

FRASER, BURR AND OLYPHANT
WEST TEXAS (TXL) LANDS

RECEIVED

D-533
D-536

REPUBLIC BANK BUILDING
DALLAS 2, TEXAS

MAR 31 1953.

RAY McDDOWELL
GENERAL AGENT

HUNTER E. AKARD
ASSISTANT GENERAL AGENT

February 19, 1953

REFERRED TO MAP

MAURICE W. KENNEDY
MANAGER
LAND AND GAS DIVISION
305 N. MARTELFELD STREET
MIDLAND, TEXAS

Commissioner of the General Land Office
Austin, Texas

Dear Sir:

Re: Sections 32 and 40, Block 40,
Township 4 South, Texas &
Pacific Reservation, Midland
and Upton Counties, Texas

It has been brought to the attention of Fraser, Burr & Olyphant, Assignees of Texas & Pacific Railway Company, that application has been made to you for a surrender of the patents heretofore issued on Sections 32 and 40 above described, together with an application for the reissuance by you of a corrected patent on said sections. Fraser, Burr & Olyphant have been requested to file a statement with you, with regard to their position, inasmuch as they own the four adjoining odd-numbered sections on all four sides of each of the even-numbered Sections 32 and 40.

Fraser, Burr & Olyphant state that when Township 4 South was located by the original surveyors of the Texas & Pacific Railway, and when the appropriate field notes for the forty-eight sections, and the official plats therefor, were returned to and approved by the General Land Office, that all the land incorporated within the outside lines of Township 4 South was thereby severed from the public domain, and became a part of the Texas & Pacific Reservation, subject to and in accordance with the Act of May 2, 1873. The Texas & Pacific Railway Company and its vendees have ever since claimed that all the land within such Township 4 was divided into forty-eight equal sections, and that it has ever since been and is now the owner of twenty-four of these sections, being the odd-numbered sections, with the same amount of acreage in each of the twenty-four odd-numbered sections that is contained within the twenty-four even-numbered sections.

Fraser, Burr & Olyphant further say that all the land included in Township 4 South was not only severed from the public domain by the survey, the return of field notes and official plats, as aforesaid, but that on June 22, 1893, the District Court of Travis County, in the cause of State of Texas vs. Canda, Drake and Straus, No. 10351, decreed that all the land included in Block 40, Township 4 South, was

12/11/53
12/11/53

counter 38903

D-536

Commissioner of the General Land Office
February 19, 1953

Page 2

segregated from the public domain, and also decreed that the Texas & Pacific Railway and its vendees were the owners of all the land within the odd-numbered sections in said Township 4 South, as those sections were to be properly located on the ground under the plan of location and construction of the Texas & Pacific Reservation, including Block 40, Township 4 South, as originally laid out on the ground, and as described in the field notes and official plats returned by the Texas & Pacific Railway Company to the General Land Office, and approved.

Therefore, Fraser, Burr & Olyphant, as assignees of the Texas & Pacific Railway Company, now say that, as the owner of the odd-numbered sections in Block 40, Township 4 South, their odd-numbered sections are properly located on the ground by respecting the monuments found on the north, south, east and west lines of Block 40, Township 4 South, and by tracing the lines east and west and north and south to those monuments; that in instances where monuments have disappeared, and where there is an excess of distance over that called for in the field notes found to exist between the monuments which still remain, that Township 4 South must be constructed by a proration of the excess between the nearest monuments which still remain, or which can be re-established, so that the excess distance, east, west, north and south must be properly prorated to the odd-numbered sections and to the even numbered sections. Any violation of this rule of construction, Fraser, Burr & Olyphant object to; and, in that connection, Fraser, Burr & Olyphant wish to state that they do not, by the filing of this letter, release any claim to any right, title or interest they have in and to any of the odd-numbered sections in Township 4 South, but that they insist and claim title to the odd-numbered sections as they must be properly located under proper rules of boundary.

Fraser, Burr & Olyphant also insist that the Act of March 22, 1889, being Chapter 90, page 103, of the Acts of the Regular Session of the 20th Legislature (9 Gammel's Laws 1131) did not affect the title of the Texas & Pacific Railway, or any of its vendees, including Fraser, Burr & Olyphant, because the patents to the odd-numbered sections in Block 40, Township 4 South, had already been issued to the Texas & Pacific Railway Company, and were held by it and its vendees at the time of the passage of the aforesaid Act of March

A'

counter 38907

Commissioner of the General Land Office
February 19, 1953

Page 3

22, 1889, and hence the Act itself in Section 5 excludes any effect the Act could have upon the odd-numbered sections so patented, in that: "provided, that nothing in this Act shall apply to any lands for which patents have been issued."

Having made the foregoing statement, Fraser, Burr & Olyphant do not have and could not justifiably have any objection to the issuance of corrected patents on Sections 32 and 40, insofar as those corrected patents may correctly incorporate only the land that should be incorporated in Sections 32 and 40, as those sections should be properly located on the ground by proper rules of boundary with regard to the interior sections in Block 40, Township 4 South.

Yours very truly,

FRASER, BURR & OLYPHANT

BY

Ray McDowell
Ray McDowell, General Agent

CRW:rmp

counter 38905

A²

File No. 38

UPTON County

Sketch File

Filed March 31 1953

Bascom Giles Com'r

W. E. Hastings
S. W. Clerk

Letter from Fraser,
Burr & Olyphant in
regard to construction
of T. & P. Ry. Co.
Blk. 40, Tsp. 4 S. in
Midland and
Upton Co.