

SURVEYOR'S REPORT

Block 2

Denison & Pacific Railway Company Surveys  
Presidio County, Texas

Located about 38 miles S 59° W from  
Marfa, the County Seat.

Surveyor's Certificate

I, Malcom L. Bamburg, Licensed State Land Surveyor, do hereby certify that I have prepared the report herein containing pages numbered 1 through 42 inclusive. This report includes the Exhibits listed on pages 4 and 5 and said Exhibits are a part hereof. Witness my hand and seal on this the 8th day of October, 1993.

*Malcom L. Bamburg*  
Malcom L. Bamburg  
Licensed State Land Surveyor

File No. Sketch File 116  
Presidio County  
D. & P. Ry. Co., Blk 2  
Filed December 7 19 93  
By GARRY MAURO, Com'r  
Douglas Howard  
See Rld. Sks. 131A, 131B

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EXHIBITS

<u>Exhibit</u>	<u>Remarks</u>
"A"	1" = 7500 vrs.: 1975 GLO Presidio County Map showing area covered in Report and location of PSF Lands.
"B"	1" = 6000 vrs.: Dan Buckley's 1880 plat of survey of D & P, Blocks 1 and 2.
"C"	1" = 6000 vrs.: E. G. Gleim's sketch showing surveys between Presidio and GH & SA 12.
"C-1"	1" = 6000 vrs.: Presidio County Rolled Sketch No. 13
"D"	1" = 3000 & 6000 vrs.: Sketch showing discrepancies in locations of original surveys.
"E"	1" = 6000 vrs.: L. E. Edwards' 1875 map showing locations of GH & SA Blocks.
"F"	1" = 6000 vrs.: Portion of GLO Presidio County map bearing date of 1875.
"H-1"	1" = 6000 vrs.: Shows location of original surveys made prior to 1880.
"H-2"	1" = 6000 vrs.: Same as above with D & P Blocks 1 & 2 added per Buckley's map.
"H-3"	1" = 6000 vrs.: Same as "H-2" except D & P 2 is constructed from the Southwest corner of GH & SA, Block 12.
"H-4"	1" = 6000 vrs.: Same as "H-2" except D & P 2 is constructed from Southeast corner of Section 21, GH & SA, Block 6.

- "H-5" 1" = 6000 vrs.: Same as "H-2", less abandoned surveys in D & P 2.
- "H-6" 1" = 6000 vrs.: Same as "H-5" with resurveys added.
- "I" 1" = 400 vrs.: Sketch showing different locations of Northwest corner of D & P 2 according to several surveyors using various ties.
- "J" Copy of Sketch File 52 with F. W. Cook's Report and survey of Hot Spring.
- "K" 1" = 6000 vrs.: GLO 1911 Presidio County Map.
- "L" 1" = 6000 vrs.: Reavis' 1889 map of H. & T. C. Ry. Co., Blocks 6, 7 & 8.
- "L-1" 1" = 6000 vrs.: Mabry's map of 1889 Resurvey of GH & SA, Blocks 5 & 6.
- "M" 1" = 6000 vrs.: Copy of R. S. Dod's map from Logan vs. Lee.
- "N" 1" = 500 ft.: Copy of E. M. Gleim's map from Logan vs. Lee.
- "P" Surveyor's Report and Plat of Survey in area of Hadden Surveys.

## INTRODUCTION

The following report, including exhibits, discusses the location of Block 2 of the Denison and Pacific Railway Company surveys ( D & P 2 ) in Presidio County. Construction of this block of surveys by ties of various surveyors within the past 110 years will yield at least 20 different locations. Any particular location depends on which surveyor's tie or Court Decree that you wish to respect.

The purpose of this report is to determine which of the above locations, if any, represents the original surveyors's location. The original surveyor's location, whether made on the ground or in the office, is at the place where he intended it to be. The intent being where he placed the survey on the ground as shown by his monuments; or, if an office survey, the intent as shown by his field notes and maps when viewed in the light of the surrounding evidence.

The intent of the original surveyor in the case of D & P 2, coupled with subsequent surveys and a court judgement, will test any present day surveyor's ability to establish the original surveyor's footsteps. The original field notes have 3 adjoiner calls that create a discrepancy of  $3\frac{1}{2}$  miles. As will be shown by this report and exhibits, the  $3\frac{1}{2}$  miles discrepancy probably should be considered as only a minor problem.

An investigation of the GLO land files, working sketches, rolled sketches, and sketch files, together with county records and private surveyors records covering an area of approximately 1,200 square miles, was necessary for preparation of this report. In addition, approximately 100 miles of field traverses have been surveyed by this office. Our area of interest is as outlined on the current Presidio County Map that accompanies this report as "Exhibit A". Also shown is Permanent School Fund land still owned by the state.

The location of D & P 2 can be discussed only after one is fully aware of the history of surveys and events leading up to and including the D & P surveys. The surveys and events that control, or could possibly control, the location of D & P 2 are listed in chronological order, followed by in depth discussion of the primary possibility for the correct location of this block of surveys.

HISTORY OF SURVEYS AND EVENTS 1854-1881

<u>Date</u>	<u>Survey or Event</u>	<u>Surveyor</u>
1854	Astronomical Point	Major Emory
May 1855	Ralph Wright 13	Stevenson Archer
Aug 1855	Wm. Hadden 17 & 18	Stevenson Archer
Aug 1855	J. Hardiman 21 & 22	Stevenson Archer
Apr 1856	Ralph Wright 13	Stevenson Archer
May 1857	M. Tarin 33 & 34	Stevenson Archer
Jun 1862	M. Curbier 186 & 187	Jarvis Hubbell
Sep 1869	L. Fuentes (3-6430)	C. N. Comly
Apr 1872	L. Fuentes (3-6828)	C. N. Comly
Aug 1873	T & P 1 River Surveys	L. E. Edwards
Aug 1873	T & P 2 River Surveys	L. E. Edwards
Nov 1873	294-298 River Surveys	T. C. Nelson
Dec 1874	H & TC 4	L. E. Edwards
Feb 1875	294-298 River Surveys	A. H. French
Mar 1875	J. Poitevent 319 & 320	J. W. Tays
May 1875	H & TC 7	J. W. Tays
May 1875	H & TC 8	J. W. Tays
May 1875	AB & M 327 & 328	J. W. Tays
May 1875	H & TC 6	J. W. Tays
May 1875	B & SF 323 & 324	J. W. Tays
Jun 1875	GH & SA 5	L. E. Edwards
Jun 1875	GH & SA 6	L. E. Edwards
Jun 1875	GH & SA 7	L. E. Edwards

Sep 1875	GH & SA 12	L. E. Edwards
Jan 1876	H & TC 7 (Sec. 9 & 10)	A. H. French
Nov 1876	L. Fuentes (3-7256)	G. H. Brooks
Jan 1878	GH & SA 23	C. E. Miner
Jun 1880	D & P 1	Dan Buckley
Jun 1880	D & P 2	Dan Buckley
Jun 1880	D & P 3	Dan Buckley
Jan 1881	Stephen Jett 999 (B-1853)	Archibald Bogle
Jan 1881	T.C.Ry.Co.491 & 492(S-32801)	Archibald Bogle
Mar 1881	Spencer #335 (P-3130)	Frank Gildart
May 1881	T.C.Ry.Co.585 & 586(S-35075)	Archibald Bogle
Jul 1881	D & P 1 & 2 Corr. Surs.	W. J. Glenn
Aug 1881	Glenn's Plat in S-31329	Gleim & Glenn
Aug 1881	D & P 2 Abandon certain surs. GLO	
Aug 1881	D&P 2 Corr. to Buckley's F.N. E. G. Gleim	

Original Location of D & P 2

An application for survey of D & P certificates was filed with T. O. Murphy, County Surveyor of Presidio County, on December 23, 1879. The area to be surveyed was defined as follows:

".... all that vacant land commencing at Survey No. 1 made for the Texas & Pacific Railroad Co. thence East 8 miles then N. 11 miles to the S. E. corner of Block No. 23 G. H. & S. A. RR. thence N. W. taking in all the vacant land between Block Nos. 5, 6, 12, & 23 of the G. H. & S. A. and Nos. 6, 7, & 8 of the H. & T. C. RR. Co. & No. 1 of the T. & P. RR. thence N. E. S. or W. so as to fill the amount of 457 certificates."

A copy of this application, along with the field notes and map, was filed in the GLO on August 4, 1880.



Dan Buckley, Deputy Surveyor, under the direction of T. O. Murphy, County Surveyor, located 3 blocks of surveys in our immediate area for the Denison and Pacific Railway Company during the month of June, 1880. A thorough discussion of these blocks of surveys would require a report for each block. Therefore, this discussion is limited to the location of Block 2.

D & P Block 2, as originally surveyed by Dan Buckley, contained 166 sections and field notes dated June 17, 1880, were filed in the GLO on August 4, 1880, as Bexar Scrip 31410 through Bexar Scrip 31492. All field notes call for stone mounds or stone corners as monuments. In addition to the standard Surveyor's Certificate, he further certifies "and that the Survey was made in the field". Subsequently, several changes were made to some of Buckley's original field notes by others. These changes are discussed later in this report.

A map showing Buckley's location of Blocks 1 and 2 is filed in Bexar Scrip 31324 of the records of the General Land Office, a copy of which accompanies this report as "Exhibit B". Although the map is not signed or dated, it was filed in the GLO on the same day that the field notes were filed. Therefore, I feel that it is safe to assume that the map was prepared by the original surveyor. This map is a depiction of his field notes, his arrangement of the surveys and other survey locations he was aware of at the time of his survey. Buckley's map will be referred to several times throughout this report and should be readily available at all times. I feel that this map is very important as evidence in deciding his TRUE INTENT in the location of D & P Block 2.

#### D & P ORIGINAL FIELD NOTES - ADJOINER CALLS

The northwest corner of Section 1 calls to begin at the southwest corner of Section 130, Block 12, G. H. & S. A. This call would make the north line of D & P 2 common with the south lines of G. H. & S. A. Blocks 12 and 7 for 11 miles to the east. This relationship is shown on Buckley's map also. Not called for in the field notes, but shown in red on the map, is a bearing and distance of N 23 E 10,500 varas from Russell's Mill. As of the date of this report, we have been unable to locate the site of Russell's Mill.

The most westerly southwest corner of Section 155 calls to begin 552 varas north from the southeast corner of Section No. 121, Block 6, G. H. & S. A. RR. The map also shows Section 121; however, it is apparent that the actual Section number is 21. Section 18 is shown in its appropriate location in Block 6, G. H. & S. A. RR.

The field notes of Section 166 call to surround the William Hadden Surveys Nos. 17 and 18. Although Section 166 does not call to adjoin the south line of H. & T. C., Block 6 and G. H. & S. A., Block 5, calculations indicate that, by Buckley's measurements, he is only 2.2 varas south of said Block lines.

The field notes of Section 147, D. & P. 2, call for its northwest corner to be 700 varas from the southeast corner of Section 131, same block. Although the field notes do not indicate which direction from the southeast corner of Section 131 the corner bears, the map shows it to the south. This 700 vara offset is an important factor in determining the north-south location of D & P 2 in its relation to G. H. & S. A., Block 5, as Surveyed by L.E. Edwards.

#### D & P 2 ORIGINAL FIELD NOTES - TOPOGRAPHY CALLS

The field notes for the original locations of Section 27, 28, 40, 41, 42, 43, 45, and 46 call to cross Arroyo de Agua Caliente, now called Hot Springs Creek. This creek is also shown on Buckley's map as called for in his field notes. It is interesting to note that the present junction of Hot Springs Creek and the Rio Grande River, in relation to Section 1, Block 2, T. P. Ry. Co., is about as shown on Buckley's map.

The field notes for the original locations of Sections 104, 114, 115, 125, 136, 137, 139, and 140 have calls for crossing Arroyo de Cienega Grande. The map agrees with the field notes.

No other topo calls are made on any of the original survey field notes.

#### D & P 2 - ABANDONED LOCATIONS

The file jackets of several sections of D & P 2 were marked "Abandoned" by the GLO between August 3 & 5, 1881. Sections 23, 24, 45, 46, 65 through 68 and 87 through 90 were abandoned due to supposed conflict with the T. & P. blocks along the river. Sections 107 through 166 were abandoned due to supposed conflict with G. H. & S. A. Ry. Co. Block 6.

D & P 2 - CORRECTIONS TO ORIGINAL FIELD NOTES

Certificates of Correction for several of the surveys of D & P 2 were filed in the General Land Office on August 22, 1881. A sketch (see "Exhibit C") reflecting these changes was filed the same date in Bexar S-31329. These certificates and sketch were filed by E. G. Gleim, County Surveyor, authorizing the GLO to make the same changes to Buckley's field notes. The changes, effected by "red lining" Buckley's original notes, pertinent to the location of D & P 2 are as follows:

1. For Survey No. 1 to read "beginning 14 miles north and 20 miles west from the stone corner, being the SW corner of Block No. 5, G. H. & S. A. RR. Co. and the S. E. Corner of Block No. 6, H. & T. C. RR. Co., which stone corner stands N 40 E 1657 varas from the west corner of Wm. Hadden Survey No. 17."

2. For Survey No. 11 "added to the end of the second call: to the N. W. Corner of Survey No. 79 in Block 5, G. H. & S. A. Ry. Co., and again added to the third call: to the S. W. corner of said Survey No. 79." It should be noted that no changes were made to the field notes of Sections 12, 33, 34, 55, 56, 77, 78, 99, or 100. They do not call to adjoin with G. H. & S. A. Block 5.

3. Minor corrections to Sections 25, 47, 69, and 92 to agree with other changes.

4. For Survey No. 44 "Begin at the S. W. corner of Survey No. 25 instead of No. 43". This moves Survey No. 44 one mile north and one mile east of Buckley's original position and replaces Section 24.

5. For Survey No. 91 "Beginning at the S. E. Corner of survey No. 86, thence South 1900 vrs., thence East 1900 vrs., thence South 950 vrs., thence West 2534 vrs., thence North 2850 vrs., thence East 634 vrs. to the beginning." In this instance, Mr. Gleim has taken Buckley's original field notes of a 1900 vara square survey and changed it to an ell shaped survey with 6 sides.

6. The sketch submitted by Gleim along with his corrections contemplates a totally different location for the Buckley surveys than shown by Buckley on his own sketch.

PRIOR SURVEYS IN AREA OF D & P BLOCK 2

Dan Buckley surveyed D & P Blocks 1 & 2 in June of 1880. At that time, he was aware of the following surveys:

- Astronomical Point at Presidio

- Fuentes Survey (3-7256)
- T. & P. River Surveys
- River Surveys 294-298
- H. & T. C. - Blocks 6, 7, and 8
- G. H. & S. A. - Blocks 5, 6, 7, 12, and 23
- The Wm. Hadden Surveys
- M. Tarin Surveys #33 and #34

The apparent problems in this area , as far as Buckley's location of D & P 2 is concerned, were caused, at least in part by discrepancies between the reported and the actual relationships between the various existing surveys. A sketch showing these discrepancies is attached as "Exhibit D". The two main problems that affected the location of D & P 2 were these distance discrepancies between G. H. & S. A. Blocks 7 & 12 and G. H. & S. A. Block 5 and between the Wm. Hadden Surveys and the M. Tarin Survey #33.

L. E. Edwards map of 1875 ( R. S. 7 - see "Exhibit E") indicates by scaled distance that the southwest corner of G. H. & S. A. Block 12 bears 1,500 varas north and 18,800 varas west from the northwest corner of G. H. & S. A. Block 5. Buckley's map between the same corners, scales 900 varas north and 20,900 varas west. It appears that the more likely relation is about 5,400 varas north and 15,000 varas west. Buckley apparently thought that the north & south distance was only 700 varas and consequently created the 700 vara north shift to cover the area. Note that his map is not exactly to scale.

Edwards' field notes and map do not give ties between the above G. H. & S. A. Blocks. The cause of this problem is that G. H. & S. A. Blocks 7 & 12 are tied to surveys that were built from Fort Davis, and G. H. & S. A. Block 5 is tied to surveys built from Presidio. I am of the opinion that Edwards did not survey these Blocks on the ground. Conversely, I believe that he was on the ground in locating T. & P. Blocks 1 & 2 along the river.

The second problem is the relationship of the southeast corner of the M. Tarin Survey No. 33 to the west corner of the Wm. Hadden Survey No. 17. The different distances from the southeast corner of the M. Tarin Survey No. 33 to the west corner of the Wm. Hadden Survey No. 17 are shown below.

- 1857 - From Tarin & Hadden F. N. calls - 8,122 v. E. & 12,681 v. N.
- 1875 - L. E. Edwards Map (R. S. 7 scaled) - 6,900 v. E. & 10,300 v. N.
- 1880 - Combined calls of H & TC 7, GH & SA 6 & D & P 2 - 7,770 v. E. & 12,446 v. N.
- 1881 - W. J. Glenn's Map (S-31329) - 4,168 v. E. & 7,116 v. N.
- 1882 - Glenn, Gano & Gleim Map (R. S. 13) Scaled - 4,100 v. E. & 7,100 v. N.
- 1883 - S. A. Thompson (SK File 14) - 4,681 v. E. & 8,320 v. N.
- 1889 - Combine Reavis & Mabry - 4,642 v. E. & 8,236 v. N.
- 1992 - Bamberg - Surveyed - 4,470 v. E. & 8,290 v. N.

It is apparent, based on the 1857 calls, that Buckley thought there was sufficient vacant land to place the 166 sections of D & P 2 as he did. Subsequent surveyors have shown that there was little, if any, space left for Buckley's Sections 131 through 166. Regardless, we must determine Buckley's INTENT in 1880 when he wrote the field notes and prepared his map.

An old 1875 General Land Office map in the Archives and Records Division of the GLO shows D & P 2 as shown on Buckley's map. A portion of the map is included with this report as "Exhibit F".

Archibald Bogle surveyed the Stephen Jett 999 (B-1853) and T. C. Ry. Co. 491 & 492 (S-32801) in January of 1881. It is apparent that Bogle used Buckley's location of surveys in this area. The T. C. Ry. Co. locations were abandoned June 8, 1882 due to supposed conflict with D & P 2, Sections 120 through 123.

CONSTRUCTION OF D & P 2 - 1880 METHOD

The "1880 Method" of constructing D & P 2 is based only on existing surveys at the time of Buckley's Surveys. THIS CONSTRUCTION USES PRESENT DAY KNOWLEDGE OF EXISTING CORNERS. The locations of the corners are shown on "Exhibit H-1", which serves as the base for all H series exhibits.

There was already a problem with existing surveys prior to Buckley's survey as can be seen on "Exhibit H-1". Edwards has a slight conflict with his own surveys of G. H. & S. A. Blocks 5 and 6. This conflict is due to not knowing the correct distance between the Wm. Hadden surveys and the M. Tarin Survey No. 33. Also, note that C. E. Miner's location of G. H. & S. A. Block 23 conflicts with H. & T. C. Block 8, the Hadden Surveys, and G. H. & S. A. Blocks 5 and 6. This is due to not knowing the correct distances between the Wm. Hadden Surveys, the M. Tarin Survey, and A. B. & M. Survey No. 327.

The Wm. Hadden and M. Tarin Surveys were probably the only surveys located on the ground in the immediate vicinity of D. & P. 2. I am of the opinion that the Wm. Hadden Surveys are the most reliable call in all of Buckley's field notes. Even so, he does not have a call for the offset distance between Sections 150 and 157. It is the neglect of this call that forces us to depend on Buckley's map to determine his intent.

"Exhibit H-2" is the same as H-1 except that D & P Blocks 1 & 2 have been added. D & P 1 is constructed call from the Fuentes Survey (3-7256). D & P 2 is constructed call from the Hadden Surveys and Buckley's relation to G. H. & S. A. Block 5, as shown on his map.

"Exhibit H-3" shows D & P 2 constructed from the Southwest corner of G. H. & S. A. Block 12. "Exhibit H-4" shows D & P 2 constructed from the Southeast corner of Section 21, G. H. & S. A. Block 6. "Exhibit H-5" is the same as "Exhibit H-2", less the abandoned surveys.

A study of the H Exhibits, based on the evidence up to this point, indicates that D & P 2 as constructed on "Exhibit H-2" is the most logical and the only correct way to establish BUCKLEY'S FOOTSTEPS AND/OR INTENT.

Any attempt to locate D & P 2 based ONLY on the evidence presented and discussed up to this point could be misleading without reviewing the evidence and events from 1881 to 1991. Therefore, this 110 years of surveys and events is listed in chronological order as follows:

DISCUSSION of SURVEYS & EVENTS SUBSEQUENT TO 1880

HISTORY OF SURVEYS AND EVENTS 1881-1991

<u>Date</u>	<u>Survey or Event</u>	<u>Surveyor</u>
Oct 1881	T. C. Ry. Co. 751 (S-37350)	W. J. Glenn
Oct 1881	T. C. RY. Co. WJG 2	W. J. Glenn
Feb 1882	Wm. Tinnin 775 & 776	W. J. Glenn
Feb 1882	Martha A. Martin 779 & 780	W. J. Glenn
Mar 1882	T. C. Ry. Co.- WJG 7	W. J. Glenn
Mar 1882	Tex. Mex. Block 1	W. J. Glenn
Mar 1882	T. C. Ry. Co. - WJG 9	W. J. Glenn
Jun 1882	Tex. Mex. Block 2	W. J. Glenn
Jun 1882	Tex. Mex. Block 3	W. J. Glenn
Jun 1882	Tex. Mex. Block 5	W. J. Glenn
Nov 1882	Rolled Sketch 13	Glenn & Gano
Dec 1882	#585 (S-35075) Correction	S. A. Thompson
Dec 1882	Martha A. Martin 779 (Cor'n.)	S. A. Thompson
May 1883	Connection from 33 to 327	S. A. Thompson
Jun 1883	S. M. Hodges 16 (S-51246)	Will H. Bonnell
Jun 1883	Stephen Jett 495-Correction	S. A. Thompson
Jun 1883	Jane Neuland 1309 & 12	S. A. Thompson
Feb 1884	T. C. Ry. Co. 583 & 584	S. A. Thompson
Jun 1884	S. M. Hodges 1333 (S-51246)	S. A. Thompson
Sep 1884	S. M. Hodges 16 (S-51246)	Will H. Bonnell

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Oct 1884	T & P 1 River - Resurvey	S. A. Thompson
Oct 1884	T & P 2 River - Sec. 3 - 19, etc.	S. A. Thompson
Nov 1884	CCSD & RGNG 1365 & 1366	S. A. Thompson
Oct 1885	Connection from 33 to 319, etc	Gage & Thompson
May 1886	T. C. Ry. Co. 1415 & 1416	S. A. Thompson
Jul 1886	G. H. Brooks (P-6345)	S. A. Thompson
Jul 1886	G. H. Brooks 345	S. A. Thompson
Jul 1886	T. C. Ry. Co. 583 & 584	S. A. Thompson
Jul 1886	CT & MC 1409	S. A. Thompson
Jul 1886	T & P 2 River- Sec. 1 & 2	S. A. Thompson
Jul 1886	T & P 1 River- Sec. 59 & 60	S. A. Thompson
Aug 1886	S. M. Hodges 1333 (S-51246)	S. A. Thompson
Aug 1886	CT & MC 1409 & 1410	S. A. Thompson
Jan 1887	GH & SA 23 - Corrections	J.R. Marmion
Mar 1889	H & TC 4 - Resurvey	W. S. Mabry
Mar 1889	H & TC 8 - Resurvey	D. L. Reavis
Apr 1889	H & TC 7 - Resurvey	D. L. Reavis
Apr 1889	H & TC 6 - Resurvey	D. L. Reavis
Apr 1889	GH & SA 5 - Resurvey	W. S. Mabry
May 1889	GH & SA 6 - Resurvey	W. S. Mabry
May 1889	GH & SA 12 - Resurvey	J. B. Ammerman
May 1889	GH & SA 23 - Resurvey	W. S. Mabry
Jun 1889	GH & SA 7 - Resurvey	J. B. Ammerman
Jun 1889	Conn. WJG 7 and GH & SA 7	J. B. Ammerman
Aug 1889	Caroline E. Ward 1462 & 1463	J. R. Marmion

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Jun 1890	Connection D & P 1 to GH & SA 12	Paul Hesse
Jul 1890	F. N. & Conn. - Franks 1468	J. R. Marmion
Jul 1890	Tex. Mex. 5 - Resurvey	Paul Hesse
Oct 1890	Tex. Mex. 2 - Resurvey	Paul Hesse
Nov 1890	#1468 Conn. & Sketches	J. R. Marmion
Dec 1890	Corr. F. N. Henry Franks	J. R. Marmion
Sep 1893	State Vs. GH & SA	Judgement
Feb 1904	Tex. Mex. 2 - Conn. & Sketch	H. W. Brooks
Sep 1907	Tex. Mex. 1 - Resurvey	Brooks & McCamant
Sep 1907	Tex. Mex. 2 - Resurvey	Brooks & McCamant
Sep 1907	Tex. Mex. 5 - Resurvey	G. F. Brooks
Oct 1907	Tex. Mex. 2 - Map	Brooks & McCamant
May 1911	S. M. Hodges 16 (S-51246) Cor'n.	T. S. Pickens
Jan 1914	TM 5 - GLO Accepts location	G. F. Brooks
1914-1915	D & P 2 - Hot Springs	O. H. Hector
Sep 1917	TM 2 - GLO Accepts Location	Brooks & McCamant
Feb 1920	D & P 2 - Sec. 50	F. W. Cook
Mar 1920	D & P 2 - Hot Springs	F. W. Cook
Jul 1921	S.M.Hodges 1333 - Survey & Report	F. W. Cook
Sep 1921	D & P 2 - SE 1/4 of Sec. 26	W. B. Bean
Apr 1922	D & P 2 - Sec 41	R. S. Dod
Feb 1923	D & P 2- Logan vs. Lee Dist. Ct.	Bean, Dod, et al
Mar 1923	T. C. Ry. (S-37333) Sketch	R. S. Dod
Dec 1923	D & P 2 Logan v. Lee-CCA, El Paso	Bean, Dod, et al
Nov 1927	D & P 2 and TM 1 Report	F. W. Cook

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Jul 1928	Vasquez vs. Fuller	Dist. Court
Apr 1929	D & P 2 - Sec 4 & 26	J. P. Dod
Dec 1935	AB & M- 37.1 ac. in #328	F. W. Cook
May 1938	SF-14030 - Sketch & Report	Bill Burson
Aug 1938	SF - 15315	J. P. Dod
Sep 1938	Tex. Mex. 1 - Sec 5 & 6	Bill Burson
Sep 1938	WJG 7 & 9 and GH & SA 5	J. P. Dod
Feb 1947	D & P 2 - N 1/2 & SW 1/4 Sec.26	Robert C. Withers
Aug 1947	D & P 2 - Sec. 108 & 110	John Stovell
Jan 1949	T & P 2 River - Sec. 11	Nick M. Thee
Jan 1949	AB & M - S 1/2 of #328	John Stovell
Mar 1951	SF - 15248 - Sketch & Report	J. P. Dod
Mar 1951	SF - 15284 - Survey	J. P. Dod
Sep 1951	SF - 15289	Nick M. Thee
Nov 1951	SF - 15315 - Resurvey	J. P. Dod
Jan 1955	Sketch around Hadden 17 & 18	Herman Forbes
Apr 1964	D & P 2 N 1/2 of NW 1/4 Sec.44	J. L. Corbin
1964-1965	Sketch in area of NWc D & P 2	J. L. Corbin
Jan 1968	AB & M - 282.9 ac in #328	J. L. Corbin
Jun 1982	Sec. 1 & 22, D&P 2	J.P. Moore
Jul 1984	D & P 2 - Sec. 44	Elbert F. Bassham
Nov 1984	Parks & Wildlife River Survey	W. C. Wilson Jr.
Jun 1985	Tex. Mex. 1 - Sec. 29 - Plat	Elbert F. Bassham
1988-93	Area Survey	Malcom L. Bamburg

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### Surveys by W. J. GLENN

W. J. Glenn, Deputy Surveyor, surveyed the T. C. Ry. Co. Surveys 751 & 752 and Block WJG-2 in October, 1881. These surveys are located easterly of the Hadden Surveys. WJG-2 wraps around the southeast corner of GH & SA 5. Glenn also located the Tinnin 775 & 776 and the Martin 779 & 780 in February, 1882.

The importance of the above surveys is that subsequent surveys made by Glenn are tied to them. It is apparent that Glenn located these surveys, Block WJG-9, Block WJG-7, and TM Block 1 from the Hadden Survey. He called to adjoin the east and north lines of GH & SA 5 and the north line of D & P 2. However, it was shown later that, when Mabry located GH & SA 5 in 1889, he was not in the same location as Glenn. See SF-15315, SF-15248, and SF-15284.

Glenn was definitely on the ground when he surveyed WJG-9 and the eastern part of WJG-7. Several of his corners were identified when vacancies were put in between his work and Mabry's location of GH & SA 5. The western-most identified Glenn corner in Block WJG-7 is the northwest corner of Section 16. This corner was found by J. P. Dod in 1938 during his survey of a vacancy between WJG-7 and GH & SA 5.

The Texas and Mexican Ry. Co. Blocks 2 and 5, as surveyed by Glenn in June, 1882, are tied to TM 1, D & P 2, and the river surveys. It appears that Glenn may not have been on the ground when he established the Tex.- Mex. Surveys and the Tinnin Surveys. This becomes apparent when trying to map all of his work in this area.

According to Glenn's corrected field notes in 1881 for the Southern part of D & P 1 and his survey of TM 3 and TM 5 in 1882, the northwest corner of D & P 2 is 59,080 varas north and 40,248 varas west of the southwest corner of the L. Fuentes Survey (3-7256).

This and other locations of the northwest corner of D & P 2, according to Glenn's own calls, are shown on "Exhibit I".

### Surveys by S. A. Thompson

S. A. Thompson located the Stephen Jett Survey # 495 in June of 1883 and it was patented on his field notes. It appears that he attempted to locate the northwest corner of GH & SA 6 by course and distance from the southeast corner of the M. Tarin #33 AND the southwest corner of GH & SA 5 by course and distance from the west corner of the Wm. Hadden #17. Thompson's location of the southwest corner of GH & SA 5 is approximately N 35° E 592 varas from Mabry's 1889 location of same. This relationship is shown on "Exhibit H-6".

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The T & P Blocks 1 and 2 along the river were resurveyed by Murray Harris in 1884. S. A. Thompson changed several of the section numbers called for by Harris and wrote the field notes and signed them. In July of 1886 Thompson placed Sections 1 & 2, T & P 2, in their present position.

It does not appear that Harris or Thompson recovered any of L. E. Edwards' corners called for in his 1873 survey of T & P Block 2. However, based on Edwards' calls to Capote Creek, Thompson's location of the lower corner of Block 2 is very near to Edwards' location. The field notes of TM 2 & TM 5 connect T & P 2 to D & P 2.

Thompson placed several surveys between T & P 2 and #294 in July of 1886. His map in Bexar S-52037 shows about 1,300 varas more space than the original field notes of T & P 2 and #294 call for. If Thompson, in fact, found an original corner of #294, it appears that he may have found the line corner 930 vrs from the river rather than the river corner.

#### Surveys by Reavis, Mabry, & Ammerman

Reavis, Mabry, and Ammerman, as State Surveyors, resurveyed the H & TC and GH & SA Blocks in this area. These resurveys were done on the ground in 1889 and several of their corners have been recovered.

There seems to be no question about where these resurveys are located on the ground. The only question might be: Are the resurvey corners in the same location as intended and reserved by the original surveyor?

The only resurveys that could possibly control the location of D & P 2 are GH & SA Blocks 5, 6 & 12. It is important to note that none of these resurveys call to adjoin TM 1, the Tinnin Surveys, WJG-7, or D & P 2.

Logan, et al, vs. Lee held that it was proper to use the northwest corner of GH & SA 5 as located by Mabry in locating the line between Surveys No. 26 and 41, D & P 2. This case is discussed at great length later on in this report. The court held that it was not shown that Mabry moved GH & SA 5 from Edwards' original location and this was true based on the evidence presented in the trial.

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*Counter 34861*

From recent surveys on the ground and verifying information provided by other Licensed State Land Surveyors we now have coordinates on the southwest corner of Section 1, GH & SA 5 and Mabry's location of the northwest and southwest corners of GH & SA 5. Mabry's southwest corner of GH & SA 5 is 272 varas south and 38 varas west of Edwards location. Thompson's southwest corner of GH & SA 5 is about 200 varas north and 300 varas east of Edwards' location.

The northwest corner of GH & SA 5 as established by Mabry is 284 varas south and 458 varas west of Edwards' location. Glenn's northwest corner of GH & SA 5, when located call from his northwest corner of Section 16, WJG-7, would be about 200 varas north and 100 varas east of Edwards location.

Mabry's distance measurements are fairly accurate. However, it can be shown that he was running approximately 1 degree to the left of true north.

#### Surveys by Paul Hesse

In 1890 Paul Hesse, State Surveyor, ran a connecting line from near Presidio to Capote Creek in GH & SA 12. His connection, covering approximately 90 miles, began at the southwest corner of the L. Fuentes Survey (3-7256). He then located the east line of TM 3 and TM 5 according to W. J. Glenn's field notes of 1882, up to the northeast corner of Section 4, TM 5, same being called by Glenn as the northwest corner of Section 44, D & P 2. THIS IS THE PATENTED AND OCCUPIED NORTHWEST CORNER OF THE N 1/2 OF THE NW 1/4 OF SECTION 44, D & P BLOCK 2, AND WAS SET BY HESSE.

Hesse then made a connection from the above corner to Thompson's upper corner of Section 1, T & P 2, and on to Thompson's lower corner of Section 11, T & P 2. He then continued on to the northeast corner of Section 92, GH & SA 12, where he terminated his connection on August 10, 1890.

Corrected field notes prepared by Hesse for TM 2 and TM 5 dated July, 1890, were filed in the GLO on March 10, 1891. It appears that this was an office survey based on his connections as there are no calls for monuments or bearings except at the northwest corner of Section 20, TM 2.

Hesse's corrected field notes, based on his tie to T & P 2, place the northwest corner of Section 44, D & P 2, 974 varas north and 2,309 varas east of Glenn's call from Presidio.

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State vs. GH & SA

Patents were issued on the odd numbered surveys in Blocks 5, 7, and 12, Galveston, Harrisburg and San Antonio Railway Company in 1890. These patents were canceled and the railroad surveys recovered by the State in a lawsuit styled: The State of Texas vs. The Galveston, Harrisburg and San Antonio Railway Company. Judgement was rendered on September 14, 1893, in the District Court of Brewster County under Cause No. 101. A copy of the judgement is filed in the GLO as Brewster County Rolled Sketch No. 100 (Flat Folder). The recovered Railroad Surveys were classified as School Land and repatented accordingly.

Surveys by Brooks & McCamant

G. F. Brooks and R. L. McCamant, Deputy Surveyors, resurveyed TM 1 and TM 2 in 1907. Also, that same year, G. F. Brooks resurveyed TM 5. According to the field notes and map it appears that Brooks is in the same north-south position as Hesse along the west line of D & P 2. However, Brooks indicates 1,834 varas less space than Hesse between the river surveys and D & P 2.

According to Brooks' map of his resurvey of TM 5 in 1907, he is tied to the east corner of the J. W. Spencer Survey #335 (P-3130) and the southwest corner of H & TC Block 7. According to the Brooks & McCamant map of their resurvey of TM 2 in 1907, they are tied to the T & P 2 river surveys and the northwest corner of Section 125, Block 12, GH & SA. Construction of the northwest corner of D & P 2 from the various corners used by Brooks & McCamant is shown on "Exhibit I". Note the different locations.

On January 13, 1914, J. T. Robison, Commissioner of the General Land Office, approved Brooks' 1907 resurvey of TM 5. He also approved Brooks' resurvey of TM 2 on September 25, 1917. Partial quote of approval: "... as represented hereon have been approved and are so recognized by this office....".

Surveys by F. W. Cook

F. W. Cook, Presidio County Surveyor, made a survey for the Tootle Estate on March 22, 1920, to locate the position of the Hot Springs in Block 2, D. & P. Ry. Co. Cook's report and plat, along with other information, are filed in Presidio County Sketch File 52. A copy of this file is attached as "Exhibit J". Cook states that he found 3 of Buckley's corners.

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The letter dated January 21, 1921, from the Tootle Estate to the State Surveyor stated that they were concerned about the location of the Hot Springs. I would say that they had just cause for concern. Four surveyors had placed the springs in 4 locations, namely, in Sections 17, 18, 27, and 41. More to come.

The lawsuit in 1923 styled "Logan, et al, vs. Lee" placed the Hot Springs in the patented location of the southeast quarter of Section 26. However, if the surveyor had followed the court's intent, the springs would have been in Section 27. Elbert Bassham's survey of Section 44 in 1984 places the springs in Section 40.

A review of Cook's plat and Buckley's calls for Hot Springs Creek indicates that Cook was approximately one mile south of where he thought he was located. In other words, his southwest corner of Section 44 is one mile south of Bassham's southwest corner of Section 44. IT APPEARS THAT MOST OF THE LOCAL LAND OWNERS THINK THAT SECTION 44, D & P 2, IS LOCATED IN THE POSITION INDICATED BY COOK.

Surveys by W. B. Bean & R. S. Dod

W. B. Bean, County Surveyor, surveyed the southeast quarter of Section 26, D & P 2, in September, 1921, and it was patented by his field notes on November 26, 1921. R. S. Dod, Licensed State Surveyor, surveyed Section 41, D & P 2, in April, 1923.

The above 2 surveys were in conflict and the proper location was decided in "Logan vs. Lee" which is now discussed.

LOGAN, et al, VS. LEE

District Court of Presidio County, Texas  
Cause No. 2632  
(Originally styled: Charles C. Logan, et al, VS  
Tranquilino Jaques, et al)

This "Boundary Suit" was heard by the court, in vacation, in chambers, on March 13, 1922, and filed in the District Clerk's Office on May 15, 1922. Plaintiffs requested at this hearing that the court appoint a surveyor to locate Sections 27, 17, 19, 41, and 39, all in Block 2, Denison and Pacific Railway Company.

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The court appointed R. S. Dod, Licensed State Surveyor, to locate the five sections and ordered him to report his findings. Dod located only Section 41, the north line of same being the south line of Section 26. The question about the location of this line, being the issue before the court, would determine the owner of the Hot Spring and improvements.

R.S. Dod's Report

R. S. Dod's report, dated April 26, 1922, was filed in District Court on May 15, 1922. Prior to his survey, Dod had copies of, or examined, the following information:

- GLO 1911 Presidio County Map (See "Exhibit K")
- Mabry's map of resurvey of GH & SA, Blocks 5 & 6 (See "Exhibit L")
- Shafter, Ruidosa, and San Carlos U.S.G.S. Topographic Maps
- Field notes of 114 surveys in Blk. 2, D & P
- Field notes of resurvey of Section 1, Blk. 5, GH & SA
- Field notes of resurvey of Section 1, Blk. 6, H & TC
- Field notes of Wm. Hadden Sur. 17 & 18
- Field notes of resurvey Blk. 12, GH & SA
- Connecting lines by W. J. Glenn
- Corrections of certain surveys in Blk. 2, D & P
- Survey of Blk. 1, Tex. & Mex. Ry.
- Plat and field notes of certain surveys and connecting lines run by him (Dod) in Shafter, Presidio and Indio Country.
- Field notes from Patents to surveys in Blk. 2, D & P

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It is evident from the above that Dod did not make a full investigation of the historical records in this area, especially those on file in the GLO. Also, note that he calls for 114 Sections in D & P 2, while the GLO records show that Buckley originally surveyed 166 sections and that 98 Sections remained after abandonment of 68 Sections. No reference is made to Buckley's map in Dod's report or in the record of the testimony of this boundary suit.

Dod concluded from his investigation that Buckley did not make the survey on the ground, and consequently there were no "footsteps" to follow; and course and distance from the beginning point of the Block (northwest corner of Section 1) would prevail. It is apparent that Dod is talking about the beginning point as described in the Patent to Section 1 and according to Gleim's changes made to Buckley's field notes filed in the General Land Office. We are aware of several described beginning points as follows:

1. Buckley's original field notes in County and GLO records: "Beginning at the southwest corner of Section 130, stone mound, Block 12, GH & SA"
2. Buckley's map (in red): " N 23 E 10,500 varas from Russell's Mill"
3. W. J. Glenn's corrected field notes filed in County records: "Beginning 6,407 varas south and 5,135 (6,265 marked out) varas west from the southwest corner of Survey 130, Blk. 12, GH & SA"
4. Gleim's correction to Buckley's field notes filed in GLO and Patent call: "Beginning 14 miles north and 20 miles west from the stone corner, being the SW corner of Block No. 5 GH & SA and the SE corner of Block No. 6, H & TC RR. Co., which stone corner stands N 40 E 1657 varas from the west corner of Wm. Hadden Survey No. 17".
5. W. J. Glenn's field notes of Sec. 37, TM 1 call 5,552 varas north and 4,624 varas east from S.E. corner of Survey No. 1, Block 2, T & P Ry. Co. river survey's. Presidio Co. Rolled Sketch # 13 shows this distance from the lower corner of said Section 1. See Exhibit C-1.
6. W. J. Glenn's combined field notes of Sec. 37 & 38, TM 1, call 2,901 varas east and 9,350 varas south from the mouth of Capote Creek.
7. Hesse's survey of TM 2 and TM 5 will place the northwest corner of D & P 2 in at least 3 different locations. See Exhibit I.

8. Brooks & McCamant surveys of TM 1, TM 2, and TM 5 will place the northwest corner of D & P 2 in at least 5 different locations. See Exhibit I.

Dod began his survey at a large old rock mound shown to him to be the northeast (north) corner of the Wm. Hadden Survey No. 17. He apparently never looked for or found the west corner of # 17, it being the only corner of the Hadden Survey that could be identified. Note that the original surveyor does not call for a monument at the north corner of # 17.

An attempt was made by Dod to locate, from the above corner, the southeast and southwest corners of Section 1, Block 6, H & TC. He failed to find these corners and established his own corner at the southwest corner of said Section 1 for the commencement of his traverse to locate Section 41, D & P 2. It was later shown by at least 3 other surveyors that his southwest corner of said Section 1 was N 22 E 847 feet from the true corner.

Dod's map shows the route of his traverse from the southwest corner of said Section 1, as established by him, to the northeast corner of Section 41, D & P 2. His traverse covers approximately 54 miles with distances being measured by the Stadia Method. See "Exhibit M" for copy of Dod's map.

Section 41, D & P 2, as established by Dod, would agree with the Patent call of Section 1, D & P 2, IF he had used the correct Block corner at the Hadden Surveys, and assuming there were no errors in his traverse. Dod states in his report that from his northeast corner of said Section 41, Bean's southeast corner of Section 26 bears 5 varas east and 576 varas south. These are supposed to be a common corner.

#### TRIAL

Chas. A. Logan, et al, VS. J. J. Lee went to trial on January 30, 1923 before an eight man jury with the Honorable C. R. Sutton presiding. It was agreed that Plaintiffs had title to Section 41, Block 2, D & P, and that Defendant had title to Section 26, Block 2, D & P.

#### Testimony for the Plaintiffs

R. S. Dod, Licensed State Surveyor & Court appointed Surveyor: Dod's testimony follows his report, with the exception that he was unaware that the Patent notes of Section 11, D & P 2, call to have common corners with Section 79, GH & SA 5. See my discussion of his report on pages 24-26.

### Evidence for Plaintiffs

- Patent to Survey 41, Block 2, D & P Ry. Co
- Original field notes from County records of Surveys 2 to 114 inclusive, Block 2 D & P Ry. Co.
- Corrected field notes of Survey 1, Block 2, D & P, E. G. Gleim, Surveyor dated 10/29/1881. Note that these field notes are not filed in the GLO.
- D. L. Reavis' corrected field notes of Surveys 1 to 54 inclusive, Block 6, H & TC
- Corrected field notes by W. S. Mabry of Survey No. 1, Block 6, GH & SA
- Corrected field notes by W. S. Mabry of Survey No. 1 to 83 inclusive, Block 5 GH & SA
- Original field notes of Wm. Hadden No. 17 & 18
- Original field notes by L. E. Edwards of Survey No. 1, Block 5, GH & SA
- GLO map of Presidio Co. dated July 1911 (See "Exhibit K")
- R. S. Dod's Map and Report (See "Exhibit M")
- Original field notes of Survey No. 327, AB & M
- Corrected field notes by W. S. Mabry of Surveys 100, 109, 110, 113, & 115, Block 5, GH & SA
- Original field notes by Buckley of Survey No. 11, Block 2, D & P
- Patents to Surveys No. 1 & 11, Block 2, D & P
- Original field notes by L. E. Edwards of Surveys 1 to 120 inclusive, Block 5, GH & SA
- Original field notes by J. W. Tays of Survey No. 1, Block 6, H & TC
- Order of Court directing survey by R. S. Dod
- Corrected field notes by W. S. Mabry of Survey No. 3, Block 6, GH & SA

- Re-Survey field notes by R. S. Dod of Survey No. 41, Block 2, D & P dated April, 1922

Testimony for the Defendant

Joe Bunton, long time resident: Testified that he showed Dod a mound of rocks that he was told in the past was the northeast corner of the Hadden Survey # 17. He also testified that Dod did not find the Block corner to GH & SA 5 and H & TC 6. Testified that after Dod's survey, Mr Gleim showed him the northeast corner of Hadden # 17 (a little mound of rocks) about 300 yards south from the corner that Dod used; stated that Dod's southwest corner of Section 1, H & TC 6 was 200 to 300 yards north of an east and west fence; stated that " I have known that spring (in Hadden #17) every since I can remember, I haven't seen it go anywhere".

E. M. Gleim, Practical Surveyor since 1906: Testified that he, Henry Brooks, and Phillip Duryea went to the northwest corner of the William Hadden Survey # 17. Said corner was a rock mound pointed out by Brooks. Stated that 100 varas east did not hit spring, but fell in marshy area. Testified that, on later date, Joe Bunton showed them the corners that Dod used and set. Note: See Gleim's map attached as "Exhibit N". Gleim adopted a rock mound for his northeast corner of # 17, from which he found another mound marked "N E 17 Dod" S 56 W 256 feet ( Map shows 206' ) and Joe Bunton showed him the rock mound Dod used some 300 varas to the east. Stated that they found the southeast and southwest corners of Section 1, Block 6, H & TC, as described in Reavis' corrected field notes. Found Dod's southwest corner of Section 1, Block 6, H & TC, N 22 E 847 feet from the true corner.

Henry W. Brooks, former County Surveyor: Testified that he had known of the location of the northwest corner of the Wm. Hadden Survey No. 17 for about 13 years. He had accompanied his father, G. H. Brooks, former County Surveyor, to this corner several years before to do a survey for Mr. Bunton. Stated that G. H. Brooks knew this corner and that it was an old and well known corner in that neighborhood. Brooks' testimony collaborates Gleim's testimony.

W. B. Bean, former County Surveyor: Testified that he surveyed the SE 1/4 of Section 26, D & P 2, in 1921. At that time he was shown the southeast corner of Section 4, D & P 2, by Jim Canton. Stated that he started from this corner and measured south 2 miles and established a corner of Section 26 a little southeast of Hot Springs. John Lee's house was North 45 West from this corner about 500 varas. His east line of Section 26 passed about 1/4 mile east of the spring. The south line of Section 26 was between 450 and 475 varas south of the spring. Bean triangulated over to Section 79, Block 5, GH & SA, to check the location of the southeast corner of

Section 4, D & P 2. Verified that his southeast corner of Section 26 was 2 miles south and 7 miles west of southwest corner of Section 79. It appears that he may have called the cedar tree north of the southwest corner of 79 as the corner to 79.

Bill Kingston, brother-in-law of John Lee: Testified that in 1913 he had Surveyor Hector locate the spring and improvements. Stated that Hector found that spring was in Section 26 about 400 or 500 yards north and west from the southeast corner. Apparently Hector measured from the southwest corner of Section 83, Block 5, GH & SA, as established by Henry Brooks. They did not find the southeast corner of Section 4, D & P 2, and made one with a pile of rocks.

Later he had Surveyor Randolph locate Section 26. Randolph checked Hector's ( ? ) location of the southeast corner of Section 4 by triangulation from the southwest corner of 79. Corner was 30 varas too far west. Stated that Randolph's east line of Section 26 passed 300 or 400 varas east of the spring and the  $\frac{1}{2}$  mile corner was just south of the bank of the creek.

W. H. Cleveland, long time resident: Testified that he showed Kingston and several surveyors the location of the corners to Sections 78 & 79, Block 5, GH & SA. Cleveland's opinion of the country was: " I one time had 102 sections leased for \$100.00 a year and I dropped. I wouldn't have leased again if you gave it to me".

#### Evidence For Defendant

- Patent to SE  $\frac{1}{4}$  of Sec. 26, D & P 2
- Patents to Sec. 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 25, & 27, all in Block 2 D & P
- Corrected field notes of W. S. Mabry, covering surveys 1 to 79 inclusive, Block 5 GH & SA Ry. Co.
- Mabry's Plat of Block 5, GH & SA (See "Exhibit L")
- Photographs of corners in area of Hadden Surveys
- Map of Survey made by E. M. Gleim, H. Brooks, and P. T. Duryea at Hadden Survey No. 17 (See "Exhibit N")

### Summary For Plaintiffs

Plaintiffs contend that the northwest corner of Section 1, Block 2, D & P Ry. Co., be located in accordance with the description in the Patent. Said corner being described as 14 miles north and 20 miles west from the southeast corner of Section 1, Block 6, H & TC Ry. Co., same being the southwest corner of Section 1, Block 5, GH & SA.

Plaintiffs then contend that the northeast corner of Section 41, Block 2, D & P Ry. Co., same being the southeast corner of Section 26, same Block, should be located course and distance from the northwest corner of Section 1, Block 2, D & P Ry. Co., as located above.

Plaintiffs further contend that corner in dispute should not be located course and distance from Mabry's southwest corner of Section 79, Block 5, GH & SA, as this is a resurvey corner and is not in the same location as Edwards' location in 1875.

Plaintiff Rests.

### Summary For Defendant

Defendant contends that the Patent location of Section 11, Block 2, D & P Ry. Co., is tied to Section 79, Block 5, GH & SA, and that the southeast corner of Section 26, Block 2, D & P, same being the northeast corner of Section 41, same Block, should be located course and distance from said Section 79.

Defendant then contends that Section 79, Block 5, GH & SA, is much closer than Section 1 of the same Block, and to locate the disputed corner from Section 79 is less subject to error than coming from the Block corner at the Hadden Survey which is across the mountains and several miles away.

Defendant further contends that Mabry did not move Edwards' location of Block 5, GH & SA, and it had not been so shown. He merely better identified Edwards' location.

Defendant Rests.

### Verdict

On February 1, 1923 Verdict was rendered in favor of J. J. Lee, Defendant. Judgement was filed on February 3, 1923 and put Lee in possession of the following described land:

All of the SE 1/4 of Section 26, Block 2, Certificate #513 D&P Railway Company Survey, about 40 miles S 65 W from Marfa, Texas, patented to J. J. Lee on Nov. 26, 1921 by Patent # 287 Vol. 12-A, described more particularly by field notes as follows: Beginning at the S. E. corner of Survey #26, also the N. E. Corner of Survey 41, all in Block 2, D & P Railway Company, for the S. E. Corner of this tract of land, a stone mound : Thence West 950 varas for corner: thence north 950 varas to a stone mound for corner: thence East 950 varas to stone mound for corner, on the South Bank of Hot Springs Creek from which point the Hot Spring is about 200 varas down the creek westward, said point also being seven miles west and 2970 varas south of a rock mound on west slope of a high hill and 120 varas north of Southwest corner of Section 79, Block 5, G. H. & S. A. Survey, and from which last rock mound, a cedar tree marked X bears N 86° 30' East 29 varas, and a sharp peak bears South 10 ½ E; Thence South 950 varas to place of beginning.

### Comments

I am of the opinion that, based on the evidence presented in this case, the court ruled properly and justly. It is the lack of evidence introduced that presents a problem today for the other landowners in D & P 2.

There are several issues and considerable evidence that were not presented before the court such as:

1. Buckley's Plat of his original survey and his field notes of 166 Sections were not introduced.
2. Glenn's Plat was not introduced.
3. None of the Surveyors made a connection from the corner of Block 5, GH & SA, near the Hadden Surveys to the Northwest corner of the Block (NWC Sec. 79) to show, in fact, that Mabry moved Edwards' location of said Block by running approximately 1 degree to the left of true north.
4. Dod failed to definitely identify any of the corners at the beginning of his 54 mile traverse to locate Section 41, D & P 2.

5. Gleim had the authority to better identify the location of D & P 2; However, he did not have the authority to move Buckley's location. The General Land Office had the authority to cancel Buckley's field notes and require relocation upon showing proper cause.
6. Cook's plat and report were not introduced.
7. The location of several existing corners in the area were not shown the court.
8. Surveyors on both sides were very lax in their investigation of the records of the County and the General Land Office.
9. No one considered the surveys to the north, south or west of D & P 2, all of which call to adjoin D & P 2 and are SENIOR to Mabry's re-survey of Block 5, GH & SA. Mabry in his survey of said Block 5 makes no reference to D & P 2.
10. Several other points which are covered throughout this report.

LOGAN, et al vs. LEE

Court of Civil Appeals, El Paso  
Eighth Supreme Judicial District  
Cause no. 1540 (256 SW 952)

Briefs for Plaintiffs & Defendant in Error

Brief for Plaintiffs in Error was filed in the C. C. A. on September 12, 1923. Brief for Defendant in Error was filed on November 7, 1923. Arguments were the same as stated in the Summaries of the District Court.

Opinion

E. F. Higgins, Associate Justice, wrote the opinion handed down by the C. C. A. on December 13, 1923. The opinion agrees with the Summary for Defendant in the District Court.



The Court clarified their decision on Mabry's corrected field notes of Block 5, GH & SA and is hereby quoted:

"We do not intend to be understood as holding that these corrected field notes could be used so as to locate land different from what it was originally located. The State Surveyors who made the resurvey were not authorized to change the locations as originally made, and it is not to be presumed, nor is it shown, that they undertook to do so. State v. Post (Tex. Sup.) 169 SW 407. The corrected field notes do not appear to have changed the locations, but merely made more certain and definite the original locations by appropriate identification of the corners by calls for fixed objects."

Judgement of the District Court Affirmed.

Surveys Subsequent to Logan vs. Lee

F. W. Cook did limited surveying in the northeast part of D & P 2 and the southeast part of TM 1 in 1927. The D & P 2 corners are common with Mabry's corners in G. H. & S. A. Block 5. The TM 1 corners are common with the D & P 2 corners.

J.P. Dod surveyed Sections 4 and 26, D & P 2, in 1929. His survey is tied to W. B. Bean's survey, being the adjudicated survey, of Section 26. Later on, in 1938 and 1951, Dod proved and surveyed vacancies between Glenn's survey of T. C. Ry. Co. Block WJG - 7 and Mabry's Resurvey of G. H. & S. A. Block 5. Several of Glenn's and Mabry's corners were recovered.

Bill Burson, in 1938, placed a vacancy between the west line of the T. C. Ry. Co. Block WJG - 7 and the east line of TM 1 and the Tinnin Surveys. This vacancy should not have been allowed, as the original surveys are tied by adjoiner calls. Note that these original surveys were made at about the same time by W. J. Glenn.

Robert C. Withers, County Surveyor, surveyed the N 1/2 and SW 1/4 of Section 26, D & P 2, on February 8, 1947. Patent was issued on his survey on March 24, 1947. Withers located his survey from R. S. Dod's northwest corner of Section 41. Remember that the court ruled in "Logan vs. Lee" that Dod's location of Section 41 was not the proper one. We now have a "Gap" between the NE 1/4 and SE 1/4 of Section 26 of approximately 576 varas.

J.L. Corbin, County Surveyor, surveyed the N 1/2 of the NW 1/4 of Section 44, D & P 2, on April 7, 1964. Patent was issued on his survey on May 7, 1964. Corbin's location of Section 44 agrees with Cook's location in 1920; however, it apparently will not agree with his own location of Sections 1 and 22 in 1964-65.

### Bassham's Survey of Section 44

Jon Ayres contacted Elbert F. Bassham, County Surveyor and LSLS, on June 23, 1983, and requested that a survey be made of the land that he had recently acquired by Land Trade with the State of Texas (PSF). The land to be surveyed was Section 44, D & P 2, less and except the N 1/2 of the NW 1/4. Apparently, Ayres wanted Patent issued on a recently surveyed location.

Bassham surveyed Section 44 and furnished the GLO with his Report and Survey Plat. I was assigned the project of making an investigation of our records to verify Bassham's location of said Section 44. Admittedly, the investigation was not as extensive as that in the preparation of this report, however, we did have more evidence before us than the Court in "Logan vs. Lee". We, at least, had the original surveyor's plat.

The investigation revealed that Bassham had located the southeast corner of Section 44 at a distance of 18 miles west and 11 miles north of what he called the southeast corner of Block 6, H. & T. C. Ry. Co. It was later found that he was using a point some 100 varas or so northeast of the true block corner.

It was concluded by the GLO that Bassham's location of Section 44 was not the correct one. The first alert was that his location was contrary to the opinion in "Logan vs. Lee". After further discussion of additional evidence, Bassham agreed that he had mislocated Section 44 and would move it to the satisfaction of the GLO. At that time, I went to Presidio County and spent about 4 weeks working with Bassham and his survey crew.

The first consideration was that Buckley's field notes and plat indicated that the north line of D & P 2 should be located 700 varas north of the north line of GH & SA 5. Next, when Buckley's calls for Hot Springs Creek were plotted on Cook's plat of 1920 (See Exhibit J), it was clear that, based on these calls, Cook was about one mile too far south. This, coupled with what were apparently Brook's monuments found along the east line of TM 5 in 1907, indicated that Cook was at Section 43 instead of Section 44.

The theory that Cook was "off" one mile was then tested. We found that, by assuming that Cook was on Section 43, and running east, and by applying 44 varas excess per mile, we reached Mabry's west line of GH & SA 5. We then ran north called distance to a point 727 varas North of Mabry's northwest corner of GH & SA 5. Bear in mind that, at this point in time, we were not aware that Mabry had run 1 degree to the left of true north all the way from the Hadden surveys.

The theory was further tested by a diagonal to the Hadden Surveys. It was found that this would require 30 varas excess per mile (allowing for the 700 vara offset) and a bearing of 1 degree to the left of calculated call. Note that this is over a distance of about 21 miles.

We recovered 7 corners at that time, including corners found by Cook, that formed a "pattern" of what we concluded was Buckley's survey of D & P 2. We also recovered 4 corners that fit Brooks' calls along the west line of D & P 2.

The GLO to date has recovered 9 additional corners that fit the pattern used by Bassham. We have also recovered 3 more corners that appear to be Brooks' corners along the west line of D & P 2.

Bassham resurveyed Section 44 in accordance with the above. In other words, Bassham's south line of Section 44 is the north line of Cook's and Corbin's called Section 44.

Bassham filed field notes and plat in the GLO in 1984. These were approved and Jon Ayres was notified of the fact.

#### GLO Surveying To Date

The General Land Office commenced surveying in this area in January of 1988. This survey was started in response to a complaint from the owner of the Hot Spring. Apparently, the owner had seen a copy of Bassham's plat or our quadrangle map which showed the Hot Spring located on Section 40, D & P 2. Note that the State (PSF) still owns Section 40.

Between January of 1988 and February of 1991 the GLO spent 26 crew weeks in the field gathering data. Upwards of 100 miles of traverse were run in an effort to determine Buckley's location of D & P 2. Traverses were mainly confined to the areas of the Tarin Survey 33, the Hadden Surveys, northwest and southwest corners of GH & SA 5, the Hot Spring, and the northwest 1/4 of D & P 2.

A conservative estimate of 2 man years has been spent on calculations, records research, mapping, review of lawsuits, and consulting with other surveyors. We now know of only 5 ORIGINAL SURVEY CORNERS that have been, or could be, definitely identified. These corners are as follows:

- SWc of the Fuentes (3-7256) @ Presidio
- SEc of the M. Tarin #33 (D-1306)

- SWc of the A. B. & M. #327 (S-9617) @ Shafter
- Wc of the Wm. Hadden #17
- Nwc of Sec. 16, T. C. Ry. Co. Block WJG-7

The only corner above that controls Buckley's location of D & P 2 is the Hadden corner. The Nwc of Section 16, T. C. Ry. Co. Block WJG-7 could possibly be used to construct D & P 2 according to E. G. Gleim's changes to Buckley's field notes.

Several RESURVEY CORNERS have been found and identified. The 2 corners that could possibly control the location of D & P 2 are the northwest and southwest corners of G. H. & S. A. Block 5.

The corners and traverse points of several subsequent surveyors have been identified in the area of the NW 1/4 of D & P 2. The surveyors are as follows:

- Paul Hesse - 1890
- F. W. Cook - 1920
- W. B. Bean - 1921
- R. S. Dod - 1922
- J. P. Dod - 1929
- R. C. Withers - 1947
- Nick M. Thee - 1957
- J. L. Corbin - 1964 & 1965
- J. P. Moore - 1982
- E. F. Bassham - 1984 & 1985
- W. C. Wilson, Jr. - 1984

The results of our findings are shown on the Exhibits attached hereto or referred to in this report.

*Presidio Co. Sk. File 116*

1993 CONSTRUCTION of D & P 2

Gleim and Glenn Method

E. G. Gleim was County Surveyor and W. J. Glenn was Deputy Surveyor in 1881 and 1882. Glenn's connection in 1881 from Presidio to the Hadden Surveys determined that there was no vacant space left for Buckley's southern portion of D & P 2. Subsequently, surveys in this part of D & P 2 were abandoned and no one disagrees with the fact that there was little, if any, space left for Buckley's surveys.

Regardless of the above, the remaining portion of D & P 2 should still be in the same location as Buckley intended it to be. However, Mr. Gleim decided, probably more as a matter of convenience than necessity, that the northeast corner of D & P 2 should be common with the northwest corner of GH & SA Block 5. Gleim filed Certificates of Correction to Buckley's field notes of Sections 1 and 11, and authorized the GLO to make the same changes. Patents on these 2 sections were later issued according to Gleim's corrections. Bear in mind that Buckley's field notes were not canceled, but merely changed to reflect Gleim's corrections.

It appears that Gleim, in fact, has moved Buckley's location of D & P 2 a distance of 700 varas to the South. There is absolutely no evidence whatsoever in Buckley's field notes or plat that would indicate that the northeast corner of D & P 2 should be common with the northwest corner of GH & SA 5. There is no evidence that Gleim found Buckley's monuments in this position.

The General Land Office had the authority to cancel Buckley's field notes and require relocation of D & P 2. The GLO also had the authority to correct obvious errors in field notes for patent. Otherwise, I do not believe that the GLO or Mr. Gleim had the authority to change the original surveyor's location. All of the Railroad Sections and most of the School Sections in this Block have been patented on Buckley's original field notes.

If it is concluded that D & P 2 should be located according to Gleim's changes to Buckley's field notes, then we should construct from Glenn's corners (Gleim approved the notes) established in this era, rather than the resurvey corners established by Mabry some 7 or 8 years later. Gleim and Glenn were working in concert; Gleim as County Surveyor and Glenn as Deputy County Surveyor.

Glenn's nearest identifiable corner is at the northwest corner of Section 16, T. C. Ry. Co., Block WJG-7. This would be 1 mile north and 9 miles east of Gleim's northeast corner of D & P 2. Course and distance from Glenn's corner will place the northwest corner of GH & SA 5 about 500 varas north and about 600 varas east of Mabry's corner.

"Exhibit I" shows various locations of the northwest corner of D & P 2 according to Glenn's own ties. No two ties will put you in the same place.

Logan vs. Lee Method

The court in Logan vs. Lee, discussed at length earlier in this report, inferred in their holdings that the northeast corner of D & P 2 was at the northwest corner of GH & SA 5 as established by Mabry in 1889. This corner was not on the ground in 1881 when Gleim made the changes to Buckley's field notes, nor in 1882 when Glenn surveyed the Tinnin Surveys, Block WJG-7, and TM 1. Mabry does not call to adjoin any of the surveys north and west of GH & SA 5.

Logan vs. Lee is a perfect example of a case that was not fully developed, especially when one is aware of all of the evidence that was available to the parties at the time of the lawsuit. However the courts adjudged properly, **BASED ON THE EVIDENCE PRESENTED.**

Assuming that we agree with the court that Mabry did not move Edwards' reservation for GH & SA Block 5, we then have the problem of constructing D & P 2. Remember that Mabry's north is about 1 degree to the left of true north.

In order to follow Buckley's intent, assuming the above, then the east line of D & P 2 should adjoin the west line of GH & SA 5 with the northeast corner of D & P 2 being 700 varas northerly of the northwest corner of GH & SA 5. The balance of the D & P Block should be constructed perpendicular to Mabry's west line of GH & SA 5. This seems to follow Buckley's intent; if you assume that Mabry did not move Edwards' reservation.

The Court's intent is a different story. The Court stated that the southeast corner of Section 26, D & P 2, should be located course and distance (according to Gleim's corrections) from Mabry's corner in the west line of Section 79, GH & SA 5. True course from here will place a vacancy between D & P 2 and GH & SA 5, being wider as we go south. The Court was not aware that Mabry's north was not true north. Based on the evidence presented in the trial and the opinion of the Court, I do not believe that the Court, or Buckley in 1880, intended that a vacancy be left between D & P 2 and GH & SA 5.

It appears that the Court followed Gleim's intent as shown by his plat and corrections to Buckley's field notes. The Court did not attempt to determine Buckley's intent as it was unaware of his plat and survey of 166 sections.

W. B. Bean's patent location of the southeast 1/4 of Section 26, D & P 2, is the location described in the Judgement of Logan vs. Lee. The Court was unaware that Bean's measurements from Mabry's corner were not accurate.

### Buckley's Field Notes & Plat Method

The original location of D & P 2 is shown by Buckley's field notes and plat, which is also the 1880 method. If his "Footsteps" can be found, they must be followed. He called for stone mounds or stone corners at all of his corners. The only corners that were probably on the ground at the time of his survey in 1880 would be the Hadden Surveys. Therefore, the only place to begin looking for "Buckley's Footsteps" would be at the Hadden Surveys.

Generally, a surveyor's footsteps are easier to find and follow when he calls for monuments with specific marks, bearings and distances to trees or other nearby identifiable objects, bearings to mountains or other prominent points, and sufficient topography crossing calls. This is not the case with Mr. Buckley. However, we must assume that he was on the ground until we prove otherwise.

Presently, we have 2 corners located that are near Buckley's northeast and northwest corners of his Section 166. These corners check very well with his ties to the Hadden Surveys. Every attempt has been made to follow his footsteps westward from these corners without success. Note that this is in the abandoned portion of D & P 2 and a "Pattern" that would fit Buckley's calls would have to be his corners as no other original or resurvey corners follow the D & P 2 pattern.

If we could have followed Buckley's footsteps from the above corners, though his footsteps may have wandered, then we would have located his survey on the ground. We were unable to find his footsteps, thus, we have determined that D & P 2 was probably located as an "Office Survey". By determining that D & P 2 was an office survey, we are rejecting his calls for the "Natural Monument" of Hot Springs Creek and stone mounds found in the area. However, this natural monument alone will not definitely fix the location of D & P 2. It must collaborate with other evidence. There is no evidence to suggest that the monuments found represent Buckley's location of D & P 2.

Regardless, if we determine that D & P 2 was an office survey, we still must rely on the "original surveyor's calls" in his field notes and map in order to determine his "Intent". Furthermore, we need to "look over Buckley's shoulder" when he drew his map and prepared the field notes. With the exception of GH & SA Blocks 7 and 12, his map is an accurate representation of the relative positions of surveys in 1880, based on the information in hand at the time and not the information that we have in hand today.

It is well understood by surveyors that have practiced surveying for many years in West Texas that L. E. Edwards was seldom, if ever, on the ground. Edwards located GH & SA Blocks 5, 6, 7, and 12. If Edwards was not on the ground, then there are no monuments for subsequent surveyors to find and locate their surveys from. We know today that the relative positions of the GH & SA Blocks are not as shown on Edwards' own map.

Where there are conflicts or discrepancies in the original surveyor's calls, the most reliable calls should be used that are in harmony with his intent. The most reliable and definite calls by Buckley are the call for the Hadden Surveys and the call for 700 varas offset between Sections 131 and 147. The calls for GH & SA Blocks 6 and 12, should be rejected as "calls by conjecture".

Assuming that D & P 2 is an office survey, H. & T. C. Ry. Co. Block 6 and G. H. & S. A. Block 5 should be constructed original call from the Hadden Survey No. 17 and D & P 2 constructed adjacent to and with a 700 vara north offset from surveys in GH & SA Block 5. Any other construction of D & P 2 would seem to be a total disregard of the original surveyor's intent and subject to many various interpretations.

#### Summation

Dan Buckley, Deputy Presidio County Surveyor, wrote field notes for D & P 2, said field notes being dated June 17, 1880. The field notes were checked and approved by T. O. Murphy, Presidio County Surveyor, and filed in the GLO on August 4, 1880. A plat (Exhibit B) accompanied the field notes and it is assumed that said plat was prepared by Buckley or Murphy. The plat shows relative positions of surveys in the area based on available information at the time.

The fact that Buckley's field notes all bear the same date does not necessarily conclude that he was not on the ground. It was not uncommon for surveyors that were on the ground over several days to date all their field notes the same day.

The question as to whether Buckley's survey was a field survey or office survey is answered as follows: If you find and identify his monuments on the ground, then you have proven a field survey; if you do not find his monuments, you have not necessarily proven an office survey, however, the construction would be as though an office survey was made. The office survey is placed on the ground according to the original surveyor's intent as shown by his field notes and plat.



It may be proper to hold that Gleim's corrections to Buckley's field notes of Sections 1 and 11, said corrections being made before any patents were issued on any of the surveys in D & P 2, could legally relocate these 2 Sections. However, there is no evidence that Gleim's corrections represented Buckley's actions or intent. Therefore, the other surveys in D & P 2 should remain at Buckley's location.

A reasonable, and perhaps valid, argument would be that subsequent surveyors, the General Land Office maps, Logan vs. Lee, and apparently some land owners have relied on Gleim's location of D & P 2 during the past 100 years. Even so, we still have the problem with the location of GH & SA Block 5. Do we use the location according to Edwards, Glenn, or Mabry?

It seems that a total disregard of all of Buckley's calls in his field notes, and the intent as shown on his plat, would place his survey in the category of a fraudulent survey or a survey that cannot be located from its calls.

Generally, when there is a problem with determining the original surveyor's footsteps or intent, we must resort to considering extraneous evidence. This has been done and only leads to total confusion and various interpretations.

It is concluded that D & P 2 was an office survey and there appears to be only one logical method by which to establish Buckley's intent on the ground and this has been done. The steps that were necessary to locate D & P 2 are as follows:

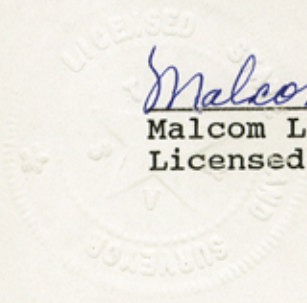
1. Established the true meridian at the west corner of the Hadden Survey No. 17. The Hadden meridian would seem to follow the overall intent of Edwards and Buckley.
2. Located GH & SA 5 according to its original calls. This is a 1900 vara square grid based on the true meridian at the Hadden Survey.
3. Located D & P 2 the same as GH & SA 5; allowing for the 700 varas offset.

CONCLUSION

This report and the statements herein rely heavily on the following: SEVERAL ENTITIES HAVE THE AUTHORITY TO BETTER IDENTIFY THE LOCATION OF ORIGINAL SURVEYS; NO ONE HAS THE AUTHORITY TO MOVE AN ORIGINAL SURVEY; THE ORIGINAL SURVEY MAY NOT HAVE AUTHORITY BUT REMAINS IN ITS ORIGINAL LOCATION EVEN THOUGH CANCELED, CORRECTED, OR ABANDONED.

In conclusion, the problems in D & P 2 are probably best explained in the following remark: No corners or pattern of corners found on the ground will meet the strict mathematical requirements of course and distance from any basic point that you may wish to use.

Respectfully Submitted,

  
*Malcom L. Bamberg*  
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Licensed State Land Surveyor

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*William J. Paricio*  
State Land Surveyor

As originally submitted,

and distance from any point being that you may wish to use.

In conclusion, the problems in 2 & 3 are probably best explained

as follows:

REMARKS IN THE ORIGINAL LOGS WITH EACH SECTION OR SECTION CORNER  
IN ORIGINAL SURVEY: THE ORIGINAL SURVEY MAY NOT HAVE ACCURATELY  
THE LOCATION OF ORIGINAL SURVEY: NO ONE HAS THE AUTHORITY TO MOVE  
FOLLOWING SURVEY: THESE HAVE THE AUTHORITY TO BECOME LEGALLY  
This report and the statements herein rely heavily on the

CONCLUSION

FILED FOR RECORD at 2:00 P. M.

DEC 02 1993

*Ramona Lee*  
COUNTY CLERK PRESIDIO CO

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