

*(See letter by Commissioner 5/3/24)
Letter Book 1496, P. 407*

Lamesa, Texas.
April 12, 1924.

*This construction of
Blk 36 Tsp 5N is not ap-
proved. See Carbon letter
herewith. 4/18/24
GWT*

Hon. J.T. Robison, Commissioner
Austin, Texas.

Dear Sir:

Your favor of February 26th. 1924, file 62205-90981- addressed to Mr. V.O. Key of Lamesa, Texas, pertaining to a survey of the N E 1/4, Sec 34, Blk 36, T 5 N., T & P Ry Co., in Dawson County has been handed to me with the request that I endeavor to arrange for acceptable field notes to be furnished so patent may issue on that tract. In this connection I desire also to call your attention to some correspondence between your office and Mr. V.O. Key relative to field notes furnished by me to the W 1/2 Sur, 26, Blk 36 T 5 N and also correspondence you have had with the Temple Trust Co., relative to field notes and patent to the S 1/2 of Sec 8, Blk 36, T 5 N., all of whom are anxious to patent their land and have called upon me for relief.

Inasmuch as you express in the second paragraph of your letter referred to a doubt that a shortage exists in the 36 sections on the North end of Blk 36, T 5 N, I have thought best to give you more conclusive data on the subject which will also serve to explain my theory that it is the proper thing to do to prorate that shortage.

Accordingly I have prepared and hand you herewith a sketch of the T & P Ry Co. surveys in Blocks 34, 35, and 36, T 4 and 5 North, Dawson County. I also enclose a sketch of a re-survey of Blk 34 T 4 N., made by C.B. Collard, County Surveyor, which is on record in Dawson County. I regret that I do not have a better blue print to send you. Field notes made by Mr. Collard covering each section in that block in accordance with the survey as shown by the sketch are recorded in the Surveyor's Records of Dawson County. I also enclose a statement which I have marked EXHIBIT A, which I have prepared from the Deed Records of Dawson County and were taken from boundary line agreements made by parties in trying to settle the confusion of this boundary question in the T & P work. For convenience I will refer to the sketch I have prepared and enclose as Exhibit B. You doubtless have and can refer to the sketches of the work done by Mr. Twichell. You also have Dodd's report as well as a copy of the judgment in the Weaver-Higginbotham case which fixed the N W cor. of Section 6, Blk 36, T 5 N., as well as the North line of that Block and the West line 3 miles down from the N W corner.

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Sketch B Shows the two remaining original corners between Blk 35 and 34 T 4 N and also shows the original corners on the E side of Blk 34 T 4 N and these corners are shown by the Twichell sketches and also by Collard's sketch and shows the shortage from East to West. Twichell made a re-survey of Blk 35, T 4 and 5 N., in 1907 and based that work upon the two original corners between Blks 34 and 35. The owners of the escrow lands of the T & P Ry Co. finding this shortage from Twichell's East line of Blk 35, T 4 N., and two tiers of sections on the S side of T 5 N., to the E boundary line of Blk 34, in about the year 1915 or 1916, sold survey 37 and 47 Blk 34, T 5 N., and surveys 1, 11, 13, 23, 25, 35, 37 and 47, Blk 34, T 4 N., SHORT, taking themselves all of the shortage which made it possible for all lands lying West thereof to be full in acreage and to be surveyed out and boundary settled on the Twichell theory. It also made it possible for the league land lying to the West to be full.

During the years from 1918 to 1920 under about three different contracts with the owners I surveyed out in accordance with the Twichell theory of construction, all of the lands in Blk 36, T 4 N., and those two tiers of sections on the extreme South side of Blk 36, T 5 N., basing all of that work upon Mr. Twichell's corners found upon the West side of Blk 35. In the year 1922 I surveyed out for the owners the league lands lying immediately West of the lands last referred to herein, subdividing those leagues into labors of 177 acres and tied the E boundary line of the same into my W boundary line of Blk 36 constructed from Twichell's corners as explained. In all the area covered herein, that is from the E side of Blk 34, T 4 N and two tier of sections off of the S side of T 5 N through and into the league lands for a great distance all boundary matters, so far as I know, or believe are adjusted, as explained, that is on Collards work on Blk 34, Twichell's work in Blk 35 and my work in Blk 36 and on into many of the leagues. Fences, many roadways, some of which are now graded, and all other improvements are placed in accordance with the surveying mentioned.

Going now to those 36 sections in each of Blks 34, 35 and 36, T 5 N., on the N end of each block, sketch B shows the original corners on the N of Blk 34, T 5 N., which are also shown by Twichell's sketch, Dodd's report, Collards work and are relied upon and held to by the land owners of those several 36 sections. Sketch B shows a judgment corner at the Northwest corner of Sec. 6, Blk 35, T 5 N., which was in the case of Miller vs. Adams tried in the District Court of Dawson County and affirmed by the Court of Appeals subsequent to the survey of Blk 35 made by Mr. Twichell, it was about the year 1909. It also shows a judgment corner for the N W Cor. Sec 6, Blk 36, T 5 N., The N W Cor of Sec 6 Blk 35, T 5 N., was fixed by projection of the Tobacco Creek corner on the the N line of Blk 34, course and distance and the N W Cor. of Sec 6, Blk 36, T 5 N was fixed by a compromise of the position of Twichell and Dodd and that of Standefer and Estes, or a compromising of the position of the Tobacco Creek corner and those between Blk 34 and 35, T 4N.

Immediately after the judgment was had fixing the N W corner of Blk 35, T 5 N, ---- Section 6, ---- Standefer made a re-survey of a considerable portion of those 36 sections on the N end of Blk 35, T 5 N, making his construction from the Tobacco Creek corners and the land owners adjusted their fences and other improvements to the same and they now so stand and many of them signed up boundary agreements and placed them on record, some of which are shown by sketch A enclosed herewith. In 1915 I ran out from the Tobacco Creek corners a large portion of the surveys in those 36 sections on the N end of Blk 34 T 5 N and a year or so later Collard ran out from the same corners the balance of those sections and the owners adopted their fences to the same and there and no controversies there now as to boundary matters. The whole of the area hereinbefore discussed so far as I know or believe is quiet and has been for a number of years as to boundary, with their fences and highways and other improvements all in accordance with the various surveying mentioned.

Those 36 sections on the N end of Blk 36, T 5 N., are not quiet so fortunate while just recently they have practically settled their boundary trouble as I shall explain. The East boundary is fixed as explained by the Standefer survey and many boundary line agreements to that survey right along the West two tier of sections Blk 35, The S boundary line is fixed by my survey as hereinbefore explained and backed up by many boundary line agreements and the N and W sides of the 36 sections is fixed by the Higginbotham-Weaver judgment before mentioned. I was called upon many times commencing four or five years ago to do surveying there and give solution of the situation, and I gave a great deal of thought and a year or two deliberation before doing any work there. If you construct the work on the Twichell theory of surveying you fall East in conflict and throw all of the shortage probably upon a few and cause law suits and great dissatisfaction. If you construct the 36 sections from the Tobacco Creek corners you fall in direct conflict with the fixed West boundary line of the 36 sections and place all of the shortage on the West tier of sections and the land owners of this tier of sections as well as all others would not regard this anymore equitable solution. The question is, what are you going to do about this shortage. It is there unquestionably. I think the land owners of that 36 sections have equitably settled this question amongst themselves.

✓ In May 1922 the owners of the 18 sections on the S part of the 36 sections, being sections, 19, to 36 inclusive, employed me to survey out their lands and prorate the shortage. I produced the West boundary line from the N W Cor. of section 6, to a point where it would cross the N boundary line of of survey 42, Blk 36, T 5 N., if the same were continued westward and found the distance from the N W Cor. Sec 6, to the point of intersection which I made the S W Cor. of Sur 31, to be, after making a double measurement, 11,337 varas. I crossed Standefer's East line Blk 35, and my North line of Sur. 37, Blk 36, T 5 N, and at the point of intersection set the S E Cor. of Survey 36 and found the distance to be from this corner to the judgment corner, N W Cor. Sur. 6, Blk 35, T 5 N to be 11,375 varas. I found the distance from My S W Cor Sur 31, to S E Cor. 36, to be 11,142 varas. I found the

distance from the N W Cor. Sec. 6, Blk 35, to the N W Cor. sec 6, Blk 36, judgments corners, to be 11,125.8 varas and this is the distance given by Collard and Estes in their report of a survey of the N line of Blk 36, T 5 N., I also found their monuments which were iron pipes along the N line of Blk 36, which are indicated on sketch B.I then placed the section corner, and many subdivision corners of those 18 sections. Shortly afterwards some dissatisfaction arose amongst those land owners and they did not then sign up boundary agreement and re-set their fences and other improvements to my work as they had agreed to do. But they have recently done so, in fact since the first of January of this year they have nearly all signed up boundary agreements and placed them on record in Dawson county adopting my survey and have re-set their fences to my work. I feel sure that this is true except with one or two exceptions and I have been reliably informed that those two will soon move their fences to my line. In the particular case in question, that is, the N E 1/4 of Sec 34, Blk 36, T 5 N., owned by R.E Cowart and which he is anxious to patent, he has signed with the owners of adjoining land and placed on record boundary line agreement fixing the four boundaries of his land on my survey. If you would like to have those agreements I shall be pleased to forward them to you. Likewise T.W. McSpadden owner of the W 1/2 of Sur 34, desires to patent his tract and J.W. Davis owner of the W 1/2 of Sur. 26 desires to patent it and both have made boundary line agreements and can furnish you the same. All three of these parties have approved loans on their land and have paid off some prior indebtedness and are hurting because of the delay in getting their patents. G.D. McSpadden had me survey the S 1/2 of Sec. 8, and desires patent. I have indicated on the sketch the corners I set of the 18 sections on the N end of these 36 sections and I am informed that most of the owners of the other lands there are willing to have their lands surveyed on the shortage theory.

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I may add further that I surveyed in Subdivision 177 acres those leagues lying immediately West of the 36 sections and several other leagues running on West. Leagues 276 and 277 are short in acreage having taken one half of the difference between Dodd's position and Estes position. I desire further to state that in the survey made by Collard & Estes they were appointed by the District Judge in the case of Higginbotham vs. Weaver, to go out on the ground and settle that vexious question. Of course it was an agreed judgment but the fixing of the line on the ground was done by Collard & Estes and I am quiet sure they believed they were making a proper solution of it. The case had been in court several years and tried and appealed and sent back for new trial and the delay was seriously hurting development of the country and the litigants agreed to let the court appoint two good surveyors to fix the line.

I beg your pardon for this long report but it appears to be necessary. The owners of those 36 sections have been greatly hampered in selling their land or borrowing money or opening up highways and making other improvements. They have substantially agreed, all agreed to a settlement. I do not know of a better one

than the survey I have made for them. I would like to have dropped out of this matter long ago but have felt that those people should have whatever assistance I could give them in working out their troubles. If, after going over this report and sketches you still have any doubt as to a shortage or you believe there is a better solution those people will appreciate very much having you advise me for them the exact solution to make. In such case I believe the exigency of the situation would justify you in having representative come here and go into this matter fully.

I am returning to you herewith field notes to the Cowart tract and also the Davis tract. If you reject them I would be pleased to have you return the sketches enclosed especially sketch B, otherwise if you so desire you may keep that sketch but I would like to have about three blue prints of it if not asking too much of you to furnish them. Furthermore I can prepare and furnish you a more detailed sketch of my survey of the 36 sections mentioned, if you desire it.

MCL/fc

Yours very truly,

M. C. Lindsey
COUNTY SURVEYOR, DAWSON COUNTY

April 18, 1924.

Mr. M C Lindsey,
Lamesa, Texas.

Dear Sir:-

Answering yours of the 14th inst. concerning block 36 Township 5N, T & P Ry Co., in Dawson county, and subdivision field notes for certain school sections therein, will say we have had this matter up with V O Key also.

It is noted you report a shortage between the NW $\frac{1}{4}$ section 6 block 35 T 5N, as established by the Court and the NW corner of section 36 block 36 T 5N, as established by the Court which you say is an agreed judgment corner. In looking into this matter we find where it seems the real trouble is that causes that shortage. On the sketch you send in in block 34 T 4N, you indicate three original corners on the E line of this block in sections 12 and 13 and on the W side of it you indicate two original corners, one at the SW corner of section 18 and the other in the middle of section 19. It seems some years ago the T & P Ry Co., when they had control of these lands in block 34 T 4N, recognized the shortage and adjusted it accordingly. It seems also the railroad company adjusted the shortage in the two southern tiers of block 34 T 5N just to the north of the one to which reference has just been made. Then in the judgment of the court fixing the Lamesa corner which is section 6 block 34 T 5N, that shortage was not recognized and by some means the Northerners six tiers in this block 34 T 5N were made shorter than the two southern tiers.

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Upon what theory either the Court or individuals could proceed to divide a block located as these blocks were I am unable to understand. Certainly the owners of the sections in those blocks might have settled on any division thereof ~~thru~~ so far as their rights were concerned, but by reference to art. 5396, RCS 1911, being the act of 1889, we find among other things

in the original act that the surveys and blocks of surveys must remain on the ground as shown by the plats, maps, sketches etc. returned to the General Land Office; that is to say resort must be had to the maps, plats, etc. returned here in the absence of all other information concerning the proper location thereof.

It seems also that the moving of the western line of the Northern six tiers of sections in block 34 T 5N, further west was carried over to the Lamesa corner and now it is proposed to limit the west line of block 36, T 5N, to a distance less than it originally called to be because in a judgment between some private parties owners of two or three sections in the northwest corner of this block the Court fixed the corner of section 6 and made it coincide with school land league 277, when as a matter of fact school land league 277 was located subsequent to the location of the T & P block 36 T 5N, and unless some object can be found on the ground and identified as an original object placed there by the surveyor, there is no authority in law as we understand it, whereby this block 36 T 5N can be restricted to a distance less than 1900 varas for each section, and league 277 will have to give way to any conflict that might be with it.

It is noted in a report by Robert E. Estes and C. B. Gollard, dated July 21, 1917, upon which it seems probable the corner was fixed at the NW corner of the sections of this block and township, or at least the plat was made in accordance with same apparently, that indicates that if the judgment corner of section 6 should be extended south it would go to a cedar stake and rock mound the same being a judgment corner for section 6 block 36 T 3N, when in fact there is nothing to indicate that that cedar stake and rock mound was an original corner.

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But to go back. Upon no theory is this Department prepared to subscribe to the breaking a block in two in the middle, especially as seems to have been done, or attempted to be done in blocks 34, 35, 36, T 5N.

To sum up: Let me suggest this Department without further information can not approve field notes for any of the school sections in block 36, T 5 N, except upon a basis of 640 acres each. If the owner of section 6 at the Northwest corner of this block 36 T 5N, should acquiesce in the judgment corner, as I suppose he will, and there is really a shortage in this tier of sections east and west, then to give the others their distance west might throw an apparent conflict between sections 5 and 6. If so, that is a matter for them to settle between themselves, as the judgment in the case fixing the corner of section 6 did not affect the rights of the owners of section 5 and the sections to the east, if they were not parties to the suit, and likewise with the remainder of the sections in this block and township, but one point is, block 36 T 5N is superior to the leagues to the west and if the leagues are two far east, then they should give way.

If, however, you can show this Department any original points identified as the original corners and lines, this matter will be subject to review. We are willing to listen to any reason in fact or law that would have the intention or effect to change the views herein expressed.

You will understand this Department does not regard resurveys where the iron pipes were put up as having any binding effect on the owners who have not acquiesced in them, and especially they do not have any legal binding on the proper legal construction to be given to the work as originally outlined by the original surveyor as shown by original surveys and sketches now on file in this office, which we have looked into before writing this.

We have received field notes for one quarter of section 44, block 36 T 5N, and that seems to be based on the position of the two southern tiers of this block and township as being further east than would be the work of subdivisions, or whole sections in the other six tiers north of these two. Certainly we will be glad to have things adjusted without inconvenience loss or annoyance to the owners of the land there, but what we have to do here is to try to keep within the terms of the law for the protection of the titles.

Let me further say if one should desire to patent on section 44, or any other full section in block 36 T 5N, we will be willing to patent same on the original field notes which only call for the preceding survey and give course and distance. Also if one desires to patent a quarter of any other sections and will furnish field notes for only one quarter of the section, omitting the calls whatever for iron pipes, etc. but do as the original surveyor did, begin at the preceding section and give course and distance, we will be willing to patent same and that will leave the party interested to adjust the matters between themselves.

The point is we can not recognize any shortage as there is nothing to prevent the block from going further west when it was placed there, and no original corners shown in the re-survey.

The plats and sketches and other documents sent by you are returned under separate cover.

Respectfully,

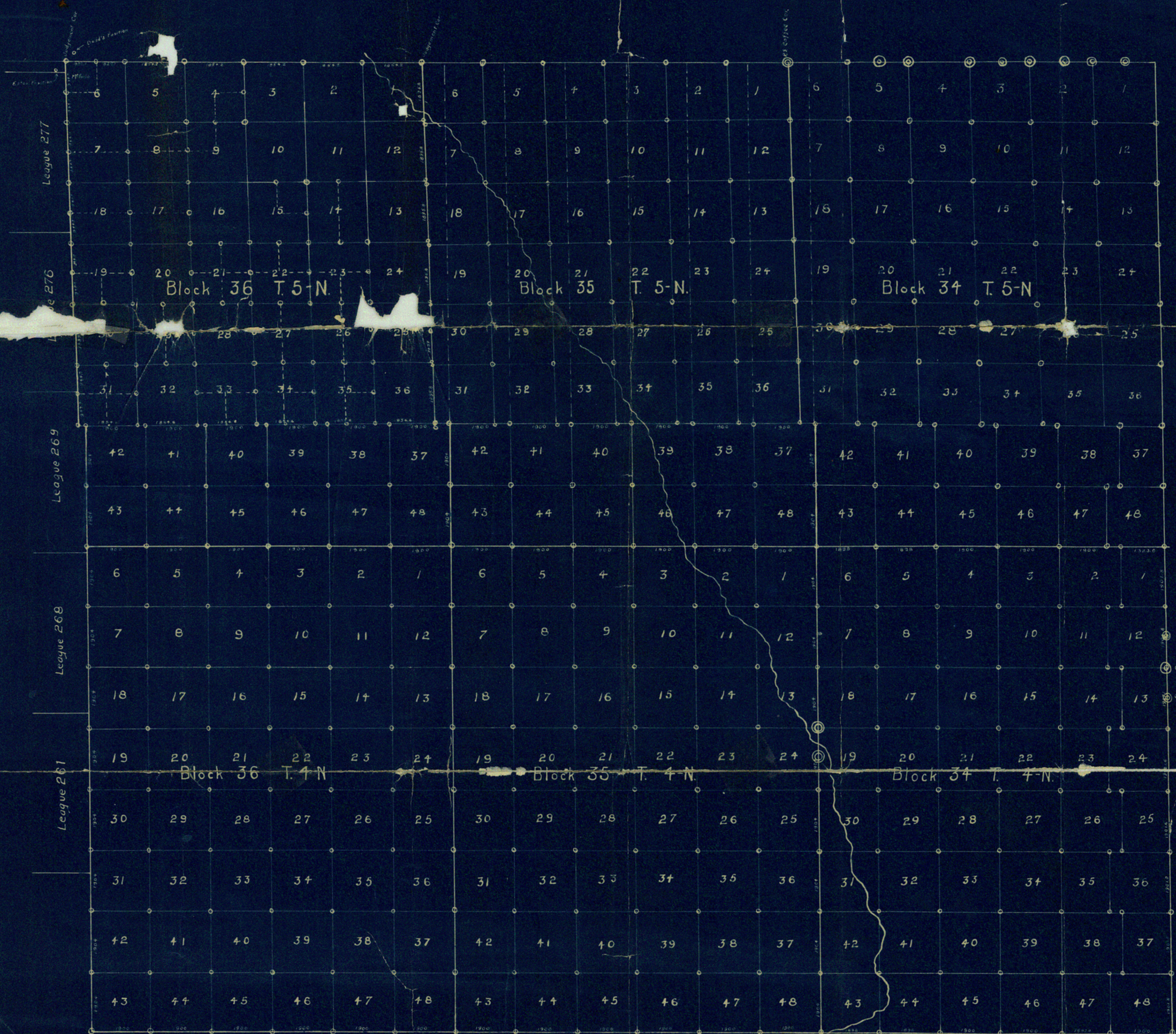
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Commissioner.

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A SKETCH OF A PART OF DAWSON COUNTY



This Sketch is true and correct.

M. C. Lindsey

Dated April 11th 1924.

County Surveyor, Dawson County, Texas.