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PUBLIC HEARING

on

SENATE CONCURRENT RESOLUTION NO. 41 -
PROPOSING TO AMEND ARTICLE VIII,
SECTION III, OF THE STATE CONSTITUTION

[Re: Tidelands]

before

SENATE COMMITTEE ON AGRICULTURE,
CONSERVATION AND NATURAL RESOURCES

Held:
April 23, 1968
Assembly Chamber
State House
Trenton, New Jersey

Members of Committee present:

Senator Fairleigh S. Dickinson, Jr. [Chairman]
Senator William T. Hiering

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FROM
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TO
1789
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SENATOR FARLEIGH DICKINSON, JR. [Chairman]: Could we come to order, ladies and gentlemen, please.

This is a hearing on Senate Concurrent Resolution No. 41, a proposal to amend Article VIII, Section III of the Constitution of the State of New Jersey by adding a new paragraph.

By way of introduction, I am Senator Farleigh S. Dickinson. On my left is my colleague, Senator William Hiering. He is the prime mover of this proposal.

Without in any way going into it, the nature of the proposal is to define the ownership of meadowlands in such a way that very vexatious problems of title which have greatly added to the problems of certain meadowland claimants or owners in the past can be settled.

I think that it would be appropriate for me now to ask the Senator if he cares to say anything in addition.

SENATOR HIERING: No, Senator, I would prefer to wait until later. I think you have stated fairly the proposition that is before us.

SENATOR DICKINSON: May I say that there are certain statements which have been submitted to us in lieu of appearances. These will be put in the proceedings which will be available to any interested person as appendices and they are: one from the New Jersey Realty Title Insurance Company; one from the Mortgage Bankers Association of New Jersey; one from the Honorable Paul Amico, Mayor of Secaucus; and there is another around somewhere I have lost for the moment, but I will find it.

I would like to call as our first witness Mr. Norman Hardy of the Treasurer's Office, State of New Jersey, if he is in the room.

N O R M A N E . H A R D Y : Good morning, Senators! I have just given Mark Reifer copies of the statement prepared in our office yesterday. If you don't mind, I would just as soon not read it, but generally state briefly our position that title of the meadowlands and the flooded lands in New Jersey has gone back for many, many years to the interest of the trustees for the support of public schools and through them to the school children in New Jersey and the State is opposed to surrendering that interest as SCR 41 proposes to surrender it without some further court action as proposed by the two bills, S 477 and 478.

The State Treasurer, as you probably know, is the statutory trustee now, since the Division of Investment handles most of the responsibilities for the Board of Trustees, to handle all matters dealing with the former Board of Trustees and the interest of the State through the Board of Trustees in these tidelands - the trustees' interest is exercised by him and our position is that this should not be surrendered through a bill such as this and the statement that I left with you states his position.

[Mr. Hardy's written statement can be found beginning on page 59 of this transcript.]

SENATOR DICKINSON: For the record, Mr. Hardy, does the statement indicate the specific designation of the interest

of the State?

MR. HARDY: Yes, by citation, yes.

SENATOR DICKINSON: Fine. Thank you.

Do you have any questions?

SENATOR HIERING: No, I haven't.

SENATOR DICKINSON: Thank you very much, Mr. Hardy, and this statement will be in the record.

MR. HARDY: Thank you very much.

SENATOR DICKINSON: Mr. Dorn, please, and would you be good enough to introduce yourself and your interest or affiliation.

P E T E R D O R N: My name is Peter Dorn and I am Secretary of the New Jersey State Chamber of Commerce.

My part in today's hearing will not be lengthy. I shall merely give you some background upon the Chamber's interest in the riparian land title question and subsequent witnesses will be making the major part of the State Chamber's presentation today.

Everyone knows, of course, that this question had its origins in the 1960 Superior Court, Law Division decision in the case of Sisselman vs. State Highway Department. In effect, the decision suddenly altered the entire picture of land ownership in New Jersey and traditions which dated back literally to the original grant of this land by Britain's Duke of York three hundred and four years ago.

I am not a lawyer, but I have come to know what any student of

real estate law learns early in his career -- that the concept of riparian law dates back to early English law which decreed that lands washed by the tides were set aside for the king.

In this country, the question of public (or state owned) lands along the Atlantic Seaboard has been traditionally defined on the basis of being washed either by mean high tide or mean low tide, depending upon the individual states.

In New Jersey, unfortunately, there never has been a clear definition of the term "riparian lands" either in statutory or judicial law. Prior to the Sisselman decision it was universally assumed that real estate titles to riparian lands (that is, lands to which the State of New Jersey claimed ownership), were limited to areas in the beds of tide-flowed streams, bays or whatever. New Jersey's vast acreages of meadowlands were considered to be subject to private -- as opposed to State -- ownership. This concept was never questioned.

The Sisselman decision had a severe impact upon private property ownership. It immediately placed ownership of land throughout the State under a heavy cloud of doubt. Initially, the effect was extremely broad because geologists have evidence that, in prehistoric times, much of this land we call New Jersey was under ocean water. A subsequent decision last November in the case of O'Neill vs. State Highway Department did narrow the confines of the controversy so that previously discussed sites such as the Hackensack Courthouse parking lot and Newark's Broad and Market Streets were deemed by the court as not affected by the Sisselman case. But meadowlands in no less than 17 counties of this State remain under this 8-year-old cloud of ownership doubt, which has affected residential,

commercial and industrial property alike. It is impossible to obtain title insurance upon such lands and, as a result, important developments in these 17 counties have come to a halt.

The Sisselman decision was a rude shock for those who had acquired meadowland properties. In good faith, they had been paying local property taxes on these lands for years. Many had made substantial investments in buildings and other improvements. They were stunned to find that their titles are not now considered valid.

The Sisselman decision as confirmed (but narrowed somewhat in scope) by the O'Neill decision, has seriously hampered residential, commercial and industrial development and has therefore exerted a **negative** effect upon the entire economy of New Jersey.

Because of adverse effects upon property owners, because property tax revenues of many tideland communities were threatened, and because of general harm to New Jersey's continuing economic development, the State Chamber of Commerce stepped into the riparian lands issue when the range of its impact first became apparent.

The Chamber began with a very small, ad hoc committee comprised of lawyers representing industrial land owners, title insurance companies, common carriers and others directly affected by the Sisselman decision. The size of this committee increased dramatically, however, when the Chamber notified its full membership of the earliest legislation developed to remedy the riparian land title impasse. As a matter of fact, the background of the 67 members of this committee evidences the widespread concern which has been raised by the riparian issue. We not only have

businessmen; lawyers, carrier, utility and local chamber representatives; the committee also includes representation from organized labor from county and municipal government, the State League of Municipalities, the State Grange, the Farm Bureau, the Association of Real Estate Boards and the Title Insurance Association. On this issue, Senator, I have also heard that the Industrial Union Council of the AFL-CIO supports this resolution and we have membership on the Committee from the Parent State AFL-CIO.

I would emphasize here that there has always been complete agreement within our ad hoc committee's membership as to solution of this tidelands title problem -- restoration of the traditional concept of riparian lands by clearly defining in law what they are -- and are not.

There have been various attempts to achieve such a solution, by means of legislation which would define riparian lands as being just what they were always assumed to be prior to the Sisselman decision. Three of these previous measures have been the result of close cooperation between their primary sponsor, Senator (and former Assemblyman) William Hiering; other legislators and the Chamber's Ad Hoc Committee on Riparian Lands. We feel that Senator Hiering is to be commended for the leadership he has given toward solution of this very upsetting situation. In 1964, Assembly Bill No. 44 passed both houses of the Legislature. It was vetoed by the Governor, however, on the grounds that it was unconstitutional. A similar fate awaited Assembly Bill No. 605 in 1965, although this bill was drafted to overcome the Governor's objections to A-44. Both these bills, incidentally, had strong bipartisan support in the Legislature. In 1966, and again in 1967, similar measures were introduced but did not move.

Last year, the Administration stepped into the matter with an entirely different approach. In a highly complex and controversial measure, Senate No. 518, an attempt was made to combine the matter of

planning and development of the so-called Hackensack meadowlands of Bergen and Hudson Counties, with adjudication of the riparian lands issue through a Meadowlands Title Board proposed for establishment within the Department of Conservation and Economic Development. Our Chamber took strong exception to this approach because it was based on the concept that the State owned lands which had been in private hands, often for generations. It was, in other words, a confirmation of the unfortunate and damaging circumstances raised by the Sisselman and O'Neill decisions. Neither S-518 nor a Senate Committee Substitute introduced last November, were acted upon by the Senate.

The Chamber, incidentally, tried last year to portray the economic consequences of the present stalemate. Working in cooperation with the Associated Railroads of New Jersey, we set up a special train trip through the meadowlands in Bergen, Hudson, Union and Essex Counties to show the extent of development halted in these counties alone. And we sponsored a luncheon so that legislators and other public officials could learn the facts of this rather involved situation.

This year, Senate Bill No. 477 makes a somewhat different approach, but we have not favored this latest measure for several reasons. We do not feel, of course, that the title question and the matter of planning and development of the Hackensack meadowlands should be combined in a single piece of legislation. While S-477 proposes resolution of individual title problems through the courts, this would be an extremely time-consuming solution. It would require a very substantial increase in the size of the courts and would entail substantial court costs for the litigants, many of whom would be kept waiting for years and years.

The ownership rights of meadowlands property holders can be restored by defining riparian lands in law as being what they had always been accepted as being prior to the Sisselman decision -- by action upon SCR-41, in other words. If this is not done, development of such lands in 17 counties will be tied up in the courts for years.

The Governor has vetoed attempts by the Legislature to place such a definition within the statutes on the grounds that the lands under question are State owned and to reestablish private ownership would take from the (State) Fund for the Support of Free Public Schools, lands which are dedicated to this Fund. This, the Governor has held, would be unconstitutional. As the result of his position, the only recourse now is to place such a definition within the State Constitution itself.

This, of course, is the approach taken by Senate Concurrent Resolution No. 41 which our ad hoc committee and the State Chamber strongly support. This is a fair solution to the problem. It would solve the matter quickly. It would avoid costly and time-consuming litigation. It would avoid further delay to residential, recreational, commercial and industrial development at a time when these facilities -- and the jobs they would generate, are sorely needed.

We think this is an issue for the people to decide.

If SCR 41 is enacted, I can assure you that the State Chamber will do everything in its power to help acquaint the voters with the meaning of the referendum question it will place before them.

Before the Chamber's next witness appears, I wish to read into

the record a letter which typifies the kind of communication the Chamber has been receiving on this riparian title question. It comes from a Mrs. F. H. White of St. Petersburg, Florida. It was sent by certified mail on April 16. Mrs. White resides at 5041 47th Avenue North, St. Petersburg, Florida, 33709. It is dated April 15, 1968, addressed to:

"Mr. Albert H. Acken
Executive Vice President
N. J. State Chamber of Commerce
54 Park Place
Newark, N. J. 07102

Re: Land Title Question
Meadowlands and
Tidewater lands

"Dear Mr. Acken:

"Relating to the above matter in your bulletin of April 3, 1968, I certainly am affected by it.

"My name is Mrs. Freda H. White, widow of the late Howard M. White, deceased July 1962. I live in St. Petersburg, Florida, and am not able to attend the Public Hearing on Tuesday, April 23, 1968 in Trenton, N.J. Therefore, I want to be represented by means of this letter.

"I own property in New Gretna, N.J., Burlington County, Bass River Township, consisting of approximately 175 acres of woodland and meadowland. This property has been in the possession of my husband's family for about 300 years. A navigable creek is named after my husband's mother's family Loveland, called 'Loveland Thorofare', and represents approximately 1000 feet frontage; beside that at least one-half mile of river frontage on the Mullica River. Deeds are recorded in the Burlington County Court House at Mt. Holly, N.J.

"My husband wanted to sell the property in 1961, but on account of the meadowland question was unable to do so. When my husband passed on in July 1962 I couldn't pursue the matter further at that time.

"Last year I had the property searched and insured by the New Jersey Realty Title Insurance Company in Newark, N.J., and was then told by my lawyer that 'I may feel free to enter into a contract of sale', without warning me, that the title insurance did not cover the tide-water lands. When I procured a buyer, the question came up about the tidewater lands and just now, on April first, I had to cancel the contract.

"I am a widow with modest means and had hoped to sell the land to pay my living expenses. I am distressed to learn that there is a dispute as to title for land on which taxes have been paid for generations, and I am paying taxes since my husband's death. I find it to be a great injustice.

"I hearily support the Senate Resolution No. 41.

"I will be very grateful if you or someone would advise me of the outcome of the Public Hearing.

"Thank you very much for your efforts.

"Sincerely,
s/s Freda H. White

"Airmail
Registered."

In closing, may I express our sincere appreciation to the Chairmen and members of the committees for providing the opportunity for this issue to be aired at this hearing today.

SENATOR DICKINSON: Thank you very much, Mr. Dorn. Senator, do you have any questions?

SENATOR HIERING: No, I have no questions at this time.

SENATOR DICKINSON: Thank you very much, sir.

The next person who wishes to appear is Alfred Porro. Counsellor, would you be good enough to step forward.

A L F R E D A. P O R R O, J R.: My name is Alfred A. Porro, Jr. I am here on behalf of the New Jersey State Chamber of Commerce and I would like to thank you, Senators, for the opportunity to appear.

I have submitted a brief report which I will go through in detail, but will skim and have made reference in the report to two accompanying documents which I will forward

to you, one being entitled, "The Invisible Boundary: Private and Sovereign Meadowland Interest," which is a project which has just been completed for Rutgers Law School and unfortunately things keep changing so rapidly in this field of meadowland titles that it is being revised again and it will be to you in approximately a week.

The second accompanying document will be that entitled, "Meadowland Owners' Dilemma: Crossroads of Antiquity," which is presently appearing in a series of articles in the New Jersey State Bar Journal.

SENATOR DICKINSON: May I interrupt just a second, please. It is to be noted, ladies and gentlemen, that the proceedings of this hearing will be open for two weeks so if there are additions, they may be made.

MR. PORRO: I have made reference to both of these documents in the report that is submitted and will have them submitted within the two-week period. The two accompanying documents will supply verification, resource materials and citations with regard to the background.

I would like to limit my remarks to some of the background with regard to the title question and some of the legal background which in my opinion has caused the dilemma that we have now.

The resolution as submitted is an attempt to clarify in the first instance a misapplication of the law through many, many years of development and a misconception of the law.

The second aspect of the resolution I think must be recognized clearly as a change of what the present status of

the law is and in essence a change of the law.

The general concept that plagues us today, as was referred to by Mr. Dorn, comes out of the old English concept that the King owned all of the properties that were flowed by the ebb and flow of the tide. I would like to point out very emphatically that the documentation that will be submitted to you will prove that this concept was not a concept relating to ownership of meadowland or marshland or any adjoining lands, but rather was a concept to give to the King the right to the watercourse and why? - for navigation - and why? - for fishery and other related activities. At no time in the old English law was it a concept of fee title to the sovereign, but rather in the nature of a right-of-way, in the nature of an easement, so that no one could interfere with the rights of the sovereign in that watercourse.

The development by usage in New Jersey will reflect very, very interesting documentary history. We will find that King Charles, II, conveyed to his brother, the Duke of York, a huge strip of property running from the Connecticut River down to the Delaware River. And in that documentation we will find express reference to marshlands, to rivers. This was a conveyance of the interest in question in its first concept and, admittedly, at this stage of history it was a conveyance of both the sovereign interest and also the private interest and if we trace that title down through the years, through Berkeley and Cartaret and then eventually through the Eastern Board of Proprietors, we will find that

the titles of these marshlands was no mystery and it was expressly set forth in the documents by the use of the word "marsh," that the title was to be and was continually conveyed.

At one point in history the sovereign interest, for purposes here, whatsoever that might have been, was given back to Queen Anne and at that point the question became, "What was the sovereign interest?" In my opinion, and I will readily admit that there are other opinions on the subject, it did not include the fee title to that property. But regardless, our cases in New Jersey over many, many years did refer to the fact that the interest of the sovereign did mean fee title. But I want to point out to you gentlemen they were talking in terms of fee title in the watercourse and not fee title to the adjoining meadowland properties.

Every case that appears on record - and we have documented them - before the Sisselman Case did not deal with meadowlands, did not deal with marshlands, but rather dealt with oyster beds and questions of this nature, all of which sat in the watercourse, itself. So there was no big misapplication of the concept at that point because the interest was limited to the watercourse. Granted, Sisselman extended the concept. The O'Neill Case in my opinion presents clearly what the status of the law is today and that is that the interest of the State should be limited up to that mean high tide line.

We have found in application and in interpretation that we still have a maze, even with O'Neill on record. I happen to be one of the few that thinks there is no question, that O'Neill

is clear. But the actual application of the O'Neill Case must admittedly be said to be difficult in some areas. Quite frankly, I feel that the application in its general sense is not difficult because we can determine where the mean high tide line is. But there are many areas where the watercourse will meander and that line is a difficult one to locate.

That brings us up to the present status and the related bill, 477, which Senator Dickinson has proposed, which in my estimation is one of the most progressive bills that have hit this State by way of planning and by way of regionalization and I have testified with regard to that bill that I feel that the definition in that bill with regard to the State's interest has failed and does not reflect even what the present status of the law is and does not reflect the O'Neill decision. In my opinion the first paragraph of this resolution does in fact reflect the O'Neill opinion.

The second aspect of the resolution admittedly changes the law. Should this be done? If we look at the maze and the documentary proof that says, in fact, these people that are claiming the land have deeds and own them, I think we will find an equitable reason to do exactly what is set forth here. It is similar to our old concepts of adverse possession, but requires more than adverse possession. It requires, in fact, that there is a deed on record, a record title. And after three centuries of following these documents, you will see that the records will show that ownership was conveyed, reconveyed, rented, sold by municipalities and as

a matter of fact, much to the embarrassment of the State, in many instances the exact land that is being claimed today was purchased by the State of New Jersey from the record owners.

So in conclusion, I would like to urge that the resolution as it presently stands does, number one, in its first paragraph set forth the present status of the law and is an attempt to ratify titles and, in its second instance, provides some quick and equitable solution with regard to the record owners.

I thank you for your attention.

[Report submitted by Mr. Porro can be found beginning on page 62 of this transcript.]

SENATOR DICKINSON: Thank you very much, counsellor.

Senator?

SENATOR HIERING: I have no questions.

SENATOR DICKINSON: Could the record please note that the Committee is in receipt of a communication from the Woodbridge Area Chamber of Commerce. That will be included in the record at the appropriate place.

[Letter from Woodbridge Area Chamber of Commerce can be found on page 70 of this transcript.]

Is there a Mr. Skinner in the room?

MR. SKINNER: Yes.

SENATOR DICKINSON: Could you please identify yourself and your connection.

A L A N S K I N N E R: My name is Alan Skinner. I am an attorney of the State of New Jersey, a member of the Legal Department of E. I. Du Pont de Nemours and Company in Wilmington,

Delaware, but residing, as I have all my life, in Salem, New Jersey. I am also a member of the New Jersey State Chamber of Commerce's Ad Hoc Committee on Riparian Lands and my appearance here today is as a representative of that Committee.

The problem of meadowland titles in the State of New Jersey, as created by its Courts, has been of great interest to me, not only professionally but personally, because Salem County includes much real estate that is extremely low in elevation and many of its landowners and municipalities could be seriously affected should the State persist in its inequitable and unjust claim of ownership of all lands that are now or ever were covered at mean high tide by tidal waters whether or not such lands are situated within the banks of a watercourse. As an attorney for du Pont specializing in real estate, I have been of the opinion that the company should not risk purchasing or improving properties which may be affected by this problem.

Since early in the year of 1964, it has been my pleasure to work with the New Jersey State Chamber of Commerce in an attempt to effect legislation that would settle titles to meadowlands in the State of New Jersey for all time. As a result of our efforts, Assembly Bill No. 44 was passed by the Legislature in the year 1964 but vetoed by Governor Hughes on January 12, 1965.

Assembly Bill No. 605 was passed by the Legislature in 1965 and vetoed by Governor Hughes on December 13, 1965. In each case Governor Hughes attempted to justify his veto on

constitutional grounds, so it was decided by the Ad Hoc Committee that the only effective way to solve the problem would be by way of a constitutional amendment.

The resolution before you today is the result of some four years of work by the members of the Committee, Senator Hiering, and others, and we of the Committee feel that it represents the best possible solution to the problem.

As Mr. Porro stated, except for a misconception of the law by the Courts of the State of New Jersey, the State would hold title to neither the meadowlands nor the actual beds and shores of watercourses. Therefore, the proposed amendment would not only confirm titles to the meadowlands in those persons equitably entitled thereto but would also confirm title to the actual beds and shores of watercourses in the State of New Jersey, thus eliminating any further title questions.

The first sentence of the proposed amendment is the portion thereof that confirms the fact that the State, by virtue of its sovereignty, is the owner of the beds and shores of tidal watercourses with exceptions for such portions thereof owned by others because of conveyances from, or applicable law of, the State. The limit of the State's ownership in a landward direction is stated to be the intersection of the horizontal plane of mean high tide with the adjoining banks of the watercourse. In the event the waters of a watercourse have overflowed the banks of the watercourse and the horizontal plane at mean high tide does not intersect but passes above the banks, the State's ownership is limited

to the top of the adjoining banks which shall be located as they become visible when the tide ebbs. I have prepared a small sketch, copies of which you have before you, illustrating the two possibilities. The second sentence confirms titles to all other lands covered by tidal waters in those persons who can prove that they or their predecessors in title, have held title continuously since July 1, 1891, and which have been assessed for taxes, owned by a municipality, or exempt from real property taxation for the last past twenty years.

Unfortunately, the State's claim of ownership of meadowlands is very insidious in nature simply because the State has not chosen to designate the specific properties which it claims, nor has it given publicity to the fact that it does make such a claim in a manner that would be understandable by persons other than attorneys or representatives of title insurance companies. The vast majority of persons who have held record title to and paid taxes on meadowlands over a great number of years have not been alerted to the problem. I have found personally that I have been unable to convince persons in my area of the State that the State could make such a claim. The problem is further complicated by the fact that while the State has been taking certain meadowlands for its own use, usually for the construction of highways, without making compensation to the person who on the record is the title holder, it has at the same time been purchasing and paying full value for lands of a similar nature to be used for other purposes.

I strongly urge the passage of Senate Concurrent Resolution No. 41.

SENATOR DICKINSON: Thank you very much, counsellor.

I have no questions. Do you, sir?

SENATOR HIERING: No.

SENATOR DICKINSON: Is Mr. Filemyr here?

MR. FILEMYR: Yes.

SENATOR DICKINSON: Will you please identify yourself, sir, and carry on.

W I L L I A M F I L E M Y R: Mr. Chairman and Senator Hiering: My name is William Filemyr. I am a farmer in Logan Township, Gloucester County, where I also serve as mayor. I appear here today to speak not only for myself, but for the New Jersey Farm Bureau, of which I am a member. The Farm Bureau is a voluntary organization of 4,000 farm families in twenty counties in New Jersey, which makes it the largest farm organization in the State.

Senate Concurrent Resolution 41 is of vital interest and importance to several hundred members of the Farm Bureau. We have no exact information as to how many farmers are holders and taxpayers of meadowlands, but we know that several hundred are affected - particularly in South Jersey.

In Logan Township, we have some 4,000 acres of meadowlands. We are an agricultural community, supported largely by tax dollars paid by farmers. The lands in question, until recent years, constituted a vital part of the farm operations, since they have been used for producing hay, grain, and pasture. Many sales of these meadows reflect a higher value

than other good farmland. The titles to these lands have been traded as valid, and taxes have been paid by the owners for generations, the same as any other land. Until the ownership of these lands came into dispute in recent years, we had no idea that our titles to these lands were any different than other land titles. We have always assumed that riparian lands were limited to areas in the beds of tide-flowed streams, bays or whatever, between the high water lines on each side.

Recent court decisions and statements by high state officials regarding meadowlands are highly disturbing to those of us who acquired such lands by what we have every reason to believe were good record titles. We have in good faith paid property taxes on such lands, and in many instances have made substantial investments to improve these lands. Now we are told by the courts that our titles are not valid - or at least are subject to determination of ownership.

The people of my community support the private ownership of these lands. Should our township and other governing bodies be required to return the taxes paid on these lands, we would all become insolvent.

Thousands of acres of these lands have been improved by hydrolic dredging from river maintenance and improvements. Easements were obtained from the farmers, and when the filling operations were completed, the lands were returned to the respective owners. Some of our people actually invested their life savings in these lands, because of their high

productivity in agriculture and as trapping grounds. They anticipated selling the property as a source of income in their retirement years. How can you explain the decision of the courts to these people?

It is time that the representatives of the people in the Legislature take action to restore the status of meadowlands ownership to that which we have understood for several generations. We believe the constitutional amendment proposed in SCR 41 is the best mechanism for accomplishing this purpose.

We in the Farm Bureau strongly favor the adoption of this legislation by the Legislature. It is time for the people of New Jersey to have a chance to make a clear-cut decision on this issue. We urge that the resolution be adopted and that the issue be placed on the ballot this coming November.

We appreciate this opportunity to express our views.

SENATOR DICKINSON: Well, thank you very much, for giving them, sir. Senator, do you wish to ask any questions?

SENATOR HIERING: Mr. Filemyr, do you have any idea of the amount of acreage in meadowlands in your County of Gloucester - any approximate figure at all?

MR. FILEMYR: In Logan Township, I think it is dominant; we have more proportionately. But I would say there must be bordering somewheres on 20,000 acres anyway and I think that is a conservative estimate because we have many tributaries and they are far-reaching. It seems like one day you think you have so much riparian land and then you read the papers or somebody tries to sell a piece of meadowland and

they find out that the State is usurping their province on land. For instance, there are several Meadowland Associations and I don't think that there is anyone of those people think the State has any interest in those lands and they shouldn't. But we had a case in point where a farmer had a property and to my knowledge it never had been ebbled and flowed by tide except there is a sluice gate and there is a drainage system there. And to get title to sell that property, they had to procure title from the State. This is an alarming thing because we have these associations. There is the Repaupo Meadow Association, which encompasses -- goodness, it must be 20,000 acres. I said 20,000. Just how far do you anticipate the State would go, you see. I wasn't including this area and maybe I shouldn't include it. But if you let the State go where they are now, there is no determination where they will draw a line of demarcation. Really you can't say how many acres there are. It is an astronomical figure, honest to goodness, and it is disturbing.

SENATOR HIERING: Is much of this land under harvest for either salt hay or mowing?

MR. FILEMYR: Well, much of it is. But in recent years -- you see, we had a tremendous high tide there and it broke a lot of our banks and because of the costly operation of putting these banks back, the dollars to do it to the dollars returned makes it prohibitive. You see, it used to be that we had farmhands on the farms and as a winter's work they would go down there and you could afford to keep them doing it, but we don't have those farmhands now so you have to

get machines. Many of your mud machines get prohibitive when you are talking about a small area. A large part of it has eroded to the point where there is ebb and flow of the tide over it. I brought this fact out here in my statement, that there have been easements and we are in the process right now of granting other easements and the farmers are cooperative. But we don't want to again have the experience we had with the Corps of Engineers. If you recall, the Corps of Engineers was going to come in and commandeer our land by condemnation. We fought them to a standstill on this. But these lands can be improved and we are interested in improving them. But we do have many acres that are farmed and we hope they continue to be farmed under our title.

SENATOR HIERING: I notice that you are Mayor of Logan Township. I don't presume that your tax records have been changed as far as the designation of ownership, have they?

MR. FILEMYR: No. In fact, we have made some consideration taxwise. When we revalued, we revalued them at a nominal figure because the State says they are theirs and if anybody goes to sell them, they find out the State has the authority. So in conscience, we placed a minimal assessment on those lands which we knew were riparian or meadowlands and this has only been in the past four or five years. But the State says to our assessor, "Assess them at true value." Morally you can't do this because we don't even know whether there is a valid title here.

SENATOR HIERING: Have your people who have owned

these meadowlands continued to pay their taxes or has there been any drop-off in tax payments?

MR. FILEMYR: Well, we have had considerable discussion and I tried to enlighten them as to our progress as far as possible legislation with Assembly Bill 44 and then Senate Bill 609. It seemed as though it was prudent for them to maintain it and I think being that we placed a nominal assessment on it, the property owners have maintained it. But if we had attempted to place it at true value, I know -- Well, we had one farmer who said, "I am tired of paying it," so he turned it in and the municipality accepted the land. But the next year he had a second thought and he came clamoring around and he said, "Put me back on the tax rolls." So that's where he is. It is terribly demoralizing. The moral issue is bad. As I said, we are assessing these people and how can you talk to somebody and say, "You have to pay the township taxes," and it isn't even their land, allegedly so? I don't want to say that it is State land because, heaven forbid, I hope this never happens.

SENATOR HIERING: Thank you, sir.

SENATOR DICKINSON: Thank you very much for coming.

Mr. Blau, please, would you be kind enough to introduce yourself.

EDWARD L. BLAU: I am Edward Blau. I am President of Blau Mortgage Company in Newark and I am a member of the Executive Committee of the New Jersey Association of Real Estate Boards. It is as Chairman of

that Association's Committee on Riparian Lands that I appear before you this morning to discuss SCR 41.

Let me say that the New Jersey Association of Real Estate Boards consists of approximately 2900 realtors in all 21 counties of this State. We strongly urge you to pass the resolution under discussion so that the important decisions regarding the future economic growth of this State may be finally resolved.

While the subject of riparian lands is extremely technical and complex, the case for passing this resolution really is quite simple when brought down to its basic fundamentals. Let us look at the picture. In 1960, the State of New Jersey first exercised a claim through the Sisselman Case on lands that were previously thought to be privately owned by almost all knowledgeable people in the title field. "Owners" who had paid municipal real estate taxes for years and others who had purchased land from municipalities found their titles being questioned as a result of the decision handed down at that time.

The lands affected were, and are, in 17 counties. The decision caused drastic repercussions for residential developers in many resort sections of our State. Without in any way minimizing the importance of the impact on residential development, I would like to concentrate on the 21,000 acres of meadowlands in Bergen and Hudson Counties, where the economic impact has been the heaviest. This industrial area is probably the most valuable undeveloped industrial land in the world as it lies just a few minutes from New York City.

Due to soil conditions that have only recently been resolved, these lands have never been built upon to any great degree. Only in recent years has any large-scale industrial growth taken place, but there is still much more to come.

Since the 1960 decision, the State has been willing to give a quit claim deed for lands in this area for a nominal sum to certain "owners" of land if set standards were met for industrial development. Since the standards were strictly enforced and required many supporting documents, the quit claim deeds were slow in being issued and industrial development began to slow down, since without the quit claim deed from the State it was impossible to get title insurance and without title insurance, mortgage financing could not be obtained.

In 1964 legislation was enacted by the Senate and the Assembly to rectify the situation which they undoubtedly felt was not only unfair to the property "owners" involved, but was by then starting to slow the economic growth of this part of the State. Although this bill passed both Houses, it was subsequently vetoed by the Governor since he questioned the constitutionality of the legislation.

A similar bill passed the Legislature in 1965, only to meet the same fate for the same reason.

At about this time, it began getting difficult to obtain title insurance in the meadowland area even if quit claim deeds were issued by the State. Title attorneys began to question the validity of the quit claim deed itself on the grounds that, if the State, in fact, owned the land in

question, it could not give its rights away for a nominal consideration. As more and more title insurance companies joined the list of those who refused to insure titles in the affected area, certain mortgage lending institutions refused to grant mortgage loans, even if a title insurance company could be found that would be willing to insure the title without exceptions. This situation developed because, among other things, the lenders were beginning to question the financial stability of the title insurance companies to handle the potential losses of the magnitude that was involved.

This brings us up to last year when the O'Neill decision caused the situation to become even worse from the property "owners'" point of view, and worse from the point of view of industrial development of the State, but at least crystal clear as far as the law was concerned. For the first time in seven years, the ownership of lands that had been flowed by the mean high tide was no longer in doubt. As a result of that decision, it could now be clearly stated that the State of New Jersey owned and still owns all of this land.

Since that time, it has been literally impossible to get title insurance in any of the affected areas even if a quit claim deed was issued by the State to the "owner" of record. Since the State clearly owned the property, giving of a quit claim deed for a nominal consideration is seriously being questioned. As a result, industrial development which had already been curtailed, is now grinding to a halt. This

situation, of course, has a huge effect on the economics of the area as well as of the State as a whole. Not only are jobs in the construction field affected, but permanent jobs for those who would have been employed in the new buildings are obviously not available as well. Real estate taxes on the improvements that would have been made are not available. And State revenues from taxes on the businesses that do not exist are also obviously missing.

From the standpoint of equity, there is another important factor that has received relatively little attention. Most of the properties were originally purchased in an undeveloped condition. The "owners" have not only paid municipal real estate taxes on this land, but many of them have developed and improved these properties with large industrial buildings, consisting of, in total money, millions of dollars. Most of these properties have been mortgaged (many prior to the Sisselman decision) and the "owners" are obligated to repay these funds to the mortgage lenders. To say that this land and the improvements thereon now belong to the State of New Jersey, that the money paid for the land is gone, that the money paid for the improvements is gone, but that the "owners" are still responsible for repaying the mortgage debt, surely is an unfair situation.

It should be emphasized at this point that we are not pleading the case of an individual property owner who made a bad investment on land with questionable title and then built buildings on this land, but rather of many, many individuals and companies who acted in good faith, relying

upon what had been the universally accepted understanding of eminent title attorneys, from the beginning of the adoption of the case title law in the State of New Jersey until the year 1960.

The 1964 Legislature recognized the situation and tried to remedy it as did the 1965 Legislature. Both bills were vetoed as they were believed to be unconstitutional. Surely then the answer must be to change the Constitution itself. No one could very logically argue that that is unconstitutional. SCR 41 takes the first step to get that constitutional change accomplished. In two sentences, the Constitution will be changed to clearly rectify a situation that is not only obviously unfair, but one that has unfortunately stifled the growth of an area that is just coming into its own. It would be unfair to close without again reminding you that 17 counties of the 21 counties in the State of New Jersey have been adversely affected by the O'Neill decision. Many properties in the resort areas are involved and the "owners" today are finding it not only impossible to build on these properties, but it is now becoming difficult to transfer existing homes and buildings as well.

In closing, I want to emphasize that of which you must be already aware, that by voting for this bill, you are not even necessarily agreeing with the necessity of changing the State Constitution, but merely agreeing that this change has enough merit to be put on the ballot next November so that the voters of this State can make the final determination. We are confident that you will see enough

merit in this proposal to therefore recommend the approval of this resolution.

SENATOR DICKINSON: Thank you very much.

May I suggest a precise five-minute recess and the next witness thereafter will be Mr. De Brier.

[Five-Minute Recess]

(After recess)

SENATOR DICKINSON: If we could come to order, please.

We had proposed to call Mr. DeBrier but with his permission we have someone who wishes to be heard who must leave a bit early. So, is Mr. Krusen here? Please proceed, Mr. Krusen.

L E S L I E C. K R U S E N: My name is Leslie C. Krusen. I am appearing here as Counsel for American Dredging Company. I am a resident of Delanco in Burlington County, New Jersey, but I am not a member of the New Jersey Bar.

In the course of my duties for American I have had a great deal to do with the properties along the Delaware River and along the Coast, and I am familiar with the problems that have arisen with respect to these tidelands.

We fully support the passage of SCR 41, which we think is the only possible solution to a very chaotic situation in this State.

I want to say parenthetically that a great deal of the industry along the Delaware River is built on lands which have been filled. They sort of take that for granted today but at one time they were marshlands good only for the breeding of mosquitoes, and by filling them and making them available to industry they have been converted to valuable properties which have attracted industry, and I don't think I need to say given employment and provided revenue, and so forth.

This company, American Dredging Company, has had a great deal to do with this. It owns considerable land of its own in New Jersey, some of which in order to make sure it had clear title, although it bought title properties, it has had to repurchase from the State by getting a quit claim deed. We didn't like it but at the moment there seemed to be no other solution to this.

A great deal of industry along the lower Delaware is built on land that the American Dredging Company, in the course of its operation, has filled.

In most cases American has obtained its rights to fill by agreement or lease with private owners, but in many cases, as I indicated, it has purchased lands. My experience has been that the titles of practically all of these lands go back to the New Jersey proprietors. In many cases actual improvements, such as bulkheading and filling and the erection of other structures, were made under the common law as it existed up to the date of the Wharf Act, and under the Wharf Act as it existed until its repeal. It is my view that any attempt on the part of the State to now challenge the titles of landowners obtained by such lawful methods amounts to confiscation, and probably to an unconstitutional taking of property without just compensation within the meaning of the Federal Constitution.

I want to add again, parenthetically, that in discussions with the Department of Conservation and Economic Development over the years, it has been indicated that the state claims that people who think they own things like

meadowlands, organized under meadowland companies, lands that have been bulkheaded and filled under the Wharf Act, and so forth, - the state has indicated that they have a sort of revocable license to use that land; if the state ever needs it, it will take it back. And that has been demonstrated in some of these highway cases where the state simply took the land in some cases the court supported them. Although the court decisions, as you doubtless now, - and I am not going to labor the law, - are very conflicting.

I also want to say that if these claims of the state should eventually be supported and they should sustain title to the lands which now or heretofore or ever were flowed, as they put it, by the tide, there are a great many factories, utilities, hotels in Atlantic City, meadowlands, lands that were diked where the dikes had gone out, that do not belong to the people who think they own it, they belong to the state.

It seems to me that this whole situation is wrong because the state has acquiesced in centuries to having these people hold title and conceding the point that you can't get title by adverse possession against the state. I think that the state in its acquiescence has conferred the equivalent.

And it seems to me, and I think to everyone, that it is fundamentally wrong that property which has been titled in the name of such private owners for generations, upon which taxes have been paid and improvements made, - the taxes, of course, have gone to the state and counties, and so

on, - should now have to be ransomed by payments to the state.

Because of the existing confusion resulting from the chaotic state of the law, title companies will not insure titles to meadowlands without an exception in respect of possible rights of the State of New Jersey. As a result, industry hesitates to locate or expand upon land which may later be determined to be the property of the state, and the development of waterfront lands has come to a standstill and will doubtless continue that way indefinitely unless the question is settled on an equitable basis.

The decisions of the Courts are conflicting and do not firmly settle the respective rights of the landowners and the state. Furthermore, the more recent decisions of the Courts have, in my opinion, not given to individual and corporate owners of land the protection to which they are fairly entitled, both under the common law, and as a matter of equitable treatment. In any event, law established by decisions of the Courts is unstable since it can always be changed overnight by reversal, or by subsequent overruling. A statutory solution is not always satisfactory because the Courts must interpret the statute and determine its constitutionality, and also because a subsequent legislature may repeal it.

Accordingly the only way to permanently settle this vital question of the stable ownership of tidelands is by an amendment to the Constitution. This will settle the matter once and for all, and will give industry the green

light to develop waterfront property with confidence.

We do not at this time question the primary right of the State of New Jersey to lands underwater up to the normal high water mark, nor to the beds of streams, as distinguished from drainage ditches, etc. The legal rights of the state are as firmly founded in our common law as the legal rights of the private owners, which the state now seeks to challenge. Passage of this amendment will define the respective rights and will settle the matter justly and permanently.

I would like to add that I don't think there could be a more democratic way of doing it than to submit it to the voters.

I want to thank the Committee for the time.

SENATOR DICKINSON: Thank you very much, Mr. Krusen. I have no questions.

Senator Hiering?

SENATOR HIERING: No, thank you, Senator.

SENATOR DICKINSON: About a month or six weeks ago we had a hearing on meadowlands which lasted till quite late in the evening and the Chairman, who happened to be I, was sort of mean to Mr. Nasmith and kept him around until 7 o'clock and he had been there since 10 o'clock in the morning. So I will, therefore, take a little liberty and call on him next. Mr. DeBrier will come thereafter.

AUGUSTUS NASMITH: Thank you. I appreciate the courtesy and I was late getting here. I'm sorry I have no prepared statement.

My name is Augustus Nasmith. I am Vice Chairman and General Counsel of the Associated Railroads of New Jersey.

We fully support SCR 41 as a fair, equitable and necessary solution to the meadowlands title problem which has blocked industrial development generally and which has specifically hampered railroads in locating revenue-producing industries on the meadowlands that we have owned for decades.

As one example, the Jersey Central was desperate for cash and for more freight revenues during the past few years. One of its prime resources was and is meadowlands adjacent to Port Newark and Port Elizabeth. If the title impediment had not existed, Jersey Central might have been able to develop these properties and avoid bankruptcy through their sale and development.

In 1815 Colonel John Stevens obtained in New Jersey the first railroad charter in the United States. By 1839 railroads were beginning to honeycomb the state and by 1880 almost all of the present rail network was in operation. It was the railroads that developed all of our larger cities and our industry in New Jersey. Where necessary they constructed the railroad right-of-way across meadowlands. We can all witness them now between Newark and Secaucus and on the Pennsylvania Railroad, if you travel it, just before you go into the tunnel to New York.

It took thousands of seeders and tons of dirt and a wait of a year for the fill to settle before the first train conquered the meadows and this was back in 1833.

As the railroads developed and as they went through the meadows, they acquired adjacent meadowland properties and improved it for industrial development to the extent possible. But still today much lies in its virgin state because modern methods of compacting were unknown until recently and when known, alas for the railroads, as others, it was too late because Sisselman had been decided and we couldn't clear the title problem.

The railroad industry wants to develop these properties for our own benefit and such development aids local municipalities and the state as a whole. The railroads opened up these areas and foresaw their future value long ago. We hold record title. We have been paying taxes for these many years and we think it is only fair to us that this Constitutional Amendment be adopted so that we may continue to grow and develop these properties and properly serve the State of New Jersey.

Thank you.

SENATOR DICKINSON: Thank you very much, sir.

I have no questions.

SENATOR HIERING: Mr. Nasmith, have the railroads obtained any quit claim deeds for a nominal reduced consideration over their right-of-way as it applies to meadowlands?

MR. NASMITH: For the right-of-way itself?

SENATOR HIERING: Yes.

MR. NASMITH: I don't believe so for the right-of-way. I don't think we have been challenged as to our ownership of the roadbed itself. The railroads have obtained quit claim deeds for adjacent meadowland properties. And I might add, after long and tedious delay and red tape which, even until recently, made it a very cumbersome and difficult and unsatisfactory procedure.

SENATOR HIERING: Now, on the meadowlands where you have obtained quit claim deeds, or the railroads have obtained them for a reduced consideration, at the present time is there still a title question involved even after getting the quit claim deed, as far as you know?

MR. NASMITH: In my opinion, yes, based on reading O'Neill. It seems to me the Supreme Court ducked the question as to whether our present agency has the authority, constitutionally, to give valid grants.

SENATOR HIERING: In other words, I presume that would be based on the ground that the railroads may have been entitled to a riparian grant for a true consideration but not a quit claim deed for a reduced consideration.

MR. NASMITH: Yes, sir. As I see it, if there is this constitutional dedication to the school fund, with which I personally don't agree but apparently some eminent people believe there is this constitutional dedication which is binding upon the Legislature, it seems to me that no grant can be valid unless it can be determined that full, true market consideration was paid for the grant or deed.

SENATOR HIERING: Thank you, sir.

SENATOR DICKINSON: Thank you very much, Mr. Nasmith.

MR. NASMITH: Thank you again for getting me on so early.

SENATOR DICKINSON: Mr. DeBrier, our apologies for holding you up.

D A N I E L D E B R I E R: Senator Dickinson and Senator Hiering, my name is Daniel DeBrier and I am here representing the Greater Chamber of Commerce of Atlantic City.

Our Board of Directors yesterday affirmed a resolution strongly urging favorable consideration of Senate Concurrent Resolution No. 41. And with your leave, I should like to leave with you a copy of this resolution which attests to our feeling in that regard. (See p. 76)

In addition, however, to what the resolution states which really asks strong support for the Resolution and urges its immediate enactment, I should like to say what has not been touched upon today, namely the implications in the problem to the beaches of New Jersey.

We feel that with the present situation, with the conflicting judicial decisions, and with the inability or reluctance or reticence of title companies to insure title, that there is a grave question presented as to the ownership of our beaches. And if the question continues in its present uncertain state, certainly great improvement of those beaches will be impossible.

We feel perhaps, tersely stated, the true legislative process as demonstrated by a hearing like this today is to inquire into the implications of the problem and to test, by support, the adequacy of the remedy proposed.

We add to the complexity of the problem the fact that our beaches are likewise washed by the ocean, subject to tidal movements, and, therefore, a question is presented which should be resolved.

We feel that out of the many possible solutions and remedies that Senator Hiering's Concurrent Resolution No. 41 presents what we think is the best and most effective and, I suppose one might say, the best legalistic approach to the problem. And, therefore, we respectfully urge its immediate enactment.

SENATOR HIERING: Thank you very much, sir.

Mr. Douglass?

D. M. DOUGLASS: I am Captain D. M. Douglass, retired Delaware Bay and River Pilot. I live in Cape May.

Out property down there has come down through generations through the family. Different ones at different times have struggled to carry it on. Today it is a question now of whether what we do have was all worth it.

I have been chided for foolishly paying taxes on a lot of wasteland. I retired after 47 years with the idea of coming back and enjoying it.

Thank you.

SENATOR HIERING: Thank you, sir.

SENATOR HIERING: Mr. Robert Ellis.

R O B E R T J. E L L I S: My name is Robert J. Ellis. I am a member of the Township Committee of the Township of Riverside.

We have a very high stake in the Resolution that's proposed by your Committee for one reason. Our town is one square mile and we have approximately 175 acres of undeveloped meadowland which is in question at this point.

For years certain taxpayers have paid taxes on this ground and we wonder now if we may have to return the money or strike these people from our tax rolls.

The State has claimed that this money is needed for the schools. If this is so, the Township of Riverside for many years has tried to purchase this ground and the State has refused.

We have laid claim to this ground under the Embankment Act because we feel that the bank that existed for many years gave us title to the land.

If it were true that the money was needed for schools, it is even more important to us that we have this ground, that private owners have this ground so that it may be developed for tax purposes to pay for the burden of the schools that we already now have.

I was wondering while the gentleman from the Department of Finance was speaking, saying that the money, I believe it is, from the sale of these grounds goes to free public schools. Every year the State has taken away

our revenue producing sources. Now there is a chance for the State to return to the townships and to local governments a means by which we can obtain our own resources to pay for the burden of the schools.

The O'Neill Decision makes our tax assessor wonder which way to go as far as assessing the property. Our property in the meadowlands is now assessed at \$100 an acre. Do we strike these from the tax rolls and lose the revenue or do we continue to keep them? And if we do have to strike them from the tax rolls, do we have to return any portion of the money already paid over a period of years?

We don't know how to zone the ground. It is zoned for what purpose, recreational or industrial or residential?

If the State is going to develop this land, it is understandable that the State would keep it. But if the State is going to leave it in its present condition of mosquito filled meadowlands, the township contends that the ground ought to be returned to its rightful owners.

Thank you.

SENATOR HIERING: Mr. Ellis, you said there is about 175 acres of meadowland. How many individual owners would be involved in your township?

MR. ELLIS: Besides the township?

SENATOR HIERING: Yes.

MR. ELLIS: Approximately 12.

SENATOR HIERING: Have these people continued to pay the taxes since this problem came up?

MR. ELLIS: Yes, they have.

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SENATOR HIERING: Thank you, sir.

I R A C. M O O R E, JR.: My name is Ira C. Moore, Jr. I appear as Attorney for UMC Industries, Inc.

Mr. Hiering, you asked one of the gentlemen who appeared about quit claim deeds in the State, and you may be interested in an experience we had.

SENATOR HIERING: Yes, sir.

MR. MOORE: We first got interested in this when the Hermetite Corporation plant merged with the Universal Match Company. Before Hermetite built their plant title was guaranteed but when Universal Match took it over the title company would not guarantee the title because it's in the Carlstadt Meadows and it may or may not have been flowed by tide at one time.

I went down to the Bureau of Navigation to find out what the situation was, and down there they gave me a list of properties which the State claims as being owned by the State in the Bergen County Meadows, which consists of Bergen County, 9 sheets; Hudson County, 4 sheets; I don't know how many sheets there are here altogether. Our property was on the list. They told me that at that time the State was granting quit claim deeds. Well, I didn't know how we could apply for a riparian grant because I knew we weren't on any stream. I showed them a survey and there was a ditch there which I think was a drainage ditch, and they said, "Well, you're on a tributary to the Hackensack River, apply on that basis." So we applied. That application knocked around down in Trenton for over a year. It went

all over and finally it reached the Governor's desk. And I was then told that the Governor wouldn't sign unless we could show hardship.

Well, of course, we didn't plan at that time to expand. We owned the property free and clear, and the President of the Hermetite Division said they wouldn't expand in New Jersey as long as the title was in question.

The result was - well, they also said you've got to get a letter from the Mayor of Carlstadt, which seemed a little unusual. The result was, we didn't and were not able to get a quit claim deed.

So as far as clearing titles by means of a quit claim deed is concerned, we just can't clear our title that way.

Well, I have some suggestions but it might be helpful first if I briefly sketch the reason why we are in this predicament.

As we all know, the titles in New Jersey depend upon a grant from King Charles to his brother James and got down to the Board of Proprietors, which ostensibly included all land. In ancient times the King of England was accustomed to give exclusive rights to fishing in navigable waters. The public was very much aroused and when the Magna Carta was extracted from King John an express provision was put in that to prevent these grants.

In New Jersey the controversy first arose over a dispute over two boatloads of oysters. One Mundy, I think his name was Robert - rather, one Arnold, one Robert Arnold had planted some oysters in front of his farm on Raritan

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Bay and a Benjamin Mundy went down and helped himself to the oysters and rode away with them. He was promptly sued for trespassing by Mr. Arnold. The case got into court and Mr. Mundy pointed out that although Mr. Arnold had a deed going back to the Board of Proprietors, Mr. Mundy has none. He pointed out that the waters of the Raritan Bay were common to the public, under common law the general public had a right to fish and to boat in the arms of the ocean.

And there was another case in the United States Supreme Court which sustained Mundy.

In other words, the sovereign rights of the State of New Jersey are for the purpose of protecting the rights of the general public in waters which are not susceptible of private ownership. That, of course, doesn't apply to land except to marshland.

The question arose as to how far inland do these public rights extend. Along the ocean they said, well at high tide the shore of the ocean is really the bed of the ocean, so that the public rights extend as far as high tide. When it comes to streams, at one time it was thought the streams had to be navigable. That rule was abandoned in New Jersey but the rule was that the State has rights as far upstream as the tide extends.

I think it's important in understanding this question to realize the reason for the rule, the reason why the State claims title - it is solely for the purpose of protecting public rights in waters where the tide ebbs and flows.

Now where we got into the trouble, this particular trouble, was that in some of the cases they speak about the State owing lands beneath waters which ebb and flow, where the tide ebbs and flows and they talk about tide flowed lands. The Court insists and picked that out of context and applied it to meadowland.

Well now, unless Newark Airport is a part of Newark Bay, our plant is a part of the Hackensack River, is a bed of the Hackensack River, there's no logic to that contention at all. There is no reason why the State should have sovereign rights over property which is susceptible to private ownership and which has been owned privately going way, way back in my memory and I give a little history of that.

Now that is the basis. If I may I would like to discuss with you the wording of the Amendment. I may or may not be helpful but I would like to try.

The language of the first part of the Amendment appears to have been taken right from the O'Neill Case, and the O'Neill Case is commonly thought to hold that salt meadow belongs to the State. I'm not sure that it does and that case still holds. I think it is subject to further litigation. But the opinion does say: "The State owns in fee simple all lands that are flowed by the tide up to the high-water line or mark. The high-water line or mark is the line formed by the intersection of the tidal plane of mean high tide with shore." And that language is pretty much the same as your amendment.

Now, what is the shore? I've looked it up to see if I could find a definition. In one of our old New Jersey cases and also in Corpus Juris Secundum the shore is defined as the strip of land between high tide and low tide. So that, if that is the definition of the shore, there is ambiguity here in the amendment. And I would suggest that that be clarified by defining the shore in case of marsh land it extends to where vegetation begins.

Now we are trying to clear title to marsh land. My suggestion is that we say so and use the term marsh land.

Annexed to my memorandum, I have a couple of alternate suggested amendments and in the first one I expressly state:

Marshlands do not lie beneath any part of the ocean or of any river, bay, sound, stream, inlet or other body of water, and the State hereby disclaims and relinquishes all right, title and interest based upon its sovereignty in and to all marshlands in this State, - and so on and so on.

Another alternate is: As used herein, the shore, as applied to marshland, is the line where vegetation begins.

And again we have a disclaimer of ownership in marsh lands.

It occurs to me that you will avoid controversy and litigation and if we are talking about marsh land, let's call it marsh land.

Now there is one other suggestion which I have. I am a little bit disturbed about the second part of the Resolution which requires record title continuously from July 1, 1891 and payment of taxes for the past 20 years.

Now in New Jersey the law for years and years has been that title can be acquired, in addition to record title, in three different ways. There is a 20 year statute of limitations, there's a statute which provides that actual possession under color of title for 30 years gives good title, and there is a statute which provides that adverse possession for a period of 60 years gives good title.

And unless you have a situation where no possession can be shown, searches normally go back 60 years, only, which would not be back to 1891.

Now when it comes to these meadowlands, many of these meadowlands have been reclaimed, they're occupied, as has been pointed out, they have been occupied by residents and by industries. Some of those people may not have record title back to 1891, they may have possession for 60 years, adverse possession, but not record title.

Now the question arises who owns the land if you can't qualify under this. I have had some experience in clearing title to meadowlands that may be of some interest to you.

In the particular area in which we were interested we found accurate metes and bounds descriptions and good title which we could trace in the present owners in a number of cases. In those cases we went to the owners and bought title. In some cases there were gaps and you couldn't get good record title. We went to the municipality and bought tax liens and foreclosed the tax liens.

This goes back a ways when Fidelity Union Title

18

Company was in business. I went to my friend, Ed Wyckoff, a title officer, and I asked him whether he would guarantee titles based upon foreclosures of tax liens. He said, "Ira, you can't show possession in meadowlands. Unless you go back to Proprietors, I don't see how we can guarantee the title." Well, I said, "Suppose we join the Board of Proprietors as a defendant to the tax foreclosure suit?" He said, "I never heard of its being done but I don't know why you can't do it." So I went down to Perth Amboy and talked with Adrian Lyon, the Registrar of the Board of Proprietors, and told him my situation. He said, "Yes, have them serve the president," and he gave me the name and address of the president, "and when you get through come down to me and I'll get a quit claim deed for you, a confirmatory deed for you." And that's what we did. So titles can be cleared and put into productive use if we leave the situation as it is today with respect to meadowlands.

Thank you for the opportunity.

SENATOR HIERING: Thank you, sir, for your very comprehensive report and we will give consideration to those suggested amendments.

MR. MOORE: Thank you.

SENATOR HIERING: Now, do we have a representative of the Raritan Valley Chamber of Commerce?

K. W E S L E Y P R A T T: My name is K. Wesley Pratt. I am Chairman of the Industrial Development Committee of the Raritan Valley Regional Chamber of Commerce.

My committee and the industries it represents, as well as the Chamber of Commerce, representing 1,200 members, are in favor of the passage of Senate Concurrent Resolution 41.

In the case of O'Neill vs. State Highway Department last November, the State Supreme Court created havoc by claiming that what had long been considered privately-owned tidal marsh land was actually owned by the State. This decision was made contrary to real estate law which generally accepted that riparian lands, to which the State has sovereign right, included only the beds of tide-flowed bays, rivers and streams.

The resulting confusion has made it impossible for private owners to obtain title insurance on involved land and has stopped industrial and economic development of this land. Title holders even wonder if they should continue to pay taxes on what might not even be their property.

The passage and enactment of SCR-41 would define ownership and settle this problem, returning industrial growth and development to that area.

If, however, SCR-41 is not put into effect, the title holders, be they industries, businesses or homeowners, would lose ownership. They would have to re-purchase land that they had been paying taxes on for many years, or else forfeit it. And what would become of the tax money that was collected on it? Would it be possible for present title holders to sue past owners for selling what they did not own? What about tidal land bought from or sold to the State? Legal chaos would result.

But beyond that, there is the question of what is right and just. The State, for many years, had admitted private ownership of these lands, proved by the assesment and acceptance of taxes, but now the State wants to change

all that. This is a grave injustice to those who in good faith purchased the land and paid taxes on it all these years.

The reason for the State's recent interest in obtaining tidal marsh land is its desire to develop the Hackensack meadowlands. The provisions of SCR-41 would not prevent this from being carried out.

It would be wise and profitable as well for the State to keep these tidal marsh lands on the tax rolls by respecting their private ownership. And it would also be of benefit to many industries, businesses and homeowners as well as to the continued economic development of New Jersey.

Bring us out of this confusion by upholding the private ownership of land. Do not allow the State to seize land it never before claimed to own. Settle the question of ownership of tidal marsh lands in a fair and just manner.

We of the Industrial Development Committee respectfully request that in the best interests of all involved, including the State, you act to implement the passage of Senate Concurrent Resolution 41 so that it may be brought to the general public for final action.

I thank you on behalf of those I represent for the opportunity to make our views on this matter known.

SENATOR HIERING: Thank you, sir.

Mr. Edward Murphy.

E D W A R D H. M U R P H Y: Sir, my name is Edward H. Murphy, Mayor, Borough of Brooklawn, Camden County.

By way of background, the Borough of Brooklawn was incorporated in 1924, consists of approximately 6/10ths of a square mile in area, 2509 population as of 1960.

I have come here today to urge passage and support of SCR 41.

For the past 11 years and some months, as Mayor, I have been vitally interested in the development of wasted land within the Borough limits. Of prime concern is a tract of land which we refer to on our tax maps as block 109, which is municipally owned and was acquired by the Borough through Chancery Court decree in 1937 for unpaid taxes.

What makes this particular land unique is that state documents that are used to contest riparian rights, survey maps, indicate that this particular land was under cultivation in 1888 with the meadowbank in existence, sluice boxes constructed and irrigation ditches within the farm land constructed. West Jersey Title Company 37 years ago made an exhaustive study on this particular tract and up until 1927 with the change of ownerships they have insured this land without any question, without any exception to state rights. However, it was at this time New Jersey State Highway Department acquired ground to

construct U. S. Route 25 which is now known as U. S. 130, and in constructing a bridge across Big Timber Creek, which is the dividing line between Camden County and Gloucester County, - and at this point I will read from their report which is dated back in 1931:

"The State of New Jersey acquired lands for New Broadway and widening of Old Broadway, west of the West Jersey and Seashore Railroad Company in 1930. We, West Jersey Title, did not insure the title but gave the State a 60 year brief of title, and the State Highway Department constructed New Broadway and the bridge across Great Timber Creek. As a result of presumably faulty construction of this drawbridge, there was insufficient support and the bank on the north side of Great Timber Creek broke down and there was an inundation of the waters of Great Timber Creek through two channels as shown by survey made by Sherman and Sleeper. One of these channels passes west of the highway and the other, beginning along the northeast, underneath the same, north of the bridge and connecting with the other channel. The space covered by the State Highway between the drawbridge and the highway over this last named channel is covered temporarily."

And it was at this point, sir, that West Jersey Title inserted an exception on all title policies from that date on, excepting the rights of the State of New Jersey. An act performed by the State itself destroyed the perfection of the title and since then you cannot get proper title insurance excluding the rights of the State of New

Jersey.

The meadow bank has been maintained as well as it could under certain conditions during the war, shortage of material, shortage of manpower. There was a braking down of our meadow bank and a deterioration of sluice boxes. However, efforts have been made to keep the meadow bank in repair. Nevertheless, this one black mark remains on the title reports and cannot be removed except and hopefully through affirmative action on SCR 41 being carried and presented to the voters for their adjudication.

On behalf of the Borough and its residents, I wish to thank you for conducting these hearings and giving me an opportunity to speak today.

Thank you.

SENATOR HIERING: Thank you, Mr. Murphy.

Mr. Canal.

N E D C A N A L: Honorable Senator, my name is Ned Canal, Realtor from the Borough of Mt. Ephraim, Camden County, and I wish to speak briefly in favor of SCR 41.

I wish to cite my own individual problem. I purchased land from the Borough of Mt. Ephraim in July of 1953. They had acquired title through foreclosure for nonpayment of taxes from the previous owner. The parcel of land in question, a four acre tract, by metes and bounds description read to the middle of Little Timber Creek, just a small creek about 10 or 15 feet in width, you can't even get a boat up the thing.

In March of 1967, last year, I started to land

fill property, with the Borough's approval, keeping it away from the flow of the Creek. In May, 1967, the same year, I was told by the state to stop. I did. Later in the month the Attorney General's office obtained an injunction. Even though I stopped, they still went in and got an injunction against me, claiming land as their own and making me look like a fool and crook in the papers.

I purchased the land in good faith from the Borough and I have paid taxes for same since 1953. This is all proof here. Now I find myself in litigation in red tape, hiring attorneys, tracing titles, obtaining surveys, marking the tides, permits, grants, etc.

I definitely urge the passage of Bill 41. It's a step in the right direction.

I wish also to recommend that the State also abide by the recording act and put on record the lands that they think they own for every one to see.

Thank you.

SENATOR HIERING: Thank you, sir.

That seems to complete our list.

Is there anyone else here who wishes to be heard?

Before concluding I do wish to make a statement for the record.

We have heard testimony here today concerning our title problem and a great deal of the testimony went to the problem in the Hackensack Meadows which, as we all know, is a very important part of our State and has tremendous potential. And actually the Hackensack Meadows contains

about 21,000 acres. But I do want to point out the enormity of the problem, since in the State of New Jersey, in the 17 counties which contain meadowlands, there is approximately 245,000 acres of meadowlands involved in this most serious problem.

I might state that these figures were compiled for me by the Navigation Section of the Department of Conservation and Economic Development.

This acreage is divided roughly as follows: In the Hackensack and North Jersey Meadows there is approximately 23,000 acres.

In the Raritan River and Bay area, there is approximately 23,500 acres.

In South and East Jersey - this takes in Monmouth, Ocean, Atlantic and Cape May Counties - there is 118,500 acres involved.

And then in South and West Jersey, which runs from Cape May to Trenton, there are some 80,000 acres involved.

Now it is most difficult to ascertain the specific number of property owners but best estimates seem to indicate that we are dealing with somewhere between 70,000 and 90,000 individual property owners.

To give you some example of the type of ownership that's involved in addition to the industrial potential and the commercial potential, I would just like to give you an example where the residential area becomes involved.

In my county of Ocean, we have approximately 40,000

acres of meadowlands, most of which borders upon the Barnegat Bay. During the 1950's and early in the 1960's there were some 50 to 60 real estate developments that were constructed in the meadowlands bordering the Bay.

What happened was, developers would buy the meadowlands, they would then fill the meadowlands, put in streets and develop it, construct homes and sell them.

On these meadowlands today there are somewhere between ten and fifteen thousand homeowners who own homes on lots which are in the meadowlands. The title to all of these homes, just as the title to all the other property we heard discussed here today, now is in serious doubt and I assume, after the O'Neill Case, claimed by the State of New Jersey.

I might state too that to attempt to reach any other solution, other than the over-all solution which we are proposing under SCR 41, would necessarily have to be on a piecemeal basis. In other words, handling the individual cases one by one.

One of the proposals that currently is before the Legislature, namely S-478, calls for this type of solution and authorizes an additional six Superior Court Judges to handle these cases individually. But, as I see it, to attempt to solve the meadowlands problem by this method would take generations and, even then, I don't think you would reach an over-all solution.

So that it is my feeling, as the prime sponsor of SCR 41, that we have here the actual only over-all and

absolute solution to the problem.

Now, ladies and gentlemen, do you have anything else or does anyone else wish to be heard?

If not, I will declare the public hearing concluded.

Thank you very much.

* * * * *

STATEMENT SUBMITTED BY NORMAN E. HARDY, DEPUTY STATE
TREASURER

Good morning, gentlemen. The Treasurer has asked me to represent the Treasury Department at this public hearing and make our position clear on Senate Concurrent Resolution 41.

SCR 41 would authorize a referendum which if passed at the next general election would give title to tidewater property to any individual who could trace ownership back to July 1, 1891 and prove payment of taxes on such land for 20 years.

The Department does not object to the intent of the bill. It does object, however, if in its presentation the public is not made fully aware of the effect of this bill. The question which would be placed before the people of this State would, if approved, deplete the resources of the public school fund of New Jersey. The fund was established by Section 4, Article 8 of the State Constitution as a permanent fund dedicated to the support of the free public schools. The constitution further provides that the Legislature may not borrow, appropriate, or use the fund for any other purpose under any other pretense whatsoever. The Treasurer is a statutory trustee of the fund and is therefore bound to protect its assets.

Implementing this constitutional mandate, N.J.S.A. 18: 10-5 clearly states that all lands owned by the State that are now or were formerly lying under water are property for the support of public schools and that all monies received from the sale of such lands shall be paid to and invested by the Board of Trustees of the fund. The Sisselman case of 1960 recognized the State's right to claim present or former tidewater lands.

Let me take a minute to describe the fund. As of March 31st it had securities with a par value of \$24,514,211. Its income has been used towards direct aid for school districts. The fund also secures the payment of the principal or interest on bonds or notes issued for school purposes by counties, municipalities or school districts, or for payment or purchase of such bonds or notes or claims for interest thereon.

The monetary value of this fund, however, is minute in comparison to the total value of one of its biggest sources of income, namely riparian land. Regretfully, as of this date, no attempt has been made to survey and determine the exact extent or limitation of these lands. There is no doubt in my mind that they have a substantial value and that the effect of a positive vote for this referendum would be to deprive the children of this State of untold millions. I do not think it is necessary at this time to cite more than the fact that the effect of this resolution would be to release the State's interest in the Hackensack Meadowlands, which has been described by many as the most valuable undeveloped tract of land in the Metropolitan New York area. The value of this particular property and therefore the value of the State's interest therein is substantial and is increasing rapidly.

SCR 41 represents the final step in a series of legislative proposals intended to settle the complicated Meadowlands title question by the simple expediency of surrendering without compensation the State's interest. Governor Hughes vetoed two similar bills - A44 of 1964 and A605 of 1965. The substantial difference between these two bills and the present resolution is that now the people are given the right to decide whether or not to give away this State interest. The prior bills were vetoed by Governor Hughes because such a release of State's interest without compensation could not be done by mere statute but in fact could only be accomplished by a constitutional change as to the assets of the school fund.

I as well as the entire Treasury Department would like to see an equal and prompt settlement of the State's interest in the Meadowlands. However, this can be done without depriving the fund of its propriety interest worth untold millions of dollars.

The Department favors the approach set forth in Senate Bill 477, which would require the prompt survey of all Meadowlands and an indication of the extent of the State's interest. It would also require that the result of this survey be published so that persons having color of title to property in these areas be made aware of the state's interest. Thereafter it would be up to the courts to determine the extent of ownership. Such a procedure is both legally and morally preferable to a stripping of the assets of the school fund.

REPORT, TESTIMONY AND RECOMMENDATIONS RE

SENATE CONCURRENT RESOLUTION NO. 41

MEADOWLAND TITLE DILEMMA

**By: Alfred A. Porro, Jr., Esq.
10 Stuyvesant Avenue
Lyndhurst, New Jersey**

On Behalf of New Jersey State Chamber of Commerce

Dated: April 23, 1968

I. INTRODUCTION.

This report and related testimony is submitted with regard to Senate Concurrent Resolution No. 41 and its proposal to aid in the clearance of meadowland titles throughout the State of New Jersey. The same is submitted by the undersigned on behalf of the New Jersey State Chamber of Commerce. The proposed resolution constitutes a genuine attempt to equitably resolve an extremely undemocratic situation which has been inflicted upon owners of marshland and meadowland throughout the State of New Jersey.

The background, circumstances and legal doctrines surrounding this problem is complicated and confusing. Submitted herewith are two extensive studies and analysis of the problem prepared by the undersigned from many years of research and work in this respect. The accompanying materials are incorporated herein by reference and made a part hereof and are entitled as follows:

1. Invisible Boundary: Private and Sovereign Meadowland Interest.
2. Meadowland Owners' Dilemma: Crossroads of Antiquity.

The first of the two documents will document with extensive citations the background of the substantive legal problem, historical development and a case analysis respecting the same.

The latter of the two works primarily devotes itself to the dilemma of the meadowland owner procedurally and other related collateral obstacles.

II. TITLE DILEMMA.

The title dilemma respecting meadowland ownership is the major challenge and obstacle to the proper and progressive developments of this valuable land. Throughout the State of New Jersey exist untold acres of marsh and lowland. This immense boundless real estate commonly borders rivers, streams, creeks, bays and similar bodies of water or waterways. In many areas such tracts are inundated and overflowed periodically by the tides, especially by the spring and extraordinary tides.

These areas possess the potential of having the greatest resource for new industry, residence, conservation, recreation and parks, tax ratables, employment, waterways, markets and transportation.

The title cloud cast by the claim of the State of New Jersey has and will continue to cripple this development.

Legislative attempts to date have proven ineffective and unsuccessful in striding this hurdle.

After approximately three centuries of belief, practice and usage of the meadowlands as either being privately or

municipally owned, the State of New Jersey in 1959 exerted a claim to ownership. This claim is based on an old English common law principle which, in essence, provided "title to lands submerged or washed by the ebb and flow of the tide below mean high tide, belong to the Crown". On the basis of this simple and well recognized statement of law, the State of New Jersey, proceeded to cloud title after title upon thousands of meadowland properties. With broad interpretation, misapplication and misconception the State claimed that it "may" have an interest in the same. This situation has caused an incredibly inequitable and unfunctionable situation.

III. O'NEILL V STATE HIGHWAY DEPARTMENT, ET ALS

The Supreme Court has expressed itself on the subject in the case of O'Neill v State Highway Department et als. Although the Court, in its opinion, clearly set forth the law of the State and thereby has theoretically greatly limited the State's alleged claim, practically the application of the definitions and guide lines set forth in the case are extremely difficult.

The report in the O'Neill case verified that it was not the elevation of the land that was crucial, but rather the location of the "mean high tide line" upon that land. The Court further emphasized that the best evidence and proof of the

location of that line was that as set by the U.S. Coast and Geodetic Survey. Lastly, the Court recognized the tremendous proof problems involved in this type of situation and created and gave birth to a new burden of proof concept, i.e., "existing scene". The party challenging the existing scene as the same reflects upon title to the premises now has the burden of proving the same. In most instances this burden has and should fall upon the State of New Jersey.

It should be noted that the proposed Senate Concurrent Resolution No. 41 incorporates, in the first portion of its definition of title interest, the gravamen of the O'Neill case, namely, the mean high tide line designation between the two interests, i.e., the private and sovereign interest and, further, the determination of the same by the "intersection of the tidal plane of mean high tide with the adjoining banks***".

IV. ORIGIN OF THE DOCTRINE.

The doctrine that underlies the present state of confusion respecting the law of ownership of estuarine and similar areas is quite simple and meaningful indeed. The present day controversy is basically one of title ownership deeply rooted in old common law real estate principles and jurisprudence. The ancient and archaic doctrine stemming from the old common law involving the King's rights in navigable streams and watercourses, was

gradually extended and interpreted to convert titles in New Jersey's meadowlands. Titles which had been undisputed for over three centuries were successfully clouded; a state of confusion and chaos was born by a pure misinterpretation and a misapplication of the old English doctrine.

It is emphatically stated that the forerunner of our present law is a doctrine which gave to the sovereignty merely a right of way, incorporeal hereditament, and right of control to all watercourses below the mean high tide line, touched by the ebb and flow of the tide. The basis and gravamen of the principle was to allow the sovereign to have free navigation, fishery, etc. without interference. The nature of the interest of the sovereign was in the nature of an easement or way. No attempt or purpose was visualized at that time to utilize this doctrine as an instrument of converting privately owned to sovereign titles.

V. NEW JERSEY CASE ANALYSIS.

As set forth in the accompanying writings "Invisible Boundary: Private and Sovereign Meadowland Interest", it will be noted that until the decision in the Sisselman case no recorded decision in the State of New Jersey appears on record to extend this doctrine to privately owned lands. All prior cases dealt with and were limited to questions of the sovereign rights

in the watercourse itself. The language of these cases clearly appears to verify the upholding of the doctrine with respect to "the purpose of passing and re-passing, navigation, fishing, fowling, sustenance, and all other uses of the water and its products", but not as a substitute for a title instrument or conveyance. However, the broad language of the judiciary in its earlier cases was interpreted in the ~~Sisselman~~ case to extend beyond the watercourse. This occurrence was unfortunate and, as pointed out in the above cited document, constitutes a complete misapplication of the law.

VI. DOCUMENTARY DOOM.

The documentary title history of meadowland areas can be and has been traced to the original grants from King Charles II to his brother, James, Duke of York, in 1664. A close reading of the original and subsequent grants and conveyances will heavily verify the fact that the title to the properties presently being attacked were recognized as non-sovereign properties. Custom, usage and documentary verification all demand resolution of the title dilemma in favor of the precedents of three centuries preceding.

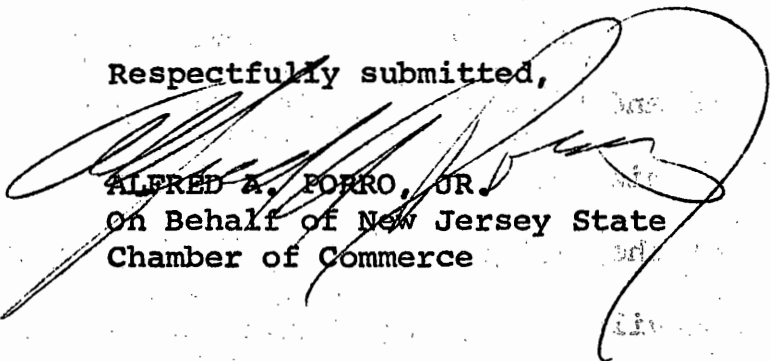
VII. CONCLUSION.

Senate Concurrent Resolution No. 41 clearly sets forth the doctrine of the O'Neill decision in its first portion and

ratifies and confirms titles as they should properly be by law. The latter section of the resolution is a practical attempt to ratify and confirm titles which are justifiably and legally privately owned, but are found to be in a position and circumstances that make it virtually infeasible to clear the broad claim that has been inflicted upon them.

The application of the written law, as it stands today, "in the field" and the location of the "invisible boundary", namely, the mean high tide line, is extremely difficult. Thus, a practical and equitable solution -- Senate Concurrent Resolution No. 41.

Respectfully submitted,



ALFRED A. PORRO, JR.
On Behalf of New Jersey State
Chamber of Commerce

Statement by
Roger W. Johnson, Executive Vice President
Woodbridge Area Chamber of Commerce

Before the
New Jersey Senate Committee
on
Agriculture, Conservation and Natural Resources
on
Riparian and Tidelands

April 23, 1968
State House, Trenton

* * *

Chairman Dickinson and members of the committee:

My name is Roger W. Johnson, I am Executive Vice President of the Woodbridge Area Chamber of Commerce.

I thank you for the privilege of bringing you some of the thinking of our Government Affairs Division regarding pending legislation concerning the use and disposition of riparian rights and/or tidelands in our state.

In connection with the Riparian Tide Lines pending litigation, there appears to be two basic problems:

First - determination of ownership of unoccupied or undeveloped tide lands areas to the extent that the State of New Jersey, for educational purposes, may derive some very considerable benefits, and, at the same time, make available such tide line areas for beneficial economic development through private or public means.

The second question devolves around the ownership of former tide land areas by private persons or businesses over the years who acquired such lands with every reason to believe that they enjoyed good record title. Such persons or businesses which have in good faith paid property taxes upon such lands, and in many cases made substantial investments to improve the lands, should have their ownership clarified and perfected.

This Chamber, while in favor of Senate Bill #477, which will resolve question #1, and keeping in mind that its effectiveness will not be fully determined for years to come, favors the immediate adoption of SCR 41 which will,

(a) Establish and clearly define in the State Constitution, those lands which are State owned;

(b) Establish and clearly define in the State Constitution those lands which are privately owned;

(c) Set up the necessary machinery for referendum on the proposal.

It is our sincere wish that these thoughts and suggestions will be of service to you in your deliberations.

Respectfully submitted,


Roger W. Johnson

**New
Jersey
Realty
Group**

NEW JERSEY REALTY TITLE INSURANCE COMPANY

830 BROAD STREET, NEWARK, NEW JERSEY 07101
AREA 201 • 623-4305

April 19, 1968

Hon. Fairleigh Dickinson, Jr., Chairman,
Comm. on Agriculture, Conservation and Natural Resources,
P O Box 316,
Rutherford, New Jersey

Re: SCR #41

My Dear Senator:

The New Jersey Realty Title Insurance Company respectfully requests that your Committee, at its public hearing on Tuesday, April 23rd, enter on the record this communication indicating the approval of our Company of the Senate Concurrent Resolution No. 41 proposing to amend Article VIII, Section III of the Constitution of the State of New Jersey.

This proposed amendment is the ultimate means to remove the confusion and uncertainties that have arisen respecting the vast meadow lands in this State and to make possible an actual conversion of much of this vast waste area into an economically productive part of this State.

The New Jersey Realty Title Insurance Company and its predecessor companies have examined title to lands throughout the State of New Jersey since 1884. It has studied the various attempts by the legislature of this State, from time to time, to encourage the reclamation of this area by individual initiative and by cooperative endeavor. These attempts extend back to earliest days of the State, but because of uncertainties that have arisen, due in part to some decisions of our courts, in part to the opinions of the Administrative Agency, in part to conflicting opinion among lawyers and in part to fears among those who would make contributions in the development of this area, the efforts of the legislatures have not been answered. Not least among the difficulties has been the constitutional problem that fettered the legislative endeavor.

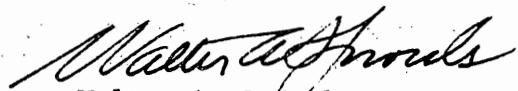
Notwithstanding the foregoing, large enterprises did enter these areas producing additional wealth in the State and opportunities for our inhabitants. But not enough. This amendment, which will resolve the meadowland muddle, will, without question, open up a new area in the reclamation of these lands; instill confidence in new enterprises to convert these waste lands in a manner envisioned by the statemen of the past. We are of the opinion that

PAGE 2

with this amendment the invitation to large enterprises to settle here will be answered to benefit of the State in general and the municipalities in those areas in particular.

We strongly urge the approval of the Resolution and its submission to the voters of this State for its adoption.

Respectfully submitted,



Walter A. Sprouls
Executive Vice President

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THE Mortgage Bankers Association

OF NEW JERSEY

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Senior Vice President
Jersey Mortgage Company

ADRIAN N. LONGFIELD, First Vice Pres.
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NOEL THOMPSON

Executive Secretary
EDWARD L. HEIL
550 Broad Street
Newark, N. J. 07102
613-4600

April 5, 1968

Hon. Fairleigh Dickinson, Jr., Chairman
Comm. on Agriculture, Conservation & Natural
Resources

P.O. Box 316
Rutherford, New Jersey

Re: SCR #41

Dear Senator Dickinson:

The Board of Governors of The Mortgage Bankers Association of New Jersey recently distributed to each Member of the New Jersey Senate and Assembly a letter containing the views of the Association with respect to various pending legislative matters. Upon the advice of its Legislative Committee, the Board of Governors recommended that SCR #41 be approved.

We understand that there will be a Public Hearing on this bill on Tuesday, April 23rd, and we wish to have the position of The Mortgage Bankers Association of New Jersey entered upon the record of such Public Hearing by means of this communication, which is addressed to you as Chairman.

The Mortgage Bankers Association of New Jersey urges the passage of SCR #41. It is our opinion that this is the most effective, efficient and expeditious way of dealing with a complicated problem which has

Hon. Fairleigh Dickinson, Jr.

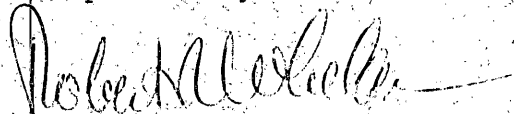
2.

prohibited the orderly development of some of the most valuable property in the State of New Jersey. Other solutions have been proposed and defeated because of potential Constitutional conflicts; and other solutions have been proposed which could solve the problem, but only at the expense of imposing gross inequities upon many persons who have pioneered in the development of meadowlands for the economic benefit of the entire State by divesting them of their purported title.

As an organization representing commercial and savings banks, savings and loans, mortgage bankers, title insurance companies, life insurance companies and other permanent investors, we are in a particularly sensitive position to testify to the adverse economic impact of the case law development following the Sisselman vs. State Highway Department decision.

We urge the adoption of the Resolution. We also urge that the increased general revenues from an orderly development of the meadowlands, the payrolls, the tax rolls, the general impetus to a favorable economic climate will result in a greater support for the public school systems of the State than the piecemeal revenues which have resulted from the sale and lease of meadowlands by the State.

Respectfully submitted,


Robert R. Whelan
Chairman
Legislative Committee

RRW/mk

SUBMITTED IN SUPPORT OF SENATE CONCURRENT RESOLUTION No. 41.

By Paul Amico, Mayor of Secaucus.

When a youngster attending school, I tried to learn a great deal about our State. Although no scholar I, like many other pupils, developed a deep love for N. J. and our great country, growing up hopeful that I would become a responsible citizen. My inspiration was that one day I would own a piece of the great America we were learning about - The Land of Opportunity.

In 1948, long before becoming active in politics and after many years of hard work, I purchased 2 acres of meadowland adjacent to the then proposed State Highway # 3. This land has been filled in and improved, several buildings have been erected with substantial taxes being paid to our community. In many areas of our State a great number of people have purchased residential and commercial properties - investing in development millions and millions of dollars on this same kind of land.

Since the Sisselman case in 1969, N. J. has claimed ownership to thousands of acres of meadows it never before claimed. Lands such as I and thousands of others have purchased, which have been in private ownership for many, many years.

As this is my 5th years as Mayor of Secaucus and because our Town has several thousand acres of meadows, I have had many opportunities to learn first hand of the difficulties which have been encountered by our home owners and land developers since the Sisselman decision which has made insurable titles to meadow lands extremely difficult and almost impossible for the owners of record to obtain.

Many persons are emphasizing the economics involved in this dispute. What seems to have been forgotten is the real important question of fairness and equity. Our legislators must come to realize that the State must take the necessary action to clear up the question of titles to these Meadows and to do it without delay. Now is the time for the state to help remove the cloud on these land titles and to help restore the full title of these lands to their rightful owners by passing and supporting SCR # 41. This would be in keeping with the great American tradition of fair play. To many people the ownership of property is the most important thing next to life itself.

Recently the Hon. James Rosen, Judge of the Superior Court, in a public statement appearing in our daily newspapers, was critical of one of our neighboring communities because they were too slow in complying with the State's requirements to assess all real property at fair and equal value - he said the municipality should set the example. This is precisely what our State should do with the title question. Set the example - do the responsible thing - clear up this unfair situation. Help to restore confidence in those persons who purchased these meadow lands. N. J. should not and must not become the State which deprived its owners of proper titles to their properties. Our State should take the lead and show it can be fair and just.

R E S O L U T I O N

WHEREAS, the question of title and ownership to riparian lands in our State is one that has perplexed our Courts, title companies, private owners, and municipal and state officials for a considerable period of time; and

WHEREAS, the absence of a clear and unequivocal answer to the ownership of these lands has discouraged the development of these lands, by private owners, for desirable industrial, commercial and conservation uses, which would in turn, provide additional greatly needed ratables; and

WHEREAS, Atlantic County, bounded by the Atlantic Ocean, and having many rivers and streams, has a real interest in a speedy solution to this problem; and

WHEREAS, there is now pending in the Legislature of our State, Senate Concurrent Resolution #41, which, if enacted, will provide for an amendment to our Constitution, which will establish and define clearly in the State Constitution those lands which are state owned, and establish and define clearly those lands which are privately owned, the latter to be achieved by declaring as private lands, any meadowland to which title has been held continuously since July 1, 1891, and which has been assessed for taxes for the past twenty (20) years; and

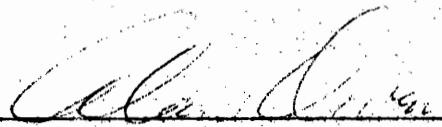
WHEREAS, a public hearing on Senate Concurrent Resolution #41 will be held at Trenton, New Jersey, on Tuesday, April 23, 1968, at which time the New Jersey State Chamber of Commerce will appear to urge adoption by the Legislature of said Concurrent Resolution;

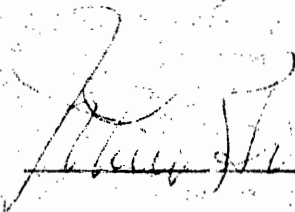
NOW, THEREFORE BE IT RESOLVED by the Board of Directors of the Greater Atlantic City Chamber of Commerce, that this body does hereby

express its support and approval of the position being taken by the State Chamber of Commerce, and does hereby further respectfully request the speedy enactment of Senate Concurrent Resolution #41; and

BE IT FURTHER RESOLVED that a copy of this resolution, duly certified by the Secretary of the Greater Atlantic City Chamber of Commerce be presented to the Chairman of the Senate Committee conducting the public hearing, and to the Senators and Assemblymen representing Atlantic County, as an expression of the sentiments and views of the Greater Atlantic City Chamber of Commerce.

Attest:




_____ President

Dated: April 22, 1968

WHITING, MOORE, HUNOVAL & HERMAN
LAW OFFICES

BORDEN D. WHITING
1876-1961

744 BROAD STREET, NEWARK, N.J. 07102

IRA C. MOORE, JR.
JOSEPH A. HUNOVAL
RODMAN C. HERMAN

AREA CODE 201
TELEPHONE 621-7777

April 15, 1968

Senate Committee On Agriculture,
Conservation and Natural Resources
Trenton, New Jersey 08625

Gentlemen:

MEMORANDUM IN SUPPORT OF SENATE
CONCURRENT RESOLUTION NO. 41

Since the unreported case of Sisselman v. State Highway Department, decided by the Appellate Division of the Superior Court in 1961, there has been serious question as to the ownership of vast areas of what are now or were formerly salt marsh. Do these lands belong to those who have record title and who are in possession of them? Or, whether in their natural state or reclaimed, do they belong to the State of New Jersey?

It is generally thought that the recent opinion of our State Supreme Court in O'Neill v. State Highway Department decided these questions in favor of the State. It is not entirely clear that this is so, but the opinion does appear to strengthen the State's claim of title.

I

This question of title stems from a controversy in the year 1819 over a few skiff loads of oysters.

In 1818 or 1819, one Robert Arnold bought several boat-loads of oysters, planted them in Raritan Bay in front of his farm and drove in stakes to mark the oyster bed. One Benjamin Mundy then came at the head of a small fleet of skiffs and rowed away with

Mr. Arnold's oysters. Arnold promptly sued Mundy for trespass. Arnold had a deed to his oyster bed — Mundy had none. But Mundy claimed that the general public has the right to fish in waters where the tide ebbs and flows; that this right applies to shell fish as well as to floating fish; that waters of navigable rivers and bays where the tide ebbs and flows belong to the people of New Jersey and that to protect the public rights, the title to such waters and the soil beneath them is in the State.

The case was decided by the New Jersey Supreme Court in 1821. The argument of counsel and the opinions of the Justices take up the first 94 pages of Volume 6 of the New Jersey Law Reports. The decision was in favor of Mundy.

Thereafter, on November 25th, 1824, the New Jersey Legislature passed an act which declared that the shore and land covered by the waters of the Sound and Raritan River, in the Township of Perth Amboy, should be set apart for the purpose of planting and growing oysters, subject to a rent to be paid to the State of New Jersey. The lessee of one William C. H. Waddell complied with the regulations of this act and took possession of an oyster bed situated beneath the waters of the Raritan River and Bay. The validity of this act of the Legislature and the right of the oysterman to the possession of his oyster bed were questioned in a law suit brought by one Merritt Martin and others, who claimed title under deeds going back to a grant from the Board of Proprietors of the Eastern Division of New Jersey. The case was finally decided by the United States Supreme Court in 1842.

The Court held that the rights and title which were granted by the State of New Jersey were valid and that the titles which were derived from grants by the Board of Proprietors were invalid.

To understand the question which has been raised with respect to the ownership of salt marsh which is sometimes said to be "flowed by tide waters," it is necessary to know the reason for these two decisions and the background history upon which that reason was based.

II

Titles to real estate in New Jersey are derived from a grant from Charles II, then King of England, 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 Lord Berkeley and Sir George Carteret and from them the eastern part of the State, 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 English possessions in America were not claimed by right of conquest, but by right of discovery. They were only retaken from the Dutch and claimed on the ground of this prior discovery. The lands belonged to the British nation, and title was vested in the King as the representative of the people. And the government and laws which he authorized to be established were not intended for a conquered people, but were subject to the rights of the people under English common law.

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 and common law. 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.

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 Carta 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.

Under English common law and Magna Carta, titles of the crown were of two kinds—proprietary titles and sovereign titles. The proprietary titles extended to such property as in its nature could be devoted to private and exclusive use, without any interference or infringement of the rights of the general public. Such titles could be parcelled out and granted to private individuals for private purposes. The sovereign title extended to such property as by custom had been used and enjoyed by the general public in common, without conflicting with private rights. The latter class of property

is sometimes referred to as common property.

Under English common law, the sea and the arms of the sea, including the bays and sounds and rivers which empty into the sea where the tide ebbs and flows, including the water and the land under the water, are common to all the people for the purpose of navigation, fishing and other uses. The title is in the sovereign, but the use is common to all the people. For this reason, it was held that neither the King, nor his successors in interest, had authority to grant a part of Raritan Bay to private persons for private use. To do so would result in the destruction of the common right to use such waters.

Upon the Revolution, the rights of the King became vested in the people of New Jersey and the Legislature, as the representative of the people, acquired the authority to regulate and improve such common property. But in Arnold v. Mundy, Chief Justice Kirkpatrick said, "The sovereign public itself, therefore, cannot, consistently with the principles of the law of nature and the constitution of a well ordered society, make a direct and absolute grant of the waters of the state, divesting all the citizens of their common right. It would be a grievance which never could be long borne by a free people."

III

Until recent years, it was generally understood that the title which the State has to protect the public's common rights in waterways, was confined to the waters and to the land under the waters, to the extent necessary to regulate the waters — that is to say, to the beds of streams and bodies of water. It is the water and the common use to which it should be put that is the basis of the State's title as sovereign.

By the common law, all waters are divided into public and private waters. In the former, the proprietorship is in the sovereign; in the latter, in the individual.

Along the seashore, part of the beach is at times covered by water and at times it is dry. When covered by water, it is the bed of the ocean. And so the practical rule was adopted that the State's sovereign title extends to normal high-water mark. This same rule applies to arms of the sea, such as bays and sounds, and the

State's title to rivers where the tide ebbs and flows extends up the stream to normal high-water mark.

Where vegetation adjoins a waterway, it has always been understood that the high-water mark is the point on the bank or shore up to which the presence and action of the water are so continuous as to leave a distinct mark, either by erosion, destruction of vegetation or other easily recognized characteristic. Marsh or swale is not a water course.

Our Courts have recognized that salt meadow is land — not water. And that it is subject to private ownership. The public rights were thought to extend only to the shore, "the mere oozing or flowing up of tide water through a salt meadow not being sufficient to constitute that a part of the river or shore."

In Stevens v. Paterson and Newark Railroad Co., decided in 1870, Chancellor Zabriskie, in a dissenting opinion, referred to 40 Acts of the Colonial Legislature and 30 of the State Legislature before the "new" constitution, providing for shutting out tides for the purpose of improving and reclaiming meadow and marsh lands overflowed by tides. All of these acts mention the persons benefited as the owners of the marshes.

IV

Historically, from the earliest Colonial days, and continuing until the present time, salt marsh has been treated as capable of private ownership. The owner of a farm frequently also owned a tract of salt meadow from which he cut the hay. Many of the deed descriptions were by metes and bounds and were accurately monumented.

The minutes of the Board of Proprietors of the Eastern Division of New Jersey have been collected and edited by the Registrar, George J. Miller, Esquire, and privately printed by the Board in three volumes. The first reference in this work to a grant of land by the Board is in Volume I at page 18:

"The Proprietors remitted one-third of their quit rents to the Justices, inhabitants and Freeholders of Woodbridge for 7 years. Samuel Moore was paid £10 yearly for his services in collecting them. In addition, he was given rights to take up 60 acres as headland, together with the portion of marsh and meadow."

"As We Were," the Story of Elizabethtown by Theodore Thayer,

Professor of History at Rutgers University, was published for the New Jersey Historical Society (1964) as part of the State's Tercentenary celebration. The following appears at page 22:

"Oxen and milch cows naturally received more care than ordinary cattle. The sheds which sheltered them in winter were bedded with salt hay gathered from the meadows. Salt hay manure, which the farmers spread upon their gardens in the spring, became a feature of Elizabethtown farming."

Relying on the long established and uniformly accepted custom of treating salt marsh as private property, hundreds of acres have been filled in and built upon. These improvements include many private homes and industrial plants valued at millions of dollars.

V

The Court's opinion in O'Neill with respect to the ownership of salt marsh is not entirely clear. At page 323, it states, "The State owns in fee simple all lands that are flowed by the tide up to the high-water line or mark. The high-water line or mark is the line formed by the intersection of the tidal plane of mean high tide with shore."

If the formerly established definitions of "high-water line or mark" are accepted, then the boundary of the State's title is the line where vegetation begins.

At page 322, the Court cites as a basis for its decision Schultz v. Wilson. From the opinion in that case, it appears clear that it is the waters and the common use to which it should be put, that is the basis for the State's title. So that unless the Newark meadows are a part of Newark Bay and the Bergen County meadows a part of the Hackensack River, it would appear that the State has no title to salt meadows.

The facts in O'Neill are not certain. In fact, the Court sent the case back for a new trial to determine the facts. Much of the language in the opinion is disconcerting, and until there is clarification, title to salt marsh will be unmarketable. If the question is left to the ultimate decision of the Courts, it may take years to get the answer. If the New Jersey Supreme Court should definitely

decide that salt meadow is part of the neighboring water or, for any other reason, hold that it belongs to the State, an appeal to the United States Supreme Court would undoubtedly follow. Then the Court might well adopt the position taken by Mr. Justice Stewart in Hughes v. Washington, that a sudden and unforeseeable change in property law amounts to a taking of property without due process.

The expansion of existing industrial plants, the development of vacant meadows and the clearing of title to homes and other improvements, requires that the cloud on title which the Courts have created be removed. That the State will thereby be releasing nothing to which it is entitled, will be clear if there is kept in mind the reason why Mr. Mundy was allowed to take and keep Mr. Arnold's oysters.

VI

If the purpose of the proposed Constitution amendment is to relinquish the State's claim of title to salt meadow land, I suggest that the language be changed.

The word "shore" is normally understood to mean the land which lies between high-water line and low-water line. The amendment might be clarified by the following insertions:

Insert on line 14, after the word visible, "but in no case beyond the line where vegetation begins."

Insert on line 17, after the word lands, "including salt marsh."

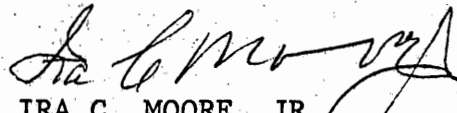
The use of the word "shore" in the proposed amendment is ambiguous, and I believe that the language could be clarified.

I am wondering why the proposed amendment requires that record title be held continuously since July 18, 1891. It has been well established that actual possession for a much shorter period is sufficient to give good title. I refer to N.J.S.A. 2A:14-6 (20 Years Statute of Limitation), 2A:14-30 (60 Years Actual Possession) and 2A:14-31 (30 Years Actual Possession under Claim or Color of Title).

I also suggest that the requirement that the land shall have been assessed for taxes continuously for the last past 20 years may, in some instances, be difficult to establish.

I am submitting herewith a suggested amendment to the proposed new Paragraph 4 of Article VIII, Section III.

Respectfully submitted,



IRA C. MOORE, JR.
Attorney for UMC Industries, Inc.

LIST OF SUPPORTING AUTHORITIES

Sisselman v. State Highway Department, (App. Div. Docket A-769 - 59)
Not Reported.

O'Neill v. State Highway Department, 50 N.J. 307 (1967).

Arnold v. Mundy, 6 N.J.L. 1 (Sup. Ct. 1821).

Martin et al v. Waddell, 16 Peters (41 U.S.) 367 (1842).

Stevens v. Paterson and Newark Railroad Co., 34 N.J.L. 532 (E. & A. 1870).

Cobb v. Davenport, 32 N.J.L. 367 (Sup. Ct. 1867) quoted at length in
Schultz v. Wilson, 44 N.J. Super. 591 (App. Div. 1957), at p. 600;
certiorari denied 24 N.J. 546 (1957).

Hughes v. Washington, 389 U.S. 290, 19 L.ed 2d 530, 88 S. Ct. 438,
36 Law Week 4058, opinion of Mr. Justice Stewart.

Gough v. Bell, 21 N.J.L. 156 (Sup. Ct. 1847).

Coster v. The Tidewater Company, 18 N.J.Eq. 55 (Ch. 1866);
aff'd. 18 N.J.Eq. 518 (E. & A. 1866).

Nixon v. Walter, 41 N.J.Eq. 103 (Ch. 1886).

Gabriel v. Paramus, 45 N.J. 381 at 383 (1965).

Yara Engineering Corp. v. N.J. Turnpike Authority, 49 N.J. Super. 603
(App. Div. 1958).

93 Corpus Juris Secundum 747, Sec. 71.

65 " " " 192 and 193, Sec. 88.

67 Corpus Juris 675, Sec. 2 and 680, Sec. 6 and footnotes.

93 Corpus Juris Secundum 602, Sec. 4 and footnotes.

Minutes of the Board of Proprietors of the Eastern Division of New
Jersey, Vol. 1, p. 18.

LIST OF SUPPORTING AUTHORITIES
(Continued)

As We Were by Theodore Thayer.

Graham v. Edison Tp., 35 N.J. 537, 544 (1961).

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

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); aff'd. 116 N.J.L. 447 (E. & A. 1936),
certiorari denied 299 U.S. 543.

Bailey v. Driscoll, 19 N.J. 363, 369 (1955).

River Development Corp. v. Liberty Corp., 51 N.J. Super. 447, 460
(App. Div. 1958); aff'd. 29 N.J. 239 (1959).

Bell v. Gough, 23 N.J.L. 624 (E. & A. 1852), at p. 665.

80 Corpus Juris Secundum 1286

N.J.S.A. 2A:14-6

N.J.S.A. 2A:14-30

N.J.S.A. 2A:14-31

SUGGESTED AMENDMENT TO PROPOSED NEW PARAGRAPH
TO BE NUMBERED 4 OF ARTICLE VIII, SECTION III
OF THE CONSTITUTION, AS SET FORTH IN SENATE
CONCURRENT RESOLUTION NO. 41

4. The State, by virtue of its sovereignty, is the owner of the lands lying beneath all those bodies of water within the State where the tides ebb and flow, including the Atlantic Ocean, tidal rivers, bays, sounds, streams and inlets within or bounding the State, limited in a landward direction to mean high-water mark, except for those parcels thereof heretofore conveyed by the State, which conveyances are hereby ratified and confirmed, and those parcels thereof lawfully acquired and held by others by virtue of applicable law of the State. Marshlands do not lie beneath any part of the ocean or of any river, bay, sound, stream, inlet or other body of water, and the State hereby disclaims and relinquishes all right, title and interest based upon its sovereignty in and to all marshlands in this State, now or formerly flowed by tide waters and all filled-in, made or reclaimed lands which were formerly such marshlands.

AN ALTERNATE SUGGESTED AMENDMENT
TO PARAGRAPH 4.

Insert after the word "State" in line 17 the following:

"As used herein, the shore, as applied to marshland, is the line where vegetation begins. The State hereby disclaims and relinquishes all right, title and interest based upon its sovereignty in and to all marshlands in this State, now or formerly flowed by tide waters and all filled-in, made or reclaimed lands which were formerly such marshlands.

Omit the balance of Paragraph 4.

April 18, 1969

Honorable Fairleigh Dickinson, Jr.
Chairman, Senate Committee on Agriculture,
Conservation and Natural Resources
Trenton, New Jersey 08635

Dear Senator Dickinson:

Executive Vice President Albert H. Achen, New Jersey Chamber of Commerce, has suggested that I lend my support to Senate Concurrent Resolution No. 41 concerning the title to the tidal meadow lands.

On account of advanced age and my health, I cannot appear at the hearing to be held on April 23rd and therefore submit my views herewith.

I had been in the employ of the former State Board of Commerce and Navigation (direct successor to the Riparian Commission) from 1915 to 1949. My duties had been largely assigned to the work of administration of the State's riparian lands. As a licensed engineer and land surveyor I conducted the riparian and hydrographic surveys to determine the location of the mean high water lines, pierhead and bulkhead lines and boundaries of proposed riparian conveyances as well as tidal observations and studies for the determination of tidal datum planes. My duties included the preparation and drawing up of the riparian grant and lease instruments of conveyance which required a knowledge of the riparian statutes, with records and procedures extending back to the time of the appointment of the Riparian Commission in 1869.

The records will show that the State has never asserted its title to these tidal meadow lands; in fact it has disavowed any ownership therein by describing the edge or bank of the waterway as the mean high water line or boundary between the upland property and the State's lands under tide water. All these riparian grants and leases convey the lands under water outshore or channelward from this de facto high water line to the pierhead and bulkhead line and the boundaries are all accurately described by metes and bounds and can always be recovered.

The statutes require the State's grantees or lessees to be the owner of the upland property at the time of the grant; otherwise the grant or lease is void. The State has always accepted the applicants' evidence to this upland ownership by the filing of documentary proof in the form of deeds and certificate of title.

The Riparian Commission created in 1898 continued in office until succeeded by the Board of Commerce and Navigation in 1915, and which continued the office until 1949. Throughout these 50 years many of the record owners of these lands were filled in and made other improvements on their property. The State, by its governing bodies, never did these improvements and its purpose was not intended their statement.

Another factor involved, and which I believe was introduced in the litigation testimony and which must be given consideration in determining the elevation of the mean high water datum plane governing the extent and area of meadow lands submerged at that level, is the channel improvements made by the Federal Government under the River and Harbor Act of 1890. The War Department has dredged, deepened, widened and otherwise improved the channels in Raritan Bay, Arthur Kill, Kill van Kull, Newark Bay, and the Hackensack and Passaic Rivers. These operations increased the tidal prism or flow of water resulting in a higher high water and lower low water and inundating a greater area of meadow land. It is submitted for consideration whether such an artificial condition created by man should result in the loss of ownership of that which is considered by the courts of highest jurisdiction as his most sacred possession.

In this litigation I feel that the courts merely confirmed the State's title to lands flowed by tide water at mean high tide, and based upon the evidence submitted I further believe that more studies should have been made by experts experienced in hydrographic work, bearing in mind that this is a borderline case and a small difference in determining the elevation of the mean high water plane would result in whether or not these meadow lands are submerged at that stage of the tide.

I urge that this proposed amendment to the State Constitution be adopted by the Legislature and placed on the ballot for consideration at the next general election.

Respectfully submitted



Robert A. Simon

R.D. 4, Box 304
Newton, New Jersey 07860