

A. H. H. H.
Attorney General's Office.

J. H. McLEARY, ATTORNEY-GENERAL.
HORACE CHILTON, ASST. ATT'Y-GEN.
H. M. HOLMES, CHIEF CLERK.
C. EDMUNDSON, ASSISTANT CLERK.

AUSTIN, 17 July 1882.

Hon. W. B. Timpleton

Co. Judge - Wavahachie Texas.

D Sir,

You were correct in supposing that this question has heretofore been presented to me for an opinion.

I have advised that the County Pines must be established under the order of the County Court and not the Co. Court's Court. This was probably an oversight on the part of the Legislature, but we cannot by construction correct it.

Respectfully,
J. H. McLeary
Atty Genl.

the state of Texas } whereas we the under-
signed have been
duly appointed by the counties of Ellis
and Navarro, and by the County courts
of said counties respectively, J. P. W. Nelson
by the County Court of Ellis County and
D. E. Green by the County Court of Navarro,
and have duly qualified according to
law, to meet together at Robt W. Porter's
House on the west bank of the Trinity
River for the purpose of running out
and ~~establishing~~ ascertaining the true
boundary line between Ellis and Navarro
counties; and whereas we have met and
after due discussion and investigation
have wholly failed to agree as to the begin-
ning point of said line on said Trinity
River, we have formed the following issues
and articles of disagreement for the pur-
pose of submitting them to the commis-
sioner of the Civil Land office for his
decision as provided in sec 8 of the
act of April 22nd 1879. (Appdx R.S. sec 8
page 29 + 30).

Issues.

- I. Navarro County contends that the County
of Ellis was properly and legally notified
to send a surveyor to run the

Surveyor from Navajo County on the 27th day of May 1882, at Porter Bluff, to run and ascertain the line; and that on said day the surveyor from Navajo County did go to said Porter Bluff, and failing to meet the surveyor from Ellis because he did not come from Ellis, proceeded to run said line; measured it, put up mile posts at every mile, connected said line with the intersecting surveys, made his report to the County Court of Navajo County, and that a certified copy of said Report was sent to the Land Officer; and that the act of April 22nd 1879 was in all things complied with, and that this action of said surveyor of Navajo County legally and finally settled and established the line between the counties of Ellis and Navajo. A certified copy of the Report of said work accompanies this and is marked exhibit "A"

II Navajo County contends that even if it should be decided that Ellis County was not legally notified to meet the Surveyor from Navajo County at Porter Bluff on the 27th day of May 1882; or if for any reason it should be determined that the line run and marked

Navarro Co. Bd. of. June 1881

by the Navarro County Surveyor at that time is not conclusively and legally established as the boundary line between Ellis and Navarro, that the true Beginning point for said line is one mile measured north on the meridian and west to get to the west bank of the Trinity River; that is that the said point is where a parallel of latitude one mile north of Posters house intersects the west bank of the Trinity River. Navarro contends that this is the point indicated in the act of Jan'y 28th 1850 defining the boundaries of Navarro County (R.S. art 866.

771.

Navarro County contends that the true construction of the act of July 31st 1876 places this point at essentially the same place as the act of 1850. (R.S. art 771.) That one mile northwardly by the meanders of the river from Robt H. Posters house on the west bank of the River, properly construed, signifies that the difference of latitude between Posters house and the corner of the counties must be one mile; and that the words "northwardly" and by the meanders of the river" merely meant to signify that the point thus defined

was not due north of Porter's house,
but was west as well as north.

IV. Navaro contends that if the corner
of the counties was one mile north on
the meridian, and when the parallel
of latitude which is this distance from
said house intersects the west bank of
the Trinity River under the act of Jan'y
28th 1850 that the act of July 31st 1876 could
not change this corner and place it
further south or nearer Porter's house,
because the effect of that would be to
cut off territory from an existing County,
(Navaro) and attach it to an existing
county (Ellis) without submitting the
matter to a vote of the people; and this
is in direct violation of sec 3 of art 9
of the Constitution of 1876.

V. Navaro contends that the line
was run and established by the
Commissioners appointed to cut off Ellis
County from Navaro under the act
of 1848, where Navaro now claims it,
and where her surveyor ran it in
May 1882; that said line was recog-
nized and known as the true line
between the counties until the act of
July 31st 1876 was passed; that said

Exhibit "A"

The State of Texas } To the Hon. Commissioners
 County of Navarro } Court of Navarro County, the
 undersigned County Surveyor of Navarro County
 and Surveyor appointed by your Honorable
 body to ascertain & fix the boundary line
 between Ellis and Navarro Counties under
 the provisions of the act of the Legislature of
 the State of Texas, entitled, "an act," establishing
 and prescribing the manner of ascertaining
 the boundaries of Counties approved April
 22nd 1879 having qualified according to law
 and performed the duties set out in said
 act respectfully submits the following.

1st That he proceeded on the day appointed
 by your body after notice given to the County
 Judge of Ellis Co., to Porters Bluff, to wit: on
 Monday the 27th day of May 1882. and was then
 present all that day, and for two days thereafter
 that the Surveyor from Ellis Co. did not make
 any appearance on said day, nor at any
 time, thereafter whilst he was engaged in
 running the line.

2nd That finding no Surveyor from Ellis County
 he proceeded to establish and run alone
 the line dividing the Counties of Ellis and
 Navarro as follows.

3rd He began on the spot on which the
 house of Robert H. Porter stood as pointed

1786 9 10
 County Line 220
 508- 1786, 810
 75- 520-500
 520-5- 1261-0000

1500 945-6 497
 7608
 185-60 1491
 13000 1491
 171640
 14600 6401
 164 800 13-4 13
 820 60 532
 8000 3240880

Navarro Co. Bdy. Line #1

2
out to him by old citizens, and run a line
thence due West one mile carefully measuring
the same, and from this point due North one
mile (var. of needle 9° East) which fixed a
point on the North bank of the Trinity River
one mile North of Robt. St. Patters house
that is to say the point thus ascertained is
at a point on the West bank of the Trinity
river where a parallel of latitude one mile
North on the meridian from Robert St. Patters
house intersects said West bank of Trinity
river. He found at this point the old and
original corner of the two counties to wit:
the N. E. corner of Navarro and the S. E.
corner of Ellis. marked on a large box
elder tree and a large burr oak. He then
run S 60 W. following very nearly an old and
plainly marked line for two miles or to
the edge of the prairie passing about 200
yds North of Mrs Neill's place. carefully
measuring the line, at 21 miles and 1100 yds
he came opposite the mouth of Mill Creek
and was 640 yds N 30 W. of the same which
necessitated a connection of the line in
course of ~~run~~ minutes. he then run on the
line S 60 W. (a variation of 8° 50' E, which is the
true variation of the needle as near as the
same has been ascertained for this point.)

3

and at 34 miles and 900 was he came
opposite the corner of Hill County as es-
tablished by W. M. Vaughn in 1881. Surveyor
of Hill County came out 40 was N 30 W of
the Cedar post erected by him for a mon-
ument. He then went back, and having
procured Bai's arc posts at Rice four
feet long and 4 inches at least square
he erected these at every mile putting the
same two feet in the ground and two feet
out cutting in deep letters "E.C." in the north
and "N.C." on the south side of each one, pla-
cing these posts on the line as connected. He
also made connections with all the surveys that
the true line as thus established intersects, and
has calculated the number of acres of each sur-
vey so intersected in each County, as will be
seen by exhibits "A" & "B" & "C" hereto attached
and made a part of this report, all of which
is most respectfully submitted this the 15 day of
August - A.D. 1882

D. E. Greer

Co. Surveyor of Navarro
Co., Texas, and Surveyor appointed to
run the Ellis & Navarro Co. line.

EXHIBIT "A"

Field notes of the Ellis & Navarro County line
Beginning at a point on the west bank of the
Trinity River, where a parallel of latitude one

4
mile north on the meridian of Rabbit H. Par
ters house intersects said West bank ^{Bais'd'arc} a post
2 feet high and 4 inches square, with letters
E. C. on north side & N. C. on south side for
monument and Box Elder 18 inches dia. & Burr
oak 20 in dia. marked as pointers. Thence
1st M. S 60° 50' N at 1900 was or one mile past Bais'd'
are post 2 feet high & four inches square
mkd as above

2nd M. At 1900 more on same course 2nd mile
past stands in part oak timber in a low
place not far from and opposite to Mr Sands
farm, monument same as 1st & same marks

3rd M. At 1900 we more on same course 3rd mile
state inside of Mrs Neals pasture in a mes
quite flat (on this mile passed about 175 or
N 30 W. of Mrs Neals house) monument same
as above and same marks

4th M. At 1900 was more on same course 4th mile
Past in a cotton field on the North side of
a Bais'd'arc hedge monument same as
above and same marks

5th M. At 1900 was ^{more} on same course 5th mile Post
in the bed of of a ravine and unbroken part
of field monument same as above and
same marks.

6th M. at 1900 was on same course. 6th mile Past in a field,
not far from the fence. monument same as above,

5
7th M. Mile - At 1900 was on same course set 7th mile post in bed of a branch whence an Elm 5 in dia. bro N 64 E 1 rod + 20 in dia N 56 1/2 W 8 varas. monument same as above.

8th M. At 1770 enter Meorchams fracture (at 700 on his line crossed the west line of T. J. Chambers 8 league 4200 vs. N 42 W. from his extreme S.W. corner and T. M. Rawa E line 170 vs S 42 E from his N.E. corner) at 1900 was set post, in Meorchams fracture. monument same as above.

9th M. At 1208 crossed Houston & Texas central R.R. at 1028 we crossed M. Jones East line 400 vs N 30 W from his S.E. corner + 70 vs N 30 W from T. M. Rawa to corner at 1900 was set mile post in prairie, monument same as above.

10th M. At 400 crossed Jones West line. at 600 was crossed East line of J. O. Smith 400 vs S 30 E passes his N.E. corner at 1900 was mile post in his west line S 30 E 400 bro from his N.W. corner. Post stands in A. C. McGreens field 10 vs. south of branch monument same as above.

11th M. At 1900 was 11th mile post stands 100 vs N 60 E from timber of Cummings Creek monument same as above.

12th M. At 100 was enter timber of Cummings Creek

- crossing said creek at 700 was crossed West line of John Wood and East line of Blevins. At 1900 was mill stake in arden field in West line of Blevins survey 300 was N 30 W. passes his S.W. corner in east line of Geo. B. McKinstry. this stake N 60 E 50 was passed a Rais's arc. hedge monument as above.
- 13th m. At 1900 was stake in Bessers field field, about 200 was. N 60 E of a branch in the head of which stands a lone pecan and another pecan brs. S 30 1/2 E 125 was. (this is a lone pecan standing on a hill) monument same as above.
- 14th m. mile at 1900 was cross oak branch at 900 was enter timber of Waxahachie Creek stake in low swampy bottoms. monument same as above.
- 15th m. mile at about 600 was cross Waxahachie Creek about 450 was below the mouth of Onion Creek (at 600 was on this mile crossed the West line of McKinstry and East line of Robt Ray. 2100 was. S 30 E. 2350 was pass the N.W. corner of McKinstry & N.E. of Ray. surveys. at 1900 was. mill stake in low swampy bottom. monument same as above.
- 16th m. At 1700 was crossed a large lake course S 30 E 1900 was. stake in Cedar Creek bottom. about 200 was South West of said Creek monument

17th M.

same as above in low flat. ~~~~~
 mile. at 1225 we crossed the West line of
 Robt Ray and East line of Jas. Garwood
 survey 2300 was from the N.W. corner of
 said Ray. at 1900 we stake in low marsh
 South 30 E of a lake monument same as
 above (this stake or monument stands N 30 W.
 837.0 was, + N 60 E 160 was from where it be
 longs, the point is accessible from high
 water) ~~~~~

18th M.

At ~~~~~ we crossed the West line of James
 Garwood and East line of Chas. Frazier 1800
 was. S 30 E of N.W. of Garwood + N.E. of Frazier
 surveys a stake in mesquite flat near east
 edge of Chambers Creek bottom in a pecan
 thicket whence an Elm. 12 in mtd x was
 N 60 E. 5 was. monument same as above.

19th M.

At 1900 we stake in mesquite flat in north
 edge of Chambers Creek bottom stake on a
 prairie Forks Stave. was N. 500 was monu
 ment same as above. ~~~~~

20th M.

At 625 cross West line of Chas. Frazier and
 East line of W.H. Cameron survey. S 30 E 450
 was from the N.E. corner of said Cameron.
 at 1900 stake in West edge of ravine + in north
 edge of Chambers Creek bottom in Goodwin's
 field about 30 was. West of a Pecan thicket,
 monument same as above. ~~~~~

- 21st M. At 625 was cross the West line of W. He Cameron, and last line of the H. & A. C. Cage survey S30 E 450 vs from the N.W. of Cameron & N.E. of Cage at 1900 was stake in low flat bottom, monument same as above.
- 22^d M. At 1100 was came to the mouth of Mill Creek
- 23rd M. Commencing at the mouth of Mill Creek thence S60 N. (variation 8°50' E.) at 1900 was stake N30 N. 500 was from the north. line of the G. A. Liddings survey. stake between Chambers & Mill Creek.
- 24th M. At 1900 was stake, stands N30 N. 100 was from the north line of the Alex Bond survey at 1900.
- 25th M. At 1900 was stake in Mill Creek, bottom on north side of Creek monument same as above
- 26th M. At 910 was crossed Mill Creek. — was East at 1900 was stk. in low bottom. slw 5 miles. N75 E 300 vs & thence S12 E. 200 vs. monument same as above.
- 27th M. At 1235 was, passed the N.W. corner of M. Whitaker, N30 N. 100 was from same & crossed N.W. Dalton & Linn S30 E 90 was from his N.E. corner at 1900 was set stk. in pasture S60 N. 500 was of a round monument same as above.
- 28th M. At 1900 was stake in Armstrongs field N60 E 490 from a large tank about 4 or 500 was N29 N. of his house. monument same as above.

Exhibit "C"

Original Grantee	No. Acres in Navarro Co.	No. acres in Ellis Co.
T. J. Chambers & Heirs	1572.8	196.96
T. M. Rowe	1993.8	12.3
P. Casley	25.7	614.3
Moses Jones	95.2	224.8
J. O. Smith	217.6	102.4
Jno. Wood	1057.6	222.4
Jackson Blewins	83.7	234.3
H. B. McKinstey	1612.9	1885.6
Robt Ray	1612.9	1885.6
James Gorwood	580.7	379.3
Chas. Frazier	870.6	1049.4
W. H. Cameron	475.1	164.9
H. and A. C. Cage	475.1	164.9
W. H. Dalton	1003.9	75.8
A. J. Phoenix	235.6	404.4
J. W. Sweeney	235.6	404.4
E. R. Marcell	47.4	112.6
Jefferson Haggerty	2582.8	739.3
Fred Gibbernath	819.4	623.2
} 33.4 of the Gibbernath one in Hill Co. }		
Cost. Bill.		

Running line to Mill Creek trial Course 21 miles
 + 1100 vrs. at \$3⁰⁰ per mile. \$64.70
 Correcting same at \$1⁵⁰ per mile 32.35
 Running line from mouth of Mill Creek to
 cor. of Hill Co. 12 miles. 1700 vrs. at \$3⁰⁰ per mile 38.65-

Correcting same at \$1 ⁵⁰ per mile	\$19.30
Connecting surveys with line and calculating areas in each County	50.00
Putting up Basis' area mile Post	100.00
Total	\$ 305.00

I, D. El Greer Co Surveyor of Navarro Co Texas and Surveyor, approuned so, in the line between the Counties of Ellis and Navarro do hereby certify that the above account is true and correct. that all the work here charged for was done by me in an accurate and correct manner according to contract and that I have charged for no work not done by me in a complete and accurate manner August 16th 1882.

D. El Greer Co. Surveyor
of Navarro Co.

The State of Texas
County of Navarro J. S. W. Kerr Clerk of the County Court of Navarro County do hereby certify that the within and foregoing is a true copy of the Original. Survey and Map of the Line surveyed between Navarro and Ellis Counties now on file in my office

To Certify which I hereunto set my hand and seal of office. at Corsicana Texas this Aug. AD 1882.

J. W. Kerr Clerk
County Court
Navarro County Texas



- 29th m. Mile - at 100 vrs. cross East line of A. J. Phoenix survey 700 vrs. N 30 W. of the S.W. corner of same at 490 vrs. tank at 1900 vrs. stk, stk, in West bank of branch, monument same as above
- 30th m. At 100 vrs. cross West line of Phoenix & East line of J. N. Summey 700 vrs. N 30 W. of the S.E. of latter at 1900 vrs. stake in mesquite prairie near Concepcion & Milfrad Road on West side 100 vrs. Bendersons House, across Eluv Creek. brs. N 88 1/2 West about 800 vrs. monument same as above,
- 31st m. At 100 vrs. cross the W. line of Summey & East line of E. R. Marshall N 30 W. 350 vrs. from the latters S.E. corner. at 865 vrs. cross the West line of the Marshall & East line of the Jefferson Haggerty S 30 E 800 vrs. from his N.E. corner. stake in bald prairie monument same as above.
- 32nd m. At 1310 vrs. came to large tank 40 vrs. wide at 1900 vrs. stake in mesquite prairie, monument same as above.
- 33rd m. At 1900 vrs. stake on a high hill of prairie, monument same as above whence a white house brs. S 58 1/2 W about 1500 vrs. & a new house 576 vrs. 1200.
- 34th m. At 400 vrs. cross West line of J. Haggerty and East line of Fred Gibernath 800 vrs. S 30 E of his extreme N.E. corner at 1900 vrs. stake on East bluff of branch, whence a small white house

line S 8 W about 800 yrs. & another house line
S 5 E about 300 yrs, monument same as above.

35th M. At 1770 us, came to the corner of Hill County a
large cedar post about 3 feet high, with the
names of Hill, Navarro and Ellis cut on same
this point is 1450 N 30 W & 160 E 130 yrs from
the S. W. corner of the Fred Gibbernath survey.

D. E. Greer C. S. N. C.

I hereby certify that the foregoing field notes
are correct and that all the corners and mile
stakes with the connections of all the surveys
are correct, August 16th 1882.

D. E. Greer C. S. N. C.

Navarro Co Bkly Line 1

Filed August 18th 1882

and duly recorded in

Minutes of County Comm-
missioners Court Vol. 3

Pages 144 to 150.

J. W. Keen Clerk

County of Navarro Texas

Ellis County holds and claims that the action taken by the County Commissioners Court of Navarro County toward establishing the boundary lines between said counties, was void and of no effect.

First- Because the jurisdiction and power to ascertain such boundaries is by law conferred upon the "County Court" and not upon the "County Commissioners Court;" See. Acts-1879-Chapter 129.-Page-137. Also Atty Generals letter construing this act. hereto attached and marked Exhibit A.

Second. Because if said Court had such power. The order made by said Court does not comply with the law regulating the establishing of county boundaries. Said order recites

that "D. E. Green, the County Surveyor be and he is hereby authorized to proceed as soon as the proper notice is given to the County Surveyor of Ellis County. Whereas, the Law provides

That said Court shall appoint an experienced and ^{competent} practical surveyor to perform such work, and further provides that said Surveyor shall before entering upon such duties take the oath of office prescribed for County Surveyors and shall give Bond &c.

And it further provides that the Court making such order shall cause a copy of same to be sent to the County Courts of the Counties interested in such boundaries, stating the time and place, when and where said survey shall begin, &c.

Now the order made by the "County Commissioners Court of Navarro County" recites that "the work shall be done when" "the County Judge orders it" which is in contravention of the law. Said order fails to recite when and where said survey shall begin. For these, and many other failures to comply with the law, Ellis County holds that she is not bound by said acts of Navarro County.

and to verify which a copy
of the said order is hereto
attached and made a part of
this statement - Marked Exhibit B

Ellis County claims the right to
begin on the West bank of the
Trinity river, at a point which
by the meandering of said
river, will be one mile north
wardly from Robert N. Peters house
thence on a straight line to
Chambers Creek at a point
opposite the mouth of Mill Creek
Because to go one mile north
from said Peters house, on
a straight line would carry
you to a point East of said
River and in Kaufman
County. In conclusion Ellis
County asks to be instructed
at what point said survey
shall begin, all of which
is respectfully submitted.

J. O. H. Nelson

B

The State of Texas }
 County of Navarro } Be it remembered that there was
 begun and holden a regular Term of the County Commission
 as Court at the court room in the City of Corsicana on
 the Second Monday To Wit on the 14 day of February
 A D 1881 The Hon R C Beale County Judge Present
 and Presiding with County Commissioners R H Math
 ews W W Loop of Huey and W A Polk and County Clerk
 S H Kerr Present Court was Opened according to
 Law and among the other things the following
 proceedings were had to wit -

February 16. 1882

It is ordered by the Court, adjudged and decreed that the
 County Surveyor D E Goer be and ^{he} is hereby
 authorized to proceed as soon as the proper notice is given
 to the County Surveyor of Ellis County To Survey
 and mark out according to Law the Boundary
 line between Ellis & Navarro County being as dis
 guide the Meters and Bounds of said line as
 defined in article 867 Page 144 Revised Statutes the
 Work to be done when the County Judge orders it

Navarro Co. Bk. Vol. 41

The State of Texas } I S H Kerr Clerk of the County Court of
 County of Navarro } Navarro County do hereby Certify that the
 foregoing is a true and correct Transcript of the Records of the
 order of Court entered at its February Term 1881
 in Minute Book Vol 3 page 36

Seal

Given under my hand and seal of Office

This 24 day of April 1882 S H Kerr C C M E
 By S Kerr Deputy

County Office
April 24 1882
Navarro Co Bdry Line

To the Hon County Judge
of Ellis County
Waxahatchie Texas

Dear Sir

Please take notice that
in obedience to the within
Order of Court I shall on the
31st day of May 1882
direct D E Greer to begin
at 11 am of that day at
Peters House on Trinity
River the Location of the
Navarro & Ellis Co
Boundary line the said
Greer being the County
Surveyor of Navarro Co

I am very yrs

R C Beale

C Judge of Navarro Co

Exhibit "B"

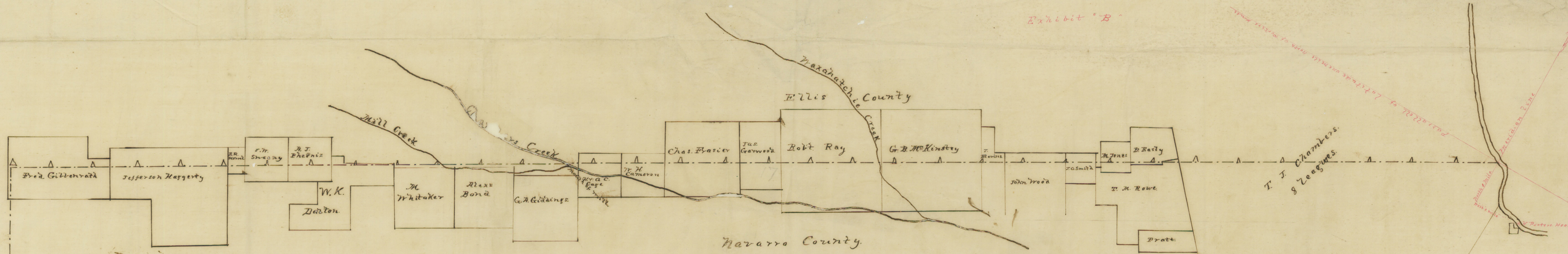


Exhibit "B"

Map of
 Navarro & Ellis County
 Line

Scale 2000 feet to inch

D. C. Guise C.S. & C.
 Aug 15th 1882.

to that time all the people who lived in the disputed strip and were citizens of Navajo County, paid taxes to said county, and that the Navajo courts exercised both civil and criminal jurisdiction in said strip.

VI

Navajo claims the line has been run according to law - that the beginning of the line is a mile north of Porter's House; that this was the contemporaneous custom - and is the legal one; that the act of July 31st 1876 can be sustained as constitutional only by construing ^{it} to describe the same point as that described in the act of July 28th 1857 (R.S. art 771.)

D. E. Green Surveyor
appointed by County Ct of
Navajo County.