

May 3rd, 1924.

Mr. M. C. Lindsey,
Lamesa,
Texas.

Dear Sir:-

We have carefully considered statements in yours of April 29th, concerning Block 36, Township 5 North, T & P Rwy Co., in Dawson County, and other blocks connected therewith, and assuming that your representation of the matter is correct, we have to advise that while we cannot approve or endorse the arrangement of this, and other blocks, as a matter of surveying and as a matter of question as to what the law should be, yet, if there is an actual shortage on the ground in Block 36, aforesaid, it seems the shortage will have to be apportioned among the several surveys East and West.

If this is done and you should be called on to make field notes for any subdivisions above what seems to be a break in the block, you will please refrain from calling for any natural or artificial objects on the ground, but simply call for a corner of the survey or of the preceding survey and put it in by course and distance, allowing its proportionate part of the shortage.

In the last tier of the surveys, beginning with Section 36, to the South of which the break seems to go, you will also please refrain from making any call for the North lines of the tier beginning with Survey 37, but call for the surveys to the North. And if you make any corrected field notes for the school sections, as a whole, in the portion of this block North of the break, you will kindly call for the preceding sections only and not for any natural or artificial objects on the ground. And do likewise in any corrected field notes that you might have to make in the tier beginning with Section 37. That is, do not call for the corners and lines of surveys to the North that are in the break, but, of course, you might call for the preceding section.

#2---M. C. Lindsey.

If you will do this, any future litigation or other facts that may be discovered which would have a tendency to involve the position of surveys and portions of surveys, those calls in the patent would allow the land patented therein to float with any new position that any court of subsequent facts might indicate would be necessary. Because they would not then be held on the ground by any natural or artificial objects.

These suggestions are offered, as being properly from our point of view, the best solution of what seems to be an ugly condition.

You understand that we do not object to the break, but our courts have held blocks cannot be broken, hence, it is a matter of law we are looking at instead of what you say is the condition on the ground.

Very truly yours,

Commissioner.

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*In answer to this
see letter 5/3/24, in
Section Book 1496, Page 407*

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MAY 1 1924

Lamesa, Texas.
April 29 1924.

REFERRED TO COMR.

Hon. J. T. Robison, Commissioner,
General Land Office.,
Austin, Texas.

Dear Sir:

Your letter of April 18th. has been received and I want to thank you for the patience exhibited by you in discussing, and dealing with the complicated situation with reference to the boundaries in Tsp 5 N, Blk 36, T & P Ry Survey in Dawson County and I feel sure that your position in this matter is based solely upon your desire to comply with the law and to do justice to the interest of the State with reference to its school land and I hope you will not understand me as trying to suggest a different policy or to in any manner attempt to tell you what your attitude should be but at the same time I feel that there are matters which I might bring to your attention wherein, after careful consideration, you may see our reason for the short surveys in the North six tiers of sections in Tsp 5 N., Blk 36, and with a settlement and adjustment of this six tiers of sections there will be no more trouble with the T & P surveys in Dawson County as all the rest have been adjusted.

Now as to the basis for the shortage, here are the facts; Every State Surveyor who has run the West line of Tsp 5 N Blk 36, has found that said line varied too far East, this is established by surveyors undertaking to follow the footsteps of the original T & P survey. Among these State Surveyors are the following, all of whom you are acquainted with and I am sure that you agree with me that their ability and honesty cannot be questioned; W.D. Twichell, C.B. Collard, Capt. R.S. Dodd, of Alpine, Texas, who made the survey in 1913 at your request, T.M. Lightfoot, District Surveyor of Big Springs, Jesse Cross, Sam Cowan and others. This variation was found by them to be greater at the North end and gradually came to a point at Tsp 3 N., Sam Cowan in his deposition, testified to having made the survey and finding the old T & P markings on the ground about ten years after the original survey was made. Mr. Twichell identified the line by topographical maps and course and distance from known corners. Capt Dodd did the same thing and Mr. C.B. Collard did the same, and reports of these surveys are on file in your office and the land was fenced, perhaps forty years ago, along the same line found by them. Naturally, when the Glasscock

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County School Land located immediately West of ~~the~~ Tsp 5 N., was surveyed they recognized the T & P work and did not put the league over ^{on} the T & P work but did put the leagues on the land where the T & P work should have been put but was not because of this 500 varas variation too far East, consequently the leagues were not junior surveys because they were put on land not theretofore surveyed and became them selves senior surveys. Therefore, these sections could not have later been surveyed into these leagues in order to make up the shortage that the mistake of the original surveyor caused. Now this was the situation, the West side of Tsp 5 N Blk 36, and the East side of the Glasscock County School Land lapped over on one another, something over 500 varas and this brought about the suit known as the Weaver-Higginbotham suit where Capt. Dodd, did the surveying and this suit was in court four or five years and the court of appeals in reversing the case held that the evidence of Cowan, Lightfoot and Dodd, should have been considered as showing where the original West line of Blk 36, was located on the ground. That left a condition that either Blk 36, or the leagues, one or the other, must take this shortage, and the court appointed a commission of surveyors consisting of Messrs. C.B. Collard and R.E. Estes and directed these surveyors to establish the Northwest corner of Sec. 6, Blk, 36, Tsp 5 N., T & P Ry Co survey and this commission of surveyors made a survey on the ground, located and established said corner at a point which would have divided this shortage, throwing one half of the shortage on the leagues and one half of it to the sections. They made their report which was duly confirmed by the court, a copy which you have, and the same was not an agreement but became the Judgment of the Court and subsequently the State patented the Northwest quarter of Sec. 6, Blk, 36, Tsp 5 N, on this identical corner, established by Estes and Collard and as County Surveyor of Dawson County, I have surveyed other lands on the same basis as such an apportionment is just and equitable and distributes the shortage to all the surveys involved rather than to any particular one and this is done on the theory that no actual surveying between the block line of 36, was made on the ground, but the same was sectionized on paper on the theory that there was sufficient distance between the East and West line of Blk 36, to make six sections when as a matter of fact there was lacking something like 500 varas of being a sufficient distance. Therefore, you will see that Blk 36, gained one half of this shortage by reason of the judgment based on the Estes and Collard survey, such survey having thrown the other half of the shortage onto the leagues which has been accepted by the owners and their land subdivided and platted and sold, based on their proportionate part of this shortage. Now the real reason that the leagues could not slide Westward a sufficient distance to give room to Blk 36, to make up this shortage is that the leagues are absolutely tied to the ground by the original survey, to natural objects which could not be moved or shifted.

in

Dawson County
March 24

Therefore, every acre that the T & P survey would extend Westward from where Messrs. Dodd, Twichell and Collard, placed it, would make the leagues just that much short of their original survey. Tsp 5 N Blk 36, could not be shifted Eastward in order to make up this shortage because the West line of Blk 35, has been definitely established by a judgment of the District Court and affirmed by the Court of Civil Appeals and every survey, including the town of Lamesa, established accordingly. Now that gets us down to the proposition of this shortage and it occurs to me to be a happy solution of the matter that the judgment corner recommended by Messrs. Collard & Estes, relieved Blk 36, of one half the loss that Messrs. Dodd, Twichell, Collard, Cowan, Cross and Lightfoot found to exist and that the other half could be distributed between the six sections of the survey for six tiers deep and is acceptable to nearly every land owner and finally settles this disturbing question of thirty years duration upon which tens of thousands of dollars have been spent for an adjustment. Any other survey leads to confusion, uncertainty and controversy but this survey harmonizes and distributes the consequences of the mistake of the original surveyors and with all these precedents before you backed up by such splendid surveying, as the men named are capable of doing, made the judgment of the court, and accepted by 95% of the land owners it occurs to me that you might with propriety approve field notes for the remainder of the school land, the same as you did for the Northwest corner of Sec 6, Blk 36, Tsp 5 N., and when this is done the entire controversy will be over as the East line of the leagues are permanently established on this survey and the remainder of Tsp 5 N, has been accepted on the survey made by Mr. Twichell and there will be no further controversy with reference to T & P work in this county.

Now if you are not familiar with the matters brought to your attention I respectfully refer you to the reports filed in your office by surveyor, Twichell, and the report made to you in 1913 by Capt R.S. Dodd and I can procure for you the evidence of Mr. Sam Cowan and Mr. Lightfoot given in the trial at Post and will substantiate every one of the foregoing assertions by documentary evidence which is available here and then if you still have doubt as to the propriety of you following up your work in accepting the survey of the Northwest corner of Sec. 6, Blk 36, Tsp 5 N., then if you will send any representative here and let him go over the ground and the records I feel sure that you will then not have one moments hesitancy in finding that the Northwest quarter of Sur. 6, Blk 36, Tsp 5 N. was legally, fairly, justly and sensibly patented.

Yours very truly,

M. C. Lindsey
County Surveyor, Dawson County, Texas.

MCL/fc

4-29-74 Sk. File 8,
5-1-22

Dawson County

In re to Boundaries of BIK 36.

Tsp. 5 N-

Therefore, every acre that the T & P survey would extend
 Westward from where Messrs. Todd, Wischell and Colford place
 it would make the survey just that much short of their
 original survey. Tsp. 5 N. BIK 36 could not be shifted
 in order to make up this shortage because the west line of the
 BIK 36 has been definitely established by a judgment of the District
 Court and affirmed by the Court of Civil Appeals and every
 step, including the taking of depositions, established accordingly.
 that sets us down to the proposition of this shortage and it
 occurs to me to be a very serious matter that the
 judgment corner recorded by Messrs. Colford & Bates,
 relieved BIK 36 of one half the loss that Messrs. Todd,
 Wischell, Colford and Colford had to expect
 and that the other half could be distributed between the
 sections of the survey for six tiers deep and is acceptable
 to nearly every landowner and finally settled this disturbing
 question of BIK 36 survey upon which tens of thousands
 of dollars have been spent for an adjustment. Any other survey
 leads to confusion, uncertainty and controversy and this survey
 harmonizes and distributes the consequences of the mistake of the
 original surveyors and with all these precedents before you
 backed up by each and every surveying, as the men named are
 capable of doing, and the judgment of the court, and accepted
 by 95% of the landowners it occurs to me that you might wish
 property above this notes for the remainder of the BIK 36
 land the same as you did for the northwest corner of BIK 36.
 BIK 36, Tsp. 5 N., and when this is done the entire controversy
 will be over as the west line of the leases are permanently es-
 tablished on this survey and the remainder of Tsp. 5 N. has been
 accepted on the survey made by M. Wischell and there will be no
 further controversy.

Now if you are not familiar with the matter
 present to your attention I respectfully refer you to the reports
 filed in your office by surveyor Wischell, and the report
 to you in 1918 by Messrs. B. B. Todd and I can promise for the
 evidence of Mr. B. B. Todd and Mr. Wischell given in the trial
 at Fort and will substantiate every one of the foregoing asser-
 tions by documentary evidence which is available here and then if
 you still have doubt as to the propriety of your following your
 work in accepting the survey of the northwest corner of BIK 36
 BIK 36, Tsp. 5 N., that if you will send any representative
 and let him go over the ground and the records I feel sure that
 you will then have one moment's hesitation in finding that the
 northwest corner of BIK 36, Tsp. 5 N. was legally estab-
 lished and remains patented.

Yours very truly,
 M. Wischell
 County Surveyor, Dawson County, Georgia

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