

June 6, 2014

Surveyor's Report No. 14-855A

Upon the Status of those Parts of Survey No. 215, B.S. & F, A-557 Understood to be in Conflict with Survey No. 4, J.V. Massey, Cert. 52, both situated in Uvalde County, Texas

General :

At the request of *[client's name redacted]*, I have researched various records on file at the Texas General Land Office pertaining to the following:

- Survey No. 215, Abstract 557, made by virtue of Land Scrip No. 1/470 issued by the State of Texas January 8, 1875 to C.R. Beaty, E.T. Seale and J.M. Forwood, and patented on March 14, 1895 to S.H. Nunn and S.S. Birchfield, Assignees, and
- Survey No. 4 made for the State of Texas by virtue of Land Scrip No. 52 issued on May 21, 1875 to J.V. Massey.

In particular, the purpose of my investigation was to discover the facts relevant to the present status of that portion of the above-mentioned Survey No. 215, B.S. & F that has been reported to be in conflict with Survey No. 4, J.V. Massey.

Letter from Texas General Land Office Surveying Division :

I was provided a copy of a letter dated March 18, 2013 from Mr. Bill O'Hara, RPLS, LSLS, Director of the Surveying Division of the Texas General Land Office to Mr. D.G. Smyth, RPLS, LSLS. The letter sets out Mr. O'Hara's conclusion from examination of the records on file in his office that Survey No. 4, Block 19, J.V. Massey is "superior" to Survey No. 215, B.S.&F. by virtue of Survey No. 4 having been made earlier in time than Survey No. 215. I understand his use of the word "superior" to mean that in his opinion title to that portion No. 4 that has not been awarded or sold as school land remains vested in the State of Texas, the land having been appropriated by Article 2 of Section VII of the Texas Constitution of 1876 for the Permanent School Fund and that this title is paramount to that of anyone claiming title under a patent previously issued by the State to that portion of Survey No. 215 in conflict with Survey No. 4.

In ordinary analysis, where the earlier survey was valid, i.e. lawfully made, it constituted a prior appropriation of that portion of the unappropriated public domain within the boundaries set forth in its field notes, subject to certain subsequent conditions being met, such as filing of the field notes in the office of the County or District surveyor authorized by law to examine and to record them and the return of the field notes once so examined

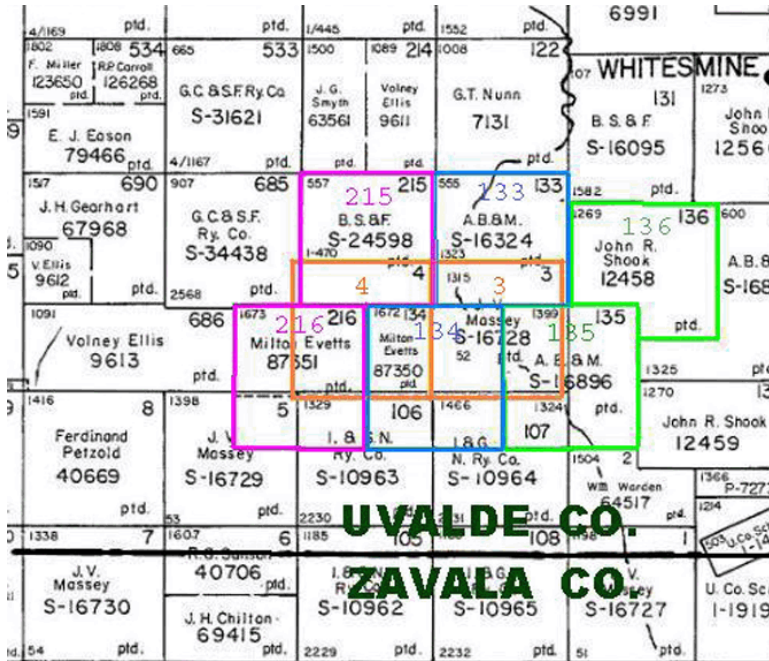
and recorded, to the General Land Office. If Survey No. 4, J.V. Massey were valid, then the land within its boundaries would have been appropriated and ineligible for location as a part of Survey No. 215, B.S. & F. when that survey was later made.

What I believe that the analysis set forth in Mr. O'Hara's letter overlooks, however, is that Survey No. 4, Block 19, J.V. Massey, does not appear to have been a valid survey under the laws of Texas then in force when Survey No. 215, B.S.&F. was located. In the following sections, I set out what seem to me to be the main points in support of this conclusion. Examination of the early General Land Office correspondence files reflects that my conclusion as to the invalidity of Survey No. 4 was also reached by General Land Office Commissioner Andrew J. Baker in March of 1895 when Survey No. 215 was approved for patent. Notes on the file jacket of Bexar Scrip File No. 16896 in the GLO records indicate that Mr. Baker's predecessor in office, W.L. McGaughey, had on August 29, 1894 written to the patentee of Survey No. 3, Block 19, J.V. Massey, requesting him to return the patent for cancellation.

Sketch of Situation :

The sketch below is based upon a portion of the Official County Map of Uvalde County compiled by the GLO in 1976 from various records on file in that office. While the map below is not a representation of a survey, it shows the gross conflicts that existed between the surveys outlined in orange, Surveys Nos. 3 and 4, J.V. Massey, and the surrounding surveys. The patent and correspondence files of the GLO show that in March of 1895, then Commissioner Andrew J. Baker recognized that Survey No. 3 was invalid, should never have been patented, and sought to have that patent cancelled. He also recognized that Survey No. 215 was lawfully made and approved the issuance of patent on that survey in full awareness of the conflict that existed between Survey No. 215 and parts of Surveys Nos. 3 and 4.

The essential situation is that Surveys Nos. 3 and 4 (in orange) were not lawfully made. In the case of Survey No. 3, apart from the legality of the survey in the first place, the location was in nearly total conflict with valid senior surveys. While patent issued on Survey No. 3 before any of the other surveys outlined in color, issuance was contrary to the laws then in force, which was the basis upon which GLO Commissioner Baker sought to have the patent returned for cancellation in 1895 and upon which the patent finally was cancelled in 1979. Following the sketch, I've set forth certain relevant facts reflected by the GLO patent files that show the fundamental problems with Surveys Nos. 3 and 4 located under J.V. Massey Certificate No. 52.



BLUE

Surveys 133 & 134 by virtue of Adams, Beaty & Moulton Scrip No. 1323
Made by J.W. Cummings, Uvalde Co. Surveyor
Date of survey: 10/15/1875
Filed in Uvalde Co. Surveyor's Records 11/06/1875
Filed in GLO 03/18/1876
Sur. 133 Patented 04/17/1878

GREEN

Surveys 135 & 136 by virtue of Adams, Beaty & Moulton Scrip No. 1324
Made by J.W. Cummings, Uvalde District Surveyor
Date of survey: 12/15/1875
Filed in Uvalde Co. Surv. Records 01/01/1876
Filed in GLO 03/29/1876
Sur. 135 Patented 03/14/1895

ORANGE

Surveys 3 & 4 by virtue of J.V. Massey Cert. No. 52
Made by F.M. Maddox, Dep. Surveyor Bexar District
Date: 03/03/1876
Filed in Bexar Dist. Surv. Records
Filed in GLO 04/07/1876
Sur. 3 Patented 07/10/1876

MAGENTA

Surveys 215 & 216 by virtue of Beaty, Seale & Forwood Scrip No. 1/470

Made by J.M. McCormick, Uvalde District Surveyor

Date of survey: 12/23/1876

Filed in Uvalde Dist. Surv. Records 01/10/1877

Filed in GLO 02/19/1878

*Field notes rejected for not having been returned
to GLO within 12 months of date of survey.*

Duplicate scrip issued for relocation.

Duplicate scrip relocated in original position by J.M. McCormick, Uvalde Co. Dep. Sur.

Date of resurvey: 06/04/1879

Filed in Uvalde Dist. Surv. Records 06/06/1879

Filed in GLO 06/10/1879

Sur. 215 Patented 03/14/1895

Surveys Nos. 3 and 4, Block 19, J.V. Massey:

According to field notes on file in the General Land Office (in Bexar Scrip File 16728), surveys designated as No. 3 and No. 4 in Block 19 were located on March 3, 1876 by F.M. Maddox in the capacity of Deputy Surveyor of Bexar District working under L.C. Navarro, District Surveyor of Bexar District. Surveys Nos. 3 and 4 were made by virtue of Land Scrip No. 52 issued on May 21, 1875 by the State of Texas to J.V. Massey, Contractor under the terms of the Act of April 29, 1874 entitled "An act to improve the navigation of the Sabine, Neches and Angelina rivers and Pine Island Bayou, in the State of Texas". The field notes for both surveys bear the certificate of L.C. Navarro as District Surveyor of Bexar District, stating that they were examined by him and recorded in his office. Notations on the field notes indicate that they were filed in the General Land Office on April 7, 1876. Survey No. 4 was made for the State adjoining Survey No. 3 as required by the provisions of the Act under which Land Scrip No. 52 had been issued.

The field notes for both Surveys No. 3 and 4 state that they were situated in Zavalla County, "Zavalla" being the original spelling of what was later renamed "Zavala" County. The file jacket for Bexar Scrip File 16728 bears an endorsement by E. Schütze dated May 4, 1876 stating "Both surveys [printed word "correct" struck out] on map of Zavalla Co. The same file jacket is endorsed "Survey No. 3 correct & patented to R.W. W. Ely & F.D. Ramsey, Assees. July 7 / [18]76"

Neither the field notes for Survey No. 3 nor those for Survey No. 4 indicate that they were filed in the office of the Uvalde County Surveyor. Nor do they bear his certificate as having examined them. Subsequent correspondence with the GLO in 1894 indicates that no record of either Surveys Nos. 3 or 4 appears in the records of the Uvalde County Surveyor. They were at the extreme North end of a block of surveys F.M. Maddox had located, nearly all of which were in fact situated in Zavala County. However, Surveys

Nos. 3 and 4 actually covered land that on March 3, 1876, the date of the survey, was entirely within the boundaries of Uvalde County and that remains so today.

Uvalde County was created by Act of the Legislature on February 2, 1856, the provisions of which are set forth below under the section entitled "Creation of Uvalde County again in February, 1856". Uvalde County was organized on April 21, 1856. While I have not yet discovered when the first County Surveyor of the new Uvalde County was elected, it seems sufficient to note that prior to F.M. Maddox's location or attempted location of Surveys Nos. 3 and 4 on March 3, 1876, field notes on file in the General Land Office in Bexar Scrip File 16324 state that they had been made by J.W. Cummings on October 15, 1875 in the capacity of Uvalde County Surveyor and as Uvalde District Surveyor, the existence of Uvalde Land District necessarily implying that it had previously been separated from Bexar Land District.

The removal of Uvalde Land District from Bexar Land District would have been in accordance with the provisions of the County Surveyors Act of January 26, 1858 entitled: "*An Act supplementary to and amendatory of An Act to give each corporate county of this State its own County Surveyor, Map and Records, and defining the duties of Surveyors*" (4 Gammel's Laws of Texas 938). Section 3 of that act provided that an organized county became a separate Land District upon the election of a County Surveyor and his having met the requirements of his office, including having given a bond. Under that provision, Uvalde County would have been separated from Bexar Land District upon Uvalde having been organized and having elected a County Surveyor duly qualified. Section 6 of the same act withdrew the authority of the District Surveyor of Bexar District and his deputies to make surveys in the newly formed Uvalde District and Uvalde County. The provisions of the act are set forth in full below in the section entitled "County Surveyors Act of January, 1858 terminating Authority of District Surveyor and his Deputies".

That being the case, the only persons who would have had authority to make the surveys within the boundaries of Uvalde County would have been either the Uvalde County Surveyor or one of his deputies. A Deputy Surveyor of Bexar District, which was F.M. Maddox's stated capacity, did not have the authority to locate land scrip in Uvalde County and so both Surveys Nos. 3 and 4 appear to have been invalid locations under the laws in force at the time.

Surveys Nos. 215 and 216, A.B. & M. :

According to the field notes on file in the General Land Office (in Bexar Scrip File 24598), on December 23, 1876, J.M. McCormick as District Surveyor of Uvalde District located Land Scrip No. 1/470 issued on January 8, 1875 by the State of Texas to C.R. Beaty, E.T. Seale, and J.M. Forwood, Contractors under the terms of the same Act of April 29, 1874 mentioned above. Mr. McCormick's location of the land scrip was made for S.H. Nunn and S.S. Birchfield to whom it had been transferred on February 2, 1875

according to the record of that transfer on file in the General Land Office (in Bexar Scrip File 24598).

The surveys Mr. McComick made to locate Land Scrip No. 1/470 were designated as Surveys Nos. 215 and 216, Survey No. 216 having been the alternate section surveyed for the State of Texas adjoining Survey No. 215 made for the assignees Nunn and Birchfield as required by the provisions of the Act under which the scrip had been issued.

While the field notes for Mr. McCormick's December 23, 1876 locations of Surveys Nos. 215 bear his certificate that they were recorded in the records of Uvalde District on January 10, 1877, the field notes were not filed in the General Land Office until February 19, 1878, more than one year after the date of the survey. As a result, the provisions of Section 5 of the Act of February 10, 1852 (3 Gammel's Laws of Texas 936), were not met, namely:

Sec. 5. That the field-notes of all surveys hereafter made, shall be returned to, and filed in the General Land Office within twelve months from the date of survey

On May 10, 1879, General Land Office Commissioner W.C. Walsh issued a certified copy of Land Scrip No. 1/470 originally issued by the State of Texas to Beaty, Seale and Forwood, retaining the original certificate in Bexas Scrip File 24598, both of which acts were authorized by law.

Mssrs. Nunn and Birchfield, the assignees of Land Scrip No. 1/470 were authorized under the terms of Section 2 of the Act of February 10, 1852 mentioned above to relocate the same land certificate upon the same survey previously made for them "*but without being compelled to have the same re-surveyed; provided, said survey shall not have been previously located by some other person by right of a genuine land claim.*"

In other words, during the interim between the original location of Survey No. 215 on December 23, 1876 and a subsequent relocation of the duplicate certificate upon the same survey, the land within Survey No. 215 was not considered to have been appropriated from the public domain by reason of the original, forfeited location of December 23, 1876. It was eligible for location by others and the above provisions of Section 2 of the Act of February 10, 1852 made clear that the forfeited survey vested no prior right in the original locator other than the right to relocate it if no other person had taken up the land in the meantime.

In the event, field notes for Surveys Nos. 215 and 216 bearing the date of June 4, 1879, stating they were made by virtue of Land Scrip No. 1/470 issued to Beaty, Seale, and Forwood, and bearing the certificate of J.M. McCormick as Deputy Surveyor of Uvalde County and as District Surveyor of Uvalde District were filed in the GLO on June 10, 1879. Mr. McCormick's field notes of June 4, 1879 give the names of the same chain carriers, Wm. White and R. Musgrave, as those for Surveys 215 and 216 dated December 23, 1876 but not filed in the GLO until February 19, 1878. While Mr.

McCormick labelled his field notes as those of a "resurvey" his 1879 work would appear to actually be a transcription of his field notes from 1876 that was also lawful as such under the terms of the Act of February 10, 1852.

Creation of Bexar Land District :

Prior to the organization of Uvalde County and the election of a County Surveyor, the land within what is now Uvalde County was administered as a part of Bexar Land District. The Act of the Texas Legislature adopted May 12, 1846 entitled "An Act to Establish a General Land Office for the State of Texas" [2 Gammel's Laws of Texas 1538] provided as follows:

See. 8. Be it further enacted, That the several counties of the Republic of Texas, as they existed on the fifteenth day of February one thousand eight hundred and forty six, be, and they are hereby declared land districts of the State of Texas, and be known as follows, viz: district of Austin, district of Bexar, district of Bastrop, district of Brazoria, district of Brazos, district of Bowie, district of Colorado, district of Fayette, district of Fort Bend, district of Fannin, district of Goliad, district of Gonzales, district of Galveston, district of Harris, district of Houston, district of Harrison, district of Jasper, district of Jefferson, district of Jackson, district of Liberty, district of Lamar, district of Montgomery, district of Milam, district of Matagorda, district of Nacogdoches, district of Refugio, district of Robertson, district of Rusk, district of Red River, district of San Patricio, district of San Augustine, district of Sabine, district of Shelby, district of Travis, district of Victoria, and district of Washington.

Surveys within Bexar Land District were made by the District Surveyor of Bexar district or his deputies, and the field notes of those surveys were recorded in his office, following other provisions of the laws of Texas then in force.

The Act of February 10, 1852: An Act Concerning Surveys of Land:

One of the fundamental requirements of the Texas system of land grants through the location of land certificates by survey was that the field notes of those surveys under which a holder of a land certificate claimed ownership be made known to others so that, among other things, the shape and location of the remaining unsurveyed lands might be kept track of. This would have been the obvious intent of Section 5 of the Act of February 10, 1852, "An Act Concerning Surveys of Land" (3 Gammel's Laws of Texas 936), the entirety of which statute is set forth as follows:

Section 1. Be it enacted by the Legislature of the State of Texas, That the field-notes of all surveys made previous to the passage of this act, shall be made out and returned in the manner now required by law, to the General Land Office, on or before the thirty-first day of August, 1853, or they shall become null and void, and the said surveys shall become vacant land, and be subject to be relocated and surveyed

as in other cases, by any persons holding a genuine land certificate or other legal evidence of claim to land.

Sec. 2. That any person holding a genuine certificate or other legal evidence of right to land under the Republic or State of Texas, and having a survey made by virtue of the same, the field-notes of which may not have been returned to the General Land Office before the period prescribed by this act, shall have the right to relocate the same certificate or other evidence of legal right to land, upon the same survey; but without being compelled to have the same re-surveyed; provided, said survey shall not have been previously located by some other person by right of a genuine land claim.

Sec 3. That any person wishing to avail him or herself of the privilege of re-locating the same land claim upon the same land, as permitted by the second section of this act, shall present his or her land claim, or cause the same to be done for that purpose, to the District or County Surveyor, as the case may be, of the district or county where the field-notes were first recorded, who shall duly enter such re-location upon the record of field-notes of the office and duly certify the same to the Commissioner of the General Land Office, which shall be sufficient authority for him to issue the patent for the land so re-located, as in other cases; provided, the field-notes of survey and certificate of re-location shall be filed in the General Land Office within one year from and after said re-location.

Sec. 4. That all surveys represented upon the maps of the General Land Office, the field-notes of which shall not be returned to the General Land Office under the provisions of this act, and for which there are no titles on file in said office, shall be null and void, and be stricken from the maps of said office; provided., this section shall not include surveys made for colonists prior to the closing of the Land Offices in 1835.

Sec. 5. That the field-notes of all surveys hereafter made, shall be returned to, and filed in the General Land Office within twelve months from the date of survey; provided, that the field-notes of surveys made by virtue of certificates issued to claimants in Fisher and Miller's Colony, Castro's, Mercer's or Peter's Colonies, may be returned at any time before the first of March, 1854.

Sec. 6. That hereafter all government dues on land shall be paid to the Commissioner of the General Land Office in accordance with the provisions of a joint resolution, approved December 31st, 1849, entitled a joint resolution granting further time for the payment of government dues and the return of field-notes.

Sec. 7. That a fee of one dollar shall be paid to the County or District Surveyor, upon his making record of the re-location of any surveys under the provisions of this act.

Sec. 8. That all lands heretofore located by virtue of any genuine claim to land, shall be surveyed within twelve months from the passage of this act, and all lands which

may be hereafter located shall be surveyed within twelve months from the date of location, or the said locations, in either case, shall be null and void, and the lands be subject to re-location and survey as other vacant and unappropriated lailds.

Sec. 9. That if any District or County Surveyor shall fail, neglect or refuse, when the amount of lawful surveying fees of any location of land may be tendered to him by any person legally entitled. to the survey, to make, or cause the survey of the same to be made within one month of the tune of the tender to him of said surveying fees, he shall be liable on his official bond to the party or parties legally entitled to the same, in the amount of the damages or injury said party or parties may sustain by reason of such neglect, refusal or failure, to be recovered before any competent tribunal; provided, this section shall not apply to any grants made to colonists in the Colonies of Austin, De Witt, De Leon and Milam.

Sec. 10. That this act take effect and be in force from and after its passage.

Creation of Uvalde County in February, 1850 :

Uvalde County was created by the Act of of February 8, 1850 entitled "An Act to Create the County of Uvalde" [3 Gammel's Laws of Texas 570] which set forth the boundaries of Uvalde County and provided for the county's organization by an election to be held "on the first Monday in August next". The records of the Texas Secretary of State do not reflect that Uvalde County was in fact organized pursuant to this act of 1850.

Creation of Uvalde County again in February, 1856 :

On February 2, 1856, another Act was adopted, also entitled "An Act to Create the County of Uvalde" [4 Gammel's Laws of Texas 252] which provided as follows:

Section 1. Be it enacted by the Legislature of the State of Texas, That all that territory included within the following limits, in the county of Bexar: beginning at the junction of the Rio Frio and Leona rivers, thence up the Rio Frio to the South-Western corner of Medina county, thence North with the Western boundary line of Medina county thirty-six miles to its North-Western corner, thence West to the Nueces river, thence down the river Nueces to the crossing of the upper Presidio del Rio Grande road, thence in a direct line to the place of beginning, be, and the same is hereby created a new county, and named the county of Uvalde.

Sec. 2. That the County Seat be established within eight miles of the centre of said county, to be called. the town of Uvalde.

Sec. 3. That it shall be the duty of the Chief Justice of Medina county to cause an election to be held within three months from the passage of this act at the various precincts already established in said territory for the purpose of electing county officers for the said county of Uvalde, which election shall be conducted in

accordance with the mode prescribed by law for the election of county officers, and the said Chief Justice shall award certificates of election to those persons who shall be duly elected as officers of said county of Uvalde, within the time and in the manner prescribed by law.

Sec. 4. That all laws and parts of laws conflicting with this act, be, and the same are hereby repealed.

Sec. 5. That this act take effect from, and after its passage.

Organization of Uvalde County in 1856 :

The records of the Texas Secretary of State reflect that Uvalde County was organized on April 21, 1856.

County Surveyors Act of January, 1858 terminating Authority of District Surveyor and his Deputies:

On January 26, 1858, an Act of the Legislature was approved entitled "An Act supplementary to and amendatory of An Act to give each corporate county of this State its own County Surveyor, Map and Records, and defining the duties of Surveyors" (4 Gammel's Laws of Texas 938). The entire act is set forth below. Note that it provided for the election of County Surveyors within organized counties and (in Section 6) for the termination of the authority of the District Surveyor within whose land district the territory of the County formerly lay to make surveys in the newly separated land district.

Section 1. Be it enacted by the Legislature of the State of Texas, That at the next general election for county officers, the Chief Justice of every organized county in the State, shall order an election for a County Surveyor of said county, by the qualified electors thereof, giving the same notice required for the election of county officers, and requiring the returns to be made at the same time, and in the same manner, Provided, That this provision shall not affect those counties, now having Surveyors whose term of office may expire at a different period; and that each county to be organized after the passage of this Act, shall elect a County Surveyor at the time of electing other county officers. All County and District Surveyors shall hold their offices for two years, and until their successors may be elected and qualified; and in case a vacancy in the office from any cause, the County Court may appoint some person to discharge the duties thereof until twenty days after the then next succeeding August election, at which election a Surveyor shall be elected to serve for two years as in other cases.

Sec 2. That when any county shall have elected a Surveyor as provided for in this Act, the person so elected, shall be qualified in the same manner, and give bond in the same form and amount as now required by law of District Surveyors; and he shall

do and perform all the duties now required of them, be governed by the same laws, and liable to the same penalties.

Sec. 3. That when any organized county shall have so elected a Surveyor, and he has given bond and been qualified as above provided, said county shall be a separate Land District.

Sec. 4. That before any Surveyor elected under the provisions of this Act, in a county not previously a separate Land District, shall make any surveys therein, he shall procure a certified map of the surveys in said county, and a certified copy of the files and locations of lands therein from the Surveyor's Office of the Land Districts to which said county belonged, and file the same in his office for the inspection of any one interested in examining the same.

Sec. 5. That said Surveyor shall within twelve months from the date of his qualification, obtain from the office of the Districts from which his county is taken, a transcript of the field notes of surveys in his county, certified to as required by the Act to which this is supplementary, and for obtaining which he shall be entitled to ten cents per hundred words, to be paid by the County Court of his county; said transcript of records so certified, shall answer all the purposes, and have the same force and effect in law that the originals could have.

Sec. 6. That it shall be the duty of each District Surveyor of this State, during the month of August, 1858, and thereafter within twenty days after each election for District Surveyor, to appoint as his deputy a special County Surveyor for each unorganized county within his District, who shall hold his office during the term of his principal unless sooner superceded by the appointment of another as his successor. The District Surveyor shall immediately notify the Commissioner of the General Land Office of every such appointment; each special County Surveyor, so appointed, shall have all the powers, perform all the duties, and be subject to all the penalties appertaining to County Surveyors, and shall keep in addition to the returns to be made to his principal, a record and map of all the transactions in his office, to become a part of the County Surveyor's records of such county, whenever it may be organized. All such special County Surveyors shall reside and keep their offices in their respective counties, if there be settlements in the same, but if there be no settlements in the county, then at the nearest town to such county. Whenever any county may elect a County Surveyor under the provisions of this Act, the District Surveyor within whose District such county may have been, or may be at the time, and his deputy shall cease to exercise any official acts within the same; Provided, That when any such unorganized county may have been taken from two or more Land Districts, a special Surveyor shall be appointed as herein provided by each District Surveyor, for so much of such county as may have been taken from his District.

Sec. 7. That any person interested for himself, or as agent or friend of another, shall at all times have the right to examine the books, papers, plates, maps, or other archives belonging to the office of any District, County, or special Surveyor, on the

payment of the fee fixed by law; and whenever an applicant calls upon either a District, County, or special Surveyor, to make an entry for location on his books, and shall be informed that the land indicated by the applicant has already been located, or located and surveyed, the applicant may demand of the Surveyor a certificate in writing, setting forth the time at which the entry, location and survey, or either, was made, at whose instance, upon what certificate or warrant and all the facts in the case, which certificate shall be held good evidence in law and equity against such Surveyor in any suit brought against him, to test the truth of the certificate, and recover damages by the applicant; and any surveyor refusing any examination of his books and archives, or to give the certificates as herein provided, shall be subject to a fine of five hundred dollars for each offence, to be recovered before the District Court, by the party aggrieved.

Sec. 8. That it shall be the duty of every District, County and special County Surveyor, of this State, once in every three months to plat upon the map of his District or county, all surveys made to that date, within the three preceding months, and transmit sketches and field notes of the same to the Commissioner of the General Land Office, together with a list of all land certificates or warrants on file in his Office, giving the number, date, quantity in acres of each, and stating by whom and to whom the same purports to have been issued; and any Surveyor failing or refusing to comply with the provisions of this Section, shall be subject to a fine of five hundred dollars for each offense, to be recovered by the State before the District Court, on complaint of any party aggrieved, or of the District Attorney of the District whose duty it shall be to prosecute all such suits. A certificate from a Post Master certifying that a letter or package containing the returns herein provided for, was mailed in his office, addressed to the Commissioner of the General Land Office, shall be evidence of the fact in any suit against a Surveyor under this Section.

Sec. 9. That all laws as far as they conflict with this Act, are hereby repealed; and that this Act take effect from its passage.

Creation of Zavala County in February, 1858 :

What was originally known as Zavalla County (the spelling being corrected to its present form of Zavala by later act of the Legislature) was created by the Act of the Legislature (4 Gammel's Laws of Texas 959) approved February 1, 1858 entitled "An Act to create the Counties of Concho, Wichita, Coleman, Dawson, Shackelford, McMullen, Eastland, Frio, Callahan, Zavalla, Edwards, Haskell, Knox, Hardeman, Dimmit, Baylor, Runnels, Jones, Wilbarger, La Salle, Duval, Taylor and Encinal"

Although created by the Act of 1858, Zavalla/Zavala County remained unorganized until 1884, when the records of the Texas Secretary of State indicate that on November 4 it was actually organized. The significance of this fact is that prior to November 4, 1884, Zavalla/Zavala County remained attached to Bexar Land District and surveys within the area embraced by that unorganized county were authorized by law to be made by the Bexar District Surveyor and his Deputies.

However, by law that authority did not extend into Uvalde County in the case of lands situated entirely within the boundaries of Uvalde County/Uvalde District.

Act of March 22, 1889: An Act to provide for the ascertainment, distribution and sale of the excesses in surveys of land made for the school fund, and to validate surveys of land as herein provided :

In 1889, two laws were enacted that were intended to cure certain objections to the validity of various surveys that had previously been made. The first, was the Act of March 22, 1889, "An Act to provide for the ascertainment, distribution and sale of the excesses in surveys of land made for the school fund, and to validate surveys of land as herein provided" (9 Gammel's Laws of Texas 1131). Its provision were the following:

Section 1. Be it enacted by the Legislature of the State of Texas: That all surveys and blocks of surveys heretofore made by virtue of valid alternate scrip be and the same are hereby declared to segregate from the mass of the public domain all the land embraced in said surveys, or blocks of surveys, as evidenced by the corners and lines of same, or by calls for natural or artificial objects, or the calls for the corners and boundaries of other surveys or by the maps and other records in the general land office.

Sec. 2. That all excess in said surveys or blocks of surveys are hereby donated and declared to belong to the public free school fund of the state; and it shall be the duty of the commissioner of the general land office to ascertain, by any and all means practicable, the existence and extent of such excesses, and to provide for and direct such surveys, or corrected surveys, as may be necessary for this purpose: Provided, That where such surveys were made in blocks of two or more surveys, said respective surveys shall remain on the ground consecutively as placed therein, as shown by the maps, sketches, and field notes originally returned to the general land office: Provided, That the person who has already purchased, or who may hereafter purchase from the state, the particular section to which surplus shall by such resurvey be made contiguous, shall have the prior right for the period of six months after such reurvey shall have been made in which to purchase such excess on the same terms as which such purchaser has already bought or may buy.

Sec. 3. That all such surveys which under the direction of the commissioner of the general land office have been or may be hereafter corrected, so that all excess in the original surveys shall be placed in the surveys belonging to the public free schools, are hereby validated, and the action of the commissioner is hereby ratified; and he is directed and authorized to issue patents to the owners thereof, and to sell such surveys belonging to the public free schools, securing to the state the benefit of such excesses.

Sec. 4. That the provisions of this act shall not apply to nor affect the rights of the third persons heretofore acquired in good faith.

Sec. 5. Provided, That nothing in this act shall apply to any lands for which patents have been issued.

Sec. 6. Whereas there is much confusion and uncertainty in regard to certain lands surveyed in this state, and the rights of actual settlers and purchasers are dependent upon the validity of such surveys, creates an emergency and an imperative public necessity authorizing the suspension, of the constitutional rule requiring bills to be read on three several days, and demanding that this act take effect and. be in force from and after its passage, and it is so enacted.

Act of April 16, 1889: “An Act to validate certain surveys which for any reason might be deemed invalid, and to authorize the commissioner of the general land office to issue patents therefor”:

The other of the two laws was the Act of April 16, 1889, “An Act to validate certain surveys which for any reason might be deemed invalid, and to authorize the commissioner of the general land office to issue patents therefor” (9 Gammel’s Laws of Texas 1135).

Section 1. Be it enacted by the Legislature of the State of Texas: That in all cases where parties resurveyed or relocated lands by virtue of any valid land certificates previously surveyed and on file in the general land office, without having taken out certified copies thereof, and thereby failed to comply strictly with the law, such last named survey, which in law might be deemed a relocation, shall be valid and the owner shall hold thereunder thereby abandoning all other surveys previously made, and the commissioner of the general land office is authorized to issue patents therefor.

Sec. 2. That all surveys heretofore made by any county or district surveyor, which would otherwise be valid, shall not be called in question on account of said surveys having been made outside of the proper county or district, but said surveys shall be valid the same as if the said surveyor had jurisdiction in the territory embracing the same.

Sec. 3. The provisions of this act shall not apply to nor affect the rights of third persons heretofore acquired by virtue of any purchase from the state location or surveys made in accordance with the laws in force at the time of such location and survey.

Sec. 4. Whereas there is much confusion and uncertainty in regard to certain lands surveyed in this state, and the rights of actual settlers and purchasers are dependant upon the validity of such surveys, creates an emergency and imperative public

necessity authorizing the suspension of the constitutional rule requiring bills to be read on three several days, and demanding that this act take effect and be in force from and after its passage, and it is so enacted.

Note that the provisions of the above act would appear to validate various surveys made by Bexar Deputy District Surveyor F.M. Maddox in 1876 that were later found to be situated in Uvalde County/Uvalde District, but only to the extent that the surveys were not in conflict with other surveys that had been lawfully made prior to the effective date of the act. So, the law would not have validated those parts of Survey No. 4 that were in conflict with Survey No. 215.

Chronology Relating to B.S.&F. Survey No. 215 in Uvalde County, Texas

- 1875.12.15 Adams, Beaty & Moulton Sur. No. 135
 Cert. 1324
 Bexar Scrip File 16896
 Surveyor: J.W. Cummings, District Surveyor of Uvalde District
 [Note: Certificates indicate that field notes were recorded in Uvalde District Surveyor's Records on 01/01/1876 and in Bexar District Surveyor's Records on 03/16/1876]
- Filed in GLO 03/29/1876
- 1876.03.29 Adams, Beaty & Moulton Sur. No. 135
 Cert. 1324
 Bexar Scrip File 16896
- Field notes are filed in GLO
- [see 06/12/1879]

- 1876.03.03 J.V. Massey Sur. No. 3, Block 19
Cert . 52
Bexar Scrip File 16728
Surveyor: F.M. Maddux, Deputy Survey, Bexar District
[Note: Uvalde County not a part of Bexar District as of the date of survey]
Field notes endorsed as approved by L.C. Navarro, Bexar District Survey and recorded in Book K-18 Pg. 173 Bexar District Surveyor's Records
Filed in GLO 04/07/1876
Ptd. 07/10/1876

[File jacket endorsed in pencil "Conflicts with ptd. survey No. 135, A.B.&M. (S.16896) & ptd. survey No. 133 A.B.&M. (S.16324) and State section No.134 and ptd. 215 B.S.&F. (S.24593) Febr. 18/96 E. Schütze]
- 1876.12.23 Beaty, Seale & Forwood Sur. Nos. 215 & 216
Land Scrip No. 1/470
Bexar Scrip File 24598
Surveyor: J.M. McCormick, District Surveyor Uvalde District
Locates land scrip for S.H. Nunn and S.S. Birchfield
- 1878.02.19 Beaty, Seale & Forwood Surs. Nos. 215 & 216
Field notes filed in GLO [more than 12 months after date of J.M. McCormick's survey of 12/23/1876]
- 1879.05.10 GLO Commissioner W.C. Walsh issues certified copy of Land Scrip No. 1/470 for 640 ac. issued to Beaty, Seale & Forwood for the reason that "the Field Note of a Survey, located in Uvalde County, made by virtue of the aforesaid Certificate, have been returned to this Office, and having been found to conflict with other surveys & also forfeited for nonreturn of field notes within 12 months"
- 1879.06.04 Beaty, Seale & Forwood Sur. Nos. 215 & 216
Land Scrip No. 1/470
Bexar Scrip File 24598
Surveyor: J.M. McCormick, District Surveyor Uvalde District
Locates land scrip for S.H. Nunn and S.S. Birchfield
[Field Notes are filed in GLO 06/10/1879]

- 1879.06.10 Beaty, Seale & Forwood Sur. Nos. 215 & 216
Land Scrip No. 1/470
Bexar Scrip File 24598
Field notes are filed in GLO
- 1886.09.13 Field notes for Sur. No. 133, Adams, Beaty & Moulton endorsed in pencil:

“Conflicts with Survey No. 3, J.V. Massey S-16728 ptd. - Sept. 13/86 E. von R.”
- 1887.10.06 Map by O.H. Hector, Maverick County Surveyor, dated 09/26/1887, is filed in GLO as Sketch File No. 12a.
- 1888.01.26 Protest letter dated 01/25/1888 from A.B. Langermann is filed in GLO

Langermann writes as agent protesting issuance of patent for:
- Sur. No. 216, B.S.&F., Cert 1/470 (Bex-S-24598) and
 - Sur. No. 135, A.B.&M., Cert. 1324 (Bex-S-16896)
- for the reasons that:
- that they are in conflict with Surs. 106 & 107, I.G.&N. R.R. Co.,
 - 106 and 107 are the older surveys made by the surveyor of Bexar District to which Zavalla Co. was attached or belonged at the time and the existing official maps showed said surveys to be in Zavalla County, and
 - subsequent surveys show 106 and 107 to be partly in Uvalde County, but still mostly in Zavalla County.
- 1888.03.23 Rosenberg adds endorsement in ink to field notes for Sur. No. 216, Beaty, Seale & Forwood:

“Conflicts 839 x 593 vrs with Survey No. 5 J.V. Massey ptd. S-16729 and also with ptd. S-16729 and also with ptd. Sur. No. 106 I. & G.N. Ry. Co. 1062 x 593 vrs ptd. S-10963 according to connection & sketch filed by Maverick Co. surveyor (Uvalde Co. Sk. 12) March 23 / 88 E. von R”
- File jacket of Adams, Beaty & Moulton Sur. 133 endorsed in pencil:

“patent to E.B. Chandler April 23/88”

1888.03.24 File jacket of Adams, Beaty & Moulton Sur. 133 endorsed in pencil:

"Rept. to Surveyor 03/24/88"

1888.04.13 Beaty, Seale & Forwood Sur. No. 216
B. Willett, Uvalde County Surveyor files Corrected Field Notes dated
04/10/1888 for Sur. 216 in the GLO

Field notes endorsed in ink on back:

*"Conflicts with Section No. 4, S-16728 on map of Uvalde Co.
April 16 / 88 E. von. R."*

[See entries for 01/22/1891 and 03/14/1895]

Adams, Beaty & Moulton Sur. No. 134
B. Willett, Uvalde County Surveyor files Corrected Field notes dated
04/10/1888 for Sur. 134 in GLO

1891.01.22 [*Note in Bexar Scrip File 16896*]

G.B. Willette Uvalde County Surveyor, writes GLO to ask:

*"Query by G.B. Willette
Who made this sketch why when & by what authority was it made*

*G.B. Willett
Co. Surveyor
Uvalde County
Austin Tex
Jan 22, 1891"*

With pencil sketch showing Surs. 10, 7, 6, and 105 in Block 3 with
Surs. 9, 8, 5 and 106 adjoining their respective North sides and Sur. 4
adjoining the North side of Sur. 106.

1891.03.09 [*ES Reel 224 - Vol. 302 Pg. 214 - GLO Early Letters Sent*]

March 9th 1891

G.B. Willett, Esq.
Uvalde Texas

Dear Sir: Replying to your favor of Feby 19th, will state, that the
sketch in question was made in the manner as it was required. As to
the position of Surveys 3, 4 & 9, same was answered before a Notary

Public.
Respectfully,
W.L. McGaughey, Commissioner

1892.08.29 J.V. Massey Survey No. 3 (Bexar Scrip File 16728) File Jacket endorsed in pencil:

“Notified to return patent for cancellation
Aug 29[24?]/94”

“Report cancel’d[?]
Geo Myers
Shelley”

1894.04._ E. Schütze adds endorsement in pencil to ptd. field notes for Sur. No. 215, Beaty, Seale & Forwood:

*“Remark Apr/94 E. Schütze
No. 215 & 216 are estimated by the not conflicting portions of each
survey ought to be divided in equal parts one for the company and one
for the State
E. Schütze”*

1894.09.03 *[ER Reel 263 #369425 GLO Early Letters Received]
[Nunn & Smyth to GLO Commissioner McGaughey]
[non-standard spellings transcribed as they appear in the original]*

Uvalde, Texas Sep. 3 / 94
Hon. W.L. McGaughey
Austin

Dear Sir, We are in receipt of yours 27 last month to Major Rhoads Fisher in regard to pattenents to Section 135 Adams Beaty & Moulton, Also 215 Beaty Seale & Forwood in which you say, “You will observe that the surveys with which said Sections No. 135 Adams Beaty & Moulton & Nos. 215 & 216 of Beaty Seale & Forwood are in conflict are subsequent, but as No. 1 the Alternate of No. 2 J.V. Massey, Survey No. 107 I.& G.N. Ry. Co. & No. 3 of J.V. Massey have been pattenented, nothing can be done until the patents are returned to this office & canceled. The parties to which the above pattenents were delivered have been notified & requested to return said patents for cancellation”.

While we understand the position of our Surveys Nos. 135 & 215 we

would like to know how soon we may expect you to issue our pattents & what is necessary for us to do further in the matter to get the pattents. We understand that if the surveys which are in conflict with us are returned that you will then issue us our pattents to 135 & 215. But suppose the parties holding them refuse to have their surveys corrected. Will you issue our pattents or not? Or will we have to bring suit to have their pattents canceled before we can have ours issued or what recourse have we in the matter to get our pattents?

Your early attention will greatly oblige us as we have sold the land & now await the pattents. Please answer at once.

Yours Truly
Nunn & Smyth

We beg to return to you the certifficate from the County Clerk showing the Surveyors Records of this County. There ought to be a similar document from the County Survey sent to your office about the year 1876, showing that we were the first on file in this County.

Yours Truly
N&W

(GLO file endorsement: 369425, Nunn & Smyth, 9/3/94)

1894.09.07

*[ES Reel 271 - Bk. 379 Pg. 645 GLO Early Letters Sent]
[GLO Commissioner McGaughey to Nunn and Smyth]*

Messrs. Nunn & Smyth
Uvalde, Texas

Dear Sirs:

Yours 3rd inst with enclosure has been received. I will state in reply that Survey No. 107 of the I.& G.N. Ry. Co. with which Section 135 Adams Beaty & Moulton conflicts, was surveyed July 6, 1875, while No. 135 was surveyed Dec. 15, 1875. No. 107 is therefore the senior location and was patented to the I.& G.N. Ry. Co. April 16, 1887. In the letter to Major R. Fisher, he was informed that Section 135 was the prior location which was an error. Mr. A.B. Langermann of this City to whom the patent upon Section 107 was delivered, was in this office a few days since and upon his attention being called to this conflict stated that the New York & Texas Land Co., now the owners of the I.& G.N. Ry. Co. land grant and of which company he was the agent, had had some litigation over the matter and the fact that the owner of Section 133 had made a deed of the part of Section 107 that conflicts

with No. 135 to the owners of the latter - thereby settling the controversy. I presume the deed is on record in Uvalde County. You might communicate with him here on the subject.

The patents upon the Surveys No. 1, J.V. Massey, the alternate of No. 2. with which No. 133 is in conflict and No. 3, J.V. Massey with which No. 135 also conflicts, were delivered to John W. Maddox of this City; who has been requested to return them for cancellation. I am not aware of whom he represented and also not able to say whether or not they will be returned. If not, they can only be set aside by a decree of Court. Section No. 215, Beaty, Seale & Forwood conflicts with State Section No. 4 of J.V. Massey, the alternate of which, No. 3, is patented as above stated. Nothing can be done by this office towards patenting Sections 135 & 215 (the alternate of 216) until the patent upon Section 1, the alternate of No. 2, J.V. Massey and No. 3 J.V. Massey are returned and canceled or set aside by decree of Court.

I furnish below the dates of said Surveys.

Section No. 135, Adams Beaty & Moulton - Dec 15, 1875

Section No. 107, I.& G.N. Ry. Co. - July 6, 1875

Section No. 2, J.V. Massey - March 3, 1876

Section No. 3, J.V. Massey - March 3, 1876

Section No. 107, I.& G.N. Ry. Co. was patented April 16 / 87

Section No. 1, J.V. Massey, alternate of No. 2, was patented to John A. McKay assignee, July 31, 1876. Section No. 3, J.V. Massey was patented to R.S.W. Ely and F.D. Ramsey, assignees, July 10/76. Both patents delivered to J.W. Maddox this City Aug. 1, 1876.

The above Surveys Nos. 2 and 3 of J.V. Massey were made as being situated in Zavala County by F.M. Maddox, Deputy Surveyor of Bexar District to which Zavala belonged for surveying purposes on the date above given (March 3, 1876) and the field notes of said Surveys No. 2 & 3 were examined, approved and recorded by L.C. Navarro District Surveyor of Bexar District in Book K No. 18, pages 173 and 173, at San Antonio. No. 107 I.& G.N. Ry. Co. was also made as being in Zapata County by F.M. Maddox Deputy Surveyor Bexar District July 6 / 75 and examined, approved, and recorded by L.C. Navarro District Surveyor Bexar District at San Antonio in Book K No. 11 Page 151. The above Surveys Nos. 2, 3, & 107 were afterwards found to be in Uvalde County. No. 1 (the alternate of No.2) being 100 acres in Uvalde and 540 acres being in Zavala Counties. This accounts for the records of Uvalde County failing to show any evidence of said surveys having been made. There is no evidence that the field notes have been recorded in Uvalde County.

I return the certificate from the Clerk of Uvalde County sent by you.
Very respectfully,
W.L. McGaughey
Commissioner

Bexar S. 10964
16727
16728
24598

1894.09.10

*[ER Reel 263 #369433 GLO Early Letters Received]
[Nunn & Smyth to GLO Commissioner McGaughey]*

(Pencil notation at head of letter, apparently by GLO staff):

Bex S 10764
10896
16729
16728
24598

Uvalde Sep 10 / 94

Hon W. L. McGaughey
Austin

Dear Sir, This J.V. Massey Survey No. 3 in this county which you say conflicts with 215 Beaty Seale & Forwood is such a puzzle to us that without wishing to appear officious or to give you enormous trouble, we wish you would more thurily investigate the matter. Could it be possible that No. 3 J.V. Massey was lifted or floated & never pattented where you now show it in conflict with our survey? We have known our surveys conflicts with the I & G.N. Ry. Co. & have also contended for pattents over them as we were the older in this County & they were notified by the Surveyor of this County at that time that they had run over into Uvalde County & over legal surveys. But this J.V. Massey Surveys is something entirely new to us & we have had the lands under fence & in use without an adverse claimant for 19 years , or since 1875 and in looking over the records here we find no record of it & it has never paid any taxes in this county. It has evidently been floated or is a loss survey. Please investigate the matter & say if you cannot issue us a pattent without the cost & delay of a suit. We are poor men & unable to go to unnecessary expense to get pattent.

Yours truly,
Nunn & Smyth

*(GLO file endorsement: 369433, Nunn & Smyth, 9/10/94
ans. 9/12/94)*

1894.09.12 *[ES Reel 271, Bk.380 Pg.196 - GLO Early Letters Sent]*

Sept. 12, 1894
Messrs. Nunn & Smyth
Uvalde, Texas

Dear Sirs: In reply to yours of the 10th inst. I will inform you that the records of this Office show that when survey No. 3 of J.V. Massey was examined and passed as correct on map in 1876, there was no conflict, the land covered by said survey being vacant. But since the survey was made, the county line between Uvalde and Zavala Counties has been established and other surveying and corrections of old surveys made covering [?] the conflict of section 135 with section 3. It is not in the power of this Office to do anything in premises. According to the maps and records, the conflict exists and as No. 3 has been patented, and the patent delivered, unless the party (Mr. Maddox) returns it for cancellation, it will require a decree of court to cancel the same. Survey No. 3 has never been abandoned or the certificate floated.

Very respectfully,
W.L. McGaughey
Commissioner

Bexar S. 16728

1894.09.14 *[ER Reel 263 #369438 - GLO Early Letters Received]*

Uvalde Sep. 14 / 94
Hon. W.L. McGaughey
Austin

Dear Sir, Can we S.H. Nunn & J.G. Smyth buy grazing lands belonging to the School or State? If so how many sections can we as a partnership buy?

Would the use of land as a Ranch by me be a compliance with the law or would we have to live on them with our families?

In case we can buy, please send us a few blank applications with your answer,

Thanks for your private[?] attention given our inquiries heretofore. We are yours truly,
Nunn & Smyth.

(GLO file endorsement: 369438, Nunn & Smyth, 9/14/94)

1894.09.17 *[ES Reel 271 - Bk. 380 Pg. 406 - GLO Early Letters Sent]*

Sept. 17th. 1894
Mssrs. Nunn & Smyth
Uvalde, Texas

Gentlemen: In answer to your favor of the 14th. inst. will state the dry grazing lands are subject to sale only to parties who have purchased land on condition of actual settlement. Hence, it would first be necessary for you to make a purchase of school land on condition of settlement, before you would be eligible to buy dry grazing lands. You could made such purchase in the firm name, but in that event both members of the firm would be required to occupy the land purchased on condition of actual settlement.

A party purchasing on condition of actual settlement is required to swear that he desires the land as a home and the he has actually settled thereon, and at the expiration of three years from date of purchase he is required to file in this office proof that he has occupied, used and improved it as his home for three consecutive years.

Respectfully, M.E. Groos, Chief Clerk

1894.11.01 *[ER Reel 265 #372647 - GLO Early Letters Received]*

Uvalde, Texas Nov 1 / 94
Hon. W.L. McGaughey
Austin

We dislike to trouble you again but believing that you simply desire to do your duty as Commissioner & that there is a mistake as to the J.V. Massey No. 3 being located in this county, and we submit for your consideration and trust that you will grant & issue us a patten to Nos. 215 B.S. & F. & 135 A.B. & M. if we will correct as to I.& G.N. No. 107, which we have alwise refused to do up to this time as our surveys were older than the Internationals but we have sold the land &

are anxious to get pattents without having the expence & delay of a suit to set aside & cancel No. 3 & 5 J.V. Massey & 107 I.& G.N.

The J.V. Massey No. 3 as you located it is in conflict with 133 A.B.& M. which we have a pattent for a long while & never knew any thing of the conflicts until now. We also submit that J.V. Massey No. 3 is a located survey in Zavalla County & pays taxes there and is abstracted as follows

Abst	Cert	Patentee	Quantity	Patented	Pat.No.	Sur.
535	52	Fly&Ramsey	640	July 10/76	178	3

Vol No. 24, in Zavalla County, Texas.

And there is no such survey ever made or pattented in this county, and it looks to us that it is hard to ask us to go to the expense to set aside or prove through the courts somebody else error. There is no party to find to J.V. Massey No. 3 in this county as we have had the land under fence & in undisputed possession for over 20 years & never knew until recently that there was such a survey claimed to be in existence & in trying to find owners & straiten up the thing we find such a survey in Zavalla County, but not in this (Uvalde) County.

Trusting that you will see the justice of our request & hoping to hear from you at your earliest convenience.

Yours Truly,
Nunn & Smyth

[pencil notation on back of last page follows]

Mr. Hill
Please look into
this and oblige and
state extent of
conflict
Callaway
11/5/94

[Second pencil note under that in a different hand follows]

The condition of these surveys remain the same as formerly reported.

Sur. 135, A.B.& M - Bex S.16896 conflicts
with Sur. 2, J.V. Massey S.16227 - 125 a.
with Sur. 107, I & G N Ry S.10964 - 113 a.
and with Sur. 3, J.V. Massey - 190 ac.

Sur. 215, B.S.& F. S.24598 conflicts with
J.V. Massey 233 acres.

1894.11.12 [ES Reel 273 - Bk.384 Pg.407 - GLO Early Letters Sent]

Nov, 12, 1894

Mssrs. Nunn & Smyth,
Uvalde Texas,

Dear Sirs: Yours of the 1st inst. has been received. I will state in reply that I have caused the surveys in question to be re-examined , and it is found that survey No. 135, Adams, Beaty & Moulton, conflicts with survey No. 2 of J.V. Massey 125 acres, and with No. 107, I.& G.N. R'y Co. 175 acres and with No.3 J.V. Massey 190 acres.

Survey No. 215, Beaty, Seale & Forwood conflicts with No.4 by 233 acres. Survey No.4 is the school section and the alternate of No. 3. The surveys of J.V. Massey and I.& G.N. R'y. Co. are pat'd locations and the office cannot patent surveys 135 and 215 over them. When they were patented the conflicts did not exist, or did not appear according to the maps. I can see no way to obtain patents on 135 and 215, except to have the patents returned and cancelled, or correct Nos. 135 and 215 to leave out the conflicts.

It is to be regretted that this state of affairs exist, and I would cheerfully relieve you if it was possible, but I can do nothing in the premises.

Bexar S.16896.24.598

Very respectfully,
W.L. McGaughey, Comm'r.

1894.12.11 Uvalde, Texas Dec 11 / 94
Hon W. L. McGaughey
Austin

Dear Sir, Please send us at once a certified copy of the pattennts to J.V. Massey Nos. 3 & 5 in this county, as we want to get the suit to set aside the pattennts before the January term of our District Court.

We enclose your exchange for \$2.00. If this is not enough advise us when you sent the coppys & we will remit the balance.

Yours Truly,
Nunn & Smyth

[Pencil notation at bottom of letter as follows:]

Cert 51 & 52
16727

Mail & ask to remit \$0.50
Cross

1894.12.13 *[ES Reel 275 - Bk.387 Pg. 68 - GLO Early Letters Sent]*

[original of letter returned with payment as following item]
[ER Reel 265A #374235 - GLO Early Letters Received]

Austin, Texas Dec.13, 1894

Mess. Nunn & Smyth
Uvalde, Texas

Dear Sirs: Enclosed please find two certified copies of patents ordered by you on 11th inst., Fees \$2.50. You sent \$2.00. Please remit 50 cents to cover balance.

Respectfully, M.E. Groos, Chief Clerk

1895.03.06 Bx. S. 16728
[ER Reel 269 - #380803]

Uvalde, Texas March 6/ 95
Hon A.J. Baker
Austin

Dear Sir, Your predecessor Maj. W.L. McGaughey, while acknowledging the validity of a survey we were trying to get patten on, refused to issue us the patten unless the parties to whom he claims we were in conflict would return their patten & have it canceled, and wrote us that he had notified the party to whom the patten was issued to return the same for cancellation; but this party Maj. Maddux of your City had disposed of the survey & did not know who it belong to; but gave us the name of the parties to whom he sold & we have communicated with them and they seem to have lost all knowledge of the matter. We have also tried to find the owner from the tax rolls in both this & Zavalla County, the last being the county in which the

survey is located, patented & abstracted in, but find no record of any taxes ever having been paid on the land. We have had the land under fence & have been in peaceable possession & have paid all Taxes for over 20 years & never knew of this conflict until we had a chance to sell the survey last year when we sought to patent & this conflict comes out. Com. McGaughey rules that the parties in conflict with us must return their patent & have it canceled or we must set it aside by decree of court.

We think this ruling is very unjust as we can not see why we should be put to the trouble & expense of a suit to have patented a survey that we have complied with the law in ever respect in locating & hope you will so see the matter & grant us our patent.

If the other party (if he should ever turn up which we think very doubtful) has any rights to the land in question, they would not be impaired by our patent as it would be of a later date than theirs, but not wishing to trespass on your time we will state the status of the two surveys, to wit:

We seek to patent Survey No. 215 Beaty Seale & Forwood located in this Uvalde County in 1875, the files & locations of which are all straight & regular. The survey that Maj. McGaughey claims in conflict with us is survey No. 3, J.V. Massey, located, patented & abstracted in Zavalla County, then attached to Bexar District. There never has been any file or record of any kind made in this county (Uvalde) for this last survey, although this (Uvalde) was an organized county long before 1875 and there never has been any adverse claimant or Taxes paid by any other than ourselves on this land although we have had it under fence & in possession for over 20 years and its closest boundary line is over two miles from the county line between Uvalde & Zavalla Counties. It also conflicts with a patent survey No. 133 which we own and also conflicts with its alternate No. 134. You will find J.V. Massey No. 3 in entire conflict with No. 215, 133 & 134. Hoping that you will see this matter in its true light & in justice to us grant the patent.

Yours Truly,
Nunn & Smyth

[Back of last page bears pencil notations as follows]

Callaway

Ans. 3 / 8 / 95
C.

1895.03.08 *[ES Reel 279 - Bk. 394 Pg.284 - GLO Early Letters Sent]*
March 8, 1895

Mssrs. Nunn & Smyth,
Uvalde, Texas

Dear Sirs, In answer to yours of the 6th inst: with reference to the 640 acre survey No. 215 in Uvalde County located by virtue of Certificate No./ 1/470, Beaty, Seale & Forward [sic]. I have to say:

After a careful examination of this claim, I find it cannot patent even if it was out of conflict with the J.V. Massey surveys Nos. 3 and 4, located by virtue of certificate No. 52 and No. 3 having been patented in July, 1876. It appears that it was improper to have patented this last mentioned claim for reason that it was surveyed by the Survey of Bexar Land District when it was located in Uvalde District. Otherwise however, it is correct and older than the claim you desire patent on, it having been surveyed March 3, 1876, and your claim was surveyed Dec. 23, 1876.

The J.V. Massey not having been surveyed by the proper surveyor however, it is the opinion of this Office that said survey No. 215 would have held good over the Massey if the said Survey No. 215 had not been abandoned, as appears from records here, in this particular. On the original certificate on file here with the field notes of said survey no. 215 is found this endorsement, to wit: "A copy of this certificate issued and delivered to N.G. Shelley for relocation. May 10, 1879" (Signed) "W.C. Walsh".

This clearly shows an abandonment of said location of survey No. 215, the owner of which was given the right to locate land elsewhere, and for this reason, independent of the question as to whether the other patent as mentioned in your letter should be returned to this Office and cancelled, the claim you wish patent to, cannot be recognized.

It seems the fact that a copy of said certificate had been issued for relocation and delivered to N.G. Shelley, May 10, 1879, was entirely overlooked by this Office in the previous correspondence with you on this subject. If a relocation was ever made of said certificate, no return of it was made to this Office, and it is now forever barred by constitutional limitation and cannot be located.

Very respectfully,
Andrew J. Baker, Commissioner

Bexar S.24558

P.S. I would suggest that, if the part of survey No. 215 that is free of conflict was embraced in a vacancy of 640 acres or less on Oct. 8, 1879, the land might be purchased under the act of March 29, 1887 at \$2.00 per acre known as the "scrap act". I mention this as a means of saving yourselves in the event you desire to hold the land.

Note that in the above letter to Nunn and Smyth, Commissioner Baker failed to recognize that Bexar Scrip File 24598 containing the field notes for Survey No. 215 actually did reflect that the certified copy of the Land Scrip No. 1/470 issued to Beaty, Seale and Forwood was relocated in the identical position as set forth in the field note for Survey No. 215 filed in the GLO June 10, 1879, accompanied by the certified copy of Land Scrip No. 1/470. That relocation of Survey No. 215 in the identical position, using the same survey, was lawful under the terms of Section 2 of the Act of February 10, 1852 "An Act Concerning Surveys of Land" (3 Gammel's Laws of Texas 936) which provided as follows:

Sec. 2. That any person holding a genuine certificate or other legal evidence of right to land under the Republic or State of Texas, and having a survey made by virtue of the same, the field-notes of which may not have been returned to the General Land Office before the period prescribed by this act, shall have the right to relocate the same certificate or other evidence of legal right to land, upon the same survey; but without being compelled to have the same re-surveyed; provided, said survey shall not have been previously located by some other person by right of a genuine land claim.

Sec 3. That any person wishing to avail him or herself of the privilege of re-locating the same land claim upon the same land, as permitted by the second section of this act, shall present his or her land claim, or cause the same to be done for that purpose, to the District or County Surveyor, as the case may be, of the district or county where the field-notes were first recorded, who shall duly enter such re-location upon the record of field-notes of the office and duly certify the same to the Commissioner of the General Land Office, which shall be sufficient authority for him to issue the patent for the land so re-located, as in other cases; provided, the field-notes of survey and certificate of re-location shall be filed in the General Land Office within one year from and after said re-location.

In other words, Commissioner Baker's characterization of Survey No. 215 as being disqualified for patent was mistaken as to the facts contained in the GLO files and as to the provisions of the law.

In his letter of March 8, 1895 above, Commissioner Baker had written that patent for Survey No. 215 could not issue for the reason that the duplicate of Land Scrip No. 1/470 had never been returned to the GLO and suggested that the would-be patentees, Nunn

and Smyth might be able to purchase that portion of Survey No. 215 not in conflict with other surveys for \$2.00 per acre. Only six days later, on March 14, 1895 that view had evidently been superceded by one consistent with the facts and the law as patent was issued for Survey No. 215, Beaty Seale and Forwood.

The endorsements on the back of the field notes for Survey No. 215 filed June 10, 1879 upon which patent was issued March 14, 1895 tell part of the story. Sequentially, they are:

1879.06.12 - *"Correct on Map, Thomson"* (in other words, the official Uvalde County Map did not show Survey No. 215 to be in conflict with any other survey on June 12, 1879 when the field notes for the relocation of the duplicate Beaty, Seale & Moulton scrip in the original 1876 location of Survey No. 215 were filed at the GLO)

1894.04.____ *"Remark Apr/94 E. Schütze No. 215 & 216 are estimated by the not conflicting portions of each survey ought to be divided in equal parts one for the company and one for the State, E. Schütze"*

1895.03.14 *"Conflicts with State Sur. No. 4, J.V. Massey. S-16728 [...] Rosenberg"*

1895.03.14 *"Pat'd, Mch. 14/95. Leslie Price"*

At the same time that Survey No. 215 was approved for patent and patented, GLO Commissioner Baker sought to cancel various patents that in his judgment had been wrongly issued. These included Surveys 106 and 107, International & Great Northern R.R. Co. (Bexar Scrip Files Nos. 10963 and 10964). The day after patent issued on Survey No. 215, the Commissioner wrote to Ira H. Evans, the President of the Texas and New York Land Company, successor to the rights of the I.& G.N. R.R. Co.

1895.03.15 *[ES Reel 279 - Bk.395 Pg.38 - GLO Early Letters Received]*

March 15th, 1895

Ira H. Evans, Esq.,
Austin, Texas

Dear Sir:

I am informed that you represent the owner of surveys Nos. 106 & 107, situated in Uvalde County, Texas, and located by virtue of certificates Nos. 2230 & 2231, respectively, issued to the I & G N R'y Company for 640 acres each.

These surveys as patented conflict with surveys Nos. 134 & 216

surveyed for the State school fund by virtue of certificate No. 1323, issued to Adams, Beaty and Moulton, and certificate No. I-470, issued to Beaty, Seale and Forwood for 640 acres each, respectively.

It was an error of this office to have patented said surveys Nos. 106 & 107, over said surveys Nos. 134 & 216, and not to correct same, I desire to request the owner of surveys Nos. 106 & 107 to return the patents to this office for cancellation, and to respectfully suggest that if these patents are not returned, this department shall advise the Attorney General to bring suit to cancel same, and this remove cloud from said State surveys.

Respectfully,
Andrew J. Baker, Commissioner.

1895.03.16 *[ER Reel 268 #378450 - GLO Early Letters Received]*

Austin, Texas Mch 16th, 1895

Hon Andrew J. Baker, Commissioner of Gen'l Land Office
Austin, Texas

Dear Sir:

I am in receipt of your favor of the 15th inst. requesting the return of Patents to I.& G.N. R.R. Surveys Nos. 106 & 107, Block 3 Zavalla County on the ground that it was an error to have issued them in conflict with State surveys Nos. 134 & 216.

These patents were issued to us under the administration of Commissioner Hall, and I had considered the matter closed. I desire to do what is right and just in the matter, and for that reason would like to be better posted on the matter. Please write me on what grounds you found your decision and if this decision should be that we are not entitled to the land, upon a revision of all the facts in the case, I will cheerfully comply with your request.

Yours very truly,
Ira H. Evans,
President

1895.03.18 *[ES Reel 279 - Bk.395 Pg.201 - GLO Early Letters Sent]*

March 18, 1895

Ira H. Evans, Esq.
Austin, Texas

Dear Sir:

In answer to your favor of 16, inst. I beg to state that survey No. 216 in Uvalde County was surveyed Dec. 23rd, 1876 for the state school fund by virtue of certificate No. 1-470 issued to Beaty, Seale and Forwood, and survey No. 134, same County, was made, Oct. 15th, 1875 for the school fund, each of the surveys were made by the proper surveyor of Uvalde Land District where said surveys are situated.

Surveys Nos. 106 & 107 in the name of the I. & G. N. R'y Co., in Uvalde County, but according to the field notes returned here they are in Zavalla County, were each made, July 6th, 1875, and by a Deputy Surveyor of Bexar Land District, who had no authority to survey land in Uvalde Land District at the time these surveys were made.

These are the facts as the record here shows, and having found this error to correct same, it will be necessary to return patents to surveys Nos. 106 & 107 for cancellation, as per my letter to your of 15th inst.

Respectfully,
Andrew J. Baker, Commissioner

At the same time, having finally obtained their patent to Survey No. 215, Mssrs. Nunn and Smyth inquired as to how they might purchase the adjoining school lands known as Surveys No. 134 and 216.

1895.04.23 *[ER Reel 270 #381219 - GLO Early Letters Received]*

Uvalde April 23 / 95
Hon. Andrew J. Baker
Austin

We see from the papers that the Land Bill has become a law. If we understand it, we will not be compelled to live on the land, but simply to enclose, occupy and use it for the purpose purchased. If that is correct, we are now ready to make application & otherwise comply with the law, for the purchase of school sections Nos. 134 & 216 in this Uvalde County as per our Mr. Nunn promise to you some time ago.

We would be obliged to you to send us blanks under the new law, or otherwise instruct us how to proceed in the matters. In exempting the "Drought Stricken County" from immediate forfeiture of school lands is our county exempted? We have some school lands purchased under the Act of 1881, which we are behind in interest for 4 years, we do not wish to forfeit these lands, but the time have been so [next page missing]

[pencil notation on back of last page follows]

381219
Nunn & Smyth
4/23/95

ans. 4/25/95

1895.06.12 *[ES Reel 285 - Bk.405 Pg.249 - GLO Early Letters Sent]*

[a letter not directly related to the Uvalde County surveys, but showing an on-going transaction of business with the General Land Office by Ira H. Evans as President of the Texas and New York Land Company]

June 13th, 1895

Mr. Ira H. Evans
Austin, Texas

Dear Sir:

Answering yours of 12th inst., enclosing sketch and giving the history of certain locations and surveys made in Crockett Co, formerly but now in Val Verde County, by virtue of certificates issued to the G.W.T. & P. R'y Co., I beg to state that as I understand the question you present will likely be determined by the Courts before this office will be requested to patent the land in question I have thought best not to say definitely what this department will do in the premises. You know an improper interpretation of the law by by this department can not effect the rights of any individual who will undertake to protect his rights in the proper way. I return to you the sketch enclosed.

Respectfully,

Andrew J. Baker, Commissioner

1895.07.09 *[ES Reel 287 - Bk.408 Pg.181 - GLO Early Letters Sent]*

July 9, 1895

Major Ira H. Evans,
Austin Texas

Dear Sir: Referring to Survey of 551-1/20 acres in Val Verde County, being survey No. 9 in Block 3 by virtue of Certificate No. 4230, issued to the I & G. N. R'y Co, I will inform you that said survey conflicts with N.C. Jones survey No. 941-1/2, patented.

The I & G.N. R'y Co. survey is older than the Jones, but will have to be out of conflict with said Jones before patent can issue, unless the Jones patent is returned and canceled. The above is the result of the examination of corrected field notes of survey No. 9, I & G.N. R'y Co. filed July, 2, 1895, dated June 26, 1896, and recorded in book No. I, Page 272 Surveyor's records of Val Verde County.

Very respectfully,
Andrew J. Baker, Commissioner

Bexar S.20987

1895.10.05 Ed Schütze adds pencil endorsement to field notes for Sur. No. 216, Beaty, Seale & Forwood (Bex-S-24598)

"Conflicts with ptd survey No. 5 J.V. Massey (S.16729) and ptd survey No. 106 Bl. III of the I.&G.N. R.R. Co. Octb. 5/95 E. Schütze"

1896.02.18 Ed Schütze adds pencil endorsement to patented field notes of Survey No. 3, J.V. Massey in Bexar Scrip File 16728:

"Conflicts with ptd. survey No. 135, A.B.&M. (S.16896) & ptd. survey No. 133 A.B.&M. (S.16324) and State section No.134 and ptd. 215 B.S.&F. (S.24593) Febr. 18/96 E. Schütze"

Ed Schütze adds pencil endorsement to field notes of Survey No. 4, J.V. Massey in Bexar Scrip File 16728:

"Conflicts with ptd survey No. 215 B.S.& F. (S.24598) and ptd.

survey No. 685 of the G.C.& S.F. R.R. Co. (S.34438)
Febr. 18/96 Ed Schütze"

- 1901.06.14 File jacket of Bexar Scrip File 16324 (Sur. No. 133, Adams, Beaty & Moulton) is endorsed in ink:

*"Inferior to S.10963 & 4
Robison 6/14/1901"*
- 1902.____ Volume 33 of the School Land Register, endorsed on its front endpaper as follows: "This volume was compiled and transcribed during year end Dec. 31, 1902 2/2/03 H" omits Survey No. 4, J.V. Massey Cert. No. 52 from the list of school lands in Uvalde County. The omission appears to have been intentional as the register lists the Surveys Nos. 2, 6, 8, and 10 made by virtue of J.V. Massey Certs. Nos. 51, 53, 54, and 55, respectively, in sequence.
- 1906.04.10 Application to purchase A.B.&M. Sur. No. 134 containing 172-1/2 ac. filed in GLO by Milton Evetts
- 1906.04.18 A.B.& M. Sur. No. 134 - School File 87350

Note in file reads:

*"See apl. #8841

#134 - S-16324 - 640 acres appears covered as follows:
About 1/3 on South by Nos. 106 & 107 I & G N
S - 10963 & 4 ptd.
North part [_? _] by Nos. 3 & 4 J.V. Massey S-16729 (No. 3 ptd. &
No. 4 unsold)
The part in conflict with No. 4 J.V. Massey has been estimated at 172-
1/2 acres & that appears to be the acreage now on sales record, but if
No. 134 holds over both 3 & 4 - S-16728, then there will probably be
400 acres or more in said 134 upon correction.
4/18/06 Hawkins"*
- 1906.04.30 B.S.& F. Sur. No. 215 - File jacket of Bexar Scrip File 24598 endorsed in ink:

*"Superior to S.10963
16728 & 9
See statement on app. 8841
to purchase 134 A.B.&M
S.16324 app 8841"*

*McDugald
4/30/06"*

A.B.& M. Sur. No. 133 - File jacket of Bexar Scrip File 16324
endorsed in ink:

*"Superior to 10963 & 4
& 16728
See statement on conflicts on app # 8841
to purchase 134
McDugald"*

[Note: above endorsement by McDugald not dated, but ink same color
as on Bex-S-24598 as noted above and notes appear very similar in
form. Most likely same date.]

1918.11.22 Pencil Sketch in School File 87350 bears these notes:

*"#216 & 134 S.24598 & S.16324
sold on estimate acreage free
of conflicts with S-16728 - 9 & S-10963 - 4 hence should file for
accordingly though different conclusions seem to have been reached
by different examiners.
Hutch
11/22/18"*

Sketch labeled "S.W. cor Uvalde Co" appears below the above note.

1918.11.23 Field notes of Beaty, Seale & Forwood Sur. No. 216 (Bex-S-24598)
endorsed in pencil:

*"Sold on estimated acreage (414-1/2 ac.) free of conflict with sect.
106 I. & G.N. Ry. Co. and Sect. 5 J.V. Massey, though it is doubtful
whether sect. 4 is inferior to this sect. as different conclusions seem to
have been made by different examiners 11/23/18 Fr. Matzon"*

In other words, the status of Survey No. 4, J.V. Massey, that in March of 1895 the Commissioner of the GLO had determined to be invalid as to those parts in conflict with the B.S.&F. Surveys Nos. 215, 216, and with the A.B.&M. Survey No. 134 was again in doubt twenty-three years later under a new roster of GLO office staff. Insofar as I am able to discover, however, the basic facts had not changed since 1895, nor had the statutes of Texas relevant to the status of Survey No. 4. The part of Survey No. 4 in conflict with Survey No. 215 remained invalid.



Respectfully submitted,

A handwritten signature in black ink that reads "Kent Neal McMillan".

Kent Neal McMillan
Registered Professional Land Surveyor
No. 4341