

this is a copy
no. 1

XXXXXXXXXX

IN THE DISTRICT COURT

23rd JUDICIAL DISTRICT

MATAGORDA COUNTY, TEXAS

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survey made by John F. Rother, County Surveyor of Matagorda County, Texas, represented by a plat dated the 23rd day of May 1936, a copy of which is attached hereto and made a part hereof as Exhibit A, the land which is the subject of this lawsuit being designated tract one on said exhibit.

The land sued for is located in Matagorda Bay, Matagorda County, Texas, within the borders of the State of Texas, and forms a part of the public domain. This land has never been appropriated or segregated by grant, purchase or patent and still belongs to the State of Texas, the sovereignty of the soil.

II.

On the first day of January, 1967, the Plaintiff was and still is the owner of the fee simple title to the above described land and premises.

On such day, Plaintiff was entitled to possession of the above described land and premises and is now entitled to possession of same; and afterward on the second day of January, 1967, Defendants unlawfully entered upon and dispossessed Plaintiff of such premises and withholds from Plaintiff the possession thereof. Defendants are occupying and using such premises under such unlawful possession.

III.

Defendants have announced to the Public that the land hereinabove described the subject of this lawsuit, will be sold at public auction by Gulf Coast Real Estate Auction Company between the hours of two o'clock and four-thirty P.M. on Wednesday, March 8, 1967, at Houston, Texas. In the event this sale takes place, the status quo of the title issue in this case to the property in question, would be seriously disturbed and complicated to the irreparable loss and damage of all parties concerned.

Therefore, Plaintiff prays that Defendants be enjoined from attempting to sell the property in question until this case can be tried on its merits, and that a restraining order be issued to prevent this sale.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to answer this petition and that Plaintiff have judgment for order restraining and enjoining the above sale, title and possession of the above described premises and costs of suit, and for such other and further relief as Plaintiff may be entitled to either in law or in equity.

CRAWFORD MARTIN
Attorney General of Texas

Houghton Brownlee, Jr
Assistant Attorney General

/s/ Ben M. Harrison
Ben M. Harrison
Assistant Attorney General
Attorneys for Plaintiff

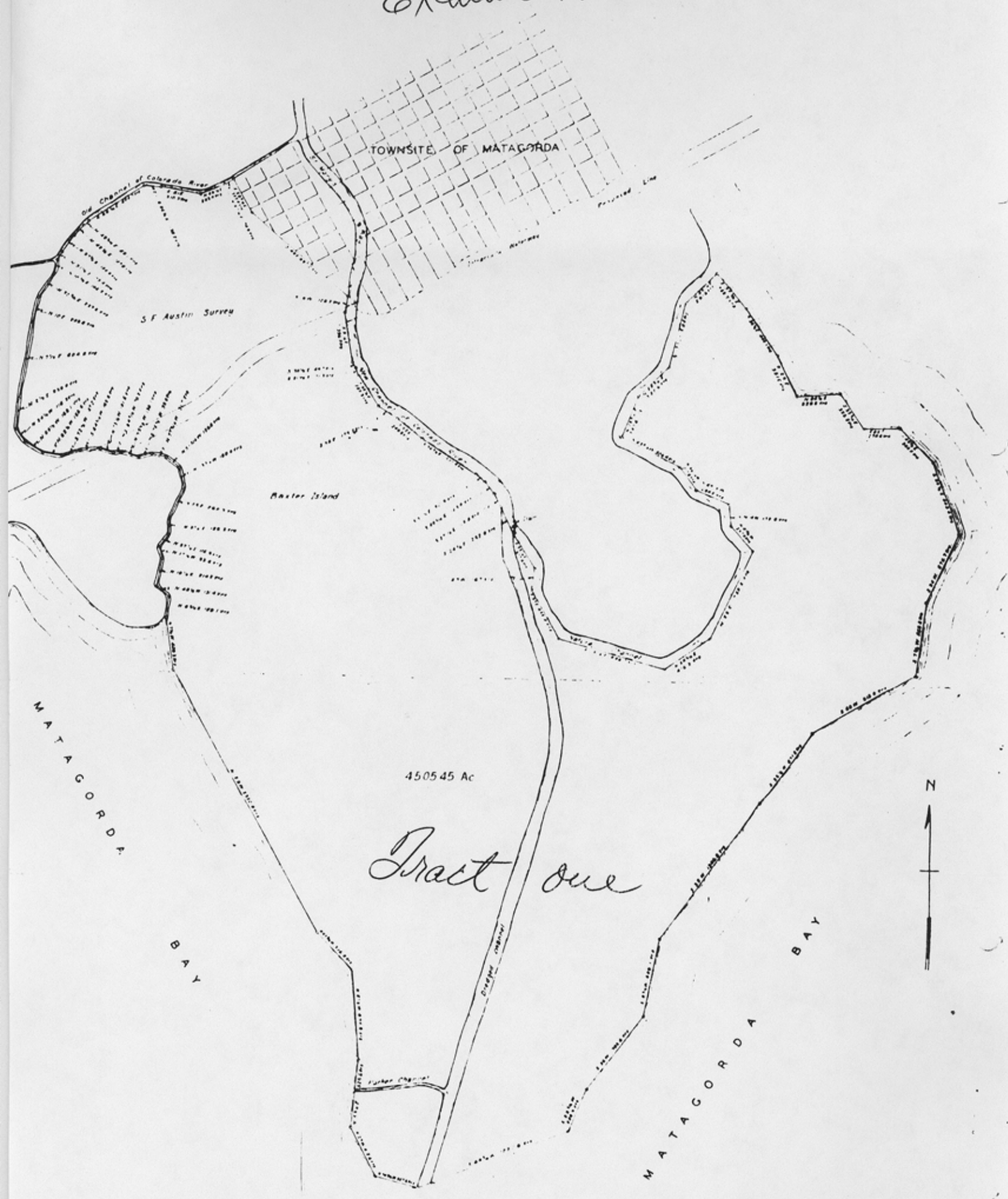
Capitol Station
Austin, Texas 78711

Subscribed and sworn to before me by Ben M. Harrison this the
3rd day of March, 1967.

"SEAL"

/s/ Virginia Owens
Notary Public in and for Travis
County, Texas

Exhibit A



BAXTER ISLAND AND ACCRETIONS ON LOWER COLORADO RIVER

MATAGORDA COUNTY, TEXAS
SCALE 1" = 2000' OR 360 VRS. MAY 1936

I, John F. Rother, County Surveyor of Matagorda County, Texas, do hereby certify that the above field notes and plat correctly represent survey as was made by me on the ground and that all marks and corners are as the survey is described in field notes and shown on plat.
Given Under My Hand and Seal of Office this 23rd day of May 1936.
John F. Rother
County Surveyor of Matagorda County, Texas

NO. 19,049

THE STATE OF TEXAS	X	IN THE DISTRICT COURT
VS.	X	23RD JUDICIAL DISTRICT
H. P. BAXTER, JR., ET AL	X	MATAGORDA COUNTY, TEXAS

DEFENDANT S' FIRST ORIGINAL AMENDED ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Defendants, H. P. BAXTER, JR., BESSIE MAE BAXTER OWENS, DON OWENS, W. L. BAXTER, MRS. THELMA NINI, W. S. BAXTER, ADDIE LEE STEUBING, ROBERT W. STEUBING, and WALLACE NINI, and file this their First Original Amended Answer, and allege as follows:

I.

Defendants deny each and every, all and singular, the allegations contained in the Plaintiff's Original Petition, and say that the same are not true, in whole or in part, and demand strict proof thereof, and of this Defendants put themselves upon the country.

II.

As further answer, if same be necessary, all of said Defendants plead not guilty of a trespass.

III.

By further answer, if the same be necessary, these Defendants allege as follows:

(A) By instrument, dated November 23, 1830, and recorded in Vol. 112, Page 9 of the Deed Records of Matagorda County, Texas, the State of Coahuilia and Texas (Mexican Government) patented two labors of land (approximately 355 acres) in Matagorda County, Texas to Stephen F. Austin. By a regular chain of conveyances the record title to such land is now vested in the Defendants herein, and they are in the exclusive

possession of same. Reference is made to such original instrument, and the record thereof, for a more particular description of such two labors of land.

(B) By the terms and description of the above land as set forth in the patent, the Southern boundary of the two labors of land followed the meanders of Matagorda Bay; and the land was therefore bounded on its Southerly exposure by the waters of Matagorda Bay. Accordingly, defendants and their predecessors in title, are and were at all times, the owners of the shore line of such two labors of land as originally located and as now extended.

(C) Prior and subsequent to the grant of the above patent, and at all times material hereto, the Colorado River had its source at a point or location in a Northerly direction from the two labors of land and flowed in a Southerly or Southeasterly direction across such land and emptied into Matagorda Bay at a point on the original shore line thereof.

(D) As a consequence, and as a direct and proximate flow of the Colorado River from its source to the point where it emptied into Matagorda Bay, large amounts of solid material, consisting of mud, sand, silt, debris, and sediment were washed and carried down to the river's mouth at Matagorda Bay causing a gradual and imperceptible increase, addition and accretion of land, contiguous to the original grant amounting to approximately 4,150.5 acres, to the original shore line of the two-labor tract of land and thereby extending such shore line Southerly, Southeasterly, and Southwesterly into Matagorda Bay, and being the same land as represented by plat thereof attached to Plaintiff's Petition as Exhibit "A."

(E) The increase of approximately 4,150.5 acres of land to and extending from the original two labors of land was brought about by natural causes and by the gradual and imperceptible deposition of mud, silt, debris,

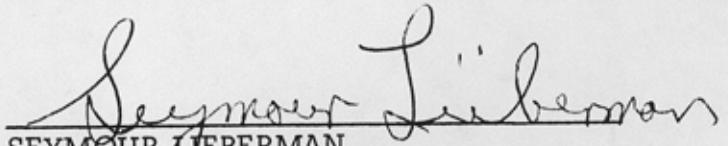
sand, and sediment aforesaid; and such increase of land was not caused by a sudden and perceptible addition.

(F) Defendants by virtue of the terms and description contained in the original patent and grant, have a vested property right in access to the shores of Matagorda Bay, accordingly, defendants are entitled to the accretion added to the original two labors of land so that they may have access not only to Matagorda Bay but also to any other body of water by which the additional or accreted land may have formed and advanced by such accretion and increase.

IV.

Pleading alternatively, Defendants are not precluded from acquiring and asserting ownership to the above increase of land to the original two labors, notwithstanding the fact that the accumulation thereof may have been brought about, in whole or in part, by artificial means for the reason that such artificial means, if any, were brought about by the act of third persons and not by any act of Defendants.

WHEREFORE, Defendants pray judgment of this Court that Defendants are not guilty of a trespass as to the entire amount of acreage pleaded by the Plaintiff and for all costs of Court herein incurred, and for any other relief they may be entitled to, in law or in equity, together for which they may pray.


SEYMOUR LIEBERMAN
Attorneys for Defendants
1515 Bank of the Southwest Bldg.
Houston, Texas 77002
CA 4-2566

M. MICHAEL GORDON
Attorney for Defendant
1073 San Jacinto Bldg.
Houston, Texas 77002
CA 4-1815

THE STATE OF TEXAS

IN THE 23RD DISTRICT COURT

V.

OF

H. P. BAXTER, JR., ET AL

MATAGORDA COUNTY, TEXAS

PLAINTIFF'S SECOND SUPPLEMENTAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, the State of Texas, files this its Second Supplemental Petition in reply to the amended answers and all other answers filed herein by Defendants, and to the intervention of Matagorda Shell Company, and would show:

1. Plaintiff denies each and every allegation contained in said answers and intervention and demands strict proof thereof.

9,049

*Trial Amendment to Plaintiff's
2nd Supplemental Petition - to replace
paragraph 2 thereof.*

II.

Plaintiff denies that the area in dispute constitutes natural accretion to the property of defendants. Such buildup was actually from artificial causes and resulted in whole or substantial part from man-made acts. From 1924, or in the alternative, from 1925, until 1929, a party or parties other than defendants or intervenor removed a raft or accumulation of timber and other debris and silt, etc, which was clogging and damming up the Colorado River near Bay City. Thereafter, beginning about 1931 or 1932, a party or parties other than defendants and intervenor dredged a channel beginning just north of Matagorda Bay, for said river, which channel was dredged on across said river and across Matagorda Peninsula, so that said river might then run directly into the Gulf of Mexico. Further, about 1940, the Intracoastal Canal was dredged by a party or parties other than defendants or intervenor immediately north of the disputed land. The dredged river is roughly in the center of the land in dispute. Further, State Highway No. 2031 about 1940 was constructed connecting Matagorda and said peninsula roughly paralleling said dredged river channel. Further, from 1940 on, the Federal Government from time to time dredged out the channel aforesaid. The above man-made acts, and each of them, substantially contributed to the buildup of the delta area in controversy. Had it not been for such man-made acts, ^{or any} ~~and each~~ of them, the size of said delta would have been very substantially diminished and the shape thereof would have been greatly altered. Hence, such land is not accretion added to property of defendants or intervenor.

Matagorda Co. Sketch File 45

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is not accretion added to property of Defendants or Intervenor. }

3. Plaintiff denies that such alleged accretion was an advancement from or accession to property of Defendants or Intervenor. Rather, the buildup of the area in controversy was a deltaic type buildup of numerous small islands, and such islands in Matagorda Bay were eventually connected (though some portions are still islands) with each other by deposition of additional spoil, mud, silt, debris, sand and other sediments on the bed of Matagorda Bay and the rivulets in such Bay separating such islands. Prior to the formation of such islands, they were part of such Bay. Such facts reflect that the land in question was not accretion.

4. Plaintiff denies that such alleged accretion advanced from the property of Defendants or Intervenor. Rather, it resulted from land arising from and upon the State owned bed of Matagorda

Bay, and hence was not accretion to property of Defendants and Intervenor.

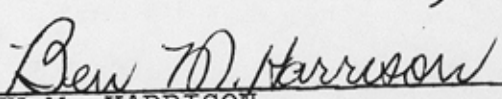
WHEREFORE, Plaintiff prays that it recover as prayed for in its petition on file herein.

CRAWFORD C. MARTIN
Attorney General of Texas

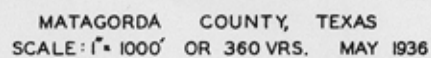
HOUGHTON BROWNLEE, JR.
Assistant Attorney General

J. ARTHUR SANDLIN
Assistant Attorney General

SCOTT GARRISON
Assistant Attorney General


BEN M. HARRISON
Assistant Attorney General

Box "R", Capitol Station
Austin, Texas 78711



36 John F. Rother
County Surveyor of Matagorda
County, Texas

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MAY 1 1969

General Land Office

NO. 19,049

THE STATE OF TEXAS § IN THE DISTRICT COURT OF
VS. § MATAGORDA COUNTY, TEXAS
H. P. BAXTER, JR., ET AL § 23RD JUDICIAL DISTRICT

J U D G M E N T

On the 5th day of September, 1967, in its regular order on the docket came on to be held the above entitled and numbered cause herein, THE STATE OF TEXAS was Plaintiff and H. P. BAXTER, JR., BESSIE MAE BAXTER OWENS, DON OWENS, W. L. BAXTER, MRS. THELMA NINI, W. S. BAXTER, ADDIE LEE STEUBING, ROBERT W. STEUBING, and WALLACE NINI, also PARKER BROTHERS & CO., INC. were Defendants and Intervenor GERALDINE ELIZABETH PARKER and MATAGORDA SHELL COMPANY, and came the parties in person and by their respective attorneys, and announced ready for trial; and came a jury, all being residents and citizens of Matagorda County, Texas, of twelve (12) good and lawful men and women, who, being duly empaneled and sworn, one juror was dismissed because of hardship and all parties agreed the case could be tried by eleven (11) jurors, and having heard the pleadings, the evidence, and arguments of counsel for all sides in response to the following special issues, the definitions, explanations, and instructions submitted to them by the Court on the 14th day of September, 1967, made the following respective findings on the 15th day of September, 1967.

By the term "accretion" as used herein is meant the gradual and imperceptible depositing by water of solid matter through the operation of natural causes.

In this connection you are further instructed that a depositing by water of solid matter is "imperceptible" if it is so gradual that no one person can perceive how much is added at any moment.

SPECIAL ISSUE NO. 1

Do you find from a preponderance of the evidence that the land in controversy was created by accretion?

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Answer: "We do."

If you have answered Special Issue No. 1 "we do not," and only in that event answer Special Issue No. 2.

SPECIAL ISSUE NO. 2

Do you find from a preponderance of the evidence that the land in controversy was created substantially by accretion?

Answer:

If you have answered Special Issue No. 1 or No. 2 "We do," and only in that event, then answer:

SPECIAL ISSUE NO. 3

Do you find from a preponderance of the evidence that said accretion, if you have found same, began at the original landward line of the shore of the Austin and Wightman surveys?

Answer: "We do."

If you have answered Special Issue No. 3 "we do," and only in that event, then answer:

SPECIAL ISSUE NO. 4

Do you find from a preponderance of the evidence that said accretion, if you have found same, extended the surface of the Austin and Wightman surveys from their landward shore lines to the present boundaries of the land in controversy?

Answer: "We do."

If you have answered Special Issue No. 4 "we do," and only in that event, then answer:

SPECIAL ISSUE NO. 5

Do you find from a preponderance of the evidence that said extension of the surface of said Austin and Wightman surveys, if you have found same, is all above the line of mean higher high tide?

Answer: "We do."

If you have answered Special Issue No. 5 "We do not," and only in that event, answer:

SPECIAL ISSUE NO. 6

What part, if any, of said extension, if you have found same, do you find from a preponderance of the evidence is above the line of mean higher high tide?

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Answer by drawing the boundary lines of said part, if any, according to scale on the scaled plat of the land in controversy which is marked Exhibit A adopted herein and attached to the Court's charge.

Which findings were received by the Court and were filed and entered in the Court in the minutes of such Court, and the Court thereupon being of the opinion and finds that Plaintiff should take nothing against the Defendants and Intervenor and that all defendants and intervenors go hence without day and that title to the following described property is not in the State of Texas.

It is accordingly ORDERED, ADJUDGED, AND DECREED that Plaintiff, THE STATE OF TEXAS, take nothing by its suit against the Defendants, H. P. BAXTER, JR., BESSIE MAE BAXTER OWENS, DON OWENS, W. L. BAXTER, MRS. THELMA NINI, W. S. BAXTER, ADDIE LEE STEUBING, ROBERT W. STEUBING, WALLACE NINI, and PARKER BROTHERS & CO., INC., and Intervenor, GERALDINE ELIZABETH PARKER and MATAGORDA SHELL COMPANY, to the present boundaries of the following described land situated in Matagorda County, Texas, set out in the attached map hereto and described as follows, to-wit:

All that certain land located in Matagorda Bay, Matagorda County, Texas, across the intra-coastal waterway canal — from the town of Matagorda, being a portion of the Colorado River Delta lying along the dredged Colorado River Canal in Matagorda Bay and comprising 4,000.00 acres of land, more or less, out of a 4,505.45 acre survey made by John F. Rother, County Surveyor of Matagorda County, Texas, represented by a plat dated the 23rd day of May, 1936, copy of which is attached hereto and made a part thereof, and said 4,505.45 acres described by metes and bounds as follows:

✓ BEGINNING

at a point on the south bank of the old channel of the Colorado River, said point is the west corner of the townsite of Matagorda;

THENCE South $28-3/4$ east along the southwest line of said Townsite 302.4 vrs.;

THENCE South 49 east along the southwest line of said Townsite 997.2 vrs. to a point on the west bank of St. Mary's Bayou;

MAY 1 1969

General Land Office

THENCE in a Southeasterly direction along the west bank of of St. Mary's Bayou and the New Channel of the Colorado River with their meanders as follows: South 9 west 128.2 vrs. South 9-1/4 east 396.0 vrs. South 30-1/2 east 49.7 vrs., south 21-1/2 east 71.3 vrs., South 33-1/4 east 283.3 vrs., South 58 east 175.7 vrs., South 52 east, 249.8 vrs. South 56-3/4 east 500.4 vrs., South 51-1/2 east 92.9 vrs. South 40-3/4 east 123.8 vrs., South 27-1/2 east 113.8 vrs. to a point for corner;

THENCE South 24-3/4 east across the dredged channel of the Colorado River, 252.0 vrs. to a point on the south bank of a natural channel of the Colorado River, said point being in the center line of a dam across the said natural channel;

THENCE along the lower bank of said natural channel with its meanders as follows; South 32-1/4 east 302.4 vrs., South 7 west 167.0 vrs., South 30 east 432.0 vrs., South 74-1/2 east 846.7 vrs., North 54-3/4 east 416.2 vrs., North 25 east 750.2 vrs., North 41-1/2 west 257.0 vrs., North 4 west, 172.8 vrs., North 65-1/2 west 290.2 vrs., North 36-1/4 west 217.8 vrs., North 63-3/4 west 505.4 vrs., north 20-3/4 east 340.6 vrs., North, 44-3/4 east 322.6 vrs., North 13-3/4 east 518.4 vrs., North 45-1/4 east 291.6 vrs., to a point on the shore of Matagorda Bay.

THENCE along the shore of Matagorda Bay with its meanders as follows: South 38-3/4 east 358.2 vrs., South 36-1/2 east 442.1 vrs., South, 28 east 351.0 vrs., North 85-1/2 east 329.8 vrs., South 33-3/4 east 325.8 vrs., East 278.6 vrs., South 45-1/2 east 365.0 vrs., South 20-1/2 east 603.4 vrs., South 24 west 576.7 vrs., South 7-3/4 west 568.8 vrs. South 60 west, 913.0 vrs. South 35-1/4 west 671.8 vrs., South 35 west 1306.8 vrs., South 9-3/4 west 609.1 vrs., South 36 west 705.6 vrs., South 22-3/4 west 356.0 vrs., South 68-3/4 west 1222.6 vrs. to a point on the west bank of the dredged channel of Colorado River and continuing along the shore of Matagorda Bay with its meanders as follows; North 74-3/4 west 327.6 vrs. North 27 west 412.6 vrs., North 5-3/4 east 525.6 vrs., North 5-1/2 west 694.8 vrs., North 43-3/4 west 396.0 vrs., North 29 west 2350.8 vrs., North 7-1/2 west 409.3 vrs., to a point in the center line of what is known as the east channel of the old Colorado River.

THENCE up the center of said, east channel with its meanders as follows: North 6-3/4 east, 159.1 vrs., North 48-1/4 west, 31.4 vrs., North 10-1/4 east 214.2 vrs., North 17-1/4 west 93.6 vrs., North 37-1/4 east 115.9 vrs., North 3-1/4 east 125.3 vrs., North 25 east 260.3 vrs., North 13-3/4 west 180.0 vrs., North 51-3/4 west 129.6 vrs., North 77-3/4 west 121.7 vrs., South 75-1/2 west 99.0 vrs., North 73-1/2 west 136.1 vrs., South 84-3/4 west 70.2 vrs., North 73-1/4 west 101.5 vrs., South 84-3/4 west 163.8 vrs., South 72-1/2

MAY 1 1969

General Land Office

west 147.2 vrs., North 82-1/4 west 155.5 vrs., North 59-1/2 west 168.1 vrs., North 34-1/4 west 116.3 vrs., North 2-1/2 east 239.0 vrs., North 7-1/2 east 604.8 vrs., North 10 east 203.8 vrs., North 32-3/4 east 227.5 vrs., North 10-1/2 east 106.2 vrs., to a point on the southeast bank of the old Colorado River;

THENCE along the southeast bank of said old river with its meanders as follows: North 31-1/2 east 73.4 vrs., North 37-1/2 east 154.8 vrs., North 42-1/4 east 107.6 vrs., North 49-3/4 east 55.1 vrs., North 55-1/4 east 504.7 vrs., South 86-1/4 east 138.2 vrs., South 81 east 310.3 vrs., North 66-1/2 east 203.4 vrs., North 57-1/4 east 74.9 vrs., to the place of beginning, containing within the foregoing described boundaries 4,505.45 acres of land, more or less.

It is further ORDERED, ADJUDGED AND DECREED by the Court that all Defendants and Intervenor, H. P. BAXTER, JR., BESSIE MAE BAXTER OWENS, DON OWENS, W. L. BAXTER, MRS. THELMA NINI, W. S. BAXTER, ADDIE-LEE STEUBING, ROBERT W. STEUBING, WALLACE NINI, PARKER BROTHERS & CO., INC., GERALDINE ELIZABETH PARKER, and MATAGORDA SHELL COMPANY, go hence without day and recover their costs incurred herein against Plaintiff, THE STATE OF TEXAS, for which let execution issue.

To which judgment of the Court the Plaintiff excepts and gives notice of appeal to the Court of Civil Appeals for the 13th Judicial District of Texas, at Corpus Christi, Texas.

ENTERED THIS THE 6th day of October, 1967.

APPROVED AS TO FORM AND SUBSTANCE:

/s/ Seymour Lieberman
SEYMOUR LIEBERMAN
Attorney for The Baxters

/s/ John C. Patterson
J U D G E

/s/ Vance Dunnam
Attorney for Geraldine E. Parker

BRACEWELL & PATTERSON

By /s/ Bob Casey, Jr.
Attorneys for Parker Brothers & Co., Inc.
and Matagorda Shell Company

August 29, 1967

Mr. Ben Harrison
Assistant Attorney General
Austin, Texas

Re: State of Texas v. H. P. Baxter,
Jr. et al

Dear Mr. Harrison:

All of the Defendants in the above cause submit the following offer of settlement of said cause, towit:

Defendants will release all claims to the oil, gas and other minerals, in, on or under the property in controversy to the State of Texas.

The Defendants will further release all surface to the property in controversy with the exception of the following which the State of Texas will release unto the Defendants, towit:

Approximately one thousand (1000) acres of land bounded on the west by the east line of the right-of-way of State Highway No. 2031; the south by the land claimed by the Culver estate, property marked by a fence; and the north line beginning at the intersection of St Mary's Bayou and State Highway No. 2031 and running along the south side of the bayou until the bayou begins its northerly meandering and continuing the north line of this property straight across in an easterly direction to the waters of Matagorda Bay; and on the east by East Matagorda Bay.

It is understood that this settlement would be effected by judgment of the court.

For the purpose of this settlement the State does not make any claim to the property north of the intra-coastal canal known as Baxter Island or the Stephen F. Austin survey.

Defendants to pay survey costs of land released to them.

The Defendants agree to pay the court costs.

Yours very truly

Vance Dunnam
VANCE DUNNAM, Attorney for
Geraldine Elizabeth Parker

SEYMOUR LIEBERMAN, Attorney for
H. P. Baxter, et al

FENTRESS BRACEWELL, Attorney for
Parker Bros. Inc.

*Telegram attached
is authority of Lieberman
& Bracewell to settle.*

File No. Sketch File 45
Matagorda County
 Judgment No. 19,049
 Filed May 1 19 87
 By GARRY MAURO, Com'r
Douglas Howard

State of Texas v. H. P. Baxter,
 et al.

Mr. Ben Harrison
 Assistant Attorney General
 Austin, Texas

Dear Mr. Harrison:

All of the Defendants in the above cause admit the following offer of settlement of said cause, to-wit:

Defendants will release all claims to the oil, gas and other minerals, in, on or under the property in controversy to the State of Texas.

The Defendants will further release all surface to the property in controversy with the exception of the following which the State of Texas will release unto the Defendants, to-wit:

Approximately one thousand (1000) acres of land bounded on the west by the east line of the right-of-way of State Highway No. 2031; the south by the land claimed by the Oliver estate, property marked by a fence; and the north line beginning at the intersection of St. Mary's Bayou and State Highway No. 2031 and running along the south side of the bayou until the bayou begins its northerly meandering and continuing the north line of this property straight across in an easterly direction to the waters of Matagorda Bay; and on the east by East Matagorda Bay.

It is understood that this settlement would be effected by judgment of the court.

For the purpose of this settlement the State does not make any claim to the property north of the intra-coastal canal known as Baxter Island or the Stephen F. Austin survey.

Defendants to pay survey costs of land released to them.

The Defendants agree to pay the court costs.

Yours very truly

W. B. DUNN
 W. B. DUNN, Attorney for
 Geraldine Elizabeth Parker
SEYMOUR LINDBERMAN
 H. P. Baxter, et al
 SEYMOUR LINDBERMAN, Attorney for
PETERSON BRADWELL
 Parker Bros. Inc.

*Thompson attached
 a certificate of
 admission to settle*

Trial Court
No. 19,049

AFFIRMED JULY 11, 1968

NO. 4714

IN THE

COURT OF CIVIL APPEALS

FOR THE

TENTH SUPREME JUDICIAL DISTRICT OF TEXAS

AT WACO

* * * * *

THE STATE OF TEXAS, Appellant

VS.

H. P. BAXTER, JR., ET AL., Appellees

* * * * *

Appeal from 23rd District Court
Matagorda County

* * * * *

O P I N I O N

* * *

This is a trespass to try title action. We adopt the State's statement of the case.

Stephen F. Austin, appellees' predecessor in title, received from the Mexican Government a grant of land in 1830 including two labors, (approximately 355 acres) situated on the left margin of the Colorado River where it empties into Matagorda Bay.

Appellees claim that the original Stephen F. Austin Survey comprising approximately 355 acres, now contains 4505.45 acres from accretion into Matagorda Bay. The State claims that this is not true, and filed this suit to recover the land (located in Matagorda Bay, across the Intra-coastal Waterway from the Stephen F. Austin Survey, comprising 4000 acres, more or less) as being a part of the public domain never having been appropriated by grant or patent.

The State contends "that the land in question is not accretion to the original Stephen F. Austin Survey

Matagorda Co. Sketch File No. 45

county 30894

through the operation of natural causes; but that the land in controversy began as islands in Matagorda Bay, and much or all of it is still islands; that these islands were formed in Matagorda Bay by the work of man, and were not accretion from the original shore to the islands."

The jury answered in effect: (1) the land in question was created by accretion; (3) the accretion began at the original line of the shore, and (4) extended the surface of the land from the landward shore lines to its present boundaries; (5) that the extension of the surface is all above the line of mean higher-high tide.

The State's first point is that the verdict of the jury is contrary to the overwhelming preponderance of the evidence.¹ It is contended the evidence is factually and legally inadequate to sustain the verdict.

We have carefully considered the contention, and it is overruled. The State introduced convincing evidence in the form of photographs, maps, expert opinion and lay evidence that the land in question, or most of it, was covered by the waters of Matagorda Bay until 1920; that it contained only 1495 acres in 1926, but increased to an area of over 4500 acres by 1936; that although it increased only two acres per year from 1830 (the year of Austin's grant) to 1918, it increased at the rate of 100 acres per year from 1918 to 1926; that the increase was the result of a filling or build-up of flats from and between islands in the bay, and was from the

1. The controlling principles governing determination of the ownership of the land in question are announced and exhaustively treated in such cases as the following, and we have purposely avoided extending this opinion by repeating them: *State v. Balli*, 144 Tex. 195, 190 S. W. 2d 71, cert. den.; *Lorino v. Crawford Packing Co.*, 142 Tex. 51, 175 S. W. 2d 410; *Giles v. Basore*, 154 Tex. 366, 278 S. W. 2d 830; *Luttes v. State*, 159 Tex. 500, 324 S. W. 2d 167; *Humble Oil & Refining Co. v. Sun Oil Co.*, 5 Cir., 190 F. 2d 191, rehearing den. 191 F. 2d 705, and authorities cited.

floor of Matagorda Bay -- not from the shore; that the deposits which created the land resulted from the 1925-1929 removal from the Colorado River of a chain of "rafts" extending 15 or 20 miles composed of compacted logs, snags, debris and silt, which had previously choked the river; that release of the accumulated material composing these rafts caused the silt to be carried to the mouth of the river and deposited in the bay over a relatively brief interval, perhaps as short as two years; and that dredging operations in the bay created spoil banks creating a series of islands which, with other existing "islands", caught the material discharged by the river flow. There was ample evidence that the land involved was created by the aid of artificial means during a brief time, and that it grew from the bay to the shore.

Appellees' evidence was equally forceful that the growth was gradual; that the land increased in area as a delta from the original shore outward; that the material in the raft itself had accumulated naturally over many years, and was carried by natural forces downstream when released; that sediment attached itself to the Austin Survey so slowly that the process was imperceptible; that the survey had increased to over 700 acres in 1918, without "islands"; that 1400 acres had been added from the shore by accretion, before the chain of rafts had been destroyed, as a result of the discharge of silt carried by the river to its mouth; that over 780 acres had been added in an eight-year period before removal of the rafts, and the aggregate area had increased to 1495 acres by 1926 while the raft was intact. There was expert opinion testimony to the effect that the increase in area was very slow, gradual and imperceptible, and that much of it occurred beneath the surface before the

delta became observable above the water.

We are unable to conclude that the evidence was not adequate to support the findings of the jury, and the State's contentions are overruled.

Refusal of a requested definition and eleven requested special issues is complained of. The charge defined "accretion" as "the gradual and imperceptible depositing by water of solid matter through the operation of natural causes."² Appellant requested submission of a definition of the term "natural causes", as meaning "causes that are independent of and unassisted by, to any substantial degree, man made acts."

The court is not required, under Rule 277, Texas Rules of Civil Procedure, to define terms of ordinary meaning; but only legal terms. *Magnolia Petroleum Co. v. Long*, 126 Tex. 195, 86 S. W. 2d 450, 455; *Pritchett v. Highway Insurance Underwriters*, 158 Tex. 116, 309 S. W. 2d 46, 49. "Natural" is not a legal term, but one of ordinary meaning. The requested definition would have only told the jury in effect, that "natural" causes did not include causes which were not natural, and would have unduly emphasized the State's evidentiary position. It was not reversible error to refuse the definition.

The refused issues requested would have inquired (8-10) whether each portion of the delta began its formation as a series of islands formed by deposit of material arising from the bay floor; (11) whether at the time an aerial survey was made in 1930, the delta consisted of islands and surrounding water; (12) whether "man-made acts substantially contributed

2. The court apparently utilized the definition of "accretion" in *Giles v. Basore*, 154 Tex. 366, 278 S. W. 2d 830, 835.

to the removal of the raft from the Colorado River into Matagorda Bay"; (13-16) whether removal of the rafts, dredging, and building of a highway "substantially contributed to the build-up" of the delta; and (17, 18) whether, without any "made-made acts" found to contribute, the size and "the shape of the delta" would "have been greatly altered."

Requested issues 8-10 and 12-18 would have simply submitted the negative or opposite of the issues submitted by the court as to which the burden of proof was imposed on appellees. The court was not required to submit the requested issues under the provisions of Rule 279. These were not independent grounds of recovery; they were in rebuttal of defendants' theory of defense. It was not error to refuse them. *Wright v. Traders & General Ins. Co.*, 132 Tex. 172, 123 S. W. 2d 314, 316.

Requested Issue 11 is evidentiary, and was correctly refused.

Appellant's other points have been considered fully and are overruled. AFFIRMED.

FRANK M. WILSON
Associate Justice

NO. 19,049

THE STATE OF TEXAS	X	IN THE DISTRICT COURT OF
VS.	X	MATAGORDA COUNTY, TEXAS
H. P. BAXTER, JR., ET AL	X	23RD JUDICIAL DISTRICT

DEFENDANTS' ABSTRACT OF TITLE

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME H. P. BAXTER, JR., BESSIE MAE BAXTER OWENS, DON OWENS, W. L. BAXTER, MRS. THELMA NINI, W. S. BAXTER, ADDIE LEE STEUBING, ROBERT W. STEUBING and WALLACE NINI, Defendants in the above numbered and entitled cause and in response to a demand for an abstract in writing of the claim of title to the premises in question upon which these Defendants rely, which demand was made by the Plaintiff, THE STATE OF TEXAS, and file this their abstract in writing of said claim of title upon which they rely:

- (1) Grant from the Mexican Government to Stephen F. Austin, dated May 31, 1828, recorded in Volume A, Page 143 of the Spanish Records and recorded in Volume 112, Page 9 of the Deed Records of Matagorda County, Texas.
- (2) Certified copies of instruments in the Estate of Stephen F. Austin, Deceased, such instruments being found of record in Volume 5, Page 21 of the Deed Records of Matagorda County, Texas.
- (3) Certified copies of instruments in the Estate of Emily M. Perry, Deceased. Such instruments are recorded in Volume 5, Page 6 of the Deed Records of Matagorda County, Texas.
- (4) Deed from William J. Bryan to G. Baer and Thomas C. Nye, dated June 19, 1877, filed in Volume Q, Page 220 of the Deed Records of Matagorda County, Texas and acknowledged on June 19, 1877 before J. P. Bryan, a Notary Public in and for Brazoria County, Texas.

- (5) Deed from Thomas C. Nye and G. Baer to Robert John Baxter and Henry Phillip Baxter dated July 15, 1878, recorded in Volume "R", Page 18 of the Deed Records of Matagorda County, Texas and acknowledged on July 15, 1878 by William C. Braman, a Notary Public of Matagorda County.
- (6) A Mineral Deed executed by H. P. Baxter and wife, May Baxter, to H. E. Dugat and S. L. Duke, dated May 14, 1929, filed in Volume 87, Page 504 of the Deed Records of Matagorda County and acknowledged on May 14, 1929 before F. H. Jones, a Notary Public for Matagorda County, Texas.
- (7) Right-of-Way Deed executed by H. P. Baxter and wife, May Baxter, and R. J. Baxter and wife, Addie Baxter, to the United States of America, dated January 9, 1934, and recorded in Volume 104, Page 413 of the Deed Records of Matagorda County and acknowledged on January 9, 1934 before E. O. Taulbee, a Notary Public for Matagorda County, Texas.
- (8) A Mineral Deed executed by H. P. Baxter and wife, May Baxter, to George R. Burke, dated April 16, 1937, and recorded in Volume 117, Page 604, of the Deed Records of Matagorda County and acknowledged on April 16, 1937 before W. W. Rugley, a Notary Public for Matagorda County, Texas.
- (9) A Mineral Deed executed by George R. Burke to Tulane Gordon dated April 16, 1937, recorded in Volume 120, Page 372 and acknowledged on April 16, 1937 before E. O. Taulbee, a Notary Public for Matagorda County, Texas.
- (10) Affidavit of Linden Barrett dated June 3, 1937, recorded in Volume 120, Page 76 of the Deed Records of Matagorda County and acknowledged before F. H. Jones, a Notary Public for Matagorda County on June 3, 1937.
- (11) Affidavit of P. C. Bundy dated April 26, 1937, recorded in Volume 119, Page 65 of the Deed Records of Matagorda County and acknowledged on April 26, 1937 before Talley M. Metzger, a Notary Public for Matagorda County, Texas.
- (12) Release executed by P. C. Bundy and B. Frank Wood to J. C. Hawkins dated March 15, 1938, recorded in Volume 125, Page 205 of the Deed Records of Matagorda County and acknowledged on March 15, 1938 before Jeanette Vick, a Notary Public for Harris County, Texas.
- (13) Application for Survey No. 54 made by L. F. Brothers to John F. Rother, County Surveyor of Matagorda County, filed on May 19, 1937 in Volume 2, Page 54 of the Surveyor's Records in Matagorda County, Texas.

- (14) Application for Survey No. 60 by L. F. Brothers to John F. Rother requesting a survey. Said application being filed on May 19, 1937 in Volume 2, Page 60 of the Surveyor's Records in Matagorda County, Texas
- (15) Application for Survey No. 61 by L. F. Brothers to John F. Rother, said application being filed on May 19, 1937 in Volume 2, Page 61 of the Surveyor's Records of Matagorda County, Texas.
- (16) Field Notes of a survey made June 10, 1937 made by H. A. Pierce, certified to by him on September 1, 1937 and certified and approved by John F. Rother on September 1, 1937 and recorded in Book 8, Page 116 of the Surveyor's Records.
- (17) Field Notes of a survey made by H. A. Pierce and certified to by him on September 1, 1937 and also certified by John F. Rother, Surveyor of Matagorda County, Texas, on September 1, 1937 and recorded in his office in Book 8, Page 117.
- (18) Field Notes of a survey made by H. A. Pierce on June 10, 1937 and certified to by the said H. A. Pierce on September 1, 1937, and certified to by John F. Rother, Surveyor of Matagorda County, on September 1, 1937 and recorded in his records in Book 8, Page 122.
- (19) Affidavit of J. F. Williams, Affiant, dated June 20, 1936, recorded in Volume 295, Page 124, of the Matagorda County Deed Records, acknowledged on June 20, 1936 before Margaret H. McConnell, a Notary Public for Matagorda County, Texas.
- (20) Affidavit of H. J. Wilkins, Affiant, dated June 9, 1936, recorded in Volume 295, Page 129, of the Deed Records of Matagorda County, Texas, acknowledged before F. H. Jones, a Notary Public for Matagorda County, Texas on June 9, 1936.
- (21) Affidavit of Lucretia Sterry, Affiant, dated June 20, 1936, recorded in Volume 295, Page 133, of the Matagorda County Deed Records and acknowledged on June 20, 1936 before Margaret H. McConnell, a Notary Public for Matagorda County, Texas.
- (22) Affidavit of Elijah Dunbar, Affiant, dated June 20, 1936, recorded in Volume 295, Page 138, of the Matagorda County Deed Records and acknowledged on June 20, 1936 before Margaret H. McConnell, a Notary Public for Matagorda County, Texas.
- (23) Affidavit of Henry P. Baxter, Affiant, dated June 20, 1936, recorded in Volume 295, Page 143, of the Matagorda County Deed Records and acknowledged on June 20, 1936 before Margaret H. McConnell, a Notary Public for Matagorda County, Texas.

- (24) Affidavit of W. E. McNabb, Affiant, dated June 8, 1936, and recorded in Volume 295, Page 144 of the Matagorda County Deed Records and acknowledged on June 8, 1936, before Margaret H. McConnell, a Notary Public for Matagorda County, Texas.
- (25) Affidavit of John F. Rother and Pettus Watkins dated June 23, 1936, and recorded in Volume 295, Page 149 of the Matagorda County Deed Records and acknowledged on June 23, 1936 before Margaret H. McConnell, a Notary Public for Matagorda County, Texas.
- (26) Affidavit of J. F. Williams and W. E. Williams, Affiants, dated June 8, 1936, recorded in Volume 295, Page 152, of the Matagorda County Deed Records and acknowledged on June 8, 1936, before Margaret H. McConnell, a Notary Public for Matagorda County, Texas.
- (27) Affidavit of John F. Rother and Pettus Watkins, Affiants, dated June 8, 1936, recorded in Volume 295, Page 157, of the Matagorda County Deed Records and acknowledged on June 8, 1936 before Margaret H. McConnell, a Notary Public for Matagorda County, Texas.
- (28) Mineral Deed from Tulane Gordon to A. T. Schwennesen dated October 19, 1937, recorded in Volume 128, Page 453 of the Matagorda County Deed Records and acknowledged on October 19, 1937 before Deila Suit Street, a Notary Public for Harris County, Texas.
- (29) Mineral Deed executed by A. T. Schwennesen to H. J. Kister, William Reinhardt and Pacific Wire Products Corp. dated January 1, 1941, recorded in Volume 144, Page 258 of the Matagorda County Deed Records and acknowledged on January 7, 1942 before Leila Suit Street, a Notary Public for Harris County, Texas.
- (30) Boundary Agreement executed by A. W. McNabb, Jennie L. McNabb, W. E. McNabb, Roy Traylor, Deila Layton, and E. P. Layton. Also executed by H. P. Baxter, May Baxter, R. J. Baxter and Addie Baxter. This Agreement is dated August 30, 1944, recorded in Volume 156, Page 225 of the Matagorda County Deed Records and acknowledged on August 30, 1944 before Darwin M. Williams, a Notary Public for Matagorda County, Texas.
- (31) Copy of probate proceedings of the Estate of Henry Elmer Dugat, Deceased, such instruments filed for record on August 30, 1938 in Volume "W", Page 435 of the Probate Records of Matagorda County, Texas.
- (32) Right-of-Way Deed executed by Alpha Lee Dugat to the United States of America dated September 7, 1938, recorded in Volume 127, Page 305 of the Matagorda County Deed Records and acknowledged on September 7, 1938 before W. W. Rugley, a Notary Public for Matagorda County, Texas.

- (33) Right-of-Way Deed executed by H. P. Baxter, joined by his wife, May Baxter, R. J. Baxter, joined by his wife, Addie Baxter, to the United States of America, dated November 16, 1938, recorded in Volume 128, Page 550 of the Matagorda County Deed Records and acknowledged on the 16th day of November, 1938, before E. O. Taulbee, a Notary Public for Matagorda County, Texas.
- (34) Right-of-Way Deed executed by R. A. Welch and Tulane Gordon to the United States of America dated January 20, 1939, recorded in Volume 128, Page 557, of the Matagorda County Deed Records and acknowledged by R. A. Welch on the 20th day of January, 1939 before Ina Wade, a Notary Public for Harris County, Texas, and acknowledged by Tulane Gordon on the 26th day of January, 1939 before Roberta Brunch, a Notary Public for Harris County, Texas.
- (35) Right-of-Way Deed executed by Linden Barrett to the United States of America dated January 28 1939, recorded in Volume 128, Page 567, of the Matagorda County Deed Records and acknowledged on January 28th, 1939, before E. O. Taulbee, a Notary Public for Matagorda County, Texas.
- (36) Right-of-Way Deed executed by A. T. Schwennessen to the United States of America dated January 31, 1939, recorded in Volume 128, Page 602, of the Matagorda County Deed Records and acknowledged on January 31, 1939, before Leila Suit Street, a Notary Public for Harris County, Texas.
- (37) Right-of-Way Deed executed by S. L. Duke and wife, Annie Duke, to the United States of America dated February 3, 1939, recorded in Volume 128, Page 619, of the Matagorda County Deed Records and acknowledged on February 3, 1938, before L. W. Pollard, a Notary Public for Fort Bend County, Texas.
- (38) Right-of-Way Deed executed by H. P. Baxter and wife, May Baxter, and R. J. Baxter and wife, Addie Baxter, to the County of Matagorda dated April 3, 1940, recorded in Volume 2, Page 581, Record of Deeds to County Lands, Matagorda County, Texas and acknowledged before D. M. Williams by H. P. Baxter and wife, May Baxter, on April 3, 1940 and acknowledged before R. D. Williams by R. J. Baxter and wife, Addie Baxter, on the 3rd day of May, 1940, both parties being a Notary Public for Matagorda County, Texas.
- (39) Right-of-Way Deed executed by H. P. Baxter and wife, May Baxter, R. J. Baxter and wife, Addie Baxter, to the United States of America, dated September 21, 1942, recorded in Volume 146, Page 498A, of the Matagorda County Deed Records and acknowledged on September 21, 1942 before James W. Gartrell, a Notary Public for Matagorda County, Texas.

- (40) Right-of-Way Deed executed by Alpha Lee Dugat to the United States of America, dated September 21, 1942, recorded in Volume 146, Page 490A, of the Matagorda County Deed Records and acknowledged on September 21, 1942 before James W. Gartrell a Notary Public for Matagorda County, Texas.
- (41) Right-of-Way Deed executed by H. J. Kister to the County of Matagorda, dated September 21, 1942, recorded in Volume 146, Page 492A of the Matagorda County Deed Records and acknowledged on September 21, 1942, before Evanda M. Ashton, a Notary Public for Los Angeles County, California.
- (42) Certified copy of probate proceedings of the Estates of Hannie J. Kister and Blanche B. Kister, Deceased, filed May 21, 1955 and recorded in Volume 274, Page 439 of the Matagorda County Deed Records.
- (43) Right-of-Way Deed executed by S. L. Duke to the United States of America dated October 14, 1942, recorded in Volume 146, Page 502A, Matagorda County Deed Records and acknowledged on October 14, 1942 before James W. Gartrell, a Notary Public for Matagorda County, Texas.
- (44) Right-of-Way Deed executed by Linden Barrett dated August 18, 1942, recorded in Volume 146, Page 371, of the Matagorda County Deed Records and acknowledged before James W. Gartrell, a Notary Public for Matagorda County, Texas on August 18, 1942.
- (45) Right-of-Way Deed executed by A. T. Schwennesen, dated September 10, 1942, recorded in Volume 146, Page 468, of the Matagorda County Deed Records and acknowledged on September 10, 1942, before Leila Suit Street, a Notary Public for Harris County, Texas.
- (46) Right-of-Way Deed executed by Pacific Wire Products Corporation to the County of Matagorda, dated September 14, 1942, recorded in Volume 146, Page 474A of the Matagorda County Deed Records and acknowledged on September 14, 1942 before Juanita Mathews, a Notary Public for Los Angeles County, California.
- (46) Right-of-Way Deed executed by William Reinhardt dated September 15, 1942, recorded in Volume 146, Page 478A of the Matagorda County Deed Records and acknowledged on September 15, 1942, before Marjorie Stough, a Notary Public for Los Angeles County, California.
- (47) Right-of-Way Deed executed by R. A. Welch and Tulane Gordon to the County of Matagorda dated September 17, 1942, recorded in Volume 146, Page 482A of the Matagorda County Deed Records and acknowledged on September 17, 1942 before Ina Wade, a Notary Public for Harris County, Texas.

- (48) Commissioner's Court Order of the Commissioner's Court of Matagorda County, Texas dated September 14, 1942, recorded in Volume "O", Page 459 of the Court Minutes of the Commissioner's Court of Matagorda County, Texas.
- (49) Probate proceedings of the Estate of H. P. Baxter, Sr., Deceased, recorded in Volume 1, Pages 608-612, of the Matagorda County Probate Minutes.
- (50) Deed from May Baxter to W. L. Baxter, Bessie Mae Owen, and H. P. Baxter, Jr. dated September 7, 1949, recorded in Volume 201, Page 475, of the Matagorda County Deed Records and acknowledged on the 7th day of September, 1949 before Dorothy D. McKelvy, a Notary Public for Matagorda County, Texas.
- (51) A Warranty Deed from R. J. Baxter and wife, Addie, to Ingomar Baxter, W. S. Baxter, Thelma Baxter Nini, Wallace Nini and Adalee Johnson dated June 2, 1952, recorded in Volume 234, Page 141 of the Matagorda County Deed Records and acknowledged on June 6, 1952, before Darwin M. Williams, a Notary Public for Matagorda County, Texas.
- (52) Quit-Claim Deed executed by Addie L. Baxter to Addie Lee Johnson dated August 20, 1955, recorded in Volume 318, Page 469 of the Matagorda County Deed Records and acknowledged on August 20, 1955 before Phyllis Williams, a Notary Public for Matagorda County, Texas.
- (53) Warranty Deed executed by Addie Lee Johnson joined by her husband, Albert P. Johnson to Bessie Mae Owen, dated August 20, 1955, recorded in Volume 318, Page 470 of the Matagorda County Deed Records and acknowledged on August 20, 1955 before Dorothy D. McKelvy, a Notary Public for Matagorda County, Texas.
- (54) Quit-Claim Deed executed by Addie L. Baxter to Thelma Nini dated May 13, 1958, recorded in Volume 318, Page 472 of the Matagorda County Deed Records and acknowledged on May 14, 1958 before Phyllis Williams, a Notary Public for Matagorda County, Texas.
- (55) Warranty Deed executed by Thelma Nini joined by her husband, T. A. Nini, Sr. to W. L. Baxter, H. P. Baxter, Jr. and Bessie Mae Owen dated May 13, 1958, recorded in Volume 318, Page 473 of the Matagorda County Deed Records and acknowledged on May 14, 1958 before Phyllis Williams, a Notary Public for Matagorda County, Texas.
- (56) Release of Lien executed by T. A. Nini, Sr. and wife, Thelma Nini, to W. L. Baxter, H. P. Baxter, Jr. and Bessie Mae Owen dated January 11, 1960, recorded in Volume 345, Page 528 of the Matagorda County Deed Records and acknowledged on January 11, 1960 before Betty L. Stampley, a Notary Public for Matagorda County, Texas.

- (57) Warranty Deed executed by W. S. Baxter and wife, Mamie P. Baxter, and Addie Baxter to R. H. Parker dated April 16, 1958, recorded in Volume 317, Page 591, of the Matagorda County Deed Records and acknowledged by W. S. Baxter and Addie Baxter on April 24, 1958 before Phyllis Williams, a Notary Public for Matagorda County, Texas, and acknowledged by Mamie P. Baxter on April 22, 1958 before Hazla Christine Bryant, a Notary Public for Bexar County, Texas.
- (58) Quit-Claim Deed from Addie L. Baxter to Wallace Nini dated February 5, 1959, recorded in Volume 329, Page 574, and acknowledged on February 6, 1959, before R. D. Williams, a Notary Public for Matagorda County, Texas.
- (59) Warranty Deed from Wallace Nini to W. L. Baxter, H. P. Baxter, Jr. and Bessie Mae Owen, dated February 5, 1959, recorded in Volume 329, Page 575 of the Matagorda County Deed Records and acknowledged on February 6, 1959 before R. D. Williams, a Notary Public for Matagorda County, Texas.
- (60) Quit-Claim Deed from Addie L. Baxter to Addie Lee Crane dated May 18, 1959, recorded in Volume 333, Page 635 of the Matagorda County Deed Records and acknowledged on May 18, 1959 before K. B. Missony, a Notary Public for Matagorda County, Texas.
- (61) Warranty Deed from Thomas J. Crane joined by his wife, Addie Lee Crane, to W. L. Baxter, H. P. Baxter, Jr. and Bessie Mae Owen, dated May 18, 1959, recorded in Volume 333, Page 637 of the Matagorda County Deed Records and acknowledged on May 18, 1959 before Betty Lee Stampley, a Notary Public for Matagorda County, Texas.
- (62) A special Warranty Deed executed by Daniel R. Bullard, Clarence M. Malone and Wilford T. Doherty and Jesse Andrews to D. R. Bullard, W. T. Doherty, Robert Grosjean, J. A. Wheeler, Michael V. Kelley, et al dated September 1, 1953, recorded in Volume 276, Page 121 of the Matagorda County Deed Records and acknowledged on June 15, 1955 by Daniel R. Bullard, Clarence M. Malone and Wilford T. Doherty before Lois Rogan, a Notary Public for Harris County, Texas, and acknowledged by Jesse Andrews before Leila C. Barbano, a Notary Public for Harris County, Texas on June 16, 1955.
- (63) Assignment executed by A. T. Schwennesen and wife, Grace, to Leila S. Street, Trustee, dated August 19, 1957, recorded in Volume 314, Page 27 of the Matagorda County Deed Records and acknowledged on December 11, 1957 before Dagmar Tomlinson, a Notary Public for Los Angeles County, California.

- (64) Affidavit of Addie Baxter dated March 21, 1960, recorded in Volume 349, Page 192 of the Matagorda County Deed Records and acknowledged on March 21, 1960 before R. D. Williams, a Notary Public for Matagorda County, Texas.
- (65) Affidavit of Addie Baxter, Affiant, dated March 21, 1960, recorded in Volume 349, Page 195, of the Matagorda County Deed Records and acknowledged on March 21, 1960 before R. D. Williams, a Notary Public for Matagorda County, Texas.
- (66) Right-of-Way Easement from Bessie Mae Owen, Don S. Owen, H. P. Baxter, Jr., Donna Baxter, W. L. Baxter, Fannie Baxter, Mrs. Addie Baxter, Ingramar Baxter, W. S. Baxter and R. H. Parker to the Matagorda County Navigation District No. 2, dated October 27, 1960, recorded in Volume 3, Page 471 of the Matagorda County Deed Records and acknowledged on the 27th and 28th days of October, 28th day of November and 21st and 22nd day of November, all AD. 1960 and all before Thomas P. Hale, a Notary Public for Matagorda County, Texas.
- (67) Assignment of Right-of-Way from Matagorda County Navigation District No. 2 to the United States of America dated January 11, 1961, recorded in Volume 364, Page 216 of the Matagorda County Deed Records and acknowledged on January 11, 1961 before Jurldean Poe, a Notary Public for Matagorda County, Texas.
- (68) Instruments in the Estate of Cora Louise Ellis, Deceased, filed November 3, 1961 in Cause No. 2403 of the Probate Minutes of Matagorda County, Texas.
- (69) Warranty Deed from W. S. Baxter to Parker Brothers & Co., Inc. dated October 25, 1962, recorded in Volume 395, Page 324 of the Deed Records of Matagorda County and acknowledged on the 26th day of November, 1962 before S. E. Richers, a Notary Public for Matagorda County, Texas.
- (70) A Warranty Deed from W. S. Baxter to Parker Brothers & Co., Inc. dated November 20, 1962, recorded in Volume 395, Page 322 of the Deed Records of Matagorda County and acknowledged on November 26, 1962 before Essie Richers, a Notary Public for Matagorda County, Texas.
- (71) Warranty Deed from Ingomar Baxter to Parker Brothers & Co., Inc. dated March 13, 1963, recorded in Volume 399, Page 626 of the Deed Records of Matagorda County, Texas and acknowledged on March 14, 1963 before Eleanor C. Moore, a Notary Public for Matagorda County, Texas.

- (72) Certified copy of Decree in the Estate of J. E. B. Austin, Deceased, dated February 18, 1839, recorded in Volume C, Page 476 of the Deed Records of Matagorda County, Texas.
- (73) Partition Deed, dated September 1, 1846, between James F. Perry and Emily Perry on the one part and William G. Hill and Eliza M. Hill on the other part, recorded in Volume 5, Page 14 of the Deed Records of Matagorda County, Texas and acknowledged on May 5, 1847 before A. P. Crittenden, a Notary Public in and for Matagorda County, Texas.
- (74) Deed, dated August 16, 1911, from R. J. Baxter to Addie Baxter, recorded in Volume 30, Page 174 of the Deed Records of Matagorda County, Texas, and acknowledged before A. C. Burkhart, a Notary Public in and for Matagorda County, Texas.

These Defendants reserve the right to file further amendments to this Abstract of Title as may be allowed by Order of the Court herein.

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FILE WITH Matagorda SK. FILE 45

STATE v. BAXTER

Cite as 430 S.W.2d 547

Tex. 547

The STATE of Texas, Appellant,

v.

H. P. BAXTER, Jr., et al., Appellees.

No. 4714.

Court of Civil Appeals of Texas.

Waco.

July 11, 1968.

Rehearing Denied Aug. 1, 1968.

*Writ Ref. N.A.E.
H. P. Baxter, Jr. 3-26-69.*

Trespass to try title action. The 23rd District Court, Matagorda County, John C. Patterson, J., found for defendants and state appealed. The Court of Civil Appeals, Wilson, J., held that evidence sustained trial court's finding that increase of original land grant from 355 acres to in excess of 4,500 acres resulted from accretion into bay and became part of original grant.

Affirmed.

1. Navigable Waters \Rightarrow 44(3)

Evidence sustained trial court's finding that increase of original land grant from 355 acres to in excess of 4,500 acres resulted from accretion into bay and became part of original grant.

2. Trial \Rightarrow 219

Court is not required to define terms of ordinary meaning but only legal terms. Rules of Civil Procedure, rule 277.

3. Trial \Rightarrow 219

Term "natural" is not a legal term but one of ordinary meaning and trial court was not required to give instruction defining it. Rules of Civil Procedure, rule 277.

4. Trial \Rightarrow 203(3)

Trial court was not required to give requested instructions which submitted negative of issues submitted by court and which did not represent independent grounds of ~~the~~ Rules of Civil Procedure, rule 279.

Crawford Martin, Atty. Gen., Austin, Ben M. Harrison, Asst. Atty. Gen., for appellant.

Seymour Lieberman, Houston, Vance Dunnam, Waco, Bob Casey, Jr., Houston, for appellees.

OPINION

WILSON, Justice.

This is a trespass to try title action. We adopt the State's statement of the case.

Stephen F. Austin, appellee's predecessor in title, received from the Mexican Government a grant of land in 1830 including two labors, (approximately 355 acres) situated on the left margin of the Colorado River where it empties into Matagorda Bay.

Appellees claim that the original Stephen F. Austin Survey comprising approximately 355 acres, now contains 4505.45 acres from accretion into Matagorda Bay. The State claims that this is not true, and filed this suit to recover the land (located in Matagorda Bay, across the Intracoastal Waterway from the Stephen F. Austin Survey, comprising 4000 acres, more or less) as being a part of the public domain never having been appropriated by grant or patent.

The State contends "that the land in question is not accretion to the original Stephen F. Austin Survey through the operation of natural causes; but that the land in controversy began as islands in Matagorda Bay, and much or all of it is still islands; that these islands were formed in Matagorda Bay by the work of man, and were not accretion from the original shore to the islands."

The jury answered in effect: (1) the land in question was created by accretion; (3) the accretion began at the original line of the shore, and (4) extended the surface of the land from the landward shore lines to its present boundaries; (5) that

the extension of the surface is all above the line of mean higher-high tide. *Sp. Rev.*

The State's first point is that the verdict of the jury is contrary to the overwhelming preponderance of the evidence.¹ It is contended the evidence is factually and legally inadequate to sustain the verdict.

[1] We have carefully considered the contention, and it is overruled. The State introduced convincing evidence in the form of photographs, maps, expert opinion and lay evidence that the land in question, or most of it, was covered by the waters of Matagorda Bay until 1920; that it contained only 1495 acres in 1926, but increased to an area of over 4500 acres by 1936; that although it increased only two acres per year from 1830 (the year of Austin's grant) to 1918, it increased at the rate of 100 acres per year from 1918 to 1926; that the increase was the result of a filling or build-up of flats from and between islands in the bay, and was from the floor of Matagorda Bay—not from the shore; that the deposits which created the land resulted from the 1925-1929 removal from the Colorado River of a chain of "rafts" extending 15 or 20 miles composed of compacted logs, snags, debris and silt, which had previously choked the river; that release of the accumulated material composing these rafts caused the silt to be carried to the mouth of the river and deposited in the bay over a relatively brief interval, perhaps as short as two years; and that dredging operations in the bay created spoil banks creating a series of islands which, with other existing "islands", caught the material discharged by the river flow. There was ample evidence

that the land involved was created by the aid of artificial means during a brief time, and that it grew from the bay to the shore.

Appellees' evidence was equally forceful that the growth was gradual; that the land increased in area as a delta from the original shore outward; that the material in the raft itself had accumulated naturally over many years, and was carried by natural forces downstream when released; that sediment attached itself to the Austin Survey so slowly that the process was imperceptible; that the survey had increased to over 700 acres in 1918, without "islands"; that 1400 acres had been added from the shore by accretion, before the chain of rafts had been destroyed, as a result of the discharge of silt carried by the river to its mouth; that over 780 acres had been added in an eight-year period before removal of the rafts and the aggregate area had increased to 1495 acres by 1926 while the raft was intact. There was expert opinion testimony to the effect that the increase in area was very slow, gradual and imperceptible, and that much of it occurred beneath the surface before the delta became observable above the water.

We are unable to conclude that the evidence was not adequate to support the findings of the jury, and the State's contentions are overruled.

Refusal of a requested definition and eleven requested special issues is complained of. The charge defined "accretion" as "the gradual and imperceptible depositing by water of solid matter through the operation of natural causes."² Appellant requested submission of a definition of the term "natural causes", as meaning

1. The controlling principles governing determination of the ownership of the land in question are announced and exhaustively treated in such cases as the following, and we have purposely avoided extending this opinion by repeating them: *State v. Balli*, 144 Tex. 195, 190 S.W.2d 71, cert. den.; *Lorino v. Crawford Packing Co.*, 142 Tex. 51, 175 S.W.2d 410; *Giles v. Basore*, 154 Tex. 366, 278 S.W.

2d 830; *Luttes v. State*, 159 Tex. 500, 324 S.W.2d 167; *Humble Oil & Refining Co. v. Sun Oil Co.*, 5 Cir., 190 F.2d 191, rehearing den. 191 F.2d 705, and authorities cited.

2. The court apparently utilized the definition of "accretion" in *Giles v. Basore*, 154 Tex. 366, 278 S.W.2d 830, 835.

"causes that are independent of and unassisted by, to any substantial degree, man made acts."

[2,3] The court is not required, under Rule 277, Texas Rules of Civil Procedure, to define terms of ordinary meaning; but only legal terms. *Magnolia Petroleum Co. v. Long*, 126 Tex. 195, 86 S.W.2d 450, 455; *Pritchett v. Highway Insurance Underwriters*, 158 Tex. 116, 309 S.W.2d 46, 49. "Natural" is not a legal term, but one of ordinary meaning. The requested definition would have only told the jury in effect, that "natural" causes did not include causes which were not natural, and would have unduly emphasized the State's evidentiary position. It was not reversible error to refuse the definition.

The refused issues requested would have inquired (8-10) whether each portion of the delta began its formation as a series of islands formed by deposit of material arising from the bay floor; (11) whether at the time an aerial survey was made in 1930, the delta consisted of islands and surrounding water; (12) whether "man-made acts substantially contributed to the removal of the raft from the Colorado River into Matagorda Bay"; (13-16) whether removal of the rafts, dredging, and building of a highway "substantially contributed to the build-up" of the delta; and (17, 18) whether, without any "made-made acts" found to contribute, the size and "the shape of the delta" would "have been greatly altered."

[4] Requested issues 8-10 and 12-18 would have simply submitted the negative or opposite of the issues submitted by the court as to which the burden of proof was imposed on appellees. The court was not required to submit the requested issues under the provisions of Rule 279. These were not independent grounds of recovery; they were in rebuttal of defendants' theory of defense. It was not error to refuse them. *Wright v. Traders & General Ins. Co.*, 132 Tex. 172, 123 S.W.2d 314, 316.

Requested Issue 11 is evidentiary, and was correctly refused.

Appellant's other points have been considered fully and are overruled.

Affirmed.



Lillian E. SMITH, Appellant,

v.

BROWN & ROOT, INC., et al., Appellees.

No. 119.

Court of Civil Appeals of Texas.

Houston (14th Dist.).

June 5, 1968.

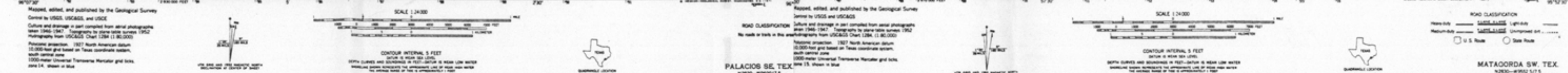
Rehearing Denied July 3, 1968.

Plaintiff brought Bill of Review seeking review of dismissal of her personal injury lawsuit for want of prosecution. The District Court of Harris County, John L. Compton, J., entered summary judgment in favor of defendants, and plaintiff appealed. The Court of Civil Appeals, Sam D. Johnson, J., held that plaintiff was not entitled to have the final judgment of dismissal set aside, where she made no allegation that she was prevented from presenting her cause of action by fraud, accident or wrongful act of either of the defendants, and where, on the other hand, she simply pleaded that her suit was dismissed due to the mistake, oversight or human inadvertence of herself and her attorneys.

Affirmed.

1. Judgment \hookrightarrow 335(3)

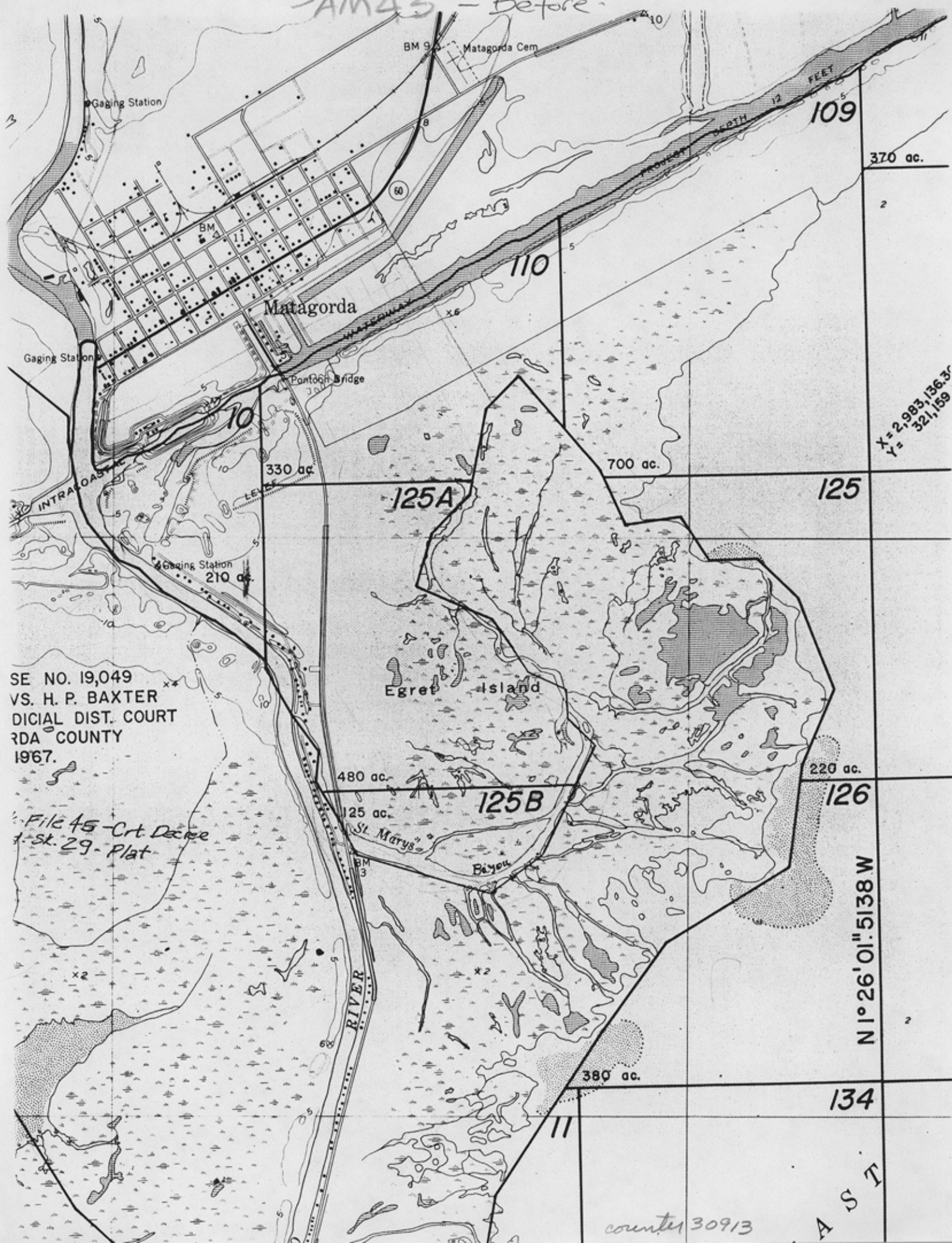
Before litigant can successfully set aside final judgment by bill of review, he must allege and prove, within time allowed, a meritorious defense to cause of action al-

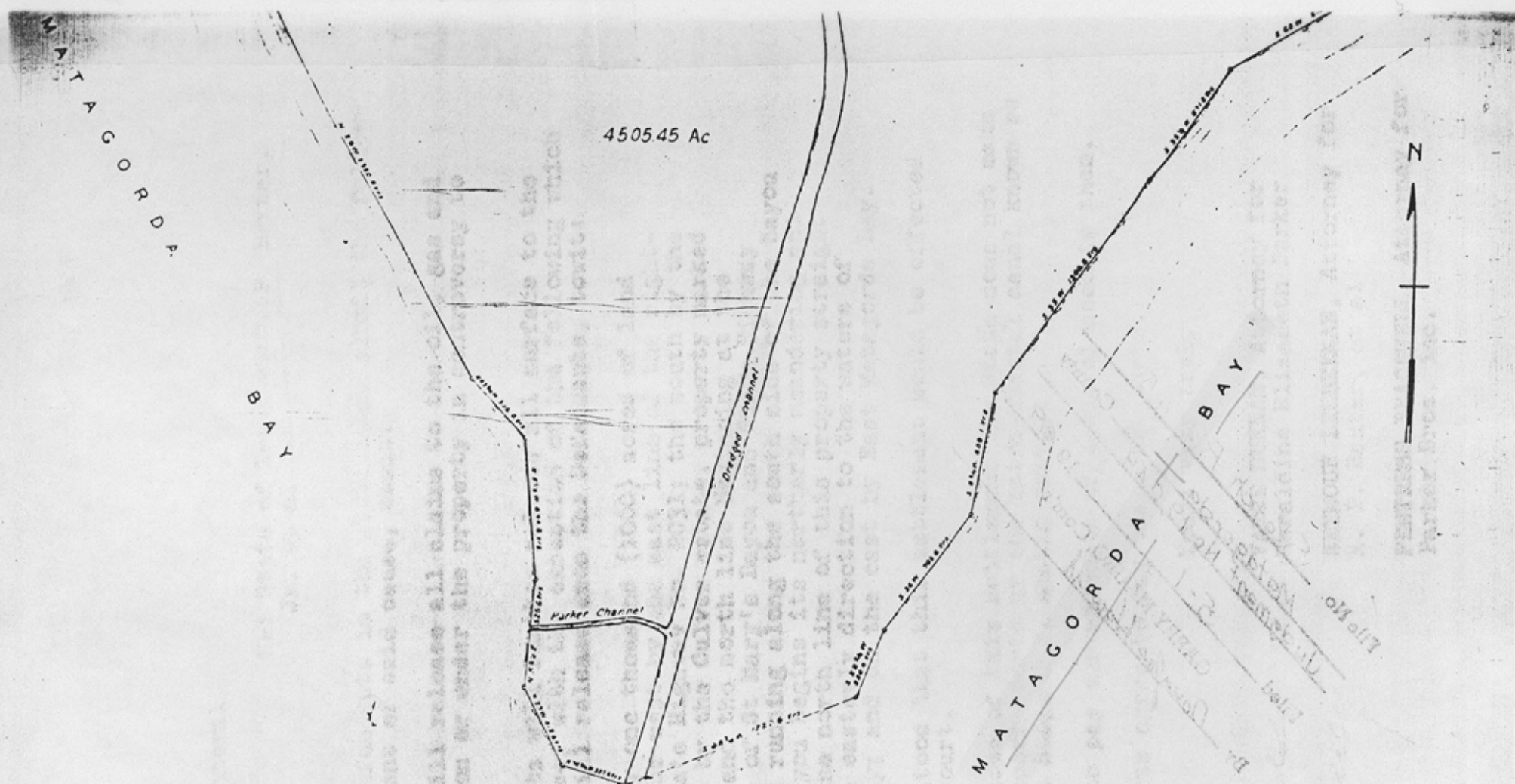
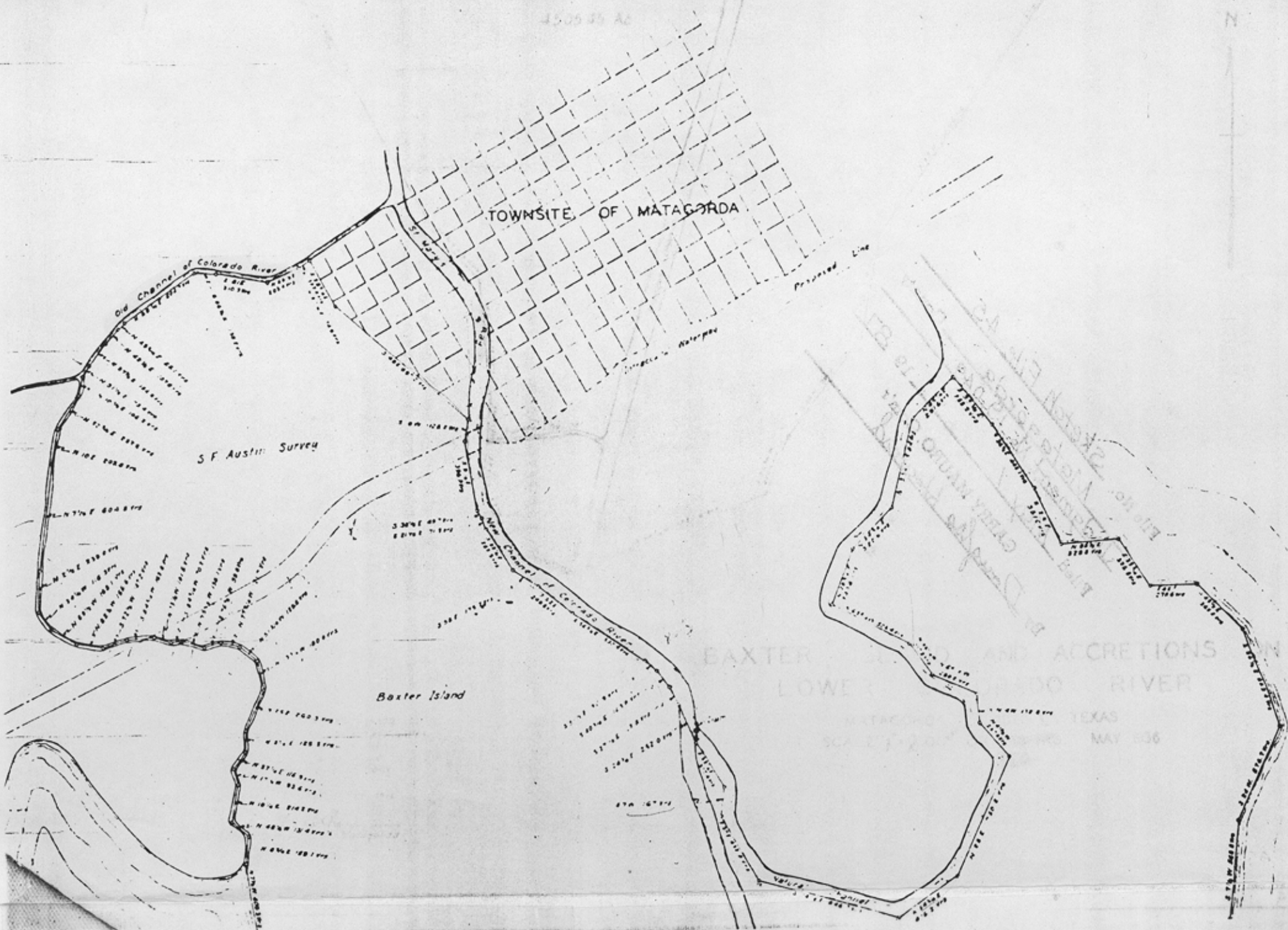


SUBMERGED AREA MAP NO. 2895-322
SUBDIVISION FOR MINERAL DEVELOPMENT IN
EAST MATAGORDA BAY
MATAGORDA COUNTY
GENERAL LAND OFFICE - BOB ARMSTRONG, COMMISSIONER

counter 30912

SAM43 - Before





I, John F. Rother, County Surveyor of Matagorda County, Texas, do hereby certify that the above field notes and plat correctly represent a survey as was made by me on the ground and that all marks and bearings are as shown on the plat as shown on field notes and shown on plat.

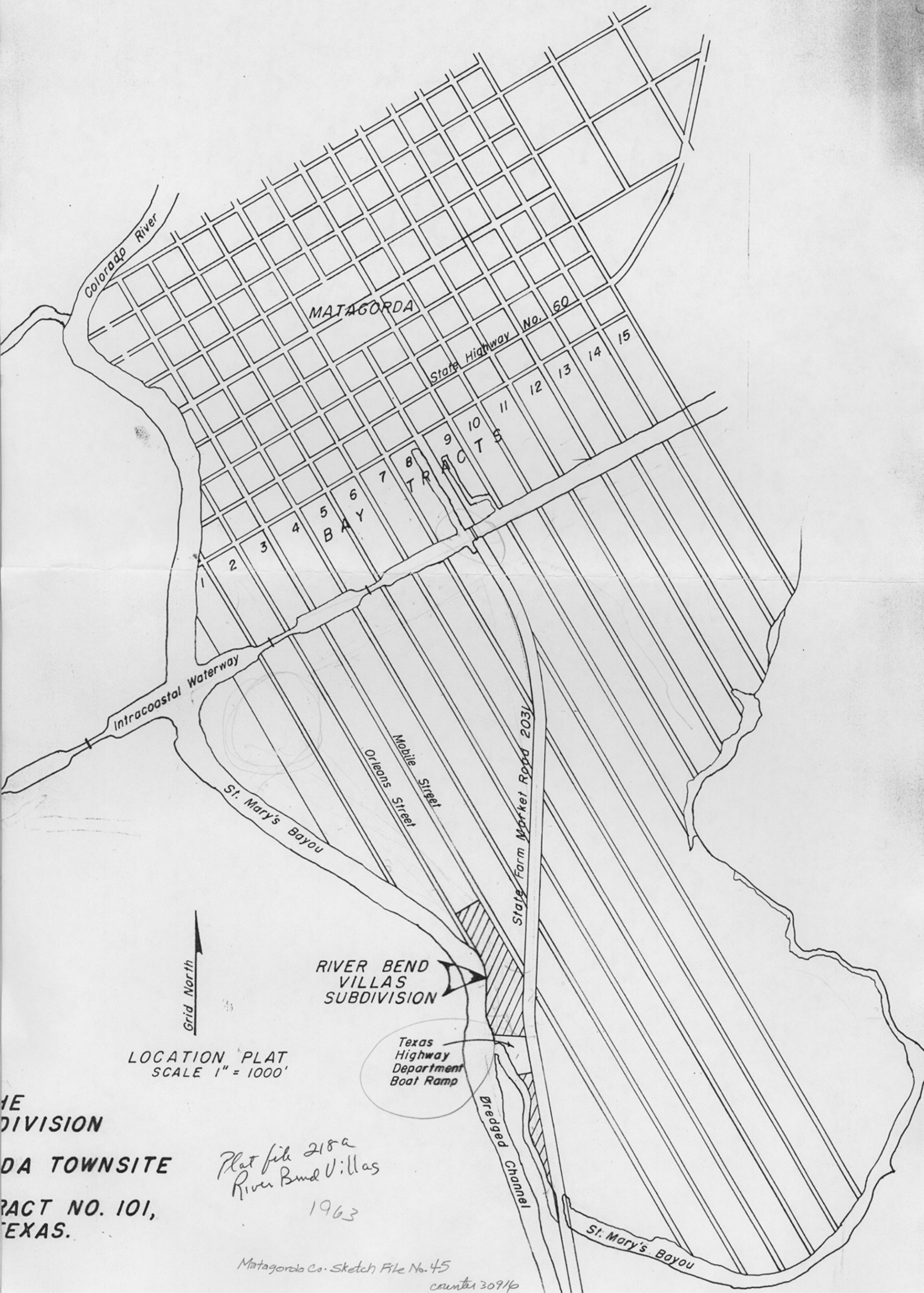
Given Under My Hand and Seal of Office this 23rd day of May 1936

John F. Rother
County Surveyor of Matagorda
County, Texas

BAXTER ISLAND AND ACCRETIONS ON LOWER COLORADO RIVER

MATAGORDA COUNTY, TEXAS
SCALE: 1" = 2000' OR 300 YDS. MAY 1936
720





THE
DIVISION

DA TOWNSITE

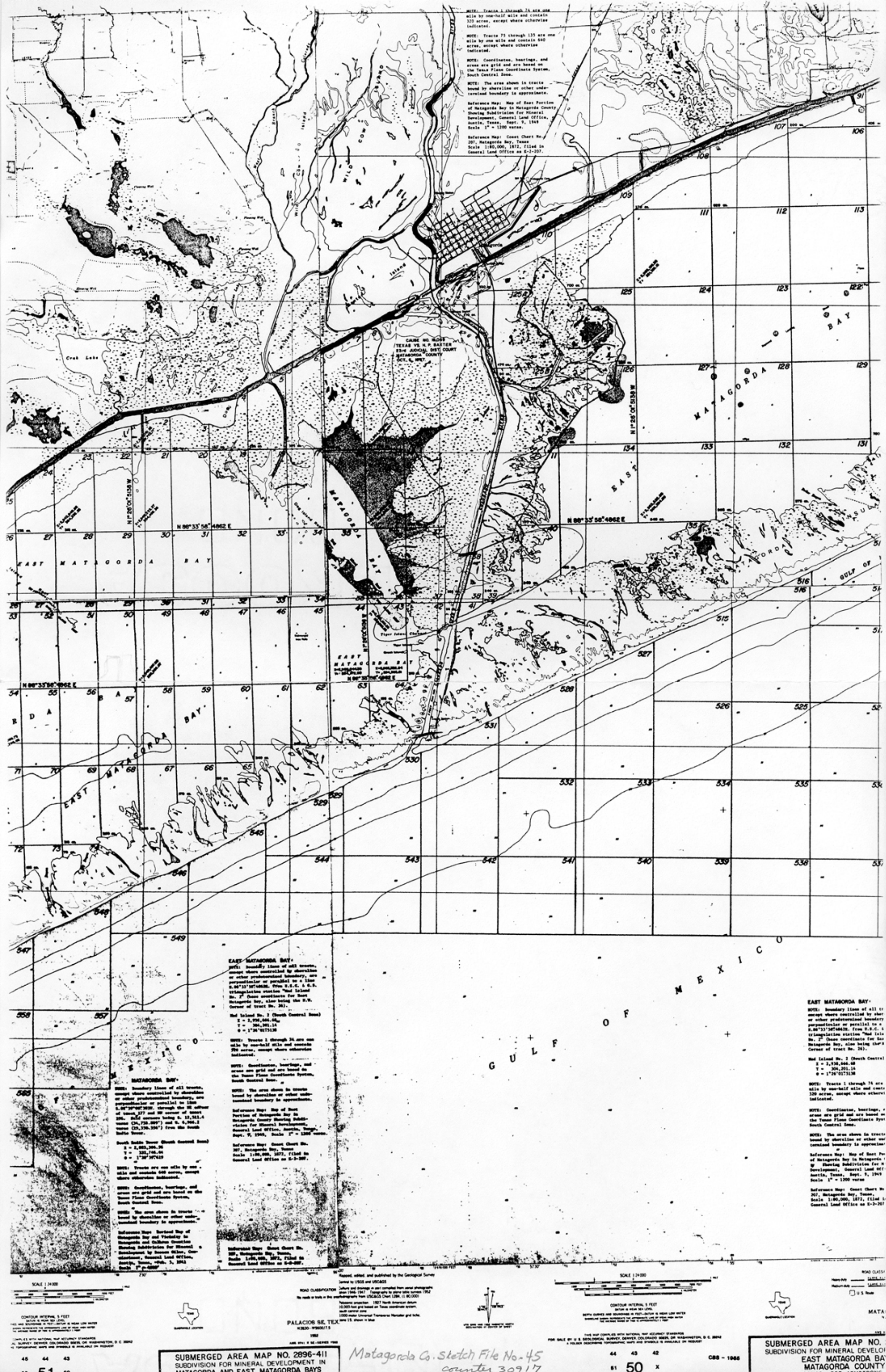
TRACT NO. 101,
TEXAS.

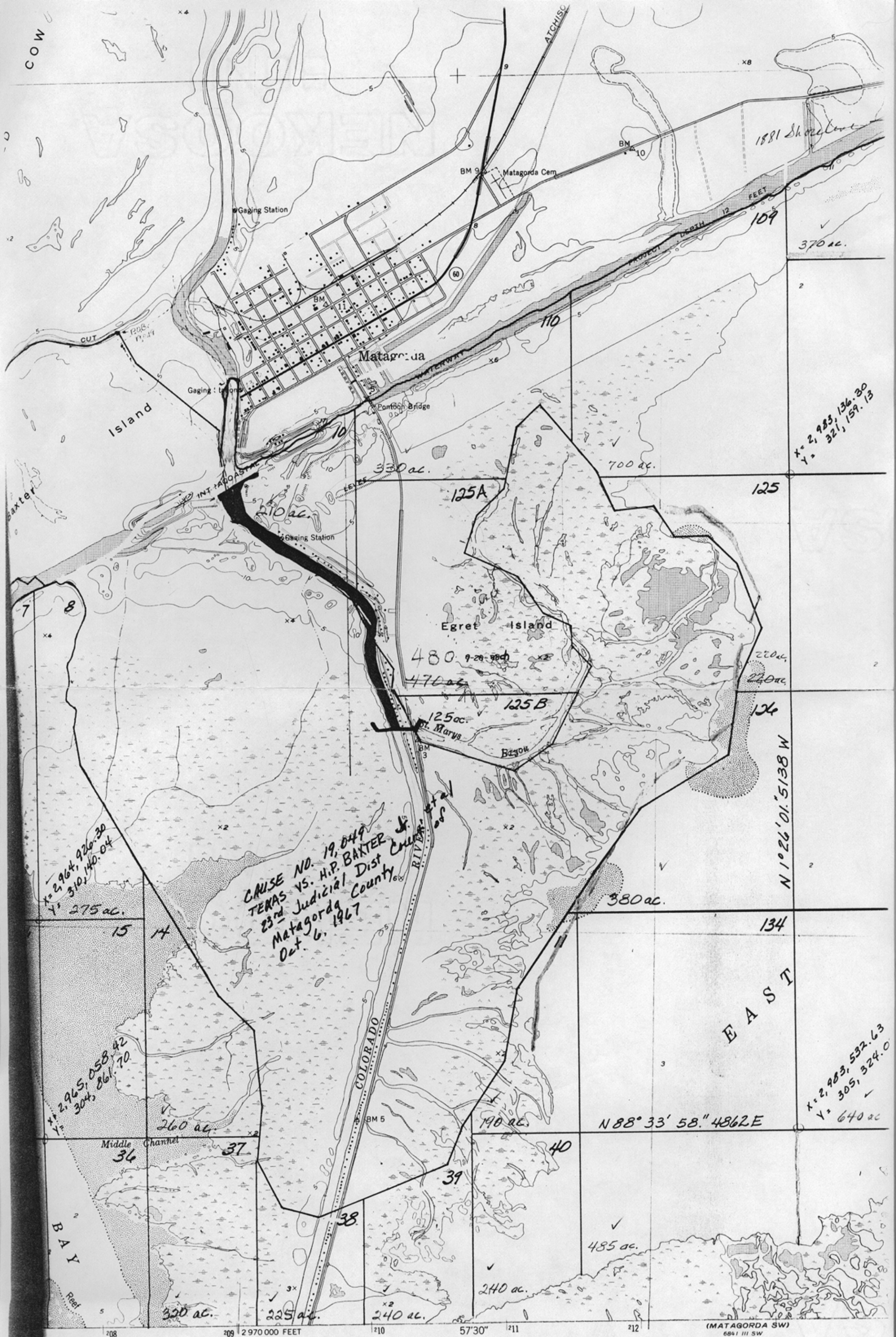
*Plat file 218a
River Bend Villas*

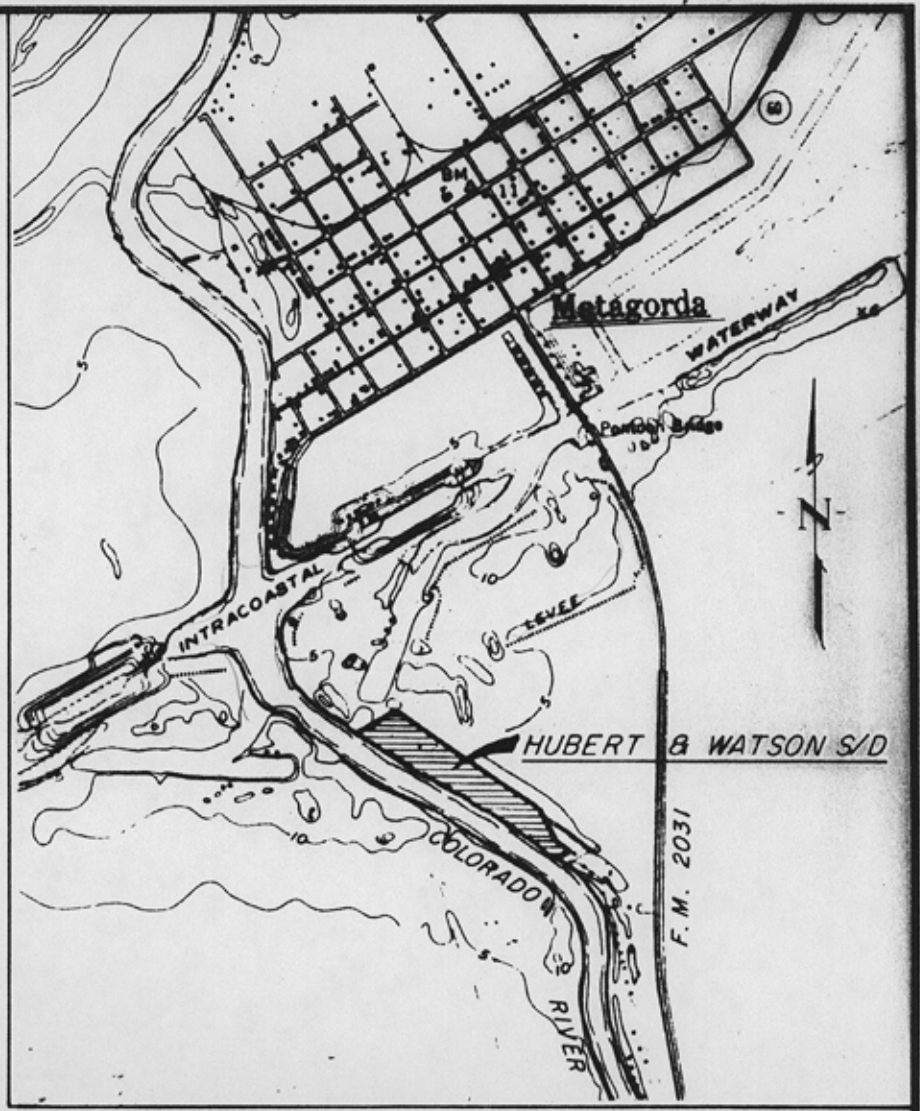
1963

Matagorda Co. Sketch File No. 45

county 30916

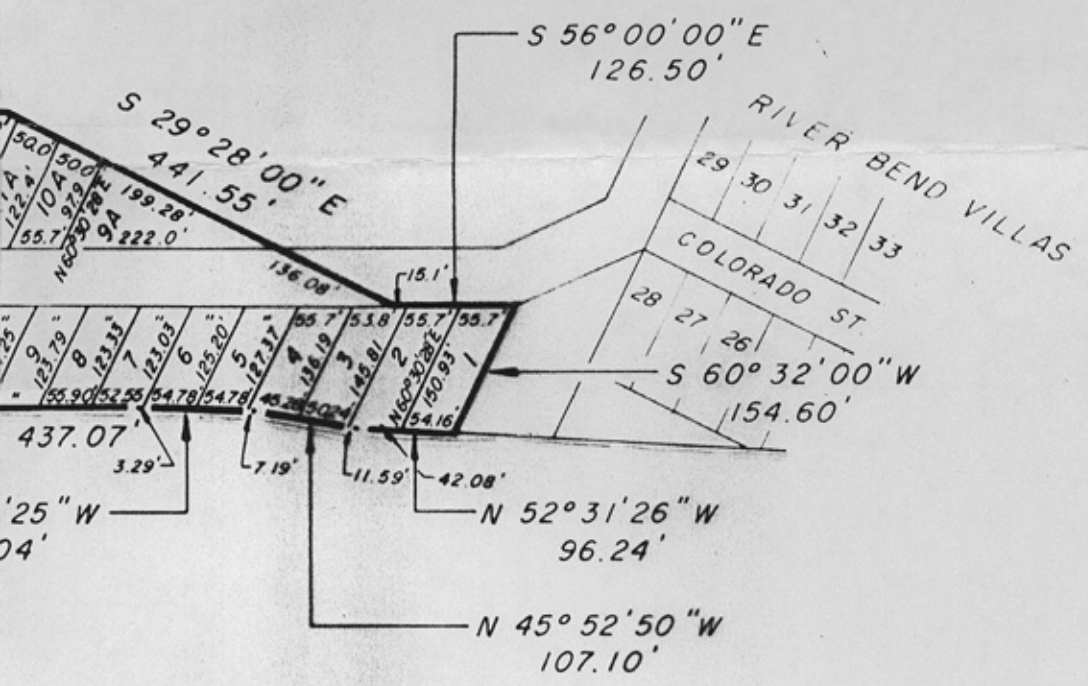






VICINITY MAP
1" = 2000'

SCALE: 1" = 200'



NOTE: 5/8" IRON ROD SET AT EACH LOT CORNER.

HUBERT AND WATSON SUBDIVISION

A SUBDIVISION OF 15.72 ACRES,
MORE OR LESS, SITUATED IN AND
A PART OF THE E.R. WIGHTMAN
LEAGUE, ABSTRACT NO. 101,
MATAGORDA COUNTY, TEXAS.

August 29, 1967

Mr. Ben Harrison
Assistant Attorney General
Austin, Texas

Re: State of Texas v. H. P. Baxter,
Jr. et al

Dear Mr. Harrison:

All of the Defendants in the above cause submit the following offer of settlement of said cause, to wit:

Defendants will release all claims to the oil, gas and other minerals, in, on or under the property in controversy to the State of Texas.

The Defendants will further release all surface to the property in controversy with the exception of the following which the State of Texas will release unto the Defendants, to wit:

Approximately one thousand (1000) acres of land bounded on the west by the east line of the right-of-way of State Highway No. 2031; the south by the land claimed by the Culver estate, property marked by a fence; and the north line beginning at the intersection of St Mary's Bayou and State Highway No. 2031 and running along the south side of the bayou until the bayou begins its northerly meandering and continuing the north line of this property straight across in an easterly direction to the waters of Matagorda Bay; and on the east by East Matagorda Bay.

It is understood that this settlement would be effected by judgment of the court.

For the purpose of this settlement the State does not make any claim to the property north of the intra-coastal canal known as Baxter Island or the Stephen F. Austin survey.

Defendants to pay survey costs of land released to them.

The Defendants agree to pay the court costs.

Yours very truly

VANCE DUNNAM, Attorney for
Geraldine Elizabeth Parker

SEYMOUR LIEBERMAN, Attorney for
H. P. Baxter, et al

FENTRESS BRACEWELL, Attorney for
Parker Bros. Inc.

*4000 acres
in Controversy*

counter 30921

MATAGORDA

BAY

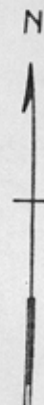
4505.45 Ac

Hurker Channel

Dredger channel

BAY

MATAGORDA



County 30923

BAXTER ISLAND AND ACCRETIONS ON LOWER COLORADO RIVER

MATAGORDA COUNTY, TEXAS
SCALE: 1"=2000' OR 300 YRS. MAY 1936
720

I, John F. Rother, County Surveyor of Matagorda County, Texas, do hereby certify that the above field notes and plat correctly represent survey as was made by me on the ground and that all marks and corners are on the ground as described in field notes and shown on plat.

Given Under My Hand and Seal of Office this
the 23rd day of May 1936

John F. Rother
County Surveyor of Matagorda
County, Texas

A

F21-1

Land here is on East side
of River. That they want
to keep -

We would get 3000
acres.

BAXTER ISLAND. Traverse as shown in Judgment No. 19,049

(Matagorda Co. Sh. File 45)

Commencing at

True Point of Beginning

1	thence	S	28	45	0	E	302.400	varas
2	thence	S	49	0	0	E	997.200	varas
3	thence	S	9	0	0	W	128.200	varas
4	thence	S	9	15	0	E	396.000	varas
5	thence	S	30	30	0	E	49.700	varas
6	thence	S	21	30	0	E	71.300	varas
7	thence	S	33	15	0	E	283.300	varas
8	thence	S	58	0	0	E	175.700	varas
9	thence	S	52	0	0	E	249.800	varas
10	thence	S	56	45	0	E	500.400	varas
11	thence	S	51	30	0	E	92.900	varas
12	thence	S	40	45	0	E	123.800	varas
13	thence	S	27	30	0	E	113.800	varas
14	thence	S	24	45	0	E	252.000	varas
15	thence	S	32	15	0	E	302.400	varas
16	thence	S	7	0	0	W	167.000	varas
17	thence	S	30	0	0	E	432.000	varas
18	thence	S	74	30	0	E	846.700	varas
19	thence	N	54	45	0	E	416.200	varas
20	thence	N	25	0	0	E	750.200	varas
21	thence	N	41	30	0	W	257.000	varas
22	thence	N	4	0	0	W	172.800	varas
23	thence	N	65	30	0	W	290.200	varas
24	thence	N	36	15	0	W	217.800	varas
25	thence	N	63	45	0	W	505.400	varas
26	thence	N	20	45	0	E	340.600	varas
27	thence	N	44	45	0	E	322.600	varas
28	thence	N	13	45	0	E	518.400	varas
29	thence	N	45	15	0	E	291.600	varas
30	thence	S	38	45	0	E	358.200	varas
31	thence	S	36	30	0	E	442.100	varas
32	thence	S	28	0	0	E	351.000	varas
33	thence	N	85	30	0	E	329.800	varas
34	thence	S	33	45	0	E	325.800	varas
35	thence	S	90	0	0	E	278.600	varas
36	thence	S	45	30	0	E	365.000	varas
37	thence	S	20	30	0	E	603.400	varas
38	thence	S	24	0	0	W	576.700	varas
39	thence	S	7	45	0	W	568.800	varas
40	thence	S	60	0	0	W	913.000	varas
41	thence	S	35	15	0	W	671.800	varas
42	thence	S	35	0	0	W	1306.800	varas
43	thence	S	9	45	0	W	609.100	varas
44	thence	S	36	0	0	W	705.600	varas
45	thence	S	22	45	0	W	356.000	varas
46	thence	S	68	45	0	W	1222.600	varas
47	thence	N	74	45	0	W	327.600	varas
48	thence	N	27	0	0	W	412.600	varas
49	thence	N	5	45	0	E	525.600	varas
50	thence	N	5	30	0	W	694.800	varas
51	thence	N	43	45	0	W	396.000	varas
52	thence	N	29	0	0	W	2350.800	varas
53	thence	N	7	30	0	W	409.300	varas
54	thence	N	6	45	0	E	159.100	varas
55	thence	N	48	15	0	W	31.400	varas
56	thence	N	10	15	0	E	214.200	varas
57	thence	N	17	15	0	W	93.600	varas
58	thence	N	37	15	0	E	115.900	varas
59	thence	N	3	15	0	E	125.300	varas
60	thence	N	25	0	0	E	260.300	varas

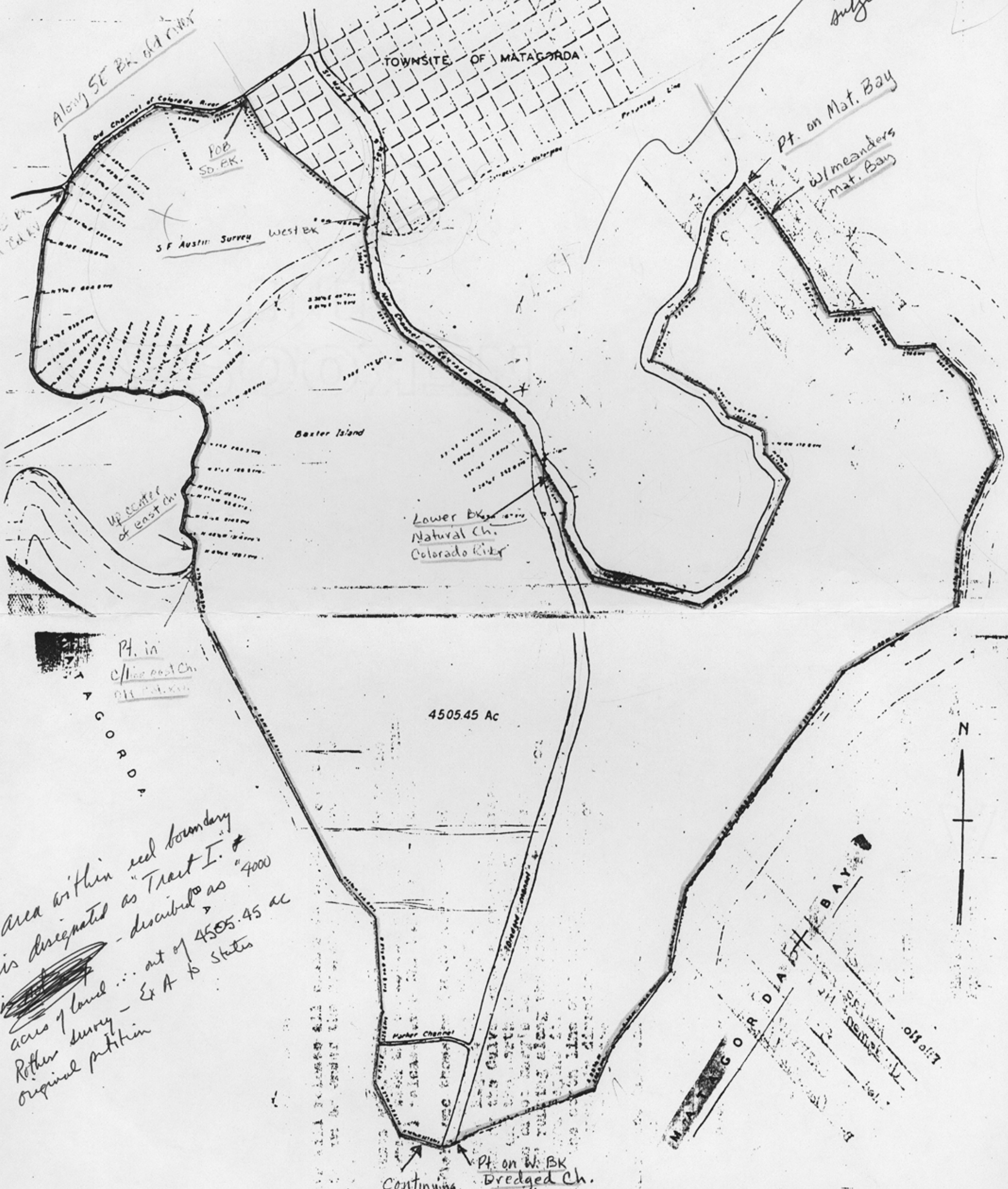
counter 30925

61	thence	N 13 45	0 W	180.000	varas
62	thence	N 51 45	0 W	129.600	varas
63	thence	N 77 45	0 W	121.700	varas
64	thence	S 75 30	0 W	99.000	varas
65	thence	N 73 30	0 W	136.100	varas
66	thence	S 84 45	0 W	70.200	varas
67	thence	N 73 15	0 W	101.500	varas
68	thence	S 84 45	0 W	163.800	varas
69	thence	S 72 30	0 W	147.200	varas
70	thence	N 82 15	0 W	155.500	varas
71	thence	N 59 30	0 W	168.100	varas
72	thence	N 34 15	0 W	116.300	varas
73	thence	N 2 30	0 E	239.000	varas
74	thence	N 7 30	0 E	604.800	varas
75	thence	N 10 0	0 E	203.800	varas
76	thence	N 32 45	0 E	227.500	varas
77	thence	N 10 30	0 E	106.200	varas
78	thence	N 31 30	0 E	73.400	varas
79	thence	N 37 30	0 E	154.800	varas
80	thence	N 42 15	0 E	107.600	varas
81	thence	N 49 45	0 E	55.100	varas
82	thence	N 55 15	0 E	504.700	varas
83	thence	S 86 15	0 E	138.200	varas
84	thence	S 81 0	0 E	310.300	varas
85	thence	N 66 30	0 E	203.400	varas
86	thence	N 57 15	0 E	74.900	varas

True Point of Beginning

Precision Ratio: 1 part in 271
 Length to Close = 111.972 varas Perimeter Length = 30260.900 varas
 Bearing of Closing Line = N 51 49 2.3 W
 Enclosed Area = 192612489.7 sq. feet or 4421.7743 acres

subject tract not a
part of "contested area"
subject to lawsuit



area within seal boundary
is designated as "Tract I." &
described as "4000
acres of land ... out of 4505.45 ac
Rother survey - Ex A to States
original within

John F. Rother, County Surveyor of Matagorda
County, Texas, do hereby certify that the above field notes
and plat correctly represent the survey as was made
by me on the ground and that all marks and
corner monuments are as described in the field
notes and shown on plat.
Given Under My Hand and Seal of Office this
the 23rd day of May 1936
John F. Rother
County Surveyor of Matagorda
County, Texas

**BAXTER ISLAND AND ACCRETIONS ON
LOWER COLORADO RIVER**

MATAGORDA COUNTY, TEXAS
SCALE: 1" = 2000' OR 720' MAY 1936

ROUTING AND TRANSMITTAL SLIP

Date

6 Oct 98

TO: (Name, office symbol, room number,
building, Agency/Post)

Initials

Date

1. La Nell Aston

2.

3.

4.

5.

Action	File	Note and Return
Approval	For Clearance	Per Conversation
<input checked="" type="checkbox"/> As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

La Nell,
Attached is a copy of our G/WW
Project maps of area just south of
Matagorda townsite. If you have
any questions or need additional
info, give me a call. Sal

DO NOT use this form as a RECORD of approvals, concurrences, disposals,
clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

Room No.—Bldg.

SAL ARCIDIACONO

Phone No.

(409) 766-3803

5041-102

OPTIONAL FORM 41 (Rev. 7-76)

Prescribed by GSA

FPMR (41 CFR) 101-11.206

GPO : 1987 0 - 170-636

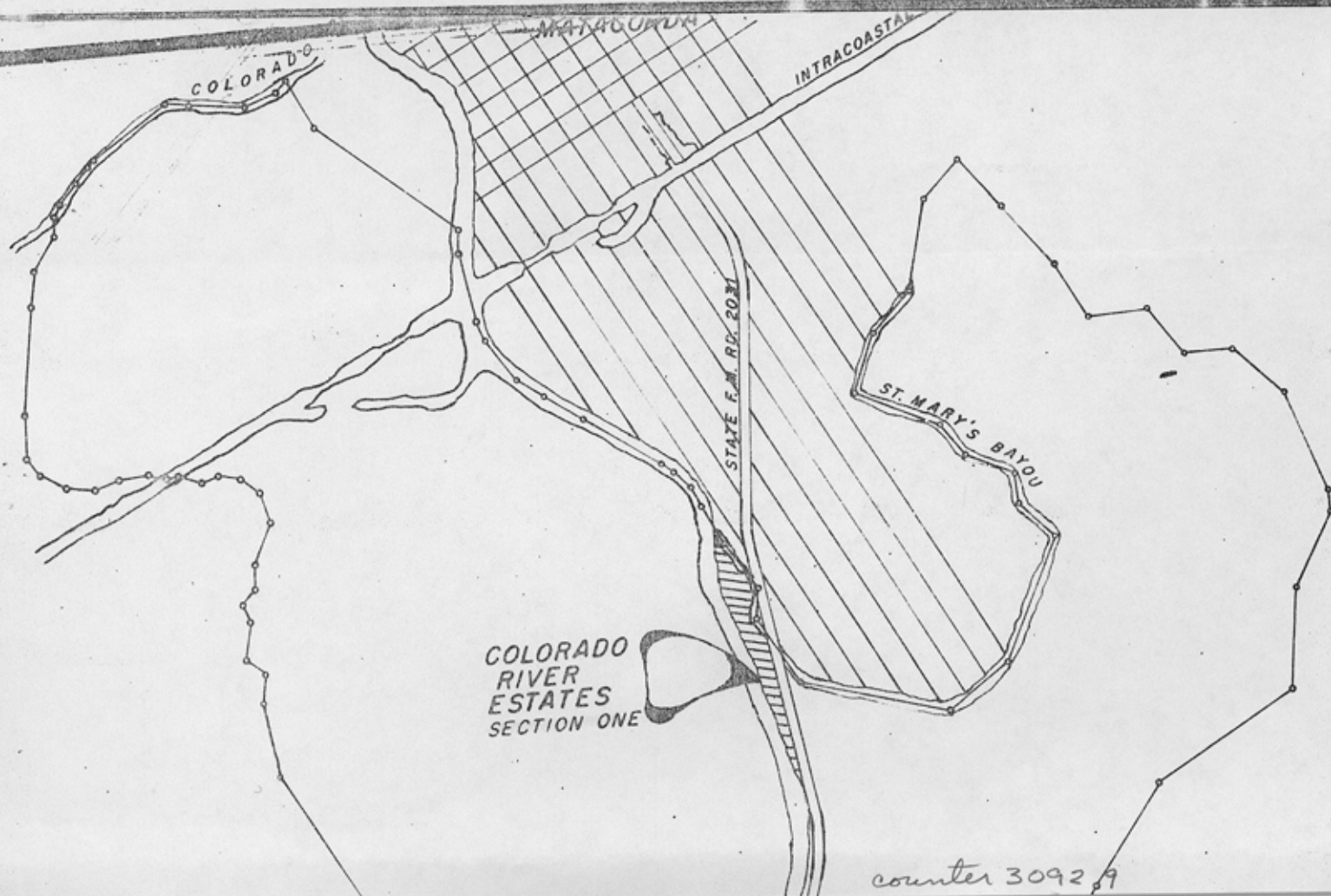
counter 30928

COLORADO RIVER ESTATES
SECTION TWO
SUBDIVISION OF A PORTION OF
BAXTER ISLAND
OUT OF THE
STEPHEN F. AUSTIN SURVEY,
ABSTRACT NO. 2,
MATAGORDA COUNTY, TEXAS.
SCALE AS SHOWN
DECEMBER 18, 1968

NOTE:

- Indicate 1/2" steel rods
- ⊙ Indicate State Highway R. O. W. markers

Sheet 1 of 5 sheets



the extension of the surface is all above the line of mean higher-high tide. *Sp. Mex. rule of secondary 26 applied to*

The State's first point is that the verdict of the jury is contrary to the overwhelming preponderance of the evidence.¹ It is contended the evidence is factually and legally inadequate to sustain the verdict.

[1] We have carefully considered the contention, and it is overruled. The State introduced convincing evidence in the form of photographs, maps, expert opinion and lay evidence that the land in question, or most of it, was covered by the waters of Matagorda Bay until 1920; that it contained only 1495 acres in 1926, but increased to an area of over 4500 acres by 1936; that although it increased only two acres per year from 1830 (the year of Austin's grant) to 1918, it increased at the rate of 100 acres per year from 1918 to 1926; that the increase was the result of a filling or build-up of flats from and between islands in the bay, and was from the floor of Matagorda Bay—not from the shore; that the deposits which created the land resulted from the 1925-1929 removal from the Colorado River of a chain of "rafts" extending 15 or 20 miles composed of compacted logs, snags, debris and silt, which had previously choked the river; that release of the accumulated material composing these rafts caused the silt to be carried to the mouth of the river and deposited in the bay over a relatively brief interval, perhaps as short as two years; and that dredging operations in the bay created spoil banks creating a series of islands which, with other existing "islands", caught the material discharged by the river flow. There was ample evidence

that the land involved was created by the aid of artificial means during a brief time, and that it grew from the bay to the shore.

Appellees' evidence was equally forceful that the growth was gradual; that the land increased in area as a delta from the original shore outward; that the material in the raft itself had accumulated naturally over many years, and was carried by natural forces downstream when released; that sediment attached itself to the Austin Survey so slowly "that the process was imperceptible; that the survey had increased to over 700 acres in 1918, without "islands"; that 1400 acres had been added from the shore by accretion, before the chain of rafts had been destroyed, as a result of the discharge of silt carried by the river to its mouth; that over 780 acres had been added in an eight-year period before removal of the rafts and the aggregate area had increased to 1495 acres by 1926 while the raft was intact. There was expert opinion testimony to the effect that the increase in area was very slow, gradual and imperceptible, and that much of it occurred beneath the surface before the delta became observable above the water.

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2d 830; *Luttes v. State*, 159 Tex. 500, 324 S.W.2d 167; *Humble Oil & Refining Co. v. Sun Oil Co.*, 5 Cir., 190 F.2d 191, rehearing den. 191 F.2d 705, and authorities cited.

2. The court apparently utilized the definition of "accretion" in *Giles v. Basore*, 154 Tex. 366, 278 S.W.2d 830, 835.

General Land Office

ment of
Court on
Jury
et

NO. 19,049

THE STATE OF TEXAS

VS.

H. P. BAXTER, JR., ET AL

IN THE DISTRICT COURT OF

MATAGORDA COUNTY, TEXAS

23RD JUDICIAL DISTRICT

J U D G M E N T

On the 5th day of September, 1967, in its regular order on the docket came on to be held the above entitled and numbered cause herein, THE STATE OF TEXAS was Plaintiff and H. P. BAXTER, JR., BESSIE MAE BAXTER OWENS, DON OWENS, W. L. BAXTER, MRS. THELMA NINI, W. S. BAXTER, ADDIE LEE STEUBING, ROBERT W. STEUBING, and WALLACE NINI, also PARKER BROTHERS & CO., INC. were Defendants and Intervenor GERALDINE ELIZABETH PARKER and MATAGORDA SHELL COMPANY, and came the parties in person and by their respective attorneys, and announced ready for trial; and came a jury, all being residents and citizens of Matagorda County, Texas, of twelve (12) good and lawful men and women, who, being duly empaneled and sworn, one juror was dismissed because of hardship and all parties agreed the case could be tried by eleven (11) jurors, and having heard the pleadings, the evidence, and arguments of counsel for all sides in response to the following special issues, the definitions, explanations, and instructions submitted to them by the Court on the 14th day of September, 1967, made the following respective findings on the 15th day of September, 1967.

By the term "accretion" as used herein is meant the gradual and imperceptible depositing by water of solid matter through the operation of natural causes.

In this connection you are further instructed that a depositing by water of solid matter is "imperceptible" if it is so gradual that no one person can perceive how much is added at any moment.

SPECIAL ISSUE NO. 1

Do you find from a preponderance of the evidence that the land in controversy was created by accretion?

Matagorda Co. Sk. File 45

counter 76796

RECEIVED

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Answer: "We do."

If you have answered Special Issue No. 1 "we do not," and only in that event answer Special Issue No. 2.

SPECIAL ISSUE NO. 2

Do you find from a preponderance of the evidence that the land in controversy was created substantially by accretion?

Answer:

If you have answered Special Issue No. 1 or No. 2 "We do," and only in that event, then answer:

SPECIAL ISSUE NO. 3

Do you find from a preponderance of the evidence that said accretion, if you have found same, began at the original landward line of the shore of the Austin and Wightman surveys?

Answer: "We do."

If you have answered Special Issue No. 3 "we do," and only in that event, then answer:

SPECIAL ISSUE NO. 4

Do you find from a preponderance of the evidence that said accretion, if you have found same, extended the surface of the Austin and Wightman surveys from their landward shore lines to the present boundaries of the land in controversy?

Answer: "We do."

If you have answered Special Issue No. 4 "we do," and only in that event, then answer:

SPECIAL ISSUE NO. 5

Do you find from a preponderance of the evidence that said extension of the surface of said Austin and Wightman surveys, if you have found same, is all above the line of mean higher high tide?

Answer: "We do."

If you have answered Special Issue No. 5 "We do not," and only in that event, answer:

SPECIAL ISSUE NO. 6

What part, if any, of said extension, if you have found same, do you find from a preponderance of the evidence is above the line of mean higher high tide?

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Answer by drawing the boundary lines of said part, if any, according to scale on the scaled plat of the land in controversy which is marked Exhibit A adopted herein and attached to the Court's charge.

Which findings were received by the Court and were filed and entered in the Court in the minutes of such Court, and the Court thereupon being of the opinion and finds that Plaintiff should take nothing against the Defendants and Intervenor and that all defendants and intervenors go hence without day and that title to the following described property is not in the State of Texas.

It is accordingly ORDERED, ADJUDGED, AND DECREED that Plaintiff, THE STATE OF TEXAS, take nothing by its suit against the Defendants, H. P. BAXTER, JR., BESSIE MAE BAXTER OWENS, DON OWENS, W. L. BAXTER, MRS. THELMA NINI, W. S. BAXTER, ADDIE LEE STEUBING, ROBERT W. STEUBING, WALLACE NINI, and PARKER BROTHERS & CO., INC., and Intervenor, GERALDINE ELIZABETH PARKER and MATAGORDA SHELL COMPANY, to the present boundaries of the following described land situated in Matagorda County, Texas, set out in the attached map hereto and described as follows, to-wit:

All that certain land located in Matagorda Bay, Matagorda County, Texas; across the intra-coastal waterway canal from the town of Matagorda, being a portion of the Colorado River Delta lying along the dredged Colorado River Canal in Matagorda Bay and comprising 4,000.00 acres of land, more or less, out of a 4,505.45 acre survey made by John F. Rother, County Surveyor of Matagorda County, Texas, represented by a plat dated the 23rd day of May, 1936, copy of which is attached hereto and made a part thereof, and said 4,505.45 acres described by metes and bounds as follows:

BEGINNING

at a point on the south bank of the old channel of the Colorado River, said point is the west corner of the townsite of Matagorda;

THENCE South 28-3/4 east along the southwest line of said Townsite 302.4 vrs.;

THENCE South 49 east along the southwest line of said Townsite 997.2 vrs. to a point on the west bank of St. Mary's Bayou;

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THENCE in a Southeasterly direction along the west bank of of St. Mary's Bayou and the New Channel of the Colorado River with their meanders as follows: South 9 west 128.2 vrs., South 9-1/4 east 396.0 vrs., South 30-1/2 east 49.7 vrs., South 21-1/2 east 71.3 vrs., South 33-1/4 east 283.3 vrs., South 58 east 175.7 vrs., South 52 east, 249.8 vrs., South 56-3/4 east 500.4 vrs., South 51-1/2 east 92.9 vrs., South 40-3/4 east 123.8 vrs., South 27-1/2 east 113.8 vrs. to a point for corner;

THENCE South 24-3/4 east across the dredged channel of the Colorado River, 252.0 vrs. to a point on the south bank of a natural channel of the Colorado River, said point being in the center line of a dam across the said natural channel;

THENCE along the lower bank of said natural channel with its meanders as follows; South 32-1/4 east 302.4 vrs., South 7 west 167.0 vrs., South 30 east 432.0 vrs., South 74-1/2 east 846.7 vrs., North 54-3/4 east 416.2 vrs., North 25 east 750.2 vrs., North 41-1/2 west 257.0 vrs., North 4 west, 172.8 vrs., North 65-1/2 west 290.2 vrs., North 36-1/4 west 217.8 vrs., North 53-3/4 west 505.4 vrs., North 20-3/4 east 340.6 vrs., North, 44-3/4 east 322.6 vrs., North 13-3/4 east 518.4 vrs., North 45-1/4 east 291.6 vrs., to a point on the shore of Matagorda Bay.

THENCE along the shore of Matagorda Bay with its meanders as follows: South 38-3/4 east 358.2 vrs., South 36-1/2 east 442.1 vrs., South, 28 east 351.0 vrs., North 85-1/2 east 329.8 vrs., South 33-3/4 east 325.8 vrs., East 278.6 vrs., South 45-1/2 east 365.0 vrs., South 20-1/2 east 603.4 vrs., South 24 west 576.7 vrs., South 7-3/4 west 568.8 vrs., South 60 west, 913.0 vrs., South 35-1/4 west 671.8 vrs., South 35 west 1306.8 vrs., South 9-3/4 west 609.1 vrs., South 36 west 705.6 vrs., South 22-3/4 west 356.0 vrs., South 68-3/4 west 1222.6 vrs. to a point on the west bank of the dredged channel of Colorado River and continuing along the shore of Matagorda Bay with its meanders as follows; North 74-3/4 west 327.6 vrs., North 27 west 412.6 vrs., North 5-3/4 east 525.6 vrs., North 5-1/2 west 694.8 vrs., North 43-3/4 west 396.0 vrs., North 29 west 2350.8 vrs., North 7-1/2 west 409.3 vrs., to a point in the center line of what is known as the east channel of the old Colorado River.

THENCE up the center of said, east channel with its meanders as follows: North 6-3/4 east, 159.1 vrs., North 48-1/4 west, 31.4 vrs., North 10-1/4 east 214.2 vrs., North 17-1/4 west 93.6 vrs., North 37-1/4 east 115.9 vrs., North 3-1/4 east 125.3 vrs., North 25 east 260.3 vrs., North 13-3/4 west 180.0 vrs., North 51-3/4 west 129.6 vrs., North 77-3/4 west 121.7 vrs., South 75-1/2 west 99.0 vrs., North 73-1/2 west 136.1 vrs., South 84-3/4 west 70.2 vrs., North 73-1/4 west 101.5 vrs., South 84-3/4 west 163.8 vrs., South 72-1/2

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west 147.2 vrs., North 82-1/4 west 155.5 vrs., North 59-1/2 west 168.1 vrs., North 34-1/4 west 116.3 vrs., North 2-1/2 east 239.0 vrs., North 7-1/2 east 604.8 vrs., North 10 east 203.8 vrs., North 32-3/4 east 227.5 vrs., North 10-1/2 east 106.2 vrs., to a point on the southeast bank of the old Colorado River;

THENCE along the southeast bank of said old river with its meanders as follows: North 31-1/2 east 73.4 vrs., North 37-1/2 east 154.8 vrs., North 42-1/4 east 107.6 vrs., North 49-3/4 east 55.1 vrs., North 55-1/4 east 504.7 vrs., South 86-1/4 east 138.2 vrs., South 81 east 310.3 vrs., North 66-1/2 east 203.4 vrs., North 57-1/4 east 74.9 vrs., to the place of beginning, containing within the foregoing described boundaries 4,505.45 acres of land, more or less.

It is further ORDERED, ADJUDGED AND DECREED by the Court that all Defendants and Intervenor, H. P. BAXTER, JR., BESSIE MAE BAXTER OWENS, DON OWENS, W. L. BAXTER, MRS. THELMA NINI, W. S. BAXTER, ADDIE-LEE STEUBING, ROBERT W. STEUBING, WALLACE NINI, PARKER BROTHERS & CO., INC., GERALDINE ELIZABETH PARKER, and MATAGORDA SHELL COMPANY, go hence without day and recover their costs incurred herein against Plaintiff, THE STATE OF TEXAS, for which let execution issue.

To which judgment of the Court the Plaintiff excepts and gives notice of appeal to the Court of Civil Appeals for the 13th Judicial District of Texas, at Corpus Christi, Texas.

ENTERED THIS THE 6th day of October, 1967.

APPROVED AS TO FORM AND SUBSTANCE:

/s/ Seymour Lieberman
SEYMOUR LIEBERMAN
Attorney for The Baxters

/s/ John C. Patterson
J U D G E

/s/ Vance Dunnam
Attorney for Geraldine E. Parker

BRACEWELL & PATTERSON

By /s/ Bob Casey, Jr.
Attorneys for Parker Brothers & Co., Inc.
and Matagorda Shell Company

August 29, 1967

Mr. Ben Harrison
Assistant Attorney General
Austin, Texas

Re: State of Texas v. H. P. Baxter,
Jr. et al.

Dear Mr. Harrison:

All of the Defendants in the above cause submit the following offer of settlement of said cause, to-wit:

Defendants will release all claims to the oil, gas and other minerals, in, on or under the property in controversy to the State of Texas.

The Defendants will further release all surface to the property in controversy with the exception of the following which the State of Texas will release unto the Defendants, to-wit:

Approximately one thousand (1000) acres of land bounded on the west by the east line of the right-of-way of State Highway No. 2031; the south by the land claimed by the Culver estate; property marked by a fence; and the north line beginning at the intersection of St Mary's Bayou and State Highway No. 2031 and running along the south side of the bayou until the bayou begins its northerly meandering and continuing the north line of this property straight across in an easterly direction to the waters of Matagorda Bay; and on the east by East Matagorda Bay.

It is understood that this settlement would be effected by judgment of the court.

For the purpose of this settlement the State does not make any claim to the property north of the intra-coastal canal known as Baxter Island or the Stephen F. Austin survey.

Defendants to pay survey costs of land released to them.

The Defendants agree to pay the court costs.

Yours very truly

Vance Dunnam
VANCE DUNNAM, Attorney for
Geraldine Elizabeth Parker

SEYMOUR LIEBERMAN, Attorney for
H. P. Baxter, et al

FENTRESS BRACEWELL, Attorney for
Parker Bros. Inc.

*Telegram attached
is authority of Lieberman
& Bracewell to settle.*

Trial Court
No. 19,049

AFFIRMED JULY 11, 1968

NO. 4714

IN THE

COURT OF CIVIL APPEALS

FOR THE

TENTH SUPREME JUDICIAL DISTRICT OF TEXAS

AT WACO

* * * * *

THE STATE OF TEXAS, Appellant

VS.

H. P. BAXTER, JR., ET AL., Appellees

* * * * *

Appeal from 23rd District Court
Matagorda County

* * * * *

O P I N I O N

* * *

This is a trespass to try title action. We adopt the State's statement of the case.

Stephen F. Austin, appellees' predecessor in title, received from the Mexican Government a grant of land in 1830 including two labors, (approximately 355 acres) situated on the left margin of the Colorado River where it empties into Matagorda Bay.

Appellees claim that the original Stephen F. Austin Survey comprising approximately 355 acres, now contains 4505.45 acres from accretion into Matagorda Bay. The State claims that this is not true, and filed this suit to recover the land (located in Matagorda Bay, across the Intra-coastal Waterway from the Stephen F. Austin Survey, comprising 4000 acres, more or less) as being a part of the public domain never having been appropriated by grant or patent.

The State contends "that the land in question is not accretion to the original Stephen F. Austin Survey

Matagorda Co-Sketch File No. 45

Counter 76802

through the operation of natural causes; but that the land in controversy began as islands in Matagorda Bay, and much or all of it is still islands; that these islands were formed in Matagorda Bay by the work of man, and were not accretion from the original shore to the islands."

The jury answered in effect: (1) the land in question was created by accretion; (3) the accretion began at the original line of the shore, and (4) extended the surface of the land from the landward shore lines to its present boundaries; (5) that the extension of the surface is all above the line of mean higher-high tide.

The State's first point is that the verdict of the jury is contrary to the overwhelming preponderance of the evidence.¹ It is contended the evidence is factually and legally inadequate to sustain the verdict.

We have carefully considered the contention, and it is overruled. The State introduced convincing evidence in the form of photographs, maps, expert opinion and lay evidence that the land in question, or most of it, was covered by the waters of Matagorda Bay until 1920; that it contained only 1495 acres in 1926, but increased to an area of over 4500 acres by 1936; that although it increased only two acres per year from 1830 (the year of Austin's grant) to 1918, it increased at the rate of 100 acres per year from 1918 to 1926; that the increase was the result of a filling or build-up of flats from and between islands in the bay, and was from the

1. The controlling principles governing determination of the ownership of the land in question are announced and exhaustively treated in such cases as the following, and we have purposely avoided extending this opinion by repeating them: *State v. Balli*, 144 Tex. 195, 190 S. W. 2d 71, cert. den.; *Lorino v. Crawford Packing Co.*, 142 Tex. 51, 175 S. W. 2d 410; *Giles v. Basore*, 154 Tex. 366, 278 S. W. 2d 830; *Luttes v. State*, 159 Tex. 500, 324 S. W. 2d 167; *Humble Oil & Refining Co. v. Sun Oil Co.*, 5 cir., 190 F. 2d 191, rehearing den. 191 F. 2d 705, and authorities cited.

floor of Matagorda Bay -- not from the shore; that the deposits which created the land resulted from the 1925-1929 removal from the Colorado River of a chain of "rafts" extending 15 or 20 miles composed of compacted logs, snags, debris and silt, which had previously choked the river; that release of the accumulated material composing these rafts caused the silt to be carried to the mouth of the river and deposited in the bay over a relatively brief interval, perhaps as short as two years; and that dredging operations in the bay created spoil banks creating a series of islands which, with other existing "islands", caught the material discharged by the river flow. There was ample evidence that the land involved was created by the aid of artificial means during a brief time, and that it grew from the bay to the shore.

Appellees' evidence was equally forceful that the growth was gradual; that the land increased in area as a delta from the original shore outward; that the material in the raft itself had accumulated naturally over many years, and was carried by natural forces downstream when released; that sediment attached itself to the Austin Survey so slowly that the process was imperceptible; that the survey had increased to over 700 acres in 1918, without "islands"; that 1400 acres had been added from the shore by accretion, before the chain of rafts had been destroyed, as a result of the discharge of silt carried by the river to its mouth; that over 780 acres had been added in an eight-year period before removal of the rafts, and the aggregate area had increased to 1495 acres by 1926 while the raft was intact. There was expert opinion testimony to the effect that the increase in area was very slow, gradual and imperceptible, and that much of it occurred beneath the surface before the

delta became observable above the water.

We are unable to conclude that the evidence was not adequate to support the findings of the jury, and the State's contentions are overruled.

Refusal of a requested definition and eleven requested special issues is complained of. The charge defined "accretion" as "the gradual and imperceptible depositing by water of solid matter through the operation of natural causes."² Appellant requested submission of a definition of the term "natural causes", as meaning "causes that are independent of and unassisted by, to any substantial degree, man made acts."

The court is not required, under Rule 277, Texas Rules of Civil Procedure, to define terms of ordinary meaning; but only legal terms. *Magnolia Petroleum Co. v. Long*, 126 Tex. 195, 86 S. W. 2d 450, 455; *Pritchett v. Highway Insurance Underwriters*, 158 Tex. 116, 309 S. W. 2d 46, 49. "Natural" is not a legal term, but one of ordinary meaning. The requested definition would have only told the jury in effect, that "natural" causes did not include causes which were not natural, and would have unduly emphasized the State's evidentiary position. It was not reversible error to refuse the definition.

The refused issues requested would have inquired (8-10) whether each portion of the delta began its formation as a series of islands formed by deposit of material arising from the bay floor; (11) whether at the time an aerial survey was made in 1930, the delta consisted of islands and surrounding water; (12) whether "man-made acts substantially contributed

2. The court apparently utilized the definition of "accretion" in *Giles v. Basore*, 154 Tex. 366, 278 S. W. 2d 830, 835.

to the removal of the raft from the Colorado River into Matagorda Bay"; (13-16) whether removal of the rafts, dredging, and building of a highway "substantially contributed to the build-up" of the delta; and (17, 18) whether, without any "made-made acts" found to contribute, the size and "the shape of the delta" would "have been greatly altered."

Requested issues 8-10 and 12-18 would have simply submitted the negative or opposite of the issues submitted by the court as to which the burden of proof was imposed on appellees. The court was not required to submit the requested issues under the provisions of Rule 279. These were not independent grounds of recovery; they were in rebuttal of defendants' theory of defense. It was not error to refuse them. *Wright v. Traders & General Ins. Co.*, 132 Tex. 172, 123 S. W. 2d 314, 316.

Requested Issue 11 is evidentiary, and was correctly refused.

Appellant's other points have been considered fully and are overruled. AFFIRMED.

FRANK M. WILSON
Associate Justice

SUMMARY OF ACQUISITION AS OF 1 JAN 1943					
TRACT NO	LAND OWNER	ACREAGE		REMARKS	
		R.O.W.	SPOIL		
12	TEXAS GULF SULPHUR CO	72.65		EASEMENT DATED 20 FEB 1934	
13	G. I. GOTTSCHALK	8.84		" " 4 NOV 1933	
100	W. E. McNABB ET AL	41.98	169.00	" " 4 MAR 1940	
101	M. J. FOLEY	3.87	19.51	" " 27 MAR 1940	
102	R. H. PARKER	12.88	14.39	" " 29 FEB 1940	
103	R. H. PARKER ET AL	2.88	14.39	" " 29 FEB 1940	
104	R. H. PARKER ET AL	2.88	14.39	" " 29 FEB 1940	
105	R. H. PARKER ET AL	2.88	14.39	" " 29 FEB 1940	
106	NORA WATKINS ET AL	2.81	5.20	" " 29 FEB 1940	
107	NORA WATKINS	1.74	17.94	" " 29 FEB 1940	
108	A. V. COOK ET UX	0.74	3.71	" " 29 FEB 1940	
109	M. J. FOLEY	1.11	5.53	" " 27 MAR 1940	
110	WILLIAM S. COROLLO	2.49	12.15	" " 9 MAR 1940	
111	R. J. SISK ET AL	2.50	12.50	" " 1 MAR 1940	
112	R. J. SISK ET AL	2.50	12.50	" " 1 MAR 1940	

FINAL
PROJECT MAP

AGENCY: DEPT. OF THE ARMY

STATE: TEXAS

COUNTY: MATAGORDA

DIVISION: SWD

DISTRICT: GALVESTON

ARMY AREA: 4 TH

LOCATION OF PROJECT

34.7 MILES SW. OF FREEPORT

MILES OF:

TRANSPORTATION FACILITIES

RAILROADS: G. C. & S. F.

STATE ROADS: 35

FEDERAL ROADS: 59

AIR LINES:

ACQUISITION

TOTAL ACRES ACQUIRED:

ACRES FEE:

ACRES TRANSFERRED:

ACRES LEASED:

ACRES LESSER INTERESTS:

DISPOSAL

TOTAL ACRES DISPOSED OF:

ACRES SOLD:

ACRES TRANSFERRED:

ACRES LEASES TERMINATED:

ACRES LESS. INT'S. TERMINATED:

ACRES REASSIGNED:

ACRES TO:

LEGEND

EXCEPT FOR THE SPECIAL SYMBOLS SHOWN BELOW, MAP SYMBOLS ARE STANDARD IN ARMY MAP SERVICE TECHNICAL MANUAL NO. 23.

RESERVATION LINE	---
RESERVATION LINE (Actual Survey)	--- ---
TRACT BOUNDARY LINE	---
TRACT NUMBER	○
AVIGATION EASEMENT	▨
CONTOUR LINE	~
DISPOSAL	▨

SEGMENT 12

DEPARTMENT OF THE ARMY
OFFICE OF THE GALVESTON DISTRICT ENGINEER
SOUTHWESTERN DIVISIONREAL ESTATE
GULF INTRACOASTAL WATERWAYFREEPORT HARBOR TO COLORADO RIVER
PROJECTDRAWN BY: C. M.
TRACED BY: J. T. S.
CHECKED BY:
SUBMITTED BY:
RECOMMENDED BY:

OFFICE CHIEF OF ENGINEERS, WASHINGTON 25, D. C.

AUDITED

INSTALLATION OF PROJECT NO. C-808

APPROVED BY: *Paul C. ...* DATE 24 MAR 1954
OFFICE CHIEF OF ENGINEERS, WASHINGTON 25, D. C.SCALE IN FEET
1" = 100'

SHEET 12 OF 13 DRAWINGS

FINAL
PROJECT MAP

AGENCY: DEPT OF THE ARMY

STATE TEXAS

COUNTY MATAGORDA

DIVISION SWD

DISTRICT GALVESTON

ARMY AREA 4 TH

LOCATION OF PROJECT

14.0 MILES S.W. OF FREEPORT

MILES OF

TRANSPORTATION FACILITIES

RAILROADS G. C. & S. F.

STATE ROADS 35

FEDERAL ROADS 59

AIR LINES

ACQUISITION

TOTAL ACRES ACQUIRED

ACRES FEE SEE SHEET NO.

ACRES TRANSFERRED

ACRES LEASED

ACRES LESSER INTERESTS

DISPOSAL

TOTAL ACRES DISPOSED OF

ACRES SOLD

ACRES TRANSFERRED

ACRES LEASES TERMINATED

ACRES LESS. INT'S. TERMINATED

ACRES REASSIGNED

ACRES TO

LEGEND

EXCEPT FOR THE SPECIAL SYMBOLS SHOWN BELOW, MAP SYMBOLS ARE STANDARD IN ARMY MAP SERVICE TECHNICAL MANUAL NO. 31

RESERVATION LINE	
RESERVATION LINE (Actual Survey)	
TRACT BOUNDARY LINE	
TRACT NUMBER	
AVIGATION EASEMENT	
CONTOUR LINE	
DISPOSAL	

SEGMENT 13

DEPARTMENT OF THE ARMY
OFFICE OF THE GALVESTON DISTRICT ENGINEER
SOUTHWESTERN DIVISIONREAL ESTATE
GULF INTRACOASTAL WATERWAY
FREEPORT HARBOR TO COLORADO RIVER
PROJECTDRAWN BY C. M.
TRACED BY
CHECKED BY J. T. S.
SUBMITTED BY
RECOMMENDED BYAPPROVED BY
OFFICE, CHIEF OF ENGINEERS, WASHINGTON 25, D. C.

AUDITED

C-808

INSTALLATION OR PROJECT NO.

DATE 24 MAR 1954
OFFICE, CHIEF OF ENGINEERS, WASHINGTON 25, D. C.DATE 24 MAR 1954
OFFICE, CHIEF OF ENGINEERS, WASHINGTON 25, D. C.DATE 24 MAR 1954
OFFICE, CHIEF OF ENGINEERS, WASHINGTON 25, D. C.

SUMMARY OF ACQUISITION AS OF 1 JAN 1943				
TRACT NO.	LAND OWNER	ACREAGE	REMARKS	
113	J. C. ZIPPRIAN ESTATE	5.00	24.99	EASEMENT DATED 12 MAR 1940
114	E. G. CULVER ET AL	5.96	11.29	" " " " 26 FEB 1940
115	FRANK DUNBAR ET AL	5.4	7.70	" " " " 22 FEB 1940
116	FRANK DUNBAR ET AL	5.00	24.99	" " " " 22 FEB 1940
117	FRANK DUNBAR ET AL	5.00	24.99	" " " " 22 FEB 1940
118	FRANK DUNBAR ET AL	5.00	24.99	" " " " 22 FEB 1940
119	ARTHUR G. BAER ET AL	1.55	5.78	" " " " 28 FEB 1940
120	ARTHUR G. BAER ET AL	1.56	5.80	" " " " 28 FEB 1940
121	LILLIE CULVER	1.57	5.83	" " " " 1 MAR 1940
122	LOUISE HODGES ET AL	1.57	5.85	" " " " 1 MAR 1940
123	LILLIE CULVER	1.58	5.88	" " " " 1 MAR 1940
124	LILLIE CULVER	1.59	5.90	" " " " 1 MAR 1940
125	LILLIE CULVER	1.59	5.93	" " " " 1 MAR 1940
126	ARTHUR G. BAER ET AL	1.60	5.95	" " " " 28 FEB 1940
127	CARRIE BANYANSCO ET AL	0.24	11.20	" " " " 1 MAR 1940
128	CARRIE BANYANSCO ET AL	2.78	13.88	" " " " 1 MAR 1940
129	FELMONT CORP ET AL	2.81	14.03	" " " " 12 APR 1940
130	FELMONT CORP ET AL	2.95	14.73	" " " " 12 APR 1940
131	A. B. LORINO ET AL	1.65	8.26	" " " " 7 MAR 1940
132	E. L. McDONALD ET AL	1.27	6.34	" " " " 19 APR 1940
133	FELMONT CORP ET AL	1.40	7.01	" " " " 12 APR 1940
134	FELMONT CORP ET AL	1.40	7.01	" " " " 12 APR 1940
135	J. J. DUFFY ET UX	2.81	14.04	" " " " 4 MAR 1940
136	FELMONT CORP ET AL	2.55	14.77	" " " " 12 APR 1940
137	MARY E. BRAMAN ET AL	3.53	14.65	" " " " 1 MAR 1940
138	MARY E. BRAMAN ET AL	6.54	13.95	" " " " 1 MAR 1940
139	MARY E. BRAMAN ET AL	6.51	13.95	" " " " 1 MAR 1940
140	MARY E. BRAMAN ET AL	6.89	14.76	" " " " 1 MAR 1940
141	JULIAN INGLEHART ET AL	6.85	14.63	" " " " 9 APR 1940
142	LILLIE CULVER ET AL	6.53	15.76	" " " " 1 MAR 1940
143	MINNIE B. SERRILL ET AL	7.55	19.04	" " " " 14 MAR 1940
144	A. B. LORINO ET AL	10.60	17.56	" " " " 7 MAR 1940
145	A. B. LORINO ET AL	18.50	9.22	" " " " 27 MAR 1940