

No. 134, Original

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In the  
**Supreme Court of the United States**

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STATE OF NEW JERSEY,

Plaintiff,

v.

STATE OF DELAWARE,

Defendant.

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**JOINT STATEMENT OF FACTS**

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Dated: December 26, 2006

## **JOINT STATEMENT OF FACTS**

In connection with the filing of their initial dispositive motions on December 22, 2006, and pursuant to Case Management Order 14, dated November 9, 2006, the parties hereby stipulate to the following undisputed material facts:<sup>1</sup>

1. Delaware traces her title to that portion of the Delaware River and its bed encompassed by a circle of twelve miles from the town of New Castle, Delaware, to the low water mark on the eastern shore thereof (the “twelve-mile circle”) through deeds going back to 1682.

2. From its earliest years as a State, and prior to the decision of the United States Supreme Court in *New Jersey v. Delaware II*, 291 U.S. 361 (1934), New Jersey claimed that, as a result of the American Revolution, that portion of the Delaware River lying between the thalweg of the Delaware River and the high water mark on the easterly shore within the twelve-mile circle became and remained vested in fee simple in New Jersey.

3. Salem County, New Jersey, Gloucester County, New Jersey, and New Castle County, Delaware, have boundaries that extend to the mean low water line on the easterly side of the Delaware River within the twelve-mile circle.

4. Within Salem County, New Jersey, the municipalities of Oldmans Township, Penns Grove Borough, Carneys Point Township, Pennsville Township, and

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<sup>1</sup> To the extent that statements herein summarize documents in the record, the documents themselves are the best evidence of their contents. This Joint Statement does not reflect the relative materiality of any specific fact stated herein as compared with facts not included. Nor does the Joint Statement address whether any act described here was done with or without legal authority.

Elsinboro Township have boundaries that extend to the mean low water line on the easterly side of the Delaware River within the twelve-mile circle.

5. Within Gloucester County, New Jersey, the municipality of Logan Township has a boundary that extends to the mean low water line on the easterly side of the Delaware River within the twelve-mile circle.

6. Within New Castle County, Delaware, the City of Wilmington has a boundary that extends to the mean low water line on the easterly side of the Delaware River within the twelve-mile circle. The town of Claymont, Delaware, lies on the western side of the Delaware River within the twelve-mile circle across from Logan Township, Gloucester County, New Jersey. The town of New Castle, Delaware, lies on the western side of the Delaware River within the twelve-mile circle across from Salem County, New Jersey.

7. New Jersey's and Delaware's boundary at the mean low water line on the easterly side of the Delaware River within the twelve-mile circle comprises approximately 29 miles.

8. On May 27, 1813, Delaware adopted an Act (Del. Laws 1829, p. 673) ceding to the United States jurisdiction over Pea Patch Island on the Delaware River within the twelve-mile circle.

9. In 1820, New Jersey passed a law appointing commissioners to meet with any commissioners Delaware might subsequently appoint in order "to make and conclude an agreement between the said states of New-Jersey and Delaware, defining their respective boundaries, jurisdiction, rights to islands, subaqueous soil, fisheries and

products of the river and bay of Delaware, southeasterly of the circular boundary between the states of Delaware and Pennsylvania.” 1820 N.J. Laws p. 205.

10. In 1846, the New Jersey Legislature enacted a law setting the boundary line of Salem County at the main shipping channel of the Delaware River. 1846 N.J. Laws, approved April 10, 1846, 2 Comp. Stat. 1690.

11. On August 8, 1846, Congress passed an Act [9 Stat. 67] authorizing the president of the United States “to take such steps as he may deem advisable for adjusting the title to the Pea Patch Island” within the twelve-mile circle.

12. On January 15, 1848, an arbitrator issued a decision upholding the title to Pea Patch Island that Delaware had conveyed to the United States in 1813. *In re: Pea Patch Island*, 30 F. Cas. 1123 (Jan. 15, 1848).

13. In 1851, the New Jersey Legislature adopted 1851 N.J. Laws, p. 355, pertaining to the filling of underwater lands.

14. In 1852, Delaware adopted the Boundary Act of 1852, stating that the limits of Delaware extend to the “low water mark on the eastern side of the Delaware River, within the twelve mile circle from New Castle.”

15. In 1854, the New Jersey Legislature adopted 1854 N.J. Laws ch. 143, p. 375, pertaining to the construction of docks, piers or wharves by Thomas D. Broadway, et al., in front of their lands at Pennsville in the Township of Lower Penns Neck, Salem County, New Jersey.

16. In 1855 the New Jersey Legislature adopted 1855 N.J. Laws ch. 109, p. 274, incorporating the Pennsgrove Pier Company and pertaining to construction of a

wharf or pier extending from the mainland into the Delaware River at the Village of Pennsgrove.

17. In 1864, the New Jersey Legislature adopted 1864 New Jersey Laws c. 391, p. 681, establishing the Board of Riparian Commissioners. See N.J. Stat. Ann. 12:3-1.

18. In 1870 the New Jersey Legislature adopted 1870 N.J. Laws ch. 131, p. 346, pertaining to the construction of wharves, piers and bulkheads by Robert Walker, et al., in front of their lands in the Township of Upper Penns Neck (now Pennsville).

19. In 1870, the New Jersey Legislature adopted 1870 N.J. Laws ch. 344, p. 726, pertaining to construction of a dock or wharf by Joseph Guest in front of his lands in the Township of Upper Penns Neck, (now Pennsville) Salem County, New Jersey.

20. In 1871, the New Jersey Legislature adopted 1871 N.J. Laws ch. 307, p. 758, pertaining to construction of wharves or piers by Henry Barber in front of his lands in the Township of Upper Penns Neck, (now Pennsville) Salem County, New Jersey.

21. In 1871, the New Jersey Legislature adopted 1871 N.J. Laws, c. 256, pertaining to grants and leases of tidally-flowed underwater lands outshore of the mean high water line by the New Jersey Board of Riparian Commissioners and Governor. See N.J. Stat. Ann. 12:3-10.

22. On March 28, 1871, Delaware passed “An Act for the Protection of Fishermen,” which provided, *inter alia*, that it would be unlawful for any person not a citizen of Delaware to catch fish in the Delaware River within the limits of the state without obtaining a Delaware license.

23. On or about May 2, 1872, Delaware officials arrested twenty-two fishermen from New Jersey for fishing within the twelve-mile circle without a license from Delaware.

24. On May 8, 1872, New Jersey Governor Joel Parker issued a proclamation asserting New Jersey's claim to jurisdiction over that part of Delaware River between the States that is easterly of the middle of the river and "warn[ing] all persons not to molest, disturb, arrest, or attempt to arrest, without lawful process, issued by some legal authority in this State, any citizen of New Jersey, at any place within her jurisdiction."

25. On May 14, 1872, Delaware Governor James Ponder responded to Governor Parker's proclamation by asserting, "The State of Delaware does not regard the question as to her jurisdiction over the said river and bay, as claimed by her, as an open question. The jurisdiction thus claimed is exclusive over the waters of said river to low water mark, on the eastern side of said river, within the twelve mile circle from New Castle, and is regarded by said State as paramount to any which may be claimed by any other State."

26. By acts adopted on January 30, 1873 and February 14, 1873, Delaware authorized the appointment of three commissioners to meet with three commissioners from New Jersey to resolve whether the citizens of New Jersey had the right to fish in the Delaware River within the twelve-mile circle, and if so, the nature and extent of the right.

27. By acts approved on February 26, 1873 and March 11, 1873, New Jersey authorized the appointment of three commissioners to meet with three commissioners from Delaware to settle so much of the dispute between the States as Delaware had

submitted, without affecting New Jersey's other claims or jurisdiction, and subject to confirmation by the respective legislatures of the States and Congress.

28. By act adopted on April 8, 1873, Delaware authorized its commissioners to make such a compromise as would secure to the people of Delaware and New Jersey the mutual right of fishery in the Delaware Bay and in the Delaware River within the twelve-mile circle.

29. The commissioners appointed by Delaware and New Jersey in 1873 held conferences and exchanged communications in 1873 and 1874, but their efforts to reach a settlement failed.

30. On March 13, 1877, New Jersey filed a bill of complaint and motion for preliminary injunction against Delaware in a case before the Supreme Court of the United States, No. 1, Original, referred to herein as *New Jersey v. Delaware I*. New Jersey claimed to own in fee simple the bed of the Delaware River from the New Jersey shore to the middle of the river, and claimed that on every part of the waters of the Delaware River it had and was entitled to an equal interest and concurrent jurisdiction with Delaware.

31. On March 26, 1877, the Supreme Court granted an injunction restraining Delaware from imposing any license or fee upon any citizen or resident of New Jersey as a condition of fishing in the Delaware River, and from arresting or fining any citizen or resident of New Jersey for fishing in the Delaware River, until further order to the contrary.

32. On November 3, 1877, the Board of Riparian Commissioners of the State of New Jersey (Riparian Commissioners) adopted pierhead and bulkhead lines for a

portion of the Delaware River within the twelve-mile circle offshore of the County of Gloucester and the County of Salem.

33. On February 17, 1883, New Jersey issued a tidelands grant to Daniel H. Kent of Wilmington, Delaware, which by its terms includes submerged lands. By its terms, Tract 1 of the February 17, 1883 grant extends 300 feet on one side and 400 feet on the other to the exterior line established by the Riparian Commissioners in the Delaware River and Salem Cove in 1877, and is described as “flowed by tide water lying in the Township of Elsinboro.”

34. In 1891, the New Jersey Legislature adopted 1891 N.J. Laws, c. 123, pertaining to dredging under tidal waters. N.J Stat. Ann. 12:3-21.

35. On September 15, 1891, New Jersey issued a tidelands grant to Annie E. Brown. By its terms, the 1891 grant to Annie E. Brown extended 850 feet on one side into the Delaware River and 850 feet on the other to the Exterior Line of the New Jersey Board of Riparian Commissioners and is described as pertaining to property “flowed by tide water lying in Pennsville in the Township of Lower Penn’s Neck ....”

36. On November 27, 1891, New Jersey issued a tidelands grant to Eugene DuPont, et al., all of New Castle County, Delaware, trading as E.I. DuPont de Nemours and Company (“Dupont”) (the November 27, 1891 grant). The property covered by the November 27, 1891 grant is within the twelve-mile circle, and extends from high water into the Delaware River 550 feet to the New Jersey Board of Riparian Commissioners’ Exterior Line.

37. On October 15, 1901, Delaware filed its Answer in *New Jersey v. Delaware I* denying New Jersey’s claims and averring, *inter alia*, that Delaware is the



owner of the whole bed of the Delaware River and of the river itself within the twelve-mile circle to the low-water mark on the New Jersey shore.

38. On February 23, 1903, Delaware approved a joint resolution appointing a joint committee of members of its House and Senate to confer with Delaware's Attorney General and special counsel in *New Jersey v. Delaware I* "concerning the proper disposition of the territorial controversy between this State and the State of New Jersey, now pending in a cause in which the State of New Jersey is complainant and the said State of Delaware is defendant, in the Supreme Court of the United States." 22 Del. Laws ch. 472.

39. On March 5, 1903, New Jersey appointed three commissioners to confer with like commissioners from Delaware "for the purpose of framing a compact or agreement between the said states and legislation consequent thereon, to be submitted to the legislatures of said two states for action thereon, looking to the amicable termination of the suit between said States in the supreme court of the United States and the final adjustment of all controversies relating to the boundary line between said states and to their respective rights in the Delaware river."

40. The commissioners of each State met between March 12-14, 1903, and on March 16, 1903, the commissioners from both States presented a draft compact to their respective legislatures.

41. The draft compact was approved by the New Jersey legislature on April 8, 1903, but was not approved by the Delaware legislature.

42. On April 9, 1903, Delaware approved a joint resolution formally appointing three commissioners to meet with commissioners from New Jersey "for the

purpose of framing a compact or agreement between the said States and legislation consequent thereon, to be submitted to the Legislatures of said two States for action thereon, looking to the amicable termination of the suit between the states in the Supreme Court of the United States and the final adjustment of all controversies relating to the boundary line between said States and their respective rights in the Delaware River.” 22 Del. Laws ch. 473.

43. On February 13, 1905, Delaware adopted a joint resolution appointing four commissioners to confer with four commissioners from New Jersey “for the purpose of framing a compact or agreement between the states and legislation consequent thereon, to be submitted to the legislatures of said two states for action thereon, looking to the amicable termination of the suit between the states now pending in the Supreme Court of the United States and the final adjustment of all controversies relating to the boundary line between said states and their respective rights in the Delaware River and Bay.”

44. On February 14, 1905, New Jersey passed a joint resolution appointing commissioners to confer with commissioners from Delaware “for the purpose of framing a compact or agreement between the said states and legislation consequent thereon to be submitted to the legislatures of said two states for action thereon, looking to the amicable termination of the suit between said states now pending in the Supreme Court of the United States and the final adjustment of all controversies relating to the boundary line between said states and to their respective rights in the Delaware river and bay.”

45. On February 18, 1905, the commissioners of Delaware and New Jersey met and agreed to the terms of a “Compact Between the State of New Jersey and the

State of Delaware Relating to the Boundary Controversy Between Said States” (hereinafter, the “1905 Compact” or the “Compact”).

46. On March 20, 1905, Delaware approved the 1905 Compact, subject to ratification by Congress.

47. On March 21, 1905, New Jersey approved the 1905 Compact, subject to ratification by Congress.

48. On March 23, 1905, Delaware approved an act appointing three commissioners to confer with like commissioners appointed by New Jersey to perform certain acts as stipulated in the 1905 Compact, including the drafting of uniform fishing laws.

49. On May 11, 1905, New Jersey approved an act appointing commissioners to confer with like commissioners from Delaware to perform certain acts as stipulated in the 1905 Compact, including the drafting of uniform fishing laws.

50. The commissioners thus appointed by the States formed the Joint Fisheries Commission.

51. On February 19, 1906, the special commissioner appointed by the Court in *New Jersey v. Delaware I* entered a report stating that in light of Congress’s pending approval of the Compact, Delaware and New Jersey had requested that the case be suspended.

52. On February 23, 1906, counsel for Delaware and New Jersey entered into a stipulation requesting that the Court approve the special commissioner’s February 19, 1906 report and authorizing the special commissioner to suspend the case.

53. On March 7, 1906, the Supreme Court suspended the case for sixty days.

54. On March 9, 1906, President Theodore Roosevelt forwarded to Congress a certified copy of the Compact.

55. On March 13, 1906, the United States Senate passed the Compact.

56. On May 16, 1906, New Jersey issued a tidelands grant to James A. Denny, et al., dated, covering property offshore of what is now known as Block 1, Lot 4, Penns Grove Borough, within the twelve-mile circle, and by the terms of the grant extending 500 feet waterward of high water into the Delaware River.

57. On October 16, 1906, the Supreme Court granted a motion to suspend the proceedings until February 4, 1907.

58. On January 16, 1907, the Joint Fisheries Commission agreed upon uniform fishing laws.

59. On January 24, 1907, the United States House of Representatives approved the Compact, thus making it effective (“An Act Giving the consent of Congress to an agreement or compact entered into between the State of New Jersey and the State of Delaware respecting the territorial limits and jurisdiction of said States”, Jan. 24, 1907, ch. 394, 34 Stat. 858).

60. On January 24, 1907, the Joint Fisheries Commission met and approved the uniform laws in the form that would be submitted to the respective legislatures.

61. On April 23, 1907, Delaware approved an “An Act Providing Uniform Laws to Regulate the Catching and Taking of Fish in the Delaware River and Bay Between the State of Delaware and the State of New Jersey.”

62. On May 7, 1907, New Jersey passed “An Act Providing Uniform Laws to Regulate the Catching and Taking of Fish in the Delaware River and Bay Between the State of Delaware and the State of New Jersey.”

63. Those 1907 Delaware and New Jersey fishing laws were not uniform.

64. On April 4, 1907, Delaware adopted an Act to cede to the United States submerged land within the twelve-mile circle east of the ship channel.

65. On March 29, 1907, the New Jersey Legislature adopted an act to cede to the United States the same submerged land within the twelve-mile circle east of the ship channel as is referenced in the preceding paragraph.

66. In 1914, the New Jersey Legislature adopted the Waterfront Development Law, 1914 N.J. Laws c. 123, pertaining to construction of waterfront developments such as a bulkhead, pier, wharf, dock, bridge, pipe line or cable. See N.J. Stat. Ann. 12:5-1 et seq.

67. In 1915, Delaware adopted the Boundary Act of 1915, declaring the limits of the State to extend to the low water mark on the Eastern side of the Delaware River within the twelve-mile circle.

68. On March 21, 1916, New Jersey issued a tidelands grant to Pennsgrove Pier Co. (the March 21, 1916 grant), by its terms covering property offshore of Penns Grove Borough, Salem County, New Jersey that extends 885 feet on one side and 975 feet on the other to the New Jersey Pierhead and Bulkhead line.

69. On March 27, 1916, New Jersey issued a tidelands lease to Harry S. Barber (the March 27, 1916 lease), by its terms covering property outshore of Block 54,

Lots 1 and 2, Penns Grove Borough, extending 575 feet from the high water line into the Delaware River.

70. On August 21, 1916, the New Jersey Board of Commerce and Navigation adopted pierhead and bulkhead lines on part of the eastern portion of the Delaware River, outshore of mean low water within the twelve-mile circle (the New Jersey Pierhead and Bulkhead Lines (1916)).

71. On August 21, 1916, New Jersey issued a tidelands grant to DuPont (the August 21, 1916 grant), by its terms including nine tracts within the twelve-mile circle in either Pennsville Township, Carneys Point Township or Penns Grove Township. The tracts included in the August 21, 1916 grant extend from the high water mark into the Delaware River various distances, from 202 feet on one side of Tract One to 4,222.1 feet on one side of Tract Seven.

72. On November 20, 1916, New Jersey issued a tidelands grant to DuPont, by its terms covering property offshore of what is now known as Block 301, Lot 1, Pennsville Township, at Deep Water Point, and within the twelve-mile circle (the November 20, 1916 grant). By its terms, the November 20, 1916 grant extends 661.3 feet from high water on one side and 650 feet on the other, into the Delaware River, both to the New Jersey Pierhead and Bulkhead line (1916).

73. On March 27, 1917, New Jersey passed a law granting jurisdiction over and title to lands in the Delaware River to the United States for bulkhead and fill. 1917 N.J. Laws ch. 189.

74. On July 16, 1917, New Jersey issued a tidelands grant to DuPont, by its terms consisting of two tracts that are offshore of what is now known as Block 1 or 301,

Lot 1, Pennsville Township, and within the twelve-mile circle (the July 16, 1917 grant). By its terms the July 16, 1917 grant extends 668 feet on one side of tract 1, and 648 feet on both sides of tract 2, offshore of the high water line and into the Delaware River, all to the New Jersey Pierhead and Bulkhead line (1916) and by its terms is described as property “flowed by tide water situate at Deep Water Point, in the County of Salem ....”

75. Between 1918 and 1939 there existed a New Jersey State tidelands lease to DuPont dated May 20, 1918 (the May 20, 1918 lease).

76. On October 17, 1921, New Jersey issued a tidelands grant to French’s Hotel Company, by its terms covering property offshore of what is now known as Block 57, Lot 1, Penns Grove Borough, and within the twelve-mile circle (the October 17, 1921 grant). By the terms of the grant, the property covered by the October 17, 1921 grant extends offshore from the high water mark 1,135.38 feet on one side and 1,283.86 feet on the other, and into the Delaware River.

77. On February 19, 1923, New Jersey issued a tidelands grant to William D. Acton, by its terms covering property now offshore of Pennsville Township, within the twelve-mile circle (the February 19, 1923 grant). The property covered by the February 19, 1923 grant extends 333.52 feet from the high water line to the corner of a pre-existing pier, and another 580 feet further waterward to the 1916 pierhead and bulkhead line on one side, and 360.75 feet from the original high water line to a corner of the pre-existing pier, and another 572.66 feet further waterward to the New Jersey Pierhead and Bulkhead line (1916), on the other side. The February 19, 1923 grant refers to a pier.

78. On November 19, 1923, New Jersey issued a tidelands grant to William D. Acton, by its terms covering property extending 970 feet on one side from the high water

mark into the Delaware River, and 964 feet from the high water line on the other side to the 1916 pierhead and bulkhead line, outshore of the Township of Lower Penns Neck, Salem County, New Jersey.

79. On August 18, 1924, New Jersey issued a tidelands lease to Fogg and Hires Company for 15 years (the Fogg and Hires lease), by its terms covering property offshore of what is now known as Block 2801, Lot 6, Pennsville Township, at the foot of Ferry Road, and within the twelve-mile circle. By its terms the property covered by the Fogg and Hires Co. lease extended 985.44 feet offshore from the high water line of the Delaware River on one side and an approximately equal distance offshore on the other side to the New Jersey Pierhead and Bulkhead line (1916). The Fogg and Hires Co. lease was cancelled May 18, 1930 and replaced with a State of New Jersey grant to the Delaware - New Jersey Ferry Company dated May 19, 1930, which grant encompassed a property with the same dimensions and location as the Fogg and Hires lease.

80. On April 14, 1925, Delaware adopted an Act (34 Del. L. p. 6) to cede to the United States 605 acres of lands within the twelve-mile circle, to the low water mark on the easterly side of the Delaware River, for the purpose of constructing a basin for the reception of material dredged from the channel of the Delaware River.

81. On August 17, 1925, New Jersey issued a tidelands grant to William D. Acton , by its terms covering property that extends 863.21 feet from the high water line into the Delaware River on one side, and 853.87 feet on the other, both to the New Jersey Pierhead and Bulkhead line (1916), offshore of Lower Penns Neck (now Pennsville Township), Salem County, New Jersey.



82. On August 17, 1925, New Jersey issued a second tidelands grant to William D. Acton, by its terms covering property located offshore of Lower Penns Neck (now Pennsville Township), Salem County, New Jersey, that extends 965.40 feet on one side and 966.63 feet on the other beyond the former high water line of the Delaware River to the New Jersey Pierhead and Bulkhead line (1916). The records of the Army Corps of Engineers indicate that a permit was issued to W.D. Acton to construct a Timber Pier to be located offshore of the North side of Pittsfield Street, Pennsville, and that the pier completed May 22, 1926 was 550 feet long.

83. On September 21, 1925, New Jersey issued a tidelands grant to the Township of Lower Penns Neck (the September 21, 1925 grant), covering property that is now offshore of Pennsville Township, within the twelve-mile circle. By its terms, the property covered by the September 21, 1925 grant extends 966.83 feet on one side and 969.91 feet on the other, outshore of the former high water line of the Delaware River.

84. On October 19, 1925, New Jersey issued a tidelands grant to William D. Acton, dated by its terms covering property that is now outshore of Pennsville Township, within the twelve-mile circle (the October 19, 1925 grant). By the terms of the grant, the property covered by the October 19, 1925 grant extends waterward from the former high water line 360.75 feet to a point on an adjoining pier, and then another 572.66 feet into the Delaware River on one side to the New Jersey Pierhead and Bulkhead Lines (1916), and 375.41 feet to a point waterward and then another 565.67 feet further waterward into the Delaware River to the New Jersey Pierhead and Bulkhead line (1916) on the other side.

85. In 1925, oyster boats from Delaware dredged and took many thousands of bushels of seed oysters from subaqueous lands claimed by New Jersey.

86. On February 21, 1927, Delaware adopted an Act (35 Del. L. pp. 6-8) to cede to the United States 1,541 acres of submerged lands within the twelve-mile circle, to the low water mark on the easterly side of the Delaware River, for the purpose of constructing a basin for the reception of material dredged from the channel of the Delaware River.

87. On March 2, 1927, Delaware adopted a joint resolution appointing a commission “for the purpose of framing a compact or agreement between the said States and legislation consequent thereon, to be submitted to the Legislatures of said two States for action thereon, looking to the final adjustment of all controversies relating to the boundary line between said States and to their respective rights in the Delaware River and Bay.”

88. On March 28, 1927, New Jersey adopted a joint resolution appointing a commission for “for the purpose of framing a compact or agreement between the said States and legislation consequent thereon, to be submitted to the Legislatures of said two States for action thereon, looking to the final adjustment of all controversies relating to the boundary line between said States and to their respective rights in the Delaware River and Bay.”. The joint commission appointed in 1927 met during 1928-1929 but was unable to reach agreement.

89. On June 19, 1928, New Jersey issued a tidelands grant to The Franklin Real Estate Company by its terms covering property that is now offshore of Block 301, Lot 13, Pennsville Township, within the twelve-mile circle, and that extends 991.46 feet

from high water into the Delaware River on one side and 827.70 feet on the other, both to the New Jersey Pierhead and Bulkhead line (1916).

90. On May 6, 1929, the New Jersey legislature passed a joint resolution authorizing its attorney general to bring suit against Delaware in the Supreme Court to “fix and determine the boundary line between Delaware and New Jersey from the Pennsylvania line, through the Delaware River, to the Atlantic Ocean.”

91. On April 15, 1929, New Jersey issued a tidelands grant to William G. Locuson (the William Locuson grant) covering property offshore of what is now known as Block 301, Lot 9, Pennsville Township, within the twelve-mile circle. By the terms of the grant, the property covered by the William Locuson grant extends 827.70 feet waterward of the high water line on one side and 823.60 feet on the other, both to the New Jersey Pierhead and Bulkhead line (1916).

92. On April 15, 1929, New Jersey issued a tidelands grant to Anna C.B. Locuson (the Anna Locuson grant), by its terms covering property located offshore of Pennsville Township, and within the twelve-mile circle, that extends 813.97 feet into the Delaware River from the high water line on one side and 809.16 feet from the high water line on the other, both to the New Jersey Pierhead and Bulkhead Lines (1916).

93. On April 15, 1929, New Jersey issued a tidelands grant to Josephine Grace Locuson, et al., dated April 15, 1929 (the Josephine Locuson grant), covering property offshore of Pennsville Township and within the twelve-mile circle, that by its terms extends from the high water line of the Delaware River waterward 813.97 feet on one side and approximately 818.78 feet on the other, both to the New Jersey Pierhead and Bulkhead Line (1916).

94. On April 15, 1929, New Jersey issued a tidelands grant to Josephine Grace Locuson, et al., (the second Josephine Locuson grant), covering property offshore of Pennsville Township, and within the twelve-mile circle, that by its terms extends from the high water mark 823.60 feet on one side and 818.78 feet on the other, into the Delaware River, both to the New Jersey Pierhead and Bulkhead line (1916).

95. On June 3, 1929, New Jersey filed a complaint against the State of Delaware in the Supreme Court, originally docketed as No. 19, Original (October Term, 1929) and referred to herein as *New Jersey v. Delaware II*.

96. On June 17, 1929, New Jersey issued a tidelands grant to Josephine Grace Locuson et al. (the June 17, 1929 grant), covering property offshore of Pennsville Township, within the twelve-mile circle. By the terms of the grant, the property covered by the June 17, 1929 grant extends from the high water line 809.16 feet into the Delaware River on one side and 797.42 feet on the other, both to the New Jersey Pierhead and Bulkhead line (1916).

97. On or about October 9, 1929, Delaware filed its Answer in *New Jersey v. Delaware II*.

98. On October 21, 1929, New Jersey issued a tidelands grant to DuPont (the October 21, 1929 grant), covering property offshore of what is now known as Block 1 or 301, Lot 1, Pennsville Township, within the twelve-mile circle. By the terms of the grant, the property covered by the October 21, 1929 grant extends from the mean high water mark 648 feet into the Delaware River to the New Jersey Pierhead and Bulkhead line (1916).

99. On October 21, 1929, New Jersey issued a tidelands license to the Delaware River Power Company (the October 21, 1929 license), covering property offshore of Pennsville Township within the twelve-mile circle. By its terms the October 21, 1929 license allows for eight armored submarine electric cables at Deep Water Point.

100. On October 21, 1929, New Jersey issued a tidelands lease to the Penn Beach Property Owners' Association (the October 21, 1929 lease). By its terms the property covered by the October 21, 1929 lease was a "tract of land flowed by tide-water situate in the Township of Lower Penns Neck," Salem County, and extended 429.49 feet beyond the mean high water line on one side and 430.70 feet on the other to the New Jersey Pierhead and Bulkhead Lines (1916).

101. On January 6, 1930, the Supreme Court appointed William L. Rawls as special master in *New Jersey v. Delaware II*.

102. On October 9, 1933, Special Master Rawls entered his report in *New Jersey v. Delaware II*.

103. On February 5, 1934, the Supreme Court entered its opinion in *New Jersey v. Delaware II*.

104. On June 3, 1935, the Supreme Court entered its decree in *New Jersey v. Delaware II*.

105. On September 16, 1935, New Jersey issued a tidelands grant to J. Landis Strickler covering property outshore of Block 54, Lot 1, Penns Grove Borough that extends 249.36 feet waterward of the center line of Delaware Avenue.

106. There is a State of New Jersey tidelands grant to DuPont dated September 13, 1943 (the September 13, 1943 grant).

107. On October 14, 1957, New Jersey issued a tidelands grant to Sun Oil Company dated (the October 14, 1957 grant) covering property outshore of what is now known as Block 101, Lots 2 and 5, Logan Township, Gloucester County, and within the twelve-mile circle. The property covered by the October 14, 1957 grant extends 1,245 feet from the mean high water line on one side and 1,245.82 feet on the other into the Delaware River.

108. On March 31, 1960, New Jersey issued a tidelands grant to DuPont (the March 31, 1960 grant), covering property outshore of Pennsville Township, within the twelve-mile circle. The property covered by the March 31, 1960 grant extends 1,027.61 feet waterward of the high water line of the Delaware River on one side and 1,096 feet on the other, both sides out to the New Jersey Pierhead and Bulkhead line (1916). The March 31, 1960 grant includes as a second tract a further area 100 feet waterward of the New Jersey Pierhead and Bulkhead line (1916).

109. In 1961, Delaware adopted a statute pertaining to the sale, lease, or granting of easements to subaqueous public lands. 53 Del. Laws ch. 34.

110. On January 11, 1962, Delaware entered into a twenty-year subaqueous land lease allowing the SunOlin Chemical Company to use Delaware subaqueous soil within the twelve-mile circle to construct, maintain, repair, replace, renew and operate submarine pipelines across the Delaware River from Claymont, Delaware to Gloucester County, New Jersey. Delaware renewed this lease on November 14, 1981 for a period of ten years. This lease was again renewed on October 15, 1991 for a period of ten years, and on May 15, 2002 for a period of twenty years.

111. On October 9, 1963, Delaware entered into a ten-year subaqueous land lease allowing the Colonial Pipeline Company to use Delaware subaqueous soil within the twelve-mile circle near Logan Township, New Jersey to construct, maintain, inspect, operate, renew, replace, repair, improve and remove submarine pipelines, from Claymont, Delaware to Logan Township, Gloucester County, New Jersey.

112. In 1966, Delaware adopted an Underwater Lands Act pertaining to the sale, lease, or granting of easements to subaqueous public lands. 55 Del. Laws. ch. 442.

113. On or about September 29, 1967, New Jersey issued a tidelands grant to DuPont (the September 29, 1967 grant). By the terms of the grant, the property covered by the September 29, 1967 grant is outshore of Pennsville Township and abuts to the north the March 31, 1960 grant to DuPont. The property covered by the September 29, 1967 grant extends 1,096 feet waterward of the high water line of the Delaware River on one side and 1,155 feet on the other.

114. In 1970, the New Jersey Legislature enacted the Wetlands Act of 1970 to protect coastal wetlands, including tidally-flowed wetlands along the Delaware Bay and River. N.J. Law of 1970, c. 272, now codified as N.J.Stat. Ann. 13:9A-1 *et seq.*

115. In 1971, Delaware adopted the Delaware Coastal Zone Act (“DCZA”). Del. Code Ann., tit. 7, § 7001 *et seq.*

116. On or about September 29, 1971, Delaware granted a ten-year lease to allow DuPont to dredge Delaware subaqueous soil, build a dock, and construct a fuel oil storage tank at the DuPont Chambers Works facility within the twelve-mile circle near the New Jersey shore. By its terms, the lease is “without prejudice to the title claim of either party.”

117. In December 1971, the El Paso Eastern Company submitted a proposal to construct a liquefied natural gas (“LNG”) facility in New Jersey, which included a proposal to build a pier from the New Jersey shore into Delaware within the twelve-mile circle. On February 23, 1972, Delaware issued a status decision stating that El Paso’s proposal was a prohibited use under the DCZA.

118. In 1972, the Federal government adopted the Coastal Zone Management Act (“CZMA”). 16 U.S.C. § 1451 *et seq.*

119. In 1973, the New Jersey Legislature enacted the Coastal Area Facility Review Act (“CAFRA”) to protect New Jersey’s coastal zone. N.J. Law of 1993, c. 185, now codified as N.J. Stat. Ann. 13:19-1 *et seq.*

120. In 1977, the New Jersey Legislature enacted the Water Pollution Control Act, to allow New Jersey, among other things, to administer the discharge permitting program then administered by the federal government through the federal Clean Water Act. N.J. Law of 1977, c. 74, now codified as N.J. Stat. Ann. 58:10A-1 *et seq.*

121. On September 16, 1977, the New Jersey Department of Environmental Protection (“NJDEP”) issued a permit to Dupont for maintenance dredging at Dupont’s Chambers Works facility beyond the low water line of the Delaware River, within the twelve-mile circle.

122. In 1977, NJDEP issued to Dupont a permit to dismantle and remove wastewater outfall structures in the Delaware River within the twelve-mile circle.

123. In 1978, the Federal government approved New Jersey’s coastal management plan with respect to most coastal areas.



124. In March 1979, New Jersey issued a report entitled Options for New Jersey's Developed Coast.

125. In March 1980, the Federal government approved Delaware's coastal zone management plan, which includes the DCZA.

126. In August 1980, the Federal government approved New Jersey's coastal zone management plan with respect to all coastal areas.

127. On March 18, 1982, Delaware issued a Letter of Authorization to DuPont in Deepwater, New Jersey by its terms allowing DuPont to repair and replace an existing 36 pile cluster in subaqueous soil within the twelve-mile circle offshore of low water.

128. In 1982, NJDEP issued a waterfront development permit and water quality certificate for the DuPont facility in Carneys Point and Pennsville, New Jersey, by the terms of the permit allowing dredging of the berth area of an existing pier.

129. In 1982, NJDEP issued to DuPont a waterfront development permit for a new sheet piling cell, by its terms allowing replacement of an existing timber cluster on the Delaware River, at Dupont's Chambers Works Plant in Deepwater, New Jersey.

130. In 1986, Delaware adopted a Subaqueous Lands Act pertaining to public and private subaqueous lands. Del. Code Ann., tit. 7, ch. 72.

131. In 1987, NJDEP issued New Jersey Pollution Discharge Elimination System permit NJ0005100DSW to Dupont, allowing it to discharge effluent from its Chambers Works facility in Pennsville Township, New Jersey, into the Delaware River.

132. On July 28, 1987, Delaware entered into a ten-year subaqueous lands lease allowing the Columbia Gas Transmission Corp. to construct a submerged natural gas pipeline across the Delaware River within the twelve-mile circle. The lease also allowed

Columbia Gas to dredge 552 cubic yards of material from subaqueous lands within the twelve-mile circle. This lease was renewed on January 8, 1998.

133. On August 3, 1987, Delaware entered into a ten-year subaqueous lands lease allowing the Colonial Pipeline Company to construct a 30 inch submerged petroleum pipeline across the Delaware River within the twelve-mile circle, and dredge subaqueous lands within the twelve-mile circle.

134. On July 13, 1990, Keystone Cogeneration Systems Inc., currently known as the Logan Generating Company, applied to Delaware's Department of Natural Resources and Environmental Control ("DNREC") for a status decision relating to its proposal to build a 200 megawatt coal-fueled cogeneration facility in Logan Township, New Jersey, including a 1,100 pier extending from the New Jersey shore into Delaware territory within the twelve-mile circle. In a status decision dated November 19, 1990, DNREC determined that the Keystone project did not constitute a prohibited bulk product transfer facility under the DZCA and that a permit under the DCZA was required. DNREC issued a coastal zone permit to Keystone on December 13, 1991.

135. On September 30, 1991, DNREC issued a subaqueous lands lease by its terms permitting the construction of the coal unloading pier and permitting the dredging of 40,000 cubic yards of material from the Delaware River within the twelve-mile circle. On May 28, 1993, Delaware issued additional approvals for the Keystone facility to allow for a modification of pier dimensions. On March 15, 1995, Delaware issued a letter of authorization for a one year extension of the subaqueous lands permit issued on September 30, 1991, and provided permission to dredge an additional 13,750 cubic yards of material within the twelve-mile circle. On November 12, 1997, Delaware issued a

letter of authorization for maintenance dredging at the facility. On November 9, 2001, Delaware issued a renewal to maintain a pier, docks and dolphins at the facility.

136. On September 24, 1991, NJDEP issued to Keystone Cogeneration Systems Inc. in Logan Township, New Jersey, stream encroachment, waterfront development and freshwater wetlands permits and a Water Quality Certificate, for a coal unloading facility and a 1600- foot approach-way pier.

137. On June 12, 1992, New Jersey issued a lease to Keystone Urban Renewal Limited Partnership (the June 12, 1992 lease), by its terms covering property outshore of what is now known as Block 101, Lots 2 and 5, Logan Township, Gloucester County and outshore of part of the property covered by the October 14, 1957 Grant to the Sun Oil Company. By its terms, the property covered by the June 12, 1992 lease extends approximately 1,600 feet offshore of the original mean high water line into the Delaware River, within the twelve-mile circle.

138. In September 1995, NJDEP Division of Parks and Forestry applied to DNREC for a subaqueous land lease to permit New Jersey to rehabilitate a pier and construct a new floating ferry dock on Delaware subaqueous soil within the twelve-mile circle near Fort Mott State Park in Pennsville Township, New Jersey. On February 7, 1996, Delaware entered into a ten-year subaqueous land lease with the NJDEP Division of Parks and Forestry.

139. On January 24, 1996, NJDEP issued a waterfront development permit to NJDEP's Division of Parks and Forestry for the rehabilitation of the historic pier at Fort Mott State Park in Pennsville Township, and other work specified in the permit.

140. In 1996 NJDEP issued and renewed in 2005 a water allocation permit for the Keystone Cogeneration Systems, Inc. facility located in Logan Township. The water allocation permit allows the facility to withdraw up to 108.5 million gallons of water per month from the Delaware River through an intake structure located beyond the low water line, within the twelve-mile circle, that extends approximately 1,600 feet into the Delaware River.

141. On December 9, 1997, Delaware entered into a ten-year subaqueous land lease allowing Delmarva Power and Light Company to install 3,755 linear feet of submarine fiber optic cable in the Delaware River within the twelve-mile circle extending from Pigeon Point in New Castle County, Delaware, to Deepwater Point in New Jersey. This lease was amended on March 11, 2002.

142. On March 22, 2000, NJDEP issued to Pennsville Township a waterfront development permit for removal of a municipal boat ramp and construction of a new ramp.

143. There is a lease to William G. Bergmann, et al., by the State of New Jersey initially dated January 11, 1999, and renewed February 13, 2002 (the January 11, 1999 lease). By the terms of the lease, the property covered by the January 11, 1999 lease extends 35 feet waterward of the high water line, and is located offshore of what is now known as Block 1601, Lot 25, on North River Drive in the Township of Pennsville.

144. There is a lease to the Township of Pennsville by the State of New Jersey dated April 25, 2000 (the April 25, 2000 lease), by its terms covering property outshore of Block 3428, part of Lot 1, Township of Pennsville, at the foot of Dartmouth Road, that extends 95 feet offshore of the existing bulkhead and mean high water line (1999).

145. On January 24, 2001, New Jersey granted an Assignment of Management Rights (lease) to the New Jersey Division of Parks and Forestry (the January 24, 2001 lease), covering property offshore of Block 5301, Lot 3, Pennsville Township, and within the twelve-mile circle. By the lease terms, the property subject to the January 24, 2001 lease includes a pier offshore of Block 5301, Lot 3, Pennsville Township that extends 350 feet waterward of the high water line into the Delaware River.

146. On February 20, 2001, NJDEP issued to Pennsville Township a waterfront development permit for installation of stormwater force main pipes, which were 113 feet long.

147. On May 4, 2001, Delaware issued a subaqueous lands permit to DuPont Chambers Works located near Deepwater, New Jersey, by its terms allowing DuPont to dredge approximately 4,650 cubic yards of material from the Delaware River within the twelve-mile circle, to backfill existing elevations on a 0.71 acre site in the Delaware River, and to install a temporary sheet pile wall surrounding the proposed excavation in the Delaware River.

148. On May 10, 2005, the Delaware Wetlands and Subaqueous Lands Section issued a twenty-year subaqueous lands lease and a water quality certification to Fenwick Commons, LLC (“Fenwick”) in connection with a project to rehabilitate a dilapidated pier at the end of west main street in Penns Grove, New Jersey. By its terms, the lease permits Fenwick to construct a 40 foot wide by 750 foot long pier, a 6 foot wide by 95 foot long aluminum gangway, a 28 foot wide by 120 foot long floating dock and breakwater, 6 support pilings, 1,255 linear feet of steel bulkhead and permission to fill 1,882 square feet of public subaqueous lands near Penns Grove, New Jersey. On May 6,

2005, counsel for Fenwick wrote to DNREC stating that “the issue as to the ownership of lands is in dispute as to the Riparian Grants from the State of New Jersey.”

149. On August 10, 2006, the New Jersey State Park Service applied to Delaware to renew its subaqueous lands lease for the Fort Mott pier. On December 19, 2006, a New Jersey official wrote to DNREC that the Park Service’s lease application was “without prejudice” to New Jersey’s position in this lawsuit.

150. On September 27, 2004, British Petroleum (“BP”), through its wholly-owned indirect subsidiary, Crown Landing, LLC, requested permission from DNREC’s Wetlands and Subaqueous Lands Section to drill geotechnical test borings in the Delaware River in connection with a proposal to construct a liquefied natural gas (“LNG”) terminal on the Delaware River. The proposed facility is commonly referred to as the “Crown Landing project” or “Crown Landing facility.”

151. BP’s proposed Crown Landing facility would include an LNG plant, storage facility, as well as other structures in New Jersey and a pier and related structures that extend into Delaware within the twelve-mile circle.

152. The portion of BP’s proposed Crown Landing facility located in Delaware would include an LNG transfer system installed on the unloading platform to transfer the LNG from the ship to three 150,000-cubic-meter storage tanks located in New Jersey.

153. BP’s proposed Crown Landing facility would require the dredging of 1.24 million cubic yards of subaqueous soil, which would disturb approximately 29 acres of the bed of the river within Delaware territory.



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