J. M. Glasco:
 stake
 Black Jack N61°W 1.2 v.
 Black Jack N53°E 10 v.

1872 survey by
David Hearn:
 stake
 Black Jack N61°W 1.4 v.
 Black Jack N53°E 10 v.

NE/C M. Thornton

Original 1848 call
 by Thomas Brookes:
 stake
 Black Jack N60°W 4.2 v.
 Black Jack N66°E 1 v.

1851 survey by
J. M. Glasco:
 stake
 Black Jack N60°W 4.2 v.
 Black Jack N66°E 1 v.

NE/C O. Hends (cancelled).....	NE/C Spencer
Original 1851 call	1889 survey by
by <u>J. M. Glasco:</u>	<u>John Denton:</u>
Stake on the south boundary	Stake on the south boundary
line Aniseta Lumbrera and	line of Aniseta Lumbrera and
NW/C No. 54 (Powell)	NW/C No. 54 (Powell)
Pine N52°E 5.1 v.	24" Pine N52°E 5.1 v.
Black Jack S9½°E 7 v.	

SW/C M. Torres	
Original 1835 Call	1851 survey by
by <u>Wm. Roark:</u>	<u>J. M. Glasco:</u>
8" Hickory corner	8" Hickory corner
15" Hickory S11 1/2° W 6	15" Hickory S11 1/2° W 6
12" Hickory S 76 1/2° E 20	12" Hickory S 76 1/2° E 20

Looking at the above table, it becomes apparent that the surveyors in this area found the lines and corners of the previous surveys and made their lines to adjoin.

After extensive record research, it is our opinion that no vacancy can exist between the surveys on our working sketch and covered by this report.

In *Strong v. Delhi-Taylor Oil Corporation, 405 SW2d 351 (1966)*, it is stated, "The law is well settled in this state in those instances where the line of a junior survey is called to be identical with that of a senior survey, the location of the senior line is conclusive of the location of the junior line...and that extraneous evidence is incompetent to pull them apart. Further, the court said there is authority for the contention that when two tracts are called to have common boundaries, then the state cannot pull them apart to create vacancies between them under any circumstances."

In *State v. Ohio Oil Company, 173 SW2d 470 (1943)*, it is stated, "Where surveyors field notes show that separate tracts or sections of land are tied together and have common corners and lines, it is not necessary to resort to rules of construction of the field notes because they speak for themselves and exclude any supposed vacancy and the only question is where the common corners and lines are located.... Where the land commissioner and the state intended to call for an adjoiner of junior and senior surveys at all marked and monumented corners and to tie the surveys together so as to have common corners and lines,....the field notes excluded any supposed vacancy between two surveys....Where the state could not pull common corners and lines of junior and senior surveys apart so as to establish a vacancy between them and the state had parted with title to the land by patent on either side of the common line, the state was not concerned with actual location of the line on the ground."

In *State v. Coleman-Fulton Pasture Co.*, 230 SW 850 (1921), it is stated, "The intention of the surveyor as expressed in his work in making office surveys must have an almost controlling effect in construing his work, in the absence of a better reason to ignore it. The intention would not control if the footsteps of the surveyor were actually made and could be found and identified on the ground by fixed and identified location objects...Where all the field notes in a grant for adjacent surveys as this, and represent no vacant land apparent from all the files, surveys, field notes, maps, and plats in the General Land Office, and finally are embraced in a patent, that the state may declare a vacancy between surveys fitting onto each other and make new field notes, tearing apart and separating the contiguous and companion surveys, thereby wedging in a vacancy, and call it unappropriated public domain, in order to sue for it as public domain. This is not the method of reforming a grant so as to recover an excess."

In *Teal v. Powell Lumber Co.*, 262 SW2d 223 (1953), it is stated, "It is presumed the surveyor went to corner and lines that his field notes call for, and to have run his lines on the courses and distances as indicated."

In our retracement survey of this area, I did not find any corner or witness tree or line marks that I thought were marked by the original locating surveyors; however, I feel we followed the locating surveyor's footsteps because of the long established occupation. This occupation consisted of old fences, old line marks, and old roads that were customarily built along the survey lines shortly after they were established. This on the ground occupation fit calls for creeks, and it is my opinion that they have been in place for at least one hundred years. We found remnants of old wire grown 10-12 inches deep in very large oak trees along these lines. We secured from Exxon Corporation field books and maps of their surveys in this area, which covered a period of 1964 through 1974. They also found this long standing occupation at the time of their survey; moreover, they also did not find any of the original witness trees at the corners. The lines and corners that I found are in close conformity with those found by Exxon more than thirty years ago.

In support of community reputation, I would like to call your attention to the case of *Stover v. Gilbert*, 112 Tx. 429, 247 SW 841, where it says, "It is well settled that ancient boundaries, in the absence of opposing evidence sufficient to establish their location may be proved by evidence of common reputation." Also, in another landmark case, *Welder v. Hunt*, 34 Tx. 44, "It is a well established rule of law that boundary lines may be proved by a common understanding and report of a community."

The famous language "What are boundaries is a matter of law; where they are is a matter of fact," was pronounced by Justice Wheeler in *Bolton v. Lamm*, 16 Tex.96 (1856). In the next sentence Justice Wheeler stated, "Where the lines of a survey have been run and can be found, they constitute the true boundaries, which must not be departed from or made to yield to course and distance."

"The lines actually traced on the ground, as shown by the land marks, and not those produced by course and distance, constitute the boundaries of the grant.... The calls of a survey, and not its courses and distances, are to govern, and where there are actual lines of demarcation, the compass and chain are no more than instruments to point them out. Carelessness of chain carriers, roughness of surface, variation of the compass, imperfection of the instrument, unskillfulness in the use of it, and other causes not to be enumerated, inevitably produce, in every instance, more or less uncertainty of result; and if we suffer ourselves to be governed by the compass and by measurement, collisions would be incessant."

I believe in our survey the old marked and occupied lines are the perpetuation generation after generation of the original surveyors' footsteps and have the reputation as ancient boundaries existing in a community.

Please refer to our survey map entitled "Retracement Survey, Upshur County, Texas" dated August 23, 2000. At the northwest corner of the Maria Flores Survey, we found a 5/8" iron rod in the base of a small oak tree (blown over) in scattered rock mound marking this corner that has been accepted by Surveyors Harry Johnson in 1967 and Homer Turner in 1992 and landowners alike. The northeast corner of the Lumbrera was set 200 varas north of this corner. This point is on the north slope of Simpson Mountain (extremely steep). There is an iron rod about ten varas south of the corner, but I felt the proper location would be as we set it 200 varas north of the rock mound. This iron rod is fairly new, and we have been unable to find record evidence for its position. There are no fences or other signs of occupation in the vicinity of this iron rod.

The northwest corner of the Lumbrera was marked by an old fence corner with fences running east and south therefrom. A line between the northeast and northwest corners crosses the creek at 1686 varas, the call distance was 1675 varas. From the creek westerly the line runs within the right-of-way of Highway 154 through downtown Gilmer, terminating at the above fence corner. The bearing and distance between these two points is S 88° 32' 01" W 5019.59 varas.

The east line was constructed from the rock mound at the northwest corner of the Maria Finolia Flores southerly following along old marked and occupied lines to an old fence corner in the north edge of Bluebird Road, then projected to a point in the centerline of said road.

The south line was constructed from the southeast corner in Bluebird Road westerly along Bluebird Road, through the northwest corner of the Samuel Spencer, and projected to the centerline of F.M. 2685 for the southwest corner.

The west line was then constructed from the southwest corner to the old fence corner at the northwest corner. The west line followed along old road and fence lines its entire length. Please refer to our survey map and note the conformity to the original surveys. This construction

makes the north and south lines to be within 3.5 minutes of being parallel and the east and west lines lack only 45 seconds in being parallel.

The northeast corner of the Malinda Thornton was an old fence corner recognized by both surveyors and landowners alike. The north line of the Thornton was constructed from the fence corner westerly following along an old fence line to an old $\frac{3}{4}$ " iron pipe at an old fence corner in the east edge of a very old road at the southwest corner of the Spencer Survey. This line was also projected westerly to its intersection with the centerline of F.M. 2685. This construction makes the west line of the G. W. Crow Survey to be 308.44 varas, its call distance was 308 varas. From the northeast corner of the Thornton proceeding westerly, the original Thornton notes called to cross a branch at 358 varas. We found this branch at 345 varas.

The south and east lines of the Thornton were evidenced by old marked and occupied fence lines. Along the south line of the Thornton (north line Simpson Brown), Surveyor Glasco in his field notes for the Brown called to cross a branch 1070 varas from the northeast corner of the Brown. From the occupied northeast corner of the Brown, we found this branch to be 1069.53 varas. Surveyor Brooks in his survey of the Thornton called to cross a creek 266 varas north of the southeast corner. We found this creek to be 278.5 varas north of our constructed southeast corner of the Thornton.

We constructed the south line of the Powell/north line of the Johnson from a point 883.1 varas south of the northeast corner of the Thornton and ran a line easterly parallel to the south line of the Lumbrera to its intersection with the west line of the Torres League. This construction will fit both creek crossings called by Glasco near the northeast corner of the Johnson. This also closely conforms to Glasco's call of the creek on the west line of the Johnson Survey. The called distance from the northwest corner of the Johnson south to the creek crossing is 694.6 varas. Our construction makes this crossing 707.59 varas. At the northeast corner of the Johnson, Surveyor Glasco called this corner to be in a glade, and he found the creek to be 70 varas west and 100 varas south. He also called for a post oak witness tree S 40° E 43.5 varas and a black jack N 84° E 34 varas. These two positions for the bearing trees fall on the edge of a hill where both black jacks and post oaks are growing.

The glade as called for by Glasco is in a marshy area with ferns and scrubby bushes growing. It is apparent that the long calls of 43.5 and 34 varas were to reach these type of trees growing on the hillside. There are no large trees growing in the marshy glade (see pictures). I feel this corner is in the very close proximity of the original corner. Natural objects are the highest priority of calls in following the footsteps of the original surveyor. In this instance this corner conforms to four calls for natural objects: 1) glade; 2) conforms to branch crossings on north line Johnson (70 varas); 3) conforms to branch crossing on east line Johnson (100 varas); 4) conforms to hillside where only the trees called for could grow.

At the southwest corner of the Maria Torres/southeast corner of Jesse Miller, we found an old bed rail marking this corner and an old fence line running north therefrom. This corner is just

Up Co
Book x pg 136

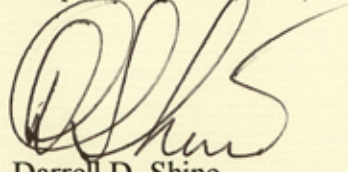
south of Flamingo Road, and the fence line begins on the north side of the road. Two hundred nineteen and two-tenths (219.2) varas west of this corner we found an old axle at an old fence corner marking the northwest corner of the Samuel Gillespie and the northeast corner of the George Torrance. Original field note distance between these two corners is 204 varas.

We found a fence corner marking the southwest corner of the Polley Survey at road intersections and an old fence line marking the south line of the Simpson Brown Survey. Please refer to the survey plat for comparisons of the actual distances compared to the original called distances.

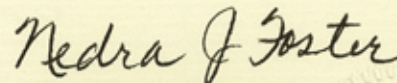
These distances found between existing, occupied corners in my opinion are in conformity with the calls recited in the original field notes. The discrepancies pointed out are typical throughout Texas, especially East Texas. This underscores the fact that distances measured approximately 150 years ago, taking into account the condition of the country, the equipment available to the surveyor, and the inexperienced local chainmen, will not in any way be uniform and should be expected to be considerably different from distances measured with the modern equipment of today. I believe the lines and corners as marked, fenced, and occupied on the ground today are in the same position as placed by the original locating surveyors.

The foregoing report is the result of more than eighteen months extensive review in the records of the General Land Office, survey records in Upshur County, deed records in Nacogdoches County, Upshur County Appraisal District, East Texas Research Center at Stephen F. Austin State University, records in the Starr Estate in Marshall, as well as consultation with other surveyors who have surveyed the same areas over the past fifty years, including the current Upshur County Surveyor, Joe Cox. Additionally, the above report is based on actual on-the-ground field work and survey work conducted by us. Our on the ground survey supports the record in that no vacancy exists between these surveys.

Respectfully submitted,

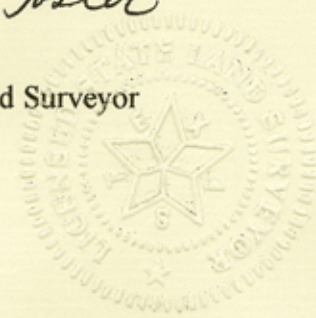


Darrell D. Shine
Licensed State Land Surveyor



Nedra J. Foster
Licensed State Land Surveyor

Upshur GLO 72000
8232000



East line W. A. McClanahan - 42" red oak line tree with wire grown in.

up Co
Book x P 137



Old road bed paralleling fence line on east line W. A. McClanahan



up co
Book x P 138



South line Malinda Thornton Survey – Wire grown in 41" Red Oak



up Co
Booth 'x' P139

Northwest corner
Maria Finolia Flores League
Found 5/8" iron rod in base
of small oak tree (blown
over) in scattered rock
mound.

Looking west on
Bluebird Road –
South line of
Aniseta Lumbrera/
North line of
C. B. Powell



B P Co
Book x Pg 140



Northeast corner William R. Johnson Survey.
Set 1/2" iron rod in marshy glade.



South line C. B. Powell/
North line William R. Johnson.
On hill looking southwest towards marshy glade.

UP CO
Book 'x' 10141



East line W. A. McClanahan -
19" Black jack with wire
grown through middle.

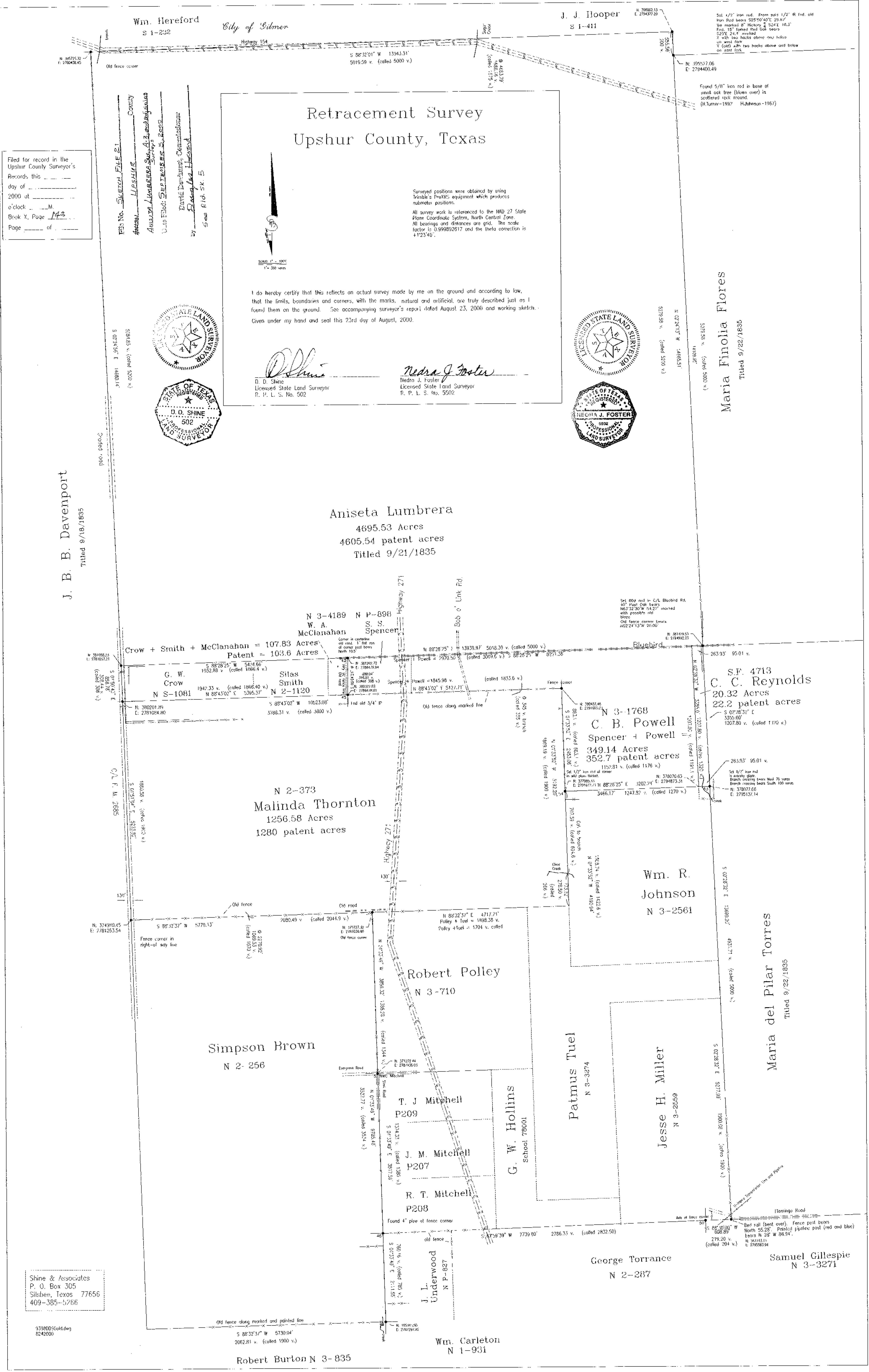
Southeast corner
W. A. McClanahan
Found old $\frac{3}{4}$ " iron pipe.



Northwest corner of
Samuel Gillespie.
Found axle.



South line of Simpson Brown.
Marked line tree.



Wm. Hereford
S 1-232
City of Edmer

J. J. Hooper
S 1-411

Retracement Survey Upshur County, Texas

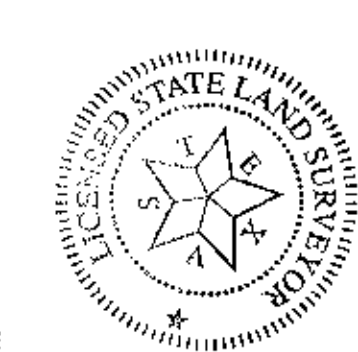


Surveyed positions were obtained by using Trimble's PROXRIS equipment which produces submeter positions.
All survey work is referenced to the NAD 27 State Plane Coordinate System, North Central Zone. All bearings and distances are grid. The scale factor is 0.999892817 and the theta correction is +123.40".

I do hereby certify that this reflects an actual survey made by me on the ground and according to law, that the limits, boundaries and corners, with the marks, natural and artificial, are truly described just as I found them on the ground. See accompanying surveyor's report dated August 23, 2000 and working sketch. Given under my hand and seal this 23rd day of August, 2000.

D. D. Shine
D. D. Shine
Licensed State Land Surveyor
R. L. S. No. 502

Nedra J. Foster
Nedra J. Foster
Licensed State Land Surveyor
R. L. S. No. 5502



Filed for record in the Upshur County Surveyor's Records, this _____ day of _____, 2000 at _____ o'clock _____ M. Book X, Page 143. Page _____ of _____

J. B. B. Davenport
Titled 9/18/1885

Aniseta Lumbrera
4695.53 Acres
4605.54 patent acres
Titled 9/21/1835

Crow + Smith + McClanahan = 107.83 Acres
Patent = 103.6 Acres
G. W. Crow N S-1081
Sitas Smith N 2-1120

N 2-373
Malinda Thornton
1256.58 Acres
1280 patent acres

Simpson Brown
N 2-256

Robert Polley
N 3-710

T. J. Mitchell P209
J. M. Mitchell P207
R. T. Mitchell P208

G. W. Hollins
School 78001

Patmus Tuel
N 3-3274

Wm. R. Johnson
N 3-2561

Jesse H. Miller
N 3-2559

George Torrance
N 2-287

Maria del Pilar Torres
Titled 9/22/1835

S.F. 4713
C. C. Reynolds
20.32 Acres
22.2 patent acres

Samuel Gillespie
N 3-3271

Wm. Carleton
N 1-931

Robert Burton N 3-835

Shine & Associates
P. O. Box 305
Silsbee, Texas 77656
409-385-5266

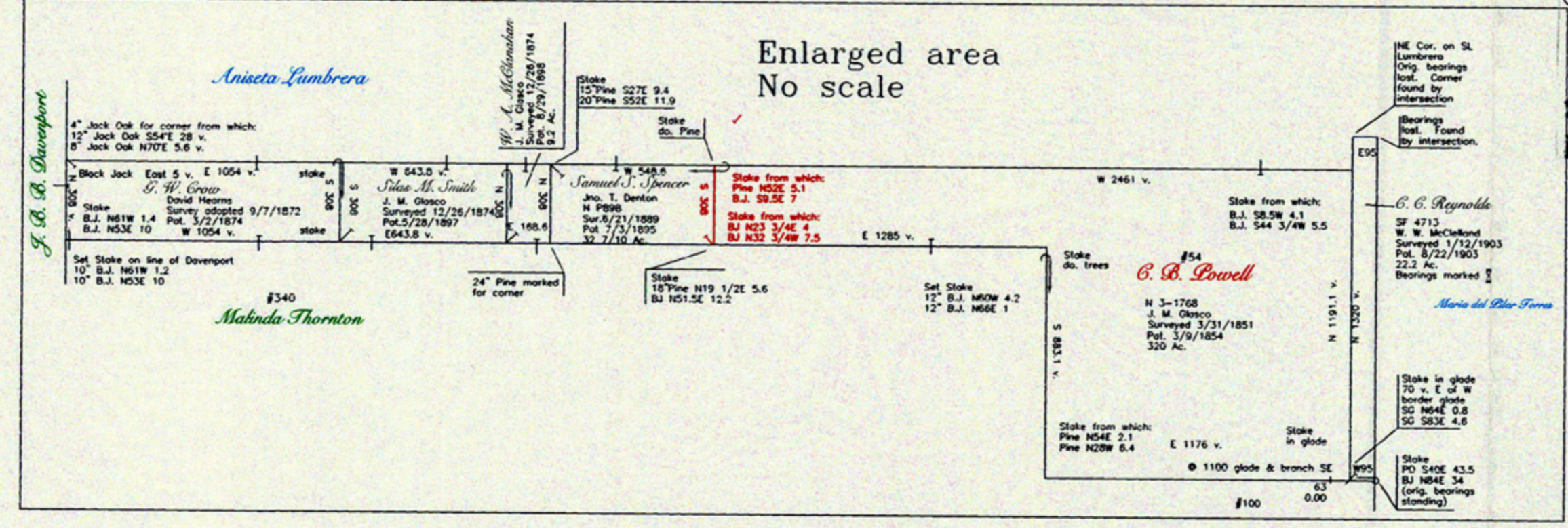
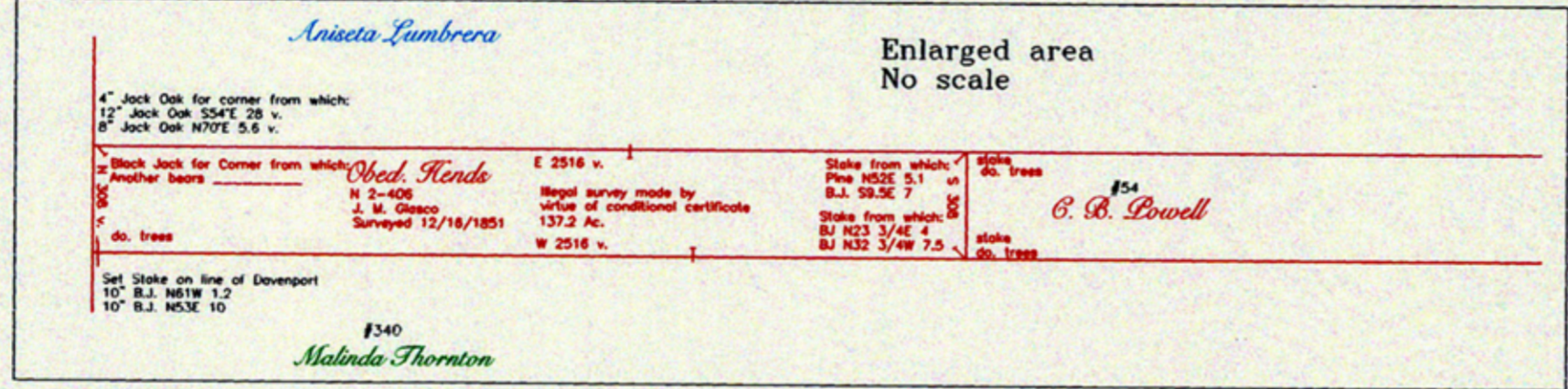
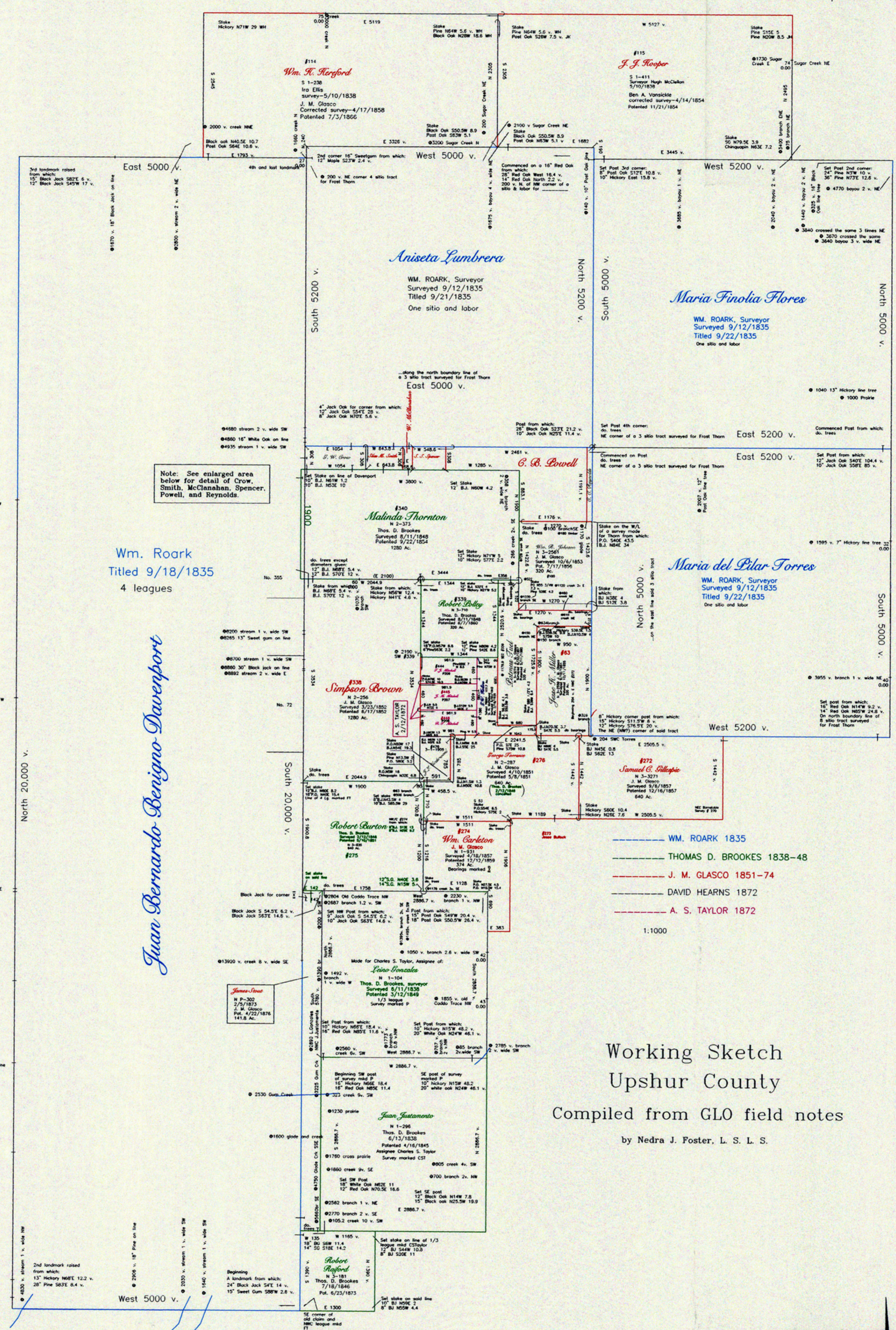


FIG. NO. SKETCH FILE 21
County
UPSHUR
Aniseta Lumbraera, Juan B. Benigno Davenport
Date Filed: SEPTEMBER 5, 2000
By David Davenport, Commissioner
Elastic Seal Attached
Original Filed as Rid. S.K. 5

SCALE: 1" = 1000 varas
1" = 2777.78'

Shine & Associates
P. O. Box 305
Silsbee, Texas 77856
409-385-5266

Goldsw700 8182000