

D-937

424

Jasper, Texas  
September 11, 1944

Hon. Bascom Giles, Commissioner  
General Land Office  
Austin, Texas

Dear Sir:

Re: Application to purchase excess acreage in  
Abst. 138, BBB&C RR Co. Section 1, Tyler  
County.

The above named section of land is one of four sections surveyed as a block unit by John McBride, County surveyor of Tyler County, on June 15th, 1874. The original field notes of these sections 1, 2, 3 and 4 each call for 640 acre surveys, being 1900 varas square.

BBB&C RR Co. Section 1 was patented under the original field notes by John McBride on February 15th, 1876. The other three sections in Block 4 were not patented until M. L. McAlister, County Surveyor of Tyler County made a re-survey of the entire block and submitted to the General Land Office a report, a map and a set of corrected field notes to each of the four sections, dated June 23rd, 1904. Since this block of sections adjoins Hardin County, T. L. McElyea, County Surveyor of Hardin County was co-surveyor in this work and signed the report and map with M. L. McAlister.

From my work on the ground I find that the original survey by John McBride in 1874 does not conform with the conditions on the ground but that the later work by McAlister and McElyea as outlined in their report and evidenced by the corrected field notes is substantially correct and with the exception of minor differences in distances their re-survey can be traced on the ground.

The corrected field notes to BBB&C RR Co. Section 1 by McAlister dated June 23rd, 1904, which were filed with the General Land Office on March 16th, 1905 but were not acted upon, call this section to contain 709.8 acres instead of 640 acres as called for in the original field notes and in the patent. My survey disclosed that Section 1 contains 724.25 acres being an excess of 84.25 acres over and above the patent acreage.

I commenced my field work at point 1 on the accompanying map where I identified the NW/corner of Abst. 257, Hardin County School Land No. 265, Hardin County. This survey was patented under the corrected field notes made by J. N. Dark, Nov. 22nd, 1869 and has the following call at its NW/corner:

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"Thence N.  $89^{\circ} \frac{1}{4}'$  W. in the County line at 4212 varas set stake for corner from which a Pine 15" in dia. mkd. X brs. N.  $88^{\circ}$  E. 12 varas dis. A Pin Oak mkd. X brs. S.  $3^{\circ}$  E. 12-3/10 varas dis."

John McBride's description of the SW/corner of Section 1:

"Beginning on E. line of A. Rodriguez's survey where the same crosses the Tyler and Hardin County line, a stake from which a Pine brs. N.  $30^{\circ}$  W. 5 varas and a Pine brs. S.  $80^{\circ}$  W. 5 varas."

M. L. McAlister gives the following bearings for this corner in his corrected field notes to Section 1:

"Thence West in the N. line of Hardin County School survey and in the County line 1848 vrs. the NW/corner of Hardin County School Land in the E. bdy line of the Ambrose Rodriguez, a stake mkd H. for corner, from which a Pine mkd X brs. N.  $88^{\circ}$  E. 12 vs. and a Pin Oak 20 in dia. mkd X S.  $3^{\circ}$  E.  $12\frac{1}{2}$  vs."

At this location I found the following (March 1944):

Pin Oak X (old) 21" S.  $3^{\circ} 0'$  E. 12.6 vs.  
Pine bearing would fall in edge of creek but pine snag on ground.

T. M. Hyde, Licensed State Land Surveyor of Kountze, Texas states in his field book, dated September 3rd, 1917 as to this bearing tree: "Pine in Branch and down."  
At that time he took a new pine bearing N.  $58\frac{1}{2}$  E. 11.0  
which we found thus: Pine stump 14" N.  $59^{\circ} 0'$  E. 11.1 vs.

M. L. McAlister in his report to the General Land Office dated June 23, 1904 and filed March 16th, 1905 states that he found the original SW/corner of BBB&C RR Co. Section 1 by John McBride 92 varas west of the NW/corner of Hardin County School Land No. 265, which means that the section encroaches on the senior survey of A. Rodriguez. I was not able to find any trace of McBride's bearings for the SW/corner of this section at that point, however McAlister reported that both bearing trees were down in 1904.

From point 1, I went S.  $0^{\circ} 22'$  E. 3748.76 varas with the well marked west line of Hardin County School Land No. 265 (point 11) and identified the SW/corner of this survey on the north bank of Village Creek by two out of three bearings given in the corrected field notes by Dark.

Returning to point 1, I went N. 1° 13' W. along a well marked line and at 1699.68 varas (point 2) I found and identified the NE/corner of the A. Rodriguez survey (patent field notes of Section 1 call to pass this corner at 1600 vs.); and continued along same line at 2124.9 vs. (point 3) I found the recognized NW/corner of BBB&C RR Co. Section 1. McBride calls only for one Pine bearing (Pine 36" S. 60° E. 4 vs.), McAlister in his corrected field notes for Sections 1 and 2 calls for a stake (No bearing trees) and E. H. Hopson surveyor of the A. L. Beard survey, Abst. 1006 in his field notes dated March 30, 1905 called for a stake (No bearing trees).

I ran from this point 3 along a dimly marked line N. 85° 23' E. a distance of 1886.3 vs. (McBride: 1900 vs.; McAlister and E. H. Hopson 1852 vs.) to point 4 which is the common corner of the original BBB & C RR Co. Sections of 1, 2, 3 and 4.

McBride gives only one bearing tree at this corner:

Pine 12" N. 30° W. 2.0 vs.

McAlister gives no bearing trees at this corner.

E. H. Hopson for the SE/corner of the L. A. Beard, Abst. 929 calls for the following:

Pine stump (Org. brg. tree) 8" N. 30° W. 2 vs.  
Pine 12" S. 87° E. 12.2 vs.  
Pine 12" N. 66½° E. 8 vs.

My investigation at this corner disclosed that the corner stake which fits McBride's bearing tree is S. 15° 21' W. 3.7 varas from the location made by E. H. Hopson for the Beard field note call. In other words I found the following:

Corner stake for NE/corner of BBB&C RR Co. Section 1 from which:

Pine stump hole N. 30° W. 2.0 vs.  
Corner stake for SE/corner A. L. Beard, Abst. 929 N. 15°  
21' E. 2.7 vs. from which:

Pine X 15" S. 87° E. 12.8 vs.  
Pine stump N. 66° 30' E. 8.0 vs.

Since McBride's work is senior to Hopson's survey I accepted the location to fit John McBride's bearing tree for the NE/corner of BBB&C RR Co. Section 1.

From point 4 I went S. 0° 19' E. 2278.04 through open country and fields to the intersection of the north line of Hardin County School Land No. 265 which is also in the Hardin-Tyler County line. (Point 5) At this point there is no evidence of a corner since the heretofore recognized and marked corner is S. 89° 55' E. 59.02 varas at the SW/corner of a pasture fence. If this latter

location would be accepted the east line of Section 1 from this point to corner 4 would run on a course N. 1° 48' W. and BBB&C RR Co. Section 4 would be short in its patent call acreage by 11.91 acres. In absence of any proof of the original corner at either point I adopted the location at point 5 in order to give Section 4 its full acreage.

From point 5, I went N. 89° 55' W. along a marked line 1839.94 varas to point 1. I returned to point 5 and followed the Hardin-Tyler County line S. 89° 55' E. and passed at 1913.15 vs. (point 9) the recognized SW/corner of the Hugh Kerr survey which I was not able to identify by its bearings made by John McBride for the Kerr and repeated again by McAlister for the SE/corner of BBB&C RR Co. Section 4. I continued same line and same course and at 2914.36 vs. (point 8) I found and identified the SE/corner of the Hugh Kerr survey as follows:

John McBride:  
(Re-survey 8-23-1872)

"100 vs. W. of Hickory at SW/corner of Section 2 Tex. & New Orleans R.R. Co. Texas Division, at a stake from which A White Oak 14 in. dia. brs. S. 40° W. 5 vs. and A Beech 20 in. dia. brs. N. 50° W. 3 vs. dist."

M. L. McAlister  
(Re-survey F/N filed  
4-3-1905)

"SE/corner of the Hugh Kerr 160 acre pre-emption survey and in the Co. line of Hardin and Tyler Counties a pine stk. for corner from which a Beech brs. N. 50° W. 3 vs. and a White Oak brs. S. 40° W. 5 vs."

Jas. G. Barker:  
(March 13th, 1944)

White Oak stump 24" S. 41° 34' W. 5.5 vs.  
Beech snag X (old) 24" N. 47° 41' W. 2.7 vs.  
Hickory Creek Bend East 15.5 vs.  
" " West Bank East 78.0 vs.  
" " (Center Line) East 90.0 vs.  
" " East Bank East 102.0 vs.

From point 8, I went N. 3° 21' E. crossing Hickory Creek 7 times to the northeast corner of the Hugh Kerr (point 7) a distance of 892.25 vs. (called distance 950.0) and found the following:

John McBride (NE/corner Kerr): White Oak 12" N. 50° W. 4 vs.  
(8-23-1872) White Oak 12" S. 50° E. 4 vs.

Jas. G. Barker: White Oak Y 17" N. 54° 27' W. 5.5 vs.  
(3-13-1944) White Oak X 18" S. 54° 27' E. 5.5 vs.

Although the courses and distances of these two bearings do not exactly fit there is no doubt in my mind that this location is the original NE/corner of the Hugh Kerr survey.

From point 7 I followed the well marked north line of the Kerr survey S. 89° 33' W. a distance of 1046.6 vs. to point 10 which is the recognized NW/corner of the Hugh Kerr but I was not able to fully identify this corner by both bearings called for by McBride.

The well marked west line of the Kerr survey between points 10 and 9 measured S. 0° 25' W. 880.94 vs.

It is obvious that the Hugh Kerr survey is not 950 varas square as called for in the patent field notes by McBride but having the NE/corner and the SE/corner positively identified and the NW/corner partially identified the location as found on the ground would have to be accepted.

The course and distance of the north portion of the east line of Section 4 between points 10 and 6 is N. 2° 23' E. 1419.68 vs. and follows a well marked line. At point 6 I found the identified NE/corner of BBB&C RR Co. Section 4 as follows:

- M. L. McAlister (NW/corner Peaden): "A stake the NE/corner of Section No. 4 BBB&C RR Co. Survey from which a Magnolia 15 in. dia. brs. S. 45° E. 5 vs."  
(Filed Nov. 21st, 1900)
- M. L. McAlister (NE/corner Sec. 4): "Magnolia mkd x (very old) S. 45° E. 5 vs."  
(June 23rd, 1904) S. Bank of Creek north 30.0 vs.
- Jas. G. Barker: Magnolia x (old) 27" S. 45° 0' E. 4.9 vs.  
(3-17-1944) Pin Oak x 31" N. 1° 30' E. 4.3 vs.  
S. Bank of Creek north 26.0 vs.

Mr. Bush who is an old resident in this vicinity recollects that he was at this corner location with Mr. McAlister over 40 years ago.

Returning to point 4 NW/corner BBB&C RR Co. Sec. 4) I traced the north line of Section 4 N. 89° 28' E. along a well marked line and at 942.83 varas passed the center line of the GC&SF RR ROW (McAlister in his report calls this distance to be S&ET RR 988 vs.) and at 1991.33 vs. intersected the NE/corner of BBB&C RR Co. Section 4 (point 6) as described above.

BBB&C RR Co. Section 4 was patented for 787.6 acres and by moving the heretofore recognized SW/corner of this survey west to point 5, Section 4 will contain its full acreage as called for in the patent.

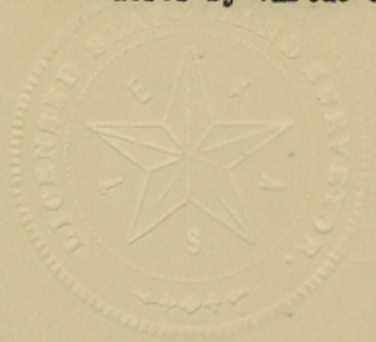
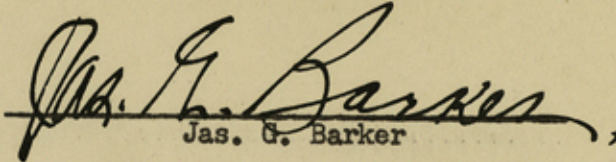
Through additional field work on Sections 2 and 3 I found that Section 2 (L. A. Beard survey, Abst. 1006 and L. A. Beard survey, Abst. 1005) is in conflict on the north portion with the G. W. Wooley survey and BBB&C RR Co. Section 3 is in conflict with G. W. Wooley, John Murphy and T&NO Section 7 as it is correctly constructed on the working sketch made by J. O. Barrow, General Land Office, dated March 14th, 1934.

However these conflicts have no direct bearing on the question discussed in this report.

CONCLUSION

Extensive field work and examination of the records of the General Land Office disclosed the fact that BBB&C RR Co. Section 1, Cert. No. 660 in Tyler County was erroneously patented for 640 acres whereas this Section actually contains 724.25 acres within its correct boundaries and free of conflict. It is therefore recommended that the fee owner of this Section, namely the Southwestern Settlement and Development Corporation make application to purchase the excess acreage of 84.25 acres by virtue of Section 4 of House Bill No. 9, dated June 19th, 1939.

Respectfully yours

  
  
Jas. G. Barker

Licensed State Land Surveyor

Sketch File No. 24

Tyler County  
Jas. G. Barker's Report of Re Survey of  
Sec. 1, B. B. B. & C. R. R. Co. Block 4

Filed October 2 1944  
Bascom Giles Com'r

W. von Rosenberg  
File Clerk

See Tyler R. l. ed sk. 2 for  
Surveyors Sketch