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PUBLIC HEARING

Before

NEW JERSEY LEGISLATIVE STUDY COMMISSION -
RIPARIAN LAWS

Held:
October 18, 1961
Assembly Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMISSION PRESENT:

Senator Henry S. Haines (Chairman)

Senator Richard R. Stout

Vincent A. Grasso, Esq.

Morton I. Greenberg, Esq.

Frank J. Sleeper, P.E.

ALSO:

Peter J. Gannon, P.E., Secretary

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The following persons registered but did not speak:

R. E. Hutchinson
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Mike O'Sullivan
Newark Evening News

Mrs. Clara H. Reno
Phila. 25., Pa.

Samuel Miller
Jersey City, N.J.

Eugene J. Schneider
N. J. Division of State
and Regional Planning

Robert E. Cyphers
Div. Water Policy & Supply

Robert H. Cousins
Div. Water Policy & Supply

Esther B. Collins
Grassy Sounds, N.J.

Spencer Lovett
Sea Isle City

James F. Jester, Jr.
Paulsboro, N. J.

Mrs. Richard Weston
Wilmington, Del

E. L. Dodd
Newark, N. J.
N. J. Bell Telephone Co.

Denis W. Maloney
Title Guarantee Co.
Hackensack, N.J.

Thomas E. Allen
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Fred C. Freeman
Plainfield, N. J.

Chas. C. Nathanson
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H. A. Morford
Long Branch, N.J.

Bertha Morford
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Alfred W. Parsons
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James C. M. Germon
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George A. Duffy, Attorney
Bergen Co. Park Comm.

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Grassy Sounds, N.J.

Betty Lovett
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Mrs. F. T. McGuire
Pennington, N. J.

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Transcontinental Gas Pipe Line Corp.

Russell E. Watson
Transcontinental Gas Pipe Line Corp.

Edward A. Tobin
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Margaret M. Stillings
Grassy Sounds

Frank M. Stillings
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Marvin E. Hume
Public Service E & G Co.
Newark, N. J.

Charles M. Thayer
E. I. duPont deNemours & Co.
Wilmington, Del.

John F. Lewis, Director
Hudson Co. Bd. of Freeholders

J. V. Suter
Public Service Elec. & Gas Co.
Newark, N.J.

Henry P. Witt
Title Insurance Assoc.
Newark, N. J.

Ben Schlossberg, Director
Dept. of Industrial & Real
Estate Dev. of Hudson Co.

SENATOR HENRY S. HAINES (THE CHAIRMAN): Ladies and gentlemen: We would like to get this public hearing started now in the interest of time.

I would like to introduce myself so that you know why I am here. I am Henry Haines, one of the members of this Legislative Study Commission, and I am Senator from Burlington County. The membership of this Legislative Study Commission on Riparian Rights comprises myself, Senator Richard Stout of Monmouth County, Assemblyman William Hiering of Ocean County, Assemblyman Elmer Matthews of Essex County, and citizens who have been appointed to this Commission as provided for in the resolution - Vincent A. Grasso on my right, Morton Greenberg on my left and Frank J. Sleeper.

The call of this meeting was in a notice which I would like to read: "A public hearing will be held on the authority of Joint Resolution Number 11, approved June 23, 1960: 'A Joint Resolution creating a commission to study the law of this state pertaining to riparian lands and rights and to prepare legislation to modernize the same.'"

In order to carry out the purposes of this resolution, this public hearing was called today in order to give persons interested an opportunity to present themselves to be heard on the subject or to submit papers for consideration of the Commission's deliberations.

We would like to confine this public hearing to matters pertinent to the subject, that is, pertinent from the standpoint of what constructively can be done to modernize the law and the procedure with respect to riparian lands.

We do hope that the occasion will not be used for the purpose of bringing individual cases that people are having current problems with, if so, only to the extent that it will be helpful in our deliberation with respect to what ought to be done legislatively and administratively with this present subject.

We have had letters and memoranda already submitted to us by various people. Some of them are with us here today and will want an opportunity to be heard. Those that do not care to be heard who have submitted material as time allows as the hearing goes on, their communications will be acknowledged and the substance of their communications made known to those here at the hearing.

Now, we would like, of course, to have people who speak to be as brief and to the point as possible and we would like to give everybody an opportunity to be heard and we would ask that those who care to be heard as their names are called, take their position at this desk and use the microphone that is available at this desk here. Slips have been passed among you whereby you could register your name and your affiliation and whether you would like to be heard. John Kent is circulating around the room yet on this errand and those who have not registered with him, if they will raise their hands, he will come to you and have you make out one of these slips and bring it to the desk.

We do have persons who have indicated their interest in speaking and I am going to call first from my list Freeholder Alfred Walden of Bergen County.

A L F R E D S. W A L D E N: Senator Haines and gentlemen of the panel: We appreciate very much being able to come down and lay before you our little problem which I must say has been quite a problem with us for some time. I have submitted this in writing to you, sir, but I will go over this briefly and read it if I may.

My purpose in appearing before this Commission today is to seek your aid and to request that in your deliberations of trying to resolve the problems of the State's Riparian Laws, that you give serious consideration to the unsuccessful endeavors of the County of Bergen and of the Bergen County Park Commission in trying to acquire from the State for public use the Riparian Rights in the Overpeck Creek Area of our county.

We have acquired for public parks and recreational purposes approximately 1,082 acres of abutting marginal meadow lands along the easterly and westerly shores of the Overpeck Creek. We have submitted a map. Perhaps the chairman would like to have that in front of you.

SENATOR HAINES: The members of the Commission do have your map.

MR. WALDEN: I have another one here if it would be of any aid.

Over the past years we have expended a considerable sum for land acquisition, surveys, park plans, engineering borings, and we have installed tide gates. However, we have been unable to make any substantial improvements due in great part to our inability to acquire the necessary riparian grant. The State is

taking about 190 acres of these lands for Route 95 and the Bergen-Passaic Expressway.

We started negotiations to acquire the riparian rights with the State in 1949 and at a meeting on May 5, 1950 the Division of Planning and Development voted to convey the riparian rights in this area at \$1.00 a front foot, and so notified our county. We were subsequently advised that the cost of the land would be \$40,000, and in March 1953 we were again advised that an accurate measurement shows a total of 45,311.19 front feet at \$1.00 a foot for a total of \$45,311.19. Our Board of Freeholders and the Bergen County Park Commission approved the payment.

On October 7, 1952 a check was drawn for \$40,000 and on May 8, 1953 a second check was drawn for an additional amount of \$5,311.19 for payment of these riparian rights. Both checks were given to Milton T. Lasher, County Counsel, who held them until March 9, 1954, when he returned the checks to the County Treasurer.

Evidently, legal technicalities, with which I am not familiar, have held up the drawing and delivery of the grant instrument.

After waiting about five years, the grant was further delayed by a letter of the State Highway Department to the Department of Conservation and Economic Development requesting that the grant be withheld until such time as the alignment for Routes 95 and 80 was sufficiently defined. The aforesaid request was only withdrawn on June 22, 1960.

Upon learning that the Highway Department had withdrawn

the aforesaid request, we again renewed our negotiations for the granting of the riparian rights, but for a slightly reduced area. In reply we received a letter dated July 27, 1961 from the Navigation Bureau advising that the Council of the Division of Resource Development at its meeting on July 12, this year, voted to grant the riparian rights at \$5.00 a front foot or grant us a five-year revocable lease in accordance with N.J.S.A. 12:3-36.

After voting in 1950 to convey the riparian rights at \$1.00 a front foot, the State now, after a lapse of about eleven years, offers to convey the grant at an increased cost of 400 per cent, thereby repudiating their original agreement, which we understand has never been rescinded from the records.

It does not appear to be for the public's best interest for the State and a county to be in controversy over the ownership and use of public lands, that as they now stand do not serve any useful purpose. The early grant to the County of Bergen of the riparian rights for the originally agreed price of \$1.00 a front foot or a nominal consideration will enable us to proceed with the preparation of plans for the improvement of the area into parks and recreational facilities for public use.

Any excessive sum over the agreed price or a nominal consideration paid to the State for the riparian rights will take away from the county and our Park Commission money that we can use for this development. I would like to speak aside from this here. We are held down by statute to the amounts of money that our Park Commission gets and our debt limit and this just makes it this much more difficult for us to operate.

In closing, I sincerely ask that this Commission in

their studies, recommend that the original agreement be honored or, if it is believed that present legislation prohibits this, then consider recommending to the legislature, a change of the law, that will enable the State to grant riparian rights for public use to all municipal bodies and county governmental agencies of the State of New Jersey at a nominal consideration.

I have attached copies of our Park resolution, all of which I believe you have.

Gentlemen, we appreciate very much the opportunity to bring our problem to you. Thank you very much.

SENATOR HAINES: Freeholder Walden, your principal concern in behalf of Bergen County and your Planning Commission is that when you are trying to get something for public use that a lot of this procedure has been standing in your way and you would like to have it expedited.

MR. WALDEN: That's correct, sir.

SENATOR HAINES: We have a copy of the resolution of the Bergen County Park Commission and County of Bergen which, aside from the "whereas's" which you have covered, requests the Commission that the laws be amended so that the sale of riparian rights may be made by the State to the County of Bergen for public park and recreational purposes as originally voted at the rate of \$1.00 per front foot.

Do the members of the Commission have any questions to ask Freeholder Walden?

We recognize that there are representatives of municipalities and counties here today that are concerned about this relationship with respect to public use and it was suggested

by Mr. Grasso that we have Morton Greenberg tell us a little more the background and difficulties on this. I don't know whether you would at this point, Mort, take the position that the department and we are cognizant of the problem and it is one of the things that we would hope to be able to do something about as a result of these deliberations. Do you want to add more than that?

MR. GREENBERG: Well, I can say this, Mr. Walden, the problem I think the department had in this case, although I am not particularly familiar with it - but the increase in the price would unquestionably be on the advice of the office of the Attorney General and probably on the basis of an opinion written by me.

The State had developed the practice of making grants to counties and municipalities at a price which was less than what would be deemed the true and fair value. Of course, you know in fixing the price of real estate there is always an argument on how much it is worth. But in any event the practice had developed of consciously lowering the price from what the true consideration was deemed to be by the Council of the Division of Planning and Development. And this letter which was sent to you in 1961 raising the price from \$1.00 to \$5.00 a foot was unquestionably on the basis of this advice.

Now, the problem is that the statute doesn't set what the State must charge as considerations, but the courts have held in several decisions that if the State charges less than the full value for a consideration and the statute would authorize that, the statute would in turn be unconstitutional, the reason

being that the riparian lands have been dedicated and the proceeds from the sale thereof have been dedicated to the support of the free public schools - this is generally called the School Fund - and if the lands are sold for less than the true value, apparently there is not much question but this is unconstitutional.

I think what you are talking about here is more than a statute because if this Commission recommended a statute, pursuant to your letter, the statute in all likelihood would be declared unconstitutional. So what you really need is a constitutional amendment to bring about what you want.

MR. WALDEN: I would say, not being a lawyer myself, that I would have to leave this in the hands of an attorney. I know that we are seeking relief. We hope that you gentlemen can be of help to us and it is not a selfish motive at all. We are all working for the people in this instance. We are out working hard for the green acre program, all of which this, of course, does tie into.

SENATOR HAINES: I think we are aware of the problem and thank you a lot.

MR. WALDEN: Thank you very much.

SENATOR HAINES: Our next person to be called on is Kenneth Creveling of the Division of Resource Development.

Are you talking for Mr. Swisher or in your own behalf this time?

K E N N E T H H. C R E V E L I N G: Senator, I will read Mr. Swisher's statement, which is a statement on behalf of the Resource Development Council.

SENATOR HAINES: Then you wanted to add something in your own capacity, did you not?

MR. CREVELING: No. I would be happy to answer any questions which may occur.

SENATOR HAINES: We are hopeful you will be able to stay for the entire hearing so you will be available.

MR. CREVELING: I hope to, yes, sir.

My name is Kenneth H. Creveling, Director of the Division of Resource Development in the Department of Conservation and Economic Development of the State of New Jersey. I am appearing here to read a statement of Mr. O. V. Swisher, who is Chairman of the Resource Development Council in the Department.

"My name is O. V. Swisher, Chairman of the Resource Development Council, speaking in behalf of the Council, whose responsibility it has been to dispose of or act as administrative agency for the State's riparian lands for the benefit of the fund for the support of free public schools.

"It is not our purpose today to offer concrete suggestions for the streamlining of the many and varied statutes affecting riparian lands in New Jersey, but rather to offer suggestions as to the areas which should be given the broadest search and which have caused the most confusion over the years. These areas would include clarification of the erosion and accretion problem as it pertains to riparian classification. In general, eroded land reverts to the State, while accreted land, where the accretion is natural, accrues to the benefit of the upland owner; the sections dealing with abandonment of preemptive rights; the problem of lack of knowledge of what

constitutes riparian lands, which has become most evident recently where lands are being sold for taxes or have been sold for taxes where there is not clear title because of the existence of streams and land flowed by tidewater; and, finally, the general policy of governmental acquisition for recreation and other public purposes.

"A part of the statutory requirements on riparian lands concerns the abandonment of preemptive rights under certain conditions. The application of this section of the law has been the subject of much discussion, and its acceptance has been delayed because of the uncertainties involved. This, of course, leads into the general question of municipal and county requirements for park and other public use development wherein the granting of a restricted deed apparently requires the same monetary return as an unrestricted deed. The entire question of public benefit from riparian lands should be thoroughly explored.

"We would like to point out that in many cases necessary changes in the riparian laws can be made by legislation, whereas many others would necessitate constitutional amendments. It is felt by the Resource Development Council that while many of the important sections requiring constitutional amendment should be studied as rapidly as possible, considerable attention should be given to amendatory legislation which would not require constitutional amendment.

"Other areas which need considerable study and revision, but on which we are not going into detail, include the application of the Meadow Bank Act and the application and consideration

in regard to Freeholder Licenses.

"The Resource Development Council is honored to offer any assistance it may be able to provide to the Riparian Study Commission in its deliberations on this most important business."

Thank you, Senator.

SENATOR HAINES: Are there questions by members of the Commission of Mr. Creveling?

MR. CREVELING: I might say I have copies of this statement available.

MR. A. H. UNDERHILL: Senator, I have a statement from the Fish and Game Council whenever you are ready for it.

SENATOR HAINES: Yes. We'll put you on the list here. Right now we are to hear from Alvin E. Gershen, Chairman of the Meadowlands Regional Development Agency.

A L V I N E. G E R S H E N: Mr. Chairman, my name is Alvin E. Gershen. I am Chairman of the Meadowlands Regional Development Agency.

I am accompanied here this morning by Mr. Charles C. Nathanson, our Executive Director, and Bill Blohm, our counsel.

We have distributed to you copies of our statement. For the sake of brevity, I would like to skip the first three or four pages and get into the specific nine points which we make.

I would like to say at this point for the sake of the record that we are an inter-municipal agency, consisting of ten municipalities in Bergen and Hudson Counties, and we are solely interested in those meadows which are called the Hackensack

Meadows. All our remarks are directed to those meadowlands. We must take this view because of the nature of our agency and the purpose for which we were formed. We are a body politic and corporate and are formed under the 1949 statutes, the Redevelopment Agencies Law.

We make nine suggestions. We have had meetings with the Department of Conservation and Economic Development, and the Attorney General's Office. We were partly responsible for the causing of the report made by the Bureau of Navigation some months ago on the ownership question in the Hackensack Meadows. Based upon that report, based upon an earlier report the Department of Conservation and Economic Development did on riparian rights in 1959, we offer respectfully the following nine suggestions:

(1) An Engineering Survey.

The most important issue concerning riparian rights in the Hackensack Meadows is not one of law, but one of fact. This is the question of what lands are now or were formerly inundated at mean high tide and, therefore, are owned by the State. This is not clear at all. It is in the best interest of all concerned that this determination be made at the earliest possible date. Those lands now inundated at mean high tide can be determined by engineering technology. We therefore suggest that an engineering survey be undertaken immediately to determine the extent of tidelands in the Hackensack Basin by establishing true elevations in the Hackensack Meadowlands. The land has become quite valuable and the reclamation of this land has become quite important and we feel that this determination should be made forthwith.

(2) A Cut-off Date.

The problem of determining what lands were formerly flooded by tide water is much more difficult. Former tidelands can only be determined by available atlas sheets, maps, surveys, and aerial photos, or by eye witness statements. Parcel by parcel determinations in this category, we feel are inequitable and inadequate because of the lack of sufficient evidence as to which changes were caused by man-made projects, including those changes made under the provisions of the Meadow Bank Act and the Wharf Acts, and which changes were natural. The State's title to lands now or formerly flooded by the tide is an attribute of its sovereignty, and the benefits thereof have since 1871 been appropriated by law to the support of the free public schools. But just as the school fund serves a public purpose, so too, we maintain, the orderly development of the Hackensack Meadowlands contributes to the general welfare. Therefore, since the State claims all lands which are now or were formerly flooded at mean high tide, and defining such lands entails great difficulty, we proposed that a cut-off date for determining former tidelands be established by legislative action. And, incidentally, if this might mean more than legislative action, we think this should be explored. Because the proceeds from the sale of tidelands have been appropriated by statute to the school fund since 1871, we propose that the cut-off date be the year 1870, one year prior to the enactment of this statute. Hence, the title of the State in lands formerly inundated at mean high tide would encompass only those lands so inundated on and after the year 1870.

(3) Meadowlands Title Declaration.

To settle the question of land ownership in the Hackensack Meadowlands and to prevent the possibility of having several hundred court actions to determine title, we propose that the former and present tidelands be so declared by legislative action after an exhaustive and all-inclusive search by an executive administrative agency into all parcels of land in the Hackensack Meadowlands. This administrative agency would survey all historical evidence, documents, engineering studies, and eye witness accounts, together with present true elevations, and would then report to the legislature the extent of lands now or since 1870 flowed by tidewater. Their report should include all documentations, and be submitted to the State legislature with dispatch. A copy of the report with all supporting evidence should be placed on file in the State library.

(4) A Cause of Action.

We further respectfully suggest that the Legislature create a cause of action so that the validity of the State's title in any parcel of land in the Hackensack Meadows may be contested by any party also claiming title. We also propose that a three-year statute of limitations be enacted running from the date that the Legislature declares the extent of State lands in the Hackensack Meadowlands, after which no action against the State's title in any parcel of land in the Hackensack Meadowlands may be commenced.

(5) A Board of Arbitration.

We propose that an impartial board of arbitration be

created by legislative act, to which all disputes of land ownership in the Hackensack Meadowlands may be voluntarily submitted. This board should also receive disputes between private persons asserting ownership under present riparian laws as well as disputes with the State or any of its departments or agencies. During the pendency of any arbitration, the statute of limitations referred to previously should be tolled, and the right of the interested parties to contest in the courts shall be reserved. Because of the urgency of clearing title, it should be required that all arbitration be commenced within three years and that the Board be dissolved within five years.

We are not anxious to have an arbitration board go on in this case forever.

(6) Validation of Prior Sales.

The problem of land ownership in the Hackensack Meadowlands has been compounded because of the sale of former tidelands by municipalities under the supposition that such lands accrued to municipal ownership. We believe that, where this is the case, the results occurred because of a mistake of fact - namely, as to which lands were former tidelands - and not because of a misunderstanding of the law. We believe that the parties involved in such transactions were acting in good faith. Benefits from these transactions have accrued to the owners, private owners, as well as to the municipalities. There is little doubt that the municipalities would have received a prior grant from the State had they applied. We therefore propose that the State consider the granting of riparian title in such lands to all

municipalities or individuals involved in these transactions, and that the value of the riparian right be declared as of the date the municipality sold the land, and further that the fair price of such riparian land be set by the State's Resource Development Council.

(7) Public Acquisition of State Tidelands.

The orderly development of the Hackensack Meadowlands specifically by the Meadowlands Regional Development Agency to their fullest potential and best use would become much more feasible if all undeveloped areas of the meadowlands necessary for reclamation, governmental function, and supporting works were in public ownership. We therefore propose that the law of preemptive rights be changed in favor of public acquisition of those tidelands in the Hackensack Meadowlands wherever the above purpose will be served. This would require that notice of intent to acquire a parcel of tidelands be given the municipality, and that the municipality may elect to purchase within a certain period of time. We propose that this period be one year from the time notice is formally given to the municipality by the Bureau of Navigation of the Department of Conservation and Economic Development. We further propose that the acquisition of Meadowlands by the municipality or by our agency, which is a governmental agency, be deemed a public purpose and that such acquisition shall be at a compensation which will preserve both the interest of the municipalities and the agency in reclaiming the meadows and that of the State's school fund.

(8) Other Title Considerations.

We propose that this Commission, and respectfully suggest,

should also give consideration to the clearing of title to filled tidelands where the party now in possession has not obtained a riparian grant and does not own the true upland with its preemptive right. At present, the State is prohibited by statute from issuing a grant where in many instances this procedure would be the most fair and practical solution. The orderly development of the Hackensack Meadowlands requires that title in such cases should also be cleared.

(9) Intermunicipal Cooperation Through a Regional Agency.

We finally propose and respectfully suggest that the State Legislative Study Commission approach all riparian laws that affect or will affect reclamation and development in the Hackensack Meadowlands with the view that reclamation of the entire 15,000 acres will be achieved in our lifetime by the municipalities cooperating on a regional basis, and that only a governmental agency which is regional in scope and authority can provide for those public works necessary for the successful reclamation and development of the Hackensack Meadowlands for the best interest of the State as a whole. The findings of this Commission and its subsequent recommendations should in our humble opinion reflect this principle.

The Meadowlands Regional Development Agency will continue to conduct research on questions pertaining to riparian rights as they are presented in suggestions or proposals made by member municipalities, which includes Kearny, Lyndhurst, Wanaque, North Arlington, North Bergen, Secaucus, Teterboro, Rutherford, East Rutherford, and Carlstadt at the moment, with some more to

come into the agency. As new solutions are suggested, we hope to communicate these to your Commission. We also offer all assistance that we may be able to provide to your Commission in the study of this most important subject.

Thank you very much for your kind courtesy in having us appear before you this morning.

SENATOR HAINES: Are there questions of Mr. Gershen by members of the Commission?

We appreciate very, very much this representation by you and the offer of you and other members of your agency to be helpful to us in these deliberations.

MR. GERSHEN: Thank you very much.

SENATOR HAINES: Sidney Willis.

S I D N E Y L. W I L L I S: Mr. Chairman and members of the Commission: My name is Sidney Willis. I am Planning Officer of Jersey City. I would like to file with the Commission a statement by Mayor Thomas Gangemi.

SENATOR HAINES: May we have copies for our benefit while you are speaking? (Copies handed Commission members.)

MR. WILLIS: In the interest of brevity, if I may, Mr. Chairman, I would like to summarize briefly the Mayor's statement.

Firstly, the Mayor expresses his concern with the immediate resolution of this matter, especially with regard to the extent of the State's riparian claim in Jersey City and in the Hackensack Meadows area.

The Mayor commends the work of the Meadowlands Regional Development Agency and also commends to you the suggestions made

in Mr. Gershen's statement prior to this.

And, finally, the Mayor offers the services of the city's legal and engineering and planning staff in defining the extent of the State's riparian claim in Jersey City.

Well, that, sir, and our detailed statement concludes the remarks I have.

SENATOR HAINES: Would you want to read the statement?

MR. WILLIS: No, sir, I won't read the statement.

SENATOR HAINES: All right. Then, thank you very much.

(Mayor Thomas Gangemi's statement can be found in the back of the transcript on page 63)

SENATOR HAINES: Is Ira Moore, Jr. here? Mr. Moore, will you state your full name and the capacity in which you appear?

I R A C. M O O R E, J R.: My name is Ira C. Moore, Jr. I am an attorney. I represent the Hermetite Division of Universal Match Corporation. I got into this situation recently because of a very important transaction involving our client.

My remarks relate to the title to marshlands in the State. While my client is affected by it, of course, my remarks relate to all the marshlands in the State of New Jersey.

The title companies at the present time I understand - in fact, I know that some of them at least - will not guarantee title to marshlands without an exception with respect to the rights of the State of New Jersey. When I say "marshlands," I refer to marshlands which are now or possibly may at some time have been flowed by tide. The title of the State of New Jersey is based upon its sovereign rights. I have filed with the Commission

a statement, but rather than reading the statement, I will amplify it just to some extent.

Unquestionably owners of salt marsh in Colonial times and since have thought that they owned the land. The title has been questioned for this reason: When the King, King Charles the Second, granted the State of New Jersey to his brother James, Duke of York, together with the government, he granted the whole state, including tide marshes. That title devolved finally - not finally, but got into the Board of Proprietors of the State of New Jersey and title people usually think that our titles go back to the Board of Proprietors of the State of New Jersey.

However, there were some very important grants made prior to the grant to the Board of Proprietors. It was assumed and has been assumed for years that based upon those early grants, the owners of marshland owned the title, free of any right to the State of New Jersey.

The questions arose originally for this reason: It has been held by our courts that when the King granted to James, Duke of York, title to the State of New Jersey, it was granted to him subject to the same rights that only the rights that the King had as King of England, and those rights were subject to certain common rights that under the Magna Charta and the British Constitution the public in general had certain rights in waters, the sea and the arms of the sea, the rivers and the bays. And those rights, if you look at the old cases, you will find they are the rights of fishing. The first case that I found in New

Jersey and the first case in the United States Supreme Court related to the oyster beds in Raritan Bay which were undoubtedly under water. Marshland is not water. If you look in the dictionary, marshland is land - it's swampy land it is true, but it's land. And the rights which the general public had as distinguished from individuals were rights which they held in common, which they could use in common, such as fishing and navigation.

Now, in our decisions as they came along, they picked up the phrase that land which is flowed by tide - up to low tide - belonged to the State of New Jersey - had title in that. They had title by virtue of their sovereignty as distinguished from their proprietary title. In other words, the King as sovereign had title, but as sovereign he couldn't give away that title. It took only Parliament to do that. So the State of New Jersey succeeding the King as sovereign had title to these tidelands for the protection of the people as a whole. It related only to lands which could not be held in severalty in private ownership, but for those lands which the public as a whole had a right to enjoy. But because of phraseology in a recent decision, the Sisselman Case, which has not I understand been recorded, but application for certiorari has been made to the Supreme Court - because of language used in those cases to the effect that the title of the State covers lands where the tide ebbs and flows, the question has been raised as to the ownership of all the marshland in the State of New Jersey where the tide now or previously ebbed and flowed.

Some years ago when the Fidelity Union Title Company

was in business our office had occasion for a client to acquire a large tract of salt meadow. The title company searched the title; Fidelity Union Title Company searched the title. We found that from the earliest times there were deeds of record covering parcels of that salt marsh. I was told by Fred DeCamp who was a great expert on meadow titles that in the old days the farmers owned the upland and they owned a piece of salt meadow where they cut the hay. It was always considered to be in private ownership and their records show it, not only there where we searched, but in other parts of the State. The records show that it had been considered in private ownership.

What is the result? As a result of that individuals and corporations have acquired title to marshland - they have made expensive improvements on it. I happen from my practice to know that the Western Electric Plant, that huge plant in Kearny, is built on reclaimed land. Whether or not they have the riparian rights, I don't know. But it was built by the Ford Motor Company. The land was reclaimed by dredging.

There are vast industries and vast tracts of land which are affected by this situation.

My proposal is this, that the Legislature recognize the situation, that it recognize the fact that the State of New Jersey's rights are only sovereign rights and that as sovereign they have no rights or should have no rights - whether they have or not, they should have no rights - in land which can be used in severalty by individual proprietors. There is no more reason why marshland should be owned by the State of New

Jersey than the upland. There is no common interest in the State of New Jersey in marshland.

I, therefore, propose that the legislature follow the example of Congress a short time ago - I think it was around 1950, somewhere around there - when they granted to the states their sovereign rights in certain waters within the three-mile limit.

I have taken the liberty, based upon that act, of drawing a couple of provisions which I think could be enacted into law, which would clear the titles to all marshland in the State of New Jersey so that business people would know where they stand, private individuals would know where they stand, so they can sell their property, so they can mortgage their property, so that they know that they have good title, and so that the title companies would know where they stand.

If I may, shall I just read these two provisions? They are very short.

SENATOR HAINES: Go ahead.

MR. MOORE: (1) It is determined and declared (1) that the public interest does not require that marshland, now or formerly flowed by tide waters, and filled in, made or reclaimed lands which were formerly such marshland, be held by the sovereign authority for the common and public use of the State and (2) that it is in the public interest that titles to such lands be recognized to be proprietary titles free from any right, title, interest or claim of the State of New Jersey based upon its sovereignty.

2. The State of New Jersey disclaims, vacates and relinquishes all right, title and interest based upon its sovereignty, in and to all marshland in this state, now or formerly flowed by tide waters, all filled in, made or reclaimed lands which were formerly such marshland.

If I may, I'll leave a few copies of this.

SENATOR HAINES: I wish you would. Are there questions of Mr. Moore by members of the Commission?

MR. GRASSO: Mr. Moore, you say marshlands; don't we have a factual problem with marshlands, the degree to which it is marshland as we have with meadowlands? Don't we have a factual engineering problem as to what is to be determined to be marshland as of what period of time?

MR. MOORE: In my opinion, no. In my opinion marshland is land. If you look at the dictionary, it is soggy land; it's swamp. There is no reason why the State of New Jersey should claim title to swamp or soggy marshland. The only reason why the State of New Jersey has any sovereign title in land which is flowed by the tide is for the common benefit of all. For example, along the ocean you have to establish a line where does the ocean end. Well, it ends at high water mark. You can fish in the ocean anywheres in there. And you come up the streams - where does it end? Well, if it is navigable, of course, some states have a criterion of navigability as to the public's rights. But there is no reason why the State of New Jersey should have any sovereign rights. In my opinion they have no sovereign rights in marshland as such, all marshland.

MR. GREENBERG: Mr. Moore, you refer, of course, to

the Submerged Lands Act of 1953 or '54.

MR. MOORE: Yes, sir.

MR. GREENBERG: When the Federal government quit claim to its rights, which had been defined by the Supreme Court, I believe, previously in United States versus California, it had someone to give the lands to, the state. I think the Submerged Lands Act provided that whatever title the United States had was extinguished in favor of the state in each instance.

MR. MOORE: That's right.

MR. GREENBERG: But now what would the state do, assuming it has good title to these lands, which it does up to high water line unless there has been a grant naturally -- assuming that the state has good title to it and assuming as in many instances that there is no legitimate claim of private ownership - most of this land is completely vacant - I realize in North Jersey there has been a lot of fill - but most of it is completely vacant - no taxes paid on - and I think you would probably find that there is no chain of title from the Board of Proprietors - who would own the land if the state gave it up?

MR. MOORE: In the first place, I dispute that the state owns it.

MR. GREENBERG: Well, assuming that they do.

MR. MOORE: I say that there is a cloud on the title, that whatever right they have is by virtue of sovereignty and a cloud has been cast on the title by virtue of these decisions. So my suggestion is that they disclaim their rights and vacate.

Now you say, who would own them? Those properties have been taxed. I'll bet you'll find in every municipality they

are on the tax rolls. And the way we acquired title to some where we couldn't get a clear chain of title in the case I referred to, we acquired the tax title and we foreclosed it. So you can get the title into private ownership very readily. Municipalities, if they wanted to, could foreclose their tax titles, and acquire title. The title is there. The title was in the Board of Proprietors and if you can't find it out of the Board of Proprietors, it is still in the Board of Proprietors. In the case I referred to, I know I went to Ed Wyckoff who was then Vice President of the Fidelity Union Title Company and asked him whether he would guarantee these titles. I was going to acquire some tax titles. "Well," he said, "the trouble is you don't have possession and unless you get back to the Board of Proprietors, I don't feel we can guarantee them." "Well," I said, "suppose I join the Board of Proprietors as a defendant?" He said, "I have never known of its being done, but I see no reason why you can't do it." So I went down to Judge Lyon and told him what I was doing - he was the registrar. We joined him as a defendant and then we acquired a grant from them, from the Board of Proprietors. So you can get title.

SENATOR HAINES: Are there any other questions of Mr. Moore? Thank you very much, Mr. Moore.

MR. MOORE: Thank you very much for your courtesy.

SENATOR HAINES: Max Schwartz.

M A X S C H W A R T Z: My name is Max Schwartz and I am President of the New Jersey Title Insurance Association.

I would like to commend both the representative of the Meadowlands Regional Agency and Mr. Moore on their presentations. Unfortunately, they stole most of my thunder.

SENATOR HAINES: You still have problems.

MR. SCHWARTZ: Well, their problems are our problems. We don't have any personal interest in this but I would like to approach this from the point of view of general benefit to the public.

I think in a case of this sort there must be a compromise some place. The State of New Jersey not only represents the beneficiaries of the School Fund but it also represents all the citizens at large and some equitable solution must be found to avoid the economic impact that would result from the present posture of affairs.

Now I too want to recommend that the Legislature authorize and direct the establishment of a new high water line, a current high water line as to all lands presently affected by tide waters. I think that's very important because in determining the State's ownership we are governed by the current high water line and not some high water line that may have been established in 1871 or otherwise.

The current high water line will determine the

title unless that high water line has been artificially created - I mean, if lands have been filled in or something of that nature, of course, you can't acquire title by artificial accretion; but the upland owners would acquire that title if the accretion was natural and also they would lose if the erosion was a normal erosion.

So I think that the Legislature should authorize and direct the establishment of a new and current line.

Now in the spirit of compromise, perhaps, I think that the Legislature in directing that that line be fixed should direct that the line be not fixed beyond the point where property has been held under a record or color of title - that would mean either by a deed or by a devise - and has been assessed to a person for upward of 20 years, and where the State of New Jersey during that period has exercised no control by way of lease or grant or any other means of proprietary control. So that if we have these meadowlands which perhaps were filled in a hundred years ago or 90 years ago, or at a period that we have no express evidence - I mean, you might get testimony of some old person but certainly it is going to be not conclusive evidence as to whether these were or were not tide lands and artificially filled in.

So where we have a situation where these lands have been apparently privately owned for at least 20 years, assessed, and the State has exercised no control, the statute should direct that the line be not fixed so as to include those lands.

Then, in accordance with the suggestion of the Meadowlands Agency representative, I too would like to give all persons who may be aggrieved by the high water line fixed by the State a certain number of years in which to bring an action to control the validity of the line established by the State and to establish their own title.

Now I think, also in the spirit of compromise, one other thing has to be done. If an action is brought, in that nature, by an individual who is attacking the established line fixed by the Legislature or by the department under this new Act, I think the burden of proof for justifying that line must be upon the department or upon the State of New Jersey because if you put that burden upon the party who is bringing such a suit it's going to be impossible for any private individual to establish such evidence. I think that this is available to the State, they have all the old records, they have all the papers, and it should be their burden in the first instance to establish this line. Of course, if they do, it will be the other party's burden to go ahead and establish his case.

I think that the Legislature should fix a period within which this line must be established so that this can't run on in perpetuity - I mean, whether it's 3 years, 5 years. I realize that the fixing of a current high water mark is not a simple thing. It may have to be done piecemeal. But the Legislature should, first, provide the funds for the doing of it; and, secondly, should provide a time limit within which it must be done.

Now another approach that might be taken is that the statute might fix the rights of the State in these tidelands to navigable waters.

We have many situations where the streams are not navigable, the streams have been dried out for many years, and the State is still claiming rights in the lands, claiming that the people must get riparian grants.

I think a statute establishing that the State has no right in these lands unless the waters which border them are navigable, or perhaps fixing that the State has no right beyond a certain number of feet from the normal bank of a navigable stream rather than take in all lands which may come under a half inch of water at an extreme or unusual high tide.

I think, too, that a point that might be added in the case of the meadowlands and the marshlands is that the land must be flowed by ebb and tide if the State has an interest in it.

The State, I believe, is now taking the position that where lands are not actually ebb and flowed but where the land is spongy at high water the water oozes up out of the land when you step on it - I think they are claiming that is ebb and flowed and that is not an actual fact. We have many situations, as Mr. Grasso knows, down at the shore where you can be three or four blocks from the ocean and at certain times of the year when the water table is up your land is spongy and yet that land is not flowed or

ebbed by the tide.

The Title Association, too, would like to offer its assistance if it can in any way help you gentlemen. As I say, I agree in the great bulk of suggestions set forth by the Meadowlands Regional Agency and I would only like them expanded to cover all matters and not just the Hackensack Meadows.

Thank you.

SENATOR HAINES: Mr. Schwartz, we are going to find it of help in our deliberations to be in further contact with title company people and you are the one that we would contact representing the title company industry. Is that right?

MR. SCHWARTZ: That's right. I say, we have no personal interest in it but we would like to see the matter clarified.

SENATOR HAINES: Yes. I was only asking - we are going to need the service and you are the person that we should contact.

MR. SCHWARTZ: That's right.

SENATOR HAINES: Are there any questions of Mr. Schwartz?

MR. GREENBERG: I have a question, Mr. Schwartz. What would you or your Association think of a statute which provided that if a person could show that he and the persons who preceded him in his claim of title or chain of title had been in possession of land for a period perhaps of 20 years and there was a question as to whether

the State had title to those lands, that he and his assigns, and so forth, could secure a grant from the State of the lands without regard to any preemptive right provided that they could show possession, and presumably they would show this by the means of affidavit, etc.? Wouldn't this be a much simpler system of clearing titles, much cheaper, and they would actually have a grant so that I would think it would be surer.

MR. SCHWARTZ: Well, I was going to suggest, and I didn't say it because the gentleman from the Meadowlands Agency already suggested it, that after the high water line is fixed the State of New Jersey in a statute of the Legislature would vest the persons to whom the property had been assessed under a color of title, I mean where all the three points existed - where the State has exercised no rights, where it had been assessed to a person, and where they had a record color of title for at least 20 years - that the State of New Jersey vest them with the title beyond the line that they had fixed.

Now, I think that that would take care of that.

Now I know that you might think that such a statute would be unconstitutional but the schools have benefited by the moneys from these sales only by reason of an act of the Legislature and I don't see any reason why an act depriving them, to an extent, of these funds is unconstitutional.

MR. GREENBERG: You expressly excluded, though, from this new high water line, lands that had been artificially filled.

MR. SCHWARTZ: Yes. But now you may have -- you have a difficult problem there. Now, the mere fact that you are going to fix a high water line which may not include these lands doesn't necessarily give these people title.

MR. GREENBERG: That's right.

MR. SCHWARTZ: They may have had their deeds starting 40, 50, or 60 some -- in most of these cases I wouldn't care if you wanted to make that 30 years because in most of these cases, such as Mr. Moore's situation, there are records of titles for 60 years. Now, of course, you can't get adverse possession against the State of New Jersey. If the State of New Jersey has a right, there is no adverse possession against them and naturally a title company will not insure it.

So we need a statute vesting the title in these people because, as I suggested to one of my colleagues when we were discussing this - at first they wanted just a disclaimer by the State and then the interest in the lands beyond this new line to be fixed - I said, "No, that's not going to be sufficient because if our own title is bad because it was originally in the State of New Jersey, we require a statute vesting title in this."

Now, I don't know whether the State had that title or whether it didn't have it but I think, for the purpose

of clarification, there must be an act vesting the title beyond the new line to be fixed so that there will be no question of title.

MR. GRASSO: I can see just as much controversy over this high water line as there is over preemptive rights. Most of the problems arise, is it not so, except for those cases which get into the courts, on a factual basis of what, in effect, is the land which is flowed by these tide waters. We always get back to the same question. This is a factual question.

MR. SCHWARTZ: There is no question about the law, the law is clear.

MR. GRASSO: There is no question about it, the law is clear. Now, you title companies, I don't blame you, are very apprehensive as to the extent to which the court will, under a factual situation, say this falls within ebb and flow of the tide. I think a great deal of apprehension arises unnecessarily. I think a lot of people think about it and they don't do anything. I think if some procedure were set up whereby the agency which has jurisdiction over these riparian lands - if they were in some position after a factual investigation to make a determination that in our opinion these lands are not flowed by tide waters and, therefore, the State never had jurisdiction over them and, therefore, whatever upland title ownership you have then you just continue. But there is a lot of apprehension over certain situations which never even get before the

Navigation Bureau and perhaps if you went to them they'd say, "In our Engineering Department we don't claim this is flowed by tide waters."

MR. SCHWARTZ: Well, of course, we always suggest that they get in touch with the Department and see what claims the Department is making. But many times the Department isn't certain itself and they are unwilling to take a stand one way or the other.

MR. GRASSO: Shouldn't there be some procedure, wouldn't it be possible, where a hearing will determine this and if the person is aggrieved with the findings of the body that they could appeal to the courts? But I think in most cases it could be resolved. As you say, they have been in possession for a long period of time and there is little or no evidence which they can support to show that it was flowed by ebb and flow of tide, then the Department would have to relinquish any rights.

I agree with you; I think the burden should be on the Department. Since it establishes its claim and ownership to the land, I think the burden of proof should be on the State to support its claim factually under the theory of law which we all understand.

MR. SCHWARTZ: Well, of course, Vince, there is no such procedure at the present time. We have sent people down to the Department and in many cases, and recently, I understand the Department has taken the attitude that they

are not going to do anything until perhaps they get the results of this hearing and some determination is made upon their rights, one way or the other. But there is nobody willing to assume the responsibility of declaring that we have no interest in this land. And let's assume that they do say that they have no interest, there is no assurance that some successor in office may not say, "Well, he was wrong. We do have an interest." And I don't think there would be an estoppel there. You would have to have legislation which would authorize the Department to do these things.

MR. GRASSO: An administrative determination and finding which would be conclusive.

MR. SCHWARTZ: That's right. Now, what we are suggesting is something very similar, by having the statute authorizing the Department to fix this line and then have the State vest or relinquish their title in anything beyond that line because you are then doing it in one fell swoop rather than have each individual come in and have the Department fix the high water line with respect to his property.

MR. GRASSO: They do that now with pierheads and bulkheads pretty much.

MR. SCHWARTZ: But I'm trying to get a general solution rather than a specific solution as to each piece of property. I have no personal interest in any one piece of property.

MR. GRASSO: It would be a monumental task.

MR. SCHWARTZ: I say it would be a monumental task and I am not suggesting how many years be allowed for the fixing of this line or whether it be done piecemeal, whether the most urgent situation is up in the Hackensack Meadows, whether they start there and go around and just hit the trouble spots first, but I think that that is the ultimate solution and I think it should be borne in mind.

MR. GREENBERG: Mr. Schwartz, suppose the State authorized adverse possession against these tidelands, - in fact, there is a statute, at least there was a year ago, the last time I looked, that you could get adverse possession against the State. The statute reads very broadly but it has been construed not to apply to riparian lands. But suppose the Legislature did authorize adverse possession against the State on riparian lands.

MR. SCHWARTZ: Well, suppose it did, then these people would require a quiet title suit to establish their adverse possession before we would certainly insure it. And if you are familiar with the Holfester case in New Jersey, proof of title by adverse possession is almost an impossibility. You have to prove that you knew you were occupying the thing adversely. If you took title by a deed and thought that you owned it, then your possession is not adverse. But you must have known that you were a squatter and adversely and openly and notoriously occupied it for at least 20 years in order for you to get that adverse possession. It's almost a physical impossibility

to meet those requirements.

MR. GREENBERG: That's under the 20 year statute --

MR. SCHWARTZ: Yes.

MR. GREENBERG: -- but suppose they took the 30 or 60 year statute, just being in possession.

MR. SCHWARTZ: Well, a 60 year statute is one thing, a 30 year statute, you haven't done away with the rights of infants, lunatics, - I mean, they crop up and we don't rely on the 30 year statute.

MR. GREENBERG: Well, of course, we are not concerned --

MR. SCHWARTZ: Of course, it doesn't bar a lunatic or an infant. You know the statute would be tolled in their situations.

MR. GREENBERG: -- we are just concerned with the State.

MR. SCHWARTZ: Yes.

MR. GREENBERG: Well, suppose the State passed a law that after 30 years anyone in possession of State riparian land, in good faith, would be deemed to have title.

MR. SCHWARTZ: Well, isn't that in effect what I'm saying? I made mine 20 years. I would be willing to make it 30. I mean, would you vest the persons who have a color or of record title to whom the property has been assessed, you vest the title in them. I mean, in effect you are suggesting -- I don't care the form that it takes

I mean, your thought may be just as good, if not better than mine, but I mean that would be just some of the mechanics that would have to be worked out.

SENATOR HAINES: We have been talking about being assessed as one of the criteria for ownership, you wouldn't suggest that assessment be one of the essential stipulations with respect to determining ownership?

MR. SCHWARTZ: Frankly, I put that in for the purpose of establishing good faith. In other words, if the State is going to vest title in somebody who has been occupying lands, we don't want to deprive the State of anything its entitled to and yet we are trying to be fair to our citizens. Certainly if a man is in possession under a color of title, the chances are that he has been in there in good faith and he hasn't jumped in there just for the purpose of trying to get the benefit of this act, or something of that nature.

Now I don't think that the assessment is essential if he has a good record title. I know that most of the situations that we have run into, there have been deeds of record for these marshlands and meadowlands for perhaps a hundred years.

SENATOR HAINES: Yes. Are we, in talking about assessment, getting into a bit of dangerous area if we stipulated that that be a condition because we are actually experiencing many municipalities along the coast, particularly, that have not had tax maps for - well, some

of them still don't and others have only had them in very recent years, and we would be in addition actually, with respect to the boundaries, giving credence to the tax map with respect to its lines. And we know that a tax map was never meant to be a survey, yet we are so apt to use what shows on a tax map as being a boundary. It was never meant to be a survey.

MR. SCHWARTZ: That's true. I certainly have no objection to omitting the assessment as one of the requirements. As I say, I put it in solely for the benefit of the State, trying to be impartial on both sides. I do think that if the State hasn't exercised control for 20 or 30 years and the person has been in possession under color of title either by deed or will, which would identify the property, that should be sufficient.

MR. GRASSO: Did I understand you correctly, that you are suggesting the substitution of the navigability test rather than ebb and flow of the tide?

MR. SCHWARTZ: That's one of the things that I suggested, yes. As a matter of fact, up until not too long ago it was thought in this State that the State only had title to waters with regard to navigable streams. It's the recent cases that have established that the test is ebb and flow of the tide, not the navigability of the stream.

MR. GRASSO: Doesn't the navigability test raise just as many actual problems as your so-called ebb and flow of the tide?

MR. SCHWARTZ: Well, I was going to suggest this, if the State is willing to go along with the navigability test when they fix the line, such as I suggested, they could also determine which streams are navigable and to what extent. So that for once and for all you would have that question laid to rest. I mean, that would be in with the fixing of the line. You have thousands of streams that are not navigable but they are affected slightly by the ebb and flow of the tide, and under the present regulations the State certainly would claim title to that land.

SENATOR HAINES: Are there any other questions of Mr. Schwartz?

Thank you a lot for your contribution, Mr. Schwartz.

MR. SCHWARTZ: Thank you.

SENATOR HAINES: We will be calling on you for some more help.

Mr. Fred Yahrting. Do you want to come to the microphone and speak? You indicated that you would like to speak.

FRED YAHRLING: I don't think it's necessary because I think the question is irrelevant to what you are trying to do. I was interested in somebody explaining to me how they arrive at mean high tide water.

SENATOR HAINES: Of course, we would not give from the Chair, here, an opinion to you on that but, as you have already indicated, listening to authorities speak you are beginning to get some clarification, are you not?

MR. YAHRLING: Right.

SENATOR HAINES: So we appreciate your being here and if your being here can be helpful to you, that's fine. If you want to say something later, you can so indicate.

R. E. Hutchinson.

R. E. HUTCHINSON: I pass.

SENATOR HAINES: Thank you.

J. W. Acton, Wildwood, New Jersey.

J. W. A C T O N: As I indicated on my slip, I do not particularly care to be heard. I'm here for education and refinement.

I represent some 40 or 50 individuals who have built homes adjacent to a public highway on land which is occasionally, some of it, flowed by high tide, once a month. Some more of it, occasionally, when there is a heavy northeaster is also flowed.

We lie, of course, on the island of Wildwood on a sand bar beyond what you would call good land. On Wildwood Island there are almost no cellars. I think the postoffice has one and the Woolworth Building. But outside of that we are almost below water level.

I had for a client a man who told me he remembered when the tide from the ocean and the bay met at the place where our railroad station now is, and used to do it with considerable regularity on the northeasters.

What are you going to call mean high tide? I want to join with the gentleman who spoke last. Isn't the sovereign right limited to between the mean high tide, that

is of the State, and the mean low water. Is any splash of the tide to confer sovereign rights on the State?

We are interested because some of our lands are and were actually only flowed maybe once a year. Some of them are maybe flowed every month.

Now some of us have record title, some of us 50. I'm going to speak for the whole 50 at this time. Some of us have record title. There is apparently a record title on parts of it at least extending back to 1910. I haven't gone back further than that.

I had an owner who apparently lost interest in the area after he had filed maps showing lot and block subdivision. There is a map which indicates a high water mark at that time but that surveyor has long since departed this life and it will be impossible to prove whether or not in the year 1910 that was the actual high water mark.

Our marsh or meadowland area, extending from high land, good land where I am going to say the soil is loam, to the territory which is the sand bar, which is the island, is interspersed with small islands, occasionally. On Rio Grande Boulevard there is a place of about 4 acres separated entirely from anything else, which is well wooded, has holly trees and other growth of, I'm going to say, 40, 50 and 60 years, of considerable size, and you can hardly get to it, you couldn't get to it without boots. I'm interested in what the State does claim the riparian rights cover.

Now some of my clients are acknowledgedly squatters.

They were invited by the municipality to come settle there. They have never been taxed for their land. Title to the land is in this main company, I believe, or title to most of the area, but they have been taxed for the improvement on that land as a personal property. Where do they stand? And as a class, shouldn't they be considered? That is not confined to the boulevards, State highways leading into the Island of Wildwood at all.

There is a similar condition, pretty much, throughout our county. The Stone Harbor Boulevard, the Sea Isle City Boulevard, the Ocean City Boulevard, have a number of citizens - three or four of mine are people who are retired and on pension, a couple of widows, - these folks, I think, have rights which are at least comparable to those of the State and should be considered by your Commission when it makes its recommendations.

Thank you very much.

SENATOR HAINES: Thank you.

I would like to present Senator Richard Stout to the group. He has just joined us. He is a member of the Commission.

Mr. Heaton Underhill representing the New Jersey Fish and Game Council.

A. HEATON UNDERHILL: My name is A. Heaton Underhill, Director of the Division of Fish and Game of the New Jersey Department of Conservation and Economic Development. I am speaking in behalf of the New Jersey Fish and Game Council, the agency established by law to formulate basic policy for the conservation and management of New Jersey's fish and wildlife resources.

We welcome this opportunity to appear before the Riparian Study Commission because riparian legislation and its administration have a vital impact on fish and wildlife conservation, and, for that matter, on the outdoor recreational opportunities of a large percentage of our citizens.

At one time, the people of New Jersey held title to all riparian lands in the state or colony. As the state developed under a more or less laissez-faire economy, legislation was enacted to provide for private acquisition and development or use of these lands. An effort was made to protect the common interest by stipulating that revenue from these sales or leases would establish a fund for the support of free public schools. For a number of years, this program was administered so vigorously that almost all of the ocean front riparian lands and a large proportion of those of our bays and estuaries are now under private control.

We believe that basically this was a short-sighted policy. While the orderly growth of the state required that there should be private use and development of much riparian land, we see today that the public interest would have been better served if the state had retained control of certain areas and locations.

It is not our purpose here today to "cry over spilt milk". There are still many areas where public control of riparian rights should be maintained.

New Jersey is a vital, in fact, an indispensable link in the Atlantic Migratory Bird Flyway. Our coastal marshes provide food and shelter for millions of waterfowl and water birds which, in turn, provide hunting opportunity and aesthetic pleasure not only to New Jersey's citizens, but also to millions from Maine to Florida.

Our marine waters support a sizeable commercial fishery for food fish, menhaden and shell fish. This represents an important segment of our economy. Our marine sport fishery is also of tremendous importance. Beside providing recreation and a source of food for hundreds of thousands of individuals annually, the expenditures of these fishermen contribute several hundred million dollars to the economy of the state.

Recent studies have shown and are continuing to show not only the tremendous importance of these riparian and estuarine areas as spawning and rearing grounds for many of our most important fin and shell fishes, but also that much of the basic fertility of our coastal waters is the result of nutrients released by tidal action in our marshes and estuaries.

How do these considerations tie in to a riparian study? In many instances, filling, dredging, bulkheading or draining of coastal marshes can only be accomplished through the procurement of riparian grants.

Over great portions of our sea coast, our bays, and our tidal streams, public access for fishing, swimming, wading, crabbing, boat launching or other recreational use has been lost through private acquisition of riparian rights! Great segments of our coastal marshes have been forever destroyed.

We do not contend that the wise and orderly development of New Jersey should not include the conversion of marshlands into industrial or residential sites. We further recognize that in many cases there should be private control and development of riparian lands for piers, bulkheads, port facilities or even private protection. However, we do believe that the state must retain riparian control of sufficient areas to preserve our fish and wildlife resources and to provide adequate recreational access and opportunity for present and future generations.

Illustrative of the increasing public awareness of the importance of wetlands and other recreational areas are: the 1960 legislative action to raise hunting and fishing license fees solely for land acquisition; federal authorization of \$105,000,000 for marsh preservation, and the current New Jersey referendum for a \$60,000,000 Green Acres Bond Issue. The indiscriminate relinquishing of riparian rights could in large measure nullify all of these programs.

In your review of riparian laws, procedures and problems, we urge that you give careful consideration to these conservation and recreational values. We suggest that recommendations be made for some type of riparian zoning whereby those marshes, estuaries and other riparian lands that can best serve the common good by preservation in a natural state can be so preserved. To this end we offer the complete cooperation of this Council and the services of all Division of Fish and Game employees who can assist you in your study of these complex problems.

SENATOR HAINES: Are there any questions of Mr. Underhill?

Mr. Underhill, we appreciate your having taken you time and effort to give us this slant on the importance of the subject that we are talking about.

MR. UNDERHILL: Thank you, Senator.

SENATOR HAINES: It is something that could easily have been overlooked.

MR. UNDERHILL: We appreciate the opportunity of presenting this side of the problem.

SENATOR HAINES: Mrs. Harold Hayes.

M R S. H A R O L D H A Y E S: My request may be in already. I wrote to Senator Haines and several other Senators about this.

We live in Beach Haven and our property is on the bay front and then we have 12th Street on the south side of us. It's rather a complicated problem inasmuch as we wanted to improve our property and construct a bulkhead. We secured our grant and a permit and we built the bulkhead and we asked the Borough Commissioners if they would bulkhead the street end at the same time. They declined our request saying that they didn't have a grant and they couldn't do anything until they got the grants.

So we waited a sufficient time and we went back and asked them again. And they said no - well, one Commissioner said that they had applied for the grant and the others said they didn't know what was going on and they couldn't do anything until they got the grant, which we felt was a fallacy since there are street ends in other sections of town that are bulkheaded and we know it to be a fact that they do not have the grants for those particular streets.

So time passed and we had a hurricane last fall and a lot of our property was cut away. And in the meantime there was a dock built out there, on State water, and there was a big argument about that and they removed the dock, or the State did.

So, in the meantime, since the Commissioners had

such an attitude about bulkheading the street and they refused to even listen to us, they wouldn't acknowledge the erosion, - even on our deed there should be a street 95 feet from our east line whereas we only have an improved street of less than 35 feet because it has been eroded so - but the Commissioners wouldn't even consider the erosion problem.

So we had no recourse but to go to the State and then apply for the grant ourselves for the street end. Upon applying for the grant we found out that the Borough had already applied for the grant almost two years previously.

Now, what we want to suggest is that in Articles 33 and 34, or Sections 33 and 34, which says that the Borough does not have to give the adjoining property owner 6 months notice, we feel as though that probably started out as a very good law, there was a reason for that like, say the Borough wanted to build a road and we as a property owner tried to stop them because of our interest in the street, well then Sections 33 and 34 would prevent us from stopping the Borough from making improvements to the street. But it seems as though in this instance Sections 33 and 34 have been very misconstrued and misused because they don't want to give us the improvements that we want. We want a street and we want protection from erosion.

In this last hurricane we lost more fill, more gravel, and all we want to do is build up a little business and improve the property, improve the street, and be a credit to the town. But because of this negative attitude

on the part of the Commissioners - and what their purpose is is unknown because they won't discuss it. And while there's nothing, I suppose, that we can do now about Sections 33 and 34 for the protection of future or other property owners who might run into this same problem, when a Borough applies for a grant on a street the property owners should have the benefit of 6 months notice so that they can find out for what purpose the borough wants to use that street, because we have a grant that goes out in the water and suppose we want to fill in our entire grant- we can to the pierhead and bulkhead lines - and the borough says, "Well, this street is ours now and we aren't going to build a street, it's our grant and even though the dedication is there we aren't going to honor it."

So it seems to me that in that section of the Riparian Laws that the property owners should be protected when the law is misconstrued and misused.

SENATOR HAINES: Mrs. Hayes, we are happy to hear from you on your problem which we recognize is not an isolated situation and we will take into consideration the problems that you call to our attention.

MRS. HAYES: Well, I certainly appreciate your taking the time to hear it because we felt that while it's our little personal problem right there, it could become a problem for other people.

SENATOR HAINES: Yes, we recognize that it does have some general aspects. Thank you.

Frederick Greiner, do you wish to add anything to the statement that you filed with us? I think it touches on some very important aspects of the subject before us.

F R E D E R I C K P. G R E I N E R: Well, Senator, there is no purpose in taking the time of the Commission or anyone else here now to read it into the record. If you see fit to include it, that's fine, but I certainly have no desire now to read into the record the statement I have already made to the Commission.

Mr. Schwartz' suggestions seem to have a good deal of merit to me, but I think Mr. Grasso pointed out a weakness that by adopting such procedures as he has in mind, we may be substituting one set of problems for another. It seems to me that the thing the Commission should strive for is to establish certain standards by which these questions can be determined. Much of our problem today, I think, arises from the fact that we don't have ground rules by which we can determine how the game is to be played. We are never quite sure until the last moment at any time how the application made on behalf of the riparian owner will be handled. If the upland owner knows the basis on which the State will determine his application and pass on it, then he is in better position to know whether an application should be made and what the probable cost of the grant will be, and particularly in the case of industry, on behalf of which I am mainly interested, the industry will be better able to determine whether it can proceed with a project in which riparian lands are to be used. As it now stands, it never quite knows what the State's position will be on any of these things and on any of the questions that have been discussed this morning. And I ask calmly that the

Commission give consideration to developing some standard by which we can all determine the State's rights and what the State will do about them. And one thing more - that there be one agency to which an applicant for a riparian grant can turn to obtain it.

I had an experience some years ago in which a client purchased for a very substantial sum a tract of land belonging to the State Highway Department, or at least we thought belonged to the State Highway Department - the Highway Department had acquired it some years before and had obtained a riparian grant in connection with it. Over the years, part of the fast land, at the time of the acquisition, was taken away by action of the tide, and the Navigation Bureau, acting for the State, took the position that the title of the State as acquired by the Highway Department had been lost to the State, represented by the Navigation Bureau. This makes very little sense to me. It seems to me that if you are dealing with the State of New Jersey and acquire its rights, you should do it once and for all and there should be one agency that determines these matters and you will not find yourself in a position in which, because of interplay between departments of government, you are not sure when you buy from the State, although you have a deed from the State of New Jersey, that it really means that the State of New Jersey is conveying all of its right, title and interest.

All I ask for is simplification and some ground rules by which we can handle these things.

Thank you.

SENATOR HAINES: Now, just a minute. Are there any questions of Mr. Greiner?

MR. GRASSO: Mr. Greiner, you suggest rules and regulations. You mean that the Legislature should authorize administrative agencies to establish rules and regulations, or should that be set forth in detail in the law?

MR. GREINER: Well, I think that broadly there could be standards established in the law. There will be necessarily determinations to be made under those broad standards and some agency, of course, will have to do that. The problem as I see it is that we don't know what standards any of us are using in determining, for example, the question of where the title of the State ends and the title of the riparian owner begins. In this matter of land that was once flowed by the tide - this problem can be met by a confirmatory grant to all the upland involved if it's procured from the State, so long as we know that the State will make such grants and the basis on which it will make them. The determination of whether any one particular area had in past years been flowed by the tide is a very difficult thing. No one wants to get into the problem, but it can be resolved simply by a grant from the State to all of the upland involved, whether it was ever flowed by the tide or not. If the State ever did have an interest in it, it now conveys it. But the State, I think, should recognize that it probably could not establish any claim to this land that was once flowed by the tide and, in fixing the consideration for such a quick claim grant, it should recognize that all it is doing in effect is satisfying the title companies; that's what

we want, and I'm sure the title companies are interested in simplification of methods and procedures so that these problems that are troubling them and troubling counsel for the upland owners can be resolved in a more simplified way.

SENATOR HAINES: Thank you, Mr. Greiner.

Mr. Grassmann, do you want to contribute to this hearing?

EDWARD J. GRASSMANN: I am Edward J. Grassmann of Elizabeth. I have headed a surveying firm for more than fifty years and have dealt with the Riparian Commission and its predecessors during that time on many, many occasions for myself and for the property owners that we represented. I and my companies own and have owned several thousand acres of meadowland from Cape May to Essex County. In that time I have never known the Riparian Commission nor its predecessors to claim title to any meadowland where it was above mean high tide. The determination of mean high tide is rather expensive as it isn't a level all over the State. You go up the Hackensack and Passaic and it's higher than it is at Sandy Hook at mean high tide, and each location is different and it takes extensive observation to determine accurately. So you better make a big appropriation if you are going to follow Mr. Schwartz' suggestion and determine the mean high tide over all the properties of New Jersey.

It has been a simple matter until the recent decision of our top court in Schultz vs. Wilson where, contrary to the procedure that has been the practice in this State previously, expressed by Chancellor Williams, that navigability was a feature of it and that every little stream where you could go

up in a boat to shoot ducks was not a navigable stream and, therefore, the State had no title to that area. Under this Schultz vs. Wilson decision, the ebb and flow of the tide alone is important.

I enlarged this map of property down in Cape May and you will notice that this area is covered with a lot of little weeny streams - we call them guts or worms - all through this area here.

Now, under this recent decision, the State owns all of these little streams and you would have to get a riparian grant to clear your title, even this little one here (indicating) because the tide ebbs and flows.

Now, if you will read the directions to be followed in filing a riparian application, you will note many things that you must comply with, including surveys of these little streams and everything of that sort which would involve great expense. The land on that map sold for about \$50 an acre recently - the meadowland, not the good land. You can see the area involved in these little streams is inconsequential. So a lot of this newspaper talk about the sixty million the State would lose if this decision was not sustained is nonsense, because I think the expense to the State would be greater than the value of the area involved in these little streams.

To that extent, I think Mr. Schwartz' suggestion that the law go back to the old practice before this decision, or that the procedure go back to that old practice, is a commendable one and should be given consideration.

In these envelopes are briefs in cases, opinions by counsel, studies of decisions in England and in this State

and other states which you may find helpful, so I made nine copies of them and brought them down here. You can throw them in the wastebasket or you can glance over them. I think you will find them very interesting.

I might incidentally add that I happen to be the Surveyor General of the Proprietors of East New Jersey, and the proprietors have granted practically all the land of East New Jersey, including these meadowlands. Many years ago there was an attempt on the part of the proprietors to claim, under the grant of the King to his brother, that the proprietors had some right to the land below high-water line, but that was knocked out by our courts more than a hundred years ago - a hundred and twenty years ago. So that situation is very clear.

I have airplane maps through most of the coastal area in my bag over here - I won't bother you with them - showing innumerable thousands and tens of thousands of these little guts or worms, as they are called in deeds. They are very prevalent and plentiful throughout the State, and I don't think the Riparian Commission wants to have jurisdiction over them, because they will lose a lot of money if they do.

Thank you, gentlemen.

SENATOR HAINES: Thank you. Are there any questions of Mr. Grassman?

MR. GREENBERG: Isn't that a question also now whether some of this land between the worms is in doubt, in view of this Sisselman case?

MR. GRASSMAN: I don't think so, because the mean high water line does not flow over it. Now, if you are going to say

any place that the tide ever flows over, then you can take most of the area in North Jersey along the coast. You take in Elizabeth, South Front Street - in Elizabeth every time there is a hurricane or a spring tide, it has about two foot of water over it and the barrels of the oil companies float around the street and in the yards, and you can't park cars. Sometimes you can't get to work for a day or so, especially when one of our hurricanes comes to the area. Now, certainly the State cannot claim title to that land. If that's the case, then every bit of this meadowland probably belongs to the State if the tide ever flows over it, ever once - a year or on the spring tides which are about two-foot above the mean high tide, which occur every month. But there is no decision in this State, and I have never heard of the riparian commission contending that that gave them title, the fact that at exceptionally high tide, whether a northeast wind or an east wind, would cause the water to go over there and would give title to the State of New Jersey. That never was contended in this State, in England, or in any other State in the Union, and I don't think it was intended in that case, the Sisselman case. The Sisselman case would never have been presented, because they hadn't the evidence to show where the high tide was. They came in my office, and I told them, "You're foolish. You'll be trimmed good and plenty if you go into that case." And many a man has been hung because the evidence wasn't presented properly and many a man who should have been hung wasn't hung because he had a good lawyer. And I think that this case that was decided by our Superior Court would not have been decided as it was decided if all the evidence, the pertinent evidence that we have

here, had been presented to the court.

SENATOR HAINES: Thank you very much, Mr. Grassman.

MR. GRASSMAN: Do you want this?

SENATOR HAINES: I think most of us on the Commission are rather familiar with that --

MR. GRASSMAN: I am not contending that this isn't riparian, the larger streams, something like that, but this is what concerns me because of the expense of making a survey.

SENATOR HAINES: Maybe you can help us with the definitions so it will be ironclad.

MR. GRASSMAN: I am not a lawyer, and you have a lot of them around here.

SENATOR HAINES: Well, you can use the English language pretty well.

MR. GRASSMAN: Occasionally, I can murder it.

SENATOR HAINES: We do not have a memo that would indicate that anyone else is interested in speaking. However, are there others who would like to speak? Just a minute, Mr. Schwartz. Would you defer your remarks for a minute?

MR. SCHWARTZ: I have something I want to add, but I will defer it.

SENATOR HAINES: Are there going to be others? No. Well then, after this gentleman and Mr. Schwartz have spoken, we will probably adjourn the hearing.

And what is your name?

J O S E P H M. L Y N C H: My name is Joseph M. Lynch and I am the Town Engineer of Secaucus. I have been asked to attend the hearing and express the

concern of Secaucus with regard to the meadowland problem which has been discussed here.

Secaucus has approximately 25 per cent of its area bordering on the Hackensack River and known as meadowland. I studied the definitions with regard to the tide, as to what constitutes meadowland, and what is land and what is water, and I find that it is near impossible to draw a line. It is complicated by a thousand engineering factors, the flow of the streams, the flow of the rivers, the rain water under certain conditions. Any engineering survey that has been discussed would be fantastically expensive; it would run into many millions of dollars to determine an accurate line.

We have a great deal of industrial development taking place. Most of the meadowland was zoned for industrial purposes. It has been occupied by the so-called nuisance uses in the past - dumps, farms - and this has changed and we have an industrial development program today that vitally affects the community and the county and the State. We are told that this program is in danger because of the decisions by the title companies with respect to defining ownership of the meadowlands. As a result, Secaucus is most concerned and would like to urge that the Commission arrive at whatever decision they may arrive at as quickly as possible.

I would like to suggest that in the case of Secaucus the drawing of a new boundary that would be acceptable to the federal authorities who have jurisdiction over the river and are familiar with the problems and that would take into account that land which has been known as Secaucus boundary could be accomplished quite simply. We would be glad to furnish a line which we believe is the boundary of Secaucus and which

would be subject to any reasonable public use or public purpose and that would solve our problem.

I would like to state further that I think there isn't any easy solution. I think Solomon had it easy after listening to the problems that were just outlined. Obviously, there will be different solutions for different areas. The problem of the areas bounded by the ocean is quite different from the problem of the areas bounded by rivers or streams. Some lands are valueless, and even defining a boundary, as mentioned before, might be a great deal more costly than the value of the land itself. In the case of Secaucus, land value is quite high because of the development that has taken place, and defining a boundary is a relatively simple problem for us.

I think that the suggestion that was proposed by Mr. Schwartz with regard to fixing a line is the answer, at least in our case, and we would like to recommend it. I think also that a body should be established and that broad powers should be assigned to the body and they should be given the right to set these boundaries, as was stated previously by another gentleman, and that standards be used in defining the boundaries, giving weight to the requirements of the State with respect to recreation purposes, with respect to the Fish and Game Commission requirements and any other agencies.

I think that just about covers it.

SENATOR HAINES: Do any of the Commissioners have questions of Mr. Lynch? If not, I want to thank you, Mr. Lynch, for coming and contributing.

Now, Mr. Schwartz.

MR. SCHWARTZ: I don't know whether I'm the hero or the villain in these proceedings after hearing the slaps and pats about the title companies, but I do think that the Commission should bear one other thing in mind that is of great interest to all shore municipalities, and I'm sorry that my own Senator, Senator Stout, isn't present at this time.

Most municipalities at some time or another have, with the aid of the State and the county, built jetties out into the ocean. Now, at the time the jetty was built, the municipality was the owner of the upland or the land beyond the high water line. As a result of the building of the jetty, there has been accretion, say, of 50 or 100 feet. Now, it has come to my attention - and I don't know whether I'm violating a confidence or not; I don't think it is at this time - but in a recent conversation I had with Justice Haneman he told me he understood that the Department was going to claim any accretion of that type, on the theory that it was artificial accretion and, therefore, the ownership remained in the State and did not accrue to the municipality.

Now, if you think logically about this, it is true that under the theory of the law as we presently know it, no man can benefit by his own efforts in gaining accretion. It must be natural accretion. Yet this accretion is caused by a combination of factors. This is sort of a partnership between the State, which is desirous in the public interest of protecting the beaches from erosion, and the municipality which also has a similar consideration for its own constituents, and it would certainly seem to me that the Legislature should pass a law that accretion of that type should be considered

natural accretion and accrue to the municipalities along the shore. I think it would be highly unfair for the Department to claim that that is artificial accretion. I don't think it could ever be established. I mean, it might possibly be caused by the new jetty; on the other hand, it might just be caused by a change in the tide, because, as anybody who has lived at the shore knows, there is no accounting for why there is accretion or erosion. You can have erosion with a jetty and you can have accretion without it. I think it is something that should be considered.

SENATOR HAINES: Thank you, Mr. Schwartz.

We have had letters and memoranda from persons who have not spoken, and we would like these letters and memoranda to be put in the record. I would like to acknowledge that we did get a letter from Francis J. Ward, of Sutton, Yoder & Ward, Toms River, having to do particularly with the procedure of grants. We also have a letter from Percy Camp, County Counsel of Ocean County, in which he expresses particular concern about an applicant for a riparian grant showing the location of the proposed grant with reference to the nearest road and indicating drainage easement through the proposed grant.

Fred C. Freeman, of Plainfield, formerly with the Department of Navigation, is here; he has not asked for the floor but has submitted a memorandum having to do with his observations with respect to the statutes on riparian grants from his long experience in the Department.

The Department has submitted a memorandum from Frank Nunziant to Anthony Scoppetuolo in which he has outlined suggestions for amending the statutes and the administrative

regulations.

Another department memorandum that is on file with this Commission is one from F. B. Cogan, Assistant Chief Engineer, to Peter Gannon on the subject of "Thoughts on Permit and Riparian Matters."

James Rankin, Chief Engineer of the Bureau of Navigation, has made some observations on the riparian law, and I believe we recognized the communication from Frederick Greiner when he made his remarks. We want his submitted statement to be part of the record as well.

There being no others who care to talk on the subject, I would like to ask my fellow Commissioners if they have anything that they want to say at this time.

There being no further comments or observations, I would like, as Chairman of the Commission, to take this opportunity to most sincerely thank the people who have been here today in order to make suggestions to the Commission on this subject. I would hope that the Commission, after having had opportunity to evaluate the suggestions and other material that it has before it, will without delay be able to come up with a recommendation to the Legislature to clarify the riparian law and procedure. This will be very gratifying to all of us and I would say for the Commission that we will bend every effort toward having recommendations by this Commission to the Legislature expedited. Again, thank you all for your contribution.

H E A R I N G C O N C L U D E D .

Statement by Mayor Thomas Gangemi, City of Jersey City, before the Legislative Study Commission on Riparian Laws, Wednesday, October 18, 1961.

Chairman Haines and Members of the Study Commission:

Jersey City has just undergone a complete revision of its form of government, replacing a commission form under which the City was governed since 1913, with a Mayor-Council form. One major reason the City of Jersey City elected to revise its municipal government was a realized need for a major effort towards community renewal. My administration has adopted a program of community development including planning, housing, urban renewal and economic development elements. Critical to the accomplishment of effective renewal in Jersey City is the strengthening of our tax base and the industrial development of the City.

Large areas in Jersey City suitable for new industrial development, including a large area which the New Jersey Markets Commission is preparing to develop for an integrated food distribution center to serve the New York Metropolitan area, are currently in the Meadowlands of the Hackensack River. Portions of these meadowlands may be subject to riparian rights held by the State. Accordingly, Jersey City has an interest in the elimination of any confusion in titles because of the possibility of the State's riparian claims. Moreover, the reclamation of the Hackensack meadowlands and the work of the Meadowlands Regional Development Agency are of great interest to Jersey City since the development of the 14,000 now vacant acres in this vast and important area will accrue major economic benefits to the City as well as Hudson and Bergen counties.

On August 15, the Bureau of Navigation of the Department of Conservation and Economic Development claimed riparian title "on all frontages along Newark Bay, Hackensack and Passaic Rivers and tributary tidal waterways, not already under conveyance from the State or legal occupation under Freeholders license, etc." Specific parcels were listed but Jersey City explicitly had not been examined. This action by the State has thrown doubt on the title to properties throughout the Hackensack area including Jersey City.

The work of the Meadowlands Regional Development Agency, the decision by Judge J. Wallace Leyden in the Siselman case and the State Bureau of Navigation's report have brought to the forefront problems with respect to Jersey City's Meadowlands area and the future industrial development which Jersey City hopes to achieve in these areas. We must now insist respectfully that the State undertake to accomplish the immediate clarification of the law with regard to riparian rights and the extent of these rights which the State may claim in Jersey City.

A number of suggestions to be put before you by the Meadowlands Regional Development Agency have considerable merit, and I ask that this Commission take under careful consideration these, as well as all proposals leading to expeditious resolutions of the problems which now tend to impede the progress of the industrial development and renewal in Jersey City.

I would like to commend the action of the Legislature in creating your Commission and to offer the services of the City's legal, engineering and planning staff toward whatever determinations may be necessary by this Commission or by any agency created to carry out the establishment of legal and factual solutions to these problems, which may be necessary.

Thank you.

Mayor Thomas Gangemi

SUTTON, YODER & WARD

COUNSELLORS AT LAW

206 HORNER STREET

TOMS RIVER, N. J.

DIAMOND 9-4650

WILLIAM SUTTON
LESTER YODER, JR.
FRANCIS J. WARD
RICHARD D. SUTTON
HERBERT C. HEIM
JAMES G. HENRY
W. SCOTT ALLEN

BRICK TOWNSHIP OFFICE:
2828 HOOPER AVENUE
BRICK TOWN, N. J.
TWINBROOK 9-4200

September 13, 1961

REPLY TO:

Toms Rive

Mr. Peter J. Gannon, Secretary
Riparian Study Commission
137 East State Street
Trenton 9, New Jersey

Dear Sir:

Pursuant to your printed notice inviting statements of recommended changes in riparian law, I would suggest the following:

1. Cut down the number of signatures required to the Grant instrument. Would this not reduce the time for processing of the Grant? Would it not be possible to merely have the Grant signed by the Attorney General and the Governor?
2. The innovation introduced during the past year of omitting from the Grant a metes and bounds description of the ripa should be discontinued. Reliance solely upon a map attached to a deed for a description of the premises conveyed is poor conveyancing practice. It is submitted that your engineering department is in a better position to draft the description at the time the Grant is purchased than any other person or time. A metes and bounds description is necessary for later conveyances and mortgages.
3. Where there is a conveyance of the upland between the time of application for the Grant before the date it is issued and recorded, and the grantee in the Grant is not the owner of the upland on the date of delivery, the Grant by its terms is void. A simplified procedure should be worked out whereby the purchaser could receive an assignment from the seller-applicant of his rights to issuance of the Grant, and avoid a long further delay in processing of a new application.

TO Mr. Peter J. Gannon, Secretary
Riparian Study Commission

4. The phrase printed on the backer of the Grant "Recorded in Liber Page," which is used to refer merely to the recording in book and page in the Navigation Bureau records should be eliminated from the backer, as this is misleading to laymen receiving the Grant instrument, causing them to believe it has already been recorded as a deed in the County Clerk or Registrar's office.

5. Where a public street crosses the upland and runs along the high water mark, it has been required that the applicant apply to the municipality to release its rights before the owner of the upland can obtain a Grant. Specific modified release procedure should be set up, as in practice this delays issuance of a Grant for many more months. There is no reason the Grant may not issue with a clause stating that it is subject to the public easement in the upland; just as it has been accepted that if there is a private easement or right of way in the upland for the benefit of a utility, the Grant may issue without release of rights of the utility.

Very truly yours,



Francis J. Ward

FJW:ja

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**County of Ocean
COUNTY COUNSEL**

27 WASHINGTON STREET
TOMS RIVER, NEW JERSEY
October 2, 1961

State of New Jersey
Legislative Study Commission
Riparian Laws
137 East State Street
Trenton 9, New Jersey

Attention: Peter J. Gannon, Secretary

Re: County of Ocean

Gentlemen:

This is in relation to your proposed public hearing to be held October 18, 1961.

Our County Engineer, Lawrence F. Wagner, has suggested that there should be included in the requirements of the Navigation Bureau a provision that all applicants for Riparian Grants should show the location of the proposed riparian grant with reference to the nearest road, the grade of the road as it passes the premises in question, the manner in which the road is drained and, if necessary, should indicate a drainage easement through the proposed grant.

The said application for Riparian Grant should also furnish a Certificate of Approval to be supplied by the County Engineer or the Local Municipal Engineer, depending on whether or not the upland adjacent to the riparian grant fronts on a County or local road.

Very truly yours,


Percy Camp
County Counsel

PC:LR

c.c. Lawrence F. Wagner

MEMORANDUM

COMMISSION TO STUDY THE LAW OF THIS STATE PERTAINING TO
RIPARIAN RIGHTS AND TO PREPARE LEGISLATION TO MODERNIZE
THE SAME:

12:3-8. TRESPASS ON LANDS OF THE STATE

It seems that the occupant should be responsible for a portion of this expense in addition to paying a fee or annual rental based upon a formula for the time covered by such occupancy. For example, an annual rental of say 7 per cent of the value of the riparian lands at the beginning of the trespass. It appears that the State must have some obligation should the trespass extend for a considerable period of time.

12:3-9. GRANT TO PERSONS OTHER THAN RIPARIAN OWNER

There has been some reluctance to arrive at the amount to be paid to the riparian owner, even though he has redress in the Courts to settle the value of the land involved. It appears that the addition to a new statute could include the Governor and the Attorney General as follows:

It shall be lawful for the Board, together with the Governor and the Attorney General, to fix and determine the amount to be paid to said Riparian owner; etc.

12:3-15. LEASE OR SALE OF BASINS

This section is rather confusing since it gives the Board the right to make and sell to the owners of certain lands, the right to have exclusive use etc. then subsequent to filing maps and surveys the basin shall remain as a public basin etc.

12:3-18. RIGHT OF WAY SEPARATING RIPARIAN OWNERS LANDS FROM
TIDEWATER ETC.

Here it appears that the right of way should be spelled out, indicating for what purpose and by whom. For use as a Street, park, sewer line, overhead power lines etc.

12:3-19. ESTABLISHMENT OF PIERHEAD AND BULKHEAD LINES AROUND
ISLANDS ETC.

12:3-20. SALE OR LEASE OF RIPARIAN LANDS AROUND ISLANDS ETC:

^{NOTE} It appears that when speaking of Islands this section should/whether the islands are above of below mean high water.

In the sale of an island below the mean high water line where there is no upland owner, the lands, it seems that a public sale should be the method of selling the Islands.

MEMORANDUM - (Continued)

12:3-23. LEASE OR GRANT TO PERSON OTHER THAN RIPARIAN OWNER;

This refers to the notice to be given the upland owner by the prospective purchaser of State lands under water. In addition to the 6 months notice, it appears that the prospective buyer file a formal application stating the purpose of the purchase to be made and that the buyer will within say (6 months) start the project proposed and continue until completed.

This is a matter that should be studied with care since the prospective buyer could obtain a lease and then default on his payments leaving the real upland owner with an obstruction in front of his property that he did not want there in the first place.

12:3-25. RENEWAL OF LEASES ETC.

There seems to be no reason the rental terms can not be made specific and provided in the lease prior to execution, leaving no chance for future settlement that may be unsatisfactory to the State. This is no place for arbitration on future rentals.

12:3-33. GRANT OF RIPARIAN LANDS FOR PARK, PLACE, STREET OR HIGHWAY

12:3-34. CONDITION IN GRANT ETC.

It seems that in the above sections there should be some mention as to whether fees can be charged or whether the area's conveyed shall remain always free to the public.

Also should there be inserted a stipulation that the Board with the approval of the Governor and the Attorney General may fix a lower fee than usual "Provided that the grant or lease be for public use, except a charge for actual maintenance costs, and that an annual audit shall be furnished the Department and the State Treasurer.

12:3-36. REVOCABLE LEASE FOR NOMINAL CONSIDERATION

Since the State should receive a fair price it seem that this section could very well be consolidated with 12:3-33 and 12:3-34 above.

12:3-38. CONFIRMATORY GRANTS AND LEASES

TO
12:3-44.

In general this seems to be in good form, however, paragraph (c.) in section 12:3-42 should be preserved.

MEMORANDUM . 2 (Continued)

12:3-45. ERRONEOUS GRANTS

Since this has caused a hardship to an upland owner, it appears that some good would come, if the 5 year occupation stipulation was excluded from any new law that may go into effect. The period of occupation is usually disputable.

There was a case where occupation continued for many years with the true owner living adjacent unaware of the trespass in front of his uplands.

Respectfully submitted

A handwritten signature in dark ink, appearing to read 'Fred O. Freeman', with a long horizontal flourish extending to the right.

Fred O. Freeman.

MEMORANDUM

DATE: October 5, 1961

TO: Anthony C. Scoppetuolo

FROM: Frank Nunziant

SUBJECT: Suggestions for amending the riparian statutes and revising the administrative regulations of the Bureau of Navigation.

Attached are the foregoing suggestions.


Frank Nunziant

FN:eh

STATUTES

"Purpresture" should be more specifically defined and assigned its own section number, which should also specify that the State may assess against the person committing the purpresture a charge for use and occupancy based upon the rental rate plus interest thereon for the period of the purpresture upon the State-owned lands.

Note: Purpresture is presently defined in general terms in the 2nd paragraph of section 4.

Section 7 should specify that it applies only to tidewaters of the Hudson River, N. Y. Bay and Kill von Kull (lying between Engard's dock on the Kill von Kull and the N. Y. state line.)

Section 8 should define the lands owned by the State as being the lands lying below the natural mean high water line, which line shall be the one established in its most recent location by evidence satisfactory to State.

Section 9 should be eliminated.

Note: After service of due notice and failure to apply, the riparian owner should not have any compensable right. After all, a riparian owner in the first instance only has a preemptive right to apply.

Section 10 should specify that they apply to tidewaters elsewhere than in the foregoing areas. However, there appears no reason why section 7 could not be eliminated and all areas included in section 10, which should also define "riparian owner" as the person who appears from the records of the particular county recording office to be the owner in fee simple of the upland adjoining the requested tideland on the date of issuance of the riparian instrument. "Date of issuance" should be defined as the date upon which the riparian instrument is ready for delivery and the consideration has been paid; such date should appear in the instrument as well as the date of execution of the instrument. Section 10 should allow application to be made by a person holding a contract for the purchase of the upland provided that such person submits a copy of such contract and the written consent of the present apparent record owner, unless such consent expressly appears in the contract itself. An assignee of the person named as purchaser in the contract should also be allowed to apply under the same conditions. If proof of rescission of the contract is submitted, the present apparent record owner should be allowed to apply on his own behalf. Provision should be made for additional preparation fees where changes in grantees are required after the original preparation of the instrument. Where changes in grantees are required,

reexecution of the instrument should be required but reconsideration of the application should not be required. Section 10 should refer to section 16 for the method of fixing prices for grants and rentals for leases.

Section 16 should specify that as to grants, the prices are computed by charging a rate per foot along the bulkhead line, if there be such a line, or a rate per acre where a grant of the State's interest within the boundaries of the alleged upland is requested or a lump sum where several factors are involved and the charge is approximated; that lease rentals are computed at 7% of the capital price fixed for a grant; that all charges are within the discretion of the Committee on Navigation and Riparian Instruments and that said Committee may consider existing market values in determining the prices or rentals.

Section 18 should be amended to except the situation where a municipality or other political subdivision applies under section 33 and a marginal street is involved.

Section 23 should be renumbered to follow section 10 and should be amended to specifically provide for written consent by the riparian owner and also should specify the contents of such consent.

Section 33 should specifically give the municipality or other political subdivision priority in all the specified situations and particularly where a riparian owner applies under section 18. Section 33 should also expressly specify that it is immaterial whether the municipality or the political subdivision has fee title or merely an easement in the existing park, place, street or highway.

License should be specifically provided for in its own section.
Note: License is presently referred to only in section 5 and 22.

All sections should be amended to specify Director of Resource Development, Council of Resource Development and Bureau of Navigation wherever applicable.

RS 13:1B-13 should be amended to require that riparian instruments be approved and signed by a three member Committee on Navigation and Riparian Instruments and that process for such instruments be fixed by such Committee. The member of the Committee to be appointed from the twelve member Council by the Governor. Riparian instruments should also require the approval and signature of the Director of Resource Development, the Commissioner of Conservation and Economic Development, the Attorney General and the Governor should be attested by the Secretary of State. In the event that only two members of the Committee approve and one member disapproves, provision should be made for the Director of Resource Development or the Commissioner of Conservation and Economic Development or both to approve in order to override the one member's disapproval. As to

matters of general policy affecting navigation and riparian rights, the approval of a majority of the entire twelve member Council should still be required.

ADMINISTRATIVE REGULATIONS

We should accept certificates of title only from counsellors at law, title companys, and county clerks. The present form of certificate merely states, that according to the records in the particular county clerk's office, John Jones is the owner in fee simple of the premises thereafter described and that he has not disposed of his rights in said lands so far as said records reveal. We have recently inserted blanks for the specification of the particular deed book where said deed is recorded. It will be practicable to dispense completely with the submission of a photocopy or certified copy of the deed by amending the certificate further as hereinafter stated.

The certificate should state:

- (a) the date of the deed.
- (b) the recording date.
- (c) the book and page where it is recorded.
- (d) the names of the grantors therein.
- (e) the names of the grantees therein together with a statement as to the nature and extent of their right, title and interest. Note: for example: tenants by the entirety, joint tenants, tenants in common or tenants in partnership; tenants in common to the extent of two-thirds interest but having the consent of the other tenant in common to the extent of the other one-third interest.
- (f) a certificate of title should only name the owners having respective interests in the same parcel or parcels of upland; if the applicants have interests in different parcels of upland, separate certificates of title should be required to avoid confusion. The certificate of title should refer to any necessary consents and be accompanied by copies thereof. The description set forth in the certificate should be the deed description, and if desired by the applicant, should be followed by a more current description based upon a survey with a proper recital that it is intended to describe the same land acquired by said deed.
- (g) a statement that the survey accurately depicts the premises acquired by said deed and that any variations therefrom have been reconciled to the satisfaction of the maker of the certificate and that there is no real conflict between the deed and the survey as to the location of property lines or as to the areas or frontages involved.
Note: It is the burden of the applicant to prove his entitlement to apply for riparian rights; it

is not the function of this Bureau to accept questionable claims of title or deeds replete with uncertainties and conflicts and to endeavor to substantiate the applicant's entitlement. Many hours are spent in computing, comparing, screening, letter writing, phone consultations, and office consultations with applicant's attorneys, title companys, and surveyors because deeds and surveys in obvious conflict are submitted to our office for solution. This Bureau does not have sufficient personnel to properly determine by its own investigation the entitlement of the applicant within a reasonably short time.

- (h) the survey should show the names of adjoining land owners referred to in the deed description in addition to any more recent adjoining land owners designated on the survey.
- (i) a statement that there is no provision in the deed restricting or limiting the entitlement of the applicant to apply for a riparian instrument.

The application should be made only by the persons in whom record title is invested. If the applicant desires that some other person should also be named in the riparian instrument the application should contain a statement to that effect. Note: for example: where record title is invested in one spouse and the other spouse has only a derivative interest, if the spouse having record title desires that the other spouse also be named in the riparian instrument, a statement to that effect should appear in the application. We are required to issue riparian instruments to the same persons and for the same interests as appears in the deed unless we receive a proper consent that other persons shall be named therein. The application should be notarized, that is, it should be sworn to before a notary public or a counsellor at law. The application should also state the use to which the desired tideland shall be put.

PERMITS AND LICENSES ISSUED FOR DREDGING SHALL PROVIDE:

1. Developments selling to the public or businesses supplying services to the boating public shall be required to;
 - a. Plan and execute a connecting channel between the development and/or service areas and the main channel of the body of water upon which it is located.
 - b. Dredge said channel to a maximum depth of feet and a maximum width of feet, the width to be no less than the width of lagoons where applicable.
 - c. Any dredging in excess of the maximum depth and width excavated and placed on the upland as fill shall be paid for at the license fee per cubic yard in effect at the time.

Subsections "b" and "c" shall apply to permits for channels into private property also.
2. That dredging for fill under a license shall be in and from an area, with dimensions, depths and location, which in the judgment of the Bureau shall contribute to the public benefit in the creation of channels, removal of shoals, widening or connecting channels instead of deep holes to obtain fill.

- PARK GRANTS -

RIPARIAN

1. Public interest should be paramount. The rapid development of water front property is fast using up the water area and the municipalities will awaken and find that the private developments have spread and eliminated waterfront from public use. The Green Acre Program recognizes this principal and, is passed, will involve public monies to accomplish this. Consideration by Navigation Bureau should be given

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to the preservation for the public of some of this waterfront. Consideration shall be given to applications for Park grants by the municipalities at a reduced rate with the grant being restrictive to compensate for the reduced rate, restrictive to depth, improvements and use.

2. LANDS UNDER WATER IN FRONT OF SEA WALLS (Monmouth Beach, Sea Bright, etc.) whether in state ownership or granted. Since most of this frontage is under water, the grants already made have little value to individual owners. Existing grants should be condemned and returned to the State, so that future coast protection work, done with public monies, to create a usable beach by the construction of groins and jetties and or the pumping of beach fill would be public lands.

3. LANDS ACCRETED BY THE CONSTRUCTION OF COAST PROTECTIVE STRUCTURES OF BEACH FILL.

Ownership of that land accreted by the construction of jetties or beach fills should be in the public.

1. Groins and jetties are constructed with public monies when erosion occurs and presents a problem.
2. The structure is planned to
 - a. Retard and stop erosion.
 - b. Rebuild the beach by the entrapment of sand.
 - c. Protect the shore.
 - d. When the structure is designed for these express purposes, fulfills the design criteria and builds beach after construction, it follows that it is an

October 3, 1961

- 3 -

artificial accretion and not natural accretion. The same reasoning holds true of beach fill of those areas so eroded and rebuilt with public monies.

4. At locations where it is required to tie riparian surveys to pierhead and bulkhead lines (as in Manasquan River), the proper agency should be requested to replace monuments lost by the encroachment and development or set new ones.

F. B. COGAN
ASST. CHIEF ENGINEER

FBC: jw

MEMORANDUM

DATE sept. 29, 1961

TO: Mr. Peter J. Gannon

RECEIVED

FROM: Mr. James K. Rankin

OCT 2 1961

NAVIGATION BUREAU CHIEF

SUBJECT: Commission on Riparian Law

Proposed changes in riparian law were discussed in the Trenton Office on September 26th by Messrs. Cogan, Scoppetuolo and Rankin. Mr. Kelly was absent but submitted a memorandum, copy of which is attached.

Mr. Kelly's memorandum was discussed. His first suggestion was that the permit statute 12:5-3 should be strengthened for enforcement as set forth in his memorandum. He suggested a procedure involving a fine and possible claim covering cost of removal of an illegal structure. It was decided that more discussion would be necessary in order to work out a suitable procedure. There was a question whether the imposition of a fine by the Bureau would be approved. Perhaps a fee for late filing would fit this situation. The action for reimbursement covering removal of structure would probably have to be initiated through the Attorney General's Office.

Mr. Kelly's second suggestion was that there should be a specific statute governing licenses issued for structures out-shore of the exterior lines. This should include isolated structures, as for example a ski jump. It was thought that such a statute would be appropriate.

Mr. Kelly's third suggestion was the establishment of laws governing mooring areas. The thought was that the state could designate and mark established areas. Further that there would be a specified charge for mooring in these areas. This was considered appropriate addition to the riparian laws.

On the second page of Mr. Kelly's memorandum he listed the various factors which affect the riparian prices. In addition to those listed it was considered proper to add (1) relation to upland realty values and (2) establishment of class prices divided into (a) private, (b) commercial (c) industrial. In substance it was considered that the character and use of the adjacent upland greatly affects the value of the riparian frontage.

Mr. Cogan called attention to the fact that frequently owners of riparian grants dredge extensively for fill in connection with dredging approach from the nearest channel. It was

considered appropriate that permits for channel approach to grants should be limited to the proper size for the vessels which would be moored at the riparian owners frontage. Any other dredging or excess dredging in connection with the channel should be under license with royalty payments.

Mr. Scoppetuolo called attention of 12:3-9 which involves a 6 month's notice. He felt that the Council should be relieved on setting damages. It seems appropriate that this statute should be reviewed and brought up to date.

As to park grants there was unanimous opinion that the policy of the Council and previous Boards in allowing a reduction to municipalities should be continued and if necessary established by law. The need for public recreational area on our beachfront grows constantly. In this connection it was thought that there should be statutes assisting the state in acquiring beach property, as per example the areas outside the Sea Bright seawall. Possibly also in this connection there might be affirmation by statute of the general policy for the Council in not making grants along the oceanfront.



James K. Rankin
Chief Engineer
Navigation Bureau

JKR:ms

cc: Mr. Cogan
Mr. Scoppetuolo
Mr. Kelly

ARCHER, GREINER, HUNTER & READ

COUNSELLORS AT LAW
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518 MARKET STREET
WOODLAWN 3 7980

HADDONFIELD OFFICE
27 CHESTNUT STREET
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HAZEL 9-4400

I MORSE ARCHER, JR.
FREDERICK P. GREINER
JAMES HUNTER, III
WAITER N. READ
THOMAS N. BANTIVOGLIO
JOHN P. HAUCH, JR.
FREDERICK J. ROHLOFF
JAMES A. PERRIN
JOSEPH H. KENNEY
JAMES P. MACLEAN, III

October 9, 1961

Mr. Peter J. Gannon
Chief, Navigation Bureau
137 East State Street
Trenton 9, New Jersey

Dear Mr. Gannon:

Many thanks for your letter of September 5th.

Henry Haines had already asked for my comments on the riparian laws and applications thereunder. A copy of my letter of today to him, containing such comments, is enclosed.

Sincerely yours,



FREDERICK P. GREINER

FPG:crs
enclosure

October 9, 1961

Honorable Henry S. Haines
230 High Street
Burlington, New Jersey

Dear Senator Haines:

Thank you for your invitation to offer my comments to the Legislative Study Commission on riparian laws. It occurs to me that time will be conserved for the Commission if such comments are submitted by letter. I hope to attend the public hearing on October 18th and if it appears that my participation therein will be helpful, I shall join in the public discussion of the questions being considered.

As you know, my work in riparian land matters mainly has been on behalf of industry seeking to develop water front land in the southern part of the State. It has been my experience over the past 20 years that, in spite of continuous effort of the Navigation Bureau staff and other officials concerned with riparian grants to minimize delays and avoid technical complications in processing applications for such grants, delays and difficulties incident to such applications are steadily increasing to the point of discouragement of such water front development.

That our riparian land statutes are a hodge podge of acts, passed, from time to time, largely before the turn of the century, is apparent from even a cursory examination of them. That they need complete review and revision in the light of present day conditions can hardly be doubted.

It has long been established that the State owns tidal lands below high water line. Where the water line is reasonably constant in location, the boundaries between the State's under water land and the private owner's upland is easily determined. In southern New Jersey, with which I am most familiar, however, this is rarely so. We have shifting high water lines, particularly along the ocean and bay, tide meadows, marshes, reclaimed lands between high and low water, meadow bank lands and other conditions rendering it exceedingly difficult to determine where the State ownership ends and the upland ownership begins.

The case law on ownership of fast land subsequently flooded by the tide is confusing at best and, in my opinion at least, conflicting in many situations. We have decisions that fast land, submerged and subsequently re-emerged, belongs to the original riparian owner of the fast land, even though the State makes a riparian grant thereof to the owner of inland reached by the encroaching high water line during such submergence. Other New Jersey decisions, however, hold that the original riparian owner of the submerged fast land loses his title forever if the State grants it to another before re-emergence. Presumably, a riparian grant of lands below high water line by the State to the owner of the ripa vests title in the grantee for all time, whether the lands granted remain submerged or not. Yet our cases hold that title to lands between high and low water, reclaimed by the owner of the ripa and "appropriated to his own exclusive use" under the since repealed Wharf Act of 1851, are lost to the State if the reclaimed land becomes submerged for any extended period.

For generations many owners of farm lands fronting on tidal water believed that their ownership extended to low water line and, without riparian grant or permit from the State, appropriated the land between high and low water to their own use. Deeds conveying such lands frequently use the low water line as a boundary in description of the land. Little, if any, objection to this has been made by the State but when industry develops water front lands it necessarily proceeds with more caution. Consulting counsel, it is often advised that litigation is necessary to determine the extent of the State's interest in any given parcel of water front land.

When an industry decides on water front development it cannot accept either the delays or the uncertainties of litigation. Many times title to some part of the land chosen for development is claimed both by the upland owner and by the State. As an alternative to abandonment of its development project, the industry may be confronted with buying that part of the land twice - once from the upland owner and once from the State - at the full price in each case.

Buying from the State is not always limited to purchase of a routine riparian grant for a consideration determined by the number of feet purchased along the pierhead and bulkhead lines. If substantial areas between, high and low water are involved, a further consideration, based on acreage, may be charged. Where the possibility of former tide coverage of present fast land exists, there is the chance that the State one day might claim, even though it could not prove, an interest in such fast land. In such situations caution prompts a request that the State quit-claim to the upland owner such rights, if any, as it might claim in the upland. For such quit-claim an additional price must be paid.

In most cases the land conveyed by the State's riparian grants is of little use until very substantial expenditure for development of the land by bulkheading, filling, erection of piers, dredging, etc. has been made. The extent to which this fact should be recognized in fixing the consideration to be paid for the grants is a question of State policy. Perhaps, in selling the State's decreasing supply of tideland available and suitable for industrial development, the main objective should be to realize therefor the maximum amount fairly procurable. In any event, however, if the State seeks to encourage development of its water front areas, it should establish some standards by which the extent of the rights it claims in such lands and the price basis on which it will transfer those rights to the upland owner can be determined with reasonable certainty.

The uncertainties involved in dealing with the State on applications for riparian grants, more than the prices charged for the grants, are, in my opinion, the major deterrents to development of water front land - uncertainties as to extent of the State's claims of title, uncertainties as to price, uncertainties as to limitations the State may impose on its grant, uncertainties as to when a grant will be made. None of these uncertainties can be resolved by the technical staff in the Navigation Bureau. I have always found the staff members courteous and helpful but it seems to me that their customary eagerness to serve well both the State and the riparian grant applicant is, these days, giving way to a feeling of frustration. They can recommend but they have no power to take the action such uncertainties demand or to make the decisions necessary for such action.

The Governor and his counsel, the Attorney General, the Commissioner of Conservation and Economic Development, the Director of Planning and Development, and the members of the Planning and Development Council all must pass on one or more phases of each riparian grant and each of those officials, together with the Secretary of State, must sign every grant instrument. All of these gentlemen have other duties, responsibilities and interests and, at least to the applicant for a riparian grant, it appears that such other duties, responsibilities and interests take precedence. There would certainly appear to be no good reason why, on even routine riparian grant applications, nearly two years must elapse between the filing of the application and delivery of the grant instrument, yet such lapse of time is customary today.

The Navigation Bureau recognizes that there are mechanical delays in the preparation of grant instruments. Such delays, while annoying to the applicant, are not serious, however, if

the title claimed by the State, the price for a grant of that title, and the conditions to be placed on the grant are promptly determined with finality upon which the applicant can rely. The discouraging difficulty with the delays encountered in processing riparian grant applications lies in the fact that until the fully executed grant instrument has actually been delivered to the applicant, there is no assurance that the State's title claims, its price or its conditions will not be changed. The Planning and Development Council may fix a price and the applicant may agree to pay it but a year later perhaps, when the grant instrument reaches the Attorney General or, later still, when it is submitted to the Governor's counsel, objection to the contemplated grant on one ground or another may be raised and the whole purchase transaction may have to be renegotiated.

Riparian lands matters seem always to be relegated to some member of the Attorney General's staff who, by reason of other duties, cannot be expected to devote sufficient time to dispose of them promptly or to become expert in that field. Many years ago I suggested to the Attorney General that he assign to such matters one of his assistants with sufficient time, inclination and ability to become expert in regard thereto. The Attorney General expressed interest in the suggestion but never followed it. If the suggestion had any merit then, it has more now. Riparian grants frequently take many months to clear the Attorney General's office and after they do, they are forwarded to the Governor's counsel for re-examination.

In answer to a recent inquiry of mine about delays in moving riparian instruments through his office, the Governor replied:

"I have been in constant touch with the Department in an effort to shorten the processing of these grants. Unfortunately, it has been my experience that many of these grants reach my office before significant shortcomings are uncovered for the first time."

Why significant shortcomings in grant instruments are uncovered for the first time when they reach the Governor's office is hard to understand. Presumably the Navigation Bureau has passed upon all technical details and the Attorney General on all legal details of each riparian grant before it is submitted to the Governor. Obviously, considerable simplification of State procedures for preparation and execution of grant instruments is essential.

If the State seeks to encourage development of its water front lands, even if it seeks only to get the highest possible

price for its interests in under water lands, it must adopt business like methods in processing applications for riparian grants. All engineering aspects of applications for grants can be handled expeditiously by the Navigation Bureau if that bureau is adequately staffed. All legal aspects thereof can be taken care of, with full protection of the interests of the State, by one member of the Attorney General's department if he is expert in the field of riparian grant matters, is assigned to those matters exclusively and is available at all times to the Navigation Bureau and the Planning and Development Council. All questions of value of riparian lands granted by the State can be determined by the Council in consultation with the Navigation Bureau and the Attorney General's expert. With cooperation between those three agencies and systematic and efficient procedures for synchronizing their efforts, most of the confusion, uncertainty and delay currently incident to riparian grant applications can be avoided. Time would be saved, of course, if the signatures of a few, instead of so many, State officials could be made adequate for proper execution of riparian grant instruments.

I most strongly urge the Commission to consider the need for establishing standards and adopting procedures along the lines herein discussed that will encourage sound development of water front lands in the State and assure to the State proper compensation for its under water lands used for such development.

Sincerely yours,

FREDERICK P. GREINER

FPG:crs

WHITING MOORE & PHILLIPS

LAW OFFICES

744 BROAD STREET, NEWARK 2, N. J.

MARKET H. 2560

HORDEN D. WHITING
OF COUNSEL

IRA C. MOORE, JR.
C. ALAN PHILLIPS

October 3, 1961.

Riparian Legislative Study Commission,
137 East State Street,
Trenton 9, New Jersey.

Gentlemen:

MEMORANDUM re TITLE to TIDELANDS
Submitted on behalf of UNIVERSAL
MATCH CORPORATION - HERMETITE
DIVISION.

Serious question has been raised as to the ownership of vast areas of the State of New Jersey which are now, or were formerly, salt marsh. The Bureau of Navigation has questioned whether the State does not own all land lying between low and normal high water mark whether such lands, including the vegetation on them, are completely submerged or not.

The State of New Jersey unquestionably as sovereign, has title to the sea, within the three mile limit, and to the arms of the sea, such as bays and rivers, including the shores of the sea, the bays and the rivers where the tide ebbs and flows. But should salt marsh, such as the Hackensack and Elizabeth meadows be considered a part of the sea or an arm of the sea because it is flowed by tidewaters?

From Colonial days, and continuing to the present time, salt marsh has been treated as subject to private ownership. The owner of a farm frequently also owned a tract of tideland from which he cut the salt hay and more recently vast areas of marsh have been filled and improved with houses, factories and otherwise.

While it has been stated as a general rule that all lands under tidewater below high water mark within the territorial limits of the State are owned by the State, in applying the rule it is important to consider its history and the reason for it.

The title to this country is based upon discovery. It belonged to the British nation and was vested in the King as the head thereof.

Riparian Legislative Study Commission. October 3, 1961.

Titles to real estate in New Jersey are derived from a grant from Charles the Second to his brother, James, Duke of York. This grant included the entire State of New Jersey together with the right of government. The Duke of York granted his land together with the right of government to Berkley and Carteret and from them the land together with the right of government passed to 24 Proprietors known as the Board of Proprietors of the Eastern Division of the State of New Jersey. On April 17, 1702, the Proprietors surrendered to Queen Anne their powers of government, retaining to themselves the title to the soil.

The land granted by James, Duke of York, to Berkley and Carteret was "bounded on the east part by the main sea, and part by Hudson's river." And prior to 1702 as well as thereafter vast tracts of land were granted which unquestionably included tidelands. One such tract was bounded by Arthur Kill, the Rahway River, the Piscataway line and the Raritan River (excepting Amboy Point). Another was from Governor Philip Carteret and his council dated September 22, 1668 to the Trustees of the town of Bergen.

But whatever the intent of the parties may have been, the courts have held that the general public have certain rights in tidelands which the King under Magna Charter and the common law of England, did not have power to convey.

The title which was vested in the British crown, together with the right of government, was granted to the Duke of York for the purpose of enabling him to establish a colony upon the newly discovered continent, to be governed, as nearly as circumstances could permit according to the principles of the British constitution. The estate and rights of the King passed to the Duke and from the Duke to the Proprietors in the same condition in which they had been held by the crown and upon the same trusts.

Under English common law titles of the crown (and of the State) are of two kinds, proprietary titles and sovereign titles. The former may be parcelled out and granted to private individuals for private purposes, the latter were held only by the sovereign authority for the common and public use of the nation. The proprietary title extended to such property as in its nature could be severed from the public domain and devoted to private and exclusive use without any interference or infringement of public and common right, such as all the soil above tide waters. The sovereign title extended to all

Riparian Legislative Study Commission.

October 3, 1961.

such property as could be used and enjoyed in common without conflicting with private rights, such as the shore and beds of the sea, arms of the sea, or bays, where the tides ebb and flow.

The latter class of property is sometimes referred to as common property. The title is in the sovereign but the use is common to all the people. Examples are the air, navigable streams, the sea, the fish and wild beasts.

In early times the King granted to private persons exclusive rights of fishing in navigable rivers. This was considered by the people to be a usurpation of their ancient common rights. Accordingly Magna Charte as passed in the time of King John enacts "that where the banks of rivers had first been defended in his time (that is when they had first been fenced in, and shut against the common use in his time) they should be from thence forth laid open." And this common right was amplified and confirmed by the Charter of Henry III.

The decisions of the first cases in New Jersey involving title to land under tide waters, were based on this common right of fishery. And the principle was laid down that neither the King, the Duke nor the Proprietors could grant title to the soil under tide water which would result in the destruction of the common right to use such waters.

But salt marsh is not of such character as to constitute common property. There is no more reason why the general public should have common rights in salt meadow than in upland. Title to the shores of the sea and its arms is vested in the State for the protection of the public common rights. It is a general rule that all between ordinary high and low-water mark is embraced under the denomination of the shore. But as pointed out in one of our early supreme court cases (Gough v. Bell, 21 N.J.L. 156 at 163) "the tide must ebb and flow, *** the mere oozing or flowing up through a salt marsh not being sufficient to constitute that a part of the river or shore."

The Bergen County meadows are not the shore of the Hackensack River.

II.

Whether or not the State has legal title to the vast areas which are now or were formerly salt marsh is a question for the courts to decide. But whether or not the State should assert its title, if any, is a question for the Legislature to decide. And the Legislature has the power, absolute and unlimited, to regulate, abridge or vacate public rights in tidal waters except in the field reserved to Congress by the Federal Constitution. (Schultz v. Wilson 44 N.J. Super 591, 597 App. Div. 1957).

The following quotation from an early Supreme Court case is in point:

"But it is worthy of notice that the claim of the State of New Jersey to land flowed by the tide is in no sense proprietary. It is strictly a sovereign right. The proprietary rights were at an early period severed from the sovereignty, and were vested in the proprietors, in whom, and in their grantees they still remain. The only title which the state claims to the soil is by virtue of its sovereignty, for the protection of the public or common rights. But where the soil of navigable rivers is permanently appropriated without prejudice to the public rights, and where the state tacitly acquiesces in such appropriation, there would seem to be but little reason in her setting up a title as proprietor of the soil for no public use."

Gough v. Bell, 22 N.J.L. 441, 461 (Sup. Ct. 1850).

Titles to salt meadows have been so seriously questioned that legislative action is imperative and should not await a possible clarifying court decision. Millions of dollars of property, both improved and unimproved are involved. The conveying and mortgaging of these properties are being obstructed and the improvement of these meadow lands by private capital will be discouraged until the title question is resolved.

Riparian Legislative Study Commission

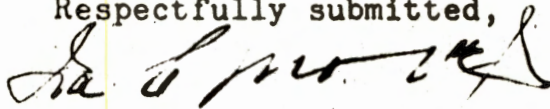
October 3, 1961

III.

It is urged that the Legislature take prompt action to disclaim and vacate any and all title which the State of New Jersey has, or may be thought to have, in salt marsh based upon its sovereignty.

A partial list of authorities in support of this statement is appended.

Respectfully submitted,



IRA C. MOORE, JR.

ICM, JR.:MAK

List of Supporting Authorities

- Graham v. Edison Tp. 35 N.J. 537, 544 (1961)
- Arnold v. Mundy 6 N.J.L. 1. (Sup. Ct. 1821)
- Martin et al v. Waddell 16 Peters (41 U.S.) 367 (1842)
- Gough v. Bell 21 N.J.L. 156 (Sup. Ct. 1847)
- Gough v. Bell 22 N.J.L. 441, 461 (Sup. Ct. 1850)
- Gough v. Bell 23 N.J.L. 624, 683 (E.& A. 1852)
- Shultz v. Wilson 44 N.J.Super 591 (App. Div. 1957)
- Simpson v. Moorhead 65 N.J.Eq. 623 (Ch. 1903)
- Ross v. Mayor &c. Borough of Edgewater 115 N.J.L. 477, 484 (Sup. Ct. 1935); affd. 116 N.J.L. 447 (E.& A. 1936) certiorari denied 299 U.S. 543
- Bailey v. Iriscoll 19 N.J. 363, 369 (1955)
- River Development Corp. v. Liberty Corp. 51 N.J.Super 447, 460 (App. Div. 1958); affd 29 N.J. 239 (1959)
- Sisselman et al v. State Highway Department of New Jersey (App. Div. Docket A-769 - 59 not reported)
- Magna Charta The Statutes at Large Vol. 1, 9th yr. King Henry VIII cap. XVI "Defending of Banks" and Prof. McKechnie's arrangements pp. 497 - 508
- Blackstone's Commentaries Book II Ch. II - 39

Newton, N. J.
Oct. 12, 1961

Mr. Peter J. Gannon
Chief, Bureau of Navigation
137 E. State St.
Trenton, N. J.

Dear Pete:

Have just returned home from a visit to our son living near Lancaster, Pa. Your letter concerning the Hackensack Meadows was delivered during my absence. There was a delay in the mail due to a change in our Rural Route and Box number.

In so far as I recollect, the State has not made any claim to the ownership of these lands since the inception of the Riparian Commission in 1869.

Early in 1916, shortly after the Board of Commerce and Navigation succeeded the Riparian Commission it commenced a comprehensive and thorough investigation of unauthorized occupation of States lands. Two field investigators were engaged to inspect the entire State's waterfront. This work, lasting several years, was under the direction of late Victor Gelineau, then an assistant engineer and who was not only an experienced land surveyor but was then taking a law course at N. Y. U. These two professions being so necessary for a complete understanding of hydrographic and legal aspects involved in the study and administration of riparian rights.

As a result of this investigation, some 1600 cases were successfully prosecuted and the illegal occupants acquired grants, leases or licenses. All these cases involved, piers, bulkheads, fill and other structures along the shore line and none of these cases involved the reclamation or occupation of these meadows inshore of the bank line.

I attended all the meetings of the Board and most of the public hearings and do not recall that any of the Board members or the various special counsels questioned the title to these meadow lands nor ordered an investigation and report as to whether the State had any riparian interest.

(cont'd)

Sections of this meadow area have been reclaimed and large sums of money expended in improvements thereon by large corporations and individuals. Certainly the legal representatives of these parties would not advise their clients to proceed and establish costly industrial plants unless they were satisfied that they held a good title.

I recall having once called upon Mr. Cruse for information concerning the title to a certain area of these lands. Mr. Cruse was then Counsel and an officer of the New Jersey Title and Guarantee Company located on Montgomery St. in downtown Jersey City. He was one of the best informed title authority in the State. I was informed that his company did and would not hesitate to insure meadow tracts.

It was intended that the grant to the State Highway Department for Route S3 convey the riparian title only to the lands flowed by tidewater at mean high tide in the several creeks and waterways to numerous and irregular to describe individually. Therefore the usual blanket description was used calling for all the right, title and interest of the State in and to the lands under water at mean high tide included within the right of way lines, including "the slopes", was used. This was not intended to be a declaration that all of the land involved belonged to the State but only those submerged at mean high tide, whatever they may be.

If this title question is to be thoroughly investigated it is suggested that all the Annual Reports of the Riparian Commission from 1869 to 1915 be reviewed. I have found these reports a valuable source of information and very helpful in carrying out my duties. The reports are bound in three or four volumes and on file in the office. It might also be helpful to review the Annual Reports of the Board of Commerce and Navigation from 1915 to about 1938.

The Board of Commerce and Navigation also made a report on the reclamation of these meadow lands sometime before 1935. There may be some reference to the title included.

I feel that you have fully covered the matter in your reports and concur in your conclusions that merely because of the Court decision in one particular area that the entire Hackensack-Passaic meadow area belongs to the State.

(cont'd)

-B-

The riparian lands of the State have been administered by duly appointed and competent authorities for nearly one hundred years. It seems that at this late date the title should not be questioned and the owners who claim a valid title, have held possession, made costly improvements and paid taxes thereon should now be distressed. Each area should be considered upon its own merits.

There is only one point in your report that could be clarified. You refer to the establishment of the mean high water line with reference to mean sea level-bench marks of the U.S.C&G precise level net.

The elevation of mean high water can only be established by continuous tidal observations over a sufficient period of time and these local high water readings reduced to mean values by simultaneous comparison observations at a primary station where long series of tide observations have been made.

The elevation of mean high and mean low water changes from place to place depending upon its location, configuration of the shore line and other factors. Even the extensive dredging operations in the rivers and bays change the elevation of the two tidal planes because of the increased tidal prism and other factors.

A review of the two U.S.C. and G Survey publications "tidal Bench Marks, State of New Jersey" and "Tidal Datum Planes" give complete information on this highly technical subject.

Certain sections of this meadow area may be considered border line cases. The area being so low and flat a difference of a tenth of a foot would change the status of the title. The establishment of the mean high water datum plane should therefore be established with reasonably great accuracy. This could be best done by an expert agency, the United States Coast and Geodetic Survey, under a project sponsored by and paid for by the State.

I hope that my remarks are readable and helpful to you.

Sincerely

/s/ Robert Simon

Mr. Simon is a retired Riparian Supervisor.

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PROPOSED STATEMENT OF THE NEW JERSEY SHELL FISHERIES COUNCILS
AT THE PUBLIC HEARING HELD BY THE RIPARIAN STUDY COMMISSION
ON OCTOBER 18, 1961

My name is Christopher H. Riley, Director of the Division of Shell Fisheries of the New Jersey Department of Conservation and Economic Development which is the division established by law to formulate basic policy for the conservation and development of New Jersey's shellfish resources.

I am speaking in behalf of the Shell Fisheries Councils. We are grateful for this opportunity to appear before the Riparian Study Commission because we, as a division, have specific problems occurring from the present riparian policy of our State.

These problems fall into two categories:

- I The issuance of riparian grants for lands whereon a shellfish lease has already been granted and exists, i.e.-
 - a. Andrew T. Russell, Grantee of Riparian Right at Waretown, N. J.
vs
Joshua & Russel J. Horner, Shellfish Lessees
 - b. Case 61-171- Herbert L. Shapiro- Grantee of Riparian Right at Mill Creek Tributary of Manahawkin Bay,
vs
Nathan G. Cramer, Shellfish Lessee
 - c. Case 61-189- Walter Chapman, Riparian Grantee of Riparian Right at Waretown, Barnegat Bay.
 - d. File # C-9844- Anna C. Nichols & Eliz. M. Toslano,
Shark River

We feel a further investigation is necessary in cases c and d -Exact locations of these may be already leased by the Shell Fisheries Council.

- II The second problem that affects our division specifically is the confusion that occurs over the rights given to the grantee: i.e.-
 - a. Does a grant give the grantee the right to keep holders of licenses to take shellfish off the premises?
 - b. Does a grant allow a grantee the right to take clams without a clamming license (from area covered by his riparian grant)?
 - c. Does a grant allow a grantee the right to take clams from a polluted area (condemned by Dept. of Health and declared a "Sanctuary" by Shell Fisheries)?

October 18, 1961

We feel very strongly that the existence of a shellfish lease should exclude a riparian grant unless the riparian grant is to be used immediately for some commercial or otherwise extensive improvemental purpose. We are of the opinion that a grant (desired just for the sake of obtaining jurisdiction over a certain area) should not be allowed if it means ousting a shellfish lessee.

More and more greater areas of shellfish lands are being condemned by the Department of Health each year. By this action the leasable areas are diminishing and we therefore need all the land available to permit those lessees whose leased lands were declared condemned to obtain new leases in pure waters in open areas.

Programs are being instituted for the development of more shellfish areas and for private lessees the demands are generally for shoreline areas.

It is our feeling that a much better program could exist.

PETER W. KERO.
PRESIDENT
SPENCER MANSER.
FIRST VICE PRESIDENT
JOSEPH SEL.
SECOND VICE PRESIDENT
CORNELIUS VREELAND.
THIRD VICE PRESIDENT
ALDO BARESI.
TREASURER
SAMSON BOSIN.
SECRETARY
NITTO & NITTO.
GENERAL COUNSEL

Meadowlands Owners' Association

INCORPORATED

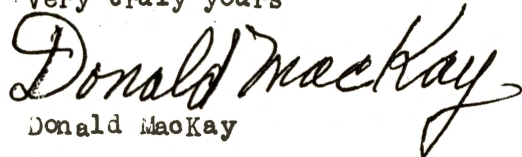
DONALD MACKAY. EXECUTIVE SECRETARY
38 Ames Avenue, Rutherford, New Jersey

Study Commission On Riparian Laws
137 West State Street
Trenton, N. J.

Gentlemen---

The Meadowlands Owners' Association suggests that the State of New Jersey amend its riparian laws so as to conform to the federal statutes, which employ normal high tides and normal low tides in delimiting tidelands and riparian lands.

Very truly yours



Donald MacKay

Executive Secretary



State of New Jersey
DEPARTMENT OF THE TREASURY

DIVISION OF
BUDGET AND ACCOUNTING

October 20, 1961

BUDGET BUREAU
STATE HOUSE, TRENTON, 21

Mr. Peter J. Gannon, Secretary
Legislative Study Commission-Riparian Laws
State House
Trenton, New Jersey

Dear Mr. Gannon:

Confirming with the request contained in your letter of October 13, 1961, I am attaching a statement showing for a three year period the revenues in the State School Fund.

As you know, this fund is broken up into two sections: (1) a capital and (2) an income section. The income derived from grants, easements and one fee licenses as shown on the first line of the statement is not distributed and becomes part of the capital section of the fund. The other revenues in the income section of the fund are distributed and constitute the amounts which are eventually transmitted to the General Treasury as part of the earnings used to make our contribution to the local districts in the form of State Aid for Education. Any expenses are necessarily deducted before transfer to General Treasury is made.

A close look at the statement will reveal that the amounts transferred to the General Treasury do not equal receipts for the four revenue items shown. This is due to the fact that the revenues are on an accrual basis and include accounts receivable at the close of a fiscal year.

When transmitting to the General Treasury, only the actual cash is transmitted, and for this reason there can be no exact agreement as between the amounts. One other note you may question is how is it possible for the grants, easements and one fee licenses to be shown as a red figure in the 1960 year. This was due to the fact that during that year write-offs of accounts receivable exceeded the accrued revenues to that extent.

Very truly yours,

A handwritten signature in cursive script that reads "Abram M. Vermeulen".

Abram M. Vermeulen, Director
Division of Budget & Accounting

AMV:mh
Att.

Trustees for the Support of Public Schools Fund

Fiscal Years Ended June 30

	<u>1958</u>	<u>1959</u>	<u>1960</u>
<u>Revenues:</u>			
Grants, Easements and One Fee Licenses	\$1,140,589.15	\$ 595,014.05	\$ 138,570.61*
Rents and Interest on Riparian Leases	33,618.53	33,338.36	38,410.66
Annual Licenses and Royalties	158,016.06	69,589.19	65,049.56
Dividends	15,662.00	18,038.00	17,115.25
Earnings on Investments	456,299.28	509,145.23	489,053.61
Total Revenues	<u>\$1,804,185.02</u>	<u>\$1,225,124.83</u>	<u>\$ 471,058.47</u>
Balance July 1,	16,633,096.18	17,853,862.04	18,474,835.39
Total Available	<u>18,437,281.20</u>	<u>19,078,986.87</u>	<u>18,945,893.86</u>
 <u>Expenditures:</u>			
Transfer to General Treasury	582,920.31	604,023.14	609,538.88
Miscellaneous Expenses	498.85	128.34	83.18
Balance June 30,	17,853,862.04	18,474,835.39	18,336,271.80
Total	<u>18,437,281.20</u>	<u>19,078,986.87</u>	<u>18,945,893.86</u>

*Denote, red figure.

