



March 18, 2020

Honorable George P. Bush
Land Commissioner
Attn: Mark Neugebauer, RPLS, LSLS
Director of Surveying Department
1700 Congress Ave.
Austin, Texas 78701

File No. Sketch File No. 73
Webb County
FOR INFORMATION ONLY
Date Filed: 07/29/2020
By: George P. Bush, Commissioner
K. Schreiber
See Webb Co. Rolled Sk. No. 79

Re: Survey Nos. 3, 4, 5 and 6, within La Mesa Ranch in Webb County, Texas

Dear Mr. Neugebauer,

Following is my report concerning the Ben T. Tumlinson Survey No. 3, A-2116, No. 4, A-2117, No. 6, A-2118, and the Low, Thaxton & Baxter Survey No. 5, A-2332, all part of the La Mesa Ranch in Webb County.

BACKGROUND

Howland Engineering (Howland), with offices in Laredo and San Antonio, has performed surveying services under the supervision of James Ornelas, RPLS, for SilverBow Resources in connection with oil and gas development in the above referenced Survey Nos. 3, 4, 5 and 6. In the course of providing the surveying services it was discovered that an existing well may be positioned on the north part of Survey No. 6 or that there is a deficiency of approx. 200 feet in a north-south direction in said Surveys.

I was engaged by SilverBow Resources to review survey work by Howland, research the archives of the Texas General Land Office, obtain and study other pertinent, maps, documents and records, and provide an opinion as to the proper construction of the subject surveys in a written report. I have met with Mr. Ornelas at his office to discuss his findings in this matter and been on the ground with him and his survey crew to observe the site conditions and evidence recovered in the field.

HISTORY

In 1803, Joaquin Galan purchased from the crown of Spain a large tract of land located north of Laredo in present day Webb County. Galan subsequently sold the land to Manuel Garza in 1805. In an effort to defend and settle the area the governmental authorities reclaimed part of the tract along the Rio Grande for the town of Palafox. The town thrived for a short while but it was destroyed by Indian raids in 1818 and 1829. Garza was compensated by the government for the expropriated land by granting him a large tract of land above Palafox known as "Balconcitos."¹ The "Balconcitos" tract containing 139,482 acres was confirmed by the District Court of Webb County, March 13, 1872, and patented July

¹ New Guide to Spanish and Mexican Land Grants in South Texas, pp. 88-89, written and compiled by Galen D. Greaser, Texas General Land Office, Jerry Patterson Commissioner, 2009.



8, 1887. The remaining northeast part of the tract named "Palafox", containing 66,675 acres, was confirmed by the District Court of Webb County, January 8, 1862, and patented October 4, 1898.²

The State of Texas began the process of confirming title to the Spanish and Mexican land grants lying between the Nueces River and the Rio Grande in 1850. As noted above, the two Galan surveys, "Balconcitos" and "Palafox" were ultimately confirmed and patented. The portion of the Galan Survey expropriated by the Spanish government for the town of Palafox was not confirmed. Thomas O'Conner (sometimes spelled O'Connor) claimed ownership of approximately 19,410 acres within the town of Palafox tract and ultimately the State of Texas recovered that land in 1903 by decision of the Texas Supreme Court.³ Abraham de la Garza claimed title to another 29,666 acres in the town of Palafox tract which was also recovered by the State in 1906 apparently under the O'Conner decision.⁴ All of the land recovered by the State within the town of Palafox tract was then subsequently surveyed in accordance with the existing laws and sold by the State.

In November 1904, J.T. Robison, Chief Clerk of the Texas General Land Office, reported to the Land Commissioner John J. Terrell on the extraordinary trip he made from Austin to Webb County to tour and inspect the land recovered by the State. He reported on the condition of the land, its soil, the persistent drought, the coal outcrops and mining, and the land value.⁵ Keeping in mind the State had found in 1900 that all of its public domain had been appropriated, the addition of nearly 50,000 acres of land to the school fund was a great opportunity to bring additional money into the fund.

In August 1904, Tom Atlee, County Surveyor of Webb County began locating authorized surveys on the recovered lands. Survey Nos. 3 and 5 were the first to be located August 1, 1904 followed by Survey Nos. 4 and 6 dated August 2, 1904, then Survey Nos. 7 – 10, September 12, 1904. Surveys to the west, north, east and south followed within the next three years. Survey Nos. 3 - 10 are the senior surveys in this vicinity with 3 and 5 being most senior by survey date, followed by 4 and 6, then 7 – 10.

FINDINGS

The original surveys subject to this report, namely Survey Nos. 3, 4, 5, 6, 7, 8, 9 and 10 are within the limits of the so-called O'Conner tract. In fact, many of the patented field notes for these surveys, particularly those adjacent to the boundary of the O'Conner tract as it was known to exist on the ground, call for lines and corners of that tract demonstrating that it was well known at the time. According to the patented field notes, the southeast corner of Survey No. 3 is at the southeast corner of the O'Conner tract and the south line of Survey No. 4, adjoining No. 3 to the west, is on the south line of the said O'Conner tract. It should be noted that the Abraham de la Garza tract adjoined the south and east boundaries of the O'Conner tract and there are numerous reference calls in the patented field notes for the boundaries and fences along the boundaries of the said de la Garza tract as well. The "Map of Palafox and Galan Tracts in Webb County, Texas" compiled by E.J. Foster, C.E., Laredo, Texas dated July 1917 illustrates the positional relationship of the "Oconor" and "Garza" tracts. See Exhibit D on page 9.

² Ibid. p. 225.

³ State of Texas v. O'Conner, 73 S.W. 1041 (Texas 1903); Texas Supreme Court.

⁴ State of Texas v. Ortiz, 90 W.W. 1084 (Texas 1906) and 310 S.W. 229.

⁵ Robison's Classification report, file Nov. 28, 1904 in SF 6326, GLO Archives and Records

Howland has found and located with survey measurements the ancient fence line recognized to be along the south and east lines of the O'Conner tract forming the south line of Surveys 3 and 4, and the east line of Surveys 3, 5, 7 and 9. This fence appears to be the best evidence of these survey boundaries and therefore will control their locations. Having reviewed all of the original field notes for these surveys I find that Mr. Atlee mostly called for a "stake" at the survey corners along with appropriate adjoiner calls to connect the junior surveys to the senior surveys as well as connecting ties to the ancient lines of the O'Conner and de la Garza tracts. Several corners call to be on a "bald hill" or a "rocky hill", topographic features that could provide additional evidence to the footsteps of the original surveyor Tom Atlee.

The said fence lines show up on the Cerritos Blancos, San Pedro Hill, Las Tiendas and Pinto Creek 7.5-minute USGS Quadrangle topographic maps (topo maps) from 1965. (Please note that the subject area happens to be where these four maps fit together like tiles.) The fence corner recognized as the southeast corner of Survey No. 3 is on the Cerritos Blancos quadrangle. Starting at the fence corner and plotting the field notes calls on the map, the topographic calls in the field notes mostly fit the topography on the map. For example, the field notes for Survey No. 3 call for its northeast corner to be a stake on a bald hill. Plotting that corner on the topo map by course and distance beginning at the fence corner for the southeast corner of the O'Conner tract clearly places it on a hill and the map colors indicate very little vegetation. Continuing north along the fence line (onto the Las Tiendas quadrangle), the field notes for Survey No. 5 call for a stake on the south slope of a bald hill for its northeast corner. Plotting this corner on the topo map places it on the south slope of a hill as called for. In addition, the field notes for both Nos. 3 and 5 make a reference tie from "a fence corner of A. de la Garza's pasture" to the northeast corner of Survey No. 3, same being the southeast corner of No. 5. The topo map shows a fence corner fitting that reference call.

Field notes for Survey No. 9 begin at the "northeast corner of the Thomas O'Conner tract." This corner is identified on the topo map at a 3-way fence corner. The field notes continue "S 20° E 1854.6 vs. to a stake on a low slope of ground in the fence of Abraham de la Garza for its S.E. corner and N.E. corner of Sur. #7." From the said 3-way fence corner shown on the topo map and following the fence southeasterly the call distance of 1854.6 varas ~ 5,151.67 feet places that corner on a low slope as called for. Field notes for Survey No. 7 call to begin at "a stake the S.E. corner of #9 in A. de la Garza's fence." Then continue "S 20° E to a stake in A. de la Garza's fence on a bald hill 1900.8 vs. for its S.E. corner and the N.E. corner of #5." The distance scaled from the southeast corner of No. 9 to the northeast corner of No. 5 is 1800 varas ~ 5,000 feet, a deficiency of approximately 100 varas ~ 277 feet.

Howland has found and located by survey measurements the ancient fence line considered to be along the south and east lines of the O'Conner tract forming the south line of Surveys 3 and 4, and the east line of Surveys 3, 5, 7 and 9. According to recent pictures taken by the Howland survey crews the fence appears to have been repaired and replaced with high fencing. This fence location appears to be the only and best evidence of these survey boundaries and therefore will control their locations in the absence of additional evidence. Having reviewed all of the original field notes for these surveys I find that Mr. Atlee mostly called for a "stake" at the survey corners along with appropriate adjoiner calls to connect the junior surveys to the senior surveys. Several corners call to be on a "bald hill" or a "rocky hill", topographic features that could provide additional evidence to the footsteps of the original surveyor Tom Atlee. These points plotted onto the USGS Quadrangle topographic maps of the area harmonize with Mr. Atlee's field notes.

PROFESSIONAL CONCLUSIONS

When considering the construction of surveys the retracing land surveyor must attempt to follow in the footsteps of the original surveyor. That is accomplished by reading the field notes description and discovering the evidence called for and left by the original surveyor. When there is ambiguity between what is in the record and what is found on the ground the surveyor must then apply the so-called Dignity of Calls, also known as the Priority of Calls as found in the common law⁶ in order to best harmonize the calls and found evidence. When following the dignity of calls the calls of highest dignity are natural monuments (rivers, streams, cliffs, the like) followed by calls for artificial monuments (stone mound, marked tree, iron stake, and the like), then direction (bearing) and distance. A call for adjoiner is equal to a call for an artificial monument.

Seniority of surveys is in most cases determined by date of original survey. When surveys are in conflict the junior survey must yield to the senior. According to the Court of Appeals of Texas in *State v. Franks*⁷ “The rule is settled that a junior survey must be made to conform to and harmonize with the lines and calls for older surveys, because the boundaries of the older surveys cannot be extended or varied to satisfy the calls of a junior survey.”

Another consideration when retracing and constructing the boundaries of original surveys is are the surveys considered a block system of surveys or sequential surveys. A system of surveys is typically defined as a group of surveys made on the same date, for the same grantee, by the same surveyor. Proration of excess or deficiency is appropriate within a block or system of surveys, not in a sequential pattern of surveys.

The surveys as a whole within the so-called O'Conner and the de la Garza tracts should not be treated as a block or system of surveys because they were not done on the same date for the same grantee. Therefore, proration of excess or deficiency across all the surveys within the O'Conner tract is not warranted. Small groups of surveys made for the same grantee within the O'Conner tract could be treated as separate systems. For instance, Survey No. 3 and its north adjoiner Survey No. 5 were both surveyed August 1, 1904 by Thomas Atlee, the Webb County Surveyor. They weren't made for the same Grantee so may need to be treated as sequential surveys. Survey No. 4 and Survey No. 6 were both surveyed August 2, 1904 also by Mr. Atlee for the same Grantee so they could be considered a small system of two surveys. Surveys 7, 8, 9 and 10 to the north were surveyed September 12, 1904 by Atlee for Low, Thaxton and Baxter; they too could be looked upon as a small system of surveys. Based upon the date of survey, Survey Nos. 3 and 5 are most senior, followed by Survey Nos. 4 and 6. Therefore, based upon the rules of boundary construction which dictate that in the absence of physical monuments to control the corner locations, the senior surveys must be given their full, call dimensions in accordance with the field notes descriptions and the adjoining junior surveys must yield to the senior surveys and thereby absorb the excess or deficiency.

The first survey located on this land recovered by the State of Texas was Survey No. 3 made for Ben T. Tumlinson and filed as Scrap File 6326 in the Texas General Land Office archives. The patented field notes for Survey No. 3 by Tom Atlee, Surveyor of Webb County, dated August 1, 1904, describe the survey as follows: *“Beginning at the S.E. corner of a survey made for Tom O'Conner on a tract of land*

⁶ *Stafford v. King* 30 Tex. 257 (1867)

⁷ *State v. Franks*, 113 S.W. 2d 589 (1938); *Leone Plantation v. Roach*, 187 S.W. 2d 674 (1945)

known as the Palafox grant. Thence N 20° W at 1900.8 vs. a stake on a bald hill 126.2 vs. S 20° E from A. de la Garza's fence corner. Thence S 70° W, at 1900.8 vs. a stake on a bald hill for N.W. corner of Sec. 3 and N.E. corner of Sec. 4. Thence S 20° E, at 1900.8 vs. a stake in the south line of said grant, 18.4 vs. S 70° W from a N.W. fence corner of A. de la Garza's pasture. Thence N 70° E, along south line of said Palafox grant 1900.8 vs to the place of beginning."

This survey being the most senior and in the absence of additional corner monuments must be constructed by its call bearings and distances beginning at the long recognized southeast corner of the O'Conner tract. These calls placed on the quadrangle map harmonize with the topographic calls as previously noted in this report. Survey No. 5 is then constructed from the northeast corner of No. 3 by its field notes calls. Survey Nos. 4 and 6 adjoin the west corners of 3 and 5; their western corners will be 1900.8 varas ~ one mile west as called for. Survey Nos. 7 – 10 begin at the northeast corner and the north line of the O'Conner tract and are constructed south to the north corners of Nos. 5 and 6. There is a noted, scaled, deficiency of approximately 100 varas ~ 277 feet from the north line of the O'Conner tract to the plotted north corners of Nos. 5 and 6, reflecting what was discovered on the ground by James Ornelas, RPLS. That deficiency must be placed in the junior surveys Nos. 7 – 10 in conformity with the decisions in *State v. Franks* and *Leone Plantation v. Roach* cited above. The deficiency can be prorated within that small system of surveys.

Therefore, in my professional opinion, Survey Nos. 3, 4, 5 and 6 should be whole, one-mile square, sections or surveys and the apparent deficiency between the south line and north line of the O'Conner tract should be placed in the junior Survey Nos. 7 – 10.

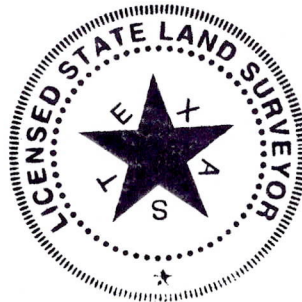
I worked closely with James Ornelas, RPLS and his staff at Howland Engineering to produce a survey plat suitable for filing in the General Land Office. Mr. Ornelas has overseen the recent monumentation of the subject survey corners with 5/8-inch iron rods with aluminum caps as shown on the survey plat prepared along with this report

Please contact me if you have any questions regarding this report and survey plat.

Respectfully submitted,



William D. O'Hara
Registered Professional Land Surveyor No. 4878
Licensed State Land Surveyor



Exhibits (4)

EXHIBIT A – Portion of current GLO Webb County Map, Northwest Part, 1984.
Subject Survey Nos. 3-10 within highlighted area.



EXHIBIT B – Survey sketch of the “O’Conor Tract” in GLO archive file SF 7055, dated 1905

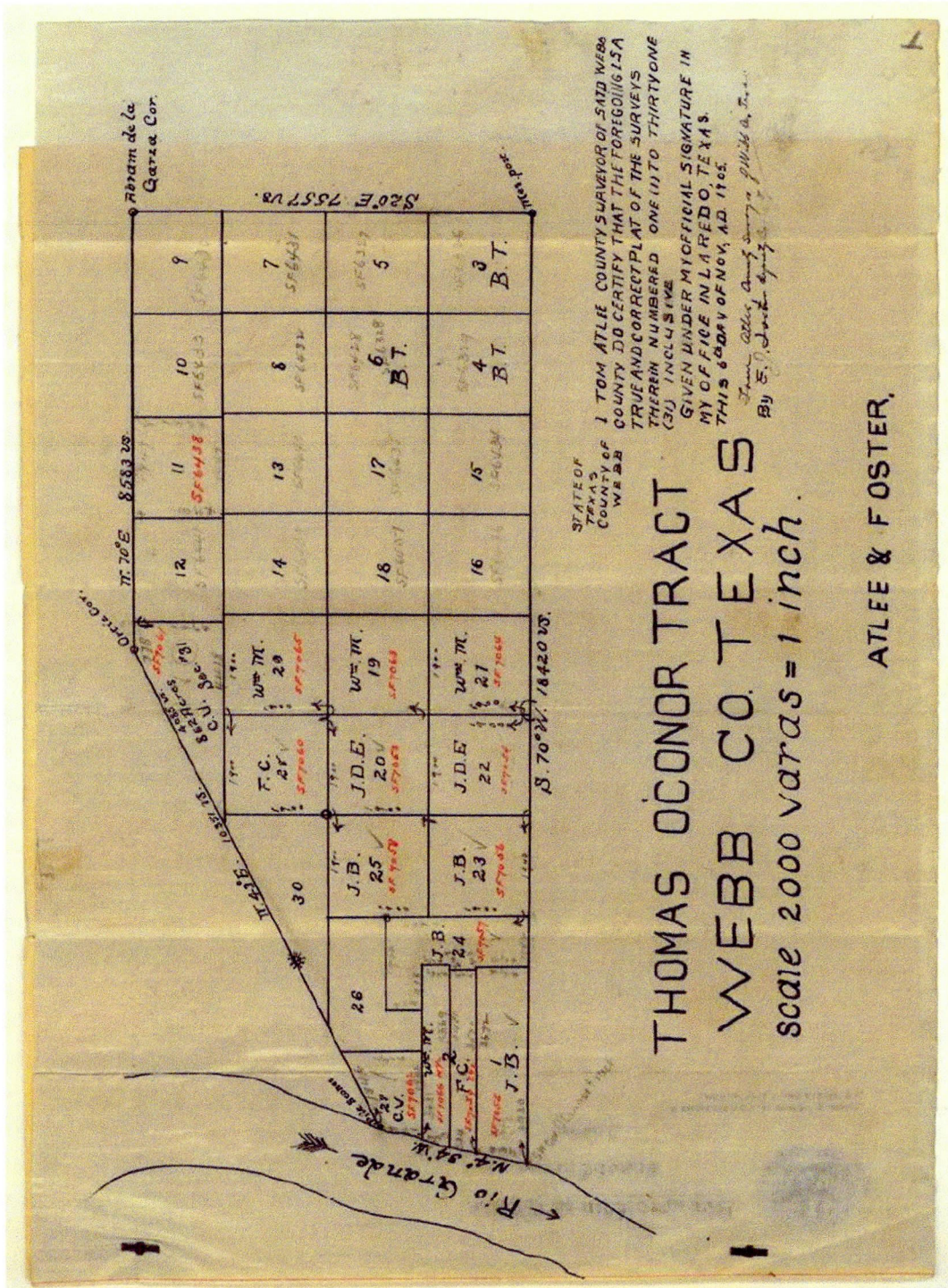


EXHIBIT C – Portion of a retired GLO Webb County Map, 1901.

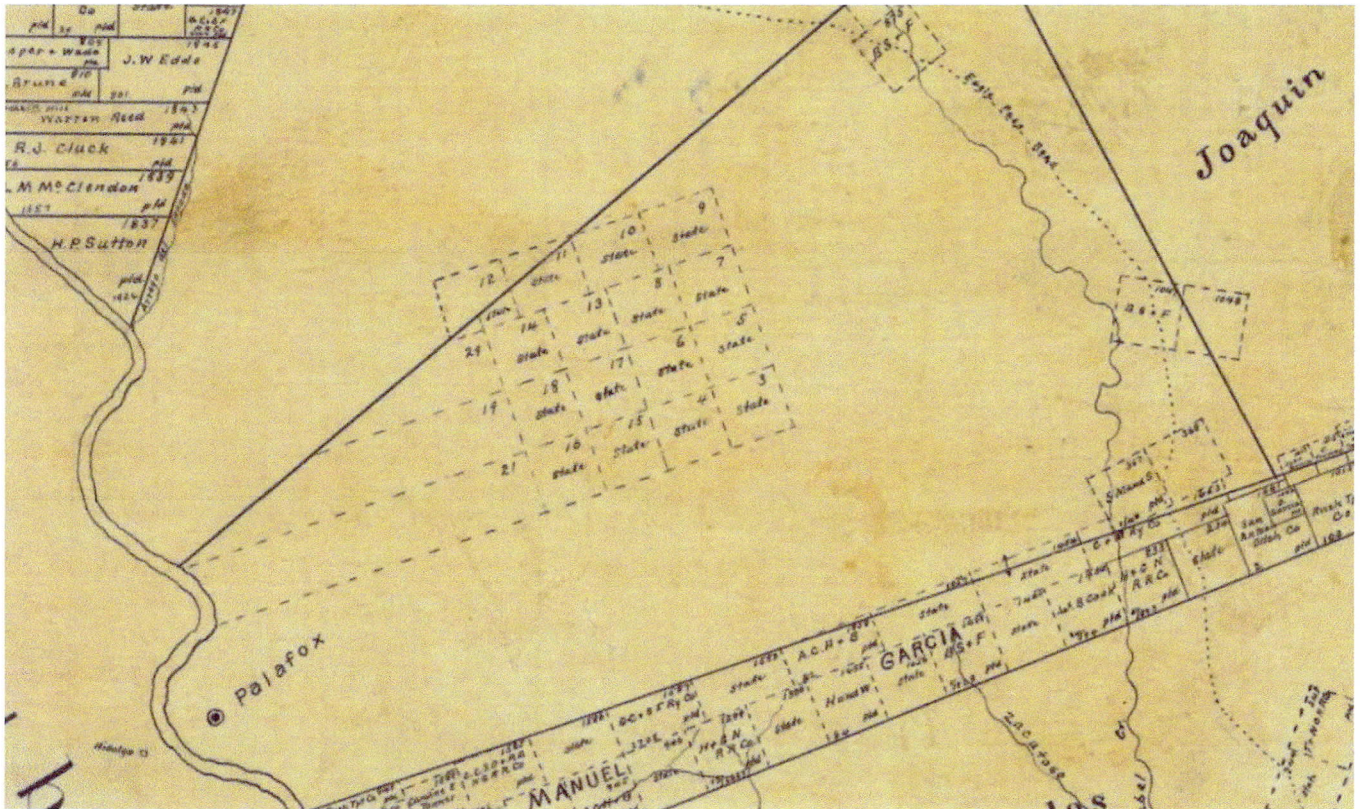
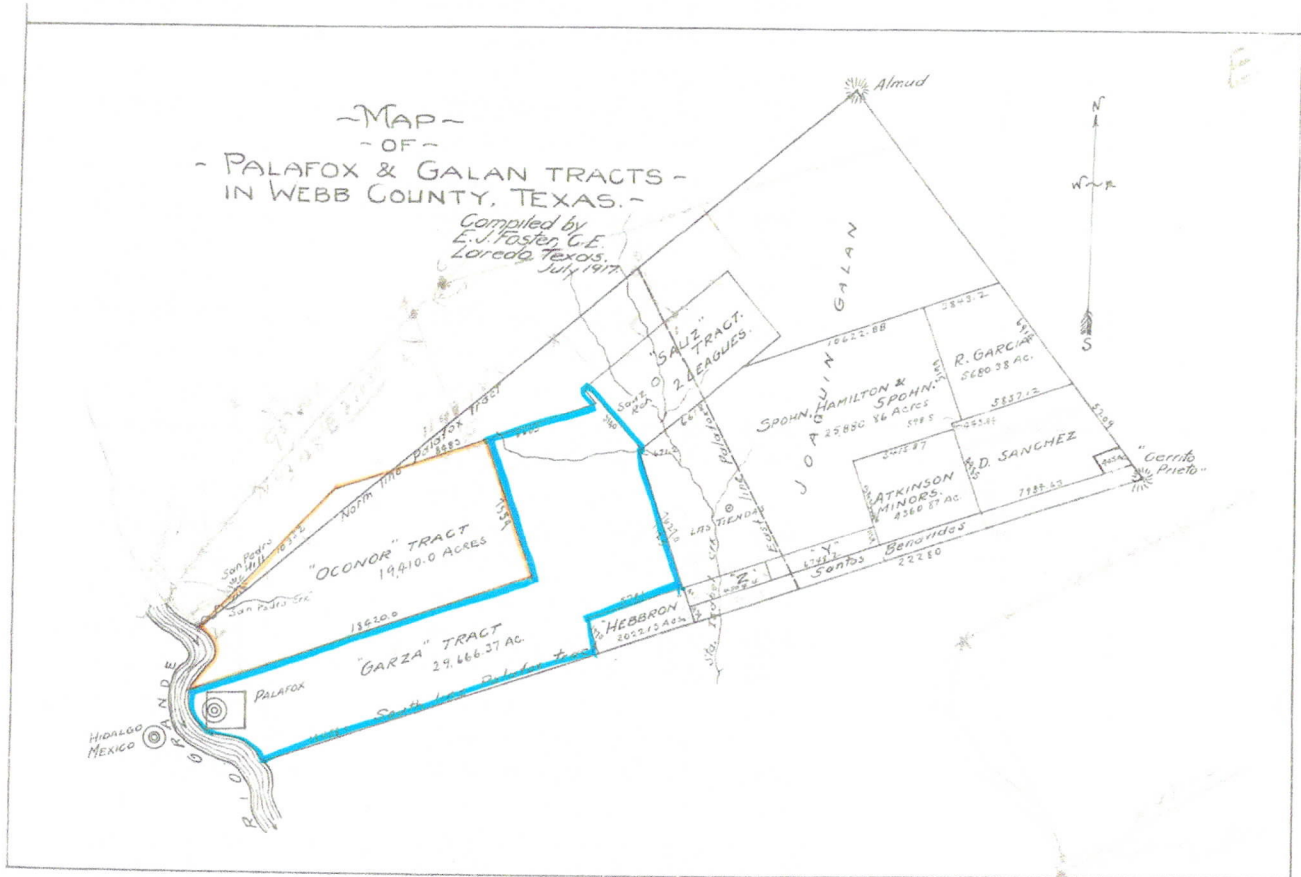


EXHIBIT D – “Map of Palafox and Galan Tracts in Webb County, Texas” compiled by E.J. Foster, C.E., July 1917, from the private records of Howland Engineering.





TRANSMITTAL

Date: March 31, 2020

To: Mark Neugebauer, Director
Surveying Division
Texas General Land Office

From: Bill O'Hara, LSLS

BO

Re: Surveys in Webb County, part of the La Mesa Ranch

Items being transmitted for filing:

- Surveyor's report
- Survey plat plotted to mylar

Thank you.

