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June 20, 2006

By Electronic and Regular Mail

Ralph I. Lancaster, Jr., Esq.  
Pierce Atwood LLP  
One Monument Square  
Portland, Maine 04101

Re: New Jersey v. Delaware, No. 134, Original  
Case Management Order No. 7

Dear Mr. Lancaster:

In accordance with your instructions, New Jersey respectfully requests that Case Management Order No. 7 be modified with respect to Paragraph 1(c). That Paragraph now frames the following as an issue:

Did New Jersey lose any relevant rights conferred by the Compact of 1905 through the doctrine of prescription and acquiescence?

New Jersey respectfully requests that this Paragraph be modified as follows:

Did New Jersey or  
Delaware lose any relevant rights conferred



by the Compact of 1905  
through the doctrine of  
prescription and  
acquiescence?

While New Jersey's position is that the 1905 Compact did not give Delaware the right to assert jurisdiction over projects on the New Jersey side of the Delaware River, Delaware contends otherwise. Given Delaware's position, New Jersey should have the opportunity to demonstrate that even if Delaware is correct that the 1905 Compact gave it some rights on the New Jersey side of the river, Delaware acquiesced.

Although New Jersey did not previously frame this issue to refer to Delaware, New Jersey's pleadings implicitly raised the issue of prescription and acquiescence with respect to Delaware. New Jersey stated in its Motion to Reopen, Reply Brief in Support of Motion to Reopen, and Brief in Opposition to Appointment of Special Master that, in contrast to New Jersey, Delaware did not assert jurisdiction over projects on the New Jersey shoreline within the Twelve Mile Circle until relatively recently. See New Jersey's brief in support of motion to reopen at 3, 9, 12, 14, 32 - 33; New Jersey's reply brief in support of motion to reopen at 12 - 13, 23 - 24; New Jersey's brief in opposition to appointment of special master at 14 - 17.

In addition, New Jersey asserted in those pleadings that, based on Delaware's prior conduct, Delaware should be estopped from now contending that the Compact limits New Jersey's jurisdiction over the exercise of riparian rights. While the doctrines of estoppel and prescription and acquiescence are not identical, they are both based on the theory that a party's conduct can eliminate rights it otherwise might have. Accordingly, New Jersey respectfully submits that it would be appropriate and consistent with its prior pleadings to modify Paragraph 1(c) to refer to Delaware as well as to New Jersey with regard to the doctrine of prescription and acquiescence.

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Thank you for your consideration of this request.

Respectfully,

ZULIMA V. FARBER  
ATTORNEY GENERAL OF NEW JERSEY

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