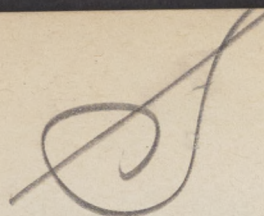


80



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**NEW JERSEY**  
**Court of Errors and Appeals**

SOCIETY FOR ESTABLISHING USEFUL  
MANUFACTURES,  
*Prosecutor-Appellant.*  
*vs.*  
BOARD OF CONSERVATION AND DE-  
VELOPMENT ET AL.,  
*Defendants-Respondents.*

On appeal from  
order of  
Supreme Court  
dismissing writ  
of certiorari.

**Reply Brief for Appellant.**

It is submitted that the respondents' brief avoids the main contention of appellant's brief, viz., that the State Board of Conservation and Development is a body solely concerned with the broad general supervision of the waters of the State, having no power in matters of detail, and being in no way concerned with the actual execution of any work undertaken by the District Board; that the District Board is endowed by the act creating it with full power to determine all matters of detail in connection with new water supplies without asking the consent of any other body; it being always understood that the consent *to the diversion of the water* necessary to carry out the plans of the District Board

must first be obtained from the State Board. While the former State Water Supply Commission had broadly all the powers now possessed by both the Board of Conservation and Development *and* the District Boards, the obvious intention of the Legislature in creating the District Boards was to relieve the State Board of all its duties except the giving or withholding its consent *to the diversion of waters*. The duty of the State Board is now solely confined to seeing that water is not diverted by one party to the detriment of another. With matters of detail it has no concern, and as the District Board is specifically clothed by the act, in language that admits no doubt, with plenary powers, to be exercised by itself, it would be a mere duplication of authority to subject the District Board to any control by the State Board over any other question than the mere right to divert the water. Under the provisions of the statute the District Board, having obtained the consent of the State Board to the diversion of the water supply, can proceed to formulate plans and modify details to a practically unlimited extent—in short, is authorized to act as an absolutely independent body.

The brief for the respondents describes the District Board as a mere municipal corporation executing plans of the State Board, but in doing so it distorts the legislative scheme.

JOHN B. HUMPHREYS,  
GILBERT COLLINS,  
*Of Counsel with the Appellant.*

## New Jersey Court of Errors and Appeals

SOCIETY FOR ESTABLISHING USE-  
FUL MANUFACTURES,

*Prosecutor-Appellant,*

*vs.*

THE BOARD OF CONSERVATION  
AND DEVELOPMENT, *et al.*,

*Defendants-Respondents.*

*On Certiorari.*

*On Appeal  
from*

*Order of  
Supreme*

*Court*

*Dismissing  
Writ.*

### **Brief for Defendant, North Jersey District Water Supply Commission and the Mayor and Common Council of the City of Newark.**

The prosecutor has determined to rest its case on those two reasons which challenge the authority of the Board of Conservation and Development to approve plans and to impose conditions upon its approval.

As the legal basis for both of these challenges is identical, we will discuss both of the points together. Prosecutor's contention is briefly that the provisions of

*Chapter 71 of the laws of 1916,*

under which the District Board operates, so far as they relate to the authority of the Board of Conservation and Development, are to be found in section 6 of the act, which reads as follows:

“Upon the filing of such petition the said District Water Supply Commission, after obtaining the consent of the State Water Supply Commission, or its successor, to the diversion of waters for such water supply, which consent shall not be given until after hearing \* \* \* shall fix a time \* \* \*.”

It is argued that the full power of the State Board must be found in this provision, and that inasmuch as nothing is therein said about plans or the imposition of conditions to the assent, the State Board acted *ultra vires* in so doing. We respectfully take issue with prosecutor in its contention that the so-called State Water Supply Commission acts (P. L. 1907, p. 633, and P. L. 1910, p. 551), are not applicable to the applications made by the District Water Board for the State Board's assent. The repealing clause in the district water act provides only that

“all acts and parts of acts heretofore passed, inconsistent with the terms and provisions of this act or granting to the State Water Supply Commission, or its successors in authority, the powers in this act granted to boards of district water supply commissions, are hereby repealed.”

Clearly this repealer does not affect the provisions of section 2 of the State Water Supply Act, which provides that no municipal corporations, corporation or persons engaged in supplying or proposing to supply the inhabitants of any municipal corporation with water, shall have power to condemn lands or water for any new or additional source of water supply, or to divert water from such new or additional source until such municipal corporations, corporation or person shall first submit the descriptions thereof, which may be accompanied by maps and plans, to said commission and until said commission shall have approved the same. Neither does it affect the provisions of section 3 of the same act which authorizes any municipal corporations, corporation or person to make application by petition to the commission for the approval of such plans. It

is clear from the District Water Board Act of 1916 that that Board is a corporation, whether it be a municipal corporation or not, section 4 of that act providing that

“Said Commission, when duly organized, shall be deemed to be and shall become a body corporate \* \* \*.”

Indeed, a study of the two acts shows that the purposes for which the old State Board, now merged by legislation of 1915, into the Department of Conservation and Development, was created and the purposes for which the District Board was created, are altogether different in scope. The District Board is in effect but an agency created by the State through which municipalities desiring to combine in the development of water supplies, may conveniently do so. Nowheres is there suggested that the District Board act as the representative of the State in determining the propriety of diverting the waters of the State for a water supply. Indeed, the very provision of section 6, requiring the application by the District Board to the State Board for its consent to such diversion, shows clearly that the District Board is a mere representative of the municipality or municipalities contracting with it and in no true sense a state agent at all. The State's rights over the waters of the State are still vested in the State Board in accordance with the provisions of the State Water Supply Acts.

It follows necessarily that the District Water Board in the carrying out of its water project is subjected to the jurisdiction of the State Board, except insofar as the provisions of the new act are inconsistent with the provisions of the old act. Since by its very second reason the prosecutor asserts that there is nothing in the act

creating the District Board which requires approval of plans by the State Board, it is obvious that the provisions in the State Water Supply Commission Act for approval of such plans are not inconsistent with the terms of the 1916 act. It necessarily follows that upon application to the State Board for assent to the diversion of the waters that Board may decide, in accordance with the State Water Supply Acts, whether the plans are justified by public necessity or reasonably anticipated public use, whether they interfere unduly with the right of the public or other municipalities to obtain water or whether the reduction in the dry season flow will be so great as to produce insanitary conditions or otherwise unduly injure public or private interests. These are the very questions the State Board is called upon to decide before granting the State's assent to the diversion of water, and it is unthinkable that whereas in the act creating the District Board the State Board's assent to the diversion is required, that very act should be deemed a repealer of those powers theretofore granted to the State Board which enable it to grant or withhold its assent intelligently. How the State Board could be expected to act with intelligence in the premises unless the plans were before it, may be left to the imagination of the prosecutor's counsel to develop.

Prosecutor insists that since by section 8 the District Commission is to "proceed to formulate plans for obtaining a water supply, etc.," at a time obviously subsequent to the meeting with the State Board at which the consent of the State to the diversion of the water was to be obtained, it follows that no plans could be before the State Board on the application for

consent. We conceive, however, that there might be a great difference in plans prepared as a basis for a contract involving the whole item of cost of a large public improvement and in plans prepared merely to indicate the general scheme of the development, the quantity of water to be diverted, the effect of such a diversion on neighboring properties or lower riparian owners. It is in such items, affecting the health and welfare of the affected communities viewed as component parts of this commonwealth, that the State Board is interested and it was by reason of the State's interest in this aspect of water developments that the State Board exists and is vested with the powers it wields. The municipalities on the other hand are primarily interested in obtaining water at moderate cost and to determine whether a given plan will accomplish this, far greater detail is required.

It might also be suggested that if the plans passed upon by the State Board first come into existence as a result of the formulation of plans by the District Commission as provided for in section 8, then the meeting of the District Board with the several communities provided for in sections 6 and 7 and as a result of which the District Board is required by section 8 to "proceed to formulate plans," could itself never take place, for the very purpose of that meeting as stated in the act is to hear "all persons and municipalities affected by the proposed plans." It follows necessarily that at the time of the hearing of the municipalities and persons affected, plans have been prepared, though perhaps not yet "formulated." We take it that it is to the "proposed" plans that the State Board granted its conditional consent.

It seems to us, therefore, beyond question that the scheme in effect in the past as to applications

on behalf of municipalities, corporations or persons to obtain the State's assent to the diversion of potable waters still remains in effect after the adoption of the District Water Board Act, the only modification in the procedure being the provision in section 6 of the latter act making more definite the character of notice required to be given by the State Board upon such application before the granting of the application. This scheme is in no way inconsistent with the provisions of the State Board Act, since in that act, while notice was required, the character of notice to be given was not definitely set forth.

The State Water Supply Act, after providing for the decision of the State Board in reference to the public necessity, the interest of other municipalities and the reduction of the dry season flow, provides that the Commission shall come to its determination within ninety days and may approve the application "subject to such reasonable terms and conditions as the Commission may prescribe." The question, therefore, before the Court is not whether the State Board had power to impose conditions, but whether the conditions imposed were reasonable.

1. The first condition is the mere assertion of a statutory obligation—the payment to the appropriate State authorities of the moneys required by the statute to be paid. Certainly this reaffirmation of the statute cannot be called unreasonable.

2. The second limitation provides the time within which the District Board must accept the consent of the State Board, conditioned as it is. If it be reasonable to impose upon the State Board the duty of determining the granting or withholding of its assent within the period of ninety days, it would seem equally reasonable

for the State Board to impose a similar condition upon the District Board in order that the matter might be finally disposed of within a reasonable period, so as not to affect the rights of other municipalities, corporations or individuals, who might make application inconsistent with the pending one. Moreover, the restriction is one which operates only to the prejudice of the District Board and unless that Board complain, no party unaffected by the restriction should be heard to object.

3. The third condition requires the actual beginning of work within one year from the granting of consent and its completion within five years, and this again would seem a reasonable request in order to insure the actual prosecution of a work, the consent to which might injuriously affect public interests if the consent were not acted upon in good faith.

4. The fourth condition limits the supply of water to be taken to 50,000,000 gallons per diem, averaged through a period of thirty consecutive days. As the very function of the State Board is to give the State's assent to the diversion of waters, it certainly cannot be considered an unreasonable requirement that it should fix the quantity of waters to be affected by its assent.

5. The fifth condition requires the maintenance of a minimum of 12,000,000 gallons per diem in the Wanaque at dry season and since one of the duties imposed upon the State Board is to ascertain whether the reduction of the dry season flow of any stream will be caused to an amount likely to produce insanitary conditions or otherwise unduly impair public or private interests, the requirement that the dry season flow be maintained at a given minimum is merely the

carrying out of the protection of other interests, both public and private, an object for which the State Board was in part created.

6. The sixth condition makes the assent subject to vested rights of all persons, corporations or municipalities affected by the proposed plan and can be considered as nothing more than a re-assertion of already existing obligations of the District Board. While this condition may have been unnecessary, since the violation of it would have been contrary to the provisions both of the State and Federal Constitution, the mere reaffirmation of a fundamental principle of law cannot be held to be unreasonable.

7. The last condition makes the granting of the assent conditioned upon the compliance with all of the other conditions imposed by the Board. This again would seem perhaps an unnecessary requirement, since the very word "condition" connotes the abrogation of all rights created upon the breach of the condition upon which they were granted. Certainly if the Board has the right to establish conditions as the statute creating its predecessor provided, it has the right to make effective the conditions which it imposes.

We respectfully submit that the consideration as to what will be done by the State Board in the event of the violation of certain of the conditions imposed are altogether beside the point. We may, however, consider them briefly.

It is suggested, for instance (page 10 of the brief), that at the end of five years, the period of limitation, the reservoir will be only three-quarters completed. The question is raised what is to become of the work done? It is perhaps a fair assumption on the part of the prosecutor

that a State authority would not cause the forfeiture of public moneys expended in the prosecution of a public work merely because it had not been completed within a limited time. It might, however, develop that an undue delay in the prosecution of the work pointed to a lack of good faith on the part of the municipalities contracting with the District Board for the purpose of preventing other municipalities from obtaining the use of a certain water supply which the contracting municipalities might desire at a future date, although not immediately. Under such circumstances, a conditioned assent might prove a most valuable weapon to enforce the rights of the non-contracting municipalities. Such a right would properly be enforced by a State body, representing all of the interests of the State, rather than by any local body standing in contract relations with a portion of its communities.

The second criticism (pp. 10 and 11 of the brief), adverts to the use of the word "adequate" in the District Water Supply Commission Act, where it is provided that if the water supply under the Commission's control is adequate for the supplying of an applying municipality, the Commission shall have power to contract. It is supposed that there may be an adequate supply in the reservoir, but that the granting of such additional supply to the applying municipality may involve the exceeding of the 50,000,000 per diem limitation contained in the assent. We do not conceive that the word "adequate," as here used, can be given the construction as proposed by prosecutor. If the District Commission is limited by the terms of the assent under which it acts to a supply of 50,000,000 gallons per diem, the supply under its control is a supply

of but 50,000,000 gallons per diem and no matter what the actual capacity of the reservoir under its control may be, the use of water in excess of 50,000,000 gallons would be a clear breach of its contract obligation and a user of additional waters when the supply was inadequate. The dilemma pictured by prosecutor, therefore, is non-existent. The District Commission should both obey the consent of the Board and the statute.

In the third place, it is suggested that the dry season flow, if it be maintained at a minimum of 12,000,000 gallons per diem, may be so low as to render impossible the carrying out of the contracts with the several municipalities. To this it may be answered that no such condition is immediately to be feared, since it is not anticipated that the full 50,000,000 gallons is to be used at once upon the completion of the reservoir, and doubtless experience will indicate during the earliest years of the reservoir's operation the possibility or impossibility of the arising of such a condition. Furthermore the assent of the State Board is conditioned upon a supplying of a per diem capacity of not more than 50,000,000 gallons which can be available in dry season flow only while that flow is not reduced below 12,000,000 gallons. The acceptance by the District Board of an assent must mean that the engineers of that Board have considered whether the conditions are capable of performance and have agreed that they are. In the absence of any evidence before this court to the contrary, this court must go far afield to find that a condition proposed by the State Board and accepted by the District Board, is based wholly upon false premises. Yet such must be the action of the court if this contention of the prosecutor is to be given weight.

Moreover, it should not be forgotten that all contracts entered into between the District Commission and the municipalities rest for their ultimate support upon the very consent here under consideration. Granting the validity of the conditions annexed to it, it follows that 50,000,000 gallons per day may be sufficient only so long as the dry season flow is not reduced below 12,000,000 gallons, and that if the full 50,000,000 shall have been contracted for, but the delivery thereof will reduce that flow below 12,000,000 per day, the municipalities would be called upon to accept a *pro rata* abatement in such amount as would insure the maintenance of the designated dry season flow.

While prosecutor intimates at the outset of its brief that bonds to be issued under authority of the District Water Commission Act will be invalid, the conclusions of prosecutor do not seriously rely upon this ground. And we respectfully submit that one must go far afield to find authority for the proposition that bonds lawfully issued become invalid in the hands of purchasers for value because for some reason quite beyond the control of the purchaser, and on account of unanticipated breach of solemn contracts by municipalities and their agencies, the purposes for which the bonds were sold can no longer be accomplished and the moneys raised by them no longer applied to such purposes. We therefore will not enter into a longer discussion of this point.

It is, therefore, respectfully submitted that the appeal from the judgment of the Supreme Court denying a writ of certiorari to the prosecutor-appellant, should be dismissed.

SPAULDING FRAZER,

*Of Counsel with North Jersey*

*District Water Supply Commission.*

HARRY KALISCH,

*Attorney for The Mayor and*

*Common Council of the City of Newark.*

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**Writ of Certiorari.**

**New Jersey Supreme Court**

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THE SOCIETY FOR ESTABLISHING  
USEFUL MANUFACTURES,  
Prosecutor,

10

vs.

BOARD OF CONSERVATION AND DE-  
VELOPMENT, NORTH JERSEY DIS-  
TRICT WATER SUPPLY COMMIS-  
SION, THE MAYOR AND COMMON  
COUNCIL OF THE CITY OF NEW-  
ARK, and THE CITY OF PATER-  
SON,  
Defendants.

---

20

Returnable February 6, 1917.

I allow this writ. Let it be sealed. January  
17, 1917.

JAMES F. MINTURN,  
*J. S. C.*

Service of within Writ acknowledged for State Board of Conservation & Development, January 18, 1917. 30

JOHN W. WESTCOTT,  
Attorney-General.

Service acknowledged for Mayor and Common Council of Newark.

HARRY KALISCH,  
City Attorney. 40

*Writ of Certiorari.*

---

NEW JERSEY, SS. :

*The State of New Jersey to Honorable  
James F. Minturn, Justice of the Supreme  
(L. S.) Court of the State of New Jersey, Greet-  
ing:*

10 We being willing for certain reasons, at the in-  
stance of the Society of Establishing Useful Manu-  
factures, to be certified of a certain so-called ap-  
proval or consent by the Board of Conservation  
and Development of an application of the North  
Jersey District Water Supply Commission for a  
water supply for the City of Newark, and the City  
of Paterson and others, which approval was given  
in writing under the official seal of said Board of  
20 Conservation and Development, and under the  
hands of a majority of the members of said Board,  
on the nineteenth day of December, Nineteen Hun-  
dred and Sixteen; do hereby command you that the  
aforesaid consent, together with all things touch-  
ing and concerning the same, to our Justices of the  
Supreme Court of Judicature of the State of New  
Jersey, at Trenton, on the sixth day of February,  
Nineteen Hundred and Seventeen, you do certify  
and send, together with this writ, that therein may  
30 be done what of right and according to the laws  
and constitution of the State of New Jersey ought  
to be done.

WITNESS, William S. Gummere, Esquire, Chief  
Justice of our Supreme Court, at Trenton, this  
seventeenth day of January, 1917.

WILLIAM C. GEBHARDT,  
Clerk.

40 HUMPHREYS & SUMNER,  
Attorneys of Prosecutor.

**Affidavit of Service of Writ.**

## NEW JERSEY SUPREME COURT.

THE SOCIETY FOR ESTABLISHING  
USEFUL MANUFACTURES,

Prosecutor,

vs.

BOARD OF CONSERVATION & DE-  
VELOPMENT, and others,

Defendants.

On Certiorari.  
Affidavit of  
Service.

10

STATE OF NEW JERSEY, }  
COUNTY OF PASSAIC, } ss. :

JOHN H. COOK, of full age, being duly sworn, de-  
poses and says as follows:

20

I did, on Friday, the nineteenth day of January,  
Nineteen Hundred and Seventeen, personally serve  
the defendant North Jersey District Water Supply  
Commission with a certified copy of the writ of  
certiorari issued in the above cause, and dated the  
seventeenth day of January, Nineteen Hundred and  
Seventeen, by handing said certified copy of said  
writ to Laurent J. Tonnele, the President of said  
Commission.

30

JOHN H. COOK.

Sworn to and subscribed before me  
this 29 day of January, 1917.

RICHARD ROSSITER,  
Commissioner of Deeds,  
N. Jersey.

40

**Affidavit of Service of Writ.**

NEW JERSEY SUPREME COURT.

THE SOCIETY FOR ESTABLISHING  
USEFUL MANUFACTURES,

Prosecutor,

vs.

BOARD OF CONSERVATION AND DE-  
VELOPMENT; and others,

Defendants.

In Certiorari.  
Affidavit of  
Service.

10

STATE OF NEW JERSEY, }  
COUNTY OF PASSAIC, } ss. :

WILLIAM A. SUMNER, of full age, being duly sworn, deposes and says as follows:

20

On Saturday, January 20th, 1917, I served the writ of certiorari in the above-entitled cause, bearing date the seventeenth day of January, Nineteen Hundred and Seventeen, and returnable the sixth day of February, Nineteen Hundred and Seventeen, upon the City of Paterson by showing said original writ to Amos H. Radcliffe, Mayor of the City of Paterson, and at the same time handing him a certified copy of said writ.

30

WILLIAM A. SUMNER.

Sworn to and subscribed before me  
this      day of January, 1917.

FILBERT L. ROSENSTEIN,  
an Attorney at Law  
of New Jersey.

40

**Order to Amend Writ.**

## NEW JERSEY SUPREME COURT.

THE SOCIETY FOR ESTABLISHING  
USEFUL MANUFACTURES,

Prosecutor,

vs.

BOARD OF CONSERVATION AND DE-  
VELOPMENT, and others,

Defendants.

Order to  
Amend Writ. 10  
On Certiorari.

Whereas a certain writ of certiorari was allowed on the seventeenth day of January, Nineteen Hundred and Seventeen, by the Honorable James F. Minturn, one of the Justices of the Supreme Court, at the instance of The Society for Establishing Useful Manufactures, to review a certain so-called approval or consent by the Board of Conservation and Development of an application of the North Jersey District Water Supply Commission for a water supply for the City of Newark and the City of Paterson, which approval was given in writing under the official seal of said Board of Conservation and Development, and under the hands of a majority of the members of said Board, on the nineteenth day of December, Nineteen Hundred and Sixteen ;

And whereas by a clerical error in the body of said writ the same was addressed to Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey, instead of to the Board of Conservation and Development, although the Board of Conservation and Development was endorsed as a primary defendant on the back of said writ ;

40

*Order to Amend Writ.*

---

10 It is, therefore, on this twenty-third day of January, Nineteen Hundred and Seventeen, on the application of Humphreys & Sumner, Attorneys for The Society for Establing Useful Manufactures, and upon reading the consent at foot hereof, signed by the Attorney-General for the Board of Conservation and Development, ordered that the said writ be, and the same hereby is, amended by substituting for the words therein contained, "the Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey," the words, "The Board of Conservation and Development."

JAMES F. MINTURN,  
J. S. C.

20 Entered, January 24, 1917.

On motion of

HUMPHREYS & SUMNER,  
Attys.

On behalf of the Board of Conservation and Development I hereby consent to the signing and entering of the within order.

30 JOHN W. WESTCOTT,  
Attorney-General.

**Acknowledgments of Service.**

NEW JERSEY SUPREME COURT.

<p>THE SOCIETY FOR ESTABLISHING USEFUL MANUFACTURES, Prosecutor,</p> <p style="text-align: center;">vs.</p> <p>BOARD OF CONSERVATION AND DE- VELOPMENT, and others, Defendants.</p>	}	On Certiorari. Acknowledg- ment of Service.	10
---	---	--	----

Service acknowledged this 29th day of January, 1917, of a true copy of an order to amend the writ of certiorari in the above-entitled cause, said order being entered on the 24th day of January, 1917.

20

LAURENT J. TONNELE,  
President of the North Jersey District  
Water Supply Commission.

30

40

*Acknowledgments of Service.*

## NEW JERSEY SUPREME COURT.

THE SOCIETY FOR ESTABLISHING  
USEFUL MANUFACTURES,

Prosecutor,

10

vs.

BOARD OF CONSERVATION AND DE-  
VELOPMENT, and others,

Defendants.

On Certiorari.  
Acknowl-  
edg-  
ment of  
Service.

Service acknowledged this 28th day of January,  
1917, of a true copy of an order to amend the writ  
of certiorari in the above-entitled cause, said order  
being entered on the 24th day of January, 1917.

20

HARRY KALISCH,  
Attorney for the Mayor and Common  
Council of the City of Newark.

30

40

*Acknowledgments of Service.*

## NEW JERSEY SUPREME COURT.

THE SOCIETY FOR ESTABLISHING  
USEFUL MANUFACTURES,  
Prosecutor,

vs.

BOARD OF CONSERVATION AND DE-  
VELOPMENT, and others,  
Defendants.

On Certiorari.  
Acknowledg-  
ment of  
Service.

10

Service acknowledged this 29th day of January,  
1917, of a true copy of an order to amend the writ  
of certiorari in the above-entitled cause, said order  
being entered on the 24th day of January, 1917.

20

FRANCIS SCOTT,  
Attorney for the City of Paterson.

30

40

**Return to Writ.**

10 The Board of Conservation and Development of the State of New Jersey, pursuant to the command of the annexed Writ and for a return thereto, do return in and by the Schedule hereto annexed and part of this return the petition of the North Jersey District Water Supply Commission, the consent of the Board of Conservation and Development, the testimony taken and given before the Board upon the hearing of the application for such consent, together with all papers, proceedings, matters and things touching and concerning the same, as the same are now on file, or in the custody or possession of said Board, as by the said Writ said Board of Conservation and Development is commanded.

20 (Seal) **ALFRED GASKILL,**  
Director and Secretary  
of the Board of Conservation  
and Development of New Jersey.

Dated, Trenton, New Jersey, February 1, 1917.

30

40

**Petition of North Jersey District Water  
Supply Commission.**

Petition of the North Jersey District Water Supply Commission to the Department of Conservation and Development, under Chapter 71 of the Laws of 1916, for the consent, on behalf of the Mayor and Common Council of the City of Newark, the City of Paterson *et al.*, of said Department to the diversion of waters from the Wanaque River for a water supply for said municipalities, and other municipalities which may join in the proposed development of a water supply from said river, all in accordance with, and as provided for under, statutes of this State. 10

WHEREAS, The North Jersey District Water Supply Commission has received requests by resolutions of the boards having charge of the water supplies of the municipalities known respectively as The Mayor and Common Council of the City of Newark and the City of Paterson, in accordance with Chapter 71 of the Laws of 1916, asking the North Jersey District Water Supply Commission to prepare preliminary estimates of the cost to said municipalities for water supplies from the Wanaque River, by the construction of a storage reservoir upon said river at or near Midvale, approximately as shown on the accompanying map; 20

AND WHEREAS, Said municipalities have requested the North Jersey District Water Supply Commission to obtain the consent of the State Water Supply Commission, or its successor, the Department of Conservation and Development, to the diversion of waters for such water supplies, in accordance with the statutes of the State: 30

THEREFORE, BE IT RESOLVED, That the North Jersey District Water Supply Commission does hereby

*Petition of Water Supply Commission.*

---

10 make application to the Department of Conserva-  
tion and Development for the consent of the State  
to the diversion of waters from a proposed develop-  
ment of a water supply on the Wanaque River, and  
does hereby request said Department to hold a pub-  
lic hearing on such application as required by the  
statutes of the State, and more particularly as re-  
quired by Section 6 of Chapter 71 of the Laws of  
1916, and does request said Department to fix a  
time and place for said public hearing and give no-  
20 tice of such hearing by publication by one insertion  
in at least one newspaper printed and published in  
each of the counties lying within the North Jersey  
Water Supply District, at least fifteen days prior  
to said hearing at which hearing all persons or  
municipalities affected by the proposed plans may  
be heard.

20 The plans under consideration provide for the de-  
velopment of a general water supply for the munici-  
palties in the Passaic Valley which may desire to  
join in the contemplated conservation project. Such  
plans would provide for a water supply of at least  
fifty million gallons of water per day. In the case  
of Newark the application is for an additional  
supply of not less than ten million gallons of water  
per day, and in the case of Paterson for a new water  
30 supply of at least ten million gallons of water per  
day. Both municipalities have agreed to bear their  
proportional cost of the expense of the preliminary  
investigation, and in the event of entering into a  
contract with the North Jersey District Water  
Supply Commission for the construction of said  
reservoir, whether constructed jointly or by only  
one of the municipalities parties to this petition,  
such water supply development will be available  
for other municipalities adjacent thereto which can  
40 feasibly be supplied therefrom, who may signify

*Petition of Water Supply Commission.*

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their intention to join with either or both of the parties to this petition, upon the basis of an equitable distribution of the cost of the water supply so to be obtained;

AND BE IT FURTHER RESOLVED, That a copy of this preamble and resolution, accompanied by a section of the State map upon which the proposed reservoir is outlined, shall be forwarded to the Department of Conservation and Development as constituting the application for the consent of the State to the diversion of waters from said proposed development, and which said development or said consent shall be understood to be for a general scheme of development of a water supply under the supervision of the North Jersey District Water Supply Commission from the said Wanaque River at any selected location for said reservoir on said river above the Town of Midvale. 10  
20

NORTH JERSEY DISTRICT

WATER SUPPLY COMMISSION,

By

LAURENT J. TONNELE,  
Chairman.

30

NATHAN H. PENDEGAST,  
Secretary.

Application filed Oct. 9/16.

H. B. KUMMEL,  
State Geologist.

**Resolution.**

(Copy)

DEPARTMENT OF CONSERVATION AND DEVELOPMENT.

Resolutions passed by the Board on October 9, 1916.

10 "Resolved, That a hearing on the application of the North Jersey District Water Supply Commission be held at 10.30 a. m. in the room of the Street and Water Commissioners in the City Hall, Newark, on the thirteenth day of November, 1916, and that a notice of this hearing be published once at least fifteen days before the date of said hearing in at least one paper in each of the following counties: Sussex, Warren, Hunterdon, Passaic, Morris, Somerset, Bergen, Hudson, Essex, Union, Middlesex."

20 "On motion by Mr. Pfeil duly carried it was directed that notice of said hearing be in the following language, and its publication as provided in the preceding resolution was ordered."

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40

### Notice of Hearing.

Board of Conservation and Development.

Newark, N. J., October 9, 1916.

The North Jersey District Water Supply Commission of the State of New Jersey having filed with the Board of Conservation and Development a petition with map and plans for a proposed new supply for the inhabitants of Newark, Paterson, and such other municipalities as may hereafter contract with said Commission, and having made application for approval of the said plans and of said supply of water to be taken from a reservoir to be constructed on the Wanaque River as approximately shown on said map, which application and plans were filed with this Board on the ninth day of October, 1916, notice is hereby given that a public hearing will be held in the rooms of the Street and Water Commissioners in the City Hall, Newark, N. J., at 10:30 a. m., on Monday, November 13, 1916, at which all municipalities or persons affected by the proposed plans may be heard for or against the granting of the application.

By order of the Board of Conservation and Development.

HENRY B. KUMMEL,  
Acting Director.

This is to certify that the aforesaid notice was published as required by law in the following papers as set forth below:

*The Evening Record*, a paper published and printed at Hackensack, Bergen County, October 27, 1916.

*Notice of Hearing.*

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- Newark Evening News*, a paper published and printed at Newark, Essex County, October 24, 1916.
- Jersey Journal*, a paper printed and published in Jersey City, Hudson County, October 14, 1916.
- 10 *The Milford Leader*, a paper printed and published at Milford, Hunterdon County, October 19, 1916.
- Daily Home News*, a paper printed and published at New Brunswick, Middlesex County, October 14, 1916.
- The Morris County Chronicle*, a paper printed and published at Morristown, Morris County, October 24, 1916.
- 20 *The Paterson Press-Guardian*, a paper printed and published at Paterson, Passaic County, October 26, 1916.
- The Unionist-Gazette*, a paper printed and published at Somerville, Somerset County, October 26, 1916.
- New Jersey Herald*, a paper printed and published at Newton, Sussex County, October 19, 1916.
- Elizabeth Daily Journal*, a paper printed and published at Elizabeth, Union County, October 14, 1916.
- 30 *Warren Journal*, a paper printed and published at Belvidere, Warren County, October 20, 1916.

ALFRED GASKILL,  
Director and Secretary,  
(Seal) Dept. of Conservation and Development.

January 31, 1917.

### Minutes of Hearing.

STENOGRAPHER'S REPORT OF A HEARING GIVEN BY THE DEPARTMENT OF CONSERVATION AND DEVELOPMENT OF NEW JERSEY IN THE CITY HALL, NEWARK, N. J., NOVEMBER 13TH, 1916, IN THE MATTER OF THE PETITION OF THE NORTH JERSEY DISTRICT WATER SUPPLY COMMISSION TO SAID DEPARTMENT, UNDER CHAPTER 71 OF THE LAWS OF 1916, FOR THE CONSENT, ON BEHALF OF THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK, THE CITY OF PATERSON *et al.*, OF THE DEPARTMENT OF CONSERVATION AND DEVELOPMENT OF THE DIVERSION OF WATERS FROM THE WANAQUE RIVER FOR A WATER SUPPLY FOR SAID MUNICIPALITIES, AND OTHER MUNICIPALITIES WHICH MAY JOIN IN THE PROPOSED DEVELOPMENT OF A WATER SUPPLY FROM SAID RIVER. 10

#### PRESENT:

Walter J. Buzby, President; Edward S. Savage, Simon P. Northrup, Stephen Pfeil, George A. Steele, Henry Crofut White and H. B. Kummel, Acting Director, representing the Department of Conservation and Development. 20

Laurent J. Tonnele, Chairman; Ernest C. Hinck, George F. Wright and Nathan H. Pendergast, Secretary, representing the North Jersey District Water Supply Commission.

William Tries, Jr., President; Arthur H. Denman, Thomas J. Smith, Charles P. Gillen and Morris R. Sherrerd, Chief Engineer, representing the Board of Street and Water Commissioners of the City of Newark. 30

Mayor Radcliffe, representing the City of Paterson.

City Counsel Miller, representing the City of Passaic.

James E. Brooks, Engineer, representing the Town of Glen Ridge. 40

*Minutes of Hearing.*

Commissioners Stanley and Setaro, representing the Town of Irvington.

William I. Lewis, Counsel, representing the Lehigh Valley Railroad and the Morris Canal & Banking Company.

10 John B. Humphreys, Counsel, and John H. Cook, Engineer, representing the Society for the Establishment of Useful Manufactures, the Dundee Water Power & Land Company, and the East Jersey Water Company and its allied corporations.

Mr. Walter J. Buzby, President of the Department of Conservation and Development, presided.

Mr. Morris R. Sherrerd, Chief Engineer of the Board of Street and Water Commissioners of the City of Newark and Consulting Engineer for the North Jersey District Water Supply Commission, spoke as follows:

20 Mr. Sherrerd: Gentlemen of the Commission: This hearing is on the application of Newark and Paterson for the assent of the State to the diversion of water from the Wanaque River for an additional supply for Newark and for a supply of water for Paterson, to be drawn from a reservoir to be built on the Wanaque River. The City of Newark now obtains its water supply, as you gentlemen know, from the Pequannock Watershed, where it main-  
 30 tains reservoirs in a watershed above the point of intake of some sixty-two square miles. The reservoirs so far constructed in the watershed are known to be only sufficient for a yield of 50,000,000 gallons per day in the driest year that has happened since the reservoirs were built, which was in 1892. During the year 1901—I will show you same on the diagram (pointing to diagram on blackboard), which gives the actual condition of the reservoirs at that time—if a draft of 50,000,000 gallons per  
 40 day had been taken from the Pequannock in the

*Minutes of Hearing.*

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year 1901, the reservoirs would have been empty on the 10th of March of 1901, which was the lowest year. Since that time the additions to the plant have been the construction of the Cedar Grove Reservoir, which is a receiving reservoir and not a storage reservoir in the sense of those in the watershed. We feel that there is no sufficient way of storage to guarantee a yield of 50,000,000 gallons per day in the driest year. 10

In 1911 the City of Newark made an application to the State Water Supply Commission for the right to take water from the Wanaque River for an additional supply for the City of Newark. At that time the City of Paterson also requested the right to take water from the Wanaque River, and the question as to the development of this source of supply was one that became a rather complicated one. First the controversy was as to who should have it, but finally all came to an agreement that the cities that desired to develop the Wanaque under this law as passed at the last session of the Legislature might join, or one or more might develop a water supply through the agency of the North Jersey District Water Supply Commission, and any of the other communities desiring to use that water could come into the project up to the time that the capacity of the reservoir was practically allotted to those that had previously joined by paying its proportion of the preliminary expenses and of the development's cost. 20 30

This application is now before you gentlemen not only based on what we know is an advantageous development of a water supply for the cities in the Passaic Valley, but also as the result of surveys which were made by the State Water Supply Commission, which will be submitted to you. The report of that survey will be submitted to you, show- 40

*Minutes of Hearing.*

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ing the cost of development of about \$60,000,000 for a storage which would be capable of yielding about 55,000,000 gallons per day from the Wanaque River.

10 When these matters were up before in the hearing held by the State Water Supply Commission five years ago the city represented at that time that it was likely to be short of water in about four years. It was urged then that the Pequannock was capable of further development. That is true; it is capable of further development. It has about sixty square miles of drainage area, and the potable extreme outflow would be about 10,000,000 gallons per day additional. The Board of Street and Water  
20 Commissioners have already authorized the raising of the Oak Ridge Reservoir ten feet, which would probably increase the yield of the Pequannock Watershed to about 55,000,000. This work has to be done within the next year, for the reason that the present draft and consumption in the city has reached what is considered as a safe yield to take from the Pequannock, and before the reservoir for which application is now pending can be put in service the city will be hard pressed for the water which it needs for its consumers. To increase the yield of the Pequannock for an additional 5,000,000  
30 gallons per day will be at an enormous expense per million gallons of development, somewhat in the proportion of five times as much per million gallons as the development on the Wanaque. It could only be done by taking advantage of some other reservoir sites which are not entirely owned by the city, and by the possibility of building a large reservoir and sacrificing one of the present reservoirs or construct several others. Its cost is out of all proportion even for the 5,000,000 gallons.

40 Under the present circumstances, if our ratio of consumption in the City of Newark should con-

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tinue in the next two years as it has in the last year and a half, as I show you on the screen, we will, perhaps, need to go even that far in the Pequannock before the Wanaque Reservoir, if this application is granted and the construction work proceeded with promptly, can be completed, which I have estimated will take four years.

10

I call your attention to the diagram on the screen, which represents the average daily consumption of water by the City of Newark plotted by months.

The portion of the diagram showing the years from 1905 to 1912 or 1911 is about the proportion that was considered at the former hearing in 1911. This portion of the diagram shows that the average consumption in February, 1908, for instance, was about 38,000,000 gallons per day. The same for 1909. In 1910 the average during two months, for nearly three months of the year, was 40,000,000 gallons per day. The next year, 1911, the average for two months was 41,000,000 gallons, and the average for about two months in another portion of the year was about 43,000,000 gallons. In the year 1912, the consumption during January and February ran over 46,000,000 gallons per day, and in 1914 the consumption ran to an average for the whole month of February of 48,000,000 gallons per day. It was really based on this showing that the statement was then made that in three or four years the consumption of the city would be likely to reach 50,000,000 gallons per day. The consumption did drop off considerably in 1913, but in 1916 the consumption has reached a point where during the month of August the consumption averaged for the whole month about 51,500,000 gallons per day, and the average so far for the year is in the neighborhood of 48,500,000 gallons per day.

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I have plotted on the bottom the cause of this increased consumption. On the bottom of the dia-

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10 gram the two bottom lines represent a consumption of about 5,000,000 gallons per day. Starting in the first part of 1915 and running up to the present time the consumption of five plants that are located on the Newark meadows has made an added sum to the water consumed by the City of Newark of about 4,500,000 gallons per day. The continuation of the increased draft, which would be represented by the last two years, as you will notice, will even bring the consumption of the city, if any such rate of increase should continue, to about 55,000,000 gallons per day in the year 1918. Without any question of doubt, the consumption during the period of three months at the time when we have to draw from storage—that is the summer months—is likely to exceed 55,000,000 gallons per day.

20 This diagram has some other lines on it which, perhaps, might need a little explanation. The upper line represents about 7,500,000 gallons per day additional to the draft of the city, which, under the State Water Supply Commission Act, should be allowed to pass down the stream in order to keep the low flow. It is not a compulsory obligation on any municipality or public company, but it was a protection in the act which was intended to maintain the low flow. When the city's draft was in the neighborhood of 40,000,000 gallons per day during 30 the years 1907, 1908, 1909, 1910 and 1911, it was the practice to allow the overflow from the spillway of about 7,000,000 gallons per day to maintain the low flow. Conditions have been so uncertain as to the possibility of collecting the water supply over these periods of protracted drought during the last five years that we are not continuing that draft in the low part of the summer—that is, the waste. I only speak of this to show it is in the interest 40 of the river flow that the development of additional water supplies should be granted to the city, be-

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cause if we can count on a draft from another source, it will not be necessary to deplete the storage in the Pequannock reservoirs to an amount that would be necessary under present conditions, if they are not supplemented by some additional source of supply.

This is some other question involved in the taking of the Wanaque which, no doubt, will be presented to you by the water companies and by the canal company. I have given a good deal of thought to the study of this question, and in conjunction with eminent counsel representing Paterson, Passaic and Newark the question of the legal situation was pretty thoroughly gone into before this act under which this application is made was presented to the Legislature. I do not think any of the counsel are here this morning, but I think I am safe in saying to you, gentlemen, that as this law was discussed by counsel it seems to those who were active in its preparation and urged its passage that the question before you is just one of granting the State's assent to the taking of these waters, provided the future interests of the applicants are shown. Any question as to its effect on private interests for the taking of waters that might properly belong to the canal company or to some water company, or to other municipalities, if you please, is one which, of course, can be threshed out in court. If any rights of companies or municipalities are infringed, certainly their remedy is to force the North Jersey District Water Supply to demand their rights, and I believe that the only question, as before you, is the one of granting the State's right to take the water.

I will be glad to answer what may be asked regarding the application.

*Minutes of Hearing.*

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10 Mr. Sherrerd: I would like to offer in evidence a diagram, which it is difficult to show large enough to be seen from the screen. This shows the depletion of the reservoirs during the several years of dry flow. The top line shows the total capacity of the storage reservoirs in the Pequannock Watershed, and the sepia line, showing the drafts of 1900 and 1901, will show you that the reservoirs would have been depleted on a 50,000,000 gallons per day draft; it actually figures out on a 46  $\frac{7}{10}$  million gallons per day basis the reservoirs would have been empty on the 10th of March. The Cedar Grove Reservoir was built after that time. This present year is plotted—1916. A portion of the line that is full black, going down to about the last week in October, shows the depletion of the reservoirs for this year. The continuation in lead pencil shows conditions which existed in 1901 applied to this present year's depletion. In other words, due to the heavy rainfalls in the spring, depletion of the reservoirs did not commence until about July, whereas, in former years, it commenced back in early June. But this depletion on the same rainfall conditions as 1901 would leave the city with only about one-half of its storage in March in this year on an equivalent draft to that taken in 1901.

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30 With a draft of 50,000,000 gallons per day, the depletion would be down so that we would only have a safe supply for about a month in the spring in next year.

I would say that in the several hearings that were held on the former applications it developed that there were a number of other municipalities that were anxious to take advantage of such a development as is proposed in this Wanaque Reservoir construction, noticeably the Town of Harrison and some other towns in Essex and Passaic Counties.

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*Minutes of Hearing.*

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There is ample provision in the law governing the North Jersey District Water Supply Commission for a hearing of all these other interests. In fact, the law provides a very thorough method in which these proceedings must be carried out, namely, that the new Commission must have hearings and must notify all the municipalities that are likely to be affected. After these hearings there can be a process of elimination until a satisfactory contract has been agreed upon between the Commission and the municipalities applying for the water supply. For instance, this application is now in the name of Paterson and Newark. After the hearing, if it is shown that other municipalities care to join, they may join them, but if it is shown that others do not care to join, the Commission may have a re-adjustment of the basis of the cost and Newark can construct this reservoir alone. Or it may take in any of the other municipalities that care to join. But the project is one that lets any of these municipalities come in at any time in the future up to the time that the capacity of the reservoir has been apportioned.

I would say in regard to that that there is one broad, underlying thought in this whole proceeding, namely, state conservation of water. I have been connected with this for about twenty-one years, during the last twelve years with the different state bodies that have had to do with it; first, the Flood Control Commission, and afterwards the State Water Supply Commission, and through that whole line of legislation the one underlying thought has been that the State ought to take hold of this question of conservation, so that this is really the opening wedge, that it has finally got down to a situation where we all of us that are interested in the matter know that it can be financed. The great

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10 trouble with the first project was that in attempting to create a district the larger municipalities felt that they were carrying the lead for the smaller ones—the bonds were a lien on their ratables. There was a damper to it in that way. We felt it on account of the fact that one municipality would probably carry the entire load for the others. Then there was a plan to have the different municipalities contract with the State Water Supply Commission directly, but it was difficult to arrange a contract which would be elastic to meet those conditions. This act is one which we believe is workable, in that it will not only proceed with one municipal owner, if you please, who finances the thing, but that the others can come in on an equitable basis when they see fit, or at the beginning, and for that

20 reason, gentlemen, as representing the City of Newark, I desire to call your attention to the fact that Newark was one of the first cities in the country to develop a water supply like the Pequannock, was one of the first cities in the country that developed a water supply on that large scale; that Jersey City has followed in its footsteps and done practically on the Rockaway, and that Newark was ready to do this thing for itself. It must do something, and it must do it within the next three years

30 positively, even though it gets every drop of water out of the Pequannock. So that Newark is willing and has agreed to go ahead under this act, which our neighboring sister City of Paterson has been kind enough to say is an act under which she is glad to go along with us, so that it is sincere in saying that it needs the water, as it is ready to share that water with any other of the municipalities in the Passaic Valley.

I thank you.

40 Mayor Radcliffe, of Paterson: I do not know

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what all this is about. I have not been able to get close enough to hear the conversation. We want water; we want the best water we can get, and we are applying for it through this Commission. We want it on the most economical plan. We are asking it for the City of Paterson and are ready to go along with Newark. We want to go along on this present legislation. 10

City Counsel Miller, of Passaic: We join in asking that this application be granted, and the City of Passaic will join later.

James V. Brooks, Superintendent of Water Supply, Glen Ridge: The Borough of Glen Ridge also gives its consent and asks to be made a party. I have been appointed by the Mayor and Common Council to represent them.

Arthur R. Denman, of the Board of Street and Water Commissioners of the City of Newark: I do not know that there is anything that I can add, but what I can add by way of emphasis to establish all that has been said in regard to Newark's reservoirs perhaps it might be well to say for the information of the Commission. I do not know how far you are advised as to the history of the matter; that this is really the outgrowth of the necessity of this whole community, of which Newark is a unit. For seven or eight years Newark has been trying to acquire the Wanaque Watershed for its own development, because nobody else was ready to show its hands, and to that end we overtured the State Water Supply Commission; that then was headed by the Hon. Foster Voorhees, who was its President, and did our best to get permission from that body to go ahead and develop that watershed and do precisely as we had done with the Pequannock, because we then saw it was scarcely a matter of a few years when we would reach the limit of our capacity. 20 30 40

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10 That Commission never saw its way clear to grant our request. In the course of time the Commission's life was limited, and, seeing that it was going out of existence by act of the Legislature, Newark again became active, and as a unit in this great community in the northern end of the State, of which Jersey City, Harrison, the Oranges, Bloomfield, Montclair,  
20 Glen Ridge, Paterson, Elizabeth, Bayonne and many others that I know of are members—for they all were just as necessitous as we were, and the necessity was growing more and more—we over-  
tured our neighbors to come together, and they re-  
sponded most generously in the matter, and when they saw their own necessities they invited us to join with them in a conference as to the best method of getting at this thing to conserve the interests  
20 of the people—not of Jersey City or Newark, not of any one town as a town, but this great develop-  
ment of Northern New Jersey.

The consequence was that we met with these gentlemen in New York City and in Newark, and the more we discussed the matter the more feasible it seemed to be to us, and the more we found that our neighbors and ourselves were in complete har-  
mony and accord in making the application for just what is now before your honorable body. So  
30 much so was this the case that we even got together and formulated a bill for the purpose of introduc-  
ing it in the Legislature that it might become a law. Then we separated it and made two bills of it, and both acts were passed by the Legislature, and the State was divided into two districts, the northern section and the southern section, or East Jersey and West Jersey, whichever way you choose to call it, of which as you may know Middlesex is the dividing line.

40 We have indicated our willingness to enter into this project and have backed it up by making an

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appropriation of public money for the preliminary surveys.

Now, this Board puts it up to you—North Jersey District Water Supply Commission puts it up to the Board of Conservation and Development. Newark puts its most emphatic approval on what has been said by its Chief Engineer, Mr. Sherrerd, and the reason it does it is because of the necessities, and it also speaks for its neighbors. I do not know that there is anything further that I can say but to leave the matter to your tender mercies and good judgment, in the hope and expectation that you will respond to what this great community of one and a half million people in northern New Jersey represent and need. 10

Q. You spoke of Jersey City. Do we understand that this is an applicant? 20

Mr. Denman: They are not applicants. Harrison, is, and there are others which have indicated their willingness to join, but they are not in a position to meet the requirements at this time.

Mr. John B. Humphreys, Counsel for the East Jersey Water Company *et al.*: I am here for a number of water companies who consider that this application is injurious to them, among whom are: Society for Establishing Useful Manufactures, Dundee Water Power and Land Company, Passaic Water Company, Acquackanonk Water Company, Montclair Water Company, East Jersey Water Company, and I have come here to-day under my instructions, which are to file with your body their several remonstrances against this project, and one of which, perhaps, I might read to you as a sample of what the others are. (Mr. Humphreys here read one of the statements.) There is a similar statement or answer filed by the Passaic Water Company, which supplies the City of Paterson, and a 40

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similar one by all the other companies. I would ask the Commission to seriously consider these remonstrances before passing on the question.

Mr. White: We understand, Mr. Humphreys, that you are not going to offer any evidence.

Mr. Humphreys: I do not think so.

10 Mr. Sherrerd: May we ask for copies of these? If the Commission would care to have a brief on behalf of the City of Newark, I will reply to some of the questions, if I have an opportunity.

20 Mr. John H. Cook: I am Hydraulic Engineer for the East Jersey Water Company, the Society for Establishing Useful Manufactures, the Dundee Water Power and Land Company, the Acquackanonk Water Company and the Montclair Water Company, and possibly I have neglected one company, but you all know, I suppose, the interests that I represent. There is no question in my mind that Newark has a sufficient water supply. Newark has been asking for an increased water supply for a good many years. I have been connected with these water companies in Paterson and the northern part of the State for about twenty years, and during that time Newark has repeatedly asked for this Wanaque Reservoir, and as long ago as 1904, at a hearing held in the City Hall in Paterson, Mr. Sherrerd stated that the development might be carried as high as 60,000,000 gallons per day, and that even if that were done, they would be short of water in 1916. Well, that additional 10,000,000 gallons per day has not been developed in the Pequannock Watershed, and we are now in 1916. We are certainly 30 10,000,000 gallons per day behind what the prophecy was at that time. I do not say that Newark may not need more water, and a great deal more water, but I do say that Newark should develop the watershed which she already controls before she takes any 40

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water that is now used for other communities. To refer to Mr. Denman's remarks that these other communities are suffering for water: This is not true. There has been no complaint on the part of the communities that he mentioned that they were in any danger of the lack of a water supply in the future. If there was any such complaint, we would have heard it. There is an ample supply of water for Paterson and Passaic flowing in the Passaic River, and it is taken out at Little Falls and pumped and filtered, and the quality of the water as it is delivered to these towns is as good as the quality of any water of any city in the country. Newark has a good supply, one of the best of that character, no doubt, in this country, and one reason has been they have practically depopulated the watershed from which their supply comes, and if they continue the same tactics in respect to the Wanaque Watershed, the effect will be that, in a few years, there will be nobody in that territory. They own about 60 per cent. of the territory of the Pequannock Watershed. That theory, from my point of view, is all wrong. There is no sense in depopulating the country for the benefit of the town.

But they should promptly develop what they have before they ask for the consent of the State for any more, and particularly for water that is now used—a portion of it at least—by other communities. Those northern streams are very desirable streams for a water supply, more so than the southern part of the territory of the Passaic River. They should not take any more of these northern waters before they utilize what they have. They can add by utilizing what there is upon the Pequannock probably 20,000,000 gallons per day to the present 50,000,000 gallons per day supply. They can get that

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10 amount of water from the continued development of the sixty-two and one-half square miles which they have above Macopin Intake, from the water supply of Long House Brook and from possibly the Kikeout Reservoir, which they could purchase if they so desire. Some objection to that will be that the waters of Long House flow into the State of New York, but that is not a true objection, because there are waters of the Merrimac which flow through the State of New Hampshire which are utilized by the Metropolitan supply of the City of Boston.

20 The whole thing with me comes down really to this—that they should use what they have before they get any more, and if there are other towns that have joined with them, that they are in need of any water supplies; that the cost for only 20,000,000 gallons per day would be excessive; that only 10,000,000 gallons per day would be used by Newark, and if Paterson could utilize 10,000,000 per day, they cannot for the present. That the figures would be extremely high and would run to \$100 per million gallons, if they are based on some former estimates that have been made.

30 William I. Lewis, representing the Lehigh Valley Railroad and the Morris Canal & Banking Company: I desire to enter an appearance for the Lehigh Valley Railroad Company and the Morris Canal & Banking Company for the purpose of serving notice upon the Board in this matter. I deliver it now to the Commission.

40 Mr. Setaro, of Irvington: I represent Irvington. Still we are not making application. I simply wish to make a suggestion to the remark offered by Mr. Cook, and it seems to be taken very lightly by these gentlemen here, that is, in referring that none of the smaller communities are suffering for the want of water. In filing the application we do so in order

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to be independent of these water interests. We are tied up by a contract which expires in 1918, and we want to be prepared to construct our own water plant in order to be independent of the water trust. This is my personal feeling in the matter. We have a contract which is advantageous to the Commonwealth Water Company and a great detriment to the Town of Irvington. Therefore, we are much interested in this application of the City of Newark being granted, for the simple reason that we feel like a big brother; that Newark shall be a big brother to the smaller communities, and if granted to the City of Newark possibly it will be the means of the smaller communities being independent of the water trust.

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Before we can do anything definite it will be necessary for the Town of Irvington to know from whence our water supply shall come, because, as you may know, it must be submitted to a referendum vote. It will be necessary for us to know our source of supply. We are suffering very much in the Town of Irvington, because we are in the grasp of the water company, and the contract is all to their advantage and the detriment of Irvington.

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Charles P. Gillen, of the Board of Street and Water Commissioners of the City of Newark: Speaking for Newark, in reply to the engineer who spoke for the East Jersey Water Company, he says that we might develop in the Pequannock Watershed 20,000,000 gallons per day additional. According to the best information we can get, we cannot develop any more than about 10,000,000 gallons additional per day. We are engaged at the present time in developing the dam higher at Cedar Grove Reservoir, and we are going right ahead, but as has been pointed out by the chief engineer we are getting large consumers down on our meadows. We are locating a lot of big factories on the Newark

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meadows, and their consumption runs into millions and millions of gallons, and these factories are going to continue, so that you can readily see the urgent necessity for an early development of this supply for the benefit of Newark. It is absolutely necessary, and what I would like to urge on the Commission is this—that whatever action is necessary, it should be an early action; it should be most prompt. Now, since I have been a member of the Board of Street and Water Commissioners we have attended these hearings, and we have tried to get somewhere with this development, and it has always been postponed and put off and postponed again month after month and year after year, and we have not got anywhere. Now, we have reached the stage where we are absolutely in need. Mr. Sherrerd says it will take four years to develop this Wanaque Watershed in case permission is granted; the gentlemen representing the Lehigh Valley and these private water companies are threatening all sorts of litigation, and we would point out the real necessity for early permission by this Commission to the city to develop this shed.

Q. Are you supplying any water to the Elizabethtown Water Company?

Mr. Sherrerd: A very small amount; about 30,000 or 40,000 gallons per day.

Mr. Gillon: As I say, this development has got to be gone into, and if that is the case, what is the use of waiting and waiting and waiting? Why cannot we get early action? Your Commission, like other commissions of this charter, is governed by public necessity; your action must necessarily be governed by public necessity, and the public necessity is here; the demand is here.

Mr. White: Are you opening or summing up?  
We have had no evidence. There have been some

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very entertaining arguments, but we have had no evidence.

Mr. Sherrerd: Does this diagram represent evidence?

Mr. Wright: Would not Mr. Sherrerd's testimony here showing the absolute needs of the City of Newark be evidence?

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Mr. White: We desire you to present such evidence as you may wish to present.

(Here followed a discussion as to whether the Board of Conservation and Development would insist upon sworn testimony.)

Mr. Cook: I testified under oath in August, 1907, because Mr. Corbin said it was necessary and proper to take testimony in such a manner.

Mr. Lewis: May I ask something, although, perhaps, it is not in line with what was said?

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Your Board, as I understand it under the statute, has succeeded the State Water Supply Commission, and you exercise the functions of that Commission, and your consent to any scheme for the development of the waters of the State is made necessary by the last legislation upon that subject. Mr. Sherrerd said very professionally, but not very fully, I thought, that the purpose of your existence was to conserve the water interests of the State, but it is more than that. The statute says—it imposes a very great duty upon you—the statute says that you shall conserve the waters for public and potable purposes of the State to the end that they shall be prudently and economically developed for all the people of the State. This is your underlying charter, and that is the reason of your existence. This is not a *pro forma* application for a consent. The District Water Supply Commission is merely charged with detail, and while perhaps it may not be necessary to lay facts before you where you act administratively, for I take it that many of your

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functions are administrative functions as well as judicial, I do so, for the aim that you have in view is the determining of this question, is this plan a good one, is it the way to obtain both these ends for the benefit of the people of the State that this particular plan should be developed?

10 You have to imagine this stem of the Passaic River from its source down to a point below Paterson. You have to consider that from Basking Ridge the main stems of four rivers run down. That when you get to the neighborhood of Little Falls above the City of Paterson you have four great feeders for the Passaic River. One, the Rockaway has been taken by Jersey City; another, the Pequannock has already been taken by Newark, but there are two other feeders of the Passaic, one the  
20 Ramapo and the other the Wanaque, which is now sought to be developed along the lines that have been presented. Now, then, in taking that stream, it seems to me that you have to consider what rights have been affected below. You will find that the Wanaque is an important feeder of the Morris Canal. You will find that down below the Passaic Water Company, chartered in 1852, has a right possibly to some of the waters after the canal has been served and after the canal rights have been  
30 satisfied. You will find that the Society for Useful Manufactures, chartered over a hundred years ago, has been taking from the Passaic River millions of gallons of water.

These three rivers that I have spoken of, the Wanaque, the Rockaway and the Pequannock, their confluence forms what is known as the Pompton River, which flows down the Passaic. The waters that pass by into the Passaic are to-day developed by these water companies. They supply, I think,  
40 to-day, under contract, the City of Paterson; they

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supply the City of Passaic, the City of Harrison, Kearny; Irvington I am not sure; Glen Ridge, Bayonne and a number of other municipalities that I do not recall. If the waters are stored in the proposed Wanaque Reservoir, that supply will be cut off. These contracts will be interrupted. It is a question for consideration as to whether it is best to take advantage of the development that already exists, or to make a new development. Whether it will cost the City of Paterson more money to take the waters away from their plant and develop a new plant. 10

I believe, gentlemen, that these all are facts that you will have to consider. I am here simply to protect the rights of the canal company and to serve notice, and, of course, to protect them all that I can. 20

Mr. Wright: At Mr. Cook's suggestion we do recall that at one time there was sworn testimony before the State Water Supply Commission, of which I was one of the members, and also in the Collingswood case. These were the only two times that we did take testimony. If it is the desire of the Commission at this time to have sworn testimony, we are willing to do so. Is it the intention of the water companies and the Lehigh Valley to contest the decision of this Commission? 30

Mr. Humphreys: We do not know what the decision will be. 30

(The members of the Board of Conservation and Development here took a recess of ten minutes to decide whether or not they should insist on sworn testimony.)

(On resuming the hearing President Buzby stated that the Board desired sworn testimony.) 40

*Minutes of Hearing.*


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SWORN TESTIMONY GIVEN AT THE HEARING HELD BY  
THE DEPARTMENT OF CONSERVATION AND  
DEVELOPMENT NOVEMBER 13, 1916.

10 Mr. Wright: The application has been duly filed; the proofs of publication have also been filed, and all are in due form. The North Jersey District Water Supply Commission would like to have Mr. Sherrerd sworn.

MR. MORRIS R. SHERRERD, being duly sworn, testified as follows:

Q. What is your name?

A. Morris R. Sherrerd.

20 Q. What is your profession?

A. Civil Engineer.

Q. How long have you been a Civil Engineer?

A. Thirty years.

Q. What is your present position?

A. I am Chief Engineer of the Board of Street and Water Commissioners of the City of Newark and Consulting Engineer for the North Jersey District Water Supply Commission.

Q. How long have you been in that position?

30 A. Eleven years as Chief Engineer, and prior to that time for ten years as Engineer and Superintendent of the Department of Water of the same Board of the City of Newark.

Q. Do you know the needs and necessities of Newark as to its water supply?

A. I do.

Q. Please tell this Commission what those needs are and why this application has been filed.

40 A. Mr. Chairman, I would like to put in the very kind of statement I have made before, as sworn

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testimony under this question. I would do this, and in addition I would like to present to the Commission copy of an agreement between the Lehigh Valley Railroad Company, the East Jersey Water Company and the Newark Aqueduct Board and the Mayor and Common Council of the City of Newark, dated September 24th, 1889, with the supplements thereto. The reason for offering this, gentlemen, is in answer to the statements that have been made by counsel for the Lehigh Valley, and also to the statements that have been filed by the water companies and the Society for Establishing Useful Manufactures, and I would say that this contract proves that the Lehigh Valley, the Morris Canal & Banking Company and the East Jersey Water Company were a party to the contract which provided, among other things, that the right to divert waters from whatever stream might be taken for the supply of the City of Newark should be furnished by these contracting parties, and one of these streams under consideration before it was finally determined to take the Pequannock was the Wanaque. It seems to me that the representation of these companies now as to the right of the State or of the municipality to take water as against those corporations is one which tends to a monopoly of the water supplies of this State by the corporate interests represented by these companies and is contrary to good public policy.

In answer to the question of the several phases of the case that the Commission have said they wanted to take testimony on; first, as to public necessity and reasonably anticipated public use, I would call your attention to the fact that the question of economy of cost, contrary to the statement of the counsel for the canal company, does not enter into the consideration of this subject at all, or if

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at all, only as an incident thereto. It is not one of the reasons that you should consider in connection with this application.

10 As to the public necessity, the statements already made by me in reference to the diagram, which we will prove by other witnesses as correct, showing the amount of water consumed by the city, will show conclusively that there exists now a public necessity. I would also testify that within the last week the Town of Irvington applied to the Board of Street and Water Commissioners of Newark requesting that after the 1st of January, 1918, this city should supply them with 1,500,000 gallons of water per day; that the conditions of the present water supply for the City of Newark were such that, at this time, I advised the Board, and it is  
20 my judgment, that the city cannot now enter into a contract with the Town of Irvington to supply them with even that small amount of water because a situation might develop which would make it necessary for the city to have every drop of water which it is able to command.

30 As to the second clause, whether such plans interfere unduly with the opportunity of other municipalities to obtain water supplies by the taking of waters necessary for their use, or whether the reduction of the dry season flow will be caused to an amount likely to injure public or private interests, or otherwise unduly injure public or private interests, I desire to call your attention, as has been stated, to the fact that this act contemplates that other municipalities desiring to join in the taking of waters from the Wanaque are enabled to do so under this act; that in no sense—and I state this as an expert on water supply matters—that in no sense can it be said that the taking of the Wanaque  
40 for a water supply under the conditions stipulated

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in this law would unduly interfere with the water supply of other communities. In fact, these questions have been pretty thoroughly threshed out in a number of suits which were instituted by the silk dyers in Paterson against the water companies and the City of Newark. In these suits I was a witness, and I had occasion to look into the quantity of water that was taken by the different water companies, and I now state that the East Jersey Water Company and its allied corporations take from the Passaic River daily a quantity of water ranging from 27,000,000 to 30,000,000 per day, which is almost entirely taken from the low flow of the stream. The City of Jersey City taking a supply of 50,000,000 gallons, 48,000,000 to 50,000,000 gallons per day, taking it from storage reservoirs on the Rockaway River at Boonton, do not deplete the low flow of the Passaic River to an amount greater than 10,000,000 gallons per day. That the City of Newark drawing its water supply from the Pequannock from impounding reservoirs does not deplete the low flow of the Passaic River to an amount greater than 7,000,000 gallons per day for the periods of the dry part of the year for months at a time. That the construction of the Wanaque Reservoir, where the stream waters would be impounded in the same manner under this act, which requires the Commission to either arrange with the Morris Canal & Banking Company for the taking of waters that might otherwise be used for their feeder, or to so construct its reservoirs that these waters which are now drawn from Greenwood Lake may be allowed to pass the reservoir, will still maintain below this reservoir the same low flow in the Wanaque River. That at least during the early portion of the use of a water supply from this source the low flow of the Passaic River can be increased rather than de-

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pleted, and that it seems to me that these gentlemen who represent those private companies come here with a bad grace against the waste of waters, and the very methods against which they are contending will tend to conserve the low flow of the rivers upon which they depend for their water supplies.

10 As answering the question as to whether rights are unduly interfered with, I would say that these very companies, the allied water companies and the East Jersey Water Company in conjunction with the Lehigh Valley and the Morris Canal & Banking Company, were parties to this Newark contract, in which they agreed to turn over these very diversion rights, and if they now come forward before this Commission and stand on their rights, it will only show to you as public officers that these corporations are taking the municipalities by the throat and saying, "That, of course, if you make a contract with us, you can have those rights, but if a municipality tries to do it for itself, then we fight." This is their attitude, in my judgment, and it certainly seems to me very clear that if they under the existing laws of this State can undertake to turn over these rights that certainly the great power of the State can give, and has given under this act, the right to this Commission in order to exercise the right of eminent domain of this sovereign State to take those rights which may be necessary for the municipalities without the necessity of having to take them through contract with the corporations who control them.

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I think that vested rights are to be recognized, and I also say, as an expert on water supply matters, that, in my judgment, this act does conserve those rights, and it has provided the necessary method of procedure, and that, therefore, the plans proposed do not unduly interfere with any public or private rights.

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Referring to the question of pollution, I would submit plans prepared for the development of the Wanaque River, from which you will see—also the report of myself as Consulting Engineer for the State Water Supply Commission in October, 1911, copy of which has been submitted to your Commission—that provision is made in these plans and estimates for the construction of a sewer; that the properties surrounding the reservoir may be developed as villa sites in order to meet the views of representatives of the Hewitt estates, a large holder of property in the Wanaque Valley, and that the construction of this sewer and the proper disposal works in connection therewith will not only prevent the taking of this reservoir and water supply from becoming a nuisance and unduly interfering with any public or private rights, but that it will be a decided improvement over the quality of water which now comes down the Wanaque River.

And, gentlemen, in view of all the facts, in view of what is now publicly known that the City of Newark has tried through its numerous applications to protect and conserve and increase its water supply, it seems to me that it is unquestionably settled that a need exists for an additional water supply for the City of Newark.

One of the speakers for the water companies said that Newark should develop its Pequannock supply, and I have already stated when I first spoke to the Commission that the Board of Street and Water Commissioners of Newark has directed the enlargement of Oak Ridge Reservoir, increasing the supply some 5,000,000 gallons per day. That it is possible that before the Wanaque can be developed, particularly under the attitude of the vested rights of the canal company and water companies, which may tie up these proceedings in court until they are

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threshed out, that it probably will be necessary for the city to go to the very limit in the Pequannock.

10 The gentleman said that the city might take Stone House Brook, which has a reservoir development above the Macopin Intake, and also which is owned by one of the allied corporations which he represents—either the Passaic Water Company or the Montclair Company. Immediately following the refusal of the State Water Supply Commission to grant to the City of Newark the right to take the Wanaque application was made to that Commission for the right to take Kikeout Brook, and whom did we find representing the opposition? These same companies, and the gentleman who now advises us to develop that reservoir proceeded at that time to testify that that was needed for his  
20 companies. It occurred to me that the charter of the water companies was limited to taking water in Passaic County, and the eminent counsel who represented the companies at that time did not know that this reservoir site was in Morris County. This will show to your Commission the attitude of the water companies in the position which is presented here to-day.

30 It is difficult, Mr. Chairman, in making a more or less extemporaneous talk of this kind, to cover the points in the order it might be advisable to present them to your Commission, but I would be glad if the Commissioners themselves feel inclined to do so that they should ask questions of me as a witness.

I also present the diagram that shows the depletion of the reservoirs as now constructed in the Pequannock Watershed, and further state that this diagram is made up from the actual records of daily consumption.

40 (Received as Proponent's Exhibit No. 2.)

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This diagram shows that in the years 1900 and 1901 if a draft of 46,700,000 gallons of water per day was taken from the Pequannock Watershed the impounding reservoirs supplying the City of Newark would have been empty on the 10th of March for the year 1901. That if a draft of 50,000,000 gallons per day had been taken from the Pequannock as developed the reservoirs would have been empty some time in February of that year. But the requirements did not begin to show any increase over the draft taken in both these years until March 10, 1901. The diagram further shows that in the year 1916, on the 1st of December, if similar weather conditions continued, the reservoirs in the Pequannock will be half depleted of their storage, and that applying the weather conditions in 1901 to the capacity and storage in the Pequannock and the present draft the amount in storage will be in the neighborhood of 1,700,000,000 gallons on the 10th of March of next year. That if the same conditions of rainfall and the necessity of drawing the reservoirs in June of this year, instead of the last of July, as was the case—the reservoirs having been drawn in June in 1901—that if the weather conditions were similar to that year during the first part of this year, 1916, the reservoirs would have been empty in February. That atmospheric conditions are likely to occur in the Pequannock Watershed; in fact, in any reservoir development in this latitude where the precipitation during the winter months will be in the nature of snow, the watershed be frozen continuously throughout the winter, so that similar conditions to 1901 when the reservoir did not show an increase in storage are likely to occur in any winter season. Even though there may be heavy rainfalls in the low altitudes in the Pequannock Watershed, being an elevation of from 700 to

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10 1,000 above sea level, the precipitation is apt to remain on the ground in the way of snow and ice during the entire winter months. That the condition of the City of Newark in regard to its water supply is precarious; that the conditions are of such a nature that if the same developments of industries continue in the next two or three years that have taken place in the last eighteen months the city will even be driven to the necessity of looking around for additional water supplies, even of a temporary character; that it may be driven to the expedient of buying water from these water companies that now appear in protest to this development. It may account in some measure for their attitude.

20 The development of a water supply from storage reservoirs is of necessity somewhat dubious, somewhat uncertain, particularly when you get down to only having a small portion, say one-eighth or one-fifth, of your water supply left in your reservoir at the beginning of the winter, for the reasons which I have just stated. The City of Newark is drawing 50,000,000 gallons per day from its reservoirs. If it allows itself to come to the point of depletion there is no reasonable way in which the city can be supplied with water, if that situation should occur. The city will be hard put to it, gentlemen, to know where to get this water.

30 I have often advocated that the city purchase Lake Wawayanda, which lies to the north of the Pequannock development, and the waters of which flow into New York State. The lake holds about 2,500,000,000 gallons of water, which would be a supply for the city if it could use it only of about 4,000,000 gallons per day. It would have to be pumped across the divide. The only way that I  
40 can see that the city would be sure of getting

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through a winter such as the winter of 1900, when these reservoirs are depleted to the danger line, would be that in advance of the depletion, when that depletion would happen, to make some arrangements with the East Jersey Water Company to take a certain amount of water, 5,000,000 or 6,000,000 gallons per day, during a period of some three months or ninety days, in order that we might conserve and hold back the waters in the Pequannock storage reservoirs. It is really a serious situation, if this depletion occurs, which you have before you, and if the draft should continue at the rate it has taken since the last of July the Pequannock reservoirs would be empty in February, and that even this year, if we get along to say in January, when the depletion is so serious, it will be necessary for Newark to make arrangements to get additional water to insure it getting across the winter with sufficient water to supply its inhabitants.

Q. Have you any data showing the present flow of the Wanaque River below the proposed dam?

Mr. Sherrerd: We have some records in the State Water Supply Commission's reports, and I can give you measurements that were taken under my directions. The flow of the river ranges from about 15,000,000 to 20,000,000 gallons per day, principally due to the draft of the Morris Canal on Greenwood Lake. In the development of the plans for the proposed reservoir on the Wanaque this draft on Greenwood Lake is not considered, it being the intention, and the reservoir is so designed, that this draft would be allowed to bypass the reservoir. The flow of the Wanaque during the summer months would not be materially decreased and, in fact, would be regulated to a more constant quantity than is now the case. I state to you, gentlemen, as a fact that the development of storage reservoirs in

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this way is an improvement on the low flow of the Passaic River than otherwise.

Q. In the summer months would not water flow over the spillway of your dam?

10 Mr. Sherrerd: It would probably flow over the spillway during eight months of the year, seven or eight months, during the first ten years of its use, unless a bypass was so arranged which was sufficient to take all the increment of flow through the gates. The reservoir could be kept full six months in the year without any question. On the Wanaque the draft is not likely to be more than 25,000,000 gallons per day for fifteen years.

Mr. White: Does Newark now furnish water to any other municipalities than Newark and Elizabeth?

20 Mr. Sherrerd: It furnishes water to Belleville.  
Mr. White: How much?

Mr. Sherrerd: There is a daily supply of less than 500,000 gallons, and a small quantity of about 40,000 to 50,000 gallons per day to the higher portion of Lyons Farms, which adjoins Newark on the south.

30 Mr. Sherrerd: I would offer in evidence a diagram showing the average consumption plotted by months of the City of Newark and its customers from the year 1892 to the present time, and also showing on the lower line thereon the consumption of five consumers during a portion of the years 1915-1916, which shows that their present daily average consumption is 4,500,000 gallons; also of those consumers that have additional plans within the City of Newark built within two years, and that the present consumption, as shown on that diagram, for the month of August, was about 51,000,000 gallons per day average for the month. The average  
40 for the year to date is in the neighborhood of 47,-

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000,000 gallons per day for the entire year. The capacity of the Newark plant on a safe yield is between 48,000,000 and 50,000,000 gallons per day, and the present consumption is up to the limit of the watershed, if we should be confronted with a dry year, such as were the years 1900 and 1901.

Q. I would like to ask you a question, because you have devoted years of study to this subject and are well posted. First, I would like to ask you if this application should be granted, and this additional supply was obtained, how much additional water would be developed under the plans as you have outlined? 10

Mr. Sherrerd: From 50,000,000 to 55,000,000 gallons per day from the Wanaque.

Q. If the other communities should come in and ask, as you hope and expect they will, to share in this supply, how long, in your opinion, would that supply last, if these other communities join with you and draw from it? 20

Mr. Sherrerd: Well, it would depend on which municipalities join, of course. All the municipalities have the right to join up to the time that the proposition is reasonably allotted.

Q. If Paterson and Passaic and some of the Oranges and those other municipalities that are now looking on with favor, but have not committed themselves, should make up their minds to take this supply, in how many years would it be exhausted? 30

A. It possibly would be necessary to look for additional water supplies in twenty years.

Q. Is it not a fact that the growth of water supplies in the municipalities increases almost double; I think it would figure in ten or twelve years?

A. The ratio here for the period from 1905 to 1916, the increase was about 2,000,000 gallons per day per year; that would double it in twenty-five years. 40

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Q. If these other municipalities took water, it would certainly double it more quickly and exhaust your supply—

10 Mr. Sherrerd: Wait a minute. These towns are now supplied with water from the Passaic River, and the switching of these towns under this storage proposition would greatly improve the conditions of the Passaic River, which are now bad from the point of view of depletion in low flow, because the 30,000,000 gallons per day which are now pumped out of the low flow would be drawn from storage. If all the towns were to take from the Wanaque, about 30,000,000 gallons would still continue to go down the river.

20 Q. We must recognize the fact that New Jersey must depend for its water supply within its own State.

Mr. Sherrerd: I do not think so.

Q. Where will you get it from?

A. There are western states that are using the waters of other states. I am talking about western states.

Q. We have laid down a law that we would not allow Staten Island to be supplied with water from New Jersey.

Mr. Sherrerd: I think that was a mistake.

30 Q. It is a fact. New York would probably not allow New Jersey to take any waters of her State under these circumstances.

40 Mr. Sherrerd: I do not think that is a reasonable conclusion. The American Society of Civil Engineers have already appointed a committee to take up this very question of an interstate supply of water. They have in preparation a memorial to Congress asking federal legislation covering this very point which you are now discussing. The western states where irrigation projects have been

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developed have worked out their problems so that these waters are taken, and it seems to me that the needs of the whole community in this metropolitan district have got to be considered without regard to state lines when that time comes.

Q. My questions were directed to this, as to water in the future, would it not be necessary for the State to conserve all the waters of the State for the uses of the State? 10

Mr. Sherrerd: Yes; I think you are right. This is probably what will be done, and this is a move to bring that about. Eventually we will have to go to the Delaware River, for instance, for a water supply, and we will have to conserve the waters of the Delaware, and it will have to be a tri-state proposition. These things are, in my judgment, a little too far in advance of these present plans. 20

Q. I would like to ask one question. I understand that this application involves the storage, the creation of a reservoir of a sufficient size to permit a draft of 50,000,000 gallons per day? 20

Mr. Sherrerd: Yes; without counting the Greenwood Lake draft.

Q. That the application is on behalf of Newark at the present time for 10,000,000 gallons per day? Is that right?

Mr. Sherrerd: Yes; Newark and Paterson together; 10,000,000 gallons per day each. 30

Q. Then unless other municipalities go in in the near future there will be only a draft of 20,000,000 gallons per day?

Mr. Sherrerd: Both cities would need to take care of their additional draft annually. The reservoir will be constructed of a capacity of 50,000,000 gallons per day. Up to the time that some other municipalities join us Newark and Paterson propose to divide the supply or divide it in proportion to their needs. 40

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Q. My understanding of your application is that in the immediate future Newark is asking for only 10,000,000 gallons per day, and that Paterson is asking for 10,000,000?

10 Mr. Sherrerd: Yes; in a sense; it does not mean that we ask you to limit the application to the 10,000,000 gallons. That would not be a fair construction to be placed on what is to be done.

Q. In the case of Newark the application is for an additional supply of 10,000,000 gallons and in the case of Paterson for a new water supply of at least 10,000,000 gallons per day. What is the object of these two statements in the application?

20 Mr. Sherrerd: It was agreed on the preliminary work, and the act so states, that the municipalities should pro rate the expenses of surveys and expenses of that kind, and Newark has been willing to share in this pro rating, although it does not anticipate that it needs the 10,000,000 gallons per day, but that Newark would be willing to stand its share of the expenses on the basis of the 10,000,000 gallons per day as an insurance against the depletion of the reservoirs.

Q. As I understand it, this Board is to consider the approval of plans to divert 50,000,000 gallons of water per day from the Wanaque River?

30 Mr. Sherrerd: Yes.

Q. Then we can ignore these 10,000,000?

Mr. Sherrerd: Yes. You are now basing your judgment and decision on the right to develop this water supply up to its capacity.

Q. Then it involves the diversion of 50,000 gallons per day from the Wanaque River?

Mr. Sherrerd: Yes.

40 Q. What is the storage capacity of the reservoir which is contemplated to be constructed in making this development?

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Mr. Sherrerd: 11,000,000,000 gallons. Here is a printed diagram from the annual report, which is a reproduction of the one on the wall, if continued up to date.

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 ADJOURNMENT FOR LUNCH.

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Before adjournment Mr. Sherrerd submitted to the Commission plans for the development of a water supply from the Wanaque River, and report made by him to the State Water Supply Commission, dated September 20th, 1911.

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 AFTERNOON SESSION.

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*Cross-examination.*

Mr. Cook: Mr. Sherrerd, if you had had, for example, 2,500 or say 5,000 million gallons of storage would you have been in this critical situation that you are now in, according to your own statement?

A. Well, we would be relieved for the time being, for two or three years, but even the 10,000,00 gallons that you are speaking about as possibly obtainable from the Pequannock is only sufficient for five years, and the construction of this Wanaque Reservoir will take at least four years, and with court action to block the proceedings on the part of counsel for the water companies it will probably be an extra two years before it can be completed.

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Q. Were you aware ten years ago or so that 2,500,000,000 or 5,000,000,000 gallons additional storage would have carried you on along without causing you this uneasiness?

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10 A. This is probably so, but at a much greater cost for development than would be the case in the Pequannock, and even to-day, last week, the Board of Street and Water Commissioners authorized the raising of Oak Ridge Reservoir, which will mean an expenditure by the city of \$200,000 initially for the raising of the dam, and it seems that that money ought to have been saved to the municipality. By getting an additional water supply at this time or a few years ago it might have been saved. If this additional water supply from the Wanaque had been allowed to proceed four years ago it would have been unnecessary to spend this money.

20 Mr. Cook: But if you had created this storage ten years ago would you have been in this difficulty, or, to put the question more correctly, are not all the difficulties that you speak of, are not they all up to this time due to the fact that that storage was not provided previous to now, whether ten years or not?

A. I think that is so, Commissioners; and perhaps might I ask Mr. Cook a question. During the operation of their plants they take from 25,000,000 to 30,000,000 gallons out of the low flow of the Passaic River; is that not so?

Mr. Cook: Yes; or more.

30 Mr. Sherrerd: If your companies had established storage on the high waters of the Passaic from which they could have drawn, would there have been the necessity of depleting the low flow of the river?

Mr. Cook: I do not know.

Mr. Cook: Then it is a fact, Mr. Sherrerd, that if you had provided this storage that these troubles which you have spoken of as coming in the last five years, they would not have been here?

40 Mr. Sherrerd: I think that is true, but, nevertheless, we need the additional water.

*Minutes of Hearing.*

Mr. Cook: In 1907 you prophesied that with 50,000,000 gallons you would be up against it in 1916. It is now 1916 and it is possible for you still to get 10,000,000 gallons additional from the Pequannock.

Mr. Sherrerd: Granting all of that, we would still be in a precarious position. It will be five years before the Wanaque Reservoir can be built and utilized. For two or three years, 1912, 1913 and 1914, our consumption did not go up with the same uniformity of increase as it did in the preceding years. This is shown on the diagram. From 1907 to 1911—it was in 1911 that the hearing was held—show that the increase was at a certain rate of 2,000,000 gallons per day per year. Since the years 1913, 1914 and 1915 did not quite bear out that prophecy, it was due to the depression in business, when the factories were not running on as full time as they were the previous years and as they are now, so that the prophecy was well founded at the time. 10 20

Mr. Cook: That is, you previously thought that your draft would be about 7,000,000 gallons more than it is now.

Mr. Sherrerd: Something like that; yes, sir. We are about three years better off than I hoped for.

Mr. Cook: Well, that is all I want to ask you. 30

Mr. Sherrerd: I would like to ask the gentlemen if they would like to have further proofs as to how they are made up?

A. No.

Q. May I ask, just to make it clear in my mind, if the Wanaque project is carried out, I understand you to say, as part of your plan, to maintain the dry-season flow of the Wanaque River below the reservoir, either by dispatching directly from the reservoir or by providing a bypass for a minimum amount of water? 40

A. Yes.

*Minutes of Hearing.*

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Q. How does that amount drawn from Greenwood Lake compare with the dry-season flow of the river at the present time?

A. It is about seven-eighths of it; three-quarters, at least.

10 Q. Well, if that is done the flow of the stream would be diminished possibly by 25 per cent.?

A. Not more than that. Not more than 25 per cent. as the result of the diversion.

Mr. Cook: Mr. Sherrerd refers to that quantity that comes from Greenwood Lake that is supposed to flow down the river as far as the Pompton feeder dam, the main stream below the Pompton feeder dam. Would not that be affected by letting that water out over the dam, which would simply go down to the Pompton feeder dam and be taken  
20 into the canal as it is at present?

Mr. Sherrerd: If the Wanaque Reservoir were built the chances are that a portion would be, just as it is at present on the Pequannock and the Rockaway, just as long as the flow of the stream is less than is required by Jersey City and Newark, and that is a fact.

Mr. Sherrerd: I would like to submit a little further testimony on the lines of public necessity. That it is a matter of record that the City of Newark through its Common Council and its Boards  
30 of Street and Water Commissioners have tendered themselves ready to enter into a contract with your predecessors, the State Water Supply Commission, for a supply of water; that is a matter of record among the papers of your predecessors. The actual formal proceedings were taken by the Mayor and Common Council and by the Board of Street and Water Commissioners, so that as far as this city is concerned it has tried and done all that was  
40 within its power to accomplish something in the way of the development of additional water supplies.

*Minutes of Hearing.*

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JOHN H. COOK, being duly sworn, testified as follows:

Mr. Cook: I am not accustomed to giving testimony except where questions are asked me, but as counsel for our companies has just entered into this matter he does not perhaps know it well enough to ask me the questions that he might ask me, and I think I can make a short statement showing our position. If the stenographer took my remarks that were made this morning here it will not be necessary for me to elaborate. I would have made the same statement under oath. I will submit those and save the time of the Commission. 10

I desire further to say what I practically said, that if the City of Newark had been made to conserve the waters of the Pequannock River that they would not have been in the difficulty that they are now. That the question of building this Wanaque Reservoir might have been postponed for possibly ten years. I am sure as a prophet that on the last occasion I was a better prophet than Sherrerd was in respect to the time his water supply would last. However that may be, this is my belief, my firm belief, that they would have had, and if they now proceed to do the best they can with the territory that is available to them they could postpone any necessity of having this supply for at least ten years. Of course, this is prophecy on my part, for no one knows what will happen to Newark in ten years. 20 30

In reference to the question of depleting the flow of the stream, the building of this Wanaque Reservoir will result in a great reduction of the flow of the river, the main stream, because while Mr. Sherrerd may say here and the Commissioners who build this reservoir will tell us that they will let out water from this reservoir, if they are not bound 40

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in any way to do so they will not do it, probably because while the old law required that if parties wished to avoid the taxes for diverting the water from the stream they were to put down the minimum flow of the river; as a matter of fact, this has not been done. When the water companies operated the Boonton River we put out from that reservoir in dry times, with the exception of two or three months in one year, 10,000,000 gallons of water into the Boonton River. At that time Mr. Sherrerd was putting in about 5,000,000 gallons per day in the Pequannock. When Jersey City got possession of the Jersey City water works reservoir they never put out a drop in dry weather, and Mr. Sherrerd ceased to do that shortly afterwards. So that where formerly some of the water was put in in dry weather there is none put in now. There are times when the flow of the river is about 200,000,000 per day when not a drop is let into the Boonton. As long as the flow of the river is less than the quantity of water required for their purposes they take it off, because the dry-weather flow of the Passaic is growing less from year to year, and must be so, and is bound to be so. The Passaic River will have to be used for water supplies, and it seems that a proper, economical consideration would require that the watersheds that are already appropriated by the cities should be fully developed and utilized before they ask for any more. Every drop taken away from the Wanaque will reduce the quantity of water. The water is of a better quality than the water that comes down the Passaic, and we will be probably at a greater expense for carrying on our purification than we are at present. But the proper, economical development of the watersheds of the Passaic River, in my opinion, does not require the granting of this right to the City of Newark at this present time.

*Minutes of Hearing.*

Mr. Sherrerd: I would ask Mr. Cook whether this act was not as equally applicable to the water companies that might be pumping out of the streams?

Mr. Cook: I do not know as to that. You were the man that drew the law; you ought to know about that.

10

Mr. Sherrerd: That law, as I understand it, applied equally to the water companies, and if there is any depletion of the waters of the Passaic River it is caused to a larger degree by the companies that take their entire supply out of the low flow; that what has just been said in regard to the development of the Wanaque and the decrease in the low flow applies with a great deal more force, in my judgment, to a company which is taking its entire supply out of the low flow, meaning 30,000,000 gallons per day out of the 100,000,000 gallons. The company which he represents takes out 30,000,000 gallons per day without adding anything to storage. It seems to me that this has not very much bearing, because during the first operation of the Wanaque plant it has already been stated that this low flow has been provided for, and so under the operation of the Wanaque there would be no reason why the low flow should not be maintained.

20

30

Mr. Cook: That law did not require that they put in any low flow, but only that they put in a certain low flow to avoid further payment for the diversion of water, and the Jersey City Water Supply Company did certainly pay for the diversion of water, and Newark never paid anything for diversion, because they had an opinion from the Attorney-General that they were not liable. We paid as long as we operated that plant, but nobody else has paid.

40

*Minutes of Hearing.*

Mr. Wright: Do we understand that those briefs that were put in this morning are still a matter of record?

A. Anything that has been handed in has got to be considered as a brief.

10 Mr. Wright: Will our Commission have an opportunity to answer those? I would ask permission to present to the Commission a brief at a later date touching on the legal questions.

A. In so far as there is contained in them statements of fact they were made evidence by the verification of this witness, and consequently are subject to cross-examination. If you desire now you can cross-examine the witness as to statements of facts. If you wish to meet those by other witnesses, we will give you an adjournment for that  
20 purpose. We did not accept the statements as evidence, nor as anything more than a mere brief, until they were made evidence by the testimony of Mr. Cook.

*Direct examination of Mr. Cook by Mr. Humphreys.*

Q. Mr. Cook, you are a hydraulic engineer?

A. I am.

30 Q. What connection have you with the Society for Establishing Useful Manufactures?

A. I am its hydraulic engineer and have been for about twenty years.

Q. Do you know when the Society was chartered?

A. In 1791.

Q. Under special charter?

A. Under special act of the Legislature.

Q. What property does it own at the Great Falls, Paterson?

40 A. It owns a dam and a system of canals, on which are located various mills; it owns property

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along the banks of the river for a certain distance downstream; it owns a station and power house located at the Great Falls and certain other lands which are connected with the operation of the water power there.

Q. Has it used the water for a long period of time?

10

A. For over 100 years.

Q. Does it need to report?

A. It does.

Q. Have you a copy of the charter of the Society?

A. I have, but not here.

Q. I would like to offer a copy of the charter in evidence.

A. For what reason?

Mr. Humphreys: Just to show the powers of the Society.

20

Q. Under your charter have you power to condemn land?

A. I believe they have, for reservoirs, etc.

Q. What are the sources of supply of water to the Society?

A. The Passaic River distributor.

Q. For what purposes do you use the water?

A. For power purposes and for manufacturing purposes.

30

Q. To whom do you sell?

A. To various lower water powers along the river, and the Society now furnishes a large quantity of electrical power distributed from a central power station at the Great Falls.

Q. What effect upon the source of supply of water to the S. U. M. would be the proposed undertaking of the building of a reservoir at Wanaque?

A. It would diminish the supply of the Society.

40

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Q. And would it be a cause of great damage to the Society?

A. It would.

Q. Can you give us any idea of the extent of the damage?

10 A. I cannot, for I have not been told how much will be actually diverted.

Q. This Society for Establishing Useful Manufactures is free from taxes under its charter?

A. I believe so, excepting the school tax; something like that.

Q. Have you anything to add to what you have already stated as to the plans proposed by the Commission as not being justified by public necessity?

A. I have already stated them quite at length.

20 Q. With regard to the East Jersey Water Company, what connection have you with that company?

A. I am hydraulic engineer for that company.

Q. And have been for how long?

A. About thirteen years.

Q. To what municipalities does that company furnish water?

30 A. It furnishes water to the New York & New Jersey Water Company; it supplies the City of Bayonne; it furnishes water to the New Jersey Suburban Water Company and the N. Y. & N. J. Water Company, which together supply the Towns of Kearny, Harrison and East Newark. The East Jersey Water Company also supplies the Town of Nutley, the Town of Bloomfield and the Town of Little Falls.

Q. Do all these municipalities depend upon your company for their supply of water?

A. They do.

40 Q. Do all those municipalities lie in the watershed of the Passaic River?

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A. Well, I don't know what you could say about Bayonne, but the rest of them do.

Q. What effect do you think the taking of water by the City of Newark from the Wanaque would have?

A. On these particular communities it would simply decrease the amount of water available to them, and probably immediately after that dam was built have no immediate effect upon their supply, because there is ample supply of water flowing in the Passaic River beyond the requirements of the associated companies at Little Falls. 10

Q. Are you connected with the Passaic Water Company?

A. I am.

Q. Will you tell us under what act that company was chartered? 20

A. Under a special act of the Legislature in 1868.

Mr. Humphreys: I would also offer in evidence the act of the charter of the Passaic Water Company.

Q. To what municipalities does that company furnish water?

A. It furnishes water to the City of Paterson, to the Borough of Prospect Park and to the Borough of Totowa. 30

Q. Can you give us any idea as to the total population supplied at the present time?

A. Somewheres in the neighborhood of 135,000.

Q. Where does the Passaic Water Company first take water?

A. From below the Great Falls in Paterson.

Q. Why did it cease to do that?

A. It moved up above the Great Falls in order probably to get the benefit at that time of the greater chances for power development than there were below the Great Falls. 40

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Q. Is the City of Paterson entirely dependent upon the Passaic Water Company for its present supply?

A. Yes.

Q. And the water is used for public and municipal purposes.

10 A. Yes.

Q. What have you to say as to the annual flow of the Passaic River being sufficient for all purposes of the City of Paterson?

A. It is.

Q. Is it likely to continue so?

A. Yes; if not diverted.

Q. What effect did the impounding of waters by Newark in the Pequannock have upon your water supply?

20 A. It reduced the quantity of water in the river.

Q. How does Paterson take the water from the Passaic River?

A. It is filtered and pumped at Little Falls at the station which is now operated by the Montclair Water Company, and it is carried down to Paterson through a forty-two-inch pipe that goes down the Little Falls Turnpike road.

Q. Do all the municipalities that you and your companies furnish with water have an ample supply?

30 A. They have.

Q. And the water which they get is the same water that they would receive from the Wanaque—that is, all the water that would be impounded by the Wanaque Reservoir now comes down the stream to Little Falls?

40 A. The Wanaque Reservoir, as proposed, would not be a sufficient elevation to supply Paterson and Passaic and Montclair and some of these other places named without pumping. Newark is the

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only community that could utilize the Wanaque advantageously, as it would get it without pumping. These other towns would have to pump the water. They might be supplied by their supply systems having to pump it, but it is a question whether it would not be better policy to pump it all than to have two divided systems. As the reservoir is now suggested they would have to pump some of the water, at any rate; that is, all these communities except Newark, which could utilize the quantity desired in the lower parts of the city without pumping. 10

Q. Are you also connected with the Acquackanonk Water Company?

A. I am.

Q. That company was also incorporated under a special act of the Legislature? 20

A. It was.

Mr. Humphreys: I offer in evidence the act of the charter of the Acquackanonk Water Company.

Q. What municipalities does the Acquackanonk Water Company furnish with water?

A. It supplies the City of Passaic and a part of Acquackanonk Township, and the Borough of Clifton, Water District No. 1, I think they call it. 30

Q. Is your evidence with reference to the Passaic Water Company—does that apply also to the Acquackanonk Water Company?

A. It does.

Q. Tell us of the municipalities the Montclair Water Company supplies?

A. It supplies water to Montclair and to Glen Ridge and the West Orange Water Company for a supply for the Town of West Orange and the Essex County institutions at Caldwell. 40

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Q. About what pipe line does that represent?

A. That I cannot tell offhand. I do not recall what this is.

Q. Where is the water taken from?

A. It is taken from Little Falls and filtered and pumped just as the water that is supplied to Paterson and Passaic.

10

Q. And the taking of water from the Wanaque in the manner proposed would have what effect on it?

A. It would have the same effect on it.

Q. What is the business of the Dundee Water Power & Land Company?

A. It supplies water for power and manufacturing purposes at the Passaic River in Passaic and Acquackanonk Township.

20

Q. Are you connected with them also?

A. I am hydraulic engineer for this company.

Q. Describe shortly what the works of your company are.

A. They have a canal, they own certain mills and they own certain lands along that canal and in the City of Passaic, and supply water to mills which are located along that canal, and supply considerable quantities of water that is used for manufacturing purposes.

30

Q. What effect upon its properties and business would the diversion of water from the Wanaque have?

A. It would have a serious effect upon it. It would deplete the flow of the river.

*Cross-examination.*

Mr. Sherrerd: You referred to the East Jersey Water Company as diverting this water. Is that legally the situation in view of the recent court decisions?

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A. I do not think I said they diverted.

Mr. Sherrerd: Is it not true that water is diverted by these towns through the instrumentality of the East Jersey Company? Are you authorized to speak for these towns in case of their opposition to the Wanaque development? The East Jersey Water Company acts as their agents? Is it not the Court's decision that the municipalities are diverting the water and the company is acting as their agent? 10

A. I do not think it is that.

Mr. Sherrerd: I understand that it is a fact, and since the water companies have the advantage of this decision it seems to me that they ought to have the municipalities themselves who are doing the diverting appear here and raise the opposition to this rather than their agents, who are only the contractors for the municipalities. 20

In the case of Harrison I would like to put it on the record that the Town of Harrison has already passed a referendum in favor of the acquisition of the Wanaque. Certainly after the municipality has spoken that they want the Wanaque water it seems to me that the agent that pumps the water should not be the one that you should hear, as far as opposition from that town is concerned.

Mr. Sherrerd: Mr. Cook, what is the lowest flow of the Passaic River at Great Falls? 30

A. Do you mean when the very lowest flow that I know anything of was?

Mr. Sherrerd: Yes.

A. During the last fifteen years, and for a period as long as one week, as measured by us at the City of Paterson, the low flow of the Passaic River ran to about 50,000,000 gallons per day. That was not caused by our diversion. That was a period of one week. That was the only time. 40

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Q. How much water was diverted from Little Falls?

A. I should imagine about 30,000,000 gallons per day.

10 Q. In the operation of these several plants have the companies received complaints as to the quality of the water?

A. They have at different times received complaints as to the quality of the water which is, I believe, the history of every water company and every municipality.

Q. From all of the municipalities supplied?

A. Not from all.

Q. From which have you received no complaints?

20 A. I think we never received any complaints, as I recall it, either directly or indirectly, from Kearny, Harrison and East Newark. We have at times received complaints as to the quality of the water, but not very frequently and not very commonly. I imagine that every water supply has times when there are complaints from its customers.

Q. Has it not been publicly stated that Montclair was dissatisfied with its water supply?

A. It might have been; they never—

30 Q. Have not the officials of the town complained to the company?

A. They may have, but it has never been brought to my attention, but if it comforts you in any way I do not doubt that they may have.

Mr. Lewis: Can you tell us how the Pompton River gets its water?

40 A. The Pompton River is made up of three rivers—the Ramapo, the Wanaque and the Pequannock. The Ramapo River is the river that is furthest to the east and drains what is known as the Ramapo Valley, the Wanaque River in the Wanaque

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Valley, with its headwaters in Greenwood Lake, and the Pequannock River in the Pequannock Valley, with its headquarters in the various reservoirs which are now owned and operated by the City of Newark.

Q. What is the present actual flow of the Pequannock at the confluence with the Pompton River to-day? 10

A. Why, it is probably nearly nothing.

Q. What is the low flow of the Ramapo at the confluence with the Pompton River?

A. Well, I cannot speak accurately, but I should imagine it was about perhaps 18,000,000 gallons per day, or something like that.

Q. Do you know what the present low flow of the Wanaque River is at that confluence?

A. You mean above the Pompton dam? 20

Q. I mean at its confluence with the river.

A. To-day I should imagine it might perhaps be 20,000,000 gallons per day.

Q. The feeder of the Morris Canal is on the Pompton River below the confluence of the three streams you have mentioned?

A. Yes.

Q. The water that supplies the Morris Canal from Mountain View to Bloomfield is taken at that point, is it not? 30

A. Yes.

Q. At the period of low flow which you mentioned a little time ago when the low flow at the Falls of Paterson was 50,000,000 gallons per day, assuming that the Wanaque Reservoir was operated to its full capacity, what water would have flowed past the City of Paterson?

A. All I can say is that whatever quantity did flow would have been reduced by 10,000,000 or 12,000,000 gallons. 40

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Q. Would not have flowed past the City of Paterson if the reservoir——

Q. Yes; it would, because the 50,000,000 gallons per day would not be taken from the flow of the Wanaque River, but would be composed partly of the flow of the Wanaque River and the additional amount required to make up the 50,000,000 gallons.

10 Mr. Sherrerd: And also the draft from Greenwood Lake?

Mr. Cook: The Greenwood Lake water, I presume, would be taken into the Morris Canal.

Mr. Lewis: Would that reach the Passaic River?

A. No.

Mr. Lewis: What is Greenwood Lake as you understand it?

A. It is the stored water that is available to the Morris Canal & Banking Company for the operation of its canal from Mountain View down.

20 Mr. Sherrerd: May I ask Mr. Cook what were the relations between the East Jersey Water Company and the Lehigh Valley at the time of the making of the Newark contract?

Mr. Cook: Answering that, I was not employed by either of the companies at that time.

Q. You knew that such a contract was made?

A. Yes.

30 Q. You knew in 1900, when you were in the service of these companies, that the question of diverting waters was finally settled?

A. While I was in the employ of the S. U. M. in 1900 I did not have very much to do with the Newark contract. I did not have much, if anything, to do with the management of the legal matters connected with the company at that time.

40 Q. Do you not know as a matter of fact that arrangements were made in order that the diversion of water to the City of Newark was either com-

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pensated for by the S. U. M. or that the right to divert that water was given to Newark?

A. I believe that there was an arrangement made with the S. U. M. whereby these Newark works could be operated without any objection on the part of the Society. It was the company, the East Jersey Company, that made the contract with Newark, that made an arrangement with the S. U. M. to bring this about. 10

Mr. Sherrerd: I believe they did.

Mr. Cook: Only, of course, for the supply of Newark as was contemplated by the contract.

Mr. Sherrerd: Certainly I understand, but nothing that would stand in the way of an arrangement of a similar character being entered into, if mutually agreeable. In other words, if, by the construction of the Wanaque Reservoir, your rights were interefered with, you would protect yourselves legally. 20

Mr. Cook: I presume so.

Mr. Lewis: What I offered was simply in the way or nature of notice. It is simply our claim to our water rights there.

Mr. Sherrerd: Mr. Chairman, I think it must be conclusive to you gentlemen that the City of Newark needs additional water from some source. We believe that we have demonstrated to you that this is the proper means of procedure; that it does not interfere unduly with the rights of others, and that it is a reasonably anticipated use of water. It is undoubtedly an engineering fact recognized by all of us that, in the construction of large works of this character, it is wise to plan for twenty-five or thirty years in the future. That was done by the City of Newark in 1892 in the development of the present Pequannock works, and you will see the wisdom of it, that it has lasted and been use- 30 40

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ful for the city for about that period of twenty-five or thirty years. In the development of this particular Wanaque project we believe that we are doing a service not only to the City of Newark but to the State of New Jersey at large in now accomplishing something for the mutual advantage of other cities that may desire to join in this development. Heretofore it has been almost an impossibility for the State of New Jersey to start out on any plan of conservation because of the limitation in the State Constitution that State bonds could not be issued for more than \$100,000 in any one year without a vote of the people. The matter has been thoroughly threshed out in the Wharton proceedings, showing that even a State Commission could not issue bonds; that it has devolved upon the municipalities themselves to use their own credit, and in this particular project and under this particular act the City of Newark is lending its credit you might also say to the State of New Jersey, because it has properly inaugurated a plan of State conservation under the control of a State Commission, which is considered equitable to all those who may desire to come in, and it seems to me that under these circumstances and under the trivial objections that have been offered by these private interests that are perhaps going to fight; and if they are going to fight nobody knows better than you gentlemen that they will use all the resources of legal minds to protect their interests. They will certainly be fully protected in whatever rights they have, and if you gentlemen cannot see your way clear to granting to the North Jersey District Water Supply Commission, and through it to Newark and Paterson, the right to acquire water in some such way as is now proposed, the municipalities will be hard put to get additional supplies,

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and will be driven, practically driven, into the hands of the monopolistic interests that seek to control the entire water supply of northern New Jersey, through it and its allied companies.

Q. Mr. Sherrerd, I am not entirely clear on what seems to be a very important question—that is, the effect of this diversion on the low flow of the Wanaque River. 10

A. Mr. President, may I say this as a general statement: The Passaic River is subject to extreme floods. When these occur the water runs off to the sea without doing anybody any good, and does a lot of damage, as was the case in 1912. Any storage reservoir on the upper reaches of the Passaic River, in my judgment, and I think I will be upheld by you gentlemen, acts as a conservator of these floods. It holds back those floods for the purpose of doling them out in time of need. Certainly if this community needs 20,000,000 gallons of water she cannot get it from the Passaic unless it conserves those floods. The low flow of the river, as testified by Mr. Cook, is 50,000,000 gallons. The companies which he represents takes out 30,000,000 gallons. That would make the flow through Paterson 80,000,000 gallons. Newark holds back perhaps 10,000,000 gallons, Jersey City 10,000,000 gallons; that makes 20,000,000 gallons. This is 100,000,000 gallons as the low flow of the Passaic River. In no way could these communities get 150,000,000 to 200,000,000 gallons per day from the Passaic without storage. With storage you can get up to 300,000,000 or 400,000,000 even on the Pompton branch alone, and we are taking one branch of the Pompton, and we propose to conserve it. It is the conservation of the flood flows of the rivers that is going to be the salvation of this territory, as far as water supplies are concerned, and all of these 20 30 40

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other questions as to whether it affects rights below are questions of law; it seems to me are not questions you should in any way bother with in this particular case. The municipalities cannot take any rights away without due process of law, and if this is the feasible way, is not the question settled?

10

Q. It has been testified by Mr. Cook that the present flow of the Pequannock is nothing at all.

20

Mr. Sherrerd: Mr. Cook is mistaken about it. I say his own company has a mill on the lower branches of the Pequannock River that runs part of the time. There is some low flow, but it is very much diminished at certain parts of the year. I have not measured the flow where it joins the Pompton, but certainly we know there is a flow there, and that it runs as high as 5,000,000 gallons per day during the summer months.

30

Mr. Cook: I think I did perhaps use something in this connection. I refer to the Pequannock River as it now is. I have visited the Pequannock within a week, and while there is a mill upon the lower branch of that stream that belongs, I think, to the Passaic Water Company, the quantity of water is extremely small and is due to frequent local showers. Below the dam there is practically no water in the stream. It is true there are cases below where a very small quantity of water, we will say the twenty-four-hour flow is held in the dam until a man can get a little to run the mill, but the quantity that is in the stream to-day is extremely small. I venture to say that at

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Mills on the Pequannock River, shortly below Bloomingdale, at Riverdale, I venture to say that the flow throughout the twenty-four hours is not as much as 2,000,000 gallons, if it is as much as that.

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Mr. Sherrerd: I think that only substantiates what we have stated. The very fact that the City of Newark is pushed to its last drop of water has made it incumbent upon me as engineer to discontinue the amount of water that used to be sent down to maintain the low flow. There are conditions in the operation of their own plant below—  
 10 their plant using the water for power purposes—  
 that the entire flow of the Passaic River is held back for days or half a day at a time. It is the very fact that we are so near the limit of our supply that makes it incumbent during the very dry season to add any quantity for fear of depletion of the reservoir. In the operation of the Wanaque it will, in a measure, release the Pequannock from the necessity of hanging on to its last drop of water.

As the added consumption on the Wanaque increases it would be incumbent upon the State, if it had entered into this project of State conservation, to develop some additional source of water supply, perhaps on the Ramapo. It ought to be the object of the State, in my judgment, to conserve the waters for its citizens and to take over these private water companies at a fair valuation, for with an equitable distribution all the waters of the State can be much better conserved and operated through the general agency of the State than they can  
 20  
 30 through isolated companies.

It might be added for the purpose of the record that these municipalities of Paterson, Passaic and Montclair particularly have asked the State Water Supply Commission to have an appraisal made of these private companies, and an appraisal has been made of these very water companies looking towards their acquisition, in order that it may be brought about in one general proposition. All this present legislation under which Newark is pro-  
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*Minutes of Hearing.*

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ceeding is not adverse to that result. The development of the Wanaque can properly be made part of, or in conjunction with, this very Little Falls, if it were acquired by the Cities of Paterson, Passaic and Montclair. The water then would be furnished from the Wanaque, probably from storage, and pumped by the water powers in the Passaic River by this very plant, and the water of the river would be increased in their flow by the very water which is now diverted.

10 Mr. Tonnele: We would like as early a decision as possible on the matter, for the reason that the development of this reservoir ought to be proceeded with to get the advantage of this time of the year, which would be opportune for the working out of the plans, in order that contracts might be entered  
20 into in the spring. We would like to ask your very earliest decision.

HEARING ADJOURNED.

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*Minutes of Hearing.*

IN THE MATTER

OF

The Hearing held on Friday,  
December 15, 1916, at 10.30  
A. M., at the City Hall, New-  
ark, N. J., before the Commit-  
tee of Department of Conserva-  
tion and Development, for the  
purpose of taking additional  
testimony upon the Application  
of the NORTH JERSEY DISTRICT  
WATER SUPPLY COMMISSION to  
said Department for permis-  
sion to divert waters of the  
Wanaque River.

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APPEARANCES:

MR. SIMON P. NORTHRUP and HENRY W. WHITE,  
for the Committee.

MR. FRAZER appears for the North Jersey Commis-  
sion.

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MR. WM. B. GURLEY, Attorney for Hewitt Estate,  
Ringwood Company, Midvale Water Company,  
Mr. Erskine Hewitt, Edwin R. and Charles G.  
Hewitt, Miss Amy Green and Sarah Cooper  
Hewitt.

MR. D. E. MINARD, Attorney for the Erie Railroad  
Company (the New York & Greenwood Lake  
Railway owning the land, Erie being the  
lessee).

MR. FRANCIS SCOTT, for City of Paterson.

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*Minutes of Hearing.*

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Mr. Gourley: I learned only a few days ago of this hearing affecting the rights of the Ringwood Company under Mrs. Hewitt, and I was in Trenton on Tuesday week and learned the inquiry had been closed, and I am very glad to be here to-day, although only notified yesterday about it.

10       The position of the Ringwood Company is this: they cannot be expected nor would you expect them very scientifically or learnedly to go into this whole question, because they are simply private owners of land, and will leave you perhaps in that respect unaided as to whether their consent should be given to this local Board or not. They don't want to stand in the way of public improvement. If this is the only thing that can be done, they will bow to it, although it will very seriously affect the vari-  
20       ous lands there and the improvements they are making. They are unable to understand the exact boundary line of this contemplated improvement; the only information we have had so far is from the small map attached to the petition of your Honorable Board, the North Jersey Board. That is too general to give us precise information as to what the damages are to us. Now, I take it, we will learn from some other source whether there is any other available water supply for these communi-  
30       ties, or whether or not Newark has adequately developed its own water supply. These are technical questions requiring the services of competent engineers to procure those facts. We know this, that it is going to be a very serious loss financially, and we expect to be paid for it in the end, whether adequately or not; it is a grave question, I take it, therefore—a very important question for this Board to determine—whether or not the cost of this enterprise is not a serious obstacle to granting the  
40       consent. Of course, if there is no other source

*Minutes of Hearing.*

available, then it has to be done; if there were another available source further up or lower down the stream, then that ought to be ascertained. We, as individuals, ought not to be expected to bear that loss or come to you with that precise information. As to whether that has been developed or not I don't know, but my instructions are simply to say on behalf of the Midvale Water Company that the loss to them is going to be very great, and I now ask and inquire whether any testimony has been laid before this Board as to other available sources of supply? 10

The Chairman: As to suggestions made on behalf of the opponents to the application that the Pequannock Watershed could be further developed by Newark, the contention on the part of Newark being that the cost of the same would be out of proportion to the additional water supply, and this was the only practical source. 20

Mr. Gourley: Newark has taken over the Pequannock Watershed and developed it, and my instruction has been that it has not been properly done. Of course, you want something more definite or binding before you can reach a conclusion, so I ask the question that if that has not been done is it fair to come over to this watershed and ask to have that embraced within its plant before other plans were taken to develop their own holdings? You gentlemen are custodians of this vast power. If there be no other sources it becomes a question whether or not their assent should be granted for this precise spot. The Hewitt interests are very large in the way of land to be taken and in the various companies. 30

I have made a copy for my own purpose of the land outlined in the application. I must say that we expected a little more information in detail 40

*Minutes of Hearing.*

than this slight sketch. I think it is wholly inadequate to give the correct information.

The Chairman: Mr. Sherrerd is here this morning and will give more detailed information, if necessary.

10 Mr. Sherrerd: We have maps showing surveys, and so forth (referring to exhibits used at the former hearing and marked in evidence of the case). I would say that the Ringwood Company has been furnished with a copy of the plans. There was a question whether or not the reservoir might not be constructed with a little neck that might raise this portion here (indicating on map).

Mr. Gourley: On the map referred to by Mr. Sherrerd, where on that does the Midvale water property show?

20 (Mr. Sherrerd indicates same on map.)

Mr. Gourley: How does this contemplated plan affect your mining rights, Mr. Hewitt?

Charles E. Hewitt: Doesn't affect the mining rights, except from any interruption there might be for the transportation of the ore and supplies to the mine, and also in regard to contemplated development of water power for future development.

Q. Your minerals are how far from this dam?

30 A. From the upper, and probably two and one-half to three miles.

Q. What effect would the construction of this reservoir have upon the operation of the mine?

A. Only in the destruction of proposed water-power development for use at the mine and possible interruption of mining operations due to operation of railway traffic.

Q. Where did you contemplate constructing the water power?

40 A. We had a site near Midvale land, far side, and also Ford Pond, and also had a plan contemplating

*Minutes of Hearing.*

the use of those and other sites on that stream, in connection with the power development from Greenwood Lake.

Q. You don't know anything about the horse-power capable of being developed there?

A. We have estimates on file at the office; I could not say from memory.

10

Q. It would be a serious damage or not?

A. Yes, sir.

Q. I believe you are constructing some villas?

A. One at Greenwood Lake—we have a dam there—and we have a plan and estimates for a dam near Midvale, and also a plan showing the arrangement of lots, but we have not done any work there.

Q. Do you know what quantity of this contemplated reservoir is owned by you now, or your company?

20

A. I could not tell you that. We have made no estimate.

Q. When were you first informed of this hearing?

A. Either yesterday or day before yesterday.

The Chairman: Several days ago my office telephoned to you.

Q. Can you approximate the proportion that you own?

A. Absolutely not.

30

Q. You would not care to hazard any guess?

A. It would be absolutely useless for your purpose.

Q. Do you consider it a substantial part?

A. Yes, sir; very substantial.

Q. One-third?

A. I haven't any opinion, except to tell you that Mr. Sherrerd can calculate that in an hour or two and get it exact.

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*Minutes of Hearing.*

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*By Mr. Frazer.*

Q. At the present time you have not made any of that development at Midvale?

A. No, sir; not at present.

10 Q. How long have you been operating your mines?

A. The Ringwood Company?

Q. The one you are speaking of.

A. Ever since it was formed; I personally have been connected with it since 1904.

Q. Have you had this water development under consideration for some time?

A. Yes, sir.

Q. For how many years?

20 A. They have been in mind since we started the mines.

Q. That was some time prior to 1904?

A. The mines were occupied before the Revolution, but since my connection they have had in mind to develop the water connection.

Q. Since 1904?

A. Yes, sir.

Q. You have had this plan, then, tentatively prepared for a period of some twelve years?

A. What plans do you refer to?

30 Q. The water development plans at Midvale, in connection with the mines.

A. We have had the plans exactly developed, but an estimate of the dam site and the real estate proposition I spoke of; but we have had all of these sites estimated and engineers' estimates for some time of the amount of water.

Q. Is it possible to develop that water power at a point above the Wanaque Dam, if that dam should be constructed?

40 A. To develop part of it.

*Minutes of Hearing.*

Q. Speaking with reference to the proposed dam for the Wanaque development, assuming that has been made as shown on the plans, is it possible for you to develop your water power at a point above that dam?

A. It absolutely cancels all of the power out from the water falling at this point at the head of Ford's Pond to the point of your dam. 10

Q. What proportion of the fall from Greenwood Lake down to the end of the Wanaque development occurs between the point of Greenwood Lake and Ford's dam?

A. I could not answer that.

Q. It is, however, the major part of the fall?

A. I should not say it was.

Q. When you say the development of Wanaque is going to destroy your water power, you mean it is going to reduce to some extent the amount of power that could be developed? 20

A. I did not say that; but it would absolutely make invaluable and useless any power that might be available for use down to where the dam is constructed.

Q. That is, from the upper part of Ford's Pond; that would be a small portion of the total power between Greenwood Lake and the dam?

A. I could not answer that without estimates, and the Commission can get the figures; I don't think my opinion would be of any value. 30

Q. I suppose you are familiar with the situation?

A. I suppose I am as familiar as anybody could be without the figures. You can get the exact heights, and I think that ought to be done.

Q. Do your plans that you have spoken of indicate those heights?

A. Oh, yes.

*Minutes of Hearing.*

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10 Mr. Gourley: It seems to me that I, representing the Ringwood Company, would like to have an opportunity, since we have exact figures that are available; I would like to put the facts before the Commission. When you come to ask questions as to relative heights between Greenwood Lake and the lower part of Midvale, where a foot is an important item, your engineer will tell you that; a man doesn't want to guess at such things.

Mr. Frazer: Then I suggest that you prepare such a statement and submit it to the other side, so that it may be O.K'd as to correctness, and then submit it to the Commission, if you wish.

20 Mr. Hewitt: From your question I rather fear that you are thinking I am reluctant to give any information, but such general things are asked when the exact information is available.

*By Mr.*

Q. Where do you get your power from, if you use it now?

A. We develop it from coal entirely.

30 Q. You don't make any use of Greenwood Lake?

A. We have not developed the water power.

Q. You have the right to properly extend to the lake?

A. Over a large portion. We have quite a large water power at Hewitt, and some of you gentlemen know of the old forge and blast furnaces which are now there and the old wheels, which are still worth seeing, but we don't use any water power now as contemplated for the future.

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*Minutes of Hearing.**By Mr. Frazer.*

Q. Have you had computed the cost of this water development?

A. We have, surely.

Q. Has the fact of the high expense of that development had anything to do with the length of time spent in determining to make it? 10

A. Not at all.

Q. It is not a fact that you can obtain your power at the present time more cheaply from the use of coal than upon payment of maintenance charges and incidents necessary upon those improvements under that development?

A. It is difficult to answer your question. If you will just give me an opportunity I will explain the exact situation. 20

Q. Go on and explain it. 20

A. Our mines at Ringwood are not under development; they are in the course of development. We have probably increased the product something like fourteen or fifteen times since we undertook to do it. When we started to develop there was too much water power for the amount of power required, and, therefore, the expense for that amount of power was not justified by the amount of power required at the mine. To make myself clear—as I have stated it very awkward, the time is coming now when we can use all of the power developed from this water power, and when this time comes, and it is fast approaching, it will be very much cheaper to operate these mines from water power than it would be by coal. 30

*By Mr. Gourley.*

Q. This is part of a general scheme of developing your whole property?

A. Yes, sir. 40

*Minutes of Hearing.*

Q. At Greenwood Lake have you continued that scheme?

A. Yes.

Q. And built a very nice and attractive section there; you can agree to that?

10 A. I like to measure things in figures; the only thing I can answer, that of the cottages we built, seventeen, that all but one is already rented of those seventeen for next year and three or four have been agreed to be built for this year.

Q. I mean in an attractive sense?

A. That refers to other opinions than my own.

*By Mr. Minard.*

20 Q. You are now entirely dependent upon the railroad for means of transportation to your property, as well as the people who occupy these villas?

A. For products; but some get there by automobile.

Q. As far as transportation is concerned?

A. Yes, sir.

Q. Will it make any difference whether the railroad which now crosses were taken to one side of the whole project or to the other; would that make any difference to you?

30 A. So far as the line goes in the general development of the mine, it would not make any difference if we could get transportation, but if this part (referring to map) is put under water, it is the water part that would kill it, not the railroad.

Q. Would it make any difference if the Ringwood part was longer or shorter?

A. Yes, sir; certainly make a difference in miles, and will affect other portions of our property that is not developed by striking out portions of our property.

*Minutes of Hearing.*

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Q. Any interruption, then, of the service on that road would be a serious detriment to you and your products?

A. Yes, sir: In connection with the value of this water power to the Ringwood Company, I will state that just at present there is a car shortage, in consequence of which it seems to be impossible to get our full supply of coal for the mines. If this continues we shall be entirely out of coal, with the result that the mines will be shut down; with the water power developed we could operate the mines without coal. 10

Mr. Minard: We are not here to make any legal or technical objections, although we reserve the right to make such as may seem necessary when occasion requires. The position of our companies is this: We realize that this is a public improvement, and we do not wish to stand in the way of a public improvement. We are common carriers and bound by law to operate the railroad, and if changes in our right of way are to be made we want an opportunity to consider in advance the place, location, curve, grade and character and weight of bridges, and all of the many things that are strictly railway propositions, and with what water engineers and other engineers may or may not know about it. Our engineering department will co-operate with this Commission or with the North Jersey Commission and work with them in a spirit of friendliness. The North Jersey Commission have been very kind to us up to now, and I expect that they will be, and let us see the plans that they have. Our difficulty to-day is this: We hoped to come before the Commission with something defi- 20 30 40

*Minutes of Hearing.*

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10 nite in the way of testimony as to how we are injured, with the idea that this Commission, with the jurisdiction such as they assume, will probably have to determine whether this water ought to come from here or somewhere else, and what quantity should be taken, but as to how it will affect our proposition we cannot offer any testimony at this time, for the very simple reason that the North Jersey Commission have not prepared any plans. All we can get is that there may be a dam at one place and might be an elevation here of 275 feet, and there might be a dam at another place and an elevation of 290 feet. Where they are going to put our railroad seems not to be considered, and until we know where it is to be put we cannot consider the disadvantage or advantage of it. They may throw us over here (indicating on map). Here we cross the reservoir, and they may throw us around there, which I hope that they will, and it may be on the east side of the dam, across the neck, and they may take us up around here (indicating on map); and while on the map it looks all right, if you look at the ground you will find geographical conditions and topographical conditions which make it almost impossible to operate a railroad, and whether we come across down below or come across the west side it will make all the difference in the world with our operation, not only the operation on grades, curves and bridges, all of which are expensive, not only to build, but to maintain in the future, and they will enter into the practicability and cost of it in the future, and we will have to build three

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*Minutes of Hearing.*

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or four miles of railroad, with all the bridges, and one thing and another that will have to be built before we give up the present railroad and continue our operation, and we will have to know just what will be needed, three or four miles or less, and then you will have to consider the population outside of the ground covered by the reservoir, because if you are going to take us away from the settlement where we get business and serve people, that has to be considered, whether it takes us from one side and puts us on the other. The business of the railroad is to carry passengers and freight, and if they are taken away from us or we from them it is a serious element of damage. It seems to me before we can possibly put in such tangible evidence as we should like to put in, and the Board is entitled to, we should know something more definite as to where our railroad is going to be located. We will have no difficulty in agreeing upon a practical location of the railroad, for the reason we are willing to help these people and not stand in the way, but we ought to be enlightened a little bit, so that we would know exactly where we are at, and show whether it will cost ten thousand or fifty thousand a mile in order to build this railroad, and all of the things that enter into the practicability of it.

The reconstruction of a railroad or operation of one is such a technical thing that railroad companies are not always able to agree with public bodies, and sometimes resort to technical reasons. We cannot offer any testimony on the subject now, but say, without

*Minutes of Hearing.*

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waiving any of our rights, we will do what we can to co-operate with them or with this Commission, and do all we can to help the situation along.

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MORRIS SHERRERD resumes the stand.

*By Mr. Frazer.*

Q. You have already offered to the Committee certain plans showing some development in detail. Do these plans show the development in such detail as to materially aid the Commission to determine the amount of water which will be obtained by this development?

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A. These plans, together with the report which is part of the exhibit in the case, show the amount of water.

Q. Can you state what the plans would develop in the line of water supplied?

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A. Would develop a reservoir which would give a capacity of eleven billion gallons of water, and located on the Wanaque at a point which would give about eighty square miles tributary to this reservoir, without counting Greenwood Lake drainage, and from such a development a supply of water from fifty to fifty-five million gallons per day could be drawn.

Q. You are familiar with the situation in the City of Newark as to its water supply?

A. I am; yes, sir.

Q. What is the amount of water supplied in Newark at the present time?

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A. The development of the Pequannock up to 1905 showed a development on the driest year which has happened since its construction, which was in 1900 and 1901, that a draft of forty-six and seven-

*Minutes of Hearing.*

tenths million gallons would have been possible from the Pequannock as then developed; that the addition of the Cedar Grove Reservoir, put in service in 1905, would sufficiently augment the supply and guarantee a draft from the Pequannock of fifty million gallons per day. That is considered the present available supply from the Pequannock, taken on the basis of a dry year. 10

Q. What is the average consumption at the present time of the City of Newark?

A. The average consumption during a period of about three months has been in the neighborhood of forty-seven to forty-eight million gallons. For a period of a year it has been about forty-five million gallons per day, and the increasing consumption from year to year varies from an addition of one million gallons per day to an addition of two million gallons per day. During the last year and a half the per diem consumption has increased four and one-half million gallons per day, due to the construction of a number of plants on the meadows, which use a very large quantity of water. 20

Q. The City of Newark at the present time is developing a meadow tract?

A. Yes, sir.

Q. And it is endeavoring to attract manufacturers of the type to which you have just referred? 30

A. It is not only endeavoring to do that, but manufacturers are locating in that section in great numbers on other portions of the meadow than those developed by the city.

Q. Then if the rate of increase should continue for another year and a half, what would be the effect upon the amount of water consumed?

A. It would exceed the available supply from the Pequannock for a dry year; it might be possible to get through one or two years if we had a slight increase in the amount of rainfall. 40

*Minutes of Hearing.*

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Q. But if you struck a year such as 1901 there would not be sufficient water to supply Newark; is that correct?

A. Yes, sir.

Q. How long do you think it would take to develop the present Wanaque scheme?

10 A. It would be possible to do it in three years if there were no hold-ups, if we were not tied up by some court delays; but as those things go it seems to me that it would take at least four years to develop the Wanaque.

Q. Now, referring again to the Wanaque water supply, is that capable of further development?

A. It is.

Q. To what extent?

20 A. The Board of Street and Water Commissioners have already directed that the Oakland Reservoir shall be raised ten feet, which would be, in my judgment, an economical development of that portion of the watershed, and that would yield an additional four to five million gallons per day; in other words, it would give an additional storage. A further development in the Pequannock could be made at a very much greater cost per unit than the Oak Ridge and ten times the cost per unit in the Wanaque, but the total of those additional developments which are possible or feasible would be  
30 an addition of about ten million gallons to the present development. I say possible, because it is a distinct factor in the development of water supplied from storage reservoirs such as the Pequannock and the one proposed—the limit of yield under very favorable conditions is between nine hundred thousand and one million gallons per day per square mile; the drained area of the Pequannock is  
40 sixty-two and one-half to sixty-three square miles, and its extreme ultimate development on that basis

*Minutes of Hearing.*

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would be from about sixty to sixty-three million gallons per day; if you increase the storage as has been represented in some of these hearings to a greater amount than the economic amount—for instance, if a great reservoir were built at New Foundland—the addition of that water surface of some six or seven square miles would be so great that the evaporation of the water surface would be a very serious factor in the development of the water supply, so that the construction of that reservoir and the continued use of the present reservoir would reduce the available yield of the Pequannock rather than increase it. 10

Q. Then the only possible increases are the two you mention?

A. Not the only two possible, but the only two advantageous and feasible ones. If the New Foundland one were favored it would be necessary to keep empty the other reservoir, which would be a waste, and at best the additional development would be still limited to ten million gallons, which would be only necessary for the period during the construction of the Pequannock, and it is no doubt probable that an additional reservoir, together with the additional raising of Oak Ridge, will be necessary. Either build an additional reservoir at Charlotteburg, in the Pequannock, or obtain additional water from some other source during the next five years, which would be the period estimated for the construction of this reservoir, and the total development of the Pequannock can only be sufficient to supply Newark for the period during which this is being constructed. 20 30

Q. You estimate it would take five years to develop it?

A. Yes; it took three or four years to develop the Cedar Grove Reservoir, and that was a very small development as compared with this. 40

*Minutes of Hearing.*

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Q. Lake Waywanda; some reference has been made to that; was that merely an emergency supply or permanent?

10 A. It could not be considered as a permanent supply under existing conditions or laws by which interstate waters can be taken. My recommendation to the Board to purchase the Wanaque tract was on the basis that here was an existing lake that contained about twenty-five hundred million gallons of water which might be used once and kept in reserve for a possible dry year on the Pequannock; that might happen during the construction of this Wanaque addition, and eventually it might be possible, and, in my judgment, a reasonable supposition, that Federal legislation will be had that will enable the taking of interstate waters, and it was on that recommendation I recommended that the city should own it, but not that it could be made a permanent supply to Newark under existing conditions. It flows into Wanaque River and into New York City, and it has several water powers on it.

20 Q. It is not in the Pequannock Watershed at all?

A. No, sir; in an adjoining watershed.

Q. What is the Kike-out Reservoir site?

30 A. It is a basin on Stone House Brook, west of Butler, which has a tributary to it of about five square miles, and upon which a reservoir could be constructed which would yield a supply of four and one-half to five million gallons per day. It is a branch of the Pequannock, which enters beyond the point of Newark Intake.

Q. Is there a reservoir?

A. For the Butler Water Company.

Q. Privately owned?

A. Yes, sir.

*Minutes of Hearing.*

Q. And the taking of that would involve proceedings similar to this for the development of the Wanaque?

A. Yes. This basin is owned by either the Montclair or Passaic Water Company, and at one time the City of Newark made application to the State Water Supply for the right to take this Kike-out Reservoir site, and it was opposed on that hearing by the company that owned it, on the basis that it was held in reserve for that company for a supply for its customers. 10

Q. How large a supply could be developed from that?

A. Four and one-half to five miles.

Q. That would be a mere temporary expedient on the part of Newark to develop that?

A. Yes; it would only be good for about three years. 20

Q. Are you familiar with the water situation in Paterson?

A. Yes, sir.

Q. What is the Paterson consumption?

A. About ten million gallons per day.

Q. Where do they obtain that supply?

A. From the Passaic Water Company from the plant at Little Falls, generally called the East Jersey plant. 30

Q. They have no municipal water development?

A. No.

Q. Do you know anything about the increase in the use of water in Paterson in five years?

A. The increase has not been so great as here; the increase has been about one-third of a million gallons per day.

Q. For a recent year; the consumption some five or six years ago is higher than it is to-day, so that its consumption has practically stood still for about 40

*Minutes of Hearing.*

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five years. I mean from the Little Falls plant. This was occasioned principally by the construction of what is called the Dyers' pipe, a pipe coming from Great Falls, and it is not generally considered in the city consumption, and the draft on that is four to five million gallons.

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*By Mr. Scott.*

Q. Do you mean that there has not been an increase in the consumption by reason of increased population?

A. No, sir; I don't think so; there has been a reduction of waste by introduction of meters. During the last ten years meters have been installed, and Newark has already done that to a large extent, since 1900.

20

Q. As a matter of fact, for more people more water?

A. From now on it will be, but there has been given a period in which its consumption has been stationary, but from now on the average will be eight to ten million gallons per day.

Q. And the population is increasing right straight along?

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A. Yes; I know that the growth of population in this whole metropolitan district of New Jersey is between  $3\frac{1}{2}$  to 4 per cent. additional per year, and it doubles in twenty-three to twenty-five years; and the increased water consumption in the City of Newark has more than doubled in the last twenty-five years. In 1891-2, when the Pequannock supply was first introduced, the consumption was from twenty to twenty-two million gallons per day, and the average for the year is now forty-six, so the average water consumption has doubled in the City of Newark for the last twenty-five years, and there

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is no reason why, conditions even being conducive

*Minutes of Hearing.*

of greater use of water, that it would not double in the next twenty-five years; so even this development here is not sufficient for the needs of Paterson and Newark for the next twenty-five years; there will have to be additional water supply provided for these territories in that time.

*By Mr. Minard.*

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Q. Considering the proposed Wanaque development supply, what municipalities, considering them from an engineering standpoint—which would be the beneficiaries of such supply if it were developed?

A. Those in the lower Passaic Valley in West Hudson towns, Bayonne, Jersey City and Hoboken, some of the lower territory of the Hackensack Water Company and Elizabeth.

20

*By Mr. Scott.*

Q. How about Paterson and Passaic?

A. All of those Passaic Valley towns—there are about forty of them—Paterson, Passaic, Montclair, Glen Ridge, Nutley, the five Oranges, Newark and West Hudson towns, Kearny, Arlington, Harrison, East Newark, Bayonne, Jersey City, Hoboken—and there are a lot of other little towns around Paterson, like Prospect Heights and the smaller municipalities in that section.

30

Q. Did any of these towns which you have just referred to have anything to do with the preliminary preparation of the plans which you have offered in evidence here?

A. It did, and paid for the cost of this, and there has been considered in this case the proposed development of 1911, which shows the towns which then contributed, and also the details of cost, in-

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*Minutes of Hearing.*

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cluding the Cities of Newark, Paterson, Elizabeth, Town of Montclair, City of East Orange, Borough of Fairfield, Borough of Glen Ridge and Town of Nutley, and the area of this development as then proposed without the filtration was approximately six million dollars, or \$5,862,000.

10 Q. Now, is it your understanding that under the present legislation any of these towns which you have been referring to may, by proper application, participate in this development at any time prior to the water under this development having been used?

A. It is that they could be made a part of the contract.

20 Q. Your understanding is that the present application of the City of Newark and Paterson does not foreclose the right of other municipalities to join in this project and obtain water from this source?

A. The plans now being worked out are developed on that basis, to obtain a supply for these other municipalities, as well as Paterson and Newark. The law provides they can come in at any time.

30 Q. Do you know from your relations with some of these other towns whether any of them are contemplating such action?

A. Yes; I am informed that Passaic desires to join ultimately in the development of the Wanaque, and Harrison has already voted by referendum passed on joining this project, and East Orange is considering that they will be able to get their additional water supply from this source. Irvington has already asked the City of Newark to give them a supply pending a development of the Wanaque, and, incidentally, I might say the Board  
40 of Street and Water Commissioners have declined

*Minutes of Hearing.*

to furnish water to that company, although their needs are about a million and a half, as their supply is so precarious that they cannot guarantee to supply Irvington.

Q. Are you familiar with the various supplies of these different municipalities?

A. About.

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Q. And of the margin that these several municipalities are furnished?

A. Yes; reasonably so.

Q. And the additional available capacity?

A. Yes; the present development for the supply of Irvington and Summit and these territories is nearly reached. There is a possibility of increasing those supplies by additional wells, but East Orange now pumps from the Canoe Brook, and it has nearly reached its capacity of yield, and, in fact, the limit is so nearly reached that it is only by the introduction of meters and the reduction of waste that they are enabled to continue the supply. West Orange is another community that has not been definitely mentioned, and they are in the same situation, and have applied to the State Water Commission, and also inquired as to the conditions under which they might join this Wanaque development.

20

Q. From your knowledge of the amount of additional available capacity in the different municipalities, how long do you say it would take before they would need the development of further source of supply?

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A. Practically all will need additional waters during five years. They must make some arrangements within at least three years for additional supply.

Q. At the present time the City of Newark is supplying Belleville with its water?

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*Minutes of Hearing.*

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A. Yes; and a small portion of Lyons Farms; those two towns require less than one-half a million gallons per day.

10 Q. This Wanaque Watershed, covering eighty square miles and supplying fifty to fifty-five million gallons, how does that compare with any one of the watersheds of New Jersey, or all of them together, with the size of area or amount of water?

A. This is the most available development on the Passaic, and practically in this whole territory, and it is less in drainage area than the portion of the Rockaway tributary to the Jersey City development. They have 120 square miles of drainage area, and it compares quite favorably with the Pequannock.

Q. In what respect?

20 A. In the quality of its water and size of drainage area and the relative proportion of storage that can be obtained from this drainage area, and more particularly its location is desirable and an advantage to these municipalities because of the height at which this reservoir is located, which gives a gravity supply to a large portion of the territory.

Q. Then if developed it would give the largest and best supply we have in northern New Jersey?

30 A. It would not be the largest, but the best, and at present the most feasible; there is a possibility of development on the Passaic or on the Pompton River.

Q. But I mean of those already developed?

A. They would be larger than this, but not of the same quality.

Q. But which have not yet been developed?

40 A. I have just described that, I believe; it would be less drainage area than the Jersey City development; it would be the best present available source of water service on the Passaic.

*Minutes of Hearing.*

*By Mr. Frazer.*

Q. Referring to the Wanaque, would the proposed development seriously interfere with some surface waters in that section?

A. It will not.

Q. Would it interfere in any degree with them?

A. It is practically all surface water; there are a few small springs which come up in the basin. 10

Q. Would they not flow in the same way they are flowing now?

A. Yes, sir.

Q. So you would say that this development would not interfere with sub-surface waters?

A. It does not take sub-surface waters in the ordinary meaning of that word; in other words, it is not an underground supply in any sense.

Q. In other words, it is not like a driven-well system? 20

A. No, sir; purely a storage-reservoir supply.

Q. What is the flow of the Wanaque River at the present time?

A. At what point?

Q. What is the average flow?

A. The flow is quite uniform; it varies from fifteen to twenty million gallons per day during the summer time, I would say.

Q. You were telling me about the amount of water in the Wanaque. 30

A. The flow is quite constant, even in the summer time, due to the draft in Greenwood Lake, which was taken to supply the canal, about fifteen to twenty million gallons per day.

Q. What is it in the lowest season; about fifteen?

A. Yes, sir; it depends upon storage.

Q. Would this proposed development seriously lessen the flow in the Pequannock River? 40

*Minutes of Hearing.*

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A. No, sir; it will not.

Q. It will not have any effect on it in the low season?

10 A. The construction of the dam is to allow that quantity to pass the reservoir all of the time, and we are not counting the drainage area of Greenwood Lake as available in estimating the capacity or use of this water from this reservoir; also, in passing that, water power might be developed so that this fall would be utilized.

Q. Referring to the statement made by Mr. Hewitt in relation to the development of water power on his properties, what is the relative amount of fall between Greenwood Lake and the Ford Brook and between the Ford Brook and this development?

20 A. Some 320 feet from Greenwood Lake down to what is called Ford's Pond and the total to what is spoken of in the reservoir by them is about thirty feet.

Q. So it would be something like less than one-tenth of the whole fall would be interfered with?

A. Yes, sir.

30 I have discussed this project with Mr. Erskine Hewitt and their contemplated development for the use of the mines, which I understood him was to take the water from Greenwood Lake down by tunnel or pipe down to about the head of this reservoir, so that the economic and efficient development of water power at Wanaque would not be seriously interfered with by the construction of the reservoir; it would only affect it in the proportion of taking off that part of the fall, but in order to get the benefit of that additional fifty feet of fall the pipe line or water-power development would have to extend about two miles; in other words,  
40 this portion taken off by the reservoir is the flat part of the fall.

*Minutes of Hearing.*

Q. Then there is a possibility that they would not develop their fall any further above?

A. Yes, sir.

Q. What would be the percentage of the total flow of the Wanaque River to the total flow of the Passaic?

A. It would be about one-tenth—about 10 per cent. of the Passaic above Great Falls. 10

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GEORGE F. WRIGHT called as a witness.

*By Mr. Frazer.*

Q. You are one of the members of the North Jersey District Water Supply Commission?

A. Yes, sir. 20

Q. When you were a member of that former Board was there any application made?

A. Yes; by the City of Newark.

Q. That application was rejected?

A. Yes, sir.

Q. What was the ground of that objection?

A. On the ground that it would not be fair for the City of Newark to pre-empt that watershed for its own benefit; it was practically the only available watershed left in North Jersey and should be left to all of the municipalities. 30

Q. Your understanding of the present application made by your Board is an application to bring about the condition which the former Board thought a fair way of developing?

A. Yes, sir; it is.

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Mr. Frazer: In the first place, I feel that there is no necessity for us to show the due organization 40

*Minutes of Hearing.*

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of the District Board, that it is organized under a public act, of which this Commission may take judicial notice. The fact that application was made by that Board and recognized by the existing Board we will not have to make proof.

10 As I stated before, I would like to have on the record, as an introductory rather than a concluding remark, that the only matters before your Board are the matters set up in the Act of 1907 or 1910; in each of these are three distinct acts of inquiry open to your Board; the two first are identical in each of the acts and in the third there is a slight discrepancy in each act.

20 We feel that we can prove that there is a public necessity in this action of the State for the development of an additional water supply; we will show that the limit of the present available water source or supply has been almost reached in a large number of municipalities here, and in the course of a few years will be reached and passed, and good judgment necessitates the development now, before that point is reached, in order that the municipalities will not be embarrassed by lack of water when the supply is exhausted. We feel that we can say under the present District Supply Act the very plan of it is such that a development of  
30 the kind here proposed will not interfere with the right of other municipalities, as those municipalities may join with the petitioning municipalities prior to the exhaustion of the other supplies, and come in on even terms with these applicants. We feel we can show that the plans are such as to take care of the dry-season flow of the Wanaque River, so that that flow will not be seriously interfered with, and any slight interference will not be such as to injure unduly public or private interests, in  
40 the language of the statute, and, in the fourth

*Minutes of Hearing.*

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place, the development itself being a surface-water development, does not involve sub-surface water so as not to interfere with private or public interest. That is what we hope to prove.

Mr. Scott: It seems to me, as Mr. Frazer has so well said, the intention of your body is to ascertain whether these jurisdictional acts have been approved. We, of course, have joined in an application to the North Jersey District Water Supply Commission to have this Wanaque Watershed developed, as has been stated here. We get a supply from the North Jersey, and may get it indefinitely, but we have joined with Newark in making this application because we foresee when it will not be a very long time when it will be necessary for us to get a water supply from that watershed, and we anticipate, as has been testified to here, that it will not only be ample but a much purer water supply; but if you gentlemen will pardon me for making a suggestion as to the private interests being concerned, it says except in the dry season, which will affect public or private interests; that is the wording of the statute. And in the fourth point by Mr. Frazer, about surface waters, as to whether the taking of them will affect public or private interests, so it seems to me that private interests should be considered from only those standpoints. If you open the door wide to private interests, to determine their interests, there will never be any end to this inquiry, but I think the jurisdictional facts have been proved to your satisfaction. If you open the door wide to put in evidence as to the extent of private interests and the lessening of the horse-power of their waters generally, it seems to me you are going outside of your function as required by the statute and opening the door so wide that it will only result in confusion.

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*Minutes of Hearing.*

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Mr. : You think the Board has the privilege of using the word unduly. There should be great liberality in construing the word unduly.

10 Mr. Frazer: I think the duty of the Board is to weigh the interests to private interests and the benefit to the public and to determine whether the benefit to the public is so great and the conditions so necessary to be carried out that the comparatively trivial private interests must go by the board. That is what unduly means.

I will ask Mr. Sherrerd will this proposed development have any effect upon the sanitary conditions?

Mr. Sherrerd: A beneficial effect, because it is part of the plan that a sewer is built around this reservoir.

20 Mr. Frazer: So from your knowledge you know it will be a benefit rather than a detriment?

Mr. Sherrerd: Yes; and it is certainly true that this is impounding flood waters, and it would be in the nature of a regulation of the stream, and an improvement to local conditions, and it is possible that if these other municipalities which are now aiding the acquisition of the East Jersey plant; that the water would be allowed to go down the stream and pump it down and out at Little Falls; 30 the whole project is one that, as an engineer having had to do with these matters some thirty years, that conservation is the keynote of it, that so much water flows on the average, about forty-eight inches of rainfall, and that water must be conserved in some way for the people, and the population is increasing and the water supply is not increasing, and unless these waters are furnished by the impounding and conserving of flood waters, we are coming to a bad state of affairs in this congested 40 State of New Jersey, and even considering the

*Minutes of Hearing.*

Little Falls plant at the low flow of the river is about sixty million gallons and the total amount taken out is some thirty million gallons, and if the same municipalities are continuously supplied, in twenty-five years the whole flow of the river has to be taken. Now, where will the water come from? There has to be storage on the upper section of the river, and only by this development of storage reservoirs can the situation be met, and on the whole this is the most advantageous and the most economical of the present available basins in the Passaic River. 10

The Chairman: In view of the stress you have laid upon the duty of our Commission to view the public benefit, how much weight ought we to give that in constructing a new water-storage system instead of further developing an old one? 20

You will presumably keep back or prevent development over a very large area in addition to what you have already devastated; in other words, the Pequannock system has been swept naked of farms, as I understand it; if you take the Wanaque system you will have to do presumably the same thing and take for the area of actual development a very large territory.

Mr. Sherrerd: That does not follow, because Newark has seen fit to purchase these farms and is turning all that part into what is now a public park, and plans for this development do not demand the acquisition of farm land; it is predicated on the construction of an intercepting sewer, which will in a very sanitary way provide for the development of this territory as a villa site. It is not contemplated to treat Wanaque in the same way as Newark has treated Pequannock. Conditions are rather different. Newark has offered to the people of New Foundland, which was the largest village in 30 40

*Minutes of Hearing.*

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10 the Pequannock Watershed, to construct a sewer system and water supply for that town, the compulsory part of that being that the city should go in and connect the outhouses with sewers, and there was outside opposition, particularly the ones who operate the hotels, to Newark having the right to do this, although the city offered to do it at its own expense, and as a result of that opposition the Board of Street and Water Commissioners concluded that if these people did not want to assist in obtaining a purer water supply, that it was better to use the money that it had proposed to expend on the water supply for the purchase of property, and that is what changed the policy of the Newark Board in this respect in the Wanaque; and in the discussion of these matters with Mr. 20 Erskine Hewitt, and who expressed himself to me and Mr. Townley in conference, that their opposition was not one of wishing to stop the development, but only that the taking of their property and payment for their property should be on the basis of what they had in mind to do with those properties rather than just the actual value of those properties; that they had in mind the continuation of the development of building sites around and above this proposed location like they have at Greenwood Glens, and unless there was 30 some provision for taking care of the sewage of these territories, that the development of the water supply might affect the development of these villa sites, and I said if the Commission furnishes a sewer which might be utilized around this reservoir, would that have a bearing upon what price should be paid for his land, and they said it would; that their position was based upon their company's interest rather than one of saying that they were 40 opposed to the construction of the reservoir and taking of their lands.

*Minutes of Hearing.*  
*Approval of Application.*

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Mr. Miller, of Passaic: Passaic joins in this application, and considers that the public necessity requires that this development should be made possible at the hands of the North Jersey Commission.

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**Approval of Application.**

APPROVAL OF APPLICATION OF THE  
NORTH JERSEY DISTRICT WATER SUPPLY COMMISSION  
FOR A WATER SUPPLY FOR THE CITY OF NEWARK,  
THE CITY OF PATERSON, ET AL.

Approved December 19, 1916.

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The North Jersey District Water Supply Commission having on the ninth day of October, 1916, filed with the Board of Conservation and Development a petition in language following:

“Petition of the North Jersey District Water Supply Commission to the Department of Conservation and Development, under Chapter 71 of the Laws of 1916, for the consent, on behalf of the Mayor and Common Council of the City of Newark, the City of Paterson, *et al.*, of said Department to the diversion of waters from the Wanaque River for a water supply for said municipalities, and other municipalities which may join in the proposed development of a water supply from said river, all in accordance with, and as provided for under, statutes of this State.

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WHEREAS, The North Jersey District Water Supply Commission has received requests by

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*Approval of Application.*

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10 resolutions of the boards having charge of the water supplies of the municipalities known respectively as the Mayor and Common Council of the City of Newark and the City of Paterson, in accordance with Chapter 71 of the Laws of 1916, asking the North Jersey District Water Supply Commission to prepare preliminary estimates of the cost to said municipalities for water supplies from the Wanaque River, by the construction of a storage reservoir upon said river at or near Midvale, approximately as shown on the accompanying map;

20 AND WHEREAS, Said municipalities have requested the North Jersey District Water Supply Commission to obtain the consent of the State Water Supply Commission, or its successor, the Department of Conservation and Development, to the diversion of waters for such water supplies, in accordance with the statutes of the State:

30 THEREFORE BE IT RESOLVED, That the North Jersey District Water Supply Commission does hereby make application to the Department of Conservation and Development for the consent of the State to the diversion of waters from a proposed development of a water supply on the Wanaque River, and does hereby request said Department to hold a public hearing on such application as required by the statutes of the State, and more particularly as required by Section 6 of Chapter 71 of the Laws of 1916; and does request said Department to fix a time and place for said public hearing and give notice of such hearing by publication by one insertion in at least one news-  
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*Approval of Application.*

paper printed and published in each of the counties lying within the North Jersey Water Supply District, at least fifteen days prior to said hearing, at which hearing all persons or municipalities affected by the proposed plans may be heard.

The plans under consideration provide for the development of a general water supply for the municipalities in the Passaic Valley which may desire to join in the contemplated conservation project. Such plans would provide for a water supply of at least fifty million gallons of water per day. In the case of Newark the application is for an additional supply of not less than ten million gallons of water per day, and in the case of Paterson for a new water supply of at least ten million gallons of water per day. Both municipalities have agreed to bear their proportional cost of the expense of the preliminary investigation, and in the event of entering into a contract with the North Jersey District Water Supply Commission for the construction of said reservoir, whether constructed jointly or by only one of the municipalities parties to this petition, such water-supply development will be available for other municipalities adjacent thereto which can feasibly be supplied therefrom who may signify their intention to join with either or both of the parties to this petition, upon the basis of an equitable distribution of the cost of the water supply so to be obtained;

AND BE IT FURTHER RESOLVED, That a copy of this preamble and resolution, accompanied by a section of the state map upon which the proposed reservoir is outlined, shall be forwarded to the Department of Conservation and Development, as constituting the application

*Approval of Application.*

10 for the consent of the State to the diversion of waters from said proposed development, and which said development or said consent shall be understood to be for a general scheme of development of a water supply under the supervision of the North Jersey District Water Supply Commission from the said Wanaque River, at any selected location for said reservoir on said river above the town of Midvale.

NORTH JERSEY DISTRICT WATER  
SUPPLY COMMISSION,

By

Laurent J. Tonnele,  
Chairman.

20 Nathan H. Pendergast,  
Secretary."

And at the time of filing said petition also having filed a map showing the approximate location of the proposed reservoir;

30 And the Board of Conservation and Development having given notice that it would grant a public hearing on such application, to be held in the City Hall, Newark, N. J., on Monday, November 13, 1916, at which time and place all persons and municipalities affected by the proposed plans might be heard for or against the approval of the application, which said notice bore date of October 9, 1916, and was published as required by statute;

40 And the Board of Conservation and Development at such public hearing having heard all who presented themselves and desired to be heard, and additional testimony having been taken and reported by a Committee of the Board, and the Board

*Approval of Application.*

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having considered the matters and things set forth in the petition, the evidence presented and the representations made at such hearings, does on this nineteenth day of December, 1916, hereby decide that the plans proposed by the said North Jersey District Water Supply Commission are justified by public necessity and reasonably anticipated public use; that they will not interfere unduly with the opportunity of other municipalities to obtain a water supply by the taking of water necessary for their use, and that a reduction of the dry-season flow of any stream will not be caused to an amount likely to produce unsanitary conditions or otherwise unduly injure public or private interests; and the Board does approve the application of the North Jersey District Water Supply Commission and hereby consents to the diversion of water from the Wanaque River as proposed therein, subject to the following terms and conditions:

1. The North Jersey District Water Supply Commission shall pay or cause to be paid to the State on behalf of each of the municipalities supplied with water under this approval such annual charge as is now made or may be hereafter authorized by law.
2. This approval shall not become operative unless said Commission shall have filed with this Board within 90 days from date hereof its written agreement accepting the terms and conditions hereby imposed.
3. The North Jersey District Water Supply Commission shall in good faith begin the construction of the storage reservoir mentioned in its application within one year from the date of this approval and shall complete the same within five years.

*Approval of Application.*

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4. The maximum diversion from the Wanaque River authorized by this approval is an average of 50,000,000 gallons per diem for any period of thirty consecutive days.

10 5. The dry-season flow of the Wanaque River below the dam must at all times be maintained at a minimum of 12,000,000 gallons per diem.

6. This approval is given subject to the vested rights of all persons, corporations, or municipalities affected by the proposed plan.

7. In the event that any of the conditions herein imposed are violated and such violation shall be established to the satisfaction of this Board, this assent shall thereby be abrogated.

20 IN TESTIMONY WHEREOF, we, a majority of the members of the Board of Conservation and Development, do hereto set our hands and cause the official seal of the Board to be affixed hereto and attested by its Secretary.

Dated, Trenton, New Jersey.

WALTER J. BUZBY,  
President.

30

(Seal) EDWARD S. SAVAGE,  
SIMON P. NORTHRUP,  
STEPHEN PFEIL,  
HENRY CROFUT WHITE,  
Members of the Board of Conservation  
and Development.

Attest:

HENRY B. KUMMEL,  
Secretary.

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*Approval of Application.*

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This is to certify that the foregoing is a compared and true copy of the approval by the Board of Conservation and Development of the application of the North Jersey District Water Supply Commission as set forth therein.

Jan. 23/17.

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HENRY B. KUMMEL,  
Secretary, as Acting Director.

(Seal)

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**Reasons.**

## NEW JERSEY SUPREME COURT.

10	<p style="text-align: center;">THE SOCIETY FOR ESTABLISHING USEFUL MANUFACTURES, Prosecutor,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">BOARD OF CONSERVATION AND DE- VELOPMENT, and others, Defendants.</p>	}	<p>On Certiorari. Reasons.</p>
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20 The prosecutor files the following reasons upon which it will rely for the reversal or nullification of the so-called approval or consent by the Board of Conservation and Development to the applica-

30 1. Because the defendant, The Board of Conservation and Development, had no power to impose conditions upon its approval of the said application of the said North Jersey District Water Supply Commission.

40 2. Because Chapter 71 of the Laws of 1916, being the statute under which said proceedings are taken, and to be taken, does not require or authorize the State Water Supply Commission, or its successor, The Board of Conservation and Development, to give approval of plans, but only to consent to the diversion of water for such water supply, and The Board of Conservation and Development in at-

*Reasons.*

tempting to authorize the plans proposed by the said North Jersey District Water Supply Commission, has acted *ultra vires*.

3. Because the defects above pointed out, in the so-called consent of The Board of Conservation and Development, would render any issue of bonds by the municipalities for the purpose of supplying funds to carry out said plan, unmarketable. 10

4. Because the validity of any bonds issued by said municipalities for the purpose of carrying out said plan, would depend upon the consent of the Board of Conservation and Development to said application of the North Jersey District Water Supply Commission first had and obtained, but inasmuch as said consent is predicated upon the performance of certain conditions, the violation of said conditions would necessarily invalidate bonds issued by the municipalities upon such conditional consent. 20

\* \* \* \* \*

14. Because said proceedings are in divers other respects irregular, illegal, unjust and oppressive to the prosecutor.

HUMPHREYS & SUMNER, 30  
Attorneys for Prosecutor.

(Reasons 5 to 13, inclusive, were not argued before the Supreme Court but were abandoned, and are therefore omitted here.)

**Opinion.**

(Filed September 14, 1917.)

## NEW JERSEY SUPREME COURT.

JUNE TERM, 1917.

10 THE SOCIETY FOR ESTABLISHING  
USEFUL MANUFACTURES,  
Prosecutor,

VS.

BOARD OF CONSERVATION AND DE-  
VELOPMENT, NORTH JERSEY DIS-  
TRICT WATER SUPPLY COM-  
PANY, *et als.*,

Defendants.

On Certiorari.

20

Argued June 6th, 1917; decided September 14th,  
1917.

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1. Upon an application by the District Board of Water Supply Commissioners, under the act of 1916, p. 129; to the Board of Conservation and Development, created by the act of 1915, p. 426; for its approval and consent to the diversion of water for an additional water supply to the Cities of Newark and Paterson; the Board of Conservation and Development has power to attach reasonable terms and conditions to its approval and consent, which are germane to the subject matter.

2. For such terms and conditions in this case, see the opinion.

Before Justices SWAYZE, BERGER and BLACK.

For Prosecutor: Messrs. Humphreys & Sumner,  
Gilbert Collins, Esq.

40 For the State: John W. Wescott, Attorney-General.

*Opinion.*

For City of Newark: Harry Kalisch, Esq.  
 For City of Paterson: Francis Scott, Esq.  
 For North Jersey District Water Supply Commission: Spaulding Frazer, Esq.

The opinion of the Court was delivered by  
 BLACK, J.:

10

Approval of the application of the North Jersey District Water Supply Commission and a consent to the diversion of water from the Wanaque River, as proposed therein, for an additional water supply for the Cities of Newark and Paterson, was given by the Board of Conservation and Development on the 19th day of December, 1916. This approval was made under a petition filed by the North Jersey District Water Supply Commission on the 9th day of October, 1916.

20

The Board of Conservation and Development was created by an act of the legislature approved April 8, 1915, P. L. 1915, p. 426. The certiorari was issued in this case to test the legality of such approval and consent.

The approval and consent was given subject to the following terms and conditions:

1. The North Jersey District Water Supply Commission shall pay or cause to be paid to the State on behalf of each of the municipalities supplied with water under this approval such annual charge as is now made or may be hereafter authorized by law.

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2. This approval shall not become operative unless said Commission shall have filed with this Board within 90 days from date hereof its written agreement accepting the terms and conditions hereby imposed.

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*Opinion.*

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3. The North Jersey District Water Supply Commission shall in good faith begin the construction of the storage reservoir mentioned in its application within one year from the date of this approval and shall complete the same within five years.

10 4. The maximum diversion from the Wanaque River authorized by this approval is an average of 50,000,000 gallons per diem for any period of thirty consecutive days.

5. The dry-season flow of the Wanaque River below the dam must at all times be maintained at a minimum of 12,000,000 gallons per diem.

20 6. This approval is given subject to the vested rights of all persons, corporations, or municipalities affected by the proposed plan.

7. In the event that any of the conditions herein imposed are violated and such violation shall be established to the satisfaction of this Board, this assent shall thereby be abrogated.

The prosecutor has valuable water rights in the Passaic River, of which the Wanaque River is a tributary.

30 The ground of attack is, that under Section 6 of the act of 1916, p. 131, the jurisdiction of the Board of Conservation and Development is confined to giving or withholding its consent to the proposed diversion, and to nothing else; in other words, the terms and conditions as set forth above on which the approval and consent were given, renders it illegal; a correct solution of this question involves, of course, a critical examination of the statutes under which these two boards were created, a short summary or history of such legislation is as follows:

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*Opinion.*

A State Water Supply Commission was created by an act of the legislature approved June 17, 1907, P. L. 1907, p. 633; among other things, it provides for the approval of plans for municipal corporations obtaining new or an additional source of water supply. It may by that act "either approve such application, reject it entirely, or approve the same subject to such reasonable terms and conditions as the commission may prescribe." Section 3, this act, was referred to in *Mundy v. Fountain*, 76 *N. J. L.*, 701; by the act approved April 8, 1915, P. L. 1915, p. 426, the Board of Conservation and Development, the defendant in this suit, was created as the successor to the State Water Supply Commission, repealing all acts inconsistent therewith; Section 16, but "shall succeed to and exercise all the rights and powers and perform all the duties now exercised and performed or conferred and charged upon the State Water Supply Commission"; Section 5, "The Board of Conservation and Development shall have full control and direction of all State conservation and development projects and of all work in any way relating thereto, except such work as is conferred upon other boards, not included within the provisions of this act." Section 7, by the act approved March 16, 1916, P. L. 1916, p. 128, the State was divided into two water supply districts, to be known respectively as the North Jersey Water Supply District and the South Jersey Water Supply District; the act approved March 16, 1916, P. L. 1916, p. 129, provides for the appointment of district boards, as provided and authorized by the previous act and defining their powers. It was under this act that the Commissioners of the North Jersey Water Supply District petitioned for the consent which is the disputed point in this litigation; Section 6, which pro-

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*Opinion.*

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vides "upon the filing of such petition, the said District Water Supply Commission, after obtaining the consent of the State Water Supply Commission, or its successor, to the diversion of waters for such water supply," shall proceed to formulate plans, &c. The argument is, this section provides for a bare consent and nothing more. But this  
10 ignores the legislation and the power granted in that legislation to the Board of Conservation and Development above cited. We think it is too plain for argument that under this legislation the Board of Conservation and Development had not only implied but express power to attach to its approval and consent the terms and conditions above set forth, as shown in the record. In addition to what  
20 seems to us to be the clear expressed intention of the legislature, these terms and conditions are all strictly germane to the subject matter that was then before the board for action; they are necessary incidents to make effective, if not efficient, the approval and consent of the Board. The construction contended for by the prosecutor is too narrow and artificial; it would strip such approval and consent of its vitality, and, as we think, is in direct opposition to the expressed intention of the legislature, viz.: that the Board of Conservation  
30 and Development had the power to impose these terms as conditions precedent to its approval and consent. The only other question is whether such terms and conditions imposed were reasonable. We think there is nothing unreasonable in any of them. There is nothing else mooted in the record which calls for discussion.

The certiorari in this case is dismissed, with costs.

**Order of Dismissal.**

NEW JERSEY SUPREME COURT.

JUNE TERM, 1917.

THE SOCIETY FOR ESTABLISHING  
USEFUL MANUFACTURES,  
Prosecutor,

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vs.

BOARD OF CONSERVATION AND DE-  
VELOPMENT, NORTH JERSEY DIS-  
TRICT WATER SUPPLY COM-  
PANY, *et als.*,  
Defendants.

On Certiorari.  
Order of  
Dismissal.

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A writ of certiorari having heretofore been al-  
lowed in the above-entitled cause, and the Court  
having inspected the record returned with the cer-  
tiorari in this cause, the reasons filed by the prose-  
cutor, and having heard argument of counsel and  
having duly considered the same,

It is, on this 17th day of September, 1917,  
ORDERED that the writ heretofore allowed be dis-  
missed, with costs.

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By the Court,

F. J. SWAYZE,

J.

On motion of

SPAULDING FRAZER,

Attorney for North Jersey

District Water Supply Company.

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**Notice of Appeal.**

## NEW JERSEY SUPREME COURT.

THE SOCIETY FOR ESTABLISHING  
USEFUL MANUFACTURES,  
Prosecutor,

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vs.

BOARD OF CONSERVATION AND DE-  
VELOPMENT, NORTH JERSEY DIS-  
TRICT WATER SUPPLY COMMIS-  
SION, THE MAYOR AND COMMON  
COUNCIL OF THE CITY OF NEW-  
ARK AND THE CITY OF PATER-  
SON,

Defendants.

On Certiorari.  
Tested Janu-  
ary 17th, 1917.  
Notice of  
Appeal.

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*To Honorable John W. Wescott, Attorney-General  
of the State of New Jersey, Attorney for Board  
of Conservation and Development; Harry Ka-  
lisch, Esquire, Attorney for Mayor and Com-  
mon Council of the City of Newark; Francis  
Scott, Esquire, Attorney for City of Paterson,  
and Spaulding Frazer, Esquire, Attorney for  
North Jersey District Water Supply Commis-  
sion:*

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Take notice that the prosecutor appeals from the  
whole of the judgment entered in this cause to the  
Court of Errors and Appeals.

HUMPHREYS & SUMNER,  
Attorneys of Prosecutor.

Service of the within notice of appeal ack. this  
19th day of Sept., 1917.

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SPAULDING FRAZER,  
Attorney of North Jersey  
District Water Supply Comm.

HARRY KALISCH,  
Council of the City of Newark.

## NEW JERSEY SUPREME COURT.

THE SOCIETY FOR ESTABLISHING  
USEFUL MANUFACTURES,  
Prosecutor,

vs.

BOARD OF CONSERVATION AND DE-  
VELOPMENT, NORTH JERSEY DIS-  
TRICT WATER SUPPLY COMMIS-  
SION, THE MAYOR AND COMMON  
COUNCIL OF THE CITY OF NEW-  
ARK AND THE CITY OF PATER-  
SON,  
Defendants.

On Certiorari.

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Service of a copy of a notice of appeal by the  
prosecutor from the whole of the judgment entered  
in this cause to the Court of Errors and Appeals  
acknowledged this 19th day of September, 1917.

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JOHN W. WESCOTT,  
Attorney-General of the State of New  
Jersey, Attorney for Board of Con-  
servation and Development.

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## NEW JERSEY SUPREME COURT.

THE SOCIETY FOR ESTABLISHING  
USEFUL MANUFACTURES,  
Prosecutor,

vs.

10 BOARD OF CONSERVATION AND DE-  
VELOPMENT, NORTH JERSEY DIS-  
TRICT WATER SUPPLY COMMISS-  
SION, THE MAYOR AND COMMON  
COUNCIL OF THE CITY OF NEW-  
ARK AND THE CITY OF PATER-  
SON,  
Defendants.

On Certiorari.

20 Service of a copy of notice of appeal by the  
prosecutor from the whole of the judgment entered  
in this cause to the Court of Errors and Appeals  
acknowledged this 19th day of September, 1917.

FRANCIS SCOTT,  
Attorney for City of Paterson.

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## Grounds of Appeal.

### NEW JERSEY COURT OF ERRORS AND APPEALS.

THE SOCIETY FOR ESTABLISHING  
USEFUL MANUFACTURES,  
Prosecutor-Appellant,

vs.

BOARD OF CONSERVATION AND DE-  
VELOPMENT, NORTH JERSEY DIS-  
TRICT WATER SUPPLY COMMIS-  
SION, THE MAYOR AND COMMON  
COUNCIL OF THE CITY OF NEW-  
ARK AND THE CITY OF PATER-  
SON,  
Defendants-Respondents.

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On Appeal  
from Su-  
preme Court.  
On Certiorari.  
Grounds  
of Appeal.

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The appellant states the following grounds of appeal:

The Supreme Court, upon the writ of certiorari in said cause, which removed the approval by the Board of Conservation and Development of the application of the North Jersey District Water Supply Commission and the consent of the Board of Conservation and Development given on December 19th, 1916, to the diversion of water from the Wanaque River as proposed in said application for an additional water supply for the Cities of Newark and Paterson to said court for review, affirmed the same and dismissed said writ; whereas, for one or more of the reasons filed by the appellant-prosecutor in said court for the reversal of said approval and consent, the Supreme Court ought to have reversed, vacated and set aside the same; and the

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*Grounds of Appeal.*

appellant here states and alleges each of said reasons for reversal so as aforesaid filed in the Supreme Court as grounds for appeal in this court.

HUMPHREYS & SUMNER,  
Attorneys for Prosecutor-Appellant.

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Service of a copy of within grounds of appeal acknowledged this 8th day of September, 1917.

JOHN W. WESCOTT,  
Atty.-General, Atty. for Bd. of  
Conservation & Development.

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SPAULDING FRAZER,  
Atty. for North Jersey District  
Water Supply Commission.

HARRY KALISCH,  
Atty. for the Mayor and Common  
Council of the City of Newark.

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FRANCIS SCOTT,  
Atty. for the City of Paterson.

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[12618]

