

IN THE
Supreme Court of the United States

STATE OF NEW JERSEY,
Plaintiff,

v.

STATE OF DELAWARE,
Defendant.

**DELAWARE'S APPENDIX
ON CROSS-MOTIONS FOR SUMMARY JUDGMENT**

VOLUME 8 (Pages 4401 - 4746)

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February 1, 2007

TABLE OF CONTENTS

Page

VOLUME 8

Interstate Compact Documents:

N.J.S.A. §§ 52:28-23 to -28 (Compact between the State of New Jersey and the State of Pennsylvania (Apr. 26, 1783))4401

Reply Brief of the State of New Jersey in Opposition to the Exceptions of the State of New York, *New Jersey v. New York*, No. 120, Original (U.S. filed Aug. 29, 1997).....4407

N.J.S.A. 32:11E-1 (Delaware-New Jersey Compact of 1961, as amended)4433

New Jersey v. Delaware II Pleadings:

Stipulated Record, Testimony, Volume I, *New Jersey v. Delaware*, No. 18, Original (U.S.) (excerpts)4447

Stipulated Record, Descriptive List of Exhibits, Volume II, *New Jersey v. Delaware*, No. 18, Original (U.S.) (excerpts).....4455

Plaintiff’s Brief Before the Special Master, *New Jersey v. Delaware*, No. 19, Original (U.S. filed Aug. 15, 1932) (excerpts)4513

Reply Brief of Defendant Before the Special Master, *New Jersey v. Delaware*, No. 19, Original (U.S. filed 1932) (excerpts).....4529

Stenographer’s Record, Oral Argument Before the Special Master, *New Jersey v. Delaware*, No. 19, Original (U.S. Sept. 12, 1932)4539

Coastal Management Plan Documents:

Busemann, *Energy Facility Siting Issues in New Jersey’s Coastal Zone: A Staff Working Paper*, New Jersey Department of Environmental Protection (“NJDEP”), Division of Marine Services, Office of Coastal Zone Management (December 1977).....4599

NJDEP, *New Jersey Coastal Management Program - Bay and Ocean Shore Segment and Draft Environmental Impact Statement* (May 1978) (excerpts).....4619

NJDEP, *New Jersey Coastal Management Program - Bay and Ocean Shore Segment and Final Environmental Impact Statement* (Aug. 1978) (excerpts)4627

NJDEP, *Proposed New Jersey Coastal Management Program and Draft Environmental Impact Statement* (May 1980) (excerpts)4635

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TABLE OF CONTENTS

Page

VOLUME 8

Interstate Compact Documents:

N.J.S.A. §§ 52:28-23 to -28 (Compact between the State of New Jersey and the State of Pennsylvania (Apr. 26, 1783))	4401
Reply Brief of the State of New Jersey in Opposition to the Exceptions of the State of New York, <i>New Jersey v. New York</i> , No. 120, Original (U.S. filed Aug. 29, 1997).....	4407
N.J.S.A. 32:11E-1 (Delaware-New Jersey Compact of 1961, as amended)	4433

New Jersey v. Delaware II Pleadings:

Stipulated Record, Testimony, Volume I, <i>New Jersey v. Delaware</i> , No. 18, Original (U.S.) (excerpts)	4447
Stipulated Record, Descriptive List of Exhibits, Volume II, <i>New Jersey v. Delaware</i> , No. 18, Original (U.S.) (excerpts).....	4455
Plaintiff’s Brief Before the Special Master, <i>New Jersey v. Delaware</i> , No. 19, Original (U.S. filed Aug. 15, 1932) (excerpts).....	4513
Reply Brief of Defendant Before the Special Master, <i>New Jersey v. Delaware</i> , No. 19, Original (U.S.) (excerpts).....	4529
Stenographer’s Record, Oral Argument Before the Special Master, <i>New Jersey v. Delaware</i> , No. 19, Original (U.S. Sept. 12, 1932)	4539

Coastal Management Plan Documents:

Busemann, <i>Energy Facility Siting Issues in New Jersey’s Coastal Zone: A Staff Working Paper</i> , New Jersey Department of Environmental Protection (“NJDEP”), Division of Marine Services, Office of Coastal Zone Management (December 1977).....	4599
NJDEP, New Jersey Coastal Management Program - Bay and Ocean Shore Segment and Draft Environmental Impact Statement (May 1978) (excerpts).....	4619
NJDEP, New Jersey Coastal Management Program - Bay and Ocean Shore Segment and Final Environmental Impact Statement (Aug. 1978) (excerpts)	4627
NJDEP, Proposed New Jersey Coastal Management Program and Draft Environmental Impact Statement (May 1980) (excerpts).....	4635

Crown Landing Documents:

Letter from David Q. Risilia, NJDEP Office of Dredging & Sediment Technology, to David Blaha, Environmental Resources Management (Feb. 4, 2005).....4641

Letter from Kenneth Koschek, NJDEP Office of Permit Coordination & Environmental Review, to Magalie R. Salas, Federal Energy Regulatory Commission (Apr. 19, 2005)4673

Letter from Joseph J. Seebode, Assistant Commissioner, NJDEP to David Blaha, Environmental Resources Management (May 24, 2005)4683

Discovery Documents:

BP, plc., Privilege Log: Common Interest Communications, (April 25, 2006) (Exhibit A to Declaration of Stuart A. Raphael).....4685

Responses of Plaintiff State of New Jersey to First Set of Interrogatories from Defendant State of Delaware, *New Jersey v. Delaware*, No. 134, Original (July 14, 2006)4713

LEXSTAT

LexisNexis (TM) New Jersey Annotated Statutes

*** THIS SECTION IS CURRENT THROUGH NEW JERSEY 212TH LEGISLATURE ***
*** 1ST ANNUAL SESSION, (P.L. 2007 CH. 5) AND NOVEMBER 2005 ELECTION ***
*** ANNOTATIONS CURRENT THROUGH JANUARY 18, 2007 ***

TITLE 52. STATE GOVERNMENT, DEPARTMENTS AND OFFICERS
SUBTITLE 4. TERRITORIAL LIMITS, JURISDICTION, BUILDINGS AND LAND
CHAPTER 28. TERRITORIAL LIMITS AND JURISDICTION
ARTICLE 2. NEW JERSEY--PENNSYLVANIA
A. DELAWARE RIVER

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:28-23 (2007)

§ 52:28-23. Preamble

Whereas, commissioners duly appointed on the part of the state of Pennsylvania, and commissioners, duly appointed on the part of the state of New Jersey, for the purpose of settling the jurisdiction of the river Delaware, and islands within the same, have executed two instruments of an agreement for the purposes aforesaid, one for each state, which agreement is contained in the following words:

An agreement made and concluded between George Bryan, George Gray, and William Bingham, commissioners appointed by the legislature of the state of Pennsylvania for settling the jurisdiction of the river Delaware, and islands within the same, and Abraham Clark, Joseph Cooper, and Thomas Henderson, commissioners appointed by the legislature of the state of New Jersey for the like purpose.

Whereas, inconveniences and mischiefs have arisen, and may hereafter arise, from the uncertainty of jurisdiction within and on the river Delaware; therefore, to prevent the same, and in order that law and justice may hereafter in all cases be executed, and take effect within and upon the said river from shore to shore, in all parts and places thereof where the same river is the boundary between the said states, the said commissioners do agree and establish, for and in behalf of their respective states, in manner following, that is to say:

HISTORY: Rev.1877, p. 1181, Preamble (C.S. p. 5368, Preamble).

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*** ANNOTATIONS CURRENT THROUGH JANUARY 18, 2007 ***

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SUBTITLE 4. TERRITORIAL LIMITS, JURISDICTION, BUILDINGS AND LAND
CHAPTER 28. TERRITORIAL LIMITS AND JURISDICTION
ARTICLE 2. NEW JERSEY--PENNSYLVANIA
A. DELAWARE RIVER

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:28-24 (2007)

§ 52:28-24. Delaware river a common highway

First. It is declared, that the river Delaware, from the station point or northwest corner of New Jersey, northerly, to the place upon the said river where the circular boundary of the state of Delaware touches upon the same, in the whole length and breadth thereof, is and shall continue to be and remain a common highway, equally free and open for the use, benefit and advantage of the said contracting parties; provided nevertheless, that each of the legislatures of said states shall hold and exercise the right of regulating and guarding the fisheries on the said river Delaware annexed to their respective shores, in such manner that the said fisheries may not be unnecessarily interrupted, during the season for catching shad, by vessels riding at anchor on the fishing ground, or by persons fishing under claim of a common right on said river.

HISTORY: Rev. 1877, p. 1181, 15 (C.S. p. 5368, 30).

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*** THIS SECTION IS CURRENT THROUGH NEW JERSEY 212TH LEGISLATURE ***
*** 1ST ANNUAL SESSION, (P.L. 2007 CH. 5) AND NOVEMBER 2005 ELECTION ***
*** ANNOTATIONS CURRENT THROUGH JANUARY 18, 2007 ***

TITLE 52. STATE GOVERNMENT, DEPARTMENTS AND OFFICERS
SUBTITLE 4. TERRITORIAL LIMITS, JURISDICTION, BUILDINGS AND LAND
CHAPTER 28. TERRITORIAL LIMITS AND JURISDICTION
ARTICLE 2. NEW JERSEY--PENNSYLVANIA
A. DELAWARE RIVER

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:28-25 (2007)

§ 52:28-25. Jurisdiction over Delaware river

Secondly. That each state shall enjoy and exercise a concurrent jurisdiction within and upon the water, and not upon the dry land, between the shores of said river, but in such sort, nevertheless, that every ship and other vessel, while riding at anchor before any city or town in either state, where she hath last laded or unladed, or where it is intended she shall first thereafter either lade or unlade, shall be considered exclusively within the jurisdiction of such state; and every vessel fastened to or aground on the shore of either state, shall in like manner be considered exclusively within the jurisdiction of such state; but that all capital and other offenses, trespasses, or damages, committed on said river, the juridical investigation and determination thereof shall be exclusively vested in the state wherein the offender or person charged with such offense shall be first apprehended, arrested, or prosecuted.

HISTORY: Rev.1877, p. 1181, 16 (C.S. p. 5368, 31).

LEXSTAT

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*** 1ST ANNUAL SESSION, (P.L. 2007 CH. 5) AND NOVEMBER 2005 ELECTION ***
*** ANNOTATIONS CURRENT THROUGH JANUARY 18, 2007 ***

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SUBTITLE 4. TERRITORIAL LIMITS, JURISDICTION, BUILDINGS AND LAND
CHAPTER 28. TERRITORIAL LIMITS AND JURISDICTION
ARTICLE 2. NEW JERSEY--PENNSYLVANIA
A. DELAWARE RIVER

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:28-26 (2007)

§ 52:28-26. Annexation of islands

Thirdly. That all islands, islets, and dry land within the bed and between the shores of the said river, and between the said station point, northerly, and the falls of Trenton, southerly, shall as to jurisdiction, be hereafter deemed and considered as parts and parcels of the state to which such insulated dry land doth lie nearest at the time of making and executing this agreement; and that from said falls of Trenton to the state of Delaware, southerly, Biles' island, near Trenton, Windmill island, opposite to Philadelphia, League island, Mud or Fort island, Hog island, and Little Tinnicum islands, shall be annexed to the state of Pennsylvania, and considered as parts and parcels thereof; and that Biddle's or Newbold's island, Burlington island, Petty's islands, Redbank island, Harmanus Helm's island, Chester island, and Shiverse's island, shall be annexed to the state of New Jersey, and considered as parts and parcels thereof; and that all other islands within said river, between the falls of Trenton and the state of Delaware, which are not hereinbefore particularly enumerated, shall be hereafter deemed and considered as parts and parcels of the state to which such island doth lie nearest, at the date hereof; and that all islands which may hereafter be formed within the said river shall be classed and annexed to the jurisdiction of either state, according to the same principle.

HISTORY: Rev. 1877, p. 1181, 17 (C.S. p. 5369, 32).

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*** ANNOTATIONS CURRENT THROUGH JANUARY 18, 2007 ***

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SUBTITLE 4. TERRITORIAL LIMITS, JURISDICTION, BUILDINGS AND LAND
CHAPTER 28. TERRITORIAL LIMITS AND JURISDICTION
ARTICLE 2. NEW JERSEY--PENNSYLVANIA
A. DELAWARE RIVER

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:28-27 (2007)

§ 52:28-27. When agreement binding

Fourthly. That this present agreement, and every article and clause therein contained, shall be suspended and take no effect until each of the legislatures of the states of Pennsylvania and New Jersey, respectively, shall have passed laws approving of and ratifying the same; which being done, the said agreement shall then be considered as a joint compact between the said states, and the citizens thereof, respectively, and be forever thereafter irrevocable by either of the said contracting states, without the concurrence of the other. In witness whereof, we, the commissioners of the aforesaid states, have set our hands and seals to two instruments of the agreement, one for each state, dated this twenty-sixth day of April, anno Domini one thousand seven hundred and eighty-three.

Abraham Clark, [L.S.]
Joseph Cooper, [L.S.]
Thomas Henderson, [L.S.]
George Bryan, [L.S.]
George Gray, [L.S.]
Wm. Bingham. [L.S.]

HISTORY: Rev.1877, p. 1182, 18 (C.S. p. 5369, 33).

LEXSTAT

LexisNexis (TM) New Jersey Annotated Statutes

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*** ANNOTATIONS CURRENT THROUGH JANUARY 18, 2007 ***

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SUBTITLE 4. TERRITORIAL LIMITS, JURISDICTION, BUILDINGS AND LAND
CHAPTER 28. TERRITORIAL LIMITS AND JURISDICTION
ARTICLE 2. NEW JERSEY--PENNSYLVANIA
A. DELAWARE RIVER

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 52:28-28 (2007)

§ 52:28-28. Agreement ratified

The aforesaid agreement and every article, clause, matter and thing therein contained, shall be and the same is hereby fully and amply ratified and confirmed, and shall be and ever hereafter remain in force, agreeably to the true tenor and extent thereof.

HISTORY: Rev.1877, p. 1182, 18 (C.S. p. 5369, 34).

For Opinion See 117 S.Ct. 2451, 118 S.Ct. 1726, 119 S.Ct. 4, 119 S.Ct. 1743, 1997 WL 309136, 118 S.Ct. 27, 118 S.Ct. 681, 117 S.Ct. 2505, 116 S.Ct. 2495, 119 S.Ct. 2336, 118 S.Ct. 555, 116 S.Ct. 669, 117 S.Ct. 605, 118 S.Ct. 292, 1997 WL 291594

Briefs and Other Related Documents

U.S.Reply.Brief,1997.

United States Supreme Court Reply Brief.

STATE of New Jersey, Plaintiff,

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STATE of New York, Defendant.


No. 120 ORIG.

October Term, 1996.

Aug. 29, 1997.


ON EXCEPTIONS TO THE REPORT OF THE SPECIAL MASTER


REPLY BRIEF OF THE STATE OF NEW JERSEY IN OPPOSITION TO THE EXCEPTIONS OF THE STATE OF NEW YORK

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NAVIGABLE WATERS 270  **36(1)**

270 NAVIGABLE WATERS

270II Lands Under Water

270  36 Ownership and Control in General


270  36(1) k. Ownership by state. Most Cited Cases

STATES 360  **6**

360 STATES

360I Political Status and Relations

360I(A) In General

360  6 k. Compacts between states. Most Cited Cases


STATES 360  **12.1**

360 STATES

360I Political Status and Relations

360I(A) In General


360  11 Territorial Extent and Boundaries

360  12.1 k. Boundaries on rivers, lakes, and ocean waters. Most Cited Cases

Under article of compact between New Jersey and New York, were landfilled portions of Ellis Island that were created after adoption of compact a part of New Jersey and subject to its sovereignty and jurisdiction?


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State of New Jersey v. State of New York
NAVIGABLE WATERS 270  **36(1)**

270 NAVIGABLE WATERS

270II Lands Under Water

270  36 Ownership and Control in General


270  36(1) k. Ownership by state. Most Cited Cases

STATES 360  **6**

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360I Political Status and Relations

360I(A) In General

360  6 k. Compacts between states. Most Cited Cases

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360I Political Status and Relations

360I(A) In General

360  11 Territorial Extent and Boundaries

360  12.1 k. Boundaries on rivers,

lakes, and ocean waters. Most Cited Cases

Was boundary established in article of compact between New Jersey and New York, which granted New York sovereignty over islands in Hudson River while granting New Jersey sovereignty over submerged land surrounding Ellis Island, a sovereign boundary and not a mere allocation of private property rights?


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State of New Jersey v. State of New York **NAVIGABLE WATERS 270**  **36(1)**

270 NAVIGABLE WATERS

270II Lands Under Water

270  **36** Ownership and Control in General


270  **36(1) k.** Ownership by state. Most Cited Cases

STATES 360  **6**

360 STATES

360I Political Status and Relations

360I(A) In General

360  **6 k.** Compacts between states. Most Cited Cases


STATES 360  **12.1**

360 STATES

360I Political Status and Relations

360I(A) In General

360  **11** Territorial Extent and Boundaries


360  **12.1 k.** Boundaries on rivers, lakes, and ocean waters. Most Cited Cases

Were speculative fears that dual jurisdiction over Ellis Island would be impracticable without factual foundation, and did those fears not provide basis for

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State of New Jersey v. State of New York **NAVIGABLE WATERS 270**  **36(1)**

270 NAVIGABLE WATERS

270II Lands Under Water

270  **36** Ownership and Control in General


270  **36(1) k.** Ownership by state. Most Cited Cases

STATES 360  **6**

360 STATES

360I Political Status and Relations

360I(A) In General

360  **6 k.** Compacts between states. Most Cited Cases


STATES 360  **12.1**

360 STATES

360I Political Status and Relations

360I(A) In General

360  **11** Territorial Extent and Boundaries

360  **12.1 k.** Boundaries on rivers, lakes, and ocean waters. Most Cited Cases

Was evidence of New Jersey's refusal to acquiesce in New York's purported assertion of governmental dominion over fill lands on Ellis Island in period after 1955, standing alone, sufficient to foreclose New York's effort to appropriate New Jersey's territory in violation of compact between New Jersey and New York?

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State of New Jersey v. State of New York STATES
360 13

360 STATES
360I Political Status and Relations
360I(A) In General
360 11 Territorial Extent and Boundaries

360 13 k. Establishment of boundaries. Most Cited Cases
Did New York's cessions of jurisdiction in 1800 and 1880 preclude New York from exercising range of governmental powers necessary to establish prescription and allow New York to acquire sovereignty over filled portions of Ellis Island?

State of New Jersey v. State of New York STATES
360 13

360 STATES
360I Political Status and Relations
360I(A) In General
360 11 Territorial Extent and Boundaries

360 13 k. Establishment of boundaries. Most Cited Cases
Did New York's evidence of prescriptive acts in period of 1890 to 1955 fail to establish that New York exercised dominion and sovereignty over filled portions of Ellis Island for sufficiently long period to acquire sovereignty?

State of New Jersey v. State of New York STATES
360 13

360 STATES
360I Political Status and Relations
360I(A) In General
360 11 Territorial Extent and Boundaries

360 13 k. Establishment of boundaries. Most Cited Cases
Did New Jersey not acquiesce in New York's isolated purported acts of prescription during period from 1890 to 1955, for purpose of determining whether New York had acquired sovereignty over filled portions of Ellis Island by prescription and acquiescence by New Jersey?

State of New Jersey v. State of New York STATES
360 13

360 STATES
360I Political Status and Relations
360I(A) In General
360 11 Territorial Extent and Boundaries

360 13 k. Establishment of boundaries. Most Cited Cases
Is laches not applicable to boundary disputes between states, since any inequities resulting from delay in preserving sovereignty are addressed through prescription and acquiescence?

*i TABLE OF CONTENTS

SUMMARY OF ARGUMENT ... 1

ARGUMENT

POINT I

UNDER ARTICLE II OF THE COMPACT, THE LANDFILLED PORTIONS OF ELLIS ISLAND CREATED AFTER THE COMPACT WAS ADOPTED ARE PART OF NEW JERSEY AND SUBJECT TO ITS SOVEREIGNTY AND JURISDICTION ... 1

POINT II

THE BOUNDARY ESTABLISHED IN ARTICLE I IS A SOVEREIGN BOUNDARY, NOT A MERE ALLOCATION OF PRIVATE PROPERTY RIGHTS ... 7

POINT III

SPECULATIVE FEARS THAT DUAL JURISDICTION OVER ELLIS ISLAND WILL BE IMPRACTICABLE HAVE NO FACTUAL FOUNDATION AND DO NOT PROVIDE A BASIS FOR ALTERING THE INTERSTATE

BOUNDARY ESTABLISHED BY THE STATES
AND APPROVED BY CONGRESS IN 1834 ... 10

***ii** POINT IV

THE EVIDENCE OF NEW JERSEY'S REFUSAL
TO ACQUIESCE IN NEW YORK'S PURPORTED
ASSERTION OF GOVERNMENTAL DOMINION
OVER THE FILLED LANDS IN THE PERIOD
AFTER 1955, STANDING ALONE, FORECLOSES
NEW YORK'S EFFORT TO APPROPRIATE NEW
JERSEY'S TERRITORY ... 15

POINT V

NEW YORK'S CESSIONS OF JURISDICTION IN
1800 AND 1880 PRECLUDE NEW YORK FROM
EXERCISING THE RANGE OF
GOVERNMENTAL POWERS NECESSARY TO
ESTABLISH PRESCRIPTION ... 24

POINT VI

NEW YORK'S EVIDENCE OF PRESCRIPTIVE
ACTS IN THE PERIOD OF 1890 TO 1955 FAILS
TO ESTABLISH THAT NEW YORK EXERCISED
DOMINION AND SOVEREIGNTY OVER THE
FILLED LANDS FOR A SUFFICIENTLY LONG
PERIOD ... 26

1) New York failed to prove a consistent and
longstanding policy recording vital statistics for
births, deaths and marriages on the filled portions of
Ellis Island ... 28

***iii** 2) New York did not prescribe the tax laws for
the filled lands ... 30

3) New York did not enforce its civil or criminal laws
on the filled portions of the Island ... 31

4) New York did not provide police or fire protection
on the Island ... 31

5) New York did not prescribe the health or building
codes for the Island, it did not mandate rates of wages
to be paid, nor did New York's laws apply to workers'
compensation claims ... 32

6) New York offered no evidence that any resident of
Ellis Island voted in a New York election and its
registration of Ellis Island voters is insufficient to
establish prescription over the filled lands ... 33

7) The federal government did not uniformly
"believe" that the whole of Ellis Island was part of

New York ... 35

8) There was no evidence that the public generally
perceived Ellis Island to be part of New York ... 36

***iv** POINT VII

NEW JERSEY DID NOT ACQUIESCE IN NEW
YORK'S ISOLATED PURPORTED ACTS OF
PRESCRIPTION DURING THE PERIOD FROM
1890 TO 1955 ... 37

POINT VIII

LACHES IS NOT APPLICABLE TO BOUNDARY
DISPUTES BETWEEN STATES. ANY
INEQUITIES RESULTING FROM A DELAY IN
PRESERVING SOVEREIGNTY ARE
ADDRESSED THROUGH PRESCRIPTION AND
ACQUIESCENCE ... 44

CONCLUSION ... 50

***v** TABLE OF AUTHORITIES

Cases:

Allen v. McCurry, 449 U.S. 90 (1980) ... 10

Arizona v. California, 373 U.S. 546 (1963) ... 13

Arkansas v. Tennessee, 246 U.S. 158 (1918) ... 3

Arkansas v. Tennessee, 310 U.S. 563 (1940) ... 25, 26

Becker v. Adams, 181 A.2d 349 (N.J.1962) ... 41

Block v. North Dakota, 461 U.S. 273 (1983) ... 45

Carchman v. Nash, 473 U.S. 716 (1985) ... 2

Central R.R. v. Mayor of Jersey City, 56 A. 239
(N.J.Sup.Ct.1903). *aff'd*, 61 A. 1118 (N.J.1905) ... 7,
14

Central R.R. Co. v. Mayor of Jersey City, 209 U.S.
473 (1908) ... *passim*

Coffee v. Groover, 123 U.S. 1 (1887) ... 2

Collins v. Promark Prods., Inc., 956 F.2d 383 (2d
Cir.1992) ... 11, 22

Fleeger's Lessee, 36 U.S. (11 Pet.) 185 (1837) ... 2

Georgia v. South Carolina, 497 U.S. 376 (1990) ... 3, 44

*vi Guarini v. New York, 521 A.2d 1362 (N.J.Super.Ct.Chan.Div.), *aff'd*, 521 A.2d 1294 (N.J.Super.Ct.App.Div.1986), *cert. denied*, 484 U.S. 817 (1987) ... 22, 23

Illinois v. Kentucky, 500 U.S. 380 (1991) ... *passim*

Kansas v. Colorado, 514 U.S. 673 (1995) ... *passim*

Kremer v. Chemical Const. Co., 456 U.S. 461 (1983) ... 10

Louisiana v. Mississippi, 202 U.S. 1 (1906) ... 22

Macomber v. Bose, 401 F.2d 545 (9th Cir.1968) ... 25

Massachusetts v. New York, 271 U.S. 95 (1926) ... 44, 47

Michigan v. Wisconsin, 270 U.S. 295 (1926) ... *passim*

Minnesota v. Wisconsin, 252 U.S. 273 (1920) ... 3

Murray v. Joe Gerrick & Co., 291 U.S. 315 (1934) ... 33

Ohio v. Kentucky, 444 U.S. 335 (1980) ... 3, 44

Oklahoma v. New Mexico, 501 U.S. 221 (1991) ... 2

Oklahoma v. Texas, 272 U.S. 21 (1926) ... 26

People v. Central R. R., 42 N.Y. 283, *app. dis.*, 79 U.S. (12 Wall.) 455 (1870) ... 7

*vii Planned Parenthood v. Casey, 505 U.S. 833 (1992) ... 9

Texas v. New Mexico, 462 U.S. 554 (1983) ... 2

Texas v. New Mexico, 482 U.S. 124 (1987) ... 13

United States v. State Tax Comm'n, 412 U.S. 363 (1973) ... 25

United States v. Stauffer Chemical Co., 464 U.S. 165 (1984) ... 10

United States v. Unzeuta, 281 U.S. 138 (1930) ... 25

Vermont v. New Hampshire, 289 U.S. 593 (1933) ... 24

Virginia v. Tennessee, 148 US. 503 (1893) ... 2, 37

Constitution, statutes and regulations:

42 Stat. 174 (1921) ... 9

40 U.S.C. § 290 ... 33

N.J. Stat. Ann. § 12:3-4 (West 1979) ... 38

N.J. Stat. Ann. § 12:5-1, *et seq.* (West 1979) ... 12

N.J. Stat. Ann. § 12:15-1, *et seq.* (West 1979) ... 42

N.J. Stat. Ann. § 13:1B-15.131 (West 1991) ... 12

*viii N.J. Stat. Ann. § 32:11D-1, *et seq.* (West 1990) ... 12

N.J. Stat. Ann. § 32:32-1, *et seq.* (West 1990) ... 23

1869 N.J. Laws, Ch. 393 ... 38

1872 N.Y. Laws 5, § 3 ... 35

1905 N.Y. Laws 83, § 2 ... 35

1911 N.Y. Laws 890 ... 35

1944 N.Y. Laws 726 ... 35

1951 N.Y. Laws 839 ... 35

1970 N.Y. Laws 5 ... 35

Miscellaneous: Andrew C. Revkin, *Harbor to Be Dredged, but Much Tainted Mud Lacks Home*, N.Y. Times, May 12, 1997 ... 12

Congressional Record, July 30, 1955 ... 16

Congressional Record, March 7, 1956 ... 16

*ix Newark Evening News, January 5, 1956 ... 16

N.Y. Times, January 5, 1956 ... 16

The New York Times on July 19, 1904 ... 38

The New York Times, January 3, 1958 ... 17

SUMMARY OF ARGUMENT ^[FN1]

FN1. The State of New Jersey incorporates

herein the Procedural History and Overview of the Special Master's Report and Recommendation set forth in its Brief in Support of Exceptions filed with this Court on July 31, 1997.

New York's claim that the Compact granted it jurisdiction over the entire Ellis Island, regardless of the extent of the Island's expansive growth in the years following the Compact, is not supported by evidence or consistent with legal principles. Under the Compact, New York's jurisdiction is limited to the Island as it existed in 1834. New York additionally cannot establish that it acquired jurisdiction over the filled portions of the Island through prescription and acquiescence. New York has proven neither the exercise of governmental authority by New York nor the silent acceptance of such acts by New Jersey necessary to establish such a claim. Finally, the Court's prior opinions make clear that laches is not applicable to boundary disputes between States. Even if the doctrine were to be applied in this case, New York failed to prove that it was prejudiced by any alleged delay by New Jersey.

ARGUMENT

POINT I

UNDER ARTICLE II OF THE COMPACT, THE LANDFILLED PORTIONS OF ELLIS ISLAND CREATED AFTER THE COMPACT WAS ADOPTED ARE PART OF NEW JERSEY AND SUBJECT TO ITS SOVEREIGNTY AND JURISDICTION.

New York rests its entire claim under the Compact on its assertion that Article II grants New York jurisdiction over the whole of the Island as it exists today. However, as the Special Master correctly found, Article I of the Compact established a permanent interstate boundary at the middle of *2 the dividing waters between New Jersey and New York, and thus placed Ellis Island and the subaqueous lands surrounding it within New Jersey waters. Article II provides that New York will "retain" its "present jurisdiction" over Ellis Island. The Article further provides that New York will "retain" exclusive jurisdiction over the other islands "lying" in the waters between the States and "now" under New York jurisdiction. Article II of the Compact was intended to preserve the *status quo ante* of 1834. Central R.R. Co. v. Mayor of Jersey City, 209 U.S. 473, 479 (1908). Significantly, Article II contains no reference to future improvements or filling. In

sharp contrast, Articles III and V explicitly provide that New Jersey and New York shall have jurisdiction over improvements "made and to be made" on their respective shores.

Well-established principles governing the interpretation of interstate Compacts require that the Court interpret Article II in accordance with its plain meaning. Oklahoma v. New Mexico, 501 U.S. 221, 245, 247 (1991) (Rehnquist, C.J., concurring and dissenting); Carchman v. Nash, 473 U.S. 716, 724-27 (1985); Texas v. New Mexico, 462 U.S. 554, 564, 572 (1983). The use of present tense language throughout the Article, coupled with its lack of reference to any future landfilling or improvements, indisputably shows that New York's jurisdiction under the Article never was intended to encompass new land masses or islands created by artificial filling after 1834. Rather, the "Ellis's Island" referenced in the Article was the 2.74-acre "Ellis's Island" that existed in 1834.

When an interstate boundary is established by Compact and approved by Congress, that boundary becomes final and binding, and extinguishes any previous boundary claims. Virginia v. Tennessee, 148 U.S. 503, 525, 526 (1893); Coffee v. Groover, 123 U.S. 1, 30-31 (1887); Poole v. Fleeger's Lessee, 36 U.S. (11 Pet.) 185, 210 (1837). The *3 Court consistently has held that a boundary set by Compact incorporates and refers to the physical conditions that existed when the boundary was adopted, and cannot be based on physical changes that occurred afterwards. See, e.g., Georgia v. South Carolina, 497 U.S. 376, 396-98 (1990) (new islands that emerged after boundary was set and which were located within South Carolina's boundary were part of South Carolina, even though boundary agreement gave Georgia sovereignty over "all the islands" in the river); Ohio v. Kentucky, 444 U.S. 335 (1980) (interstate boundary was low water line of 1792, not current low water line); Minnesota v. Wisconsin, 252 U.S. 273, 279-80 (1920) (main channel, or boundary line, was the channel that existed in 1846, not the channel subsequently created by dredging); Arkansas v. Tennessee, 246 U.S. 158, 177 (1918). Accordingly, Article II refers to the Ellis Island of 1834, and under Articles I and II, the landfilled portions of Ellis Island created after 1834 are part of New Jersey and subject to its sovereign governmental power and jurisdiction.

The States' intention underlying the 1834 agreement is not simply reflected in the plain language of the Compact, it is also evidenced by New Jersey's 1829 Complaint in this Court in which New Jersey argued

that New York's only claim to the islands arose from adverse possession and that New York's adverse possession had been limited to the fast lands. Thus, to the extent that the 1834 Compact reflects New Jersey's willingness to accede to New York's jurisdictional claim to Ellis Island, New Jersey's concession related solely to the fast land, the land that existed in 1834.

New York nevertheless argues that the States must have contemplated the expansion of Ellis Island after 1834 because, in New York's view, landfilling on both sides of the Hudson River was a commonplace, accepted practice when the Compact was made. New York argues that its "present jurisdiction" under Article II should therefore be interpreted to include the 24 acres of made land created by *4 the United States by filling submerged lands in New Jersey waters in the years after 1834. However, there is not a shred of evidence in the legislative history of the Compact which supports the notion that the Commissioners who negotiated the 1834 agreement contemplated that New York's jurisdiction over the Island could be enlarged without limitation in New Jersey territory.

Moreover, New York's factual claim that landfilling was widespread in New York Harbor in 1834 and therefore landfilling around the original Island must have been anticipated by the States was appropriately rejected by the Special Master. The record does not support that assertion. In fact, New York's own expert witness, Donald F. Squires, conceded that although there had been some filling of submerged lands on the New York side of the Harbor, as of 1834 there was very little filling on the New Jersey side of the Hudson River. T2851-22 to T2852-10; T2857-18 to T2858-12. Filling of lands along the Jersey shoreline was minor until the railroads reached the area after 1848. See D932 at p. 13. Furthermore, the record contains no conclusive evidence that by 1834 any filling had occurred around the original Island. T265-14 to T266-19; T292-9 to T293-13; T313-11 to -20; T336-10 to T338-1; T250-5 to -8, P478, p. 18.

The earliest naps in the record indicate that Ellis Island was about three acres at the beginning of the 19th Century. P382(d). The Island was some 2.74 acres in 1834 and essentially remained that size until large scale filling commenced in 1890. Compare P382(j) and P382(l). Rather than anticipating extensive filling around the original Island, *5 the Commissioners would more likely have assumed that the size of the Island would remain stable.^[FN2]

FN2. New York also relies upon the 1686 Dongan Charter and the 1730 Montgomerie Charter in support of its contention that landfilling around Ellis Island would have been anticipated by the States when the Compact was made in 1834 but there is no evidence that the provisions of either document were relied upon for filling of lands on the Jersey side of the Harbor. Indeed, the evidence also shows that the Montgomerie Charter of 1730 pertaining to New York City did not give the City or anyone else the right to reclaim the submerged lands within the western part of the Hudson River or the submerged lands surrounding Ellis Island. D743; T1594-24 to T1595-8.

In further support of its contention that Article II allows New York to exercise jurisdiction over the filled portion of the Island, New York disputes the Special Master's finding that Ellis Island was, in fact, at one time three land masses, entirely separated by water. Report at 94-97. New York asserts that Ellis Island is today and has always been one island. However, the evidence fully supports the Special Master's factual finding that the present Island is made up of land area that was at one time three separate and distinct islands. Report at 95.

The United States expanded the original Island after 1890 by filling some eight acres of submerged lands in New Jersey waters. The federal government then built a second island in 1899, and built a third island in 1905 to 1906. These three land areas have long been referred to as Islands Nos. 1, 2, and 3. See Historical Development Map, Report at 14a. Island No. 2 was initially connected to Island No. 1 by a ferry house and covered walkway built on pilings over water. The 1901 photograph of these connecting structures, which is included as Exhibit E in the Special Master's Report, plainly shows that those structures were built on pilings, that there was water under the structures and that the water could pass directly out from under the ferry basin *6 between the Islands No. 1 and 2 to the Bay of New York.^[FN3] In addition, the record unequivocally shows that Island No. 1 was not connected by fill to Island No. 2 until 1933, and that Islands 2 and 3 were not connected to each other by fill until the 1920's. See P382; P386. Research documents compiled for the federal government by New York's expert, Harlan D. Unrau, are replete with references to Islands Nos. 1, 2 and 3. See D74 and D952. The evidence thus conclusively establishes that the land area presently

referred to as Ellis Island is not the same as the “Ellis’s Island” referred to in the Compact.

FN3. New York endeavors to controvert what the eye can plainly see by relying on Dr. Squire’s entirely speculative assertion that Island No. 1 and Island No. 2 were somehow connected by “timber cribbing” beneath the water. NY’s Exceptions Brief at 20. The water purportedly “obscures the solid cribbing.” Significantly, Dr. Squires could not point to any evidence in the record to support his theory. The Special Master rightly commented that a picture is worth a thousand words. Report at 96; T2233.

New York further contends that it was granted jurisdiction over the waters of the harbor to promote, as Justice Holmes noted in *Central R.R.*, *supra*, “the interests of commerce and navigation.” 209 U.S. at 479. New York insists that this purpose can only be accomplished by interpreting Article II to encompass the islands that existed in 1834, all expansions to those islands, and, apparently, all new islands that emerged after 1834. But this argument, too, lacks any support whatsoever in the legislative history. There is nothing to buttress the claim that New York deemed retention of jurisdiction over Ellis and the other islands essential to the exercise of its limited authority over navigation and commerce on the waters.

As it relates to Ellis Island, this assertion is refuted by the fact that decades before the Compact was agreed to New York sold the Island to the federal government and *7 ceded virtually all governmental authority over the Island to the United States. New York certainly did not view ownership or control of the Island to be at all necessary to its jurisdiction over the waters of the Harbor, a fact further underscored by the purported transfer and cession of jurisdiction over the adjoining submerged lands in 1880. New York’s own actions completely undermine its claim that control of the Island and surrounding fill were a necessary ingredient to its authority to promote “the interests of commerce and navigation.” *Id.*

New York’s argument in this regard is merely a variation of the assertion it advanced in 1870, when it claimed that its Article III power was the equivalent of sovereignty on the New Jersey side of the boundary line. That assertion was rejected by New York’s highest court in *People v. Central R.R.*, 42 N.Y. 283, appeal dismissed, 79 U.S. (12 Wall.) 455 (1870). The New Jersey courts also rejected the

contention. See *Central R.R. v. Mayor of Jersey City*, 56 A. 239 (N.J.Sup.Ct.1903), aff’d, 61 A. 1118 (N.J.1905). In 1908, this Court reached the same conclusion in *Central R.R.*, *supra*. The courts uniformly have agreed that New York’s Article III jurisdiction cannot override the sovereign boundary in Article I. The same conclusion must obtain with regard to New York’s jurisdiction over Ellis Island under Article II.

POINT II

THE BOUNDARY ESTABLISHED IN ARTICLE I IS A SOVEREIGN BOUNDARY, NOT A MERE ALLOCATION OF PRIVATE PROPERTY RIGHTS.

Before the Special Master, New York asserted that the boundary established in Article I was not a sovereign boundary within the waters between New York and New Jersey, but simply gave New Jersey property rights in the submerged lands. New York apparently has abandoned this *8 particular argument in its exceptions, and now primarily relies on Article II to support its contention that the landfilled portions of Ellis Island created after 1834 are within its territory. However, *amici* argue that under the Compact “jurisdiction” means “sovereignty,” and that the Compact only gave New Jersey property rights in the waters surrounding Ellis Island, not governmental authority.^[FN4]

FN4. The Special Master rejected this assertion and New York has not taken exception to that finding. For this reason, the Court should decline to entertain argument by *amici* on the issue.

The contention that New Jersey only has property rights in the submerged lands on its side of the boundary in the dividing waters was rejected by the Court in *Central R.R.*, *supra*. As Justice Holmes pointed out for the Court:

It appears to us plain on the face of the agreement that the dominant fact is the establishment of the boundary line. The boundary line is the line of sovereignty, and the establishment of it is not satisfied, but is contradicted, by the suggestion that the agreement simply gives the ownership of the land under water on the New Jersey side to that state as a private owner of land lying within the state of New York. On the contrary, the provision as to exclusive right of property in the compact between states is to be taken primarily to refer to ultimate sovereign

rights, in pursuance of the settlement of the territorial limits, which was declared to be one purpose of the agreement, and is not to be confined to the assertion and recognition of a private claim.... [209 U.S. at 478].

*9 As Justice Holmes noted in his opinion, the Court's interpretation of the agreement was based on the uniform interpretation of the agreement reflected in the decisions of the highest courts of New Jersey and New York. *Id.* at 479.

New York has accepted the decision of its highest court since it was rendered in 1870. Indeed, in 1880, when the boundary Commissioners from both States formally drew the boundary that had been agreed to in 1834, they did so based on the 1870 decision of the New York Court of Appeals. P329. In 1921, New York and New Jersey supplemented the Compact of 1834 by establishing the New York Port Authority, and agreed once again that they shared a common, sovereign boundary at the middle of the Hudson River and Bay of New York. P408, p. 39, p. 70; P407, p. 38; P409, p. 13; P407, Part II, p. 44. Like the Compact of 1834, this supplement was approved by Congress. 42 Stat. 174 (1921).

It is simply too late in the day for New York and its *amici* to relitigate the question of whether the boundary line is a line of sovereignty or merely a line dividing the property interests of the States in the land under the waters of New York Harbor. While New York may continue to believe that Justice Holmes was "wrong" in the *Central R.R.* decision, its long standing acceptance of that decision, and the prior ruling of its own Court of Appeals, effectively forecloses New York and its *amici* from relitigating the issue in this Court. See *Planned Parenthood v. Casey*, 505 U.S. 833, 854 (1992) ("With Cardozo, we recognize that no judicial system could do society's work if it eyed each issue afresh in every case that raised it. See B. Cardozo, *The Nature of the Judicial Process* 149 (1921). Indeed, the very concept of the rule of law underlying our own Constitution requires such continuity over time that a respect for precedent is, by *10 definition, indispensable.") (O'Connor, Kennedy and Souter, JJ.).^[FN5]

FN5. New York was a party to the 1870 decision of its highest court and therefore the decision is binding on it. In addition, both States have relied on the decision for the past 127 years. Elementary notions of *res judicata*, collateral estoppel and *stare*

decisis preclude New York from disinterring its argument of 1870 in 1997. See *United States v. Stauffer Chemical Co.*, 464 U.S. 165 (1984); *Kremer v. Chemical Constr. Co.*, 456 U.S. 461 (1982); *Allen v. McCurry*, 449 U.S. 90 (1980).

POINT III

SPECULATIVE FEARS THAT DUAL JURISDICTION OVER ELLIS ISLAND WILL BE IMPRACTICABLE HAVE NO FACTUAL FOUNDATION AND DO NOT PROVIDE A BASIS FOR ALTERING THE INTERSTATE BOUNDARY ESTABLISHED BY THE STATES AND APPROVED BY CONGRESS IN 1834.

New York *amicus* Trust for Historic Preservation posits that dual jurisdiction over Ellis Island will create insurmountable practical difficulties and impede the preservation of Ellis Island as a historic landmark. Similarly, New York *amici* New York Landmarks Conservancy, Preservation League of New York State, and Historic Districts Council urge the Court to hold that under Article III, New York should be granted sole jurisdiction over historic preservation. This Court should not base its decision on the speculative, unsubstantiated and exaggerated fears of *amici*, and should reject the *amici*'s interpretation of Article III.^[FN6]

FN6. In large part, the Historic Trust premises its concerns on the purely hypothetical assumption that at some indeterminate time the federal government may relinquish its control over Ellis Island. The Island is part of the Statue of Liberty National Monument operated by the National Park Service. The notion that the federal government will sell or dispose of the Island is pure fantasy.

*11 *Amici* speculate that recognizing New Jersey's sovereignty over the filled lands will create insurmountable difficulties, embroil this Court in ongoing controversy, and potentially impede historic preservation. *Amici* further suggest that the historic preservation laws of New York are superior to New Jersey's laws and that New Jersey has a lesser interest in preservation than New York. Thus, while paying lip-service to the notion that the Compact is to be enforced as written, *amici* urge this Court to base its decision on considerations which are both totally unfounded and completely irrelevant.

Ellis Island is owned and controlled by the United States, which has consulted both New York and New Jersey with respect to preservation matters. There is no evidence that this approach has impeded preservation in any way.^[FN7] And, more importantly, in prior litigation, the United States took the position that both New Jersey and New York had jurisdiction over Ellis Island. *Collins v. Promark Prods., Inc.*, 956 F.2d 383 (2d Cir.1992). Thus, the prospect of dual jurisdiction has not been of concern to the governmental entity which is responsible for preserving and administering the Island on a day-to-day basis.

FN7. The Administration Building and the Kitchen and Laundry Building have been renovated after consultation with *both* States. The federal government was not faced with *any* dispute by the States in the preservation of those buildings.

Similarly, there is no evidence that New Jersey and New York will be unable to cope with shared jurisdiction. New York and New Jersey already share jurisdiction over the waters between the States under Articles III, IV and V of the Compact. The record contains no indication whatsoever that this situation has created any of the insurmountable difficulties which *amici* hypothesize may occur.

***12** Over the years, New York and New Jersey have been able to harmoniously address issues of joint interest. For example, since 1921 the States have collaborated on transportation and other port-related projects through the Port Authority of New York and New Jersey, a bistate entity. As another example, both States are members of the Delaware River Basin Commission, which was established in 1961. See *N.J. Stat. Ann. § 32:11D-1, et seq.* (West 1990). See also, Andrew C. Revkin, *Harbor to Be Dredged, but Much Tainted Mud Lacks Home*, N.Y. Times, May 12, 1997 at p. B1. *Amici*'s groundless fears of endless disputes regarding Ellis Island are sheer speculation and hyperbole.

Amici's additional contentions that New York's preservation laws are superior to New Jersey's laws and that New York has better experience in preservation are patently offensive as well as irrelevant. As a threshold matter, New Jersey takes issue with *amici*'s view that New York's historic preservation laws are in some sense better than comparable laws in New Jersey. Indeed, the National Trust for Historic Preservation correctly notes that Jersey City has a comprehensive landmarks

law. New Jersey state law also bars the State or its local government units from undertaking projects that will "damage or destroy" a structure on the Register of Historic Places. *N.J. Stat. Ann. § 13:1B-15.131* (West 1991). New Jersey's Waterfront Development Act comprehensively regulates projects on property fronting upon navigable waters of the State. See *N.J. Stat. Ann. § 12:5-1, et seq.* (West 1979).^[FN8] Taken together, New Jersey law and ***13** local regulation provide strong measures for the protection of landmark structures at Ellis Island.

FN8. The State's regulations implementing that Act, N.J. Admin. Code tit. 7 § 7-1, et seq. (1996) and N.J. Admin. Code tit. 7 § 7E-1, et seq. (1996), provide that within the New York Bay, Hudson River area, the territorial area subject to State regulation includes any tidal waterway and all lands lying thereunder, up to the mean high water line, as well as an adjacent uplands area. N.J. Admin. Code tit. 7 § 7-2.3(a)(3) (1996). In addition, the State's implementing regulations include historic sites as areas requiring special protection, and discourage development that detracts from, encroaches upon, damages, or destroys the value of historic resources. See N.J. Admin. Code tit. 7 § 7E-3.36 (1996).

In any event, this Court has never resolved an interstate boundary dispute or interpreted an interstate Compact by comparing the laws of the disputing States, and deciding which laws it prefers. Similarly, this Court has never resolved such a dispute by examining each States' experience in a particular area, and determining which State possesses better qualifications. Rather, this Court has based its decisions on the terms agreed to by the States. The Court must enforce the Compact as written. *Texas v. New Mexico*, 482 U.S. 124 (1987); *Arizona v. California*, 373 U.S. 546, 565 (1963).

Finally, the New York Landmarks *amici* maintain that the Court should declare that New York has "at the very least" certain police power jurisdiction over all of the waters of the River and the Bay, and such jurisdiction extends to the filled portion of Ellis Island. The Landmarks *amici* argue that this power is synonymous with the "police power" of State and local governments and would include the power to regulate the preservation of landmark structures.

This is merely another attempt to extend New York's sovereignty to the New Jersey shore. What the

Landmarks *amici* call “police power” is the full range of sovereign power under some other name. New York's jurisdiction under Article III over the waters of the River and New York Bay does *not* encompass such a range of governmental powers.

*14 The nature and extent of New York's jurisdiction over the waters under Article III were defined as early as 1870 by the New York Court of Appeals: It was to be a police jurisdiction of and over all vessels, ships, boats or craft of every kind that did or might float upon the surface of said waters, and over all the elements and agents or instruments of commerce, while the same were afloat in or upon the waters of said bay and river for quarantine and health purposes, and to secure the observance of all the rules and regulations for the protection of passengers and property, and all fit governmental control designed to secure the interests of trade and commerce in said port of New York, and preserve thereupon the public peace. [*Central R.R., supra*, 42 N.Y. at 299-300.]

See also, *Central R.R., supra*, 209 U.S. at 479 (holding that New York's police power over the waters “was to promote the interests of commerce and navigation, not to take back the sovereignty that otherwise was the consequence of article 1”); *Central R.R., supra*, 56 A. at 245 (holding that “the jurisdiction that was conceded to New York over the land and waters within the territorial limits of New Jersey was not governmental”).

New York's jurisdiction does not extend to all police powers that might be exercised by a State or local government. What is more, preservation of historic structures is not the sort of regulation that pertains to the interests of commerce and navigation. New York's jurisdiction applies in the waterways. Once the submerged lands around the original Island were filled, there was no longer any basis upon which New York could exercise jurisdiction over navigation and commerce. Article III *15 therefore provides no basis whatsoever for the exercise by New York of jurisdiction over the filled portions of Ellis Island.

POINT IV

THE EVIDENCE OF NEW JERSEY'S REFUSAL TO ACQUIESCE IN NEW YORK'S PURPORTED ASSERTION OF GOVERNMENTAL DOMINION OVER THE FILLED LANDS IN THE PERIOD AFTER 1955, STANDING ALONE, FORECLOSES NEW YORK'S EFFORT TO APPROPRIATE NEW JERSEY'S TERRITORY.

New York argues that regardless of how the Compact is interpreted, the Court should find that New York's jurisdiction extends to the whole of the present Island by application of the doctrine of prescription and acquiescence. New York focuses its argument entirely on the period from 1890 through 1955, and contends that during this time New York exercised sufficient dominion over the filled lands and that New Jersey acquiesced in New York's prescription of the whole of the Island.

In limiting its argument to the period from 1890 to 1955, New York ignores the overwhelming evidence of New Jersey's non-acquiescence in the years after 1955, and raises no exception to the Master's finding that during this period “New Jersey [was] much too active in opposition to New York's jurisdiction for New York to carry her burden on acquiescence,” Report at 106. Instead, New York simply insists that by 1955, whatever claim New Jersey may have had to the filled portions of the Island was extinguished. New York's exception should be overruled because the Special Master's determination that New Jersey's non-acquiescence in New York's purported acts of prescription in the period after 1955 was “beyond cavil” is supported by overwhelming evidence in the record. Report at 12.

*16 In July 1955, when the federal government was considering the sale of Ellis Island, the Commissioner of New Jersey's Department of Conservation and Economic Development wrote to the Regional Director of the General Services Administration (“GSA”), stating that Ellis Island was within New Jersey's jurisdiction. P97, P98, P99, P100, P133. In August 1955, the Jersey City Municipal Council adopted a resolution making the same assertion and urging support for a proposal by James F. Murray, a member of the New Jersey Senate, that the Island be converted to a public recreation area and ethnic museum. P347. At that time, the New Jersey Senate unanimously passed a resolution stating that Ellis Island was within New Jersey. 1955 Minutes of the New Jersey Senate 1031 (August 15, 1955). Additionally, New Jersey Representative T. James Tumulty stated during a debate on the floor of the House of Representatives that, “I am not going to prolong the discussion, but Jersey City claims that Ellis Island, in particular, is within the confines of Jersey City.” *Congressional Record*, July 30, 1955, at 12387. The Regional Director of the GSA took note of the claims raised by New Jersey officials. P107.

The assertions of New Jersey's jurisdictional claim to

Ellis Island continued, and these actions were well publicized. In January 1956, twenty-five state and county officials from New Jersey undertook an inspection of Ellis Island to reaffirm New Jersey's claim. The inspection was reported in the press. See P108 (N.Y. Times, January 5, 1956; Newark Evening News, January 5, 1956). Representative Irwin D. Davidson of New York commented on New Jersey's claim to jurisdiction over the island in remarks printed in the *Congressional Record* on March 7, 1956. P109.

The New York Times also reported on the federal government's plans to dispose of the Island on March 14, 1956 and stated that New Jersey had "always contested" *17 New York's claim to jurisdiction. This report also made mention of the January 4, 1956 inspection tour by the New Jersey officials. P110. In addition, *Business Week* reported on Ellis Island in its September 29, 1956 issue, stating that the Island's potential sale presented the question of jurisdiction between the two States. P111.

Additional actions taken by New Jersey officials in this period further underscore that the question of jurisdiction over Ellis Island was a live controversy. On January 2, 1958, New Jersey State Senator Murray sent a telegram to United States Senators H. Alexander Smith and Clifford P. Case, and Representatives Alfred D. Simiensi and Vincent J. Dellay, all from New Jersey. P113. State Senator Murray asserted that Jersey City had jurisdiction over Ellis Island. See P114 (*The New York Times*, January 3, 1958). Senator Case sent his copy to the Administrator of the GSA who replied stating that the question of whether the property would be subject to New Jersey taxes after sale was a question that had to be resolved between the State and the purchaser. P116.

In June 1959, Governor Robert B. Meyner of New Jersey wrote to a resident of New York concerning Ellis Island and Bedloe's (or Liberty) Island. P123. A copy of this letter was sent to and received by Governor Nelson A. Rockefeller of New York. P487, ¶ 59; T1291-23 to T1292-24 and T1262-12 to -16. In the letter, New Jersey's Governor stated that the question of jurisdiction over the two islands had "never been settled," and there was speculation whether the islands are in New Jersey or New York. Governor Meyner stated further that in view of the proposed sale of Ellis Island by the federal government, it may be necessary "to decide once and for all whether Bedloe's and Ellis Islands are New Jersey or New York territory." P123.

The issue of jurisdiction over Ellis Island also arose during Congressional hearings on the federal government's *18 decision to dispose of the Island. New Jersey officials forcefully asserted the State's jurisdictional claims to the Island. See Comments of Representative Dominick V. Daniels of New Jersey, P143, p. 119 (stating that there was an immediate need "to determine in which State and municipality the island lies"); Meyer Pesin, Jersey City Corporation Counsel P143, p. 123 (noting the "legal complication of jurisdictional sovereignty over Ellis Island"); Alvin E. Gershen, Development Advisor for Jersey City, P143, p. 129 (suggesting that the Governors of New York and New Jersey resolve the terms of the jurisdictional location of Ellis Island).

New York officials testifying before Congress also recognized New Jersey's jurisdictional claims. United States Senator Kenneth B. Keating of New York noted the existence of the dispute over jurisdiction and submitted a memorandum he had received from the Library of Congress on the issue. P143, p. 64. At the hearing on December 6, 1962, Senator Keating further stated that "one of the first problems which will arise will be to determine whether Ellis Island actually lies within the confines of New York or New Jersey. I am sure that our colleagues from New Jersey will contend that it is a part of New Jersey." P143. See also Senator Keating, P143, p. 97 ("it may be that a further compact will be necessary here in order to insure that the purchaser does get clear title ..."). New York City Mayor Robert Wagner also testified concerning the open question of jurisdiction over the Island. In testimony before a congressional subcommittee he stated that, "I think the question of jurisdiction could be ironed out by a meeting of the minds, if there would be an agreement on the purpose to which the island would be put." P143, p. 250.

In 1963, Jersey City officials continued to assert that the municipality would have jurisdiction over Ellis Island in the event of its sale by the federal government. Mayor Thomas J. Gangemi insisted that Jersey City would have a *19 say in the development of the Island and on September 5, 1963, Jersey City enacted an ordinance that would control such development. P157. Mayor Gangemi also stated that Ellis Island would be taxed by Jersey City once it was sold to a private owner. In fact, Ellis Island had been on the tax rolls of the city since at least 1940.^[FN9]

FN9. New York's claim that the evidence of Ellis Island's inclusion on New Jersey tax

maps was a “well-kept secret” is entirely specious. The tax records of Jersey City and Hudson County are public documents available for review by any interested party. These documents are no more “secret” than any of the public documents relied upon by New York in support of its claimed acts of prescription.

On February 11, 1963, the Office of General Counsel of the GSA rendered an opinion by Henry Pike entitled, “Ellis Island, Its Legal Status.” P144. The opinion, which the Special Master found to be “highly probative”, Report at 140, concluded that the United States had title to the original Ellis Island and the acreage created by the filling of the surrounding underwater lands. The opinion also concluded that New York had jurisdiction over the original Island, and New Jersey had jurisdiction over the part of the Island built on the underwater lands. The opinion stated:

the artificial filling in around the original island, about 3 acres in size, did not operate to change the sovereignty over the filled-in area as sometimes occurs in the case of accretion or erosion. The filled-in area remains, for purpose of applying the provisions of the 1833 compact, as if it were ‘land under water’ lying west of the middle of the bay and river, which under Article Third *20 has been consistently held to be part of New Jersey. [P144, p. 3-4].^[FN10]

FN10. In the opinion, Pike suggested in conclusory fashion that reference in the Compact to “land under water” refers to land below the low water mark. Yet Pike clearly indicated that New York’s jurisdiction was confined to the original island which was about three acres. If New York’s jurisdiction was so limited, it was limited to lands above the mean high water line, not the low water line.

The February 11, 1963 opinion essentially confirmed what United States Attorney General Moody had determined in 1904: the underwater lands around the original Ellis Island were subject to New Jersey’s sovereignty and jurisdiction. Significantly, the federal government has adhered to the conclusions reached in the GSA’s opinion. In June 1968, the National Park Service prepared a preliminary master plan for the use of Ellis Island. This document concluded that the original three-acre Island was within New York and that the remaining land was

“part of the State of New Jersey and under her sovereignty....” P166, p. 13.

Shortly thereafter, Congressman (and later New York City Mayor) John V. Lindsay introduced a bill concerning the future use of the Island. As the Special Master noted, in Representative Lindsay’s supporting statement “he recognized that the twenty-four acres of fill on Ellis Island ‘were never New York property, but as subaqueous territory, pertained to the jurisdiction of New Jersey.’ ” Report at 138-139, quoting from P154.

A multi-volume analysis of the conditions on the Island issued by the National Park Service in December 1980 reiterated the same point. P170. (The original Island is part of New York, the 24 acres created by landfill and the surrounding waters “are part of the state of New Jersey.”) *See also*, Letter of Undersecretary of the Department of Interior Joseph Simmons, III, to Senator Bill Bradley of New *21 Jersey concerning employment opportunities for New Jersey workers on the Statue of Liberty restoration project. (“We are aware ... that the majority of Ellis Island is in the State of New Jersey due to landfill not being covered by the 1833 Treaty.”) P171, P172.

In January 1984, the National Park Service completed a form to nominate the Immigration Station on Ellis Island for listing on the National Register of Historic Places. Harlan D. Unrau, New York’s expert, signed the form. Under the section of the document entitled, “Location,” both New York and New Jersey were listed. In the section that called for “Geographical data,” the form stated, “List all States and Counties for Properties Overlapping State or County Boundaries.” The Park Service wrote on the form that Ellis Island was geographically within both New York State, New York County, and New Jersey, Hudson County. D74, *Historic Resource Study, supra*, pp. 1344, 1350. Notably, the titles to Unrau’s two Ellis Island studies both indicate that Ellis Island is part of the Statue of Liberty National Monument which is stated to be in “New York-New Jersey.” *Id.*; *Historic Structure Report, supra*. Those studies are official publications of the National Park Service.

Unchallenged pronouncements by the federal government concerning the boundaries between States are significant to the determination of whether a boundary has changed through prescription and acquiescence. In *Michigan v. Wisconsin*, 270 U.S. 295 (1926), the Court made clear the importance of a boundary interpretation by the United States and a State’s failure to object thereto. In that case,

Michigan was found to have lost its claim to disputed land that the federal government determined to belong to Wisconsin. As the Court explained: the line as claimed by Wisconsin has been, from the time of the Burt survey, accepted as the true boundary by the United States, and, *22 its surveys, plats, and maps, sales and other acts in respect of the public lands, continuously and consistently recognized, with the knowledge of Michigan and without protest on her part. [*Id.*, 270 U.S. at 307].

Similarly, in deciding a boundary challenge in *Louisiana v. Mississippi*, 202 U.S. 1 (1906), the Court gave considerable weight to determinations by the United States of which State had sovereignty over the disputed land. The Court noted that “[t]he General Land Office of the United States, in all of the maps it has caused to be made of Louisiana and Mississippi, has been consistent in its recognition of the ownership by Louisiana of the disputed” parcel. *Id.*, 202 U.S. at 57.

By 1986, a New Jersey Representative even went so far as to seek a judicial determination of the Site's interest in the Island. New Jersey's sovereignty over the filled portions of the Island was the subject of a complaint filed in a New Jersey court by a member of the State's congressional delegation. Although the court determined that it lacked jurisdiction over the dispute, New Jersey, as a defendant, clearly expressed its claim over the filled portions of the Island in the action against New York. See *Guarini v. New York*, 521 A.2d 1362 (N.J. Super. Ct. Chan. Div.), *aff'd*, 521 A.2d 1294 (N.J. Super. Ct. App. Div. 1986), *cert. denied*, 484 U.S. 817 (1987).

In addition, in 1992 New Jersey appeared as *amicus curiae* asserting its sovereignty over the filled portions of Ellis Island in *Collins*, *supra*. In that case, the position asserted by the United States was wholly in accord with the February 11, 1963 GSA opinion. The question squarely presented in that case was whether New Jersey law applied to a controversy which arose from an accident that occurred on the portion of the islands created by artificial filling. The federal government maintained that under the Compact of *23 1834, the filled land was in New Jersey and subject to its jurisdiction.

On January 8, 1993, New Jersey's Attorney General wrote to the Attorney General of New York to reassert New Jersey's claim of jurisdiction over the filled portions of Ellis Island. Although the letter did not result in a resolution of the boundary dispute, New York was again put on notice of New Jersey's

territorial claim.

All of the aforementioned evidence establishes beyond dispute that New Jersey had never acquiesced in any purported acts or prescription by New York. Any conceivable doubt on that score would be laid to rest by the 1986 Memorandum of Understanding executed by the Governors of both States. That agreement explicitly recognized New Jersey's right to share the tax revenue collected by *both* States on the Island and conclusively establishes that New Jersey had not acquiesced in any claim by New York to jurisdiction over the filled land.

Following initiation of *Guarini*, *supra*, New Jersey Governor Thomas H. Kean and New York Governor Mario M. Cuomo executed a Memorandum of Understanding in which both agreed that the two States would share tax revenue collected by both States on the Island. The Governors promised to use their best efforts to have legislation enacted in their respective States dividing tax revenue attributable to the Island. The agreement was executed on June 23, 1986. New Jersey enacted implementing legislation in 1987, N.J. Stat. Ann. § 32:32-1, *et seq.* (West 1990). New York has not enacted a law to carry out the agreement.

Without question, when executing the Memorandum, New York recognized that New Jersey had never acquiesced in New York's purported acts of prescription over the filled portions of the Island. It defies logic for New York to claim *24 that New Jersey had relinquished its jurisdiction over the Island prior to 1955 in light of New York's admission more than thirty years later that New Jersey was entitled to a portion of the tax revenue collected on the Island. There is no explanation for New York's agreement to divide tax revenue from the Island other than New York's indisputable admission that New Jersey had *not* been divested of its jurisdiction over the filled portions of the Island.

An exercise of taxing power is one of the “primary indicia” of a State's jurisdiction. *Illinois v. Kentucky*, 500 U.S. 380, 385 (1991). This Court has explained that any “well-authenticated instance of an effort on the part of [State] authorities to tax property located” on disputed land is significant to the determination of prescription and acquiescence. *Vermont v. New Hampshire*, 289 U.S. 593, 616 (1933). In light of its admission in the Memorandum of Understanding, New York cannot convincingly argue that New Jersey's sovereignty over the filled land was lost through prescription and acquiescence prior to 1955.

POINT V

NEW YORK'S CESSIONS OF JURISDICTION IN
1800 AND 1880 PRECLUDE NEW YORK FROM
EXERCISING THE RANGE OF
GOVERNMENTAL POWERS NECESSARY TO
ESTABLISH PRESCRIPTION.

The federal government's pervasive control over Ellis Island following the 1834 Compact left New York without the requisite power to exercise the dominion and control necessary to establish prescription over the filled lands. Not only did New York cede its jurisdiction over Ellis Island to the federal government on two occasions, the United States also maintained a far-reaching presence on the Island for more than a century, controlling the day-to-day operation of every facet of the facilities located there. In these *25 circumstances, New York had no opportunity to prescribe sovereignty over New Jersey's territory in any meaningful fashion.

It is well-settled that such transfers of jurisdiction vest the federal government with exclusive authority over the ceded area and results in a complete dilution of State control. A cessation of jurisdiction by a State when transferring title to land to the United States results in the federal government becoming "the only authority operating within the ceded area." Macomber v. Bose, 401 F.2d 545, 546 (9th Cir.1968) (citing Collings v. Yosemite Park & Curry Co., 304 U.S. 518 (1938)). "When the United States acquires title to lands, which are purchased by the consent of the legislature of the state within which they are situated ... the Federal jurisdiction is exclusive of all state authority." United States v. Unzeuta, 281 U.S. 138, 142 (1930). While a State may reserve the right to serve civil and criminal process upon land transferred to the United States, such a limited exclusion does not affect the exclusive federal jurisdiction that vests over the transferred land. See e.g., United States v. State Tax Comm'n, 412 U.S. 363, 371-372 (1973). Thus, all controlling legal precedents indicate that the United States had exclusive jurisdiction over the lands ceded to it by New York, that State's reservation of the right to effect civil and criminal process notwithstanding.

New York's expansive cessions of jurisdiction to the federal government stand in sharp contrast to the circumstances presented in Arkansas v. Tennessee, 310 U.S. 563, 571 (1940), in which Tennessee was found to have prescribed jurisdiction over land owned by the federal government. Nothing in the opinion of the Court in that case suggests that

Tennessee had ceded its jurisdiction over the disputed land to the United States. Nor is there any indication in this Court's holding that the federal government operated a facility on the land or was responsible for the day-to-day maintenance and control of the property. To the *26 contrary, the record suggests that individuals resided on the federally owned property, paid land taxes to Tennessee and attended Tennessee schools. Id. 310 U.S. at 567. New York, on the other hand, transferred its authority and control over Ellis Island to the federal government, which maintained an extensive presence on the Island.

Certainly, in light of the federal government's exclusive control of the filled portions of Ellis Island, any purported acts of prescription by New York were equivocal at best and not material enough to put New Jersey on notice of New York's attempt to usurp sovereignty or to constitute prescriptive acts sufficient to justify a transfer of sovereignty over the disputed land.

POINT VI

NEW YORK'S EVIDENCE OF PRESCRIPTIVE
ACTS IN THE PERIOD OF 1890 TO 1955 FAILS
TO ESTABLISH THAT NEW YORK EXERCISED
DOMINION AND SOVEREIGNTY OVER THE
FILLED LANDS FOR A SUFFICIENTLY LONG
PERIOD.

In order to establish its claim of prescription and acquiescence New York must prove, by a preponderance of evidence, both "a long and continuous possession of, and assertion of sovereignty over" the disputed land, and a lengthy acquiescence by New Jersey in New York's purported acts of possession and control. Illinois, supra, 500 U.S. at 384. Only a "long acquiescence in the possession of territory under a claim of right and in the exercise of dominion and sovereignty over it, is conclusive of ... rightful authority." Oklahoma v. Texas, 272 U.S. 21, 47 (1926). The Special Master correctly determined that New York's evidence failed "to demonstrate the unequivocal acts of prescription demanded by this Court's jurisprudence." Report at 145.

*27 New York's claims of prescription must be examined in light of New York's undisputed jurisdiction over the portion of Ellis Island that existed at the time of the 1834 Compact. Because New Jersey does not challenge New York's jurisdiction on the "original" Island, any evidence of

New York's acts of prescription over that land are irrelevant to a claim of sovereignty to the portions created by fill subsequent to 1834. Thus, the Special Master was right to examine carefully New York's evidence of prescription to determine if any proof exists that New York asserted control over the disputed portions of the Island.

In addition, as the Special Master correctly pointed out in his Report, the dominant fact regarding Ellis Island in the relevant prescriptive periods is the federal government's ownership and pervasive control of the whole of Ellis Island. In the face of that dominant reality, any of the sporadic and episodic acts which New York now claims as evidence of prescription cannot be seen as having provided New Jersey with notice of any genuine or credible effort by New York to appropriate New Jersey territory by prescription.^[FN11]

FN11. Nor can New York claim that its exercise of jurisdiction over the original Island translates into acts of prescription over Islands No. 2 and 3. New York mistakenly relies on the holding in *Michigan, supra*, for the proposition that it had "color of title" to Islands Nos. 2 and 3, and, therefore, exercised dominion over all three Islands by virtue of its exercise of jurisdiction over the original Island. In *Michigan*, Wisconsin was found to have exercised jurisdiction over a series of islands that had been "surveyed and platted as belonging to Wisconsin" by the United States government. *Id.*, 270 U.S. at 312. Although Wisconsin had actually exercised jurisdiction over all but a few of the islands, several had not been subject to that State's prescriptive acts. However, because Wisconsin was operating pursuant to the federal government's declaration that the entire series of the islands belonged to Wisconsin, the State was deemed to have exercised jurisdiction over those islands which had not been subject to specific acts of prescription. *Id.*, 270 U.S. at 313-314. New York, on the other hand, never had the benefit of a federal declaration that it had jurisdiction over Islands Nos. 2 and 3. To the contrary the federal declaration that it had jurisdiction over Islands No. 2 and 3. To the contrary, the federal government has consistently held the opinion that the portions of Ellis Island created by fill are subject to New Jersey's sovereignty.

Therefore, New York lacked "color of title" to Islands Nos. 2 and 3, and cannot claim that its prescriptive acts over a portion of Island No. 1 should be interpreted to be acts relating to the two newer Islands.

*28 1) New York failed to prove a consistent and long-standing policy recording vital statistics for births, deaths and marriages on the filled portions of Ellis Island.

New York failed to establish a consistent, long-standing practice of recording births and deaths on the filled portions of Ellis Island. New York produced only twenty-two death certificates for all of the decades that that State claims to have prescribed jurisdiction over the filled portions of the Island. All but one of those records are from a three-month period in a single year: 1924. Yet, in that year, some 105 individuals are reported to have died on Ellis Island. *See* D74 at 638. New York's evidence also identifies that there were 267 deaths in 1908 and their expert's testified that there were probably thousands more from 1890 to 1954. T2718-5 to T2722-9. Yet, New York has produced only a smattering of death certificates from its records. INS Historian Marian Smith, New Jersey's witness, could not find any regulation or policy of the State or City, or the federal government, that would support a finding that Ellis Island deaths were routinely recorded in New York. D1-22; T3941-19 to T3942-20.

New York also produced only twenty-three birth certificates and seventeen of these certificates are for births occurring prior to 1897, when a fire leveled the wooden buildings on Ellis Island. This fire destroyed the original hospital complex as well, the bulk of which was located on the original Island, along with the Hospital Administration Building which was entirely within the confines of the original Island. T3919-11 to T3934-15 (discussing location *29 of buildings prior to the 1897 fire); *see also* P522-P526. If New York issued seventeen birth certificates for births on the portion of the Island over which it had jurisdiction, this is not evidence of prescription over the filled lands. All New York could provide were six birth certificates for Ellis Island after 1897, three of which do not list the place of birth on the Island. As INS Historian Smith testified, there was no proof that the federal government had any policy of recording all Ellis Island births in New York. T3920-1 to -21; T1423-14 to -20.^[FN12]

FN12. New York comments that two of the

birth certificates refer to the Ellis Island hospital as the place of birth. NY Brief at 24. New York adds that three birth certificates refer to the place of birth as Ellis Island and then suggests that it is reasonable to assume that the births occurred in the hospital on the filled land. New York cannot appropriate New Jersey land with such assumptions. It either proves an act of prescription on New Jersey territory or it does not. There is no basis for any assumption as to where those three births occurred, and the remaining two New York birth certificates are a slender reed upon which to claim prescription.

Similarly, New York's evidence regarding the recording of marriages was totally deficient. New York produced only six marriage certificates. Two of those certificates indicate that the marriage took place on Manhattan Island, not Ellis Island. The remaining four marriage certificates do not indicate where the marriages took place. D46-49. Furthermore, since, as INS Historian Smith testified, the recorded marriages were of immigrants who had not technically landed for immigration purposes, their certificates merely identify the administrative address of the Ellis Island immigration station as a residence. T1356-18 to T1364-13 citing P464-P469. Although New York claims that "hundreds and hundreds of weddings" took place on the Island, there is absolutely no evidence of whether those marriages occurred on the original Island or filled lands, and no evidence of which State, if any, issued marriage certificates for those ceremonies. T1356-18 to *30 T1358-14; T2702-5 to -18; T2705-3 to -5; T2701-6 to T2718-2. On the other hand, there is considerable evidence in the record suggesting that marriages of immigrants did *not* take place on the Island. Immigrants were taken to Manhattan to be married. Report at 115.

2) New York did not prescribe the lax laws for the filled lands.

There is no evidence that New York levied or collected any taxes on Ellis Island for the period from 1890 through 1991. The record shows that New York did not levy or collect taxes attributable to activities on the filled lands until six years ago, hardly a sufficient period to constitute prescription and after execution of the 1986 Memorandum of Understanding in which New York's Governor explicitly recognized New Jersey's authority to collect taxes associated with Ellis Island.

Without question, when executing the Memorandum of Understanding, New York recognized New Jersey's authority to collect taxes related to Ellis Island. In light of that admission, New York cannot rely upon tax collection activity in the subsequent years as evidence of prescription, particularly when the Memorandum contemplated a sharing of tax revenue. Thus, any evidence of tax collections after the execution of the Memorandum has no bearing on New York's prescription claim.

3) New York did not enforce its civil or criminal laws on the filled portions of the Island.

Contrary to New York's assertions, there is no credible evidence that New York enforced its civil or criminal law with regard to any actions on Ellis Island. This point was essentially conceded by Harlan D. Unrau, New York's expert. He stated that he had no evidence that New York's laws governed activities on the Island. T3608-7 to *31 -25. New York was asked in discovery to produce evidence of a civil or criminal complaint of New York or New York City with respect to unlawful activities on Ellis Island. It produced nothing and essentially admitted that in response to a demand for admissions. See NY Response to Admission, No. 82.

4) New York did not provide police or fire protection on the Island.

New York police did not patrol the Island and there is no documentary proof that the New York Harbor Police did anything other than patrol the waters around the Island. The only proof offered by New York relates to very limited assistance rendered by its police to the National Park Service, along with the Jersey City police, to provide some measure of protection of the Island from vandalism or theft in the 1970's when the Island was essentially abandoned. T2595-4 to T2614-2; T3950-23 to T3961-10; T2797-22 to T2802-9, citing D50; T2616-10 to T2619-22; T2770-1 to T2782-1, citing D50. NY Response to Request for Admissions, No. 82-84. There has never been a New York police presence on the Island.

Having reviewed the evidence cited by New York concerning policing of Ellis Island, INS Historian Marian Smith stated flatly, "I have yet to see any evidence of the New York City or State police on the island exercising any of their powers even though we know the immigration law allows for the admittance to make arrests. They may have, but we haven't seen any evidence of it. At least I haven't." See T3950-23 to T3961-10, specifically, T3955-6 to -10; see

also T2770-1 to T2782-1 citing D50-51 (re-direct) and compare T2797-22 to T2802-9 citing D50-51 (re-cross).

There is also no evidence of the regular provision of fire protection services by New York. The evidence is clearly to the contrary: the federal government provided its *32 own fire protection apparatus. Again, New York's expert conceded this point. T3686-1 to -10; T26142 to T2616-9; T3682-19 to T3686-11 (discussing the only two fires when New York firefighters may have been called). Although New York points to assistance rendered by New York in the 1916 fire that resulted from the Black Tom explosion in New Jersey, this was an extraordinary event and the rendering of emergency assistance was unremarkable.

5) New York did not prescribe the health or building codes for the Island, it did not mandate rates of wages to be paid, nor did New York's laws apply to workers' compensation claims.

There is also no evidence supporting New York's contention that New York State and New York City building or health codes applied to activities on Ellis Island, and there is certainly no evidence that New York State or New York City enforced state or local laws there. Indeed, a specification that was issued by the federal government in 1900 explicitly stated that the New York City codes and regulations did not apply to federal construction activities. D775 at p. 10. In addition, a specification issued in the 1930's showed that the contractors were not required to comply with local building regulations for construction work within the lot lines of the government properties. D805, p. 3, ¶ 20. In fact, New York admitted in response to a formal request from New Jersey that "it has produced no documents to support a conclusion that any governmental authority organized pursuant to the laws of New York every enforced its building codes or ordinances on Ellis Island at any time after the acquisition of Ellis Island by the federal government..." New York Response to Request for Admission No. 74.

To the extent the federal government did follow local building regulations, it did not do so out of any legal compulsion, but rather, merely by choice. T1378-13 to *33 T1381-14 citing D775 at 10, and D426-428. Thus, the federal government's decision to follow New York State or New York City building codes for a particular project is clearly not an act of sovereignty by New York and cannot be given any weight in the prescription analysis.^[FN13]

FN13. New York also maintains that the federal government's decision to base prevailing wage rates on wages paid in New York is an act of prescription. But, the federal government used New Jersey wage rates as well. Thus, the evidence on this point is equivocal. In addition, New York relies upon its evidence that New York law governed workers' compensation claims for workers at Ellis Island. It presented evidence of one such claim but that claim was presented at a time when the States had no authority to entertain claims for workers on federal projects. See *Murray v. Joe Gerrick & Co.*, 291 U.S. 315, 318 (1934). Indeed, it was not until 1936 that Congress permitted the application of state workers' compensation laws to workers injured on federal property. See 40 U.S.C. § 290.

6) New York offered no evidence that any resident of Ellis Island voted in a New York election and its registration of Ellis Island voters is insufficient to establish prescription over the filled lands.

New York's evidence regarding voting also fails to establish its prescription claim. Contrary to New York's assertions, there is no evidence that any Ellis Island resident actually voted in a New York election. New York produced voting registers for only ten out of the more than 100 years during which New York claims to have prescribed jurisdiction over the filled portions of the Island. D52-58 and D953-956. While New York suggests that this evidence is a representative sampling of its voting registration records, the record contains no evidence regarding the ninety or more years not covered by the evidence, and no inference can be drawn that evidence of voter registration exists for those years.

*34 In addition, after 1954, no one lived on the Island and no one lives on the Island today. Thus, for the last 43 years not one individual has claimed to be qualified to vote in a New York election by reason of residency on the filled portions of Ellis Island.

An examination of the voting district maps prepared by the New York City Board of Elections further undermines New York's arguments. On each of these maps, the size and shape of Ellis Island does not reflect the fill added after 1834. The oval shape that appears on the maps is the same shape of the original Island. D957-965; New York Response to Request for Admission No. 13. The maps clearly do not show an intent to include the filled portions of the Island within a New York voting district.

Another indication that the City Board of Elections did not consider the filled portions of Ellis Island to be part of the defined voting districts is the fact that each voting map also depicts Oyster Island, an island which New York expert Donald F. Squires identifies as having been dredged out of existence as early as 1900. The inclusion within the voting district of a land area that ceased to exist sometime prior to 1900 strongly indicates that the Ellis Island that was depicted on all of the voting district maps was the Island as it existed before the filling of submerged lands. T2724-14 to T2733-7 citing D932 at p. 9.^[FN14] This conclusion is confirmed by the fact that the earliest election district statute referred to by New York dates from 1882, prior to any significant fill on the Island. Certainly, the New York Legislature could not have intended to refer to the filled portions of the Island in *35 that statute. To the extent that subsequent legislation incorporated the terms of the 1882 law, the filled portions of Ellis Island were not included in any New York election district created by the later statutes.

FN14. In fact, New York statutes for the establishment of Senate and Assembly districts list Ellis Island in tandem with the “dredged away” Oyster Island in 1916, 1917, and 1943. See 1916 N.Y. Laws 373; 1917 N.Y. Laws 798; 1943 N.Y. Laws 359. The reference to Oyster Island was not deleted from New York’s statutes until 1953. See 1953 N.Y. Laws 893.

Notably, registrants who identified themselves as living on the filled areas of the Island may not have been legally qualified to vote under New York law. The New York City Board of Elections derives its authority to establish voting districts under state law. New York’s statutes establishing voting districts merely refer to Governor’s, Bedloe’s and Ellis Islands, or simply to Ellis Island. See NY Brief at 23. The New York State Constitution makes similar reference to the islands with respect to State Senate districts. *Id.* There is no explicit reference suggesting the inclusion in those districts of the filled areas of Ellis Island.^[FN15]

FN15. New York’s census districts conformed to New York’s election districts. See *e.g.* 1892 N.Y. Laws 5, § 3; 1905 N.Y. Laws 83, § 2. Therefore, the filled lands were not properly within the census district. Federal census districts were drawn based

on Congressional districts. The laws establishing those districts did not specifically reference the filled lands. See *e.g.* 1911 N.Y. Laws 890; 1944 N.Y. Laws 726. There was no reference to Ellis Island in 1951 N.Y. Laws 839 or 1970 N.Y. Laws 5. Furthermore, although the 1960 and 1970 federal census counts inhabitants at Ellis Island, no one was living there in those years.

7) The federal government did not uniformly “believe” that the whole of Ellis Island was part of New York.

New York also observes that “[t]here is no question that all three branches of the federal government believed that Ellis Island was in New York.” NY Brief at 27. The evidence of record does not support New York’s contentions.

*36 In support of its argument, New York states that the INS “at all times ... regarded Ellis Island as part of New York.” New York’s argument relies heavily on letterhead used by the federal agency. *Id.* New York’s contention concerning what the INS “believed” is undermined by the plain fact that there was one post office for all of Ellis Island and that the uncontested historical evidence places the post office on the original Island, which explains fully any letterhead designation referring to Ellis Island, New York. T3948-22 to T3950-22 citing P531; T1410-8 to T1411-10. Subsequent actions in 1933 by INS Port Commissioner Edward Corsi in an application to New Jersey for a Waterfront Development Permit, and a later application to New Jersey for a water main construction permit in 1937, underscores the lack of merit in New York’s claims. INS Historian Marian Smith testified that the agency acknowledged both the historic sovereignty of New York over the original Island and New Jersey’s sovereignty over the filled lands. See P488-P490. Within ten years of the INS transfer of the Island, that view was echoed by the Government Services Administration in a formal report entitled “Ellis Island, Its Legal Status.” P487 ¶ 71 citing P144.

8) There was no evidence that the public generally perceived Ellis Island to be part of New York.

Lastly, the Special Master was also correct in concluding that New York’s evidence of public perception was decidedly unpersuasive. New York introduced a series of maps, post cards, letterheads, and other documents with the description “Ellis Island, New York” in an effort to establish that the public perceives Ellis Island to be located in that

State. Although public perception can be relevant with respect to a claim of prescription and acquiescence, such evidence is of dubious value with respect to a boundary set by Compact. As this Court explained, public perception of the location of a boundary line “cannot affect the potency *37 and conclusiveness of [a] compact between ... states by which [a] line was established....” *Virginia v. Tennessee*, 148 U.S. 503, 527 (1893).

Moreover, public perception can be established only through evidence of greater clarity than that introduced by New York. The Special Master correctly concluded that New York failed to establish that the public perception concerns the filled portion of the Island, as opposed to the original lands over which New York has jurisdiction. It would be perfectly consistent with New Jersey's sovereignty over the filled portions of the Island for post cards and letterheads to read Ellis Island, New York, as a portion of the Island has been New York's jurisdiction after execution of the 1834 Compact. The same is true of New York's unsupported allegation that the immigrants arriving on Ellis Island believed that they were in New York. Most, if not all, immigrants arriving at Ellis Island did, in fact, pass through the Main Building, the bulk of which is located on the original Island in New York. Thus, their perception that they were in New York, if such a perception did exist, is not at all contrary to New Jersey's sovereign interest in the filled portions of the Island.

POINT VII

NEW JERSEY DID NOT ACQUIESCE IN NEW YORK'S ISOLATED PURPORTED ACTS OF PRESCRIPTION DURING THE PERIOD FROM 1890 TO 1955.

Although there has been little opportunity for either New Jersey or New York to assert governmental authority over Ellis Island in light of the federal government's presence there, New Jersey asserted its sovereign authority over its territory as soon as the federal government began to fill New Jersey's land.

*38 New York takes exception to the Special Master's finding that the 1904 deed from New Jersey to the United States for the submerged lands around the original Island was a sovereign act. New York endeavors to treat that deed as merely a relinquishment of New Jersey's property interest. The ownership by New Jersey of that land was reflective, as Justice Holmes stated in *Central R.R.*,

of New Jersey's ultimate sovereign rights. As the Special Master commented, New Jersey's actions to preserve its property rights were sovereign acts. And the sale of the land was made by New Jersey under laws intended to regulate New Jersey's interest in its tidal lands. 1869 N.J. Laws 383; N.J. Stat. Ann. § 12:3-4 (West 1979).

New Jersey asserted its interest in the underwater lands surrounding Ellis Island when faced with unauthorized filling by the federal government. P487 ¶ 20 citing P405; P490 ¶ 13 citing P383(a); T1364-15 to T1367-14. That resulted in formal recognition by United States Attorney General Moody of New Jersey's sovereign interests. The federal government consequently purchased the lands designated as now and formerly below mean high water surrounding the original Island in 1904. P487 ¶ 23 citing P338, P351 at pp. 4-5; T1448-1 to T1453-16; T886-6 to -17; T944-1 to T956-9. The deed was recorded in Hudson County, New Jersey, and identified the lands as in the “New York Bay in the County of Hudson and State of New Jersey.” P487 ¶ 26 citing P7; T695-12 to T706-4; T711-5 to T715-2 citing P7. The purchase was reported in a page one story of *The New York Times* on July 19, 1904. P487, ¶ 25 citing P5.

New York also challenges the significance of the federal New York Harbor Line Board maps-entitled “Pierhead and Bulkhead Lines for Ellis Island, New Jersey, New York Harbor[,] as recommended by the New York Harbor Line Board”-as “erroneous,” a “misnomer,” and a “mapmaker's error” that was “[not] worth the trouble of *39 changing even if someone had noticed it,” due to the “irrelevance of state boundaries to the task of establishing harbor lines....” NY Brief at 31-33. New York maintains that the maps were “not published” and that the signature of Secretary of War Elihu Root, a prominent New Yorker and eventually an elected official of that State, was of “uncertain authenticity” and significance. *Id.* These contentions fall wide of the mark.

The United States Secretary of War and members of the New York Harbor Line Board, from 1890 through 1915, as part of their delegated responsibilities, prepared, approved and signed each Harbor Line map. P487 ¶ 27 citing P330(1) through (9), P387, P398; P386; *see* Appendix F, New Jersey's Brief in Support of Exceptions. These were published maps, adopted by the Harbor Line Board which conducted public meetings, some of which were attended by New York officials.^[FN16] P487 ¶ ¶ 21, 22. It is incontrovertible that Secretary of War Elihu Root

signed the 1901 map identifying Ellis Island, New Jersey. New York has produced no competent evidence to support its position that Secretary Root's signature evidences his "probable indifference to the error," or that he was derelict in his duties as Secretary of War, which required the review and approval of such lines by statute. Both prior and subsequent maps identifying Ellis Island, New Jersey were approved by *40 the individuals who held the office of Secretary of War at the time of the maps' publication.^[FN17]

FN16. Additionally, records of the New York Harbor Line Board document the receipt of a letter dated June 13, 1900 from the New York City Department of Docks and Ferries, which acknowledges the letter's contents as follows: "receipt of invitation to the Mayor of New York City to attend Harbor Line Board meeting on extension of harbor lines in vicinity of Ellis and Bedloes Islands, and states that as the matter refers to extension of harbor lines in State of New Jersey, the New York Dock Dept. is not concerned in the matter." P487 ¶ 21 citing P386.

FN17. New York is also without evidentiary support for its theory that the Harbor Line Board was somehow not up to the task of modifying title blocks of maps. In 1915, the title blocks for the maps were redrafted, and reflected the same designation of "Ellis Island, New Jersey." P384. Moreover, even a cursory examination of the maps shows that the harbor lines around Ellis Island were frequently changed, indicating that alteration of the maps was undertaken by the federal government without any change to the designation of the Island as located in New Jersey.

New York's arguments are equally unavailing in its criticism of the Special Master's observations concerning the Port Authority amendment to the Compact in 1921. The Special Master concluded that the amendment's silence on the issue of Ellis Island was "a tacit recognition of federal hegemony over the Island" because "both States had the opportunity to discuss any and all issues of State activity in and around New York Harbor." Report at 128-29. He concluded that this silence "also serves as evidence of New Jersey's non-acquiescence." *Id.* at 128. Equally as significant is the conclusion that New York's silence was tacit acceptance of New

Jersey's sovereignty over the filled lands as well as the lands west of the boundary in the Bay of New York, when viewed in context of preceding and concurrent events: namely, the public demands by the New Jersey Board of Riparian Commissioners that New Jersey's sovereign interest be recognized by the federal government, the public recognition of New Jersey's sovereign interest by the Attorney General in 1904 and the resulting purchase and recording of the deed in that same year; the decision of this Court in *Central R.R.* respecting the interpretation of the Compact, and the publication of New York Harbor Line Board maps identifying the lands as "Ellis Island, New Jersey" from 1890 to 1915.

*41 In addition, Ellis Island was and continues to be identified on the tax rolls of Hudson County, New Jersey, as tax exempt government property. NY Brief at 34. This is not, as New York maintains, "a well-kept secret, unknown not only to the United States and the State of New York but ... to the State of New Jersey itself." NY Brief at 34. Hudson County's tax records were and continue to be public records, freely available to New York if it had cared to take an interest. New York also insists that an assertion by a local government in New Jersey of its power to tax is not an example of non-acquiescence by New Jersey. But the point is not well taken. New Jersey's local governments only exercise power conferred upon them by the State. *Becker v. Adams*, 181 A.2d 349 (N.J.1962). If Hudson County believed that Ellis Island was part of New York it would not have included the Island on its tax rolls. In *Central R.R.*, this Court held that New Jersey had the power to tax property on its side of the boundary line, including lands beneath the dividing waters. Hudson County's actions were in accord with that recognized sovereignty.^[FN18]

FN18. Both Hudson County and Jersey City participated at various stages in this matter as *amici*. Both entities have submitted letters to the Court supporting New Jersey's exceptions and joining in New Jersey's requests for relief.

New York also disputes the Special Master's observations and conclusions respecting events in 1933 and 1937 concerning the application for permits for waterfront development and for the construction of a water main at Ellis Island. To support its criticism, New York relies upon unsupported speculation in an attempt to undermine what is obvious about the events; *i.e.*, the federal

government complied with the statutory and regulatory requirements of New Jersey. NY Brief at 34-35.

The evidence shows that in 1933-1934, the federal government constructed a new ferry house on the narrow *42 strip of land adjoining Island No. 1 and Island No. 2, and filled a rectangular stretch of land behind Island No. 2, the ferry house and a portion of Island No. 1. The United States Bureau of Immigration and Naturalization sought a Waterfront Development Permit issued by the New Jersey Board of Commerce and Navigation. The application for the New Jersey permit was signed by Port Commissioner Corsi. P487, ¶ 28 citing P10, P11 and N.J. Stat. Ann. § § 12:15-1, *et seq.* (West 1979); T1368-5 to T1368-11. New York makes the argument that the federal government was “simply seeking a permit from New Jersey for work on New Jersey’s subaqueous lands.” NY Brief at 35. But that work was on the very territory New York now claims is within its jurisdiction.

Moreover, in 1937, federal officials applied for and received a permit from the New Jersey Board of Commerce and Navigation allowing construction and installation of a water main from Jersey City, New Jersey, to Ellis Island. In its difficulty in securing an easement from the Jersey Central Railroad, whose property the water main would have to cross, the Justice Department drafted a complaint for filing in the Federal District Court of New Jersey. T1368-12 to T1370-17 citing D470-492 (Bates 1666-1699); T1413-17 to T1418-22 citing D485 (Bates 1688). Thus, the federal government recognized the need to comply with New Jersey law and it further recognized that New Jersey’s federal court would have jurisdiction if there was a need to commence a lawsuit.

New York also claims that actions by Representative Mary T. Norton of New Jersey to secure employment from New Jerseyans on Ellis Island construction projects should not be considered evidence of New Jersey’s non-acquiescence. Here again, New York’s arguments must be rejected. This was surely not an example of a member of Congress seeking work for New Jerseyans on a project in New York City. Representative Norton was of the view that *43 Ellis Island was part of New Jersey and that her constituents should be employed there.

The federal government acknowledged New Jersey’s sovereign right to seek an apportionment of New Jersey residents as laborers for Ellis Island projects. Organized labor unions for New Jersey’s workers

joined Representative Norton in arguing that Ellis Island was within New Jersey, and United States Senator Kean of New Jersey sought resolution of this issue through the appointment of New Jersey laborers. P487, ¶ ¶ 30-44 citing P12-P59. As the Special Master concluded, these were unequivocal assertions of sovereignty and are strong evidence of non-acquiescence on the part of New Jersey because “New Jersey was basing her claims to jobs for her citizens on her sovereignty over the filled portion of Ellis Island....” Report at 132.^[FN19]

FN19. While New York workers were ultimately employed on the Island because the general contractor did not have a permit to operate in New Jersey, this does not negate the fact that New Jerseyans asserted the State’s claim to job opportunities on the Island.

New York’s argument that a duly elected United States Representative does not speak for the State which she represents is difficult to take seriously. Apparently, New York attempts to belittle Representative Norton because she was allied with the Mayor of the city that she represented in Congress. However, Mary Norton was a prominent official by virtue of her position as a United States Representative. The fact that she was associated with a politically powerful Mayor had absolutely no bearing on her authority as a member of Congress asserting the rights of her constituents.

The Court has made clear that in determining whether acquiescence existed it is “concerned not only with what [a State’s] officers have done, but with what they have said, as well.” Illinois, supra, 500 U.S. at 386. Any “official act” or “expression” of “any official” is significant to a State’s *44 claim of sovereignty. Massachusetts v. New York, 271 U.S. 65, 95 (1926). Statements by public officials are of “no little interest” when evaluating a State’s active preservation of its sovereignty. Ohio v. Kentucky, 444 U.S. 335, 340 (1980). Representative Norton’s assertions of New Jersey’s sovereign rights must be accorded significant weight.^[FN20]

FN20. The Special Master correctly rejected New York’s claim that it was not “on notice” of New Jersey’s assertions of sovereignty over the filled portions of Ellis Island. The Special Master noted that “New Jersey, as sovereign, legally does not need to exercise prescriptive acts over her own territory.

Rather, she has to counter New York's prescriptive acts of which she has notice by not acquiescing in those acts." Report at 118. Prescription and acquiescence is akin to adverse possession and incorporates the concept that the party against whom the doctrine is sought to be applied must be on notice of the encroaching State's acts of prescription. Georgia, supra, 497 U.S. at 393. Thus, it is New York that must prove that New Jersey was on notice of New York's purported acts of sovereignty over the filled portions of the Island and not the other way around. New York failed to meet this burden.

New York's burden of establishing notice is made more difficult by the fact that New York retains jurisdiction over the original Island. Any of the acts that New York claims constitute prescription could reasonably be interpreted by New Jersey to relate to New York's undisputed jurisdiction over the Island as it existed in 1834. Thus, it would not be unusual for New Jersey to interpret isolated exercises of governmental authority by New York as benign.

POINT VIII

LACHES IS NOT APPLICABLE TO BOUNDARY DISPUTES BETWEEN STATES. ANY INEQUITIES RESULTING FROM A DELAY IN PRESERVING SOVEREIGNTY ARE ADDRESSED THROUGH PRESCRIPTION AND ACQUIESCENCE.

This Court's decisions clearly indicate that laches is not applicable to boundary disputes between States. "[T]he *45 laches defense is generally inapplicable against a State." Illinois, supra, 500 U.S. at 388. "Although the law governing interstate boundary disputes takes account of the broad policy disfavoring the untimely assertion of rights that underlies the defense of laches and statutes of limitations, it does so through the doctrine of prescription and acquiescence...." *Id.* Any equitable considerations that arise from inaction on the part of a State in a boundary dispute are addressed through the application of prescription and acquiescence.

The Special Master incorrectly concluded that the Court's holding in Kansas v. Colorado, 514 U.S. 673 (1995), left open the possibility that laches could apply to boundary disputes, where the boundary is established by compact. While the holding in *Kansas* suggests that laches might apply to disputes

between States concerning interstate agreements, that opinion contains no suggestion that the Court has abandoned application of the doctrine of prescription and acquiescence in favor of the doctrine of laches when deciding boundary disputes merely because a boundary is established through compact.

The issue in *Kansas, supra*, was whether Colorado had violated an interstate agreement concerning water rights to the Arkansas River. The boundary between those two States was not in question. When examining the question of delay on the part of Kansas the Court opined that it had "yet to decide whether the doctrine of laches applies in a case involving the enforcement of an interstate compact." *Id.*, 514 U.S. at 687 (emphasis added). That this observation was limited to the possibility of applying laches to non-boundary disputes is made plain by this Court's subsequent citation to its holding in *Illinois* that laches is generally inapplicable "in the context of an interstate boundary dispute." *Id.*; see also Block v. North Dakota, 461 U.S. 273, 294 (1983) (O'Connor, J., dissenting) ("[t]he common *46 law has long accepted the principle [that] neither laches nor statutes of limitations will bar the sovereign.")

While interpretation of certain provisions of the 1834 Compact are at issue in this case, the core dispute between the parties is over their common boundary on Ellis Island. The holding in *Kansas*, therefore, is inapplicable to the extent that the Court infers that laches may be applicable in certain original jurisdiction cases concerning the enforcement of interstate agreements.

As explained above, New York failed to introduce convincing evidence that New Jersey acquiesced in any purported acts of sovereignty by New York over the filled portions of the Island. To permit New York to assert the equitable doctrine of laches after that State has utterly failed to establish the elements of prescription and acquiescence would completely subvert that doctrine. New York seeks to expand its jurisdiction without having to establish that it ever undertook prescriptive acts over the disputed land. It would be entirely inequitable to divest New Jersey of its sovereignty over the filled portions of the Island without any showing at all by New York that that State had exercised governmental control over the disputed land. To do so would render meaningless the long-standing precedents of this Court applying prescription and acquiescence to boundary disputes.^[FN21]

FN21. The Special Master rightly concluded

that a State is not required to preserve its claim of sovereignty over disputed land through the initiation of legal proceedings in this Court against the encroaching sovereign. In fact, in a long line of decisions dating back to the very founding of this nation numerous factors apart from the pursuit of judicial relief have been considered by this Court to be indicative of a State's non-acquiescence in another State's exercise of dominion over disputed territory. As this Court plainly stated in *Michigan, supra*, an expression of sovereignty by a State can be made in any "practical way," including, but not limited to, a request for judicial relief. 270 U.S. at 316. Furthermore, this Court has held that any "official act" or "expression" of "any official" is significant to a State's claim of sovereignty over disputed territory. *Massachusetts, supra.* 271 U.S. at 95. Surely, this allows for an expression of non-acquiescence to be made in a manner other than through the initiation of legal proceedings.

*47 Even if this Court were to apply laches to this matter, there is no evidence in the record of prejudice to New York to justify application of the doctrine to its benefit. "The defense of laches 'requires proof of (1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense.'" *Kansas, supra*, 514 U.S. at 687 (quoting *Costello v. United States*, 365 U.S. 265, 282 (1961)).

New York's claim of prejudice is grounded on nothing more than baseless speculation that evidence supporting that State's position was destroyed prior to the time that this action was commenced by New Jersey. Unable to produce any proof that reliable evidence favoring New York's position was made unavailable because of delay, that State instead relies solely on conjecture that vandals pilfered or destroyed documents left on the Island after the federal immigration station was closed in 1955.

The Special Master correctly determined that the record contains no evidence supporting New York's claims of prejudice. While New York's expert, Harlan D. Unrau, introduced evidence that vandals had stolen "plumbing" and "whole sets of dishes" from Ellis Island, Report at 105, n. 42, he offered no testimony that documents relevant to this action were also stolen. In fact, Unrau admitted that he had no knowledge of any historic documents relating to Ellis

Island that had been lost in the years after the immigration station closed. T2165-1 through T2166-8. Apart from the somewhat incredulous claim that thieves would have been interested in pilfering decades-old bureaucratic documents relating to the operation of an immigration station, New York's claim of "prejudice" is made even less credible by that State's *48 speculation that the documents presumably stolen from the Island would have proven helpful to New York at the trial of this matter.

Of the vast amounts of documents and other evidence available to the States through the National Park Service, the Immigration and Naturalization Service, the National Archives, and other locations, New York has been able to muster only a paltry smattering of evidence of its purported prescription over the disputed lands. This is hardly surprising since New York had ceded jurisdiction over the land and the federal government exercised exclusive authority there. It strains credibility for New York to claim that of the staggering array of documents generated by the federal government with respect to the operation of Ellis Island, vandals stole essential evidence necessary to establish New York's acts of sovereignty over the filled portions of the Island, as well as New Jersey's acquiescence therein.

Furthermore, the record contains no evidence of the record retention policies in place at government agencies that may have records relevant to this matter. The record contains no evidentiary support for New York's claim that evidence that otherwise would have been available to that State was not retained by relevant agencies. For example, the record contains no testimony establishing that New York's tax authorities destroyed records relevant to this matter, as suggested by New York. Nor is there any proof in the record that New York was rebuffed in any attempt to secure documents. In addition, during the pretrial proceedings in this matter, New York never suggested that it needed further time to investigate its claims.^[FN22]

FN22. The brief of the proposed historian *amici* suggests that any lack of evidence in support of New York's claims may be the result of an inadequate investigation by that State. The proposed *amici* cite dozens of articles, letters, and other materials they allege are material to this matter but that were not introduced into the record by New York. According to the proposed *amici*, this evidence is available "in publicly accessible

state or university collections” and at other collections around the country. (Proposed Historian *Amici* Brief at 7, n. 5 and 29, n. 16). New York had every opportunity to locate this evidence prior to the hearings in this matter and to present testimony regarding these documents in support of its claims. New York either failed to locate these materials or made the strategic decision not to seek their introduction into the record. Thus, an alleged delay by New Jersey cannot be blamed for New York's failure to undertake a zealous investigation.

*49 Moreover, New York's claim that the recollections of relevant witnesses were lost as a result of delay is not supported by the record or common sense. No evidence was offered by New York to support its claim that the recollections of the individuals who worked and lived on Ellis Island have been lost to time. Ellis Island holds a singularly important position in the history of the United States and in the history of immigration in this nation. It is one of the most widely celebrated places in our nation and the subject of countless books, letters, diaries, and memoirs. Indeed, visitors to the immigration museum now operating on the Island need only take a few steps before encountering the oral histories of dozens of individuals who passed through Ellis Island. For New York to claim that the thoughts and perceptions of those who spent time on the Island have been lost is simply unfounded. The record of this case makes plain that thousands of pages of correspondence, contracts and official documents concerning Ellis Island were made available to the Special Master.^[FN23]

FN23. There is no reason for this Court to remand this matter for further evidentiary hearings as suggested by the proposed historian *amici*. New York has never made such a request from this Court, nor does the record support such an extraordinary step. Thousands of pages of documents were produced by both parties during discovery, resulting in hundreds of exhibits, numerous expert reports and detailed trial affidavits. Had the proposed *amici* wished to participate in this matter, they had every opportunity to present their views during the trial phase, when the Special Master was collecting evidence. The record below suggests that this matter was exhaustively researched and that the relevant documents were presented to the Special Master by the

parties and their experts.
50CONCLUSION

For the reasons stated herein, New Jersey respectfully requests that the Court overrule the exceptions of New York and sustain the exceptions of the New Jersey.

U.S.Reply.Brief,1997.
State of New Jersey v. State of New York
1997 WL 915795 (U.S.)

Briefs and Other Related Documents ([Back to top](#))

- [119 S.Ct. 2336](#) () (Jun. 14, 1999)
- [118 S.Ct. 681](#) () (Jan. 12, 1998)
- [1998 WL 15118, 66 USLW 3530](#) (Oral Argument) Oral Argument (Jan. 12, 1998)
- [118 S.Ct. 555](#) () (Dec. 01, 1997)
- [118 S.Ct. 292](#) () (Oct. 14, 1997)
- [118 S.Ct. 27](#) () (Sep. 29, 1997)
- [1997 WL 536892](#) (Appellate Brief) REPLY OF THE STATE OF NEW YORK TO EXCEPTIONS OF THE STATE OF NEW JERSEY TO THE REPORT OF THE SPECIAL MASTER (Aug. 29, 1997)
- [1997 WL 436232](#) (Appellate Brief) MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE IN SUPPORT OF THE EXCEPTIONS OF THE STATE OF NEW YORK AND BRIEF OF AMICI CURIAE (Jul. 31, 1997)
- [1997 WL 438444](#) (Appellate Brief) EXCEPTIONS OF THE STATE OF NEW YORK TO THE REPORT OF THE SPECIAL MASTER (Jul. 31, 1997)
- [1997 WL 915797](#) (Appellate Brief) MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE IN THE SUPPORT OF THE EXCEPTIONS OF THE STATE OF NEW YORK AND BRIEF OF AMICI CURIAE (Jul. 31, 1997)
- [1997 WL 998680](#) (Appellate Brief) EXCEPTIONS OF THE STATE OF NEW JERSEY AND BRIEF FOR THE STATE OF NEW JERSEY IN SUPPORT OF EXCEPTIONS (Jul. 31, 1997)
- [1997 WL 915798](#) (Appellate Brief) BRIEF FOR THE CITY OF NEW YORK, AS AMICUS CURIAE, IN SUPPORT OF THE STATE OF NEW YORK'S EXCEPTIONS TO THE REPORT OF THE SPECIAL MASTER (Jul. 30, 1997)
- [117 S.Ct. 2505](#) () (Jun. 27, 1997)
- [1997 WL 291594](#) () (Mar. 31, 1997)
- [117 S.Ct. 605](#) () (Dec. 16, 1996)
- [116 S.Ct. 2495](#) () (Jun. 10, 1996)
- [116 S.Ct. 669](#) () (Dec. 11, 1995)

END OF DOCUMENT

N.J.S.A. 32:11E-1



Effective: November 21, 2003

New Jersey Statutes Annotated Currentness

Title 32. Interstate and Port Authorities and Commissions

Subtitle 4D. Delaware River and Bay Authority

Chapter 11E. Delaware River and Bay Authority (Refs & Annos)

→ 32:11E-1. Compact

The State of New Jersey hereby agrees with the State of Delaware, upon enactment by the State of Delaware of legislation having the same effect as this section, to the following compact:

DELAWARE-NEW JERSEY COMPACT

Whereas, The states of Delaware and New Jersey are separated by the Delaware River and Bay which create a natural obstacle to the uninterrupted passage of traffic other than by water and with normal commercial activity between the two states thereby hindering the economic growth and development of those areas in both states which border the river and bay; and

Whereas, The pressures of existing trends from increasing traffic, growing population and greater industrialization indicate the need for closer cooperation between the two states in order to advance the economic development and to improve crossings, transportation, terminal and other facilities of the area; and

Whereas, The financing, construction, operation and maintenance of such crossings, transportation, terminal and other facilities of commerce and the overall planning for future economic development of the area may be best accomplished for the benefit of the two states and their citizens, the region and nation, by the cordial cooperation of Delaware and New Jersey by and through a joint or common agency or authority; and

Whereas, The Delaware-New Jersey Compact, enacted pursuant to 53 Laws of Delaware, Chapter 145 (17 Del. C. s.1701) and P.L.1961, c. 66 (C.32:11E-1 et seq.) of the Pamphlet Laws of New Jersey, with the consent of the United States Congress in accordance with Pub.L.87-678 (1962), created the Delaware River and Bay Authority with the intention of advancing the economic growth and development of those areas in both states which border the Delaware River and Bay by the financing, development, construction, operation and maintenance of crossings, transportation or terminal facilities, and other facilities of commerce, and by providing for overall planning for the future economic development of those areas; and

Whereas, The economic growth and development of areas of both states will be further advanced by authorizing the authority to undertake economic development projects, other than major projects as defined in Article II, at its own initiative, and to undertake major projects after securing only such approvals as may be required by legislation of the state in which the project is to be located, except that the authority is prohibited from undertaking any major project, to be located in the Delaware River or Bay, including, without limitation, any deep-water port or superport, without the prior approval, by concurrent legislation, of the two states; and

Whereas, The natural environment of those areas in the two states which border the Delaware River and Bay would be better preserved by requiring that the projects, other than crossings, of the authority shall be in complete compliance with all applicable environmental protection laws and regulations before the authority may undertake the planning, development, construction or operation of any project, other than a crossing;

NOW, THEREFORE, The State of Delaware and the State of New Jersey do hereby solemnly covenant and agree, each with the other as follows:

N.J.S.A. 32:11E-1

ARTICLE I

SHORT TITLE

This compact shall be known as the "Delaware-New Jersey Compact."

ARTICLE II

DEFINITIONS

"Charge card" means any card, plate, coupon book or other device existing for the purpose of obtaining money, property, labor, services or anything else of value on credit which is not subject to a finance charge.

"Credit card" means any card, plate, coupon book or other device existing for the purpose of obtaining money, property, labor, services or anything else of value on credit which may be subject to a finance charge.

"Financial records" mean all receipts and records of disbursements, revenues and expenses, operating and capital outlay expenses, assets and liabilities, including the fiscal status of authority facilities, projects and developments, including the status of reserve, depreciation, special or other funds and the receipts and payments of these funds, and schedules of authority bonds and notes.

"Information" means all authority books, papers, maps, photographs, cards or other documentary materials, regardless of physical form or characteristics.

"Crossing" means any structure or facility adapted for public use in crossing the Delaware River or Bay between the states, whether by bridge, tunnel, ferry or other device, and by any vehicle or means of transportation of persons or property, as well as all approaches thereto and connecting and service routes and all appurtenances and equipment relating thereto.

"Transportation facility" and "terminal facility" mean any structure or facility other than a crossing as herein defined, adapted for public use within each of the states party hereto in connection with the transportation of persons or property, including railroads, motor vehicles, watercraft, airports and aircraft, docks, wharves, piers, slips, basins, storage places, sheds, warehouses, and every means or vehicle of transportation now or hereafter in use for the transportation of persons and property or the storage, handling or loading of property, as well as all appurtenances and equipment related thereto.

"Commerce facility or development" means any structure or facility adapted for public use or any development for a public purpose within each of the states party hereto in connection with recreational and commercial fishery development, recreational marina development, aquaculture (marine farming), shoreline preservation and development (including wetlands and open-lands acquisition, active recreational and park development, beach restoration and development, dredge spoil disposal, and port-oriented development), foreign trade zone site development, manufacturing and industrial facilities, and any other facility or activity designed, directly or indirectly, to promote business or commerce which, in the judgment of the authority, is required for the sound economic development of the area.

"Appurtenances" and "equipment" mean all works, buildings, structures, devices, appliances and supplies, as well as every kind of mechanism, arrangement, object or substance related to and necessary or convenient for the proper construction, equipment, maintenance, improvement and operation of any crossing, transportation facility or terminal facility, or commerce facility or development.

"Project" means any undertaking or program for the acquisition or creation of any crossing, transportation facility or terminal facility, or commerce facility or development, or any part thereof, as well as for the operation, maintenance and improvement thereof.

N.J.S.A. 32:11E-1

"Major project" means any project, other than a crossing, having or likely to have significant environmental impacts on the Delaware River and Bay, its shorelines or estuaries, or any other area in the State of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester and Salem, as determined in accordance with state law by the environmental agency of the state in which the major project is to be located.

"Tunnel" means a tunnel of one or more tubes.

"Governor" means any person authorized by the Constitution and law of each state to exercise the functions, powers and duties of that office.

"Authority" means the authority created by this compact or any agency successor thereto.

The singular whenever used in this compact shall include the plural, and the plural shall include the singular.

ARTICLE III

FAITHFUL COOPERATION

They agree to and pledge, each to the other, faithful cooperation in the effectuation of this compact and any future amendment or supplement thereto, and of any legislation expressly in implementation thereof hereafter enacted, and in the planning, development, financing, construction, operation, maintenance and improvement of all projects entrusted to the authority created by this compact.

ARTICLE IV

ESTABLISHMENT OF AGENCY; PURPOSES

The two states agree that there shall be created and they do hereby create a body politic, to be known as "The Delaware River and Bay Authority" (for brevity hereinafter referred to as the "authority"), which shall constitute an agency of government of the State of Delaware and the State of New Jersey for the following general public purposes, and which shall be deemed to be exercising essential government functions in effectuating such purposes, to wit:

(a) The planning, financing, development, construction, purchase, lease, maintenance, improvement and operation of crossings between the states of Delaware and New Jersey across the Delaware River or Bay at any location south of the boundary line between the State of Delaware and the Commonwealth of Pennsylvania as extended across the Delaware River to the New Jersey shore of said river, together with such approaches or connections thereto as in the judgment of the authority are required to make adequate and efficient connections between such crossings and any public highway, or other routes in the State of Delaware or in the State of New Jersey; and

(b) The planning, financing, development, construction, purchase, lease, maintenance, improvement and operation of any transportation or terminal facility within the State of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester and Salem, which facility, in the judgment of the authority, is required for the sound economic development of the area; and

(c) The planning, financing, development, construction, purchase, lease, maintenance, improvement and operation of any commerce facility or development within the State of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester and Salem, which in the judgment of the authority is required for the sound economic development of the area; and

(d) The performance of such other functions as may be hereafter entrusted to the authority by concurrent legislation expressly in implementation hereof.

The authority shall not undertake any major project or part thereof without having first secured such approvals as may be required by legislation of the state in which the project is to be located.

N.J.S.A. 32:11E-1

The authority shall not undertake any major project, or part thereof, to be located in the Delaware River or Bay, including, without limitation, any deep-water port or superport, without having first secured approval thereof by concurrent legislation of the two states expressly in implementation thereof.

The authority shall not undertake any major project or part thereof without first giving public notice and holding a public hearing, if requested, on any proposed major project, in accordance with the law of the state in which the major project is to be located. Each state shall provide by law for the time and manner for the giving of such public notice, the requesting of a public hearing and the holding of such public hearings.

(e) The commissioners of the authority shall be responsible for appointing a Director of Economic Development or Deputy Executive Director and an appropriate number of supporting staff as deemed necessary by the authority to oversee commerce and economic development activity by the authority in the New Jersey counties of Cape May, Cumberland, Gloucester and Salem. The commissioners of the authority shall also be responsible for appointing a separate Director of Economic Development or Deputy Executive Director and an appropriate number of supporting staff as deemed necessary by the authority to oversee commerce and economic development activity by the authority in the State of Delaware. The authority shall not permit the appointment of the Directors of Economic Development or Deputy Executive Directors and supporting staff pursuant to this subsection to increase the budget of the authority.

ARTICLE V

COMMISSIONERS

a. The authority shall consist of 12 commissioners, six of whom shall be residents of and qualified to vote in, and shall be appointed from, the State of Delaware, and six of whom shall be residents of and qualified to vote in, and shall be appointed from, the State of New Jersey; not more than three of the commissioners of each state shall be of the same political party; the commissioners for each state shall be appointed in the manner fixed and determined from time to time by the law of each state respectively. Each commissioner shall hold office for a term of five years, and until his successor shall have been appointed and qualified, but the terms of the first commissioners shall be so designated that the term of at least one commissioner from each state shall expire each year. All terms shall run to the first day of July. Any vacancy, however created, shall be filled for the unexpired term only. Any commissioner may be suspended or removed from office as provided by law of the state from which he shall be appointed.

Commissioners shall be entitled to reimbursement for necessary expenses to be paid only from revenues of the authority and may not receive any other compensation for services to the authority except such as may from time to time be authorized from such revenues by concurrent legislation.

b. The authority shall not permit any commissioner or other person acting on its behalf to use a credit card or charge card established in the name of, or the account of which is paid for by, the authority for the purpose of obtaining money, property, labor, services or anything else of value, except that such credit card or charge card may be used for the purposes of the business of the authority provided that the expenses and purchases by credit card or charge card do not exceed the maximum annual amount established by joint agreement between the Governor of the State of Delaware and the Governor of the State of New Jersey for the use of such cards.

c. The authority shall not permit any commissioner or other person acting on its behalf to incur expenses and purchases, other than by credit card or charge card, in the performance of their official duties or on behalf of the authority except that such expenses and purchases may be incurred for the purposes of the business of the authority provided that such expenses do not exceed the maximum annual amount established by joint agreement between the Governor of the State of Delaware and the Governor of the State of New Jersey for such expenses and purchases.

ARTICLE VI

BOARD ACTION

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The commissioners shall have charge of the authority's property and affairs and shall, for the purpose of doing business, constitute a board; but no action of the commissioners including, but not limited to the adoption of the annual capital plan, including specifically the economic development portion of that plan, shall be binding or effective unless taken at a meeting at which at least four commissioners from each state are present, and unless at least four commissioners from each state shall vote in favor thereof. The vote of any one or more of the commissioners from each state shall be subject to cancellation by the Governor of such state at any time within 10 days (Saturdays, Sundays and public holidays in the particular state excepted) after receipt at the Governor's office of a certified copy of the minutes of the meeting at which such vote was taken. Each state may provide by law for the manner of delivery of such minutes, and for notification of the action thereon.

ARTICLE VII

GENERAL POWERS

For the effectuation of its authorized purposes, the authority is hereby granted the following powers:

- a. To have perpetual succession.
- b. To adopt and use an official seal.
- c. To elect a chairman and a vice-chairman from among the commissioners. The chairman and vice-chairman shall be elected from different states, and shall each hold office for two years. The chairmanship and vice-chairmanship shall be alternated between the two states.
- d. To adopt bylaws to govern the conduct of its affairs by the board of commissioners, and it may adopt rules and regulations and may make appropriate orders to carry out and discharge its powers, duties and functions, but no bylaw, or rule, regulation or order shall take effect until it has been filed with the Secretary of State of each state or in such other manner in each state as may be provided by the law thereof. In the establishment of rules, regulations and orders respecting the use of any crossing, transportation or terminal facility or commerce facility or development owned or operated by the authority, including approach roads, it shall consult with appropriate officials of both states in order to insure, as far as possible, uniformity of such rules, regulations and orders with the law of both states.
- e. To appoint, or employ, such other officers, agents, attorneys, engineers and employees as it may require for the performance of its duties and to fix and determine their qualifications, duties, compensation, pensions, terms of office and all other conditions and terms of employment and retention.
- f. To enter into contracts and agreements with either state or with the United States, or with any public body, department, or other agency of either state or of the United States or with any individual, firm or corporation, deemed necessary or advisable for the exercise of its purposes and powers.
- g. To accept from any government or governmental department, agency or other public or private body, or from any other source, grants or contributions of money or property as well as loans, advances, guarantees, or other forms of financial assistance which it may use for or in aid of any of its purposes.
- h. To acquire (by gift, purchase or condemnation), own, hire, lease, use, operate and dispose of property, whether real, personal or mixed, or of any interest therein, including any rights, franchise and property for any crossing, facility or other project owned by another, and which the authority is authorized to own and operate.
- i. To designate as express highways, and control public and private access thereto, all or any approaches to any crossing or other facility of the authority for the purpose of connecting the same with any highway or other route in either state.
- j. To borrow money and to evidence such loans by bonds, notes or other obligations, either secured or unsecured,

N.J.S.A. 32:11E-1

and either in registered or unregistered form, and to fund or refund such evidences of indebtedness, which may be executed with facsimile signatures of such persons as may be designated by the authority and by a facsimile of its corporate seal.

k. To procure and keep in force adequate insurance or otherwise provide for the adequate protection of its property, as well as to indemnify it or its officers, agents or employees against loss or liability with respect to any risk to which it or they may be exposed in carrying out any function hereunder.

l. To grant the use of, by franchise, lease or otherwise, and to make charges for the use of, any crossing, facility or other project or property owned or controlled by it.

m. To exercise the right of eminent domain to acquire any property or interest therein.

n. To determine the exact location, system and character of and all other matters in connection with any and all crossings, transportation or terminal facilities, commerce facilities or developments or other projects which it may be authorized to own, construct, establish, effectuate, operate or control.

o. To exercise all other powers not inconsistent with the Constitutions of the two states or of the United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, except the power to levy taxes or assessments, and generally to exercise in connection with its property and affairs, and in connection with property within its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.

ARTICLE VIII

ADDITIONAL POWERS

For the purpose of effectuating the authorized purposes of the authority, additional powers may be granted to the authority by legislation of either state without the concurrence of the other, and may be exercised within such state, or may be granted to the authority by Congress and exercised by it; but no additional duties or obligations shall be undertaken by the authority under the law of either state or of Congress without authorization by the law of both states.

ARTICLE IX

EMINENT DOMAIN

If the authority shall find and determine that any property or interest therein is required for a public use in furtherance of the purposes of the authority, said determination shall not be affected by the fact that such property has theretofore been taken over or is then devoted to a public use, but the public use in the hands or under the control of the authority, shall be deemed superior to the public use for which it has theretofore been taken or to which it is then devoted. The authority shall not exercise the power of eminent domain granted herein to acquire any property, other than a crossing, devoted to a public use, of either state, or of any municipality, local government, agency, public authority or commission, or of two or more of them, for any purpose other than a crossing, without having first secured the authorization of the holder of the title to the land in question and such other approvals as may be required by legislation of the state in which the project is to be located. The authority shall not exercise the power of eminent domain in connection with any commerce facility or development.

In any condemnation proceeding in connection with the acquisition by the authority of property or property rights of any character in either state and the right of inspection and immediate entry thereon, through the exercise by it of its power of eminent domain, any existing or future law or rule of court of the state in which such property is located with respect to the condemnation of property for the construction, reconstruction and maintenance of highways therein, shall control. The authority shall have the same power and authority with respect thereto as the state agency named in any such law; provided that nothing herein contained shall be construed as requiring joint or concurrent action by the two states with respect to the enactment, repeal or amendment of any law or rule of court on the

N.J.S.A. 32:11E-1

subject of condemnation under which the authority may proceed by virtue of this article.

If the established grade of any street, avenue, highway or other route shall be changed by reason of the construction by the authority of any work so as to cause loss or injury to any property abutting on such street, avenue, highway or other route, the authority may enter into voluntary agreements with such abutting property owners and pay reasonable compensation for any loss or injury so sustained, whether or not it be compensable as damages under the condemnation law of the state.

The power of the authority to acquire property by condemnation shall be a continuing power, and no exercise thereof shall be deemed to exhaust it.

ARTICLE X

REVENUES AND APPLICATION

a. The authority is hereby authorized to establish, levy and collect such tolls and other charges as it may deem necessary, proper or desirable, in connection with any crossing, transportation or terminal facility, commerce facility or development, or other project which it is or may be authorized at any time to construct, own, operate or control, and the aggregate of said tolls and charges shall be at least sufficient (1) to meet the combined expenses of operation, maintenance and improvement thereof, (2) to pay the cost of acquisition or construction, including the payment, amortization and retirement of bonds or other securities or obligations assumed, issued or incurred by the authority, together with interest thereon and (3) to provide reserves for such purposes; and the authority is hereby authorized and empowered, subject to prior pledges, if any, to pledge such tolls and other revenues or any part thereof as security for the repayment with interest of any moneys borrowed by it or advanced to it for its authorized purposes and as security for the satisfaction of any other obligations assumed by it in connection with such loans or advances. There shall be allocated to the cost of the acquisition, construction, operation, maintenance and improvement of such facilities and projects, such proportion of the general expenses of the authority as it shall deem properly chargeable thereto.

b. No action taken by the authority to increase tolls, charges or fares on the Delaware Memorial Bridge or the Cape May-Lewes Ferry shall have force or effect without first giving public notice and holding public hearings within the New Jersey counties of Cape May, Cumberland, Gloucester and Salem and all counties in the State of Delaware concerning the proposed increase in tolls, charges or fares. The authority shall be required to provide appropriate supporting information and financial records related to the proposed increase in tolls, charges or fares to the presiding officers of the Legislature of the State of Delaware and the Legislature of the State of New Jersey at least five days in advance of the first public hearing required to be held on the proposed increase.

ARTICLE XI

COVENANT WITH BONDHOLDERS

The two said states covenant and agree with each other and with the holders of any bonds or other securities or obligations of the authority, assumed, issued or incurred by it and as security for which there may be pledged the tolls and revenues or any part thereof of any crossing, transportation or terminal facility, commerce facility or development, or other project, that the two said states will not, so long as any of such bonds or other obligations remain outstanding and unpaid, diminish or impair the power of the authority to establish, levy and collect tolls and other charges in connection therewith, and that neither of the two said states will, so long as any of such bonds or other obligations remain outstanding and unpaid, authorize any crossing of the Delaware River or Delaware Bay south of the line mentioned in Article IV (a) of this compact, by any person or body other than the authority; unless, in either case, adequate provision shall be made by law for the protection of those advancing money upon such obligations.

ARTICLE XII

SECURITIES LAWFUL INVESTMENTS

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N.J.S.A. 32:11E-1

The bonds or other securities or obligations which may be issued by the authority pursuant to this compact, or any amendments hereof or supplements hereto, are hereby declared to be negotiable instruments, and are hereby made securities in which all state and municipal officers and bodies of each state, all banks, bankers, trust companies, savings banks, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees and other fiduciaries and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of either state, may properly and legally invest any funds, including capital, belonging to them or within their control; and said obligations are hereby made securities which may properly and legally be deposited with and shall be received by any state or municipal officer or agency of either state for any purpose for which the deposit of bonds or other obligations of such state is now or may hereafter be authorized.

ARTICLE XIII

TAX STATUS

The powers and functions exercised by the authority under this compact and any amendments hereof or supplements hereto are and will be in all respects for the benefit of the people of the states of Delaware and New Jersey, the region and nation, for the increase of their commerce and prosperity and for the enhancement of their general welfare. To this end, the authority shall be regarded as performing essential governmental functions in exercising such powers and functions and in carrying out the provisions of this compact and of any law relating thereto, and shall not be required to pay any taxes or assessments of any character, levied by either state or political subdivision thereof, upon any of the property used by it for such purposes, or any income or revenue therefrom, including any profit from a sale or exchange. The bonds or other securities or obligations issued by the authority, their transfer and the interest paid thereon or income therefrom, including any profit from a sale or exchange, shall at all times be free from taxation by either state or any subdivision thereof.

ARTICLE XIV

JURISDICTION; USE OF LANDS

Each of the two states hereby consents to the use and occupancy by the authority of any lands and property of the authority in such state for the construction, operation, maintenance or improvement of any crossing, transportation or terminal facility, commerce facility or development, or other project which it is or may be authorized at any time to construct, own or operate, including lands lying under water.

ARTICLE XV

REVIEW AND ENFORCEMENT OF RULES

Judicial proceedings to review any bylaw, rule, regulation, order or other action of the authority or to determine the meaning or effect thereof, may be brought in such court of each state, and pursuant to such law or rules thereof, as a similar proceeding with respect to any agency of such state might be brought.

Each state may provide by law what penalty or penalties shall be imposed for violation of any lawful rule, regulation or order of the authority, and, by law or rule of court, for the manner of enforcing the same.

ARTICLE XVI

NO PLEDGE OF CREDIT

The authority shall have no power to pledge the credit or to create any debt or liability of the State of Delaware, of the State of New Jersey, or of any other agency or of any political subdivision of said states.

N.J.S.A. 32:11E-1

ARTICLE XVII

LOCAL COOPERATION AND AGREEMENTS

a. All municipalities, political subdivisions and every department, agency or public body of each of the states are hereby authorized and empowered to cooperate with, aid and assist the authority in effectuating the provisions of this compact and of any amendment hereof or supplement hereto.

b. The authority is authorized and empowered to cooperate with each of the states, or any political subdivision thereof, and with any municipality, local government, agency, public authority or commission of the foregoing, in connection with the acquisition, planning, rehabilitation, construction or development of any project, other than a crossing, and to enter into an agreement or agreements, subject to compliance with the laws of the state in which the project is to be located, with each of the states, or with any political subdivision thereof, and with any municipality, county, local government, agency, public authority or commission or with two or more of them, for or relating to such purposes.

c. The authority and the city, town, municipality or other political subdivision in which any project, other than a crossing, is to be located are hereby authorized and empowered, subject to compliance with the laws of the state in which the project is to be located, to enter into an agreement or agreements to provide which local laws, resolutions, ordinances, rules and regulations, if any, of the city, town, municipality or other political subdivision affected by such project shall apply to such project. All other existing local laws, resolutions, ordinances or rules and regulations not provided for in the agreement shall be applicable to the project, other than a crossing. All local laws, resolutions, ordinances or rules and regulations enacted after the date of the agreement shall not be applicable to such projects unless made applicable by the agreement or any modification thereto.

ARTICLE XVIII

DEPOSITARIES

All banks, bankers, trust companies, savings banks and other persons carrying on a banking business under the laws of either state are authorized to give security for the safekeeping and prompt payment of moneys of the authority deposited by it with them, in such manner and form as may be required by and may be approved by the authority, which security may consist of a good and sufficient undertaking with such sureties as may be approved by the authority, or may consist of the deposit with the authority or other depository approved by the authority as collateral of such securities as the authority may approve.

ARTICLE XIX

AGENCY POLICE

Members of the police force established by the authority, regardless of their residence, shall have in each state, on the crossings, transportation or terminal facilities, commerce facilities or developments and other projects and the approaches thereto, owned, operated or controlled by the authority, and at such other places and under such circumstances as the law of each state may provide, all the powers of investigation, detention and arrest conferred by law on peace officers, sheriffs or constables in such state or usually exercised by such officers in each state.

ARTICLE XX

REPORTS AND AUDITS

a. The authority shall make annual reports to the Governors and Legislatures of the State of Delaware and the State of New Jersey, setting forth in detail its operations and transactions, and may make such additional reports from time to time to the Governors and Legislatures as it may deem desirable.

It shall, at least annually, cause an independent audit of its fiscal affairs to be made and shall furnish a copy of such

N.J.S.A. 32:11E-1

audit report together with such additional information or data with respect to its affairs as it may deem desirable to the Governors and Legislatures of each state.

It shall furnish such information or data with respect to its affairs as may be requested by the Governor or Legislature of each state.

b. The authority shall, within 180 days after the end of each fiscal year of the authority, submit to the Governor and Legislature of the State of Delaware and the Governor and Legislature of the State of New Jersey a complete and detailed report of the following:

- (1) its operations and accomplishments during the completed fiscal year;
- (2) its receipts and disbursements or revenues and expenses during that year in accordance with the categories and classifications established by the authority for its own operating and capital outlay purposes;
- (3) its assets and liabilities at the end of the fiscal year, including the status of reserve, depreciation, special or other funds including debits and credits of these funds;
- (4) a schedule of bonds and notes outstanding at the end of the fiscal year;
- (5) a list of all contracts exceeding \$100,000 entered into during the fiscal year;
- (6) a business or strategic plan for the authority and for each of its operating divisions;
- (7) a capital plan containing specific goals and objectives including, but not limited to, economic development goals and objectives in the State of Delaware and in the New Jersey counties of Cape May, Cumberland, Gloucester and Salem; and
- (8) the authority's progress toward meeting the prior year's economic development goals and objectives.

ARTICLE XXI

BOUNDARIES UNAFFECTED

The existing territorial or boundary lines of the states, or the jurisdiction of the two states established by said boundary lines, shall not be changed hereby.

ARTICLE XXII

ENVIRONMENTAL PROTECTION

a. The planning, development, construction and operation of any project, other than a crossing, shall comply with all environmental protection laws, regulations, directives and orders, including, without limitation, any coastal zone laws, wetlands laws, or subaqueous land laws or natural resource laws, now or hereafter enacted, or promulgated by the state in which the project, or any part thereof, is located.

b. The planning, development, construction and operation of any project, other than a crossing, to be located in the Delaware River and Bay shall comply with all environmental protection laws, regulations, directives and orders, including, without limitation, any coastal zone laws, wetlands laws, subaqueous land laws or natural resource laws, now or hereafter enacted or promulgated by either state.

c. The planning, development, construction and operation of any project, other than a crossing, located in the coastal zone of Delaware (as defined in Chapter 70 of Title 7 of the Delaware Code, as in effect on January 1, 1989), shall be subject to the same limitations, requirements, procedures and appeals as apply to any other person under the Delaware Coastal Zone Act, Chapter 70 of Title 7 of the Delaware Code, as in effect on January 1, 1989. Nothing in

N.J.S.A. 32:11E-1

this compact shall be deemed to preempt, modify or supersede any provision of the Delaware Coastal Zone Act, Chapter 70 of Title 7 of the Delaware Code, as in effect on January 1, 1989. The interpretation and application of this paragraph shall be governed by the laws of the State of Delaware and be determined by the courts of the State of Delaware.

d. The planning, development, construction and operation of any project, other than a crossing, located in New Jersey, shall be subject to the provisions of New Jersey law, when applicable, including, but not limited to, "The Wetlands Act of 1970," P.L.1970, c. 272 (C.13:9A-1 et seq.) and the "Coastal Area Facility Review Act," P.L.1973, c. 185 (C.13:19-1 et seq.).

CREDIT(S)

L.1961, c. 66, p. 566, § 1. Amended by L.1989, c. 192, § 1, eff. Oct. 18, 1989, operative June 28, 1990; L.2001, c. 414, § 1; L.2003, c. 192, § 1, eff. Nov. 21, 2003.

HISTORICAL AND STATUTORY NOTES

2006 Electronic Update

Complementary Legislation:

Del.--17 Del.C. § § 1701, 1719.

N.J.--N.J.S.A. 32:11E-1 to 32:11E-12.

U.S.--Sept. 20, 1962, Pub.L. 87-678, 76 Stat. 560.

2001 Legislation

L.2001, c. 414, § 2, approved Jan. 8, 2002, provides:

"This act shall take effect upon enactment into law by the State of Delaware of legislation of substantially similar substance and effect, but if the State of Delaware shall have already enacted such legislation, this act shall take effect immediately."

2003 Legislation

L.2003, c. 192, § 3, approved Nov. 21, 2003, provides:

"This act shall take effect immediately, but shall remain inoperative until passage by the State of Delaware of legislation having substantially similar effect as this act; but if such legislation already has been enacted, this act shall take effect immediately."

1990 Main Volume

The 1989 amendment inserted the definition of "commerce facility or development" and the references thereto; inserted the definition of "major project"; in article 4, rewrote subparagraph (b), added subparagraph (c) and (d), rewrote the second paragraph, and added the third and fourth paragraphs; in article V increased the number of commissioners to 12 from 10 with 6 commissioners from each state; in article VI increased the quorum and majority vote requirements to 4, from 3, commissioners; in article IX, inserted the limitations on eminent domain powers in the first paragraph; in article XVII, inserted the reference to "agreements" in the article heading, designated subsec. a and added subsecs. b and c; and added article XXII concerning environmental protection.

Section 3 of L.1989, c. 192, approved Oct. 18, 1989, provides:

"This act shall take effect immediately but shall remain inoperative until the enactment into law by the State of Delaware of legislation of substantially similar substance and effect; but if such legislation already has been enacted, this act shall take effect immediately."

N.J.S.A. 32:11E-1



Delaware enacted into law legislation of substantially similar substance and effect as New Jersey L.1989, c. 192, as 1990 Delaware Laws ch. 252, approved June 28, 1990.

Title of Act:

An Act to provide for an interstate compact with the State of Delaware to establish "The Delaware River and Bay Authority," defining the purposes, powers and duties thereof, exercising certain powers therein reserved to the State of New Jersey for the establishment and operation of said authority, and providing for the operation of the Delaware Memorial Bridge. L.1961, c. 66, p. 565.

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
1990 Main Volume


Navigable Waters  14(2).
States  6, 84.
Westlaw Topic Nos. 270, 360.
C.J.S. Navigable Waters § 17.
C.J.S. States § § 31, 32, 141 to 143, 165, 202.

NOTES OF DECISIONS


Employees 2
Jurisdiction 3
Law governing 1/2
Powers 1

1/2. Law governing

Delaware River and Bay Authority (DRBA), an agency created by congressionally sanctioned interstate compact between New Jersey and Delaware, is subject to New Jersey labor laws regarding collective bargaining for public employees as labor laws of New Jersey and Delaware are complementary and parallel with regard to collective negotiations for public employees. International Union of Operating Engineers, Local 68, AFL-CIO v. Delaware River and Bay Authority, 147 N.J. 433, 688 A.2d 569 (1997), certiorari denied 118 S.Ct. 165, 522 U.S. 861, 139 L.Ed.2d 108. Labor And Employment  1106; States  6

Delaware law, rather than New Jersey law on arbitration, applied to dispute arising out of a New Jersey corporation's construction contract to modify and improve maintenance building of Delaware River and Bay Authority, even though New Jersey and Delaware had concurrent jurisdiction; contract was prepared, bid accepted, and executed in Delaware, and building was located in Delaware. Gauntt Const. Company/Lott Elec. Co. v. Delaware River and Bay Authority, 241 N.J.Super. 310, 575 A.2d 13 (A.D.1990). Arbitration  2.2

1. Powers

Provision of interstate compact for such powers as may be reasonably necessary or incidental to effectuation of Authority's authorized purposes authorized Authority to sue and be sued. Delaware River and Bay Authority v. International Organization of Masters, Mates and Pilots, 45 N.J. 138, 211 A.2d 789 (1965). States  84

2. Employees

New Jersey public employment relations commission was without jurisdiction over Delaware River and Bay Authority, a bi-state agency created by compact between New Jersey and Delaware, in absence of provision of

N.J.S.A. 32:11E-1

compact conferring such jurisdiction, and could not require authority to recognize or collectively negotiate with exclusive bargaining representative selected through commission. Delaware River and Bay Authority v. New Jersey Public Employment Relations Commission, 112 N.J.Super. 160, 270 A.2d 704 (A.D.1970), certification granted 58 N.J. 24, 274 A.2d 296, affirmed 58 N.J. 388, 277 A.2d 880. Labor And Employment ☞ 1666

3. Jurisdiction

Department of Transportation (DOT) had no jurisdiction to compel Delaware River and Bay Authority (DRBA) to allow trackless trolley company to stop at ferry terminal, or to reimburse trolley company for intermodal tickets trolley company accepted; DRBA operated a ferry, not a railroad or bus route, and was not a public utility directly regulated by DOT. In re Complaint of Five Mile Beach Electric Railway Co., Inc., 342 N.J.Super. 52, 775 A.2d 708 (A.D.2001). Automobiles ☞ 114; Automobiles ☞ 119

New Jersey court had jurisdiction to construe terms of congressionally sanctioned interstate compact between New Jersey and Delaware which created Delaware River and Bay Authority (DRBA), to determine labor dispute between DRBA and its employees, where case did not involve dispute between two states and compact created concurrent jurisdiction with courts of New Jersey and Delaware to review any action taken by DRBA. International Union of Operating Engineers, Local 68, AFL-CIO v. Delaware River and Bay Authority, 147 N.J. 433, 688 A.2d 569 (1997), certiorari denied 118 S.Ct. 165, 522 U.S. 861, 139 L.Ed.2d 108. Courts ☞ 489(1); Courts ☞ 510

N. J. S. A. 32:11E-1, NJ ST 32:11E-1

Current through L.2006, c. 103 (End) and J.R. No. 3 (1st session) and L.2007, c. 6 and J.R. No. 1.

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RECORD

VOLUME

I

PLEADINGS AND TESTIMONY

IN THE
Supreme Court of the United States
OCTOBER TERM, 1930.
No. 18 Original.

STATE OF NEW JERSEY,

Plaintif,

vs.

STATE OF DELAWARE,

Defendant.

STIPULATED RECORD
TESTIMONY
VOLUME I

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INDEX

	PAGE
Notice	1
Motion for Leave to file Bill of Complaint.....	2
Proof of Mailing Copies of Motion and Bill of Complaint.....	3
Bill of Complaint.....	4
Motion for Leave to file Bill of Complaint.....	18
Answer	19
Notice	75
Motion for the Appointment of a Special Master.....	76
Motion for the Appointment of a Special Master in this Case	76

TESTIMONY.

Order of Reference	78
Opening Statement on Behalf of Plaintiff.....	79

Plaintiff's Witnesses.

Henry J. Sherman,	direct examination.....	84
	recalled, direct " 117, 130, 265, 286	
Miss Vera E. Castellano,	direct examination.....	91
	cross "	116
	recalled, direct "	341, 347
Arthur M. Denny,	direct examination.....	123
	recalled, direct "	158
W. W. Weatherby,	direct examination.....	128
Harry M. Geiter,	direct examination.....	129
Charles R. Buttar,	direct examination.....	159
	cross "	169
	recalled, direct "	197, 249
	cross "	251
Albert Bobeson McAllister, Jr.,	direct examination.....	169
	recalled, direct "	348
Joseph N. Fowler,	direct examination.....	174
	cross "	194
Edward Gaskill,	direct examination.....	198
	cross "	201
Stetson Campbell,	direct examination.....	202
	cross "	205
George C. Bell,	direct examination.....	205
	cross "	208
	re-direct "	209

Charles F. A. Bright,	direct examination.....	528
Samuel M. Denny,	direct examination.....	533
Joshua H. Weston,	direct examination.....	537
Albert E. McAllister, Jr.,	direct examination.....	564
Mrs. Janetha W. Schooner,	direct examination.....	613
Colonel Lawrence Martin,	direct examination.....	664
Stipulation re Exhibits.....		740

Notice.

[1]

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 19 Original

10

STATE OF NEW JERSEY,

Plaintiff,

vs.

STATE OF DELAWARE,

Defendant.

NOTICE

TO:

Hon. C. Douglas Buck, Governor, and

Hon. Reuben Satterthwaite, Jr., Attorney-General of the

State of Delaware.

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SIRS:

Please be advised that on Monday, June 3, 1929, the plaintiff will apply to the Court for leave to file its bill of complaint, a copy of which is annexed hereto.

WILLIAM A. STEVENS,

Attorney-General.

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DUANE E. MINARD,

Assistant Attorney-General,

Solicitors for Plaintiff.

Dated May 25, 1929.

40

George H. Elhinton—for Plaintiff—Direct.

[869] Q. Now, were you familiar with a wharf in the township of Upper Penns Neck of Robert Walker and Francis P. Walker?

A. No, sir, I have no recollection of any wharf and of those people.

Q. Are you familiar with the Summerill wharf?

A. Yes, sir.

Q. Do you know whether that was the location of the former Walker property?

A. That I could not answer you, because I don't know. I did not know what the Walker property consisted of.

Q. Do you know when the Summerill wharf was built?

A. No.

Q. Was it built before your time?

A. Well, I guess so.

Q. It was in existence at your earliest recollection?

A. It was.

Q. Did it extend below the low water mark?

A. Well, now, I am unable to answer that question positively.

Q. Was it used for any purpose?

[870] A. Yes, sir.

Q. What purpose?

A. Well, there were boats landed there, freight was taken from there and carried to Wilmington and other points.

Q. To what extent was it used—I mean what quantities?

A. The Summerill property, they were there quite a number of years, they even rafted lumber there.

Q. Down the Delaware?

A. Yes, sir, or up the Delaware.

Q. For how many years was it so used to your knowledge?

A. Well, it was used during the lifetime of the Summerills.

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George H. Elhinton—for Plaintiff—Direct.

Q. What period of years did that cover?

A. Well, I suppose that covered not less than 70 years, or 75, and maybe more.

Q. Do you know whether boats landed at that wharf at low tide?

A. No, sir, I don't, because I was never down there when a boat landed, and therefore I have no knowledge whether a boat could land there at low tide or not.

Q. What business were the Summerills in?

A. Lumber, coal, phosphate.

[881] Q. And did they handle their business from that wharf?

A. They did, part of it.

Q. You don't have any knowledge when the wharf was built, do you?

A. No, sir.

Q. Do you remember when it was discontinued?

A. Well, no, I don't know that I do; of course, the first one, I don't just recall how long they have been used.

Q. Were you familiar with the wharf of Henry Barber?

A. Yes, sir.

Mr. Minard: This Summerill wharf is the wharf mentioned in our Exhibit No. 48. Now, the Henry Barber is referred to in our Exhibit 43.

Q. Now, the Henry Barber wharf, do you know when that was built?

A. No, sir.

Q. What is your earliest recollection of it?

A. The Henry Barber wharf was a short wharf, did not extend very far in the river, and of course, when I moved to Penns Grove I was in my fourth year and after I was old enough to notice, that wharf was [368] built.

Q. It was there then?

40

George H. Elkinton—For Plaintiff—Direct.

A. Yes, sir. That storehouse on it, the grain and ash like, was landed there and taken away by boat.

Q. You mean hauled there from inland?

A. The coal was shipped there by barges and unloaded on this wharf.

Q. Do you know whether they were unloaded during low tide as well as high tide?

A. They would come in on tide and they would remain there until loaded, and it would ground them at low water.

Q. You don't know how long that wharf remained?

A. It is there yet.

Q. Is it used now?

A. Well, no, it is not being used now.

Q. Now, within the last few years, we will say the last 20 years, has there been an extension built to this wharf?

A. Yes, sir.

Q. How long an extension, do you know?

A. I should judge, if I would judge, it was two scows [363] built at the end of it, but I don't know how long they are, but I should judge they were four or five hundred feet.

Q. They built it by using the bodies of scows and fastening them in place?

A. Yes, they drove piles below about 15 inches high.

Q. Above—

A. Above the low tide, and then they fastened these two barges lengthwise of it, and then drove the other part on the side to hold them there, and on the end of that they built the house.

Q. When was that extension built?

A. I judge, if my memory serves me, in 1918.

Q. In other words, that was built during the war period?

40

George E. Elkinton—For Plaintiff—Direct.

Witness: What is that?

Mr. Minard: During the World War period.

A. Yes, sir.

Q. And what was it used for?

A. They carried passengers and they carried freight to and from there for a short time. If I may talk a little on that, that wharf was built in opposition to [364] the Wilson Line, it was put there right after the Wilson Line kept out the Penns Grove Line, and boats were running there, but not very long. That since fell through, and even the thing is a wreck now.

Q. But is it still there?

A. Yes, sir.

Q. But out of repairs?

A. Yes, very much out of repairs.

Q. Do you know anything about the Joseph Guest wharf?

A. Yes, sir.

Q. That is referred to in Exhibit 44. What do you know about that wharf?

A. Well, I know it was built—that is positive.

Q. Do you know when?

A. I can't give you the positive time, but as near as my memory serves me, it was '72, '73 or '74—1872, '73 or '74.

Q. What was it used for?

A. Well, it was used for a very short time, the ice carried it away, and then there was not much traffic to that wharf.

[365] Q. Was it ever rebuilt?

A. No, sir.

Q. How far did it extend in the river?

A. Well, it extended out to the channel.

Q. To the navigation channel?

A. Yes, it was navigation.

40

George H. Elkinton—*for Plaintiff*—Direct.

Q. Below low water mark then?
 A. That would depend upon the depth of the water. There was, I suppose, low water two to four feet, or maybe five.

Q. Do you know anything about the Pennas Grove Pier Company's wharf?

A. Yes, I know something about that.

Q. I am referring now to Exhibit 42. Tell us about that?

A. Well, that was a wooden structure built on abutments with sleepers extending out into it.
 Q. How far out did it extend?

A. Well, that was about 200 yards at that time.

Q. With relation to the high water or low water mark?

A. Well, it was navigable at low water unless there was a heavy northwester that blew the water out of the river.

[306] Q. Did your family have anything to do with that pier?

A. Yes, sir.

Q. Just what?

A. Father bought that property in 1848.

Q. Was there a pier there then?

A. There was, yes, sir.

Q. And what did he use it for?

A. He rented it to boats, the Major Habeld ran there for a number of years, the Cohnany, and a number of boats that I can recall.

Q. How many years was it so used?

A. Why, it was used right along clear up to the present time.

Q. It is now in use?

A. It is now in use.

Q. And these boats you referred to were passenger or freight boats?

A. Both.

60

George H. Elkinton—*for Plaintiff*—Direct.

Q. Is it a regularly used pier at the present time for the establishment of a navigation line?

A. Yes, sir.

[307] Q. What line?

A. The Wilson Line.

Q. Now, Exhibit 42 authorizes Charles Elkinton, John Sumner and others to build this wharf?

A. That requires an explanation.

Q. All right.

A. That wharf, as I said before, was a wooden structure entirely from shore to full length. In 1855 or 1856 there was a cove down below there on top of the tide and in the winter time that cove, the ice came out and carried the top of the wharf off entirely—I stood in the wharf looking out and saw the lumber flying and the ice coming, and my father then formed a company, Walker, Sumner and so on, took stock, father keeping the majority of the stock, and they rebuilt it.

Q. The date of this Exhibit, or Act of the Legislature authorizing the building of the pier, is March 15, 1855, that is the time you are talking about now?

A. Yes, sir.

Q. But there was a wharf there prior to that time?

[308] A. Yes, sure, and clear up before that time.

Q. Now, have you in your possession any of the title deeds for lands that entered into the use of that wharf?

A. I have two.

Q. I show you a paper which purports to be a deed dated October 6, 1848, Wilmington and New Jersey Steam Boat Company to Isaac Harff?

A. That is right.

Q. Is that one of the original deeds?

A. That is the deed from the Ferry Company to Isaac Harff.

Q. Is this still in your possession?

A. Yes, sir.

40

Defendant's Exhibits offered in evidence.

Mr. Southerland: Exhibit No. 754, Second Answer filed by Attorney General in Penn v. Lord Baltimore.

(Pamphlet referred to was then filed marked Defendant's Exhibit No. 754.)

[1061] Mr. Southerland: Exhibit 755, we have undertaken to summarize these Pennsylvania Colonial Acts. We have undertaken to classify them. The whole exhibit concludes with a table of the enacting clauses adopted. The whole story is in this tabulation.

(Pamphlet referred to was then filed marked Defendant's Exhibit No. 755.)

Mr. Southerland: Exhibit 756 is certain entries taken from Entry Books of the Board of Trade, which indicate that the letters exhibited in Plaintiff's Exhibits Nos. 395 and 402 were also sent to other colonies.

(Pamphlet referred to was then filed marked Defendant's Exhibit No. 756.)

Mr. Southerland: Exhibit 757, Description of the boundaries of Delawares and of New Jersey.

(Pamphlet referred to was then filed marked Defendant's Exhibit No. 757.)

Mr. Southerland: Exhibit 758, Minute of Committee of Trade and Plantations: Lord Baltimore advised to proceed by Petition to King in Council.

(Pamphlet referred to was then filed marked [1062] Defendant's Exhibit No. 758.)

Mr. Southerland: Exhibit 759, Report and Opinion of Charles B. Penrose, Solicitor of the Treasury, to the Secretary of War, February 4, 1843, relating to the dispute over Pea Patch Island. (Transmitted by the Secretary of War to the Senate January 18, 1844.)

(Pamphlet referred to was then filed marked Defendant's Exhibit No. 759.)

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Defendant's Exhibits offered in evidence.

Mr. Southerland: Exhibit 760, Extracts from Bench Notes of Lord Hardwicke in Penn v. Baltimore.

(Pamphlet referred to was then filed marked Defendant's Exhibit No. 760.)

Mr. Southerland: Exhibit 761, Photographic copy of one side of two fragments of material attached to the cord of the Dover Grant, the photograph being as nearly as possible the exact size of same.

(Photographic copy referred to was then filed marked Defendant's Exhibit No. 761.)

Mr. Southerland: We offer as Exhibit 762, a similar photograph of the reverse sides of the two pieces of material above referred to.

(Photographic copy referred to was then [1063] filed marked Defendant's Exhibit No. 762.)

Mr. Southerland: We offer as Exhibit 763, enlarged photograph of the two fragments of material adhered to the cord above referred to.

(Photograph referred to was then filed marked Defendant's Exhibit No. 763.)

Mr. Southerland: We offer as Exhibit 764, an enlarged photograph of the other side of the two fragments of material adhering to the cord.

(Photograph referred to was then filed marked Defendant's Exhibit No. 764.)

(Adjourned to meet in Baltimore, Maryland, September 12, 1932, at 10 A. M., Eastern Standard Time.)

RECORD

VOLUME II

LIST OF EXHIBITS

IN THE
Supreme Court of the United States
OCTOBER TERM, 1930.
No. 18 Original.

STATE OF NEW JERSEY,
Plaintiff,
vs.
STATE OF DELAWARE,
Defendant.

**STIPULATED RECORD
DESCRIPTIVE LIST OF EXHIBITS.
VOLUME II.**

WILLIAM A. STEVENS,
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DYANE H. MINARD,
Assistant Attorney General.

GEORGE S. HOBART,
Special Counsel.
For Plaintiff.

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Special Counsel.
For Defendant.

INDEX

	PAGE
<i>Plaintiff's Exhibits.</i>	
Main Case Series	1, 20
List of River Charts (Exhibit 181).....	15
Map Series	17, 69
Seal Series	18
Pea Patch Island Series	20
Historical Extract Series	23
Old Case Series	24
Delaware Oyster Laws	24
Boundary Series	26
Surrender Series	33
Island Series	36
Title Series	38
Declaration Series	59
Miscellaneous	77
<i>Defendant's Exhibits</i>	82-103

New Jersey—Delaware Boundary Case
(New Jersey v. Delaware)

DESCRIPTIVE LIST OF EXHIBITS

PLAINTIFF'S EXHIBITS

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
<i>Main Case Series</i>			
1	Report of John P. Stockton, Atty. Gen. of N. J. on Dividing Line bet. Delaware River & Bay, August 12, 1865.....	12	84
2	U. S. C. & G. S. Chart No. 296—Wilmington to Philadelphia.....	17	88
3	U. S. C. & G. S. Chart No. 294—Bombay Hook to Wilmington.....	19	89
4	U. S. C. & G. S. Chart No. 1218—Delaware Bay.....	19	89
5	N. J. Joint Resolution No. 25, Laws of 1928 (p. 834) authorizing boundary suit.....	23	91
6	Grant Charles II to Duke of Yorks, May 12, 1664.....	24	92
7	Lease Duke of Yorks to Berkeley and Carteret, June 22, 1664.....	24	93
7a	N. J. Archives, Vol. I (Reference).....	26	94
8	Release Duke of Yorks to Berkeley and Carteret, June 24, 1664.....	27	94
9	Extracts from History of New Jersey by Smith, 1765.....	27	95
10	Extracts from Historical Collections of N. J., Barber & Howe, 1844.....	28	95
11	Extracts from History of New Jersey, Mulford, 1848.....	29	96

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
12	Extracts from East Jersey under Proprietary Government, Whitehead, 1676	29	96
13	Extracts from Grants, Concessions, etc., Leaming & Spicer, 1763 (Supplemented by Exhibit 147; Also Exhibit 169)	30 403 409	96 92 847
14	Extracts from History of U. S., Bancroft, 1886	30	97
15	Extracts from Narratives of Early Pa., West Jersey and Del., 1630-1707, Myers	30	97
16	Treaty of Brede, July 21, 1667	31	97
17	Confirmatory Grant, Charles II to Duke of York, June 29, 1674	31	98
18	Deed, Berkeley to Fenwick, March 15, 1678	32	98
19	Tripartite Deed, Fenwick and Billings to Penn, Lawrie & Lucas, Feb. 6, 1674	33 60	99 117
20	Warrant for Patent, Duke of York to Carteret, July 23, 1674. Lease, Duke of Yorks to Carteret, July 23, 1674. Release, Duke of Yorks to Carteret, July 23, 1674.	33 34 34	99 99 100
21	Deed, Fenwick to Penn, March 23, 1683	35	100
22	Quinti-partite Deed, Carteret - Penn - Lucas - Lawrence - Byllyngs, July 1, 1676	35	100
23	Confirmatory Deed, Duke of Yorks to Billings - Penn - Lawrie - Lucas - Etridge-Warner, August 6, 1680	35	100
24	Release, Duke of Yorks to Carteret (grandson), Sept. 10, 1680	35	100
25	Surrender and Acceptance of New Jersey Proprietary Government, April 15, 1703	36	101
26	Royal Governors of N. J. after surrender, 1702-1776	37	102

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
27	Opinion of Raymond & York on King's title to Delaware River, August 6, 1721 (Supplemented by Exhibit 167)	38 408	102 848
27a	Proceedings before Lord's Commissioners of Trade and Plantations respecting application of Gookin for grant to islands in Delaware River (Supplement to Exhibit 27)	119 408	153 846
28	Supplemented by Exhibit 157 N. J. Constitutions, July 2, 1776, and August 13, 1844, with amendments	38	103
29	N. J. Statute and Deed to U. S. Government for site of Skip John Light, Aug. 15, 1874	39	103
30	N. J. Act for preserving oysters, March 27, 1719	40	104
31	N. J. Act for preserving oysters, Feb. 11, 1776	40	104
32	List of titles of N. J. Oysters Statutes, to and including 1931	41	104
33	N. J. Act to regulate fisheries in Delaware River, November 23, 1806	42	105
34	List of titles to N. J. Statutes relating to fisheries in Delaware River	42	105
35	N. J. Act defining boundaries of counties, January 21, 1703-10; January 19, 1747-8	43	106
36	N. J. Act for dividing and ascertaining boundaries of counties (Nevill's laws, 1762, p. 12)	44	106
37	N. J. Act to preserve and support jurisdiction (supplement to act, Dec. 3, 1807), Nov. 21, 1821	44	105
38	N. J. Act fixing boundaries of counties, November 23, 1832	44	107
39	N. J. Act fixing boundaries of counties, April 10, 1846	46	107
40	N. J. Act creating Oldman's Township, February 7, 1881	46	107

4. Plaintiff's Exhibits—Main Case Series

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
41	N. J. Act granting Broadway and others right to build wharf in Delaware River, lower Penn's Neck Township, March 16, 1864.	46	108
42	N. J. Act to incorporate Pennsgrove Pier Co., March 15, 1855.	47	108
43	N. J. Act authorizing Barber to build wharves in Delaware River, upper Penn's Neck Township, Salem County, March 23, 1871.	47	109
44	N. J. Act authorizing Guest to construct wharf in Delaware River at Pennsgrove, March 17, 1870.	48	109
45	N. J. Act (supplement) authorizing Schacht to build bridge and dam channel between Kings' Island and shore of Delaware River, Greenwich Township, Gloucester County, March 27, 1878 (withdrawn).	48 318	109 284
46	N. J. County Municipalities map, 1925	49	110
47	N. J. Act for removal of obstructions in Delaware River, March 22, 1880.	49	110
48	N. J. Act authorizing Walker to build wharf in Delaware River, Upper Penn's Neck Township, Salem County, N. J., March 21, 1870.	50	111
49	N. J. Act for protection of seed oysters in Delaware Bay and River, March 20, 1901.	51	111
50	N. J. Act for enforcement of act of April 14, 1846, and supplements, in Maurice River Cove and Delaware Bay, March 21, 1871.	51	111
51	Extracts from Treaty of Paris, 1783.	53	112
52	Delaware River Boundary negotiations between Penn and Jennings, 1683.	53	113

Plaintiff's Exhibits—Main Case Series

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
53	N. J. Delaware Jurisdiction compact, 1905, Public Act No. 83, U. S. Congress, approved January 24, 1907 (84 Stat. L. Pt. 1, p. 858, Ch. 394) see also Exhibit 151.	56	115
54	Declaration, Charles II, confirming Duke of Yorks release of March 14, 1682, November 23, 1682.	57	115
55	Release, Duke of Yorks to 24 East Jersey Proprietors, March 14, 1682.	57	115
56	List of titles to N. J. Riparian Laws, to and including 1931.	58	116
57	Map showing list and location of N. J. Riparian grants on Delaware River.	60	121
58	N. J. Riparian Grant "A" to Deany, April 26, 1906.	68 79	123 130
59	Description and sketch showing structures on Grant "A".	80	131
60	N. J. Riparian Grant "B" to Pennsgrove Pier Co., March 21, 1916.	82	132
61	N. J. Riparian Grant "C" to French's Hotel Co., October 17, 1921.	82	132
62	Description of structures on Grants "B" and "C".	84	133
63	Sketch of structures of Grants "B" and "C".	84	133
64	N. J. Riparian Grant "D" to Du Pont, August 21, 1916.	84	184
65	N. J. Riparian Grant "E" to Du Pont, July 16, 1917.	85	184
66	N. J. Riparian Grant "G" to Du Pont, November 20, 1916.	86	185
67	N. J. Riparian Grant "U" to Delaware River Power Co., October 21, 1929.	87	185
68	Description of structures on Grants "D," "E," "G," and "U".	88	186

Plaintiff's Exhibits—Main Case Service

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
88	N. J. Riparian Grant "P" to Acton, February 19, 1928.	102	146
89	N. J. Riparian Grant "Q" to Delaware N. J. Ferry Co., May 18, 1930	103	147
91	Description and sketch of structure on Grants "P" and "Q"	104	148
92	N. J. Riparian Grant "R" to Kent, February 17, 1888.	105	148
93	N. J. Riparian Grant "S" to U. S. A., March 29, 1909	106	149
94	N. J. Riparian Grant "T" to Du Pont, October 21, 1929	147	150
95	N. J. Riparian Grant "V" to Penn Beach Property Owners' Assn., Oct. 21, 1929	148	150
96	Description of structures on Grant "V"	149	151
97	Description of structures on Licenses "T," Grant "U"	149	151
98	Paden Map of New Jersey, December 1, 1777	118	154
99	Joshua Fisher Map of Delaware River and Bay, February 28, 1766	114	155
100	Map showing original Ship John Bed	129	161
101	Map showing present oyster beds at Ship John	127	163
102	Extracts from U. S. Coast Pilot (1930)	129	165
103	Certificate of Incorporation, Delaware New Jersey Ferry Co., March 23, 1927	136	170
104	Deed, William D. Acton to Delaware New Jersey Ferry Co., April 8, 1927.		
	Lands in Pennsville, Salem County, New Jersey	139	171
105	Deed, French's Hotel Co. to Delaware New Jersey Ferry Co., August 9, 1927.		
	Lands in Pennagrove, Salem County, New Jersey	139	172

Plaintiff's Exhibits—Main Case Service

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
69	Sketch of structures on Grants "D," "E," "G" and "U"	88	136
70	N. J. Riparian Grant "E" to Du Pont, November 27, 1891	89	137
71 & 72	Description of structures in seven northerly tracts of Grant "D," and of one tract in Grant "E"	89 91	137 138
73	N. J. Riparian Grant "K" to Franklin Beal Estate Co., June 13, 1928.	92	139
74	Description of structures on Grant "H"	93	139
75	N. J. Riparian Grant "I" (1) to Locuston, June 17, 1928	94	140
76	N. J. Riparian Grant "I" (2) to Locuston, April 15, 1929	94	140
77	N. J. Riparian Grant "I" (3) to Locuston, April 15, 1929	94	141
78	N. J. Riparian Grant "I" (4) to Locuston, April 15, 1929	95	141
79	N. J. Riparian Grant "I" (5) to Locuston, April 15, 1929	96	142
80	N. J. Riparian Grant "J" to Acton, August 17, 1928	97	142
81	Sketch of structures on Grant "J"	97	143
82	N. J. Riparian Grant "K" to Lower Penns Neck Township, Sept. 21, 1926	98	143
83	N. J. Riparian Grant "M" to Acton, August 17, 1928	98	144
84	N. J. Riparian Grant "N" to Brown, August 23, 1891	99	144
85	Description of structures on Grants "K," "M" and "N"	99	144
86	N. J. Riparian Grant "L" to Acton, November 19, 1928	100	145
87	Description of structures on Grant "L"	101	145
88	N. J. Riparian Grant "O" to Acton, October 19, 1928	101	146

Exhibit No.	Subject	Printed Record Page	Steno. Minutes Page	Printed Record Page
119	Grant 233—On a warrant of Wm. Griffith, Esqr., of 91,908 acres to Enlow Corbit 13 acres (May 2, 1818)			266
120	Grant 272—On a warrant of Wm. Griffith, Esqr., of 91,908 acres to Enlow Corbit 1 acre 60/100 (May 4, 1818)	172	140	266
121	Grant 221—On a warrant of the heirs or devisees of Mary Hind of 4,168 1/3 acres to Thomas B. Woolman 27 70/100 acres (August 6, 1821)	173	140	266
122	Grant 219—On a warrant of the heirs or devisees of Mary Hind of 4,168 1/3 acres to Joseph Howell 48 acres (August 1, 1821)	173	141	266
123	Grant 209—On a warrant of Palmetus Bond for the use of Mary Jones of 622 acres to Christopher Mooms 43 85/100 acres (May 2, 1820)	173	142	266
124	Grant 188A—John Killis resurvey of Oldmans Creek Island of 867 1/4 A overplus 277 1/4 acres returned of a warrant of Daniel Ellis of 1686 2/3 acres (October 19, 1789)	193	173	266
125	Grant L.—For 400 acres on a warrant of Samuel Neville for 5000 acres to Timothy Bain and Mount Hopman for 140 acres (February 8, 1748/9)	264	266	266
126	Grant 181—On a warrant of Samuel Atkinson & Bath His wife of 500 acres—and one to Daniel Ellis of 5000 acres to Edward Hall & Chasment Hall 178 acres (October 27, 1784)	254	267	266
127	List of Riparian Grants on Delaware River, within 12-miles circle	265	268	266
128	N. J. Grant to U. S. Government (March 29, 1909) for Mash Meall Lighthouses site	265	268	266
129	N. J. Grant to U. S. Government, March 29, 1909, for Cross Ledge Light-house site	266	269	267

Exhibit No.	Subject	Printed Record Page	Steno. Minutes Page
106	Deed, Pennsgrove Pier Co. to Delaware New Jersey Ferry Co., August 9, 1827. Lands in Pennsgrove, County of Salem, New Jersey	172	140
107	Certified copy of indictment, State of N. J. v. Eldon Buehalco, October 1, 1826	173	140
108	Certified copy of indictment, State of N. J. v. Emerson Tarburton, October 1, 1826	173	141
109	Treaty of Westminster between England and United Netherlands, Feb. 9-19, 1678-4	173	141
110	Declaration of Charles II to the Governor and Council of East Jersey, dated November 23, 1683	193	173
111	Map showing oyster planting grounds	264	266
112	List of Proprietary Surveys within, partly within, adjacent, etc., to the boundary of the 12-mile circle	254	267
113	Map showing proprietary grants	265	268
114	Grants 10 and 27—Wm. Penn, 2800 acres. Surveyed June 16, 1706	265	268
115	Grant 95—Wm. Penn, 3600 acres. Surveyed October 20, 1704	265	268
116	Grant 26—Wm. Penn, 15533 acres. Surveyed April 24, 1706	265	268
117	Grant 19—Wm. Penn, 4500 acres. Surveyed June 13, 1706	265	269
118	Grant 224—On four warrants of Thos. Rodman, one of 7000 acres, one of 1843 1/2 acres, one of 1458 1/3 acres, one of 364 a. 93P & one of Wm. Smith of 87,500 acres & one of the heirs & assigns of Henry Salter of 10,000 acres to Enlow Corbit 8 acres 20/100 (May 4, 1818)	266	269

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
130	Description of Grants I-1 to 5: I-1, Josephine Grace Locuston and Anna C. B. Locuston. I-2, Anna C. B. Locuston. I-3, Josephine Grace Locuston and Anna C. B. Locuston. I-4, Josephine Grace Locuston. I-5, William G. Locuston.	305	279
131	Description of structures on Broadway Legislative Grant, 1854.	306	279
132	Description of structures on Penns-grove Pier Co. Legislative Grant, 1865	309	282
133	Description and sketch of structures on Barber Legislative Grant, 1871.	310	283
134	Description of structures on Guest Legislative Grant, 1870.	312	283
135	Description of structures on Walker Legislative Grant, 1870.	313	284
		309	314
136	N. J. Laws, 1907, Chapter 20, authorizing Grant to U. S. Government for lands in Delaware River at Dan Baker and Story Point Shoals (Ch. 20, P. L. 1907, p. 44) and grant for said land (Artificial Island)	315	286
137	U. S. War Dept. Map of Artificial Island, grant	320	289
	(Complement of Exhibit 696)	303	432
138	N. J. Board of Commerce & Navigation map of Pierhead and Bulthead near Cedar Point to Penns-grove	321	289
	(See Exhibit 143, same map official)	406	340
139	Grant No. 220—Western Proprietors to Joseph Howell	336	293
140	Wedges and Currents in Delaware Bay and River, 1837	343	303
141	Deed, Wilmington and N. J. Steamboat Co. to Isaac Hurff, October 6, 1848, for lands in the Township of Upper Penna Neck	309	314

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
142	Deed, Isaac Hurff and wife to Charles Elkinton, October 16, 1848, conveying lands in the Village of Penns-grove, in the Township of Upper Penna Neck.	380	315
143	Justice Court Proceedings against Will-den and Shilling for fishing in Delaware River off Church Landing, Salem County, April 27, 1908.	355	318
144	Map of shore front of Delaware River in County of Gloucester showing the exterior of wharf lines, etc. (Sheet No. 68-5)	395	337
145	Map showing pierhead and bulkhead lines for the easterly shores of the Delaware River, between Penns-grove & Cedar Point, August 21, 1916.	400	349
	(Same as Exhibit 138, but official)	821	289
146	Opinion of Certain English Lawyers on the Patent of Governor Nicolls for Elizabethtown, N. J., Archives Vol. I, p. 272-A. (From N. Y. Col. MSS., in Secretary of State's Office, Albany, Vol. XXIV, p. 1)	402	342
147	Extracts relating to Ports, Fishing, etc., in Delaware River. The Concessions and Agreements of West Jersey. N. J. Archives, Vol. I, pp. 241-268. (March 3, 1676)	403	342
	(Supplementing Plaintiff's Exhibit 13)	80	96
	Also Exhibit 160	409	347
148	Instructions from William Penn, Governor Lawrie, Edward Byllinge, Nicholas Lucas and Edmond Warner to their Commrs in West Jersey. N. J. Archives, Vol. I, p. 219-224. (August 13, 1676)	408	343
149	Letter from the Proprietors of West Jersey to Richard Hartshorn, one of their Commrs. N. J. Archives, Vol. I, pp. 227-230. (August 26, 1676)	404	343

Exhibit No.	Subject	Items, Minutes Page	Printed Record Page
160	Lease from Elizabeth, Widow of Sir George Carteret, and His Trustees, to the First Twelve Proprietors of East Jersey. N. J. Archives, Vol. I, pp. 369-369. (February 1, 1681)	404	343
161	Agreement of the Twelve Proprietors of East Jersey as to the Benedict of Sur-vivalship. N. J. Archives, Vol. I, pp. 378-376. (June 1, 1682)	405	344
162	Letter from James Nevill to Governor Penn. N. J. Archives, Vol. I, pp. 381-383. (March 3, 1682/3)	405	344
163	Letter from James Nevill to Governor Penn. N. J. Archives, Vol. I, pp. 418-414. (May 28, 1683)	406	344
164	Agreement between William Penn and the Executors of John Fenwick. N. J. Archives, Vol. I, pp. 507-8. April 13, 1684	406	345
165	Proceedings on Petition of Penn and others regarding ports of East and West Jersey (1697). N. J. Archives, Vol. 2, p. 164-207	406	345
166	Minutes of Council of Phila. 16th of sixth month, 1703, respecting strange vessel at Lewia	407	345
167	Proceedings of Board of Trade re applica-tion of Capt. Gookin for a grant of Island in Delaware River. 1721-1722. Supplement to Exhibits 27 and 27a	409 28 119	346 102 153
168	Order in council respecting application of Earl of Roehford for grant of islands in Delaware River, April 22, 1772	406	346
169	Extracts from Historical Sketches re-lating to the Early Settlements of West New Jersey. N. J. Hist. Soc., N. 974.9; C. 591	408	346

Exhibit No.	Subject	Items, Minutes Page	Printed Record Page
160	Further extracts from the Grants, Con-cessions and original Constitutions, etc. (L. & S.), 1738.	409	347
	See also Exhibits 18	30	96
	and 147	403	342
161	New Jersey-Delaware Boundary. Mes-sages, Proclamations and Correspond-ances of the Governors, and Minutes, Re-ports, Proceedings and Acts of the Leg-islature of the State of N. J., 1830-1839. N. J. Laws 1830, p. 206.	410	347
	Supplementing Exhibit 53.	56	115
	See also Exhibit 183.	408	353
162	Delaware Laws relating to New Jersey-Delaware Boundary dispute. Revised Statutes of Delaware, 1852, pp. 2-3	411	348
163	Certified copy of deed, Ebenezer Pitt-man to Israel Dolbow, dated May 12, 1801	412	349
164	Certified copy of deed, Andrew Dolbow to Joseph Bailey, dated May 28, 1839	413	349
165	Certified copy of deed, George Dolbow to Wilmington & New Jersey Steam Boat Co., dated November 17, 1837	413	350
166	Certified copy of deed, Wilmington & New Jersey Steamboat Co. to Moses Fithian and Richard Mulford, dated March 11, 1837	413	350
167	Certified copy of deed, Richard Mul-ford and wife to Isaac Hurff, dated August 26, 1848	414	350
168	Certified copy of deed, Moses Fithian's Ex'rs to Isaac Hurff, dated August 19, 1848	414	350
169	Lease, Rebecca Kinsey to Elizabeth Whee-ton, January 11, 1844, for lands in the Township of Lower Penns Neck	415	351

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
181	Eleven channel charts of Delaware River and Bay—in one cover.....	451	878

List of charts contained in Plaintiff's Exhibits 181.

1. A chart of Delaware Bay and River, from the original by Mr. Fisher of Philadelphia, 1778.
2. Bays de la Delaware, avec les Forts, Sondes, Dangers, Bancs, &c., de Joshua Fisher. A Paris 1777.
3. Carte de la bays et riviere de Delaware, Jones Fisher, 1778.
4. A chart of Delaware River from Round-bay Hook to Ridley Creek with soundings, &c., taken by Lt. Knight of the Navy, computed and published for the use of pilotage by J. F. W. Des Barres, Esq., June 1st, 1778. (Also a plan of Delaware River from Chester to Philadelphia showing the situation of his Majesty's ships, &c., on the 16th Novr, 1777. Surveyed and sounded by Lt. John Hunter of the Navy.)
5. The Bay and River of Delaware. Newburyport. Published by Edmund M. Blunt, 1894.
6. Chart of the Boudstead of Cape Henlopen exhibiting the site and location of the Breakwater contemplated by an Act of Congress approved on the 24th of May, 1828. Approved Feb. 27, 1833, by John Quincy Adams.
7. Survey of Delaware River from New-castle to Port Penn, made under the direction of W. G. Williams, Capt., U. S. Topography Engineers, 1834.

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
170	Lease, Thomas Simmickson, Trustee of Harriet H. Ingham, to Eliza Whelan, January 18, 1846, for lands in the Township of Lower Penns Neck.....	416	351
171	Brief of Title to the "Dutch Fisheries" so called lying bet. Salem Creek and Finner's Point on Del. B. in Salem Co., N. J., from 1788 to 1873, beginning at the earliest record in Salem Co. Clerk's Office.....	417	352
172	Certified copy of deed from Elgar Brown and wife to Darken Nicholson, January 17, 1786.....	418	353
173	Certified copy of deed from John Robinson to Darken Nicholson, November 13, 1786.....	418	353
174	Certified copy of deed from John Hall and wife to Darken Nicholson, October 8, 1800.....	418	353
175	Certified copy of deed from John Thompson and others, heirs of Darken Nicholson to Michael Collier and another, December 9, 1818.....	419	354
176	A true copy of deed from Christopher Green and others to James Green, July 10, 1843.....	419	354
177	Certified copy of deed from Andrew Simmickson, Master in Chancery, to Matthias K. McConner, Sept. 23, 1872.....	419	354
178	Certified copy of deed from Andrew Simmickson, Master in Chancery, to Elias Busby, Sept. 23, 1872.....	420	354
179	Certified copy of deed from Matthias K. McConner to Jacob Collier and others, Sept. 23, 1872.....	420	355
180	Ten charts showing velocity and flow of Delaware River in Delaware Bay and at Sea.....	426	354

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
8.	Sketch showing the positions of the buoys placed in Delaware Bay and River under the direction of the Supt. U. S. C. S. by Lieut. Com. J. B. Goldsborough & R. Baché, U. S. Navy, 1847.		
9.	U. S. C. & G. S. Sheet No. 2—Delaware Bay and River, published 1848 (No. 126.)		
10.	U. S. C. & G. S. Sheet No. 3—Delaware River Trenton to Linton's Pt. Published 1849. (No. 126.)		
11.	U. S. C. & G. S. Sheet No. 1—Entrance to Delaware Bay, published in 1850. (No. 124.)		
	Notes: Other channel information previously introduced as follows:		
	Exhibit 98—Faden map of New Jersey, 1777	113	154
	Exhibit 99—Joshua Fisher map, 1756	114	155
	Exhibit 102—U. S. Coast Pilot, Sailing Directions	129	165
	Exhibit 2—U. S. C. & G. S. Map—Wilmington to Phila.	17	83
	Exhibit 3—U. S. C. & G. S. Map—Bom-bay Hook to Wilmington	19	89
	Exhibit 4—U. S. C. & G. S. Map—Delaware Bay	19	89

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
	<i>Offered by Defendant</i>		
	Exhibit 727—Francis Shalles map of (a) & Del. and Eastern shore of Md. with soundings made 1799, 1800 and 1801	583	450
	Exhibit 728—Luffman map of Del. River and Bay from Phila. to Atlantic Ocean, Nov. 1, 1814	584	450
	Exhibit 729—Tanner Chart of Del. Bay from Phila. to Cape Henlopen, 1828	584	450
182	Proceedings of N. J. Assembly concerning boundary negotiations with Pa. and Del. 1781-1782 (Supplementing Exhibit 161)	468 410	383 347
	<i>Map Series.</i>		
183	Letter, Sept. 2, 1831, E. B. Riley, Secretary, of John Medgo, to D. E. Minard, explaining boundary lines on map of Dept. of Dochs, Wharves and Ferries, Phila. (Deft. Ex. 722-a, b, c)	652	403
184	Letter, Sept. 2, 1831, Richard Weglein, Director, Dept. of Wharves, Docks & Ferries, Phila., to D. E. Minard, explaining boundary lines on map of Dept. of Dochs, Wharves and Ferries, Phila. (Deft. Ex. 722-a, b, c)		
185	Letter, Sept. 9, 1831, Julian D. Sears, to D. E. Minard, explaining boundary line on U. S. Topographical and Geological Survey maps. (Deft. Ex. 720 a, b, c, d, & e, 724, 725 and 726)	652	434
		653	434

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
186	Statement by William T. Campbell, in Charge of the preparation of New Jersey road maps for the New Jersey State Highway Commission, in the matter of Boundary Line Dispute in Delaware and New Jersey	655	496
187	Letter, dated Sept. 1, 1881, from General Drafting Co. Inc., Mapmakers, N. Y. C., to Mr. Walter H. Bacon, Jr.	664	501
188	Map of the State of New Jersey, from original surveys based on the triangulation of the U. S. Coast and Geodetic Survey. George H. Cook, State Geologist. C. O. Vermeule, Topographer, 1888. (Annual Report of State Geologist, 1888.)	666	502
<i>Seal Series.</i>			
189	Photostat copy of document in Delaware Archives, Dover, Delaware, claimed to be original grant, Charles II to Duke of York, for Three Lower Counties. March 23, 1682/3	733	543
190	Photograph of Great Seal, marginal notation, and endorsement on original grant Henry VIII to Thomas Tennnes. (Reverse, marginal notation.) February 28, 1542-4	736	545
191	Photograph of Great Seal, marginal notation and endorsement on original grant from Henry VIII to Thomas Tennnes and wife. Recorded Patent Roll 35 Henry VIII, Part 5, m26, O 68, 728, February 28, 1542-4. (Obverse, and endorsement)	736	545
	Exhibit "A." Original Grant, Feb. 28, 1542-4, Henry VIII to Thomas Tennnes and wife. (Exhibited to Court and identified for use on argument.)	738	546

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
192	Photograph of Great Seal, marginal notations and endorsement on original grant Charles II to John Clerke and Edward Stratford. December 20, 1677. (Obverse, endorsement)	738	546
193	Photograph of Great Seal, marginal notations and endorsement on original grant Charles II to John Clerke and Edward Stratford. December 20, 1677. (Reverse, marginal notations)	739	546
194	Letter from J. S. & A. B. Wyun to Theodores Runyon regarding seals of Charles II. July 8-11, 1877	744	550
195	Photograph of Seal (A) Charles II, 1683-June 17, 1683. "Obverse" (should be "Reverse")	745	550
196	Photograph of Great Seal (A) Charles II, 1683-June 17, 1683. "Reverse" (should be "Obverse")	745	550
197	Photograph of Great Seal (B) Charles II, June 17, 1683-April 19, 1672. "Obverse" (should be "Reverse")	745	550
198	Photograph of Great Seal (B) Charles II, June 17, 1683-April 19, 1672. "Reverse" (should be "Obverse")	746	551
199	Photograph of Great Seal (C) Charles II, April 19, 1672-October 21, 1685. "Obverse" (should be "Reverse")	746	551
200	Photograph of Great Seal (C) Charles II, April 19, 1672-October 21, 1685. "Reverse" (should be "Obverse")	746	551
201	Extracts from "The Great Seals of England" 1887, in British Museum, London, England. (Wyun)	748	553
202	Extracts from "A Guide to the Manuscripts Preserved in the Public Record Office" By M. S. Giuseppe, F. S. A., an Assistant Keeper of the Records, 1922-4	749	553

20 Plaintiff's Exhibits—Pea Patch Island Series

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
203	Exhibit "B" Original Grant Dec. 20, 1677, Charles II to John Clarke, and Edward Stratford. (Exhibited to the Court and retained for use on argument)	750	553
204	Extracts from "Historical Notes on the Use of the Great Seal of England" by Sir H. C. Maxwell-Lyte, K. O. B. (1926)	703	555
<i>Main Case Series.</i>			
204	Chapter 26, N. J. Colonial Act for running and ascertaining the line of partition or division between the Eastern and Western Divisions of the Provinces of New Jersey, etc. Passed, March 27, 1719	704	556
205	New Jersey Act declaring the River Delaware a common highway and for improving the navigation thereof. Passed, December 21, 1771	754	558
206	Certified copy of Justice's record on the arrest of Charles Matson and Harry Bolwell for illegal fishing in Delaware River off Flann's Point Cemetery, May 20; June 22, 1912, and affirmance of Judgment, September Term, 1912	755	556
207	Proceedings on Application of War Department for cession of lands in Delaware River at Brinkhead Dike. (Defendant's Exhibit No. 696.) 1917	756	557
<i>Pea Patch Island Series.</i>			
208	Certified copy of letters of administration, Re: Est. of Clement Hall, deceased, October 5, 1809	756	557
209	Certified copy of Bills to Show Cause, Re: Est. of Clement Hall, September 2, 1811	757	557

Plaintiff's Exhibits—Pea Patch Island Series

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
210	Certified copy of Order for Sale of Lands of Clement Hall, December, 1811	757	557
211	Certified copy of Deed from Edward Hall and wife to Henry Gale, February 27, 1818	757	557
212	Certified copy of Deed from Bebecca Hall and others, Administrators to Henry Gale, February 27, 1818	758	558
213	Certified copies of Samuel L. James vs. Henry Gale. Judgment Salem Pleas Court, September 21, 1831	758	558
214	N. J. Act of November 24, 1831, confirming title to Pea Patch Island to Henry Gale (Laws of N. J., p. 16)	758	558
215	Opinion of Garret D. Wall, U. S. District Attorney, District of New Jersey, June 9, 1834, respecting title of Henry Gale to Pea Patch Island, pp. 25-34, Incl.	759	558
216	Parts of House of Representatives (U. S.) Report No. 92, 24th Congress, 1st Session, April 12, 1836, respecting title to Pea Patch Island	759	558
217	Minutes, U. S. Circuit Court, District of New Jersey, November 16, 1836, Gale v. Bebling	759	559
218	Certified copy of Deed from Isaac Johnson, Sheriff, to Jonathan Trumbull Hudson, February 25, 1837	760	559
219	Gale v. Bebling, charge to the jury by Henry Baldwin, Justice of the U. S. S. C. in the U. S. District Court, District of N. J., with letter of May 2, 1837, from James S. Green, U. S. District Attorney of the District of N. J., to B. F. Butler, Attorney General of the U. S., pp. 88-90, Incl.	760	559

Exhibit No.	Subject	Steno. Minute Page	Printed Record Page
<i>Historical Extract Series.</i>			
228	Extracts from the History of Pennsylvania in North America from the original institution and settlement of that province under the first proprietor and governor, William Penn, in 1681, till after the year 1742, by Robert Proud, 1797 (Vol. I)	764	561
229	Extracts from "An Introduction to the History of the Revolt of the American Colonies." Derived from the State Papers contained in the Public Offices of Great Britain, by George Chalmers (2 vols.) (1845)	764	562
230	Extracts from "History of Original Settlements on the Delaware" by Benjamin Ferris, 1848	764	563
231	Extracts from "Annals of Pennsylvania from the Discovery of the Delaware," by Samuel Hazard, 1699-1699 (1840)	765	563
232	Extracts from "A History of the State of Delaware," from Francis Vincent, 1879	765	563
233	Extracts from Historical Notes concerning the Three Lower Counties of Delaware. ("Charter to William Penn and Laws of the Province of Pennsylvania," etc. John Blair Linn, Secretary of Commonwealth, 1879. Defendant's Exhibit 610)	766	563
234	Extracts from "Chronicles of Pennsylvania," pp. 168-189, 180-181. (Hist. Society of Pa.)	766	563

Exhibit No.	Subject	Steno. Minute Page	Printed Record Page
220	Parts of U. S. Senate Document 140, 25th Congress, 2d Session, January 29, 1838, respecting title to Pea Patch Island (pp. 8, 9, 37, 38)	761	559
221	Parts of U. S. Senate Document 140, 26th Congress, 2d Session, January 29, 1838, respecting title to Pea Patch Island (pp. 10-15)	761	560
222	Pea Patch Island Case in U. S. District Court for the District of Delaware, May Term, 1839	761	560
223	Parts of U. S. Senate Document 501, 26th Congress, 1st Session, May 26, 1840, respecting Pea Patch Island (pp. 6-9, 9-11, 11-12, 13)	763	560
224	Certified copy of Deed from Jonathan T. Hodson to James Humphrey, April 5, 1844	762	560
225	Letter dated August 3, 1851, from C. H. Bridges, Major General, Adjutant General's Office, War Department, Washington, to Duane E. Minard, re: War Department letter of October 7, 1847, to Thomas Dickenson, Jr., Clerk of Salem County, enclosing deed of James Humphrey to the U. S. for recording	763	561
226	Certified copy of Deed from James Humphrey to United States of America, June 9, 1847	763	561
227	Parts of U. S. Senate Document Executive No. 21, 30th Congress, 1st Session, February 4, 1848, respecting title to Pea Patch Island (pp. 40, 47-48, 105, 106, 108-107)	763	561

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
235	Extracts from "History of Proprietary Government in Pa." by Wm. Robert Shepherd, Ph.D., Prize Lecturer in History, Columbia Univ., 1896, Studies in History Economics and Public Law, edited by the faculty of Political Science of Columbia Uni. in the City of N. Y. Vol. VI.	766	563
236	Extracts from Archives of Maryland. (Published by authority of the State, under the direction of the Maryland Historical Society, 1888)	767	563
<i>Old Case Series.</i>			
237	Extracts from Record, United States Supreme Court, New Jersey v. Delaware (Old Case). No. 1 Original, October Term, 1884 (pp. 41-59, 62-87) and subsequent Master's Report, Stipulation and Order, February 19, 1877-February 23, 1906. (Supplementing Defendant's Exhibit 693)	767	563
238	Testimony of witnesses on behalf of the plaintiff taken in 1903 in the case of State of New Jersey v. State of Delaware, United States Supreme Court (Old Case)	768	564
<i>Delaware Oyster Laws</i>			
239	Extracts from Delaware Laws Defining Delaware Oyster Beds	770	565
240	Extracts from "Condition and Extent of the Natural Oyster Beds of Delaware," published by Department of Commerce and Labor, Bureau of Fisheries, Document No. 745, Government Printing Office, 1911 (pp. 28-27)	771	565
<i>Boundary Series.</i>			
241	Order in Council directing hearing of claims of the Duke of York and Lord Baltimore to Three Lower Counties, August 19, 1670	771	566
242	Proceedings of Committee of Trade and Plantations respecting Penn's Petition for a Grant of Pennsylvania; referring same to Sir John Worden and Lord Baltimore for Consideration of Proposed Boundaries. June 14, 1680	771	566
243	Sir John Worden letter to William Blaythwaite, Secretary to the Lords of Trade and Plantations. June 23, 1680	772	566
244	Proceedings of Committee of Trade and Plantations respecting Penn's petition for a Grant of Pennsylvania; reference to the replies of Sir John Worden and Lord Baltimore respecting Boundaries, June 25, 1680	772	566
245	Letter from Sir John Worden to William Blaythwaite, Secretary of the Committee of Trade and Plantations, signifying the approval of the Duke of York of the proposed Grant of Pennsylvania to Penn, and suggesting the Easterly and Southerly Boundaries thereof. October 16, 1680	772	567
246	Proceedings of Committee of Trade and Plantations respecting Penn's Petition for a Grant of Pennsylvania; reference to Penn's request for hearing on Boundaries. November 1, 1680	773	567
247	Proceedings of Committee of Trade and Plantations respecting Penn's Petition for a Grant of Pennsylvania; directing the Attorney General and Lord Baltimore to have a sight of the draft submitted by Penn. November 4, 1680	773	567

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
255	Proceedings of the Committee of Trade and Plantations respecting Penn's Petition for a Grant of Pennsylvania; referring same to Chief Justice North for review of its Provisions. January 22, 1689/1	777	569
256	Royal Proclamations to Lord Baltimore and to the inhabitants of Pennsylvania concerning the Grant of Charles II to William Penn, April 2, 1681	778	570
257	Letter, John Wardon to Governor Andros. May 12, 1681	779	570
258	Letter, Sir John Worden to William Penn. July 16, 1681	779	570
259	Letter from Lord Baltimore to Lyonell (Leoline) Jenkins. Re: Title to Three Lower Counties. June 12, 1688	779	570
260	Lord Baltimore's Claim to the Three Lower Counties. December 7, 1688	780	570
261	Letter from Sir E. Herbert to William Blaythwayt concerning proceedings between Penn and Lord Baltimore respecting title to Three Lower Counties. June 30, 1684	780	571
262	Petition of William Penn for early hearing in dispute with Lord Baltimore respecting title to Three Lower Counties. (Received.) August 15, 1685	780	571
263	Minutes of Committee of Trade and Plantations regarding division of Delaware Peninsula. (October 17, 31, 1685; November 7, 18, 1685)	781	571
264	Orders in Council declaring Delaware a Crown Colony. November 18, 1685; June 23, 1709	781	571
265	Report of Taylor & Pierson Survey of Circular Boundary of Delaware, 1701	782	572

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
248	Letter from William Blaythwayt, Secretary of the Committee of Trade and Plantations, to Sir John Worden submitting extract of proposed Grant of Pennsylvania for his criticism of Boundaries. November 18, 1680	774	567
249	Notice to Agents of Lord Baltimore of meeting of Committee of Trade and Plantations for further consideration of the proposed Grant of Pennsylvania to Penn. November 18, 1680	774	567
250	Letter from Sir John Worden to William Blaythwayt, Secretary of the Committee of Trade and Plantations, respecting Boundaries in the proposed Grant of Pennsylvania to Penn. November 20, 1680	774	568
251	Letter from Sir John Worden to William Blaythwayt, Secretary of the Committee of Trade and Plantations, respecting the southerly boundary of the proposed Grant of Pennsylvania to Penn. November 23, 1680	775	568
252	Proceedings of Committee of Trade and Plantations respecting Penn's Petition for a Grant of Pennsylvania; setting hearing of Sir John Worden and Lord Baltimore concerning boundaries. December 16, 1680	776	568
253	Photostat copy of Lord North's manuscript draft of the Boundaries of Pennsylvania, January, 1680-1. (Detendant's Exhibit 615, p. 19)	776	569
254	Proceedings of Committee of Trade and Plantations respecting Penn's Petition for a Grant of Pennsylvania; approving the Boundaries as settled by Lord Chief Justice North and Sir John Worden; and fixing a Hearing to Review the Entire Patent, January 15, 1689/1	777	569

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
273	Report of Lords Commissioners of Trade & Plantations on certain laws of Pennsylvania. (Confirming circular boundary.) July 9, 1718.	785	573
274	Order in Council disapproving certain laws of Pennsylvania (Circular boundary). July 21, 1719.	785	574
275	Report of Privy Council Committee for Plantation Affairs to Privy Council recommending adjournment of further consideration of Lord Baltimore's petition for Confirmatory Grant of Maryland &c., and the petition of Richard Penn and others contra, to afford the Penns an opportunity for a suit in Chancery. May 10, 1734.	786	574
276	Order in Council approving report of May 10, 1734, of Privy Council Committee for Plantation Affairs and ordering postponement of the petitions of Lord Baltimore, Richard Penn and others, accordingly. May 18, 1734.	786	574
277	Extracts of Draft of Petition by Fernando John Paris, attorney for the Penns; opposing Lord Baltimore's Petition of April 8, 1734, for Confirmatory Grant of Three Lower Counties. (August, 1734.) (Penn v. Baltimore, Vol. V. I., pp. 78-88, Historical Society of Pennsylvania.)	786	574
278	Order in Council referring to Lords Commissioners of Trade and Plantations, the Petition of Lord Baltimore for Confirmatory Grant of Maryland to include Three Lower Counties. August 8, 1734.	786	574
279	Petition of Richard Penn opposing Lord Baltimore's Petition for Confirmatory Grant of Maryland to include Three Lower Counties, received December 18, 1734.	787	575

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
286	Order in Council referring to Lords Commissioners of Trade and Plantations Petition of Lord Baltimore respecting Boundary between Pennsylvania and Maryland. January 9, 1708/9.	783	573
287	Order in Council discharging Petition of Lord Baltimore for reviewing settlement of Boundary between Maryland and Delaware. January 27, 1708/9.	783	573
288	Order in Council referring to Lords Commissioners of Trade and Plantations Petition of William Penn for the settlement of boundaries between Maryland and Pennsylvania. April 16, 1709.	783	573
289	Order in Council fixing hearing on Petition of Lord Baltimore for review of Order in Council, November 13, 1685, fixing boundary between Maryland and Three Lower Counties. May 19, 1709.	784	573
290	Order in Council postponing hearing on Petition of Lord Baltimore for review of Order in Council, November 13, 1685, fixing boundary between Maryland and Three Lower Counties. June 9, 1709.	784	573
291	An act for corroborating the circular lines between the counties of Chester and Newcastle (1712). Vol. III (1712-34). (Statutes at Large of Pa., pp. 41-45; 435-37; 462-5).	784	573
292	Petition of William Penn for approval of certain laws of Pennsylvania. (Confirming circular boundary.) (Received) December 9, 1718.	785	573

Steno. Minutes Page

Steno. Minutes Page

Exhibit No.

Subject

280 Order in Council referring to the Privy Council Committee for Plantation Affairs, the Petition of Richard Penn, opposing the Petition of Lord Baltimore Confirmatory Grant of Maryland to include Three Lower Counties. December 19, 1784..... 575

281 Representation of Lords Commissioners of Trade and Plantation to Privy Council respecting Lord Baltimore's Petition for Confirmatory Grant of Maryland to include Three Lower Counties, and the petitions of others contra. January 16, 1784/8..... 575

282 Order in Council referring to the Privy Council Committee for Plantations, the representations of January 16, 1784, of Lord's Commissioners of Trade and Plantations respecting Lord Baltimore's Petition for Confirmatory Grant of Maryland to include Three Lower Counties. February 12, 1784/5..... 575

283 Order of Privy Council Committee for Plantation Affairs for distribution to the parties of copies of representations of January 16, 1784, of Lord's Commissioners of Trade and Plantations respecting Lord Baltimore's Petition &c. February 18, 1784/5..... 576

284 Order of Privy Council Committee for Plantation Affairs fixing hearing on Petition of Lord Baltimore for Confirmatory Grant of Maryland &c. and on Petition of Richard Penn and others contra. March 4, 1784/5..... 577

285 Order in Council referring to Privy Council Committee Petition of Ferdinando John Paris respecting border outrages between Pennsylvania and Maryland. January 23, 1787/8..... 577

286 Report of Privy Council Committee for Plantation Affairs on Maryland-Pennsylvania boundary outrages. May 4, 1738. (Privy Council Register No. 5, pp. 515-19)..... 577

287 Privy Council proceedings on Joint Petition of Lord Baltimore and Thomas and Richard Penn for royal approval of boundaries fixed by the Court of Chancery in *Penn v. Baltimore*:
 (a) Order in Council referring Petition to Committee of Council for Plantation Affairs, June 28, 1767.
 (b) Report of Committee, December 22, 1768.
 (c) Order in Council approving Report and directing accordingly, January 11, 1769.
 (Note: The original Petition received May 16, 1767, is in Public Record Office Book P. C. 1, 53, No. 3).
 Letter from John Pownall, Secretary of Lords Commissioners for Trade and Plantations requesting opinion of Attorney and Solicitor General on Petition of Lord Baltimore and Penns for approval of boundaries as fixed by Chancery decree in *Penn v. Baltimore*. November 27, 1767..... 578

288 Opinion of William deGrey and L. Denning, Attorney and Solicitor General, respectively, concerning His Majesty's approbation of the agreement between William Penn and Lord Baltimore of 1763 for the settlement of boundaries between Maryland and Pennsylvania. August 20, 1768..... 579

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
290	Royal approval of proceedings of Lords of the Committee of Council for Plantation Affairs, with reservation as to Crown Title to Three Lower Counties, January 11, 1769.....	793	578
291	Delaware laws relating to Delaware-Pennsylvania Boundary, 1869-1921.....	794	579
292	Extracts from "History of Chester County, Pennsylvania" by J. Smith Pothey and Gilbert Cope, Philadelphia, 1881, pp. 155-161.....	794	579
293	Extracts from "History of Delaware County, Pennsylvania," By Henry Graham Ashmead. Philadelphia, 1884 (pp. 15-20).....	794	579
294	Extracts from "An Historical Account of the Boundary Line between the States of Pennsylvania and Delaware" by W. C. Hodgkins, Assistant, Treasury Dept., Office of the Coast and Geodetic Survey, Appendix No. 8, Report for 1888, Government Printing Office, Washington, 1894 (pp. 183, 184-185).....	795	579
295	Circular Boundary of Delaware. Extracts from "An Historical Account of the Boundary Line between the States of Pennsylvania and Delaware" by W. C. Hodgkins, Assistant, Treasury Dept., Office of the Coast and Geodetic Survey, Appendix No. 8, Report for 1896, Government Printing Office, 1894 pp. 185/263.....	795	580
296	Extracts from "Report on the Boundary of the Maryland-Pennsylvania Boundary part of the Mason and Dixon Line." Authorized by the Legislatures of Maryland and Pennsylvania. Published under authority of an act of Assembly of Pennsylvania, approved May 18, 1909.....	795	580

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
297	Reprint from "The Pennsylvania Magazine of History and Biography," published by the Historical Society of Pennsylvania, Volume LIV, No. 215, July, 1930, pp. 209 to 245, incl.....	798	580
<i>Surrender Series.</i>			
298	Proceedings of Lords Commissioners &c respecting Penn's proposal for the surrender of government, May 21, 1703	797	580
299	Report of Nottingham to Lords Commissioners &c. respecting Penn's proposal for surrender of government, June 8, 1703.....	797	581
300	Proceedings of Council of Trade and Plantations respecting Penn's proposal for surrender of government, June 10, 1703.....	797	581
301	Penn's proposals for surrender of the government of Pennsylvania, June 15, 1703.....	797	581
302	Proceedings and debates of the British Parliament respecting North America, Vol. III, pp. 16-18, concerning Wm. Penn's surrender, June 18, 1703..... (Partly included in Defendant's Exhibit 621)	798	581
303	Mr. Penn's proposal of surrender of government to Board, July 1, 1703.....	798	581
304	Penn's proposal for surrender of government, June 18, 1703, and the report thereon of the Lords Commissioners of Trade and Plantations. December 16, 1703.....	798	582
305	Letter of Wm. Penn to Board of Trade regarding surrender of government January 2, 1704.....	799	582

Exhibit No.	Subject	Source Minutes Page	Printed Record Page
306	Order of Commissioners for Trade and Plantations directing four queries to Penn respecting proposed surrender of government. January 10, 1704/5.....	799	582
307	Letter from William Poppo to William Penn submitting four queries respecting the proposed surrender of government. January 11, 1704/5.....	799	582
308	Penn's answers to four queries submitted January 4, 1704/5 respecting surrender of government. January 12, 1704/5.....	799	582
309	Order of Commissioners for Trade and Plantations specifying subject of proposed surrender of government. March 9, 1704-5.....	800	582
310	Penn's Draft of Proposed New Patent for Pennsylvania and Three Lower Counties submitted May 23, 1706, with objections of Lord Commissioners of Trade and Plantations, noted in the margin, and Mr. Penn's observations of these objections.....	800	583
311	Proceedings of Council of Trade and Plantations January 11-12, 1705/6.....	800	583
312	Penn's Draft of proposed surrender of government. Received, January 15, 1705/6.....	801	583
313	Report of Lords Commissioners of Trade and Plantations on Penn's proposed surrender of government. February 5, 1706-7.....	801	583
314	Report of William Lowndes to Lords Commissioners of Trade respecting Penn's proposed surrender of government. March 18, 1706/7.....	801	583
315	Order of Lords Commissioners of Trade and Plantations directing eight queries to Penn respecting proposed surrender of government. May 12, 1707.....	802	584

Exhibit No.	Subject	Source Minutes Page	Printed Record Page
316	Penn's reply to seven queries submitted on behalf of the Lords Commissioners of Trade and Plantation respecting proposed surrender of government. July 2, 1707.....	802	584
317	Proceedings of Council of Trade and Plantations, February 6, 1707.....	802	584
318	Board of Trade Records, Proprietaries, Volume 10, p. 100. July 31, 1710.....	802	584
319	Letter from William Poppo to Penn submitting six queries from Lords Commissioners of Trade and Plantations respecting surrender of government. November 4, 1710.....	803	584
320	Penn's reply to queries of Lords Commissioners of Trade and Plantations respecting his proposal for surrender of government. December 7, 1710.....	803	584
321	Memorial of William Penn to Lords Commissioners of Trade and Plantations respecting surrender of government. Received February 2, 1710/11.....	803	585
322	Report of Lords Commissioners of Trade and Plantations (two documents) respecting Penn's proposal for surrender of government February 13, 1710/11.....	803	585
323	Letter from Thomas Hadley, Secretary of the Treasury, to the Attorney General. October 6, 1711.....	804	585
324	Proceedings of Council of Trade and Plantations respecting Penn's proposal for surrender of government, February 13, 1711/12.....	804	585
325	Report of Edward Northey, Attorney General, to the Earl of Oxford and Earl Morlimar respecting Penn's title to the government of Delaware and his Memorial for the surrender of the government of Pa. February 26, 1711-2. (Chalmers's Opinions 67).....	804	585

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
306	Order of Commissioners for Trade and Plantations directing four queries to Penn respecting proposed surrender of government. January 10, 1704/5.....	799	582
307	Letter from William Popple to William Penn submitting four queries respecting the proposed surrender of government. January 11, 1704/5.....	799	583
308	Penn's answers to four queries submitted January 4, 1704/5 respecting surrender of government. January 12, 1704/5.....	799	582
309	Order of Commissioners for Trade and Plantations specifying subject of proposed surrender of government. March 8, 1704-5.....	800	583
310	Penn's Draft of Proposed New Patent for Pennsylvania and Three Lower Counties submitted May 23, 1706, with objections of Lord Commissioners of Trade and Plantations, noted in the margin, and Mr. Penn's observations of these objections.....	800	588
311	Proceedings of Council of Trade and Plantations January 11-12, 1706/6.....	800	583
312	Penn's Draft of proposed surrender of government. Received, January 16, 1706/6.....	801	588
313	Report of Lords Commissioners of Trade and Plantations on Penn's proposed surrender of government. February 5, 1706-7.....	801	588
314	Report of William Lowndes to Lords Commissioners of Trade respecting Penn's proposed surrender of government. March 18, 1706/7.....	801	583
315	Order of Lords Commissioners of Trade and Plantations directing eight queries to Penn respecting proposed surrender of government. May 12, 1707.....	802	584

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
316	Penn's reply to seven queries submitted on behalf of the Lords Commissioners of Trade and Plantation respecting proposed surrender of government. July 2, 1707.....	802	584
317	Proceedings of Council of Trade and Plantations, February 6, 1707.....	802	584
318	Board of Trade Records, Proprietaries, Volume 10, p. 100. July 31, 1710.....	802	584
319	Letter from William Popple to Penn submitting six queries from Lords Commissioners of Trade and Plantations respecting surrender of government. November 4, 1710.....	803	584
320	Penn's reply to queries of Lords Commissioners of Trade and Plantations respecting his proposal for surrender of government. December 1, 1710.....	803	584
321	Memorial of William Penn to Lords Commissioners of Trade and Plantations respecting surrender of government. Received February 2, 1710/11.....	803	585
322	Report of Lords Commissioners of Trade and Plantations (two documents) respecting Penn's proposal for surrender of government. February 15, 1710/11.....	803	585
323	Letter from Thomas Harley, Secretary of the Treasury, to the Attorney General. October 6, 1711.....	804	585
324	Proceedings of Council of Trade and Plantations respecting Penn's proposal for surrender of government, February 12, 1711/12.....	804	585
325	Report of Edward Northey, Attorney-General, to the Earl of Oxford and Earl Mortimer respecting Penn's title to the Government of Delaware and his Memorial for the surrender of the government of Pa. February 26, 1711-2. (Chalmer's Opinions 67).....	804	585

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
335	Representation of Lords Commissioners of Trade and Plantations upon Islands in Delaware River involved in Petition of Charles Gookin for Grant thereof. June 14, 1732.	807	587
336	Letter from James Alexander to Mr. Delafaye respecting Title to Islands in Delaware River. January 18, 1780	808	587
337	Order in Council referring to Privy Council Committee for Plantation Affairs Petition of Cadwallader Evans for Grant of all the Islands in Delaware River and Bay. December 18, 1765.	808	588
338	Order of Privy Council Committee for Plantation Affairs referring to Lords Commissioners of Trade and Plantations Petition of Cadwallader Evans for Grant of all Islands in Delaware River and Bay. February 12, 1766.	808	588
339	Proceedings Lords Commissioners of Trade and Plantations on Petition of Cadwallader Evans for Grant of Islands in Delaware River and Bay. March 23, April 1, 13 and 15, 1766.	809	588
340	List of Islands in Delaware River and Bay submitted by Cadwallader Evans in connection with his Petition for Grant of Islands in Delaware River and Bay. April 7, 1766.	809	588
341	Map of Islands referred to in Petition of Cadwallader Evans for Grant of Islands in Delaware Bay and River. April 7, 1766.	810	588
342	Report Privy Council Committee for Hearing Appeals from the plantations reciting Report of Lords Commissioners of Trade and Plantations respecting Petition of Cadwallader Evans for Grant of Islands in Delaware River and Bay. June 24, 1766.	810	588

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
326	Letter from Mr. Popple to Attorney and Solicitor General requesting opinion on Earl of Sutherland Petition for Grant of Islands in Delaware River and Bay. February 13, 1716/17.	805	586
327	Petition of Charles Gookin for Grant of Islands in Delaware River. (Received) January 8, 1719.	805	586
328	Opinion of Richard West on Title to Islands on Delaware River and Bay. February 11, 1719.	805	586
329	Petition of Hannah Penn objecting to Grant to Charles Gookin of Islands in Delaware River. (Received) September 24, 1721.	806	586
330	Second petition of Charles Gookin for Grant of Islands in Delaware River. (Received) December 28, 1721.	806	586
331	Order in Council referring to Privy Council Committee Board of Trade Report of September 1, 1721, on Petition Charles Gookin for Grant of Islands in Delaware River. December 28, 1721.	806	587
332	Order in Council referring to Privy Council Committee Matter of Petition of Charles Gookin for Grant of Islands in Delaware River and Petition of Hannah Penn contra. December 28, 1721.	807	587
333	Petition of Earl of Clarendon for Grant of Islands in Delaware River (1723).	807	587
334	Order in Council referring to Lords Commissioners of the Treasury the Petition of Robert Hunter for Grant of Islands in Delaware River. May 31, 1723.	807	587

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
343	Order in Council rejecting Petition of Cadwallader Evans for Grant of Islands in Delaware River and Bay. July 7, 1768.	810	589
344	Petition of William Henry, Earl of Rochford, for Grant of Islands in Delaware River, January 2, 1772.	810	589
345	Order in Council referring to Privy Council Committee for Plantation Affairs Report of Lords Commissioners of Trade and Plantations on Petition of Earl of Rochford for Grant of Islands &c. in Delaware River and Bay and the Petition of Thomas and John Penn contra. March 25, 1772.	811	589
346	Report of Committee of Council for Plantation Affairs to Privy Council respecting Petition of Rochford for Grant of Islands in Delaware River. April 14, 1773.	811	589
347	Order in Council allowing the withdrawal of the Petition of Earl of Rochford for Grant of Islands in Delaware River and Bay. April 22, 1772. (Same as Exhibit 159).	811	590
<i>Title Series.</i>			
348	Royal authority for expenses for expedition against Dutch Settlements at New York and on Delaware River. February 25, 1663/4, April 16, 1664.	812	590
349	Instructions Charles II to Royal Commissioners Nicolls, Carre, Cartwright and Maverick. April 23, 1664.	812	590
350	Private Instructions, Charles II to Royal Commissioners, Nicolls, Carre, Cartwright and Maverick. April 23, 1664.	812	590

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
351	Commission, Charles II to Royal Commissioners, Nicolls, Carre, Cartwright and Maverick. April 25, 1664.	813	590
352	Proclamation of Royal Commissioners, Nicolls, Carre, Cartwright and Maverick. 1664.	813	591
353	Submission Agreement between Sir Robert Carr and the Dutch and Swedes on the Delaware River: Oath of Alliance. October 1, 1664.	813	591
354	Letter from Colonel Nicolls to Royal Secretary of State, stating reasons for reducing Delaware. October, 1664.	814	591
355	Commission Charles II to Duke of York, Lord High Admiral of England, authorising reprisals against the Dutch vessels. February 2, 1664/5.	814	591
356	Copy of Grant to Neal Watson allowing reserved rent payable to the Crown. March 10, 1670 (See Exhibit 376).	815	591
357	Commission, Duke of York to Major Edmund Andros, Governor. July 1, 1674.	817	593
358	Letter, Charles II to the States-General. March 31, 1673/4.	817	593
359	Extracts from a Letter from Sir John Warden to Governor Andros. August 31, 1676.	817	593
360	Extracts from a Letter from Sir John Warden to Governor Andros. May 7, 1677.	817	593
361	Grant of Charles II to William Penn for the Province of Pennsylvania. February 28, 1680/1. Signed March 4, 1680/1.	817	593
362	Letter from William Penn to William Darnall, et al. December 26, 1682.	818	593

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
363	Public Record Office Copy of Grant Charles II to the Duke of York for the Three Lower Counties of Delaware. March 22, 1682-3.	818	594
364	Photostat copy of Original Holograph Writ for Grant Charles II to Duke of Yorks for Delaware. March 12, 1682/3	819	594
365	Photostat of Original Warrant for the Great Seal in British Record Office London for Grant of Charles II to Duke of Yorks for Three Lower Counties. March 23, 1682-3.	819	594
366	Cardified copy of Grant, Charles II to Duke of Yorks for Territory of Delaware. March 22, 1682-3 (Zooke-Park)	822	596
367	Photostat copy of Original Patent Roll, British Record Office, London; Record of Grant of Charles II to Duke of Yorks for Three Lower Counties. March 22, 1682-3	822	596
368	Original Holograph Warrant of Charles II for Grant of Three Lower Counties to Duke of Yorks. April 13, 1683	822	596
369	Duke of Yorks; Proceedings respecting his surrender of Letters Patent, March 22, 1688, for New Castle and Three Lower Counties, and respecting Proposed New Grant with Report of Attorney General of Draft of Grant, April 13, 1688	831	601
370	Reference to Surrender of Grant Charles II to Duke of Yorks, March 22, 1682-3; docket book Privy Seal Office Record of New Grant, April, 1688.	831	601
371	Proceedings of Privy Council relating to Pean's claim of title to Three Lower Counties. May 30, 1683.	832	601

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
372	Order in Council referring to Privy Council Committee for Trade and Foreign Plantation Petition of Richard Burke, Agent of Lord Baltimore, opposing proposed New Grant, April 13, 1683, from Charles II to Duke of Yorks for Three Lower Counties. May 31, 1683	833	601
373	Letters of Sir John Werden to Governor Dongas of New York respecting acquisition of additional land by Penn. August 27, 1684; March 10, 1685-4.	833	602
374	Petition of Ephraim Herman to the Right Honourable the Lord Proprietary and his Honourable Council, May, 1684	833	602
375	Letter of Mr. Penn to Committee of Trade and Plantations. March 17, 1684/6	833	602
376	Copy of New Grant given by Wm. Penn to Neal Watson by which reserved rents were payable to Wm. Penn. March 20, 1684/6 (Replaces Grant Exhibit 356)	833	602
377	Proceedings of Committee of Trade and Plantations respecting Letter of May 13, 1685, from Mayor and Aldermen of New York to Sir John Worden objecting to the Diversion of Trade to Delaware and the two Jerseys. July 15, 1685	834	602
378	Lord Treasurer's Direction to Commissioners of Customs to prepare form of Security and Duties for Three Lower Counties as Separate Plantation. January 9, 1686/7.	834	602
379	Proceedings of Committee for Trade and Plantations directing the Attorney General to institute quo warranto proceedings against the Colonies of Maryland & East and West Jersey, and Delaware. April 20, 1686.	834	602

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
380	Order in Council directing Attorney General to prosecute quo warrants proceedings (Pennsylvania). May 30, 1696	885	603
381	Orders in Council directing Attorney General to prosecute quo warrants proceedings against Proprietary Governments (Delaware). April 21, 1696, April 26, and May 23, 1697	885	603
382	Address of Governor and Council of New York to King. August 6, 1691	885	603
383	Opinion of Thomas Trevor, Attorney General, to Committee of Trade and Plantations respecting the right of the Crown to appoint Governors of the Colonies, and the right of the Duke of York to assign his propriety in New Jersey, February 12, 1692/3	886	603
384	Petition of William Penn to the Queen and Privy Council for the restoration of the Government of Pennsylvania, and reference thereof to the Attorney General and Solicitor General for report. July 5, 1694	886	603
385	Proceedings of Privy Council on the report of the Attorney General and Solicitor General respecting the Petition of William Penn for the restoration of the Government of Pennsylvania, and reference thereof to the Committee of Trade and Plantations. July 12, 1694	886	604
386	Proceedings of Committee of Trade and Plantations respecting the restoration of the Government of Pennsylvania to Penn (July 18, 16, and 27, 1694)	887	604
387	Report of Edward Ward and Thomas Trevor on the Title of Penn to the Three Lower Counties. July 26, 1694. Proceedings Committee Trade and Plantations thereon. August 2, 1694	887	604

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
388	Proceedings of Committee of Trade and Plantations respecting the proposed restoration of the Government of Pennsylvania to Penn. August 1 and 3, 1694	887	604
389	Order in Council approving some and rejecting other laws of Pennsylvania. August 9, 1694	887	604
390	Opinion of Attorney General Trevor on right of Crown to set up Admiralty Courts in the Colonies (Pennsylvania). December 4, 1696	888	605
391	Representation of Lords Commissioners of Trade and Plantations respecting Courts of Admiralty in the American Colonies (Pennsylvania). December 17, 1696	888	605
392	Memorial of Proprietors of American Colonies (Pennsylvania). Respecting Courts of Admiralty therein. December 26, 1696	888	605
393	Order in Council fixing bearing on establishment of Admiralty Courts in American Colonies (Pennsylvania). December 31, 1696	888	606
394	Letter from J. Tucker respecting Courts of Admiralty in Pennsylvania. March 17, 1696/7	888	606
396	Letter from King to Penn respecting enforcement of Laws of Trade in Pennsylvania. April 23, 1697	889	606
398	Opinion of Attorney General Trevor and Solicitor General Hawley respecting power of Duke of York to establish ports in America. October 18, 1697	889	606
397	Report of Commissioners of Customs on disregard of Admiralty Jurisdiction by Lieut. Governor Markham. May 24, 1699	840	608

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
398	Proceedings respecting an Act for Preventing Frauds and Regulating Abuses of Trade in the Province of Pennsylvania; Report of Walter Yonge and Sam Clarke May 24, 1689; Proceedings of Privy Council, May 25, 1689; Proceedings of Committee of Trade and Plantations, September 1, 1689.	840	606
399	Order in Council disallowing Pennsylvania Act for Preventing Frauds and Regulating Abuses in Trade; and directing all pirates to be sent to England for trial. August 31, 1689.	840	608
400	Order in Council instructing Penn respecting matters of Government. August 31, 1689.	840	606
401	Letter from Lords Commissioners of Trade and Plantations respecting Pennsylvania Act for Preventing Frauds, etc.; Removal of Governor Markham; and other matters involved in complaints of misgovernment; likewise Letter on same subject to Col. Quarry. September 12, 1689.	841	607
402	Letter from King William to Penn giving instructions respecting matters of government. February 10, 1690-1700.	841	607
403	William Penn's Commission to Thomas Farmer, Water Bailiff for Philadelphia, June 20, 1700.	841	607
404	Abstract by Edward Randolph, Surveyor General to Lords Commissioners of Trade and Plantations of Alleged High Crimes and Misdemeanors, and Maladministration of William Penn in the Three Lower Counties (Received) February 19, 1700-1.	842	607

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
406	Charges of Edward Randolph, Surveyor General before Lords Commissioners of Trade and Plantations of High Crimes and Misdemeanors against William Penn respecting Three Lower Counties and Pennsylvania. March 24, 1700/L.	842	607
406	Letter from William Penn to Lords Commissioners of Trade and Plantations respecting complaints about his exercise of government. August 24, 1701.	842	607
407	Memorial of Representatives of the Three Lower Counties to William Penn. October 10, 1701.	843	606
408	Memorial of Members of Assembly of Three Lower Counties to Lords Commissioners of Trade and Plantations complaining against government of Penn. October 25, 1701.	843	608
409	Extracts from Penn's Charter of Privileges to People of Pennsylvania. October 23, 1701.	843	606
410	(See Defendant's Exhibit 656)		
410	Penn's Commission to his Council, October 23, 1701.	843	608
411	Proceedings of Lords Commissioners of Trade and Plantation respecting acts passed by Assembly of Three Lower Counties and the right of Penn to the government thereof. October 28-9, 1701.	844	608
412	Proceedings of Council of Trade and Plantations. October 29, 1701.	844	608

Exhibit No.	Subject	Manuscript Page	Printed Record Page
413	Letters from William Poppo, Secretary Lords Commissioners of Trade and Plantations, to Edward Northey, Attorney General, Sir John Hawles, Solicitor General; and Charleswood Lawton, Penn's Agent, respecting laws passed at New Castle and Penn's right to government thereof. October 29, 1701.	844	609
414	Copy of Letter from Mr. Yeats to Coll. Quarry relating to some grants made by Mr. Penn in Pennsylvania. January 19, 1701/2.	845	609
415	Letter from William Penn to William Poppo asking postponement of consideration of Delaware Laws submitted for approval. January 15, 1701/2.	846	609
416	Letter from William Poppo to William Penn stating willingness of Lords Commissioners of Trade and Plantations to postpone consideration of Delaware Laws submitted by Penn. January 16, 1701/2.	845	609
417	Proceedings of Council of Trade and Plantations. February 19, 1701/2.	846	610
418	Memorial of Robert Quarry on behalf of Three Lower Counties to the Lords Commissioners of Trade and Plantations, April 7, 1702.	846	610
419	Letter from William Poppo to the Attorney General requesting return of laws submitted October 29, 1701, for opinion. April 8, 1702.	846	610
420	Proceedings of Board of Trade regarding complaints of Colonel Quarry against Penn, April 18, 1702.	846	610
421	Letter from William Poppo to Charleswood Lawton, Penn's agent, transmitting information against Penn's practices in Pennsylvania. April 16, 1702.	847	610

Exhibit No.	Subject	Manuscript Page	Printed Record Page
422	Extracts from the Second Memorial of Col. Robert Quarry against the government of Mr. Penn, presented to the Board of Trade, April 20, 1702.	847	611
423	Extracts from William Penn's answer to the First Memorial of Quarry, presented to the Board of Trade, April 20, 1702.	848	611
424	Extracts from William Penn's answer to Col. Robert Quarry's Second Memorial, presented to the Board of Trade, April 20, 1702.	848	611
425	Extracts from Quarry's rejoinders to Penn's answers to former's First and Second Memorials to Lords Commissioners of Trade and Plantations. (Received) May 12, 1702.	848	611
426	Proceedings of Board of Trade on Col. Quarry's complaints against Penn. May 12, 1702.	848	611
427	Letter from William Poppo to William Penn advising of Col. Quarry's reply and of the date fixed for hearing and particularly reminding Penn to show title to government and soil of Three Lower Counties. May 12, 1702.	849	611
428	Proceedings of Board of Trade on Col. Quarry's complaints against Penn. June 1, 1702.	849	612
429	Proceedings of the Board of Trade. June 3, 1702.	849	612
430	Proceedings of the Board of Trade. Opinion of Attorney and Advocate General. June 11, 1702.	849	612
431	Letter from William Poppo to the Attorney General and to Sir John Cooke Advocate General, submitting on behalf of Lords Commissioners for Trade and Plantations four queries respecting the government of Pennsylvania. June 11, 1702.	849	612

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
440	Representation from Lords Commissioners of Trade and Plantations to the Earl of Nottingham, Principal Secretary of State respecting Penn's failure to answer three queries submitted in May, 1702, and to furnish evidence of title requested in June, 1702, to soil and government of Three Lower Counties, August 18, 1702	853	614
441	Letter from Earl of Nottingham to Mr. Penn demanding answer to three queries and evidences of title to soil and government of Three Lower Counties, August 19, 1702	854	614
442	Address of Members of Assembly of Three Lower Counties to Lords Commissioners of Trade and Plantations November 21, 1702 (See Defendant's Exhibit 640)	854	615
443	Penn's answers to four queries of the Lords Commissioners of Trade and Plantations, referring to title to Three Lower Counties. Received, November 30, 1702	854	615
444	Board of Trade four queries to Penn May and June 1702 and Penn's answers thereto. November 30, 1702	855	615
445	Letter from William Penn to the Privy Council objecting to conditions concerning the Three Lower Counties. January 25, 1702/3	855	615
446	Letter from Colonel Quarry to the Board, dated February 25, 1702/3 criticizing Penn's Grants	855	615
447	Letter from Col. Quarry to Lords of Trade, June 16, 1702	855	615

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
433	Queries of Lords Commissioners of Trade and Plantations to Sir John Cook, Advocate General, respecting Penn's authority to appoint Thomas Parmer Water Bailiff of Philadelphia and the opinion in reply thereto. June 18, 1702	850	613
433	Edward Rowland, Surveyor General, memorandum respecting Penn's claim of title to Three Lower Counties. June 16, 1702	850	613
434	Letter from Penn to Lords Commissioners of Trade and Plantations enclosing his rejoinder to Quarry reply respecting complaints against Penn's government of Pennsylvania and the Three Lower Counties. June 22, 1702.	851	613
435	Proceedings of Board of Trade on Col. Quarry's complaints against Penn, June 23, 1702	851	613
436	Letter from William Popple to William Penn requesting answer to three queries of March 19, 1702 and proof of title requested June 4, 1702 to soil and government of Three Lower Counties. June 28, 1702	851	613
437	Proceedings of Board of Trade on Col. Quarry's complaints against Penn, June 29, 1702	852	613
438	Opinion of Attorney General Northey and Solicitor General Cooke, on Board of Trade inquiry respecting Pennsylvania, July 7, 1702	852	613
439	Extracts from letter from Col. Robert Quarry to Lords Commissioners of Trade and Plantations respecting Penn's government of Pennsylvania. July 24, 1702	852	614

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
448	Letter from Col. Quarry and others to the Lords Commissioners of Trade and Plantations respecting death of Colonel Hamilton, Governor of Pennsylvania, and the government thereof by the Council appointed by William Penn. June 29, 1708.	856	616
449	Letter to William Penn from one of his Council. September 6, 1708.	856	616
450	Letter from Col. Quarry to the Lords Commissioners of Trade and Plantations concerning affairs of the Colonies, (Pennsylvania and Three Lower Counties). May 30, 1704.	856	616
451	Opinion of Edward Northey, Attorney General, respecting certain laws of Pennsylvania. (Received) October 15, 1704.	857	616
452	Letter from William Penn submitting Lords Commissioners of Trade and Plantations observations on certain Pennsylvania laws. July 29, 1706.	857	616
453	Objections of the Council of Trade and Plantations upon acts of Pennsylvania, July 26, 1706, and William Penn's reply thereto, August 31, 1706.	857	616
454	Letter from Lord Cornbury to the Lords of Trade. November 20, 1705.	857	617
455	Report of Lords Commissioners of Trade and Plantations on objections to Pennsylvania laws. Jan. 17, 1706/6.	858	617
456	Order in Council disallowing certain Pennsylvania laws. February 7, 1706/6.	858	617
457	Wm. Penn's letter regarding title to Three Lower Counties. June 29, 1708.	858	617
458	Letter from William Poppel to William Penn respecting proceedings between Penn and Baltimore concerning title to Three Lower Counties. December 18, 1708.	858	617

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
459	Report of Lords Commissioners of Trade and Plantations upon certain laws of Pennsylvania. (Administration of Government by Council.) September 8, 1709.	859	617
460	Order in Council disapproving certain laws of Pennsylvania (Administration of Government by Council). October 24, 1709.	859	624
461	Extracts from letter from James Logan to Henry Goldney respecting title to Three Lower Counties. January 20, 1712.	859	624
462	Extract of letter from James Logan to Thomas Grey (Agent of Wm. Penn, Jr.) respecting title to Three Lower Counties. May 14, 1713.	870	625
463	Extracts of letter from James Logan to Hannah Penn respecting title to Three Lower Counties. May 14, 1713.	870	625
464	Extract of letter from James Logan to Hannah Penn referring to title to Three Lower Counties. July 2, 1713.	870	625
465	Delaware Quit Receipt, Opinion of Edward Northey, Attorney General. July 30, 1713.	870	625
466	Letter from James Logan to Wm. Penn. September 8, 1713.	871	625
467	Letter from James Logan to Henry Goldney (one of Penn's mortgagors) referring to title of Three Lower Counties. November 9, 1713.	871	625
468	Extract of letter from James Logan to Thomas Grey (Agent of Wm. Penn, Jr.) respecting title to Three Lower Counties. March 5, 1713/4.	871	625
469	Extract of letter from James Logan to Hannah Penn respecting title to Three Lower Counties. April 8, 1714.	871	625

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
470	Extract of letter from James Logan to William Penn, Jr. respecting title to Three Lower Counties. September 29, 1716	873	636
471	Opinion of Edward Northey and William Thompson (Solicitor and Attorney General, respectively, on the petition of Earl of Sutherland for charter to Delaware) October 21, 1717; October 28, 1717 (Deft. Ex. 636)	872	624
472	Report of Lords Commissioners of Trade and Plantations on Petition of Earl of Sutherland for Grant of Three Lower Counties. November 7, 1717 (Deft. Ex. 635)	872	624
473	Letter from William Keith to Secretary of Board of Trade respecting Suspension of Proprietorship of Pennsylvania. May 14, 1719	873	626
474	Letter from John Page (Attorney for Wm. Penn) to George Ward, August 6, 1719	874	637
475	Letter from William Keith, Governor of Pennsylvania, to the Lords Commissioners of Trade and Plantations describing title and boundary of the Province of Pennsylvania. January 12, 1719/20	874	637
476	Extracts of letter from James Logan to Hannah Penn referring to title to Three Lower Counties. March 29, 1720	874	637
477	Representation of the Lords Commissioners for Trade and Plantations to the King upon the state of Ellis Major's Colonies and Plantations on the Continent of North America. September 8th, 1721	875	637

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
478	Representations of the Lords Commissioners of Trade and Plantations upon the state of the plantations (Pennsylvania and Three Lower Counties). September 8, 1721	875	627
479	Extracts from letter from James Logan to Simon Clement (Uncle and Advisor of Hannah Penn) respecting title to Three Lower Counties. November 22, 1722	875	628
480	Extract of letter from Simon Clement, Uncle and Advisor of Hannah Penn, to James Logan, respecting title to Three Lower Counties. March 29, 1723	875	628
481	Letter from Hannah Penn to Sir William Keith, May 20, 1724	876	628
482	Extract of letter from James Logan to Hannah Penn referring to title of Three Lower Counties. July 30, 1724	876	628
483	Holles Newcastle's letter to Attorney General transmitting copy of Earl of Sutherland's Petition for a Grant of Three Lower Counties, November 18, 1725, with biographical note of Holles Newcastle	876	628
484	Argument against Penn title to the Three Lower Counties of Delaware (1726)	877	629
485	Letter from James Logan to Hannah Penn. January 1, 1725/6	878	639
486	Letter from James Logan to John Penn. April 17, 1726 (Deft. Ex. 533)	878	639
487	Extracts from a letter from James Logan to John Penn. October 17, 1726 (Deft. Ex. 533)	878	639
488	Letter from James Logan to John Penn. October 28, 1726 (Deft. Ex. 534)	879	639

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
487	Commission, Lieutenant-Governor Hamilton to John Penn, et al., to attend Indian conference. May 13, 1754.....	882	632
488	Commission, Governor Denny to John McKinly, Sheriff of Newcastle County, October 3, 1764.....	882	632
489	Appointment of James Walker, Collector of Customs at Newcastle. October 8, 1758.....	882	632
500	Extracts from report of Lords Commissioners for Trade and Plantations respecting certain laws of Pennsylvania deemed to encroach upon the prerogatives of the Crown. June 24, 1760.....	882	632
	Note—Exhibit Numbers 501 to 1000, inclusive, reserved for Defendant's Exhibits which follow Plaintiff's Exhibits.		
1001	An Act for the Preservation of Fish in the Rivers Delaware, Susquehanna and the Lehigh, commonly called the Western Branch of Delaware. (The Statutes at Large of Pennsylvania. 1760/61.) March 14, 1761.....	883	633
1002	Commission, John Penn to John Vining, Justice of the Supreme Court, October 29, 1764.....	883	633
1003	Commission, John Penn to Jacob Vanbibber, Justice of the Supreme Court, October 31, 1764.....	883	633
1004	Commission, John Penn to Richard McWilliam, Justice of the Supreme Court, November 1, 1764.....	884	633
1005	Commission, John Penn to Jacob Kollock, Sr. et al., Justices of Peace for Sussex County, November 1, 1764.....	884	633
1006	Commission, John Penn to James Hamilton, et al., Justices of the Peace for Kent County, November 1, 1764.....	884	634

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
489	Appointment of Alexander Keith, Collector of Customs at Newcastle. May 13, 1759.....	879	630
490	Extracts from letter of James Logan to James Steel, respecting title to Three Lower Counties. November 18, 1729.....	879	630
491	Minutes Lords Commissioners of Trade & Plantations upon certain Pennsylvania laws. (Furries across Delaware River between Phila. & New Jersey). April 15, 1739.....	879	630
492	Extracts from letter James Logan to Thomas Penn respecting title to Three Lower Counties, October 9, 1731..... (Def't. Ex. 535)	880	631
493	Extract from answer in Penn vs. Beltimore, filed July 15, 1737, respecting alleged Patent, Charles II to Duke of York, March 22, 1682..... (Def't. Ex. 536)	880	631
494	Sir William Murray's (later Lord Mansfield) memorandum to the Solicitor General enclosing Petition of Ferdinando John Paris, Agent for Lieutenant-Governor of Pennsylvania, and other data, relating to submission of Delaware laws for royal approval. Sept. 1, 1745.....	881	631
495	Extracts from notes of Ferdinando John Paris, attorney for the Penna. prepared for consultation of counsel in Penn vs. Baltimore. May 3, 1750.....	881	631
496	Extracts from letter of James Hamilton to the Lords Commissioners of Trade and Plantations respecting title and boundaries, &c. of the Province of Pennsylvania. February 8, 1750.....	881	632

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
1007	Commission, John Penn to Evan Rice, et al. Justices of the Peace for Newcastle County, November 1, 1764.	884	634
1008	Commission, John Penn to John Clowes, Justice of the Supreme Court, November 2, 1764.	885	634
1009	Precept, John Penn to John Vining, et al. Justices of the Supreme Court, to hold Criminal Courts. November 27, 1764.	886	634
1010	Report of Lords Commissioners of Trade and Plantations on certain laws of Pennsylvania (Lighthouse at mouth of Delaware Bay). June 13, 1766.	886	634
1011	Report of Privy Council Committee for Plantation Affairs approving report of June 13, 1766 of Lords Commissioners of Trade and Plantations respecting certain laws of Pennsylvania (Lighthouse at mouth of Delaware Bay). June 18, 1766.	886	634
1012	Order in Council approving report of June 13, 1766 of Privy Council Committee and disapproving certain laws of Pennsylvania (Lighthouse at mouth of Delaware Bay). June 18, 1766.	886	635
1013	Commission, John Penn to Caesar Rodney, Justice of the Supreme Court. May 5, 1769.	886	635
1014	Commission, John Penn to David Hall, Justice of the Supreme Court. June 16, 1769.	886	635
1015	Minutes of Proceedings of Lords Commissioners of Trade and Plantations respecting recital in Pennsylvania acts of Penn's proprietorship in Three Lower Counties. July 13, 1770.	887	635

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
1016	Extracts of letter from John Penn to Thomas Penn respecting action of July 18, 1770 of Lords Commissioners of Trade and Plantations regarding recital in Pennsylvania acts of proprietorship of Three Lower Counties. March 6, 1771.	887	636
1017	Pa. Act declaring the Rivers Delaware and Lehigh and parts of Neabaminy Creek as far up as Barnsley's Ford, and of the stream called Lechawamin as far up as the falls thereof, common highways, and for improving the navigation in the said rivers, March 9, 1771.	887	636
1018	Pa. Act to repeal a part of the act, entitled "An Act for Preservation of Fish in the Rivers Delaware, Susquehanna and the Lehigh, commonly called the Western Branch of Delaware," March 9, 1771.	888	636
1019	Proceedings of Lords Commissioners for Trade and Plantations respecting references to Three Lower Counties in laws of Pennsylvania. May 1, 1771.	888	636
1020	Extracts from Acts of the Privy Council (Colonial) respecting laws enacted by Pennsylvania, May 23, 1771.	888	636
1021	Letter from John Penn to Thomas Penn respecting objections of Lords Commissioners of Trade and Plantations to the use by Penn of the term "Proprietors" of the Lower Counties. July 12, 1771.	888	636
1022	Letter from Henry Wilnot (attorney of Penn) to Mr. Pownall, Board of Trade, respecting style of Proprietors of Three Lower Counties used by Penn. July 18, 1771.	889	637
1023	Pa. Act for preventing tannin and riotous assemblies and for the more speedy and effectual punishing the rioters. October 19, 1771.	889	637

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
1033	Statutes at Large of Pennsylvania 1775-1778, Chapter 728, April 8, 1776....	892	638
1034	Statutes at Large of Pennsylvania, 1778, Chapter 737, August 1, 1778.....	892	638
1036	Commission from Lieutenant Governor Hamilton to Samuel Kirk, Sergeant at Arms and King's Messenger. August 26, 1783	893	639
1036	An Act for opening and establishing a Land Office within this State, and for the sale of all vacant and unutilized lands therein (3 Delaware Laws, 1160) Passed June 19, 1788..... (Supplements Defts. Ex. 668)	896	639
<i>Declarations Series.</i>			
1037	Act of Parliament requiring Royal Approval of Proprietary Governors. (1664/5)	896	641
1038	Letter from William Poppel to William Penn requiring security for faithful observance of Laws of Trade. May 8, 1697	896	641
1039	Letter from William Poppel to William Penn respecting security for observance of Laws of Trade. December 30, 1697	897	641
1040	Letter from William Penn to Board of Trade respecting the requirement of security for Deputy Governor. February 14, 1697/8.	897	641
1041	Order in Council disallowing William Markham as Lieutenant Governor and directing Penn to nominate another. August 31, 1698	897	641
1049	Commission to Andrew Hamilton, October 27, 1701.....	897	641

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
1024	Proceedings of Board of Trade on Act of Assembly of Pennsylvania (1771) declaring Delaware River, and other, public highways, February 21 and April 13, 1772	889	637
1025	Opinion of Richard Jackson, Attorney General, of Pennsylvania Act declaring the River Delaware common highway Ac. March 26, 1772.....	890	637
1026	Report of Lords Commissioners of Trade and Plantations on certain laws of Pennsylvania (Delaware Ac. Rivers Public Highways). April 13, 1772	890	637
1027	Appointment of Francis Hopkinson, Collector of Customs at Newcastle, May 1, 1772	890	637
1028	Opinion of Richard Jackson, Attorney General, on certain Pennsylvania laws (Port Wardens of Philadelphia). March 2, 1774	891	638
1029	Report of Lords Commissioners of Trade and Plantations on certain laws of Pennsylvania (Port Wardens at Philadelphia). May 12, 1774	891	638
1030	Report of Privy Council Committee for hearing appeals from the Plantations on laws of Pennsylvania (Port Wardens at Philadelphia). June 29, 1774	891	638
1031	Order in Council approving report of June 29, 1774 of Privy Council Committee and disapproving of certain laws of Pennsylvania (Port Wardens at Philadelphia). July 6, 1774	891	638
1033	Answer of John Penn, Governor of Pennsylvania to inquiries of Lords Commissioners of Trade and Plantations, January 30, 1776.....	892	638

Plaintiff's Exhibits—Declaration Series

Steno. Minute Record Page

Exhibit No.	Subject	Steno. Minute Record Page
1050	Letter from William Penn to William Poppel submitting Revised Declaration respecting Andrew Hamilton as Governor. December 10, 1702.	900
1051	Andrew Hamilton; Declaration of William Penn, December 10, 1702.	900
1052	Proceedings of Privy Council respecting appointment of Andrew Hamilton, Deputy Governor. January 21, 1703/8 (and Order in Council respecting Government of Three Lower Counties)-----	900
1053	Order in Council allowing extension of term of Andrew Hamilton, Governor. January 21, 1703/8.	900
1054	Penn's Petition for appointment of John Evans as Deputy Governor. July 7, 1703	901
1055	Report of Lords Commissioners of Trade and Plantations on John Evans as Deputy Governor. July 9, 1703.	901
1056	Order in Council approving John Evans as Deputy Governor subject to security, declaration, &c. July 11, 1703	901
1057	Penn's Declaration on John Evans as Deputy Governor. July 12, 1703	901
1058	Report of Lords Commissioners of Trade and Plantations on John Evans as Deputy Governor. July 22, 1703....	902
1059	Order in Council approving John Evans, Deputy Governor. July 30, 1703	902
1060	Order in Council referring to Lords Commissioners of Trade and Plantations, annexed Petition of William Penn for approval of Charles Gookin, Lieutenant Governor. May 20, 1708....	902
1061	Report of Lords Commissioners of Trade and Plantations on appointment of Charles Gookin as Deputy Governor. June 2, 1708	902

Plaintiff's Exhibits—Declaration Series

Steno. Minute Record Page

Exhibit No.	Subject	Steno. Minute Record Page
1043	Penn's Petition for temporary appointment of Andrew Hamilton as Deputy Governor and Order in Council referring same to Commissioners of Trade and Plantations. October 28, 1702	898
1044	Report of Lords Commissioners of Trade and Plantations respecting approval of Andrew Hamilton, Deputy Governor, and submitting four queries to Mr. Penn. November 11, 1702.	898
1045	Order in Council allowing Andrew Hamilton, Deputy Governor, and requiring Penn to give direct answers to four queries of Board of Trade. November 11, 1702.	898
1046	Letter from William Poppel to William Penn acknowledging receipt of answer to four queries and stating that Lords Commissioners of Trade and Plantations think them unsatisfactory and requesting declaration of Crown Title to Three Lower Counties for appointment of Andrew Hamilton as Deputy Governor and for security. December 1, 1702	899
1047	Andrew Hamilton Declaration by William Penn. December 4, 1702	899
1048	Letter from Penn to Lords Commissioners, &c. respecting Declaration as to Crown Title to Three Lower Counties December 4, 1702	899
1049	Letter from William Poppel to William Penn rejecting Declaration of Crown Title to Three Lower Counties submitted for Andrew Hamilton and enclosing forms to be used. December 8, 1702	900

Exhibit No. Subject Printed Record Page

Exhibit No.	Subject	Printed Record Page
1072	Report Lords Commissioners of Trade and Plantations of compliance with requirements of Order in Council, November 12, 1716, respecting security, declaration and instructions of William Keith as Deputy Governor. December 17, 1716.	646
1073	William Keith; Approval. December 17, 1716.	646
1074	Order in Council referring to Privy Council Committee, Petition of Sprigg Penn and others for the approval of Patrick Gordon as Deputy Governor. February 12, 1726.	647
1075	Privy Council Committee Order fixing time and place for hearing on application for approval of Patrick Gordon as Deputy Governor. February 23, 1726.	647
1076	Patrick Gordon; Sprigg Penn and Hannah Penn Declarations. March 1, 1726.	647
1077	Report of Privy Council Committee recommending approval of Patrick Gordon as Deputy Governor. March 4, 1726.	647
1078	Order in Council approving Patrick Gordon as Deputy Governor. March 11, 1726.	647
1079	Report of Lords Commissioners of Trade and Plantations respecting declaration security and instructions for Patrick Gordon as Deputy Governor. April 15, 1726.	647
1080	Patrick Gordon; Approval. April 15, 1726.	648
1081	Declaration of John, Thomas and Richard Penn respecting Patrick Gordon as Deputy Governor. July 25, 1728.	648

Exhibit No. Subject Printed Record Page

Exhibit No.	Subject	Printed Record Page
1062	Order in Council approving appointment of Charles Gookin, Deputy Governor. June 26, 1708.	645
1063	Letter from William Popple, Secretary of Board of Trade, to William Penn respecting form of declaration. June 30, 1708.	645
1064	Charles Gookin; Penn's Declaration. July 2, 1708.	645
1065	Letter from William Penn to Board of Trade respecting form of declaration. July 2, 1708.	645
1066	Report Lords Commissioners of Trade and Plantations of compliance with conditions of Order in Council, June 26, 1708, respecting security and declaration and submitting instructions for Charles Gookin, Deputy Governor. July 8, 1708.	645
1067	Order in Council referring to Lords Commissioners of Trade and Plantations annexed Petition of William Penn for approval of William Keith as Lieutenant Governor. September 13, 1716.	646
1068	Report of Lords Commissioners of Trade and Plantations on William Keith as Lieutenant Governor. October 16, 1716.	646
1069	William Keith; Penn's Declaration. October 25, 1716.	646
1070	Order in Council approving William Keith as Deputy Governor subject to qualification, security and declaration. November 19, 1716.	646
1071	Report of John Hardings, Deputy Remembrancer of receipt of security for William Keith, Deputy Governor. December 17, 1716.	646

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
1083	Report of Privy Council Committee for Plantations approving continuance of Patrick Gordon as Deputy Governor. July 26, 1783.	908	648
1083	Order in Council approving continuance of Patrick Gordon as Deputy Governor subject to usual conditions. August 2, 1783.	908	648
1084	George Thomas: John Penn and Thomas Penn Declaration. March 28, 1787.	909	648
1085	Order in Council referring to Privy Council Committee for Plantation Affairs. Petition of John Penn and others for approval of George Thomas. March 31, 1787.	909	648
1086	Privy Council Committee Order referring to Lords Commissioners of Trade and Plantations Petition of John Penn and others for approval of George Thomas as Lieutenant Governor. April 4, 1787.	909	649
1087	Lord Baltimore's Petition against approval of George Thomas as Deputy Governor. (Rec'd) April 19, 1787.	909	649
1088	Privy Council Committee Order referring back to Lords Commissioners of Trade and Plantations Petition for approval of George Thomas as Deputy Governor together with Lord Baltimore's Petition contra. May 6, 1787.	910	649
1089	Privy Council Committee Order for distribution to parties of copy of Board of Trade Report respecting approval of George Thomas as Deputy Governor. June 20, 1787.	910	649
1090	Order in Council approving George Thomas as Deputy Governor. February 15, 1787/8.	910	650

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
1091	Order in Council approving James Hamilton as Deputy Governor and requiring security, declaration and instructions to be cared for by Lords Commissioners of Trade and Plantations. May 12, 1748.	911	650
1092	Declaration of John and Richard Penn for James Hamilton, Deputy Governor. May 12, 1748.	911	650
1093	Letter of Ferd. John Paris proposing securities for James Hamilton as Deputy Governor. May 12, 1748.	911	650
1094	(a) James Hamilton; Approval, May 20, 1748.	911	650
1094	(b) Declaration of John and Richard Penn respecting Robert Hunter Morris, Deputy Governor. June 21, 1754.	912	650
1095	Order in Council approving Robert Hunter Morris, Deputy Governor, subject to qualifications, security, declaration and instructions. June 21, 1754.	912	651
1096	Robert Hunter Morris; Proposal, Declaration and Security. June 26, 1754.	913	651
1097	Report of Lords Commissioners for Trade and Plantations on Security, Declaration and Instructions respecting Robert Hunter Morris as Deputy Governor. July 23, 1754.	912	651
1098	Declaration of John and Richard Penn respecting William Denny as Deputy Governor. May 12, 1756.	913	651
1099	Order in Council approving William Denny as Deputy Governor, subject to qualifications, security, declaration and instructions. May 17, 1756.	913	651
1100	William Denny: Approval. May 18, 1756.	913	651

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
1101	Order in Council approving instructions to William Denny as Deputy Governor. July 7, 1766.	913	651
1102	Extracts from Thomas and Richard Penn's Commission to William Denny as Lieutenant Governor. August 21, 1766	914	652
1103	James Hamilton: Declaration of Thomas Penn and Richard Penn. July 19, 1769	914	652
1104	Order in Council approving James Hamilton as Deputy Governor subject to qualifications, security, declaration and instructions. August 10, 1769	914	652
1105	Order in Council approving instructions to James Hamilton as Lieutenant Governor. August 23, 1769	914	653
1106	Petition of Thomas and Richard Penn for approval of John Penn as Deputy Governor. Received, June 15, 1768	915	652
1107	Declaration of Thomas and Richard Penn respecting John Penn as Deputy Governor. July 2, 1768	915	653
1108	John Penn: Approval. July 6, 1768	915	653
1109	Order in Council approving security, declaration and instructions of John Penn as Deputy Governor. August 31, 1768	915	653
1110	Order in Council approving John Penn as Deputy Governor subject to declaration, security, qualifications and instructions and for administering the oath. August 8, 1768	916	653
1111	John Penn: Declaration of Thomas Penn. August 11, 1768	916	653
1112	John Penn: Report, November 13, 1766	916	653

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
1113	Report of Lords Commissioners of Trade and Plantations submitting final draft of instruction to John Penn as Deputy Governor. January 3, 1767	916	653
1114	Order in Council referring to Privy Council Committee for Plantation Affairs, final instructions to John Penn, Deputy Governor. February 18, 1767	917	653
1115	Privy Council Committee approving instructions to John Penn as Deputy Governor. April 2, 1767	917	654
1116	Order in Council approving instructions to John Penn as Deputy Governor. April 13, 1767	917	654
1117	John Penn: Declaration of Thomas Penn and Richard Penn. August 26, 1769	917	654
1118	Petition of Thomas and Richard Penn for approval of reappointment of John Penn. Received, August 28, 1769	918	654
1119	Order in Council approving reappointment of John Penn as Deputy Governor (subject to usual conditions) September 15, 1769	918	654
1120	Order in Council approving instructions to and appointment of John Penn as Deputy Governor. January 5, 1770	918	654
1121	Declaration of Thomas and John Penn respecting Richard Penn as Deputy Governor. July 17, 1771	918	655
1122	Order in Council approving John Penn as Deputy Governor subject to qualifications, security, declaration and instructions. July 19, 1771	919	655
1123	Richard Penn: Report. July 23, 1771	919	655
1124	Declaration of Thomas Penn and John Penn respecting right claimed by the Crown to Three Lower Counties. April 17, 1773	919	655

Exhibit No.	Subject	Seems. Minutes Page	Printed Record Page
1126	Proceedings of Privy Council respecting appointment of John Penn, Gov. April 23, 1773	919	655
1126	John Penn: Proceedings and Report May 10, 13, 27, 1773	919	655
1127	Report of Lords Commissioners of Trade and Plantations upon appointment of John Penn as Deputy Governor. June 17, 1773	920	655
1128	Certificate of Edward Taylor respecting approval of John Penn as Deputy Governor. June 17, 1773	920	656
1129	Order in Council approving report of June 17, 1773, Lords Commissioners of Trade and Plantations respecting security, declaration, &c. for John Penn as Deputy Governor. June 30, 1773	920	656
1130	Declaration of Juliana and John Penn respecting John Penn as Deputy Governor. August 8, 1773	921	656
1131	Order in Council approving John Penn as Deputy Governor subject to the usual declaration, security, qualifications and instructions. August 23, 1773	921	656
1133	Proceedings of Board of Trade respecting the appointment of John Penn as Deputy Governor of Pennsylvania and Three Lower Counties, September 11, 1776	921	656

Exhibit No.	Subject	Seems. Minutes Page	Printed Record Page
1133	List of Boundary Maps Map Series.	922	657
1	Taylor and Pierson map of circular boundary between Pennsylvania and Delaware, 1701		
2	Senex map of Pa. and Md. Boundary, Penn MSS. "Boundaries", Vol. 11, p. 18, Pa. Hist. Soc. Feb. 3, 1731.		
3	"A map of part of the Province of Pennsylvania and the Counties of New Castle, Kent and Sussex on Delaware: Showing the temporary limits of the jurisdictions of Pennsylvania and Maryland; Fixed according to an order of his Majesty in Council, dated the 25: day of May in the year 1738. Surveyed in the year 1739." (Mason & Dixon line survey Md.-Pa. boundary—Mason & Dixon Line, January 25, 1907.)		
4	"A map of parts of the provinces of Pennsylvania and Maryland with the counties of New Castle, Kent and Sussex on Delaware according to the most exact surveys yet made drawn in the year 1744." (Original in Pa. Hist. Soc.) (Dated, Philadelphia, Oct. 28, 1740.)		
5	Penn map of Pa.-Md. Boundaries, Breriate, Penn v. Baltimore, Pa. Archives, 2d series, Vol. 15, (1749).		
6	Draft of line between Md. & Pa., Penn MSS. "Boundaries", Vol. 11, p. 15, Pa. Hist. Soc. Dr. John Taylor map, 1740, (<i>Penn v. Baltimore</i>).		
7	A Map of Pennsylvania, New-Jersey, New York, and the Three Delaware Counties: Published by Lewis Evans, March 28, 1749 according to Act of Parliament		

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
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8. A general Map of the Middle British Colonies, in America; viz. Virginia, Maryland, Delaware, Pennsylvania, New-Jersey, New-York, Connecticut, and Rhode Island: of Aquanishronomy, the Country of the Confederate Indians: Comprehending Aquanishronomy proper, their place of Residence, Ohio and Tinnooruntie their Deer-Hunting Countries, Canuxsavage and Skanigdarule, their Beaver-Hunting Countries; of the Lakes Erie, Ontario and Champlain, and of Part of New-France: Wherein is also shown the ancient and present seats of the Indian Nations. By Lewis Evans, 1765.

9. Nicholas Scull—Map of improved part of the Province of Pennsylvania, January 1st, 1768.

10. Map of the British Colonies in the year 1766 from a map of the period.

11. To the Honorable Thomas Penn and Richard Penn, Esquires Treas and Absolute Proprietaries and Governors of the Province of Pennsylvania and the Territories therunto belonging and to the Honorable John Penn Esquire Lieutenant-Governor of the same. This Map of the Province of Pennsylvania. Is Humbly dedicated by their Most Obedient Humble Serv't W. Scull. (Printed April 4, 1770.)

12. A map of Pennsylvania . . . Laid down from actual surveys and taken from the late map of W. Scull published in 1770; and humbly inscribed to . . . Thomas Penn and Richard Penn, Esquires Treas and Absolute Proprietaries & governors of the Province of Pennsylvania . . . La. Pennsilvanie en trois Femilles Traduits . . . A Paris, chez la Bouge. (1777)

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
-------------	---------	---------------------	---------------------

13. A map of the provinces of New-York and New-Jersey, with a part of Pennsylvania and the Province of Quebec from the topographical observations of C. J. Sauthier. Augsburg, Engraved and published by Matthew Albert Lotter, 1777.

14. A Map of the Delaware and Chespeak Bays with the Peninsula between them. Copied by Andrew Skinner, 1780. Photostat from the original ms. in the William Clements Library, Univ. of Mich. (Clintea collection, No. 260.)

15. Pa.-N. J. From Hilliard d'Anberteuil, Bruxelles, 1782.

16. To the American Philosophical Society. This Map of the Peninsula Between Delaware & Chespeak Bays with the said Bays and shores adjacent . . . by John Churchman.

17. Map of the State of Pennsylvania by Reading Howell, (1792).

18. A Map of the Middle States of America, drawn from the latest and best authorities; by Tho's Couder. London. Published August 18th, 1784, by J. Johnson, St. Paul's Churchyard. (874 1794 No. XLII, Library of Congress.)

19. Delaware from the best authorities. W. Barber sculp. Engraved for Carey's American Edition of Guthrie's Geography Improved. (In Carey's American Atlas, Phila., Mathew Carey, 1796, Map No. 11.)

20. Map of the State of Maryland . . . By Dennis Griffith . . . To the Governor the Senate and House of Representatives of the State of Maryland. This map is respectfully inscribed by the author. Phila., J. Vallance, 1786.

- | Exhibit No. | Subject | Steno. Minutes | Printed Record |
|-------------|---|----------------|----------------|
| | | Page | Page |
| 21. | The States of Maryland and Delaware from the latest Surveys, 1796. (From the American Atlas, New York, Published by John Held, 1796. Known as atlas to Winterbotham's History.) | | |
| | | 1787 | |
| 22. | New Jersey entworfen von D. F. Soltmann. Hamburg, Carl Ernst Bohn, 1797. | | |
| 23. | Maryland and Delaware entworfen von D. F. Soltmann, Hamburg, Carl Ernst Bohn, 1797. | | |
| | | 1796 | |
| 24. | Proud.—"A Map of Pennsylvania, Delaware, New Jersey and Maryland, with parts adjacent", Proud's History of Pa. 1796. | | |
| | | 1799 | |
| 25. | Adlum and Wallis, "Map exhibiting a general view of the roads and inland navigation of Pa. and parts of the adjacent states, respectively inscribed to Thomas Mifflin, Governor and the General Assembly of the Commonwealth of Pennsylvania." (Pa. Archives, 3d Series, Vol. 1.) | | |
| | | 1801 | |
| 26. | Delaware. Engraved by A. Doolittle, New Haven. (In Carey's American Pocket Atlas. Second edition * * * Philadelphia, 1801, bet. pp. 68 and 69.) | | |
| | | 1817 | |
| 27. | A Map of the State of Pennsylvania by Reading Howell. Philadelphia, Kimber & Sharpless, 1817. | | |
| | | 1818 | |
| 28. | Maryland. Baltimore, F. Lucas, Jr. 1819. | | |
| | | 1823 | |
| 29. | Map of Pennsylvania, Constructed from County Surveys authorized by the State and other original Documents by John Melish. Engraved by B. Tanner. | | |

- | Exhibit No. | Subject | Steno. Minutes | Printed Record |
|-------------|--|----------------|----------------|
| | | Page | Page |
| 30. | Geographical, Statistical, and Historical Map of New Jersey. (From a Complete Historical, Chronological and Geographical American Atlas. Phila., H. C. Carey, & I. Lea, 1822, Map No. 17.) | | |
| | | 1825 | |
| 31. | New Jersey, Map. H. C. Carey and I. Lea, Philadelphia (1826). | | |
| 32. | Pennsylvania Map by H. C. Carey and I. Lea, Philadelphia (1826). | | |
| | | 1829 | |
| 33. | A Map of the States of New Jersey with part of the adjoining states. Compiled * * * by Thomas Gordon, 1828. | | |
| | | 1831 | |
| 34. | Map of the States of Virginia and Maryland. Engraved and printed by Fenner, Sears & Co. (From J. H. Hinton's The History and Topography of the United States. 3rd ed. London, 1842, v. 1. (sec. p. 17.) | | |
| | | 1839 | |
| 35. | Map of New Jersey and Pennsylvania. Exhibiting the Post Offices, Post Roads * * * by David H. Burr (Lith Topographer to the Post Office). Geographer to the House of Representatives of the U. S. | | |
| | | 1846 | |
| 36. | A new map of Maryland and Delaware with their canals, roads & distances by H. P. Tanner, 1844. (In collection "Maps of New Jersey, Pennsylvania, Maryland and Delaware * * * Philadelphia, 1846, Map 2.") | | |
| 37. | New Jersey. Reduced from T. Gordon's Map. By H. S. Tanner. Phila. S. Augustus Mitchell 1844. (In collection "Maps of New Jersey, Pennsylvania, Maryland and Delaware * * * Philadelphia. S. Augustus Mitchell. Map No. 1.) | | |
| 38. | "A Map of the Original Settlement on the Delaware by the Dutch and Swedes", Purts History of Delaware Settlements, 1844. | | |

- | Exhibit No. | Subject | Steno. Minutes Record Page | Printed Record Page |
|-------------|---|----------------------------|---------------------|
| 21. | The States of Maryland and Delaware from the latest Surveys. 1788. (From the American Atlas, New York, Published by John Held, 1798. Known as atlas to Winterbotham's History.) | | |
| | 1797 | | |
| 22. | New Jersey entworfen von D. F. Sobmann. Hamburg, Carl Ernst Bohn, 1797. | | |
| 23. | Maryland and Delaware entworfen von D. F. Sotzmann, Hamburg, Carl Ernst Bohn, 1797. | | |
| | 1798 | | |
| 24. | Frood—"A Map of Pennsylvania, Delaware, New Jersey and Maryland, with parts adjacent", Frood's History of Pa. 1798. | | |
| 25. | Adlum and Wallis, "Map exhibiting a general view of the roads and inland navigation of Pa. and parts of the adjacent states, respectively inscribed to Thomas Mifflin, Governor and the General Assembly of the Commonwealth of Pennsylvania." (Pa. Archives, 3d Series, Vol. 1.) | | |
| | 1801 | | |
| 26. | Delaware. Engraved by A. Doelttite, Newhaven. (In Carey's American Pocket Atlas, Second edition * * * Phila., 1801, bet. pp. 68 and 69.) | | |
| | 1817 | | |
| 27. | A Map of the State of Pennsylvania by Reading Howell. Phila., Kimber & Sharpless, 1817. | | |
| | 1819 | | |
| 28. | Maryland. Baltimore, F. Lucas, Jr. 1819. | | |
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| 29. | Map of Pennsylvania, Constructed from County Surveys authorised by the State and other original Documents by John Melish. Engraved by B. Tanner. | | |

- | Exhibit No. | Subject | Steno. Minutes Record Page | Printed Record Page |
|-------------|--|----------------------------|---------------------|
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| | 1825 | | |
| 31. | New Jersey, Map. H. C. Carey and J. Lea, Philadelphia (1825). | | |
| 32. | Pennsylvania Map by H. C. Carey and J. Lea, Philadelphia (1825). | | |
| | 1828 | | |
| 33. | A Map of the States of New Jersey with part of the adjoining states. Compiled * * * by Thomas Gordon, 1828. | | |
| | 1831 | | |
| 34. | Map of the States of Virginia and Maryland. Engraved and printed by Fenner, Sears & Co. (From J. H. Hinton's True History and Topography of the United States. 3rd ed. London, 1842, v. 1. fac. p. 17.) | | |
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| 35. | Map of New Jersey and Pennsylvania. Exhibiting the Post Offices, Post Roads * * * by David H. Burr (Late Topographer to the Post Offices). Geographer to the Honors of Representatives of the U. S. | | |
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| 37. | New Jersey. Reduced from T. Gordon's Map. By H. S. Tanner. Phila. S. Augustus Mitchell 1846. (In collection "Maps of New Jersey, Pennsylvania, Maryland and Delaware * * * Phila. S. Augustus Mitchell. Map No. 1).) | | |
| 38. | "A Map of the Original Settlement on the Delaware by the Dutch and Swedes", Ferris History of Delaware Settlements, 1846. | | |

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
-------------	---------	---------------------	---------------------

- 48. Map of State of Delaware. Page 4, Atlas of State of Delaware, by D. G. Beers, Pomeroy & Beers, Philadelphia, 1868.
- 49. Map of Peninsula embracing Delaware and the Eastern Shores of Maryland and Virginia, Wilmington, Del. 1869. Boughtman, Thomas & Co's map. 1869
- 50. Shesler—"An Historical Map of Pennsylvania" Pa. Hist. Soc. (1876) 1876
- 51. Sketch showing portions of the States of Delaware, Pennsylvania, Maryland and New Jersey; with the boundary line between Delaware and Pennsylvania, the positions of the stone monuments marking the line laid out in 1892, the lines of the triangulation, etc. Surveyed and drawn for the Joint Boundary Commission by W. G. Hodgkins, C. R. Amstutz, U. S. Coast and Geodetic Survey, Chief of Party, 1892 and 1893. 1898
- 52. Map of the State of Delaware from Vol. 1, History of State of Delaware, by Henry C. Conrad, 1908.

53. Johnson's Delaware and Maryland, by Johnson and Ward. Undated Map

- 1184. Map accompanying Agreement between Lord Baltimore and T. and B. Penn. July 4, 1760. 928 657
- 1185. Map of part of the Middle British Colonies prior to the Revolution. From Governor Pownall's Map of 1776. 928 657
- 1186. Map—"Seat of War in the Environs of Philadelphia": By Thom. Kitchin, Geogr. Hydrographer to His Majesty (1777)--- 928 657

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
-------------	---------	---------------------	---------------------

- 39. Pennsylvania and her eminent men. Apollon W. Harrison, Phila., 1847. 1847
- 40. Map of New Sweden, by Gregory B. Keen, from Narratives and Critical History of America, Vol. IV, 1848, Justin Winsor. 1848
- 41. Map of Pennsylvania, Constructed from the County Surveys authorized by the State; and other original documents, revised and improved under the supervision of Wm. E. Morris * * * Phila., B. L. Barnes, 1849. 1850
- 42. A Map of the State of Delaware. From original surveys by Jacob Price & Samuel M. Res. Phila., Robert P. Smith, 1850. 1853
- 43. A map of New Jersey with part of the adjoining States originally compiled * * * by Thomas Gordon. Revised corrected and improved by Robert E. Horner, 1858.

44. Delaware and Maryland. New York, J. H. Colton & Co., 1854. 1856

45. Colton's Delaware and Maryland, N. Y., J. H. Colton, 1858. 1863

- 46. Boughtman, Thomas & Co's Map of the Peninsula embracing Delaware and the Eastern Shores of Maryland & Virginia * * * by D. G. Beers & Co., Wilmington, Boughtman, Thomas & Co., Pub., 1868. 1868
- 47. Map of Brandywine Hundred, Delaware. Page 7, Atlas of State of Delaware, by D. G. Beers, Pomeroy & Beers, Philadelphia, 1868.

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
1127	Section of Sailing Chart No. 1000, Atlantic Coast, Cape Sable to Cape Hatteras, United States Coast and Geodetic Survey, published at Washington, D. C. Feb. 1927, reissued Aug. 1929.	923	657
1138	Section of U. S. Coast and Geodetic Survey Topographic Sheet No. 2140, surveyed in 1892/3, Scale 1:40,000, Washington, D. C. Oct. 26, 1901.	924	669
1139	United States Lighthouse Service Record of shoreline changes on east side of Delaware Bay.		
	Cohasset Light Station 1887-1888.	927	660
	Egg Island Light Station 1887-1877.		
1140	A general map of the Middle British Colonies in America containing Virginia, Maryland, The Delaware Colonies, Pennsylvania and New Jersey, etc., improved from several surveys made after the late war and corrected from Governor Fowall's late map, 1774.	928	661
1141	An accurate map of North America describing and distinguishing the British and Spanish Dominion of this great Continent according to the definitive Treaty concluded at Paris, 10th Feb'y. 1763, etc. the whole laid down according to the latest and most authentic improvements, by Esau Bowman, Geogr ^r to His Majesty and John Gibson, engraver.		
1142	A map of the country between Albatraz Sound and Lake Erie, comprehending the whole of Virginia, Maryland, Delaware and Pennsylvania, etc. (Made by Thos. Jefferson, for his "Notes on the State of Virginia", 1788).	929	661

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
1143	The Provinces of New York and New Jersey with part of Pennsylvania, etc., drawn by Capt. Holland, engraved by Thomas Jeffreys, Geographer to His Majesty and improved from the modern surveys of those Colonies down to the year 1773.	930	662
1144	A map of the British and French Dominions in North America with the roads, distances, limits and extent of the settlements, humbly inscribed to the Right Honourable the Earl of Halifax and the other Eight Honourable the Lords Commissioners for Trade and Plantations by their Lordships most obliged and very humble servant, Juno Mitchell. (February 18, 1755) With extract from Geological Survey Bulletin 817, entitled "Boundaries, Areas, Geographic Centers and Altitudes of the United States and the several states" (Second Edition), published by the U. S. Dept. of the Interior, 1900 (pp. 26-7), describing the John Mitchell map.	930	663
	<i>Miscellaneous.</i>		
1145	Proceedings, Lords Commissioners of Trade and Plantations respecting the establishment of Admiralty Courts in the Colonies (including Pennsylvania), December 14, 1694.	931	663
1146	Extracts of letter from Col. Quarry criticizing Penn's government of Pennsylvania and title to the Three Lower Counties, December 7, 1702.	931	663
1147	Letter from Col. Quarry to Lords Commissioners of Trade and Plantations respecting Penn's government of Three Lower Counties, June 16, 1703.	931	663

Plaintiff's Exhibits—Miscellaneous

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
1149	Proceedings of Lords Commissioners of Trade and Plantations respecting proposed new patent to Penn for Pennsylvania and Three Lower Counties and his proposal for surrender of government thereof. November 13, 1705....	933	683
1149	Proceedings of Lords Commissioners of Trade and Plantations respecting Pennsylvania Act for corroborating circulars between the Counties of Chester and New Castle. April 14, 1710.....	933	683
1150	Deed, Newcastle-Pennaville Ferry, Inc. to Delaware-New Jersey Ferry Co. for ferry property at Newcastle, Delaware. March 26, 1937.....	933	683
1151	Deed, Wilmington Steamboat Company to Delaware-New Jersey Ferry Company, for ferry lands at Newcastle, Delaware. March 26, 1937.....	933	683
1152	Deed, A. Victor Hughes, et al. to Delaware-New Jersey Ferry Co. for ferry property at Newcastle, Delaware. July 26, 1937.....	933	683
1153	Extracts from History of Maryland, by J. Thomas Schard, 1879, Vol. 1, published by John B. Piet.....	1018	715
1154	Extracts from History of Delaware, 1609-1888, by J. Thomas Schard, published by L. J. Richards & Co. Philadelphia, 1888.....	1019	715
1155	Extracts from "An Historical Review of the Constitutional Government of Pennsylvania" by Benjamin Franklin, published in London, 1789.....	1019	715
1156	Letter from James Logan to Henry Goldbey, May 12, 1708.....	1019	719
1157	Act of the Legislature of Delaware, February 2, 1789.....	1019	719

Plaintiff's Exhibits—Miscellaneous

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
1158	Letter from William Blaythwaite to Sir John Warden respecting Penn's Petition for Grant of Pennsylvania. June 14, 1680.....	1020	719
1159	Proceedings of Lords Commissioners for Trade and Plantations respecting Lord Baltimore's Objections to April 19th, 1688, Proposed Grant of Three Lower Counties. February 12th, 1688/4.....	1020	719
1160	Letter from William Popple to the Attorney and Solicitor General requesting opinion on Earl of Southland's Application for Grant of Three Lower Counties. February 18, 1716/17.....	1020	719
1161	Agreement of William Penn, Samuel Hodge, John Smith and Richard Yndall, respecting lands at Salem (Proceedings N. J. Historical Society, Volume 4, p. 84).....	1020	719
1162	Notes: Unused, same as Exhibit 154. Minutes of Provincial Council of Pennsylvania respecting defense of Delaware River and Bay. August 7, October 15, 21, 1768.....	1021	720
1163	Minutes of Provincial Council of Pennsylvania respecting Privileges in Delaware River and Bay. September 21, 25, 1747.....	1021	720
1164	Map to show the first division line between Upland and Newcastle counties as established by the Upland Court, November 12, 1678.....	1021	720
1165	Map showing a continuation of the 12 mile circle (with Newcastle as the center) east of the Delaware River, and many of the tracts of land sold by John Fenwick previous to 1688 and surveys made by Wm. Penn after that date lying in Salem County, New Jersey. Projected by Thomas B. Purdy, 1878.....	1022	720

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
1166	Copy of part of Helme's map of Pennsylvania, begun in 1681.....	1022	720
1167	Extracts from Bulletin No. 13, U. S. Geological Survey, Department of Interior, 1886, respecting boundary between New Jersey and Delaware, p. 77.....	1023	721
1168	Extracts from Public Records, respecting the use of the term "In Delaware River," 1678-1681.....	1023	721
1169	Extracts from "Breviate," John Penn, etc. plaintiff, vs. Charles Calvert, Lord Baltimore, defendant, in the Court of Chancery of England, prepared on behalf of the Plaintiffs by Sir Dudley Ryder, Attorney General, William Murray, Solicitor General, and Noel, King's Counsel, and Paris & Weston, Solicitors.....	1024	722
1170	Comparison of Plaintiff's Exhibits No. 189 and No. 367.....	1024	722
1171	Power of Attorney, John Penn, Jr. and John Penn to Thomas McKean and Edmund Physick to sell Penn lands and collect quit rents in Delaware, July 7, 1791.....	1025	722
1172	Delaware Law Conforming Acts of Assembly and Legal Proceedings to Constitution, February 22, 1777.....	1025	722
1173	Proceedings of Lords Commissioners for Trade and Plantations and of Privy Council appointing Lord Cornbury, Vice Admiral, June 28-29, 1701.....	1026	723
1174	"A. Calen Appeal to the People of the State of Delaware" issued by Thomas McKean and Edmund Physick respecting Penn's Title to Lands in Delaware, September 3, 1783.....	1028	723

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
1175	Extracts from Letter from Edmund Physick to John Penn and John Penn, Jr. relating to sale of Penn lands in Delaware to the Delaware State, June 29, 1792.....	1026	723
1176	Extract from Letter of Edmund Physick to John Penn regarding sale of Penn lands in Delaware to Delaware State, December 19, 1794.....	1026	723
1177	Petition of 41 citizens of Delaware for Legislative Action on Penn Land Titles, December 26, 1792.....	1027	723
1178	Petition of 32 citizens of Delaware for Legislative Action on Penn Land Titles, December 28, 1792.....	1027	724
1179	Extracts from the Journal of the House of Representatives of the State of Delaware, January 7 to February 2, 1793.....	1027	724
1180	Map of Delaware, from "History of Delaware," by J. Thomas Scharf, 1888.....	1028	724
1181	Supplement to N. J. Act entitled "An Act for Dividing and Ascertaining the Boundaries of all the Counties in this Province," passed January 21, 1709-10 (Rev. Stat. 166), passed November 28, 1822 (Rev. Stat. 164).....	1028	724
1182	Letter from Charles II to Edward Byllynge, Governor of West Jersey, respecting the Restraint and Punishment of Pirates, March 15, 1683/4.....	1029	725

Defendant's Exhibits

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
514	Extracts from Journal of Jasper Danckers, 1679. (B. B. James and J. B. Jameson, Scribner's 1918, pp. 143-144)	478	388
515	Extracts from New Castle Court Records, 1678-1678, Liber A, B, and C (known as "Old Records Transcribed") Kean & Rice	479	389
516	Collection of Documents from Vol. 12 "Documents Relating to the Colonial History of the State of New York" 1680-1682	479	389
517	List of Kings of England with Periods or Reigns, March 24, 1603 to January 29, 1820	480	390
518	Extracts from Proceedings of Privy Council, Committee on Trades and Plantations, June, 1789 -- regarding Penn's Grant of Pennsylvania.	480	390
519	Extracts from Penn's Grant of Pennsylvania, March 4, 1681	480	390
520	Quit Claim Deed, Duke of York to Penn for Pennsylvania, August 21, 1682	482	391
521	Deed of Footmoot, Duke of York to Penn for 12 mile circle, August 24, 1682	483	391
522	Certified Copy of New York Records of Two Deeds of Footmoot, Duke of York to Penn, August 24, 1683.	483	391
523	Lease, Duke of York to Penn for 12 mile circle, August 24, 1683	483	391
524	Bargain and Sale Deed, Duke of York to Penn for land below 12 mile circle, August 24, 1683.	483	392
525	Memorandum of Livery of Seizin for 12 mile circle, October 28, 1683.	483-4	392
526	Certificate of Livery of Seizin to Penn for land below 12 mile circle, November 7, 1683.	484	392

Defendant's Exhibits

DEPENDANT'S EXHIBITS.

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
501	Extracts from Scharf's History of Delaware (1888)	469	383
502	Biographical Note concerning J. Thomas Scharf. Applston's Cycl. Am. Biography, Vol. 5, p. 416 (1888)	469	384
503	Extracts from Vinson's History of Delaware (Chapter 1) (1870)	469	384
504	Biographical Note concerning Francis Vincent (Applston's Cycl. Am. Biog. Vol. 6, p. 298) (1870)	470	384
505	Extracts from Bancroft's History of U. S., Vol. 1, pp. 9-11 (1888)	470	384
506	Deduction or brief account of New Netherlands, etc. 2 N. Y. Col. Doc. 133	471	385
507	Division of Boundary between West India Company and English, Nov. 8, 1683; resolution thereon, Nov. 8, 1683. (1 N. Y. C. Ed. 541-549)	472	385
508	Explanation of Old Style Calendar (Report on reurvey Md.-Pa. Boundary 1903, Matthews)	472	385
509	Gregory B. Keen Testimony in Old Case, January 29, 1905	473	386
510	Extracts from Charter to Wm. Penn, etc. (Duke of York's Laws). Edn. 1879	475	387
511	Patent, Governor Andros to Anthony Laloe, August 20, 1679. (Del. Hist. Soc.)	476	388
512	Delaware Act for making copies of New York Record, March 24, 1770. (1 Delaware Laws, pp. 455-459)	477	388
513	Duke of York Record, 1646-1679 (Printed by General Assembly of Delaware under J. B., approved March 16, 1889)	478	389

Defendant's Exhibits

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
527	Grant, Duke of York to Penn for 12 mile circle, August 24, 1682, and submission to Penn by 12 inhabitants thereof, October 23, 1682.	454	392
528	Report of John Moll of Livery of Seisin to Penn for 12 mile circle and land below, November 21, 1682.	456	392
529	Patent, Charles II to Duke of York for 12 mile circle and land below, March 22, 1682.	487	394
530	Copy of Patent Charles II to Duke of York for 12 mile circle and land below, March 23, 1682, certified before Lord Mayor of London, February 4, 1725.	488	394
531	Report of R. Sawyer on Grant to Duke of York for Delaware, April 18, 1683.	489	395
532	Letter, James Logan to John Penn, April 17, 1726.	489	395
533	Extract of Letter, James Logan to John Penn, October 17, 1726.	490	395
534	Letter from James Logan to John Penn, October 28, 1726.	490	395
535	Extracts from Letter from James Logan to Thomas Penn, October 2, 1751.	491	396
536	Extracts from Bill of Complaint, <i>Penn vs. Baffinore</i> , concerning Patent Charles II to Duke of York for Delaware (Brevelata) June 21, 1726.	493	397
537	Sarah Wistar Miller testimony in Old Case, December 8, 1904.	497	399
538	Death certificate, Sarah W. Miller, July 23, 1831.	497	399
539	Louisa B. Johnson testimony in Old Case, February 8, 1906.	497	400
540	Death certificate of Louisa Bird Johnson, December 14, 1926.	501	402

Defendant's Exhibits

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
541	Extracts from Delaware Senate Journal, presentation of papers to State, February 14, 1908.	502	402
542	Copy of Original Paper "difficulties that the proprietary affairs of the Province of Pennsylvania at present lie under." Certified May 20, 1801.	503	403
543	Certificates of Surveys of Delaware Land for Duke of York and others, November 24, 1740.	505	404
544	Letter from Lord Baltimore to Lord Halifax, February 7, 1682-3, enclosing Report on Conferences between Lord Baltimore, Markham and Penn, held December 19, 1682.	506	404
545	Extracts from Proud's History of Pennsylvania. Vol. I, p. 263, etc. Vol. II, pp. 105-117.	507	405
546	Proceedings, Committee on Trades and Plantations, April 17, 1683-September 1, 1697, relative to Boundary Line between Delaware and Maryland.	507	405
547	Letter, Lord Baltimore to Lionel Jenkins, December 11, 1683.	507	405
548	Draft of Patent, Charles II to Duke of York for Delaware with Sawyer's Report, April 13, 1683.	508	405
549	Commission of Sir Edmund Andros by King James II, April 7, 1688.	508	406
550	Draft of Patent, James II to Wm. Penn, December 10, 1688.	509	406
551	Report of Board of Trade and Orders in Council, respecting quo warrants proceedings, July 17, 1685, May 28, 1687.	509	406
552	Governor Fletcher's Commission for Pennsylvania, October 31 (1692), 4th year.	510	407

Defendant's Exhibits

88

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
553	Extracts from Proceedings of Committee of Trade and Plantations regarding Restoration of Government to Penn July 18, 1694, August 3, 1694	510	407
554	Report of Lords of Trade on Penn's Petition for Restoration of Government of Pennsylvania to Penn, August 1-3, 1694	511	407
555	Revocation of Governor Fletcher's Commission for Pennsylvania, August 20, 1694	511	407
556	Letter from Queen to Governor of New York concerning Penn's Restoration to Government, August 21, 1694	511	408
557	Extracts from Minutes of Provincial Council of Pennsylvania upon Restoration of Penn Government in Pennsylvania, March 24, 1695	512	408
558	Letter from Godolphin, Fox and Hall, Commissioners of Treasury, to Penn demanding one-half his property under Dead Duke of York to Penn for land below 13 mile circle. March 27, 1701	512	408
559	"The Board of Trade to the Crown" concerning the Province of Pennsylvania (anonymous, undated)	513	408
560	Delaware Act of Settlement (1 Delaware Laws, Appendix 11), December, 1683	513	408
561	Delaware Act of Union with Pennsylvania, December 6, 1682 (Correct date, December 7, 1683)	513	409
562	First Frame of Government of Pennsylvania, May 3, 1682	513	409
563	Second Frame of Government of Pennsylvania and Territories, April 3, 1683	514	409
564	Third Frame of Government of Pennsylvania and Territories, November 7, 1686	514	409

Defendant's Exhibits

87

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
565	Penn's Summons to Clark, Watson, Roades, Avery, Withbank, and Mowton to attend General Court at New Castle, October 29, 1682	514	409
566	Penn's Warrant to the Sheriff of Hills (New Deal) to summon the Freeholders thereof. November 8, 1682	514	409
567	Penn's Warrant to Taylor and Pierson for Survey of Circular Boundary. October 28, 1701	515	409
568	Return of Survey of Circular Boundary, December 4, 1701; certified December 13, 1701	516	410
569	Extract from the Record of Admiralty Case "The Sarah," July 28, 1721	518	410
570	Grant of Bank Lots at Newcastle, 1701 (December 23)	517	411
571	Grant of Bank Lots at Newcastle to Thomas Janvier, June 29, 1702	523	414
572	Grant of Bank Lots at Newcastle to Jos. Wood, December 27, 1703	522	414
573	Grant of Bank Lots at Newcastle to Robert French, April 27, 1703	522	414
574	Grant of Bank Lots at Newcastle to Joseph Wood, December 4, 1704	523	414
575	Grant of Bank Lots at Newcastle to Richard Halliwell, June 13, 1707	522	414
576	Grant of Bank Lots at Newcastle to Benjamin Swett, October 15, 1708	523	414
577	Grant of Bank Lots at Newcastle to Christopher Humsey, September 2, 1708	523	414
578	Grant of Bank Lots at Newcastle to Richard Clark, September 2, 1708	523	414
579	Grant of Bank Lots at Newcastle to Isaac Vigeran, June 24, 1708	522	414
580	Surveys of Bank Lots at Newcastle to George Hogg, March 23, 1701 (Incumplots)	523	414

Defendant's Exhibits

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
581	Surveys of Bank Lots at Newcastle to Thomas Janvier, April 14, 1702.....	522	414
582	Surveys of Bank Lots at Newcastle to James Miller, August 9, 1708.....	522	414
583	Surveys of Bank Lots at Newcastle to Richard Halliwell, March 11, 1706/7....	522	414
584	Surveys of Bank Lots at Newcastle to Christopher Husey, August 19, 1707.....	522	414
585	Surveys of Bank Lots at Newcastle to Isaac Vigoren, June 10, 1708.....	522	414
586	Surveys of Bank Lots at Newcastle to John Van Gesel, September 9, 1708.....	522	414
587	Surveys of Bank Lots at Newcastle to Benjamin Swett, June 10, 1706.....	522	414
588	Surveys of Bank Lots at Newcastle to Thomas Trese, August 9, 1708.....	522	414
589	Surveys of Bank Lots at Newcastle to Joseph Wood, January 2, 1703/4.....	522	414
590	Surveys of Bank Lots at Newcastle to Joseph Wood, January 22, 1703/4.....	522	414
591	Survey of Beedy Island to Jonathan Woodland, November 6, 1749.....	522-3	414
592	Survey of Beedy Island to Jonathan Woodland; return for Charles McKay, July 20, 1762.....	523	414
593	Warrant to Survey Beedy Island to Charles McKay, July 14, 1762.....	523	414
594	Warrant to Survey Bank Lot at New Castle to Richard Cantwall, October 13, 1708.....	524	415
595	Warrant to Survey Bank Lot at New Castle to Robert Dyer, September 16, 1708.....	524	415
596	Warrant to Survey Bank Lot at New Castle to Thomas Trese, August 6, 1708.....	524	415
597	Warrant to Survey Bank Lot at New Castle to John Brewster, February 11, 1707.....	524	415

Defendant's Exhibits

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
598	Warrant to Survey Bank Lot at New Castle to John Blake, May 23, 1707.....	524	415
599	Warrant to Survey Bank Lot at New Castle to Robert French, February 23, 1703.....	524	415
600	Warrant to Survey Bank Lot at New Castle to Christopher Husey, June 28, 1707.....	524	415
601	Warrant to Survey Bank Lot at New Castle to Richard Halliwell, February 31, 1706/7.....	524	415
602	Warrant to Survey Bank Lot at New Castle to George Hogg, February 28, 1701.....	524	415
603	Warrant to Survey Bank Lot at New Castle to Thomas Janvier, April 1, 1702.....	524	415
604	Warrant to Survey Bank Lot at New Castle to James Miller, August 9, 1708.....	524	415
605	Warrant to Survey Bank Lot at New Castle to Benjamin Swett, June 3, 1706.....	524	415
606	Warrant to Survey Bank Lot at New Castle to John Van Gesel, July 9, 1703.....	524	415
607	Warrant to Survey Bank Lot at New Castle to Isaac Vigoren, April 28, 1708.....	524	415
608	Warrant to Survey Bank Lot at New Castle to Joseph Wood, December 23, 1701.....	524	415
609	Warrant to Survey Bank Lot at New Castle to Hippolytus LaFevre, November 10, 1702.....	524	415
610	Warrant to Survey Bank Lot at New Castle to Rowial De Ham, April 29, 1708.....	524	415
611	Report of Commissioners Establishing the Boundaries of the Town of New Castle, May 1, 1708 (map therein referred to missing).....	524	415
612	Map of Town of Newcastle (no date).....	525	415

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
613	Plan of Town of Newcastle from book entitled "Plan and Street Regulations of the Town of Newcastle, Del." 1804.	326	416
614	Ferry Patent Sir William Keith to Wessel, Alrich, July 25, 1724.	526	416
615	Ferry Grant to Peter Alrichs, July 28, 1761.	526	416
616	Petition of Robert Towers for a Grant of Egg Island, November 29, 1764.	528	417
617	List of Proprietaries, Governors, Lieutenant Governors, and Deputy Governors of Pennsylvania and the Three Lower Counties, 1681 to 1776.	536	417
618	Letter from Penn to Commissioners of Trade and Plantations regarding declaration, December 4, 1702.	539	418
619	Extract of Letter from Lords of Trade to Lord Cornbury, May 1, 1704.	539	418
620	Penn's Proposals to Lords Commissioners of Trade and Plantations, respecting the Surrender of the Government of Pennsylvania and Territories, June 18, 1703.	539	418
621	Report of Lords Commissioners, etc., regarding Penn's Proposal of Surrender, February 5, 1707.	539-39	418
622	Penn's Letter to Lords Commissioners, etc., relating to a Declaration on the Appointment of Gookin, Deputy Governor, June 28, 1708.	539	418
623	Penn's Letter to Lords Commissioners, etc., enclosing Declaration, July 2, 1708.	539	418
624	Attorney General Northey's Report on Penn's Proposal, February 25, 1711/12.	539	419
625	Extracts from Proceedings of Committees on Trade and Plantations regarding Surrender, November 23, 1720, November 29, 1720.	581	419

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
626	Extracts from Ebeling's History of Pennsylvania, Chapter X (1 Hazard's Register, 404) (1801).	531	419
627	Extracts from Anderson's History of Commerce, 1790, Vol. 6, pp. 288-290.	531	419
628	Commission of Patrick Gordon, Lieutenant Governor, January 7, 1726. Approved on Condition of Declaration as to Crown's Title to Three Lower Counties, April 18, 1726.	533	420
629	Extracts from Proceedings of Committees of Trade and Plantations respecting Boundary between Pennsylvania and Maryland, February 6, 1707/8; to January 27, 1708/9.	533	420
630	Lord Baltimore's Petition to Review Order in Council of November 1685, and Proceedings therein, May 19, and June 9, 1709.	533	420
631	Order in Council Dismissing Lord Baltimore's Petition and Confirming Order in Council of November 18, 1688. June 28, 1709.	533	420
632	Extracts from Records of Board of Trade respecting the Petition of the Earl of Sutherland for Grant of Three Lower Counties. December 29, 1716.	533	420
633	Governor's Speech to Newcastle Assembly, June 13, 1717.	534	421
634	Notice of Hearing on Petition of Earl of Sutherland, February 23, 1716.	534	421
635	Report of Attorney General Northey and Solicitor General Thomson on Petition of Earl of Sutherland, October 21-28, 1717.	534	421
636	Second Petition of Earl of Sutherland for Grant of Three Lower Counties, November 18, 1726.	535	421

Exhibit No.	Subject	Exhibit No.	Subject
637	Lord Baltimore's Petition for Further Grant for Three Lower Counties, August 1784	648	Extracts from Minutes and Papers of Committee for Trade and Plantation respecting Petition of Cadwallader Evans for a Grant of Islands in Delaware River, February 17, 1768-April 15, 1768
638	Report of Lords Commissioners on Lord Baltimore's Petition of 1734, January 16, 1786	649	Extracts of Minutes of Provincial Council at Philadelphia, October 14, 1701
639	Petition of Three Lower Counties to the Crown, April 19, 1765, with Letter of Transmittal from P. Gordon, April 26, 1785	650	Charter of Privileges Penna to Inhabitants of Pennsylvania and Proceedings thereon, October 28, 1701
640	Petition to the King of Justices of the Peace and Grand Jury of Sussex County (Delaware). May 6, 1785	651	Order to Affix Great Seal to Acts of Assembly, November 28, 1767
641	Petition to the King of Justices of the Peace and Grand Jurors of Newcastle County (1785)	652	Proclamation to Governor Denny, under the Great Seal of Newcastle, Kent and Sussex Counties, August 25, 1758
642	Two Opinions of Lord Hardwicke in Penn vs. Baltimore, 27 Eng. Rep. 847; May 15, 1750	653	Title Page, Laws of the Government of Newcastle, Kent and Sussex, upon Delaware, 1743
643	Lord Hardwicke's Decree in Penn vs. Baltimore Certified May 15, 1750	654	Pennsylvania-Delaware Act for Further Securing the Administration of the Government (no date)
644	Fiscal Agreement between Baltimore and Penna, July 4, 1760	655	Delaware Act for Making and Establishing the New Great Seal for the use of this Government (no date)
645	Order of Lords Commissioners, etc., submitting to the Crown for confirmation Proceedings relating Delaware-Maryland Boundary. August 24, 1767	656	Title Page of Laws of the Government of Newcastle, Kent and Sussex upon Delaware. Vol. 2, 1768
646	Extracts from Proceedings, Committee for Trades and Plantations respecting Royal Approval of Boundaries, Delaware-Maryland, November 21-25, 1767	657	Delaware Act Concerning Written and Non-Operative Wills (no date)
647	Extracts from Papers and Proceedings, Board of Trade respecting confirmation of Delaware-Maryland Boundary Settlement, August 26, October 24, Nov. 11, 1768, January 11, 1769	658	Extracts from Legislative Enactments for the Three Lower Counties (undated)
		659	Act of Delaware Assembly Supplement to an Act for the More Effectual Ascertaining and Fixing the Limits of the Several Counties within this Government, etc. (no date)
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Defendant's Exhibits

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
672	Delaware Act Authorizing the Distribution of Certain Public Papers Relating to Lands in this State, January 27, 1868	547	429
673	Delaware Act Ceding to U. S. Jurisdiction over Pea Patch Island, May 27, 1818	547	429
674	Various Resolutions of Delaware General Assembly Respecting Title to Pea Patch Island, January 28, 1857; January 23, 1848; February 28, 1868	547	429
675	Extracts from Record of the Case of Pea Patch Island, October 11, 18, 1847. Benj. David Testimony and Arbitration Agreement	549	429
676	Sargeant's Opinion in Pea Patch Island Case, January 15, 1849	549	430
677	Delaware Boundary Act of 1853 (Revision 1852, p. 2)	550	430
678	Delaware Boundary Act of 1915. (Revision 1915, pp. 7-10)	550	430
679	List of Titles of Delaware Acts Relating to Fishery, 1829-1905	550	430
680	List of Titles of Delaware Acts Relating to Shell Fish, 1812-1928	550	431
681	Delaware Act in Relation to the Dredging of Oysters, South of Sulphur Light, April 22, 1887; Repealer, March 29, 1888	550-1	431
683	Delaware Resolution Respecting Original Charters of the State, January 28, 1849	551	431
685	Various Resolutions from Delaware General Assembly Respecting Historical Papers in Possession of J. Henry Rogers, March 24, 29, April 24, and May 3, 1895	551	431

Defendant's Exhibits

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
684	Delaware Act for the More Effectual Ascertain and Fixing the Limits of the Several Counties within this Government, etc. Passed September 2, 1776	543	427
681	Extracts from Minutes of House of Representatives of the Government of the County of Newcastle, Kent and Sussex upon Delaware, May 21, 1785	544	427
682	Delaware Constitution, 1776	544	427
683	Delaware Constitution, 1792	545	427
684	Citation of Delaware Constitution, December 2, 1831, and June 4, 1897	545	427
685	Delaware Act, Supplement to an Act for Opening and Establishing a Lead Office within this State, etc. February 7, 1794	545	427
686	Letter from Physick & Kean, Attorneys for John Penn to Joshua Clayton, President, etc. of Delaware. December 22, 1791	545	428
687	Letter from Kean & Physicks to Joshua Clayton, April 26, 1792	545	428
688	Delaware Act for Establishing and Regulating a Ferry over the River Delaware at the Town of Newcastle. January 21, 1801	546	428
689	Delaware Act for Establishing and Regulating a Ferry over the River Delaware at the Town of Newcastle, January 21, 1808	546	428
679	Delaware Act Supplemental to an Act for Establishing and Regulating a Ferry over the River Delaware at the Town of Newcastle, January 20, 1811	546	428
671	Delaware Act to Procure Certain Papers or Copies Thereof from the Land Office in Pennsylvania, January 20, 1801	547	428

Defendant's Exhibits

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
694	Edward G. Bradford testimony in Old Case, February 2, 1906.	571	442
695	Certified copy of death certificate of Edward G. Bradford, March 8, 1928.	571	442
696	Benjamin Nields' testimony in Old Case, February 2, 1906.	571	443
697	Certified copy of death certificate of Benjamin Nields, December 8, 1917.	571	443
698	John H. Rodney's testimony in Old Case, February 2, 1906.	572	443
699	Certified copy of death certificate of John Henry Rodney, August 3, 1918.	572	443
700	Alexander B. Cooper's testimony in Old Case, February 2, 1906.	573	443
701	Certified copy of death certificate of Alexander B. Cooper, September 5, 1924.	573	443
702	Wm. B. Flynn's testimony in Old Case, February 2, 1906.	573	443
703	Certified copy of death certificate of Wm. B. Flynn, Jr., November 24, 1910.	573	444
704	James L. Hawkins' testimony in Old Case, February 2, 1906.	573	444
705	Certified copy of death certificate of James L. Hawkins, January 28, 1914.	574	444
706	Hewson E. Lannan's testimony in Old Case, February 2, 1906.	574	444
707	Certified copy of death certificate of Hewson E. Lannan, May 17, 1920.	574	444
708	Henry C. Mahaffy's testimony in Old Case, February 2, 1906.	574	444
709	Certified copy of death certificate of Henry C. Mahaffy, April 28, 1912.	575	445
710	Thomas Beardson's testimony in Old Case, February 2, 1906.	575	445
711	Certified copy of death certificate of Thomas Beardson, August 10, 1921.	575	445

Defendant's Exhibits

98

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
684	Delaware Act to Cede Certain Lands to U. S. April 4, 1807. (Area shown by Metes and Bounds of Defendant's Exhibit 688)	551	431
685	Delaware Act to Cede to U. S. Certain Lands under water in the Delaware River, etc. south of Bulkhead Bar Dike, April 14, 1926.	552	431
686	Delaware Act to Cede to U. S. Certain Lands under water in the Delaware River, etc. for Construction of Bulkhead around portions of "Dan Baker" and "Stoney Point" Shoals, February 21, 1927.	552 320	432 389
687	(Complement of Exhibit 137) Map of Delaware River Beedy Point to Bulkhead Bar surveyed for 85 foot channel, made under the direction of Major Herbert Deekyne, Corps of Engineers, U. S. Army, by R. G. Pearson, Assistant Engineer. June 28-July 8, 1909.	553	432
688	Blueprint Map "Delaware River Submerged Land East of Artificial Island Proposed to be Ceded to the U. S. U. S. Engineer Office, Philadelphia, Pa. January 8, 1917," showing area described in Exhibit 684.	559	436
689	Delaware Laws Relating to the Board of Pilot Commissioners (Revision 1915, Sections 908-971).	559	436
690	List of Delaware Laws in Connection with the Board of Pilot Commissioners 1881-1915.	559	436
691	George Gray's testimony in Old Case, February 2, 1906.	568	441
692	Certified copy of death certificate of George Gray, August 7, 1926.	570	442
693	Copy of Bill and Answer in Old Case (1877).	570	442

Defendant's Exhibits

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
726	Map of States of Maryland and Delaware, Dept. of Interior, U. S. Geol. Survey, compiled 1918, reprinted 1928	588	449
727 a & b	Map of the State of Delaware and the eastern shore of Maryland with soundings of the Bay of Delaware from actual survey and soundings made in 1799, 1800 and 1801 by the author. Engraved by Francis Shallus, Philadelphia. (Author's name or date not given) (two sections)	588	450
728	Map of Delaware River and Bay from Philadelphia to the Atlantic Ocean. L. Luffman, Geogr. Done from a survey made by order of the American Government, published November 1, 1814 by L. Luffman. 877 Strand, London	584	450
729	Chart of the Bay of Delaware from Philadelphia to Cape Henlopen, Published by H. S. Tanner, 1832	584	450
730	Photostat of endorsements on back of original patent of Charles II to Duke of York of March 22, 1682/3. (Defendant's Exhibit No. 529.) (Document at Dover, Del.)	1080	736
731	Questions submitted to Sir Henry Maxwell-Lyte, K.C.B., relating to the letters patent of March 22, 1682/3, and his opinion thereon, together with certain exhibits, documents and notes explanatory thereof. March 23, 1933	1043	738
732	Extract from "Who's Who," 1931, respecting Sir Henry C. Maxwell Lyte	1043	738
733	Affidavit of Miss Ethel Stokes respecting certain searches in the Public Record Office. March 28, 1933	1043	733
734	Extract from Letter of Fernando John Paris, Counsel for the Penna. to John Penn, November 7, 1734	1044	733

Defendant's Exhibits

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
712	James Danby's testimony in Old Case, February 2, 1905	575	443
713	Certified copy of death certificate of James Danby, March 8, 1928	575	445
714	James H. Clark's testimony in Old Case, February 2, 1905	576	445
715	Certified copy of death certificate of James Howe Clark, July 9, 1930	576	446
716	J. Henry Bogers' testimony in Old Case, February 8, 1905	576	448
717	Certified copy of death certificate of Joseph H. Bogers, January 13, 1900	577	446
718	Henry W. McMullen's testimony in Old Case, February 8, 1905	577	446
719	Certified copy of death certificate of Henry W. McMullen, January 31, 1922	577	446
720	Five (5) Quadrangles, U. S. Geological Survey Maps: (a) Chester Quadrangle. (b) Wilmington Quadrangle. (c) Salem Sheet. (d) Bryans Sheet. (e) Bayville Sheet	581	448
721	Delaware State Road Map, 1931	581	448
722 a, b, & c	Map entitled: "Map of the Delaware River District from Trenton, N. J. to Wilmington, Del. prepared by the Dept. of Wharves, Docks and Ferries of the City of Philadelphia, 1918" (in 3 sections)	582	449
723	N. J. State Road Map, 1930	582	449
724	Pennsylvania-New Jersey map, Dept. of Interior, U. S. Geological Survey, edition of 1916, reprinted 1928	582	449
725	Map of State of New Jersey published by Dept. of Interior, U. S. Geol. Survey, printed 1918, reprinted 1928	583	449

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
744	An act for reuniting to the Crown the Government of several Colonies and Plantations in America. April 8, 1702	1047	786
745	Minutes of Privy Council regarding report from the Lords of Trade recommending that proprietary Colonies be united to the Crown. April 10, 1703	1047	786
746	Minutes of Privy Council regarding report from the Lords of Trade and requesting further report on the advisability of terminating proprietary governments. December 20, 1706	1048	786
747	Report of J. Chestwynd and others of the Board of Trade to the Lords Justices, recommending that proprietary governments be brought under dominion of the Crown. July 21, 1719	1048	786
748	Extracts from Lieut. Govr. Gordon's Answers to Queries regarding Pennsylvania. (About September, 1781)	1048	786
749	Manuscript from the records of the House of Lords relating to certain Acts of Assembly of the Lower Counties. March 28, 1740	1048	786
750	Extracts from "Cambridge History of the British Empire" Vol. I, Cambridge, University Press, 1929	1049	787
751	Minutes of hearing before the Board of Trade on Lord Baltimore's objection to the appointment of George Thomas as Deputy Governor of Pennsylvania and Lower Counties. (1787)	1060	787
752	Extracts from and abstracts of various documents touching the disposition of the Three Lower Counties and the powers of government, 1713 to 1750 inclusive	1060	787
753	First Answer of Attorney General in Penn v. Lord Baltimore. (14 June 1745)	1060	787

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
735	Extracts from the Record of the Case of Penn vs. Baltimore. May 15, 1760	1044	784
736	Letter of William Penn to Lord Hyde, February 6, 1682/3, regarding patent promised him by the Duke of York	1044	784
737	Minutes of the Privy Council respecting the restoration of William Penn to the Government of Pennsylvania and territories, and the approval of certain Pennsylvania Laws. August 9, 1684	1045	784
738	Endorsements on copy of Act of Union of December 6, 1682 (Defendant's Exhibit No. 561) presented to the Board of Trade by Edward Randolph, Surveyor General, as an exhibit to his report to the Board received February 19, 1760/1 (Plaintiff's Exhibit No. 404)	1045	784
739	Report of John Povey relating to demand on William Penn for payment of quit-rents to the Crown, December 9, 1701. From Entry Books of William Blathwait, Auditor General and Surveyor of the King's Revenue in the Plantations	1045	784
740	Report of William Blaythwait to Treasury Board upon quit rents due in Lower Counties. From Entry Books of William Blathwait, Auditor General and Surveyor of the King's Revenue in the Plantations	1046	785
741	Report of William Blaythwait to Treasury Board upon quit rents in the Lower Counties due the Crown. March 22, 1708	1046	785
742	Report of William Blaythwait, Auditor General, April 10, 1714, regarding plantation affairs	1046	785
743	Extract from Estimate of Revenues from Pennsylvania	1046	785

Defendant's Exhibits

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
761	Photographic copy of one side of two fragments of material attached to the cord of the Dover Grant, the photograph being as nearly as possible the exact size of same.	1062	739
762	A smaller photograph of the reverse sides of the two pieces of material above referred to.	1063	739
763	Enlarged photograph of the two fragments of material adhered to the cord above referred to.	1063	739
764	An enlarged photograph of the other side of the two fragments of material adhering to the cord.	1063	739

Defendant's Exhibits

Exhibit No.	Subject	Steno. Minutes Page	Printed Record Page
754	Second Answer filed by Attorney General in <i>Penn v. Lord Baltimore</i> . (16th July 1747)	1060	738
755	A list of 85 colonial acts passed by the Pennsylvania Assembly from 1700 to 1705/6, the enacting clauses of which contain the Lower Counties, either specifically approved by the Crown or allowed to become laws by lapse of time in accordance with the proprietary charter (including certain proceedings of the Board of Trade had thereon).	1061	738
756	Entries taken from Entry Books of the Board of Trade which indicate that the letters exhibited in Plaintiff's Exhibits Nos. 398 and 402 were also sent to other colonies.	1061	738
757	Description of the boundaries of Delaware and New Jersey. Extracted from "Boundaries, Areas, Geographic Centers, and Altitudes of the United States and the Several States," Bulletin 817, 2nd Edition, U. S. Geological Survey, 1900.	1061	738
758	Minute of Committee of Trade and Plantations: Lord Baltimore advised to proceed by petition to King in Council, April 27, 1683.	1062	738
759	Report and opinion of Charles B. Fenwick, Solicitor of the Treasury, to the Secretary of War, February 4, 1843, relating to the dispute over Pea Patch Island.	1062	738
760	Extracts from bench notes of Lord Hardwicke in <i>Penn v. Baltimore</i> . October 26, 1743.	1063	739

END

RECORD

VOLUME II

LIST OF EXHIBITS

PLAINTIFF'S BRIEF BEFORE MASTER

IN THE
Supreme Court of the United States
OCTOBER TERM, 1930.
No. 18 Original.

STATE OF NEW JERSEY, <i>Plaintiff,</i>
<i>vs.</i>
STATE OF DELAWARE, <i>Defendant.</i>

Plaintiff's Brief
Before the Special Master.

WILLIAM A. STEVENS, DUANE E. MINARD,
Attorney General, Assistant Attorney General,
GEORGE S. HOBART, Solicitor of Plaintiff,
Special Counsel.

August 15, 1932.

Arthur W. Clegg, Law Printer, 14-27 Lafayette Street, Newark, N. J.

State of New Jersey v. State of Delaware.

Errata to Plaintiff's Brief Before Special Master.

9c

- In subhead (B) "proprietary" should be "proprietary."
- II 1. 7 from bottom, "30 U. S." should be "5 Peters."
- III 1. 7 from bottom, "5" should be "5,702."
- Opposite references to "Treaty of Westminster" insert "12" before "214."
- III 1. 2 from bottom, strike out quotation marks before the word "Judicial" and after the word "States."
- 2 1. 15, after the word "defendant" insert "New Jersey exhibits are numbered 1 to 500 and 1001 to 1182; Delaware exhibits are numbered 501 to 764."
- 4 1. 13, "radles" should be "radins."
- 5 1. 10, "30 U. S." should be "5 Peters."
- 10 1. 15, "deuply" should be "deputy."
- 11 1. 18, "were" should be "was."
- 20 1. 7, "proprietary" should be "propriety."
- 23 1. 10, "As" should be "as."
- 23 1. 15, after the bracket insert "I."
- 24 1. 11 from bottom, "Virtue" should be "virtue."
- 25 1. 20, change "relinguishes" to "relinguishes."
- 25 1. 12 from bottom, "rule" should be "rule."
- 26 1. 13 from bottom, after "On" insert "the."
- 26 1. 16, strike out "In"; also strike out "period" following the bracket after the figures "1823"; also strike out "This."
- 29 1. 15 from bottom, strike out "being."
- 29 1. 14 from bottom, strike out "its" and insert "New Jersey's" before the word "jurisdiction."
- 37 1. 16, "of" should be "from."
- 35 1. 12, "in" should be "as."
- 71 1. 16, "affect" should be "effect."
- 76 1. 10, change "1882" to "1822."
- 76 11. 16-17, "have" should be "has"; and "were" should be "was."
- 78 1. 7, strike out "the Colonies."
- 85 1. 5 from bottom, "indispensable" should be "indispensable."
- 86 1. 10 from bottom "indispensable" should be "indispensable."
- 92 last line, insert "See also" before the word "Scott."
- 94 1. 4 from bottom, strike out "consists of"; insert "is."
- 95 1. 6, "low" should be "high."
- 99 1. 4, strike out "the."
- 25 1. 1, "indispensable" should be "indispensable."
- 20 1. 1, "indispensable" should be "indispensable."

Page

- 122 1. 2 from bottom, "is" should be "are."
123 11. 1 and 2, "is" should be "are."
128 1. 11, "proceedings" should be "proceeding."
142 1. 15, "recite" should be "recite."
142 1. 17, "length" should be "lengthy."
147 1. 2 from bottom, "shows" should be "show."
148 1. 9, strike out the first word "a."
148 1. 9, "wiggler" should be "wigglers."
148 1. 10, "possesses" should be "possess."
148 1. 11 from bottom, "it" should be "they"; "escapes" should be "escape."
149 1. 17, "sets" should be "set."
159 1. 11 from bottom, "discernable" should be "discernible."
170 1. 11 from bottom, "is" should be "are."
172 1. 5 from bottom, "he" should be "he."
176 1. 11 from bottom, "vessels" should be "vessel."
177 1. 3 from bottom, "shall" should be "will."
178 1. 13, "discernable" should be "discernible."
181 1. 1, insert "it" after the word "show."
188 1. 7 from bottom, "116" should be "395."
189 1. 3 from bottom, strike out "quotation mark" after the word "owner."
189 1. 2 from bottom, strike out "bracket" before word "Heffer."
189 last line, strike out "bracket" following the "period" after the figure "62"; insert "quotation mark" after figures "62."
194 1. 8 from bottom, strike out "among."
200 1. 3, insert "by" before "Plymouth."
207 1. 14, strike out the "comma" after "Exhibit 162."
208 1. 8 from bottom, "effecting" should be "affecting."
217 1. 15 from bottom, "have" should be "has."
219 1. 19, "discovered" should be "discoverer."
229 1. 13, "Ordinance" should be "Ordinance."
249 1. 3, "is" should be "are."
251 1. 2 from bottom, insert "had" before "no title."
260 1. 10 from bottom, insert "comma" after the word "arguments."
271 1. 4 from bottom, strike out "the."
278 1. 6 from bottom, insert "(cited at p. 282)" following the word "Horse."
283 1. 9, strike out "(supra)."
318 1. 2, "suite" should be "suit."
335 1. 5 from bottom, "territory" should be "territorial."
342 1. 8 from bottom, strike out "is" and "which."
346 1. 11, insert "as" before "have been."
349 1. 9, "show" should be "shows."
368 1. 17, insert "not" before the word "claim."
4 1. 12, "shows" should be "show."
4 1. 12 from bottom, "discernable" should be "discernible."
5 1. 3, "pendent" should be "pendant."
3 1. 14, insert "a" before the word "commission"; also "dated" after the word "commission."
9 1. 7 from bottom, "on" should be "an."
7 1. 14, "expert" should be "expert."
9 1. 6, "omission" should be "omission."
1 1. 11 from bottom, "Macaulay" should be "Macaulay."
2 1. 10 from bottom, "asks" should be "asks."
3 1. 23, change "1863" to "1868."
1 1. 1, "describing" should be "describing."
5 1. 4, change "is" to "shall."
5 1. 7, change "request" to "reference."
5 1. 2 from bottom, "pretensions" to "pretensions."
1 1. 8 from bottom, insert a "comma" following the word "failed."
9 1. 11 from bottom, "1862/3" should be "1862/3."
4 1. 18, change "is" to "shall."
4 1. 8, second word "was" should be "were."
4 1. 16, second word "on" should be "of."
6 1. 7 from bottom, "commendation" should be "recommendation."
4 1. 19, insert "were" following the word "who."
9 1. 11 from bottom, "either" should be "is."
9 1. 4 from bottom, "are" should be "is."
9 1. 3 from bottom, "were" should be "was."
7 1. 2 from bottom, strike out "proved" and insert "failure to submit the acts of assembly to, and obtain their approval."
1 1. 5 from bottom, "proceedings" should be "proceeding."
2 1. 9, "proceedings" should be "proceeding."
3 1. 17, "controversy" should be "controversy."
9 1. 19, insert "at" following the word "fixed."
4 1. 9, "sequeter" should be "sequiter."
2 1. 4 from bottom, "Its" should be "The."
3 1. 4, insert "have" before the words "been included."
7 1. 13 from bottom, strike out "to."
1 1. 11, strike out "follows."
1 1. 12, strike out entire line.
1 1. 13, strike out "15 acres of."
7 1. 10 from bottom, "Quinte" should be "Quinti."
9 last line, "plaintiff" should be "defendant."
1 1. 17, "and" should be "as."
9 1. 20, insert "comma" following the word "elsewhere."

INDEX

	Page
STATEMENT OF THE CASE	1
The Issues Raised by the Pleadings.....	3
II.	
JURISDICTION	5
III.	
SUMMARY OF THE ARGUMENT.....	5
IV.	
ARGUMENT	6
(1) Plaintiff has title and jurisdiction in Delaware River and Bay and the bed thereof, between the Thalweg and High Water Mark on the Eastern Shore thereof.....	6
1. British Title to American Colonies.....	6
2. The Dutch Treaties.....	11
3. New Jersey Title.....	12
4. Rights in Tidal Waters under the Common Law.....	20
5. The Importance of Delaware River to the Colonies.....	28
6. Plaintiff's Rights in Delaware River and Bay.....	36
7. New Jersey Boundary Laws.....	72
8. Proprietary Grants within the 12 Mile Circle.....	75
9. New Jersey Riparian Grants within the 12 Mile Circle.....	78
10. Ancient Wharf Titles.....	78
11. Private Wharf Acts.....	81
12. Testimony on Ancient Wharves.....	85
13. Long Uninterrupted Use below Low Water Line.....	86
14. New Jersey Riparian Laws.....	88
15. New Jersey Grants under General Laws.....	92
16. The Economic Value of Riparian Lands.....	122
17. Plaintiff's Uninterrupted Enjoyment of Riparian Title.....	125
18. Several Fisheries in the 12 Mile Circle.....	127

	PAGE
19. New Jersey Residents Fishing in 12 Mile Circle..	128
20. Plaintiff's Exercise of Jurisdiction in the 12 Mile Circle	130
21. New Jersey Jurisdiction in Delaware River and Bay	132
22. Plaintiff's Oyster Industry	147
A—Ship John Bed.....	155
B—Planting Grounds	170
23. Channel and Shore Line Changes in Delaware River and Bay	174
24. Plaintiff's Rights by Prescription.....	192
25. History of the Boundary Dispute.....	205
(2) Defendant has no title or jurisdiction in Delaware River, or the bed thereof, east of the Thalweg within a radius of 12 miles about New Castle.....	213
1. Delaware Title	213
2. British Title to the Delaware Settlements.....	217
3. Delaware Colonies as an Appurtenance of New York	254
4. Title under the Duke of York's Deeds.....	261
5. The Invalidity of Deeds of Feoffment.....	280
6. The Grant of March 22, 1692/3.....	284
7. The Right of the Crown to Grant the Bed of Delaware River or Bay.....	288
8. The Circular Boundary	295
9. The Boundary Maps	318
(a) New Jersey Boundary Maps.....	319
(b) Defendant's Boundary Maps	320
(c) U. S. Governmental Maps.....	322
(d) Penn Boundary Maps.....	331
(e) Impartial Boundary Maps.....	349
10. Delaware Boundary Laws	354
11. Boundary below the 12 Mile Circle.....	357
(a) The Extent of this Boundary.....	357

	PAGE
(b) The Nature of the Dispute.....	358
(c) Views of the Publicists.....	360
(d) Decisions of the Courts.....	361
(e) The Geographical Centre Rule.....	365
(f) Description of Delaware Bay.....	365
(g) Application of the "Thalweg" Rule to Delaware Bay	375
(h) Practical Considerations	381
12. Letters Patent	390
13. The Privy Council	398
14. Surrender of Grant of March 22, 1692/3.....	401
15. The Dover Document	409
16. Colonial Organization and Legislation.....	435
17. Logan Correspondence	485
18. Penn-Baltimore Controversy over Title to Three Lower Counties	505
19. The Case of Penn v. Baltimore.....	525
20. Penn's Proposed Surrender of Government.....	544
21. The Earl of Sutherland's Petition.....	561
22. Miscellaneous Proceedings	566
23. Subsequent Construction	571
24. Title to Islands in Delaware River and Bay.....	584
25. Royal Approval of Deputy Governors.....	589
26. One-half of Profits	609
27. Silence of Penn on the Grant of March 22, 1692/3.....	615
28. Repudiation of Penn Title.....	618
29. Pea Patch Island Case.....	640
(a) History of the Controversy over the Island	642
(b) New Jersey Claim of Title.....	643
(c) The Wall Opinion	649
(d) Judge Baldwin's Opinion in Gale v. Behling.....	654
(e) The Delaware Suit.....	671
(f) Official Reports on Pea Patch Controversy	672

	PAGE
(g) Intermediate Delaware Acts	673
(h) The Sargeant Opinion	673
(i) Title to Pea Patch Island.....	709
30. Defendant's Exercise of Jurisdiction in the River within the 12 Mile Circle.....	711
31. Delaware Pilot Laws	719
32. Delaware Fish and Oyster Laws.....	721
33. The Doctrine of Equitable Estoppel.....	727
34. Penn's Right by Prescription.....	747
35. The Thalweg Rule in the 12 Mile Circle.....	748
V.	
CONCLUSION	748

TABLE OF CITATIONS
(Exclusive of Exhibits)

	PAGE
A	
Albany County v. Stanley, 105 U. S. 305.....	637
American & Ocean Ins. Co. v. Bales of Cotton, 1 Peters 511, 635, 636	635, 636
Arkansas v. Mississippi, 250 U. S. 39.....	1, 205, 353, 364
Arkansas v. Tennessee, 248 U. S. 158.....	364
269 U. S. 152.....	388
Arnold v. Mundy, 6 N. J. L. 1.....19, 25, 27, 65-66, 150, 204, 649, 677	19, 25, 27, 65-66, 150, 204, 649, 677
Attorney General v. Del. & B. E. R. R. Co., 27 N. J. E. 3, 13, 36, 63, 255	13, 36, 63, 255
Aff. 27 N. J. E. 632 (1876).....	63
B	
Bailey v. P. W. B. R. Co., 4 Harr. Del. Rep. 389.....	26
Beard v. Rowan, 9 Peters 301.....	637
Bell v. Gough, 23 N. J. L. 624.....	679
Benest v. Pipon, Knapp's Rep. 67.....	194
Bennett v. Boggs, 1 Bald. C. C. 60, 36, 51-57, 196, 255, 649, 655, 662, 677, 699, 703	36, 51-57, 196, 255, 649, 655, 662, 677, 699, 703
Bichel v. Poke, 5 Harr. (Del.) 325, 326.....	177
Blundell v. Catterel, 5 B. & A. 278.....	20, 293
"Breviate"—Penn v. Baltimore, 409, 410, 411, 412, 413, 414, 471, 526, 694	409, 410, 411, 412, 413, 414, 471, 526, 694
Bringhurst v. O'Donnell, 14 Del. Chy. Rep. 225.....	26
C	
Carter v. Marcott, 4 Burrows 2162.....	293
20 C. B. (n. s.) 1.....	20
Central Railroad Co. v. Jersey City, 70 N. J. L. 81.....	13, 64, 72
Ciesna v. Tennessee, 246 U. S. 289.....	364
Clark v. Clark, 178 U. S. 186.....	679
Clawson v. Primrose, 1873, 4 Del. Ch. Rep. 643.....	24
Cobb v. Davenport, 32 N. J. L. 369, 381.2.....	36, 255

	PAGE
Hoboken, Mayor and Council of the City of, v. Pennsylvania R. R. Co., etc., 124 U. S. 656.....	94
Hooker v. Cumming, 17 John 195.....	22
Hooper v. California, 155 U. S. 648.....	637
Hooper v. Bell, 3 Cranch. 454.....	635
Howard v. Ingersoll, 13 How. 381.....	22, 389, 396
Hudley v. Security Trust & Sd. Co., 5 Del. Ch. 578.....	26
I	
Ill. Cen. R. Co. v. Chicago, 176 U. S. 646.....	679
Indiana v. Kentucky, 136 U. S. 1.....	191, 200-2
Iowa v. Illinois, 147 U. S. 1.....	362-3, 365
J	
Johnson's Lessees v. M'Intosh, 8 Wheat. 543. 6-10, 12, 211, 253, 294	
Jones v. Prairie Oil & Gas Co., 273 U. S. 195.....	679
K	
Kansas v. Colorado, 206 U. S. 43.....	93
Kean v. Rice, 11 Sargeant & Rawley's Rep. 203, 49-51, 196, 669, 699, 703	
Knight v. United Land Asso., 142 U. S. 183.....	24, 68
L	
Livingston v. Moore, 7 Peters 469.....	679
L. J. C. P. (85) 29.....	21
Lord Fitzwalter's Case, 1 Modern 106.....	293
Louisiana v. Mississippi, 232 U. S. 458.....	187
202 U. S. 1.....	202-3, 366, 375-80, 725-6
201 U. S. 1.....	338, 344
Louis v. Rutz, 138 U. S. 226.....	69
12 L. T. 150.....	21
Mc	
McCarter v. Hudson Water Co., 70 N. J. E. 525.....	27
Att. 70 N. J. E. 695.....	27

	PAGE
Coffee v. Grover, 123 U. S. 1.....	637, 696
Colchester Corp. v. Brooke, 7 Q. B. 339; 15 L. J. Q. B. 59; 9 JF. 1090.....	21
Coosaw Mining Co. v. South Carolina, 144 U. S. 550.....	637
Corfield v. Coryell, 4 Wash. C. Ct. Rep. 370, 27, 370, 652, 655-667, 668, 677, 699, 703	
36, 46-49, 174, 196, 255	
6 Fed. Case 546.....	624
Craig v. Radford, 3 Wheat. 594.....	624
D	
Den v. Asso. of N. J. Co., 16 How. 426.....	668
DeVoe Mfg. Co., In Re, 108 U. S. 401.....	64, 72
Duke of Somerset v. Fogwell, 5 Barn. & Cres. 383.....	293
F	
Fairfax's Devisee v. Hunter's Lessee (7 Cranch. 603).....	633, 634
Fitzgerald v. Fausce, 46 N. J. L. 536 (1884).....	63
G	
Gale v. Behling (Sen. Doc. No. 140, 25th Cong. 2nd Ses., Jan. 27, 1838), 272, 421, 471, 644, 654, 667, 669, 671, 676, 698, 703, 704	
Gann v. Fishers of Whitestable, 11 H. of L. 192.....	293
Georgia v. South Carolina, 257 U. S. 616.....	364
Gough v. Bell, 21 N. J. L. 106.....11, 13, 27, 294, 676, 677, 704-9, 746	
22 N. J. L. 441.....	27, 63-57, 294
23 N. J. L. 624.....	27
Att. 23 N. J. L. 624.....	59-63, 703
Re Grange (Atty. Gen. Opp.) (1793).....45, 194-5, 375, 669, 699, 703	
H	
Handley, Lessee v. Anthony, et al., 5 Wheat. 376, 22, 368, 361, 389, 655	
Hardin v. Jordan, 140 U. S. 334.....	93
Harlan & Hollinsworth v. Paschall, 5 Del. Ch. 435.....	26
H. L. Case (11) 192.....	20

	PAGE
M	
Marine Railway and Coal Co. v. United States, 257 U. S. 47, 641, 747	634, 747
Martin v. Hunter, 1 Wheat. 304	634
Martin v. Waddell, 16 Peters 367, 10-11, 13, 22, 28, 94, 288, 294, 557, 649-50, 668, 676, 699	699
Massachusetts v. New York, 271 U. S. 65	11, 205, 738, 739
Massachusetts v. West Virginia, 217 U. S. 1	203, 204
Maryland v. Wisconsin, 270 U. S. 295	204, 205, 348
Michigan v. Wisconsin, 252 U. S. 273	127, 364, 365
Minnesota v. Wisconsin, 252 U. S. 273	127, 364, 365
Missouri v. Kentucky, 78 U. S. 116	188, 708, 709, 718
Missouri v. Kentucky, 78 U. S. 116	188-190
Missouri v. Nebraska, 196 U. S. 23	187
Missouri v. Nebraska, 196 U. S. 23	145 U. S. 519
Moltonson v. O'Dea, 10 House of Lords 593	298
Moore v. Attorney General, Irish Rep. 1929, Pt. III (March) 191	294, 701
Moore v. Ventnor Gardens, 149 Atl. Rep. (N. J. Chy.) 636	94
Morris County Banking Co. v. C. B. R. Co., 16 N. J. E. 419	679
Morris v. United States, 174 U. S. 196	93
N	
Nabob of the Carnatic v. The East India Co., 2 Ves. Jun. 56	542
Nebraska v. Iowa, 149 U. S. 359	185, 186, 187
New Jersey v. New York, 30 U. S. 284	6
New Jersey v. New York, 30 U. S. 284	283 U. S. 386
New Jersey v. New York, 30 U. S. 284	6 Peters 284
New Orleans v. U. S., 35 U. S. 662	702
New York v. Connecticut, 4 Dallas 1	187
New York v. Connecticut, 4 Dallas 1	640
O	
Orr v. Hodgson, 4 Wheat. 453	634, 635

	PAGE
Painter v. Mulligan, 2 Johns 175	22
Paul v. Hazelton, 37 N. J. L. 105	94
Pea Patch Island Case, 30 Fed. Cas. 1123, 1135, 288, 421, 638, 681, 747	747
Penn v. Baltimore.....271, 272, 276, 282, 288, 410, 411, 412, 421, 427, 471, 501, 502, 505, 512, 518, 530, 542, 543, 544, 559, 605, 670, 685, 689, 692, 747	22
People v. Pratt, 3 Cain 318	187
Philadelphia Co. v. Stimson, 223 U. S. 605	22
Pollard's Lessees v. Hagan, 3 Howard 212	44 U. S. 221
Pollard's Lessees v. Hagan, 3 Howard 212	24, 68
Pollard's Lessees v. Kibbe, 14 Peters 353	12, 211, 637
R	
Rhode Island v. Massachusetts, 12 Peters 667, E, 400, 542, 543, 637, 684, 696-697, 698, 699, 702	6
Rhode Island v. Massachusetts, 12 Peters 667	14 Peters 210
Rhode Island v. Massachusetts, 12 Peters 667	15 Peters 233
Rhode Island v. Massachusetts, 12 Peters 667	4 How. 591
Rhode Island, Colony of, v. Colony of Massachusetts, Privy Council 1746, 3 Acts of Privy Council, Colonial Ser. 36	400
Rhode Island v. Colony of Conn., Privy Council 1727, 3 Acts of Privy Council, Colonial Series 10	400
River Banne Case, Davies, 149	20
Rundle v. Del. & R. Canal Co., 1 Wall Jr. 275	72
Rundle v. Del. & R. Canal Co., 1 Wall Jr. 275	Aff. 14 How. 80
Rundle v. Del. & R. Canal Co., 1 Wall Jr. 275	69, 72
S	
Scott v. Lattig, 227 U. S. 229	92
Shively v. Bowlby, 152 U. S. 1, 11, 21, 24, 25, 67-68, 92, 185, 187, 284, 397	397
St. Anthony Falls Water Power Co. v. Board of Water Comm'rs, 168 U. S. 349	69, 93
St. Louis v. Rutz, 138 U. S. 224	69
State Board of Health v. Phillipsburg, 83 N. J. E. 402	27
State v. Jersey City, 25 N. J. L. 525	27

	PAGE
State v. Morris, 1 Harr. (Del.) 326 (Note to Emory v. Colings)	74, 644, 681-687, 698
State v. Reybold, 5 Harr. 484	26
Stevens v. Paterson & N. R. Co., 34 N. J. L. 532	27, 63, 94
Smoot Sand & Gravel Co. v. Washington Airport, 283 U. S. 349	641
Sobolewski v. German, 32 Del. Rep. 540	26
T	
Taylor v. Horde, 1 Rep. Cas. K. B. 60	278, 282
Trinity Church Case, 4 Paige (N. Y.) 498	24
Tucker v. Ferguson, 22 Wall. 527	637
U	
U. S. v. Fisher, 109 U. S. 143	637
United States v. Holt State Bank, 270 U. S. 49	93
United States-Mexico Boundary (8 Atty. Gen. Opp. P. 175)	187
U. S. v. Palmer, 3 Wheat. 610	637
U. S. v. Pacheco, 63 U. S. 590	24, 68
U. S. v. Perchman, 7 Peters 51	635-636, 686
United States v. River Rouge Imp. Co., 269 U. S. 411	66
U. S. v. Texas, 143 U. S. 621	5, 352, 698
162 U. S. 1	205, 341, 342, 343, 344, 345
V	
Virginia v. West Virginia, 246 U. S. 565	400-401
78 U. S. 39	702
W	
Ware v. Hyton, 3 Dallas 199	635
Warren v. Matthews, 6 Modern 73	294
Washington v. Oregon, 211 U. S. 127	191, 679
Wilkinson v. Leland, 2 Peters 627	637
Woolley v. Campbell, 37 N. J. L. 163	294
W. R. (13) 589	21

	PAGE
CONSTITUTIONS.	
<i>United States.</i>	
Art. I, Sec. X, par. 2 (34 Stat. L., Pt. 1, Chy. 394)	126
Art. III, Sec. 2	5
Art. VI, Sec. 2	621
<i>Delaware.</i>	
Art. II, Sec. 4 (1831)	1724
TREATIES.	
Treaty of Breda (1667)	213
Treaty of Paris (1783)	4, 11, 216, 217, 581, 746, 748, 749
Treaty of Peace (1783)	177, 189, 634
Treaty of Westminster (1674)	214, 238, 507
STATUTES.	
<i>United States.</i>	
Title 28, U. S. Code Anno., Sec. 341, p. 171	5
Title 46, Chap. 10 (U. S. Code, p. 1476)	719, 720
<i>New Jersey.</i>	
Ch. J. R., 25 N. J. P. L. 1929	1
Act of November 8, 1822	52
Act of January 21, 1709-10	72
Act of January 19, 1747-8	73
Act of November 28, 1882	75
Act of March 16, 1854	81
Act of March 15, 1855	82
Act of March 17, 1870	83
Act of March 21, 1870	84
Act of March 23, 1871	84
March 18, 1851 (P. L. 1851)	89

	PAGE
April 11, 1864, Chapter 391 (P. L. 1864).....	89
March 27, 1917, Chapter 189 (P. L. 1917).....	121
March 31, 1869, Chapter 383 (P. L. 1869).....	90, 91
March 21, 1871, Chapter 256 (P. L. 1871).....	91
March 6, 1888, Chapter 108 (P. L. 1888).....	91, 92
April 8, 1915, Chapter 242 (P. L. 1915).....	72, 207
Nixon's Digest.....	247
N. J. Comp. Stat., Vol. 4, p. 5368.....	710
N. J. Comp. Stat., Vol. 3, p. 3948.....	710
<i>Dalaware.</i>	
April 1, 1869, Chapter 382.....	315
March 8, 1871, Chapter 1.....	316
April 25, 1869, Chapter 448.....	316
March 28, 1921, Chapter 4.....	316
March 1871, Chapter 3, Sec. 2, p. 11.....	721
Laws 1871, Chapter 3, Sec. 2, p. 224.....	721
Laws 1905, Chapter 130, Sec. 2, p. 224.....	721
Laws 1887, Chapter 5, Vol. 5, pp. 14-17.....	722
Laws 1887, Chapter 6, Vol. 5, p. 33.....	722
Laws 1863, Chapter 653, Sec. 3, p. 768.....	722
Laws 1863, Chapter 653, Sec. 3.....	722
Laws 1909, Chapter 131, p. 240.....	723
Laws 1897, Chapter 463 (XX Del. Laws, p. 476).....	726
Revised Stat. 1915, Chapter 74, Sec. 2451.....	723
Revised Stat. 1915, Sec. 2462.....	723
Revised Stat. 1915, Sec. 2457.....	723
Revised Stat. of 1852, Sec. 1, 2, 4.....	350
<i>Pennsylvania.</i>	
Act of January 29, 1823.....	75
Act of Assembly, May 28, 1715.....	308
<i>England.</i>	
7-S William III, Ch. 2, 9 Stat. at L. 435.....	590

	PAGE
TEXT BOOKS.	
American Charters, &c. Thorpe.....	25
Angell on Tide Waters.....20, 22, 68, 69, 93, 194, 291, 292, 361	25
Angell on Watercourses, Sec. 60.....	187
Bacon's Abridgement, Vol. 8, p. 23.....	188, 289, 290
Blackstone's Commentaries, Vol. I, Chap. 5, p. 231, 183, 184, 228, 398, 399	187, 390, 391
Blackstone's Commentaries, Vol. II.....	425
Blackstone's Great Charters.....	280, 281, 285, 572
Bouvier's Law Dictionary (Bald.).....	590
Campbell's Lives of Lord Chancellors, Vol. 4.....	530, 539, 540
Campbell's Lives of Lord Chancellors, Vol. 6.....	189, 710
Caratheodery DuDroit Inter., p. 62.....	23, 24, 272, 273, 293, 403, 592
Chalmers's Colonial Opinions.....	292, 298
Clark's Summary of Colonial Law.....	20
Comyn's Digest, Navigation, A and B.....	194, 228
Vol. VII, p. 7.....	425
Vol. V, p. 350.....	290
Vol. VIII.....	270, 611
Concise Dict. of Nat'l Blog, Oxford U. Press, London, 1921, p. 133.....	363
Creasy, First Platform on International Law.....	396
Cruise, Digest of the Laws of England, Vol. 5.....	538
Daniel's Chy. Pl. & Pr., Vol. 2.....	33, 361
Farham on Waters, Vol. I, p. 51.....	24
Fowler on Real Property Law.....	187
Gould on Waters, Sec. 159.....	20
Hale's (Sir Matthew) First Treatise (De Portubus Maris), Hargraves, No. 98.....	303
Halleck, Treatise on International Law, Vol. I, Ch. 6, Sec. 23.....	189, 710
Hefter, Sec. 66, p. 43.....	528, 531, 534
"Judicial Settlements of Controversies between States," James Scott Brown.....	528, 531, 534

	PAGE
Knekenbeck, International Rivers, Grotious Soc. Pub., London, 1918	380
Kent's Commentaries, Vol. 3, 427 (12 Ed.)	20, 22, 281, 282
Laws of England, Vol. 28, p. 360	20
Leaming & Spicer	17, 442
Lewis, Eminent Domain, 2d Ed., Sec. 76b, p. 114	93
Malloy's Treaties, Conventions, etc., Vol. 1, p. 587	26, 620, 621
Moore and Hall, Hist. of Law of Foreshore and Beachore, 3d Ed., p. 376	20, 133
Moore's Int'l Law Dig., Vol. 1	6, 45, 46, 187, 194, 291, 376, 710
Nevill's Laws, 1752	73
New International Cycl., Vol. 11, p. 407	485
Phillimore, Comm. on Int'l Law, Vol. 1, p. 239	363
Pollock & Maitland, Vol. 2, p. 668	398
Pufendorf, Elements of Universal Jurisprudence	360
Supreme Court, Business of the, Frankfurter & Landis, p. 32	687
Vattel, Law of Nations	22, 132, 133, 185, 192, 193, 228, 360
Wheaton, Elements of Int'l Law, Sec. 192, p. 202	363
Woolsey, Int'l Law, 58	363

PUBLIC DOCUMENTS.

Am. Stat. Papers, For. Rel. I, 148	326, 375
Chancery Proceedings 1714-1758, Division Sewell, 210/2	694
Chy Office, London, p. 1	645, 646
Executive Message, Dec. 91, 18th Cong., 1st Ses.	645
House of Representatives Rep. No. 59, 23rd Cong., 2d Ses.	642, 645, 646
House of Representatives Rep. No. 92, 24th Cong., 1st Ses.	735
N. J. Archives, Vol. 1, 1st Ser., p. 323	735
N. Y. Colonial Documents, Vol. 3, p. 284	367
N. Y. Hist. Coll., N. S., Vol. 1, p. 85	367
N. Y. Hist. Coll., Vol. 1, p. 130	375
Opinions, Attorney General (1788), Vol. 1, p. 32	325, 375

	PAGE
Pa. Archives, 2d Ser., Vol. IX, p. 628	329
Pa. Archives, 4th Ser., Vol. 4, p. 769	419, 421
16 Pa. Archives, 2d Ser. (Preface)	471
16 Pa. Archives, 2d Ser., p. 83	694
Report Chief of Engineers, U. S. A., 1929, Pt. 2, p. 270	125
Senate Doc. No. 21, 30th Cong., 1st Ses.	176, 421, 688
Senate Doc. No. 40, 26th Cong., 2d Ses.	645
Senate Doc. No. 140, 25th Cong., 2d Ses.	654, 655

HISTORIES.

Chester County, Pa., Futhy & Cope	304, 404
Chalmers History Revolt of American Colonies	23, 268, 400
Delaware, History of, Vincent, 6, 128, 177, 218, 219, 253, 358, 367	421, 646
Delaware, History of, Conrad's, Vol. 3	85
Delaware, History of, Mulford's	129, 364, 367
Delaware, Original Settlements on the, Ferris	367
De Laet's New World, p. 320	252, 590, 615
England, History of, Macaulay's, Vol. 1	615
England, History of, Macaulay's, Vol. 2	398
England, History of, Trevelyan's, pp. 124, 276	398
England, History of, Stubbs, Vol. 3, p. 254	272
Maryland, History of, Scharf's	129
New Jersey, History of, Smith's	367
New Jersey, History of, Gordon's	35
New Jersey, History of, Mulford's	274, 275, 367, 435, 436
Pennsylvania, Annals of, Hazard's	31, 437, 448, 450, 463
Pennsylvania, History of, Proud'a	268, 485
Pennsylvania, Hist. Prop. Gov't, Shepherd's, p. 308	367
Purchas' Pilgrims, Vol. 3, p. 510, London, Ed. 1628	649
Trenton, History of, Vol. 1, Princeton Univ. Press, 1929	649

Statement of the Case.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1930.

No. 18 Original.

STATE OF NEW JERSEY, <i>Plaintiff,</i>
<i>vs.</i>
STATE OF DELAWARE, <i>Defendant.</i>

**PLAINTIFF'S BRIEF BEFORE THE
SPECIAL MASTER.**

I.

Statement of the Case.

This is an original action brought pursuant to a resolution of the legislature of plaintiff (*Ch. J. R. 25, N. J. P. L. 1929, p. 834; Ex. 5*) instructing the Attorney General to institute a proceeding in this court to secure a judicial determination of the controversy between the parties hereto over the boundary line between them from the Pennsylvania state line through Delaware river and bay to the Atlantic Ocean.

Issues herein were joined by complaint filed June 3, 1929, and answer was filed on October 7, 1929, without filing a replication (*Equity Rule 31*); (*Arkansas v. Mississippi, 250 U. S. 39, 41*).

By order entered January 6, 1930, the Honorable William L. Rawls, of Baltimore, Maryland, was appointed

Part 1. The Economic Value of Riparian Lands.

of the water front. Nobody would want to take a chance, on New Jersey grants if they had to pay another sum to Delaware. No real estate man would take the chance of developing under such conditions.

There is a section coming in for development from Pedricktown north. When the manufacturers become acquainted with the power plant at Pennsville the development will extend all the way to Pennsville.

He thinks industries are going down in that section because the rent is cheaper and there will be no difficulty in getting railroad facilities. Before the Deep Water Plant purchased its land, its representatives called upon him for an opinion as to land values in that neighborhood (298). He then valued the land at \$250 an acre without riparian rights. That inquiry involved about 200 acres along the river and extending some distance back. The cost of riparian rights are lower in that neighborhood than they are above Pennsville (299).

Between the points where the northerly circular boundary of Delaware, if extended, would reach and leave the New Jersey side, there is a distance measured along the east side of the river, without closely following the indentations of the shore line, of about 24 miles of shore front (*Ex. 2 and 3*). Plaintiff, in 1916, established exterior pierhead and bulkhead lines in this area, and has conveyed riparian rights along this shore within those lines, for a distance of nearly two miles at prices ranging from about 25 cents per lineal foot, in 1883 (before there was any industrial development there), to ten dollars per lineal foot, in 1929. For these grants it has received something over \$82,000. Experience elsewhere shows that the value of these riparian rights increases from year to year as the demand increases and the available space

Part 1. Uninterrupted Enjoyment of Riparian Title.

diminishes. Mr. McCullum's (uncontradicted) testimony shows that the upland in this area is valued as high as \$250 per acre, exclusive of riparian rights, but that that value is dependent upon the availability of riparian rights. The territory is adapted only to such industrial use as depends upon the river for water, water power, and shipping facilities. The United States Government has spent (to June 30, 1929) 45 million dollars for the maintenance and improvement of a 35 foot channel between Philadelphia and the capes. The commerce on the river, passing this shore front, was twenty-eight million tons in 1928 (*Rept. Chief of Engineers, U. S. A., 1929 Pt. 2, pp. 270, 277*). There are no seaports on the Atlantic coast of New Jersey south of Raritan bay, and Delaware river entrance of commerce affords plaintiff's principal facilities for the development of the southern half of the state.

17. Plaintiff's Uninterrupted Enjoyment of Riparian Title.

From the foregoing exhibits and testimony it appears that the question of title to the bed of the river between the ship channel and the eastern shore of Delaware river, within a radius of 12 miles of New Castle, is one of great value and importance to the economic and social welfare of plaintiff and its inhabitants; particularly those south of Trenton.

This exercise of jurisdiction over the river east of the ship channel, within 12 miles of New Castle, has continued for more than a century. It has never been challenged by defendant, except in 1872 when its objection was confined to fishing rights. That objection was removed by the injunction of this court which found in favor of the rights of plaintiff's inhabitants, and has never been

Part 1. Uninterrupted Enjoyment of Riparian Title.

removed. By the compact of 1905 (*Ex. 53*) those rights were acknowledged and confirmed.

Plaintiff's right to grant riparian lands and what rights, then exercised for three quarters of a century, was by that compact expressly acknowledged and confirmed in the following language.

"Art. VII. Each state may, on its own side of the river, continue to exercise riparian jurisdiction of every kind and nature, and to make grants, leases and conveyances of riparian lands and rights under the laws of the respective states.

Art. VIII. Nothing herein contained shall affect the territorial limits, rights, or jurisdiction of either state of, in or over the Delaware river, or the ownership of the subaqueous soil thereof, except as here in expressly set forth."

Article VII clearly acknowledges and confirms the jurisdiction which plaintiff had previously, and has since, exercised in the ownership and disposition of lands under water in the disputed area. Article VIII also confirms that jurisdiction. But it does more than that; it confirms (by not affecting) the territorial limits, rights or jurisdiction of plaintiff of, in or over Delaware river, as *those limits, rights and jurisdiction had theretofore been exercised and enjoyed by plaintiff.*

That compact was solemnly ratified by the legislature of each state, and approved by Congress (*24 Stat. L. pt. 1, ch. 394, p. 556*) in accordance with Article I, Section 1, pgf. 2 of the Constitution of the United States, and can never be changed without plaintiff's consent and the approval of Congress.

That compact, alone, is sufficient to sustain the title of plaintiff and its grantees in the bed of the river east of the ship channel, independent of all other considerations.

Part 1. Several Fisheries in the 12 Mile Circle.

But there are supporting legal considerations. One of the grounds assigned by this court for supporting the contention of plaintiff in *Minnesota v. Wisconsin* (252 U. S. 273) respecting the boundary in St. Louis bay was the fact that (p. 279)—

"Extensive docks have been constructed from the Minnesota shore in both the upper and lower bays; those extending southwest from the Grassy point across the boundary claimed by Wisconsin. The general situation of 1846 continued until long after 1861, but during the last thirty years extensive improvements required for a large and busy harbor have produced great changes.

The further legal consideration of long acquiescence on the part of defendant in plaintiff's exercise of possession and jurisdiction east of the ship channel, within the supposed 12 mile circle, and the question of prescriptive rights acquired therein by plaintiff will be discussed under heading 24 of Part (1) herein.

18. Several Fisheries in the 12 Mile Circle.

In addition to the practice of common fishery already discussed, there appears also to have been certain established several fisheries of New Jersey residents and others on the east side of Delaware river below low water mark, within a radius of 12 miles of New Castle.

Exhibit 1165 shows four such fisheries, designated, Dutch Fishery (two), Thompson's Fishery, and Hall's Fishery. That map was made in 1873, but we do not know how long these fisheries had existed prior to that time, except as to the Dutch Fishery, the mummings of title of which were presented as Exhibits 171 to 179, inclusive.

These deeds cover the general chain of title for three quarters of a century (1798 to 1872), which the witness identified upon a map (*Ex. 1165*), as occupying

*Conclusion.*35. *The Thalweg Rule in the 12 Mile Circle.*

Having established the fact that the deeds of feoffment and the supposed grant of March 22, 1682/3 failed to convey to Penn any title to the bed of the river within a radius of 12 miles of Newcastle, and that, if those documents could be so construed as to convey such title, that title did not inure to the defendant, first, by reason of its repudiation of that title in 1792-4, and second, by reason of the prescriptive rights of plaintiff acquired in the river east of the ship channel, it follows that title to the bed of the river east of the ship channel vested in plaintiff at the American Revolution, and by the Treaty of Paris, and the thalweg rule applies as well within, as below, the 12 mile circle.

V.

CONCLUSION.

From the foregoing facts and arguments plaintiff deduces the following conclusions:

1. The deeds of feoffment conveyed no title to the bed of Delaware river and bay.
2. The grant of March 22, 1682/3 was unlawfully made and effectively surrendered. No other royal grant was ever made and the royal title to the bed of Delaware river and bay continued until the American Revolution, subject to such prescriptive rights as were acquired therein east of the ship channel by the colony and inhabitants of West Jersey prior to the American Revolution.
3. By conquest in the American Revolution and by the acknowledgment of the Crown in the Treaty of Paris, plaintiff acquired title and jurisdiction in the bed of Delaware river and bay east of the main ship channel as it then existed between the states of Delaware and New Jersey.

Conclusion.

4. That title and jurisdiction has been exercised and maintained to the present time without interference, objection, or the exercise of contrary jurisdiction, of defendant, except in the single instance in 1813 when ineffectively it ceded its right, title and interest to the United States Government for the Pea Patch Island.

5. By the acts of its legislature in 1792 and 1794 defendant repudiated the Penn title under the deeds of feoffment and the grant of March 22, 1682/3, and asserted its title within its territorial limits by virtue of the American Revolution and the Treaty of Paris, under which it acquired title in Delaware river and bay only to the middle of the main ship channel as it then existed.

6. The Compact of 1905 between the parties hereto confirmed to plaintiff the right to exercise its claim of title and jurisdiction east of the middle of the ship channel.

7. The legal boundary between the plaintiff and defendant in Delaware river and bay is the middle of the ship channel therein, as it existed at the time of the American Revolution, west of Pea Patch Island, and elsewhere subject to changes in the location thereof occurring in the ordinary course of nature, or as marked and maintained, by the United States Government, as the main navigable channel in said river and bay.

Respectfully submitted,

DUANE E. MINARD,
Assistant Attorney General,
Solicitor for Plaintiff.

Dated: August 15, 1932.

DEFENDANT'S REPLY

BRIEF BEFORE MASTER

IN THE
Supreme Court of the United States

No. 19 Original. October Term, 1979

STATE OF NEW JERSEY,

Plaintiff

STATE OF DELAWARE,

Defendant

Reply Brief of Defendant Before
Special Master.

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TABLE OF CONTENTS.

	PAGE
(References are to points listed in index to Plaintiff's Brief, and to the paging thereof.)	
I. 4-21 inclusive. Brief, pp. 20-146.....	1
I. 24. Plaintiff's Rights by Prescription. Brief, pp. 192-205	11
II. 1. Delaware Title. Brief, pp. 213-217.....	15
II. 2. British Title to the Delaware Settlements. Brief, pp. 217-254.....	15
II. 3. Delaware Colonies as an Appurtenance of New York. Brief, pp. 254-261.....	15
II. 4. Title under the Duke of York's Deeds. Brief, pp. 261-280	21
II. 5. The invalidity of Deeds of Feoffment. Brief, pp. 280-283	21
II. 6. The Grant of March 22, 1682/3. Brief, pp. 284-288	21
II. 7. The Right of the Crown to Grant the Bed of Delaware River or Bay. Brief, pp. 288-295	21
II. 8. The Circular Boundary. Brief, pp. 296-318..	67
II. 9. The Boundary Maps. Brief, pp. 318-349.....	68
II. 14. Surrender of Grant of March 22, 1682/3. Brief, pp. 401-408.....	69
II. 17. Logan Correspondence. Brief, pp. 485-504....	71
II. 15. The Dover Document. Brief, pp. 409-435.....	74
II. 16. Colonial Organization and Legislation. Brief, pp. 435-495	78
II. 18. Penn-Baltimore Controversy over Title to Three Lower Counties. Brief, pp. 505-525	80

TABLE OF CONTENTS (Continued)

	PAGE
II. 19. The Case of Penn v. Baltimore. Brief, pp. 525-544	82
II. 20. Penn's proposed Surrender of Government. Brief, pp. 544-561.....	87
II. 21. The Earl of Sutherland's Petition. Brief, pp. 561-566	89
II. 22. Miscellaneous Proceedings. Brief, pp. 566-571	90
II. 23. Subsequent Construction. Brief, pp. 571-584..	91
II. 24. Title to Islands in Delaware River and Bay. Brief, pp. 584-589.....	92
II. 25. Royal Approval of Deputy Governora. Brief, pp. 589-609	93
II. 26. One-half of Profita. Brief, pp. 609-615.....	94
II. 27. Silence of Penn on the Grant of March 22, 1682/3. Brief, pp. 615-618	95
II. 28. Repudiation of Penn Title. Brief, pp. 618-639.	96
II. 29. Pea Patch Island Case. Brief, pp. 640-711.....	101
II. 33. The Doctrine of Equitable Estoppel. Brief, pp. 727-746	106
II. 34. Penn's Right by Prescription. Brief, pp. 747-748	107
Conclusion	108

IN THE
Supreme Court of the United States.

No. 19 Original. October Term, 1929

STATE OF NEW JERSEY,
Plaintiff,
v.
STATE OF DELAWARE,
Defendant.

REPLY BRIEF OF DEFENDANT BEFORE SPECIAL MASTER.

This reply brief will be devoted to answering certain of the arguments advanced in Plaintiff's first brief, and will follow the subject headings in Plaintiff's brief.

I. Points 4 to 21, Inclusive. Brief, pp. 20-146.

Under the heading of points four to twenty-one of the first division of the argument, Plaintiff's brief discusses common law rights in tidal waters and certain modifications of the common law that arose in the American colonies. It is urged that these changes in the common law were binding upon William Penn and operated to defeat his title to the bed of the Delaware River east of the main ship channel within the twelve-mile circle.

To the statement of the common law of England respecting tidal waters we take no exception. In answer to the statement that the common law prevails in Delaware (Brief, p. 25), we would point out that the common law

of the State of Delaware differs from the common law of England with regard to the foreshore in that in Delaware the owner of lands fronting on navigable rivers holds to low-water mark instead of to high-water mark.

Harlem & Hollingsworth v. Paschal, 5 Del. Ch. 435;

State v. Reynolds, 5 Harr. 484, 486.

This modification of the English law is undoubtedly due to custom and usage.

On pages 36 to 72 of the brief, the argument is developed that from earliest colonial times the inhabitants of New Jersey were accustomed to exercise certain riparian privileges not recognized by the strict doctrine of the common law, including particularly the right to wharf out to at least low-water mark.

Plaintiff also refers to the rights of navigation and of fishery which existed in the inhabitants of the province of New Jersey, but these rights, as we shall hereafter show, were common to all British subjects and are in no wise based upon colonial custom. The right of *several* fishery that exists in New Jersey is undoubtedly the growth of a colonial custom.

Plaintiff argues that the right of the citizens of New Jersey to wharf out is in some way inconsistent with or adverse to the ownership of the subaqueous soil of the Delaware River by William Penn. This contention is without merit. In the first place the New Jersey cases relied on by Plaintiff seem to limit this right to low-water mark.

See *Beff v. Gough*, 23 N. J. Law 624, 668, where the Court of Errors and Appeals said:

"The facts and considerations above stated, it seems to me, establish not only a usage originating

with the first settlement of this state, coextensive with its limits, and until recently unquestioned, for the owners of land adjoining to its navigable waters to appropriate to their exclusive use the shores of such waters to the low water line, but that this usage has been sanctioned by the courts and by repeated legislative enactments too unequivocal to admit of dispute and too plain to be disregarded."

Whether or not the grant to the Duke of York and the grant of the Duke of York to Berkeley and Carteret carried title to the foreshore of the Delaware River and Bay, it is a fact that the State of Delaware has never claimed any title above low water mark on the New Jersey shore, so that the existence of an ancient right to wharf out to low water mark in the inhabitants of the Province of New Jersey is in no way inconsistent with the Penn title.

In the second place, however, viewing the matter in a much broader light, the law in most of the States of the Union recognizes the right of a riparian owner, in the absence of legislative restriction, to wharf out for the purpose of obtaining access to the navigable portion of the river. See the discussion in Volume 1, Farnham on "Waters and Water Rights," sections 62-66; and the review of the State decisions by Mr. Justice Gray in *Shively v. Bowley*, 152 U. S. 1.

The courts of the State of New Jersey, however, not recognizing the title of the riparian proprietor below high water mark, have of necessity somewhat limited these rights. In the State of New Jersey the riparian owner has no title below high water mark. This was the common law of England. The right of the riparian owner in New Jersey to wharf out is not based on any theory of title to the foreshore or to the subaqueous soil of the river. It is

a right which is in the nature of a burden upon the ownership of the foreshore and subaqueous soil. It is a right which is recognized at least as fully, if not more fully, by the laws of the State of Delaware. The holder of such a right does not hold it adversely to the State as the owner of the subaqueous soil but in effect derives it from the State. It follows, therefore, that the existence of this right and its use by the erection of a wharf is not an act which is hostile to the State as owner and can not be made the foundation for a claim of adverse possession.

The New Jersey doctrine of riparian rights is stated by Justice Potts in *Bell v. Gough*, *supra*, as follows (p. 681):

"The remit is, that though the legal title of the Messrs. Colea, under whom the defendant in error holds, extends only to the line of ordinary high water mark, yet they possess rights, as riparian owners in the adjacent shore and waters, of which they cannot be divested without their consent, or compensation; that the land between high and low water mark belongs to the state for the use and benefit of the public, but that this title cannot be granted to a private person for a private use; that the act of 1836 is inoperative and void, and that, consequently, as no title passed from the state to those under whom the plaintiff in error claims, she has failed to maintain her plea, and the judgment below must be affirmed."

In *State v. Jersey City*, 25 N. J. Law 525, Judge Ellmer of the New Jersey Supreme Court said:

"It must now be accepted as the established law in New Jersey, that the right of the owner of lands bounding on a navigable river extends only to the actual high water mark, and that all below that mark belongs to the state. The inchoate right, if such it

may be called, which the proprietor of the upland has, either with or without a license, to acquire an exclusive right to the property, by wharfing out or otherwise improving the same, gives him no property in the land while it remains under the water. It may be granted by the state to a stranger, at any time; before it is actually reclaimed and annexed to the upland. Such is unquestionably the common law, and I am aware of no alteration of it in this respect in New Jersey. Some of the judges seem to have expressed a different opinion in the case of *Bell v. Gough*, before the Court of Errors, but no case has been decided which establishes a different doctrine. In that matter, I concur myself with the opinion expressed by Judge Randolph. 2 *Zeb.* 491. If the blocks and lots covered with water had been in this case valued and assessed entirely distinct from the upland, I should have felt constrained to hold that the assessment could not be supported."

The result of these decisions in New Jersey would seem to make it clear that before the New Jersey legislature undertook by various riparian acts to protect the riparian rights of the owners of the upland the common law doctrine prevailed and was modified only in so far as the riparian owner actually reclaimed the shore or exercised his riparian right by the actual erection of a wharf.

It follows from the foregoing decisions of the New Jersey courts, as well as from the general law on the subject, that the recognition of such riparian rights in colonial times never had the effect of passing title to the soil to the riparian owner. Much less did it have the effect of vesting title in the province of New Jersey to the bed of the river east of the main ship channel. Plaintiff does not expressly claim that the recognition of these riparian rights vested such title in the Province of New Jersey. Yet

that must be the contention of Plaintiff, because otherwise the argument is beside the point.

Plaintiff's brief says (p. 70):

"The foregoing authorities show that, independent of the common law of England respecting public rights in tidal waters, a modification of the strict common law rule came into practice and common usage among the settlements on Delaware river and bay at the beginning of colonial history, as a matter of necessity arising from their situation and conditions, which had the implied, if not the actual, approval of the Crown and its successors in sovereignty. Under such modifications of the common law rights have sprung up, in favor of plaintiff and its inhabitants in the bed of tidal waters of Delaware river and bay, east of the ship channel, which are binding upon defendant, whether it derives its title from Penn (who was one of the West Jersey Proprietors at the times mentioned) or from the Crown."

We agree that under colonial usage and custom in both the Province of New Jersey and the Colony of Delaware riparian rights sprang up, unknown to the English common law. What of it? Such rights are in no wise inconsistent with the fact that the ownership of the subaqueous soil was vested in William Penn, and the recognition of such rights could not avail to change the boundaries of the colonies.

We are here concerned with a question of title and boundaries. If the riparian owner's right to wharf out vested in him no title to the foreshore or the subaqueous soil of the river then the title thereto remained unaffected by the existence of the right. Moreover, that right flowed from custom and usage sanctioned by the proprietaries of both colonies. It is elementary that one who claims a

right derived as grantee of another does not hold adversely to the other and can not by the exercise of that right acquire title by adverse possession.

The conclusion, therefore, is that the exercise of riparian rights by the inhabitants of the Province of New Jersey was not in any sense hostile or adverse to the ownership of the soil by William Penn. It was a right which he and all other proprietaries of American colonies accorded to the inhabitants of these colonies.

Plaintiff is here seeking to establish title to the subaqueous soil of the Delaware River east of the main ship channel. Such title can not be established by pointing to the exercise of riparian rights by the inhabitants of the Province of New Jersey. Even if it could be argued that the riparian owner acquired title by adverse possession to the subaqueous soil underneath the wharf erected by him, such adverse possession would not inure to the benefit of New Jersey and would not shift the boundary line between the States.

It is to be noted that Plaintiff does not expressly claim that the exercise of riparian rights by the inhabitants of the Province of New Jersey had the effect of establishing title in the proprietors of New Jersey to the middle of the main ship channel. We do not see how such a proposition could be argued. Yet unless Plaintiff is prepared to make such an argument it is not seen how the existence of wharf rights has any bearing on the case. If the Province of New Jersey at the time of the Revolution did not hold title to the eastern half of the Delaware River and if the riparian owners on the western shore of New Jersey did not hold such title—and both these propositions seem to be admitted by Plaintiff—then the title was of necessity in William Penn by virtue of the deeds of feoffment and the letters patent of March 22, 1682/3, from the Crown.

To put the matter in another way, the right of the riparian owner to wharf out does not rest upon title to the subaqueous soil, and a claim to ownership of the subaqueous soil by the State of Delaware is not inconsistent with the use of such subaqueous soil by the riparian proprietor for the purpose of wharfing out.

Let us suppose that after a lapse of time a riparian owner who has erected a wharf upon subaqueous soil in front of his property tears down that wharf and does not rebuild it. Surely it can not be said that he holds title to the subaqueous soil which is no longer covered by a wharf. He still has the right to build another wharf, but the ownership of the soil is not thereby changed.

Let us suppose again that a valuable mineral deposit is found in the subaqueous soil of the river within the area circumscribed by the piling of the wharf erected by the owner of the upland. Could it be contended for a moment that the owner of the upland, by virtue of his having erected a wharf, would have any title to such deposit? Clearly not. Nor could the riparian owner contend that by virtue of his long possession of the wharf he had acquired a title by prescription to the subaqueous soil.

As pointed out in our original brief, nearly all the New Jersey grants of riparian rights within the twelve-mile circle, and practically all the improvements on the New Jersey shore within the twelve-mile circle, were made or built after the institution of the prior suit in 1877. The failure of the State of Delaware to attempt to tax these improvements during the pendency of this suit can not be ascribed to laches nor can any acquiescence be imputed to the State during that time.

Riparian rights of the New Jersey side of the river were recognized by the Compact of 1905, quoted on page

126 of Plaintiff's brief. Article VII of this Compact recognizes, by implication, the rights of riparian owners on the New Jersey shore. It is to be noted that Article VII refers to "riparian lands and rights". Subaqueous soil is not comprehended with the term "riparian lands".

Hart v. Board of Levee Commissioners, 154 Fed. 559;

Bathgate v. Irvine, 58 Pac. 442, 128 Cal. 135;

Rome Railway & Light Co. v. Loeb, 141 Ga. 202, 80 S. E. 785, Ann. Cas. 1915 C. 1023.

Article VII of the Compact is obviously merely a recognition of the rights of the riparian owners of New Jersey and a cession to the State of New Jersey by the State of Delaware of jurisdiction to regulate those rights. That the Compact of 1905 left the title to the subaqueous soil unaffected is clear from the express language of Article VIII.

Plaintiff's brief says (p. 126):

"That compact, alone, is sufficient to sustain the title of plaintiff and its grantees in the bed of the river east of the ship channel, independent of all other considerations."

It may be safely said that this contention is one that did not occur to Plaintiff's counsel until after the suit was filed. The Bill of Complaint in this case (Rec., pp. 4-18) sets forth with great particularity the source of Plaintiff's claim of title to the eastern half of the Delaware River and nowhere mentions the Compact of 1905 as the source of that claim. Moreover, the construction placed upon the Compact at all times since its execution and approval by Congress has been the reverse to that now contended for by Plaintiff. Since 1907 the United States has accepted

several customs of subaqueous soil from the State of Delaware east of the ship channel within the circle. It is safe to say that the contention made in Plaintiff's brief in this case is the first time that the idea has ever been advanced that the Compact of 1905 settled the boundary dispute within the twelve-mile circle. Certainly if it had settled the dispute by ceding to New Jersey the eastern half of the river there would have been no occasion whatever for the language of Article VIII of the Covenant which expressly reserves the boundary question from the settlement.

On pages 132-146 of the brief Plaintiff discusses the exercise of admiralty jurisdiction and rights of navigation upon the assumption that these were acts of dominion by the province of New Jersey over the Delaware River. This assumption is wholly unfounded. By the English common law the right of navigation of a navigable river was a right in the subject, protected by the Crown, and every grant of the subaqueous soil of a navigable river was subject to this right. The exercise of admiralty jurisdiction was the exercise of the Royal prerogative applicable alike to colonial and proprietary colonies, and in no wise inconsistent with the ownership of the subaqueous soil by William Penn.

It is stated (Plaintiff's brief, p. 132) that defendant has produced no record of any judicial or other proceeding which shows the exercise of jurisdiction by the State of Delaware within the twelve-mile circle. This statement ignores the evidence that was presented to the arbitrator in the *Case of Pea Patch Island*, a summary of which is found in the opinion, and ignores numerous instances of the exercise of jurisdiction testified to by the witnesses in the former suit. (Exhibits 691, 692, 694, 712.)

Plaintiff's brief (p. 140) refers to Defendant's Exhibit 569 as an exhibit introduced "to show exercise of admiralty jurisdiction in New Castle." The exhibit was introduced for the purpose of showing that the Admiralty Court which, as Plaintiff rightly says, was a Royal Court and not a Colonial Court, judicially construed the phrase: "territories thereof and thereon depending" as meaning the Delaware counties. Many of the acts of the Pennsylvania Colonial Assembly contained this phrase and its meaning is thus judicially determined in the case summarized in Exhibit 569.

I-24 Plaintiff's Rights by Prescription. Brief, pp. 192-205.

In Plaintiff's discussion of this point numerous authorities are cited to establish the legal proposition that, when one State or nation has continuously enjoyed and possessed certain territory with the acquiescence of the other nation or State such possession and acquiescence is to be taken as the strongest possible evidence of title. The correctness of this general principle of law is not questioned. An examination of the authorities cited, however, shows that the principle is applicable only when the possession and claim has been acquiesced in by the other State or nation. It can never be applied when there has been a continuous dispute and an assertion of a contrary claim by the other State. Thus, in *Indians v. Kentucky*, 135 U. S. 479, an excerpt from which is quoted on pages 200-202 of Plaintiff's brief, the Supreme Court says:

"This long acquiescence in the exercise by Kentucky of dominion and jurisdiction over the island is more potent than the recollections of all the witnesses produced on either side."

Conclusion.

In conclusion we invite the Master's attention to the fact that the fundamental question here presented is the boundaries of two of the original Thirteen Colonies of the Union. Each colony owes its origin to a Royal charter. The boundaries of each colony were fixed by such charter. If we assume that all of the arguments on behalf of the Plaintiff are sound (except the argument that the letters patent of March 22, 1682/3, were surrendered, which is clearly unsupported by the record), if we assume that *William Penn did not receive the benefit of the letters patent of March 22, 1682/3, if we even assume that the Delaware Act of 1794 constituted a binding election by the State to derive its title from the Crown of England*, in short, if we assume that *the Penns had no title*, yet the fact remains that the boundaries of the Colony of Delaware at the time of its origin were fixed by its title deeds and that these boundaries included the bed of the Delaware River within the twelve-mile circle. If we assume that the Duke of York had title to the lands and waters of the Colony of Delaware at the time he ascended the throne, then it follows that that colony existed as a separated colony with *these boundaries so fixed by his letters patent until the American Revolution*, and that upon the recognition of statehood by the Crown of Great Britain the State of Delaware succeeded to the rights of the Crown with *the boundaries fixed in the letters patent to the Duke of York*.

Plaintiff's brief seems to recognize the soundness of this argument, and this is probably the reason for the vigorous attempt, never before made, to prove that the letters patent of March 22, 1682/3, were surrendered. That attempt has failed as there is no evidence whatever to sup-

port it. It of necessity follows that the letters patent of March 22, 1682/3, which gave the Royal assent to the creation of a new colony, fixed the boundaries of that colony and included within it as an integral part thereof the bed of the Delaware River within the twelve-mile circle.

Respectfully submitted,

ERUBEN SATTERSWAITE, JR.,
Attorney General of the State of
Delaware.

CHARLES A. SOUTHERLAND,
Special Counsel.

WARD & GRAY,
Of Counsel.

ORAL ARGUMENT

BEFORE MASTER

Delaware Boundary Case

Stenographer's Record

Fourteenth Session.

STATE OF NEW JERSEY

vs.

STATE OF DELAWARE.

**Oral Argument Before
the Special Master.**

Baltimore, Maryland

September 12, 1932

DUANE E. MINARD,
for Plaintiff.

CLARENCE A. SOUTHERLAND,
for Defendant.

Argument of Duane E. Minard for New Jersey.

[1054] (Pursuant to adjournment, proceedings were resumed this 12th day of September, 1932, at 10 A. M., at Baltimore, Maryland.)

The Master: Are you ready, Mr. Minard?

Mr. Minard: Yes. If your Honor please, the plaintiff filed its main brief, prepared, arranged and printed in accordance with Rules 26 and 27 of this Court. According to the practice, it has also prepared and filed proposed findings of fact, conclusions of law and form of decree arranged and printed also in accordance with the rules. 10

There has been submitted this morning what is called an outline of the argument. There is no intention to argue the case throughout; it is a long case, and involves a great deal of material and a great many questions which could not be argued to any advantage. What may be said in oral argument, extemporaneous, is not likely to be as accurate and carefully arranged as [1055] printed briefs, therefore, the plaintiff relies on the printed brief more than upon the argument. Of course, on both sides there will be differences respecting the conclusions reached in the briefs or in the arguments. Plaintiff takes exception to some conclusions stated in the defendant's brief, and defendant, doubtless, has like objections to statements in the plaintiff's brief. The plaintiff's brief, however, the only excuse that can be offered for the size of it, was the desire to include a comprehensive review of the fact and law, with appropriate quotations so the Master would have conveniently before him what was being talked about, instead of merely putting numbers in brackets, and having him refer to a mass of material. 20 30

The Master: You do not have to make any apology for it. I found it very carefully prepared.

Mr. Minard: I had some misapprehension about the size. It was very much reduced in the original and in 40

Argument of Duane E. Minard for New Jersey.

the gallery, but comprehensive statements were desired. What will be said now is merely a review or disjointed discussion of some points which seem to require [1056] emphasis. Now in this argument, reference has been made to defendant's and plaintiff's brief in brackets for convenience, so that the points here discussed may be verified by the page number of either brief, as the occasion requires.

Now, there are certain conceded facts which can be stated and disposed of and laid aside, so that we need not concern ourselves any more about them. Defendant admits that by deeds or letters patent of Charles II to the Duke of York in 1684 and confirmatory letters patent of 1674 for the territory from the St. Croix River to the Delaware River, including New Jersey, but omitting Connecticut and Massachusetts, that those grants conveyed no title in or west of the Delaware River or Bay; they stopped on the east side of the River and Bay. That is agreed to by both parties.

For all purposes also it is to be noted that that destroys the claim that has been made from time to time by Penn and his successors, that the Duke's right to make the deeds of feoffment was predicated upon the grant of the Delaware territory. That is frequently [1057] recited in the record as the basis of the Duke's title of feoffment on the occasions when those deeds were questioned, so that that disposes of that source of title.

It is also admitted by the defendant that neither the deeds of feoffment of 1682 nor the letters patent of March 22, 1682-3 to the Duke of York conveyed any part of the Delaware River or Bay below the 12-mile circle, and that title thereto remained in the Crown until the American Revolution, when that title was relinquished to the States by the Treaty of Paris. It follows that the common boundary, in that territory, at least, should be determined

Argument of Duane E. Minard for New Jersey.

according to established rules of law, and not according to any previous grant or previous title.

Now, your Honor has probably observed that plaintiff has been at some pains, from 1782 to the present time, on a number of occasions, to appoint commissioners and try to get defendant to appoint [1058] commissioners to settle this disputed boundary line, the dispute having arisen in April, 1688, but the defendant was unwilling at any time to appoint commissioners for that purpose, and although it did appoint commissioners at times, it limited their scope to fisheries, and excluded consideration of the boundary. Now, plaintiff has consistently tried for that length of time, to get this boundary question settled, and if it has gone into the matter of the proof and the brief without stint of labor or detail, it is because the plaintiff in this case has nothing to gain by a favorable decision but it has everything to lose by an unfavorable decision, because nothing that it now asks— I will put it the other way—everything that it now asks it has used and enjoyed and exercised jurisdiction over from the beginning of the settlement and there is not a thing in this case that plaintiff expects to get now, or any addition to that which it has already had all these years, without interruption, except in the fisheries case, when this Court [1059] found, as a matter of fact, in 1877 that the rights which plaintiff claimed at that time east of the middle of the channel of the Delaware River belonged to it and an injunction was issued to restrain interference with that right; now, on the other hand, defendant has never had or used or exercised possession of anything which it now claims. Therefore, it has everything to gain by a favorable decision and absolutely nothing to lose by an unfavorable decision.

Now, the controversial questions are two: They agree that the boundary below the 12-mile circle is the middle

Argument of Deane E. Minard for New Jersey.

of the Bay, therefore, the term "middle" is the question to be determined, with respect to the boundary below the 12-mile circle, what is meant by the word "middle," as a matter of law.

The second question is, whether the defendant acquired title to the entire river to low-water mark on the east side, by deed of feoffment, from the Duke of York to William Penn, for the town of New Castle, and the letters patent of March 23, 1682-3.

[1060] Those are the two questions, the only two main controversial questions in the case.

The Master: Will you please repeat the second question?

Mr. Minard: The second question is, whether the defendant, State of Delaware, acquired any previous title prior to the Revolution, from the deeds of feoffment and the grant of 1682.

Now, with regard to the term "middle of the river," plaintiff claims that middle means the thalweg or main ship channel; defendant claims it is the geographical center. Now, how the geographical center is to be determined, they have given us no indication. On the exhibit, Exhibit 4, the geographical center was ascertained by measuring at right-angles to the main ship channel, the distance between either shore. They took as a basis right angles, because the configuration of the shore is such that unless you establish some geographic basis, you will get all kinds of distances by shifting [1061] your ruler in any direction, so that some sort of basis was desirable, and that is the basis that was used.

Now, we say if the geographical center is the proper rule in Delaware Bay, then that rule necessarily involves recognition of the *fouces terrae* rule, which prevailed in England, with regard to determining the boundary of

Argument of Deane E. Minard for New Jersey.

counties, shore counties. That rule, originally stated, or as it grew up in the early practices, was limited to heads sufficiently close together to permit a person standing on one to observe another person on the other headland and to observe what he was doing. That was a limited distance. The rule was, instead of measuring the water boundaries of counties from the irregular shore line, where there were indentations and coves—pronounced indentations and coves—a straight line was used between the headlands and that was the basis of measuring the limit of the counties to distinguish between the territory that belonged to the counties and the territory, the marginal territory, that belonged to the King.

[1062] Now, that rule, however, as adopted in this country in a good many cases, has been modified very much from the old English rule. For instance, Chancellor Kent, in discussing that rule in this country, used the headlands of Montank Point and Cape May, Nantucket Island and Montank Point, Cape Cod and Nantucket. He covered the whole Atlantic Coast and gave specific instances where the rule of *fouces terrae* should be applied. The Montank Point to Cape May area, which he used, was a distance of 228 miles, and of course, even beyond, but the Attorney General of the United States in 1783, applied the rule to Cape May and Cape Henlopen, 12 miles apart, and the Alabama Claims Commissioners applied the rule between Cape Charles and Cape Henry, a distance of 12 miles. If that rule was applied, as some such rule seems to be necessary in an irregular shore line, then a line would be drawn from Cobansey light and Ben Davis Point, 5.29 miles, from Ben Davis Point and False Egg Island Point, 8.75 miles, from Egg Island [1063] Point and Cape May Point, 17.28 miles. However, that is merely a suggestion; we do not think that the geographical center rule applied in Delaware Bay.

Argument of Duane E. Minard for New Jersey.

States Coast Pilot, in all the issues down to 1880, that Delaware Bay is merely a widening of the river, the Bay is constantly widening by erosion of the soft material on the shore. That material is not washed out into the sea, it simply dissolves and drops down.

There is no denial of the proof; that is not referred to.

Now, then, we rely secondly upon the decisions for the application of that rule. Those decisions are in the plaintiff's brief at the pages mentioned here in this outline. We rely, also, upon the practical difficulties that would result from a zig-zag boundary, through a territory like oyster fields where actual dredging and occupation is practiced. We cite the cases to show that a boundary ought to be one to settle controversies and not inspire them, and the [1068] corollary of that proposition, the very impractical results from a boundary based upon a geographical center, an unadulterated geographical center. We also rely upon that main ship channel route in the Bay because of the long continued exercise of jurisdiction and uninterrupted regulation, that is, by plaintiff, improvement and use of the bed of the river and bay, without objection, interference or adverse claim of title or jurisdiction, but with the acknowledgment and recognition of that title and jurisdiction in defendant's statutes, by its oyster reports of 1910 made in conjunction with the United States Bureau of Fisheries and by the compact of 1903, which expressly acknowledged and affirmed defendant's rights. We also rely upon the uniform recognition of plaintiff's title therein by all departments of the Government of the United States, and we have cited those in the brief, as early as 1797, *Coryfield v. Coryell*, *Keos v. Rice*; and in the Light-house occurrences, where no grant of land to the United States Government has [1069] ever been sought from Delaware for lands in the river and bay, including Ship John Light. We urge those reasons to the extent that they

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Argument of Duane E. Minard for New Jersey.

amount to a proof, as has been held in some of the cases, quite a good many of the United States Supreme Court cases. Of course, we don't follow that principle in the twelve mile circle. It happens that in the Egg Island Flats they applied to New Jersey and not to Delaware, but that was years ago before the present controversy was imminent. They did get a grant for Dan Baker Shoal from Delaware without one from New Jersey, but they did apply, but it happens we have a Constitution in our State that contains a provision that the moneys received for the sale of subaqueous soil is the property of the school fund, and the Attorney-General at the time took the position that some compensation was necessary under that constitutional provision. However, where the grants have been made, a nominal sum has been agreed upon, not in any way full compensation. That is the only instance. Defendant's brief says it was decided in that case that the grant [1070] could not be made and Mr. Satterthwaite is correct in that but what was meant was it could not be made without compensation.

Now, the application of the thalweg rule within the 12-mile circle is discussed elsewhere in the brief, and so much for the middle of the channel.

The title to the 12-mile circle, plaintiff admits that the Dabs got no title under the grant of 1664 or 1674, and they admit he acquired nothing by conquest during 1664. Of course, that is discussed in plaintiff's brief. The Duke was not in the command, he had nothing to do with the expedition, he had not the slightest thing to do with it, except that the King asked him as Lord High Admiral of the Crown to assign certain ships and men, which he did. Of course, they very properly admit that he acquired no jurisdiction. They claim he acquired a *de facto* right of government there, which of course, is answered in plaintiff's brief. He could acquire nothing

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Argument of Deane E. Mincard for New Jersey.

by the Magna Charta and the laws and customs of England, and they absolutely forbid any idea of an estoppel. However, we let the estoppel go, because if the Court finds there was an estoppel, so much the better. We were entitled to the benefit of that estoppel ahead of Penn by two years' prior claim.

Now, the description in the letters patent of March 1682-3 is the same as in the deeds of feoffment contained, and it is agreed in many places in the record that that boundary, that circular part, was intended to conform [1073] to the southern boundary of Pennsylvania, in other words, it was used in the deeds of feoffment copied out of the Pennsylvania grant, just the same as you have a boundary line for a lot, you use that boundary line as one of the boundaries of the next lot, and that is exactly what happened here.

This description was given to the Duke of York by William Penn. It is so recited in one of the exhibits here referred to and he called it a natural boundary. We know what a natural boundary is, the legal definition of a natural boundary is a natural object like a stream of water, but where it is a stream of water, it is the middle of the stream, and it says that he gave him a natural boundary. The deed of feoffment for the town of New Castle has been judicially construed by the courts, it has been judicially construed by the Privy Council on a number of occasions, it has been practically construed by Penn and all of his successors subsequent to that time as extending anything in the river east of the main ship channel. The decisions of the Privy Council excluded all parts of the river, and it also excluded Reedy Island, [1074] which lies adjacent to the shore of Delaware, by express order of the Council, a judicial determination by the highest court in the British Empire.

Argument of Deane E. Mincard for New Jersey.

under the instructions issued by the Crown to those Commissioners. They also admit that the Duke had no record title to the Three Lower Counties. Now, the [1071] claim of possessory title or de facto right which defendant claims and that he was permitted to exercise that dominion with the consent, either expressed or implied, of the King and Privy Council by virtue of his kinship with the King, even though defendant does not claim that the *de facto* government extended to any part of the river, that is contrary to the facts and to the law. Plaintiff's brief shows that those territories belong to the Crown as part of the public domain, that they could not be alienated from the Crown except by letters patent or act of parliament. The Duke of York was repeatedly adjudged a private citizen and this alchemy of relationship has no place whatever in British Constitution or law.

Now, then, any title which Penn had to the bed of the river within the 12-mile circle and any title which the defendant, as the successor under Penn, as they claim, has, must depend upon the deeds of feoffment and the letters patent of March 22, 1682-3. The Duke never conveyed anything to Penn after the grant of 1682-3, and they answer that by saying an estoppel was created under the earlier deeds of feoffment. We die- [1072] case that in the brief. An estoppel did apply between private parties applying to private properties, but estoppel never applied to royalties or royal properties. They were open letters, nothing secret, that was the essence of letters patent, that they should be open.

Now, estoppel never applied to royal property or to prerogatives of royalty in the bed of waters. Now, so far from estoppel, we need but refer to history to show how many cases there were where the King made a grant and then made a grant to somebody else. The King was not controlled, except by his parliament and

Argument of Duane E. Minard for New Jersey.

The deeds of feoffment were invalid for the following reasons: (a) The Duke had no title to convey. (b) The form of conveyance rested on possession and there is no evidence of either actual or constructive possession in the Duke. (c) The form of conveyance did not pass incorporeal hereditaments or royalties, such as the powers of government or the bed of tidal waters held by the Crown as trustee for the public.

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I would prefer the Court to ask questions as I go along, because your Honor can see I am not attempting to make an oration and I would very much rather deal with questions as they come along than to wait and give to the Master that mental anxiety of keeping the questions he wants to ask in mind until the conclusion of my argument.

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The Master: That is entirely in your hands. If you have prepared to argue and want to present it as a complete argument, I certainly have no disposition to [1076] interrupt until you have completed. If you have not done that, and it does not interrupt your train of thought, then as you go along I will ask questions.

Mr. Minard: I do prefer to have you do that, because as I stated before, I am not attempting to make a comprehensive argument here.

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The next defect in the deeds of feoffment is that in such a conveyance the consent of the lord, in this case of the King, was necessary and it was not given.

Next, that form of conveyance was abolished in 1283-90 by act of parliament, so held by Lord Mansfield in *Taylor v. Horde*.

If the description in the deeds of feoffment and the letters patent of March 22, 1682-3 had adopted a complete circle, as now claimed or virtually claimed by defendant, they would have included most of Salem and the greater

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Argument of Duane E. Minard for New Jersey.

part of Gloucester County in New Jersey, that is, on the east side of the river.

The Master: Mr. Minard, may I interrupt you there? Do I understand that by virtue of a deed of feoffment, which was a device whereby a deed was made [1076] from someone claiming to have title to another, and every of seisin followed upon that deed, title was good as against the world, unless of course it was challenged by someone having a better title, I presume.

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Mr. Minard: Yes, that is correct, but providing--

The Master: Is that true?

Mr. Minard: That is true of the effect of such a deed provided conditions precedent existed, which I have enumerated; if those conditions precedent did not exist, then the conveyance could not be made by deed of feoffment, in other words, there had to be possession on the part of the grantor. There had to be some color of title. I couldn't give a deed of feoffment for this building and have some friend of mine come down here and put me in possession. Of course, I wouldn't get anywhere because the nature of the proceeding wouldn't be good. A deed of feoffment was not a proposition where if you could get a deed of feoffment and get somebody to put you in possession, you were all right, if you could get away with it; that is not the thing at all. Certain conditions precedent were essential, which I [1077] have enumerated here, before a deed of feoffment could validly issue, to say nothing of the effect of it. Something was necessary before the circumstance could arise under which a deed of feoffment could be given and those are what I have attempted to enumerate.

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As I said, that circle would have included most of Salem and part of Gloucester Counties on the east side of the river. That such was the intention of the parties has never been and is not now claimed. The Duke of

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Argument of Duane E. Minard for New Jersey.

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York in 1690 had confirmed his deed of 1684 for that territory to Penn and others, as Trustees for the proprietor. There is no more reason to suppose the intention of the Duke to convey to Penn in 1682 the land in the river, than to suppose that he intended to convey the land east of the river or within a semi-circle. The words "and the said river and the soil thereof" are explained in the record. From the earliest days the Delaware settlements were referred to as "in Delaware River," such as the man lives in Fall River or any other place by that name. It was so designated in deeds and in documents, obviously not meaning in the river, but [1078] describing upland, with trees as corner marks, and so on; that was merely the vernacular of the time and when this deed for the town of New Castle stated "and said river and the soil thereof," there were other settlements intended to be included, Wilmington and further up towards what is now Christians, there were other settlements in Delaware River, so-called, that were intended to be included. As for the idea that it included the river and the soil in it, why, every grant that has ever been intended to be made of the bed of a stream calls it the bed or bottom of the stream. There is no soil of the river; it is impossible. They say that is similar to the grant to Lord Baltimore and the grant of the Potomac, but it is quite different. Lord Baltimore's grant, by a comprehensive description, included the Potomac River by running to the southerly side thereof. What would a circular arc do to give Penn Delaware River? If they wanted to give him the river, there is no reason why they should not say to the east side of the river, just as the grants to the Duke said to the east side of the river. A little circle of twelve miles in diameter did not in- [1079] clude the river. If there was any intent to give him the river, as the grant to

Argument of Duane E. Minard for New Jersey.

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Lord Baltimore gave him the Potomac, they would have said so. There is no ground for such a construction. Since the title of the Crown extended to high-water mark, on the tributaries as well as on the river, defendant's claim to low-water mark only on the river is an absolutely arbitrary limit. It is not supported by any rule of law or any rule of reason. There is no apparent reason why the Court should adopt an arbitrary rule. If they did not get any upland in that circle, then the title was to high-water mark, because that is where the King's title lay, and there is no reason to stop at low-water mark because that is purely an arbitrary location and that low-water mark suggestion comes in this case for the first time in the history of this controversy. The case in 1877 was tried on the theory that it included the upland and the exhibits in that case show it—and we offered some of them here—it included the upland, and the testimony offered in that case to show grants to Penn in the upland from the proprietors was intended to [1080] estop him from claiming an adverse title under the deeds of feoffment.

The Master: Mr. Minard, that was not done in a recent case involving land opposite the District of Columbia, where the boundary was carried to the high-water mark on the Virginia shore.

Mr. Minard: I know that. Those cases were cited in our brief to show—yes, that is so—there is no reason why high-water mark should not be the case here as low-water mark. We cite those cases to show this, in two of those cases, Smoot Sand & Gravel, and the Colony something case, the Court held that the arbitration had made the subject *res adjudicata*, and we cite them merely to show that the arbitration is not binding on anybody not a party to it.

Argument of Duane E. Minard for New Jersey.

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Argument of Duane E. Minard for New Jersey.

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Argument of Duane E. Minard for New Jersey.

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Argument of Duane E. Minard for New Jersey.

Council, by its order, adjudicated to belong to the Crown as late as 1772.

Also, with respect to the circular boundary lines, it is clear and undisputed that it was never regarded as a complete circle; it was expressly stated to the contrary and it was always described as extending northward and westward, never eastward or southward, of New Castle. Penn repeatedly described that line as two-thirds of a semi-circle, the westerly end of which would meet the fortieth degree of latitude west of New Castle. The fact that he was mistaken does not alter the fact that in his warrant for survey and his repeated documents afterwards, he described it as 120 degrees. [1083] When surveyors began measuring a line, they took a point on the west side of the river and went north, and then they surveyed the circle to the west side of the river, then they went back and surveyed the rest of it to a certain distance and then quit, two-thirds of a semi-circle, never anything else.

The Master: Now, Mr. Minard, why should anything else have been surveyed, why should anything but a semi-circle have been surveyed? All he was concerned with was the division between Delaware and Pennsylvania, that is, carrying that circle as he said, a semi-circle there.

Mr. Minard: Well, I don't know why anything else should have been surveyed, except this—

The Master: So far as the boundaries of the river are concerned, all you have to do is measure twelve miles up and twelve miles down, you don't have to run a circle.

Mr. Minard: Well, Penn had a reputation of being careful of his own interests, and when the Penn- [1084] sylvania line was adopted before the Federal Constitution, they took the boundary to the middle of the river, took that circular boundary to the middle of the river and Penn will understand they took that boundary to the middle of the river up the channel, and I don't see why they

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Argument of Duane E. Minard for New Jersey.

The defendant's forbearance in regard to that, now expressed for the first time in this case, never before mentioned, if that forbearance is due to the previous conveyance by the Duke, and the occupancy by settlers of the east side of the river, then the middle of the channel must be used because the inhabitants and [1081] government on the east side of the river had claimed and exercised title in the river before the American Revolution, and plaintiff and its inhabitants had claimed and exercised title and made conveyances to the channel for more than half a century before there was any sign of any conflicting claim on the part of the defendant. The first deed we have in the record is 1801, and that, by the way, is the origin of a title to a ferry company which my friend, Mr. Southerland here, incorporated in 1927, and he bought that title and bought that grant from the State of New Jersey and paid taxes to it, paying large sums of money, as late as 1927.

Mr. Southerland: I would still do it today until this dispute is settled.

Mr. Minard: An important phase of the case is the practical interpretation and contemporary construction placed upon the description in the deed of feoffment for the town of New Castle by Penn and his successors, and others in official position under them. There is no instance prior to the American Revolution in which they or any of them claimed or exercised any rights east of [1083] the main ship channel. The only instances of the exercise of any title or jurisdiction in the river at all are the warrants, surveys and grants by Penn and his Commissioners, and they extend 600 feet in the river or to the channel; that was the limit, and one of the warrants, I don't recall there was any grant, but there were warrants for the survey of Beedy Island, several of them, and Beedy Island was one of the islands that the Privy

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Argument of Duane E. Minard for New Jersey.

The only maps in existence that purport to show a boundary on the east side of the river are the United States Geological Survey maps. None of the United States Coast & Geodetic Survey maps show it; no other department of the United States Government has ever recognized that from 1797 to the present time and the United States Government has repeatedly declared to the contrary. These geological survey maps, four of them, show a boundary on the east side of the river and we investigated to find out where they got the information, and the director very courteously and frankly acknowledged that they had merely copied the description from the Act of 1852 of Delaware, and stated that was the best information they had, and until something else appeared, they put that on their map. That, of course, disposes of those maps. The Government undertook to assume no responsibility [1087] for them, whatsoever. They simply took the defendant's self-serving set and followed that.

There were three other maps offered in evidence, a copy of the Department of Docks & Wharves of Philadelphia, a State Highway map, which was not an official map, but merely a sales copy, and a copy of their own road map, which show that, and in all instances, each one of those instances, they had copied the boundary from the geological map, which they had offered in evidence; it went right around to the same source.

Here are a great many maps made before the American Revolution, official maps, Penn maps, maps made by Penn's surveyor generals and others; and they show no boundary east of the river, and it was not claimed at that time.

Now, as to the grant of March 22, 1682-3. The point about the practical construction is this, that until the Act of 1852 of the Assembly of Delaware--

The Master: Fixing the boundary!

Argument of Duane E. Minard for New Jersey.

shouldn't go to the limit of their territory, if they are going to make a boundary.

From 1701 to 1921, the dispute over that circular boundary continued. When it was run in 1701, the Delaware colonists objected to it as incorrect, and that objection remained. It was run several times, by Graham, by Hodgkins, and it was the subject of a tripartite commission, Maryland, Pennsylvania and Delaware, and the State of Delaware never accepted that circular boundary until 1921, and then they said it was the boundary originally established, and the point about it is this, that in the description of that as a semi-circle, or as two-thirds of a semi-circle, and in all of the references to it, from 1701 to 1921, including the re- [1063] citation in the commissioners' report, all they say is, it is the boundary of the deeds of feoffment--the boundary of the deeds of feoffment.

Now, with regard to the maps, there are a great many maps in evidence. We do not regard the evidence of testimony some of those maps as negative testimony, even though defendant so states. When maps are made by royal geographers, when maps are made by order of the Board of Trade, and the entire records of the Lord Privy Council are laid before Mitchell, and he is ordered to make a map with the limits, l-i-m-i-t-s, in French, and l-i-m-i-t-t-a in English, of those territories, there are a great many official maps, Penn's own maps, maps from 1701 down to the present time, by the most eminent geographers, including Pomeroy & Beers, Atlas of Delaware, which is the only official atlas of Delaware. That shows the boundaries of Delaware in colors and the circular boundary stops on the west side of the river, and in spite of the fact that Scharf and Vincent and Conrad, in their histories of Delaware, copy their description [1066] tion of the boundaries of that State from the Act of 1852, the map of Delaware that they put in their histories is the Pomeroy & Beers Atlas map, in all of them.

Argument of Duane E. Minard for New Jersey.

[1088] Mr. Minard: Yes, no Statute of boundary had ever been passed that included any part of the river and that was thirty years or more after New Jersey had passed the first boundary act, establishing its boundary in the channel of the river. Now, it is true that in 1813 it ceded an island to the United States under a negative cession, it did nothing to put the Government in possession, it left the Government to fight that out for itself, which it did. In 1872, it arrested the fishermen, and that attempt was stopped by a finding of fact in favor of the plaintiff, by this Court and by an injunction until the further order of this Court, and no further order of this Court has been made, except to dismiss that case without prejudice.

The Master: May I interrupt you there? What is the full story about the injunction case, was that a preliminary injunction? As I understand, the State of New Jersey filed its bill and asked for a preliminary injunction, filed affidavits, or were depositions taken—

[1089] Mr. Minard: Yes, sir.

The Master: And the Court granted the preliminary injunction, it was only a preliminary injunction, was it not?

Mr. Minard: That is all, but it was not an injunction *pendente lite*, it was an injunction until the further order of this Court upon definite findings of fact outside of the allegations of the complaint. Affidavits were filed in that case, and those affidavits are in the record, that is, they are referred to in the record, and I think they are copied in some of the exhibits, but that was an express finding of the plaintiff's right to fish in the river east of the main ship channel and it was made until the further order of this Court.

I have referred to the practical construction placed upon this map. The only evidence in this case—I wouldn't say evidence, because it is not evidence—the only indication

Argument of Duane E. Minard for New Jersey.

in this case that jurisdiction was exercised in the river and bay from the Delaware side, and I say that advisedly, because in all of this [1090] material that I am speaking of, there is never a suggestion that any State Court of Delaware ever exercised any jurisdiction, the only reference was to Federal Courts. They offer no proof in this case, no documents, no evidence, nothing; all they have here is material imported from the arbitration case, which was not a judicial proceeding, and the testimony was absolutely inadmissible in this case. They say that the testimony offered in the other case is admissible here, but they don't say a word about the testimony in the arbitration case being admissible. It is not by any stretch of the imagination. They import from that case the testimony of witnesses or affidavits; they import from the case in 1903, testimony of other witnesses; they are distinguished men, prominent citizens, United States Marshalls, some of them Federal Judges. They came and performed their patriotic duty and they put their blind eye to the telescope, so to speak, which would have revealed, in fact, something entirely different. Not a document is presented, not a certified record of the Court proceedings that they were [1091] talking about in a very indefinite and second-hand way, not a recorded instrument, not a specific date. They ignored the decisions of the Court, they had never read *Goak v. Beking*; and one of them was asked if he had read it, because it was unfavorable to Delaware, and the reply was equivalent to saying they were taking a partial position because it was their patriotic duty. Here was the published report, ten years before the arbitration case, and yet the Arbitrator makes statements in his opinion that show he didn't know anything about it, or else that he deliberately ignored it.

That was the kind of testimony, hearsay, second-hand, if it was the opinion of lawyers, if it was offered as such, some qualification would have been necessary. They

Argument of Deane E. Minard for New Jersey.

never heard of any question of a title, yet eight or ten years before that, Justice Baldwin had decided the case of Connecticut against Massachusetts, I think it was, in which he cited the dispute between New Jersey and Delaware over this boundary line, as one of the disputes still unsettled over colonial boundaries, and they [1692] never heard of it. A lawyer who attempts to express an opinion without troubling himself to look up the law in the reported cases, may be respected as a gentleman, but his opinion, as a lawyer, is entitled to no consideration whatever.

With regard to the grant of March 23, 1682-3, we have argued there what seems to be conclusive. Nobody doubts that in an unoccupied country, acquired by discovery, or even by conquest, the Crown may, by letters patent, or Parliament may, by Act, convey lands to individuals or groups that will undertake to colonize the territory, but when those inhabitants came to this country and settled, they brought with them the laws of England. The Common Law of England applied to the colonies, there is no case to the contrary and there are a score of authorities in support of the proposition. When they settled on the shores of the Delaware River, they acquired the same rights in that Delaware River that their people at home acquired in the other navigable rivers, namely, [1688] the inalienable right under Magna Charta and subsequent Charters, more particularly under the latter, they obtained the right of free and uninterrupted use of that river, subject only to the public easement of navigation and the King held the title for the benefit of the public. Now, then, on the eminent authority of this Court, of the Courts in England, of eminent publicists, the Crown could not make a valid grant in 1682-3 of the bed of Delaware River to the exclusive use of an individual.

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Argument of Deane E. Minard for New Jersey.

The Master: Mr. Minard, how would it affect the grant to Lord Baltimore?

Mr. Minard: In 1632, the condition was entirely different; there were no inhabitants along the Potomac River, Virginia had not been settled, and I am now distinguishing between a condition of wilderness and a condition of civilization; that is the distinction that is made in the decisions. 10

In the proposed grant of April 13, 1683, the river was omitted, all reference to the river is [1694] omitted, thereby, the legal objection to the other grant was removed. The proposal there was not to include the river.

The Master: What was that, Mr. Minard?

Mr. Minard: That was the proposed new grant of April 13, 1683. 20

Mr. Southerland: Mr. Minard, aren't you in error as to that? I don't want to interrupt, but I believe you are in error.

Mr. Minard: Well, if I am, you may show it. Since the descriptions in the letters patent of March 23, 1682-3, is the same as those of the deeds of feoffment combined, and the same interpretation was applied as to the deeds of feoffment, that interpretation was applied by all of the beneficiaries under it.

The validity of the letters patent or of the deeds of feoffment can be sustained, only by construing them not to include the royalties in the river, which belonged to the people of England and the colonies. Defendant [1695] can't claim that those letters were delivered to Penn and remained in his possession, or that of his successors, and were brought to America in the early part of the Nineteenth Century, is based upon a statement by Penn's solicitors. Nobody in the world except Paris ever claimed that those documents were delivered to Penn. 30 40

Argument of Duane E. Minard for New Jersey.

The Master: Let me see if we can get clear on that. Is it really an issue in the case whether the documents could operate in the original patent or not? As I understand it, there is no question there was a patent of March 22, 1682-3, issued, a Roll's copy of which you have in the record--

10 Mr. Minard: Yes, sir.

The Master: Which would be operative, concededly, but for the fact you claim it was surrendered within 24 days after it was granted.

Mr. Minard: Yes, sir.

The Master: So that it seems that the question of whether or not the document--whether or not it was surrendered or was the original must be considered

20 Mr. Minard: That is the point of it, as I understand it. If that is the original, then the original was not surrendered. I have not considered how far the recital of the surrender and the acceptance of the surrender would go to clear an outstanding document; that might be another question. But the evidence of the surrender, and that there was no such grant subsisting afterwards is so conclusive in the case, that we did not regard that other question at all.

The Master: Repeat that, please.

30 Mr. Minard: I say that the evidence that the grant of March 22nd did not revive is so conclusive in the case that we did not undertake to consider what the effect of it might be on an outstanding document.

Paris is the only man who ever claimed that that grant was in existence. There is in evidence here a certified copy by John Pags that that grant had [1687] for many years been in his possession. In 1717, Page wrote a letter in which he said that Penn's title to Delaware was very bad, and if he had a Roll grant of March 22,

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Argument of Duane E. Minard for New Jersey.

1682-3, he wouldn't have said that. Those two men are responsible for the only suggestion in the whole record that Penn's grant was in existence, or that that grant of March 22nd was in existence. We will come to something a little later, which shows that was merely a signment of the imagination of zealous counsel, and moreover the allegations in the complaint are not true. Defendant argues that inasmuch as it was alleged in the Bill and Lord Hardwicke found against Lord Baltimore, it must be assumed the allegations in the Bill were proved. That assumption is disproved, because Lord Hardwicke excused himself from deciding any question of title which was involved, because a Court of Chancery had no jurisdiction to decide such a question and the practice before that time was undoubtedly, if any question of title came into the case, [1698] the Court of Chancery must stop it and refer it to a Court of Law, for a decision, and in the Common Law States, where the early equity practice has been followed, including the State of New Jersey to this day, if you plead title in a suit in Chancery, the case has to be decided--referred to a Court of Law for decision on that point and trial by jury. Lord Hardwicke had no jurisdiction to discuss title and therefore, he excused himself from it. He had jurisdiction to enforce an agreement for specific performance, and he had the right to assume that the parties recognized each other's title in the agreement. They also erroneously state he imposed a trust on the Crown; he expressly said he would not do that. I merely mention that in this statement now, because it comes to my mind.

When Paris came to prove that grant, he went on the witness stand was sworn and he swore that grant was made and he produced a copy which he said he and the Master of the Rolls had compared with the original [1688] on the Patent Rolls, and he offered that certified

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Argument of Deane E. Minard for New Jersey.

the document, and others, the copies. That is [1101] discussed in our brief, and it is shown conclusively there, we think, that the original was not produced. The most conclusive proof is in the Breviate. The Breviate described the documents to be offered, and where they got them from, and then they came to this grant of 1682, from the Chapel of the Rolls, a certified copy and there is no evidence that the original was produced in *Penn v. Baltimore*. During the pendency of that suit, in an application for a grant for the Penns, in 1747, they cited their title as the deeds of feoffment only. There were Sir William Murray and Paris. Sir William Murray was Solicitor General. They not only didn't claim that they had a royal grant, but they admitted that they didn't have, and asked for one as late as that, the same man. Paris was Solicitor for the Penns from 1705, yet in 1717, on the Earl of Sutherland's petition, he says Mr. Penn might have some other documents, they offered the deeds of feoffment only, but said Mr. Penn may have some other documents, but [1102] being under lunacy, we don't know, and Penn died under that lunacy, so that Paris didn't know of such grant. He knew there was a Bill of April 13, 1683, reciting the surrender of it, because Paris represented Penn at that hearing.

The Master: Mr. Minard, why should there have been any hesitation about mentioning the grant of March, 1682? From a legal standpoint, it was either revoked or not by the application for the later grant within 20 days, in other words, if that grant was not revoked by the warrant of the new grant, why, then, no matter whether Penn locked it up in his garret or in his cellar, or what he did with it, it was a perfectly good title deed and was operative. What I am puzzled about is why Paris or any of the lawyers connected with this case should have been puzzled, particularly in view of what happened before

Argument of Deane E. Minard for New Jersey.

copy in evidence. Defendant says the notation on that copy says it was merely shown to Paris. The practice in Chancery at that time, and in many Courts of Chancery of identifying an exhibit is to make a notation of that kind on it, as an evidence that that is the document that was offered in evidence. That is the document that Paris obtained and his notation on the bottom that he compared it himself.

The Master: Do you remember Mr. Sargeant said that it was produced to him, both the original and the copy? Mr. Minard: Oh, yes, he does, because they produced before Sargeant this same document, Exhibit 267, I think it is, was produced in that case; in other words, the only evidence of the case in *Penn v. Baltimore*, was that document, that same certified copy.

The Master: He puts it a little differently. Mr. Minard: Well, at any rate, that is [1100] the one that was there. The record in the Pea Patch Island case shows it. In the Pea Patch Island case, Mr. Clayton and the other gentleman representing Delaware, said it was the original when they produced it--oh, no, no, I am wrong. The document they produced before Sargeant was this one certified to by Page before the Lord Mayor of England; that is the one that was produced there, not this one.

The Master: Yes, Mr. Minard, you will find Mr. Sargeant said both were produced, that it was an exemplified copy, original and copy.

Mr. Minard: They are all of the same document. The Master: That is correct.

Mr. Minard: Two of them are this particular paper, and the other is a copy of the Chancery Roll. A portion of the notes of the hearing in *Penn v. Baltimore* were offered in evidence here to show that in some cases he said

Argument of Deane E. Minard for New Jersey.

the document, and others, the copies. That is [1101] discussed in our brief, and it is shown conclusively there, we think, that the original was not produced. The most conclusive proof is in the Breviate. The Breviate described the documents to be offered, and where they got them from, and then they came to this grant of 1682, from the Chapel of the Rolls, a certified copy and there is no evidence that the original was produced in *Penn v. Baltimore*. During the pendency of that suit, in an application for a grant for the Penns, in 1747, they cited their title as the deeds of feoffment only. There were Sir William Murray and Paris. Sir William Murray was Solicitor General. They not only didn't claim that they had a royal grant, but they admitted that they didn't have, and asked for one as late as that, the same man. Paris was Solicitor for the Penns from 1705, yet in 1717, on the Earl of Sutherland's petition, he says Mr. Penn might have some other documents, they offered the deeds of feoffment only, but said Mr. Penn may have some other documents, but [1102] being under lunacy, we don't know, and Penn died under that lunacy, so that Paris didn't know of such grant. He knew there was a Bill of April 13, 1683, reciting the surrender of it, because Paris represented Penn at that hearing.

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Argument of Duane E. Minard for New Jersey.

Lord Hardwicke, because he had no difficulty at all about the surrender.

Mr. Minard: Well, that is the point we [1103] make, that these people knew all about it and they never used it and they never mentioned it. If that grant was for the benefit of Penn, taken out at his expense and for his benefit and if the doctrine of estoppel was applicable in 1750, it was in 1685. There was no difference in the situation of the legal status the first time or the last time the question of title came up. I think I will be able to explain--

The Master: I don't get the point of that. You mean for the benefit of the East Jersey Proprietors?

Mr. Minard: No, no. If this grant was for the benefit of Penn, it was undoubtedly taken out at Penn's expense, and we know that he did all the work, he prepared the description, he did everything to get those grants, not only the deeds of feoffment, but the ones of March 22nd. The Duke of York did nothing but simply say it is all right with me; Penn did everything, the preparation of the documents and everything. If that was for the benefit of Penn, and a trust was imposed upon the Duke of York for Penn's benefit, it was just [1104] as effective the day that document was signed, was sealed, as it was in 1750, when Lord Hardwicke imposed such a trust, so that the conduct of the parties in the intervening period is the part that I am coming to to show whether that grant did subsist or not.

I need not go into the mystery about this Document of Dover. It appeared for the first time in the Pea Patch Island case; it never appeared anywhere else in the history of this case prior to that. A man said he heard somebody else say that Coates had brought it from England ten or fifteen years before that. Well, I don't suppose the time is essential, except to test the man's recollection.

Argument of Duane E. Minard for New Jersey.

If Coates brought it when he brought some of the other documents that were referred to, then we know the other documents came in 1810, because it is so recorded in the Pennsylvania Archives, there is a letter there from Coates. It is stated that a document proves itself, an ancient document. We say yes, if it bears visible evidences of authenticity, but a document without the Great Seal of England recognizable as such is not entitled to credence as a royal grant ex. [1105] cept by collateral proof to prove it is one, and I say to you that the seals on the document at Dover never were the Great Seals of England. The Great Seals of England from Edward, the Confessor, to date, including the warrant for the last election in October in England, are in the British Museum, every one of them to this date, regardless of how they are broken, and they still bear the clear imprint of the matrix, and although they may be broken to pieces, they still retain an impression. In Sir William Blackstone's work, written in 1769, he describes various charters then found in different places, one the Charter of the Forests of 1224, on which he says the seal was still perfect; that charter was then at Durham Cathedral. Chunks were broken out, yes, but the impression of the matrix was unimpaired. The grant of 1677, of Charles, II, was shown to your Honor, and the seal was broken and had been fastened together, but every single piece had its component part of the matrix on it.

Defendant attempted, by methods we do not think proper, to introduce the testimony of a [1106] very estimable gentleman, Sir Henry Maxwell-Lyte, upon certain questions submitted to him in an attempt to support the contention that the Dover Document is the original grant. They did not submit to him the original to get his opinion whether it was the original; they submitted a photostatic copy and while such a copy may show all the notations on the original of the document, it is absolutely

Argument of Duane E. Minard for New Jersey.

been surrendered, or anything of the kind. The documents became *functus officio* as they went from one office to the other, from the Bill until the grant was made. Obviously, the grant need not include that recital, and there is no evidence it was intended to, just as obvious that the new grant would contain matters that were contained in the other, which was not in the Bills for their issuance at all. Defendant claims that the issuance of the new letters patent was to be the consideration for the surrender of the old document. Well, in the first place, there was no consideration for the first document, the second document was for an entirely different area, so that if considerations were in order, it would require a different one, and second, no consideration was necessary so it is hardly to be said that one thing is a consideration for another when no consideration is necessary. It clearly appears without denial that for a period of ninety [1103] years from their date to the American Revolution, the letters patent were not mentioned as evidence of title. Repeatedly, in the Breviate Penn's counsel admitted they didn't have them and explained why they didn't have them, that the King died in the period of seven years before the covenant of assurance had expired. In 1734, Paris drew a petition for a new grant in opposition to a petition of Lord Baltimore for a grant, and he recited the letters patent of 1682-3 in that document, and when he submitted that document to Dudley Byder, the Attorney General, he struck it out and the petition was filed with reference to the deeds of feoffment only. In 1745, on an application for the approval of Delaware laws—which finally was not filed because Sir William Murray, Solicitor General, to whom it was submitted for approval, was unwilling to risk the Penn title in view of what had gone before and he so stated it in his opinion—originally, Paris had cited the letters of 1682-3 and they were stricken out on the advice of Solicitor General

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Argument of Duane E. Minard for New Jersey.

worthless to show the originality of the document. He says the grant shown to your Honor had endorsements on them in the fold at the back and on the bottom, because of the nature of the documents, but every document made had notations on the margin and endorsements on the back. Sir Henry contents himself with saying it was not essential to the document. It was the practice, it was the thing they were identified by without unfolding them, that was the purpose of the endorsement, and whether it was a grant of land, or an annuity, it had to pass through the office where the fees were collected, and the notation on the margin indicated the payment of the fees, and are to be found [1107] on every single original grant that is to be found anywhere.

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Defendant claims that the surrender of the letters patent of March 22nd, recited in the Bill for a new grant, was intended to take effect only on the issuance of a new patent. That is not supported by the language of the document, or by any fact or practice. The past tense is unmistakably used.

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The Master: Wait, Mr. Minard, let's look at that for a minute. As I recall that title, it says has surrendered, and by these presents, doth surrender.

Mr. Minard: No, no, it says, hath surrendered and they have been accepted, by these presents accepted, nor presents that they have been accepted and he here repeats that they have been accepted.

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Mr. Southerland: Exhibit 389, page 5, is the best reprint of that.

Mr. Minard: There was no reason to recite in the grant that a previous grant had been issued and had been surrendered. That was not the practice. When [1103] the Crown issued new grants for Virginia and new grants for Massachusetts, or parts thereof, there was no recital that he previously made a grant, or that a grant had

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Argument of Duane E. Minard for New Jersey.

Murray. Those persons were unwilling to risk Penn's title.

[1110] It is shown and not denied that Penn never claimed the existence of those letters patent or their possession for 35 years after their date, but five times, between 1701 and 1717, Penn expressly admitted that the grant had been promised pursuant to the covenant of further assurance in the deeds of feoffment which he cited as his title, but they had never been given. He admitted it five distinct times in public places and public documents, that they had not been given.

The Master: The man who developed the original theory of the trust was probably Logan.

Mr. Minard: Apparently along in the thirties, or somewhere in thirty-seven he recounts what Penn told him, and gives the whole theory that afterwards apparently was presented to the Lord Chancellor. There is no doubt that in one or two places Logan said Penn was at the expense of getting a grant, but he doesn't say he got one, and in one or two instances says he didn't get it.

The Master: You mean there was no question, there was no grant to Penn?

Mr. Minard: No, I mean there was no grant for [1111] the Three Lower Counties. That grant was surrendered, no other grant was made, that is admitted, I think, all around, but what I am saying is that Penn never claimed the existence of the grant of March 22nd, knowing that it was surrendered. If that grant had been in existence he would have used it because the beneficial interest would have been just as good then as any time, but he did not use it and never mentioned it.

The proceedings in the controversy with Lord Baltimore over title to the Three Lower Counties began in May 1683 when the Duke of York was a private person, on objections of Lord Baltimore to the issuance of letters

Argument of Duane E. Minard for New Jersey.

patent for those Counties pursuant to a bill of April 18th, so that the bill of April 18th reciting the surrender of the acceptance was the *res gestae* of that first proceeding of Lord Baltimore. The existence of the grant or the claim that it survived was never made by Penn or the Duke, and it is admitted that the Duke was interested in that proceeding, but the claim of its existence was never made during the two years or more, two and one-half years of that proceeding. [1112] Defendant says that that was really Penn's proceeding; of course, but he paraded behind the skirts of the Duke of York for the influence it would give. It isn't part of our case, but the wicked conspiracy by which Lord Baltimore was deprived of the Delaware Peninsula is one of the judicial crimes of history. They lied that there was a cape 25 miles below the present Cape Henlopen. That was a pure fiction. They lied to the Lords Commissioners when they told them there was settlements in that country when the grant of 1632 was made; there were not. That was a conspiracy to deprive Lord Baltimore of his territory and it was of one piece with many of the wicked enterprises that Penn engaged in and got away with through the aid of James, the Duke of York. If you want to get a picture of Penn's character somewhat different from that of the panegyrics of his admirers here, read McCarty's History of England's description of him.

During that period, that grant was never shown, and then the proceedings continued, the order of council was made after James had become king, and the judgment [1113] was that the territory belonged to the Crown. That judgment was repeated during six successive reigns at different times, down to 1767, when James was king, when other people who were not his heirs were king. If it had belonged to the Duke of York, it was his private estate and would have descended by inheritance to his heirs, but it was never so construed, for if they had been

Argument of Duane E. Minard for New Jersey.

in force, this controversy about half the rents and profits of the two Lower Counties would never have existed, because an entirely different consideration was mentioned in that deed.

During the first 25 years of that controversy with Lord Baltimore, Penn managed the situation himself with the aid of the Duke's solicitors. At first he asserted his claim under the deeds of feoffment. They were totally disregarded and he abandoned them and pretended he was acting as agent of the Duke of Yorke, which he thought was a more profitable role for him to play. Defendant stated that Penn was recognized as the real party in interest and that Penn and the Duke of Yorke were joined together as parties on one side in [1114] the controversy. Let's see what the records show. In their report of 1734-6, the Lords Commissioners stated the controversy was between the Duke of Yorke and Lord Baltimore, and that Penn acted only as the agent of the former. That is the Lord Commissioners' report. In Penn's own memorial of July 31, 1710, respecting the surrender of government, he stated that in the controversy with Lord Baltimore he merely asserted the title of the Duke of Yorke. There you have the Lords Commissioners' report and also Mr. Penn himself contradicting the statement that Penn was the real party in interest. After Penn's death, these proceedings were resisted by Mr. Paris with the aid of Dudley Ryder, Attorney-General, and Sir William Murray, Solicitor-General, on Penn's claim of title under the deeds of feoffment. That is the theory under which they proceeded until the order of council.

It has been mentioned in defendant's brief, as if it was a virtue in the interest of Penn, that the Solicitor-General and the Attorney-General were Penn's counsel during the proceedings in *Penn v. Baltimore*. [1115]

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Argument of Duane E. Minard for New Jersey.

Well, it is a notorious fact in the history of England that the chief virtue of these public appointments in England was the aids perquisites in private employment; it is discussed everywhere; it is not according to our code of ethics, and we wouldn't look with very much favor upon the Attorney-General in the same case filing an answer on behalf of the claim of title by the Crown, and also resisting the Crown's title on behalf of his private client. It has nothing to do with the judgment in the case, but the case of *Penn v. Baltimore* was mishandled in many respects. Lord Hardwicke knew a great deal more than his decision disclosed, because he sat in the Privy Council and had knowledge which would have taught him better if he hadn't had one eye closed. The Attorney-General and the Solicitor-General were employed by Penn and were serving in a dual capacity which conflicted.

The Master: I have tried to look at the report of *Penn v. Baltimore*, I don't mean the report of the decision, but the testimony, the one which you are referring to now. I think it is referred to in Saygeant, [1116] some publication, *Penn v. Baltimore*.

Mr. Minard: Do you mean one Vesey?

The Master: No, this was one of the books, apparently one volume, and I notice in your quotation from the Breviate you have three or four hundred pages.

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Mr. Minard: It is the Breviate. It was prepared by counsel and the solicitors of Penn, Sir W. Ryder, Sir William Murray, and one or two others.

The Master: Do you know where the original of that publication is located?

Mr. Minard: I don't believe I can tell you where the original is. I know it was published as a separate volume, No. 16, in the Pennsylvania archives.

The Master: That is the Breviate.

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Argument of Duane E. Minard for New Jersey.

Mr. Minard: The Breviale only and Mr. Satterthwaite showed me a printed copy which has all the appearances of being ancient, if not original—

Mr. Satterthwaite: It was published in London.

Mr. Minard: It is about this size, if your Honor please, about that big, I think, but the thing was printed as one of the volumes of the archives.

[1117] During a period of 49 years of controversy with Lord Baltimore, before the Departments and Ministers of England, where the Duke's counsel appeared and Penn and his solicitors and Lord Baltimore and his solicitors or agents; in numerous hearings before the Lords Commissioners; in some hearings before the Privy Council Committee, which was merely the Privy Council sitting as a committee of the whole to reach a decision, during those 49 years the grant of March 22, 1682-3 is not once mentioned. If the Duke of York had any interest in that proceeding, as they seem to think he had, certainly that would have been title for him.

In 1732 or before that time, but certainly in 1732, Paris consummated the negotiations between Penn and Lord Baltimore for the provinces. In that document Paris set up every conceivable vestige of title that the Penns had and he didn't mention the grant of March 22, 1682-3. He tried to prove the Duke of York's title by reciting the grants of 1664 and 1674 on a number of occasions as a background for the deeds of feoffment, but he never once mentioned the grant of [1118] March 22nd. If that grant had been in existence between 1683 and 1734, it certainly would have been mentioned as the most important document bearing on the title of Penn or the Duke in those counties. Its omission was not an inadvertence because the recital of its surrender and its acceptance by the king was contained in the document which gave rise to the original proceeding. It was shown by the Earl of Sufer-

Argument of Duane E. Minard for New Jersey.

land in 1717 and Penn cited it in his draft of petition of 1734, the bill of March 13, 1683. He mentioned that as well as the grant and both of them were stricken out by the Attorney-General.

The failure of Penn or the Duke or any parties to the transaction to mention these documents as well as the attempt of the Duke in 1688 to make a grant and of Penn in 1703 and Byder and Paris in 1734 to obtain such a grant, must be regarded as their own interpretation of the fact that the grant of March 22, 1682 did not exist. Conclusive proof that the surrender became effective and that that grant did not exist appears from the fact that the existence, benefit or possession [1119] of such a grant was never claimed by Penn or any of his successors, but that there was no royal grant for the Three Lower Counties in existence was admitted by Penn in July 1701, November 1702, January 1703, June 1703 and July 1710, by Penn in public documents and by James Logan in July 1713, September 1715 and October 1731.

The Master: Now, Mr. Minard, do you claim that Penn at that time had references to the deed of March 22, 1682?

Mr. Minard: You mean when he said he didn't have any?

The Master: Yes.

Mr. Minard: Well, if that document had been in existence—

The Master: In other words, was it not a fact at that time, as I gather from this record, that he got a lawyer, found somebody who knew something, and told him the story, or at least the family, told the family what the situation was, and that they used the grant of March 22, 1682 in a way that made it effective, certainly [1120] in the case of Penn against Baltimore.

Mr. Minard: Well, the man to whom you refer—

Argument of Duane E. Minard for New Jersey.

to the Duke. The circumstances explaining the change there are all described in our brief, but when they found out that the fortieth degree of latitude [1122] did not touch that line, that two-thirds of a semi-circle to the west of New Castle, Penn immediately discarded this grant of March 22, 1682, it was no good, and would do him no good. The Master: Penn was in America at that time, was he self 10

Mr. Minard: Not when he found that out. You see, Markham was over here--

The Master: He was in America at the time that application for the new grant was made, was he?

Mr. Minard: Yes, he was in America, but the other grant had been arranged for before he left, and he got into America in October 1683 and Markham had already been in touch with Lord Baltimore and Lord Baltimore had already secretly gotten hold of this instrument which revealed that the fortieth degree of latitude was some 25 miles north of Chester, and Markham had to discontinue his negotiations with Baltimore before Penn arrived, because he didn't know what to do under the circumstances, and just as soon as Penn found out what the situation was, he got word over there as quickly as the means of communication. [1123] tion would permit, and he got word over there evidently not before the grant of March 22, had been sealed, but apparently before-- 20 30

The Master: In other words, the conference between Markham and Lord Baltimore was in 1682?

Mr. Minard: September 1682. When the Duke of York proposed his grant of 1683, he didn't mean to convey any title he had as Duke of York, he undertook to make a royal grant from himself as King to Penn.

It is said by the defendant that this document of 1688 was solely for the purpose of conveying the lower counties. Of course, that can't be true, and it is also intimated it 40

Argument of Duane E. Minard for New Jersey.

The Master: When Penn said he had no royal grant, didn't he mean that he had not direct royal grant from the King to himself?

Mr. Minard: No, I don't think so. The man you refer to was James Logan who informed the family of that proposition. James Logan came to the Colony in 1689 as private secretary to William Penn and was with his affairs all the time. James Logan must have known earlier what he knew later about that interpretation, but even with that interpretation after he had written a letter saying it is claimed your father might have some beneficial grant, he wrote all those letters about the title in Delaware that they could not sustain, McKean and others wrote to Penn telling him the situation was so bad they better not insist on their rights, they had better compromise, John Page said the title was bad, everybody who knew anything about it or had anything to do with it accepted the fact that Penn had no title either direct or beneficial. Now, then, what they [1121] undertook to obtain in the place of the grant of March 22, 1682-3 was not a grant to Penn, but another grant to the Duke. There was no reason why they couldn't have gotten a grant to Penn from Charles II because he was putty in the hands of James. Penn thought the grant from the King to the Duke made his title good, and that is the reason he got it. He was trying to get another one to the Duke, not to himself, and that is the grant that Penn referred to when he repeatedly admitted he had none, because he said that grant failed by reason of the interposition of Lord Baltimore, the new grant. It was to the Duke, and not to Penn. He repeatedly says it failed, Logan says it failed, and that is the one he is talking about.

The Master: The grant of 1688 was to Penn direct.

Mr. Minard: Yes, James had become King in the meantime. But what Penn was trying to get first was a grant 40

Argument of Duane E. Minard for New Jersey.

was for the purpose of releasing Penn from the quit rents. That document was made for the purpose of releasing Penn from criminal prosecution and it proposes to exonerate him from punishment for usurping the prerogatives of title and government. There is nothing to the first paragraph. We have recited a number of instances from 1682-3 down to the present time, almost, where the title of Penn was asserted when his welfare depended upon his sustaining [1124] his title. Forty-three of such instances are cited when the grant of March 22nd was not mentioned. That is not intended to be a complete list, and there are a few more here to be noted. Throughout the Penn-Baltimore controversy from May 1683 to June 1785, when the Duke of York was directly involved and his solicitor was actively interested in the proceedings, the grant was not mentioned; in the petition of Paris and Byder for the new grant in 1734 and the grant of 1682 is not mentioned; it was not mentioned in Penn's proposal for surrender of government in 1705, when he was doing his best to assert strong title; it was not mentioned for the entire twenty years of negotiations for that surrender, ten years of which negotiations were conducted by Penn himself. When they challenged his right to the Three Lower Counties and tried to make him show his title he allowed only the deeds of feoffment. There was his chance, and he didn't take it. During the proceedings of the Earl of Sutherland's application they were not produced, and the absence was excused, not by the Attorney-General as might be inferred from the defendant's brief, but by Paris on the ground of Penn's [1125] lunacy, that Penn might have some other documents of which we don't know. The Attorney-General's report of July 25, 1684 sets up Penn's title and doesn't mention that grant. The Lords Commissioners' report to the King in 1721 sets up Penn's claim of title and doesn't mention it. Throughout the proceedings on the restoration of government in the 1690s, '94 or

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Argument of Duane E. Minard for New Jersey.

so, throughout that whole proceeding where Penn was trying to show his rights in the Three Lower Counties, as well as Pennsylvania, he doesn't mention the royal grant. Defendant states that the sole purpose of the proposed grant of 1688 was to release the quit rents. That, of course, is disproven by the document itself and also by Penn's repeated admissions that he had no grants, and by his frequent attempts to get one.

Defendant states that the proposed grant of 1688 was evidence of the intention of James to recognize and confirm Penn's title. That it was not intended to confirm any recognized title, is indicated by the provisions in there to excuse Penn or release him from punishment for having exercised prerogatives he did not [1138] possess. It was an exculpation and not a confirmation.

Defendant states Penn's title was squarely before the Lord Chancellor in *Penn v. Balfmore*, and the Lord Chancellor held that the Crown was a royal trustee. Both those statements are denied by the documents themselves. The Lord Chancellor excused himself from deciding title and could not have done it. The minute he discussed title he excused himself from jurisdiction, and he expressly said he refused to impose a trust upon the Crown.

Defendant states some twenty laws of the Joint Assembly of Pennsylvania and Delaware were submitted and approved in the reign of William and Mary. On the same page of its brief defendant states that as early as 1701 the Board of Trade asked the Attorney-General whether the approval of laws passed at New Castle would constitute an acknowledgment of Penn's right of government to the Lower Counties. Defendant says that apparently the Attorney-General made no reply to this inquiry, and no further attention was paid to the matter because the laws under consideration were thereafter approved. On [1127] the following page of its brief defendant says

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Argument of Deane E. Minard for New Jersey.

that in 1770 the Board of Trade, for the first time, after nearly ninety years of practice of reciting Penn's proprietorship of the Three Lower Counties, decided that such style was improper and unwarranted. The history of these transactions shows the contrary. The first laws passed at New Castle, under the Act of Union, were submitted by Penn not to the Privy Council where they belonged, but Penn went and had a little friendly talk with some of the members of the Lords Commissioners, and he said that pursuant to that conversation he is submitting these laws for their consideration first. They had no business with the laws originally. They were a fact-finding body, and Penn went to feel them out first, full of fears and suspicions. They raised two questions, one of Penn's right in the Three Lower Counties, and second whether he had properly styled himself as proprietor of the Three Lower Counties in those acts, and they submitted those to the Attorney-General and asked him whether the approval of those acts might not constitute acknowledgment of his powers that he claimed in the [1128] Three Lower Counties.

As soon as Penn heard those questions had been submitted to the Attorney-General and Penn's agent had been notified to attend to show Penn's title to the Three Lower Counties, for that was the request that was made, Penn rushed in and said, I will withdraw those laws if you will permit me to, because others are coming along and I will submit them all together, and he got the laws back with the consent of the Lords Commissioners. They were re-enacted at Philadelphia the next year and early in 1754-5, several years later, distinguished as acts of Pennsylvania passed at Philadelphia, and as such they were treated, some approved and others rejected, but from that day to the Revolution neither Penn nor his successors ever submitted an act of the assembly of the Delaware

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Argument of Deane E. Minard for New Jersey.

Counties. They undertook to in 1745, but the Solicitor-General, Mr. Murray, advised them not to do it, that it was a troublesome question, and it was inadvisable to raise up the question.

The Master: Where had the Legislature been held prior to that time?

[1129] Mr. Minard: Penn knew that his title to the Three Lower Counties was not—

The Master: Had they met in New Castle?

Mr. Minard: Yes, I am just explaining that. When he tried to clear a site for Philadelphia, some of the people around the Schuylkill claimed they had grants from the Duke of York's governors and Penn told his agents, the Commissioners, to move them and tell them, if necessary, their title was not good because the Duke had no title. He knew that in 1682 because he sent the Commissioners ever ahead of him in 1681. Now, then, Penn persuaded the people in the Lower Counties to join in a joint assembly, and there are two exhibits here which show how he tried to get the West Jersey people to do the same thing. Then he passed the Act of Union in which he recited his title to the Three Lower Counties as the deeds of feoffment, no mention of the grant to the Duke or anything of that sort. He persuaded them to come in and then he attempted to exercise over them the powers of government given him by his Charter to Pennsylvania, and so ascertain was Mr. [1130] Penn about those powers that he provided that the sessions should be held alternately in New Castle and Philadelphia, and he held the first session in New Castle to satisfy those down there, then he held the second session in Philadelphia and so on back and forth, that was the plan. But that was not all. He passed over again at Philadelphia all the laws that had been previously passed by the Assembly of New Castle, but he did not re-enact at New Castle any of the laws

Argument of Deane E. Minard for New Jersey.

passed at Pennsylvania. Penn knew his title was not any good down there.

The reason why the Attorney-General made no reply, which defendant says he "No further attention was paid to the matter because the laws under consideration were thereafter approved"—well, those laws were not approved, they came in a new dress, new cover, a new disguise, a new appearance. They came in the guise of legitimate acts passed under the Pennsylvania Charter, and the reason the Attorney-General didn't reply was because they were withdrawn, the whole matter was withdrawn and when the acts were re-submitted [1131] about three or four years later, no mention was ever made that those were the acts that had been in before; every attempt was made to show that they were different acts, Pennsylvania acts, and not for New Castle. 1770 was not the first time that any question was raised about the style of these acts. The same question was submitted to the Attorney-General in 1701 and a decision was avoided by the withdrawal of the acts. In 1703, when Penn filed his petition for surrender, he set up these counties as within his proprietorship and the Lords Commissioners refused to consider the counties or his proprietorship therein and Penn rushed in then and asked leave to withdraw that memorial and he set up another one in which he did not claim proprietorship to the Three Lower Counties; that was in 1705. So that 1770 was not the first time, as defendant says, that that question was raised.

Defendant states from 1701 to the American Revolution the Delaware Counties acknowledged Penn and his successors as governors and proprietaries of the Lower Counties, and that the Lower Counties separated from [1132] Pennsylvania because of different views regarding military protection and the resistance of the payment of quit rents, but that at all times when Penn's title was

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Argument of Deane E. Minard for New Jersey.

threatened, the Lower Counties were found supporting Penn. Well, now, the memorials which the members of the Assembly of the Lower Counties filed with the Lords Commissioners on two different occasions and the representations of persons appointed by them to act and represent them before the Lords Commissioners, stated Penn had misrepresented his title to them, that he had put a false gloss on the whole relationship of the Three Lower Counties, and they insisted that Penn be asked to show his title. They asked that he show his title and they were threatened to be put in jail without bail, and the only time Penn condescended to show them anything as evidence of title was in his parlor one night when three of the members of the Delaware Assembly were in his house, he showed them a paragraph from a copy of letters patent and folded the paper so as to conceal the rest of it, a paragraph out of a copy of the proposed grant of 1688. Logan was present and [1133] talks about it, a grant that was never made, and admitted that he impressed these people by showing them a paragraph out of a proposed grant that had never been made. It was then that the Three Lower Counties questioned his title that the first serious question of his title was raised and his deeds of feoffment were rejected by the Lords Commissioners, and he was asked to show other title and even then the deeds of feoffment were not produced. Under the lash of an order of the Privy Council, Penn brought in the deeds of feoffment, 1702, nothing else. He never came back and never showed any other title, and in 1734, when the Privy Council Committee and the Lords Commissioners demanded of Penn's successors, that they produce their title, after holding them up for months, they flatly refused to do it. They were afraid, Paris and Murray and Byder, to produce Penn's title, and they absolutely refused to do it.

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Argument of Duane E. Misard for New Jersey.

It was a bitter challenge, it was a constant belligerent resistance all the time, and when the Revolution was over, the defendant's legislature took up the challenge, received petitions from 600 or 800 of its citizens complaining about Penn's title and asking for a Legislative confirmation. By its own laws, it confirmed the challenge that began in 1694, one hundred years old, and completely repudiated the Penn title on the identical grounds which the members of the Assembly of [1136] New Castle in 1702 or 1703 had assigned, in their opposition to Penn before the Lords Commissioners, in other words, that controversy of 100 years' continuous duration was consummated by defendant by an Act of the Legislature, which has settled the question down to the present time. They took the Penn lands, they sold them and put the money in their pockets, and that is the end of that, and when you say the people of the lower counties recognized Penn's title, there is the evidence of it.

With regard to the title in the river, anywhere in the river, including the 12-mile circle, including Reedy Island in the 12-mile Circle, the title to that river and those islands was reviewed in different proceedings from 1721 to 1772, more than 50 years. In repeated orders of the Privy Council, in repeated reports of the Lords Commissioners, in repeated decisions of the Privy Council Committee, Penn's representatives appeared, they showed their title, they were aided by Paris, the whole proceeding was conducted, the bearing of evidence, [1137] the Penns were heard and their testimony, they appeared by counsel in solemn trial, yet, in all those instances, the order in Council confirmed the Crown's title and the latest decision was that of the Lords Commissioners in 1772, when they re-affirmed the Crown's title to the island including Reedy Island within the 12-mile circle, and the only thing that prevented an order in Council on that occasion, as had occurred previously up to 1756, was that

Argument of Duane E. Misard for New Jersey.

After the separation of the counties, there is no direct act of Penn or his successors of any exercise of title or proprietary governorship. Logan, who was Land Commissioner, refused to make grants down there, [1134] because the title was bad and he didn't want to sell the people something that was not good. Ephraim Herman, one of the attorneys who delivered possession to Penn, and was a Penn adherent, was so undecided that he went to Baltimore and got grants for land admittedly in the Three Lower Counties. The Governors were designated by the Crown under a separate designation to act during the King's pleasure, not William Penn's, and acted independent of the Penns.

There is not a single evidence, a case, an instance, from 1704, at least, in fact, from 1702, when Penn, or his successors, ever exercised any direct powers in the Three Lower Counties, except those who happened to be Deputy Governors.

So far as supporting Penn whenever his title was questioned, there are just two instances of memorials prepared and presented by people of the Three Lower Counties, against the Earl of Sutherland's petition was one, and against the boundary question was another, and Mr. Logan, in his letter, explains those were obtained [1135] by Penn's agents, who had great difficulty in getting anybody to sign them, and they were able to get them only in New Castle County, because they were unable to get any signers in Kent or Sussex, and those people who did sign were told they might lose their land if they didn't sign; under a threat of a loss of lands, they got the signatures, they were told New York was likely to get them if they refused to sign.

Penn's challenge, or the challenge of Penn's title began in 1694, and it is described in one of the exhibits. It began in 1694 and continued until the American Revolution.

Argument of Duane E. Misard for New Jersey.

the petition at that time, I think by the Earl of Roquesford, was withdrawn before the matter got to the Privy Council, but not until after the Privy Council, sitting as a committee of the whole, decided that no conveyance had been made by the Crown, or any of its predecessors. Those are judgments of the Court of last resort.

10. Penn's claim, under the deeds of feoffment was examined and rejected, expressly rejected by the Lords Commissioners of Trade, in 1701, 1702, 1708, 1706, [1138] 1721, 1770, and the title of the Crown, not the King, but the Crown,—the direct opposites of this negative finding—by the Privy Council, in formal judgments of the Court of last resort, in 1688, January, 1709, June 1709 and 1769, the last one, affirmative judgment of the Crown title. Other people had been Kings who were not heirs of the Duke.

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I call attention to the fact that defendant says Penn was willing to sign the declaration in favor of the Crown claim of title to the Three Lower Counties, only after the form had been modified to suit his objection. I say if you read the text of the original statement and the text of the form which they prepared, you will have before you what is generally known as a distinction without a difference.

There is not a trace of proof that Penn was willing to sign one and unwilling to sign the other. Penn's objections were raised and argued after the specific form had been prepared and submitted to him, and it was demanded that he sign on the dotted line, and now I will say if the Crown's title [1139] was involved, and Penn declared that this act should not prejudice the claim of title of the Crown, or that he should say that it would not prejudice the right and title of the Crown, for the purpose of preserving the royal title, either one would be equally effective to prevent prescriptive right, or something of that sort, title by adverse possession, either one would be

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Argument of Duane E. Misard for New Jersey.

equally effective, but when they prepared the specific form which Penn objected to, and vigorously protested against, not only before the Lords Commissioners, but in the letters, privately, in his private conversation with the members to persuade them to modify that, they stuck to it and the form was never changed until the American Revolution. He not only objected to it then, but he objected to it again in 1708 and he asked them if they couldn't omit the reference to title, and insert the word "government," showing definitely they claimed the reservation of title, not government; they never recognized his powers of government and he never claimed them after 1702 or 1701. They say [1140] that Penn never regarded the declaration as in any way weakening his title. Well, if that was so, why did he so vigorously protest against those forms.

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Reference to the restoration of government is cited as an instance of recognition of his title. Well, now, his title had not come into controversy at that time. That was seven years before the real serious controversy arose, and then they were cautious to say that it was the administration of the government. No title was involved in that controversy at all, merely the administration of government. There never was any question of title involved in that matter. The administration of government was to return, to be held in the same manner as held before, and that was not a confirmation of power, it was merely a return to the *status quo ante*.

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During twenty years of the surrender negotiations, Penn never mentioned the grant of 1683, March 23rd. Not only that, but throughout those twenty years of negotiations, they repeatedly refused to let Penn say in any of the documents that he was proprietary of the [1141] Three Lower Counties, and he withdrew the papers. Throughout those twenty years, whenever they referred to the Lower Counties, the document read this way:

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Argument of Deane E. Minard for New Jersey.

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Argument of Deane E. Minard for New Jersey.

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Argument of Duane E. Minard for New Jersey.

Penn's right to the government of Pennsylvania and his claim or pretension to the Delaware Counties. They decided if they were going to have a surrender, they might as well have the tail with the hide, and all the doubtful questions thrown in, so they decided on a form of surrender by the Attorney General, which included his right to the government of Pennsylvania, and his claim or pretension to the government of the Lower Counties.

I have other things here in this outline which I will not mention.

I have pointed out with respect to rights in the bed of the river for various purposes, New Jersey has always granted them, the titles have always been recorded in New Jersey, they have been subject of judicial proceedings in the Chancery and Orphans' Courts, have always been taxed, Mr. Southerland's own company paying taxes regularly and promptly, and all without question [1142] of refund, in case this case is decided against us.

They say any attempt of defendant to collect taxes on any of these improvements from 1877 to 1905 would have been unwarranted on account of the litigation over the boundary line. Any serious claim of title would have been supported by some effort, at least, to prevent plaintiff from so doing, pending the suit. There is a good deal of money involved there, and they would have at least impounded it in a Court of Chancery. No such effort was ever made. After the suit of 1877 was brought, defendant did not file an answer for nearly twenty-five years, and then only under the compulsion of the Court. They weren't anxious to defend their rights, they let the thing ride. From 1782 to 1927, they refused to submit it to arbitration. Defendant offers no explanation for its failure to collect taxes or exercise jurisdiction during the twenty-seven years that have expired since the compact of 1905.

Argument of Duane E. Minard for New Jersey.

The Master: Would you mind saying that again? [1143] Mr. Minard: I say they offer no explanation of the failure to collect any taxes from the date of the compact, 1905—they say the reason they didn't attempt to collect anything from 1877 to 1905 was because of the litigation, but they do not offer any explanation from the date of the compact until the present time.

The Master: Well, so far as the riparian improvements are concerned, doesn't the compact, in Section 7 or 8 entirely clear that up?

Mr. Minard: That may be the explanation.

The Master: In other words, what the other questions may be, it seems to me that by the compact, both of you agreed that bygones were bygones, and you weren't going to disturb each other on your riparian improvements, I forget the exact language.

Mr. Minard: One of our claims is that the compact acknowledged and confirmed the claim of New Jersey's right to convey these riparian lands and exercise control, as far as the ship channel. We have cited cases [1144] to show that in a compact of that sort, or a treaty, where there is no act of cession, the agreement amounts to an acknowledgment of a condition existing from the beginning and not the granting of a new right.

I have only one more subject, I will omit a number here in the outline, and I am coming to the close and merely want to wind up with some remarks on this repudiation of title.

On this repudiation of title, I looked for a serious discussion of that in the defendant's brief, because that seemed to be as firm and steadfast an obstruction to their claim of title as the Rock of Gibraltar is in the Mediterranean. That is one thing that whether they were right or wrong, they have never admitted they were wrong, they have never attempted to make restitution, they have

Argument of Duane E. Minard for New Jersey.

followed that policy all through, that they declared in their Statutes in 1794 they took a perfectly logical position—if the position had been arbitrary, it would have been one thing—but they took a perfectly logical position, they stated that the title not only to [1145] the river and bay, but to the entire land, all of the land in Delaware, was in the King, they were merely adopting what the Privy Council had decided repeatedly from 1685 to 1767. They said it belonged to the Crown, that the Crown had reserved it in every declaration, eighteen of them, from 1702 to 1782, in the appointment of governors, they recognized the title of the Crown, they said they acquired it by conquest, which was perfectly logical, they declared that the Penns had no title at all, which was perfectly logical, but in not a single proceeding where the Penn title was questioned from 1683 to that time, had the Penn title ever been affirmatively sustained. Now, Penn may have acquired by possession, as was apologetically offered in a number of cases before the Departments of England, and that was the chief ground urged in *Penn v. Baltimore*, and that was one of the chief grounds Sargeant considered in his decision.

Possession would not have given them any. [1146] things, except what they actually possessed or occupied, and they never actually possessed or occupied anything but a very small portion in Delaware, a very small area around New Castle was all they had ever possessed there, and they couldn't even collect the quit rents.

The action taken by the Delaware Legislature, in its Act of 1794, is perfectly logical and correct. They say now it was an unfortunate mistake, and so on, but they have never done anything to change it. They say now it was due to anti-British feeling, but anti-British feeling existed in Virginia, it existed in all the States or Colonies where they passed laws to confiscate the property of Brit-

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Argument of Duane E. Minard for New Jersey.

ish subjects, but this Court stepped in and upheld the Treaties of 1783 and 1794; the first of which said that you couldn't confiscate the land of a person who was a British subject, and the next that if you have done it, you must give it back. Anti-British feeling doesn't explain that. You have to assume it was a valid law, since the parties in interest did not contest it.

[1147] They say the plaintiff cannot get any benefit from that; that is not so. In a Court of Equity, a person is responsible for his own acts for the benefit of anybody who may have an adverse claim or interest. That is no answer now. That is the law of Delaware, and the State itself, without the action of its Legislature, nor any department, nor the Attorney General, nor anybody, can repudiate that law. It governs his conduct. I thought that would be seriously considered, but it is not, it is sidestepped in the brief, and I regard it as an adamantine wall that stands between them and the title that they have repudiated down to the present day. That we regard as a conclusive bar, even if the Court should find that that Act was wrong. Defendant cannot take advantage of its own wrong in a Court of Equity. It must be estopped now, whether the Act be right or wrong in claiming an adverse title. There was a declaration to the world, to the plaintiff, to everybody, that it claimed title under conquest, just the same as New Jersey did, so far as the river and bay [1148] were concerned, and there was sufficient reason to justify plaintiff, in the exercise of its jurisdiction, to the middle of the main ship channel within the 12-mile circle as elsewhere, and acting under that law to the present time, they can't say now that it was wrong. That is the most conclusive thing in the case.

I understand defendants have a reply brief. I have not seen it, of course, and while I don't know that there will be any occasion to reply to it, we have not filed any reply

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Argument of Clarence A. Southerland for Delaware.

brief to theirs, because there was nothing in their brief that was not fully argued in plaintiff's main brief, so I would like leave to reply if I find it necessary, if I am punctual about it.

The Master: I am sure that is agreeable. We will take a recess until 2:15 P. M.

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[1149] ARTER RECESS.

The Master: All right, gentlemen.

Mr. Southerland: Mr. Special Master, in the argument for the defendant in this case, we shall endeavor to follow the example of our friend from New Jersey of discussing only the main points in the case, without any attempt to discuss every possible difference of fact, or legal theory that might arise in it. The record is, of necessity, extremely voluminous and we shall merely deal with what we think are the crucial issues of the case.

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We are in agreement on one point. In the first place, the case naturally, as we see it, divides itself into two main divisions, the 12-mile circle from New Castle and the lower river and bay.

Addressing myself first to the question of the 12-mile circle, we are in agreement at the outset, that prior to the Treaty of Paris, or at least to the Revolution, the province of New Jersey had no title to [1150] the subaqueous soil of the Delaware River. The State of Delaware, on the other hand, claims that prior to the Revolution, it did have such title. The early history of the Delaware territory is probably well-known to the Special Master, and I shan't attempt to review it, except to refresh your recollection by a few facts. The Delaware River was discovered—

40 The Master: Let me get that right.

Argument of Clarence A. Southerland for Delaware.

Mr. Southerland: The early history of the Delaware territory is doubtless well-known to the Special Master, and I shan't attempt to review it, except to invite your attention to a few outstanding matters. In 1609, it was discovered by Henry Hudson, an English navigator in the service of the Dutch; in 1615, Cornelius Hendrickson, another Dutch navigator, explored Delaware river and bay; in 1621, the West India Company was incorporated to colonize the land claimed by the Dutch. The first settlement within the boundaries of the present State of Delaware occurred in 1631, near what is known as Lewes, Delaware, under the leadership of David Peterson [1151] De Vries. That settlement was completely wiped out by an Indian massacre in the following spring. It is a fact of some importance, in view of the subsequent decision of the Privy Council in the contest between Penn and Lord Baltimore.

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The seat of the Dutch power, of course, was at New Amsterdam, later New York. In the meantime, and before the Dutch had really colonized the South River, as they called it, the Swedes settled at a point in what is now the City of Wilmington, at Fort Christina. The Dutch, of course, regarded the Swedes as intruders, and in 1651, the Dutch built Fort Casimir, in what is now New Castle. In 1654, the Swedes took that fort, but the following year, 1655, Governor Stuyvesant sent an expedition and reduced the fort, and also reduced Fort Christina and from that time to the time of the English conquests, the Dutch were masters on the Delaware River. They had established one settlement on the west coast, in what is now New Jersey, called, I think, Fort Nassau.

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[1152] Whether or not the Dutch title was a good title by discovery, or whether it was only a possessory and *de facto* title, which we know was not recognized by the English, is an academic matter now. The point of the

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Argument of Clarence A. Southerland for Delaware.

thing is, when the English conquered the Dutch settlements in 1664, they succeeded to a territory which had been under actual dominion, which comprised two, and probably three, settlements, in what is now Delaware, together with a settlement in what was known as Upland, now Chester, Pennsylvania. The dominion theretofore exercised by the Dutch, passed to the English.

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Here we reach the first controverted point in the case. We say from 1664 to 1682 the territory now within the State of Delaware and a small portion of what is now the State of Pennsylvania, was governed, controlled, and in all respects, administered as an appurtenance of and as part of the government at New York, under the Duke of Yorke. That conclusion is challenged by the plaintiff. The plaintiff says no, those governors in New York exercised royal authority, not authority of the Duke of Yorke as the subordinates of the proprietary of New York, but they exercised royal authority.

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We have cited to your Honor in the brief a number of instances, which I will merely refer to in a general way, to show that the authority exercised in the Delaware territory was at all times the authority of the Duke of Yorke and none other. In the first place, there was no royal commission to the Governor General of New York; he held a commission from James, Duke of Yorke, and Albany, as proprietary of New York, and the authority he exercised, he exercised in Delaware, by virtue of that commission, and that commission only, and at the time when the government of the Delaware territory, including the settlement at Upland, is now what is Pennsylvania, was taken over, a book of laws for that territory was established and that book of laws is thus described, "established by the authority of His Majesty's letters patent granted to His Royal Highness James, Duke of Yorke and Albany, bearing date the 12th [1154] day of March, in the 16th

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Argument of Clarence A. Southerland for Delaware.

year of the Reign of our Sovereign Lord, King Charles II" (That was the general grant for New England, New York and New Jersey), "digested into one volume for the public use of the territories in America under the government of His Royal Highness, collected out of the several laws now in force in His Majesty's American Colonies."

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The Master will observe I am not here attempting to sustain the record title of the Duke of Yorke; he had no such title; I am trying to show a *de facto* title. In the appendix to this book of laws, it is stated that Colonel Richard Nicolls assumed control of the government, referring to Delaware, by virtue of the Duke's commission to him as deputy. One of the orders of 1668 required councillors to take an oath to His Royal Highness, and one of the ordinances of 1671 provided that the tenure of land at Delaware was to be held in free and common socage, "as His Royal Highness, by His Majesty's patent, holds all his territories in America."

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[1155] In one of the actually litigated cases of record in the New Castle County Courts, it is shown that an appeal came from the Burlington Court to New Castle, it was there tried, and later, after the decision at New Castle, it was appealed to New York. That will be found in Exhibit 515 at page 5, and the general jurisdiction of the New York Appellate Courts will be found referred to in Exhibit 9 at page 22.

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William Penn received his deeds of feoffment from the Duke of Yorke, and when received, they were recorded in New York. Moreover, he obtained from the commander in chief and the council at New York, an order directed to the magistrates and other persons in authority on the Delaware river, that is, in the settlements on the Delaware river, directing them to yield obedience to William Penn in like manner, and in words to this effect, "as you were used to do under His Royal Highness." We, therefore,

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Argument of Clarence A. Southerland for Delaware.

say the record definitely and affirmatively proves, as a historical fact, that from 1664, the date of the conquest, to 1682, the actual authority exercised in [1156] the State of Delaware was that of the Duke of Yorke, who possessed, governed and enjoyed that territory to the same extent as though he had received actual letters patent from the Crown. 10

One other point, when William Penn obtained from the Crown his patent for Pennsylvania, he took a quit claim deed from the Duke of Yorke. That he did so has excited some comment from our friends on the other side, who say it was nothing but a scheme of William Penn to bolster up the Duke's title to Delaware. Actually, the record shows that the Duke was in possession, not merely of the land that he granted to Penn as Delaware, but also of the settlements at Upland, the old Swedish settlement, because the ordinances established shortly after 1664, by this very book of laws provided that there shall be three Courts, one at New Castle, one in the Whorekill, now Sussex County, and the other at Upland, that is to say in what is now Pennsylvania, so that when William Penn obtained this grant, it was a recognition of the Duke's title. It was not obtained previously, [1157] obviously, because William Penn had been advised that the fortieth degree of latitude was not located where he thought it was, and therefore, we say the conclusion from the admitted and proven facts of the case is that the Duke of Yorke from 1664 to 1682, possessed, governed and enjoyed this territory with like effect as though he had a grant from the Crown. We say he was permitted, with the tacit, if not actual, consent of the Privy Council to do so, not because he was entitled to it as heir presumptive but we say that is why the possession was looked upon with so much favor by the Privy Council. There is one further illustration of the strength of that title, which it seems to us definitely 20

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proves it. In the proceedings for the patent of William Penn for his new province of Pennsylvania, the Duke of Yorke was immediately consulted as to his interests in those parts, referring to Delaware. Sir John Werden wrote back that the boundary suggested seemed to conform very well and other correspondence followed between the committee of the Privy Council and Sir John Werden, representing the [1158] Duke of Yorke and interviews took place between William Penn and Sir John Werden in order to fix a satisfactory boundary between the new Province of Pennsylvania and the Duke's possessions in those parts, i. e., New Castle. There we have a strong recognition by the Privy Council, speaking for the King, of the Duke's possession and authority in what is now Delaware. 30

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We now come to the deeds of feoffment. The occasion why Penn got this grant, the reasons that prompted him to ask the Duke for a grant of Delaware, are perfectly apparent in the record and I think there is no dispute about them. He wanted access to the sea. He wanted to be able to establish ports and harbors for the commerce of his new province. He seems to have been under the impression, a natural one, because accurate maps of the North American continent did not exist in England at that time, he seems to have been under the impression that his patent for Pennsylvania would include the head of the Chesapeake Bay. After his patent was granted his Deputy, Mr. Markham, came to America and proceeded to interview [1159] Lord Baltimore with regard to the establishment of their boundary and to Markham's astonishment, observations taken disclosed that not merely the head of the Chesapeake Bay, but New Castle and Upland were south of the fortieth degree of latitude. There is at least every reason to suppose that this finding was promptly reported to William Penn and gave him great concern. 40

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Argument of Clarence A. Southerland for Delaware.

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Argument of Clarence A. Southerland for Delaware.

In August 1682 he obtained his deeds of feoffment. In the famous interview between Lord Baltimore and William Penn in 1682, September or October, he stated very frankly it was not the need or love of the land but the water that he, Lord Baltimore, "abounded in what I was lacking, namely, harboring." One may observe he desired to obtain a harbor, yes, but of what avail was it to obtain a grant of the soil of the river, and the answer to that is found in the state of the English Law as it existed at that time. I shall not pause to review the various cases dealing with it, but it is sufficient to say they are in the brief and they establish this as the English Law, that the Crown owned the foreshore, and that any intrusion on that strip of [1160] land, even by the owner of the upland, for the building of wharves, piers, and so forth, could be abated by the Crown or restrained by injunction at suit of the Attorney-General. On the other hand, if the owner of the upland owned also the foreshore and some of the subaqueous soil adjacent to that foreshore, that he could erect any structure which was not an interference with navigation. It is a mere speculation, of course, at this late date whether William Penn had been so advised and whether he did desire the river for that purpose, but at any rate, he did desire it and it was included in the grant.

Now, there followed when he came to America a ceremony which our friends of New Jersey say constituted mere pomp for the impression of the simple inhabitants of New Castle. On the contrary, the formalities which were there exercised constituted the old livery of seisin by delivery of turf and twig and water and soil of the River Delaware, and a few days later a delivery of soil of the tract below the circle. William Penn obtained, as I have stated, in connection with the authority of the Duke of York, an express order from [1161] the Commander in Chief and Council of the Government of New York is-

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Argument of Clarence A. Southerland for Delaware.

structing the inhabitants, justices and other persons in authority at New Castle to submit to his government. He proceeded at once to organize a government and by notices and summonses sent out, he held what was called a general court for the settling of the jurisdiction, and on November 2, 1682 that court was held at New Castle and the record of that court exists as a record of the State of Delaware to this day. He issued a summons for the election of delegates to the assembly and that assembly was held; the Delaware County sending delegates and the Pennsylvania Counties. At that assembly the act of Union of December 6, 1682 was passed, annexing the Lower Counties to Pennsylvania. The act of settlement was passed which provided for a joint assembly and council and provided that six of the counties, three in Delaware and three in Pennsylvania should choose so many representatives of the assembly. Following that organization, William Penn as proprietor and his successors continued as proprietaries in fact. The joint assembly of Pennsylvania and Delaware continued [1162] until the early Eighteenth Century, and thereafter the assembly of the Lower Counties itself. All that control and dominion continued uninterrupted until the Revolution and the Treaty of Paris, regardless of any claim of title or anything of that sort. In fact, what happened was from the moment William Penn took over the actual government of what is now the State of Delaware in 1682, that Colony whether known by the name of Delaware or the government of the Three Lower Counties or the government of the Counties of New Castle, Kent and Sussex, of Delaware, continued uninterrupted.

Attack is made on the title first that the Duke had no title either to the soil or to the powers of government. It would seem an over refinement of technicality at this day, 250 years later, to question a muniment of title which

Argument of Clarence A. Southerland for Delaware.

was acted on, followed and carried out for nearly 90 years prior to the Revolution, but let us examine it. The Duke of York was without record title to the land, he was without record title giving him express powers of government; he was in [1163] actual possession of the land, however, he had actually governed that land for eighteen years, he had very substantial rights, rights recognized by the Privy Council, and when William Penn sought his grant to Pennsylvania, the Duke undertook to transfer and did transfer to William Penn those rights. Thus the matter stood from August 1682 to March of the following year, when the title was completely cured by the taking out by the Duke of York of letters patent under the Great Seal of England for the soil, waters, and with full powers of government over what is now the State of Delaware.

It is next argued that the draft of the patent of 1688, which was ordered by King James and never passed the Great Seal, contains an admission and a recital of the insufficiency of the deeds of feoffment, and that it was an admission by Penn and a declaration by King James that Penn had actually done wrong in exercising powers of government. The patent contains language absolving Penn from high crimes, misdemeanors, and what not. What crimes had he committed? The [1164] answer is found in the next sentence, following the exculpation, and recites that he had purported to use powers "which as he is now advised he could not, nor cannot, maintain or justify wherein he hath amongst other things, according to his judgment, for the better improvement of the said tract of land, etc., promoted a general liberty of conscience to all the inhabitants therein." That is what he was absolved from, and I submit we may believe it was a crime which was quite a serious offense to the minds of any of the Stuart Kings.

Argument of Clarence A. Southerland for Delaware.

We come to a point discussed in the brief which is not argued, and that is the construction of the deeds of feoffment, whether or not they included the River Delaware. The language of the deeds is, "And the said River and the soil thereof." There are in plaintiff's brief five suggestions as to the meaning of that language. We say, as was said by Senator Wall, United States Attorney for New Jersey, in his opinion of 1834, that that language means exactly what it says, the Delaware River. It is argued that there is not one [1165] single instance of a conveyance of a river where the language, the bed of said river, is not used. Now, in fact, as the Master may recall, the patent from Charles II to the Duke of York for New York and New England conveyed the Hudson River, and the language is, "Together also with the said River, Called Hudson's River." There is not even in that language the use of "the soil thereof." These various suggestions I shall not pause to deal with. It is suggested that only that portion of the river to the north and west of the diameter passed on the theory that the phrase, "southernmost part of the circle" appearing in the deed means the southern point, and if that is so, it would follow that only a diameter passed.

The Master: I don't get that, Mr. Southerland.

Mr. Southerland: The argument made in the brief is that by the deeds of feoffment and letters patent the phrase, all that part of the river and soil thereof, lying north of the southernmost part of said circle, that in that phrase southernmost part means southernmost point, that would be the point of tangency [1166] of the circle to a due east and west line. The argument is made from that that there be only that portion of the Delaware River west of a north and south diameter passed under the deed. We say on its face that cannot be the correct interpretation, for if the word part means point, then

Argument of Clarence A. Southerland for Delaware.

strictly speaking, only the diameter would pass, a line without width, which is absurd.

Two other suggestions are found in *Gale v. Belling*. We can deal with them when we discuss that case. So much for the construction of the deed.

10 It is argued that even if the construction of the deeds be that some title purported to pass, nevertheless the deeds themselves were invalid and it is first said that a deed of feoffment rests on possession and that is sound, and we agree with that statement of the law, but it is argued that the Duke of York had no possession, and it comes back to the point I have already discussed, that is, we say he had full possession.

20 It is next said a feoffment conveys only [1187] corporeal hereditaments. Well, what is the soil of the river, what is a pool; it is a piece of land covered with water, and if you maintain ejectment for it, says Blackstone, you maintain it for so much land covered with water. The bed of the river is a hereditament. Our friends say it is a royalty. A royalty is a class of property held by the Crown. It may be a chose in action, it may be an incorporeal hereditament, but how it is conveyed depends upon the nature of the property. Moreover, if it be considered an incorporeal hereditament then it passes by deed of feoffment where it is considered as an appurtenance to a corporeal hereditament. If a deed of feoffment is not good as a feoffment, then why is it not good as a deed of sale? It contains the words "grant, bargain and sell" in the language of the deed itself, "to the only use and behoof of him, his heirs and assigns forever," and therefore, under any theory, under any view at all, the title conveyed thereby was good.

40 It is next argued that the Lord's consent was necessary—

Argument of Clarence A. Southerland for Delaware.

[1188] The Master: How about the lease for ten thousand years?

Mr. Southerland: Yes, I almost forgot that. All the argument of the plaintiff has not in any way sought to invalidate the lease for ten thousand years. That is a muniment of title which apparently not even our friends on the other side can find any criticism of except, I assume, they will say the Duke of York had no title.

10 It is next argued that the Lord's consent was necessary. This confuses the requirements before the statute of Quia Emptores was passed with those after it was passed. Prior to the statute of Quia Emptores the Lord's consent to the transfer was required; after the statute was passed, the necessity for consent was abolished.

20 It is lastly argued that feoffments were abolished by the statute Quia Emptores. They were in use in England in quite recent times, as is stated by Washburn on Real Property, and also the House of Lords, in a case coming from Scotland construed a title of [1189] feoffment and sustained the rights of one of the parties, and the Court also said if the grantor had the title to the fore-
 30 shore it would pass by a charter of feoffment under the phrase "The pertinents" in Scottish law. Lastly, we have pointed out a very obvious error of some sort into which our friends have fallen in a quotation from Lord Mansfield's decision in *Taylor v. Horde*. There is a quotation from that in plaintiff's brief on page 282, and the first two paragraphs of that quotation in the plaintiff's brief appear as we read the report from the argument of counsel, not from the opinion of the Court, and the third paragraph we can't find at all. If we have been in error on this, I hope my friend will straighten us out, because we can't find that at all. It is page 282 of the plaintiff's brief, at the bottom of the page, the three paragraphs quoted from *Taylor v. Horde*, and the third paragraph 40

Argument of Clarence A. Southerland for Delaware.

which says, "feoffment was wiped out by statute," we can't find. Are you sure that is right, Mr. Minard?

Mr. Minard: I assume it was at the time I wrote it; I checked it up.

Mr. Southerland: This "(168)" refers to the [1170] Burrow's Report.

Mr. Minard: There is a page in there that refers to the Burrow's Report of the case. That is the reference to it as I found it.

Mr. Southerland: It is possible, I suppose, there might be two cases. As I say, we find the first two paragraphs, but don't find the third, so I will leave that for Mr. Minard to straighten out.

It is next argued that the language of the deed "all the land within the circle of twelve miles" didn't mean a circle and didn't even mean sufficient of a circle to carry around across the Delaware River, because it is stated it was merely fitting the Delaware boundary into the arc which separated it from Pennsylvania. The very language of the deed refutes that argument, the very language which conveys the river "and the said river and the soil thereof lying north of the southernmost part of said circle," so you must bring the circle around. Moreover, the southernmost part of the circle began twelve miles below New Castle, and you can only get twelve miles if you bring the circle around. So [1171] much for the deeds of feoffment.

On March 22, 1682-3 letters patent were issued under the Great Seal of England to the Duke of York and conveyed to him with full powers of government the land that now constitutes the State of Delaware. It is an admitted fact by our friends that the letters patent of March 22, 1682-3 were taken out at the request of William Penn, at the expense of William Penn, and were for his benefit and are, therefore, to be regarded as taken out pursuant

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Argument of Clarence A. Southerland for Delaware.

to the covenant for further assurance contained in the deeds of feoffment. What was the effect of that on the Penn title? I don't understand our friends of New Jersey seriously to question the legal proposition now thoroughly established and established then by the authority of *Taylor v. De Bar*, in the Court of Chancery of England in 1676, that that title passed to William Penn. When I say passed, there are two views of course that may be taken of title by estoppel, one is that the title passes, the second is that the title remains in the subsequent grantee, but that he is estopped to assert it. It [1172] would seem from the Lawrence case in the early Eighteenth Century in the King's Bench, when it was indicated an ejectment would lie upon an estoppel, that that Court took the same view of it that modern courts take. I know the courts of Delaware take the view that a title actually passes and it would seem from the Lawrence case that the English courts took that view. That would seem, however, to be somewhat contrary to the view taken by Lord Hardwicke, who apparently took the view that the legal title remained with the subsequent grantee, the equitable title only passing. However that may be, and it is of no importance whether it is a legal title or an equitable title, we are in a court of equity and however that may be, at least, the equitable title passed.

Three years afterwards the Duke of York ascended the throne as James II. Thereafter he could not be sued and his successors who held that bare legal title could not be sued, but that only affects the remedy, not the right. There is a clear indication in Lord Hardwicke's [1173] opinion that a good equitable title passed to William Penn, and while he could not maintain an action for specific performance against the Crown, yet his title in a court of equity was as good as a legal title.

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Argument of Clarence A. Southerland for Delaware.

The next point, and a point which again is not argued, but is just found in the brief, relates to the validity of the title conveyed by the letters patent. As we read the plaintiff's brief, there occurs in two or three different places a suggestion or assertion without much discussion, but at least a suggestion to the Crown as one of its prerogatives that aqueous soil belonging to the Crown was inalienable to a subject, or if it were conveyed and was inalienable to a subject, it could not be conveyed to a subject under any circumstances, then only as an incident to powers of government and other royalties so granted to that subject for the maintenance of a proprietary, seniority or new colony.

We have dealt with that first with the England authorities, the English authorities in an unbroken chain from the earliest times to modern times, which hold clearly and there is no doubt about it that sub- [1174] aqueous soil is always alienable by the Crown to any subject, but that the subject's right of navigation and common fishery cannot be thereby impaired. The things the Crown cannot under any circumstances part with are the public rights, not rights in the Crown, but rights in the people, which the Crown safeguards, of navigation and fishery. Thus it is said by Farnham on Waters that if the City of London, the owner of the bed of the River Thames would undertake to fill up the stream and also the river, there would be some remedy at law about it, but it is unquestioned English law, never questioned from ancient times to modern times, that subaqueous soil is alienable to a subject.

There is cited by the plaintiff in support of its proposition no case either in England or America which holds such a grant is void. There is cited *Browne v. Kennedy*, where the courts of this State held it was alienable subject to the right of navigation and fishery. Next is cited *Martin v. Waddell*, and *Massachusetts v. New York*, which

Argument of Clarence A. Southerland for Delaware.

are two cases in the Supreme Court of the United States, which have [1175] carefully considered this question of the alienability of the soil of navigable rivers, or in one of the cases the Great Lakes, from the standpoint of the construction of the deed. I shall not pause, it would take too long, to analyze those two cases in full. Briefly, they stand for this proposition; *Martin v. Waddell* involves a dispute over some subaqueous soil in New Jersey. One party had title from the proprietary, the other the State of New Jersey's title. The Supreme Court said the proprietors after 1702 could not give title, and why, because, said the Supreme Court, when the Duke of York took a grant for New Jersey, the vendee was granted certain seniorial or proprietary rights and included as part of the proprietary rights the subaqueous soil. They held the soil was part of his seniorial rights, and therefore when the proprietors surrendered to the Crown their government, we think they intended to surrender their jura regalia. In *Massachusetts v. New York*, the State of Massachusetts had ceded its claim to all the mainland of what is now New York and the State of New York had conveyed to [1176] Massachusetts, in private ownership, a tract of land in the State of New York and fixed the northern boundary as the international boundary line, so if you took the words literally they would include part of the bed of Lake Ontario. The Supreme Court again held that the intantion of the parties to that treaty was that the State of New York should retain the subaqueous soil and in commenting on *Martin v. Waddell* they said, first, after stating the general law, that subaqueous soil may be held by a subject, after stating and recognizing that general principle, they went on to say that the decision in *Martin v. Waddell* was addressed wholly to the interpretation of the particular grants then before the Court.

The Master: Was what, Mr. Southerland?

Argument of Clarence A. Southerland for Delaware.

Mr. Southerland: The Supreme Court, in *Massachusetts v. New York*, in considering the prior decision of Chief Justice Taney in *Martin v. Waddell*, said that the language of that opinion in *Martin v. Waddell* was addressed wholly to the interpretation of the deeds and records then before the Court. I haven't [1177] the words exactly, but that is the substance.

There is, therefore, no decision by the Supreme Court of the United States or any Court that we have been able to find which says that the sovereign Crown of England or any State to this day cannot grant subaqueous soil in private ownership.

But what is the situation in the instant case? The grant here was not a grant in private ownership; it was a grant to the proprietary of a new colony and the purpose was to enable that proprietary to establish harbors, ports and benefit the commerce of that new colony, therefore, if we say, if you please, that *Martin v. Waddell* stands for the proposition that subaqueous soil is alienable only as an incident to governmental powers—which it does not—if we assume that for the moment, we have here in this case a perfect illustration of the grant of subaqueous soil to one who was actually proprietary of the new colony.

If the case of *Martin v. Waddell* is to be construed, however, as we say it should, namely, only standing for the proposition that *prima facie* title to [1178] subaqueous soil, title to the rivers, title to the bays, are presumed to be in the sovereign, in the absence of anything shown to the contrary, if the case stands for that, then what situation do we have? William Penn was an actual proprietor. The presumption, therefore, since the language conveying the river to William Penn is clear and undoubted, the presumption is that powers of government were thereby intended to be conveyed. Actually in the deed of feoffment

Argument of Clarence A. Southerland for Delaware.

the language used is "royalties, franchises, jurisdictions and powers." They could refer only to one thing, namely, to the actual *de facto* powers which the Duke of Yorks was theretofore exercising. Therefore, coming back to *Martin v. Waddell*, I say if it is applicable at all to the facts of the case at bar, it is clear authority for the proposition that by virtue of that deed of feoffment William Penn took title not merely to the soil of the Delaware River, but was the actual transferee of the Duke of Yorks with all the powers of government which the Duke was theretofore exercising.

The importance in this case of these letters [1179] patent is such and we think it is the turning point of the case, that the plaintiff argues and argues with at least some vigor that they were surrendered, that they were not in existence more than twenty days after their issuance. The first bit of evidence which it is asserted supports that argument is the new Bill of April 11, 1683. That Bill shows on its face what it is. It recites a proposed surrender. Suppose a deed were drawn and that deed says that A. D. for and in consideration of the sum of \$50,000, the receipt whereof is hereby acknowledged, does sell, and hereby has sold and transferred, and so on, to X. Y. certain land. That deed, if you please, is never signed, or having been signed, is never delivered. Could it be contended for a moment that that mere draft of a paper is evidence that that consideration money was paid? Obviously, not, and that seems an absurd question to ask; yet, what in effect, is the difference here? Here we have a draft by the Attorney-General on order of the King that upon [1180] a surrender made by the Duke of Yorks of one charter, which he then has, his Majesty in pleased to grant him another charter for the same land is different terms. How can it be possibly stated that the recital in that document which says that we accept the surrender

Argument of Clarence A. Sutherland for Delaware.

Mr. Sutherland: The Supreme Court, in *Massachusetts v. New York*, in considering the prior decision of Chief Justice Taney in *Martin v. Waddell*, said that the language of that opinion in *Martin v. Waddell* was addressed wholly to the interpretation of the deeds and records then before the Court. I haven't [1177] the words exactly, but that is the substance.

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Argument of Clarence A. Sutherland for Delaware.

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Argument of Clarence A. Southerland for Delaware.

"by these presents"—that was the language which your Honor found in a document a few moments ago—that by these presents, we have accepted, and do accept—how can it be said it was effective until it passed the Great Seal of England? We say if that draft had passed the Great Seal, there was an automatic surrender of the first patent, but until that draft did pass the Great Seal no surrender occurred. So much for that.

The Master: Your contention is it was exactly like a Bill in the Legislature?

Mr. Southerland: Precisely. There is an illustration that had not occurred to me, but that is very obvious.

The second bit of evidence that is pointed to, in support of the theory that the document was sur- [1181] rendered, is what my friend calls the silence of William Penn. When William Penn was asked, says he, by the Lords Commissioners of Trade, "Well, what is your title for Delaware?" William Penn said, "My deeds of feoffment. Well, we don't think they are much good." Why, says he, didn't William Penn urge the equitable title that he had by virtue of the patent to the Duke of York? Well, it seems to us there are two answers to that question. In the first place, William Penn was negotiating in effect with the Crown, with the Privy Council and the Lords Commissioners of Trade, and he was negotiating for the payment to him for a very substantial sum of money; he asked 20,000 pounds and later 12,000 were agreed on and he was negotiating to cure a record title. He wanted a good record title to the Three Lower Counties. For him to have interjected into that proceeding the legal question as to whether or not he had good title under the patents to the Duke of York, would probably only have complicated and prolonged those negotiations. I say that because when later those facts, or at least, [1182] enough of them to put the Attorney-General on

Argument of Clarence A. Southerland for Delaware.

notice were brought to the attention of the Attorney-General, what did they say, they said, "Take that case into the Court of Chancery, and find out where that title is." I say that was sufficient reason, for sufficient reasons of his own, Penn did not press that deed.

There is another reason: William Penn was not a lawyer. I should think that to this day, many a business man with a title to a piece of real estate in that condition would be worried about it. It would occur to any lawyer at once, because we think of the equities of the thing, and our minds delve at once into what the real relations of the parties are, and what the doctrines of law are applicable to it, but I don't think that is true today of the average business man, and I think he would have the vague feeling he was put upon, and something could be done about it, but if he was asked for his title, I don't know that he would give the answer which our friends on the other side say anybody would have given. However that may be in modern times, surely it [1183] is reasonable to say that 230 years ago this doctrine that we accept so readily was not quite so clear then as it is now. It was the law, yes, there was the case I mentioned before of *Taylor v. Debar*, in the Chancery cases in 1676, yet, that is cited, as I recall it, as one of the leading cases in England, but when the law makes a leading case, it takes a little time for that case to become powerful, as the line of decisions make it, so I think it is possible to assume that William Penn and even his successors, and even James Logan, regarded this formal defect in record title as more serious than it actually was. Moreover, their trustee, the person against whom any action would have to be brought, was the Crown, so that no action would lie.

All these considerations seem to me to furnish quite a reasonable explanation why, when William Penn was asked for the source of his title, he said the deeds of

Argument of Clarence A. Southerland for Delaware.

feoffment and stuck to it. As a matter of fact, he was right; they are the ultimate source of title.

[1184] It is next argued that even the witnesses on behalf of Delaware in the prior suit, and even Judge Rodney, in his Monograph, failed to point to this deed as a source of title. Surely, that argument proves too much. Surely, every witness in the prior boundary suit, the members of the Bar who testified on behalf of the State of Delaware, Judge Bradford, Judge Gray, and certainly, Judge Rodney when he wrote the Monograph referred to, had full knowledge of the existence of the letters patent of March 22nd, and yet they said that the deeds of feoffment in Delaware are regarded as the original source of Penn's title, and hence, of the State's title.

It is next argued that Logan had no knowledge of any royal grant. I shan't pause to read all the Logan correspondence, it would take too long, but the Logan correspondence makes it abundantly clear not only that Logan knew fully of the existence of this grant, but that he regarded it as furnishing ground for the contention that the title did inure to the benefit of Penn. Mr. Minard discusses it on page 485, I think, [1185] your Honor.

The Master: Now, Mr. Southerland, if you will look at page 495, beginning "Refers to Earl of Sutherland's application for a grant of the three lower counties. States that the Duke granted to Penn," and then continues with Logan's letter—

Mr. Southerland: Yea, sir, this is the letter of 1726.

The Master: That is right. "Now 'tis true that the title in regard to ye Crown is deficient but as the Duke was a subject when he made those deeds and when he received the patent afterwards from his brother I am told ye patents would inure to thy father's benefit by virtue of the Duke's first deeds to him."

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Argument of Clarence A. Southerland for Delaware.

Mr. Southerland: Yea, sir, and before that, in the letter of 1717, Logan, writing to William Penn and Henry Goldney says, "yet I can scarce think it possible that after 35 years quiet possession under so many different Crowns, such a grant from King Charles to the Duke, and from him, as proprietor," and so forth. [1186] The inference, to me, there is he is again referring to that patent. In 1720, it is clear on March 29, 1720, Logan wrote again, "And further, if Lord Baltimore should fail in his claim to the counties," and so forth. In 1726 occurs the letter which your Honor has just quoted, which contains not merely a reference to the patent, but as your Honor has pointed out, a reference to the legal theory that could be bottomed upon that patent. Therefore, when it is stated that Logan never heard of any grant to the Three Lower Counties, if by that is meant no direct grant to William Penn from the Crown, that, of course, is correct, but if it is meant to refer to the matters upon which we bottom our title, that is contradicted by the letters.

Lastly, as to the patent of March 22, 1682. A considerable number of exhibits have been introduced, with reference to the Document of Dover. As I see it, the relevancy of that evidence is this: If the Document of Dover is, in fact, the original document, which passed [1187] the Great Seal of England, then surely, that constitutes the strongest possible evidence that the document, in fact, was never surrendered, and therefore, it is material, we think, in this case for the Master to consider on this issue of surrender whether or not the document at Dover is the original patent which passed the Great Seal.

The Master: On the other hand, Mr. Southerland, if the surrender was ineffective, that is, the alleged surrender is ineffective, and the grant of March 22, 1682 remained in effect, then it doesn't make any difference about the Document of Dover or not.

Argument of Clarence A. Southerland for Delaware.

Mr. Southerland: We agree.

The Master: It is only in the event that the patent of March 22, 1682 was surrendered, that the Document of Dover can really play any part in the issue of fact, as I see it.

Mr. Southerland: I think that is correct, but I am not certain whether Mr. Minard would agree with that statement.

[1188] The Master: No one has the slightest doubt there was a grant. There is no doubt about it, there is a Boll's copy in the record.

Mr. Southerland: Which my friend put in.

The Master: Unless that patent has been effectively or effectively surrendered it is still operative.

Mr. Southerland: Yes, sir, that is correct.

The Master: Still operative, no matter whether there is an original in existence, or there isn't an original in existence, as I understand it.

Mr. Southerland: We, of course, would assent to that idea of the matter, but I don't know whether Mr. Minard would or would not.

Mr. Minard: I would not, for this reason: If that grant existed in full force and effect at the time of the American Revolution, rights by prescription contrary to that grant had arisen on the east side of the river, and that grant would not be effective as against defendant's own repudiation of Penn's title.

[1189] Mr. Southerland: Confining the matter solely to the matter of surrender, is the Master correct, as you understand it?

Mr. Minard: As I understand the Master's proposition, if the grant was not surrendered, whether the Dover Document is an original is unimportant. That is so, as far as that document is concerned.

Argument of Clarence A. Southerland for Delaware.

Mr. Southerland: However, I understand the plaintiff to argue that our evidence of surrender that he finds is in the fact, as he says, that the Dover Document is not an original.

Mr. Minard: No, the defendant asserts the Dover Document as an original, and we say that is not so. In the first place, the other grant is recited as having been surrendered and the surrender having been accepted, regardless of the phraseology and hereby accepted—that is merely a repetition of the acceptance in the Bill. It had been accepted before. Second, the Dover Document does not bear the essential ear-marks of [1180] an original, so, whether the original is in existence or not, doesn't matter if there is no evidence of its being surrendered. But whether this is the original or not is entirely a different question.

The Master: Right. If there is no surrender, it is irrelevant as to which is the original.

Mr. Southerland: I don't desire to take the Master's time with a long discussion, therefore, of the evidence dealing with the question of the original or no original. It is fully covered in the Brief. I would like to say merely this: We have produced in support of the authenticity of the document which is admittedly—in any event, whether it be a copy or the original—250 years old, a chain of circumstances, an affidavit in 1735 that Page then had the original, a letter some years later, stating Mr. Paris had got the original charter and deeds from Mr. Page, the allegation in the Bill of Complaint in *Penn v. Lord Baltimore*, the testimony of Benjamin David in the Pea Patch case, that he got them from Mr. Coates, the agent for Penn. My [1191] friend scouts that testimony, but that is the only kind of testimony that can be gotten about a document, which has passed from hand to hand.

Argument of Clarence A. Southerland for Delaware.

A good deal of evidence has been taken about the seal on the document. I want to recall the Master's mind to the trip we made to Dover, and the Master's inspection of the document then, and it will be recalled that the seal was of a dark color, that it was not yellow, and the inference is, therefore, that it is not a duplicate. Moreover, I would ask the Master to read carefully, and I think it will be found of considerable interest, the case that was presented to Sir Henry Maxwell-Lyte, because in that will be found a full discussion of the various controverted points about this document.

There are two objections to it—well, one objection, because the other was abandoned with regard to marginal notations, and there again let me say merely this: It is agreed by Mr. Minard, it is stated by Sir Henry Maxwell-Lyte that one of the characteristics [1182] of a document of this kind is the endorsement on the reverse thereof, "Perpetuity." That meant that the document was liable to the Great Fee, and it was a notation put on there by the Clerk of the Chancery when that document went through his hands. This document has such an endorsement, and that seems to us to dispose completely of the contention that it was an incorrect copy. This is not a duplicate, it is not an exemplification, and that disposes of the contention it is an incorrect copy because it would not have that endorsement on it, and the only thing left for it to be is the original document itself. The reason I have dwelt at length upon this Dover Document and upon this issue of surrender is because we think that this defense of surrender is the only defense the plaintiff has to the Delaware title.

If we assume, if you please, that William Penn never got any title at all, for what is comprised within the lands and waters of the State of Delaware, or if we assume, if you please, that Delaware has repudiated [1183] the

Argument of Clarence A. Southerland for Delaware.

title, a matter I will discuss subsequently—but, if we assume every argument on behalf of the plaintiff to be sound, except this argument of surrender, the Delaware title would still be good, why, because its boundaries were fixed by the letters patent of March 22, 1682-3, which legalized it as an English colony, and fixed its metes and bounds. Therefore, the issue in this case of these letters patent is an important issue and I think our friends on the other side have visualized that situation, and I think that is the reason for the attempt made in this case, never before suggested, that the letters patent of March 22nd were surrendered.

We have dealt with these various exhibits concerning Penn v. Baltimore, and the Earl of Sutherland's application, and the application for the islands, under the general theory that they represent attacks made on William Penn's, or his successors', title to the Delaware Counties. I think it would be a waste of time for me to review the history of Penn v. Baltimore, I am sure it is well known to your Honor, and is fully discussed in the Brief, [1184] and I shan't take the time to discuss it now, so I shall merely offer a few observations on Lord Hardwicke's opinion. Certainly, I may add, I do not feel that counsel for the State of Delaware are called upon to defend the memory or reputation of William Penn in this dispute with the State of New Jersey.

Lord Hardwicke's opinion, as we see it, decided Penn's title to be good, and decided that title to be good under the deeds of feoffment and the letters patent. The objection to it are these: first, the decree, says my friend, did not pass upon any question of title, because a Court of Chancery has no jurisdiction over titles. That is true, as a general proposition of law of Chancery jurisdiction, it is true today in the State of Delaware, but notwithstanding that, if a question of title is incidentally presented to a Court

Argument of Clarence A. Southerland for Delaware.

wick's decision was a decision which considered this question of title and compelled him to express an opinion on it and that decision constitutes a real precedent for a decision of this case, because in the matter of the Crown's title, the Attorney-General was before the Court. I don't know whether my friend argues that he was recalcitrant to his duty, but I don't see how, after 200 years, we can assume anything but [1197] that the parties to this cause acted in good faith, and the Attorney-General of England did his duty, but he did not go into Court and say at any time during that case, "The Crown claims this land, we object to these proceedings." He filed an answer in which he says he has no knowledge of the matters, and prays the Court may protect the interests and prerogatives of the Crown, if any, and the Court made such a decree reserving, however, to the parties in the decree, the liberty to apply to the Court if by an act of the Crown, the execution of the decree should be obstructed. No occasion arose to apply to the Crown for relief thereafter, for the reason the Crown did not make any effort to obstruct the decree. So much for *Penn v. Baltimore*.

There is one other incidental matter, which is argued in the Brief, and which relates to the Penn-Baltimore dispute, and that is the effect of the Order of Council of November 13, 1685, which divided the Peninsula. The language of that order was this, that one-half of the Peninsula be adjudged to Lord [1198] Baltimore, and one-half be adjudged to His Majesty. My friends say there was an adjudication of title in the Crown by the Privy Council which had jurisdiction over boundary disputes in the Colonies, something no Court ordinarily had. We don't quarrel with his argument that the Privy Council was the Court of last resort, in regard to Colony boundaries, but we say the record in the case plainly shows that that was a case where Lord Baltimore petitioned the

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Argument of Clarence A. Southerland for Delaware.

of Chancery, the Court is bound to pass upon that title, can't avoid it. We, today, have many a suit for a specific performance of a contract for the sale of real estate [1195] and the defense is, the title is no good and the Court of Chancery must say "I think this title is good enough for you to take," or "you don't have to take it." I will say questions of title are sent to a law court for decision by a jury in some instances, but nevertheless, they have decided and passed upon titles and this was such a case. Here was a case for the specific performance of an agreement to settle boundaries. That agreement contained a covenant for mutual conveyances. Lord Baltimore's counsel defended that suit, and it was ably defended over a period of years.

The Master: Who was counsel?

Mr. Southerland: I have read them, but can't tell your Honor without looking them up, but they argued as follows: "You cannot," said Lord Baltimore's counsel, "compel specific performance of this agreement for the obvious reason that the agreement contains a clause for mutual conveyances. If we take Penn's conveyance for all land west of the north and south line, or west of the tangent line, we will get no title, we will get nothing, and [1196] therefore, this agreement was inequitable and should not be performed." I say regardless of the jurisdiction—the general jurisdiction—over title, that actually the Lord Chancellor had to say, "Oh, yes, you will have to take that title, because it is sufficiently good," and that is what he did say, and he based his opinion on two things, and on one just as much as on the other, first, good title by way of the Crown as royal trustee; second, undisputed possession because they had been permitted to govern, enjoy and possess these grants and had nominated governors which the Crown approved, notwithstanding the Crown's claim of title. Therefore, we say Lord Hard-

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Argument of Clarence A. Sutherland for Delaware.

10 Privy Council that his title under his charter of 1632, to the Delaware Bay for all of the Delaware Peninsula be ratified and confirmed, and established as the true title. The decision as to the western half down to Cape Henlopen was against him, but that is all that decision was. In no sense was that a decision between William Penn on the one hand and the Crown on the other, because no such cause was before the Privy Council. The jurisdiction of any body, the nature of any order they may make, or the extent thereof, depends upon the issue submitted to them for determination. The issue submitted to them for determination was not an [1199] issue between William Penn and the Crown; it was a dispute between Mr. Penn and Lord Baltimore, touching boundaries and soil of a colony in America; it was in no sense the determination of an issue between William Penn and the Crown; the Crown had the record title and so far as the Patent Roll was concerned, that title was in the Crown and it was the very reason the Privy Council did not attempt to adjudicate that title between William Penn and the Crown. Where is the title? Here it is in the Duke of Yorke, and he has now ascended the throne. That was what was done in that order of November 13th, and that is all. It is argued that was an adjudication against William Penn. If it had been, is it conceivable that that view of that order would not have been taken by Attorney-General Northey in 1717, when he passed directly upon the Penn title? Is it conceivable that order would have escaped Lord Baltimore's counsel in *Penn v. Baltimore*, or would have escaped Lord Hardwicke? It was not until the *Pes Patch Island* case that it was even suggested that that Order in Council was an adjudication [1200] that foreclosed William Penn's title.

I wish to refer very briefly to the application of the Earl of Sutherland in 1717. William Penn is described

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Argument of Clarence A. Sutherland for Delaware.

as being under a Innacy. It is possible he was suffering from sort of a stroke, as we call it, and was wholly incapable of attending to any business of any kind. However, when the Attorney-General gave his opinion and referred to the grant of 1683, which recited the grant of 1632, "which grant cannot be found," it seems to me what that means—and I admit this is merely, I think, an inference from what we know of the whole situation—it is quite likely that the Attorney-General of England did not think it was his duty at that time to search the Patent Rolls, that it was the duty of Mr. Paris, or whoever else it was to find that paper, and produce it. It is possible Penn put it somewhere and nobody knew where it was, and for some reason, a Rolls copy was not produced, and when the Attorney-General asked for it, and Mr. Paris, or whoever else appeared there, said they didn't have it, hence the [1201] statement it could not be found. The point in that opinion, however, it seems to us is, there was enough there, obviously, to indicate there had been a grant to the Duke of Yorke, while he was a subject, for this disputed territory and following the deeds given by him to William Penn for this territory. What did the Attorney-General conclude? Now, mind you, one of the peers was then asking for a grant of the land and said, "I will prove they belong to the Crown," and the Attorney-General's opinion was asked whether they did belong to the Crown, so that the Crown could grant them, and he said this, "Upon the whole, we submit, whether it would not be better that your Majesty's title should be determined"—where?—"in the Court of Chancery." Why in the Court of Chancery? Obviously, because there was a question of equitable right. Had there been a question solely of legal right, he would have said, presumably, that it must be taken to the Privy Council, but no, he said the Court of Chancery, and the language can mean only one

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Argument of Clarence A. Southland for Delaware.

thing, that the Attorney-General conceived the status [1902] of the title, a grant by the Duke of Yorke, an estoppel by a subsequent grant to him, a question of equity that only a Court of Equity could pass upon.

We have heard from my friend, and a great portion of his Brief is devoted to the proceedings in the Privy Council and the Board of Trade where Penn's title was questioned. Actually, for almost 20 years, not quite, after 1682, there never was any question about the title. More than that, in 1694, William Penn, who had been removed from his government, was restored by William and Mary to his government. Before he was restored, proceedings were had before the Privy Council on his petition for restoration. He appeared before the Attorney-General and submitted his title deeds, the Attorney-General examined them, he made the claim before the Attorney-General that pursuant to those deeds he had occupied and governed the lower counties the same as Pennsylvania, and thereupon, his petition was approved and by various orders in Council, and letters patent under the Great Seal of England, William Penn was restored to [1203] the government of Pennsylvania and country of New Castle and Territories thereon depending with as full a possession as he theretofore had. What is the effect of that? Surely, if a technical argument be needed to sustain the Penn title, it is found in that document. He was restored to full possession of that country and to the administrative powers that he had theretofore exercised. How could thereafter the Crown of England claim that it had not fully ratified and recognized William Penn's title?

Beginning with about 1701, William Penn's title was questioned and it came about in this way: In 1696, there was established by William, III, the Board of Trade. The Board of Trade was an advisory body, as Mr. Minard has stated, and the important thing to note about it is

Argument of Clarence A. Southland for Delaware.

that consistently from the first, and particularly, during the early part of the Eighteenth Century, it advocated a very strict policy of maintenance of the royal prerogatives, as against the Colonists, and on every possible occasion recommended to the Privy Council that proprietary governments be terminated, [1204] and that colonies governed under royal governors and responsible direct to the Privy Council, instead of to their proprietary, should be set up. The charters of New Jersey and North Carolina were actually surrendered, I believe.

In 1701, a report was made to the Board of Trade by Surveyor-General Randolph. Randolph's duty was to report on the affairs of the various colonies. He visited Delaware and reported to the Board of Trade the disaffection of certain of the colonists, and in particular, the lack of record title in William Penn and the lack of record title of express powers of government, and so on. He submitted to the Board of Trade at the time a copy of the Act of Union. Nothing was ever done by the Board of Trade to set aside that Act of Union. Nothing was ever done, save to call upon William Penn to ask him what his title was, and after he had bottomed his title upon the deeds of feoffment, the Board of Trade, seizing an opportunity which it saw, asked him to sign a declaration that thereafter the ap- [1206] pointment of Lieutenant Governors for the Lower Counties shall not be construed to diminish or set aside Her Majesty's right and title to the Three Lower Counties. Correspondence ensued and William Penn objected to that form. The form he finally signed was this, that it should not be construed to diminish or set aside her Majesty's claim of title. There is all the difference in the world between acknowledging that somebody has a title which you claim and acknowledging somebody claims a title which you have.

Argument of Clarence A. Southerland for Delaware.

The Master: Was that the final form? It is not entirely clear from the Brief.

Mr. Minard: The first form was a statement to Penn of what they expected of him. It was in the form of a declaration.

The Master: Page 596 of Mr. Minard's Brief is where he sets out the proceedings regarding the matter.

Mr. Minard: That is the form.

The Master: Yes. You say there, as I [1206] recall, that nothing shall be taken—I forget the exact language without looking it up—I think the word "right" is used as I recall it.

Mr. Minard: On page 594 of the Brief we have a letter from Secretary Popple, dated December 1, 1702, telling Penn what kind of a declaration he was to sign regarding Colonel Andrew Hamilton. There is the language, the second line from the bottom. I don't mean to inject an argument, but it has been just stated that they took an opportunity which they saw, and I call attention to the fact they did so pursuant to an order of the Privy Council.

Mr. Southerland: That is right.

Mr. Minard: I thought you stated it was an idea of the Lords Commissioners of Trade. At the bottom of page 594 he says "They have likewise ordered me to remind you that by her Majesty's order in Council of the 11th of last month you are further required to declare under your hand that her Majesty's allowance of Colonel Andrew Hamilton to be your Deputy Governor in Pennsylvania shall not be construed in any [1207] manner to diminish or set aside her Majesty's right and title." He submitted a form then and they rejected that and submitted this form of theirs. That form says "Her Majesty's claim of right to the said Lower Counties"; that is the distinction Mr. Southerland is talking about.

Argument of Clarence A. Southerland for Delaware.

Mr. Southerland: Here is what I am talking about. The Privy Council or the Board of Trade, I think Mr. Minard is wrong, I think the idea originated with the Board of Trade—

Mr. Minard: There is the evidence of it.

Mr. Southerland: You will find in some of your exhibits that the Board of Trade originated the idea, but I don't think it is of any importance. At any rate, the British authorities required this declaration. Here is the first declaration they sent him—

The Master: In your Brief, Mr. Minard, apparently the final declaration is set out on page 596.

Mr. Minard: Yes, that is the only form the [1208] Board of Trade ever submitted to Penn.

The Master: Was that the form finally agreed upon?

Mr. Minard: Yes, that was the form expressly prepared by them and which they required him to sign.

Mr. Southerland: On December 1, 1702, William Popple, Secretary of the Committee, wrote to William Penn as follows: Your answer to the four queries which was brought me last night has been laid before the Lords Commissioners. They have likewise ordered me to advise you that her Majesty's allowance of Andrew Hamilton to be your Deputy Governor in Pennsylvania shall not be construed in any manner to diminish or set aside her Majesty's right and title to the Three Lower Counties.

Mr. Minard: That is what I just read.

Mr. Southerland: William Penn replied to that, and this is his language: "I will take no advantage of the Queen's royal approbation of my Deputy Governor, Colonel Andrew Hamilton, for one year to elude or diminish her pretensions or claim of right to the government of the lower counties upon Delaware [1209] now under the administration of said Hamilton in conjunction with the

Argument of Clarence A. Southerland for Delaware.

Province of Pennsylvania." I suppose that language didn't seem quite dignified to the Lords Commissioners of Trade. I don't think it is.

Mr. Minard: They tell you why in their own letter.

Mr. Southerland: However, this is the form finally sent to Penn and signed by him: "Her Majesty's claim of right to the Three Lower Counties," Exhibit 1049.

Mr. Minard: And the reasons for it are at the bottom of page 595 of our Brief.

Mr. Southerland: Where is it?

Mr. Minard: Popple's letter says "not finding the same so conformable to Her Majesty's order in council as they conceive it ought to be, their lordships have directed me to return it to you, and therewith also to send you as I do here enclosed the form of a declaration prepared by ourselves in conformity to Her Majesty's said order." Not a form, but the form.

Mr. Southerland: The form finally approved [1210] was an acknowledgment by Penn of a claim of right and nothing more, and never was anything more than that.

There are a great many exhibits with regard to the surrender negotiations. All the negotiations in effect are this; there was a constant dispute as to why he talked about "territories depending on Pennsylvania" and he replied it has been used in the past and there can be no harm in using it and the matter went on and on, and finally when they agreed on price, they were about to take a surrender of what he had. Frankly, I don't think it amounts to very much, either to the defendant or plaintiff in this case. Actually, the surrender was never consummated; William Penn died; his estate got into litigation and the whole thing was abortive and so far as anything is to be drawn from it, it lies in the Queen's warrant drawn for 1000 pounds, which recites William Penn's deed

Argument of Clarence A. Southerland for Delaware.

of feoffment along with his Charter to Pennsylvania, and as a matter of fact, the Queen's warrant recites William Penn's deed of feoffment.

The Master: Nothing was actually paid.

[1211] Mr. Southerland: I know there was a warrant drawn, but whether it was paid or not, I don't know.

The Master: Was anything ever paid?

Mr. Minard: I never heard it was paid. As Mr. Southerland says, all I saw was the warrant.

Mr. Southerland: If we are right, therefore, in saying that none of these proceedings during the Eighteenth Century in any way disturbed the Penn title, if that title was valid at least in equity by virtue of the letters patent, if the letters patent were not surrendered, then good title vested in William Penn at the time of the Revolution, in the Penn heirs and the State of Delaware as successor.

We come now to a subject which is treated at some length in the briefs, and which I will touch on very briefly, and that is, the exercise of dominion by the States. Preliminarily, let me say that it seems to us that in this case exercise of dominion plays a much less important part than it does in many boundary disputes. The principles under which courts look eagerly to that class of evidence to determine title, are of [1212] course, well settled. Cases are cited both on our brief and on Mr. Minard's brief in the Supreme Court of the United States, and the principle simply is that long continued domination, exercise of jurisdiction by one State, acquiesced in by the other for a long period of time, notwithstanding there is no Statute of Limitations that runs against the State, is very strong evidence of title and may be conclusive. What we say is that surely if there is anything that is obvious in this case it is that neither side, neither State, has ever acquiesced in the claim of the other; that continuously there has been a sharp

Argument of Clarence A. Southerland for Delaware.

10 conflict, a dispute between the States, which in some
 farm or another has been active during a great portion
 of this time. The Pea Patch case, it is true, was not
 technically between the States, but was a suit brought
 pointedly to the attention of the States, the general bound-
 ary dispute, and the suit in 1877, of course, related to
 the boundary within the circle and the very Compact of
 1906, of course, is an acknowledgment by both parties, if
 you please, that at that time, in 1906, there existed
 [1213] between the States unsettled an existing dispute
 of the boundary line, so that we say there is no room
 in this case for the application, as we see it, by either
 State of that principle. Notwithstanding that, both
 States, of course, have submitted to the Master many
 illustrations of the exercise of jurisdiction; first of all, by
 20 cessions of land to the United States: New Jersey has
 one cession where the Government took a site for a light
 house and took no deed from Delaware, and we have one
 in 1927 for which there is no New Jersey deed. An ap-
 plication was made by the War Department some twelve
 years before.

The Master: That would be within the twelve mile
 circle.

30 Mr. Southerland: Within the twelve mile circle, and
 east of the ship channel. The apparent reason was that
 under the New Jersey Constitution a grant of that sort
 could not be made without compensation, and it being
 impracticable to pay compensation, the Government took
 a Delaware deed and improved the land and is still there
 under a Delaware title. All I am seeking to [1214]
 point out is the recognition of the claim of both these
 States to the eastern half within the twelve mile circle.
 Taking the maps all in all, they show this, the later maps
 in this section of the country have followed the United
 States Geological Survey, putting the boundary on the

Argument of Clarence A. Southerland for Delaware.

New Jersey shore, which shows at least, an existing dis-
 pute with our friends from New Jersey.

There is one feature of that, however, which calls for
 comment. The argument is made that plaintiff and its
 citizens have acquired by prescription certain rights, and
 it is stated that modifications of the common law of
 England have sprung up. We agree with that undoubt-
 edly. By an early common law of England, no subject
 could encroach upon the foreshore unless he had a grant
 for it. That law was wholly unsuited for the develop-
 ment of the American colonies, and the only State we
 know of that has clung to it in any way is the State of
 New Jersey. The law is, as laid down by Chief Justice
 Marshall, that you hold to low water mark, not to high
 water mark, but the State of New [1215] Jersey holds
 tenaciously to the theory that it owns the foreshore.
 Undoubtedly modifications have sprung up. In *Gough v.*
Bell, a New Jersey case, the Court seems to limit it to low
 water mark. We say it is undoubtedly true in the State
 of Delaware and in most of the American colonies that
 the upland owner had the right to wharf out and that
 right was not adverse to the owner of the soil. When
 you build a wharf on the State's land at New Castle, or
 Rehoboth, or somewhere on the Delaware shore, you are
 not trespassing on the property of the State of Delaware.
 The State of Delaware gives you that right subject only
 that you must not either by State or Federal law obstruct
 navigation.

We say moreover that the Compact of 1905 expressly
 acknowledged the rights of the citizens of New Jersey, at
 least, by implication to wharf out, and in my view the
 Compact of 1905 ceded to the State of New Jersey all the
 right to control the erection of those wharves and to say
 who shall erect them, and it was a very sensible thing to
 do. Therefore, we say there is no case here for the ap- 40

Argument of Clarence A. Southerland for Delaware.

plication of any doctrine [1216] of prescription, that the evidence that is in simply shows that each State has continuously on every possible occasion asserted its claim to the best of its ability.

My friend complains about the nature of the evidence we have put in showing dominion over the river. Actually there is no evidence, if you please, in this record except the arrest of one or two fishermen by New Jersey of any dominion by the State or Federal Courts of New Jersey. It is impossible for us at this date to discover the issuance of writs one hundred years ago, and the writ itself would show nothing. That testimony was before Mr. Sargeant in the Pes Patch case and a resums of the testimony is in his opinion. I appreciate that one hundred years have gone by since that decision, but the Supreme Court of the United States has recognized the fact that a long lapse of time since such testimony was available is a good reason for taking the best that can be gotten.

The Master: In connection with that provision of the Compact, there is another provision immediately [1217] preceding regarding fisheries. I confess to a good deal of perplexity as to the provision regarding fisheries.

Mr. Southerland: It is Section 6 of the Compact. My general understanding of that is the parties had solved the fisheries difficulty. That had been the occasion of the dispute of 1877. This Compact settled the fishing rights and both States were to adopt uniform laws to regulate fishing rights in the river and when it came to oysters and clams, they said we won't touch that question at all, we will lay it aside.

The Master: It excluded oysters and clams?

Mr. Southerland: Excluded shell fish.

The Master: Otherwise, unless there was some limit, to me it meant New Jersey could plant up to the Delaware

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Argument of Clarence A. Southerland for Delaware.

shore and Delaware could plant up to the New Jersey shore. Unless some restriction is placed on the interpretation there--

Mr. Southerland: As a matter of fact, the old Compact related to the circle and settled the dispute in the circle regarding the service of process [1218] and fisheries.

Mr. Minard: But there were no oysters in the circle.

Mr. Southerland: But it might be deemed wise to put a saving clause in about it.

Mr. Minard: There is no evidence of oysters there from the earliest date.

Mr. Southerland: I desire to discuss for just a moment what my friend calls the repudiation of the Penn grant. What is a repudiation? Obviously, if this means anything as a legal assertion, as a doctrine which is followed by any legal consequences, it means that the State is estopped to assert the truth as to its title by reason of a contrary recital in a preamble to a legislative act. No authority is cited on plaintiff's brief for that proposition. We don't think any authority can possibly be found. My friend was reluctant, he would much rather talk about repudiation than he would about the legal doctrine, which is estoppel. That doctrine applies under certain definite conditions. They are simply these, that an estoppel [1219] occurs when A misleads B by reason of B's ignorance of the truth and B relies upon what A says. It is an elementary doctrine of law and we say, Yes, in the heat of passion the General Assembly of 1794 took these lands but obviously it was an after-the-war measure, but we say how did that transfer title to anything to the State of New Jersey? How did that avail to divest the State of Delaware of a title she had theretofore lawfully had? There is no suggestion in plaintiff's brief, by any means known to the law, by which Delaware's title passed to the State

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Argument of Clarence A. Southerland for Delaware.

of New Jersey. The only legal peg upon which that garment may be hung is the doctrine of estoppel and there is no estoppel, first, because the facts were not misrepresented—it was a question of law, the facts being patent, and open to anyone who had searched the title records—and secondly, because the State of New Jersey had not been misled by anything in the preamble to that act. Remember, this is not the act, it is merely a recital in the preamble to an act.

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We come now to the Pea Patch case. Serious [1220] criticism of the arbitrator's opinion, serious criticism of the conduct of the United States authorities is made by our friends from New Jersey. Actually I think the Master will conclude after reading that opinion that whether it is right or wrong—whether the Master thinks it is right or whether the Master thinks it is wrong—at least, it is a well-considered opinion giving the view of a competent lawyer of his time of the legal points involved. However, it is interesting to note in spite of the vast research that has been done in this case, and it has been done, and I say that not only out of appreciation for the remarkable efforts that Mr. Minard has made here in assembling his material, but also the efforts made on behalf of the State of Delaware by Mr. Bates thirty years ago, because the material which we put before your Honor today is only one-fourth or one-third of the material he then assembled with some additions. In spite of that research, your Honor will find the essential things were in evidence and considered by Mr. Sargeant in the Pea Patch case. How different it is when we come to consider [1221] the case upon which Mr. Minard relied, *Gale v. Bekking*.

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The statement is made that the verdict was rendered after the fullest consideration of the facts and law and was a real trial. Was it? In the first place, no Del-

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Argument of Clarence A. Southerland for Delaware.

were counsel participated in the case. I don't mean the United States Attorney for New Jersey was, in any sense, recalcitrant in his duty, I don't desire to be so free with charges, but we do say that the exhibits my friend put in show clearly it was anticipated that the burden of that case, of evidence, of jurisdiction, and what not, that was expected to be done by Delaware counsel. Actually it was not done and the point of the matter is, the Delaware case was not in any sense presented to the Court. First and foremost, and this is sufficient to rob it of all powers of precedence, the letters patent of March, 1682, were not power as precedent. Many of the principles of law are sound and your Honor can apply them to this case. There are certain aspects of that opinion which we are entitled to say, we think, [1222] rob it of the effect in any event of being a precedent. Mr. Justice Baldwin discussed the title conveyed by the deeds of feoffment. Bear in mind that Mr. Wall admitted in a letter to the Secretary of War that the deeds for Delaware conveyed the Delaware River. Mr. Justice Baldwin said that the granting clause could only be taken to include that portion of the river lying west of a line drawn between the two intersections of the circle with the west bank of the Delaware—the two intersections of the circle and the west bank of the Delaware. That was frankly an extraordinary view to take, but if you take a map—what was in dispute then was Pea Patch Island—

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The Master: How much land would that cut off?

Mr. Southerland: That would take in half of Salem County and part of Gloucester County.

Mr. Minard: No, a copy of that diagram—Wall put it in the back of his appendix, and it is in there and it doesn't take in all of the river.

[1223] Mr. Southerland: It takes in all of the river, except one little portion consisting of a small triangle. A

Argument of Clarence A. Southerland for Delaware.

little corner of the river is not taken in. I don't desire to emphasize that, for the purpose of showing anything but this, that it is perfectly apparent that a trial which resulted in an expression of opinion of that sort from a competent Bench is explainable only on one theory, that there was no presentation of the other side of the case. I have repeatedly stated that nothing will lead a Court into error so much as the lack of an active clash of opinion at the Bar.

The Master: Mr. Southerland, I am familiar with the interpretation that he would take the circle at the southernmost end and then bring it up to coincide with the northern part of the circle, swinging it—his opinion says that was the eastern boundary of Delaware. That was his interpretation.

Mr. Minard: That was one of the alternative theories which he said might be pursued. That was not the burden of his decision.

[1924] Mr. Southerland: The alternative that he made was that half the river was conveyed. All that can be said on that point is, why half, when the deed says the river? There is just no sense in it.

Mr. Minard: No more sense than the easterly low-water line.

Mr. Southerland: I am glad my friend reminded me of that, because there is quite a good answer to that, aside from Chief Justice Marshall's decision in *Hensley's Lessee v. Anthony*. Actually, there is a very close point whether or not the foreshore didn't pass to the Duke of Yorke under his charter, and consequently, was conveyed by him to New Jersey. Our English counsel says that you may take either view. Consequently, a construction that would limit Penn's title to low-water mark is perfectly sound. Moreover, when the Crown conveys the river, does it convey to high-water mark, or does it

Argument of Clarence A. Southerland for Delaware.

convey to low-water mark? Again you have a question of construction. Bearing in mind the previous grant to the Duke of Yorke, I think it is perfectly natural to assume, as William Penn did when he wrote to the Duke of Yorke in 1683, that New [1225] Jersey had the title to low-water mark.

Coming back to *Gale v. Belling*, and one other suggestion made by Justice Baldwin. Justice Baldwin argued that no title to any subaqueous soil to any part of the river or bay passed by the second deed of feoffment, and therefore, the deeds must be read together, and none passed by the first. I wouldn't go so far as to say, as was said by the Honorable John M. Clayton, in the *Pas Patch* case, that that is an unparalleled example of judicial license, but I would say it is an extraordinary piece of legal reasoning and one which I confess I never saw before in any legal opinion, namely, that if you have two deeds, one that conveys Blackacre and the other Whiteacre, that you can take the one that says it conveys Whiteacre and say that since it conveys Whiteacre, the other must convey Blackacre.

The Master: Before you leave the point of the foreshore, what is your understanding of the decision in these two recent Supreme Court cases involving [1228] the Potomac River? Do they hold that as a matter of law, common law, that the right of the Crown went to high-water mark?

Mr. Southerland: I don't know, sir, I am not familiar with them. It did, by the common law.

The Master: What has happened is this, very strangely, that the Supreme Court in the Maryland boundary case, has held that the low-water mark throughout the Potomac River is the boundary between Maryland and Virginia, low-water mark on the Virginia side. They held, however, that that decision did not cover the District of

Argument of Clarence A. Southerland for Delaware.

Mr. Southerland: Oh, yes, he wrote to the Commissioners in 1683 saying they held to low-water mark and they had the liberty of the river, but not the proprietary.

Mr. Minard: He was talking about the islands up around Burlington, and that particular letter did not refer to islands except between Pennsylvania and New Jersey, for it goes on to say if they will concede his right to Burlington Island, he will agree to give them half. That was the burden of that paragraph. That was not down the river at all, it was just there.

[1223] Mr. Southerland: I have just this one observation to offer on the question of the 12-mile circle, which I think I have already touched upon. We have devoted in this case, as our opponents have, a great deal of thought, a great deal of research, a great number of exhibits to what is called the Penn title, and we have done so, because we believe, as everyone in Delaware does, that that is the correct title for the State of Delaware, but it is possible to lay aside all of this evidence regarding the Penn title, it is possible to view this case from a very simple viewpoint, namely, Delaware and New Jersey, each owes its origin to a Royal Charter of Charles, II. Admittedly, the metes and bounds of New Jersey in the Charter did not go below low-water mark, either low-water mark or high-water mark. Admittedly, the metes and bounds in the charter by Charles, II, for Delaware carried within them the bed of the river within the 12-mile circle. Those charters constituted those communities, English colonies and defined their boundaries. Under those [1230] charters, those colonies continued to be English colonies until 1776 or 1783, whichever date you prefer, when they became free and independent States and as Justice Baldwin said, succeeded to all the jurisdiction within their borders and succeeded to the waters and metes and bounds as fixed by their Colonial charters,

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Argument of Clarence A. Southerland for Delaware.

Columbia, did not include the boundary between the District of Columbia and Virginia, and when that boundary came up for decision, they held that under the construction of Lord Baltimore's charter, he was entitled to go, as I understand it, to high-water mark on the Virginia side.

Mr. Minard: You are referring to Mr. Justice Holmes' decision?

The Master: Yes.

[1227] Mr. Minard: As I recall there, there had been an arbitration agreement, which the Court accepted as between Virginia and Maryland, but as to the District of Columbia they said it was not a party to that agreement.

The Master: It didn't cover that part of the river, the arbitration was further down. It didn't cover the south bank, it hadn't anything to do with that.

Mr. Minard: Of course, I don't recall it with that point in mind, but I remember there was that question in the case, that they were not bound to hold according to the arbitration agreement, because the District of Columbia was not a party.

The Master: Will you look at those cases when you leave?

Mr. Southerland: Yes, I will be glad to. Lord Baltimore's charter conveyed by metes and bounds along the farther bank. Undoubtedly, the Crown held title to high-water mark, no question about that. [1228] The sole point I was trying to make was whether or not when the Crown grants upland the foreshore also passes is a question of the construction of the deed and that there was nothing arbitrary about William Penn's assumption or the assumption of the Statute that the New Jersey proprietors took title.

Mr. Minard: Penn never said anything about it.

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Argument of Clarence A. Southerland for Delaware.

necessarily. If we except the one single defense of surrender, it is possible to grant every argument our friends make in this case about the Penn title, and to say what of it, let's suppose for a moment that the Penn title is not the true title—we think it is, and we have defended it, because we think it is the true title—but if it is not the true title, nevertheless, the metes and bounds of the colony of Delaware were fixed by its original Colonial Charter, and are the same today as they were in 1682.

In the matter of the title below the 12-mile circle, we have a case where the principles of law are admitted, and I don't think either side questions them.

[1231] Where the thalweg rule is applicable is where there is a necessary course of navigation. When you have to do with a broad sheet of water, generally navigable in most of its parts, you have the rule of the geographical center. Mr. Minard has laid down certain tests in his argument for the application of the rule of the geographical center, and he has undertaken to say not one of those is true of the Delaware Bay. Let us see.

In the first place, the question of current. His own witness testified, and it is admitted testimony in the case, that the currents in the Delaware Bay are prevaillingly tidal currents. They are not currents of the Delaware River. The Delaware River currents are deflected, and do not pass down in this deep water in the center Bay, and go to the Delaware shore, so that, in the old technical sense of the thread of the stream, following a flowing river in what is presumed to be the deepest portion of the river, you don't have it in the Delaware Bay because you have tidal currents.

[1232] The Supreme Court in its various cases, discusses the application of the thalweg rule, and bases its decisions on the necessary track of navigation, and it is apparent at once how closely allied that is to the deepest part of the

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Argument of Clarence A. Southerland for Delaware.

stream or downway, down which boats were supposed to go. A necessary track of navigation, what does that mean, if it happens to be a sailing course? Obviously, you can look at the Gulf of St. Lawrence, and there are several sailing courses, for instance, in the summer time boats going to England will follow one course and boats going to New York will follow another. We have a situation in the Delaware Bay, which, while not by any means is exactly similar to the situation I have instanced, nevertheless, if you will examine the maps, shows that it is comparable to that situation. What do we have? We have a large Bay, navigable all over by small boats in 1783, which, of course, is the test, navigable at all parts by ordinary boats, except for certain shoals. Now, the water in Fisher's Chart, which, as Mr. Minard has stated, [1233] is the most reliable chart of the time, shows, I think, practically no place in the Bay at that time, except for certain very small shoal areas, which had less than four fathoms of water. Now, that is a lot of water and at that time that water was sufficient for practically all the boats that used the Delaware River. I think the frigate "Constitution," which was built later, had a draft of some 20-odd feet. When we speak of the channel in the Delaware Bay, we are borrowing a term from the river. Actually, there is no channel in the Delaware Bay in the strict sense of the term at all. In the first place, the dredged channel stops some distance above Ship John, and when my friend put in the Coast & Geodetic Survey maps to indicate the channel, he had to have Mr. Sherman draw a red line on what Mr. Sherman considered the deepest water. If your Honor will examine that map, your Honor will find a space, I think, of five or six miles at the mouth of the Bay, where the water runs 50, 60, 70 or 80 feet deep, in other words, a generally open body of water. It is no more a channel [1234] unless you want to call every body of water, which goes out between two capes, a

Argument of Clarence A. Southerland for Delaware.

channel. The government has established in the Bay, certain buoys, markers for navigation. They don't mark the channel in the strict sense of the term in which they mark a channel of a river, because you have a mouth of five or six miles at the broadest part, and up the river about one mile, anyway, any part of which is navigable at any time.

The test is the draft of boats in 1783. I mentioned the frigate, "Constitution," because it was a war vessel, and for those times, a large vessel, and it had less, as I recall, I have no note of the exact number of feet, it had less draft than you will find in all places on Fisher's Map, to wit, four fathoms of water.

My friend said if you had a geographical center in Delaware Bay, it would be very difficult to mark. The truth is, any water boundary, I don't care what kind, presents certain inherent difficulties. If you had the channel, what is the channel in the Delaware Bay, where would you mark it? You say the center of the main ship channel. [1236] There is a ship channel in the river that can be marked, it is marked, and means something, but when you get into Delaware Bay from Ship John on down, you have a course that a sailing vessel from Philadelphia will follow with reference to certain established marks, but you have no definite and well-defined channel where you can find the middle and say, That is the middle of the main ship channel, unless you arbitrarily pick out two certain depths of water, say, 60 feet on each side, or 40 feet on each side; so the same difficulty present themselves in that respect.

I don't actually think in either event that Mr. Minard speaks of with regard to the geographical center and the difficulty I speak of with regard to the main ship channel, would be inseparable. For instance, in the Great Lakes, take Lake Huron, which is an irregular shape, it has a long tongue of water sticking out to the southwest, and has

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Argument of Clarence A. Southerland for Delaware.

quite a large body of water, I think, called Georgian Bay, to the northeast. The way they took the boundary line was to disregard the large [1236] body of water and draw a line half-way across the lake. How is anybody to know he is on the Canadian or American side of the line, unless he is a navigator, or has an navigator along to tell him by taking an observation? So that I say this question is a thing to be determined by difficulties inherent in water matters; they inhere in the nature of the boundary.

One more observation on that: The United States Government has put down in the Bay certain indications to navigation. They do not, in any real sense, mark the channel, they mark a course of navigation, but not a necessary course of navigation. As I read the Supreme Court opinions, they say this, Where boats can travel generally over a sheet of water or adopt several different sailing directions, there is no necessary course of navigation. Here you have under any viewpoint, several channels which you can follow. If you are going to Philadelphia, you follow what is called the main ship channel. Actually, what it is, as I say, is a body of water of, I think, an extent of five or six miles at the mouth of [1237] the Bay and narrowing as it goes up, but not in any sense, a channel. If you are going to a point on the Delaware or New Jersey shore, you could go in another direction. So you don't have a situation comparable to that of a narrow stream where the only body of water capable of being navigated, is the channel. That is the characteristic of a river and the characteristic of a ship channel, but Delaware Bay is otherwise.

The Master: You don't distinguish between the Bay and River at all.

Mr. Southerland: Your Honor refers to the section of the river between the lower river and the bay. It seems

Argument of Clarence A. Southerland for Delaware.

to us that is determined by how your Honor decides the question in the bay. If the thalweg rule is applicable to the bay, it is applicable to the river; if it is not applicable to the bay, then we think, as a matter of convenience, as an exception to the thalweg rule, the middle of the river should be followed, as a matter of convenience. Here we have an unusual combination of circumstances. If we are right, and of course, [1238] this is disputed by our friends from New Jersey, the boundary line within the circle is on the New Jersey shore. If we are right in the bay, the geographical center is the boundary line in the bay. Therefore, as a matter of convenience, we say in the river the geographical rule should be applied, which, as far as the river is concerned, thalweg rule would ordinarily apply.

20 The Master: The thalweg rule would ordinarily apply to the river?

Mr. Southerland: There is no question about that.

Mr. Minard: I have a number of notes here which I thought I might call the Court's attention to, statements where we differed about the facts or a rule of law, but there is no use taking time to discuss them because they are all clearly included in our brief, and by comparing the argument with our brief, or their brief with our brief, those matters will be answered as well as I could state them now.

30 [1239] The Master: There are one or two points I am a good deal perplexed about after reading the briefs. I think what Mr. Southerland says is perfectly true, that the rule of the thalweg was never intended to apply to a large body of water that had no definite channel upon which you could sail or navigate at random.

Mr. Minard: In any direction?

The Master: Yes.

Mr. Minard: That is true.

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Argument of Clarence A. Southerland for Delaware.

The Master: The other point to bear in mind is, we are to determine the boundaries at the date of the Revolution or the Treaty of 1783.

Mr. Minard: Subject to the natural imperceptible change which the boundary would follow.

The Master: I don't get that.

Mr. Minard: Those boundaries move according to the imperceptible changes.

The Master: Yes, that is undoubtedly true, but we are to take it as of the date of the Treaty of 1783. What was that boundary? As a matter of fact, a [1240] sailboat could not go up a river in a channel, I mean, as a matter of common sense; we know that to confine a sailboat to a particular route would absolutely prohibit it from being navigated.

Mr. Minard: Well, they beat up, as they call it.

The Master: If you marked out a course for a sailboat like you do for a steamboat, you would prohibit navigation, except under certain circumstances.

Mr. Minard: Unless it had a wider channel.

The Master: In one of the cases in the Supreme Court, they say, We will apply the rule of the thalweg to an inland sea. On the other hand, in the *Kentucky v. Indiana* case, I think, they said they would not apply the rule of the thalweg to a river, unless there were a definite established channel. I think that was the case, or one of the cases that arose. Now, I confess, I am a great deal perplexed on the application of that rule; there is no doubt that every river has some channel, that is, some deep part.

[1241] Mr. Minard: Of course, plaintiff calls to its aid the practical considerations necessary in that location. The comparison with Lake Ontario, which Mr. Southerland makes is not applicable, because here they have to

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Argument of Clarence A. Southerland for Delaware.

dredge the bottoms and there is private, as well as public property in those bottoms, which has to be dredged and used, whereas, on Lake Ontario, it didn't make any difference which side you were on, because you were a sailor, and as a sailor, you had equal rights anywhere.

Mr. Southerland: May I add a remark which is not controversial? My friend commented on the absence of evidence by defendant. Frankly, when he concluded his case in chief, we concluded, with his charts, with his testimony from the Government, the facts are all in before the Master. As we see it, it is an application of the rules of law to the facts of this case. I don't see what other evidence could be put in. There it is.

The Master: That is true and that is a phase of the case I am frank to say perplexes me more [1242] than any other.

Mr. Minard: And there is the question of prescriptive rights, or the exercise of those rights, in the disputed area, as well as the application of the thalweg or geographical center rule. A very large investment of capital has been built up down there.

The Master: I think the question you mean to say is, they still have open independently of the question of the boundary, irrespective of--

Mr. Minard: Is the question of prescriptive right, whatever their title may be.

The Master: Gentlemen, you may submit any additional briefs that you desire, and I want to feel free to meet with you at some future time and place, if I find it necessary.

Mr. Minard: All I want is the privilege to reply to defendant's reply brief.

The Master: Gentlemen, I don't think I ought to let you go without saying that I think the case has been most admirably presented on both sides. It has been

Argument of Clarence A. Southerland for Delaware.

a great pleasure to me to hear it. I don't think [1243] it is possible to present a case with greater thoroughness, more exhaustively, than this case has been presented, and I want to express my real appreciation and admiration of the way in which the case has been presented and argued on both sides.

Mr. Minard: What I was going to say is this: That I know that no labor has been spared, not a thing left untouched by either side.

The Master: I can realize that.

Mr. Minard: But I want to express my feelings in this way: We have had a great deal of detail here, more material than was presented in any other of the original actions that I have ever seen, and I want to appreciate the sympathy and patience of the Master from the beginning. It was enough to have frightened him, but he never lost his poise, equanimity and patience, as we went along.

Mr. Southerland: We thank the Master for his expressions and we reciprocate.

The Master: Thank you very much.

ENERGY FACILITY SITING ISSUES
IN NEW JERSEY'S COASTAL ZONE

A Staff Working Paper

Helga Busemann

December, 1977

New Jersey Department of Environmental Protection
Division of Marine Services
Office of Coastal Zone Management
P. O. Box 1889
Trenton, New Jersey 08625

Prepared with financial assistance from the U. S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of Coastal Zone Management, under the provisions of Section 305 of the federal Coastal Zone Management Act of 1972 (P.L. 92-583).

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ABSTRACT

The requirement of the New Jersey Coastal Area Facility Review Act and the Federal Coastal Zone Management Act that energy facility siting be included in any coastal planning has mandated that the New Jersey Office of Coastal Zone Management (NJOCZM) address the siting of energy facilities in the coastal zone.

This report frames the issues facing coastal energy planners. Issues addressed include nuclear power, Outer Continental Shelf oil and gas exploration and development, deepwater ports, liquefied natural gas, and the more general issues of energy conservation and the siting of energy facilities. The report includes an overview of how energy is used and produced today in New Jersey.

The report sets forth some principles which will guide the NJOCZM in developing energy facility siting policies within the coastal zone.

The report is intended as a working document to provoke discussion by energy users and energy producers, by local, state, and federal officials and agencies, by private interests and by the public. Hopefully, these discussions will lead to a further refinement of the issues, from which responsible and coherent coastal energy facility siting policies will emerge which can be incorporated into New Jersey's coastal management strategy.

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TABLE OF CONTENTS

Energy Issues and Policy Alternatives for New Jersey Tables of Contents

	Page
Abstract	i
Acknowledgements	ii
Table of Contents	iii
Tables	iv
Figures	v
I. Introduction	1
II. Role of Energy in New Jersey:	3
A. Background	3
B. Consumption	3
C. Cost of Fuel	6
D. Availability of Fuel	8
1. Petroleum	8
2. Natural Gas	11
3. Electricity	13
a. Nuclear Power	22
b. Nuclear versus Coal	22
c. Future Demand of Electricity	22
III. Energy Conservation and Alternative Energy Sources	26
A. Conservation	26
1. Transportation and Land Use	27
2. Residential and Commercial	27
3. Industry	28
4. Utilities	29
B. Coal	30
C. Solar Energy	31
D. Wind Energy	31
E. Conclusion	32
IV. Proposed Energy Facilities:	34
A. Outer Continental Shelf Exploration and Development	34
1. Issues	34
2. Background	35
3. OCS Scenarios--What to Expect	39
4. OCS Facilities	40
a. Pipelines	40
b. Natural Gas Processing Plants	42
c. Refineries	44
d. Other Facilities	44
B. Nuclear Power Plants	44
1. Issues	46
2. Background	46
3. Public Health and Safety Factors:	49
a. Nuclear Safety	49
b. Disposition of Spent Fuel	50
c. Nuclear Theft	50

	Page
4. Environmental Impacts	51
5. Siting Factors	52
6. Conclusion	53
C. Liquefied Natural Gas (LNG)	56
1. Issue	56
2. Background	56
3. Safety	57
a. Buffer Zones	58
b. Risks	60
4. Environmental Impacts	61
5. LNG Siting - A Regional Approach	61
6. State Options	62
7. Conclusion	63
D. Deepwater Ports	67
1. Background	67
2. New Jersey as a Deepwater Port	67
3. Potential Impacts	68
a. Environmental: Pipeline vs. Tanker to Shore	68
b. Socio-economic	68
4. Siting Factors - Size	69
5. Legal Implications	69
6. Conclusions	70
V. State and Federal Role in Energy Facility Siting	72
1. Legislation	72
2. State Agencies	72
a. Department of Energy	73
c. Department of the Public Advocate	73
d. Other Agencies	73
3. Federal Role	74
a. The Federal Interest in Energy Facility Siting	74
b. Federal Consistency	75
c. Federal Preemption	76
VI. Regional Analysis:	78
A. Hudson River Waterfront, Newark and Raritan Bay	78
B. North Shore	79
C. Central Shore	80
D. South Shore	81
E. Delaware Bay	83
F. Delaware River Waterfront	84
VII. Energy Facility Siting Policies	85
VIII. Conclusions	91
Bibliography	92

Tables

	Page
Table 1: U.S. and N.J. Gross Energy Consumption 1974	5
Table 2: New Jersey Consumption of Energy by Sector-1974	6
Table 3: Cost of Energy in 1973, U.S. vs. Middle Atlantic States	7
Table 4: Oil Refineries in New Jersey, Pennsylvania and Delaware	10
Table 5: Power Stations in New Jersey (1976)	16
Table 6: Successful Bidders in Lease Sale #40, August 1976	38
Table 7: Existing and Proposed Nuclear Plants for New Jersey	47

Figures

	Page
Figure 1 Petroleum Refineries	9
Figure 2 Major Natural Gas Pipelines in New Jersey	12
Figure 3 Electric Power Plants in New Jersey	14
Figure 4 Major Electric Transmission Lines in New Jersey	15
Figure 5 Location of Tracts Leased in August 1976 in Relation to the New Jersey Coast	36
Figure 6 Definition of Pine Barrens	43
Figure 7 Location of Tanker Casualties on the Delaware River (1969-1974)	59

C. Liquefied Natural Gas

1. Issue

As a result of many factors, domestic supplies of natural gas, have been curtailed to New Jersey utilities. Some of these utilities are now seeking alternative sources of the fuel abroad. For efficiency, transportation over the ocean for long distances requires natural gas to be liquefied in transit and revaporized at the port of destination. Shipment of liquefied natural gas (LNG) through heavily travelled state waters and through population corridors and its transfer to reprocessing plants are of state concern because of the catastrophic effects that an accidental spilling of the highly volatile gas could have on life, property and the environment.

2. Background

LNG is natural gas which has been cooled and compressed so that it can be more easily transported or stored. New Jersey gas utilities store domestic LNG at relatively small several facilities throughout the state (including Burlington, Carlstadt, Elizabethtown, Hackettstown, Hamilton, Howell and Stafford Townships) to supplement their regular supplies of natural gas during periods of peak demand. Regulations covering the installation, safety and maintenance of LNG tanks and facilities are contained in regulations issued by the New Jersey Department of Labor and Industry, pursuant to the Occupational Safety and Health Act.¹

Public Service Electric and Gas (PSE&G) has taken over ownership of a large LNG facility, not yet in operation, in Rossville, Staten Island on the Arthur Kill waterway in New York. The facility faces the New Jersey towns of Perth Amboy, Woodbridge and Carteret which contain two refineries, numerous tank farms, and PSE&G's own conventional generating plant in Sewaren. Middlesex County, which testified on this terminal in 1974, opposed its location because of the proximity of the terminal to the inherently dangerous and explosive industrial facilities and to the large population living nearby.² To become operational, PSE&G needs a firm contract from its Algerian partner as well as a license from the Federal Power Commission to import this gas. Gas from this facility would presumably be pipelined to PSE&G's customers in New Jersey.

Both the Tenneco Company and the Transcontinental Pipeline Company (Transco) have previously applied to DEP for riparian, wetlands, air and water permits to construct LNG facilities along the Delaware River in Deptford and Logan Townships in Gloucester County. No action has been taken on these permits pending a decision by the Federal Power Commission (FPC). In December 1976, FPC staff issued a draft environmental impact statement on the Tenneco application, recommending that the project not be built because of safety hazards.³ At the same time the staff issued an amendment to the final environmental impact statement on the Transco project recommending that that project⁴ likewise be withdrawn on the basis of its latest safety analysis.

Although the FPC has not yet acted on its staff's recommendations, it appears as if both projects are moot, since Tenneco has announced that it will be building a terminal in Canada and Transco has announced the withdrawal of its application. It now remains for the FPC to act on PSE&G's application in Staten Island.

Boston is the only city on the East Coast which is currently importing LNG through its harbor. (Construction of two LNG terminals in Cove Point, Maryland and Savannah, Georgia are scheduled for completion in 1978. To avoid accidental collisions, the U.S. Coast Guard, responsible for the safety of shipping in navigable waters, clears shipping lanes for the LNG tankers in Boston Harbor. LNG shipments to the Distrigas facility in Boston occur about once every twenty days. The U.S. Coast Guard escorts the LNG tankers to the Distrigas facility two miles upstream. The Tenneco and Transco applications would have involved 406 annual shipments (an average of more than one per day) and might have resulted in considerable disruption to existing shipping traffic. The FPC's recent decision to allow Distrigas in Massachusetts to increase its LNG imports has buoyed the people in Staten Island, New York, who are opposed to PSE&G obtaining an import license for its Staten Island LNG terminal. The community believes that increased supplies of LNG to Massachusetts may find their way to the New York area by pipeline, obviating the need for a new New York area terminal.

The next section discusses some of the environmental impacts associated with LNG shipments.

3. Safety

Transshipment of LNG involves liquefying the gas in the exporting country, shipping it in specially built low-temperature (cryogenic) tankers, and then regasifying it upon entry into the importing country.

The nature of supercooled LNG is such that upon accidental release, the gas evaporates and greatly expands in volume. It is during the period of evaporation, when the highly concentrated gas forms a neutrally buoyant cloud over the water, spreading as a plume, that the danger of an accident is greatest. An ignition of the dispersing vapor plume could set off a fire several miles downwind of the source and create a hazard to life and property anywhere in the path of the plume.

The shipment of LNG represents a moving hazard since there is always the possibility of a collision with another vessel and a subsequent spill. The potential for such accidents is increased in estuaries, harbors and heavy shipping lanes, especially in population corridors.

The Department of the Public Advocate has challenged DEP's issuance of a CAFRA permit and the Nuclear Regulatory Commission's (NRC) issuance of a construction permit to build the twin Hope Creek reactors on Artificial Island in Lower Alloway Creek because of the possible catastrophic effects that a LNG tanker spill accident could produce in the vicinity of the nuclear cluster. Not-

withstanding the ruling by the NRC's Atomic Safety and Licensing Board that the probability of a cloud of gas igniting over the plant was minimal and that construction should proceed, the Public Advocate has appealed that decision to the NRC's Atomic Licensing and Appeal Board. That Appeal Board remanded the issue back to the Safety and Licensing Board to further address the safety issue. A decision is expected by December 1978.

An FPC analysis of tanker accidents in the Delaware River revealed that accidents were about 30 percent higher than the average casualty rate of other major U.S. ports. Dangerous areas of the river include the junction of the Chesapeake and Delaware Canal and the Marcus Hook and the Paulsboro area (See Figure 6). The frequency with which tanker accidents occur was demonstrated only too vividly in December 1976 and January 1977 when the Delaware River was the scene of a number of tanker accidents, following shortly after the grounding and rupture of the Argo Merchant tanker off Nantucket.

The Delaware River does not, unfortunately, presently have a vessel traffic separation (VTS) scheme; such a radar-operated system monitors and directs shipping traffic much like air traffic is controlled at airports. While the U.S. Coast Guard (which would operate a VTS system) recognizes the need for it in the Delaware River, it is expensive and is only being introduced slowly in U.S. ports.

(a) Buffer Zones

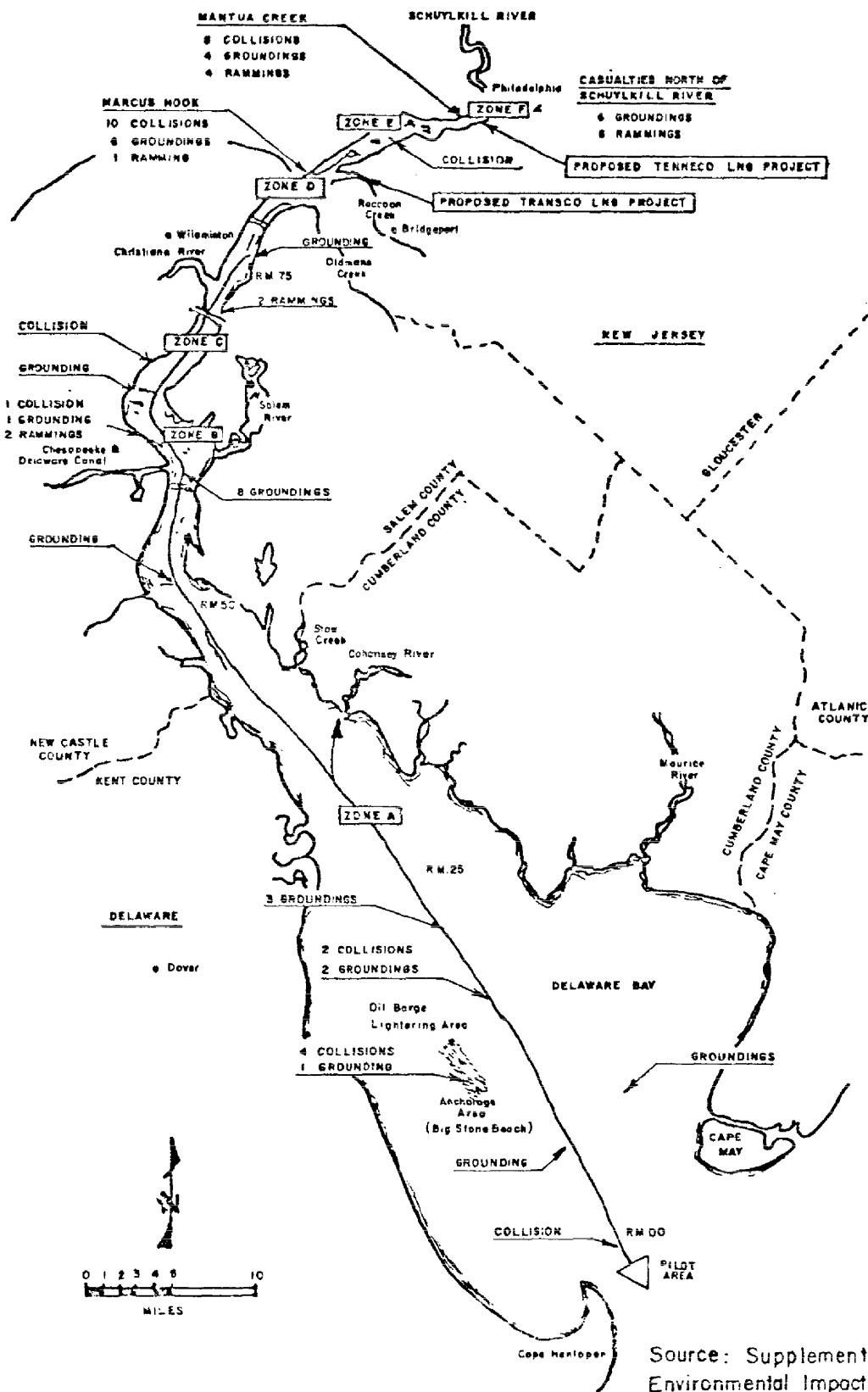
Any buffer zone for LNG facilities should have two elements: the conventional (fixed) buffer around the facility itself and the (temporary) buffer on either side of the shipping channel. Accidents at the fixed LNG facility constitute a lesser hazard, according to the FPC, than an accident occurring in transit which could affect a potentially larger number of people.

In 1974, Governor Byrne's Cabinet Energy Committee established an LNG Task Force to study hazards and set siting criteria for LNG facilities, including their buffer zones. The Task Force discovered considerable disagreement concerning appropriate buffer zones. Because of this uncertainty and because of Federal preemption and federal interest in LNG facilities, the States of New Jersey, Pennsylvania, New York and Delaware petitioned the FPC in May 1976 to issue uniform standards for siting and operating LNG facilities.¹⁰

Opinions differ on the size of needed buffer zones.

Experiments by the Massachusetts Institute of Technology indicated that a flammable vapor cloud of LNG could spread as far away as 55 to 60 miles from the spill site. Exxon indicated a risk area of up to 20 miles for a 125,000 cubic meter spill. The U.S. Bureau of Mines indicated a combustion distance in excess of 40 miles.¹¹

Figure 7
 Location of Tanker Casualties
 on the Delaware River
 (1969-1974)



Source: Supplement to the Final Environmental Impact Statement For the Construction and Operation of an LNG Import Terminal at Raccoon Island Federal Power Commission, December, 1976

An LNG facility located on the lower Delaware River, according to these assumptions, would include a risk zone of at least twenty miles and encompass Cumberland and Cape May counties in New Jersey as well as parts of Pennsylvania and Delaware. A forty mile risk corridor would include the same counties plus, Atlantic, Camden, Gloucester and Salem counties and Philadelphia and Wilmington. In 1975, the FPC calculated that a 125,000 cubic meter spill (contents of a total tanker) would produce a vapor cloud with a 3.73 mile radius and extend for 7.46 miles.¹² In 1976, it revised this estimate by reducing the maximum spill probability to one fifth, or 25,000 cubic meters, the capacity of one of the five LNG cargo tanks, the maximum quantity expected to be ruptured during an accident.¹³ Using this assumption, plus stable atmospheric conditions and a wind speed of five miles per hour, the radius of a potential vapor cloud was estimated at 2,510 feet, extending 3937 feet, with a dispersion time of 4.5 minutes.¹⁴

While the risk corridor (corresponding to the size of the vapor cloud) is estimated by the FPC to be smaller than that calculated by MIT, Exxon, or the U.S. Bureau of Mines, it is large enough to pose significant risks to the population living on either side of the Delaware River. As such, the decision whether to permit LNG tankers up the river is one that the three states abutting the river, namely, New Jersey, Delaware and Pennsylvania should be involved in.

Experiments on the size and potential impacts of an LNG vapor cloud are continuing. For example, since shipment by tanker constitutes the greatest danger surrounding LNG, scientists are considering the solidification of natural gas in transit. This technology is not proven, however, and must be viewed as a long term alternative.¹⁵

(b) Risks

The Federal Power Commission calculated the probable fatalities resulting from a vapor cloud (mobile-type) accident and from a pool radiation (fixed-site) fire in West Deptford and Logan Township in Gloucester County and found them to be unacceptable.¹⁶ Probabilities were based on:

- a) probability of an accident (collision) along the designated route,
- b) probability of a spill, given (a),
- c) probability of ignition of vapor cloud given (a) and (b),
- d) probability of a radiation fire (from fixed site) given (a) and (b) above,
- e) probability of fatalities within the estimated risk corridor.

The FPC projects 750 fatalities, with a probability of 9.2×10^6 (or 92 per ten million trips) per exposed person per year, for a vapor cloud fire (This is comparable to being struck by a meteorite or being involved in a nuclear accident.)¹⁷ The FPC attributed 185 fatalities, with a probability of 9.5×10^5 (or 95 per one million trips) per exposed person per year, to a pool radiation accident, that is an accident which would occur at a fixed site.

(This is comparable to poisonings or drownings.) The projection of fatalities for vapor cloud accidents was greater, though with a lesser probability of occurrence than projections for radiation fires.

4. Environmental Impacts

Because of the large buffer zone that should be established, few sites in New Jersey lend themselves to LNG facilities. The LNG facilities proposed on the upper Delaware River in West Deptford and Logan Township would pose a constant danger to the large population and nearby industrial facilities. Downstream, hazards to the population would be less, but adverse impacts on the estuarine environment would be considerable.

The lower Delaware River and estuary are the site of valuable saltwater marshes, wetlands and oyster beds which would be affected by the construction of LNG facilities. Construction at Bayside in Greenwich Township, which has been mentioned as an alternate site for LNG operations, would entail 13-18 million cubic yards of dredging.¹⁸ In addition, periodic maintenance dredging would be required as large tankers require adequate channel depths. Re-gasification of LNG would also entail the use of large quantities of water, which, upon discharge, would be considerably colder than the surrounding water because of the nature of processing the super-cooled liquid gas.¹⁹ The effects of having unnaturally cold water in one part of the river and unnaturally warm water emanating from the nuclear units at Artificial Island might wreak havoc with the marine flora and fauna. These potential effects have not been addressed to date.

5. LNG Siting -- A Regional Approach

The nature of an LNG spill is such that its impact could extend over many miles. An LNG facility built on either side of the Delaware River would, of necessity, have to include the three bordering states in any contingency planning. The Staten Island facility would likewise necessitate an interstate arrangement between New Jersey and New York. Therefore, LNG siting becomes a matter of regional concern which should be addressed by the region.

A regional facility serving the customers of several gas utilities could end up being much larger than contemplated by any one of the utility applicants individually. This might be an advantage or disadvantage. Economies of scale might make it advantageous for a reprocessing plant to be of a large enough size to reprocess the LNG of several utilities. A single unit would call for the utilities to share dock and storage space and possibly involve some institutional changes in doing business. The disadvantage is that an accident at a large concentrated facility might be worse than one at a smaller facility.

A regional approach to siting has the advantage of providing a large number of sites from which to make a selection and would result in enhanced safety and reduced risk. The FPC identified several alternate sites along the Delaware River and Chesapeake

Bay.²⁰ It found none of them satisfactory, with the exception of Cove Point, Maryland, which has already been licensed by the FPC for an LNG facility to serve the needs of the Columbia Gas Company. Staff to the FPC indicated that if the West Deptford and Logan Township sites were rejected by the FPC, expansion of the Cove Point facility should be explored as an alternative.²¹

One alternative to an LNG facility plant on the shoreline would be a deepwater port linked to the shore by a pipeline for an inland processing plant. This would eliminate the dangers to the people living along the Delaware River. The implications of deepwater ports in general are discussed in Section D.

6. State Options

The State has several alternatives with respect to siting LNG facilities:

- a) It could ban LNG facilities entirely.
- b) It could ban LNG until development of the Outer Continental shelf in the Baltimore Canyon indicates that there is no gas there in commercial quantities. (If gas were found offshore, the need for LNG would be considerably reduced. Gas projections for Lease Sale 40 range from 104 billion cubic feet (bcf) to 512 bcf per year for a field life of about 25 years. This represents between 30 and 193 percent of New Jersey's 265.9 bcf gas consumption in 1976. While offshore gas would not necessarily be dedicated to New Jersey, the likelihood of some of it going to the mid and New Atlantic region in the event of a strike, is good.²²
- c) It could sanction limited LNG shipments until OCS development starts and reveals extensive gas finds.
- d) It could sanction deepwater ports for LNG linked to the shore by pipeline. This would eliminate LNG tankers in the inland waters of the state and their potential for accidental collisions and spills of LNG. A recent study examined the feasibility of building a LNG terminal off the coast of Los Angeles.²³
- e) It could permit LNG terminals along the Lower Delaware River, sacrificing a portion of the wetlands.
- f) It could permit LNG facilities at the proposed locations based on the remote statistical probability of such accidents occurring.

Decisions among these and other options involve scientific analysis and value judgements and must be made in consultation with other federal, state and local units of government as well as interested and informed segments of the public.

7. Conclusion

The Federal Power Commission holds the most important key to LNG because it both regulates the prices of interstate gas and issues the permits to import LNG. Deregulation of the price of gas could conceivably create the needed incentives for producers to increase natural gas production for interstate commerce and lessen the need to import it. Importation of LNG, on the other hand, would create a dependency on gas similar to that which the nation developed for petroleum. A build-up of this type of dependency is contrary to the goal of reducing U.S. vulnerability to foreign embargoes.

Given LNG's shipping hazards and the alternative of conservation, a more prudent course would appear to be a public education program to conserve gas. In any event, since LNG siting issues involve several states, LNG should be treated as a regional matter with decisions concerning siting and the use and distribution of LNG to be decided by the affected states.

Footnotes

- ¹Occupational Safety and Health Act, P.L. 1973, N.J.S.A. 34:6A, Regulations withdrawn NJAC 12:110-179, 1975, NJAC 12:180-205 in effect.
- ²Middlesex County Planning Board testimony before the Advisory Council on Environmental Protection on Liquid Natural Gas Facilities of the Distrigas Company, September 13, 1974.
- ³See Federal Power Commission, Bureau of Natural Gas, Draft Environmental Impact Statement, "West Deptford LNG Project", Docket #CP76-16, December 1976, p. 158.
- ⁴See "Supplement to Final Environmental Impact Statement for the Construction and Operation of LNG Import Terminal at Raccoon Island", December 1976, Docket CP73-258, 259 and Docket CP267-270, incl.
- ⁵In Boston, the U.S. Coast Guard requires 72 hours notice (by telex) of the arrival of an LNG tanker. It in turn provides 24 hours notice to pilots and towing boats in the harbor that no shipping will be allowed during transit of the LNG tanker. Before a LNG tanker is permitted to proceed into the harbor, it is boarded by U.S. Coast Guard personnel for inspection.
- ⁶Robert E. Huber, "LNG Foes Glad to See Massachusetts Gas OKd", Staten Island Advance, April 18, 1977.
- ⁷Jansen, Donald, "Effort Made to Bar Atomic Power Plant", New York Times, April 8, 1977.
- ⁸See Draft Environmental Impact Statement (DEIS) West Deptford, Supra note 3, page 110.
- ⁹The Olympic Games tanker spilled 134,000 gallons of oil into the Delaware River near Marcus Hook on December 27, 1976. The Argo Merchant spilled 7.5 million gallons offshore Nantucket.
- ¹⁰Petition for rule making in the matter of the need for site selection and facility operation criteria for liquified natural gas terminals. The Petition dated May 6, 1976 (Docket RM 76-13) to the Federal Power Commission was submitted by the Attorney Generals for New Jersey, New York and Pennsylvania; the Township of Woodbridge; Congressman John M. Murphy, from New York; and the New Jersey Public Advocate. It was printed in the Federal Register June 4, 1976.
- ¹¹Memorandum from R. Katz to R. Dyba, entitled "LNG Siting Group", July 17, 1975.
- ¹²Federal Power Commission, Attachment #5, to the Final Environmental Impact Statement for the, "Construction and Operation of an LNG Import Terminal at Staten Island, New York", July 15, 1975, p. 2.

¹³See DEIS West Deptford, Supra note 3, introductory note.

¹⁴Ibid, p. 107. Note a higher windspeed would facilitate dispersion of the methane gas and reduce the time-length of the fire; conversely a calmer wind would lengthen the time and extent of the fire.

¹⁵William P. Strumbos has done considerable work in this field. See U.S. Patent 3,834,174, "Cryogenic Transportation Method and Apparatus Therefore", September 10, 1974 and V.U. Minorsky and George G. Sharp, Inc., "LNG Vessels Regulatory and Economic Consideration", before the Gulf Section of the Society of Naval Architects and Marine Engineers, February 11, 1972.

Note also experiments by U.S. Coast Guard on the behavior of LNG flames, Coastal Zone Management Newsletter, October 20, 1976., p. 6.

¹⁶See Supplement to Final Environmental Impact Statement, Raccoon Island, supra note 3.

¹⁷Determinations of the acceptable levels of risks to society were made by the Rasmussen study group in assessing nuclear risks. The group identified several classes of accidents:

- a) probability of 1 accident in 1,000 (1:1000) or 10^3
- b) probability of 1 accident in 10,000 (1:10,000) or 10^4
- c) probability of 1 accident in 100,000 (1:100,000) or 10^5
- d) probability of 1 accident in 1,000,000 (1:1,000,000) or 10^6

Type (a) accident, associated with industrial occupational hazards and some sport events, was viewed as societally unacceptable.

Type (b) and (c) accidents, associated with drownings, poisonings and fires, were acceptable to varying degrees, and

Type (d) accident was viewed as negligible and associated with meteorites and nuclear accidents.

See U.S. Nuclear Regulatory Commission: "Reactor Safety Study: An Assessment of Accident Risks in U.S." Wash 1400 (NUREG 75/0114) p. 11.

¹⁸DEIS, West Deptford, supra note 3, Table 28, page 151.

¹⁹Ibid, page 80.

²⁰Ibid, page 132. Aside from the West Deptford and Logan Township (Raccoon Island) sites, FPC identified two additional sites along the Delaware River; namely, Bayside in New Jersey, and Cherry Island near Wilmington, Delaware, Stillpond Neck, Baltimore Harbor, Sotterly Point, Scarborough Neck and Cove Point, Maryland were other sites identified along Chesapeake Bay.

²¹Ibid, page 157.

²²Telephone communication with Alan Day, Outer Continental Shelf Office, Bureau of Land Management, New York City, September 22 1976. Note that the Final Environmental Impact Statement for Lease Sale 42 indicates the likelihood that the bulk of any natural gas produced would be consumed either in New England or the Mid-Atlantic, "since shipping the gas against the strong geographical price gradient appears unlikely". p. 1001.

²³See Fairchild Stratos Division, Offshore LNG Receiving Terminal Project. Prepared for Western LNG Terminal Company, Los Angeles, California, March 1977. See also H.W. Backhaus, "Offshore LNG Handling System aimed at Severe Conditions", Oil and Gas Journal, September 26, 1977, p. 60.

STATE OF NEW JERSEY COASTAL MANAGEMENT PROGRAM BAY AND OCEAN SHORE SEGMENT

MAY 1978

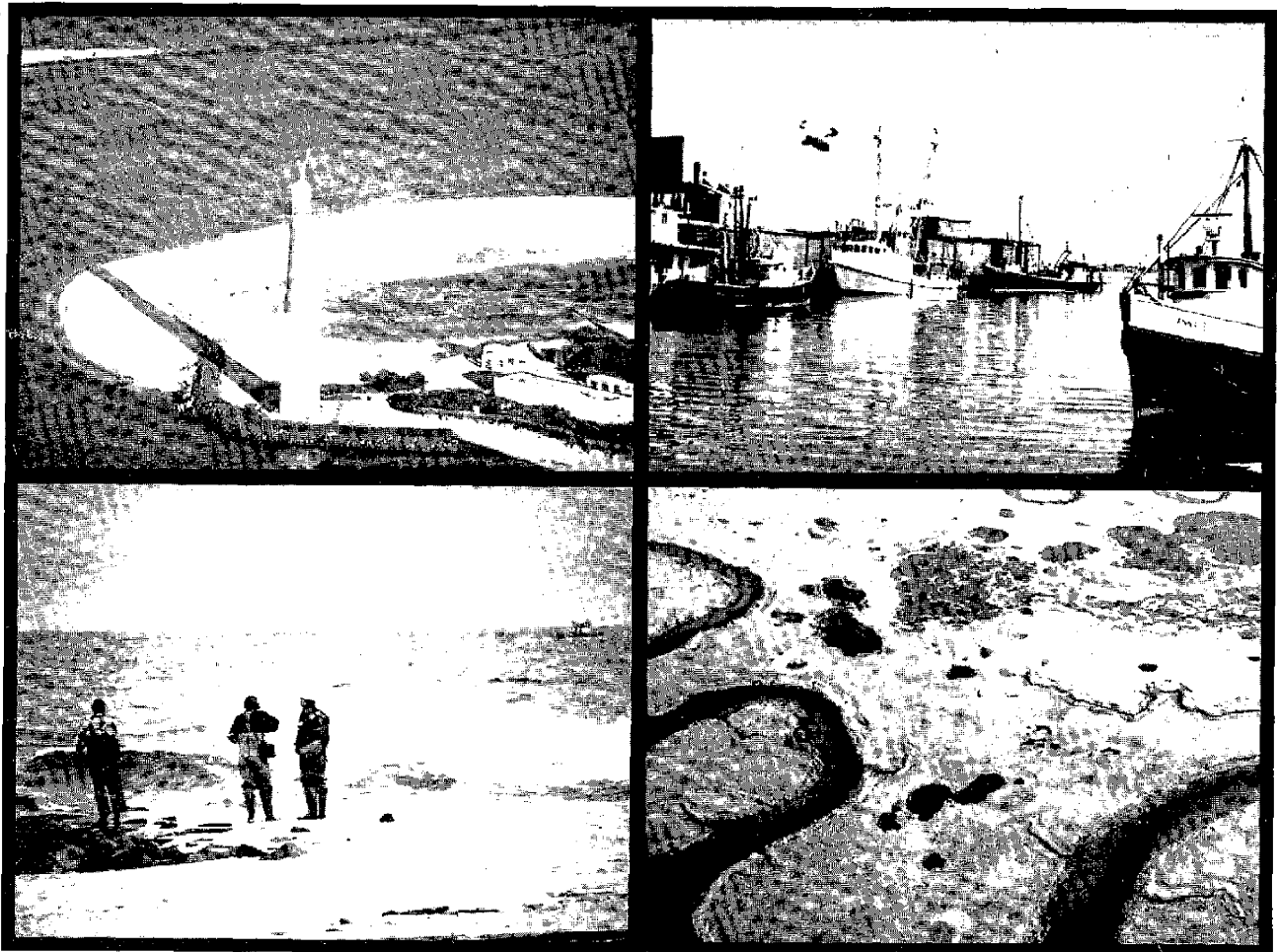
DRAFT ENVIRONMENTAL IMPACT STATEMENT

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APPENDIX H: RECIPIENTS OF THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

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Environmental Protection Agency
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Marine Mammal Commission
Nuclear Regulatory Commission
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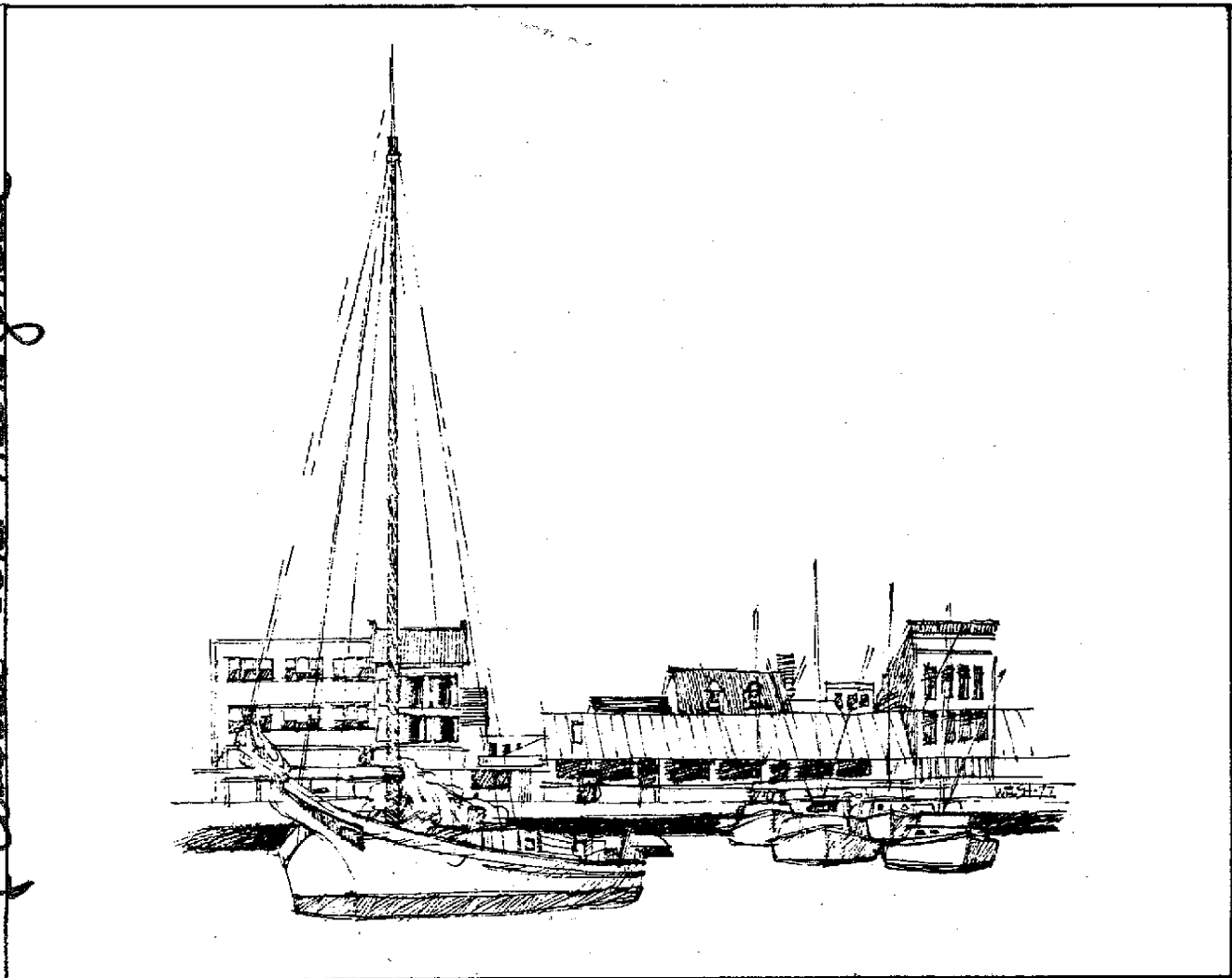
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Coastal Management Program - Bay and Ocean Shore Segment and Final Environmental Impact Statement



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DEPARTMENT OF ENVIRONMENTAL PROTECTION

Brendan Byrne
Governor

Daniel J. O'Hern
Commissioner

Chapter Eight: NEXT STEPS IN COASTAL MANAGEMENT IN NEW JERSEY

Managing the Bay and Ocean Shore Segment
Completing the State's Coastal Management Program
Changing the Coastal Management Program

Managing the Bay and Ocean Shore Segment

Federal approval of the New Jersey Coastal Management Program - Bay and Ocean Shore Segment by NOAA-OCZM is a major, but not the final step toward completing coastal planning.

While the Coastal Program for the Segment is completing the federal review process, New Jersey has submitted its first Coastal Zone Management Program Administration (Section 306) Grant Application to NOAA-OCZM. The application defines a series of projects for the twelve months following Program approval, to add increasingly greater specificity to the Coastal Resource and Development Policies, as well as improved coastal awareness and monitoring of coastal decisions. Greater specificity will come in part from mapping programs, and will build upon the environmental sensitivity and development potential studies to be carried out as part of the further development of the Coastal Location Acceptability Method (CLAM).

DEP will also work with the NJDOE, the Attorney General of New Jersey and NOAA-OCZM in the next year to resolve boundary issues between New Jersey, Delaware and New York. To resolve the New Jersey-Delaware issues, DEP will work particularly closely with Salem County officials and representatives of affected municipalities.

DEP also plans to explore many other possible uses of the funding available under Program Administration Grants. A special coastal zone management grant in the summer of 1977, for example, enabled DEP to run a Beach Shuttle to Island Beach State Park. Similar projects might be feasible in the future. The Division of Marine Services and the Division of Fish, Game and Shellfisheries will work with the Mid-Atlantic Regional Fisheries Management Council to promote interstate coordination of plans for the management of fishery resources. Specifically, DEP will identify and establish priorities for a set of fishery management tasks including preparation of an inventory of living coastal resources, and may then request funding from NOAA-OCZM under the Coastal Fisheries Assistance Program.

DEP and NJDOE have received funding under the Coastal Energy Impact Program to conduct a joint Major Energy Facility Study, to specify appropriate energy facility development potential criteria and candidate areas for use in the Coastal Management Program's Location Policies. DEP will also continue its analysis of coastal land and water features and development opportunities, in cooperation with State and local planning agencies, in order to articulate increasingly specific coastal policies, concerning the appropriate function and character of various coastal regions. DEP will continue the elaboration of a prospective concept of the coast outlined in Chapter Three, providing a context for decision-making that recognizes the appropriate and desirable differences between regions and communities of the coast.

DEP will continue in its efforts to make the management system for the coastal program increasingly equitable, understandable and efficient. This will involve consideration of administrative changes such as further permit coordination and simplification, and legislative changes such as permit consolidation, as well as preparation of handbooks and other publications to make the permit application and review processes more clear.

The expertise and insights of the coastal planning agencies participating in the 1978 cooperative DEP-County Coastal Planning project is providing valuable information for this prospective effort. The 1978 project involves three major elements. First, the counties are responsible for reviewing the coastal management program and recommending county-specific revisions. Second, the counties are submitting comments and recommendations on specific coastal permit decisions pending before DEP. Third, the counties are acting as regional coastal clearing-houses to the public, thereby increasing public participation and promoting inter-governmental coordination.

During the next year, DEP will also prepare a "critical resource report" analyzing the extent to which cumulative impacts on critical coastal resources are adequately managed, and recommending appropriate administrative or legislative action.

At the conclusion of the county contracts in November 1978, DEP, with county officials and other interested citizens, will evaluate the results and recommendations. In particular, DEP will consider the recommendations made by the counties for future coastal activities including studies, pilot projects, and administrative functions, to be funded under the Program Implementation Grant.

Lastly, the Department of the Public Advocate has strongly encouraged a program to fund people wishing to actively participate in the permit review of particular applications. DEP will work with the Public Advocate and other interested people to explore whether this idea would be workable and beneficial.

Completing the State's Management Program

Federal approval of the Bay and Ocean Shore Segment marks a major achievement, but the entire management program for New Jersey's coastal zone must also be completed promptly. DEP will continue its coastal planning efforts under the Fourth Year Coastal Zone Management Program Development Grant. In particular, DEP will complete a major Estuarine Study to increase the specificity of the environmental sensitivity factors considered in the Program's Location Policies. Also, DEP will initiate a Development Potential Study, complementing the Estuarine Study, by identifying the key siting factors for a wide range of coastal development activities from the developer's perspective. The study will concentrate on the conventional types of development that take place in the coastal zone. The results of these projects should markedly increase the level of detail of the standards in the Location Policies.

The second major DEP-OCZM staff coastal planning effort in 1978, in addition to work on the Segment, is preparation of the management program for the Delaware Waterfront, Northern Waterfront and Hackensack Meadowlands portions of the prospective coastal zone, as defined in Appendix E. Considerable coastal planning has taken place in these more built-up, urbanized coastal regions, and many of the

coastal policies in Chapter Four are equally applicable to these areas. However, detailed coastal planning in terms of the boundary, policies, and management system will be carried out in order to prepare a draft coastal management program for the entire state's coastal zone, incorporating the Bay and Ocean Shore Segment by 1979.

DEP's contract with coastal counties will produce results contributing to the program for these areas since Hudson, Union, Middlesex, Camden, Gloucester and Salem Counties are among the participants. In addition, as part of the development of the coastal program for the Northern Waterfront area, DEP-OCZM will be undertaking an analysis of the Hackensack Meadowlands Development Commission's (HMDC) master plan to determine consistencies with the coastal management program. The study will help define an appropriate coastal zone boundary, based in part on water quality, wetlands, and aerial photographic analyses.

New Jersey's Fourth Year Coastal Zone Management Program Development Grant Application to NOAA-OCZM defines the specific tasks and budget for DEP's coastal planning for 1978 and early 1979. DEP has requested that NOAA extend this grant through June 1979. Copies of the grant application are available from DEP-OCZM. If funding is available, DEP may request an additional program development grant to complete preparation of the New Jersey coastal program.

New Jersey will follow the following timetable for preparation of the parts of the coastal zone outside the Bay and Ocean Shore Segment and integrate these elements into a single state-wide program.

August, 1978	DEP, with NOAA, completed <u>Final Environmental Impact Statement for Bay and Ocean Shore Segment</u> , which the Governor has submitted to the NOAA for review.
Early September, 1978	NOAA review (Rest of timetable assumes approval.)
October, 1978	New Jersey anticipates receipt of first Program and Administration (Section 306) Grant for Bay and Ocean Shore Segment, estimated to be \$800,000 in federal funds.
December, 1978 (approx.)	DEP publishes preliminary working draft, for public comment, of Coastal Management Program for entire state, and holds workshops and meetings.
March, 1978 (approx.)	DEP and NOAA publish Draft Environmental Impact Statement for the entire Coastal Zone and DEP and NOAA hold public meetings and hearings.
July, 1979 (approx.)	Governor submits complete State Coastal Management Program Final Environmental Impact Statement on the Coastal Zone to NOAA.
September, 1979	New Jersey receives Program Administration Grant for entire coastal zone, estimated to be \$1.4 million.

Changing the Coastal Management Program

The last five years of coastal planning in New Jersey have amply demonstrated the dynamic nature of the issues and opportunities that confront the coast. Onshore planning for offshore oil and gas activities, sound management of barrier islands, revitalization of all New Jersey's urban areas, including the special case of Atlantic City, and other policy areas have moved to the top of the coastal management agenda in 1978, but the future may bring new management needs. The federal Coastal Zone Management Act wisely recognizes the importance of change and flexibility and provides mechanisms for states to refine or amend approved coastal management programs.

In the short term, changes to the Bay and Ocean Shore Segment will be considered and proposed, as appropriate, in the course of drafting the management program for the Delaware River, Northern Waterfront and Meadowlands regions of the coastal zone, and integrating the boundary, policies, and management system for those regions with the initial Coastal Program for the Bay and Ocean Shore Segment. In the long term, New Jersey will seek federal approval for major changes in the management program when such changes seem imperative to maintain a responsive, coherent, and up-to-date approved coastal management program. Any changes will be incorporated into the Coastal Program according to NOAA regulations 923.81. Federal consistency would not be applicable to such changes until these processes would be completed.

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PROPOSED NEW JERSEY COASTAL MANAGEMENT PROGRAM

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FEDERAL ENERGY
REGULATORY COMMISSION

Mr. David Blaha
Environmental Resources Management
200 Harry S. Truman Parkway Suite 400
Annapolis, MD 21401

RE: Deficiency Letter for Waterfront Development Application
File No. 0809-02-0011.1
Applicant: Crown Landing LLC
Project: Crown Landing LNG Import Terminal
Block: 101; Lot: 2
Location: Logan Township, Gloucester County

Dear Mr. Blaha:

The Office of Dredging and Sediment Technology (ODST) has reviewed the above referenced Waterfront Development Permit application received by the Department on January 7, 2005. Please be advised that the information submitted with your application has been reviewed and found to be deficient with respect to the Application Contents requirements found at N.J.A.C. 7:7 Chapter 7 and the Coastal Zone Management Rules N.J.A.C. 7:7E- et. Seq. as detailed below.

In order to facilitate the review process this application should reference and/or include all related supporting materials such as the Resource Reports submitted to the Federal Energy Regulatory Commission and other supporting information, which may be found in other reports or documents.

The project site is located in the States of Delaware and New Jersey. Accordingly, activities taking place from the mean low water line (MLWL) offshore are located in the State of Delaware and therefore are subject to Delaware Coastal Zone Management Regulations. Activities or associated impacts to New Jersey's coastal resources occurring from the MLWL landward are the subject of this application.

The project consists of the construction and operation of a liquefied natural gas (LNG) terminal in Logan Township, Gloucester County NJ. The proposed work entails: construction of berthing pier located in the Delaware River; approximately 800,000 cubic yards of associated dredging (in Delaware State waters) with disposal of dredged materials in New Jersey at the White's/ Weeks

Confined disposal facility (CDF) located in Logan Township. Other land-based construction activities consist of three storage tanks with a combined storage capacity of 11.1 billion cubic feet of LNG with associated containment dikes; various buildings stormwater and parking facilities; and gas pipeline tie-ins.

This letter identifies the applicable sections of the respective CZM Rule, which are provided in *Italics* for reference. The text of the deficiency analysis shall appear in **bold** following each Rule.

SUBCHAPTER 3 – Special Area Rules

7:7E-3.5 Finfish Migratory Pathways

(a) *Finfish migratory pathways are waterways (rivers, stream, creeks, bays and inlets) which can be determined to serve as passageways for diadromous fish to or from seasonal spawning areas, including juvenile anadromous fish which migrate in autumn and those listed by H.E. Zich (1977) "New Jersey Anadromous Fish Inventory" NJDEP Miscellaneous Report No. 41, and including those portions of the Hudson and Delaware Rivers within the coastal zone boundary.*

1. *Species of concern include: alewife or river herring (*Alosa pseudoharengus*), blueback herring (*Alosa sapidissima*), American shad (*Alosa aspidissima*), striped bass (*Monroe saxatilis*), Atlantic sturgeon (*Acipenser oxyrhynchus*), Shortnose sturgeon (*Acipenser brevirostrum*) and American eel (*Anguilla rostrata*).*

(b) *Development, such as dams, dikes, spillways, channelization, tide gates and intake pipes, which creates a physical barrier to the movement of fish along finfish migratory pathways is prohibited, unless acceptable mitigating measures such as fish ladders, erosion control, or oxygenation are used.*

(c) *Development which lowers water quality to such an extent as to interfere with the movement of fish along finfish migratory pathways or to violate State and Delaware River Basin Commission water quality standards is prohibited.*

1. *Mitigating measures are required for any development which would result in: lowering dissolved oxygen levels, releasing toxic chemicals, raising ambient water temperature, impinging or suffocating fish, entrainment of fish eggs, larvae or juveniles, causing siltation, or raising turbidity levels during migration periods.*

The (ODST) is awaiting comments by the Division of Fish and Wildlife (DFGW) concerning project activities that may adversely affect finfish migratory pathways. The applicant has not discussed pile driving and related in-water construction activities which may generate noise which can interfere with the movement of fish along migratory pathways in the Delaware River. Clupids are known to be affected by hydroacoustic pulses associated with pile driving activities. Timing restrictions imposed upon the work, if approved, may suffice in addressing some impacts such as hydroacoustic affects. However, additional impacts associated with the withdraw of ballast water may have adverse impacts to ichoplankton and early life stages of

marine fish which occur in the Delaware River. These impacts and the requisite mitigate measures must be addressed to demonstrate compliance with this Rule.

Navigational Channels 7:7E-3.7

(a) *Navigation channels include water areas in tidal rivers and bays presently maintained by DEP or the Army Corps of Engineers and marked by US Coast Guard with buoys or stakes, as shown on NOAA/National Ocean Survey Charts: 12214, 12304, 12311, 12312, 12313, 12314, 12316, 12317, 12318, 12323, 12324, 12326, 12327, 12328, 12330, 12331, 12332, 12333, 12334, 12335, 12337, 12341, 12343, 12345, 12346, and 12363.*

1. *Navigation channels also include channels marked with buoys, dolphins, and stakes, and maintained by the State of New Jersey, [and] access channels and anchorage's.*
2. *Navigation channels include all areas between the top of the channel slopes on either side.*

(b) *Standards relevant to navigation channels are as follows:*

1. *New or maintenance dredging of existing navigation channels is conditionally acceptable providing that the condition under the new or maintenance dredging rule is met (see N.J.A.C. 7:7E-4.2(f) and (g)).*
2. *Development which would cause terrestrial soil and shoreline erosion and siltation in navigation channels shall utilize appropriate mitigation measures.*
3. *Development which would result in loss of navigability is prohibited.*
4. *Any construction which would extend into a navigation channel is prohibited.*
5. *The placement of structures within 50 feet of any authorized navigation channel is discouraged, unless it can be demonstrated that the proposed structure will not hinder navigation.*

Based on information provided the ship berth site is over 1,500 feet away from the federal navigation channel. The applicant has not submitted, as part of this application, information concerning the cueing of ships waiting to dock at the facility and or associated tugboats which would tend the ships being docked and departing the dock. Additional information is required in the form of a plan drawn to scale depicting LNG and tender vessels in relation to the river channel, including turning radii and the route to and from the dockage position from the channel. In addition, the Department is awaiting review findings from the U.S. Coast Guard concerning impacts to navigation arising from the proposed Crown Landing LNG facility operation. These items must be addressed to demonstrate compliance with this Rule.

7:7E-3.15 Intertidal and Subtidal Shallows

- (a) *Intertidal and subtidal shallows means all permanently or temporarily submerged areas from the spring high water line to a depth of four feet below mean low water.*
- (b) *Development, filling, new dredging or other disturbance is discouraged but may be permitted in accordance with (c), (d), (e), and (f) below and with N.J.A.C. 7:7E-4.2 through 4.20.*
- (c) *New dredging in intertidal and subtidal shallows is discouraged, unless it complies with the following conditions:*
1. *There is a need for the proposed facility that requires the dredging that cannot be met by other similar facilities in reasonable proximity taking into account scope and purpose of the proposed facility;*
 2. *There is no feasible alternative location for the proposed facility that requires the dredging, which would eliminate or reduce the amount of disturbance to intertidal and subtidal shallows without increasing impacts on other Special Areas; and*
 3. *The proposed dredging and the facility that requires the dredging have been designed to minimize impacts to intertidal and subtidal shallows.*
- (d) *Mitigation shall be required for the destruction of intertidal and subtidal shallows in accordance with (e) below. Mitigation proposals shall comply with the standards of N.J.A.C. 7:7E-3B. Mitigation shall not be required for the following:*
1. *Filling in accordance with N.J.A.C. 7:7E-4.10(c) and (e)1,2 and 3;*
 2. *Maintenance dredging in accordance with N.J.A.C. 7:7E-4.6;*
 3. *Beach nourishment in accordance with N.J.A.C. 7:7E-7.11(d);*
 4. *New Dredging in accordance with N.J.A.C. 7:7E-4.7 to a depth not to exceed four feet below mean low water; and*
 5. *Construction of a replacement bulkhead in accordance with N.J.A.C. 7:7E-7.11(e)2i or ii.*
- (e) *Mitigation shall be required for the destruction of intertidal and subtidal shallows at a creation to loss ratio of 1:1 through the creation of intertidal and subtidal shallows on the site of the destruction. For the purposes of this section, creation means excavating upland to establish the characteristics, habitat and functions of an intertidal and subtidal shallow. Where on-site creation is not feasible, mitigation shall be accomplished as follows:*
2. *At a property other than a single family home or duplex property mitigation shall be performed in accordance with the following hierarchy:*
 - i. *If on site creation of intertidal and subtidal shallows is not feasible, then mitigation shall be required at a creation to loss ratio of 1:1 through the creation of intertidal and subtidal shallows within the same 11-digit hydrologic unit code area, as defined at N.J.A.C. 7:7E-1.8, as the destruction;*
 - ii. *If on site creation of intertidal and subtidal shallows is not feasible in accordance with (h)2i above, then mitigation shall be required at a creation to loss ratio of 1:1 through the*

- creation of intertidal and subtidal shallows within an adjacent 11-digit hydrologic unit code area within the same watershed management area, as defined at N.J.A.C. 7:7E-1.8, as the destruction. An adjacent 11-digit hydrologic unit code area is one which shares a common boundary at any point on the perimeter of the 11-digit hydrologic unit code area where the destruction is located;*
- iii. If the creation of intertidal and subtidal shallows required in (h)2ii is not feasible, then mitigation shall be required at an enhancement to loss ratio of 2:1 through the enhancement of a wetland system which was previously more ecologically valuable but has become degraded due to factors such as siltation, impaired tidal circulation, or contamination with hazardous substances (degraded wetland system) on the site of the destruction. For the purposes of this section, enhancement means actions performed to improve the characteristics, habitat and functions of an existing degraded wetland;*
 - iv. If the enhancement of degraded wetlands required in (h)2iii above is not feasible, then mitigation shall be required at an enhancement to loss ratio of 2:1 through the enhancement of a degraded wetland system within the same 11-digit hydrologic unit code area as the destruction;*
 - v. If the enhancement of degraded wetlands required in (h)2iv above is not feasible, then mitigation shall be required at an enhancement to loss ratio of 2:1 through the enhancement of a degraded wetland system within an adjacent 11-digit hydrologic unit code area within the same watershed management area as the destruction. An adjacent 11-digit hydrologic unit code area is one which shares a common boundary at any point on the perimeter of the 11-digit hydrological unit code where the destruction is located;*
 - v. If the enhancement of degraded wetlands required in (h)2v above is not feasible, then mitigation shall be required in accordance with either of the following:*
 - (1) Creation of intertidal and subtidal shallows at a creation to lost ratio of 1:1 within the same watershed management area; or*
 - (2) Enhancement of degraded wetlands at an enhancement to loss ratio of 2:1 within the same watershed management area.*

Impacts to intertidal and subtidal shallows in the project site appear to have been minimized. Approximately 150 sq. Ft of impacts to intertidal and subtidal shallows are proposed associated with the construction of a stormwater outfall pipe. The applicant proposes mitigation for this activity in the adjacent Oldmans Creek. In addition, to the impacts associated the outfall pipe there would be impacts from the placement of pilings and other pier support members in the water and shallows areas. This is further discussed under the Filling Rule referenced later in this document. The mitigation proposal should detail the location of the proposed mitigation site on a plan drawn to scale with an accompanying mitigation plan. Accordingly, please address this item by submitting a detailed mitigation discussion and site plan.

7:7E-3.23 Filled Water's Edge

(a) Filled water's edge areas are existing filled areas lying between wetlands or water areas, and either the upland limit of fill, or the first paved public road or railroad landward of the adjacent water area, whichever is closer to the water. Some existing or former dredged material disposal sites and excavation fill areas are filled water's edge (see Appendix, Figure 4, incorporated herein by reference).

(b) The "waterfront portion" is defined as a contiguous area at least equal in size to the area within 100 feet of navigable water, measured from the Mean High Water Line (MHWL). This contiguous area must be accessible to a public road and occupy at least 30 percent of its perimeter along the navigable water's edge.

(c) On filled water's edge sites with direct water access (that is, those sites without extensive inter-tidal shallows or wetlands between the upland and navigable water), development shall comply with the following:

1. The waterfront portion of the site shall be:

i. Developed with a water dependent use, as defined at N.J.A.C. 7:7E-1.8;

ii. Developed with an at-grade deck provided:

(1) The deck is open to the general public;

(2) The use of the deck is water oriented;

(3) The deck is not enclosed; and

(4) A public walkway is provided around the deck landward of the mean high water line at the water's edge; or

iii. Left undeveloped for future water dependent uses;

2. On the remaining non-waterfront portion of the site, provision of additional area devoted to water dependent or water-oriented uses may be required as a special case at locations which offer a particularly appropriate combination of natural features and opportunity for waterborne commerce and recreational boating; and

3. On large filled water's edge sites, of about 10 acres or more upland acres, where water-dependent and water-oriented uses can co-exist with other types of development, a greater mix of land uses may be acceptable or even desirable. In these cases, a reduced waterfront portion, that is, less than that provided by a 100-foot setback, may be acceptable provided that non-water related uses do not adversely affect either access to or use of the waterfront portion of the site.

2. For sites with an existing or pre-existing water dependent use other than a marina, development that would reduce or adversely affect the area currently or recently devoted to the water dependent use is discouraged.

(f) In waterfront areas located outside of the CAFRA zone the water dependent use may be a public walkway, provided the upland walkway right-of-way is at least 30 feet

wide, unless there are existing onsite physical constraints which cannot be removed or altered to meet this requirement.

(g) The development shall comply with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and either N.J.A.C. 7:7E-5A or 5B.

(h) Along the Hudson River and in other portions of the Northern Waterfront and Delaware River Region, where water dependent uses are deemed infeasible, some part of the waterfront portion of the site may be acceptable for non-water dependent development under the following conditions:

- 1. The development proposal addresses, as a minimum, past use of the site as well as potential for future water dependent, commercial, transportation, recreation, and compatible maritime support services uses;*
- 2. The developed land uses closest to the water's edge are water oriented;*
- 3. Currently active maritime port and industrial land uses are preserved;*
- 4. Adverse impacts on local residents and neighborhoods are mitigated to the maximum extent practicable; and*
- 5. All other coastal rules are met.*

(i) On all filled water's edge sites, development must comply with the Public Access to the Waterfront Rule (N.J.A.C. 7:7E-8.11). Public access to the waterfront will not be required at single family or duplex residential lots along the waterfront, which are not part of a larger development.

This Rule applies to construction above the mean high water line; therefore upland elements of the Crown Point Terminal project are subject to this Rule. The applicant has indicated that this Rule is not applicable, however based on the site history, it appears the subject land areas were once waters, wetlands or tidelands that were filled via the placement of dredged materials. Therefore, this Rule is applicable and must be addressed. It is recognized that port facilities are water dependent and therefore the water dependent component of the project is met. However, the project does not address or provide the Public Access to the Waterfront as required by this Rule. Moreover, the applicant has requested a "waiver" of this requirement. While public access to the waterfront may not be appropriate at core areas of this site due to security concerns, access could be provided at other portions of the site or at off-site locations. This is discussed further at the Public Access to the Waterfront Rule (N.J.A.C 7:7E-8.11).

7:7E-3.27 Wetlands

This section of the Rule text has not been provided in this deficiency letter since there are companion Freshwater Wetlands permits pending with the Land Use Regulation Program. Notwithstanding the pending wetlands permits, the subject Waterfront Development Permit was not submitted with site development plans which depict the verified wetlands limits; associated buffer areas according to their respective resource classification and other plans as

required by the Chapter 7 of the Coastal Permit Program Rules. Please supply all of the information indicated under Application Contents N.J.A.C. 7:7-4.2. Site plans must be supplied in accordance with sections 1 A through H and sections 1-10(f).

7:7E-3.28 Wetlands Buffers

Similar to the Wetlands Rule above, this section of the Rule has not been provided because there are companion Freshwater Wetlands Transition Area Waivers pending with the Land Use Regulation Program. As referenced above, however this application must include plans that detail buffers and transition area modifications in accordance with the Rule at N.J.A.C. 7:7-4.2.

7:7E-3.38 Endangered or threatened wildlife or plant species habitats

(a) Endangered or threatened wildlife or plant species habitats are areas known to be inhabited on a seasonal or permanent basis by or to be critical at any stage in the life cycle of any wildlife or plant identified as "endangered" or "threatened" species on official Federal or State lists of endangered or threatened species, or under active consideration for State or Federal listing. The definition of endangered or threatened wildlife or plant species habitats include a sufficient buffer area to ensure continued survival of the population of the species. Absence of such a buffer area does not preclude an area from being endangered or threatened wildlife or plant species habitat.

1. Areas mapped as endangered or threatened wildlife species habitat on the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife (known hereafter as Landscape Maps) are subject to the requirements of this section unless excluded in accordance with (c)2 below. Buffer areas, which are part of the endangered or threatened wildlife species habitat, may extend beyond the mapped areas. The Department's Landscape Maps, with a listing of the endangered and threatened species within a specific area, are available from the Department's Division of Fish and Wildlife, Endangered and Nongame Species Program at the Division's web address, www.state.nj.us/dep/fgw/ensphome.

2. Information on the areas mapped as endangered or threatened plant species habitat on the Department's Landscape Maps and the occurrence of endangered or threatened plant species habitat is available from the Department's Office of Natural Lands Management, Natural Heritage Database at PO Box 404, Trenton, New Jersey 08625-0404.

3. The required endangered or threatened wildlife or plant species habitat buffer area shall be based upon the home range and habitat requirements of the species and the development's anticipated impacts on the species habitat.

(b) Development of endangered or threatened wildlife or plant species habitat is prohibited unless it can be demonstrated, through an Endangered or Threatened Wildlife or Plant Species Impact Assessment as described at N.J.A.C. 7:7E-3C.2, that endangered or threatened wildlife or plant species habitat would not directly or through secondary impacts on the relevant site or in the surrounding area be adversely affected.

(c) Applicants for development of sites that contain or abut areas mapped as

endangered or threatened wildlife species habitat on the Landscape Maps shall either:

- 1. Demonstrate compliance with this rule by conducting an Endangered or Threatened Wildlife Species Impact Assessment in accordance with N.J.A.C. 7:7E-3C.2; or*
- 2. Demonstrate that the proposed site is not endangered or threatened wildlife species habitat and this rule does not apply by conducting an Endangered or Threatened Wildlife Species Habitat Evaluation in accordance with N.J.A.C. 7:7E-3C.3.*

(d) If the Department becomes aware of an occurrence of an endangered or threatened wildlife species on a site that is not mapped as endangered or threatened wildlife species habitat on the Department's Landscape Maps, and the Department determines that the habitat may be suitable for that species, the Department shall notify the applicant and the applicant shall demonstrate compliance with or inapplicability of this rule in accordance with (c) above.

(e) If the Department becomes aware of an occurrence of an endangered or threatened plant species on a site that is not in the Natural Heritage Database, the Department will notify the applicant and the applicant shall demonstrate compliance with this rule in accordance with (b) above.

(f) The Department is responsible for the promulgation of the official Endangered and Threatened Wildlife lists pursuant to the Endangered and Non-Game Species Conservation Act, N.J.S.A. 23:2A et seq. These lists include wildlife species that are endangered and threatened in New Jersey as well as wildlife species officially listed as endangered or threatened pursuant to the Endangered Species Act of 1973, 16 U.S.C.1531 et seq. Because the lists are periodically revised by the Department in accordance with N.J.S.A. 23:2A-1 et seq., the lists are not published as part of this rule. The lists are found at N.J.A.C. 7:25-4.13 and 7:25-4.17, the rules adopted pursuant to the Endangered and Non-Game Species Conservation Act. To obtain a copy of the most current Endangered and Threatened Wildlife lists, please contact the Department, Division of Fish and Wildlife, Endangered and Nongame Species Program at the Division's web address, www.state.nj.us/dep/fgw/ensphome, or by writing to the Division at PO Box 400, Trenton, New Jersey 08625-0400.

(g) The Department is responsible for promulgation of the official Endangered Plant Species List pursuant to N.J.S.A. 13:1B-15. The Endangered Plant Species List, N.J.A.C. 7:5C-5.1, includes plant species determined by the Department to be endangered in the State as well as plant species officially listed as endangered or threatened or under active consideration for Federal listing as Endangered or Threatened. Because the Endangered Plant Species List is periodically revised based on new information documented by the Department, it is not published as part of this rule. To obtain the most current Endangered Plant Species List, please contact the Department, Division of Parks and Forestry, Office of Natural Land Management, PO Box 404, Trenton, NJ 08625-0404.

(h) For sites located within the Pinelands National Reserve and the Pinelands Protection Area, the plant species listed in the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-6.24) are also considered endangered or threatened plant species.

(i) Rationale: See OAL Note at the beginning of this chapter.

The subject site has been identified as containing exceptional resource value wetlands via a Letter of interpretation issued by the Department. This determination is based upon the western riverine portion of the site area containing bald eagle foraging habitat. The

applicant has discussed this Rule and proposes to mitigate for certain temporary and secondary impacts to endangered Bald Eagle forested riparian buffer habitats located along the Delaware River. The mitigation is proposed via planting of a forested buffer along Oldmans Creek shoreline on the southern boundary of the site. In order to address compliance with this Rule the applicant must specifically quantify the impacted area; the proposed mitigation area; provide a time schedule for the anticipated impacted area and mitigation creation area and identify the mitigation area including a metes and bounds survey. In addition, Sections 3 b and c of this Rule requires that applicants for development of sites that contain or abut areas mapped as endangered or threatened wildlife species habitat on the Landscape Maps shall either:

1. "Demonstrate compliance with this rule by conducting an Endangered or Threatened Wildlife Species Impact Assessment in accordance with N.J.A.C. 7:7E-3C.2; or
2. Demonstrate that the proposed site is not endangered or threatened wildlife species Habitat and this rule does not apply by conducting an Endangered or Threatened Wildlife Species Habitat Evaluation in accordance with N.J.A.C. 7:7E-3C.3"

Since the applicant has acknowledged the presence of bald eagle habitat onsite a wildlife species impact assessment must be provided in accordance the Rule at N.J.A.C. 7:7E-3.38(3)(b)(1).

7:7E-3.39 Critical wildlife habitats

(a) Critical wildlife habitats are specific areas known to serve an essential role in Maintaining wildlife, particularly in wintering, breeding, and migrating.

1. Rookeries for colonial nesting birds, such as herons, egrets, ibis, terns, gulls, and skimmers; stopovers for migratory birds, such as the Cape May Point region; and natural corridors for wildlife movement merit a special management approach through designation as a Special Area.

Effective February 2, 2004

Note: This is a courtesy copy of the Coastal Zone Management rules. The official version is in the New

Jersey Administrative Code (N.J.A.C. 7:7E). Should there be any discrepancies between the courtesy copy

and the official version, the official version will govern.

51

2. Ecotones, or edges between two types of habitats, are a particularly valuable critical wildlife habitat. Many critical wildlife habitats, such as salt marsh water fowl wintering areas, and muskrat habitats, are singled out as water or water's edge areas.

3. Definitions and maps of critical wildlife habitats are currently available only for colonial waterbird habitat in the 1979 Aerial Colony Nesting Waterbird Survey for New Jersey (NJDEP, Division of Fish and Wildlife). Until additional maps are available, sites will be considered on a case-by-case basis by the Division of Fish Wildlife.

(b) Development that would directly or through secondary impacts on the relevant site or in the surrounding region adversely affect critical wildlife habitats is discouraged, unless:

1. *Minimal feasible interference with the habitat can be demonstrated;*
 2. *There is no prudent or feasible alternative location for the development; and*
 3. *The proposal includes appropriate mitigation measures.*
- (c) The Department will review proposals on a case-by-case basis.*
- (d) Rationale: See the note at the beginning of this Chapter.*

The applicant has discussed this Rule indirectly via 7:7E-3.38 Endangered or threatened wildlife or plant species habitats. However, the applicant has not depicted the specific critical wildlife habitat areas on a construction or site development plan and provided the analysis required at section (b) 1-3 of this Rule. This information must be provided in order to demonstrate compliance with this Rule.

7:7E-4.4 Docks and piers for cargo and commercial fisheries

(a) Docks and piers for cargo and passenger movement and commercial fisheries are Structures supported on pilings driven into the bottom substrate or floating on the water surface, used for loading and unloading passengers or cargo, including fluids, connected to or associated with, a single industrial or manufacturing facility or to commercial fishing facilities.

(b) Docks and piers for cargo and passenger movement and commercial fisheries are conditionally acceptable provided:

1. The width and length of the dock or pier is limited to only what is necessary for the proposed use;

2. The dock or pier will not pose a hazard to navigation. A hazard to navigation includes all potential impediments to navigation, including access to adjacent moorings, water areas and docks and piers; and

3. The associated use of the adjacent land meets all applicable Coastal Zone Management rules.

(c) The standards for port uses are found at N.J.A.C. 7:7E-7.9. The standards for the construction of a dock or pier composed of fill and retaining structures are found at N.J.A.C. 7:7E-4.10.

This Rule requires that the length and width of a dock or pier be limited to only what is necessary for the proposed use. Accordingly, information including engineering and design parameters, which generated the sizing of the ship dock, must be provided to show that the Rule is met and the dock structure has been minimized. For example, dimensions of piers at other LNG facilities should be provided for comparison. The applicants' response to this Rule may be limited to the portions of the pier located in New Jersey.

7E-4.7 New dredging

(a) New dredging is the removal of sediment that does not meet the definition of Maintenance dredging at N.J.A.C. 7:7E-4.6.

(b) New dredging is conditionally acceptable in all General Water Areas for boat moorings, navigation channels or anchorages provided:

1. There is a demonstrated need that cannot be satisfied by existing facilities;

2. *The facilities served by the new dredging satisfy the location requirements for Special Water's Edge Areas;*
3. *The adjacent water areas are currently used for recreational boating, commercial fishing or marine commerce;*
4. *The dredge area causes no significant disturbance to Special Water or Water's Edge Areas;*
5. *The adverse environmental impacts are minimized to the maximum extent feasible;*
6. *The dredge area is reduced to the minimum practical;*
7. *The maximum depth of the newly dredged area shall not exceed that of the connecting access or navigation channel necessary for vessel passage to the bay or ocean;*
8. *Dredging will have no adverse impacts on groundwater resources;*
9. *No dredging shall occur within 10 feet of any wetlands. The proposed slope from this 10 foot buffer to the nearest edge of the dredged area shall not exceed three vertical to one horizontal; and*
10. *Dredging shall be accomplished consistent with all of the following conditions, as appropriate to the dredging method:*
 - i. *An acceptable dredged material placement site with sufficient capacity will be used. (See N.J.A.C. 7:7E-4.8 Dredged material disposal in water areas, and N.J.A.C. 7:7E-7.12 Dredged material placement on land);*
 - ii. *Pre-dredging chemical and physical analysis of the dredged material and/or its elutriate may be required where the Department suspects contamination of sediments. Additional testing, such as bioaccumulation and bioassay testing of sediments, may also be required as needed to determine the acceptability of the proposed placement site for the dredged material. The results of these tests will be used to determine if contaminants may be resuspended at the dredging site and what methods may be needed to control their escape. The results will also be used to determine acceptability of the proposed dredged material placement method and site;*
 - iii. *Turbidity concentrations (that is, suspended sediments) and other water quality parameters at, downstream, and upstream of the dredging site, and slurry water overflows shall meet applicable State Surface Water Quality Standards at N.J.A.C. 7:9B. The Department may require the permittee to conduct biological, physical and chemical water quality monitoring before, during, and after dredging and disposal operations to ensure that water quality standards are not exceeded;*
 - iv. *If predicted water quality parameters are likely to exceed State Surface Water Quality Standards, or if pre-dredging chemical analysis of dredged material or elutriate reveals significant contamination, then the Department will work cooperatively with the applicant to fashion acceptable control measures and will impose seasonal restrictions under the specific circumstances identified at (b)11vii below;*
 - v. *For new dredging using mechanical dredges such as clamshell bucket, dragline, grab, or ladders, deploying silt curtains at the dredging site may be required, if feasible based on site conditions. Where the use of silt curtains is infeasible, dredging using closed watertight buckets or lateral digging buckets may be required. The Department may decide not to allow mechanical dredging of highly contaminated sites even if turbidity control measures were planned;*
 - vi. *For hydraulic dredges, specific operational procedures designed to minimize water*

quality impacts, such as removal of cutter head, flushing of pipeline sections prior to disconnection, or limitations on depth of successive cuts, may be required;

vii. The Department may authorize dredging on a seasonally restricted basis only, in waterways characterized by the following:

(1) Known spawning, wintering or nursery areas of shortnose sturgeon, winter flounder, Atlantic sturgeon, alewife, blueback herring, striped bass or blue crab;

(2) Water bodies downstream of known anadromous fish spawning sites under N.J.A.C. 7:7E-3.5 Finfish migratory pathways, where the predicted turbidity plume will encompass the entire cross-sectional area of the water body, thus forming a potential blockage to upstream migration;

(3) Areas of contaminated sediments with high levels of fecal coliform and/or streptococcus bacteria, and/or hazardous substances adjacent to (upstream or downstream) State approved shellfishing waters and public or private bathing beaches; or

(4) Areas within 1,000 meters or less of oyster beds as defined in N.J.A.C. 7:7E-3.2; and

viii. Side slopes shall not be steeper than 3:1 adjacent to wetlands to prevent undermining and/or sloughing of the wetlands.

(c) Propwash dredging, which is the movement of sediment by resuspending accumulated material by scouring the bottom with boat propellers or specially designed equipment with propellers is prohibited.

(d) New dredging or excavation to create new lagoons for residential development is prohibited in wetlands, N.J.A.C. 7:7E-3.27, wetlands buffer, N.J.A.C. 7:7E-3.28, endangered or threatened wildlife or vegetation species habitats, N.J.A.C. 7:7E-3.38, and discouraged elsewhere.

(e) New dredging is conditionally acceptable to control siltation in lakes, ponds and reservoirs, provided that an acceptable sedimentation control plan is developed to address re-sedimentation of these water bodies.

(f) The Department has prepared a dredging technical manual, titled "The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey's Tidal Waters," October 1997, which provides guidance on dredged material sampling, testing, transporting, processing, management, and placement. The manual is available from the Department's Office of Maps and Publications, PO Box 420, Trenton, New Jersey, 08625-0420, (609) 777-1038.

(g) With the exception of N.J.A.C. 7:7E-4.7(b), (c), (d) and (e) above, new dredging is discouraged.

The dredging associated with this project is located outside of New Jersey's tidal waters, however, impacts associated with, or stemming from, dredging work are subject to State purview via certain CZM Rules. The applicant has indicated that this Rule is not applicable, however dredged material disposal via a hydraulic pipeline dredge is proposed within the State's boundary. Moreover, this application has been submitted without the requisite dredged material analysis as required by this Rule. Accordingly, a complete analytical report characterizing the subject sediment to be dredged must be submitted in order to address section 10 of this Rule. This material should be accompanied by the sediment core location plan that was approved by the Department. An evaluation of the data and determination of whether dredging impacts have been minimized will be made after review of pending

comments from the Department's Division of Fish and Wildlife; the National Marine Fisheries Service; the Federal Energy Regulatory Commission; U.S. Coast Guard and other commenting agencies.

7:7E-4.8 Dredged material disposal

(a) Dredged material disposal is the discharge of sediments removed during dredging operations.

(b) The standards relevant to dredged material disposal in water areas are as follows:

1. Dredged material disposal is prohibited in tidal guts, man-made harbors, medium rivers, creeks and streams, and lakes, ponds and reservoirs. Dredged material disposal is discouraged in open bays, semi-enclosed and backbays where the water depth is less than six feet;

2. Disposal of dredged materials in the ocean and bays deeper than six feet is conditionally acceptable provided that there is no feasible beneficial use or upland placement site available and it is in conformance with the USEPA and US Army Corps of Engineers Guidelines (40 C.F.R. parts 220-228 and 230-232 and 33 CFR, parts 320-330 and 335-338) established under Section 404(b) of the Clean Water Act and the Evaluation of Dredged Material Proposed for Ocean Disposal Testing Manual, EPA-503/8-91/001, February 1991, and Evaluation of Dredged Material Proposed for Discharge in Inland and Near Coastal Waters Testing Manual, EPA-000/0-93/000, May 1993, as appropriate to the proposed disposal site;

3. Dredged material disposal in water areas shall conform with applicable State Surface Water Quality Standards at N.J.A.C. 7:9B;

4. Overboard disposal (also known as aquatic, open water, side casting, subaqueous, or wet) of uncontaminated sediments into unconfined disposal sites in existing anoxic dredge holes, shall comply with the following:

Effective February 2, 2004

Note: This is a courtesy copy of the Coastal Zone Management rules. The official version is in the New

Jersey Administrative Code (N.J.A.C. 7:7E). Should there be any discrepancies between the courtesy copy

and the official version, the official version will govern.

93

i. Data on water quality, benthic productivity and seasonal finfish use demonstrate that the unconfined disposal site has limited biological value;

ii All subaqueous dredged material disposal shall utilize best management techniques such as submerged elbows or underwater diffusers and may be limited to a particular tidal cycle to further minimize impacts; and

iii. The hole shall not be filled higher than the depth of the surrounding waters.

5. Overboard disposal of sediments consisting of less than 90 percent sand shall be conditionally acceptable in unconfined disposal sites when shallow waters preclude removal to an upland or confined site. Such disposal shall comply with the following:

i. Shellfish habitats (as defined in N.J.A.C. 7:7E-3.2) are not within 1,000 meters;

ii. Disposal will not smother or cause condemnation or contamination of harvestable shellfish resources (as in N.J.A.C. 7:7E-3.2);

iii. *Sediment characteristics of the dredged material and disposal site are similar; and*
6. *Uncontaminated dredged sediments with 75 percent sand or greater are generally encouraged for beach nourishment.*

(c) The standards for dredged material placement on land are found at N.J.A.C. 7:7E-7.12.

(d) The Department has prepared a dredging technical manual, titled "The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey's Tidal Waters," October 1997, which provides guidance on dredged material sampling, testing, transporting, processing, management, and placement. The manual is available from the Department's Office of Maps and Publications, PO Box 420, Trenton, New Jersey, 08625-0420, (609) 777-1038.

(e) Rationale: See the note at the beginning of this Chapter.

This Rule principally addresses dredge material disposal in water areas. Please refer to the Rule at N.J.A.C. 7:7E-7.12 – Dredged Material Placement on Land discussed later in this letter.

7:7E-4.10 Filling

(a) Filling is the deposition of material including, but not limited to, sand, soil, earth, and dredged material, into water areas for the purpose of raising water bottom elevations to create land areas.

(b) Filling is prohibited in lakes, ponds, reservoirs and open bay areas at greater than 18 feet as defined at N.J.A.C. 7:7E-4.1, unless the filling is consistent with the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) and Freshwater Wetlands.

Approximately 340-sq. ft. of fill for the construction of a stormwater outfall structure is proposed. In addition, an unspecified amount of fill will result from the piles that will support the proposed dock. The area of disturbance to waters, intertidal and subtidal shallows associated with the pilings and other pier supports must be quantified and mitigated. Accordingly, compliance with Rule must be demonstrated by suitable mitigation for the subject fills.

7:7E-4.14 Submerged pipelines

(a) Submerged pipelines (pipelines) are underwater pipelines which transmit liquids or gas, including crude oil, natural gas, water petroleum products or sewerage.

(b) Submerged pipelines are conditionally acceptable provided:

- 1. The pipelines are not sited within Special Areas, unless no prudent and feasible alternate route exists;*
- 2. Directional drilling is used unless it is demonstrated that the use of directional drilling is not feasible;*
- 3. The pipeline is buried to a sufficient depth to avoid exposure or hazard;*
- 4. All trenches are backfilled to preconstruction depth with naturally occurring sediment; and*
- 5. The proposed development has been designed to minimize impacts to the water*

area.

(c) Rationale: See the note at the beginning of this Chapter.

The applicant proposes to hydraulically convey dredged material to an off-site disposal location via pipeline. This Rule has not been fully addressed as no details have been given concerning this activity. Specifically, the route and location of the pipe must be given as well details of its size and method of traverse (i.e., suspended, submerged) must be provided. Based on a review of river charts the length of the pipeline will exceed 3.5 miles and the pipeline will cross offshore of Raccoon Creek. Since the pipe will be located in and will cross navigable waters, it must be routed so that it will not interfere with navigation. In addition, the applicant has not been identified if the pipe will traverse wetlands, buffers and other Special areas as it makes landfall. Finally, this dredge pipeline will convey a very large quantity of dredge slurry, which may contain contaminants. Accordingly, a discussion along with supporting pipeline specifications must be provided demonstrating that the pipeline will be deployed and maintained such that it will not release or leak slurry into the river or wetlands. Moreover, plan should be provided for the detection of any leaks in submerged portions the pipe. In addition, since the project calls for ongoing maintenance dredging, the applicant must identify the method and details of future dredging cycles. If a hydraulic pipeline dredge will be used for subsequent operations the duration of work and effects of the pipeline route must also be addressed.

SUBCHAPTER 5

IMPERVIOUS COVER LIMITS AND VEGETATIVE COVER PERCENTAGES IN THE UPLAND WATERFRONT DEVELOPMENT AREA

7:7E-5A.1 Purpose and scope

This subchapter sets the impervious cover limits and vegetative cover percentages for sites in the upland waterfront development area, as defined at N.J.A.C. 7:7E-5.2. For a site in the upland waterfront development area, impervious cover limits and vegetative cover percentages are based on the growth rating, environmental sensitivity, and development potential, and on whether the site is forested or unforested.

7:7E-5A.2 Upland waterfront development area regions and growth ratings

(a) The growth rating for a site in the upland waterfront development area is determined by the region in which it is located, and the growth rating assigned to that region.

(b) The growth ratings are as follows:

1. A development growth rating is assigned to regions of the upland waterfront development area that are already largely developed. Development in regions with this growth rating is preferred over development in regions with limited growth and extension growth ratings;

(c) The eight different regions and their growth ratings are based on their respective

patterns of development and cultural and natural resources.

(d) The regions are as follows:

7. The Delaware River region, which is:

- i. The land within the upland waterfront development area in the municipalities of Bridgeton and Millville in Cumberland County and Salem in Salem County; and*
- ii. The land within the upland waterfront development area in Salem County (but not located in the Delaware estuary region), and extending north from Salem County through Gloucester County, Camden County, Burlington County (but not located in Bass River Township), and Mercer County; and*

8. The Delaware estuary region, which is:

- i. The land within the upland waterfront development area in Cumberland County (but not located in the municipalities of Bridgeton and Millville); and*
- ii. The land within the upland waterfront development area in Salem County that is south and east of a boundary formed by Interstate 295 from its intersection with the New Jersey Turnpike to County Route 641; County Route 641 from its intersection with the New Jersey Turnpike to U.S. Route 130; U.S. Route 130 from its intersection with County Route 641 to its intersection with Oldmans Creek (but not located within the municipality of Salem).*

(e) The growth ratings assigned to the regions described in (d) above are as follows:

1. The following regions are assigned a development growth rating:

- i. Urban area region;*
- ii. Northern waterfront region; and*
- iii. Delaware River region;*

2. The following regions are assigned an extension growth rating:

- i. Western ocean region; and*
- ii. Southern region; and*

3. The following regions are assigned a limited growth rating:

- i. Mullica-southern ocean region;*
- ii. Great Egg Harbor River region; and*
- iii. Delaware estuary region.*

7:7E-5A.3 Environmental sensitivity

(a) The environmental sensitivity of a site is based on the soil type and the depth to seasonal high water table or the presence of paving or structures. Different portions of a site may have different environmental sensitivities.

(b) A site or portion of a site has a high environmental sensitivity if it has wet or high permeability moist soils.

1. Wet or high permeability moist soils are soils with a depth to seasonal high water table of three feet or less, unless the soils are loamy sand or coarser as defined by the United States Department of Agriculture's Soil Texture Triangle, in which case they are soils with a depth to seasonal high water table of four feet or less.

(c) A site or portion of a site has a medium environmental sensitivity if it has neither a high environmental sensitivity nor a low environmental sensitivity.

(d) A site or portion of a site has a low environmental sensitivity if the depth to seasonal high water table is greater than five feet, or the site or portion of the site has

paving or structures at the time the application is submitted.

7:7E-5A.4 Development potential

(a) Development potential is determined by the type of development proposed and the presence or absence of certain development-oriented elements at or near the site of the proposed development, including roads; wastewater conveyance, treatment and disposal system; and existing development. Development potential may be high, medium or low, as determined under N.J.A.C. 7:7E-5A.5 through 5A.7. A single development potential applies to an entire site.

(b) If a development proposed on a site is inconsistent with the applicable Areawide Water Quality Management Plan adopted under N.J.A.C. 7:15, the development potential cannot be determined for the site. Any development that is inconsistent with the applicable Areawide Water Quality Management Plan is prohibited under N.J.A.C. 7:7E-8.4(b).

(c) The types of development are:

2. Major commercial or industrial development, which includes all industrial development, warehouses, offices, manufacturing plants, energy facilities, wholesale and major shopping centers with more than 100,000 square feet of enclosed building area, and major parking facilities with more than 700 parking spaces. For the purposes of this section and N.J.A.C. 7:7E-5A.6, major commercial or industrial development also includes solid waste facilities and wastewater treatment plants; and

3. Campground development, which provides facilities for visitors to enjoy the natural resources of the State. Typically, this type of development is suited to sites somewhat isolated from other development and with access to water, beach, forest and other natural amenities.

(d) The development potential for a site shall be determined as follows:

1. If a proposed development is a residential or minor commercial development as described at (b)1 above, the development potential for the site is determined under N.J.A.C. 7:7E-5A.5;

2. If a proposed development is a major commercial or industrial development as described at (b)2 above, the development potential for the site is determined under N.J.A.C. 7:7E-5A.6; and

7:7E-5A.6 Development potential for a major commercial or industrial development site

(a) Subject to the limitations at N.J.A.C. 7:7E-5A.4(c)4, the development potential for a major commercial or industrial development site is determined under (b) through (d) below.

(b) A site upon which a major commercial or industrial development is proposed is a high development potential site if it meets all of the requirements at (b)1 through 4 below:

1. An existing paved public road abuts the site;

2. If an offsite wastewater conveyance, treatment and disposal system is to be used:

- i. The existing conveyance component of the system abuts the site; and*
- ii. The existing wastewater conveyance, treatment and disposal system has adequate capacity to convey, treat, and dispose of the sewage from the proposed development, or the applicant has an agreement with the sewage authority to modify the system to provide adequate capacity;*
- 3. A part of the perimeter of the site is adjacent to, or immediately across a paved road from, existing major commercial or industrial development, or, in a region with a development growth rating, the site is adjacent to or immediately across a paved road from any existing commercial development; and*
- 4. In a region with a limited growth or extension growth rating, the site is located either:*
 - i. For a major commercial development, within two miles of an existing intersection with a limited access highway; or*
 - ii. For an industrial development, either within:*
 - (1) Two miles of an existing intersection with a limited access highway; or*
 - (2) One-half mile of a freight rail line that shall be used, or the applicant has a written agreement with the owner of a freight rail line to obtain freight rail service directly to the site.*
 - (c) A site upon which a major commercial or industrial development is proposed is a medium development potential site if it is not a high development potential site under (b) above but does meet the requirements at either (c)1 or 2 below:*
 - 1. The site is located in a region with a development growth rating and the site is located:*
 - i. One thousand feet or less from the nearest existing paved public road, or 1,000 feet or less from the nearest public road that is approved and shall be constructed before or concurrently with the development;*
 - ii. If an offsite wastewater conveyance, treatment and disposal system is to be used, 1,000 feet or less from the conveyance component of that system, or 1,000 feet or less from the conveyance component of a system that is approved and shall be constructed before or concurrently with the development, provided:*
 - (1) The wastewater conveyance, treatment and disposal system has adequate capacity to convey, treat, and dispose of the sewage from the proposed development, or the applicant has an agreement with the sewage authority to modify the system to provide adequate capacity; and*
 - iii. For an industrial development, one-half mile or less from the nearest existing commercial or industrial development that has more than 50,000 square feet of enclosed building area within a single facility; or*
 - 2. The site is located in a region with a limited growth or extension growth rating and the site is located:*
 - i. Either 1,000 feet or less from the nearest existing paved public road, or five miles or less from the nearest intersection with a limited access highway;*
 - ii. If an offsite wastewater conveyance, treatment and disposal system is to be used, 1,000 feet or less from the existing conveyance component of the system, provided:*
 - (1) The existing wastewater conveyance, treatment and disposal system has adequate capacity to convey, treat, and dispose of the sewage from the proposed development, or the applicant has an agreement with the sewage authority to modify the system to provide*

adequate capacity; and

iii. One-half mile or less from the nearest commercial or industrial development that has more than 50,000 square feet of enclosed building area within a single facility.

(d) A site upon which a major commercial or industrial development is proposed is a low development potential site if it is neither a high development potential site under (b) above nor a medium development potential site under (c) above.

(1) The existing wastewater conveyance, treatment and disposal system has adequate capacity to convey, treat, and dispose of the sewage from the proposed development, or the applicant has an agreement with the sewage authority to modify the system to provide adequate capacity;

iii. If a commercial development is proposed, one-half mile or less from the nearest existing commercial or industrial development that has more than 20,000 square feet of enclosed building area within a single facility; and

iv. If a residential development is proposed, one-half mile or less from developed land, as described at (b)3 above.

(d) A site upon which a residential or minor commercial development is proposed is a low development potential site if it is neither a high development potential site under (b) above nor a medium development potential site under (c) above.

7:7E-5A.6 Development potential for a major commercial or industrial development site

(a) Subject to the limitations at N.J.A.C. 7:7E-5A.4(c)4, the development potential for a major commercial or industrial development site is determined under (b) through (d) below.

(b) A site upon which a major commercial or industrial development is proposed is a high development potential site if it meets all of the requirements at (b)1 through 4 below:

1. An existing paved public road abuts the site;

2. If an offsite wastewater conveyance, treatment and disposal system is to be used:

i. The existing conveyance component of the system abuts the site; and

ii. The existing wastewater conveyance, treatment and disposal system has adequate capacity to convey, treat, and dispose of the sewage from the proposed development, or the applicant has an agreement with the sewage authority to modify the system to provide adequate capacity;

3. A part of the perimeter of the site is adjacent to, or immediately across a paved road from, existing major commercial or industrial development, or, in a region with a development growth rating, the site is adjacent to or immediately across a paved road from any existing commercial development; and

4. In a region with a limited growth or extension growth rating, the site is located either:

i. For a major commercial development, within two miles of an existing intersection with a limited access highway; or

ii. For an industrial development, either within:

(1) Two miles of an existing intersection with a limited access highway; or

(2) One-half mile of a freight rail line that shall be used, or the applicant has a written agreement with the owner of a freight rail line to obtain freight rail service directly to the site.

(c) A site upon which a major commercial or industrial development is proposed is a medium development potential site if it is not a high development potential site under (b) above but does meet the requirements at either (c)1 or 2 below:

1. The site is located in a region with a development growth rating and the site is located:

i. One thousand feet or less from the nearest existing paved public road, or 1,000 feet or less from the nearest public road that is approved and shall be constructed before or concurrently with the development;

ii. If an offsite wastewater conveyance, treatment and disposal system is to be used, 1,000 feet or less from the conveyance component of that system, or 1,000 feet or less from the conveyance component of a system that is approved and shall be constructed before or concurrently with the development, provided:

(1) The wastewater conveyance, treatment and disposal system has adequate capacity to convey, treat, and dispose of the sewage from the proposed development, or the applicant has an agreement with the sewage authority to modify the system to provide adequate capacity; and

iii. For an industrial development, one-half mile or less from the nearest existing commercial or industrial development that has more than 50,000 square feet of enclosed building area within a single facility; or

2. The site is located in a region with a limited growth or extension growth rating and the site is located:

i. Either 1,000 feet or less from the nearest existing paved public road, or five miles or less from the nearest intersection with a limited access highway;

ii. If an offsite wastewater conveyance, treatment and disposal system is to be used, 1,000 feet or less from the existing conveyance component of the system, provided:

(1) The existing wastewater conveyance, treatment and disposal system has adequate capacity to convey, treat, and dispose of the sewage from the proposed development, or the applicant has an agreement with the sewage authority to modify the system to provide adequate capacity; and

iii. One-half mile or less from the nearest commercial or industrial development that has more than 50,000 square feet of enclosed building area within a single facility.

(d) A site upon which a major commercial or industrial development is proposed is a low development potential site if it is neither a high development potential site under (b) above nor a medium development potential site under (c) above.

7:7E-5A.8 Development intensity

(a) The development intensity for a site is based on growth rating, environmental sensitivity, and development potential. Tables A through C below are used to determine the development intensity of a site or portion of a site. Because environmental sensitivity may be different for different portions of a site, development intensity can also be different for different portions of a site.

(b) To determine the development intensity for a site:

1. Determine the growth rating for the site under N.J.A.C. 7:7E-5A.2;
2. Determine the environmental sensitivity for each portion of the site under N.J.A.C. 7:7E-5A.3;
3. Determine the development potential for the site based on the site and the type of development under N.J.A.C. 7:7E-5A.4 through 5A.7;
4. Consult Table A, B, or C below as follows:
 - i. For a site with a development growth rating, consult Table A; (See Attachment A)

The applicant has reported that the Crown Landing site is comprised of a total land area of 162.4 acres within the waterfront development area. The net land area reported (subtracting wetlands and wetlands transition areas) is 37.9 acres. The growth area of the site is the Delaware River Region, and therefore it is a designated Development Region for Coastal growth.

The Environmental Sensitivity of the site is derived based on soil types and their respective depths to the seasonal high water tables. The applicant has determined the site as containing two environmental sensitivities based on seasonal high water table levels. However, the applicant has not provided the pezometers or core logs which were used to determine the environmental sensitivity of the site. Furthermore, the extent of the 26.9 acres of medium environmental sensitive area and 11.0 acres of high sensitivity areas were not delineated and shown on a site development plan. This section of the Rule and supporting data establish the criteria for which the development intensity and allowable impervious cover limits are based. Therefore, this information must be elucidated and provided in order to enable the Department to determine compliance with this Rule.

In addition, section 7:7E-5A.10 Vegetative Cover Percentages for a Site in the Upland Waterfront Development Area requires that trees and or herb/shrub vegetation shall be planted or preserved on-site. This section of the Rules was not addressed in the statement of compliance. Accordingly, this section of the Rule must be addressed via an analysis of the Vegetative Cover Percentages and submitted with the calculations.

7:7E-7.4 Energy facility use rule

- (a) *Energy facilities include facilities, plants or operations for the production, conversion, exploration, development, distribution, extraction, processing, or storage of energy or fossil fuels. Energy facilities also include onshore support bases and marine terminals. Energy facilities do not include operations conducted by a retail dealer, such as a gas station, which is considered a commercial development.*
- (b) *Standards relevant to siting of new energy facilities, including all associated development activities, are as follows:*
 1. *Energy facilities shall not be sited in Special Areas as defined at N.J.A.C. 7:7E-3.1 through 3.42, 3.44, 3.46, and marine fish and fisheries areas defined at N.J.A.C. 7:7E-8.2, unless site-specific information demonstrates that such facilities will not result in adverse impacts to these areas;*
 2. *Except for water dependent energy facilities, energy facilities shall be sited at least*

500 feet inland of the mean high water line of tidal waters in the following areas:

i. The CAFRA area; and

ii. The Western Ocean, Southern, Mullica-Southern Ocean, Great Egg Harbor River and Delaware Estuary regions, as defined at N.J.A.C. 7:7E-5A.2(d);

3. Public access to and use of the waterfront and tidal waters shall be maintained and, where feasible, enhanced in the siting of energy facilities, pursuant to N.J.A.C. 7:7E-8.11; and

4. The scenic and visual qualities of coastal areas shall be maintained as important public resources in the siting of energy facilities, pursuant to N.J.A.C. 7:7E-8.12.

(c) Coastal energy facilities construction and operation shall not directly or indirectly result in net loss of employment in the State for any single year.

1. Coastal energy facility construction and operation which results in loss of 200 or more person-years of employment in jobs in New Jersey directly or indirectly related to the State's coastal tourism industry in any single year is prohibited.

2. Rationale: See the note at the beginning of this Chapter.

(i) Standards relevant to pipelines and associated facilities are as follows:

1. Crude oil and natural gas pipelines to bring hydrocarbons from offshore of the New Jersey coast to existing refineries, oil and gas transmission and distribution systems, and other new oil and natural gas pipelines are conditionally acceptable, provided:

i. For safety and conservation of resources, the number of pipeline corridors, including trunk pipelines for natural gas and oil, shall be limited, to the maximum extent feasible, and designated following appropriate study and analysis by interested Federal, State and local agencies, affected industries, and the general public;

Standards relevant to gas processing plants are as follows:

1. A "gas processing plant" is designed to recover liquifiable hydrocarbons from a gas stream before it enters a commercial transmission line. A gas processing facility may include treatment, recovery and fractionation equipment to separate the recovered liquid hydrocarbon stream into its various components including, for example, ethane, butane and propane.

2. Gas processing plants proposed for locations between the offshore pipeline landfall and interstate natural gas transmission lines shall be prohibited from sites within the CAFRA area and shall be located the maximum distance from the shoreline. The siting of gas processing plants will be reviewed in terms of the total pipeline routing system.

3. Rationale: See the note at the beginning of this Chapter.

(n) Standards relevant to other gas-related facilities are as follows:

1. Additional facilities related to a natural gas pipeline such as metering and regulating stations, odorization plants, and block valves are conditionally acceptable in the CAFRA area if adequate visual, sound, and vegetative buffer areas are provided.

2. Rationale: See the note at the beginning of this Chapter.

(p) Standards relevant to storage of crude oil, gases and other potentially hazardous liquid substances are as follows:

1. The storage of crude oil, gases and other potentially hazardous liquid substances as defined in N.J.A.C. 7:1E-1.1 under the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.) is prohibited on barrier islands and discouraged elsewhere in the CAFRA area.

2. The storage of crude oil, gases and other potentially hazardous liquid substances is

conditionally acceptable in the Urban Area, Northern Waterfront and Delaware River regions if it is compatible with or adequately buffered from surrounding uses.

3. The storage of crude oil, gases and other potentially hazardous liquid substances is not acceptable where it would limit or conflict with a potential recreational use.

4. The storage of crude oil, gases and other potentially hazardous liquid substances is not acceptable along the water's edge unless the storage facility is supplied by ship, in which case it is acceptable on the filled water's edge provided the storage facility complies with (p)1, 2 and 3 above.

5. Rationale: See the note at the beginning of this Chapter.

(q) Standards relevant to tanker terminals are as follows:

1. New or expanded tanker facilities are acceptable only in existing ports and harbors where the required channel depths exist to accommodate tankers.

i. Multi-company use of existing and new tanker terminals is encouraged in the Port of New York and New Jersey and the Port of Camden and Philadelphia, where adequate infrastructure exists to accommodate the secondary impacts which may be generated by such terminals, such as processing and storage facilities.

2. New tanker terminals are discouraged in areas not identified in (q)1 above.

3. Offshore tanker terminals and deepwater ports are discouraged.

4. Rationale: See the note at the beginning of this Chapter.

(s) Standards relevant to liquefied natural gas (LNG) facilities are as follows:

1. New marine terminals and associated facilities that receive, store, and vaporize liquefied natural gas for transmission by pipeline are discouraged in the coastal zone unless a clear and precise justification for such facilities exists in the national interest; the proposed facility is located and constructed so as to neither unduly endanger human life and property, nor otherwise impair the public health, safety and welfare, as required by N.J.S.A. 13:19-10f; and such facilities comply with the Coastal Zone Management rules.

i. LNG facilities shall be sited and operated in accordance with the standards set forth in the Natural Gas Act of 1938, 15 U.S.C. 717-717z, the Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432, the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 et seq., the Energy Policy Act of 1992, P.L. 102-486, 106 Stat. 2776, October 24, 1992, and the National Environmental Policy Act, 42 U.S.C. 4321 et seq., which set forth standards for siting, design, installation, inspection, testing, construction, operation, transportation of gas, replacement, and maintenance of facilities.

ii. In determining the acceptability of proposed LNG facilities the Department will consider siting criteria including but not limited to:

(1) The risks inherent in tankering LNG along New Jersey's waterways;

(2) The risks inherent in transferring LNG onshore; and

(3) The compatibility of the facility with surrounding land uses, population densities, and concentrations of commercial or industrial activity.

iii. New LNG facilities that liquefy, store and vaporize LNG to serve demand during peak periods shall be located in generally remote, rural, and low-density areas where land use controls and/or buffer zones are likely to be maintained.

The Compliance Statement supplied by applicant refers to sections of other documents such as the numerous Resource Reports. Supporting documents should be referenced or attached

to facilitate agency and public review. In accordance with this Rule a detailed analysis, specific to the LNG operation in New Jersey, the must be provided to enable the Department to determine compliance with section S (ii) 1, 2, 3 this Rule. This must include a demonstration that the storage and vaporizing facilities be located in areas where land use controls and or buffer zones are likely to be maintained. This information would be best supported by a zoning analysis and other land use parameters. In addition, the following items from the Crown Landing LLNG Project Resource Report 11 – Safety and Reliability and other referenced documents must be provided and or addressed:

1. Page 11-12 - please provide the Resource Report 13 (Additional Information Related to LNG Plants).
2. Page 11-15 - provide a mapping of the calculated or modeled Thermal Exclusion Zones for this site.
3. Section 11.2.4 –provide worst-case scenario pool fire models for the Crown Landing LNG site.
4. Section 11.2.5.1 –provide the Environmental Resource Report dated September 2004, (U.S. Dept. of Energy study on safety of LNG shipping which was scheduled for release in November 2004).
5. Page 11-7 –provide an analysis of rapid phase transition for subsurface releases of LNG at the project site modeling maximum warm season river conditions and various tide stages.
6. Page 11-7 – provide the Hazards Identification Study (RRS, 2003).
7. Section 11.2.5.1 –provide the FERC ABS Study entitled “Consequence Assessment Methods of Incidents Involving Releases from LNG Carriers” (draft released 5/13/04).
8. Page 11-10 –provide the US Coast Guard defined zone surrounding the LNG ships during transit to and loading at the facility. And address this with the respect to recreational boating and fishing at the subject reach of the Delaware River.
9. Page 11-11 - provide the USCG letter of recommendation (if available).
10. Page 11-13 – provide the Lloyds 2002 and the University of Houston 2003 studies.
11. Page 11-18 – discusses a proposed mooring study for stability during extreme winds. This work should be done in advance of the project. Please discuss or provide the study.
12. Page 11-19 – discuss why a ten-minute release was selected as adequate in terms of containing spilled LNG.
13. Page 11-19 – depict exclusion zones.
14. Page 11-20 – provide a delineation of the modeled vapor dispersion zones for the subject site.

7:7E-7.12 Dredged material placement on land

(a) Dredged material placement is the disposal or beneficial use of sediments removed during dredging operations. Beneficial uses of dredged material include, but are not limited to, fill, topsoil, bricks and lightweight aggregate. This rule applies to the placement of dredged material landward of the spring high water line. The standards for dredged material disposal in Water Areas are found at N.J.A.C. 7:7E- 4.8.

(b) Dredged material placement on land is conditionally acceptable provided that the use is protective of human health, groundwater quality, and surface water quality, and manages ecological risks. Testing of the dredged material may be required as needed to

determine the acceptability of the placement of the material on a particular site.

(c) Dredged material disposal is prohibited on wetlands unless the disposal satisfies the criteria found at N.J.A.C. 7:7E-3.27.

(d) The use of dredged material of appropriate quality and particle size for purposes such as restoring landscape, enhancing farming areas, capping and remediating landfills and brownfields, beach protection, creating marshes, capping contaminated dredged material disposal areas, and making new wildlife habitats is encouraged.

(e) Effects associated with the transfer of the dredged materials from the dredging site to the disposal site shall be minimized to the maximum extent feasible.

(f) Dredged material disposal in wet and dry borrow pits is conditionally acceptable (see N.J.A.C. 7:7E-3.14, and 3.35).

(g) If pre-dredging sediment analysis indicates contamination, then special precautions shall be imposed including but not necessarily limited to increasing retention time of water in the disposal site or rehandling basin through weir and dike design modifications, use of coagulants, ground water monitoring, or measures to prevent biological uptake by colonizing plants.

(h) All potential releases of water from confined (diked) disposal sites and rehandling basins shall meet existing State Surface Water Quality Standards (N.J.A.C. 7:9B) and State Groundwater Quality Standards (N.J.A.C. 7:9).

(i) The Department has prepared a dredging technical manual, titled "The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey's Tidal Waters," October 1997, which provides guidance on dredged material sampling, testing, transporting, processing, management, and placement. The manual is available from the Department's Office of Maps and Publications, PO Box 420, Trenton, New Jersey, 08625-0420, (609) 777-1038.

As discussed previously under the Rules on New Dredging, this application has been submitted without the dredged material analysis as required by this Rule. Accordingly, a complete analytical report characterizing the subject sediment to be dredged must be submitted in order to address this Rule. This material must be submitted in accordance with the Department's guidance entitled: "The Management and Regulation of Dredging and Dredge Material Disposal in New Jersey's Tidal Waters, October 1997".

An evaluation of the data and a determination of whether dredging impacts comply with this Rule will be made after review of pending comments from the Department's Division of Fish and Wildlife; the National Marine Fisheries Service; the Federal Energy Regulatory Commission; U.S. Coast Guard and other commenting agencies. In addition, in order to address acceptability of the material for placement, a letter of acceptance from Weeks Marine or any other party accepting the material must be provided as required under the Rule on New Dredging 7:7E-4.7(10)(I).

SUBCHAPTER 8. RESOURCE RULES

7:7E-8.1 Purpose and scope

(a) In addition to satisfying the location and use rules, a proposed development must satisfy the requirements of this subchapter. This subchapter contains the standards the Department utilizes to analyze the proposed development in terms of its effects on various resources of the built and natural environment of the coastal zone, both at the proposed site as well as in its surrounding region.

7:7E-8.2 Marine Fish and Fisheries

(a) Marine fish are marine and estuarine animals other than marine mammals and birds. Marine fisheries means:

- 1. One or more stocks of marine fish which can be treated as a unit for the purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational and economic characteristics; and*
- 2. The catching, taking or harvesting of marine fish.*

(b) Any activity that would adversely impact on the natural functioning of marine fish, including the reproductive, spawning and migratory patterns or species abundance or diversity of marine fish, is discouraged. In addition, any activity that would adversely impact any New Jersey based marine fisheries or access thereto is discouraged, unless it complies with (c) below.

(c) The following coastal activities are conditionally acceptable provided that the activity complies with the appropriate general water area rule(s) at N.J.A.C 7:7E-4;

- 1. Construction of submerged cables and pipelines;*
- 2. Sand and gravel mining to obtain material for beach nourishment, provided :*
 - i. The beach nourishment project is in the public interest;*
 - ii. There are no alternative borrow sites that would result in less impact to marine fish and fisheries;*
 - iii. Any alteration of existing bathymetry within Prime Fishing areas, as defined at N.J.A.C. 7:7E-3.4, does not reduce the high fishery productivity of these areas; and*
 - iv. Measures are implemented to minimize and compensate for impacts to marine fish and fisheries; and*
- 3. The establishment of Aquaculture Development Zones in accordance with N.J.S.A. 4:27-1 et seq. and any regulations developed and adopted pursuant thereto.*

Impacts to the identified fish habitats will occur as a result of the pier structure; associated shading; the placement of pilings constituting fills in water areas; hydroacoustic impacts and ballast water withdraws. Some of the associated physical disturbances and impacts are proposed to be mitigated by the creation of an intertidal and subtidal mitigation area. As stated earlier, NJDEP Division of Fish and Wildlife indicated that ship ballast and tank hydrostatic test water withdrawals may adversely impact on the natural functioning of marine fish, including the reproductive, spawning and migratory patterns or species abundance. Accordingly, in order to enable the Department to determine compliance with this Rule additional detailed information must be provided quantifying impacts to marine fish and fisheries that may occur as a result of the construction and operation of the Crown Landing LNG facility. This submission should contain all relevant alternatives for the avoidance and minimization of impacts and a report of agency input concerning avoidance and mitigative measures.

which is under review. A final determination of compliance with this Rule will be based upon recommendations and or the issuance of an Air Permit.

7:7E-8.11 Public Access to the Waterfront

(a) Public access to the waterfront is the ability of all members of the community at large to pass physically and visually to, from and along the ocean shore and other waterfronts.

(b) Coastal development adjacent to all coastal waters, including both natural and developed waterfront areas, shall provide permanent perpendicular and linear access to the waterfront to the maximum extent practicable, including both visual and physical access. Development that limits public access and the diversity of the waterfront experiences is discouraged.

1. All development adjacent to water shall, to the maximum extent practicable, provide, within its site boundary, a linear waterfront strip accessible to the public. If there is a linear waterfront accessway on either side of the site and the continuation of which is not feasible within the boundaries of the site, a pathway around the site connecting to the adjacent parts, or potential parts of the waterfront path system in adjacent parcels shall be provided.

3. Public access must be clearly marked, provide parking where appropriate, be designed to encourage the public to take advantage of the waterfront setting, and must be barrier free where practicable.

4. A fee for access, including parking where appropriate, to or use of publicly owned waterfront facilities shall be no greater than that which is required to operate and maintain the facility and must not discriminate between residents and non-residents except that municipalities may set a fee schedule that charges up to twice as much to nonresidents for use of marinas and boat launching facilities for which local funds provided 50 percent or more of the costs.

5. All establishments, including marinas and beach clubs, which control access to tidal waters shall comply with the Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

6. Public access, including parking where appropriate, shall be provided to publicly funded shore protection structures, beaches nourished with public funds and to waterfronts created by public projects unless such access would create a safety hazard to the user. Physical barriers or local regulations which unreasonably interfere with access to, along or across a structure or beach are prohibited.

10. Development elsewhere in the coastal zone shall conform with any adopted municipal, county or regional waterfront access plan, provided the plan is consistent with the Coastal Zone Management rules.

11. The Department may require some or all of the public access portion of a site to be dedicated for public use through measures such as a conservation restriction.

12. Development adjacent to coastal waters shall provide fishing access within the provision of public access wherever feasible and warranted.

13. Development adjacent to coastal waters shall provide barrier free access within the provisions of public access wherever feasible and warranted by the characteristics of the access area.

14. For developments which reduce existing on-street parking that is used by the

public for access to the waterfront, mitigation for the loss of these public parking areas is required at a minimum of 1:1 within the proposed development site or other location within 250 feet of the proposed project site.

(c) At sites proposed for the construction of single family or duplex residential dwellings, which are not part of a larger development, public access to the waterfront is not required as a condition of the coastal permit.

This Rule requires various forms of waterfront access to the public. The Department acknowledges the safety and security concerns relating to public access at the Crown Landing facility. Considering these issues onsite compliance with this Rule could be addressed either by providing a secured and limited area of ingress/egress to the waterfront onsite or acquiring or enhancing off-site waterfront access areas. Compliance with this Rule must be demonstrated through the submission a plan providing public access via one or more of the above recommendations.

7:7E-8.13 Buffers and Compatibility of Uses

(a) Buffers are natural or man-made areas, structures, or objects that serve to separate distinct uses or areas. Compatibility of uses is the ability for uses to exist together without aesthetic or functional conflicts.

(b) Development shall be compatible with adjacent land uses to the maximum extent practicable.

1. Development that is likely to adversely affect adjacent areas, particularly Special Areas N.J.A.C. 7:7E-3, or residential or recreation uses, is prohibited unless the impact is mitigated by an adequate buffer. The purpose, width and type of the required buffer shall vary depending upon the type and degree of impact and the type of adjacent area to be affected by the development, and shall be determined on a case-by-case basis.

2. The standards for wetland buffers are found at N.J.A.C. 7:7E-3.28.

3. The following apply to buffer treatment:

i. All buffer areas shall be planted with appropriate vegetative species, either through primary planting or supplemental planting. This landscaping shall include use of mixed, native vegetative species, with sufficient size and density to create a solid visual screen within five years from the date of planting.

ii. Buffer areas which are forested may require supplemental vegetative plantings to ensure that acceptable visual and physical separation is achieved.

iii. Buffer areas which are non-forested will require dense vegetative plantings with mixed evergreen and deciduous trees and shrubs. Evergreens must be at least eight feet tall at time of planting; deciduous trees must be at least three inches caliper, balled and burlapped; shrubs must be at least three to four feet in height.

Due to the special safety, and security issues and operations of LNG facilities the subject site may need substantial buffer areas surrounding it to assure safety and compatibility with surrounding land uses. According to the Energy Use Rule at N.J.A.C. 7:7E-7.5(S)(3)(iii), LNG facilities shall be located in areas that are not only remote and low-density but also have buffer zones likely to be maintained. Thermal exclusion zone and landscape plans should be provided to demonstrate compliance with this Rule.

7:7E-8.14 Traffic

(a) Traffic is the movement of vehicles, pedestrians or ships along a route.

(b) Coastal development shall be designed, located and operated in a manner to cause the least possible disturbance to traffic systems.

1. Alternative means of transportation, that is, public and private mass transportation facilities and services, shall be considered and, where feasible, incorporated into the design and management of a proposed development, to reduce the number of individual vehicle trips generated as a result of the facility. Examples of alternative means of transportation include: van pooling, staggered working hours and installation of ancillary public transportation facilities such as bus shelters.

(c) When the level of service of traffic systems is disturbed by approved development, the necessary design modifications or funding contribution toward an area wide traffic improvement shall be prepared and implemented in conjunction with the coastal development, the satisfaction of the New Jersey Department of Transportation and any regional agencies.

(d) Any development that causes a location on a roadway to operate in excess of capacity Level D is discouraged. A developer shall undertake mitigation or other corrective measures as may be necessary so that the traffic levels at any affected intersection remain at capacity Level D or better. A developer may, by incorporating design modification or by contributing to the cost of traffic improvements, be able to address traffic problems resulting from the development, in which case development would be conditionally acceptable. Determinations of traffic levels which will be generated will be made by the New Jersey Department of Transportation.

(e) Coastal development located in municipalities which border the Atlantic Ocean, except as excluded under (e) 1, 2 or 3 below, shall provide sufficient on-site and/or offsite parking for its own use at a ration of two spaces per residential unit. In general, on street parking spaces along public roads cannot be credited as part of off-site parking provided for a project. All off-site parking facilities must be located either in areas within reasonable walking distance to the development or areas identified by any local or regional transportation plans as suitable locations. All off-site parking facilities must also comply with N.J.A.C. 7:7E-7.5(d), the parking facility rule, where applicable.

1. The non-oceanfront portions of the following municipalities which border the Atlantic Ocean are excluded from the parking requirement at (e) above:

- i. Neptune Township, Monmouth County: Those portions of this municipality which are west of State Highway 71;*
- ii. Brick, Dover and Berkeley Townships, Ocean County: Those portions of these municipalities which are not located between Barnegat Bay and the Atlantic Ocean;*
- iii. Upper Township, Cape May County: Those portions of this municipality which are not located between Whale Creek and the Atlantic Ocean and/or Strathmere Bay and the Atlantic Ocean; and*
- iv. Lower Township, Cape May County: Those portions of this municipality which are not between Lower Thorofare and the Atlantic Ocean and/or Jarvis Sound and the Atlantic Ocean;*

2. The department shall reduce the parking requirement for developments restricted

to senior citizen housing that is, restricted to persons at least 62 years of age or those persons meeting the definition of "senior citizen tenant" pursuant to the Senior Citizens and Disabled Protected Tenancy Act, N.J.S.A. 2A:18-61, upon documentation that the parking needs of the development are less than two spaces per unit; or
3. Nursing homes and assisted living facilities are excluded from the parking requirement at (e) above.

The construction, and to lesser extent, operation of the Crown Landing LNG facility may generate a significant volume of traffic including large equipment and material transport via roadways serving the site. In addition, in the event of a site emergency, significant traffic demands may arise at the site or surrounding roadways as a function of evacuations. Compliance with this Rule is limited to the comment provided in Table 7 of the compliance statement. It is indicated in the comment that the project will not cause local roadways to operate in excess of level of service "D". No traffic analysis was submitted in support of this assertion. Please submit a traffic analysis of the subject site with respect to demonstrating compliance with this Rule.

Based on the foregoing, the subject application is deficient and not complete for final review with respect to the Application Contents requirements and the Coastal Zone Management Rules. Accordingly, please address the indicated deficiencies and supply the needed narrative, plans and supporting information. Failure to supply the required information within ninety days of the date of this letter, pursuant to N.J.A.C. 7:7- 4.4(B)(4), may result in the Department initiating cancellation of this application.

If you have any questions regarding this letter please contact me at (609) 292-9342.

Sincerely,

David Q. Risilia
Project Manager
Office of Dredging & Sediment Technology

C: William Jenkins, ACOE Philadelphia District Regulatory Branch
Anita Ripotella, National Marine Fisheries Service
Daniel Ryan, NJDEP Special Assistant to the Commissioner
Don Wilkenson, NJDEP Fish and Wildlife
Steve Mars, US Fish and Wildlife Service
Robert Kopka, FERC
Lingard Knutson, USEPA, Region II
Laurie Beppler, BP Crown Landing



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April 19, 2005

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, NE, Room 1A
Washington, DC 20426

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FEDERAL ENERGY
REGULATORY COMMISSION

**RE: Crown Landing LNG and Logan Lateral Projects
DEIS (FERC/EIS - 0179D) Comments**

Reference Docket No. CP04-411-000 and CP04-416-000

Dear Secretary Salas:

The Office of Permit Coordination and Environmental Review of the New Jersey Department of Environmental Protection (NJDEP) has completed its review of the Draft Environmental Impact Statement (DEIS) for the Crown Landing LNG and Logan Lateral Projects. Our review was conducted pursuant to the requirements of the National Environmental Policy Act (NEPA). We offer the following comments regarding potential impacts to natural resources, cultural resources, air quality, and permitting for your consideration.

NATURAL RESOURCES

The NJDEP's Division of Fish and Wildlife's [DFW] concerns are directed to the specific impact areas noted below.

Siting of the Proposed Plant

A review of the DEIS raises the question of why this facility is being proposed at an inshore location and if the alternative of locating the facility offshore has been considered. An offshore site location poses concerns associated with the loss of access in the area of the pipeline and the potential need for some amount of Homeland Security buffer. The DFW also realizes that there maybe a lack of existing infrastructure to transfer the LNG but apparently, based on the information provided, these problems are being worked out on other existing offshore sites listed in the DEIS (Table 3.2.2-1). Locating the facility offshore would lessen impacts substantially to natural resources.

The DFW also raised safety concerns associated with the length of the pier (see the Recreational Boating Access section below for further comments) extending approximately 2,000 feet into the Delaware River and adding an additional 1,500 foot Homeland Security Buffer. It appears that as much as 50% of the river will be blocked to commercial and recreational boating while ships are at dock, thereby forcing all boaters to enter the Federal Navigation Channel to proceed up or down river.

Dredging and Pier Issues

Intertidal shallows impacts

At the present time, the State of Delaware has characterized this project as not being in compliance with Delaware's Coastal Regulations. Since the State of Delaware has not relinquished review of this phase of the project, we will not comment further except to say that the DFW is concerned about the loss of intertidal shallows, the loss of habitat and potential negative impacts to the endangered shortnose sturgeon, bald eagle, anadromous fish, Atlantic sturgeon and the other recreational/forage fish (which were missed in the DEIS). In addition, no mitigation was offered in the DEIS for the loss and shading of intertidal shallows.

Seasonal restrictions

Historical information documents the presence of both shortnose sturgeon and/or Atlantic sturgeon in various life stages in this part of the river. A timing restriction of 3/15 to 8/1 would appear necessary to protect anadromous fish (including young-of-year striped bass) during migration and/or spawning from hydraulic dredging, sediment generating activity and/or pile driving.

Dredge Spoils Monitoring Plan

Since this project will utilize hydraulic dredging, and based on our current data on sturgeon, the DFW requests monitoring for both species of sturgeon. The DFW recommends that monitoring follow National Marine Fisheries Service (NMFS) protocols. The DFW agrees with NMFS that this area is Essential Fish Habitat (EFH) as defined by the NMFS and a consultation with that agency must be completed prior to the initiation of any work.

Ship Ballast and Emergency Fire Extinguishing Water

Large quantities of onsite river water (8,000,000 gallons of ballast water per ship in berth within a 24 hour turnaround, 1,440,000,000 gallons of ballast water yearly) will be necessary to provide ballast and stability during the off loading of up to 180 loads of LNG annually at this facility plus an additional one time use for initial tank testing (25,000,000 gallons per tank, 3 tanks total). The DFW requested originally that a wedge wire screen system be developed for this need in order to prevent entrainment of aquatic biota. Crown Landing LNG has agreed to use this technology but is still proposing to individually fill each upland tank. The DFW requests that the applicant reuse the testing water for pressure testing and not draw the 25,000,000 gallons per tank from the river. In addition, since the use of a biocide may be required for the pressure

testing, the DFW believes that an alternative method or pretreatment prior to discharging biocides back into the river must be developed in order to protect in-river aquatic biota.

Due to the differing designs of the current LNG fleet, there is no means identified at present to fill the ballast water tanks other than opening the ship's intakes and turning on the ship board pumps. It appears from the information supplied that there will be a 1" gap between trash bars on the sides and bottom of the ship. The DFW still has concerns about these designs relative to the removal of ichthyoplankton, early life stage finfish and other aquatic biota from the Delaware River ecosystem (i.e. entrainment/impingement of aquatic organisms). Surveys to determine the extent of these potential impacts are needed.

Recreational Boating Access

On page 4-174, the applicant talks about the width of the river being 3,100 feet wide. From its review the DFW believes the Delaware River is about 6,000 feet wide at this location. Recreational boating access to these public waters will be severely limited by the construction of the approximate 2250' berth and the additional 1500' Homeland Security buffer. This project will have a negative effect on small boat and large ship traffic in the area. All small boats will be forced to enter the Federal Navigation Channel on the westerly side of the river to go around this site and its buffer. The US Coast Guard and the NJ Marine Police should be consulted as to what dangers recreational boaters will be exposed to by this project. Additionally, the applicant states that delays of 2 to 3 hours may be encountered during the berthing of the LNG ship when it will be necessary to limit vessel traffic up and down the river. Based on the proposed number of ships utilizing this facility, the river may be cumulatively blocked for up to 18 hours per week. It is expected that some of this blockage will occur during the weekend when recreational boating activity is highest. It should be noted that no cost figures were provided regarding the impact to recreational and commercial traffic.

Mitigation for the loss of public access to the Delaware River was also not found in the DEIS. The incorporation of this design feature into an overall plan would address concerns about the maintenance of recreational fishing access. It appears that the security zone required around the proposed development will exclude recreational fishermen from the creek bank and parts of the river.

Wildlife Impacts

A search of NJDEP's Landscape Project Version 2 maps and consultation with our Endangered & Nongame Species Program [ENSP] revealed that a large percentage of the proposed plant area is identified as bald eagle foraging habitat. Under NJDEP regulations this loss must be mitigated with the creation of habitat at least of equal value at a minimum of a 2:1 ratio. Personnel from the DFW's ENSP, Office of Environmental Review and the US Fish & Wildlife Service have met with representatives of the company in the past on this issue. However, the discovery of a new bald eagle nest on Oldmans Creek this year (2005) means additional foraging habitat will be identified for nesting bald eagles. The currently proposed protection plan must now be replaced by a new mitigation plan that stresses the creation of new foraging habitat of equal or greater habitat value to replace the loss created by the plant and berth. It should be noted that since the

plant site is outside of the new bald eagle nest buffer, a timing restriction will not be needed at this time for this ENSP aspect of concern.

The applicant should be informed that this information is based on present (spring 2005) bald eagle nesting site information and that nesting buffers and foraging habitat areas may change again before construction starts. The nesting population along the Delaware River has historically been steadily increasing and adding new nesting sites.

Fisheries Impacts

There are concerns regarding project activities that may adversely affect shortnose sturgeon. The applicant needs to address dredging in this section as an activity that may effect this species. Both adults and juveniles can be found in the project area and may be attracted by dredging activities (food source). Although the shortnose may not be found in high numbers near the Crown Landing site, the situation exists for potential interaction with this species and ways to avoid and/or minimize loss should be better addressed as well as potential mitigation for any loss.

The DFW questions the number of species the applicant listed (10) as known to occur in the project area. Sampling records from the States of Delaware and New Jersey indicate that there are more than 50 finfish species that have inhabited the project area since 1980. Many of these species, such as striped bass, utilize the area as a prime nursery ground. There are also many extensive recreational uses of the area that should be recognized by the applicant.

In addition, American shad do spawn in the vicinity of Crown Landing. Construction and dredging work may adversely impact nearby spawning activities as well as the upriver migration. As the water quality of the Delaware River continues to improve, so does the potential spawning habitat for anadromous species such as shad, river herring, striped bass and sturgeons. The potential habitat expansion needs to be considered when discussing impacts to marine fisheries species and associated forage fish.

Lastly, as stated in the dredging and ballast water sections of this review, all fish species are in jeopardy at some point in their lives by entrainment or impingement. Studies to determine the impacts of project operations on fish and other aquatic organisms are needed for inclusion within the Final EIS.

Pipeline Construction

The crossing of all major wetlands and river crossings are minimal due to the use of directional drilling. The DFW has concerns about the proper monitoring of the pressure, handling and disposal of the drilling fluid. A timing restriction of 4/1 – 7/31 is recommended for all pipeline construction that will result in disturbances outside of the paved road footprint. This timing restriction will protect nesting migratory waterfowl and other listed species particularly in the area of the Birch Creek crossing.

If there are any questions concerning these comments please feel free to contact Donald Wilkinson of the DFW at 856-785-2711.

PERMITTING

The NJDEP's Office of Dredging and Sediment Technology (ODST) issued a Deficiency Letter (attached) to Crown Landing on February 4, 2005, pursuant to the pending Waterfront Development Application (WDA), file No. 0809-02-0011.1. Much of the information reviewed by the ODST for the WDA is the same material supplied by Crown Landing LNG evaluated by the FERC for the DEIS. Therefore, the attached ODST's Deficiency Letter shall serve as the *primary source of comments and are herewith supplemented by the items below.*

It should be noted that the project as presented in the DEIS might be substantially different than one proposed in the near future by the applicant. The State of Delaware Coastal Zone Industrial Control Board decision to uphold the rejection of the Crown Landing LNG pier in Delaware has a major impact on this project. Specifically, BP/Crown Landing LNG indicated to the ODST that they plan to modify this LNG facility by moving the ship-docking facility wholly into New Jersey in the event they could not build the facility in Delaware waters as proposed in the current WDA. The landward shift of the project would trigger new and previously unanticipated safety and environmental impacts. Accordingly, this change would likely require the applicant to make a new WDA to the Department.

The following comments site the section of the DEIS report and reference the corresponding New Jersey's Coastal Zone Management (CZM) Rule and page number of the OSST deficiency letter as follows:

DEIS 2.4.1.3 / N.J.A.C. 7:7E-7.12 Dredged Material Placement on Land (pg. 15)

The DEIS refers to the sheet piled walls flanking the proposed ship berth extending 30' above the dredged mud line. *Cross section details of the height of the sheet pile walls would better depict the actual height of the structure above the existing river bottom and help address minimization of impacts with the river substrate and associated marine fish habitat.*

The DEIS does not evaluate the long-term impacts of maintenance dredging over the life of this facility with respect to minimization of impacts and consumption of disposal capacity of New Jersey. Specifically, the selected orientation of the pier and dredged mooring area at a right-angle to the river current will be prone to higher rates of sedimentation than a mooring area situated parallel to the river's flow. The applicant reports that 60,000-80,000 cy of material will be dredged per year to maintain adequate depths. At this rate, this would generate approximately 1.8 to 2.4 million cy of material over a 30-year project life. Coupled with the initial dredging and disposal of 800,000 cy of dredged material this would consume 3.2 million cu. yd. or 40% of the available permitted capacity of the sole regional disposal facility, the Weeks Marine/White's Basin facility. This facility is an almost exclusive repository for privately dredged material serving the Ports of Philadelphia, South Jersey Port Corporation, refineries located on Sckuylkill River and some of Delaware's ports as well. While the project proposes to serve a tri-state send-out area, 100% of the dredged material is proposed to be placed in New Jersey.

Very limited discussion is provided with respect to the piping of the dredged material to the Weeks facility. Please refer to page 15 section N.J.A.C. 7:7E-4.14 and section 7:7E-7.12 for more comment pertaining to dredging and dredged material disposal.

It should be noted that the material proposed to be dredged has not been adequately characterized in accordance with Department procedures at this time.

DEIS 3.2.1 Existing LNG Facilities

While the DEIS provides background on other existing LNG facilities, the report does not address the moving safety/security zones or the regulated navigation areas (RNA) affected by those facilities. In addition, in discussing these facilities, ship delivery, marine fish and aquatic habitat conditions and impacts are not addressed. This information is necessary to evaluate the impacts of the project as they pertain to commercial shipping and recreational boating uses on the Delaware River at and around the proposed facility.

Siting of the Proposed Plant

DEIS 3.3.3 Site Specific Review of the Delaware Bay and River

The site specific review of alternatives along the Delaware Bay and River do not seem to evaluate siting a facility on the New Jersey site of the Delaware Bay/River in the reach from Cohansey River to Deepwater. Have these areas been considered?

DEIS 3.4 Pier Alternatives

In most projects the use of existing facilities and infrastructure usually reduce new environmental impacts. As such the use of the nearby pier owned by National Energy Power Company LLC should be thoroughly explored.

Pier Location and Orientation - It appears that the major factor in siting the pier is the use of a shallow water buffer to protect the ship from a rogue ship strike or deliberate terrorist strike from a ship. This mode of design is contrary to common port siting parameters. This design assumes that the most likely damage to a LNG ship would be via a large ship; however it does not address the real possibility of a deliberate attack to the LNG ship via smaller boats and watercraft that could navigate shallow waters. Therefore, the driving principle of the pier location, while addressing the less-likely large ship strike scenario fosters significant shallow water and dredging impacts while leaving the LNG ship vulnerable to other hazards. Conversely, the Cove Point LNG facility located in the Chesapeake Bay area is surrounded by deep water and affords no shallow water buffer.

In Table 3.4. -1 Pier Option C would significantly reduce shallow water and dredging impacts over the preferred alternative. This option is rejected because it affords the "least protection from an errant ship". This structure could be modified to accommodate the LNG ship dockage and coal barge deliveries, but has not been explored in depth.

DEIS 4.3.2 Surface Water and Table 4.3.2-2

A representative characterization of the sediment at the project site to project depth has not been performed. Therefore, it is not appropriate to draw conclusions comparing COE data from the Marcus Hook channel and ship berths to the Crown Landing LNG on-site. Specifically, deeper water channel sediments tend to have more coarse-grain sediments that generally, have lower concentrations of contaminants. Likewise, existing dredged ship berths may differ in sediment characteristics than those found on-site.

DEIS 4.12. Reliability and Safety

The Department is awaiting comments from the New Jersey Board of Public Utilities Division of Reliability, Safety and Security. The ODST comments on this section are partially addressed in the ODST's deficiency letter under 7:7E-7.4 Energy Facility Use Rule (pg. 22 -25). The Rules on Coastal Zone Management, specifically N.J.A.C. 7:7E-7.4(s), the Energy Facility Use Rule, enables the Department to consider siting criteria including but not limited to:

- (1) The risks inherent in tankering LNG along New Jersey's waterways;
- (2) The risks inherent in transferring LNG onshore; and
- (3) The compatibility of the facility with surrounding land uses, population densities, and concentrations of commercial or industrial activity.

New LNG facilities that liquefy, store and vaporize LNG to serve demand during peak periods shall be located in generally remote, rural, and low-density areas where land use controls and/or buffer zones are likely to be maintained.

Pages 24-25 of the Department's deficiency letter illustrate deficiencies in the FERC Environmental Resource Report relating to safety. Provisions should be considered for the Department to gain access to review relevant documents that are referenced Resource Report 13 and numerous other studies which are considered classified.

DEIS 4.12.5 Marine Safety

Concerns exist with respect to the moving safety security zone and the extent of the regulated navigation areas (RNA) surrounding the ship in transit, while docking and while at dock. It appears that significant closure or exclusion periods (from 16 minutes in transit to as much as 3 hours during docking) may occur. The associated impact on shipping and recreational boaters may be significant, but is not discussed. It appears that the final determination of the RNA and safety area is dependent upon the US Coast Guard letter of recommendation. As such, the Department can not evaluate this project's effect on navigation until the USCG letter is released.

Permanent restrictions on river access is essentially a loss of the resource to the public and should be addressed. In addition, Public access to the Delaware River was also not discussed the DEIS. Please refer to the 7:7E-8.11 Public Access to the Waterfront (pg. 29 of the Deficiency letter.)

Pipeline Construction

The Logan Lateral Project Freshwater Wetlands Individual Permit project is being reviewed by the NJDEP's Land Use Regulation Program, as such comments on Logan Lateral Project are not offered by ODST.

If there are any questions concerning these comments please feel free to contact David Risilia of the ODST at 609 292-9342.

CULTURAL RESOURCES

The NJDEP's Historic Preservation Office (HPO) has completed its review of the DEIS. An extension of archaeological site 28 Gl 241 was identified and will be avoided by the project as currently designed. Also the project will have no impacts to the 1963 Route 130 Bridge over Oldmans Creek. Therefore, unless there are project changes, and provided the applicant undertakes the site avoidance plan, including periodic archaeological monitoring to ensure integrity of the fence protecting the site as well as illustrating and describing the avoidance area and fence in project documents, our Office has no further concerns regarding historic and archaeological properties.

In regard to the Logan Lateral project, the archaeological site survey has not been completed. The HPO received an archaeological survey report prepared for FERC license application, reviewed it, and sent comments to the archaeological consulting firm that did the work, Environment & Archaeology in Florence KY. The survey is not complete, because some of the planned construction alignment has not yet been surveyed. Also, the surveyors had not adequately explored B horizon soils in several planned construction areas proximal to previously registered archaeological sites. The HPO is awaiting results of additional work to complete the identification of archaeological resources within the Area of Potential Effects that may be eligible for listing in the National Register of Historic Places.

AIR QUALITY

The NJDEP's Bureau of Air Quality Planning (BAQP) has the following comments regarding Section 4.11.1 Air Quality of the DEIS.

National Ambient Air Quality Standards

On December 17, 2004, the United States Environmental Protection Agency finalized designations of nonattainment areas for PM 2.5. New Jersey was designated as nonattainment for PM 2.5 in thirteen counties; including Gloucester County where this project is located.

Regulatory Requirements for Air Quality

Air emission sources in New Jersey are regulated at the federal level under the CAA, as amended, and at the State level by the New Jersey Air Pollution Control Act not NJAC as indicated.

General Conformity

The BAQP will be commenting on the Draft Statement of Conformity and associated air analysis when issued. An air analysis of the project has not been included as part of the DEIS. An Environmental Resource Report prepared by BP has been reviewed by the BAQP and indicates that there are emissions associated with the project. Direct and indirect emissions associated with project construction shall be mitigated pursuant to the requirements of New Jersey's Waterfront Development Permit. New Jersey anticipates the submittal of a proposed mitigation plan by the applicant to address these emissions.

Air Quality Impacts and Mitigation

The BAQP believes that direct and indirect emissions from the construction of the facility are subject to general conformity analysis, not the operation of the facility.

Thank you for giving the NJDEP the opportunity to comment on the DEIS.

Sincerely,



Kenneth C. Koschek
Supervising Environmental Specialist
Office of Permit Coordination
& Environmental Review

Attachment

C: Dorothy Guzzo, NJDEP
Martin McHugh, NJDEP
Donald Wilkinson, NJDEP
David Risilia, NJDEP
Angela Skowronek, NJDEP
Susan Rosenwinkel, NJDEP

Upton



State of New Jersey

Department of Environmental Protection

Richard J. Codey
Acting Governor

Bradley M. Campbell
Commissioner

May 24, 2005

Mr. David Blaha
Environmental Resources Management
200 Harry S. Truman Parkway
Suite 400
Annapolis, Maryland 21401

Re: Deficiency Letter for Waterfront Development Application
File No. 0809-02-0011.1
Applicant: Crown Landing LLC
Project: Crown Landing LNG Import Terminal
Block 101, Lot 2
Location: Logan Township, Gloucester County

Dear Mr. Blaha:

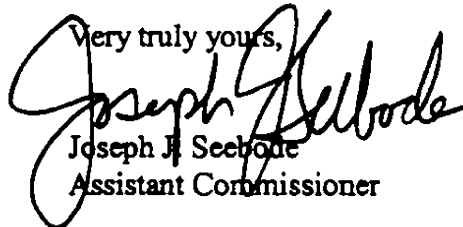
On February 4, 2005, the Office of Dredging and Sediment Technology ("ODST") sent you a deficiency letter regarding this project. This letter will correct an observation made in that letter regarding the project site and New Jersey's jurisdiction, review, and regulatory authority over the project, specifically the observation that activities taking place below the mean low water line are subject to Delaware coastal zone regulations rather than to New Jersey's regulatory authority.

As stated in the ODST letter of February 4, 2005, the project consists of construction and operation of a liquefied natural gas terminal in Logan Township, Gloucester County, New Jersey. The project is proposed to include construction of a berthing pier in the Delaware River and associated dredging.

The proposed liquefied natural gas plant would be located entirely within the State of New Jersey, while the proposed pier needed to service the plant would be attached to the New Jersey shoreline and extend into the Delaware River within the 12 Mile Circle. Thus, the pier would originate in New Jersey and extend into Delaware.

As State officials have made clear, and as recognized in a May 13, 2005 letter from Gregory S. Roden, Esq., Senior Attorney for BP America, Inc. to David Risilia of ODST, although a portion of the pier is proposed to be in Delaware, construction of the entire pier, and any associated dredging, is subject to New Jersey's exclusive review and permitting authority, and not that of Delaware. This is the case because the Compact of 1905 between New Jersey and Delaware, which

was approved by the Legislatures of both States and by the United States Congress, gives New Jersey exclusive riparian jurisdiction of every kind and nature on its side of the Delaware River. Thus, you should disregard any indication in the February 4, 2005 letter that may suggest anything to the contrary.

Very truly yours,

Joseph J. Seebode
Assistant Commissioner

c: Laurie Beppler, BP Crown Landing
William Jenkins, ACOE Philadelphia District Regulatory Branch
Anita Ripotella, National Marine Fisheries Service
Steve Mars, US Fish and Wildlife
Robert Kopka, FERC
Lingard Knutson, USEPA Region II
Daniel Ryan, Special Assistant to the Commissioner
Don Wilkenson, NJDEP Fish and Wildlife
Dave Risilia, NJDEP ODST

4/25/2006

**Privilege Log: Common Interest Communications
(Through January 23, 2006)**

**Exhibit A
Declaration of Stuart A. Raphael**

Entry	Date	Type	From	To	CCs	Description	Privilege
1	2/10/2005	e-mail	Swayze, D.	Andersen, W.		Communication from BP counsel to NJ counsel attaching CZICB filing and discussing strategy regarding same and dispute with Delaware over 1905 Compact	WP
2	2/10/2005	e-mail	Andersen, W.	Swayze, D.		Communication from NJ counsel to BP counsel in response to prior e-mail and discussing legal position re New Jersey's riparian rights	WP
3	2/10/2005	e-mail	Swayze, D.	Andersen, W.	Roden, G.	Communication from BP counsel to NJ counsel in response to prior e-mail, discussing strategy regarding dispute with Delaware and noting forthcoming attorney work product regarding 1905 Compact	WP
4	2/16/2005	e-mail	Pascrell, B.	Campbell, B.		Communication from BP representative to NJ official attaching communication from BP counsel with BP's CZICB filing and with counsel's work product regarding 1905 Compact, and inquiring about status of NJ's position on Delaware regulatory proceedings	WP, AC
5	2/16/2005	e-mail	Campbell, B.	Pascrell, B.		Communication from NJ official to BP representative providing his position on various legal issues relating to Delaware regulatory proceedings	WP, AC
6	2/17/2005	e-mail	Pascrell, B.	Campbell, B.		Communication from BP representative to NJ official forwarding communication between BP and its counsel regarding strategy position in relation to dispute with Delaware, Delaware regulatory proceedings and original action against Delaware, and inquiring about NJ position	WP, AC
7	2/17/2005	e-mail	Campbell, B.	Bauer, V.; Fortkiewicz, V.; Pascrell, B.; McCormac, J.		Communication from NJ official to various NJ officials, counsel to NJ Governor and BP representative commenting on strategy summary provided in prior e-mail relating to Delaware regulatory proceedings and dispute with Delaware	WP, AC
8	2/17/2005	e-mail	Pascrell, B.	Campbell, B.	Bauer, V.; Fortkiewicz, V.; McCormac, J.	Communication from BP representative to NJ official acknowledging prior e-mail (attaching prior e-mail string)	WP, AC
9	2/17/2005	e-mail	Campbell, B.	Bauer, V.; Fortkiewicz, V.; Pascrell, B.; McCormac, J.		Communication from NJ official to various NJ officials and BP representative re BP's legal position and commenting on NJ's legal position relating to dispute with Delaware (with prior e-mail string)	WP, AC
10	3/24/2005	e-mail	Fortkiewicz, V.	Shute, G.; Pascrell, B.	Fader, P.	Communication from counsel to NJ Governor to BP representatives regarding possible meeting and inquiring of BP regarding communication from Governor Minner in relation to dispute between NJ and Delaware	WP, AC
11	3/29/2005	e-mail	Raphael, S.	Fader, P.		Attorney communication with Counsel to New Jersey Governor transmitting letter discussing possible representation of New Jersey and providing preliminary analysis of legal issues regarding 1905 compact and attaching materials relating to analysis along with Raphael biography and contact information	WP, AC

4/25/2006

**Privilege Log: Common Interest Communications
(Through January 23, 2006)**

**Exhibit A
Declaration of Stuart A. Raphael**

Entry	Date	Type	From	To	CCs	Description	Privilege
12	4/1/2005	e-mail	Raphael, S.	Hartpence, E.	Fader, P.	Communication from attorney to New Jersey Assistant AG transmitting letter for NJAG Peter Harvey discussing possible representation of New Jersey and/or Crown Landing in litigation with Delaware	WP, AC
13	4/8/2005	e-mail	Burke, G.	Picco, S.		Communication from NJ counsel to BP counsel discussing possible Raphael engagement	WP
14	5/6/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.; Roden, G.	Communication from BP counsel to NJ counsel transmitting draft common interest agreement	WP, AC
15	5/9/2005	e-mail	Raphael, S.	Burke, G.		Communication from BP counsel to NJ counsel transmitting court filing in selected case with comments (in e-mail) and annotations (to attachment) reflecting mental impressions of BP counsel on issues relating to 1905 Compact	WP
16	5/11/2005	e-mail	Burke, G.	Picco, S.	Horowitz, R.; Andersen, W.	Communication from NJ counsel to BP counsel requesting access to work product of BP counsel prepared in anticipation of dispute with Delaware over 1905 Compact and soliciting recommendations from BP counsel on strategies for litigation	WP
17	5/12/2005	e-mail	Burke, G.	Raphael, S.	Andersen, W.; Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel requesting access to work product of Raphael prepared in anticipation of dispute with Delaware over 1905 Compact	WP
18	5/12/2005	e-mail	Raphael, S.	Burke, G.	Andersen, W.; Horowitz, R.; Picco, S.	Communication from BP counsel to NJ counsel in response to request for access to work product and discussing means for sharing work product relating to dispute with Delaware over 1905 Compact	WP
19	5/12/2005	e-mail	Burke, G.	Picco, S.	Raphael, S.; Donlon, A.; Renella, J.; Horowitz, R.; Andersen, W.	Communication from NJ counsel to BP counsel proposing meeting of counsel for NJ and BP	WP
20	5/13/2005	e-mail	Burke, G.	Raphael	Donlon, A.; Renella, J.; Horowitz, R.; Andersen, W.; Picco, S.	Communication from NJ counsel to BP counsel identifying NJ counsel to have access to work product relating to dispute with Delaware over 1905 Compact	WP
21	5/13/2005	e-mail	Raphael, S.	Burke, G.	Donlon, A.; Renella, J.; Horowitz, R.; Andersen, W.; Picco, S.	Response of BP counsel to NJ counsel's May 13, 2005 e-mail, discussing work product to be shared and attaching document from prior litigation reflecting counsel's mental impression of its relevance to dispute with Delaware over 1905 Compact	WP
22	5/16/2005	e-mail	Burke, G.	Raphael, S.; Picco, S.	Renella, J.; Stanley, L.; Horowitz, R.	Communication from NJ counsel to BP counsel requesting additional meeting with counsel	WP

4/25/2006

Privilege Log: Common Interest Communications
(Through January 23, 2006)

Exhibit A
Declaration of Stuart A. Raphael

Entry	Date	Type	From	To	CCs	Description	Privilege
23	5/16/2005	e-mail	Picco, S.	Burke, G.; Raphael, S.	Renella, J.; Stanley, L.; Horowitz, R.	Communication from BP counsel to NJ counsel responding to 5/16/05 e-mail requesting additional meeting with counsel (with prior email string)	WP
24	5/16/2005	e-mail	Raphael, S.	Picco, S.; Burke, G.	Renella, J.; Stanley, L.; Horowitz, R.	Communication from BP counsel to NJ counsel responding to 5/16/05 e-mail requesting additional meeting with counsel (with prior email string)	WP
25	5/16/2006	e-mail	Raphael, S.	Burke, G.	Picco, S.	Communication from BP counsel to NJ counsel regarding meeting among counsel (with prior 5/16/05 e-mail string)	WP
26	5/17/2005	e-mail	Raphael, S.	Burke, G.	Roden, G.; Picco, S.	Communication from BP counsel to NJ counsel transmitting FERC data request and providing mental impressions of relevance of same to dispute with Delaware over 1905 Compact	WP, AC
27	5/18/2005	e-mail	Raphael, S.	Burke, G.	Roden, G.; Pascrell, W.; Picco, S.	Communication from BP counsel to NJ counsel transmitting BP counsel's work product regarding portions of FERC data request that implicate NJ's regulatory rights under 1905 Compact	WP
28	5/24/2005	e-mail	Raphael, S.	Andersen, W.	Picco, S.	Communication from BP counsel to NJ counsel transmitting work product on 1905 Compact issues and discussing possible work product/litigation strategy	WP
29	5/25/2005	e-mail	Renella, J.	Raphael, S.; Burke, G.	Picco, S.	Communication from NJ counsel to BP counsel requesting copies of filings in case cited in e-mail; discussing strategy for better access to BP counsel's work product relating to dispute with Delaware over 1905 compact; and inquiring about status of BP declaration	WP
30	5/25/2005	e-mail	Raphael, S.	Renella, J.	Picco, S.; Burke, G.	Communication from BP counsel to NJ counsel responding to previous e-mail inquiry	WP
31	5/25/2005	e-mail	Raphael, S.	Andersen, W.; Chudzick, H.; Goldman, J.; Jabolonski, D.; Renella, J.; Weyl, L.; Donlon, A.; Horowitz, R.; Kelly, E.; Weeks, B.	Burke, G.; Picco, S.	Communication from BP counsel to NJ counsel discussing strategy for sharing/accessing work product relating to dispute with Delaware over 1905 Compact	WP
32	5/25/2005	e-mail	Raphael, S.	Andersen, W.		Communication from BP counsel to NJ counsel transmitting BP counsel work product on issue relating to 1905 Compact and strategy for use in dispute with Delaware	WP
33	5/25/2005	e-mail	Andersen, W.	Raphael, S.		Communication from NJ counsel to BP counsel regarding work product transmitted by BP counsel in prior e-mail	WP

4/25/2006

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Declaration of Stuart A. Raphael**

Entry	Date	Type	From	To	CCs	Description	Privilege
34	5/25/2005	e-mail	Raphael, S.	Andersen, W.		Communication from BP counsel to NJ counsel in response to prior e-mail and discussing work product and further litigation strategy	WP
35	5/25/2005	e-mail	Andersen, W.	Raphael, S.		Communication from NJ counsel to BP counsel regarding NJ counsel's creation of possible submission in litigation with Delaware over 1905 Compact and soliciting additional information for same	WP
36	5/25/2005	e-mail	Raphael, S.	Andersen, W.		Communication from BP counsel to NJ counsel in response to last e-mail regarding creation of work product and discussing potential litigation strategy regarding same	WP
37	5/29/2005	e-mail	Raphael, S.	Burke, G.; Andersen, W.	Picco, S.	Communication from BP counsel to NJ counsel transmitting two documents representing attorney work product and discussing potential significance in dispute with Delaware over 1905 Compact	WP
38	6/1/2005	e-mail	Raphael, S.	Burke, G.; Andersen, W.; Renella, J.; Horowitz, R.	Picco, S.	Communication from BP counsel to NJ counsel attaching attorney work product on 1905 Compact for possible court submission and discussing possible litigation strategy	WP
39	6/2/2005	e-mail	Raphael, S.	Burke, G.	Renella, J.; Horowitz, R.; Roden, G.; Picco, S.	Communication from BP counsel to NJ counsel attaching work product relating to BP/Crown Landing (Lauren Segal) declaration for court submission regarding dispute with Delaware over 1905 Compact and proposing conference call to discuss	WP, AC
40	6/3/2005	e-mail	Fortkiewicz, V.	Raphael, S.		Communication from counsel to NJ Governor to BP counsel forwarding 6/2/2005 e-mail exchange among NJ personnel regarding litigation with Delaware and project issues agenda, and requesting telephone call from BP counsel	WP, AC
41	6/3/2005	e-mail	Raphael, S.	Fortkiewicz, V.		Communication from BP counsel to counsel to NJ Governor regarding discussions with NJAG's office and regarding access to litigation work product relating to dispute with Delaware over 1905 Compact, and providing contact information	WP
42	6/6/2005	e-mail	Fortkiewicz, V.	Raphael, S.		Communication from counsel to NJ Governor to BP counsel regarding mechanism for providing access to work product relating to dispute with Delaware over 1905 Compact, and discussing rescheduling of meeting	WP, AC
43	6/6/2005	e-mail	Raphael, S.	Fortkiewicz, V.		Communication from BP counsel to counsel to NJ Governor responding to 6/6/05 e-mail regarding scheduling meeting regarding dispute with Delaware (with prior email string)	WP, AC
44	6/7/2005	e-mail	Fortkiewicz, V.	Raphael, S.		Communication from counsel to NJ Governor to BP counsel responding to 6/6/05 e-mail regarding scheduling meeting regarding dispute with Delaware (with prior email string)	WP, AC
45	6/7/2005	e-mail	Raphael, S.	Fortkiewicz, V.		Communication from BP counsel to counsel to NJ Governor responding to 6/6/05 e-mail regarding scheduling meeting and responding to counsel's voice mail message (with prior email string)	WP, AC

Entry	Date	Type	From	To	CCs	Description	Privilege
46	6/7/2005	e-mail	Andersen, W.	Raphael, S.	Horowitz, R.	Communication from NJ counsel to BP counsel forwarding document assembled by counsel for purposes of litigation with Delaware and requesting assistance in preparing document to accompany original action filing	WP
47	6/10/2005	e-mail	Raphael, S.	Andersen, W.; Burke, G.; Horowitz, R.; Renella, J.	Belin, D.; Picco, S.	Communication from BP counsel to NJ counsel transmitting documents prepared by BP consultant D. Belin for possible use in original action litigation against Delaware	WP
48	6/10/2005	e-mail	Raphael, S.	Raphael, S.; Andersen, W.; Burke, G.; Horowitz, R.; Renella, J.	Belin, D.; Picco, S.	Communication from BP counsel to NJ counsel transmitting revised version of previous document	WP
49	6/13/2005	e-mail	Raphael, S.	Burke, G.	Renella, J.; Horowitz, R.; Andersen, W.; Roden, G.; Picco, S.	Communication from BP counsel to NJ counsel transmitting work product relating to BP/Crown Landing (Lauren Segal) declaration for court submission regarding dispute with Delaware over 1905 Compact and relating to other possible court submissions in litigation with Delaware	AC; WP
50	6/14/2005	e-mail	Pascrell, B.	Burzichelli, J.		Communication from BP representative to NJ legislator discussing legislation and common legal interest in dispute with Delaware over 1905 Compact	WP; AC
51	6/14/2005	e-mail	Burzichelli, J.	Pascrell, B.		Communication from NJ legislator to BP representative acknowledging prior e-mail and seeking further information (attaching prior e-mail)	WP; AC
52	6/14/2005	e-mail	Pascrell, B.	Burzichelli, J.	Crowther, L.; Arbaugh, S.	Communication from BP representative to NJ legislator responding to prior e-mail and confirming forthcoming information on strategy for dispute with Delaware over 1905 Compact	WP; AC
53	6/14/2005	e-mail	Pascrell, B.	Crowther, L.	Burzichelli, J.; Arbaugh, S.	Communication from BP representative to NJ legislator transmitting attorney work product relating to proposed legislation and strategy regarding dispute with Delaware over 1905 Compact	WP; AC
54	6/15/2005	e-mail	Raphael, S.	Burke, G.		Communication from BP counsel to NJ counsel transmitting document of possible interest regarding dispute with Delaware	WP
55	6/15/2005	e-mail	Raphael, S.	Fader, P.; Fortkiewicz, V.; Burke, G.		Communication from BP counsel to NJ counsel and counsel to NJ Governor regarding BP's position on certain legislation relation to compact dispute and attaching same (with 6/14/2005 cover transmittal letter from J. Burzichelli to B. Coleman)	WP; AC

4/25/2006

**Privilege Log: Common Interest Communications
(Through January 23, 2006)**

**Exhibit A
Declaration of Stuart A. Raphael**

Entry	Date	Type	From	To	CCs	Description	Privilege
56	6/16/2005	e-mail	Burke, G.	Raphael, S.	Renella, J.; Horowitz, R; Picco, S.	Communication from NJ counsel to BP counsel transmitting work product relating to NJ declarations for court submission regarding dispute with Delaware over 1905 Compact; soliciting input on same; and discussing NJ counsel's forthcoming input on BP counsel's work product relating to BP declaration for court submission regarding dispute with Delaware over 1905 Compact	WP, AC
57	6/16/2005	e-mail	Donlon, A.	Raphael, S.	Burke, G.; Picco, S.	Communication from NJ counsel to BP counsel transmitting a selection of documents that reflects counsel's mental impressions of relevance to dispute with Delaware over 1905 Compact	WP
58	6/16/2005	e-mail	Raphael, S.	Donlon, A.		Communication from BP counsel to NJ counsel responding to 6/16/2005 e-mail (with prior email string)	WP
59	6/16/2005	e-mail	Donlon, A.	Raphael, S.		Communication from NJ counsel to BP counsel responding to prior (6/16/2005) e-mail (with prior email string)	WP
60	6/16/2005	e-mail	Horowitz, R.	Raphael, S.		Communication from NJ counsel to BP counsel confirming receipt of work product relating to BP/Crown Landing (Lauren Segal) declaration for court submission regarding dispute with Delaware over 1905 Compact and relating to other possible court submissions in litigation with Delaware (with prior email string)	WP
61	6/16/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.	Communication from BP counsel to NJ counsel transmitting work product for possible court submission in dispute with Delaware over 1905 Compact	WP
62	6/16/2005	fax	Donlon, A.	Raphael, S.		Communication from NJ counsel to BP counsel transmitting a selection of documents that reflects attorney work product and mental impressions of potential relevance to dispute with Delaware over 1905 Compact	WP
63	6/16/2005	e-mail	Burke, G.	Raphael, S.	Picco, S.	Communication from NJ counsel to BP counsel acknowledging receipt of BP counsel's work product relating to court submission in dispute with Delaware over 1905 Compact (with prior email string)	WP
64	6/16/2005	e-mail	Raphael, S.	Andersen, W.; Burke, G.	Picco, S.	Communication from BP counsel to NJ counsel providing input on NJ counsel's work product relating to NJ declaration for court submission in dispute with Delaware over 1905 Compact	WP
65	6/16/2005	e-mail	Burke, G.	Raphael, S.	Picco, S.	Communication from NJ counsel to BP counsel noting internal review of BP counsel's work product relating to court submission in dispute with Delaware and confirming forthcoming comments on same	WP
66	6/16/2005	e-mail	Andersen, W.	Raphael, S.		Communication from NJ counsel to BP counsel requesting input on court submission in dispute with Delaware over 1905 Compact	WP
67	6/16/2005	e-mail	Raphael, S.	Andersen, W.	Burke, G.	Communication from BP counsel to NJ counsel transmitting work product relating to court submission in dispute with Delaware over 1905 Compact	WP
68	6/16/2005	e-mail	Andersen, W.	Raphael, S.		Communication from NJ counsel to BP counsel confirming receipt of BP counsel's work product relating to court submission in dispute with Delaware over 1905 Compact	WP

4/25/2006

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(Through January 23, 2006)**

**Exhibit A
Declaration of Stuart A. Raphael**

Entry	Date	Type	From	To	CCs	Description	Privilege
69	6/17/2005	e-mail	Raphael, S.	Burke, G.; Donton, A.; Andersen, W.	Picco, S.	Communication from BP counsel to NJ counsel providing mental impressions of significance of selection of documents transmitted by BP counsel on 6/16/2005	WP
70	6/17/2005	e-mail	Raphael, S.	Fader, P.		Communication from BP counsel to counsel to NJ Governor transmitting, as requested, BP counsel's work product relating to court submission in dispute with Delaware over 1905 Compact	WP
71	6/17/2005	e-mail	Burke, G.	Raphael	Renella, J.; Picco, S.	Communication from NJ counsel to BP counsel requesting further input on work product relating to court submission in dispute with Delaware over 1905 Compact	WP
72	6/17/2005	e-mail	Raphael, S.	Burke, G.	Renella, J.; Picco, S.	Communication from BP counsel to NJ counsel transmitting requested input on work product relating to court submission in dispute with Delaware over 1905 Compact and discussing possible strategy for same	WP
73	6/17/2005	e-mail	Burke, G.	Raphael, S.	Renella, J.; Horowitz, R.	Communication from NJ counsel to BP counsel regarding BP counsel's input on NJ counsel's work product relating to NJ declarations for court submission in dispute with Delaware over 1905 Compact	WP
74	6/17/2005	e-mail	Raphael, S.	Burke, G.	Renella, J.; Horowitz, R.; Picco, J.	Communication from BP counsel to NJ counsel providing further input on NJ counsel's work product relating to NJ declarations	WP
75	6/17/2005	e-mail	Raphael, S.	Donton, A.	Burke, G.; Picco, S.	Communication from BP counsel to NJ counsel providing analysis and mental impressions of significance of selected documents in relation to dispute with Delaware over 1905 Compact	WP
76	6/17/2005	e-mail	Burke, G.	Raphael, S.; Picco, S.		Correspondence from NJ counsel to BP counsel transmitting work product regarding court submission in dispute with Delaware over 1905 compact and discussing next steps	WP
77	6/19/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.	Communication from BP counsel to NJ counsel transmitting work product for court submission in dispute with Delaware over 1905 Compact	WP
78	6/20/2005	e-mail	Raphael, S.	Burke, G.	Donton, A.; Renella, J.; Andersen, W.; Horowitz, R.; Picco, S.	Communication from BP counsel to NJ counsel transmitting selected documents that reflects attorney work product and mental impressions of document's potential relevance to dispute with Delaware over 1905 Compact, and recommending strategy for obtaining additional information relating to dispute	WP
79	6/20/2005	e-mail	Burke, G.	Raphael, S.	Donton, A.; Renella, J.; Andersen, W.; Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel responding to receipt of selected document transmitted in prior e-mail and discussing plans to follow-up	WP
80	6/20/2005	e-mail	G. Burke	Raphael, S.; Picco, S.	Horowitz, R.	Communication from NJ counsel to BP counsel transmitting work product relating to BP declaration for court submission in dispute with Delaware over 1905 Compact	WP

4/25/2006

**Privilege Log: Common Interest Communications
(Through January 23, 2006)**

**Exhibit A
Declaration of Stuart A. Raphael**

Entry	Date	Type	From	To	CCs	Description	Privilege
81	6/20/2005	e-mail	Raphael, S.	Burke, G.	Andersen, W.; Horowitz, R.; Picco, S.; Roden, G.	Communication from BP counsel to NJ counsel transmitting work product relating to BP/Crown Landing declaration for court submission in dispute with Delaware over 1905 Compact and discussing counsel's mental impressions regarding strategy for same	WP; AC
82	6/20/2005	e-mail	Raphael, S.	Horowitz, R.	Burke, G.; Picco, S.	Communication from BP counsel to NJ counsel seeking NJ counsel's work product on court submission in dispute with Delaware over 1905 Compact and offering selected document for possible inclusion with same	WP
83	6/20/2005	e-mail	Donlon, A.	Raphael, S.	Burke, G.; Horowitz, R.	Communication from NJ counsel to BP counsel requesting versions of selected documents for court submission in dispute with Delaware over 1905 Compact, reflecting mental impression of significance of same (with string of prior e-mails)	WP
84	6/20/2005	e-mail	Raphael, S.	Donlon, A.		Communication from BP counsel to NJ counsel seeking clarification of request in prior e-mail	WP
85	6/20/2005	e-mail	Donlan, A.	Raphael, S.		Communication from NJ counsel to BP counsel providing clarification requested in prior e-mail	WP
86	6/20/2005	e-mail	Raphael, S.	Donlon, A.		Communication from BP counsel to NJ counsel acknowledging clarification in last email (with prior email string)	WP
87	6/20/2005	e-mail	Donlon, A.	Raphael, S.		Communication from NJ counsel to BP counsel acknowledging last email (with prior email string)	WP
88	6/20/2005	e-mail	Raphael, S.	Donlon, A.		Communication from BP counsel to NJ counsel transmitting selected documents requested in prior e-mails, discussing additional forthcoming requested documents, and providing attorney mental impressions relating to strategy for court submission of particular documents in dispute with Delaware over 1905 Compact (with prior e-mail string)	WP
89	6/21/2005	e-mail	Fortkiewicz, V.	Raphael		Communication from counsel to NJ Governor to BP counsel forwarding communications (e-mail string) among various NJ counsel about discussions with BP counsel and follow-up inquiry regarding litigation strategy in dispute with Delaware over 1905 Compact, and requesting conference with BP counsel to discuss same	WP; AC
90	6/21/2005	e-mail	Horowitz, R.	Raphael, S.	Burke, G.; Picco, S.	Communication from NJ counsel to BP counsel regarding strategy for contents of court submission in dispute with Delaware over 1905 Compact	WP
91	6/21/2005	e-mail	Raphael, S.	Donlon, A.	Horowitz, R.; Andersen, W.; Renella, J.; Picco, S.	Communication from BP counsel to NJ counsel transmitting selected documents requested in 6/20/2005 e-mails for court submission in dispute with Delaware over 1905 Compact (with prior e-mail string)	WP
92	6/21/2005	e-mail	Raphael, S.	Andersen, W.		Communication from BP counsel to NJ counsel seeking copies of a selection of documents that reflects attorney's mental impression of significant of same to dispute with Delaware over 1905 Compact	WP

4/25/2006

Privilege Log: Common Interest Communications
(Through January 23, 2006)

Exhibit A
Declaration of Stuart A. Raphael

Entry	Date	Type	From	To	CCs	Description	Privilege
93	6/21/2005	e-mail	Raphael, S.	Andersen, W.	Belin, D.; Burke, G., Picco, S.	Communication from BP counsel to NJ counsel transmitting work product for possible court submission in dispute with Delaware over 1905 Compact and discussing edits to same	WP
94	6/21/2005	e-mail	Raphael, S.	Burke, G.	Horowitz, R.; Renella, J.; Andersen, W.; Donlon, A.; Picco, J.	Communication from BP counsel to NJ counsel providing strategy for possible inclusion with court submission in dispute with Delaware over 1905 compact and transmitting work product relating to same	WP
95	6/21/2005	e-mail	Raphael, S.	Burke, G.	Horowitz, R.; Picco, S.	Communication from BP counsel to NJ counsel regarding impact of pending legislation on litigation with Delaware over 1905 Compact	WP
96	6/21/2005	e-mail	Burke, G.	Raphael, S.	Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel in response to prior e-mail	WP
97	6/21/2005	e-mail	Burke, G.	Raphael, S.	Horowitz, R.; Renella, J.; Andersen, W.; Donlon, A.; Picco, J.	Communication from NJ counsel to BP counsel in response to BP counsel's 6/21/2005 e-mail transmitting work product relation to possible court submission in dispute with Delaware over 1905 Compact (with prior email string)	WP
98	6/22/2005	e-mail	Pasorell, B.	Fader, P.	Fortkiewicz, V.; Arbaugh, S.; Burzichelli, J.	Communication from BP representative to counsel to NJ Governor transmitting article regarding dispute between NJ and Delaware and discussing strategy relative to dispute	WP
99	6/22/2005	e-mail	Fortkiewicz, V.	Pasorell, B.		Communication from counsel to NJ Governor to BP representative acknowledging prior e-mail (attaching e-mail string)	WP
100	6/22/2005	e-mail	Burke, G.	Raphael, S.; Picco, S.	Donlon, A.; Horowitz, R.	Communication from NJ counsel to BP counsel transmitting work product relating to NJ affidavits for court submission regarding dispute with Delaware over 1905 Compact and discussing development relating to BP counsel's document research in relation to dispute with Delaware	WP
101	6/22/2005	e-mail	Raphael, S.	Burke, G.		Communication from BP counsel to NJ counsel seeking input on work product relating to possible court submission in dispute with Delaware over 1905 Compact	WP
102	6/22/2005	e-mail	Burke, G.	Raphael, S.		Communication from NJ counsel to BP counsel in response to prior e-mail seeking input on work product and confirming forthcoming action on same	WP
103	6/22/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.	Communication from BP counsel to NJ counsel transmitting work product relating to BP/Crown Landing (Lauren Segal) declaration for court submission in dispute with Delaware over 1905 Compact, and commenting on same	WP, AC
104	6/23/2005	e-mail	Pasorell, B.	Burzichelli, J.		Communication from BP representative to NJ legislator transmitting attorney work product and advice relating to legislation and dispute with Delaware over 1905 Compact, and discussing advice	WP, AC

**Privilege Log: Common Interest Communications
(Through January 23, 2006)**

**Exhibit A
Declaration of Stuart A. Raphael**

Entry	Date	Type	From	To	CCs	Description	Privilege
105	6/23/2005	e-mail	Burzichelli, J.	Pascrell, W.		Communication from NJ legislator to BP representative acknowledging prior e-mail and discussing same (attaching prior e-mail string)	WP; AC
106	6/23/2005	e-mail	Burke, G.	Raphael, S.	Picco, S.	Communication from BP counsel to NJ counsel transmitting work product relating to court submission in dispute with Delaware over 1905 Compact and commenting on/explaining same	WP
107	6/23/2005	e-mail	Picco, S.	Burke, G.		Communication from BP counsel to NJ counsel commenting on work product relating to court submission in dispute with Delaware over 1905 Compact and advising of inquiry of third party relative to Delaware permitting issue	WP
108	6/23/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.	Communication from BP counsel to NJ counsel transmitting work product relating to court submission in dispute with Delaware over 1905 Compact	WP
109	6/23/2005	e-mail	Burke, G.	Raphael, S.		Communication from NJ counsel to BP counsel transmitting e-mail among NJ counsel with attached document of possible interest in relation to dispute with Delaware over 1905 Compact and reflecting counsel's mental impressions regarding same	WP
110	6/23/2005	e-mail	Burke, G.	Raphael, S.	Picco, S.	Communication from NJ counsel to BP counsel providing comments on BP counsel work product relating to Declaration of BP/Crown Landing (Lauren Segal) for court submission in dispute with Delaware over 1905 Compact	WP
111	6/23/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.	Communication from BP counsel to NJ counsel transmitting work product relating to declaration of BP/Crown Landing (Lauren Segal) for court submission in dispute with Delaware over 1905 Compact, with attachments	WP
112	6/24/2005	e-mail	Burke, G.	Raphael, S.	Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel providing input to work product relating to declaration of BP/Crown Landing (Lauren Segal) for court submission in dispute with Delaware over 1905 Compact	WP
113	6/24/2005	e-mail	Raphael, S.	Burke, G.	Horowitz, R.; Picco, S.; Roden, G.	Communication from BP counsel to NJ counsel transmitting revised work product relating to BP/Crown Landing declaration for court submission in dispute with Delaware over 1905 Compact (with prior email string)	WP
114	6/24/2005	e-mail	Burke, G.	Raphael, S.	Horowitz, R.; Picco, S.; Roden, G.	Communication from NJ counsel to BP counsel acknowledging receipt of revised work product and requesting revisions to related documents (with prior email string)	WP
115	6/24/2005	e-mail	Burke, G.	Raphael, S.	Donlon, A.; Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel transmitting work product relating to NJ affidavit for court submission in dispute with Delaware over 1905 Compact	WP
116	6/24/2005	e-mail	Raphael, S.	Burke, G.	Horowitz, R.; Picco, S.; Roden, G.	Communication from BP counsel to NJ counsel transmitting work product relating to BP/Crown Landing declaration (Lauren Segal) for court submission in dispute with Delaware over 1905 Compact (with prior email string)	WP
117	6/24/2005	e-mail	Kaplan, N.	Raphael, S.		Communication from NJAG's office to BP counsel acknowledging receipt of prior e-mail and attachments (with prior email string)	WP

4/25/2006

**Privilege Log: Common Interest Communications
(Through January 23, 2006)**

**Exhibit A
Declaration of Stuart A. Raphael**

Entry	Date	Type	From	To	CCs	Description	Privilege
118	6/24/2005	e-mail	Raphael, S.	Kaplan, N.		Communication from BP counsel to NJAG's office acknowledging receipt of prior e-mail and transmitting contact information (with prior email string)	WP
119	6/24/2005	e-mail	Raphael, S.	Burke, G; Douton, A	Horowitz, R; Picco, S.	Communication from BP counsel to NJ counsel transmitting input to NJ counsel's work product relating to NJ affidavit for court submission in dispute with Delaware over 1905 Compact and providing mental impressions of significance of same to dispute with Delaware	WP
120	6/24/2005	e-mail	Raphael, S.	Burke, G.	Douton, A; Horowitz, R; Picco, S.	Communication from BP counsel to NJ counsel providing mental impressions of selected document and potential strategy regarding same for dispute with Delaware over 1905 Compact	WP
121	6/24/2005	e-mail	Raphael, S.	Fortkiewicz, V.	Burke, G.	Communication from BP counsel to counsel to NJ Governor transmitting work product relating to sample statement concerning court filing against Delaware	WP, AC
122	6/24/2005	e-mail	Fortkiewicz, V.	Raphael, S.		Communication from counsel to NJ Governor to BP counsel in response to previous e-mail regarding statement concerning court filing against Delaware and inquiring about NJAG office's actions	WP, AC
123	6/24/2005	e-mail	Raphael, S.	Fortkiewicz, V.		Communication from BP counsel to counsel to NJ Governor responding to previous inquiry	WP, AC
124	6/24/2005	e-mail	Raphael, S.	Aseltine, P.	Burke, G.	Communication from BP counsel to NJAG's office transmitting contact information and copy of work product concerning court filing against Delaware, as requested by counsel to NJ Governor	WP, AC
125	6/24/2005	e-mail	Aseltine, P.	Raphael, S.		Communication from NJAG's office to BP counsel acknowledging receipt of prior email (with prior email string)	WP, AC
126	6/24/2005	e-mail	Raphael, S.	Aseltine, P.		Communication from BP counsel to NJAG's office transmitting information for accessing work product relating to dispute with Delaware over 1905 Compact	WP
127	6/24/2005	e-mail	Raphael, S.	Kaplan, N.; Burke, G.	Douton, A; Jablonski, D.; Horowitz, R; Andersen, W.; Picco, S.	Communication from BP counsel to NJ counsel transmitting additional work product relating to court submission in dispute with Delaware over 1905 Compact discussing litigation strategy	WP
128	6/24/2005	e-mail	Douton, A.	Raphael, S.	Burke, G.; Horowitz, R.	Communication from NJ counsel to BP counsel confirming receipt of input on NJ counsel's work product relating to NJ affidavit for court submission in dispute with Delaware over 1905 Compact; providing further input on same; requesting copies of particular documents; and discussing tactical significance of specific documents in relation to court submission	WP
129	6/24/2005	e-mail	Burke, G.	Kaplan, N.; Raphael, S.	Andersen, W.; Douton, A.; Horowitz, R.; Jablonski, D.	Communication from NJ counsel to NJAG's office and to BP counsel regarding BP counsel's recent input on work product on possible court submission and proposing further revision to same	WP

4/25/2006

**Privilege Log: Common Interest Communications
(Through January 23, 2006)**

**Exhibit A
Declaration of Stuart A. Raphael**

Entry	Date	Type	From	To	CCs	Description	Privilege
130	6/24/2005	e-mail	Raphael, S.	Kaplan, N.; Burke, G	Andersen, W.; Donlon, A.; Horowitz, R.; Jablonski, D.; Picco, S	Communication from BP counsel to NJ counsel providing input on NJ counsel's proposed revision to work product on possible court submission in dispute with Delaware	WP
131	6/24/2005	e-mail	Raphael, S.	Donlon, A.	Burke, G.; Horowitz, R.	Communication from BP counsel to NJ counsel in response to prior e-mail; agreeing to provide selected documents requested and commenting on additional input on work product relating to NJ declaration for court submission in dispute with Delaware over 1905 Compact	WP
132	6/24/2005	e-mail	Raphael, S.	Donlon, A.	Burke, G.; Horowitz, R.	Communication from BP counsel to NJ counsel attaching requested documents	WP
133	6/24/2005	e-mail	Burke, G.	Raphael, S.	Donlon, A.; Jablonski, D.; Horowitz, R.; Andersen, W.; Picco, S.	Communication from NJ counsel to BP counsel transmitting work product relating to court submission in dispute with Delaware over 1905 Compact	WP
134	6/25/2005	e-mail	Raphael, S.	Burke, G.	Jablonski, D.; Horowitz, R.; Andersen, W.; Picco, S.	Communication from BP counsel to NJ counsel transmitting comments and work product relating to court submission in dispute with Delaware over 1905 Compact and discussing litigation and strategy with regard to same	WP
135	6/25/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.	Communication from BP counsel to NJ counsel transmitting input on work product relating to NJ affidavit for court submission in dispute with Delaware over 1905 Compact	WP
136	6/25/2005	e-mail	Burke, G.	Raphael, S.	Picco, S.	Communication from NJ counsel to BP counsel acknowledging receipt of input to work product relating to NJ declaration and soliciting further input on additional work product	WP
137	6/25/2005	e-mail	Burke, G.	Raphael, S.	Donlon, A.; Jablonski, D.; Horowitz, R.; Andersen, W.; Picco, S.	Communication from NJ counsel to BP counsel inquiring of BP counsel's efforts to obtain information of potential relevance to, and possible inclusion in, court submission in dispute with Delaware over 1905 Compact	WP
138	6/27/2005	e-mail	Raphael, S.	Burke, G.; Horowitz, R.	Picco, S.	Communication from BP counsel to NJ counsel transmitting copy of selected legislation of potential relevance to court submission in dispute with Delaware over 1905 Compact	WP
139	6/27/2005	e-mail	Horowitz, R.	Raphael, S.	Burke, G.; Renella, J.; Andersen, W.	Communication from NJ counsel to BP counsel requesting usable copy of selected document for inclusion in court submission in dispute with Delaware over 1905 Compact	WP

Entry	Date	Type	From	To	CCs	Description	Privilege
140	6/27/2005	e-mail	Raphael, S.	Horowitz, R.	Burke, G.; Renella, J.; Andersen, W.; Picco, S.	Communication from BP counsel to NJ counsel transmitting document requested in last e-mail	WP
141	6/27/2005	e-mail	Raphael, S.	Horowitz, R.; Burke, G.	Picco, S.	Communication from BP counsel to NJ counsel transmitting selected documents for inclusion in court submission in dispute with Delaware over 1905 Compact and commenting on possible revisions to same	WP
142	6/27/2005	e-mail	Burke, G.	Raphael, S.; Donlon, A.	Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel acknowledging receipt of input on work product relating to affidavit	WP
143	6/27/2005	e-mail	Roden, G.	Burke, G.; Raphael, S.	Horowitz, R.; Picco, S.	Communication from BP counsel to BP counsel and NJ counsel transmitting final Declaration of Lauren Segal for court submission regarding dispute with Delaware over 1905 Compact and commenting on forthcoming delivery of original of same	WP
144	6/27/2005	e-mail	Raphael, S.	Burke, G.	Horowitz, R.; Picco, S.; Roden, G.	Communication from BP counsel to NJ counsel transmitting final Declaration of Lauren Segal for court submission regarding dispute with Delaware over 1905 Compact, with comments, and with attachments to same	WP
145	6/27/2005	e-mail	Raphael, S.	Burke, G.; Donlon, A.	Horowitz, R.; Picco, S.	Communication from BP counsel to NJ counsel transmitting input to work product relating to NJ affidavit for court submission in dispute with Delaware over 1905 Compact and explaining reasons for revision to same	WP
146	6/28/2005	e-mail	Fortkiewicz, V.	Raphael, S.		Communication from counsel to NJ Governor to BP counsel inquiring about statement by NJAG's office concerning court filing against Delaware	WP, AC
147	6/28/2005	e-mail	Raphael, S.	Fortkiewicz, V.		Communication from BP counsel to counsel to NJ Governor in response to inquiry about statement by NJAG's office concerning court filing against Delaware	WP, AC
148	6/28/2005	e-mail	Raphael, S.	Burke, G.; Horowitz, R.	Picco, S.	Communication from BP counsel to NJ counsel transmitting documents requested by NJAG's office for inclusion in court submission in dispute with Delaware over 1905 Compact	WP
149	6/29/2005	e-mail	Aseltine, P.	Heck, K.; Fleming, M.; Darcy, S.; Fortkiewicz, V.; Raphael, S.	Burke, G.; Horowitz, R.; Renella, J.; Dugan, M.	Communication from NJAG's office to BP counsel, counsel to NJ Governor and NJ Governor's office transmitting work product relating to proposed statement by NJAG's office in connection with litigation against Delaware	WP, AC
150	6/29/2005	e-mail	Raphael, S.	Burke, G.; Andersen, W.	Picco, S.; Teichman, M.; Donlon, A.	Communication from BP counsel to NJ counsel transmitting a selection of documents that reflects counsel's mental impressions regarding significance of same to dispute with Delaware over 1905 Compact, commenting on potential use of same, and providing possible strategy for obtaining additional documents relevant to dispute	WP

4/25/2006

**Privilege Log: Common Interest Communications
(Through January 23, 2006)**

**Exhibit A
Declaration of Stuart A. Raphael**

Entry	Date	Type	From	To	CCs	Description	Privilege
151	6/29/2005	e-mail	Raphael, S.	Aseltine, P.	Fortkiewicz, V.; Kaplen, N.; Burke, G.; Horowitz, N.	Communication from BP counsel to NJAG's office providing input on proposed statement regarding litigation with Delaware and discussing strategies for same	WP
152	6/29/2005	e-mail	Burke, G.	Raphael, S.	Jablonski, D.; Renella, J.; Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel transmitting work product for court submission in dispute with Delaware over 1905 Compact and soliciting input on same	WP
153	6/29/2005	e-mail	Raphael, S.	Burke, G.	Jablonski, D.; Renella, J.; Horowitz, R.; Picco, S.	Communication from BP counsel to NJ counsel acknowledging e-mailed request for input on work product for court submission (attaching prior email string)	WP
154	6/30/2005	e-mail	Raphael, S.	Fortkiewicz, V.		Communication from BP counsel to counsel to NJ counsel re statement regarding litigation with Delaware	WP, AC
155	6/30/2005	e-mail	Fortkiewicz, V.	Raphael, S.		Communication from counsel to NJ Governor to BP counsel acknowledging receipt of input in prior e-mail (attaching prior email string)	WP, AC
156	6/30/2005	e-mail	Aseltine, P.	Raphael, S.	Burke, G.; Kaplen, N.	Communication from NJAG's office to BP counsel transmitting work product relating to proposed statement regarding litigation with Delaware, commenting on input to same and soliciting comments on same	WP, AC
157	6/30/2005	e-mail	Raphael, S.	Aseltine, P.	Kaplen, N.; Burke, G.; Fortkiewicz, V.	Communication from BP counsel to NJAG's office providing input on work product relating to statement regarding litigation with Delaware	WP, AC
158	6/30/2005	e-mail	Aseltine, P.	Raphael, S.		Communication from NJAG's office to BP counsel acknowledging prior e-mail (attaching prior email string)	WP, AC
159	6/30/2005	e-mail	Raphael, S.	Burke, G.; Kaplen, N.	Fortkiewicz, V.; Aseltine, P.	Communication from BP counsel to NJ counsel transmitting bill introduced in Delaware legislature, and providing mental impressions regarding bill's significance to litigation over 1905 Compact and court submissions relating to same	WP
160	6/30/2005	e-mail	Raphael, S.	Burke, J.; Horowitz, R.; Donlon, A.	Roden, G.; Picco, S.	Communication from BP counsel to NJ counsel attaching copy of DNREC 6/7/2005 letter to FERC, providing mental impressions of same, and discussing BP and Crown Landing's litigation position in DNREC proceeding	WP
161	6/30/2005	e-mail	Burke, G.	Kaplen, N.; Raphael, S.	Fortkiewicz, V.; Aseltine, P.	Communication from NJ counsel to BP counsel acknowledging receipt of e-mail regarding Delaware legislation (attaching email string)	WP
162	7/5/2005	e-mail	Raphael, S.	Burke, G.		Communication from BP counsel to NJ counsel soliciting conference call on particular document at issue in litigation with Delaware over 1905 Compact	WP
163	7/5/2005	e-mail	Burke, G.	Raphael, S.	Kaplen, N.	Communication from NJ counsel to BP counsel in response to prior email, stating availability for call (attaching prior email string)	WP

Entry	Date	Type	From	To	CCs	Description	Privilege
164	7/5/2005	e-mail	Raphael, S.	Kaplan, N.; Burke, G.; Horowitz, R.	Donlon, A.; Andersen, W.; Jablonski, D.; Picco, S.	Communication from BP counsel to NJ counsel discussing litigation strategy regarding possible Delaware position, and attaching related input to work product on court submission on dispute with Delaware over 1905 Compact	WP
165	7/5/2005	e-mail	Raphael, S.	Fortkiewicz, V.		Communication from BP counsel to counsel for NJ Governor, forwarding previous e-mail regarding litigation strategy at request of counsel to NJ Governor	WP
166	7/5/2005	e-mail	Raphael, S.	Fortkiewicz, V.	Burke, G.; Horowitz, R.; Donlon, A.; Picco, S.	Communication from BP counsel to counsel for NJ Governor transmitting work product relating to NJ affidavit for court submission in dispute with Delaware over 1905 Compact	
167	7/5/2005	e-mail	Fortkiewicz, V.	Raphael, S.		Communication from counsel to NJ Governor to BP counsel acknowledging receipt of prior email regarding litigation strategy and noting forthcoming telephone call (attaching prior email string)	WP
168	7/5/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.	Communication from BP counsel to NJ counsel forwarding, and seeking input concerning, work product relating to Crown Landing letter to FERC in response to DNREC letter	WP
169	7/5/2005	e-mail	Burke, G.	Raphael, S.	Horowitz, R.; Kaplan, N.; Renella, J.; Picco, S.	Communication from NJ counsel to BP counsel advising of delay in conference call previously scheduled to discuss litigation strategy	WP
170	7/5/2005	e-mail	Burke, G.	Raphael, S.	Picco, S.	Communication from NJ counsel to BP counsel inquiring about issues in case cited in e-mail and seeking counsel impressions regarding same in relation to dispute with Delaware over 1905 Compact	WP
171	7/5/2005	e-mail	Burke, G.	Raphael, S.	Picco, S.	Communication from NJ counsel to BP counsel in response to e-mail soliciting input on work product relating to Crown Landing letter to FERC	WP
172	7/5/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.; Fortkiewicz, V.	Communication from BP counsel to NJ counsel responding to inquiry about legal issues in case cited in e-mail in relation to dispute with Delaware over 1905 Compact, attaching relevant excerpts from filings in the case cited in e-mail; and providing attorney's legal analysis of pending issues in dispute with Delaware over 1905 Compact and relation to case cited in e-mail	WP
173	7/5/2005	e-mail	Burke, G.	Raphael, S.	Fortkiewicz, V.; Picco, S.	Communication from NJ counsel to BP counsel acknowledging receipt of counsel's input and analysis regarding case cited in prior e-mail	WP
174	7/21/2005	e-mail	Raphael, S.	Fader, P.; Fortkiewicz, V.		Communication from BP counsel to NJ counsel forwarding selected article of possible interest to dispute with Delaware over 1905 Compact	WP

Entry	Date	Type	From	To	CCs	Description	Privilege
175	7/21/2005	e-mail	Burke, G.	Raphael, S.	Jablonski, D.; Renella, J.; Kaplan, N.; Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel attaching work product for court submission in dispute with Delaware over 1905 Compact and soliciting attorney input and analysis on particular legal issue	WP
176	7/21/2005	e-mail	Burke, G.	Raphael, S.	Jablonski, D.; Renella, J.; Kaplan, N.; Horowitz, R.; Andersen, W.; Picco, S.	Communication from NJ counsel to BP counsel attaching work product relating to NJ affidavit for court submission in dispute with Delaware over 1905 Compact	WP
177	7/26/2005	e-mail	Aseltine, P.	Raphael, S.		Communication from NJAG's office to BP counsel attaching work product relating to statement regarding litigation with Delaware over 1905 Compact	WP, AC
178	8/10/2005	e-mail	Raphael, S.	Horowitz, R.	Burke, G.; Renella, J.; Picco, S.	Communication from BP counsel to NJ counsel providing mental impressions of effect of extension of deadline for Delaware's responsive brief on litigation strategy	WP
179	9/13/2005	e-mail	Kelly, E.	Raphael, S.		Communication from NJ counsel to BP counsel requesting copy of specific document potentially relevant to litigation with Delaware over 1905 Compact	WP
180	9/13/2005	e-mail	Raphael, S.	Kelly, E.		Communication from BP counsel to NJ counsel transmitting copy of selected legislation requested in prior e-mail and commenting on same	WP
181	9/13/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.;	Communication from BP counsel to NJ counsel attaching work product relating to BP regulatory filings implicating dispute with Delaware over 1905 Compact	WP
182	9/13/2005	e-mail	Burke, G.	Raphael, S.	Harville, L.; Picco, S.	Communication from NJ counsel to BP counsel in response to prior e-mail transmitting work product (with prior e-mail string)	WP
183	9/22/2005	e-mail	Raphael, S.	Burke, G.; Horowitz, R.	Renella, J.; Donton, A.; Andersen, W.; Picco, S.	Communication from BP counsel to NJ counsel summarizing status of document research work product and actions taken in pursuit of litigation strategy, and attaching selected documents deemed by counsel to be potentially relevant to dispute with Delaware over 1905 Compact	WP
184	9/22/2005	e-mail	Raphael, S.	Andersen, W.	Burke, G.; Horowitz, R.; Picco, S.	Communication from BP counsel to NJ counsel attaching, commenting on and inquiring about selected document of potential relevance to dispute with Delaware over 1905 Compact	WP
185	9/22/2005	e-mail	Raphael, S.	Donton, A.	Andersen, W.; Burke, G.; Picco, S.	Communication from BP counsel to NJ counsel commenting on selected document of potential relevance to dispute with Delaware over 1905 Compact and strategy regarding same	WP

4/25/2006

Privilege Log: Common Interest Communications
(Through January 23, 2006)

Exhibit A
Declaration of Stuart A. Raphael

Entry	Date	Type	From	To	CCs	Description	Privilege
186	9/22/2005	e-mail	Raphael, S.	Burke, G.; Horowitz, R.	Andersen, W.; Donlon, A.; Renella, J.; Picco, S.	Communication from BP counsel to NJ counsel forwarding e-mail from BP counsel (Teichman, M.) which provided update on, and summary of, document research work product and research strategy, and which attached and provided counsel mental impressions of selected documents of potential relevance to dispute with Delaware over 1905 Compact, e-mail to NJ counsel includes BP counsel's comments on same, reflecting mental impressions regarding strategy and relevance to dispute with Delaware	WP
187	9/22/2005	e-mail	Raphael, S.	Burke, G.	Horowitz, R.; Andersen, W.; Donlon, A.; Renella, J.; Picco, S.	Communication from BP counsel to NJ counsel forwarding e-mail from BP counsel to BP counsel (Teichman, M.) and client transmitting, commenting on, and inquiring about selected document deemed by counsel to be potentially relevant to dispute with Delaware and inquiring of NJ counsel about potential follow-up on same	WP
188	9/23/2005	e-mail	Burke, G.	Raphael, S.	Andersen, W.; Donlon, A.; Renella, J.; Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel in response to prior e-mail commenting upon selected document and confirming follow-up	WP
189	9/30/2005	e-mail	Renella, J.	Burke, G.; Horowitz, R.; Raphael, S.	Andersen, W.; Donlon, A.; Picco, S.	Communication from NJ counsel to BP counsel proposing and requesting research strategy relating to documents of potential relevance to dispute with Delaware (attaching prior 9/22/2005 e-mail string from Raphael to Burke and Horowitz)	WP
190	9/30/2005	e-mail	Raphael, S.	Renella, J.; Burke, G.; Horowitz, R.	Andersen, W.; Donlon, A.; Picco, S.	Communication from BP counsel to NJ counsel responding to and commenting on prior e-mail regarding proposed research strategy in relation to litigation with Delaware over 1905 Compact	WP
191	9/30/2005	e-mail	Horowitz, R.	Raphael, S.	Burke, G.; Renella, J.	Communication from NJ counsel to BP counsel regarding legal issues attendant to production of documents requested by Delaware	WP
192	10/5/2005	e-mail	Burke, G.	Picco, S.	Horowitz, R.	Communication from NJ counsel to BP counsel forwarding prior e-mail from Ms. Horowitz, discussing strategy for production of documents requested by Delaware and requesting information from BP regarding same	WP
193	10/7/2005	e-mail	Burke, G.	Picco, S.	Horowitz, R.	Communication from NJ counsel to BP counsel seeking response to request for information in prior e-mail regarding production of documents requested by Delaware	WP
194	10/9/2005	e-mail	Raphael, S.	Renella, J.; Burke, G.; Horowitz, R.	Andersen, W.; Donlon, A.; Picco, S.	Communication from BP counsel to NJ Counsel responding to 9/30/2005 e-mail proposing document research strategy relating to litigation with Delaware and discussing results of same (with prior e-mail string)	WP
195	10/12/2005	e-mail	Horowitz, R.	Picco, S.	Burke, G.; Renella, J.	Communication from NJ counsel to BP counsel requesting advice on legal issues attendant to production of documents requested by Delaware	WP

**Privilege Log: Common Interest Communications
(Through January 23, 2006)**

**Exhibit A
Declaration of Stuart A. Raphael**

Entry	Date	Type	From	To	CCs	Description	Privilege
196	10/13/2005	e-mail	Harville, L.	Horowitz, R.	Burke, G.; Renella, J.; Picco, S.	Communication from BP counsel to NJ counsel providing advice requested in prior e-mail	WP
197	10/14/2005	e-mail	Burke, G.	Harville, L.	Raphael, S.; Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel following up to telephone conference regarding legal issues attendant to document production and requesting reply to inquiry	WP
198	10/17/2005	e-mail	Burke, G.	Harville, L.	Horowitz, R.; Renella, J.; Raphael, S.; Picco, S.	Communication from NJ counsel to BP counsel providing strategy for production of documents to Delaware in light of legal advice received (with prior e-mail string)	WP
199	10/17/2005	e-mail	Harville, L.	Burke, G.	Horowitz, R.; Renella, J.; Raphael, S.; Picco, S.	Communication from BP counsel to NJ counsel confirming legal advice attendant to production of documents requested by Delaware and requesting copies of produced documents	WP
200	10/17/2005	e-mail	Burke, G.	Harville, L.	Raphael, S.; Renella, J.; Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel responding to request for copies of documents and commenting on shared understanding regarding same	WP
201	10/17/2005	e-mail	Harville, L.	Burke, G.	Raphael, S.; Renella, J.; Horowitz, R.; Picco, S.	Communication from BP counsel to NJ counsel acknowledging prior e-mail (attaching prior e-mail string)	WP
202	10/17/2005	e-mail	Raphael, S.	Horowitz, R.; Burke, G.; Andersen, W.	Renella, J.; Picco, S.	Communication from BP counsel to NJ counsel forwarding and explaining e-mail from BP counsel (Teichman, M.) containing selected documents reflecting attorney work product and discussion of counsel's mental impressions of relevance of same to litigation with Delaware, and providing additional mental impressions on same	WP
203	10/17/2005	e-mail	Raphael, S.	Horowitz, R.; Burke, G.; Andersen, W.	Renella, J.; Donlon, A.; Picco, S.	Communication from BP counsel to NJ counsel forwarding and explaining e-mail from BP counsel (Teichman, M.) containing work product in the form of summary of document research results relating to litigation with Delaware	WP
204	10/18/2005	e-mail	Harville, L.	Burke, G.	Raphael, S.; Picco, S.	Communication from BP counsel to NJ counsel discussing DNREC request for documents and stating BP's intended response regarding specific documents	WP
205	10/18/2005	e-mail	Burke, G.	Horowitz, R.	Raphael, S.; Picco, S.	Communication from NJ counsel to BP counsel acknowledging prior e-mail (with e-mail string attached)	WP
206	10/18/2005	e-mail	Horowitz, R.	Harville, L.; Burke, G.	Raphael, S.; Picco, S.	Communication from NJ counsel to BP counsel regarding DNREC document request and organization of documents being produced (with prior e-mail string)	WP

**Privilege Log: Common Interest Communications
(Through January 23, 2006)**

**Exhibit A
Declaration of Stuart A. Raphael**

Entry	Date	Type	From	To	CCs	Description	Privilege
207	10/20/2005	e-mail	Raphael, S.	Horowitz, R.; Burke, G.; Andersen, W.; Donlon, A.; Renella, J.	Picco, S.	Communication from BP counsel to NJ counsel forwarding and explaining e-mail from BP counsel (Teichman, M.) which contains analysis and mental impressions of reference in selected document (identified in 9/22/2005 e-mail from Raphael to Burke) as part of research for litigation with Delaware; BP counsel's e-mail provides additional mental impressions on same and on court filing in case referenced in selected document as related to dispute with Delaware over 1905 Compact (attaching prior e-mail string)	WP
208	10/20/2005	e-mail	Horowitz, R.	Harville, L.	Burke, G.; Renella, J.	Communication from NJ counsel to BP counsel discussing specific document to be produced to Delaware	WP
209	10/20/2005	e-mail	Harville, L.	Horowitz, R.	Burke, G.; Renella, J.	Communication from BP counsel to NJ counsel in response to prior e-mail and providing information on location and producing document (attaching prior e-mail)	WP
210	10/20/2005	e-mail	Horowitz, R.	Harville, L.	Burke, G.; Renella, J.	Communication from NJ counsel to BP counsel in response to prior e-mails discussing efforts to locate and produce document (with prior e-mail string)	WP
211	10/20/2005	e-mail	Harville, L.	Horowitz, R.	Burke, G.; Renella, J.	Communication from BP counsel to NJ counsel in response to prior e-mails providing additional information on specific document (with prior e-mail string)	WP
212	10/21/2005	e-mail	Horowitz, R.	Harville, L.	Burke, G.; Renella, J.	Communication from NJ counsel to BP counsel acknowledging information provided in prior e-mail (with prior e-mail string)	WP
213	10/21/2005	e-mail	Horowitz, R.	Harville, L.		Communication from NJ counsel to BP counsel regarding efforts to locate document discussed in prior e-mails and requesting transmittal of same	WP
214	10/21/2005	e-mail	Harville, L.	Horowitz, R.		Communication from BP counsel to NJ counsel in response to prior e-mail and requesting transmittal information	WP
215	10/21/2005	e-mail	Horowitz, R.	Harville, R.		Communication from NJ counsel to BP counsel providing transmittal information sought in prior e-mail (with prior e-mail string)	WP
216	10/27/2005	e-mail	Raphael, S.	Burke, G.; Horowitz, R.; Renella, J.		Communication from BP counsel to NJ counsel commenting on Delaware court submission in original action and requesting copy of additional court submission	WP
217	10/27/2005	e-mail	Burke, G.	Raphael, S.	Horowitz, R.; Renella, J.	Communication from NJ counsel to BP counsel responding to prior e-mail request for copy of court submission (with prior e-mail string)	WP
218	10/30/2005	e-mail	Raphael	Burke, G.; Horowitz, R.; Renella, J.; Andersen, W.; Donlon, A.	Picco, S.	Communication from BP counsel to NJ counsel transmitting attached BP counsel work product re Compact of 1905 and dispute with Delaware	WP

4/25/2006

Privilege Log: Common Interest Communications
(Through January 23, 2006)

Exhibit A
Declaration of Stuart A. Raphael

Entry	Date	Type	From	To	CCs	Description	Privilege
219	10/31/2005	e-mail	Raphael, S.	Burke, G.; Horowitz, R.; Renella, J.; Andersen, W.; Donlon, A.	Picco, S.	Communication from BP counsel to NJ counsel transmitting attorney work product on court submission in original action against Delaware	WP
220	10/31/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.	Communication from BP counsel to NJ counsel transmitting attorney work product relating to court submission in original action against Delaware and commenting on same	WP
221	11/2/2005	e-mail	Raphael, S.	Horowitz, R.; Renella, J.; Burke, G.	Donlon, A.; Andersen, W.	Communication from BP counsel to NJ counsel regarding documents for court submission in original action against Delaware and attaching and explaining one of the referenced documents	WP
222	11/2/2005	e-mail	Raphael, S.	Horowitz, R.; Renella, J.; Burke, G.	Donlon, A.; Andersen, W.	Communication from BP counsel to NJ counsel attaching another of the documents referenced in prior e-mail for court submission in original action against Delaware	WP
223	11/2/2005	e-mail	Raphael, S.	Horowitz, R.; Renella, J.; Burke, G.	Donlon, A.; Andersen, W.	Communication from BP counsel to NJ counsel attaching additional documents referenced in prior e-mail for court submission in original action against Delaware	WP
224	11/3/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.	Communication from BP counsel to NJ counsel requesting copy of Delaware court submission and seeking information on same	WP
225	11/3/2005	e-mail	Burke, G.	Horowitz, R.; Raphael, S.	Renella, J.; Picco, S.	Communication from NJ counsel to BP counsel and NJ counsel acknowledging 11/3/2005 e-mail request and requesting action on same by Ms. Horowitz	WP
226	11/3/2005	e-mail	Raphael, S.	Burke, G.; Horowitz, R.; Renella, J.	Andersen, W.; Horowitz, R.; Picco, S.	Communication from BP counsel transmitting and commenting upon selected document for possible court submission in original action against Delaware, reflecting counsel's mental impression of relevance of same	WP
227	11/3/2005	e-mail	Raphael, S.	Burke, G.; Horowitz, R.; Renella, J.	Andersen, W.; Picco, S.	Communication from BP counsel attaching different format of document transmitted in prior e-mail (attaching prior e-mail)	WP
228	11/4/2005	e-mail	Raphael, S.	Burke, G.; Horowitz, R.; Renella, J.	Andersen, W.; Donlon, A.; Picco, S.	Communication from BP counsel discussing document research; attaching, analyzing, summarizing and providing attorney mental impressions of selected documents; and transmitting attorney work product relating to court submission in original action against Delaware	WP
229	11/4/2005	e-mail	Horowitz, R.	Raphael, S.	Burke, G.; Renella, J.; Picco, S.	Communication from NJ counsel to BP counsel confirming forthcoming copy of Delaware court submission	WP
230	11/4/2005	e-mail	Raphael, S.	Burke, G.; Horowitz, R.; Renella, J.	Andersen, W.; Donlon, A.; Picco, S.	Communication from BP counsel to NJ counsel re-sending prior 11/4/2005 e-mail and attachments due to possible non-receipt of same	WP

4/25/2006

**Privilege Log: Common Interest Communications
(Through January 23, 2006)**

**Exhibit A
Declaration of Stuart A. Raphael**

Entry	Date	Type	From	To	CCs	Description	Privilege
231	11/4/2005	e-mail	Horowitz, R. Burke, G.; Renella, J.; Raphael, S.	Burke, G.; Renella, J.; Raphael, S.	Andersen, W.; Donlon, A.; Picco, S.	Communication from NJ counsel to BP counsel confirming receipt of prior e-mail (with prior e-mail string)	WP
232	11/4/2005	e-mail	Raphael, S. Horowitz, R.; Burke, G.; Renella, J.	Horowitz, R.; Burke, G.; Renella, J.	Andersen, W.; Donlon, A.; Picco, S.	Communication from BP counsel to NJ counsel attaching different format of selected documents transmitted in prior e-mail	WP
233	11/4/2005	e-mail	Burke, G. Raphael, S.	Raphael, S.	Jablonski, D.; Renella, J.; Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel noting estimated time of transmission of work product for court submission in original action against Delaware	WP
234	11/4/2005	e-mail	Burke, G. Raphael, S.	Raphael, S.	Jablonski, D.; Renella, J.; Horowitz, R.; Picco, S.	Communication from NJ counsel to BP counsel transmitting work product for court submission in original action against Delaware	WP
235	11/5/2005	e-mail	Raphael, S. Burke, G.; Horowitz, R.; Renella, J.	Burke, G.; Horowitz, R.; Renella, J.	Kaplan, N.; Jablonski, D.; Andersen, W.; Donlon, A.; Picco, S.	Communication from BP counsel to NJ counsel commenting on work product on court submission in original action against Delaware and sharing BP counsel's work product on same	WP
236	11/6/2005	e-mail	Burke, G. Raphael, S.	Raphael, S.	Picco, S.	Communication from NJ counsel to BP counsel commenting on and inquiring about BP counsel's work product on court submission in original action against Delaware	WP
237	11/7/2005	e-mail	Raphael, S.	Burke, G.	Picco, S.; Harville, L.	Communication from BP counsel to NJ counsel responding to prior e-mail and explaining reasoning/strategy for particular work product on court submission in original action	WP
238	11/7/2005	e-mail	Jablonski, D. Raphael, S.	Raphael, S.	Donlon, A.; Kelly, E.; Burke, G.; Renella, J.; Horowitz, R.	Communication from NJ counsel to BP counsel transmitting work product on court submission in original action against Delaware	WP
239	11/7/2005	e-mail	Raphael, S.	Jablonski, D.; Burke, G.	Donlon, A.; Kelly, E.; Renella, J.; Horowitz, R.; Andersen, W.	Communication from BP counsel to NJ counsel commenting on work product on court submission in original action against Delaware and transmitting BP counsel's work product on same	WP

Privilege Log: Common Interest Communications
(Through January 23, 2006)

Exhibit A
Declaration of Stuart A. Raphael

Entry	Date	Type	From	To	CCs	Description	Privilege
240	11/7/2005	e-mail	Burke, G.	Jablonski, D.; Raphael, S.	Donlon, A.; Kelly, E.; Renella, J.; Horowitz, R.; Andersen, W.	Communication from NJ counsel to BP counsel commenting on BP counsel's work product and intended strategy for same and for court submission in original action against Delaware	WP
241	11/10/2005	e-mail	Raphael, S.	Aseltine, P.		Communication (2 consecutive e-mails) from BP counsel to NJ counsel providing links to Supreme Court website pages and providing attorney mental impression on relevance of same to litigation strategy	WP
242	11/10/2005	e-mail	Aseltine, P.	Raphael, S.		Communication from NJ counsel to BP counsel acknowledging prior e-mail (with e-mail string attached)	WP
243	11/12/2005	e-mail	Horowitz, R.	Raphael, S.	Burke, G.; Renella, J.	Communication from NJ counsel to BP counsel transmitting Delaware court submission with comment on production of same	WP
244	11/18/2005	e-mail	Raphael, S.	Burke, G.; Horowitz, R.; Renella, J.	Picco, S.; Harville, L.	Communication from BP counsel to NJ counsel transmitting DNREC letter to FERC of potential relevance to dispute with Delaware over 1905 Compact and commenting on same	WP
245	11/18/2005	e-mail	Burke, G.	Raphael, S.; Horowitz, R.; Renella, J.	Harville, L.; Picco, S.	Communication from NJ counsel to BP counsel acknowledging prior e-mail (with e-mail string attached)	WP
246	12/2/2005	e-mail	Burke, G.; Raphael, S.	Raphael, S.; Burke, G.	Renella, J.; Horowitz, R.	Communications between and among NJ counsel and BP counsel attempting to schedule conference among counsel	WP
247	2/12, 12/13/2006	e-mail	Burke, G.; Raphael, S.	Raphael, S.; Burke, G.	Renella, J.; Horowitz, R.	Communications between NJ counsel and BP counsel requesting and scheduling conference	WP
248	12/15/2005	e-mail	Raphael, S.; Burke, G.	Burke, G.; Raphael, S.	Renella, J.; Horowitz, R.	Communication from BP counsel to NJ counsel regarding time for scheduled conference	WP
249	12/28/2005	e-mail	Raphael, S.	Horowitz, R.; Renella, J.	Burke, G.	Communication from BP counsel to NJ counsel inquiring about status of Delaware's court submission	WP
250	12/28/2005	e-mail	Horowitz, R.	Stuart, R.; Renella, J.	Burke, G.	Communication from NJ counsel to BP counsel in response to prior e-mail regarding Delaware court submission	WP
251	12/28/2005	e-mail	Raphael, S.	Horowitz, R.	Burke, G.; Renella, J.	Communication from BP counsel to NJ counsel commenting on Delaware court submission and discussing possible strategy in response to same	WP
252	12/29/2005	e-mail	Horowitz, R.	Raphael, S.	Burke, G.; Renella, J.	Communication from NJ counsel to BP counsel responding to prior e-mail and commenting on possible strategy in response to Delaware court filing	WP
253	12/29/2005	e-mail	Raphael, S.	Horowitz, R.	Burke, G.; Renella, J.; Picco, S.	Communication from BP counsel to NJ counsel in response to prior e-mail and further discussing litigation strategy and requesting conference call for further discussion of same	WP

Entry	Date	Type	From	To	CCs	Description	Privilege
254	12/29/2005	e-mail	Horowitz, R.	Raphael, S.	Burke, G.; Renella, J.; Picco, S.	Communication from NJ counsel to BP counsel responding to prior e-mail and request for conference call and commenting on possible litigation strategy	WP
255	1/2/2006	e-mail	Raphael, S.	Horowitz, R.; Renella, J.; Burke, G.; Kaplan, N.	Andersen, W.; Donlon, A.; Jablonski, D.; Kelly, E.	Communication from BP counsel transmitting work product on court submission in original action against Delaware and providing analysis of strategy for filing same	WP
256	1/2/2006	e-mail	Raphael, S.	Fader, P.		Communication from BP counsel to counsel to NJ Governor forwarding prior email to Horowitz, et al. (with attached work product) and commenting on proposed litigation/filing strategy	WP
257	1/3/2006	e-mail	Raphael, S.	Horowitz, R.	Renella, J.; Burke, G.	Communication from BP counsel to NJ counsel transmitting work product on court submission in original action against Delaware and commenting on/explaining same	WP
258	1/6/2006	e-mail	Raphael, S.	Horowitz, R.	Renella, J.; Kelly, E.; Jablonski, D.	Communication from BP counsel to NJ counsel inquiring about status of work product on court submission in original action against Delaware	WP
259	1/6/2006	e-mail	Horowitz, R.	Raphael, S.	Burke, G.	Communication from NJ counsel to BP counsel responding to prior inquiry and noting proposed timing for transmittal of work product on court submission	WP
260	1/6/2006	e-mail	Kelly, E.	Raphael, S.	Donlon, A.; Jablonski, D.; Burke, G.; Renella, J.; Horowitz, R.; Andersen, W.	Communication from NJ counsel to BP counsel transmitting work product on court submission in original action against Delaware and commenting on same	WP
261	1/6/2006	e-mail	Raphael, S.	Burke, G.; Renella, J.; Horowitz, R.; Andersen, W.; Kelly, E.; Donlon, A.; Jablonski, D.		Communication from BP counsel to NJ counsel transmitting work product on court submission in original action against Delaware and commenting on/explaining strategy for same	WP
262	1/20/2006	e-mail	Raphael, S.	Burke, G.; Horowitz, R.; Renella, J.		Communication from BP counsel to NJ counsel commenting on Supreme Court weekly conference and schedule in relation to original action against Delaware	WP
263	1/23/2006	e-mail	Raphael, S.	Burke, G.; Horowitz, R.; Renella, J.		Communication from BP counsel to NJ counsel concerning Court's order list and requesting conference call to discuss same	WP

4/25/2006

**Privilege Log: Common Interest Communications
(Through January 23, 2006)**

**Exhibit A
Declaration of Stuart A. Raphael**

Entry	Date	Type	From	To	CCs	Description	Privilege
264	1/23/2006	e-mail	Burke, G.	Raphael, S.	Horowitz, R.; Renella, J.	Communication from NJ counsel to EP counsel acknowledging receipt of prior e-mail and agreeing to conference call (with prior e-mail)	WP

4/25/2006

**Hunton Williams'
Client Workroom
(as of 4/4/2006)**

**Exhibit A
Declaration of Stuart A. Raphael**

Pleadings - Final (29 documents)
Transcripts (1 document)
Articles (155 documents)
Pleadings - Draft (2 documents)
Correspondence (28 documents)
Delaware Legislature (6 documents)
Delaware Permits (78 documents)
Federal Permitting, BP Crown Landing (71 documents)
Maps (2 documents)
Memos (2 documents)
New Jersey Legislature (13 documents)
NJ-Del Agreements (1 document)
Legal Research (531 documents)

Personnel in Office of Attorney General with access:

William Andersen, Peter Aseltine, Gerard Burke, Helene Chudzik, Amy Donlon, Julie Goldman, Rachel Horowitz, Dean Jablonski, Eileen Kelly, John Renella, Brian Weeks, Lewin Weyl

Personnel in Office of Governor with access:

Victor Fortkiewicz

4/25/2006

**Personnel Identified
in Privilege Log**

**Exhibit A
Declaration of Stuart A. Raphael**

First Name	Last Name	Office	Title	Location
William E.	Andersen	New Jersey Office of the Attorney General	Deputy Attorney General	Trenton, New Jersey
Stacey Daniel	Arbaugh Belin	Princeton Public Affairs Group ERM, Inc. (consultant to BP America Inc.)	Assistant to Mr. Pascrell Consultant	Trenton, New Jersey Annapolis, Maryland
William J. Peter	Pascrell, III Aseltine	Princeton Public Affairs Group New Jersey Office of the Attorney General	Partner Public Information Officer	Trenton, New Jersey Trenton, New Jersey
Virginia	Bauer	New Jersey Commerce, Economic Growth and Tourism Commission	CEO and Secretary	Trenton, New Jersey
Gerard	Burke	New Jersey Office of the Attorney General	Assistant Attorney General	Trenton, New Jersey
John J. Bradley	Burzichelli Campbell	New Jersey General Assembly New Jersey Department of Environmental Protection	Assemblyman, Dist. No. 3 Commissioner	Trenton, New Jersey Trenton, New Jersey
Helene	Chudzik	New Jersey Office of the Attorney General	Deputy Attorney General	Trenton, New Jersey
Leana	Crowther	New Jersey General Assembly	Assistant to Assemblyman Burzichelli	Trenton, New Jersey
Sean	Darcy	New Jersey Office of the Governor	Deputy Press Secretary	Trenton, New Jersey
Amy C.	Donlon	New Jersey Office of the Attorney General	Deputy Attorney General	Trenton, New Jersey
Mariellen	Dugan	New Jersey Office of the Attorney General	Assistant Attorney General	Trenton, New Jersey
Paul T.	Fader	New Jersey Office of the Governor	Chief Counsel to the Governor	Trenton, New Jersey
Mark	Fleming	New Jersey Office of the Governor	Assistant Counsel to the Governor	Trenton, New Jersey
Victor A.	Fortkiewicz	New Jersey Office of the Governor	Assistant Counsel to Governor	Trenton, New Jersey
Julie	Goldman	New Jersey Office of the Attorney General	Attorney assistant	Trenton, New Jersey
Elisa	Hartpence	New Jersey Office of the Attorney General	Assistant to Attorney General	Trenton, New Jersey
Peter C.	Harvey	New Jersey Office of the Attorney General	Attorney General	Trenton, New Jersey
Lisa D. Kelly	Harville Heck	Assistant Counsel New Jersey Office of the Governor	BP America Inc. Press Officer	Houston, Texas Trenton, New Jersey

4/25/2006

**Personnel Identified
in Privilege Log**

**Exhibit A
Declaration of Stuart A. Raphael**

First Name	Last Name	Office	Title	Location
Rachel	Horowitz	New Jersey Office of the Attorney General	Deputy Attorney General	Trenton, New Jersey
Dean	Jablonski	New Jersey Office of the Attorney General	Deputy Attorney General	Trenton, New Jersey
Nancy	Kaplen	New Jersey Office of the Attorney General	Director; Acting Attorney General	Trenton, New Jersey
Eileen P.	Kelly	New Jersey Office of the Attorney General	Deputy Attorney General	Trenton, New Jersey
John E.	McCormac	New Jersey Department of the Treasury	State Treasurer	Trenton, New Jersey
Steven J.	Picco	Reed Smith LLP	Partner	Trenton, New Jersey
Stuart A.	Raphael	Hunton & Williams LLP	Partner	McLean, Virginia
John R.	Renella	New Jersey Office of the Attorney General	Deputy Attorney General	Trenton, New Jersey
Gregg S.	Roden	BP America Inc.	Assistant Counsel	Houston, Texas
Lauren B.	Segal	Crown Landing LLC	Vice President	Houston, Texas
Gary	Shute	BP America Inc.	Regional Vice President	Towson, Maryland
Lawrence	Stanley	New Jersey Office of the Attorney General	Assistant Attorney General	Trenton, New Jersey
David S.	Swayze	Parkowski, Guerke & Swayze, P.A.	Partner	Wilmington, Delaware
Michael W.	Teichman	Parkowski, Guerke & Swayze, P.A.	Partner	Wilmington, Delaware
Brian	Weeks	New Jersey Office of the Attorney General	Deputy Attorney General	Trenton, New Jersey
Lewin	Weyl	New Jersey Office of the Attorney General	Deputy Attorney General	Trenton, New Jersey

Number 134, Original

In The
SUPREME COURT of the UNITED STATES

STATE OF NEW JERSEY,

Plaintiff,

v.

STATE OF DELAWARE,

Defendant.

RESPONSES OF PLAINTIFF STATE OF NEW JERSEY
TO FIRST SET OF INTERROGATORIES FROM
DEFENDANT STATE OF DELAWARE

ZULIMA V. FARBER
Attorney General

RACHEL J. HOROWITZ*
Deputy Attorney General
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1. New Jersey objects to the Interrogatories to the extent that they call for information protected by the attorney-client privilege, the work product privilege, or any applicable privilege.

2. New Jersey objects to the Interrogatories to the extent that they seek disclosure of information prepared in anticipation of litigation or prepared for trial without making the showing required by Rule 26(b) of the federal Rules of Civil Procedure.

3. Information as to which a privilege could be asserted shall not constitute a waiver of any claim or privilege that the Plaintiff may have as to any other information, and New Jersey reserves the right to recall any such privileged documents inadvertently produced.

4. New Jersey objects to the Interrogatories to the extent that the Defendant seeks material not in New Jersey's possession, custody, or control. Without limiting the generality of the foregoing objection, New Jersey further objects to the Interrogatories to the extent that they seek information in the possession, custody or control of the Defendant.

5. New Jersey objects to the Interrogatories to the extent that they are overly broad, unduly burdensome or both.

6. New Jersey objects to the Interrogatories to the extent that they are vague and ambiguous.

7. New Jersey objects to the Interrogatories to the extent that they seek attorney-work product or legal conclusions.

8. New Jersey objects to the Interrogatories to the extent that they seek information that is not relevant to any claim or defense of any party.

9. New Jersey objects to the Interrogatories to the extent that they are not restricted to a reasonable or relevant time frame. Without limiting the generality of the foregoing objection, New Jersey further objects to the interrogatories to the extent that they seek information prior to the period of time relevant to this matter.

10. New Jersey objects to the Interrogatories to the extent that they seek confidential or proprietary information.

11. Any disclosure by the New Jersey in response to an otherwise objectionable Interrogatory shall neither be deemed nor constitute a waiver of New Jersey's general objections.

12. New Jersey's responses to the Interrogatories reflect its understanding of the facts and circumstances as of the date set forth herein, based on an ongoing and duly diligent investigation. New Jersey reserves the right to supplement and amend its responses to the Interrogatories where necessary or appropriate including, but not limited to, producing documents or information subsequently located, inadvertently omitted or misidentified in these responses.

13. Unless indicated otherwise, Bates number references shall refer not only to the page number stated but all pages thereafter which are part of the document cited.

The following specific responses and objections are subject to the foregoing general responses and objections.

INTERROGATORY RESPONSES

1. Identify and describe each Person answering or providing information or Documents to assist in answering each Interrogatory.

RESPONSE: New Jersey objects to the interrogatory to the extent it seeks information protected by the work-product privilege and seeks information which is irrelevant or not calculated to lead to the discovery of relevant information. Additionally, New Jersey objects to the interrogatory to the extent it implies the need to identify actual persons providing factual information in response to those questions that seek to establish facts pertaining to documents which in some case may be over one hundred years old and which may need to be addressed based upon historical documents equally available to all. Without waiving this objection, New Jersey shall provide for each interrogatory the identity of any person other than counsel or counsel's staff who has provided factual information from personal knowledge or has provided documents within their custody or control.

2. Identify and describe each person whom you expect to call as a fact witness or upon whose testimony you expect to reply in this action, and describe the subject matter on which each Person is expected to provide testimony.

RESPONSE:

- A. Richard G. Castagna
Manager, Bureau of Tidelands Management
New Jersey Department of Environmental Protection (NJDEP)
P.O. Box 439
Trenton, New Jersey 08625
(609) 292-2573

Mr. Castagna shall describe the types of riparian activities along New Jersey's coast which require a riparian instrument or approval from the Tidelands Resource Council as well as the types of riparian instruments issued by the Council and its

predecessor Boards and Commissions. Mr. Castagna shall identify the municipalities located within the Twelve Mile Circle. As records custodian for the Tidelands Resource Council, Mr. Castagna shall testify to the authenticity of documents in the custody of the Council and its staff; shall identify and describe the instruments known to be issued by the Council or its predecessor Boards or Commissions for riparian uses outshore of New Jersey's mean low water line within the Twelve Mile Circle; shall describe the riparian uses permitted pursuant to those instruments, and shall describe any pertinent testimony received by the Council or its predecessor entities that pertain to these riparian uses. As supervisor of staff who coordinate with local municipalities to identify existing riparian uses requiring Council approval, Mr. Castagna shall identify those riparian uses within the Twelve Mile Circle taxed by the municipalities in which they are located.

B. David Q. Risilia
Principal Environmental Specialist, Coastal Resources
Site Remediation and Waste Management Program
Office of Dredging and Sediment Technology
New Jersey Department of Environmental Protection
401 East State Street
Trenton, New Jersey 08625
(609) 292-9342

Mr. Risilia shall describe the types of riparian activities along New Jersey's coast for which NJDEP requires a permit; shall describe the physical attributes and functions of the BP Crown Landing Facility as contained in BP's permit application to NJDEP; and shall describe the nature and scope of the BP Crown Landing Facility approval recently issued by the Federal Energy Regulatory Commission (FERC).

C. Kevin Broderick
Manager, Bureau of Coastal Regulation
Division of Land Use Regulation
New Jersey Department of Environmental Protection
501 East State Street
Trenton, New Jersey 08625
(609) 984-3444

Mr. Broderick shall describe the types of riparian activities over which NJDEP asserts jurisdiction under the State's Coastal Zone Management program and the State's Waterfront Development Act; and identify and describe the activities and projects on the New Jersey side of the Delaware River within the Twelve Mile Circle for which NJDEP has issued permits.

D. Ruth Ehinger
Manager, Office of Coastal Management
New Jersey Department of Environmental Protection
401 East State Street
Trenton, New Jersey 08625
(609) 633-2201

As former Manager of the State's Coastal Permitting Program, Ms. Ehinger shall describe the types of riparian activities over which NJDEP asserted jurisdiction under the State's Coastal Zone Management program and the State's Waterfront Development Act.

E. Suzanne U. Dietrick
Chief, Office of Dredging and Sediment Technology
Site Remediation and Waste Management Program
New Jersey Department of Environmental Protection
401 East State Street
Trenton, New Jersey 08625
(609) 292-8838

Ms. Dietrick shall describe the type of projects proposed in applications received by her office and the type of permits issued by her office to such applicants and shall further describe her communications regarding these projects.

F. Jeffrey T. Reading
Assistant Director, Division of Waster Quality
New Jersey Department of Environmental Protection
401 East State Street, Floor 3E
Trenton, New Jersey 08625
(609) 292-4543

Mr. Reading shall describe the purpose of New Jersey's Pollution Discharge Elimination System (NJPDES) Program; describe the type of activities for which these permits are issued; and shall identify and describe the NJPDES permits issued for discharges from facilities located on the New

Jersey shore of the Delaware River where the outfall pipe extends below the mean low water line of the Delaware River within the Twelve Mile Circle.

G. Frederick Sickels
Assistant Director, Division of Water Supply
Water Supply Permitting Element
New Jersey Department of Environmental Protection
401 East State Street
Trenton, New Jersey 08625
(609) 292-2957

Mr. Sickels shall describe the activities regulated by the Bureau of Water Allocation and its New Jersey predecessor entities; the procedures for applications received by the Bureau; the nature of the activities the Bureau regulates that occur below the mean low water mark of the Delaware River; and the permits issued by the Bureau for regulated activities within the Twelve Mile Circle.

H. William Muzynski
Chief, Project Review
Delaware River Basin Commission
25 State Police Drive
West Trenton, New Jersey 08628
(609) 883-9500

Mr. Muzynski shall describe the type of activities and/or projects concerning which the Delaware River Basin Commission receives notification; and shall identify and describe those activities within the Twelve Mile Circle on the New Jersey side of the Delaware River for which the Commission has issued permits.

I. Joseph Miri
Chief, Office of Water Policy
Division of Water Supply
New Jersey Department of Environmental Protection
401 East State Street
Trenton, New Jersey 08625
(609) 292-7219

Mr. Miri shall describe the type of permit applications for which the Delaware River Basin Commission receives notification and the inter-agency procedure concerning these

applications; and shall identify and describe those activities within the Twelve Mile Circle on the New Jersey side of the Delaware River for which the Commission has issued permits.

J. Steven C. Whitney
27 Mourning Dove Lane
Little Deer Isle, Maine 04650

Mr. Whitney shall describe the past policy and practice of New Jersey's Coastal Management Program with respect to regulating and approving activities proposed within the Twelve Mile Circle; and the circumstances concerning the Department's decision to abandon pursuit of a Memorandum of Agreement between New Jersey and Delaware concerning such activities.

3. Identify and describe each Person whom you expect to use as an expert witness in this action, and for each Person, describe the subject matter on which the expert is expected to give testimony about, the substance of the facts and opinions to which the expert is expected to give testimony about, a summary of the grounds for each opinion, and the educational background and work experience that qualifies the Person to give testimony as an expert witness.

RESPONSE: New Jersey shall provide this information when, and if, expert testimony becomes necessary in this matter.

4. Identify and describe each project under consideration or pending for approval by New Jersey regarding construction within the Twelve-Mile Circle.

RESPONSE: New Jersey objects to this Interrogatory because it seeks information irrelevant to disposition of "No.134, Original" and information pertaining to Delaware's Proposed Issue of Fact No. 1 that was struck pursuant to the June 13, 2006 Order of the Special Master.

5. Identify and describe all communications between BP and New Jersey concerning:
- (a) *New Jersey v. Delaware III*;
 - (b) The 1905 compact;
 - (c) New Jersey's Coastal Zone Act;
 - (d) Delaware's Coastal Zone Act;
 - (e) riparian jurisdiction and rights;

- (f) Delaware's regulatory authority of Delaware Territory in the Delaware River;
- (i) [sic] alternative locations for an LNG Facility in New Jersey outside Delaware Territory in the Delaware River.

RESPONSE: New Jersey objects to this interrogatory because it seeks information irrelevant to disposition of "No.134, Original" and information pertaining to Delaware's Proposed Issues of Fact No.1, No. 2 and No.9 that were struck pursuant to the June 13, 2006 Order of the Special Master. However, to the extent that the requested information concerns the scope and nature of the BP Crown Landing Facility approved by the Federal Energy Regulatory Commission (FERC) on June 15, 2006 and concerns BP's pending application to the Department of Environmental Protection (DEP) for approval of that facility, New Jersey responds:

DEP's file concerning BP's application was produced for Delaware counsel's inspection on October 5 and 6, 2005 at DEP's offices, and remaining file documents were provided to Delaware under cover of a letter dated October 19, 2005. All communications postdating October 6, 2005 related to the BP application are attached hereto, NJ-107 to NJ-108; NJ-1007 to NJ-1008; NJ-1011 to NJ-1012; NJ-1015 to NJ-1016; NJ-1069 to NJ-1073; NJ-1075 to NJ-1089; NJ-1737 to NJ-1911; NJ-1919 to NJ-2055, plus Appendix 31.

David Risilia (DEP-Land Use), Kevin Broderick (DEP-Land Use), Suzanne Dietrick (DEP-Land Use), Jeffrey Reading (DEP, NJPDES), Frederick Sickels (DEP-Water Alloc), William Muzynski (DRBC).

- 6. Identify and describe all communications between any Third Party and New Jersey concerning:
 - (a) Delaware's regulatory authority in the Twelve Mile Circle;
 - (b) The 1905 compact;
 - (c) New Jersey v. Delaware III;
 - (d) the pier associated with the Penns Grove Project;
 - (e) casinos in the Twelve Mile Circle;

RESPONSE: New Jersey objects to this interrogatory on the grounds that it seeks public records available to the Defendant; that it seeks information deemed irrelevant to the litigation pursuant to the June 13, 2006 Order of the Special

Master; that it seeks information from persons and entities that are not under the supervision or control of the State of New Jersey; that it seeks information from persons and entities who are unauthorized to represent the official position of New Jersey with respect to issues in this litigation or otherwise legally bind the State in any way; that response to the interrogatory as phrased is excessively and unreasonably costly and burdensome; and that a response to the interrogatory as phrased is not reasonably calculated to produce evidence relevant to the meaning of the 1905 Compact.

As used in these interrogatories, "New Jersey" refers to all current and former elected officials of state and federal legislatures and all county and local governments; to all departments, political subdivisions, agencies boards, officials or attorneys associated with the State; to any employee, official or elected representative of any county, municipality and Township in New Jersey; and to any person or business acting on behalf of the State in an official or unofficial capacity. "Third parties" refers to everyone else.

Thus, Defendant is asking for information in the possession of any person (living or deceased) ever elected to represent New Jersey in any federal, state, county or local office; from any person (living or deceased) ever employed by any of New Jersey's 21 Counties and 566 municipalities; and from any person or business ever retained to perform any function whatsoever on behalf of the State, county or local government and these persons' communications with literally anyone else that "concern" certain topics.

New Jersey does not have the resources at hand to identify all such persons and to solicit this information from them, nor is Plaintiff obligated to seek discovery from persons and entities it neither legally represents nor supervises or controls.

Without waiving any of the foregoing objections, New Jersey responds:

See all documents identified in these interrogatories, including approvals issued by the Army Corps, Philadelphia District within the Twelve Mile Circle (NJ-01 to NJ-99 and NJ-418 to NJ-613); articles from Every Evening; Evening Journal; Journal Every Evening; Morning News; Philadelphia Inquirer;

and Sunday Star listed in the attached four page index, also submitted in response to Interrogatory #7; articles from the Newark Evening News, Sunday Star Ledger, The Democrat, The Trenton Times, The New York Times, the Delaware Public Archives, the Delaware Historical Society, and other documents appearing in the attached seven-page index; as well as all documents provided in response to Delaware's request for Production of Documents.

7. Identify and describe all communications, discussions, or negotiations concerning Delaware or New Jersey's regulatory jurisdiction over the Twelve Mile Circle and/or concerning the 1905 Compact with any Third Party including but not limited to NOAA, DRBC, FERC, EPA, Fenwick Commons, El Paso, Keystone, the United States Coast Guard; and Delaware.

RESPONSE: New Jersey objects to the interrogatory because it is grossly overbroad and, thus, not calculated to retrieve information relevant to the issues in "No.134, Original." Without waiving these objections or New Jersey's opposition to Delaware's claim of jurisdiction over riparian improvements appurtenant to New Jersey land, New Jersey provides the following list of "communications" with "third parties" that "concern" the 1905 Compact and/or the regulatory jurisdiction of New Jersey within the Twelve Mile Circle and/or the regulatory jurisdiction of Delaware within the Twelve Mile Circle:

- A. Documents utilized in *New Jersey v. Delaware I* (plaintiff's case) previously supplied, documents provided under cover of letter dated July 14, 2006 from D.A.G. William Andersen to David C. Frederick, Esq; Motion documents provided by Delaware under cover of letter dated January 3, 2006 (NJ-946 to NJ-969);
- B. Documents utilized in *New Jersey v. Delaware II*; (not provided, as Delaware has advised it already has these documents);
- C. Pleadings and all other documents filed in *New Jersey v. Delaware III*;
- D. Documents obtained by Amy Donlon, D.A.G., in response to New Jersey's FOIA Request to Delaware dated May 17, 2005 (Appendix 12; Documents provided to Delaware on September 23, 2005);
- E. DEP's file documents concerning BP's application produced for Delaware on October 5 and 6, 2005 at DEP's offices;

- F. Remaining DEP file documents provided to Delaware October 19, 2005;
- G. DEP file documents concerning BP's application that postdate October 6, 2005 (NJ-107 to NJ-108; NJ-1007 to NJ-1008; NJ-1011 to NJ-1012; NJ-1015 to NJ-1016; NJ-1069 to NJ-1073; NJ-1075 to NJ-1089 and NJ-1737 to NJ-1911; NJ-1919 to NJ-2055 plus Appendix 31);
- H. DEP submissions to FERC (NJ-107 to NJ-108; NJ-1081 to NJ-1089; NJ-1007 to NJ-1008; NJ-1013 to NJ-1014);
- I. DEP submissions to NOAA (NJ-109 to NJ-417);
- J. All documents produced by New Jersey to Delaware identified in the October 19, 2005 letter from D.A.G. Rachel Horowitz to Max Walton, Esq., (Connolly Bove Lodge & Hutz LLP);
- K. All riparian instruments, permits and approvals issued by any Department, Division or Bureau of the State of New Jersey for any activity within the Twelve Mile Circle, as identified in the affidavits of Richard Castagna (Appendix 5; Appendix 6; CD Index of Licenses and Grants by Location provided to Delaware on September 23, 2005; CD of Surveys Attached to Tidelands Applications for Licenses and Grants within the Twelve Mile Circle provided to Delaware October 5, 2005; licenses for dredging and placement of rip-rap to E.I. Du Pont de Nemours issued July 11, 2006 (NJ-1723 to NJ-1736); NJ-939 to NJ-945); Jeffrey Reading (Appendix 7 & NJ-1150 to NJ-1440); Frederick Sickels (Appendix 8 & NJ-1441 to NJ-1474); Kevin Broderick (Appendix 9, NJ-109 to NJ-417 and NJ-1476 to NJ-1722), and as described in New Jersey's Response to Delaware's Request for Documents;
- L. Permits sought and/or issued by the ACOE Philadelphia District for riparian improvements on the Delaware River in the Twelve Mile Circle area (NJ-01 to NJ-99; NJ-418 to NJ-613).
- M. Newspaper articles or editorials (NJ-677, NJ-682, NJ-687, NJ-690, NJ-692, NJ-695, NJ-696, NJ-700, NJ-702; NJ-704, NJ-706, NJ-716, NJ-718, NJ-723, NJ-774 to NJ-841, NJ-982);
- N. Four page list of articles attached hereto from Every Evening; Evening Journal; Journal Every Evening; Morning News; Philadelphia Inquirer; and Sunday Star;
- O. Seven page list of articles from the Newark Evening News, Sunday Star Ledger, The Democrat, The Trenton Times, The New York Times, documents from the Delaware Public

- Archives, the Delaware Historical Society, and other sources;
- P. Documents by Clarence Southerland and Attorney General Green, State of Delaware (NJ-25 to NJ-30; NJ-745 to NJ-730); and
- Q. All other documents provided in New Jersey's response to Delaware's request for Documents.

New Jersey has been unable to locate the *El Paso* file in its archives.

David Risilia (DEP-Land Use); Kevin Broderick (DEP-Land Use), Suzanne Dietrick (DEP-Land Use); Jeffrey Reading (DEP-NJPDES); Richard Castagna (Tidelands); Frederick Sickels (DEP-Water Alloc); William Muzynski (DRBC); Joseph Miri (DEP-DRBC); Ruth Ehinger (DEP-Coastal); Narinder Ajhuda (DEP-NOAA).

8. Identify and describe all approvals requested or required by New Jersey for the Crown Landing Facility. For each, identify and describe whether and when the approval has been granted; or, if not, describe any deficiencies in BP's application for such requested or required approval.

RESPONSE: New Jersey objects to this interrogatory because it seeks information irrelevant to disposition of "No.134, Original" and information pertaining to Delaware's Proposed Issue of Fact No.9 that was struck pursuant to the June 13, 2006 Order of the Special Master. Without waiving this objection, New Jersey responds:

The BP Crown Landing Facility requires the following approvals from NJDEP: a Waterfront Development Permit, a riparian instrument (a grant or lease of tidelands), a federal Coastal Consistency Determination and a Water Quality certificate, as well as any other New Jersey approvals referenced in the NJDEP letters describing deficiencies. The deficiencies in BP Crown Landing's application are described in a letter from NJDEP to David Blaha dated February 4, 2005 (NJ-1090 to NJ-1121); a letter from NJDEP to David Blaha dated May 24, 2005 (NJ-1011 to NJ-1012, Appendix 31); a letter from NJDEP to FERC dated April 19, 2005 (NJ-1081 to NJ-1089); a letter from NJDEP to David Blaha dated October 19, 2005 (NJ-1901); and a letter from NJDEP to FERC dated June 13, 2006 (NJ-107 to NJ-108).

David Risilia (DEP-Land Use), Suzanne Dietrick (DEP-Land Use).

9. Identify and describe every project completed after 1905 and purportedly authorized by New Jersey that extended from the New Jersey shore into the Twelve Mile Circle that extended more than 250 feet into Delaware Territory or required the dredging of more than 200,000 cubic yards of Delaware's subaqueous soil. Identify and Describe all documents relating thereto.

RESPONSE: New Jersey objects to the interrogatory on the grounds that it does not issue "purported" authorizations or permits. As to permits and approvals issued by New Jersey for activities described in this interrogatory, see documents described in the affidavit of affidavits of Richard Castagna (Appendix 5; Appendix 6; CD Index of Licenses and Grants by Location provided to Delaware on September 23, 2005; CD of Surveys Attached to Tidelands Applications for Licenses and Grants within the Twelve Mile Circle provided to Delaware October 5, 2005; Dredging License issued to E.I. Du Pont de Nemours (06-0105-T) and a license for placement of rip-rap to E.I. Du Pont de Nemours (06-0106-T) issued July 11, 2006 (NJ-1723 to NJ-1736); and NJ-939 to NJ-945); Jeffrey Reading (Appendix 7 & NJ-1150 to NJ-1440); Frederick Sickels (Appendix 8 & NJ-1441 to NJ-1474); Kevin Broderick (Appendix 9 and Waterfront Development permit, Freshwater Wetlands permit and Water Quality Certificate issued to DuPont in 2006, NJ-1476 to NJ-1722), and all documents identified in New Jersey's Interrogatory response #7. In addition, see permits issued to DuPont Chambers Works, NJ-1122 to NJ-1134; to the Penns Grove Sewerage Authority, NJ-1142 to NJ-1149 and to BF Goodrich, NJ-1135 to NJ-1141. See also NJ-01 to NJ-99; NJ-418 to NJ-613, approvals issued by the Philadelphia District of Engineers for projects within the Twelve Mile Circle. There are no other "completed projects" of the type described in this interrogatory that are known to New Jersey at this time.

Jeffrey Reading (NJDEP, NJPDES); Richard Castagna (Tidelands); Kevin Broderick (NJDEP-Land Use); Frederick Sickels.

10. Identify and describe any and all instances in which New Jersey has raised any objection to Delaware's authority to regulate within the Twelve Mile Circle.

RESPONSE: New Jersey objects to the form of the interrogatory because it presumes that the State of Delaware has legal authority to regulate within the Twelve Mile Circle in all instances, including regulation of activities above the Mean

Low Water Line on the New Jersey side of the Delaware River, and to regulate any and all riparian uses and structures appurtenant to New Jersey land. Furthermore, the interrogatory improperly assumes that an "objection" by New Jersey was appropriate or necessary: from the 1800's to present and until 2005, no Delaware action within the Twelve Mile Circle conflicted with New Jersey's exercise of jurisdiction.

Without waiving this objection, New Jersey responds:

New Jersey has objected to Delaware's "authority to regulate within the Twelve-Mile Circle" in the following:

- A. proceedings in *New Jersey v. Delaware I* from 1877 to 1905;
- B. proceedings in *New Jersey v. Delaware II*, from 1929 to 1935;
- C. proceedings in *New Jersey v. Delaware III*, Original, No. 134;
- D. a letter from NJDEP to David Blaha, consultant, BP Crown Landing, dated May 24, 2005 (NJ-1011 to NJ-1012);
- E. a letter from NJDEP to FERC dated May 25, 2005 (NJ-1007 to NJ-1008);
- F. a letter from NJDEP to FERC, dated June 13, 2005 (NJ-107 to NJ-108);
- G. a letter from NJDEP to Kevin Donnelly, DNREC dated March 29, 2006 (NJ-104-106);
- H. a letter from Paul Fader, Counsel to Governor Codey, to Joseph Schoell, Counsel to Governor Minner, dated April 11, 2005 (Appendix 3);
- I. a letter from Assemblyman Burzichelli to Governor Minner, dated February 16, 2005 (NJ-1005 to NJ-1006);
- J. New Jersey Assembly Resolution No. 260, adopted May 2, 2005 (Appendix 32);
- K. New Jersey Senate Resolution No. 100, introduced May 19, 2005 (Appendix 33);
- L. New Jersey Assembly Bill No. A-4287 (Appendix 40);
- M. a letter from NJDEP to Kevin Donnelly, DNREC, dated March 29, 2006 (NJ-104 to NJ-106);
- N. *New Jersey v. Federanko*, 139 A.2d 30 (N.J. 1958); and
- O. *Main Assocs, Inc. v. B & R Enters., Inc.*, 181 A.2d 541 (N.J. Super.Ct., Ch.Div., 1962).

David Risilia (NJDEP-Land Use); Kevin Broderick (NJDEP-Land Use); Suzanne Dietrick (NJDEP-Land Use); Jeffrey Reading (NJDEP-NJPDES); Richard Castagna (Tidelands); Frederick

Sickels (NJDEP-Water Alloc); William Muzynski (DRBC); Joseph Miri (NJDEP-DRBC); Ruth Ehinger (NJDEP-Coastal); Narinder Ahuja (NJDEP-NOAA); and Leana Crowther (Aide to Assemblyman Burzichelli).

11. Identify and describe any and all instances in which New Jersey has applied to Delaware for a permit to build a project within the Twelve Mile Circle.

RESPONSE: In 1996, NJDEP issued a Waterfront Development Permit to the Division of Parks and Forestry, State of New Jersey to rehabilitate a deteriorated crib pier at Fort Mott State Park in Elsinboro Township in connection with a joint project to reestablish historical ferry service between the two states. The New Jersey Division of Parks and Forestry obtained a DNREC subaqueous lands lease for construction of the project. See, Broderick Affidavit, ¶14 (Appendix 9); Donlon Affidavit, ¶20 (Appendix 12). New Jersey previously produced for Delaware the Division's file concerning Fort Mott.

Kevin Broderick (NJDEP-Land Use); Bruce Stoneback (NJDEP-Land Use); NJDEP Custodian of Records (Parks and Forestry).

12. Identify and describe all actions that New Jersey has undertaken to implement Article IV of the 1905 Compact, including but not limited to, adopting uniform fishing laws. Identify and Describe all Documents relating thereto.

RESPONSE: New Jersey objects to the form of this question because it suggests that specific action was needed to implement Article IV of the 1905 Compact, when no such specific action was required. See *Ampro Fisheries, Inc. v. Yaskin*, 606 A. 2d 1099 (N.J. 1992), cert. den. 506 U.S. 954 (1992).

Notwithstanding this objection, and without waiver of it, as a result of Article IV, New Jersey adopted fishing laws in 1907. New Jersey Laws of 1907, Chapter 131 (NJ-1031 to NJ-1035). The preamble to this law recites that it was enacted pursuant to the Compact and the law provided that it would not become operative until the Delaware Legislature passed a similar law. Since Delaware did not adopt the same law and the States never adopted uniform fishing laws thereafter, the two states each retained authority to enact fishing laws

applicable within the Delaware River and Bay. See *Ampro Fisheries*, supra. See also Delaware Attorney General Opinion No. 68-058 (NJ-1019 to NJ-1020); Delaware Attorney General's letter to Delaware Board of Fish and Game Commissioners, dated September 11, 1946 (NJ-1021 to NJ-1027); Delaware Attorney General Opinion No. 77-033 (NJ-1017 to NJ-1018); Preston Lea's Biannual Address dated January 5, 1909 (NJ-2063); documents related to fishing laws (NJ-2110, NJ-2112, NJ-2145, NJ-2063, NJ-2145, NJ-1017, NJ-1019, NJ-1021, NJ-1028, NJ-1031); and all other documents touching upon the 1905 Compact or its effect as described in New Jersey's response to Interrogatory #7.

13. State whether uniform fishing laws were ever adopted by Delaware and New Jersey as required by Article IV of the 1905 Compact. Identify and describe all Documents relating thereto.

RESPONSE: New Jersey objects to this Interrogatory because Article IV of the Compact of 1905 did not require Delaware and New Jersey to adopt uniform fishing laws. See, *Ampro Fisheries v. Yaskin*, and other documents cited in New Jersey's response to Interrogatory 12.

14. Identify and describe all communications, correspondence and/or representations made by Commissioners, legislators, and/or others involved in negotiating, drafting, adopting, and/or ratifying the 1905 Compact.

RESPONSE: New Jersey objects to the interrogatory on the grounds that it seeks information in the custody of unidentified persons; that it seeks information from persons not within the employment or control of the State of New Jersey; that it seeks information in the possession of third parties that is equally available to New Jersey and Delaware and, thus, is unreasonably burdensome for New Jersey to locate and produce for Delaware; and that the term "representations" is undefined.

Without waiving these objections, New Jersey responds: See proceedings in *New Jersey v. Delaware I* from 1877 to 1905 (provided under cover of letter dated July 14, 2006 from D.A.G. William Andersen); record for *New Jersey v. Delaware I* provided to Delaware counsel by letter of October 21, 2005; motion papers for *New Jersey v. Delaware I* provided by Delaware under cover of letter dated January 3, 2006 (NJ-946); proceedings in *New Jersey v. Delaware II*, from 1929 to 1935;

the New Jersey Commissioners Report of 1903 (Appendix 48); Statement by Ward (NJ-687, NJ-700); and The Delaware House Hearing (NJ-704).

News reports and opinion concerning the Compact appear in documents from Every Evening; Evening Journal; Journal Every Evening; Morning News; Philadelphia Inquirer and Sunday Star listed in the attached four-page index; and in documents from the Newark Evening News, Sunday Star Ledger, The Democrat, The Trenton Times, The New York Times, the Delaware Public Archives, the Delaware Historical Society and other sources listed in the attached seven-page index.

15. Identify and describe all communications, correspondence and/or representations made concerning *New Jersey v. Delaware I*.

RESPONSE: New Jersey objects to the interrogatory on the grounds that it is over-broad and, thus, asks for information irrelevant to resolution of *New Jersey v. Delaware*, Original, No. 134. Additionally, the vagueness of the request makes response to the interrogatory overly burdensome.

Without waiving this objection, New Jersey refers Delaware to the record in *New Jersey v. Delaware I* as supplemented by New Jersey under cover of letter dated July 14, 2006 from D.A.G. William Andersen; the 1903 Report of New Jersey Commissioners (Appendix 48); proceedings in *New Jersey v. Delaware II* (App. 186a); documents by Clarence Southerland, Esq. and Attorney General Green, State of Delaware (NJ-725 to NJ-730); news reports and opinion concerning the Compact appear in documents from Every Evening; Evening Journal; Journal Every Evening; Morning News; Philadelphia Inquirer and Sunday Star listed in the attached four-page index; and in documents from the Newark Evening News, Sunday Star Ledger, The Democrat, The Trenton Times, The New York Times, the Delaware Public Archives, the Delaware Historical Society and other sources listed in the attached seven-page index.

16. Identify and describe all communications, correspondence and/or representations made concerning *New Jersey v. Delaware II*.

RESPONSE: New Jersey objects to the interrogatory on the grounds that it is grossly overbroad and, thus, asks for information irrelevant to resolution of *New Jersey v. Delaware*, Original, No. 134. Additionally, the vagueness of the request makes response to the interrogatory overly burdensome.

Without waiving this objection, New Jersey refers Delaware to the record in *New Jersey v. Delaware II* ; to documents by Clarence Southerland, Esq. and Attorney General Green, State of Delaware (NJ-725 to NJ-730); to filings made in *New Jersey v Delaware III*; news reports and opinion concerning the Compact appear in documents from Every Evening; Evening Journal; Journal Every Evening; Morning News; Philadelphia Inquirer and Sunday Star listed in the attached four-page index; and in documents from the Newark Evening News, Sunday Star Ledger, The Democrat, The Trenton Times, The New York Times, the Delaware Public Archives, the Delaware Historical Society and other sources listed in the attached seven-page index.

17. Describe what New Jersey contends was the historical meaning of "riparian jurisdiction" at the time the 1905 Compact was drafted, signed and approved by Congress.

RESPONSE: The use of the phrase "riparian jurisdiction" in Article VII of the Compact of 1905 refers to each State's sovereign authority to regulate, tax and police the exercise of riparian rights appurtenant to its respective shore of the Delaware River, whether along the waterfront or extending outshore to the main channel, and to regulate, police and tax all structures and activities incident to the exercise of those rights. As examples, see approvals and other evidence of New Jersey regulatory authority described in the affidavits of Richard Castagna (Appendix 5; Appendix 6; CD Index of Licenses and Grants by Location provided to Delaware on September 23, 2005; CD of Surveys Attached to Tidelands Applications for Licenses and Grants within the Twelve Mile Circle provided to Delaware October 5, 2005; Dredging License issued to E.I. Du Pont de Nemours (06-0105-T) and a license for placement of rip-rap to E.I. Du Pont de Nemours (06-0106-

T) issued July 11, 2006 (NJ-1723 to NJ-1736); NJ-939 to NJ-945; and Tax Maps for New Jersey Municipalities within the Twelve Mile Circle, NJ-846 to NJ-937); the affidavit of Jeffrey Reading (Appendix 7 & NJ-1150 to NJ-1440); the affidavit of Frederick Sickels (Appendix 8 & NJ-1441 to NJ-1474); the affidavit of Kevin Broderick (Appendix 9 & NJ-1476 to NJ-1722) and BP's pending permit application to the Department, previously provided to Delaware as supplemented in these responses and in New Jersey's responses to Delaware's Request for Documents.

"Riparian" derives from the Latin word "ripa," meaning "shore of the river," and is defined as "[o]f or pertaining to the bank of a river; as, riparian rights." Webster's Unabridged Dictionary 1244 (1898). "Jurisdiction," as used in Article VII, refers to the "authority of a sovereign power to govern or legislate." *Id.* at 806.

At the time of the 1905 Compact, "riparian jurisdiction" was clearly understood in both States to encompass the regulation of improvements extending outshore of the low-water mark. It has long been recognized that a primary objective of riparian improvements is the ability to "wharf out" from the shore, beyond the low-water mark, as necessary to gain access to navigable waters. See, *Mayor of Newark v. Sayre*, 45 A. 985, 990 (N.J. 1900). Delaware has similarly recognized that "[a]mong the riparian property rights associated with ownership of the foreshore is the right to wharf out directly from the foreshore to the bulkhead line and the right to have free access to the navigable portion of a river." *City of Wilmington v. Parcel of Land*, 607 A.2d 1163, 1168 (Del. 1992) (citing *Harlan & Hollingsworth Co. v. Paschall*, 5 Del. Ch. 435, 456-57 (Del. Ch. 1882)). As recognized in *New Jersey v. Delaware II*, "riparian proprietors have very commonly enjoyed the privilege of gaining access to a stream by building wharves and piers" 291 U.S. at 375. Well before 1905, the City of Wilmington enacted Ordinances regulating the construction and permitted activities upon wharves between the shore along the Christiana River and the channel to ensure the navigability of the Christiana River within the Twelve-Mile Circle, and appointed a Harbor Master to enforce the regulations. (NJ-614 to NJ-669). See also maps included in the Andersen letter of July 14, 2006 which show pier head and bulkhead lines well out-shore of the low water line on both sides of the River at around the time of the Compact.

In addition to the construction of riparian improvements in order to wharf out from the shore to access navigable waters, other traditional types of water-dependent uses were regarded as falling within a States' "riparian jurisdiction." See, New Jersey's response to Interrogatories No. 23, 24, 26 and 27. A State's jurisdiction over riparian development traditionally has encompassed the broad exercise of its police powers and taxation authority over that riparian development. See, e.g., *New Jersey v. Federanko*, 139 A.2d 30, 36-37 (N.J. 1958) (affirming conviction for gambling that occurred on the Pennsgrove Pier); *Main Assocs. Inc. v. B&R Enters., Inc.*, 181 A.2d 541, 543-45 (N.J. Super. Ct. Ch. Div. 1962) (upholding authority of Borough of Penns Grove to tax the value of the pier).

Kevin Broderick (NJDEP-Land Use); Jeffrey Reading (NJDEP-NJPDES); Richard Castagna (NJDEP-Tidelands); Frederick Sickels (NJDEP-Water Alloc).

18. Identify and describe all alternative locations where an LNG facility could be constructed in New Jersey outside of Delaware territory in the Delaware River.

RESPONSE: New Jersey objects to this interrogatory because it seeks information irrelevant to disposition of "No.134, Original" and information pertaining to Delaware's Proposed Issue of Fact No.2 that was struck pursuant to the June 13, 2006 Order of the Special Master (See, fn.1, Page 4).

19. Identify the date that New Jersey was first aware that BP intended to apply or had applied to Delaware for a coastal zone status decision under Delaware's Coastal Zone Act and identify the date that New Jersey learned of DNREC or the CZICB's denial of the coastal zone status decision for the Crown Landing Facility. Identify and describe all documents relating thereto.

RESPONSE: New Jersey objects to this interrogatory because New Jersey's "awareness" of Delaware's decision-making concerning the BP Crown Landing Facility has no relevance to disposition of the issues in "No.143, Original" specifically, the meaning of the 1905 Compact.

20. Describe any advice that William E. Andersen of New Jersey gave to the Keystone Urban Renewal Limited Partnership as set forth in his declaration dated May 17, 2006.

RESPONSE: New Jersey objects to the interrogatory to the extent that it seeks information contained in privileged communications and to the extent it implies that D.A.G. Andersen is a person with knowledge relevant to this lawsuit. Without waiving this objection or any applicable privilege, New Jersey responds that DAG Andersen asserted that the State of New Jersey had riparian jurisdiction over Keystone's proposal and requested that Keystone file an application for a tidelands license for its pier with the Tidelands Resource Council. He further requested that Keystone file an application for a permit under New Jersey's Waterfront Development law, N.J.S.A. 12:5-3. Keystone applied for and received a permit and a license from New Jersey.

Richard Castagna (NJDEP-Tidelands); William Andersen; Kevin Broderick (NJDEP-Land Use); Ruth Ehinger (NJDEP-Coastal).

21. Describe any other advice given by William E. Andersen to any other person or entity regarding Delaware's jurisdiction or regulatory authority within the Twelve Mile Circle.

RESPONSE: New Jersey objects to the interrogatory to the extent that it seeks information contained in privileged communications and to the extent it implies that D.A.G. Andersen is a person with knowledge relevant to this lawsuit. Without waiving that objection or any applicable privilege, New Jersey responds that D.A.G. Andersen does not recall giving any advice about Delaware's regulatory jurisdiction in the Twelve Mile Circle, aside from Keystone (mentioned above) and privileged communications with Plaintiff arising from this current litigation.

D.A.G. William Andersen

22. Identify and describe all contracts or agreements (formal or informal) with BP concerning the Crown Landing Facility or *New Jersey v Delaware III*.

RESPONSE: New Jersey objects to this interrogatory because it is vague and seeks both information irrelevant to disposition of "No.134, Original" and information pertaining to Delaware's Proposed Issue of Fact No.2 that was struck pursuant to the

June 13, 2006 Order of the Special Master. Without waiving this objection, New Jersey responds that there are no contracts or agreements whatsoever with BP concerning the nature or scope of BP's project or DEP's ultimate disposition of BP's pending application.

David Risilia (NJDEP-Land Use); Suzanne U. Dietrick (NJDEP-Land Use); Kevin Broderick (NJDEP-Land Use).

23. State New Jersey's contention as to the meaning of the phrase "may...continue to exercise...jurisdiction" as stated in the 1905 Compact and the factual and historical basis for such contention, including any historical usage of that phrase.

RESPONSE: By using the phrase "may . . . continue to exercise . . . jurisdiction," the States agreed that their riparian sovereignty could continue without interference by the other State. Moreover, the Compact language granting each State riparian jurisdiction "of every kind and nature" over riparian improvements on "its own side of the river" pursuant to each state's "respective laws" reserves to each State the right to devise and enforce laws regulating riparian improvements on its respective shore and outshore to the river channel in order to protect the health, safety and welfare of its own citizens.

Before the Compact was enacted, New Jersey had exercised jurisdiction over the construction of docks, wharves, piers, and other waterfront developments, pursuant to statutes that applied to all of the State's waterfront, including within the Twelve-Mile Circle. See, e.g., 1851 N.J. Laws 335; N.J. Stat. Ann. § 12:3-10, -12, -21. This included dredging to reach the navigable channel. See N.J. Stat. Ann. § 12:3-21 (1979) (enacted in 1891).

Further, it was well established before the 1905 Compact that the right to build riparian improvements was subject to state regulation. E.g., *Weber v. Board of Harbor Comm'rs*, 85 U.S. (18 Wall.) 57, 64-65 (1873) (riparian proprietor may construct wharves or piers "subject to such general rules and regulations as the legislature may prescribe for the protection of the public").

On at least eight occasions prior to 1905, New Jersey had issued grants for riparian lands and structures extending well below the low-water mark on the New Jersey side of the River within the Twelve-Mile Circle. See, Affidavit of Richard G. Castagna (Appendix 5, at ¶¶1-10). As part of this grant process, New Jersey imposed appropriate regulatory conditions on those conveyances, such as prohibiting "the extension of such docks or wharves so far into said river as to injure or impede the navigation of the same." E.g., 1854 N.J. Laws ch. 143, § 1; 1855 N.J. Laws ch. 109, § 4 (same); 1871 N.J. Laws ch. 307, § 1 ("provided, however, that no such wharf, pier or bulkhead shall be erected or built . . . for a greater distance than one hundred feet beyond low water mark, nor in front of the land of any other person").

New Jersey's historical exercise of riparian jurisdiction over the construction of docks, wharves, piers, and other waterfront developments is further described in the record in *New Jersey v. Delaware I* and *New Jersey v. Delaware II*. See, e.g., Castagna Affidavit (Appendix 5, ¶8, App. 29a, 31a-36a, 54a).

The plain meaning of the phrase "may . . . continue to exercise . . . jurisdiction" is further confirmed by Delaware's statements in *New Jersey v. Delaware II* that conceded both the right of New Jersey citizens to wharf out to navigable water and the exclusive right of New Jersey to regulate the exercise of those riparian rights. See, e.g., *New Jersey Motion to Reopen*, App. 186a, 191a, 215a, 223a, 235a, 237a, 249a and 255a.

Thus, when the Compact of 1905 provided that the States would "continue" to exercise "riparian jurisdiction of every kind and nature" under the "laws of the respective states," it confirmed that New Jersey would continue to exercise full regulatory jurisdiction over riparian improvements in the manner to which it had been historically accustomed: free of regulation or interference by Delaware.

Richard Castagna (NJDEP-Tidelands).

24. State New Jersey's contention as to the meaning of the phrase "on its own side of the river" as stated in the 1905 Compact and the factual and historical basis for such contention, including any historical usage of that phrase.

RESPONSE: This phrase is properly understood in the context of the portion of the Compact language that it modifies. Specifically, the Compact provides that "(e)ach state may, on its own side of the river, continue to exercise riparian jurisdiction of every kind and nature..." (emphasis supplied). Thus, the phrase in question identifies where each state may exercise riparian jurisdiction "of every kind and nature(.)"

For purposes of the exercise of riparian jurisdiction, each state's "own side of the river" extends to the channel, as necessary to permit the complete exercise of jurisdiction "of every kind and nature" over riparian rights associated with its shore, which includes regulation for the protection of the health, safety and welfare of its citizens.

The ability of New Jersey to exercise riparian jurisdiction "of every kind and nature" is not consistent with the allegation that New Jersey's "own side of the river" terminates at the low water mark. Riparian rights encompass, among other things, the right of the owner of the foreshore to wharf out to reach navigable channels. This requires the ability to build structures emanating from the shore, including but not limited to extending as far as necessary to allow vessels to reach navigable water. This was clearly the recognized understanding of riparian activities or rights at the time of the Compact. See answer to 17. This right is limited by the prohibition against interference with navigation in the channel. See also *New Jersey v. Delaware*, 291 U.S. at 376 ("...riparian proprietors have commonly enjoyed the privilege of gaining access to a stream by building wharves and piers, and this though the title to the foreshore of the bed may have been vested in the state." (Citations omitted)). It would be impossible for New Jersey to exercise "riparian jurisdiction of every kind and nature" if its exercise of riparian jurisdiction were limited to the area within its low water mark, since this limitation would be inconsistent with the ability of the holder of riparian rights to reach the channel. See, for example, pierhead and bulkhead lines at NJ-670 to NJ-672; NJ-614 to NJ-669, and the maps referred to in the July 14, 2006 Andersen letter.

The Compact did not establish or rely on the existence or location of the boundary between the two states, but rather settled the scope of riparian jurisdiction to be exercised by each in light of the commonly understood nature of riparian jurisdiction, and in light of past practices (See Compact, stating that each state may "continue to exercise riparian jurisdiction of every kind and nature,...") (emphasis supplied). To the time of the Compact, New Jersey had on a number of occasions exercised riparian jurisdiction beyond the low water mark (see Complaint & Castagna Affidavit). Moreover, following the entry of the Compact, New Jersey continued to exercise such jurisdiction (see statements of Southerland in *New Jersey v. Delaware II*; documents by Clarence Southerland and Attorney General Green, State of Delaware (NJ-25 to NJ-30; NJ-745 to NJ-730), and the Castagna Affidavit (Appendix 5).

From 1905 to 1935, when the boundary was as yet unsettled, Article VII of the Compact could only have been understood to mean that [by] "riparian jurisdiction of every kind and nature on its own side of the river" would encompass the right to regulate all riparian activity emanating from that state's shore, including the right to tax and police said structures and uses. Indeed, the Compact was applied in that manner (Record in *New Jersey v. Delaware II*). Moreover, the 1935 decision did not limit New Jersey's jurisdiction under the Compact. To the contrary, the decree implementing the decision was expressly made subject to the Compact.

The Supreme Court's 1935 decision recognizes that the Compact settled jurisdiction in a manner that did not depend on the resolution of the boundary line or the respective property rights of the States in the Delaware River in general. In rejecting New Jersey's claim that Delaware had abandoned its claim that its boundary was at the New Jersey low water mark by entering the Compact of 1905, the Court stated that "(t)he Compact of 1905 provides for the enjoyment of riparian rights, for concurrent jurisdiction in respect of civil and criminal process, and for concurrent rights of fishery. Beyond that it does not go. 'Nothing herein contained (in the compact) shall affect the territorial limits, rights, or jurisdiction of either State of, in, or over the Delaware river, or the ownership of the subaqueous soil thereof, except as herein

expressly set forth.'" *New Jersey v. Delaware*, 291 U.S. 361, 377-78 (1935).

The Court found no inconsistency in continuing to apply the Compact despite the Court's boundary determination, and in fact the Court's decree did so.

Moreover, nothing in the Compact indicates that the understanding of the scope of each state's riparian jurisdiction, which was to be exercised on "its own side of the river," would be modified as a result of the resolution of the actual boundary by the Supreme Court. The Compact states that New Jersey and Delaware were "looking to the amicable termination of the said 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..." New Jersey's ability to exercise riparian jurisdiction would be radically altered by the 1935 boundary decision if, in fact, the effect of that decision was to completely redefine and significantly narrow its "own side of the river."

As the boundary line wasn't settled by the Compact, the meaning of the phrase "its own side of the river" derives from the common understanding that, in the absence of another provision, the boundary between two states bordered by a river is at the center of the channel. Therefore, the phrase "on its own side of the river" would, under common law, mean the side of the river adjacent to each state, up to the center of the navigable channel.

The phrase "its own side of the river" is also understood in reference to Articles I and II of the Compact. These Articles recognize the jurisdiction of each state over the piers and wharves attached to its respective shore. These Articles authorized both New Jersey and Delaware to issue criminal process "against any person accused of an offense committed upon the soil of said state, or on the eastern (or western, for Delaware) half of said Delaware river, or committed on board of any vessel being under the exclusive jurisdiction of that state, and also civil process issued under the authority of the state of New Jersey (or Delaware) against any person domiciled in that state, or against property taken out of that state to evade the laws thereof "upon any portion of the Delaware River" between the low water mark of either State.

Articles I and II exclude from this authorization a person or property "on board a vessel aground upon or fastened to the shore of the state of Delaware, or the shores of said islands, or fastened to a wharf adjoining thereto..." Thus, Articles I and II divide the river at the center line.

25. State the factual and historical basis for New Jersey's contention that the word "exclusive" should be impliedly read into Article VII of the 1905 Compact.

RESPONSE: New Jersey objects to the interrogatory on the grounds that it mischaracterizes New Jersey's interpretation of Article VII of the Compact of 1905. New Jersey does not contend that "the word 'exclusive' should be impliedly read into Article VII of the 1905 Compact." Rather, New Jersey contends that the plain language of Article VII establishes that the States agreed to divide up the riparian jurisdiction of the two States over the Delaware River so that each State would continue to exercise jurisdiction over riparian improvements on "its own side of the river" without interference by the other State. See response to Interrogatory #24 concerning the meaning of the phrase "its own side of the river."

Furthermore, the Compact language reflects that the States clearly intended each state's jurisdiction over riparian improvements "on its own side of the river" would be "of every kind and nature" pursuant to law of its own devising (i.e., pursuant to the "law of the respective state.") New Jersey asserts that the Compact reserves to each State all powers necessary to fully regulate a riparian improvement "on its side of the river," including the police and tax power. Thus, New Jersey's jurisdiction over riparian improvements on "its side of the river" under the Compact is as "exclusive" as Delaware's jurisdiction is over improvements on Delaware's "side of the river."

Delaware has confirmed on numerous occasions that it understood that New Jersey would continue to exercise its jurisdiction over riparian improvements free of regulation or interference by Delaware. See, e.g., New Jersey Motion to Reopen, App. 186a, 191a, 215a, 223a, 235a, 237a, 249a, 255a (statements by Delaware counsel in *New Jersey v. Delaware II* conceding both the right of New Jersey citizens to wharf out to navigable water and the exclusive right of New Jersey to

regulate the exercise of those riparian rights); New Jersey Motion to Reopen, Donlon Affidavit (Appendix 12, ¶¶ 7-8 & Ex. C-G, App. 87a-89a, 102a-110a, statements made by Delaware State Highway Department in 1957 that Delaware had no jurisdiction over improvements appurtenant to the New Jersey side of the River within the Twelve-Mile Circle).

In addition, please refer to Argument of Clarence A. Southerland, Esq., counsel for the State of Delaware, September 12, 1932 (Vol 15), *New Jersey v Delaware II*; and Reply Brief of State of Delaware before the Special Master, (Vol 15), *New Jersey v Delaware II*.

26. State the factual and historical basis for New Jersey's contention that the term "riparian jurisdiction" as used in Article VII of the 1905 Compact cedes sovereign jurisdiction to New Jersey for activities that violate Delaware law.

RESPONSE: New Jersey objects to the interrogatory on the ground that it is not calculated to lead to evidence relevant to the issues in "No.134, Original" because it (1) mischaracterizes New Jersey's contention concerning the term "riparian jurisdiction;" (2) mischaracterizes the effect of the Compact as "ceding" jurisdiction to New Jersey when, at the time, both Delaware and New Jersey had unresolved jurisdictional claims; and (3) the interrogatory is argumentative in purpose and form.

Without waiving these objections, New Jersey responds that the 1905 Compact confers upon New Jersey "riparian jurisdiction of every kind and nature." This means that New Jersey has exclusive State authority to approve or deny an exercise of riparian rights appurtenant to New Jersey land that involves construction of a bulkhead or construction of a wharf, dock or pier to reach navigable water (also known as "wharfing out"), even if the pier or wharf is located partly or predominantly in "Delaware territory" (the subaqueous soil of the river up to the low water line on the New Jersey side of the river). New Jersey also has exclusive State authority over activities on or incident to the exercise of riparian rights, or to the use of riparian structures; riparian structures are all structures emanating from the New Jersey shoreline and extending into the water, i.e., docks, wharves, piers, bulkheads, water intake and outfall structures. Riparian structures do not include structures connected to both sides

of the river, such as bridges or pipes, cables or utility lines. New Jersey, does however, require riparian instruments for persons or entities to construct the portion of these structures that is landward of the mean low water line in the Twelve Mile Circle and, therefore, occupy New Jersey land.

It was Delaware that characterized the Compact as a "cession" to New Jersey of jurisdiction over riparian improvements within the Twelve Mile Circle that emanated from the New Jersey side of the Delaware River (186a).

Kevin Broderick (NJDEP-Land Use); Ruth Ehinger (NJDEP-Coastal); David Risilia (NJDEP-Land Use); Richard Castagna (Tidelands).

27. State New Jersey's contention, and the factual and historical basis thereof, as to whether the term "riparian jurisdiction" as used in Article VII of the 1905 Compact cedes to New Jersey exclusive jurisdiction over any and all regulatory and police power issues relating to structures that enter Delaware Territory from the New Jersey shore within the Twelve Mile Circle, including without limitation, issues relating to taxation, environmental protection, natural resources and regulation of casinos and adult entertainment.

RESPONSE: New Jersey objects to the interrogatory on the ground that it is not calculated to lead to evidence relevant to the issues in "No.134, Original" because it mischaracterizes the effect of the Compact as "ceding" jurisdiction to New Jersey when, at the time, both Delaware and New Jersey had unresolved jurisdictional claims.

Additionally, New Jersey objects to the interrogatory because it seeks a definitive listing of all possible development that could conceivably be proposed in the future on New Jersey's shore, since information on this Proposed Issue of Fact No.1 was struck pursuant to the June 13, 2006 Order of the Special Master.

Without waiving this objection, New Jersey responds that the 1905 Compact confers upon New Jersey "riparian jurisdiction of every kind and nature." Since the Compact utilized these all-inclusive terms and called out only service of process as an exception (discussed below), the Compact grants New Jersey exclusive authority to approve, deny, modify, or condition an exercise of riparian rights appurtenant to New Jersey land,

whether for navigational, environmental or public safety reasons. This includes authority over the construction of any structure emanating from New Jersey's shoreline and extending into the river, as well as authority over activities on the structure. See, also, New Jersey's response to Interrogatory #24.

Six New Jersey municipalities have geographic area that falls within the 12 Mile Circle. Verifiable instances of municipal taxation of riparian property appurtenant to land within each municipality is described in the Castagna affidavit (Appendix 5; Tax Maps for New Jersey Municipalities within the Twelve Mile Circle, NJ-846 to NJ-937). See also *New Jersey v. Federanko*, 139 A.2d 30, 36-37 (N.J. 1958) (affirming conviction for gambling that occurred on the Penns Grove Pier); and *Main Assocs. Inc. v. B&R Enters., Inc.*, 181 A.2d 541, 543-45 (N.J. Super. Ct. Ch. Div. 1962) (upholding authority of Borough of Penns Grove to tax the value of the pier).

Richard Castagna (Tidelands).

28. State the factual basis for New Jersey's claim that the deliberative process privilege, the mental process privilege, or any other privilege applies to communications with BP.

RESPONSE: New Jersey objects to this interrogatory because it seeks information irrelevant to disposition of "No.134, Original" and information pertaining to Delaware's Proposed Issue of Fact No.2 that was struck pursuant to the June 13, 2006 Order of the Special Master.

29. Identify and describe every person associated with BP who has had contact with New Jersey concerning the Crown Landing Facility.

RESPONSE: New Jersey objects to this interrogatory on the grounds that it is overly-broad and, thus, inconsistent with the June 13, 2006 Order of the Special Master which permitted discovery as to "the nature and scope" of the proposed project.

Without waiving this objection, New Jersey responds: persons associated with BP who have had contact with New Jersey concerning the Crown Landing facility are identified in BP's application file for this facility on file with NJDEP. That

file was produced for Delaware on October 5, 6, and 19, 2005. File documents postdating that production have been provided and are identified in New Jersey's response to Interrogatory #5, above.

David Risilia (NJDEP-Land Use); Kevin Broderick (NJDEP-Land Use); Suzanne U. Dietrick (NJDEP-Land Use).

30. Identify and describe every person associated with New Jersey who has had contact with BP concerning the Crown Landing Facility.

RESPONSE: New Jersey objects to this interrogatory on the grounds that it is overly broad and, thus, inconsistent with the June 13, 2006 Order of the Special Master which permitted discovery as to "the nature and scope" of the proposed project.

Without waiving this objection, New Jersey responds: persons who have had contact with BP concerning the Crown Landing facility include all persons employed by the New Jersey Department of Environmental Protection and identified in the Department's application file for this facility. That file was produced for Delaware on October 5, 6, and 19, 2005. File documents postdating that production have been provided and are identified in New Jersey's response to Interrogatory #5, above.

David Risilia (NJDEP-Land Use); Kevin Broderick (NJDEP-Land Use), Suzanne Dietrick (NJDEP-Land Use); Jeffrey Reading (NJDEP, NJPDES); Richard Castagna (Tidelands); Frederick Sickels (NJDEP-Water Alloc.); William Muzynski (DRBC); Joseph Miri (NJDEP-DRBC); Ruth Ehinger (NJDEP-Coastal); Narinder Ahuja (NJDEP-NOAA).

31. Identify and describe all communications, correspondence and/or representations concerning taxation of structures in Delaware Territory in the Delaware River after *New Jersey v. Delaware II*.

RESPONSE: Verifiable instances of taxation of riparian property within the Twelve Mile Circle by New Jersey municipalities is described in the Castagna affidavit (Appendix 5 and Tax Maps for New Jersey Municipalities within the Twelve Mile Circle, NJ-846 to NJ-937); see also *New Jersey*

v. *Federanko*, 139 A.2d 30, 36-37 (N.J. 1958) (affirming conviction for gambling that occurred on the Pennsgrove Pier); and *Main Assocs. Inc. v. B&R Enters., Inc.*, 181 A.2d 541, 543-45 (N.J. Super. Ct. Ch. Div. 1962) (upholding authority of Borough of Penns Grove to tax the value of the pier).


Richard Castagna (NJDEP-Tidelands).

32. Identify and describe all communications, correspondence and/or representations made concerning New Jersey's decision to file *New Jersey v. Delaware III*.

RESPONSE: New Jersey objects to this interrogatory because it seeks information irrelevant to disposition of "No.134, Original" and information pertaining to Delaware's Proposed Issue of Fact No.2 that was struck pursuant to the June 13, 2006 Order of the Special Master.

CERTIFICATION

I hereby certify that I am employed by the State of New Jersey, Department of Environmental Protection; that I am authorized to execute this certification on behalf of the State of New Jersey in this case; that the foregoing answers to interrogatories and the documents being provided to the State of Delaware were assembled by myself, State counsel, and knowledgeable employees within the Department, the Tidelands Resource Council, and the Delaware River Basin Commission; and that I have reviewed these responses to interrogatories and believe they are true. I acknowledge that if any of the foregoing responses are known to me to be willfully false, that I am subject to penalty. If I or persons under my supervision acquire additional information or documents responsive to these interrogatories, I shall provide this information and/or documentation to counsel for the State of New Jersey immediately.


RICHARD CASTAGNA, MANAGER
BUREAU OF TIDELANDS MANAGEMENT

Dated: July 14, 2006