

GENERAL LAND OFFICE

GARRY MAURO  
COMMISSIONER

MEMORANDUM

DATE: November 20, 1998

TO: The file  
FROM: Kay Molina  
SUBJECT: Briscoe judgement

File No. Sketch File 121  
PRESIDIO County  
Frank Briscoe vs. State of Texas  
Final Agreed Judgment  
Date Filed: June 26, 2003  
By Jerry Patterson, Commissioner  
Douglas Howard  
See Pld. Sk. 130 & 131

MEMORANDUM

**BACKGROUND:** In 1985, the GLO entered into a trade agreement with a number of individuals for the purpose of exchanging numerous parcels of Permanent School Fund (PSF) land located in various counties of the State for one certain parcel of land in Harris County, Texas. The trade was entered into under authority and by virtue of Texas Natural Resources Code, Section 32.061, which authorizes the School Land Board and Commissioner of the GLO to trade PSF land. Frank Briscoe and his brother, Andrew Briscoe Jr., were deeded a "full" section, Section 24, T.M. Ry. Co., Block 1, Presidio County, Texas, described by field notes of record in the GLO Archives for Section 24, dated 1882, in exchange for 3.606 acres of land in Harris County. At the time of the land trade, the value that the Briscoes paid for the Harris County property was determined to be equal to the value of the 640 acre section of land in Presidio County. [The Presidio County land was priced at \$45 per acre for a total of \$28,800.] Frank and Andrew Briscoe later partitioned the Presidio property and Frank Briscoe is now the sole owner of Section 24.

In 1991, prompted by a boundary dispute within the block, the GLO began the task of resurveying D. & P. Ry. Co. Block 2, Presidio County, Texas, which lies adjacent to and south of T.M. Ry. Co. Block 1. After many months of field surveying by the GLO, coupled with countless hours of record research, consultation with legal counsel, and discussion among several Licensed State Land Surveyors, a survey was adopted to resolve the problems in that block. The resurvey and confirmation of the location of D. & P. Ry. Co. Block 2, as surveyed in 1880 by Dan Buckley, indicates that there is the possibility that the southerly tier of surveys located in T.M. Ry. Co. Block 1 to the north may not contain the full 640 acres as reflected in the original field notes of record in the GLO. GLO surveyors have confirmed that Section 24, T.M. Ry. Co., Block 1, is a "short" section and that the shortage amounts to approximately 236 acres.

SKETCH FILE No. 121  
COUNTY Presidio  
Pg 1 of 49



By no fault of either party, the section of land Mr. Briscoe received from the State contained fewer acres than were bargained for. Consequently, Mr. Briscoe filed suit against the State of Texas and a Final Judgement was entered by the 201st Judicial District Court of Travis County, Texas.

LAWSUIT: In *Frank Briscoe vs. The State of Texas*, the court ordered, adjudged, and decreed the following [copy attached]:

(i) Frank Briscoe is entitled to recover from the State of Texas 265.50 acres of Permanent School Fund land out of the North part of the D. & P. Survey, Section 40, Block 2, Presidio County, Texas, subject to the same mineral reservations set forth in the deed between the State of Texas and Frank Briscoe recorded in Volume 260, page 450, of the Deed Records of Presidio County, Texas (the "Earlier Deed");

(ii) The State of Texas issue a patent to Frank Briscoe for the 265.50 acres of Permanent School Fund land, being the north part of the D. & P. Survey, Section 40, Block 2, Presidio County, Texas, subject to the same mineral reservations set forth in the Earlier Deed; and

(iii) If at a later date it is determined that section 24, T.M. Ry. Co. Block 1, Presidio County, Texas, consists of more than 409 acres, the additional acreage shall be allocated to the south portion of said Section 24 and shall be the shape of a parallelogram running along the entire length of the south line of the survey and adjacent to the north 409 acres. All additional acreage in excess of the 409 acres of said section 24 shall be the property of the PSF provided, Frank Briscoe, or his heirs or assigns, shall have a one-time preferential right to purchase the additional acreage at fair market value and subject to the same mineral reservations set forth in the Earlier Deed.

CONCLUSION: Pursuant to the Final Judgement, the State of Texas issued a patent to Frank Briscoe for 265.50 acres of Permanent School Fund land out of the North part of the D. & P. Survey, Section 40, Block 2, Presidio County, Texas, subject to the same mineral reservations set forth in the Earlier Deed.

SKETCH FILE No. 121  
COUNTY Presidio

Pg. 2 of 49



CC. Y

NO. 98-08343

FRANK BRISCOE

Plaintiff,

VS.

THE STATE OF TEXAS,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

TRAVIS, TEXAS

201st JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

On this day came to be heard the above-entitled and numbered cause, and FRANK BRISCOE, Plaintiff, appeared pro se and announced ready for trial, and the STATE OF TEXAS, appeared by attorney of record and announced ready for trial, and all questions of fact were submitted to the court.

The Court, after having first determined that it has jurisdiction of the parties hereto and the subject matter hereof, and hearing the evidence and arguments of counsel, has determined that the following facts are undisputed.

1. In 1986, Plaintiff and his brother, Andrew C. Briscoe, Jr. exchanged with Defendant, an undivided 5.59% interest in 3.606 acres in Harris County for a 640-acre section of Permanent School Fund land in Presidio County, Texas, specifically Section 24, T.M. Ry. Co., Block 1, Presidio County, Texas, described by field notes of record in the Texas General Land Office Archives dated 1882, and by a deed between the State of Texas and Frank Briscoe recorded in Volume 260, page 450, of the Deed Records of Presidio County, Texas.

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SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 3 of 49

NOV 16 1998



2. At the time of the exchange, the value of the 640- acre section of Permanent School Fund land in Presidio County was determined to be equal to the value of the undivided 5.59% interest in the 3.606 acres of land in Harris County.

3. Plaintiff and Andrew C. Briscoe Jr. later partitioned Section 24, T.M. Ry. Co., Block 1, in Presidio County, and Plaintiff is now the sole owner of Section 24.

4. In 1991, the General Land Office resurveyed D.& P. Ry. Co. Block 2, Presidio County, Texas, which lies adjacent to and south of T.M. Ry. Co. Block 1. The resurvey indicated that there is the probability that the southern tier of surveys located in T.M. Ry. Co. Block 1 to the north does not contain the full 640 acres as reflected in the original field notes of record in the General Land Office, and Plaintiff was advised by Defendant that Section 24, T.M. Ry. Co., Block 1, more likely consists of approximately 409 acres not in conflict with senior patents.

5. On August 27, 1998, C. B. Thomson, Licensed State Land surveyor of Travis County, surveyed approximately 265.50 acres of Permanent School Fund land out of the North part of the D.& P. Survey, Section 40, Block 2, Presidio County, Texas.

6. Plaintiff and Defendant have determined that the 265.50 acres of Permanent School Fund Land out of the North part of the D.& P. Survey, Section 40, Block 2, Presidio County, Texas, is of equal value to the 231 acres out of Section 24, T.M. Ry. Co., Block 1, that is in conflict with senior patents.

7. The parties have agreed that this judgement is entered in full and final satisfaction of any and all claims and causes of action arising out of the facts giving rise to this suit.



The Court is of the opinion that Plaintiff is entitled to a declaratory judgment as requested. It is therefore ORDERED, ADJUDGED, and DECREED that, to complete the earlier trade between the parties, Plaintiff is entitled to recover from Defendant the 265.50 acres of Permanent School Fund land out of the North part of the D. & P. Survey, Section 40, Block 2, Presidio County, Texas, subject to the same mineral reservations set forth in the deed between the State of Texas and Frank Briscoe recorded in Volume 260, page 450, of the Deed Records of Presidio County, Texas.

It is further ORDERED, ADJUGED, AND DECREED that Defendant issue a patent to Plaintiff for the 265.50 acres of Permanent School Fund land, being the north part of the D. & P. Survey, Section 40, Block 2, Presidio County, Texas, as more fully described in Exhibit "A" attached hereto, subject to the same mineral reservations set forth in the deed between the State of Texas and Frank Briscoe recorded in Volume 260, page 450, of the Deed Records of Presidio County, Texas.

It is further ORDERED, ADJUDGED, AND DECREED that if at a later date it is determined that Section 24, T.M. Ry. Co., Block 1, Presidio County, Texas, consists of more than 409 acres, the additional acreage shall be allocated to the south portion of said Section 24 and shall be the shape of a parallelogram running along the entire length of the south line of the survey and adjacent to the north 409 acres. All additional acreage in excess of the 409 acres of said Section 24 shall be the property of the Permanent School Fund provided, however, that Plaintiff, or Plaintiff's heirs or assigns, shall have a one-time preferential right to purchase the additional acreage at fair market value and subject



to the same mineral reservations as set out in the deed between the State of Texas and Frank Briscoe recorded in Volume 260, page 450, of the Deed Records of Presidio County, Texas.

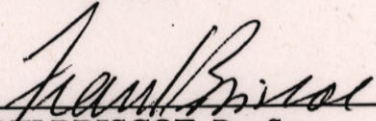
Plaintiff shall record this Order in the Real Property records of Presidio County, Texas.

All costs of Court expended or incurred in this cause are adjudged against the party incurring same. All other relief not expressly granted is denied.

Signed on this 12 day of November, 1998.

/S/ SUZANNE COVINGTON  
Judge Presiding

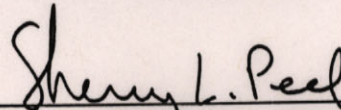
Approved for Entry:

  
FRANK BRISCOE, Pro Se  
314 Morton Street, #10  
Richmond, Texas 77469

STATE OF TEXAS  
DAN MORALES  
Attorney General of Texas

JORGE VEGA  
First Assistant Attorney General

KAREN W. KORNELL  
Assistant Attorney General

  
By: SHERRY L. PEEL  
Assistant Attorney General  
Natural Resources Division  
P.O. Box 12548  
Austin, Texas 78711-2548  
Telephone: (512) 463-2012  
Fax: (512) 320-0052  
State Bar No. 15721300

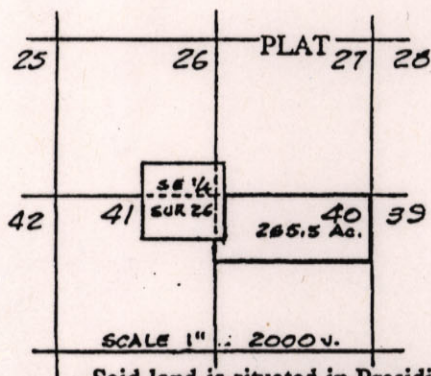
Judgment  
Page 4

SKETCH FILE No. 121  
COUNTY Presidio  
3, 6 of 49

COUNTER 82625



EXHIBIT "A"



THE STATE OF TEXAS

County of Presidio

[North part of  
[D. & P. Survey  
[No. 40  
[Blk. 2  
[Tsp.  
[Cert. 520

FIELD NOTES

of a survey of 265.50 acres of  
land made for the Permanent School Fund  
by virtue of its ownership.

Said land is situated in Presidio County, S 61° W about 39.5 miles from Marfa, the  
County Seat, and described by metes and bounds as follows, to-wit:

Beginning at a stone mound found for the southeast corner of the patented and  
adjudicated location of the southeast quarter of Survey No. 26, D. & P. Block 2,  
having coordinates on the Texas Coordinate System, South Central Zone (NAD 1927),  
of X = 229,667.80 feet and Y = 843,431.69 feet, said stone mound being on the  
south edge of a small header in the east bank of a drain to the north;

Thence NORTH with the patented and adjudicated east line of the southeast quarter of  
Survey No. 26 a distance of 571.711 varas to a capped 5/8" iron rod set for the most  
northerly northwest corner of this tract at the intersection of the north line of Survey  
No. 40 with the east line of the southeast quarter of Survey No. 26, said corner being  
on the south slope of a hill and northwest of an existing pasture road;

Thence EAST with the common line between Survey No. 40 and Survey No. 27, D. &  
P. Block 2, a distance of 1806.253 varas to a capped 5/8" iron rod set in bottom on the  
north side of a drain for the common corner of Surveys No. 27, 28, 39, and 40 in said  
block;

Thence SOUTH with the common line between Surveys No. 39 and 40, crossing drain  
and crossing road along top of ridge, at 729.424 varas passing a capped 5/8" iron rod  
set on a west sloping ridge between two headers for reference corner, in all a distance  
of 817.076 varas to a 5/8" iron rod set on the northeast side of a point of land between  
headers from the east and south, in a new stone mound with one rock marked "SEC",  
for the southeast corner of this tract;

Thence WEST through Survey No. 40 a distance of 1900.000 varas to a 5/8" iron rod  
set in the west line of Survey No. 40 for the southwest corner of this tract on a south  
slope on the north side of an east-west draw and south of an existing road, in a new  
stone mound;

Thence NORTH with the common line between Surveys No. 40 and 41, at 87.652  
varas passing a capped 5/8" iron rod set for reference corner on a north slope below an  
east-west road and west of a north-south road, in all a distance of 245.365 varas to a  
capped 5/8" iron rod set on a north slope above the Kingston Hot Spring for the most  
westerly northwest corner of this tract and at the intersection of the common line  
between Surveys No. 40 and 41 with the south line, as patented and adjudicated, of the  
southeast quarter of Survey No. 26;

Thence EAST with the said south line of the southeast quarter of Survey No. 26 a  
distance of 93.747 varas to the place of beginning.

Bearings are GEODETIC

Distances are SURFACE

Survey tied to N.G.S. Station RUIDOSA

Published Coordinates: Y = 843,287.43 feet X = 202,824.75 feet

Zone: Texas South Central Mapping Angle (Theta) = -2° 36' 59"

Combined scale factor = 0.9997385

SKETCH FILE No. 121

COUNTY Presidio

Pg. 7 of 49



27 August 1998  
Date of Survey

Jim Flowers, Willie Miles,  
Mark Neugebauer, Charlie  
Strauch, and Mike Mokarzel  
Field Survey Personnel

I, C. B. Thomson, Licensed State Land ~~Surveyor~~ Surveyor of Travis County, Texas, do hereby certify that the foregoing survey was made by me on the ground, according to law, on the date and with field personnel aforesaid, and that the limits, corners, and boundaries with the marks of the same, natural and artificial, are truly and correctly described and set forth in the foregoing plat and field notes, just as I found them on the ground.

C. B. Thomson  
Licensed State Land Surveyor ~~County Surveyor~~

Filed for record in my office, the \_\_\_ day of \_\_\_, \_\_\_, at \_\_\_ o'clock \_\_\_ M., and duly recorded the \_\_\_ day of \_\_\_, \_\_\_, in Book \_\_\_, Page \_\_\_ of the Official Public Records of \_\_\_ County, Texas.

County Clerk

**DO NOT WRITE BELOW THIS LINE**

**FOR GENERAL LAND OFFICE USE ONLY**

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 8 of 49

COUNTER 82627



**FRANK BRISCOE**

*Attorney At Law*

314 Morton Street, Suite #10

Richmond, Texas 77469

Telephone: 713-341-5787

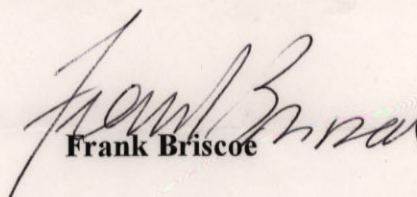
Fax: 713-341-6663

**TO:** Sherry L. Peel, Asst. Atty. General  
**COMPANY:** Office of the Attorney General, Natural Resources Div.  
**FAX #:** 512-320-0052  
**FROM :** Frank Briscoe  
**DATE :** 11/5/98

Number of Pages (Including this page) 2

Dear Ms. Peel:

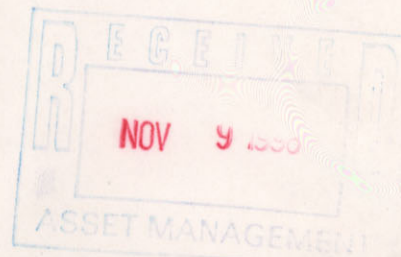
The draft judgment you sent me is just fine. If you will get the State's signatures and forward it to me, I will sign and file it and furnish you with a certified copy. If you prefer to send me the original, I will sign and return it to you. I would like to complete this matter as soon as convenient. Thanks!

  
Frank Briscoe

cc: Spencer L. Reid

SKETCH FILE No. 121  
COUNTY Presidio

Pg. 9 of 49

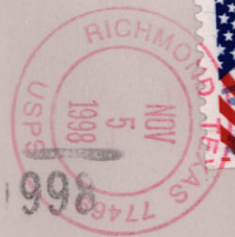




**FRANK BRISCOE**

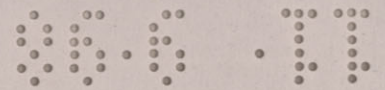
*Attorney at Law*

314 MORTON STREET  
RICHMOND, TEXAS 77469

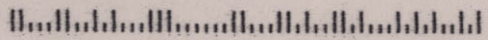


NOV 9

Spencer L. Reid  
Senior Deputy Commissioner  
Texas General Land Office  
1700 No. Congress Ave., Rm. 720  
Austin, TX 78701-1495



78701-1495



COUNTER 82629



# FRANK BRISCOE

*Attorney at Law*

August 3, 1998

*Asset - Surveying*

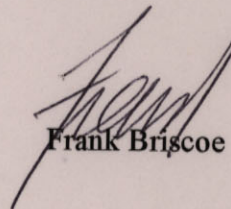
RECEIVED  
98 AUG - 6 PM 12: 11  
ENERGY RESOURCES

Spencer L. Reid  
Senior Deputy Commissioner  
Texas General Land Office  
1700 North Congress Avenue  
Austin, Texas 78701-1495

Dear Spencer:

Would you please have someone mail or fax me the field notes for the 265.5 acres surveyed out of the north part of Section 40, Block 2, D & P Survey, Presidio County. I need a legal description. I think that we are finally on the way to solving this problem. The petition has been filed in the 201st District Court and is Cause #98-08343. Thanks!

Sincerely,

  
Frank Briscoe

FB/lrb

cc: Ms. Sherry Peel

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 10 of 49

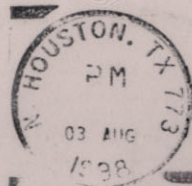


**FRANK BRISCOE**

*Attorney at Law*

314 MORTON STREET  
RICHMOND, TEXAS 77469

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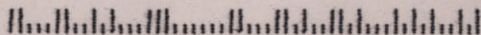


AUG

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Spencer L. Reid  
Senior Deputy Commissioner  
Texas General Land Office  
1700 No. Congress Ave.  
Austin, TX 78701-1495

78701/1495



COUNTER 82631



**FRANK BRISCOE**  
*Attorney at Law*

**COPY**

July 28, 1998

98 JUL 31 PM 4:40  
GENERAL LAND OFFICE  
LEGAL SERVICES

Ms. Sherry Peel  
Texas Attorney General's Office  
P. O. Box 12548  
Austin, Texas 78711-2548

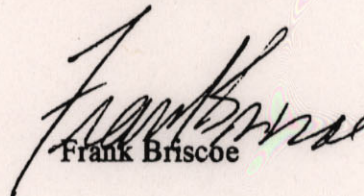
Dear Sherry Peel:

I have filed the enclosed petition in Travis County and am hopeful that you will accept service without the necessity of formal service.

As you are aware, I would like to acquire acreage of equal value to the shortage in this transaction. It is contemplated that the State would be required to convey to me 265.5 acres out of the north part of Section 40, Block 2, D & P Survey. The General Land Office has already surveyed this property in the expectation it would be awarded to me through court action.

Please let me hear from you regarding acceptance of service.

Sincerely,

  
Frank Briscoe

FB/lrb  
Enclosure

cc: Spencer L. Reid  
Sherman Bales

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 11 of 49







**Cause of Action**

Plaintiff says that he is entitled to recover from **THE STATE OF TEXAS** land of value equal to that paid for by Plaintiff but not received.

**Prayer**

Therefore, premises considered, Plaintiff prays that upon trial hereof, Plaintiff recover in kind for acreage paid for but not received and for his costs herein expended.

Respectfully submitted,

---

**FRANK BRISCOE, Pro Se**  
314 Morton Street, #10  
Richmond, Texas 77469  
281-341-5787  
Fax: 281-341-6663  
SBN 03009000

SKETCH FILE No. 121  
COUNTY Presidio

Pg. 13 of 49



# FRANK BRISCOE

*Attorney at Law*

June 22, 1998

*Byr*  
*Spencer*  
*LaMell*

Attorney General Dan Morales  
P. O. Box 12548  
Austin, Texas 78711-2548

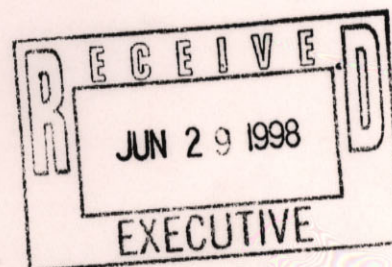
Dear Dan:

It is a brief and simple story. In 1986, my brother, Andrew, and I purchased from the State, Section 24, Block I, Texas-Mexico Railway Survey in Presidio County. We paid the State's asking price of \$45.00 per acre for 640 acres, a total of \$28,800.00. My brother has since died and the property (and claim) is mine.

In 1991, the State resurveyed the property and advised us that we had really purchased only 404 acres instead of the 640 we paid for. I began to correspond with Spencer Reid of the General Land Office seeking some sort of reimbursement. After several months, we agreed that the State would convey, and I would accept, acreage in another State-owned section, the value of which would reimburse me for my loss. Spencer advised me that it would be necessary to file a "friendly" lawsuit and that the State would agree to a judgment awarding me the acreage in the other State section. He told me that I would hear from your office in this regard. That was on March 3, 1998, and the silence has been deafening.

Please advise me whether it will be necessary for me to sue the State of Texas for the \$10,620.00 I gave the State without receiving any consideration therefor. I would prefer to accept 265.5 acres of Section 40, Block 1, D & P Survey. This acreage has already been surveyed with the intent that it would somehow be conveyed to me. What I need to know now is, am I going to have to bring suit to compel the great State of Texas to do the proper thing?

By copy of this letter to my local State Representative and Senator here in Fort Bend County, as well as those in Presidio County, I am earnestly requesting their help with this matter.



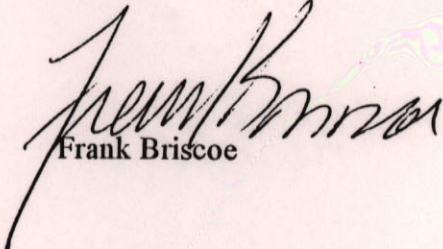
SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 14 of 49



I enclose copies of correspondence with Spencer Reid of the GLO, letter of the following dates:

Reid to Briscoe	August 29, 1997
Briscoe to Reid	September 9, 1997
Reid to Briscoe	September 18, 1997
Briscoe to Reid	September 23, 1997
Briscoe to Reid	October 28; 1997
Briscoe to Reid	February 10, 1998
Reid to Briscoe	March 3, 1998
Briscoe to Reid	May 19, 1998.

Sincerely,

  
Frank Briscoe

FB/lrb  
Enclosures

cc: The Honorable Charlie Howard  
The Honorable Kenneth Armbrister  
The Honorable Pete P. Gallego  
The Honorable Frank Madla  
The Honorable Gary Mauro  
Mr. Spencer L. Reid  
Mr. Sherman Bales

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 15 of 49





**Texas General Land Office**  
Garry Mauro, Commissioner

Stephen F. Austin Building  
1700 North Congress Avenue  
Austin, Texas 78701-1495  
(512) 463-5001

**Spencer L. Reid**  
Senior Deputy Commissioner  
(512) 463-5236  
Fax (512) 463-5098

March 3, 1998

Mr. Frank Briscoe  
314 Morton Street, Suite 10  
Richmond, Texas 77469

Dear Mr. Briscoe:

In response to your recent letter, the General Land Office (GLO) surveyors have completed the field work on Section 40, D & P Ry. Co., Block 2, Presidio County, Texas. The written description is being prepared this week.

A letter has been sent to the Texas Attorney General's Office (AG) detailing the background of the dispute and recommending settlement by agreed judgment. As soon as the details of the process are worked out with the AG's office, I will be in contact with you to finalize the agreement.

Please feel free to call me and discuss the details at any time.

Sincerely,

Spencer Reid  
Senior Deputy Commissioner

SR/la

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 16 of 49



**FRANK BRISCOE**

*Attorney at Law*

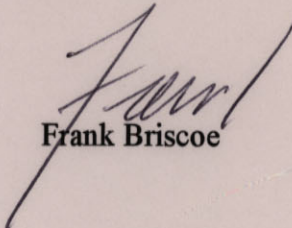
February 10, 1998

Spencer L. Reid  
Senior Deputy Commissioner  
Texas General Land Office  
1700 North Congress Avenue  
Austin, Texas 78701-1495

Dear Spencer:

As you told me it would be, the surveyors were on Section 40, D & P last month. I am anxious to keep the matter moving and I will appreciate any progress report you can have sent to me.

Best regards,



Frank Briscoe

FB/lrb

cc: Sherman Bales

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 17 of 49



**FRANK BRISCOE**

*Attorney at Law*

314 MORTON STREET  
RICHMOND, TEXAS 77469



FEB

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1998

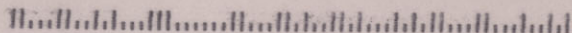
2 13 98



FEB

Spencer L. Reid  
Senior Deputy Commissioner  
Texas General Land Office  
1700 No. Congress Ave.  
Austin, TX 78701-1495

78701+1495



COUNTER 82639



# FRANK BRISCOE

*Attorney at Law*

November 7, 1997

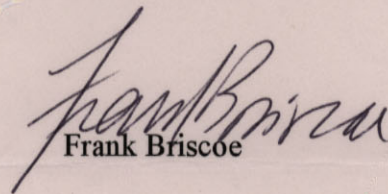
Mr. Greg Rives  
Asset Management  
Texas General Land Office  
1700 North Congress Avenue  
Austin, Texas 78701-1495

Dear Mr. Rives:

I have, and thank you for, your letter of October 23, 1997 enclosing a plat showing "State Owned" sections in Presidio County.

I have made it clear to Spencer Reid that the **ONLY** tract I am interested in is Section 40 of D & P, Block 2 - and then only to the extent of 265.5 acres off the north part of that section. That would compensate me for the 235.6 acres the State "shorted" me on when I purchased Section 24, Tex Ry Co, Block 1. I have written Spencer (September 23) proposing what I deem to be a fair settlement. In a letter from Spencer dated September 18, he expressed the hope that we could "come to terms soon". So do I!

Sincerely,

  
Frank Briscoe

FB/lrb

cc: Spencer Reid

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 18 of 49



# FRANK BRISCOE

*Attorney at Law*

September 23, 1997

Spencer L. Reid  
Senior Deputy Commissioner  
Texas General Land Office  
1700 North Congress Avenue  
Austin, Texas 78701-1495

Dear Spencer:

Thank you for your letter of September 18, 1997. I particularly appreciate your expression of hope that we can come to terms soon. As I understand them, these are the facts:

- (1) In buying Section 24, Tex Mex Survey, Block 1, I overpaid the State \$45.00 per acre for 236 acres, or a total of \$10,620 (all figures from your letter);
- (2) Section 40, D & P, has been appraised at \$40.00 per acre and contains only 630 acres.

Please consider this a firm offer to settle my claim for the equivalent of \$10,620 worth of acreage of the north part of Section 40. By my math, that would come to 265.5 acres.

This offer is conditioned upon the State bearing all expense of the necessary friendly suit and preparing the papers required to carry out the bargain. I will also require a survey of the north 265.5 acres out of the north part of Section 40 at State expense.

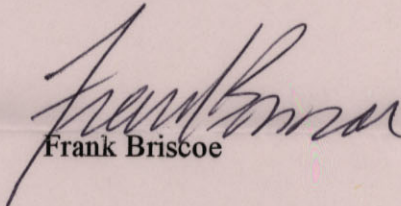
So that you will be aware, Sherman Bales has expressed his agreement with this arrangement. When I get title to the 265.5 acres out of Section 40, he and I will exchange properties so that his road will be on his property and the north line of his Section 27 will not be at the front door of my house. (Sherman owns Sections 27 and 28 - not 26 and 27 as I mistakenly advised you earlier.)

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 19 of 49



I will be satisfied with this resolution. If you can think of any way to accomplish the same purpose in a more simplified manner, please let me know. I know that you are busy with more important matters and I appreciate your courtesy throughout.

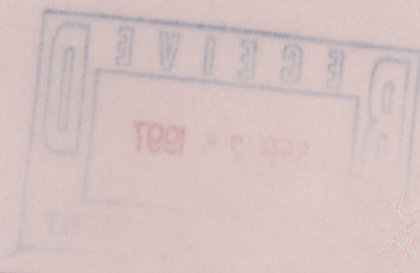
Sincerely,

  
Frank Briscoe

FB/lrb

cc: Sherman Bales

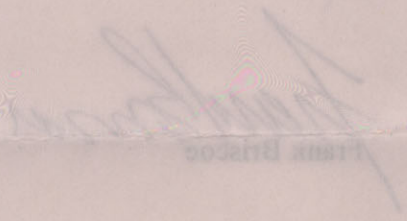
SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 19 1/2 of 49





I will be satisfied with this resolution. If you can think of any way to accomplish the same purpose in a more simplified manner, please let me know. I know that you are busy with more important matters and I appreciate your courtesy throughout.

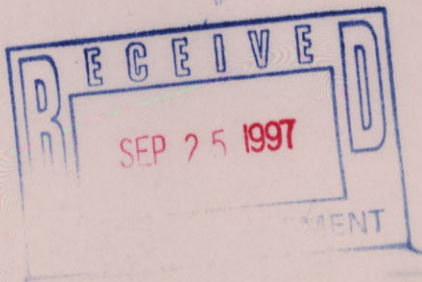
Sincerely,



Frank Biscoe

FBI/DOJ

cc: Sherman Bates



SKETCH FILE NO. 151  
COUNTY 9/25/97  
P. 191/2 of 43



# FRANK BRISCOE

*Attorney at Law*

September 9, 1997

Spencer L. Reid  
Senior Deputy Commissioner  
Texas General Land Office  
1700 North Congress Avenue  
Austin, Texas 78701-1495

Dear Spencer:

Thank you for your letter of August 29. I would have replied sooner but I was enjoying myself in Presidio County.

There is some light at the end of the tunnel. Sherman Bales and I are very close friends and he runs cattle on my sections. He and I have discussed this problem many times. As a matter of fact, as recently as last week, he urged me to call Greg Rives and talk to him about resolving the matter to everyone's satisfaction.

Sherman owns Sections 26 and 27. Section 40 lies directly south of his Section 27 and contains the road by which he reaches his house on Hot Springs Creek. Before the re-survey, the road was in his Section 27.

Sherman desires to acquire the north part of Section 40 in order to get his road back and within his fence.

I have a very nice house near the south line of Section 18. The re-survey moved the north line of Sherman's Section 27 up to my front yard. He and I have agreed that if I can acquire the north part of Section 40, we would exchange that acreage for land in front of my house. Sherman would be willing to waive his "adjacent landowner preferential status" for me to acquire part of Section 40. I do not know if it is possible for him to "assign" such right to me, but he is willing to do so. Upon reflection, because of the possibility of other adjacent landowners being involved, it would probably be best for the State to deal with him. I propose the following:

The State convey to Sherman Bales the north 1/2 of Section 40 upon his agreement to convey to me a like number of acres in the north part of his Section 27. Upon his doing so, I will be glad to release the State from any claim I have regarding the Tex Mex section.

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 20 of 49

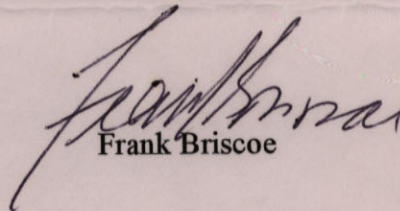


I note your statement that whether this is resolved "by mutual agreement or hostile suit, we are going to have to go to court". The thing I really want to avoid is for this problem to go on forever.

I greatly appreciate your having Mr. Blumberg send a map of other sections owned by the State, but according to the information I have, none of them abut my property. While it is true that neither does Section 40, I can acquire desirable adjacent property through the suggested transactions with Sherman Bales.

Put your legal staff to work on this and let's see some creative lawyering.

Best regards,



Frank Briscoe

FB/lrb

cc: Sherman Bales

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 21 of 49





**Texas General Land Office**  
Garry Mauro, Commissioner

Stephen F. Austin Building  
1700 North Congress Avenue  
Austin, Texas 78701-1495  
(512) 463-5001

**Spencer L. Reid**  
Senior Deputy Commissioner  
(512) 463-5236  
Fax (512) 463-5098

September 18, 1997

Mr. Frank Briscoe  
314 Morton Street, Suite 10  
Richmond, Texas 77469-3119

Dear Mr. Briscoe:

Thank you for your September 9, 1997, letter in which you outlined several options to a possible agreement. Mr. Greg Rives works under the supervision of Mr. Bob Blumberg in the real estate section. Mr. Rives will be sending you a map showing the location of the state-owned property in Presidio County, Texas in the vicinity of your property in the next few days. We will also evaluate your specific proposal.

I sincerely hope that we can come to terms on this issue soon.

Sincerely,

Spencer L. Reid  
Senior Deputy Commissioner

SLR/lha

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 22 of 49





August 29, 1997

Mr. Frank Briscoe  
314 Morton Street, Suite 10  
Richmond, Texas 77469-3119

Dear Mr. Briscoe:

This is in response to your July 24, 1997 letter. For discussion purposes, it may help to lay out the facts as I understand them.

In 1985, the General Land Office (GLO) entered into a trade agreement with a number of individuals for the purpose of exchanging numerous parcels of Permanent School Fund (PSF) land located in various counties of the state for one certain parcel of land in Harris County, Texas. The trade was entered into under authority and by virtue of Texas Natural Resources Code, Section 32.061, which authorizes the School Land Board and Commissioner of the GLO to trade PSF land. One of the surveys deeded to you and your brother, Andrew Briscoe, Jr. (a one half undivided interest each), was to Section 24, T.M. Ry. Co., Block 1, Presidio County, Texas. Deeds issued as a result of such a trade do not warrant title to the property conveyed. A boundary survey of the property traded to you was not conducted prior to the trade. In fact, the field notes of record in this office for Section 24, dated 1882, were and still are the only field note description of that property available.

In 1991, prompted by a boundary dispute within the block, this office began the task of resurveying D. & P. Ry. Co. Block 2, Presidio County, Texas, which lies adjacent to and south of T.M. Ry. Co. Block 1. After many months of field surveying by this office, coupled with countless hours of record research, consultation with legal counsel, and discussion among several Licensed State Land Surveyors, a survey was adopted to resolve the problems in that block. The resurvey and confirmation of the location of D. & P. Ry. Co. Block 2, as surveyed in 1880 by Dan Buckley, indicates that there is the possibility that the southerly tier of surveys located in T.M. Ry. Co. Block 1 to the north may not contain the full 640 acres as reflected in the original field notes of record in this office. A survey on the ground of Section 24 would be required to make a determination as to the existence and amount of shortage, if any.

We disagree with your statement that "the State knew - or should have known - of the shortage at the time of sale." The trade was made based on the 1882 field notes and long

SKETCH FILE No. 121

COUNTY Presidio

Pg. 23 of 49  
Printed on recycled paper with soybean ink



Mr. Frank Briscoe  
August 29, 1997  
Page 2

before the resurvey of D. & P. Ry. Co. Block 2. The 1882 field notes were the best information available to the GLO at the time of the trade.

After my meeting with you on February 7, 1997, I asked the legal staff to investigate whether a refund consistent with what we could do on regular land sales could be made to you for the presumed shortage of the acreage in Section 24. The appraised value of Section 24 at the time of the trade was \$45.00 per acre. Assuming that Section 24 is not also located in a wrong position on the ground, it is estimated that Section 24 contains approximately 404 acres which would create a 236 acre shortage. Assuming a 236 acre shortage at \$45.00 per acre leaves a \$10,620 refund due. Although you paid no money into the State Treasury in connection with this trade, it is the public policy of this agency to deal fairly with those who have purchased (or traded for) public lands. Texas Natural Resources Code, Section 51.020 states that... "money paid in good faith to a fund in the State Treasury for public land to which the fund is not entitled shall be refunded." No statutory provision expressly authorizes the payment of a cash refund for property conveyed as the result of a trade or exchange of land. (Please bear in mind that the State is prohibited by law from giving away its resources, and that money in the PSF may only be used for certain enumerated purposes. Thus, money may not be refunded without express statutory authority. Further, there is no statutory authority to pay interest.)

I further instructed my staff to investigate the possibility of exchanging another section of land to you for the value of the shortage in Section 24. You mentioned that Section 40, D. & P. Ry. Co. Block 2, would be a desirable piece of property for the exchange. An appraisal of Section 40 was requested and it was discovered that an appraisal had previously been requested because Mr. Sherman Bales was negotiating independently with the GLO real estate staff to acquire Section 40. Mr. Bales is an adjacent landowner and has a legal preference right to purchase school land adjoining his.

The current appraised value of Section 40, containing 630 acres, is \$40.00 per acre for a total value of \$25,200. In a conversation with Ms. Lenora DuBose, I understand that you expressed an interest in acquiring only the north portion of Section 40, an amount equivalent to the value of the shortage in Section 24, that being approximately \$10,620. Based on your letter of July 24, 1997, I understand that you are no longer interested in the north part of Section 40 but rather want to acquire all of Section 40. Is that correct?

I do not particularly understand your comment that the value of Section 40 has been affected by "the serious encroachment on the northwest side of the section." You may be referring to the location of the southeast quarter of Section 26, D. & P. Ry. Co. Block 2, which is the adjudicated location of that quarter section. The lawsuit Logan v. Lee 256 S.W. 952 (Tex. Civ. App. - El Paso 1923, no writ) was an action in trespass to try title regarding the

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 24 of 49



Mr. Frank Briscoe  
August 29, 1997  
Page 3

ownership of the southeast quarter of Section 26. The resolution of that lawsuit was binding on the parties to the suit, namely Logan and Lee. In the District court action, Lee was awarded the southeast quarter of Survey 26 as located by surveyor W.B. Bean. This judgment was affirmed by the El Paso Court of Civil Appeals. Our appraisal takes the conflict into account.

Among other language in its decision, the Court of Civil Appeals made the following statement: "We do not intend to be understood as holding that these corrected field notes could be used so as to locate land differently from what it was originally located. The state surveyors who made the resurveys 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" (emphasis added).

As a result of litigation, the southeast quarter of Section 26 now occupies the adjudicated location, not in harmony with the remaining sections in Block 2 and this office recognizes that location only to the extent intended by the court. Section 40 was appraised based on containing 630 acres of land and not the full 640 acres.

You comment that the value of Section 40, D. & P. Ry. Co. Block 2, "is further diminished by the State's grant of an easement across the section". As you are aware, this road easement was issued to facilitate the closure of a sale of Mrs. Andrew Briscoe's ranch to Mr. Cortner. Our experience is that such easements rarely negatively affect value. In fact, if the road maintenance is improved, the existence of a road usually enhances its value.

Whether we handle this by mutual agreement or by hostile suit, we are going to have to go to court. We have no legal authority to refund funds that were never paid into the Treasury. Furthermore, we have no authority to transfer land to a specific individual unless that person qualifies for one of the preference rights, which primarily requires that he surround the tract or at least adjoin the tract. Our understanding is that you have no such relationship to Section 40. Without retreating from my position that the state owes an obligation to make you whole, we have to have go to court to establish that a legal obligation exists in order for us to transfer funds or real property to a private party. (There are hundreds of patented tracts of land in West Texas with acreage shortages, many in excess of 200 acres, where the state was paid for 640 acres. There is generally no legal obligation on the state to refund the purchase price for these tracts, even in situations where there is a survey confirming that a shortage in fact exists.)

We will continue to pursue ways to compensate you with land in lieu of cash, including further discussions on Section 40. We will have to accommodate the concerns of Mr. Sherman Bales and other adjacent owners that have the statutory preferences to proceed on

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 25 of 49

COUNTER 82679

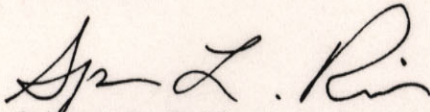


Mr. Frank Briscoe  
August 29, 1997  
Page 4

this particular tract. Under separate cover, Mr. Bob Blumberg will forward a map to you showing all of the state sections in that part of Presidio County in case we cannot resolve the issues with Section 40.

I'll be available to discuss this with you on the phone next week. Please call me at 512-463-5236. I look forward to hearing from you.

Sincerely,

  
Spencer L. Reid  
Senior Deputy Commissioner

SR/la

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 26 of 49



# FRANK BRISCOE

*Attorney at Law*

July 24, 1997

## **CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Spencer L. Reid  
Senior Deputy Commissioner  
Texas General Land Office  
1700 North Congress Avenue  
Austin, Texas 78701-1495

Re: Claim for Damages Growing Out of  
State Sale of Section 24, Texas Mexican Railway Survey  
Presidio County, Texas

Dear Spencer:

I do not believe the facts of this matter are in dispute.

- (1) By deed dated April 22, 1986, the State conveyed to Andrew and Frank Briscoe Section 24, "Tex-Mex" Survey, Presidio County, Texas. The deed reflected a "full" section of 640 acres for which the Briscoes paid \$45 per acre for a total of \$28,800. (Actually, as you know, this was a "swap" - we bought land in Harris County and conveyed that to the State in return for the Presidio County land.
- (2) Andrew and I partitioned the Presidio property and I am now the sole owner of Section 24.
- (3) On February 7, 1997, you, Ben Thompson and Lenora Dubose visited my office, explained that section was "short" and I have subsequently been advised by your office that the shortage amounts to 235.6 acres. The bottom line is that I paid the State \$10,602 in 1986 for land I never received.
- (4) To further complicate the matter, there are indications that the State knew - or should have known - of the shortage at the time of sale.

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 27 of 49



**Damages**

I have been deprived of the use and increase of \$10,602 for eleven years. As I stated in my letter to you of April 25, 1997, (by certified mail), a modest increase of 5% per annum would now have increased by losses to a figure in excess of \$20,000.

**Demand**

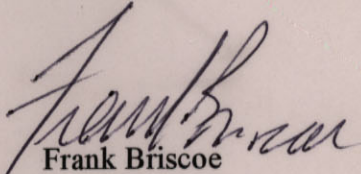
You told me in the past that I could not be compensated by money because no funds changed hands in the initial transaction. On June 23, 1997, Kay Molina left a message on my recorder that you had suggested a "friendly" lawsuit to result in an agreed judgment of \$10,602. If you made that suggestion, it is not agreeable to me. Even though I have no burning desire to sue the State of Texas, I feel very strongly that I have been wronged and I am determined to do whatever is necessary to set the matter right.

I will settle the claim on either of the following grounds:

- (1) Conveyance by the State to me of Section 40, D & P Survey, Block 2. Kay Molina has advised that Section 40 has been appraised at \$25,200. That evaluation, however, does not take into consideration the serious encroachment on the northwest side of the section. The value of Section 40 is further diminished by the State's grant of an easement across the section.
- (2) As an alternative, I will accept an amount of double the \$10,602 the State received in 1986 for which I received nothing at all.

I know that you have very important things to do but this matter needs to be resolved. I am a reasonable person and I have a legitimate claim. If I do not receive a written response setting out a proposed settlement of this matter by September 1, 1997, the Attorney General's office will have another irate plaintiff to respond to.

Sincerely,

  
Frank Briscoe

FB/lrb

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 28 of 49



**FRANK BRISCOE**

*Attorney at Law*

314 MORTON STREET  
RICHMOND, TEXAS 77469

28 99

**CERTIFIED**

P 287 888 965

**MAIL**

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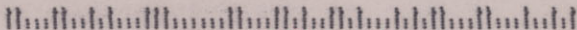
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**RECEIVED**  
JUL 28 1997  
**ASSET MANAGEMENT**

Spencer L. Reid  
Senior Deputy Commissioner  
Texas General Land Office  
1700 No. Congress Ave.  
Austin, TX 78701-1495

728

78701-1495 71



COUNTER 82653



*La Nell*

**FRANK BRISCOE**

*Attorney at Law*

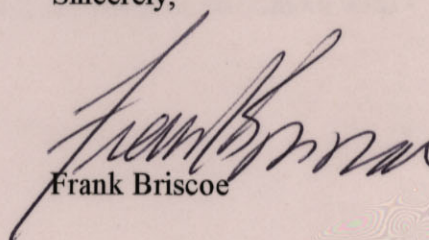
May 19, 1997

Spencer L. Reid  
Senior Deputy Commissioner  
Texas General Land Office  
1700 North Congress Avenue  
Austin, Texas 78701-1495

Dear Spencer:

I enclose a copy of your letter of March 3, 1998, which, I believe, is your last correspondence. Please advise me what I can do to expedite this process. If you know the names of the individual(s) in the Attorney General's office to whom this has been referred, I would appreciate receiving that information

Sincerely,

  
Frank Briscoe

FB/lrb  
Enclosure

cc: Sherman Bales

*Ans. by telephone*

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 29 of 49





**Texas General Land Office**  
Garry Mauro, Commissioner

Stephen F. Austin Building  
1700 North Congress Avenue  
Austin, Texas 78701-1495  
(512) 463-5001

**Spencer L. Reid**  
Senior Deputy Commissioner  
(512) 463-5236  
Fax (512) 463-5098

May 1, 1997

Mr. Frank Briscoe  
Attorney at Law  
314 Morton Street  
Suite 10  
Richmond, Texas 77469-3119

Dear Mr. Briscoe:

Thank you for your letters of April 14, and April 25, 1997. As we discussed on the telephone this morning, I have asked Ms. Lenora DuBose, the attorney who attended the meeting in your office with me and Ben Thomson, to investigate the possible solutions and respond to your request.

Your letter of April 14, was routinely routed to the Acquisitions and Dispositions Section of the General Land Office. The gentleman that left you a message is Mr. Greg Rives. He handles our land sales and was not familiar with your particular situation.

As I told you on the telephone, we will come to a resolution of this problem as soon as possible. You may contact Ms. DuBose at 512-305-8599, if necessary. Please do not hesitate to call me at any time.

Sincerely,

Spencer Reid  
Senior Deputy Commissioner

SR/la

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 30 of 49



# FRANK BRISCOE

*Attorney at Law*

April 25, 1997

Spencer L. Reid  
Senior Deputy Commissioner  
Texas General Land Office  
1700 North Congress Avenue  
Austin, Texas 78701-1495

Re: Section 24, Tex-Mex Railway Survey  
Presidio County, Texas

Dear Spencer:

In 1986, my brother Andy and I engaged in a transaction with the State of Texas whereby we purchased a small percentage of 3.606 acres of land in the A. W. Childress Survey in Harris County.

We deeded that property to the State and, in return, the State gave us a deed to Section 24, Tex-Mex Railway Survey in Presidio County. The price of the Harris County property was determined by our paying \$45 per acre for a full (640 acres) section. We paid \$28,800.

It is now apparent that we did not receive 640 acres - that Section 24 was a "short section" and possibly contains as little as 404 acres (letter to me from Ben Thomson dated March 5, 1997). I want to be compensated for the shortage.

If there are only 404 acres in the section, the price should have been  $404 \times \$45$  or \$18,180 instead of the \$28,800 we paid. We paid the State \$10,620 for land we never received.

I could probably make a case that, at the time of the sale, the State knew (or should have known) of the serious shortage. The State was aware of the survey problems in D & P Block Two which resulted in the southernmost sections in Tex-Mex (including Section 24) being "short sections".

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 31 of 49



The State has had the use of my funds (\$10,620) for eleven years. At a modest increase of 5% per annum, my loss now exceeds a total of \$20,000.

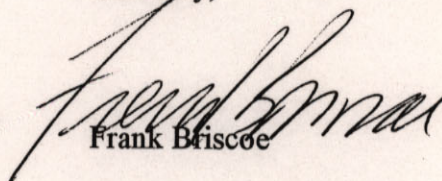
I know that you have asked someone to respond to my letter of April 14. He has left messages twice on my answering machine. I have called the number given to me, but I get only a recording regarding a State auction of various properties throughout the state.

I notice that the State apparently still owns Sections 36 and 30 of the "short" Tex-Mex sections. If those sections are to be sold and surveying is contemplated in that area, I will accept the surveyor's report on how many acres are in Section 24. I might be willing to accept an estimate if it is something a little more definite than "between 404 acres and 640 acres". I do want the matter resolved within the foreseeable future.

Please write or have someone write to me expressing (1) acknowledgment that we did not get all we paid for (something you seemed to do when you were here), and (2) what I can expect to be done about it. Because Ben Thomson will probably be involved in this, I am favoring him with a copy of this letter.

Best regards.

Sincerely,



Frank Briscoe

FB/lrb

cc: Ben Thomson

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 32 of 49



**FRANK BRISCOE**

*Attorney at Law*

April 14, 1997

*Susan + Ben,  
Would you look  
into this +  
respond*

*Presidio Co la*

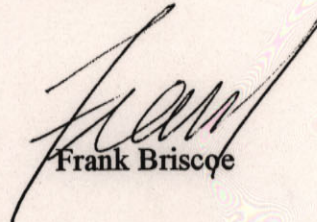
Spencer L. Reid  
Senior Deputy Commissioner  
Texas General Land Office  
1700 North Congress Avenue  
Austin, Texas 78701-1495

Dear Spencer:

I would like to explore the possibility of releasing my claim against the State with reference to my purchase of Section 24, Tex-Mex Survey (now made a short section) for the State deeding me the north one-half of Section 40, D & P Block 2. A goodly portion of the road to my property runs through this part of Section 40.

Please consider this and give me a call. Thanks.

Sincerely,

  
Frank Briscoe

FB/lrb

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 33 of 49





March 27, 1997

Ms. Carolyn Renfroe  
Presidio County Abstract Company  
P.O. Box 1508  
Marfa, Texas 79843

Re: Miscellaneous Easement No. ME97-0079

Dear Ms. Renfroe:

Enclosed are two (2) original copies of the Miscellaneous Easement referenced above. The easement grants a perpetual easement to Mark O. and Nancy C. Cortner, for purposes of maintaining an existing roadway across Permanent School Fund land.

When the information is available, please fill in Mr. and Mrs. Cortner's address and telephone number in Sections 1.01 and 11.01 of the easement. Upon execution of both originals by Mr. and Mrs. Cortner, please retain one original and mail the other to my attention at the address above.

Thank you for your assistance in finalizing this transaction. If you have any questions or comments, please let me know.

Very truly yours,

GENERAL LAND OFFICE

By: Lenora DuBose

Lenora DuBose  
Attorney at Law  
Real Estate Section  
Legal Services Division  
(512) 305-8599

4/11/97  
Original  
delivered to  
Bruce  
Smith

Enclosures

Printed on recycled paper with soybean ink

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 34 of 49

SKETCH FILE No. \_\_\_\_\_  
COUNTY \_\_\_\_\_



# The State of Texas



Austin, Texas

## MISCELLANEOUS EASEMENT

ME97-0079

STATE OF TEXAS

§  
§  
§  
§

KNOW ALL BY THESE PRESENTS:

COUNTY(IES) OF PRESIDIO

This Miscellaneous Easement, ME97-0079 ("the Agreement"), is granted by virtue of the authority granted in Section 51.291, et seq., TEX. NAT. RES. CODE ANN. (Vernon Supp. 1997), 31 TEX. ADMIN. CODE §13.11, et seq., and all other applicable statutes and rules, as the same may be amended from time to time, and is subject to all applicable regulations promulgated from time to time.

### ARTICLE I. PARTIES

1.01. In consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the STATE OF TEXAS, acting by and through Garry Mauro, Commissioner of the Texas General Land Office, on behalf of the Permanent School Fund of the State of Texas (the "Grantor"), hereby grants to MARK O. and NANCY C. CORTNER, whose address is 319 N. SUMMER ST. MARFA TX 79843 Telephone No. (970) 565-1139 (collectively, "Grantee"), a non-exclusive easement for the purposes identified in Article V.

### ARTICLE II. PREMISES

2.01. The easement is located across Permanent School Fund land in Presidio County(ies), Texas, described as follows:

BEING a right-of-way forty feet (40') wide, being twenty feet (20') either side of a centerline formed by the Improvements (as hereinafter defined), as currently constructed, located over and across Section 40, Block 2, D&P Ry.Co., Presidio County, Texas (the "Premises").

The Premises are further described or depicted on the Topography Map attached hereto as Exhibit A and the plat attached hereto as Exhibit B, collectively incorporated by reference for all purposes. The parties acknowledge and agree that the Premises are limited to the existing Improvements, delineated on Exhibits A and B, such Improvements historically used by Grantee for ingress and egress to Grantee's property described as:

Page 1

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 35 of 49



Sections 7 and 8, Block 2, D&P Ry.Co. and Sections 10 and 16, Block 1, Tex.Mex  
Ry.Co., Presidio County, Texas.

2.02. Grantee acknowledges and agrees that the location of the Improvements (as hereinafter defined) is fixed within the easement and the location shall not be changed except by an amendment to this Agreement signed by both parties hereto and subject to any approval by any other governmental agency with jurisdiction over same.

2.03. GRANTEE HAS INSPECTED THE PHYSICAL AND TOPOGRAPHIC CONDITION OF THE PREMISES AND ACCEPTS THE SAME "AS IS", IN ITS EXISTING PHYSICAL AND TOPOGRAPHIC CONDITION. THE GRANTOR DISCLAIMS ANY AND ALL WARRANTIES OF HABITABILITY, MERCHANTABILITY, SUITABILITY, FITNESS FOR ANY PURPOSE, AND ANY OTHER WARRANTY WHATSOEVER NOT EXPRESSLY SET FORTH IN THIS AGREEMENT. THE GRANTOR AND GRANTEE HEREBY AGREE AND ACKNOWLEDGE THAT THE USE OF THE TERM "GRANT" IN NO WAY IMPLIES THAT THIS EASEMENT IS FREE OF LIENS, ENCUMBRANCES AND/OR PRIOR RIGHTS. NOTICE IS HEREBY GIVEN TO GRANTEE THAT ANY PRIOR GRANT AND/OR ENCUMBRANCE MAY BE OF RECORD AND GRANTEE IS ADVISED TO EXAMINE THE RECORDS IN THE ARCHIVES AND RECORDS DIVISION OF THE TEXAS GENERAL LAND OFFICE, 1700 NORTH CONGRESS AVENUE, AUSTIN, TEXAS 78701, AND ALL OTHER LAND TITLE RECORDS OF THE COUNTY IN WHICH THE PREMISES ARE LOCATED. THE PROVISIONS OF THIS SECTION 2.03 SHALL SURVIVE THE TERMINATION OF THIS EASEMENT.

ARTICLE III. TERM

3.01. This Agreement is perpetual, beginning on the date of execution by Grantor, unless sooner terminated as authorized by law or as set forth herein or unless the Premises shall cease to be used by Grantee for the purposes set forth in Section 5.01.

ARTICLE IV. CONSIDERATION AND TAXES

4.01.A. The consideration ("Consideration") for the granting of this easement shall be the construction, maintenance and repair by Grantee of the Improvements, such Improvements providing access over and across Grantor's property for the benefit of Grantee, Grantor and their successors and assigns.

B. Past due Consideration and other past due payments shall bear interest from maturity at the rate of ten percent (10%) per annum from the date when due until actually paid, as provided in Section 51.301, TEX. NAT. RES. CODE ANN. (Vernon 1978). Failure of Grantee to make a payment on or before the date the same becomes due shall, at the Grantor's option, make all payments due and payable immediately.

4.02. In addition to the above, Grantee shall pay and discharge any and all taxes, general and special assessments, and other charges which during the term of this Agreement may be levied on or assessed against the Premises or the Improvements constructed thereon, provided such taxes result from Grantee's use of this easement. Grantee shall pay such taxes, charges, and assessments not less than five (5) days prior to the date of delinquency thereof directly to the authority or official charged with the collection thereof. Grantee shall have the right in good faith at its sole cost and expense to contest any such taxes, charges, and assessments, and shall be obligated to pay the contested amount only if and when finally determined to be owed.

Page 2

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 36 of 49

COUNTER 82661



4.03. Grantee agrees to and shall protect and hold the Grantor harmless from liability for any and all such taxes, charges, and assessments, together with any penalties and interest thereon, and from any sale or other proceeding to enforce payment thereof.

#### ARTICLE V. USE OF THE PREMISES

5.01. Grantee and Grantee's employees, contractors, and agents shall have the right to use the Premises for a right-of-way to maintain, operate, inspect, and repair an existing roadway, being forty feet (40') wide, abutting and continuing from the termination point of the Ruidosa Hot Springs County Road, as depicted on Exhibits A and B (the "Improvements"). Grantee shall use the Premises and the Improvements solely for purposes of ingress and egress to Grantee's property located in Presidio County and described in Section 2.01 of this Agreement. Grantee shall not use the Premises or the Improvements for any other purpose without first obtaining written consent of the Grantor, which consent may be granted or withheld in the Grantor's sole discretion.

5.02.A. The Grantor and Grantee hereby acknowledge and agree that each shall have reciprocal rights of ingress and egress to and from the Premises across contiguous or adjacent Permanent School Fund land or land owned by Grantee, provided in the exercise of this right the Grantor and Grantee agree not to unreasonably interfere with the other party's (or that party's agents, assignees, or designees) use of its property. Grantee shall have the right of ingress and egress for the purposes of constructing maintaining, operating, inspecting, and repairing the Improvements and such right is not granted for any other purpose. Grantee and the Grantor mutually agree to use contiguous or adjacent Permanent School Fund land or land owned by Grantee, respectively, only to the extent and for the length of time necessary to provide access to and from the Premises. Notwithstanding any other provisions to the contrary, no easement is created by this Section 5.02; instead, a license is granted to the parties and their respective officers, employees, agents and contractors for the limited purposes set forth herein.

B. Grantee acknowledges and agrees that the Grantor's right of ingress and egress described in Section 5.02.A. of this Agreement shall be and remain in effect as long as the Improvements and any other structure placed on the Premises by Grantee remain on the Premises and/or as necessary for the Grantor to confirm the removal (in whole or in part) of the Improvements. Such right of ingress and egress shall survive the expiration or earlier termination of this Agreement.

5.03. Grantee shall be fully liable and responsible for any damage, of any nature, arising or resulting from any act or omission of Grantee or Grantee's officers, employees, agents, contractors and invitees, which are related to the exercise of the rights granted in this Article V.

5.04.A. Grantee's use of the Premises is subject to and contingent upon compliance with the following covenants, obligations and conditions (the "Special Conditions"):

1. Clearing of natural vegetation shall be limited to that material which poses a hazard or a hindrance to the maintenance or use of the Improvements.
2. Grantee is required to perform mitigation and/or pay surface damage fees according to Grantor's policy in effect at the time damages occur for any and all surface damages resulting from actions of Grantee, Grantee's employees, contractors and/or agents during the term of this Agreement. If mitigation is required Grantee will be notified in writing by Grantor of the terms and conditions under which the mitigation shall be conducted. Such mitigation and/or payment of damage fees



shall be performed in the manner and within the time frame specified in the written notice provided by Grantor to Grantee following said damages.

B. Prior to any reconstruction or major repairs on the Premises, Grantee shall provide written notice of all Special Conditions, if any, to any contractor and/or agent involved in such activities. Grantee shall send a copy of such notice to the Texas General Land Office, ATTN: Asset Management, 1700 N. Congress Avenue, Austin, Texas 78701-1495.

5.05. The Grantor, its agents, representatives and employees shall have the right to enter upon the Premises at any reasonable time (or any time in case of emergency) for purposes of inspection, repair (and Grantee agrees to repay the State the reasonable cost thereof on written demand) and any other purpose necessary to protect the Grantor's interests therein. Further, the Grantor shall have the right to use or to permit the use of any or all of the Premises and the Improvements for any purpose deemed, in the Grantor's sole discretion, to be consistent with Grantee's easement grant.

5.06. Grantee shall not use, or permit the use of the Premises for any illegal purpose. Grantee shall comply, and will cause its officers, employees, agents, contractors and invitees to comply, with all applicable laws, ordinances, rules, and regulations of governing agencies concerning use of the Premises.

5.07. Failure by Grantee to maintain and operate the Improvements in accordance with this Article V shall render such Improvements "unauthorized structures" under TEX. NAT. RES. CODE ANN., §51.302 (Vernon Supp. 1996).

#### ARTICLE VI. ASSIGNMENTS

6.01. EXCEPT FOR A TRANSFEREE OR ASSIGNEE OF GRANTEE'S PROPERTY DESCRIBED IN SECTION 2.01 ABOVE, GRANTEE SHALL NOT ASSIGN THE PREMISES OR THE RIGHTS GRANTED HEREIN, IN WHOLE OR PART, TO ANY THIRD PARTY FOR ANY PURPOSE WITHOUT THE PRIOR WRITTEN CONSENT OF THE GRANTOR, WHICH MAY BE GRANTED OR DENIED IN THE GRANTOR'S SOLE DISCRETION. ANY UNAUTHORIZED ASSIGNMENT SHALL BE VOID AND OF NO EFFECT. NO ASSIGNMENT SHALL RELIEVE GRANTEE OR ITS SUCCESSOR(S) IN INTEREST OF ANY LIABILITY FOR ANY OBLIGATION, COVENANT, OR CONDITION OF THIS AGREEMENT. THIS PROVISION, AND THE PROHIBITION AGAINST ASSIGNMENT CONTAINED HEREIN, SHALL SURVIVE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT. FOR PURPOSES OF THIS AGREEMENT, AN ASSIGNMENT IS ANY TRANSFER, INCLUDING BY OPERATION OF LAW, TO ANOTHER OF ALL OR PART OF THE PREMISES, INTERESTS OR RIGHTS HEREIN GRANTED.

#### ARTICLE VII. PROTECTION OF NATURAL and HISTORICAL RESOURCES

7.01. Grantee shall use the highest degree of care and all appropriate safeguards to: (i) prevent pollution of air, ground, and water in and around the Premises, and (ii) to protect and preserve natural resources and wildlife habitat. Grantee shall comply with all applicable rules and regulations of the Texas General Land Office, the School Land Board, and other governmental agencies responsible for the protection and preservation of public lands and waters. In the event of pollution or an incident that may result in pollution of the Premises or adjacent property which is the result of Grantee's (or Grantee's employees, contractors, and agents) acts or omissions, Grantee shall immediately notify the Grantor, use all means reasonably available to recapture any pollutants which have escaped or may escape, and mitigate for any and all natural resources damages caused thereby.



7.02. GRANTEE IS HEREBY EXPRESSLY NOTIFIED OF THE NATIONAL HISTORIC PRESERVATION ACT OF 1966 (PB-89-66, 80 STAT. 915, 16 U.S.C.A. SECTION 470, ET.SEQ.) AND THE TEXAS ANTIQUITIES CODE (TITLE 9, CHAPTER 191, TEX. NAT. RES. CODE ANN. [VERNON SUPP. 1996]). IN CONFORMANCE WITH THESE LAWS, IN THE EVENT THAT ANY SITE, FOUNDATION, BUILDING, STRUCTURE, LOCATION, OBJECT, ARTIFACT, ITEM OR OTHER FEATURE OF ARCHAEOLOGICAL, SCIENTIFIC, EDUCATIONAL, CULTURAL, OR HISTORIC INTEREST IS ENCOUNTERED DURING THE ACTIVITIES AUTHORIZED BY THIS AGREEMENT, GRANTEE SHALL IMMEDIATELY CEASE ANY AND ALL ACTIVITIES, AND NOTIFY THE COMMISSIONER OF THE TEXAS GENERAL LAND OFFICE AND THE TEXAS HISTORICAL COMMISSION, P.O. BOX 12276, AUSTIN, TEXAS 78711, SO THAT APPROPRIATE ACTION MAY BE TAKEN. IN THE EVENT THAT GRANTEE IS REQUIRED TO CEASE ACTIVITIES, THE GRANTOR SHALL NOT BE LIABLE FOR ANY COSTS OF GRANTEE, GRANTEE'S AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS OR ANY OTHER PERSON OR ENTITY AS A RESULT OF ANY INTERRUPTION OF GRANTEE'S ACTIVITIES OR INABILITY TO USE THE PREMISES AS HEREIN CONTEMPLATED.

ARTICLE VIII. INDEMNITY and INSURANCE

8.01. GRANTEE SHALL BE FULLY LIABLE AND RESPONSIBLE FOR ANY DAMAGE, OF ANY NATURE, ARISING OR RESULTING FROM ITS OWN ACTS OR OMISSIONS RELATED TO ITS EXERCISE OF THE RIGHTS GRANTED HEREIN. GRANTEE AGREES TO AND SHALL INDEMNIFY AND HOLD THE GRANTOR, THE GRANTOR'S OFFICERS, AGENTS, AND EMPLOYEES, HARMLESS FROM AND AGAINST CLAIMS, SUIT, COSTS, LIABILITY OR DAMAGES OF ANY KIND, INCLUDING STRICT LIABILITY CLAIMS, WITHOUT LIMIT AND WITHOUT REGARD TO CAUSE OF THE DAMAGES OR THE NEGLIGENCE OF ANY PARTY, EXCEPT FOR THE CONSEQUENCES OF THE NEGLIGENT ACTS OR WILLFUL MISCONDUCT OF THE GRANTOR, THE GRANTOR'S OFFICERS, AGENTS, EMPLOYEES, OR INVITEES, ARISING DIRECTLY OR INDIRECTLY FROM GRANTEE'S USE OF THE PREMISES (OR ANY ADJACENT OR CONTIGUOUS PSF LAND) OR FROM ANY BREACH BY GRANTEE OF THE TERMS, COVENANTS OR CONDITIONS CONTAINED HEREIN.

ARTICLE IX. DEFAULT, TERMINATION and EXPIRATION

9.01. If, following 30 days prior written notice from the Grantor specifying a default or breach, Grantee fails to pay any money due hereunder or is in breach of any term or condition of this Agreement, the Grantor shall have the right, at its option and its sole discretion, to terminate this Agreement and all rights inuring to Grantee herein by sending written notice of such termination to Grantee in accordance with Article XI of this Agreement. Upon sending of such written notice, this Agreement shall automatically terminate and all rights granted herein to Grantee shall revert to the Grantor. Such termination shall not prejudice the rights of the Grantor to collect any money due or to seek recovery on any claim arising hereunder.

9.02.A. Except as otherwise provided in subsection B, Grantee shall, within one hundred twenty (120) days from the date of expiration or sooner termination of this Agreement, remove all personal property, structures, and the Improvements, and shall restore the Premises (and any other property affected by such removal activities) to the same condition that existed before Grantee entered thereon. Such removal and restoration activities shall be conducted in accordance with Texas General Land Office guidelines in effect at the time of removal/restoration which may include, without limitation, specific removal techniques required for protection of natural resources, and mitigation or payment in lieu of mitigation for any and all

Page 5

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 39 of 49

COUNTER 82667



damages resulting from removal activities. Grantee shall notify the Grantor at least ten (10) days before commencing removal/restoration activities so that a Texas General Land Office field inspector may be present.

B. Pursuant to 31 TEX. ADMIN. CODE §13.13(c)(1), the Grantor may waive the removal/restoration requirements in this Section 9.02 if, in the Grantor's sole opinion and discretion, such waiver is in the best interest of the State. Any such waiver shall be in writing and may be conditioned upon factors including, without limitation, the nature and sensitivity of the natural resources in the area, potential damage to or destruction of property, beneficial uses of the existing improvement(s), and other factors considered to be in the best interest of the Grantor.

#### ARTICLE X. HOLDOVER

10.01. If Grantee holds over and continues in possession of the Premises after expiration or earlier termination of this Agreement, Grantee will be deemed to be occupying the Premises on the basis of a month-to-month tenancy subject to all of the terms and conditions of this Agreement, except that as liquidated damages by reason of such holding over, the amounts payable by Grantee under this Agreement shall be increased such that the Consideration payable under Section 4.01 of this Agreement and any other sums payable hereunder shall be two hundred percent (200%) of the amount payable to the Grantor by Grantee for the applicable period immediately preceding the first day of the holdover period. Grantee acknowledges that in the event it holds over, the Grantor's actual damages will be difficult, if not impossible, to ascertain, and the liquidated damages herein agreed to be paid are reasonable in amount and are payable in lieu of actual damages and are not a penalty. Grantee further acknowledges that acceptance of hold over Consideration does not imply Grantor consent to hold over.

10.02. The tenancy from month-to-month described in Section 10.01 of this Agreement may be terminated by either party upon thirty (30) days written notice to the other.

10.03. The Consideration due after notice of termination has been given is to be calculated according to Section 10.01 hereinabove on a pro rata basis. If upon notice of termination by the Grantor, Grantee pays Consideration in excess of the amount due and payable and the Grantor accepts such payment, the acceptance of such payment will not operate as a waiver by the Grantor of the notice of termination unless such waiver is in writing and signed by the Grantor. Any such excess amounts paid by Grantee and accepted by the Grantor shall be promptly refunded by the Grantor after deducting therefrom any amounts owed to the Grantor.

#### ARTICLE XI. NOTICE

11.01. Any notice which may or shall be given under the terms of this Agreement shall be in writing and shall be either delivered by hand, by facsimile, or sent by United States first class mail, adequate postage prepaid, if for the Grantor to Deputy Commissioner, Asset Management, addressed to his attention, 1700 North Congress Avenue, Austin, Texas 78701-1495, FAX: (512) 463-5098, and if for Grantee, to 319 N. SUMNER ST MARFA TX 79843. Any party's address may be changed from time to time by such party by giving notice as provided above, except that the Premises may not be used by Grantee as the sole notice address. No change of address of either party shall be binding on the other party until notice of such change of address is given as herein provided.

11.02. For purposes of the calculation of various time periods referred to in this Agreement, notice delivered by hand shall be deemed received when delivered to the place for giving notice to a party referred to above. Notice mailed in the manner provided above shall be deemed completed upon the earlier to occur



of (i) actual receipt as indicated on the signed return receipt, or (ii) three (3) days after posting as herein provided.

## ARTICLE XII. INFORMATIONAL REQUIREMENTS

12.01. Grantee shall provide written notice to the Grantor of any change in Grantee's name, address, corporate structure, legal status or any other information relevant to this Agreement.

12.02. Grantee shall provide to the Grantor any other information reasonably requested by the Grantor in writing within fifteen (15) days following such request or such other time period approved by the Grantor (such approval not to be unreasonable withheld).

12.03. Except with regard to initial construction/installation of the Improvements and emergencies, prior to conducting any activities at the Premises which may materially impact natural resources in or around the Premises, Grantee shall provide written notice to the Grantor describing the proposed activities in detail and any procedures which will be used to protect natural resources. Such notice shall be provided by Grantee to the Grantor at least sixty (60) days prior to conducting re-burial activities, and at least thirty (30) days prior to conducting major repairs, modification, or other activities. Grantee acknowledges and agrees that the Grantor shall have at least twenty (20) days following receipt of the notice to review the proposed activities and to impose specific conditions for conducting such activities which, in the Grantor's sole determination, are necessary to protect natural resources or to mitigate for actual damages to natural resources. If the Grantor has not provided notice to Grantee within twenty (20) days following receipt of Grantee's notice, the Grantor is deemed to have approved, subject to the terms of this Agreement, the proposed activities to be conducted at the Premises. In case of emergencies, Grantee may undertake all actions necessary to prevent imminent injury or damage to public health, safety or welfare, and/or to protect natural resources. Within twenty-four (24) hours following such emergency actions, Grantee shall provide notice to the Grantor of such actions as hereinabove provided. (If not during normal business hours, call 1-800-832-8224).

12.04. Grantee hereby acknowledges that late submission by Grantee to the Grantor of information (including, without limitation, as-built, confirmation and/or burial surveys) required under this Agreement will cause the Grantor to incur various expenses not contemplated by this Agreement, the exact amount of which are presently difficult to ascertain. Accordingly, if any information required to be submitted within a certain time under the terms of this Agreement shall not be received by the Grantor on or before five (5) days after the date when due, then, Grantee shall pay to the Grantor a "Late Charge" equal to one hundred dollars (\$100.00) for each day so past due. The Grantor and Grantee agree that such Late Charge represents a fair and reasonable estimate of the expenses that the Grantor will incur by reason of such late submission of information by Grantee. Acceptance of such Late Charge by the Grantor shall not constitute a waiver of Grantee's default with respect to any such past due information, nor prevent the Grantor from exercising any other rights and remedies granted under this Agreement, at law, or in equity.

## ARTICLE XIII. MISCELLANEOUS PROVISIONS

13.01. With respect to terminology in this Agreement, each number (singular or plural) shall include all numbers, and each gender (male, female or neuter) shall include all genders. If any provision of this Agreement shall ever be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions of the Agreement, but such other provisions shall continue in full force and effect.

Page 7

SKETCH FILE No. 121  
COUNTY Presidio

Pg. 41 of 49



13.02. The titles of the Articles in this Agreement shall have no effect and shall neither limit nor amplify the provisions of the Agreement itself. This Agreement shall be binding upon and shall accrue to the benefit of the Grantor, its successors and assigns, Grantee, Grantee's successors and assigns (or heirs, executors, administrators and assigns, as the case may be); however, this clause does not constitute a consent by the Grantor to any assignment by Grantee, but instead refers only to those instances in which an assignment is hereafter made in strict compliance with Article VI above, or in the case of a deceased natural person grantee, refers to the instances previously referred to in this sentence and also circumstances in which title to Grantee's interest under this Agreement passes, after the demise of Grantee, pursuant to Grantee's will or the laws of intestate succession. The words "hereof," "herein," "hereunder," "hereinafter" and the like refer to this entire instrument, not just to the specific article, section or paragraph in which such words appear.

13.03. Neither acceptance of Consideration (or any portion thereof) or any other sums payable by Grantee hereunder (or any portion thereof) to the Grantor nor failure by the Grantor to complain of any action, non-action or default of Grantee shall constitute a waiver as to any breach of any covenant or condition of Grantee contained herein nor a waiver of any of the Grantor's rights hereunder. Waiver by the Grantor of any right for any default of Grantee shall not constitute a waiver of any right for either a prior or subsequent default of the same obligation or for any prior or subsequent default of any other obligation. No right or remedy of the Grantor hereunder or covenant, duty or obligation of Grantee hereunder shall be deemed waived by the Grantor unless such waiver be in writing, signed by a duly authorized representative of the Grantor.

13.04. No provision of this Agreement shall be construed in such a way as to constitute the Grantor and Grantee joint venturers or co-partners or to make Grantee the agent of the Grantor or make the Grantor liable for the debts of Grantee.

13.05. In all instances where Grantee is required hereunder to pay any sum or do any act at a particular indicated time or within an indicated period, it is understood that time is of the essence.

13.06. Under no circumstances whatsoever shall the Grantor ever be liable hereunder for consequential damages or special damages. The terms of this Agreement shall only be binding on the Grantor during the period of its ownership of the Premises, and in the event of the transfer of such ownership interest, the Grantor shall thereupon be released and discharged from all covenants and obligations thereafter accruing, but such covenants and obligations shall be binding during the Agreement term upon each new owner for the duration of such owner's ownership.

13.07. All monetary obligations of the Grantor and Grantee (including, without limitation, any monetary obligation for damages for any breach of the respective covenants, duties or obligations of either party hereunder) are performable exclusively in Austin, Travis County, Texas.

13.08. The obligation of Grantee to pay all Consideration and other sums hereunder provided to be paid by Grantee and the obligation of Grantee to perform Grantee's other covenants and duties under this Agreement constitute independent, unconditional obligations to be performed at all times provided for hereunder, save and except only when an abatement thereof or reduction therein is expressly provided for in this Agreement and not otherwise. Grantee waives and relinquishes all rights which Grantee might have to claim any nature of lien against, or withhold or deduct from or offset against, any Consideration or other sums provided hereunder to be paid to the Grantor by Grantee. Grantee waives and relinquishes any right to assert, either as a claim or as a defense, that the Grantor is bound to perform or is liable for the nonperformance of any implied covenant or implied duty of the Grantor not expressly set forth in this Agreement.

Page 8

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 42 of 49

COUNTER 82667



ARTICLE XIV. FILING

14.01. Grantee shall, at its sole cost and expense, record this Agreement in the Presidio County Real Property Records and provide a certified copy of the recorded Agreement to the Grantor within 60 days after this Agreement is executed by all parties.

ARTICLE XV. ENTIRE AGREEMENT

15.01. This instrument, including exhibits, constitutes the entire agreement between the Grantor and Grantee and no prior written or prior or contemporaneous oral promises, warranties or representations shall be binding. This Agreement shall not be amended, changed, altered, assigned or extended except by written instrument signed by all parties hereto.

15.02. This Agreement shall become effective only upon execution by all parties hereto and delivery of a fully executed counterpart to each party.

IN TESTIMONY WHEREOF witness our hands and the seal of the Texas General Land Office effective 4/3, 1997.

THE STATE OF TEXAS

MARK O. and NANCY C. CORTNER

By: Garry Mauro  
GARRY MAURO, Commissioner,  
Texas General Land Office

By: Mark O. Cortner  
Name: MARK O. CORTNER

Date: 3/27/97

Date: 4.3.97

By: Nancy C. Cortner  
Name: NANCY C. CORTNER

Date: 4.3.97

APPROVED:  
Dep. Com: [Signature]  
Sr. Dep.: [Signature]  
Exec.: \_\_\_\_\_

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 43 of 49



ACKNOWLEDGMENT

STATE OF ~~TEXAS~~ Colorado

§

COUNTY(IES) OF ~~PRESDIO~~ monteruma

§

This instrument was acknowledged before me on the 3<sup>RD</sup> day of April, 1997,  
by MARK O. CORTNER.



Notary Public, State of ~~Texas~~ Colorado

My commission expires: 11-7-99

ACKNOWLEDGMENT

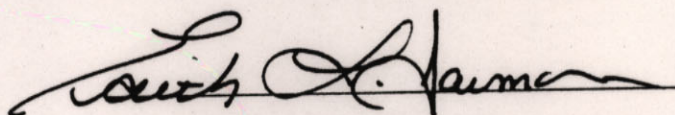
STATE OF ~~TEXAS~~ Colorado

§

COUNTY(IES) OF ~~PRESDIO~~ monteruma

§

This instrument was acknowledged before me on the 3<sup>RD</sup> day of April, 1997,  
by NANCY C. CORTNER.



Notary Public, State of ~~Texas~~ Colorado

My commission expires: 11-7-99

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 44 of 49



TOPOGRAPHICAL MAP

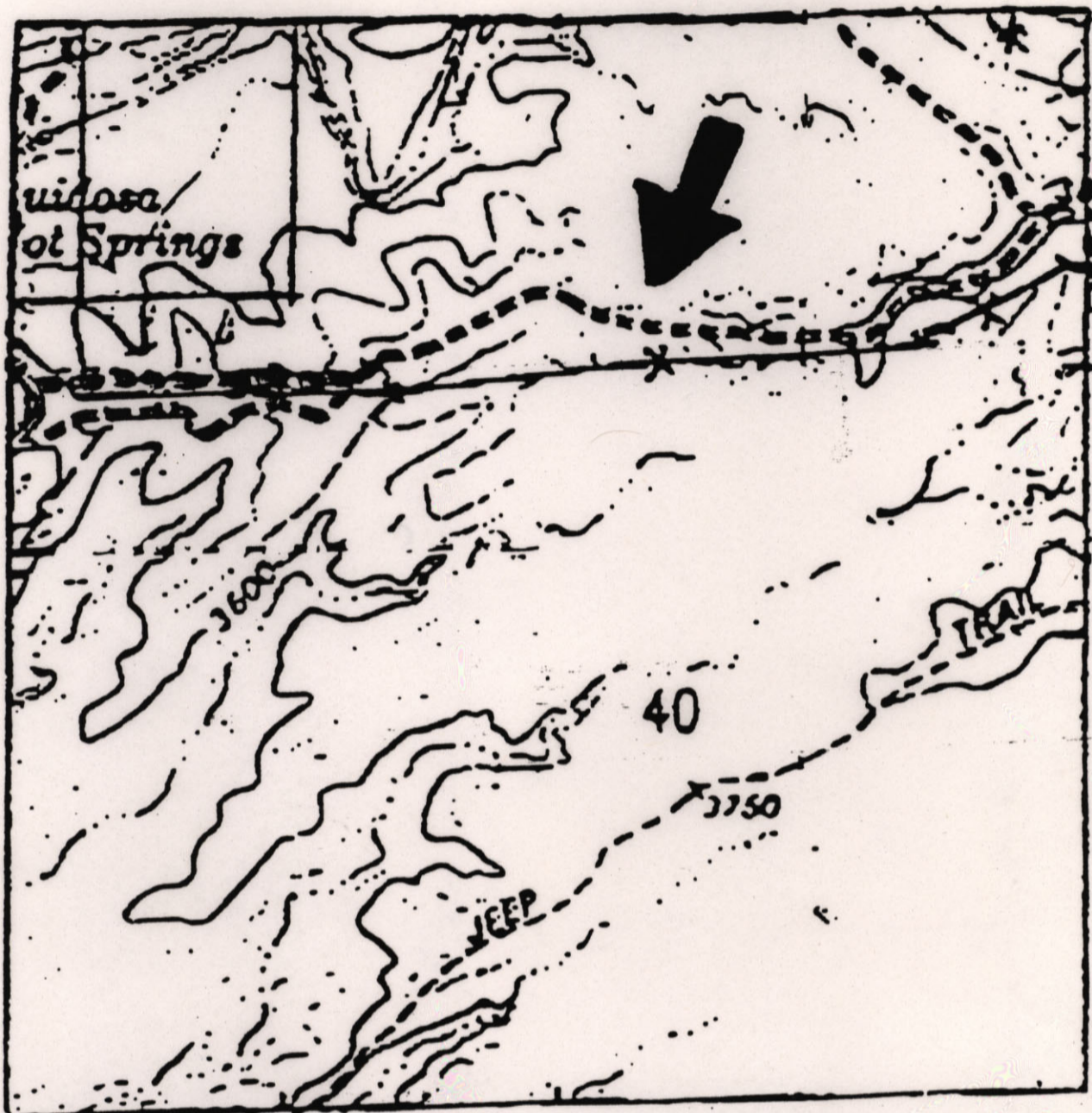
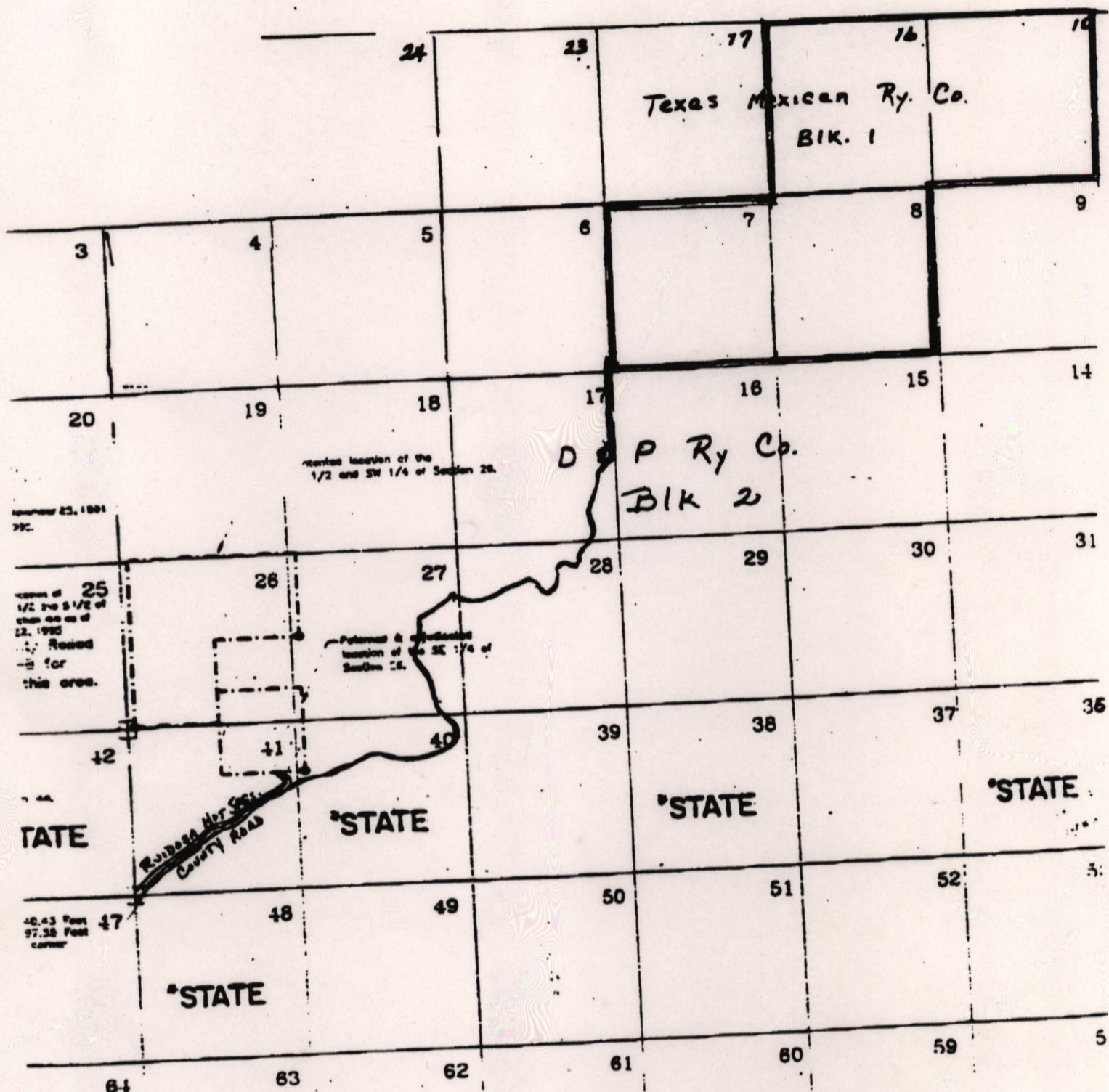


EXHIBIT  
A

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 45 of 49





Pacific Railway Co.

EXHIBIT  
B

SKETCH FILE No. 121  
 COUNTY Presidio  
 Pg. 46 of 49



GENERAL LAND OFFICE

GARRY MAURO  
COMMISSIONER

MEMORANDUM

DATE: March 20, 1997 4:04pm

TO: File

FROM: Lenora DuBose

SUBJECT: Miscellaneous Easement to Successors of Hazel F. Briscoe  
(Mark & Nancy Cortner)

Per my conversations with Spencer Reid, this easement is necessitated by the resurvey of certain property in Presidio County, Texas. Based on the resurvey, it was discovered that the historically recognized section lines in that county are inaccurate. Thus, persons who have lived in the county for generations are occupying land which, while described in their deed or other title document, is in a different location on the ground than as indicated in their deed/other title document. While Spencer is confident that the General Land Office would prevail in any litigation over the resurvey, it is in the State's best interest to avoid the costs of litigation and "keep the peace" when possible. Per Spencer, in this case it is in the State's best to avoid costly litigation over this roadway easement.

FACTS: An existing roadway, always thought by the residents of Presidio County to be located on private property owned by Mr. Sherman Bales, has been used by Ms. Briscoe to access her property located in Sections 7 & 8, Block 2, D&P Ry.Co, and Sections 10 & 16, Block 1, Tex.Mex. Ry.Co, Presidio County, Texas. Based on the resurvey of property in Presidio County, it was discovered that the existing roadway actually runs through the northern portion of Section 40, a State-owned tract of land, rather than the southern portion of Section 27, owned by Mr. Bales. Because of the extenuating circumstances in this case and Ms. Briscoe's historical use of this roadway, the Commissioner has waived the application fee required to be paid to obtain a Miscellaneous Easement over State land, pursuant to 31 TAC § 13.11. Also, because of the previous expense in construction of the roadway over what was recognized by local residents as private property, and the continued obligation to maintain and repair such roadway, the consideration for the easement is acknowledged to be the construction, maintenance and repair of the roadway. Per Spencer Reid, this consideration is sufficient for the easement grant, as the State and its transferees and assignees may use the roadway for ingress/egress over the northern portion of Section 40, such ingress/egress to be a benefit to the State during future development of the Section, if any.

SKETCH FILE No. 621

COUNTY Presidio

Pg.47 of 49

COUNTER 82672





**Texas General Land Office**  
Garry Mauro, Commissioner

Stephen F. Austin Building  
1700 North Congress Avenue  
Austin, Texas 78701-1495  
(512) 463-5001

**Spencer L. Reid**  
Senior Deputy Commissioner  
(512) 463-5236  
Fax (512) 463-5098

March 4, 1997

Mr. Frank Briscoe  
314 Morton Street  
Suite 10  
Richmond, Texas 77469-3119

Dear Mr. Briscoe:

Thank you for your hospitality and the pleasant visit that Lenora Dubose, Ben Thomson, and I had with you at your office recently. I hope that we were of some assistance to you in explaining the situation on the Presidio County survey problems.

I have asked Ben Thomson to research the questions and issues in your recent letter. You will receive a response directly from Ben. Please do not hesitate to call if I can be of further assistance.

Sincerely,

Spencer Reid  
Senior Deputy Commissioner

SR/la

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 48 of 49



file

**FRANK BRISCOE**

*Attorney at Law*

February 17, 1997

Spencer L. Reid  
Senior Deputy Commissioner  
Texas General Land Office  
1700 North Congress Avenue  
Austin, Texas 78701-1495

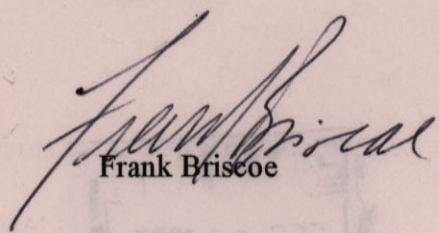
Dear Spencer:

Thank you again for coming here to explain what had happened and why. If my Tex-Mex Section 24 is going to be reduced because of the northward "movement" of D & P, I would like to hear your ideas on compensation. You will recall that I purchased that section as part of the land "swap" with the State.

Also, please advise if the Tex-Mex shares common section corners with the D & P any more. I noticed that the "old" D & P sections not only move north but west (?) as well. Does this mean that my Tex-Mex Section 24 is no longer directly north of my Section 5, D & P? Can you furnish me with a plat reflecting the position of those two sections to each other and also an estimate of the number of acres now in Section 24, Tex-Mex?

Thanks again for your help. Please give Ben Thompson and Lenora DuBose my best regards.

Sincerely,

  
Frank Briscoe

FB/lrb

SKETCH FILE No. 121  
COUNTY Presidio  
Pg. 49 of 49



fw

FRANK BRISCOE

Attorney at Law

February 17, 1997

Spencer I. Reid  
Texas General Land Office  
1700 North Congress Avenue  
Austin, Texas 78701-1492

Dear Spencer:

Thank you again for coming here to explain what had happened and why. If my Tex-Mex Section 24 is going to be reduced because of the northward "movement" of D & P, I would like to hear your ideas on compensation. You will recall that I purchased that section as part of the land "swap" with the State.

Also, please advise if the Tex-Mex shares common section corners with the D & P any more. I noticed that the "old" D & P sections not only move north but west (?) as well. Does this mean that my Tex-Mex Section 24 is no longer directly north of my Section 2, D & P? Can you furnish me with a plat reflecting the position of those two sections to each other and also an estimate of the number of acres now in Section 24, Tex-

Thanks again for your help. Please give Ben Thompson and I your regards.  
Best regards,

Sincerely,

RECEIVED  
FEB 20 1997  
ASSET MANAGEMENT

FBHP

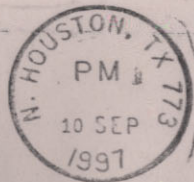
SKETCH FILE NO. 151  
COUNTY BRISCO  
P. 42 of 44



**FRANK BRISCOE**

*Attorney at Law*

314 MORTON STREET  
RICHMOND, TEXAS 77469

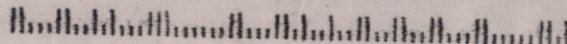


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**Spencer L. Reid**  
**Senior Deputy Commissioner**  
**Texas General Land Office**  
1700 No. Congress Ave.  
Austin, TX 78701-1495



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