UPPER NEWPORT BAY
Conflicting Visions
By Ray Watson

Upper Newport Bay is located at the head of the better-known Newport Bay. The transformation of lower Newport Bay from its’ early 20th century reputation as one of the “greatest natural habitats for wild life and game birds in the world” to its current reputation as one of the finest yachting and recreational harbors on the California Coast began in January of 1935. For years city fathers had visualized dredging the bay’s remaining “mud flats,” repairing and extending the entrance jetties with the objective of transforming it into a world-class boating harbor. After years of unsuccessfully seeking the funds necessary to finish the dredging, early in the 1930s a countywide bond issue was approved and matching federal funds authorized. Early in 1935 the long awaited dredging work began. Directed by the army corps of engineers and overseen by Richard Patterson, Newport Beach City engineer, 8,500,000 tons of sand and 50,000 tons of rock were removed from the bay. The 750-acre water area of the lower bay was dredged to a depth of 10-feet and Newport Harbor was dedicated on May 23, 1936.

But as I learned in reading Ellen Lee’s NEWPORT BAY, Pioneer History, even then not everyone shared in the enthusiasm of that dedication. As she reported, a local preservationist, Ed Ainsworth, “whimsically suggested that thousands of birds gathered near the entrance might object: Just think of it….these new fangled people are going to send dredgers in here and just raise cain with our roosts. There won’t be a mudflat left in Newport Bay. It’s a crime. This new pleasure harbor is going to be fine for everyone except the birds. The whole bay is going to be at least ten feet deep.”

With work on dredging the lower bay nearing completion Newport Beach City engineer Patterson turned his attention to the Upper Bay. In his mind it too was a “mud flat” in need of dredging and so in 1936 he submitted his plan for extending the newly dredged Newport Harbor into the Upper Bay.

But the country was still in the depths of the world wide economic depression followed by World War II. So Patterson’s plan lay dormant until in the late 1950’s the Orange County Harbor District published a tentative plan for the Upper Bay incorporating his vision of dredging it for water recreational uses.

In the spring of 1960 the Irvine Company and University of California were in the final stages of exploring the feasibility of locating a new university campus on Irvine land near the head of the Upper Bay. As part of that process both the University and Company had retained architect/planner William Pereira to prepare a preliminary plan for the prospective campus and surrounding community. As part of that planning process Pereira became aware of the Harbor District’s plan and suggested the new University request modification of it to include a rowing coarse. So he incorporated the Harbor District’s plans for the Upper Bay into a section of his report which he titled: “Link to Upper Bay.”
William Pereira incorporates the Harbor District plan for the Upper Bay into his 1960 report.

Pereira makes the case for linking the Upper Bay to the Campus.

"LINK TO UPPER BAY"

"The Irvine Company offers to give the University a five-acre site on upper Newport Bay, to be connected to the campus proper by a 100-foot corridor. The upper bay, with its 500 acres of protected tidal water, is in the process of becoming an outstanding recreation area. A 56-acre county park exists at the south end and a second aquatic park is proposed on the west shore. The County plans to develop yet another aquatic park on some 130-acres at the extreme north end of the bay adjacent to the University campus.

As presently conceived by the tentative harbor District Plan, the site given to the University would be at the upper turning basin of a proposed 2000-meter rowing course, which will extend from the bay into the proposed County Aquatic Park. This would permit students to add rowing to other forms of water sport and would provide a place for University crew sheds, boat houses, etc."

Pereira submitted his report to both the University and Company in May of 1960. In the following month the Board and shareholders of the Company unanimously...
approved the Company’s offer of the 1000-acre site identified by Pereira for a University of California campus together with the commitment to build a new community around it. As part of that agreement Pereira’s “report” was incorporated in the offer. In December the University officially accepted the Company’s offer and announced their goal of accepting their first students in September of 1965. With the three-year long campaign by both the city and county to convince the University of the virtues of the Newport area behind them everyone immediately announced their pledge to do their respective jobs to meet the campus’s scheduled opening. And one of those tasks, among many, was to implement the Harbor District’s Upper Bay plan. Thus began the gigantic company and public agencies tasks of implementing what each had pledged. Not the least of which was the dredging of the Upper Bay. The Company executive assigned to work with the Harbor District’s executive, Ken Sampson, on that task was William Mason, the Company’s engineer.

As a starter the County made it clear they had no funds to acquire the Company’s islands in the upper bay and suggested they arrive at a trade of County lands for Company islands. The County’s plan had included the idea of utilizing the dredged material from the islands to fill the area behind new bulkheads thus converting a portion of the natural tidelands into uplands. What Sampson and Mason agreed on was for the trade to be politically acceptable the economic value of the islands acquired by the County must exceed the value of the new uplands the Company would receive in exchange.

By early in 1962 Mason and Sampson had arrived at a tentative agreement on the trade. However both knew there were serious legal and political hurdles that needed to be overcome. During this two year period there had been little public awareness of what the County and Company were contemplating. After all, most of the plan the Company and Harbor District were attempting to implement had been around for over thirty years. For the most part their respective efforts didn’t cause much of a public ripple until two long time Newport Bay residents, Francis and Frank Robinson, began voicing opposition to the trade. As awareness of the proposed plan grew opposition began to build running the gamut of objecting to the entire vision of dredging the bay to alleging the Company was getting the best of the trade. Before long there was a growing chorus of objectors and the different factions pulled together and began calling themselves Friends of the Bay.

Their vision of the bay was in sharp contrast to the Harbor Commission’s plan. To them, the Upper Bay was one of the last remaining natural harbors in highly urbanized Southern California. By the mid-sixties a growing segment of the community were expressing interest in the preservation of our fast disappearing existing environment.

The growing opposition came as a surprise to both the Company and County. After all, they were attempting to open up the Upper Bay to the public in accordance with a plan that had existed for decades. Now with the Company’s commitment to the University there was an incentive for the Company to make concessions that it had not offered before. But now there was a group not only opposing the trades but also opposing the actual dredging the islands regardless of who owned them.
Frustrated by the growing opposition Mason sought to sweeten the trade by offering additional land. At the **March 1963** Irvine Company Board meeting Mason sought and received permission to offer additional Company land in the exchange telling his Board that the additional land “could hasten trade and improve public reaction.” He also requested permission to allow the County to temporarily store 400,000 cu. Yards of dredged material on TIC property.

The next step was to secure approval by the County Board of Supervisors, which was received on May 6th, 1964 when the County Supervisors instructed their staff “**to proceed with the preparation of the necessary documents to the State lands Commission and to test it’s constitutionality by the State Supreme Court.**”

The local press coverage was positive, for the most part, as it recounted the significant amount of water frontage the public was to receive and the fact that after more than twenty-five years the plan for bay was soon to become a reality. An example of the positive press coverage was the following as it appeared in The Newporter’s Orange County Annual (1964) issue.

**UPPER NEWPORT BAY**

“Upper Newport Bay is considered to be one of the most desirable residential and recreational areas in Southern California, and recently approved by the Board of Supervisors is a plan whereby Orange County receives increased land and water acreage for development of regional parks and waterways in Upper Newport Bay. The plan climaxes several years of intensive study mutually undertaken by the company and the orange County harbor District, and involves a harbor design approved by the harbor Commission and the City Council of Newport Beach.”

“According to the plan, The Irvine Company agrees to convey to the County of Orange 143.7 acres upland area in the Upper Bay, plus a 116-acre park which would have a water frontage of 13,000 feet at the northerly end of the upper bay, plus a 33-acre park at 23rd Street

The plan further provides that in return for the conveyance of Irvine properties, the County will deed 114.1 acres of filled tidelands to The Irvine Company, and will release to the company, free of public rights for tidelands not included in two park sites and water area of approximately 37.7 acres, making a total of 151.8 acres. The Irvine proposal allocates to the County of Orange 420 acres of waterway and three water-oriented parks totaling 209 acres having a water frontage of 19,240 lineal feet. This compares to the present County ownership of 310 acres of waterway and the County Dunes Park of 60 acres having a water frontage of 4260 lineal feet.”
Revised Harbor District plan accommodating
The University’s proposed rowing course.

As positive as the press was in 1964 that year may well have been the beginning of a down hill spiral that lasted for ten more years. Francis and Frank Robinson’s Save our Bay group were fast growing in number and volume. The Company’s position of cooperating with the county and city in implementing their plans for the bay were soon being characterized by some as the Irvine Company seeking to destroy one of the last natural bay habitats in the State. But at that time opposition to the trade was perceived as a vocal minority of the community. In June of 1966 Charles Thomas retired as president of the Company and Bill Mason was elected to take his place. President Mason immediately placed resolution of the long sought upper bay reconfiguration high up on his list of priorities for the Company.

At the same time Harbor Commissioner Ken Sampson joined with Mason in their respective pursuit to complete the trade and get on with implementing the commissions plan. At the same time, despite growing opposition, the State Land Commission approved the trade. Soon after, however, pressure was brought to overturn their previous approval but in 1967 after rehearing the issue they upheld their previous approval.

Following the Commission’s approval the County and Company began the process of making the exchange by putting their respective parcels, county tidelands and
company islands, in a joint escrow account where they were to remain until all legal challenges had been resolved. The most important legal question that both county and company wanted an answer to was the constitutionality of the exchange. Neither party wanted to make the exchange and then have the courts rule it unconstitutional. To resolve that question both had agreed that a third party suit be brought testing that question.

That process took six years. During those six years the county political climate materially changed. In the summer of 1970 the country celebrated its’ first “earth day.” New supervisors were elected having run for office questioning the trade and began expressing, at best, tepid support with others expressing out right opposition. Soon the Company found itself in the bizarre position of awaiting court approval of a trade that the other party no longer appeared to support.

Soon the entire process split into two tracks. The constitutional lawsuit continued through the courts while the County was attempting to rescind the exchange and the Company attempting to hold it together at least long enough to find out if it was constitutional. Then the County brought a separate lawsuit against the Company in an attempt to establish public prescriptive rights around the Upper Bay, which prompted the Company to cross-complain for inverse condemnation.

With the County now doing everything it could to abort the trade it became obvious it was doomed. But the Company still wanted the constitutional question answered since it could potentially impact the public's and Company’s ability to make future trades involving uplands and tidelands. Finally after three years the lower court ruled the trade constitutional. Immediately that decision was appealed and three more years of uncertainty and growing turmoil awaited an appeal courts ruling. In 1973 the appeal court overturned the lower court and ruled that the concept of exchanging tidelands for uplands was constitutional because the magnitude of tidelands in this instance was excessive.

Although two years earlier Mason had informed his Board there was now little chance of the current Board of Supervisors going through with the trade and had suggested the Company seek a public buyer for the islands he still took the court’s rejection hard. He had believed he had crafted an agreement with the County that would have resulted in a public recreation area that had been dreamed of for years and now that it was within striking distance of becoming a reality the community had changed their minds and all his hard work had come to naught.

While Mason acknowledged the “grand” plan for the bay was DOA there was no clear vision of what the Company would do next. Irvine still owned the islands and the County owned the surrounding tidelands. Over the previous year he had made a number of informal inquires of Local, State and Federal agencies seeking any interest they might have in purchasing the islands. None showed any interest.

Further complicating the future for the Company was that as a part of the trade process both the islands and uplands had been placed in a single escrow account awaiting the courts decision. With the county and company’s properties co-mingled the County property assessor, Andrew Hindshaw, had designated both the Company’s and County’s properties as owned by “Irvine Company, et al,” and assessed their value as $50-million sending the tax bill to the Company.
And there the issue stood on a fateful Saturday morning on July 14, 1973 when the phone rang at my home in EastBluff. On the phone was Bill Mason’s 17-year-old daughter. Her first words were, “My father has had a heart attack and he is dead.” At the time I was executive vice president and as I soon discovered had become the interim chief executive officer of the Company. Two months later, 9/11/73, I was elected President. I had lost a friend, the Company had lost a wonderful and dedicated leader but resolution of the Upper Bay quagmire was now my responsibility.

Among the many issues I immediately discussed with the Company’s Board was the Upper Bay. My position was that for the better part of twelve years the Company had acted responsibly and in good faith in its obligations to both the University and the County in attempting to implement their development of the Bay but that vision was no longer viable either practically or politically. As I informed the Board my objective now was to find a buyer for the islands and put that issue behind us.

Over the next year, with the help of Robert Shelton, we did just that. Bob Shelton had been city manager of Newport Beach when I joined the Company in 1960. Although he no longer worked for the city there was no better-respected individual in local government than Bob Shelton. The two remaining substantive issues we needed resolve was an agreeable price and the resolution of the accrued unpaid property taxes resulting from the Assessor’s $50 million value he placed on the islands.

After months of give and take negotiations we arrived at what I believed was an acceptable resolution to both issues. The State Department of Fish and Game would buy the Company’s islands for $3.4 million with the Company taking a note in that amount with full payment due in 5 years. Since the accrued unpaid property taxes exceeded by a considerable amount the sales price the next step was to resolve that issue with the County. When they finally agreed to a settlement of the tax suit brought by Company for accrued property taxes for $1,650,000 I was prepared to seek approval from my Board. So on 11/12/74 the Company Board authorized the “sale of approximately 527-acres in Upper Newport Bay.” Thus the net return received by the Company was $1,750,000 that by any calculation was significantly less than had been expended in the aborted four-year saga. But from my point of view the issue was now behind us and we could go on to our primary challenge of building our communities.

We informed Fish and Game of the Board’s approval and proceeded to inform the public. But before rejoicing could begin a segment of the Save our Bay group led by the Robinsons objected to the agreement. Frank Robinson claimed he had discovered a “long lost map” which “proved” the islands “were actually tidelands” and thus already owned by the public and not the Company. His position, however, was that since he acknowledged the Company would dispute his claim he suggested we reduce the price by $1-million and if we did he would support the sale. I told him that the authenticity of the islands as uplands had been ruled on by both the courts and the State Land Commission and for decades the Company had been paying property taxes on them. Thus I had no interest in conceding his point and I was proceeding with the sale.

Because of all the issues resulting from the years of litigation the actual conveyance of the lands was “pursuant to a settlement” which both the County and Company signed in 1975, fifteen years after Pereira first made reference to the Upper Bay in his 1960 report and forty years since Newport Beach’s engineer, Patterson first proposed it.
What the Company conveyed to the State was: All its rights, title and interest in and to the three islands plus (1) the land beneath Back Bay Drive, (2) over 200 acres of acknowledged tidelands at the head of Upper Newport Bay held by Irvine pursuant to Tidelands patent No. 204, (3) the surrounding uplands contiguous to upper Newport Bay to the “10 foot contour line,” thereby guaranteeing perpetual public access to the entire Upper Bay, and (4) certain other valuable property intended for use by the public as a scenic viewpoint of the Bay.

I felt very good on that summer day of 1975 when various representatives of the County, City and State joined me on a bluff overlooking the magnificent bay as we signed the “settlement.” The ecological preserve vision had prevailed. We at the Company could put the controversy that surrounded the bay behind us and get on with the business of building out the Irvine Ranch.

At least that is what I thought. Unfortunately, like a bad recurring dream, there was still one more chapter to play out before the Upper Bay saga could be put behind the Company. Two years after I resigned the Presidency in July of 1977 and four years after we had all signed the Settlement agreement a citizen’s “complaint” was filed claiming the islands were tidelands and thus already owned by the State and that the Company knew that and thus guilty of fraud. However, none of us involved in 1975 settlement were served and the claim lay dormant until amended in 1980 and then again in 1981 some six years after the Settlement was executed. The plaintiffs in the suit were Frank and Francis Robinson whom together with the Sierra Club filed a taxpayers’ derivative action seeking return of the $3.7-million the State had paid for the islands disputing the “validity of Irvine’s title to” them.

In relatively quick order Judge Luis Cardenas granted Irvine’s motion for a summary judgment motion and dismissed the complaint. Plaintiffs appealed to a higher court which reversed the summary judgment on the basis that they might prevail in their action if they could prove: (1) “Irvine knew in entering the Settlement that the three islands were actually tidelands, and (2) was aware that it had no legal claim to the islands.

The trial commenced on April 27, 1987 and concluded on June 4th. Judge Judith Ryan issued her dismissal of all the plaintiffs’ claims on July 21, 1987 twelve years after we all signed the settlement agreement.

On a personal note: As Phillip Berry, Sierra Club attorney, and I entered the court room on the first day of the trial I turned to him and said that at the conclusion of the trial I had a personal request of him. “Would he have dinner with me and my four children during which he would explain the public benefit he is seeking in this trial. We had, after all, conveyed all the islands and surrounding lands in the Upper Bay to the State. The compensation we had received was far less than we had paid in property taxes through the years. And the title company had provided the State with title insurance assuring them that the Company did own the uplands and that the issue of ownership had been settled in court over sixty years ago. He had no response. We went to trial.

Years latter he discussed the case during an oral history he provided to the research library at the University of California, Berkeley. There he stated: “we won all the legal issues, but we got “hometowned” by the judge. She decided a single factual issue against us, so we lost.” The “single factual issue” he referred to was: Were the islands uplands, as claimed by The Irvine Company, or tidelands, as claimed by his plaintiffs. The judge ruled they were uplands. What other issue he claimed he had won
is still a mystery to me since by order of the appeals court that was the only legal issue to be decided.

**Retrospective**

The fact that for much of the 20th century there were conflicting visions about the future of Newport’s two bays is not surprising. After all they are, more than anything else, what defines and differentiates the city of Newport Beach. While Ed Ainsworth’s 1935 whimsical lament that the “new harbor is going to be fine for everyone except the birds” may have clearly expressed the views of some, the early developers of Lido and Balboa Islands and Peninsula were obviously much more interested in attracting humans to their projects than birds.

It’s also not difficult to understand why, in 1935 when they were dredging the lower bay, the city fathers didn’t extend their dredging to the upper bay. While their city engineer had published an upper bay plan to do just that, the thirties were difficult times. The country and world were suffering from the aftermath of the 1929 economic crash. Unemployment was as high as 30%. They were fortunate to have received enough Federal and local funds to dredge even the lower bay. The upper bay could wait. And wait it did through developer bankruptcies, the continuing depression and finally World War II.

With the secession of the war the country and Newport Beach experienced unprecedented growth. But there was still much land to build on around the lower bay and the subject of the back bay rarely came up until Pereira discovered the Harbor Districts decades old plan. He includes it in his plan for the proposed new university campus and in 1960 the city, county and Irvine Company jointly and triumphantly launch into the task of converting his broad visions of a new campus and new town into the brick and mortar of reality.

The early part of the sixties was devoted to fleshing out Pereira’s visions with the County and Newport Beach. Before ground could be broken the necessary public hearings were held. In Newport Beach the Irvine’s first “village”, East Bluff on the mesa overlooking the Back Bay, broke ground in 1963.

At the same time the Company and County were diligently seeking an equitable land trade in the Back Bay as a necessary first step in implementing the Harbor Commission’s Upper Bay plan. And there in lies the essence of the trap both the County and Company found themselves in. Both assumed that the vision part of the process had been resolved. After all, the plan had first been put forth in 1936. The conflicting visions thought to have been resolved. As in the lower bay the birds had lost, hadn’t they?

Well they had in 1936. But by 1960 the citizens of Newport Beach had come to enjoy and for many cherish the contrast between the two connecting Bays. The lower and larger one together with its now prosperous islands and peninsula had become “successful” beyond anyone’s dreams. And, at the same time the undisturbed ecological wonder of the Back Bay provided Newport’s residents with a welcome contrast to the hustle and bustle of its more famous lower bay.

In retrospect, what the County and Company misread was that broad visions favored during one era might not engender the same support in subsequent eras. And that is exactly what happened. While the County and Company plodded ahead in their zeal to
convert Paterson’s twenty-five year old plan into a junior version of what had been done in the lower bay a growing chorus of voices began challenging the fact someone was proposing to destroy the ecological environment they had come to love. That chorus grew into protests, then law suits and finally fifteen years later the purchase of the islands by the State and vow of all to preserve nature’s habitats rather than build more of what they already had in the lower bay.

I fault no one, Company, County, City or citizen for standing up to their beliefs during the entire process. I regret that for some the 1975 settlement agreement didn’t put an end to the animosity against the Irvine Company. And that animosity carried over into another lawsuit being filed against the Company years after an agreement the bay would be preserved. In 1979 some Newport residents charged the Company never actually owned the islands and that knowing that to be a fact had fraudgently sold them to the State. A claim the court finally heard and quickly rejected in 1987, twenty-seven years after architect/planner William Pereira suggested a University/Upper Bay “Link.” The following addendum outlines the issues in the 1987 lawsuit.

It is time now to celebrate what we have and put behind us whatever ill-will some may still harbor over the path it took to resolve the understandable conflict between the conflicting visions for the Upper Bay.

ADDENDUM
UPPER BAY LAW SUITS

OC Foundation for preservation of public property vs The Irvine Company
  Began: April 27, 1987
  Concluded: June 4, 1987
  Plaintiffs: Francis and Frank Robinson, Allen Beek
  Sierra Club Lawyer: Philip Berry
  Issue: Plaintiff had filed a “taxpayers’ derivative action to set aside the April 11, 1975 Upper Newport Bay Settlement Agreement, which memorialized a good faith compromise of a longstanding dispute between The Irvine Company, State of California, County of Orange and City of Newport Beach regarding Irvine’s title to three islands in Upper Newport Bay and certain surrounding shore lands. Pursuant to the Settlement, which put an apparent end to the controversy, Irvine conveyed to the State its interest in the three islands and portions of the surrounding shore lands at a negotiated price of $3.481 millions. Almost four years later, plaintiffs, calling themselves the Orange County Foundation for Preservation of Public Property, as well as the Sierra Club and a handful of individual taxpayers, challenged the Settlement.

  This Court quickly granted a summary judgment on the ground that the Settlement was a good faith compromise that should not be disturbed. On appeal, the Court of Appeal reversed, holding that if plaintiffs could establish certain facts pleaded in the complaint, the Settlement would be subject to challenge.” “The Court of Appeal determined that in order to prevail plaintiffs must establish that The Irvine Company knew in entering the Settlement that the three islands were really “tidelands” and, further, that Irvine was aware at the time it sold the islands to the State that it had “no legal claim to them.”
The trial brief by the Company stated: “Irvine’s outright ownership of Upper Island was confirmed in 1926 by a binding decree of this Court entered in County of Orange v. The Irvine Company.” Further, “in reliance on this Court’s 1926 decree, Irvine subsequently purchased the two other identically situated islands, known as Middle and Shellmaker Islands, for valuable consideration pursuant to an arms length transaction.” And, “Irvine received a number of title reports from different insurers over a period of more than ten years prior to the Settlement verifying that it possessed unencumbered title to the three islands.”

“In about 1965, plaintiffs and others supporting their cause, for the first time began to dispute Irvine’s title to the three islands on the ground that they were tidelands. It is against this backdrop that the negotiations leading to the 1975 Settlement were commenced. Irvine decided to abandon its development plans and, at the same time, benefit the public interest by selling the islands to the State in 1975 at a price far below their developable potential.”

“Pursuant to the Settlement, Irvine conveyed to the State all its right, title and interest in and to the three islands, as well as the following valuable property: (1) the land beneath Back Bay Drive, (2) over 200 acres of acknowledged tidelands at the head of Upper Newport Bay held by Irvine pursuant to Tidelands Patent No. 204, (3) the surrounding uplands contiguous to Upper Newport Bay up to the 10 foot contour line, thereby guaranteeing perpetual public access to the entire Upper Bay, and (4) certain other valuable property intended for use by the public as a scenic viewpoint or overlook of the Bay.”

“Of the $3.481 million Irvine received for lands conveyed under the Settlement, it paid $1.65 million to the County to settle the pending property tax dispute over valuation and assessment of the islands.”

“Plaintiffs’ complaint was filed on April 6, 1979, almost four full years after the public ceremony, attended by plaintiffs, at which the Settlement was executed. No effort was apparently made to serve this initial pleading on any of the defendants. On or about December 4, 1980, another one and one-half years later, plaintiffs filed their First Amended Complaint for Money and Declaratory Relief. On March 23, 1981, some six years after the Settlement was executed, plaintiffs filed their Second Amended Complaint.”

“On May 15, 1981, Irvine answered the Second Amended Complaint and moved for summary judgment. Judge Luis Cardenas granted Irvine’s summary judgment motion and dismissed the complaint. Plaintiffs appealed. The Court of Appeal focused on the allegations of a single paragraph in plaintiffs’ complaint, which it felt constrained to assume plaintiffs could establish, and ruled that such allegations were sufficient to allow the plaintiffs to escape summary judgment. That paragraph was, “Irvine, its predecessors in interest at all times knew that the three islands were in public ownership.” Based on that allegation the judge stated, “If this allegation is found true it will be sufficient to sustain a judgment in Foundation’s favor.”

“Plaintiffs escaped summary judgment by creating a very narrow and specific issue of fact regarding whether or not (1) Irvine knew in entering the Settlement that the three islands were actually tidelands, and (2) was aware that it had no legal claim to the islands.”
Judges (7/21/87) Ruling:

“Plaintiff failed to show by a preponderance of evidence that the three islands were tidelands in 1850. The weight of the evidence suggests that the islands existed in 1850 and more likely than not were above mean high tide. Irvine had a good faith belief that its title to the Islands were valid.”

Since these were the only two factual items the appeals court allowed the trial to precede the judge ruled in the Company’s favor on both and awarded the Company court cost. Through a third party the Company was asked to forgo the claim against Robinson’s and Allen Beek. We were told the claim could bankrupt them. The Company forgave the claim.

Philip Berry’s oral history comments re: trial:

In an oral history taken by UC-Berkeley library in 1993 Berry made the following comment about the trial. “We won all the legal issues, but we got “hometowned” by the judge. She decided a single fact issue against us, so we lost.”

A reading of the judge’s ruling disputes Berry’s claim he “won all the legal issues.” The only legal issues allowed in the trial were the two factual issues cited above and Berry lost on both issues. He lost all the other issues by summary judgment before the subsequent trial was allowed to again determine whether the Islands were uplands or tidelands. On that issue he and his plaintiffs again lost.