

Shine & Associates, Inc.

LAND BOUNDARY SURVEYORS
D. D. SHINE, RPLS, LSLs
NEDRA J. FOSTER, RPLS, LSLs

August 1, 2011

Mr. Bill O'Hara
Texas General Land Office
Stephen F. Austin Building, 1st Floor
1700 N. Congress Avenue
Austin, Texas 78701

File No. Sketch File 72

County Webb

Resurvey of D.B. Pate, 132807, 12.12 ac.

Date Filed: August 16, 2011

Jerry Patterson, Commissioner

By Douglas Howard

See Rolled Sketch 78 and 78A

Re: Record Analysis and Survey of Area in Webb County

Dear Mr. O'Hara:

This report consolidates a report written to you on March 31, 2011 along with supplemental information in answer to subsequent questions posed by you.

We have analyzed the original records of Webb County in the area of the Poitevent Sections 891 and 892 and have performed a survey on these and surrounding grants. Included with this report is our survey plat, a portion of the 1933 and the 1986 General Land Office county maps of Webb County, and a working sketch prepared by us.

HISTORY OF THE AREA

The J. Poitevent Surveys 891 and 892 are companion sections. (See 'Inset' on Shine working sketch.) Section 892 was surveyed by S. M. Jarvis on the same day (10/6/1876) as Section 891. These were both 1900.8 varas square with the south line of Section 892 being common with the north line of Section 891. Mr. J. Poitevent was issued Land Scrip Certificate 2/125 for 640 acres of land for widening and freeing from obstructions the channel of the Trinity River. Quoting from this certificate: "The lands granted to said Contractor are to be located in alternate sections and located in the following manner:

First. The two sections of land adjoining and connecting with each other must be surveyed, one for the State and the other for the Contractor.

Second. The surveys to be made square, unless prevented by previous entries or navigable streams.

Third. When the field notes have been returned to the General Land Office, the Commissioner will number the surveys and report the result to the Surveyor, who will fill up the blanks left in his record for that purpose, accordingly.

Fourth.

Fifth. The even numbers will be reserved to the State, and the odd numbers to the Contractor."



On June 12, 1874, J. Poitevent sold his certificate 2/125 to Lazaro de la Garza for \$140. This Section 891 was patented February 24, 1879. Section 892 (school section) was adjacent and on the north side of Section 891. Quoting from a letter from GLO Commissioner Walker dated 11/13/1928, "The effect of this survey and the filing of the certificate and field notes in the land office was to segregate the included areas from the public domain, and acceptance by the Commissioner of the North Section (892) for the School Fund sealed the location." By the Act of January 30, 1854, Section 11 from the Laws of the State of Texas, "That all the alternate or even sections of land, surveyed in pursuance of the provisions of this act, or any other act of the Legislature of this State, donating lands to any railroad company, shall be reserved to the use of the State, and not liable to locations, entries or pre-emption privileges, until otherwise provided by law."

Also in *State v. Jones*, 184 SW2d 510 (1944), "File laid on vacant land segregated area embraced therein from public domain for twelve months from date of filing, which segregation was perpetuated by survey and return of field notes made within the twelve months period, and any subsequent location or attempted location thereon was ineffective and nothing that subsequent surveyor surveying an adjoining file did or could do affected rights of locators under original file."

On June 7-8, 1883, under Bexar Scrip 17990, S. M. Jarvis returned corrected field notes for Section 892, placing it on the south side of Section 891. The jacket of this set of field notes reflects, "This corrected field note was made outside of the space or location given this section by the original survey location, and as there was no authority in law for such correction, these field notes are of no value. Therefore, never been approved by the Land Office, though had the effect to mislead the draftsman (a new man) into an erroneous compilation of the map of Webb County. Being a nullity, this field notes are disregarded. J. T. Robison, Acting Commissioner, 6/23/1906." Quoting from *Sanborn v. Gunter*, 17 SW 117 (1891), "I conclude that if the corrected field notes and surveys made by the railway are corrections and not re-locations and appropriations of new land, such corrections would have priority over the locations made by the plaintiffs and would entitle the defendants to a judgment. But I conclude that such surveys were such relocations and appropriations of new land as could not be made...." This case supports the position of Commissioner Robison when he disregarded Mr. Jarvis' corrected field notes for Section 892 due to the fact that it was a re-location of the section.

The area originally occupied by Section 892 adjoining the north line of Section 891 was covered in part by a survey performed February 20, 1883 for E. N. Love by S. M. Jarvis (same surveyor who laid out Sections 891 and 892). [Note that this preceded Mr. Jarvis' re-location of Section 892 on June 7-8, 1883.] Following this on June 15, 1883, Mr. Jarvis laid out a preemption grant for Elentira

Guajardo partially in conflict with his own work on the original northerly position of Section 892.

In 1922 the General Land Office offered for sale Section 892 in the original, northerly position. Mr. D. B. Pate of Hornbeck, Louisiana was the highest bidder for this section of land and put up one-fortieth of his purchase price; however, no action was taken on this bid due to the fact that those owning the E. N. Love Section 1881 and the E. Guarjardo Survey protested the sale. This issue ultimately went before Judge J. F. Mullally in the District Court of Webb County, March 1927, as J. B. Chilton, Jr. v. D. B. Pate, No. 7981. Following is a portion of the Court's decision: "It is ordered, adjudged and decreed that the plaintiff, J. B. Chilton, Jr., do have and recover from the defendant, D. B. Pate, the title and possession of the following described premises situated in Webb County, Texas, to-wit:

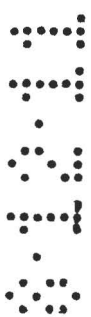
Survey No. 330, Certificate 1/16, S.M.& S. 640 acres;
Survey No. 1881, Certificate 615, Abstract 541, Original Grantee J. Poitevent, 1280 acres.

It is further ordered, adjudged and decreed that the claim of the defendant to said property, or any part thereof, by virtue of an award made to him by the General Land Office on or about March 27th, 1925, under the claim that Survey 892, Certificate 2/125, J. Poitevent, 640 acres is situated upon said premises, is hereby cancelled and annulled, and the cloud thereof is hereby removed from plaintiff's title to said premises." It should be noted that the status of the Elentira Guajardo Survey, Abstract 3066, was not addressed by this Court.

Therefore, it appears that title to all of Section 892 in the original, northerly position outside the boundaries of Survey No. 1881 which is the Love Survey and Section 330 which is the J. E. Hill may still be in the State. There also appears to be a portion of the junior Elentira Guajardo preemption survey in conflict with Section 892. Notwithstanding the validity of the Guajardo patent, there is still a small strip of land lying between the southwesterly part of the Guajardo Survey and the north line of Section 891 that is not described by any field notes other than the total field notes of Section 892 as it was laid out in the original, northerly position. This in my opinion would not be considered a vacancy; I believe it to be an unsold portion of Section 892 as it was originally laid out.

This issue of Section 892 was addressed by the Attorney General in a letter dated January 15, 1924. After a listing of the facts, the opinion is offered that "said Survey No. 892 as originally located in 1876 became, remained and is now the property of the permanent public free school fund of the State."

It is my opinion that the E. N. Love Survey, Abstract 541, Donation 2181, and the Elentira Guajardo, Abstract 3066, Preemption 5696, were laid out in conflict with the senior school Section 892. It is also my opinion that Surveyor S. M. Jarvis was unaware that corrected field notes are not acceptable on a grant



outside of the space or location given the section by the original survey location. A certificate cannot be 'floated' to a different location by corrected field notes. However, Mr. Jarvis did write corrected field notes which 'floated' Section 892 from adjoining the north line of Section 891 down to adjoining the south line of Section 891. The General Land Office accepted these corrected field notes, and this error was not noticed for twenty three years. At that time, June 23, 1906, Acting Commissioner J. T. Robison said this "error had misled the draftsman (a new man) into an erroneous compilation of the map of Webb County."

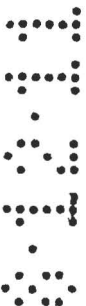
In 1906 Mr. Tom Atlee performed a corrected survey on Section 892 in the re-located southerly position. The GLO awarded this Section 892 to D. N. Cobb. The money paid for Section 892 in the southerly position was returned to Mr. Cobb because it was determined that the corrected survey (by Mr. Jarvis) was a re-location of this section and not a correction – and thus illegal. Mr. Cobb used the same survey work performed by Mr. Tom Atlee in order to purchase the same land as a scrap file (unsurveyed, vacant public land) rather than as Section 892. The General Land Office accepted this action and patented the scrap file to Mr. Cobb. It is interesting to note that the 1933 GLO county map shows this section of land (in the southern position), as both the scrap file and as Section 892 and also shows Section 892 in the northerly position.

SURVEY #1450

Another area that warrants some discussion lies along the west line of the Jesus Lerma #1450, Abstract 1542, and the east line of the Poitevent #891, Abstract 1645. It is evident that the work of Mr. Jarvis was often lacking in certainty.

When S. M. Jarvis first laid out the Lerma preemption grant on 12/1/1879, he called to adjoin Survey 891, but his work was out of closure by 100 varas. He stated he had laid out 160 acres; however, instead of a typical 950 x 950 configuration, he called 948 varas on the north line, 950 on the east line, 848 on the south line, and 950 on the west line. This is inexplicable. When he attempted a correction, he did call for a typical 950 x 950 configuration, and he changed the passing call for the southwest corner of #1247 by 98 varas. This corrected set of field notes did not call to adjoin the east line of the Poitevent #891.

The original field notes (cancelled) of the Lerma #1450 call to begin at a stone, the southwest corner of preemption homestead Survey #781 made for Juan Salinas. Thence west with the north boundary line of Survey #322, at 848 varas a stake on the east boundary line of Survey #891. The corrected notes of the same day, December 1, 1879, call for the same beginning point as the cancelled notes (southwest corner of Juan Salinas #781). Thence west with the north line of #322, at 705 varas pass its northwest corner, at 950 varas stake for the southwest corner.



The cancelled and corrected notes begin at the same corner – cancelled notes run west 848 varas to east line of #891; corrected/patented notes run west 950 varas with no call to adjoin #891. One might conclude that the patented field notes are in conflict with the senior #891 by 102 varas.

At the most northerly northwest corner of #1415, the patented field notes and the two cancelled sets of notes for this survey all call to adjoin the south line of #1450, not the southwest corner of #1450. Again, one might conclude this was because the Lerma west line encroached over into #891.

Patent was issued on the corrected description of #1450 on December 15, 1885. Analysis of the field notes indicates that Mr. Jarvis was trying to do a mathematical fix, but his distances are so erratic that one can play the numbers game for hours and come up with numerous different solutions.

On December 2, 1879, Mr. Jarvis surveyed #2100, the Juan Arellano preemption grant, Abstract 1976, lying to the north of #1450 Jesus Lerma, Abstract 1542. In the Arellano survey, on the south line he called to begin at the southwest corner of #1247 for Vicente Salinas, Abstract 1704. As he surveyed westward he called at 590 varas to pass the northwest corner of #1450 (the Jesus Lerma) and proceeded a total distance of 635 where he called to adjoin the east line of #891. This call would result in the west line of the Lerma being some 45 varas eastward of the east line of the Poitevent #891. This is the only bit of evidence that would place the west line as not adjoining the east line of Section 891. Mr. Jarvis' sketches included on the field notes of the Lerma (both cancelled and patented) show the Lerma to adjoin the east line of Section 891.

As an example of Mr. Jarvis' confusion, the following shows the different calls from various sets of Jarvis field notes between the northwest corner of Section 322 and the east line of Section 891 to be:

354 varas - call in #1415 S-32499 (cancelled)

282 varas - call in #1415 S-32499 (patented)

189.8 varas - call in #891 for connection to #322

About the only consistent thing in Mr. Jarvis' work is his inconsistency! To rely on one passing call in order to insert a strip between two surveys when all other surrounding evidence adjoins the two surveys is not good survey construction.

Another example is in the east lines of Surveys 891 and 892. Mr. Jarvis first makes this one straight, common line, but when he corrected his field notes of Section 892, he placed a jog westerly of 11.5 varas at the southeast corner of Survey 891.

As set out above, although one can make a case for #1450 to encroach into #891 by its calls, it is our opinion this is not the case. It is our opinion that the Lerma Survey #1450 must join the east line of Section 891 as was originally called,



as is shown on the sketch of both cancelled and patented field notes, and as is called in the field notes of #1415. The confusion of Mr. Jarvis in his mathematics should not result in confusion of boundary lines when it is clear that the two surveys were intended to join.

SURVEY WORK

We have performed an on the ground survey in this area. The grants of this area are shown on the accompanying plat dated March 31, 2011 with the objects marking their corners. The lines of occupation are very consistent with the original surveys, and this is fortunate as the passage of time and the use of the land has taken away the witness trees called. The original passing calls for natural features become the evidence that bolsters confidence the surveys are properly located. For example, the original field notes of the Vicente Salinas #1247, Abstract 1704, contain four passing calls for an arroyo. It is evident that Mr. Jarvis was on the ground for this survey as the passing calls fit Dolores Creek today in a very satisfactory manner. We also found the arroyo on the east line of Section 890 that fits the original passing call reasonably well. We found evidence of the old road on the west line of the Guajardo that fits the original passing call.

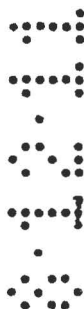
There is a 12.12 acre area which is bounded on the north by the Guajardo Survey, on the east by the Arellano Survey, on the south by Section 891, and on the west by the Love Survey. It is my opinion that this is a remaining portion of Section 892 as it was laid out originally in the northern position.

SUPPLEMENTAL – July 28, 2011

Following your (Bill O’Hara’s) review of the March 31, 2011 report, survey plat, and working sketch, you submitted to us the following questions on May 25, 2011.

Following is Bill O’Hara’s email correspondence to Darrell Shine:

1. Is the stone found near your calculated NWC of the Salinas No. 1247 possibly the original stone called for in the field notes?
2. How did you construct the SEC of the Gonzales No. 1451?
3. What is your reasoning for extending the northern south line of the Juan Arellano No. 2100 181.80 varas westerly from the northwest corner of the J. Poitevent No. 891 when the field notes call that distance to be 155 varas? The biggest issue and concern I have with your plat is the position and location of the Jesus Lerma No. 1450. You assert that the west line of the Lerma should join the east line of J. Poitevent No. 891, and opine in your report that the surveyor likely intended to join these surveys and attempted a mathematical fix within the field notes. Perhaps this is true but the fact



remains that the surveyor, S. M. Jarvis did not call for the west line of the Lerma to join the east line of the J. Poitevent No. 891; the call in the Lerma field notes to pass the southwest corner of the Vicente Salinas No. 1247 at 298 varas would leave room for a gap of 37 varas between the said Lerma and Poitevent Surveys; the call in the Lerma field notes to pass the northwest corner of the J. Poitevent No. 322 (same being the northeast corner of the C.C.S.D.&R.G. No. 1415) at 705 varas leaves a gap of 37 varas between the Lerma and Poitevent No. 891; and, the call in the field notes for the Arellano No. 2100 to pass the northwest corner of the Lerma No. 1450 leaves a gap of 45 varas between the said Lerma and Poitevent Surveys. With no other evidence or information on which to locate the Lerma Survey, the mentioned passing calls in my opinion become locative. So, based upon the present evidence and information I can't justify closing the gap. I'm not suggesting with certainty there is vacant land between the Lerma and Poitevent Surveys, only that there isn't enough justification at the time to join the Lerma to the Poitevent. I am not inclined to file your survey in the archives showing the surveys with a common line without compelling and conclusive evidence to do so.

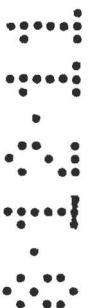
Following is Darrell Shine's June 17, 2011 response to the above questions and comments posed by Bill O'Hara:

In response to your questions regarding our construction, the answers are the following:

#1 The stone we found near the northwest corner of the Salinas No. 1247 could be the original stone called for; however, it has been disturbed. This is a lone stone found in a cattle feeding area (barren ground) and could easily have been kicked around by livestock. This is the only stone in the area and was about 5 ½ varas from where we set the corner. This is a flat stone about 6" across with 2 small pieces broken off. The broken pieces are about the size of hickory nuts.

#2 The southeast corner of the Gonzalez No. 1451 was constructed as follows: We took the railroad crossties found at the northeast corner of the Gonzalez No. 1451 and at the southeast corner of the Vincente Salinas No. 1247 to be the correct corners. We took the 4" metal fencepost at the southwest corner of the Guajardo No. 1934 and the 6" x 6" concrete monument at its southeast corner as being the correct corners. This line was projected eastward to an intersection with the above described east lines of No. 1451 and No. 1247. The intersection we took for the southeast corner of No. 1451.

#3 The Juan Arellano No. 2100 by call lacks approximately 20 varas reaching the east line of No. 891, leaving a strip of 1.814 acres; however, Surveyor Jarvis called to be in the east line of No. 891. Going the called distance from a corner that lacked 20 varas reaching the northeast corner of No. 891 would shorten the



acreage in the already short Juan Arellano No. 2100. The GLO approved and patented 80 acres in accordance with “an act for the Benefit of Actual Occupants of the Public Lands,” approved May 26, 1873. The Arellano is already 2.64 acres short and to short him another acre by choosing one distance over another is not good surveying. We have located the northwest corner of the Arellano called distance of 512 varas west of the southwest corner of the Vicente Gonzalez and southeast corner of the Elentira Guajardo. The 512 varas is a call in the Arellano notes. The Arellano under our construction contains 77.36 acres.

The earliest instructions to surveyors issued by Supreme Government of the State of Coahuilla and Texas in the 1820’s state, “special care shall be taken that no vacant land be left between the possessions.” Again on January 27, 1838, Commissioner John P. Borden sent instructions to the County Surveyor of San Patricio County, one of which reads, “Care should also be taken to leave no small vacancies between surveys.”

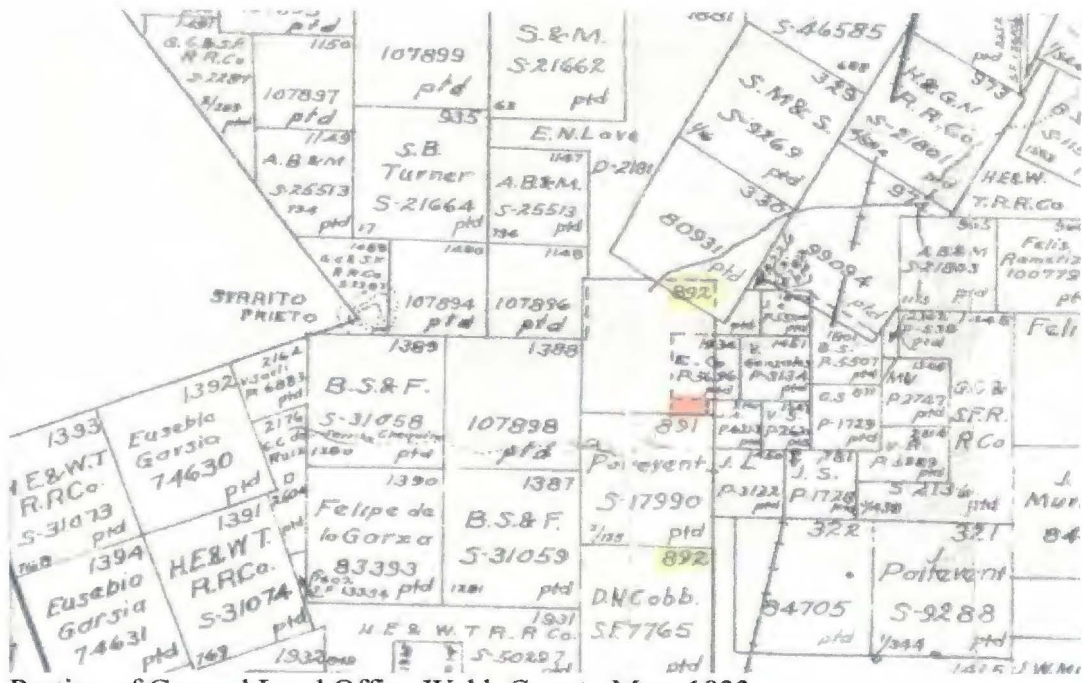
On May 31, 1858 the GLO sent general instructions to the surveyors in 150± counties, which embraced most of the previous instructions from the GLO, together with such other subsequent enactments and changes of circumstances required. One of the requirements which is still used today is “a plot of the survey and its corner connections.” On the field note forms from the GLO there is a small space left in the upper left hand corner of the page for this purpose. It appears the 37 vara gap you are talking about came about with a tie line in No. 781 field notes. No. 781 calls to begin 245 varas west of the northeast corner of No. 322. Surveys No. 781 and No. 1450 are both 950 varas square. $950 + 950 + 245 = 2145$ varas between the east line of No. 322 and the southwest corner of No. 1450. The north line of No. 322 is 1900.8 varas and the most northerly north line of No. 1415 is 282 varas.

$1900.8 + 282 = 2182.8$ varas.

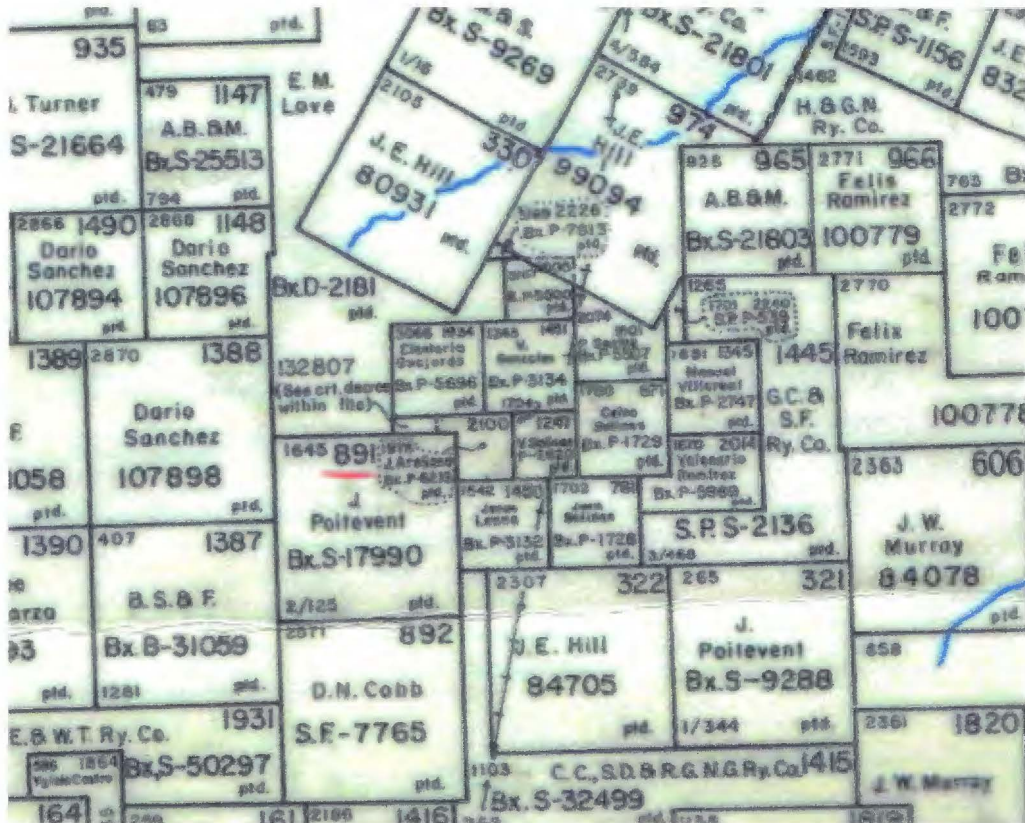
$2182.8 - 2145 = 37.8$ varas; therefore, all of the Jarvis passing calls would necessarily be off by 37 varas. Also, the cancelled field notes of No. 1450 called to be in the east line of No. 891, ran with its east line, and called for the creek he called for on the east line of No. 891. Mr. Jarvis was aware of the location of No. 891 and to leave a 37 vara strip would have been a direct violation of his instructions as a County Surveyor.

In Jarvis’ field notes for No. 1415, “Thence North with E. bdy of 891 [a distance of] 457.5 v. to stake on South line of 1450 Jesus Lerma Preemption.” This call ties the east line of No. 891 to the west line of No. 1450 and leaves no gap. Finally, the plot shown in the upper left hand corner of the No. 1450 Lerma field notes shows No. 891 and No. 1450 to have a common line.
(end of Mr. Shine’s 7/17/11 response)

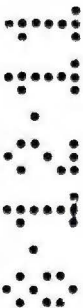
Because Mr. Jarvis was the original surveyor for most of this area, we have certainly given his work due attention. We have been fortunate to locate most of



Portion of General Land Office Webb County Map, 1933.

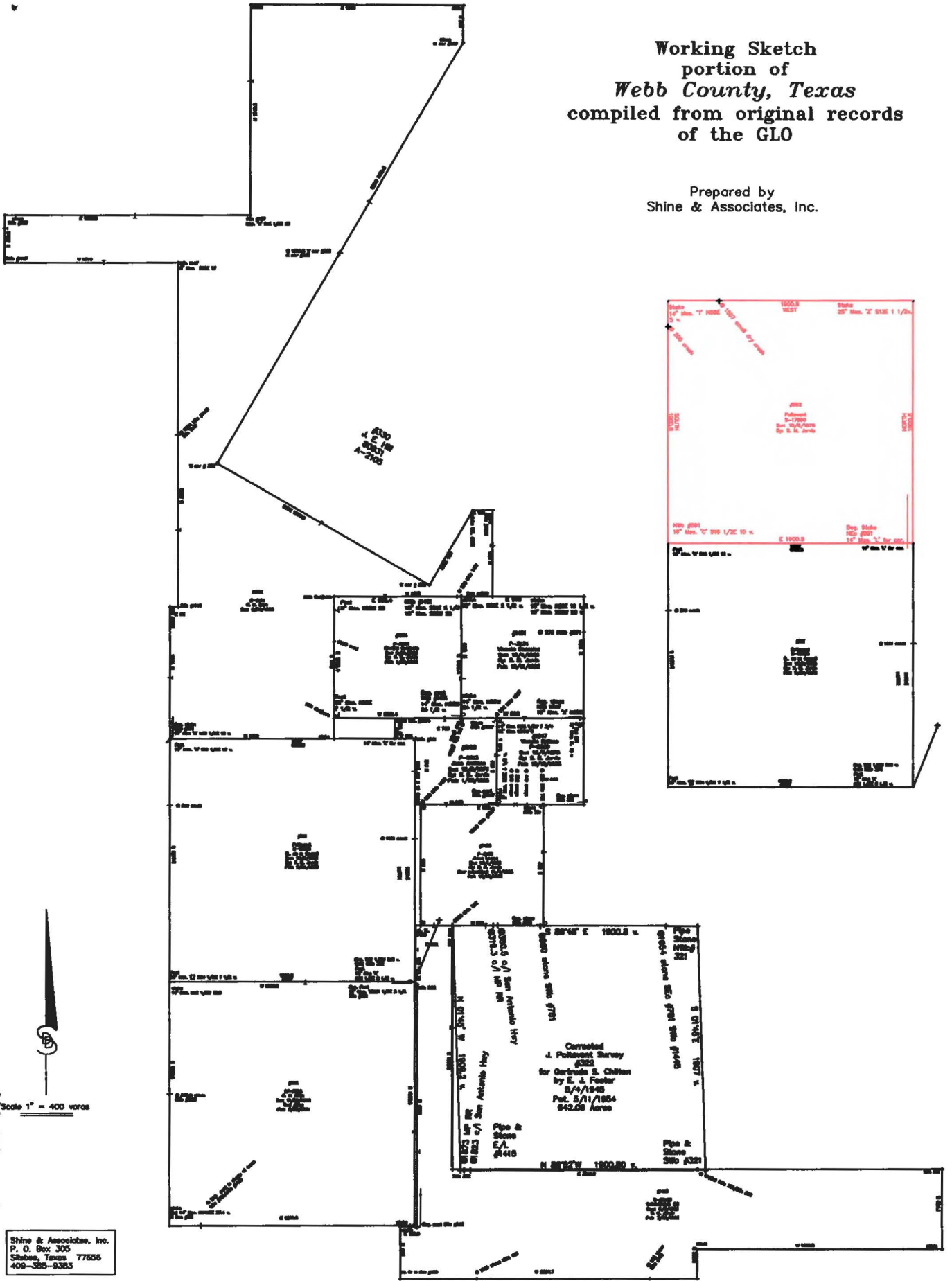


Portion of General Land Office Webb County Map, 1986.



Working Sketch
 portion of
Webb County, Texas
 compiled from original records
 of the GLO

Prepared by
 Shine & Associates, Inc.



Scale 1" = 400 yards

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Corrected
 J. Pollmann Survey
 6322
 for Cordeiro S. Chilton
 by E. J. Foster
 5/4/1945
 Pat. 5/11/1954
 642.66 Acres

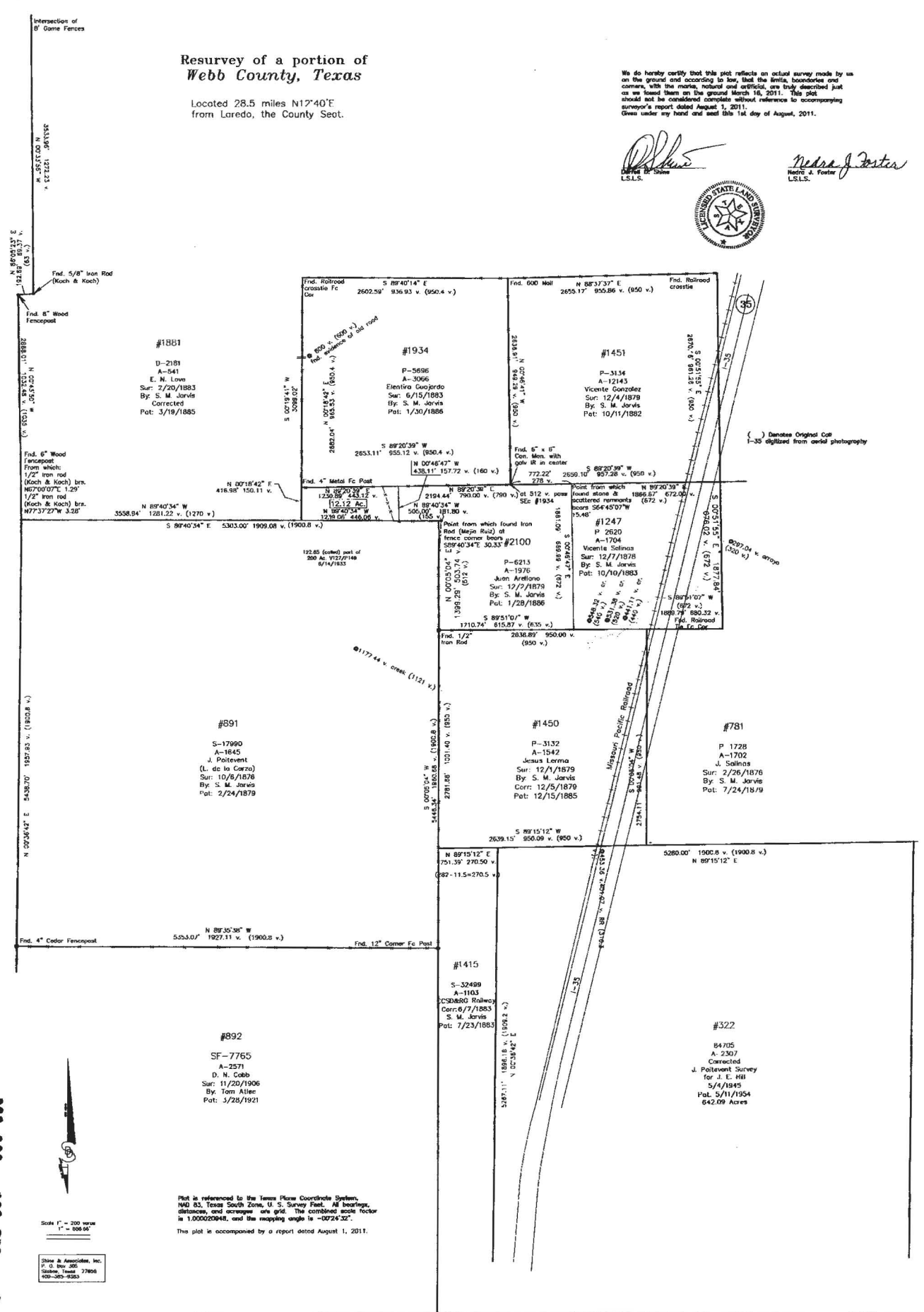
Resurvey of a portion of Webb County, Texas

Located 28.5 miles N17°40'E
from Laredo, the County Seat.

We do hereby certify that this plot reflects an actual survey made by us on the ground and according to law, that the limits, boundaries and corners, with the marks, natural and artificial, are truly described just as we found them on the ground March 16, 2011. This plot should not be considered complete without reference to accompanying surveyor's report dated August 1, 2011.
Given under my hand and seal this 1st day of August, 2011.

[Signature]
L.S.L.S.

[Signature]
L.S.L.S.



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Plot is referenced to the Texas Plane Coordinate System, NAD 83, Texas South Zone, U. S. Survey Feet. All bearings, distances, and acreage are grid. The combined scale factor is 1.000020948, and the spheroidal angle is -0°24'32".
This plot is accompanied by a report dated August 1, 2011.

Scale 1" = 200 yards
1" = 609.60

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