

## WALKER LAND SURVEYING

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\*4425

#4425 No.

Sketch File 50

Brewster

County

Location of H.E. &amp; W.T. Ry. Co. Blk. G-9

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GARRY MAURO, Com'r

To:

Honorable Garry Mauro  
Commissioner of the Texas General Land Office  
Austin, Texas

By Douglas HowardPlatted  
See Rld. SK. 150

## SURVEY REPORT

This report concerns the location of H.E. & W.T. Ry. Co. Block G-9, located in Southern Brewster County, for purposes of establishing the position of unpatented Permanent School Fund lands in the area. Also, the conclusions drawn here in certain surrounding Blocks will affect future construction of state lands in those Blocks as well.

This survey was conducted on the Texas State Plane Coordinate System, South Central Zone, NAD 1927, and is tied to several triangulation stations in the area. A Wild T-2 theodolite and DI4L Distomat were the instruments used to perform the conventional aspects of this survey while solar observations were taken to help maintain directional integrity. In addition, precise static Differential Global Positioning System (DGPS) observations were taken at primary control points and triangulation stations throughout the survey area to establish the control coordinates.

Record research involved the documents of the General Land Office in Austin as well as the records of the Surveyors Office and District Court of Brewster County. A plat of this survey accompanies this report and should be referred to for graphic depiction of the evidence presented.

The following is a list of the Surveys and Blocks in the order of their seniority that are involved in this survey followed by a discussion of the findings and conclusions of each.

<u>SURVEY/BLOCK</u>	<u>ORIG. GRANTEE</u>	<u>DATE SURVEYED</u>	<u>ORIG. SURVEYOR</u>
Survey 1	G.H.&S.A. Ry. Co.	Mar. 7, 1878	C. E. Miner
Block 19	G.H.&S.A. Ry. Co.	Mar. 8, 1878	C. E. Miner
" "	" "	Feb. 8, 1889	Geo. Spiller (resurvey)
Block 20	G.H.&S.A. Ry. Co.	Mar. 12, 1878	C. E. Miner
" "	" "	Feb. 8, 1889	Geo. Spiller (resurvey)
Block G-1	D.&W. Ry. Co.	May-June, 1881	J. T. Gano
Block G-2	D.&W. Ry. Co.	July-Aug., 1881	J. T. Gano
" "	" "	June, 1909	R. S. Dod (resurvey)
Block 225- 245	T.&St. L. Ry. Co.	Aug-Nov, 1881	S. A. Thompson

Block G-9 H.E.&W.T. Ry. Co. Sept.-Dec, 1881 J. T. Gano

Block G-23 C.T.&M.C. Ry. Co. April 27-29, 1882 J. T. Gano

#### G.H.&S.A. RY. CO. SURVEY 1

On March 7, 1878, C. E. Miner, Deputy County Survey under W. S. Lempert, Presidio County Surveyor, surveyed G.H. & S.A. Ry. Co. Surveys 1 and 2. These two 640 acre Surveys lie in the middle of D. & W. Block G-2 which will be discussed later in this report. At the North corner of said Survey 1, Mr. Miner calls for a "large red rock with small ones piled around...from which a spring and bunch of willows bears S.36deg.E. 306 varas and a hill with dirt mound resembling adobe's bears N.21deg.W. 300 varas." These Surveys are senior to and have no adjoiner calls to surrounding Surveys. This red rock is called for by other surveyors in their field notes and corrected field notes of Block G-2 and will be discussed in the part of this report covering said Block.

#### G.H. & S.A Ry. Co. Block 19

On March 8, 1878, C. E. Miner surveyed and returned field notes for G.H. & S.A. Ry. Co. Block 19. Mr. Miner's field notes have no adjoiner calls to surrounding Blocks.

Block 19 is a "system" of Surveys. To have a true system, the Surveys involved must all be surveyed by the same original surveyor and, as stated in STATE VS. JONES, 184 SW2 510, "it is not necessary to constitute a block of surveys a system that the work be done on the same date but it is sufficient if it be continuous from day to day, and continued for many days, weeks or months." The case of BROOKS et. al. VS SLAUGHTER, 218 SW 632, states: "All corners and field notes in a system of surveys may be looked to in locating any of the surveys in the system." It is possible that a system can contain more than one Block.

In his field notes, Mr. Miner has a call for a "rock mound" at the end of each course and distance. It has long been known to Texas surveyors and to Texas courts, especially when dealing with large railroad Blocks, that the lack of descriptive or locative calls for monuments, such as marks on rocks, topographical calls or monuments with bearing calls to witnesses such as trees or mountain peaks meant that the surveyor did not actually set a "rock mound" for each corner. However, if these descriptive or locative calls are present, it is believed that the monument was set and should be located, if possible, to represent the only definite original monuments in the Block. The case of HAMMAN VS. SAN JACINTO RICE CO., 29, SW 1008, states "It is a matter of common knowledge that surveys located under alternate scrip issued as a bonus to railway companies were located in larger blocks and rarely, if ever, were the lines of each survey actually run on the ground, the method usually followed being to run a base line for an entire block, and on this line plat a system of 640-acre surveys."

At the Northwest corner of Survey 1, Mr. Miner's field notes indicate that he set a "rock mound in bed of arroyo on South side of creek..." and continued with bearing and distance calls to surrounding natural objects. This is the only definite monument called for by Mr. Miner in this Block.

## RESURVEY OF GEO. SPILLER, 1889

In 1889, State Surveyor George Spiller resurveyed Block 19 and wrote corrected field notes which were co-signed by the Commissioner of the General Land Office, R. M. Hall. Mr. Spiller's corrected field notes indicate that he found Mr. Miner's original monument at the Northwest corner of Survey 1 and proceeded to duplicate the Block as originally written, with the exception that he called for setting several more definitely described monuments.

### CONCLUSIONS AND CONSTRUCTION

The original monument for the Northwest corner of Survey 1 set by Mr. Miner as well as the resurvey monuments of Mr. Spiller, as long as they properly perpetuated the original survey, should control the location of Block 19. If the monument for the Northwest corner of Survey 1 could be located, course and distance to the Northeast corner would establish that point along the East line of the Block.

At the Southeast corner of Survey 44, which is the Southeast corner of the Block, Mr. Miner has only a call for a "rock mound". Mr. Spiller, however, calls for "a stone mound 5 ft. base 5 ft. high surrounded on West and South by red hills..". A diligent search was made for this monument but could not be located with certainty. Our preliminary calculated coordinates for this point put us in an area that did indeed have red hills to the West and South but no definite rock mound could be found. This is an area of aluvial surge, or an area that is prone to heavy water flow if conditions are right. In this type of area, rocks or stones can be piled up by the action of flowing water, then, by the same action, later removed or changed. This corner will be discussed further in the part of this report concerning D. & W. Block G-2.

### G.H. & S.A Ry. CO. Block 20

Also in March of 1878, C. E. Miner surveyed and wrote field notes for G.H. & S.A. Block 20. In his field notes, Mr. Miner has definite calls for a monument at the Southwest corner of Survey 1. We have located this monument and it is depicted on the plat accompanying this report. Also, this Block is senior to and has no original adjoiner calls to the Texas and St. Louis Blocks to the North nor Block G-9 to the East.

## RESURVEY OF GEO. SPILLER, 1889

As in Block 19, Geo. Spiller resurveyed and wrote corrected field notes for Block 20, also co-signed by the Commissioner, R. M. Hall. Mr. Spiller calls for beginning at the same monument of Mr. Miner's at the Southwest corner of Survey 1. Mr. Spiller proceeds to recreate the Block according to Mr. Miner's field notes. Along the Southern area of Block 20, Mr. Spiller reconfigures some of the Surveys, but this is of no consequence for the purposes of this survey. Also as in Block 19, Mr. Spiller calls to have set several monuments throughout the Block. The ones that I believe are necessary for this survey have been located and are depicted on our plat.

Although the Texas and St. Louis Blocks were surveyed in 1881 and did not exist at the time of the original survey of Block 20 in 1878, they were described by the original surveyor, S. A. Thompson, by the time of Mr. Spiller's resurvey in 1889. The corrected field notes of Mr. Spiller call for a 273 varas offset to the South of the South line of the Texas and St. Louis Blocks. As will be seen in the discussion of Block G-9 lying to the East, this is the same off-set called for by J. T. Gano in that Block. However, as can be seen on our plat, Mr. Spiller's monuments along the North line of Block 20 are actually North of the South line of the Texas and St. Louis system, which causes a conflict between the two systems. This situation will be discussed along with H.E. & W.T. Block G-9.

I believe that the relationship of Mr. Miner's original monument at the Southwest corner of Survey 1 to the resurvey monuments of Mr. Spiller indicate that Mr. Spiller properly retraced Block 20. As indicated on the plat accompanying this report, the monuments of Mr. Spiller nearest the East line of Block 20 at the North and South end have been located for this survey. By constructing on a Easterly bearing consistent with the relationship between Spiller monuments call distance from these two monuments will establish, for purposes of this survey, the East line of Block 20. However, as will be seen in the discussion of Block G-9, the exact location of the East line of Block 20 should have no effect on the construction of all but the Western tier of Surveys in Block G-9.

#### D. & W. RY. CO. BLOCK G-1

In May and June of 1881, J. T. Gano, Deputy Surveyor of Presidio County under the County Surveyor E. G. Gleim, surveyed and returned field notes for Block G-1. Mr. Gano began his survey of this Block at the Southwest corner of Survey 1, being the Southwest corner of the Block, calling for a "rock mound on the N.E. slope of the Rio Grande Range of mountains...., from which Stairway Peak, the highest visible point of said Rio Grande Range bears S.19 1/2deg.W. 950 vrs. and the top of Iron Mountain bears N.1 1/2deg.E. about two miles." It is believed that this is the only monument actually established, if indeed it was established, by Mr. Gano in this Block. The Texas and St. Louis system of Blocks discussed below border Block G-1 along its West line. Conclusions on the position of said Block G-1 will be discussed along with the Texas and St. Louis system.

#### TEX. & ST. LOUIS RY. CO. SYSTEM OF BLOCKS

The Texas and St. Louis Blocks depicted on the plat accompanying this report are part of a large system of Blocks, composed of over 600 Surveys, surveyed by S. A. Thompson, also Deputy Surveyor of Presidio County under E. G. Gleim, for the Texas and St. Louis Ry. Co. between August 15 and November 14, 1881.

In the field notes of this system, Mr. Thompson has several calls for rock mounds that have a definite physical description. These descriptions range from defining the size of the rock mound, calling for a mark or marks made on a rock to bearing calls to surrounding natural features. As with G.H. & S.A. Ry. Co. Block 20, it is believed that the monuments called for by Mr. Thompson with definite descriptive or locative calls were the only ones actually set. It is interesting to note that if these monuments having a definite physical description are plotted on a Survey map of this area, they closely follow Maravillas Creek and what is now Highway 385, pass through Persimmon Gap in Big Bend National Park and, forming a figure that resembles the letter "J" or a fish hook, loop to the West and stop on the Western line of this system in Block 232. There are no other monuments called for in this system by Mr. Thompson with descriptive or locative calls. The one exception being at the Southeast corner of Survey 36, Block 237, which calls to adjoin the Southwest corner of Mr. Gano's Block G-1 mentioned above. At this point Mr. Thompson calls for Mr. Gano's monument and recites the same description and bearing calls as Mr. Gano's field notes. For this and other surveys made in this system, we have had occasion to locate most of Mr. Thompson's remaining called for monuments.

#### RESURVEY OF R. S. HUNNICUTT, 1908

In 1908, R. S. Hunnicutt, a Licensed State Land Surveyor, was directed by the Commissioner of the General Land Office to go into the area and locate the original Gano corner at the Southwest corner of Survey 1, Block G-1, mark it and destroy all other monuments in the vicinity. Mr. Hunnicutt set a monument, a rock mound marked "SW G-1" and a witness, an "X" chiseled on a large boulder nearby, at what is now known as the "Hunnicutt Corner", where he believed the proper location of Mr. Gano's Southwest corner of Block G-1 to be. Since that time there has been considerable controversy over the true location of the Gano corner and whether or not the "Hunnicutt Corner" is in the same position. The "Hunnicutt Corner" and said witness were located for this survey and are depicted on the plat accompanying this report.

Mr. Hunnicutt also established other monuments for corners in the Texas and St. Louis system. These monuments are called for in his field notes on file in the Brewster County Surveyor's Records, the files of the General Land Office and are depicted on a plat labeled "RHS" on file in the Rolled Sketches of Brewster County also in the General Land Office. As we will see from the court cases discussed below, Mr. Hunnicutt's locations in the Texas and St. Louis system have been adjudicated as incorrect.

In 1912, R. S. Dod, Licensed State Land Surveyor, agreed with Hunnicutt's position. John Stovall, Brewster County Surveyor in the early 1940's also perpetuated this position.

In the 1930's, surveyors W. L. Rider and W. W. Barker disputed Hunnicutt's locations. Mr. Rider's monument for the Northwest corner of Block G-1 became known as the "Rider Corner" and will be discussed later in this report.

In 1945, after the cases Williams vs. Jones and State vs. Jones discussed below, J. A. Simpson, Licensed State Land Surveyor, was requested by Asa Jones and others to locate on the ground the Northwest corner and the Southwest corner of D.& W. Block G-1. Mr. Simpson monumented these corners, and others, with iron pipes set in concrete. These two monuments were located for this survey and Mr. Simpson's work will be discussed later in this report.

#### COURT CASES

In the 1940's, a series of three important court cases took place that involved lands in a large part of Southeastern Brewster County. Many separate land owners, and the State of Texas, were involved. While these cases deal mainly with lands lying East of the East line of the Texas and St. Louis Blocks, the decisions affect that system as well.

These cases are listed below, followed by a discussion of the judgements and how they affect the areas involved.

DICK WILLIAMS, ET AL VS. ASA JONES, ET AL, 1943, Cause #2006, Vol. 6, P. 223, District Court Records of Brewster County

STATE, ET AL VS. JONES, ET AL, 1944, #4331, Court of Civil Appeals, 184 SW2 510

F. M. ROARK, ET AL VS. H. D. SMITH, ET AL, 1947, Cause #1934, Vol. 7, P. 1, District Court Records of Brewster County

Dick Williams, et al, vs. Asa Jones, et al.

This was a trespass to try title suit involving lands in D. & W. Ry. CO. Block G-1 instituted by Dick Williams and two others against Asa Jones and some two hundred and fifty other defendants. The State of Texas intervened and brought in additional defendants in the Texas and St. Louis Blocks lying to the West.

Williams, et al, and the Intervenor, the State of Texas, as plaintiffs, presented evidence supporting Hunnicutt's location as the proper position of the Southwest corner of Block G-1. This would cause a conflict between Block G-1 and the Texas and St. Louis Blocks.

The Court found for the defendants, Jones, et. al., declaring that no conflict existed between said Blocks. The Court also established positions for the Northwest and Southwest corners of said Block G-1, said Southwest corner also being the Southeast corner of Tex. & St. Louis Block 237. The Court stated: "...the plaintiffs and their co-plaintiff, M. L. Hopson, and the Intervenor, the State of Texas, contended that the true Southwest corner of said Block G-1 is located at what is known as the R. S. Hunnicutt corner, evidenced by a pile of rock in which there is a stone marked SW G-1, and located on the ground at a point latitude 29deg.33'51.951", longitude 102deg.57'56.238" and from which stone mound the highest point on the north end of Stairway Mountain bears S.19deg.30' W. 1230 varas; and from which X mark on top of imbedded boulder 12.5 feet across the top and about 5 feet high bears S.34deg.51' E. 32 varas, and based upon said contention sued for certain sections of land in said Block G-1 based upon the assumption that same are each located on the ground from said Hunnicutt corner as the true Southwest corner of said Block G-1."

"And the Court having heard evidence upon such finds that such corner (the Hunnicutt Corner) is not the true Southwest corner of Block G-1, but finds that the true Southwest corner of Block G-1 is located on the ground co-incident with the Southeast corner of said Survey 36, Block 237, T.& St. L. Ry. Co. survey, which point is located 3198.4 varas East and 3396 varas South of said Hunnicutt corner. And it further appearing to the Court that in locating the several surveys within said Block G-1, the proper method of locating same is to give each survey therein a distance East and West of 1900 varas and North and South of 1900 varas, based upon the beginning point as here fixed for the true location on the ground of the Southwest corner of said Block G-1 and to construct them numerically in the same manner as shown in the field notes of John T. Gano, each being tied into the preceding one in the manner set out in said field notes of said Gano."

The Court went on to state: "Thence extending North for an aggregate of 38,000 varas to a point for G-1's Northwest corner, which is 92.3 varas West and 78.7 varas North of W. L. Rider's Northwest corner of Survey 200, Block G-1, which Rider corner is defined as follows: Beginning at a fence corner and a large flat rock from which...."(followed by several bearing calls to surrounding natural objects).

These two locative decrees would seem to be unambiguous and that these two corners could be located with certainty from their witnesses, i.e. the "Hunnicutt Corner" and the "Rider Corner". It will be seen, however, that a certain amount of reasoning is necessary to establish these two positions according to the strongest interpretation of the intent of the Court.

State, et al, vs, Jones, et al.

The plaintiffs, Williams, et al, and the Intervenor, the State of Texas, appealed the District Court decision to the Court of Civil Appeals in El Paso. The opinion of the Court was that "there is no error in the judgement of the court and it is affirmed." Thereafter, the State applied for a writ of error to the Supreme Court of Texas from this appellate decision. The Supreme Court refused a writ of error, thus making the Trial Court final.

As previously discussed, the case of Williams vs. Jones dealt with the location of Block G-1 and to a certain extent the location of the Texas and St. Louis Blocks lying to the West. The case of Roark vs. Smith, which also involved the State as Intervenor, dealt again with the location of Block G-1 and also considerably more land in Southeast Brewster County. Portions of H.E. & W. T. Ry. Co. Block G-9 are mentioned in this suit.

The Court in Roark vs. Smith found that:

- (1) "...surveys in the blocks aforesaid can be located on the ground in accordance with the original and corrected field notes thereof now on file in the General Land Office of the State of Texas and the judgement of this Court in Cause No. 2006, styled Dick Williams, et al, vs. Asa Jones, et al, in the manner hereinafter ordered."
- (2) The Court further found that although the Blocks involved were all surveyed by the same original surveyor, J. T. Gano, they "...did not constitute a system of blocks of surveys, but each block must be located independently and the surveys therein laid on the ground in the manner hereinafter set out." The Court went on to describe, Block by Block, how each should be established on the ground.
- (3) The Court also found "...that the directions taken as true north by John T. Gano for his work in such surveys and by Archibald Bogle for his work in Block B-1 was one degree and eight minutes (1deg.08') west of true north".
- (4) The judgement also stated " Each of the surveys be located by using as the north call of the field notes and of this judgement a course of one degree and eight minutes (1deg.08') west of true north, and with all the courses consistent therewith."

This court reaffirmed the position of the Southwest corner of Block G-1 as established in Williams vs. Jones from the "Hunnicuttt Corner". It also reaffirmed the position established in Williams vs. Jones for the Northwest corner of said Block from the "Rider Corner", which has the same physical description in both cases. Roark vs. Smith recites a latitude of 29deg.49'458" and a longitude of 102deg.56'37.873" for the Rider Corner, Williams vs. Jones had no coordinates for this point.

Roark vs. Smith further states: "The west line of said Block G-1 and of the western tier of sections therein is a line on the ground between the southwest corner of Survey 1 and the Northwest corner of Survey 200, as herein above located, and such line has its proper variation of 1deg.08' west of true north; this being the line established for the west line of Block G-1, in the above styled and numbered case." This court also states that the South line of Block G-1 "...forms an extension of the South line of Block 237, T.& St. L. Ry. Co. and is the north line of Surveys 1, 2, 12, 13 and 20, Block G-9...", said Block G-9 being the direct subject of this survey.



In its discussion the adjudicated construction of C.T.& M.C. Ry. Co. Block G-23, surveyed by J. T. Gano in 1882 which borders Block G-9, the Court states that "All other surveys in said block G-23 are to be constructed off of said surveys in said block as hereinabove located in their original relative positions and in accordance with the field notes for said surveys as filed by John T. Gano in the General Land Office of the State of Texas, giving each survey its calls for distance and using the course called for in said field notes with the variations hereinabove established."

#### SURVEYS OF J. A. SIMPSON, 1945 AND N. THEE, 1952

After the decisions rendered in Willams vs. Jones, J. A. Simpson, Licensed State Land Surveyor, monumented, among others, the Northwest and Southwest corners of Block G-1. These have been located for this and other surveys and are depicted on the plat accompanying this report.

Mr. Simpson's pipe for the Northwest corner of Block G-1 closely follows the court's locative calls to the "Rider Corner", the remains of which are evident.

Mr. Simpson also set a pipe for the Southwest corner of Block G-1. In a letter to the Commissioner of the General Land Office received in December of 1952, Mr. Simpson states that "The above described position for corrected S.W. corner of Block G-1 is located at a Right Angle to the North line of Block G-1 as run by me and marked on the ground for Asa Jones et al and upon which Patents were issued." It is apparent that this corrected location is the monument that we have located for this survey. This position does not, however, conform to the courts' locative calls South and East from the "Hunnicut Corner".

#### SURVEY OF E. F. BASSHAM, 1986

In May of 1986, E. F. Bassham, Licensed State Land Surveyor at that time, filed a plat, survey report and corrected field notes for Patent of Survey 10, Block G-14, G.C.& S.F. Ry. Co. Surveys. These are on file in the General Land Office and in the Brewster County Surveyors records. This Block is referred to in the case of Roark vs. Smith and its specific construction is laid out by the court.

As can be seen on his plat, Mr. Bassham found Mr. Simpson's pipe for the Northwest corner of Block G-1, the remains of the "Rider Corner", the "Hunnicut Corner", the "Thee" rock mound and the Simpson pipe at their locations of the Southwest corner of said Block G-1. Also indicated on his plat is Mr. Bassham's opinion of the courts' position of said Southwest corner based on their ties to the "Hunnicut Corner".

## CONCLUSIONS IN TEX.& ST. LOUIS SYSTEM

The court cases above establish the West line of Block G-1 and the various Surveys in that Block in a precise and seemingly unambiguous manner. However, from the true positions on the ground of the two "witness" corners, i.e. the "Hunnicuttt Corner" and the "Rider Corner", pure construction based on the court ties to these monuments will produce a bearing between them that is not quite the  $1\text{deg}.08'$  variance established by Roark vs. Smith nor a distance that is exactly 1900 varas per Survey (or Section) between the Northwest and Southwest corners of said Block G-1 as decreed by the courts.

After consultation with the Surveying Department of the General Land Office, which in turn consulted legal advise from the same, the following conclusions were followed for the construction of the Texas and St. Louis Blocks and the West line of Block G-1:

(1) Locate the Northwest corner and the Southwest corner of Block G-1 from the court ties to the "Hunnicuttt Corner" and the "Rider Corner". For the Northwest corner of said Block, the pipe set by J. A. Simpson for the same, which has long been accepted, is honored for this survey. The Southwest corner of said Block is established as per the Court calls from the Hunnicutt corner, utilizing the variance of  $1\text{deg}.08'$  minutes (North  $0\text{deg}.48'$  East State Plane) established by the Roark vs. Smith for the "East" and "South" calls.

As stated earlier in this report, many of Mr. Thompson's original monuments in the Texas and St. Louis system have been located by us for this and other surveys in the area. Their relationship to each other indicates, I believe, a definite rotation to the left of North of approximately  $1\text{deg}$ . Indeed, the bearing relationship between the three original Thompson monuments depicted on the plat accompanying this report indicates that the bearings between two of them to be almost exactly the  $1\text{deg}.08'$  (North  $0\text{deg}.48'$  East State Plane bearing) established by the courts, if that bearing is calculated at an average theta angle (for State Plane bearing) between the Northwest and Southwest corners of Block G-1.

Therefore, the South line of Blocks 237, 238 and 239 is a line from the Southwest corner of Block G-1 as established above to a point South  $0\text{deg}.48'$  West 3800 varas from the Thompson monument at the common corner of Surveys 19, 20, 33 and 34, said Block 239. The various Survey corners along the South line of said Blocks 237 and 238 are proportioned from said Southwest corner of said Block G-1 to a point established for the Southwest corner of Survey 36, said Block 239, South  $0\text{deg}.48'$  West from the common corner of Surveys 1 and 2, Block 235, and Surveys 35 and 36, Block 230, that intersects the South line of said Blocks 237 and 238.

The original field notes of Mr. Thompson for his Surveys along the West line of Block G-1 call to adjoin the G-1 Survey corners. In a letter dated July, 1948 on file in the records of the GLO to H. R. Gard, Deputy County Surveyor of Brewster County, Bascom Giles, Commissioner of the General Land Office at that time, states that he corrected Mr. Gard's field notes in the Texas and St. Louis System to delete the calls for adjoinder to the Survey corners in Block G-1. Mr. Giles states in said letter "I have used the sketches on the field notes and State's Exhibit 8 in Cause No. 1934 as my authority to make the corrections in these field notes." Exhibit 8 apparently gave authority to break the adjoinder calls of the Survey corners in the two systems. Indeed, all of the corrected field notes for Patent written after Roark vs. Smith in the Texas and St. Louis system that I have seen call for the 1deg.08' variance and offset ties to the Survey corners along the West line in Block G-1. In other words, the East line of the Texas and St. Louis Blocks and the West line of Block G-1 are the same but the Survey corners on either side do not adjoin each other.

One final note on this construction. The Court cases mentioned above did not directly address the precise construction of the various Surveys in the Texas and St. Louis Blocks. It is believed, however, that the 1deg.08' variance was derived from evidence found in that system and should be utilized for retracing Mr. Thompson's original positions. It is further believed that since the construction of the Texas and St. Louis Blocks were not directly decreed by the courts, construction parallel and perpendicular to the West line of Block G-1, being North 0deg.36'22" East, is not in order.

#### D. & W. Ry. Co. Block G-2

In July and August of 1881, J. T. Gano surveyed and wrote field notes for D. & W. Ry. Co. Block G-2. At the Northeast corner of Survey 1, Mr. Gano has a call for a "rock mound" with a bearing call and a distance of 3200 varas to a "mound resembling an adobe on top of hill". He also calls for the North corner of G.H. & S.A. Survey 1 at Willow Springs discussed at the beginning of this report.

As stated earlier, at the North corner of G.H. & S.A. Survey 1, C. E. Miner calls for a "large reddish rock with small ones piled around" with bearing calls to a "hill with dirt mound resembling adobes" and "a spring and bunch of Willows". At this point in his field notes of Survey 73, Block G-2, which has a corner common to the North corner of G.H. & S.A. Survey 1, Mr. Gano recites Mr. Miner's description verbatim. In his description of Survey 79, which also adjoins the North corner of Survey 1, Mr. Gano calls for a "rock mound" and again recites the bearing calls of Mr. Miner. These are the only two monuments with definite descriptions called for by Mr. Gano in this Block.

After thoroughly searching this area on more than one occasion, we found a "spring and bunch of willows" and a "hill with dirt mound resembling adobes". Unfortunately, there is more than one hill with a top resembling adobes. We also found more than one candidate for the "large red rock with small ones piled around" that would fit the bearing calls to the above natural objects. If one is in a position that fits the bearing and distance to the "hill with dirt mound resembling adobes" the distance to Willow Spring is too long by approximately 500 varas and vice versa. It may be that Mr. Miner's original calls were in error and Mr. Gano, by reciting them, perpetuated this flaw.

#### RESURVEY OF R. S. DOD, 1909

In June of 1909, R. S. Dod, State Surveyor, resurveyed and wrote corrected field notes, which were co-signed by the Commissioner, J. T. Robison, for Block G-2. Mr. Dod also generated a plat which is on file in the Brewster County Surveyors records and the records of the General Land Office.

Mr. Dod's plat and corrected field notes indicate that he found what he believed to be the two monuments mentioned above, although he did not recite any bearing calls from either. He then proceeded to resurvey and describe this Block, setting several monuments with definite descriptions. We have located the Dod monuments that I believe are necessary for this survey and they are indicated on the plat accompanying this report.

#### CONCLUSIONS AND CONSTRUCTION

As stated earlier in this report, we were unable to recover with certainty the monument called for at the Northeast corner of Survey 1, Block G-2. Mr. Dod's plat and corrected filed notes indicate that he did. They also indicate that he found the large red rock at the Northeast corner of G.H.& S.A. Survey 1.

Mr. Dod's resurvey was accepted by the General Land Office as the official resurvey of this Block and as I have no evidence to the contrary, I believe that this resurvey should be honored as the proper location of this Block. It should also be noted that many patents on the even numbered Surveys in this Block were issued from the corrected field notes of Mr. Dod.

As seen on the plat accompanying this report we have recovered all of the necessary monuments of Mr. Dod that could be found that are necessary for the construction of the North line of Block G-1, which will in turn control the South line of Block G-9, the subject of this survey.

Blanco 25 10 20

Counter 16347

Two monuments called for by Mr. Dod are the Southeast and Northwest corners of Survey 117. After several searches in these areas we were unable to recover them with certainty. At the Southeast corner of Survey 117 Mr. Dod calls for a rock mound "from which a rock mound bears north 100 varas, from which rock mound a windmill bears S.50deg.10'W. 331 varas, Pummel Pk. bears S.52deg.15'W., Roy Pk. brs. S.28deg.15'E., B.M. 2947 is north 543 varas and west 368 1/2 varas". We recovered benchmark 2947 and calculated a position for the Southeast corner based on Mr. Dod's ties. At this approximate location we find two small stone mounds, but no rock mound 100 varas North as called for. Also this position is some 60 varas too far West and 180 varas too far South of a position calculated from the definite Dod monument found for Southeast corner of Survey 103. Although the actual location of this corner would control the position of Surveys 117 and 118, I believe that the North line of Block G-2 can be constructed from other definite Dod monuments in this Block.

Several positions for the Northwest corner of Survey 117 were searched. Again, we could not find with certainty Mr. Dod's monument. This corner is in an area that, unless a substantial rock mound was built, could have seen a natural degradation to the point of obscurity.

A four mile straight line between the Dod monuments at the Northeast corner of Survey 80 and the Northeast corner of Survey 108 produces a bearing of North 0deg.35'32" East State Plane bearing, or a variance of 1deg.23' to the left or West of true North, which is North 1deg.58'30" East, State Plane bearing at the approximate center of Block G-2. This variance of Mr. Dod's is very close to the North 0deg.36'22" East found to exist between the established Northwest and Southwest corners of Block G-1 as discussed earlier.

The Northwest corner of Survey 80 is also called for by Mr. Dod but falls in the bed of Tornillo creek. No other long line between Dod monuments can be established in this area of the Block.

Texas courts have addressed the occurrence of a variation from true call of a surveyor by the relationship of the existing monuments. The case of BROOKS et. al. VS. SLAUGHTER, 218 SW 632, states: "if the lines actually run had disclosed a uniform variance from true course this same divergence should be used in constructing the other lines of the block." The relationship of other Dod monuments, although not in a straight line, indicate that this variance is consistent.

The construction of the North line and the Northeast corner of Block G-2 is accomplished by calculating call distance of 3800 varas North 0deg.35'32" East from the Dod monument found at the Northwest corner of Survey 105 to the Northwest corner of Survey 101. The North line is then run on a bearing perpendicular to said North 0deg.35'32" East, or South 89deg.24'28" East, State Plane bearing. The Dod monuments found at the Northwest corners of Surveys 93 and 90 are then intersected with the North line to form their tier of Surveys. Call distance is run along said South 89deg.24'28" East bearing from the Northwest corner of Survey 90 to establish its Northeast corner. An intersection utilizing the above bearings is made with the calculated Northwest corner of Survey 99 to establish its Northeast corner, which is also the Northeast corner of the Block.

#### H.E.& W.T. Ry. Co. Block G-9

J. T. Gano surveyed and returned field notes on H.E.& W.T. Ry. Co. Block G-9 between September 12 and December 10, 1881. Aside from calling for his monument at the Southwest corner of Block G-1, which was discussed earlier in this report, Mr. Gano has no definite calls for monuments in this Block and it is believed that no original monuments were set.

Block G-9 is junior to and has calls for adjoiner to D.& W. Block G-1 and the Texas and St. Louis Blocks lying to the North, G.H.& S.A. Block 20 lying to the West and D.& W. Block G-2 lying to the South.

#### CONCLUSIONS AND CONSTRUCTION

J. T. Gano and S. A. Thompson, original surveyor of the Texas and St. Louis Blocks, were both Deputy County Surveyors under E. G. Gleim at the same time and worked out of the same office. Mr. Thompson called for the Southeast corner of the Texas and St. Louis system to adjoin the Southwest corner of Mr. Gano's Block G-1 and called for Mr. Gano's monument at that point. Mr. Gano's Northwest corner of Survey 20, Block G-9, calls to adjoin his Southwest corner of Block G-1 and the Southeast corner of the Texas and St. Louis Block 237. I believe that this is strong evidence that these adjoiner calls should be honored.

In his field notes of Survey 37 in the Northwest corner of Block G-9, Mr. Gano calls for beginning at "a rock mound the N.W. corner of Sur. 36, this Blk. and the S.E. corner of Sur. 34, Blk. 238, T.& St. L. Ry. Co. for the N.E. corner of this Sur. Thence W. 1852vs. to a rck. mnd. in S. line of sd. Sur. 34, Thence S. 273 vs. to N.E. Cor. Sur. No. 25, Blk. 20, G.H.& S.A. Ry. Co. 1950vs. to rck. mnd in E. line of sd. Sur. 25."

Block G-9

Counter 16349

The 273 varas off-set to the South of the South line of the Texas and St. Louis Blocks is the same recited by Mr. Spiller in his corrected field notes of Block 20 in 1889. However, as can be seen on the plat accompanying this report, the Southwest corner of Survey 34 is 405.5 varas East and 140.2 varas South of the Northeast corner of Survey 25, said Block 20. All of the field notes of Mr. Gano along the West line of G-9 have adjoiner calls to the East line of Block 20 and off-set calls to the Survey corners of that Block. This indicates the intent to adjoin that Block.

The case of STATE VS. SULLIVAN, 92 SW2 228, states: "Where facts conclusively show that surveyor called for adjoinder through mistake or conjecture, call for adjoinder, even though point called for was marked, will be rejected as inserted by mistake and controlling effect given to course and distance from known and undisputed corners when such construction of survey is most consistent with intention to be derived from entire description." This would indicate that in certain circumstances the courts will break calls for adjoinder if it feels the call was made by mistake or conjecture. In this case it could be possible to break the adjoinder call to G.H. & S.A. Block 20 by virtue of the fact that Mr. Gano made this call without knowing the true location of its East line. This would create a vacancy between the West line of Block G-9 as determined by its relationship to Survey 34, Block 238. On the other hand, both the adjoinder call to the Texas and St. Louis Blocks and the East line of Block 20 could be honored as per the depictions on our plat. In either case I do not believe that the exact location of the East line of Block 20 nor the existence or non-existence of a vacancy would effect any except the Western tier of Surveys in Block G-9.

Mr. Gano's field notes in G-9 have calls for adjoinder to his previously surveyed Block G-2. The case of CARLTON VS. MARSHALL, 208 SW2 201, states: "The surveyor who wrote field notes for survey presumptively knew his own ground location of prior survey referred to therein...".

At this point it becomes necessary to construct the various Surveys in Block G-9 from the best evidence of their proper location and following as many of the original calls as possible. A decision must be made as to what bearing is to be used to connect with the Survey corners along the South line of the Texas and St. Louis Blocks, which the Northern tier of Surveys in G-9 would adjoin.

Although the court cases discussed previously did not deal directly with the construction of the various Surveys within Blocks G-2 or G-9, it is believed that the North 0deg.36'22" East bearing found to exist between the Northwest and Southwest corners of Block G-1, also a Gano Block, should be utilized within Block G-9.

81-2

As mentioned earlier in this report, ROARK VS. SMITH established Block G-23 essentially "course and distance" from the adjudicated position of Block G-1. Although Block G-23, surveyed April 27-29, 1882, is junior to Block G-9, it is believed to be the best evidence from which to establish the Survey corners in G-9 that adjoin it. As stated in the case styled MAGNOLIA PETROLEUM VS. E. BIEL, 285 SW2 858: "Calls of a junior survey are admissible and may be considered in locating lines and corners of a senior survey when both surveys are made by same surveyor and within a short space of time." Therefore, the corners in Block G-9 that adjoins Blocks G-1 and G-23 can be established call distance from the Southwest corner of said Block G-1.

By adjoining the Survey corners previously mentioned in the construction of the South line of Blocks 237 and 238 in the Texas and St. Louis system, the North corners of the Northern tier of Surveys in Block G-9 are established. By using the call North-South distance of 1900 varas and constructing parallel and perpendicular to the West line of Block G-1 from the above mentioned adjoiners, the "regular" Surveys within Block G-9 are established. It is believed that this construction would honor the intent of the above mentioned court cases and defeat the fewest calls in the original field notes.

A plat of this survey accompanies this report.

Respectfully Submitted,

Steven F. Walker

Steven F. Walker

Registered Professional Land Surveyor #4425

Licensed State Land Surveyor

Brewster County Surveyor

Date: December 12, 1995

