

Roscoe's

1810 000 FEET

*Patented Land
Lost*

EMERSON

APPROXIMATE

BOUNDARY

COUNTY

RED

RIVER

OKLAHOMA

*Aug 79
Bridge*

(Joins upper left)

11 820 000 FEET

1863

1920's

Current

1810000 FEET

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

DARRELL CURRINGTON, et al.,)
)
Plaintiffs,) No. CIV-84-1199T
v.)
LEROY C. HENDERSON, et al.,)
)
Defendants.)

FINDINGS AND JUDGMENT

This is a declaratory judgment action to quiet title to real property lying in the bed of the Red River between Jefferson County, Oklahoma, and Clay County, Texas. The Court has subject matter jurisdiction of the cause, and individual parties, pursuant to 28 U.S.C. §1332, by reason of diversity of citizenship, and amount in controversy; and jurisdiction over the United States of America pursuant to 28 U.S.C. §1346(f) and 2409a.

The Court finds as follows:

1. Plaintiffs Darrell Currington, et al., are owners of lands bordering the Red River in Jefferson County, Oklahoma, described as all of fractional Section 2, Township 5 South,

Range 9 West of the Indian Meridian. Plaintiffs Clifford W. Hooper, et al., are owners of lands similarly located, described as all of fractional Section 3, Township 5 South, Range 9 West of the Indian Meridian.

2. Defendant Charles T. Henderson et ux are owners of lands bordering the Red River in Clay County, Texas, described as part of the Reuben R. Brown Survey, Abstract No. 14, Patent No. 376, Volume 15.

3. Defendants Leroy C. Henderson, et al., are owners of lands bordering the Red River in Clay County, Texas, adjoining the lands described above and also described as part of the Reuben R. Brown Survey. Margaret Henderson, one of the owners of the lands, is a person entitled to intervene as of right pursuant to Rule 24(a), Federal Rules of Civil Procedure, and accordingly she is permitted to intervene and aligned with other owners of the same lands.

4. Defendants P.P. Langford, Jr., et al., are owners of lands bordering the Red River in Clay County, Texas, adjoining the lands described above, and also described as part of the Reuben R. Brown Survey. The lands are part of the same tract of land involved in the earlier action in this Court styled James v. Langford, D.C.W.D. Okla., 1981, 558 F. Supp. 737, affirmed CA 10, 1983, 701 F 2d 123, cert. den., 1984,

5. All or part of the above lands in Oklahoma lie opposite to all or part of the above lands in Texas, so that the River and its bed lie between and form a boundary between the Oklahoma lands and the Texas lands at this location.

6. The United States owns lands comprising the south half of the river bed of the Red River, or otherwise described, the land lying between the south (Texas) bank and the medial line of the river bed; the medial line being an imaginary line running lengthwise along the bed of the river equidistant from the North (Oklahoma) bank and the South (Texas) bank. This ownership was established in State of Oklahoma v. State of Texas, 256 U.S. 70, 41 S.Ct. 420; 258 U.S. 574, 42 S.Ct. 406, which case also established that the lands comprising the North half of the river bed, between the Medial line and the North (Oklahoma) bank belong to the riparian owners on the Oklahoma side.

7. In Oklahoma v. Texas, supra., the United States Supreme Court determined that the boundary between Texas and Oklahoma as fixed by the Treaty of 1819 between the United States and Spain was the South (Texas) "cut bank along the southerly side of the sand bed" of the river. The bank was more particularly described as the "water washed and relatively permanent

elevation or acclivity at the outer line of the river bed which separates the bed from the adjacent upland, whether valley or hill, and serves to confine the waters within the bed and to preserve the course of the river". Oklahoma v. Texas, 260 U.S. 606, 43 S.Ct. 221. The boundary as it was in 1821 is the boundary today, subject to the doctrines of erosion accretion and avulsion, where applicable.

8. The primary issue in this case is the precise location of the South (Texas) bank, between the lands of the respective landowners, which constitutes the boundary between riparian lands on the Texas side and lands owned by the United States; and the precise location of the medial line of the river bed, which constitutes the boundary between lands owned by the United States and the lands of the Oklahoma owners. The precise location of the North (Oklahoma) cut bank, together with that of the South (Texas) bank, dictate the location of the medial line. Therefore, locating all three lines is essential to a determination of the boundary lines.

9. The prior decision of this Court in James v. Langford, supra., is controlling as to the issues in this case. The lands involved in that case directly adjoin the lands involved here, and both the Oklahoma bank and the Texas bank, there styled the "wheatfield bank" are continuous features,

readily identifiable on the ground, throughout the entire course of the Red River at the location involved here.

10. That portion of the Red River lying between Oklahoma and Texas flows in a generally eastward direction. The present watercourse in the area generally follows a serpentine path between well defined outer banks ranging from one to two miles apart. At this location, the extreme distance between the banks exceeds one mile. The low water channel of the river meanders irregularly between the banks, frequently braiding into multiple streams and washing the outer banks at numerous points along the course of the river. The meander loops tend to move downstream, and major fluctuations in the water level also cause significant changes in the location of the channel over short periods of time. The low water channel either is now or recently has been touching both the North bank and the South bank in the immediate vicinity of the lands involved here.

11. The cut bank on the North (Oklahoma) side constitutes a prominent bluff or vertical bank which can be readily identified over the entire distance between the lands except where a small creek known as Whiskey Creek joins the Red River from the west. This is the bank identified as the Oklahoma bank in James v. Langford, supra.

12. On the South (Texas) side, the prominent bank identified as the "wheatfield bank" in James v. Langford, supra., can be readily identified extending northward from the location of the west bridge on State Highway No. 79. The same bank can be traced extending upriver around the inner curve of a prominent bend in the river between the lands here involved, and also becomes a steep bluff trending southwest from that point. There is no interruption in the "wheatfield bank" as thus extended along the northern edge of all of the Texas lands involved in this cause.

13. Each of those banks described above is relatively permanent, and constitutes part of a continuous bank which contains the braids of the river and marks the outer limits of the meanderings of the low water channel. These banks are washed by the waters of the active channel at several points above and below the disputed lands and serve to confine the waters of the river within the bed and thereby preserve the course of the river. All of the lands below these banks are completely inundated several times a year, even during relatively dry years. Thus, the banks so identified are those which meet the definition of the term "bank" as set out in Oklahoma v. Texas, supra.; and constitute the North (Oklahoma) and South (Texas) banks, respectively at this location. The medial line is an imaginary line midway between those banks.

14. This Court has no jurisdiction to determine, and does not attempt hereby to determine the location of a state line as a political boundary between Texas and Oklahoma. It does, however, have jurisdiction to determine the location of boundary lines for the purpose of resolving issues of ownership as between owners of abutting lands. James v. Langford, CA 10, 1983, 701 F 2d 123. These findings and the judgment herein accordingly are limited to a determination of those issues of property ownership.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the boundaries between the lands owned by the parties hereto, the respective rights of the parties, and the ownership of the lands comprising the bed of the Red River at the location involved here, are declared and determined to be as set out below:

1. The boundaries to be adjudicated hereby lie between a portion of the Reuben R. Brown Survey on the Texas side, and Sections 2 and 3, Township 5 South, Range 9 West of the Indian Meridian on the Oklahoma side.

2. There is attached to this judgment and made part hereof, a plat, adapted from a map issued by the U.S. Geological Survey, upon which are plotted as accurately as reasonably possible, the river banks and boundary lines referred to herein. The plat

is intended to further identify the boundary lines described herein, and to serve as a basis for any precise survey which hereafter may be accomplished.

3. The boundary between lands owned by the individual defendants and lands owned by the United States is along a pronounced bank or acclivity commencing along the east edge of a cultivated wheatfield on lands owned by P. P. Langford, Jr., et al., and following a roughly circular course along the northerly edge of the lands owned respectively by the individual defendants, being a clearly identifiable continuation of the bank established as the boundary in James v. Langford, supra. This boundary line is identified as line T-T' on the attached plat. The lands lying south and west of this line are owned by the individual defendants named herein. The lands lying in the river bed of the Red River immediately north and east of the boundary line are owned by the United States, as Trustee for certain Indian Tribes.

4. The North (Oklahoma) bank at the same location is along a pronounced bank or acclivity which is a clearly identifiable continuation of the bank identified as the Oklahoma bank in James v. Langford, supra. The bank is for the most part a steep bluff or embankment which follows a roughly circular course along the southern edge of lands owned by plaintiffs on the north side of the river. The line is identified as line O-O'

Dated this _____ day of October, 1985.

RALPH G. THOMPSON
UNITED STATES DISTRICT JUDGE

Approved:

CHARLES NESBITT
Attorney for Plaintiffs

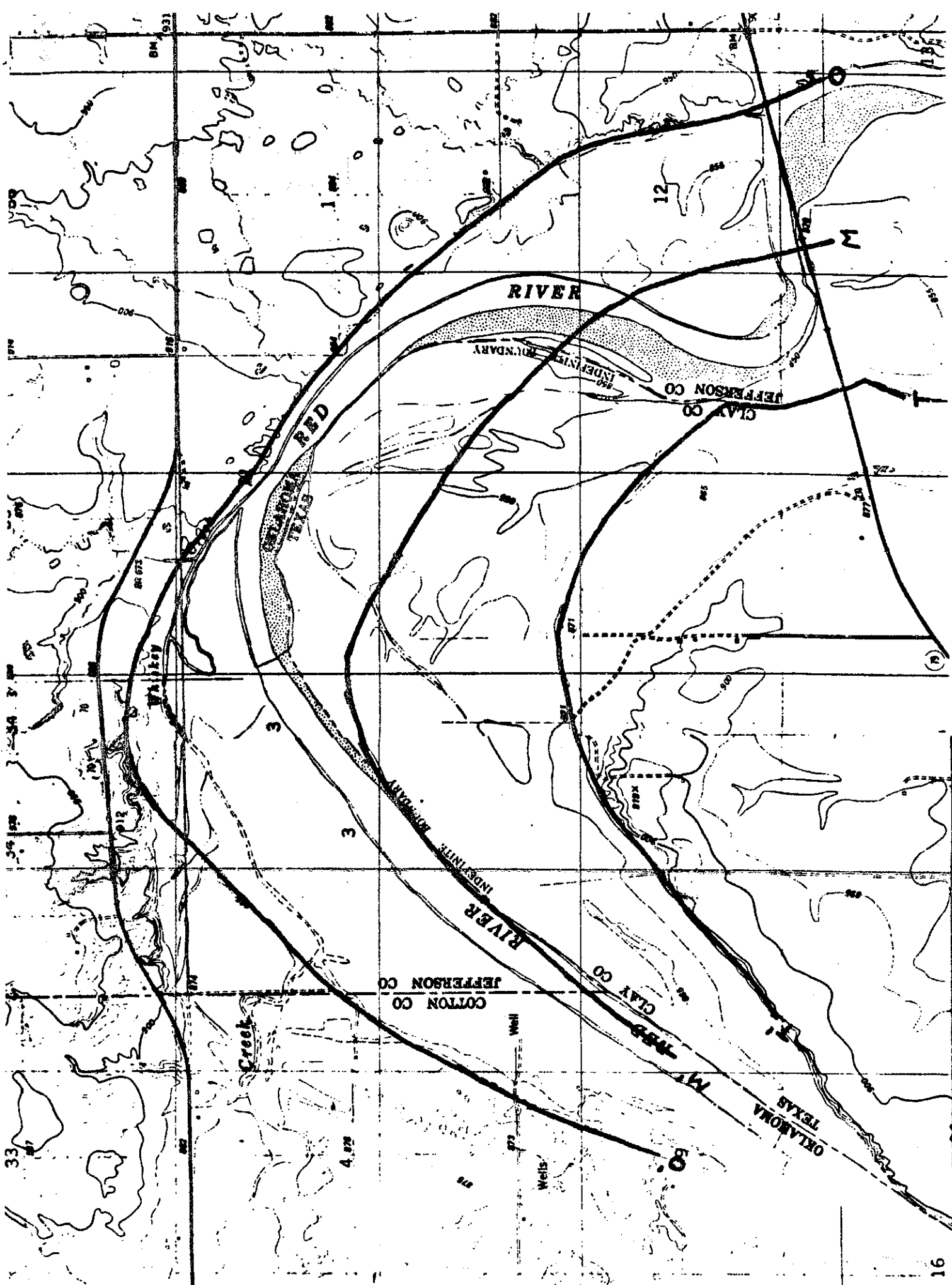
VAL R. MILLER
Attorney for Defendant, Charles T. Henderson

WILLIAM KNOWLTON

ANITA JOHNSON SANDERS

MICHAEL A. TAYLOR
Attorneys for Leroy C. Henderson, et al.

JOHN E. GREEN
Assistant U.S. Attorney
Attorney for United States



Leave to file Answer out of time
granted this 24 day of November, 1984.

Walter S. Henderson
UNITED STATES DISTRICT JUDGE

NOV 26 1984

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

DARRELL CURRINGTON, et al.,)

Plaintiffs)

-vs-)

LEROY C. HENDERSON, et al.,)

Defendants)

CIVIL NO. 84-1199-T

NOV 27 10 20 AM '84

RECEIVED
CROWE & DUNLEVY
OKLA CITY, OKLA

ANSWER OF DEFENDANT,
UNITED STATES OF AMERICA

COMES NOW the defendant, United States of America,
through William S. Price, United States Attorney for the Western
District of Oklahoma, by John E. Green, First Assistant United
States Attorney, and for Answer to the Complaint and Amended
Complaints of the plaintiffs, alleges and states:

1. That this defendant admits its ownership and claim
of interest in the land referred to in paragraph no. 1 and described
in paragraph no. 2 of plaintiffs' Complaint, that is, Sections 2
and 3, Township 5 South, Range 9 West of the Indian Meridian,
Jefferson County, Oklahoma. Further, jurisdiction over the
United States is derived from 28 U.S.C., Section 2409(a),

(ownership of the disputed lands in the south half of the Red River), and Section 2410, as alleged in paragraph no. 5(a) of the Amendment to Complaint, (property in which the United States holds a lien).

2. That the statements of ownership of the lands involved herein as alleged in paragraphs no. 2 and 3 of the Amendment to Complaint herein are matters of record and would not require an answer thereto.

3. That this defendant admits the allegations of paragraph no. 4 in said Complaint, and claims ownership of the south half of the Red River, or from the medial line of said River to the south cut bank of said River, said ownership being established in State of Oklahoma v. State of Texas, 256 U.S. 70, 258 U.S. 574, 260 U.S. 606, etc., and the cases thereafter in 1922.

4. That the United States admits that portion of paragraph no. 5 of plaintiffs' Complaint with reference to the ownership of some portions of the lands involved herein, and is without sufficient information to admit or deny the allegations of the remaining portions of said paragraph no. 5.

5. That the United States is without sufficient information to admit or deny the allegations of paragraph no. 6 of said Amended Complaint, as well as paragraph 7 and the prayer for relief made by the plaintiffs.

6. That all matters not specifically denied by this answering defendant, United States of America, are denied herein.

7. That as to the allegations in paragraph no. 5(a) of the Amendment to Complaint filed by the plaintiffs on October 1, 1984, the United States of America, through the Department of Agriculture, Farmers Home Administration, claims a security interest in a portion of the property involved herein by reason of the execution of certain notes and Deeds of Trust made by the defendants, Charles T. Henderson and Janice K. Henderson, husband and wife, as set out below:

(a) That on March 14, 1980, defendants, Charles T. Henderson and Janice K. Henderson, husband and wife, obtained a loan of \$75,000.00 from the Farmers Home Administration to purchase 386.25 acres of land in Clay County, Texas, as reflected in their promissory note of even date, a copy of which is attached hereto, marked Exhibit "A". As part and parcel of the same transaction, and as security given for said loan, the defendants, Charles T. Henderson and Janice K. Henderson, husband and wife, executed a second lien Deed of Trust, dated March 14, 1980 and recorded the same date in Volume 74, Page 857, Deed of Trust Records of Clay County, Texas, a copy of which is attached hereto marked Exhibit "B".

(b) That on February 25, 1981, the defendant, Charles T. Henderson, obtained an emergency loan from Farmers Home Administration in the sum of \$22,420.00, as evidenced by his promissory note of the same date, a copy of which is attached hereto, marked Exhibit "C". That given as security for said note, the defendants, Charles T. Henderson and Janice K. Henderson,

husband and wife, did execute a Deed of Trust, dated February 25, 1981, and filed of record the same date in Volume 77, Page 201, Deed of Trust Records of Clay County, Texas. A copy of said Deed of Trust is attached hereto, marked Exhibit "D".

(c) That as of August 2, 1984, there was due and owing on the notes set out above, the principal sum of \$87,508.50, together with interest in the sum of \$5,066.85, plus interest accrued and accruing after that date at the daily rate of \$22.126.

(d) That of the 386.25 acres held by Farmers Home Administration as security for the notes set out above, approximately 140 of those acres are encompassed in the instant action.

WHEREFORE, the United States of America prays that it be granted absolute ownership of all real estate from the medial line to the south cut bank of the Red River in the premises; that its security interest in and to the lands in controversy be established and given proper priority and disposition herein; that its security in the lands involved be declared as a lien according to the proper priority on said lands; and for such other and further relief to which it is entitled and is deemed just and equitable in the premises.

WILLIAM S. PRICE
United States Attorney

John E. Green

JOHN E. GREEN
First Assistant
United States Attorney

NOTING CERTIFICATE
To certify that a true copy of the foregoing
was served on each of the parties to this by mailing
to them or to their attorneys of record on the

26 day of November, 1984

John E. Green
Asst. United States Attorney

7 11 84

Range 9 West of the Indian Meridian. Plaintiffs Clifford W. Hooper, et al., are owners of lands similarly located, described as all of fractional Section 3, Township 5 South, Range 9 West of the Indian Meridian.

2. Defendant Charles T. Henderson et ux are owners of lands bordering the Red River in Clay County, Texas, described as part of the Reuben R. Brown Survey, Abstract No. 14, Patent No. 376, Volume 15. The United States of America holds a second lien Deed of Trust on the lands owned by Charles T. Henderson et ux, dated March 14, 1980, recorded at Volume 74, Page 857, Deed of Trust Records of Clay County, Texas, to secure a loan of \$75,000 from the Farmers Home Administration; and a Deed of Trust dated February 25, 1981, recorded at Volume 77, Page 201, Deed of Trust Records of Clay County, Texas, to secure an emergency loan of \$22,420 from Farmers Home Administration. As of August 2, 1984, there was due the United States the total principal sum on the loans of \$87,508.50, and accrued interest of \$5,066.85. Of 386.25 acres pledged as security, approximately 140 acres are encompassed by this action.

3. Defendants Leroy C. Henderson, et al., are owners of lands bordering the Red River in Clay County, Texas, adjoining the lands described above and also described as part of the Reuben R. Brown Survey. Margaret Henderson, one of the owners of the lands, is a person entitled to intervene as of

DATE 3-14-80

OWNER POLICY REJECTION FORM

Pursuant to requirement of Article 9.55, Insurance Code, as amended, the undersigned hereby acknowledges that a Mortgagee Policy to be issued in file no. JP-974-5 in consideration of \$ 439⁰⁰ premium is to be issued to the lender and that such policy does not afford title insurance coverage to the undersigned in the event of a defect in the title to the real estate which is being acquired. An owner policy in the amount of \$ 300,000⁰⁰ shall be issued for an additional premium cost of \$ 807⁰⁰ unless rejected hereby.

The undersigned hereby reject the issuance of said Owner Policy.

Chalmers Henderson

Jamie K. Henderson

(Acknowledgement)

THE STATE OF TEXAS }
COUNTY OF

Before me, the undersigned authority, on this day personally appeared

known to me to be the person S whose name S ARE subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the

14th day of MARCH, A.D. 19 80

[Signature]
Notary Public in and for

CLAY County, Texas

(Corporate acknowledgement)

THE STATE OF TEXAS }
COUNTY OF

Before me, the undersigned authority, on this day personally appeared

of

a corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

Given under my hand and seal of office on this the

day of

, A.D. 19

Notary Public in and for

County, Texas

