

Please file in Travis Pre-emption file 1454

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GENERAL LAND OFFICE

Austin, Texas  
July 23, 1938

To the Commissioner of the General Land Office of the  
State of Texas, Austin, Texas.

Dear Sir:

A. F. Ray and C. H. Berkley have filed an application for a survey of that tract of land, supposed to be un-patented and lying east of the E. W. Brown Survey # 136 and west of the John Gilbert Survey # 1717 and the Levi Lewis Survey # 154 and lying north of the William Walker Survey # 130 in Hays County, Texas. Their applications for the surveys have been recorded in the Hays County Surveyors Records and I have been engaged to make the surveys and prepare the field notes, and said applications accompany this report.

In connection with this report and these surveys I have prepared a map and I am submitting 4 certified maps to be placed in your files. On this map I have identified various corners as "A", "B", etc. and shall refer to same in this report. This map is to be considered a part of this report.

I am submitting for your consideration field notes of the alleged vacancies and in behalf to my clients I am requesting you to give same an early consideration and an official recognition of same or a definite refusal.

To support the theory of an existing vacancy between the east line of the E. W. Brown Survey # 136, and the west or southwest line of the Levi Lewis Survey # 154 and the John F. Gilbert Survey # 1717, north of the William Walker Survey # 130, I am suggesting that the well established north line of the William Walker Survey # 130 should be the south boundary of the vacancy and that the well established southwest line of the Levi Lewis Survey # 154 and the John F. Gilbert Survey # 1717 should be the northeast line of the vacancy, and that the west line of the vacancy should be a line run, as called for in the field notes of the Brown Survey, (seventh call), due SOUTH from the west corner of the abandoned John Williams Survey # 61 to the north line of the William Walker Survey.

I found a rock mound "B" which is the northeast corner of the William Walker Survey # 130, I found a Live Oak N 60° E 45 varas and a Live Oak stump S 30° E 61 varas. From this rock mound I ran West 5000 varas and found a rock mound "C", the original northwest corner of the William Walker Survey # 130 and also found an old live oak stump, 5 feet in height, which bears S 30° E 55 varas from the rock mound.

Joe C. Ewe made a survey of the W. R. Wood Survey. See your files Travis Pre-emption # 1159. His certified note of explanation shows that he found the middle east corner of the E. W. Brown Survey # 136, "A", identified at that time by one of the Brown bearing trees and by the stump of another. I found the west corner of the Wood Survey "A" an old rock mound and also the remains of a Live Oak N 17° E 53 varas therefrom. I also reversed the calls of the Brown Survey and ran North at 550 varas crossed a creek in all 1000 varas and found an old rock mound "J" the northeast corner of the E. W. Brown Survey,

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and from which there was L. O. N 31° W 7 varas. I further identified the Wood Survey by finding all corners of same, most of them still identified by the original bearing trees.

The field notes of the E. W. Brown Survey # 136 read in part as follows:

Thence S 60° E with Raper Survey 37, at 1750 vrs a creek runs N. E, 2688 vrs a mound S. E. corner of Survey 37, from which a Black Jack mkd H 15 in' dia'm brs S 8° W 43 vrs and a live oak mkd E 12 in diam' brs, N 31° W 7 vrs.

Thence S 30° W with the west line of William Survey No 61, at 450 varas a branch runs N, 1000 varas a mound and S W corner of Williams Survey No 61, from which a live oak mkd K 14 in diam' brs N 17° E 51 vrs, another mkd V. 12 in' diam' brs N 71° E 38 vrs.

Thence S. 1354 vrs, a mound in the W. line of Survey No 130, from which a live oak mkd H 18 in' diam brs, N 37° W 22 vrs another mkd + 12" in diam bears N. 27. vrs.

Thence W with the N line of 130-----

Therefore it was the intention of the surveyor of the Brown survey to corner with the M D Raper Survey # 37 on the northwest line of the John Williams Survey # 61 and then run S 30° W to the West corner of the Williams Survey. The Brown Survey field notes called for rock mounds and called for definite bearing trees.

I found the field notes of the John Williams Survey # 61 in the transcribed County Surveyors records of Hays County and said field notes are practically as follows: (Certified copy of same will be furnished to Land Office if requested.)

John Williams Survey # 61, Hays County.

Beginning at the South corner of # 60 made for Marcus B. Raper for the corner of # 61, a stake and stone mound.

Thence S 30° W 1901 varas to a stake for the south corner of Survey # 61 and from which a Live Oak 10" marked H, bears S 3° W 40 varas.

Thence N 60° W 1901 varas to a stone mound for the West corner of # 61

Thence N 30° E 1901 varas intersecting the west corner of # 60 and from which a Live Oak 10" in diameter bears East 10 varas, a Live Oak 8" in diameter bears S 50° E 40 varas marked H.

Thence S 60° E 1901 varas to the place of beginning.

Wm. S. Wallace

4-25-1839

County Surveyor of Bastrop  
Forfeited by non-return of certificate,  
August 1, 1857

I consider the rock mound "A" found by Joe C. Ewe and identified by him May 31, 1892 as the middle east corner of the E. W. Brown Survey (See Travis Pre-emption File 1159) is in fact the same corner called for in the E. W. Brown Survey # 136 field



notes (Travis 2nd class File 25) as made by James R. Pace June 6, 1847.

From this corner "A" I ran N 30° E and at 1901 varas I searched for a corner of the John Williams Survey # 61 but did not find same, continued and at 2018 vrs. from "A" I found an old rock mound "K" the north corner of the H Brashe Survey. No bearing trees found.

From the west corner "A" of the W. R. Wood survey I ran S 60° E and at 1558.9 varas I found a rock mound "F" the original South corner of the W. R. Wood Survey identified by one of its original bearing trees and the stump of another, continued S 60° E and at 1932.6 varas I found a scattered rock mound "M" on a high level terrace at least 25 varas away from any loose rock or rock out-crops. This I believe was the south corner of the John Williams Survey # 61. I searched for a Live Oak S 3° W 40 varas and found soil sufficient to have supported the tree called for and found numerous Live Oak sprouts for a radius of 10 feet at the proper location, but I did not find the tree or stump.

I found the southwest corner of the Levi Lewis Survey # 154, a rock mound "D" and a L. O. marked  $\Sigma$  N 7° 40' E 32.2 varas and an old L. O. stump N 37° W 22.0 varas. I also found the west westerly corner of the Levi Lewis Survey a rock mound "H" which is S 30° 10' W 278.94 varas distant from another rock mound on the southwest line of the W. R. Wood Survey.

It is my opinion that if there is a vacancy as applied for, the west corner of the W. R. Wood must be recognized as the west corner of the John Williams Survey # 61 and the middle east corner of the E. W. Brown Survey # 136 and then consider that the call for direction as set forth by the E. W. Brown notes "South to a mound in the N line of Survey No. 130 must control over any theory." In the event that this alleged vacancy is allowed to be patented by the State of Texas there will be a total area of 98.46 acres which has been applied for by my clients and which has been within their enclosure for more than 10 years and to which they claim a preference right to purchase.

My report up to this paragraph has attempted to assemble all facts which would favor the area shown on my map between "A"- "D"- "E" as vacant public land subject to purchase by my clients.

However, I do not believe this land is vacant and that it is in fact a portion of the E. W. Brown Survey # 131 and the following facts are presented:

James R. Pace was the surveyor of the William Walker Survey # 130 and the E. W. Brown Survey # 136 and he made both surveys in June 1847 and used the same chainmen. He also prepared the field notes in 1848 used to issue patent to the Philip A. Smith Survey # 26. There are papers on file in your office (Travis 1st class # 106) which show that the Philip Smith Survey had been made by some other surveyor many years before 1848 and it is possible that James R. Pace copied the notes on file. You may note that although James R. Pace starts his survey of the E. W. Brown at the N. E. corner of League # 26 (Philip A. Smith) that he calls for different bearing trees than those set forth for the same corner in field notes of Philip Smith Survey.

I found a rock mound "I" the northeast corner of the Philip Smith and also both original bearing trees in their proper relation to same. From this rock mound I ran South a distance



of 432 varas and fixed a point for the northwest corner of the I. V. Davis Survey, and from this point I ran East 510 varas and set a stake. From this stake "H" I found an old L. O. tree marked bearing N 67° E 36 varas, which I consider the original bearing tree.

I then ran South and at about 1392 varas I intersected the original northwest corner of the William Walker Survey. (See map, corner "C"). I refer you to the field notes of the I. V. Davis Survey # 191 Travis Pre-emption File 1943 and the C. H. Mallet Survey # 199 Travis Pre-emption File 2038 and Otto Gross Affidavit File 2038. In as much as the State issued a patent to I. V. Davis after consideration of the Otto Gross report and in as much as I have been able to confirm all of his findings it appears that the beginning corner of the E. W. Brown Survey, the most westerly line of the E. W. Brown Survey, and the first line called for in the Brown Survey have been definitely relocated as originally located by James R. Pace in June 1847, and that James R. Pace did not in fact find the original Northeast corner of the Philip Smith Survey.

I went to the middle east corner of the Brown "A" and ran South 1354 varas and searched unsuccessfully for a corner and bearing trees, continued South in all 1408.5 varas to the north line of the William Walker Survey # 130 and set a stake "E" for the southwest corner of the vacancies applied for. This should be the southeast corner of the Brown Survey but there is not any probability that any live oak bearing trees could have ever been in this location on account of the shape of the ground and the absolute lack of soil, being on a high rocky side slope. From this point I ran West 547.2 to the N W corner "C" of the William Walker Survey which is called for as the southwest corner of E. W. Brown survey # 136. This distance should have been 1263 varas according to the Brown field notes.

From this "C", the true S. W. corner of the Brown Survey I ran East 1263 varas and searched for a corner and bearing trees of the Brown Survey, but did not find any.

At a point 1136.4 varas East of the S. W. corner of the Brown Survey I found the previously mentioned corner of the Levi Lewis Survey "D". This corner "D" definitely known to be the S. W. corner of the Levi Lewis has been found by previous surveyors and considered as the S. E. corner of the E. W. Brown Survey according to the following records and a line connecting this corner "D" with the middle east corner of the E. W. Brown Survey has been considered as the east line of the Brown Survey as evidenced by records of your office, as follows:

|                    |                    |            |        |               |
|--------------------|--------------------|------------|--------|---------------|
| W. R. Wood Survey  | By Joe C. Eve      | 5-31-1882  | Travis | P 1139        |
| I. V. Davis Survey | Otto Gross         | 10-14-1887 | Travis | P 1943-P 2038 |
| Levi Lewis Survey  | 154 Jno. H. McNutt | 6-7-1893   | Travis | P 1654        |

My clients have purchased the land included in the alleged vacancy as a part of the E. W. Brown Survey and have same within their enclosure.

There is not any greater area in the Brown Survey between the east line of the Davis Survey and the west line of the Lewis Survey than was intended by the original description of the Brown Survey. The area of the vacancy is 98.46 acres and the area patented to I. V. Davis between the Brown and Smith Surveys is 124.8 acres, therefore the State has been fully paid for the entire area involved in this report.



I am presenting 4 certified copies of this report and map and an offering one of same to be filed in Travis Pre-emption File 1654 and one to be filed in Travis 2nd Class File # 25 as well as such files as you may establish for these applications.

My clients desire to purchase this land if deemed public domain, if not, they each desire a certificate of refusal so that the question will not have to be reviewed again and they desire to have your official map corrected in accordance with your final decision.

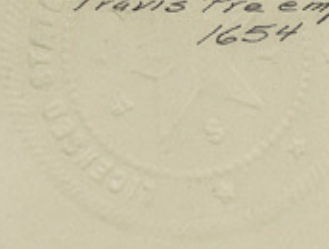
1938. Certified to in quadruplicate, this 26<sup>th</sup> day of July,

By

*Orin E. Metcalf*

Triplicate  
File  
Travis Pre-emption  
1654

Licensed Land Surveyor  
My office is located in Austin, Texas.



File No. 30

Hays  
County

Statement of Orin E. Metcalf

Filed Aug. 15<sup>th</sup> 1938  
W.M. H. McDONALD, Compt.

*[Signature]*  
File Clerk

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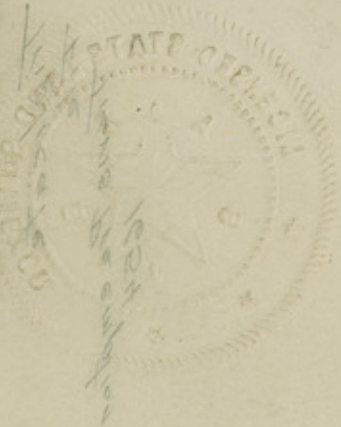


such files as you may establish for these subdivisions.

any other matter which may be required for the proper conduct of this office.

Very respectfully,  
Orin E. Metcalfe

*Orin E. Metcalfe*



File No. 30

Hays County

Statement of Orin E. Metcalfe.

Filed Aug. 12<sup>th</sup> 1938

WM. H. McDONALD, Com'r

*Attest*  
File Clerk