

JIM HOGG County Sk. File No. 9  
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THE STATE OF TEXAS )  
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COUNTY OF JIM HOGG. )

I, C. A. Douglas, State Licensed Land Surveyor, do hereby certify as follows in connection with the proceedings had in the case of Horne v. Moody, being Cause No. 12573 in the 49th. District Court of Webb County, Texas, and Cause No. 10659, in the Fourth Court of Civil Appeals, certified copies of which proceedings appear of record in Volume 23, pages 306 to 324 of the Jim Hogg County Deed Records, and the opinion of such court of Civil Appeals also appearing in 146 SW 2d 505 to 512, to-wit:

1. That I am the same surveyor referred to in the opinion of the Court of Civil Appeals in above cause.

2. That as stated in such opinion I made a resurvey of the Las Viboritas Grant, Original Grantee, Francisco Montalvo, Jim Hogg County, following in the foot-steps of the surveyor, Jose Antonio Gutierrez de Lara, who originally located and surveyed such grant at the time such grant was made by the State of Tamaulipas, Mexico, to said Francisco Montalvo. That the following field notes, introduced in evidence on the trial of above case, reflect the location of such Viboritas Grant as made by said Lara, being the location of such grant as fixed by said Court of Civil Appeals in its judgment in above cause, to-wit:

Beginning at two large stones in the Charco Redondo, which Charco Rendondo was called for by said Lara as his beginning point, being the present recognized Southwest corner of the Palo Blanco Grant Original Grantee Antonio Pena (referred to in Lara's field notes as Antonio de la Pena Gonzalez and as Jose Antonio Pena Gonzalez) for the upper Southeast corner of said Viboritas Grant. Thence North along common boundary lines of said Viboritas Grant and the adjoining Palo Blanco Grants, Original Grantees, Antonio Pena and Francisco Pena, respectively, 7650 varas (being the 153 cordeladas called for by said Lara) a point for the Northeast corner of the Viboritas Grant; thence South 89 degrees 40 minutes West

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along the Original North line of the Viboritas Grant, as located by said Lara, at 9865 varas passed the Arroyo del Gato at 10246 varas, the original Northwest corner of the Viboritas Grant, as located by Lara, for the Northwest corner of such grant; Thence South 1-17 East along the original West line of the Viboritas Grant, as located by Lara, at 2100 varas passed through some caves in ravine called Lobos de Pena, at 10150 varas passed the creek coming out of El Sordo, now known as the Baluarte Creek, at 12704.6 varas the original Southwest corner of the Viboritas Grant, as located by Lara, for the Southwest corner of such Viboritas Grant; thence East 4881 varas to the Southwest corner of the San Antonio Baluarte Grant, Original Grantee, Luis Salinas, which corner is marked by two large stones, being the lower Southeast corner of the Vivoritas Grant as located by Lara, for the lower Southeast corner of such Vivoritas Grant; Thence North 00-36 West along the West boundary line of said Baluarte Grant at 1990 varas past said Baularte Creek and at 5111.2 varas the Northwest corner of said Baluarte Grant, which is marked with a large stone and mortar monument, being an original inside Lara corner, for an inside corner of the Vivoritas Grant; thence East along the North boundary line of said Baluarte Grant 5135 varas to the place of beginning, containing 18163.1 acres of land, more or less.

3. That the Northeast corner of the Vivoritas Grant as located by the judgment of the Court of Civil Appeals in above cause, being the Lara Northeast corner of said Vivoritas Grant, is situated South 648 varas from the Northeast corner of the Vivoritas Grant as called for in the field notes to the patent to such grant, and is situated south 758.2 varas from the Northeast corner of the Vivoritas Grant as accepted and recognized in the cases of Allen v. Draper and Allen v. Edds, being Causes Nos. 1 and 2 on the docket of the District Courts of Jim Hogg County, Texas, the opinions of the Court of Civil Appeals and commission of Appeals in such cases appearing in 204 SW 792, and 254 SW 783.

4. That the Northwest corner of the Vivoritas Grant as located by the judgment of the Court of Civil Appeals in the above cause, of Horne v. Moody, being the above mentioned Lara Northwest corner, bears South 23-04 East 948.6 varas from the Northwest corner of said Vivoritas Grant as recognized and accepted in the above Allen cases.

5. That the West boundary line of the Vivoritas Grant as located and fixed by the Court of Civil Appeals in the above judgment intersects the North boundary line of H & W Survey 161, certificate 89 (as located by corrected field notes to such survey prepared by H. E. Robards, dated October 24, 1938, appearing of record in Book 1, pages 119-20 of the Surveyor's Records of Jim Hogg County, Texas, and filed with the Commissioner of the General Land Office on the 28th day of October, 1938 and approved by him on December 27, 1938) 810.6 varas West of its Northeast corner, as such Northeast corner is located in such Robard's corrected field notes, and intersects the South boundary line of such Survey 161, as per such Robards' corrected field notes, 757 varas West of the Southeast corner of such Survey 161, as per said Robards' corrected field notes, which last mentioned point of intersection is the Northeast corner of A. A. Horne Survey 1009 as per corrected field notes of such Survey 1009 heretofore prepared by me, appearing of record in Book 1, pages \_\_\_\_\_ of the Jim Hogg County Surveyors' records, and Book 1, pages \_\_\_\_\_ of the Record of Field notes of Jim Hogg County, Texas, which corrected field notes were prepared by me in order to eliminate from such Survey 1009 that portion thereof in conflict with Las Vivoritas Grant, as directed by the Court of Civil Appeals in the above mentioned case of Horne v. Moody.

6. That such West boundary line of the Vivoritas Grant, as located by the Court of Civil Appeals in above Horne v. Moody case, intersects the North boundary line of El Sordo Grant, Original Grantee, Luis Vela (as such North boundary line of El Sordo Grant was located by the Court of Civil Appeals in the above case of Horne v. Moody) 751 varas West of the Northeast corner of said El

Sordo Grant, as such Northeast corner was located and fixed by the Court of Civil Appeals in above judgment; in said case of Horne v. Moody: which location of El Sordo Grant is hereinafter fully set out in this certificate. That the Southwest corner of Las Vivoritas Grant as fixed and located by the Court of Civil Appeals in above case of Horne v. Moody is situated 481 varas West of the point where the South boundary line of said Vivoritas Grant, as fixed and located by the Court of Civil Appeals, in such Horne v. Moody case, intersects the East boundary line of El Sordo Grant, as fixed and located by the Court of Civil Appeals in such Horne v. Moody case.

7. That as is apparent from the record in the above Horne v. Moody case, and the opinion and judgment of the Court of Civil Appeals in such case, such court fixed and located the East boundary line of said El Sordo Grant as being West 4400 varas from the above mentioned Southwest corner of the Baluarte Grant, which is also the lower Southeast corner of the Vivoritas Grant, as fixed and located by the Court of Civil Appeals in such case of Horne v. Moody; the Northeast corner of El Sordo Grant as fixed and located by the Court of Civil Appeals in such Horne v. Moody case being situated West 4400 varas and North 00-20 East 9400 varas from such Southwest corner of the Baluarte Grant; and the Southeast corner of such Sordo Grant was by such Court of Civil Appeals in such case located as being West 4400 varas and South 00-20 West 3100 varas from such Southwest corner of the Baluarte Grant.

8. That under the location of the East boundary line of said Sordo Grant, and the West boundary line of said Vivoritas Grant, as fixed and located by the Court of Civil Appeals in such Horne v. Moody case, there is a conflict between such two grants between the North line of El Sordo Grant and the South line of the Vivoritas Grant, which conflict has a width of 751 varas along the North line of El Sordo Grant (beginning at its Northeast corner, as fixed and located by the Court of Civil Appeals in such Horne v. Moody case) and has a width of 481 varas along the South line of Las Vivoritas, between the Southwest corner of the Vivoritas Grant and the point where the South boundary line of said Vivoritas Grant intersects the

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East boundary line of said Sorde Grant, as fixed and located by the Court of Civil Appeals in such Horne v. Moody case.

9. That the Court of Civil Appeals in such case of Horne v. Moody decreed that the North boundary line of said El Sorde Grant extends West from the above mentioned Northeast corner of such grant and coincides with the South boundary line of said Survey 1009.

10. That prior to the trial of such case of Horne v. Moody I also surveyed the East and North boundary lines of said Sorde Grant, and did considerable other surveying in and around said El Sorde Grant in an effort to ascertain the true location thereof.

11. I am also familiar with all of the testimony and evidence in the above case of Horne v. Moody with reference to El Sorde Grant and with the holdings of the Court of Civil Appeals in such case and know that the Court of Civil Appeals in such case of Horne v. Moody located the North and East boundary lines of El Sorde Grant as heretofore stated in this certificate.

12. I am also familiar with the above mentioned H. E. Robards corrected field notes of Survey 161, having actually run out such lines on the ground. That the Southeast corner of such Survey 161, as per such corrected field notes, is situated exactly 3800 varas South 00-20 West from the point called for in the patent field notes to Las Vivoritas Grant as the Northwest corner of the Vivoritas Grant. In this connection I further certify that I actually retraced on the ground the foot-steps of J. E. Martin, the surveyor who prepared the field notes which appear in the patent to Las Vivoritas Grant, and found the Northeast corner of such grant in such patent field notes to be South 110.2 varas distant from the Northeast corner of such Vivoritas Grant, as recognized in the above mentioned Allen cases, and found the Northwest corner of the Vivoritas Grant, as called for in such patent field notes, to be South 0-16 East 165.8 varas and East 1219.2 varas from the Northwest corner of the Vivoritas Grant as recognized in such Allen cases. In this connection I further certify that there is nothing in the patent field notes, nor anything on

the ground, which would operate to locate the North boundary line of the Vivoritas Grant as same was recognized in said Allen cases.

13. It is apparent from field notes in the patent to the Las Vivoritas that said Martin in preparing such field notes considered and believed the East boundary line of the Sordo Grant to be located in exactly the same position as same was located by the judgment of the Court of Civil Appeals in the above Horne v. Moody case, and further that he believed the Sordo Grant to be a prior and superior grant to said Vivoritas. This is apparent from the fact that Martin followed in the foot-steps of said Lara with the exception that he attempted to move the West boundary line of the Vivoritas a sufficient distance to the East, and changed the course thereof, to make same coincide with the correct East line of El Sordo Grant (being at the location established by judgment of the Court of Civil Appeals in the above Horne v. Moody case) so as to avoid the above mentioned conflict which now exists between said Sordo and Vivoritas Grants; and that in an effort to offset such loss of acreage on the West side of the Vivoritas Grant said Martin attempted to lengthen the East and West boundary lines and to move the North boundary line of such grant to the North. However, said Martin apparently did not actually run out on the ground the calls of the Vivoritas Grant which coincide with the West and North boundary lines of the Baluarte Grant, as above set out. His failure to include in his field notes the 111.2 vara excess in the West boundary line of the Baluarte Grant resulted in his Northwest corner of the Vivoritas Grant being situated 4008.6 varas (being the above mentioned 3800 vara distance that the Southeast corner of Survey 161 is from Martin's Northwest corner of the Vivoritas Grant, plus the 208.6 vara width of Survey 1009 adjacent to the Vivoritas Grant) instead of the 3897 vara distance called for by Martin in his field notes between his Northwest corner of the Vivoritas Grant and the Northeast corner of the Sordo Grant. Furthermore, Martin's failure to recognize the 135 vara excess in the length of that portion

of the upper South boundary line of the Vivoritas Grant which coincides with the North boundary line of the Baluarte Grant resulted in the original fence which was supposed to be along the West boundary lines of above mentioned Survey 161 and adjoining Survey 162, being erroneously erected approximately 135 varas West of the true West boundary lines of such Survey 161 and such Survey 162 as originally located, which explains why approximately 29.07 acres off of the upper East side of Survey 208 (as located by H. E. Robards' corrected field notes appearing of record in Book 1, pages 123-4 of the Jim Hogg County Surveyors Records, and Book 1, pages 113-4 of the Record of Field Notes of Jim Hogg County, Texas, and was filed with the Commissioner of the General Land Office on the 28th day of October 1938 and approved by such Commissioner on December 28, 1938) have been considered and treated as a part of Survey 162.

14. That that portion of above Survey 161 which is free and clear of conflict with Las Vivoritas Grant, as same was located by judgment of the Court of Civil Appeals in above case of Horne v. Moody, is that portion thereof included in my recent corrected field notes to such Survey 161; which corrected field notes appear of record in Book 1, pages \_\_\_\_\_ of the Jim Hogg County Surveyors Records, and Book 1, pages \_\_\_\_\_ of the Record of Field Notes of Jim Hogg County, Texas and which show the West 375.66 acres of such Survey 161 to be free and clear of conflict with such Vivoritas Grant. In this connection will say that I am also familiar with the patent to such Survey 161 and the location of such survey is in conformity with the field notes set out in such patent. That such patent field notes and the above mentioned Robards corrected field notes of Survey 161 are the same, since the Robards corrected field notes merely retrace and follow the field notes in such patent.

15. In connection with, and in explanation of the first plat appearing in the above mentioned opinion of the Court of Civil Appeals in above case of Horne v. Moody, I further certify as follows:

(a) Such plat is a photostatic copy of a part of Exhibit 16 in above cause, (with surveys 1008 and 1009 added thereto) which was H. E. Robards' map filed with the Commissioner of the General Land Office by R. E. Heiner in connection with the three applications of said Heiner filed with Robards, County Surveyor, and with the Commissioner of the General Land Office. Under two of such applications, Surveys 1008 and 1009 were awarded to A. A. Horne, as the assignee of said Heiner.

(b) That the true patent North line of the Vivoritas Grant, as above located, does not appear on such plat; the North line of Vivoritas Grant indentified on such plat as "Martin's survey-patent accepted on this line" is the North line of the Vivoritas Grant as recognized in the above mentioned Allen cases.

(c) Survey 162 on such plat has the location the same as given by the Supreme Court in the above Allen cases.

(d) Sections 208 and 161 have the location same were given by Foster's corrected field notes, which Foster field notes were superseded by the above mentioned Robards' corrected field notes of such two surveys.

(e) That the other line on such map designated as "Martin's survey, patent of Vivoritas accepted on this line" is the West line of Vivoritas as per field notes in patent thereof and, below the North line of El Sordo Grant as located by the Court of Civil Appeals in the Horne v. Moody case, is the East boundary line of El Sordo Grant as located by the Court of Civil Appeals in such Horne case.

(f) That the South boundary line of Survey 1009, as shown on such plat, is the North boundary line of El Sordo Grant as same was located by the Court of Civil Appeals in such case of Horne v. Moody.

(g) Referring to my testimony (as quoted in opinion of the Court of Civil Appeals in such Horne case) as to locating the Northeast



corner of El Sordo Grant by the Agua Nueva tie call used by Trimble in the plat on his El Sordo field notes, and referring to the circle marked on above plat and identified as "NE corner El Sordo Grant Trimble Agua Nueva Tie call according to where Trimble believed the Agua Nueva to be located," will say that such tie call places the Northeast corner of El Sordo Grant at approximately the same point that such Northeast corner of El Sordo Grant was located by the Court of Civil Appeals in the Horne v. Moody case. In my opinion such difference was the result of a slight error in such tie call on the part of Trimble. In this connection it should be noted that the Court of Civil Appeals in such Horne case did not locate the Northeast corner of El Sordo by using such tie call but located the East boundary line of El Sordo, and its Northeast corner, by calls in Trimble's field notes to Palitos Blancos Grant for such East line of El Sordo to be situated 4400 varas West of the Southwest corner of the Baluarte Grant, and for the Southeast corner of El Sordo to be situated 3100 varas South of the Northwest corner of such Palitos Blancos Grant, as located by Trimble.

16. It appeared from the undisputed evidence in the above case of Horne v. Moody that El Sordo Grant was first fenced in the years 1883 and 1884 on the outside boundary lines given such grant in the judgment of the Trial Court in such case of Horne v. Moody, being the same location as recognized in the above Allen cases. That thereafter such erroneous locations of the North and East boundary lines of El Sordo Grant were generally recognized as being the correct boundary lines of such El Sordo Grant until the time of the entry of the judgment of the Court of Civil Appeals in above case of Horne v. Moody. I am also familiar with the Fowler and Rankin Subdivision of said El Sordo Grant, of part of Las Vivoritas Grant, and other grants, which subdivision was made in the year 1907. It is apparent from such subdivision of El Sordo Grant that the East boundary lines of Sections 1, 12, 13, and 24 thereof coincide with the East boundary line of said grant, as recognized in said Allen cases and as located

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by the Trial Court in above case of Horne v. Moody. It is further apparent from such subdivision that the West boundary lines of Sections 13 and 14 of Vivoritas Grant, as per such Fowler and Rankin Subdivision, (each of which are fractional Sections instead of whole Sections) coincide with the East boundary lines of said Sections 13 and 24 of El Sordo Grant as per such subdivision; obviously because of the belief that the <sup>East</sup> boundary line of said Sections 13 and 24 of El Sordo Grant, as per such subdivision, constituted the correct East boundary line of said Sordo Grant. It therefore appears to me that the location of the boundary lines of said Sordo and Vivoritas Grants by the Court of Civil Appeals in the case of Horne v. Moody does not operate to change the location of Sections 1, 2, 3, 10, 11, and 12, 13, 14, 15, 23 and 24 of El Sordo Grant, as per such Fowler & Rankin Subdivision; and that the only effect that such judgment of the Court of Civil Appeals had on above Sections of such Fowler & Rankin Subdivision of El Sordo Grant is to cut off rectangular strips of 308.9 varas each (of 104 acres each) off of the North sides of Sections 1, 2 and 3 and to leave a strip of land off of the East side of El Sordo Grant, as located by the Court of Civil Appeals in the Horne v. Moody case, not covered by such Fowler and Rankin Subdivision, 339.7 acres of such strip being situated in pastures of said Moody. However 165.14 acres of such ~~339.74 acres of such~~ 339.7 acres are ~~also~~ situated in the Vivoritas Grant.

17. That north of the North boundary line of El Sordo Grant, as located by the Court of Civil Appeals in such Horne case, and in the Moody pastures, there are 791.55 acres of said Las Vivoritas Grant.

WITNESS my hand and seal of office, this the 29 day of September, 1941.

(Seal)

*C. A. Douglas*

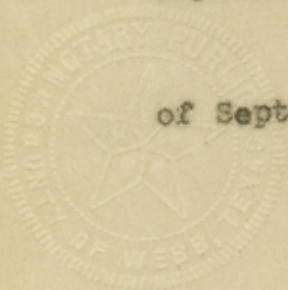
C. A. Douglas

State Licensed Land Surveyor.

STATE OF TEXAS, ↓  
COUNTY OF WEBB. ↓

BEFORE ME, the undersigned authority, on this day personally appeared C. A. Douglas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office, this the 29<sup>th</sup> day of September, 1941.

  
D. J. Terrell  
Notary Public, Webb County, Texas.

The original of the foregoing instrument was filed for record with the County Clerk of Jim Hogg County on September 29, 1941, and appears of record in Volume 23, pages 497-504 of the Jim Hogg County Deed Records.

Sketch File No. 9

JIM HOGG County

SURVEYORS REPORT

C. A. Douglas

Filed November 26 1941

Bascom Giles, Com'r

J. Woodland

File Clerk

Descriptive: About 5½ miles

South of Hebronville

(Harne vs. Moody)

12-11-41  
J. W.