

ANNUAL REPORT
OF THE
RIPARIAN COMMISSIONERS

OF THE
STATE OF NEW JERSEY,

For the Year 1899.

WITH ACCOMPANYING DOCUMENTS.

TRENTON, N. J.:
MACCRELLISH & QUIGLEY, STATE PRINTERS, OPPOSITE THE POST OFFICE.

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Riparian Commissioners.

Gov. FOSTER M. VOORHEES, *Chairman*.....ELIZABETH, N. J.
WILLARD C. FISK, *Vice-Chairman*.....JERSEY CITY, N. J.
WILLIAM CLOKE.....TRENTON, N. J.
JOHN I. HOLTPATERSON, N. J.
JOHN J. FARRELLNEWARK, N. J.
JOHN C. PAYNE, *Secretary*.....JERSEY CITY, N. J.

New Jersey State Library

Commissioners' Report.

To His Excellency Foster M. Voorhees, Governor of the State of New Jersey

The Riparian Commissioners of the State beg leave to submit their annual report for the year ending October 31st, 1899, as required by law.

The receipts of the Riparian Fund from all sources for the year aggregated \$102,743.52, as shown in detail in the report of the Secretary and Engineer, appended hereto.

The making of grants and other conveyances of riparian property was suspended for part of the year, pending a proposed change of policy on the part of the Commissioners as to the method of disposing of the State's riparian property.

This proposed change contemplated the revocation of the choice heretofore allowed all applicants for riparian lands, of either buying them outright or taking them on annual rental, and thenceforth to make no more conveyances in fee, but to lease them only. The tentative proposition of the Commissioners was to give long-term leases with a renewal, under a regulation by arbitration at the expiration of the term in the lease. Pending the preparation and submission to the Attorney-General of a form of lease embodying these main points, the Board refrained from making any further grants in fee until the matter should be decided, doubt having arisen in the minds of the Commissioners as to the power of the Board to re-value by arbitration, and as it knew of no other way of making such re-valuation, conveyances were held in abeyance until the Attorney-General's opinion was received, for reasons set forth in that opinion, which will be found in full in the report of the Secretary of the Board.

Immediately upon this termination of the matter the suspended applications for grants were taken up and passed, but three days too late to appear in this year's operations.

They aggregated over \$50,000.

The question as to whether or not the Legislature shall clothe the Commissioners with power to provide for a revaluation by arbitration, lies with that body to determine.

At the present prices the riparian lands, still belonging to the State, undisposed of by grant or lease, are worth about \$20,000,000.00, but large portions of these are located on waters where there is likely to be but little demand for them for many years to come. The rapid development of the material interests of the State is creating an increasing demand for riparian property where located on navigable waters, near centres of population and on highways of commerce. It has been the policy of the Commissioners, in disposing of these lands, to take into account the purpose for which they are sought, and to make some concession in price in cases where they are to be used for large productive industries, giving employment to labor and otherwise developing the material interest of the State, increasing its population and taxable resources. Nor does the Board feel that it would be warranted in taking advantage of the necessity of applicants for these lands by exacting extortionate prices. While ever mindful of the high purpose to which the revenues from this purpose are devoted, the Commissioners also aim to foster, and not check and retard, the commercial and industrial development of the State by the adjustments on broad and liberal grounds of these great purposes and interests. The Board desires to turn into the school fund as many dollars as possible, and at the same time to encourage manufacturing and other capital and enterprises to locate in New Jersey.

During the past year several questions have been asked the Board by parties making applications for riparian lands, as to the exact character of the property rights they acquire in these grants. As these questions may perplex the minds of others who contemplate making application for riparian lands, we have thought it well to embody the replies thereto in this report. What are the precise rights secured by the grantee of riparian lands, has been asked. He secures the same right, as far as he actually reclaims or improves it, as the purchaser of any piece of upland really secures. That is to say, as far as he fills in or docks his purchase. The courts have decided that until they are so reclaimed the tidal waters of the State are open to common use for fishing and navigation. With this provision the riparian grant belongs to the grantee, within the metes and bounds of his purchase, as absolutely as his field, his garden, or his city lot, and he

may convey it by sale to another person just as he may convey upland property. The only easement the general public can exercise is to fish or sail or row in the waters covering his riparian purchase until it is reclaimed from such public use by bulk heads or wharves. It is in this respect closely analogous with public use, for hunting and other purposes, of unfenced upland commons. The exercise of such a public easement cannot interfere with the rights of the owner to use his land under water in any way that he sees fit. It cannot be so employed as to deprive him of any right of ownership and use. The absolute character of the grant made by the State follows as a corollary of the State's absolute ownership of these lands under water. There is a vague idea, cherished with singular persistency in some minds, of some shadow of partial ownership in these riparian lands by the owner of the abutting upland. The idea has its root in conveniency of access of such owners to the waters covering these lands. But that adjacency is its only foundation. It gives him no more right to the State's riparian property on one side of his land than it does to the farm or other realty of his neighbor on the other side.

Conveniency of access to property conveys no title. The lands under the tide-waters of the State belong to the whole people of New Jersey. The farmer in Warren county has as much right and interest in them as the oystermen of Cumberland or Ocean. That common ownership finds its equitable adjustment and distribution in the use of the public school fund, derived from the sale or lease of these riparian lands.

The only advantage, aside from adjacency, that the abutting owner has over other residents of the State, in the riparian lands fronting on his property, is the six months' option that he is entitled to under the law for their purchase or lease.

The work of the Commissioners during the past year has been of an unusually arduous character. The Board has held more meetings than in any preceding year, and there have been numerous visits of inspection to different parts of the State by committees. It has been confronted with a large number of difficult and perplexing problems, many of which have been solved to the complete satisfaction of all concerned, and some of which are still under consideration.

Attention is called to the Report of the Engineer of the Board on the Examination of the Boundary Line Monuments of the State, and

8 REPORT OF RIPARIAN COMMISSIONERS.

consideration for the recommendations there made, which meet the approval of the Board, respectfully asked.

Respectfully submitted,

WILLARD C. FISK,
JOHN I. HOLT,
JOHN J. FARRELL,
WILLIAM CLOKE.

Dated October 31, 1899.

Engineer's Report.

To the Riparian Commissioners of the State of New Jersey :

GENTLEMEN—The following tabular statement shows the grants, leases and licenses made by the Riparian Commission during the year ending October 31st, 1899; the names of the grantees or lessees, dates, localities and amounts paid, or secured to be paid, to the State:

GRANTS IN FEE.

Date.	To Whom Made.	Locality.	County.	Amount.
1898.				
Sep. 29.	Abram Jerolamon.....	Shrewsbury River.....	Monmouth,	\$220 16
Oct. 27.	Belle Rider.....	Atlantic Ocean.....	Monmouth,	300 00
	Henry D. Moore.....	Beach Thoroughfare.....	Atlantic	498 00
	M. and J. Bowker.....	Great Egg Harbor Bay..	Cape May..	97 63
Dec. 1.	John Townsend.....	Great Egg Harbor Bay..	Atlantic.....	96 50
	Mary A. Wootton.....	Atlantic Ocean.....	Atlantic.....	1,124 00
	29. The Beesley's Point Fishing Co.....	Great Egg Harbor Bay..	Cape May..	100 00
1899.				
Mar. 2.	Barneget City Improve- ment Co.....	Barneget Inlet.....	Ocean.....	150 00
	30. T. C. E. Blanchard.....	Navesink River.....	Monmouth,	742 00
	Nairn Linoleum Co.....	Passaic River.....	Hudson.....	2,084 40
Apr. 15.	Hoboken Land Im- provement Co.....	Hudson River.....	Hudson.....	2,537 00
May 25.	Bertha Wagner.....	Navesink River.....	Monmouth,	775 58
	John M. Bell.....	Passaic River.....	Bergen.....	101 98
	Ocean City Association..	Atlantic Ocean.....	Cape May..	250 00
	Wilhelmina S. Weigle..	Absecon Inlet.....	Atlantic.....	165 00
June 1.	James B. Reilley.....	Atlantic Ocean..	Atlantic.....	1,125 00
	Conrad Stein.....	Navesink River.....	Monmouth,	465 00
	John M. Bell.....	Passaic River.....	Bergen.....	351 92
	Austen H. McGregor ...	Newark Bay.....	Essex.....	700 00

\$11 884 17

* Rip (9)

LEASES.

Date.	To Whom Made.	Locality.	County.	Amount.
1899.				
Mar. 3.	Edward Zusi.....	Passaic River.....	Essex	\$1,726 00

LICENSES.

Date.	To Whom Made.	Locality.	County.	Amount
1898.				
Dec. 1.	S. B. Norcross.....	Rancocas River.....	Burlington,	\$25 00
29.	Elwood Brand.....	Shark River.....	Monmouth,	60 00
1899.				
Apr. 10.	Asbury Park and Sea Girt Railroad Co.....	Shark River.....	Monmouth,	100 00
	William A. Miller.....	Shrewsbury River.....	Monmouth,	25 00
June 1.	Newark Sand Dredging Co.....	Passaic River.....		500 00
				<u>\$710 00</u>

CONVERSIONS.

Date.	To Whom Made.	Locality.	County.	Amount.
1898.				
Oct. 27.	Helen W. Seamans.....	Shrewsbury River.....	Monmouth,	\$90 00
1899.				
Jan. 26.	William H. Barnet.....	Atlantic Ocean.....	Monmouth,	150 00
	Mayor and Council of Bor- ough of Belmar.....	Atlantic Ocean.....	Monmouth,	150 00
Mar. 2.	John A. Buhler.....	Shark River.....	Monmouth,	150 00
30.	J. H. Martin and J. L. Lynes.....	Hudson River.....	Bergen.....	3,125 00
	J. H. Martin and J. L. Lynes.....	Hudson River.....	Bergen.....	3,148 50
	West Shore and Ontario Terminal Co.....	Hudson River.....	Bergen	<u>35,000 00</u>
	Total.....			\$41,813 50

SUMMARY.

Grants.....	\$11,884 17
Leases.....	1,726 00
Licenses.....	710 00
Conversions.....	41,813 50
Rentals received on Leases.....	46,609 85
	<u>\$102,743 52</u>

ORGANIZATION OF THE BOARD.

The term for which the former Board was appointed expiring, the present Board, appointed by the Governor March 23d, 1899, and confirmed March 24th, 1899, took their seats May 25th, 1899, and, after organization, by the election of Governor Voorhees, Permanent Chairman, and Hon. Willard C. Fisk, Vice-Chairman, re-appointed Mr. George L. Record Counsel of the Board, and John C. Payne Secretary and Engineer.

The place of Hon. Miles Ross, who was compelled by ill health to resign before the end of his term, was filled by the appointment of John J. Farrell, Esquire, of Newark, the remainder of the former Board being re-appointed.

The statement shows an increase of nearly twenty thousand dollars in the amount of business done by the Board over that of the previous year, and the volume of business would have been much greater but for the suspension of the operations of the Board during the period when the policy of changing the form of conveyance was under discussion by the Board. Applications have accumulated during this period amounting to over fifty thousand dollars, and these applications are to be taken up and passed upon by the Board in the regular order of business.

NEW FORM OF CONVEYANCE.

In connection with the matter of the establishment of new enterprises on the shores of the State and the desire of the Board to foster the same, the subject of a new form of conveyance has been discussed by the Board and hearings had, at which parties interested in the more valuable water-front of the State have appeared. The end desired was to secure to the State a more advantageous disposition of the State's lands, and at the same time secure to the intending purchaser such protection as would remove any objection or barrier to the successful development of any commercial enterprise. Upon the submission, however, of the propositions and points involved to the Attorney-General, he decided that under the existing law the Board had no power to make conveyances embodying the features suggested. The opinion is as follows :

TRENTON, N. J., Nov. 1st, 1899.

George L. Record, Esq., Attorney for Riparian Commission of N. J., Jersey City, N. J.:

DEAR SIR—I understand that the Riparian Commission have under consideration a plan for leasing the State's lands under water for terms of years, with a provision that at the expiration of the term the property leased may be re-valued under an agreement, contained in the lease, that the Commission will submit the matter of valuation, if there be any dispute, to the arbitration and ultimate decision of an umpire, and that my opinion is desired by the Committee as to whether such a form of lease as that herein indicated can be lawfully made by the Commission.

I am of the opinion that the Commission had no power to make any lease containing an arbitration feature and thereby agree to submit the question of the value of the State's land to the arbitrament of a third person. The Commissioners are agents of the State. They are not owners of the State's title. Their power is limited and is defined by the statutes. (See Gen. Stat., pages 2785, 2787, 2788, 2790, sec. 21; 2791, sec. 26; 2793, sec. 36; 2795, sec. 41.) These references, I think, clearly indicate that the power to fix and determine the amount of rent or the price to be paid for a grant of lands under water is vested in the Commission as the agents of the State. There is no authority conferred by the Legislature upon the Commissioners to substitute any other agency for the purpose of determining the price of land or its rental value. The Commissioners cannot even agree to accept a capital sum in lieu of annual payments, without the authority of the Legislature acting for the State, which authority was expressly conferred upon the Commissioners by the act of March 17, 1870 (Gen. Stat., p. 2796, sec. 46). I have no doubt whatever that any provision in any lease in contemplation, by which the amount of rent is to be settled by arbitration, cannot lawfully be made by the Riparian Commissioners, nor have I any doubt that the Commissioners may lease the State's land for such term and at such rental as the Commissioners may fix and determine. In making such leases, the interests of the State would seem to require that the terms should be long enough to induce the lessee to make improvements, and not so long but that the State would have an opportunity, in a reasonable time, to avail itself of the increased value of its lands resulting from the improvement of its tenants, and thus increase its income from rents.

Very truly yours,

S. H. GREY,
Attorney-General.

Thereupon the Board passed the following resolution :

WHEREAS, This Board had had under consideration a change in its policy whereby the practice hitherto followed of giving absolute grants and perpetual leases, convertible into grants, should be discontinued, and in the place thereof a plan could be adopted of giving leases for a long or perpetual term, with no provision for conversion into grants, but upon such an annual rental to be fixed from time to time by arbitration between the State and the lessees ;

AND WHEREAS, This Board had been advised by the Attorney-General, and by its counsel, that the Board has no power under the law to adopt and carry out such proposed plan ;

Therefore, Resolved, That the further consideration of the said proposed change in the policy of the Board be postponed until the powers of the Board shall be enlarged by act of the Legislature, and that the Board proceed with the applications and business before it, in accordance with the practice hitherto followed.

The Board proceeded to the consideration of the applications which had accumulated during the discussion of the above subject, and applications, aggregating over \$50,000, were granted.

EXAMINATIONS BY THE BOARD.

The Board, in addition to the examination of the locality of each application as made, has carried on general examinations of the waterfront of the State, and encroachments, wherever found, have been made the subject of investigation by the counsel of the Board, Mr. George L. Record, resulting, generally, in applications being made for the land covered by the encroachment.

RAILROAD CROSSINGS.

The matter of the crossing of navigable streams of the State by railroads bridges, referred to in the last annual report of the Commission, has continued to receive the attention of the Board, and in the case of the bridges crossing Shark river, the former bridge of the trolley company has been replaced by a handsome iron structure, with clear spans of thirty-three feet and channel spans of sixty-six feet.

In the case of the steam railroad bridge over Shark river, the Commission has been met in a fair spirit by the officers of the company, who have agreed to make such changes in the character of the structure, by removing all unused supporting timber and piling and increasing the channel spans, as will result in removing the objections raised.

In the matter of the bridges over Overpeck creek, the West Shore Railroad Company have cleared the spans of unused piling and timber, making the bridge passable for all small craft, and have issued such orders relative to the operations of the draw as will, when carried out, remove all of the objections to this bridge. In the matter of the bridge of the New York, Susquehanna and Western Railroad over the same stream, practically nothing has been done to remedy the evils complained of, and the matter is in the hands of the counsel of the Board for legal action.

MEETINGS OF THE BOARD.

The meetings of the Board during the year have been frequent and much attention has been paid and time spent in the hearing of parties interested in riparian applications, as many questions of interest have arisen in the presentation of such applications; in some cases the locating and establishment of an industry in a locality depending on the action of the Commission, making necessary careful investigation and decision.

STATE BOUNDARY LINE EXAMINATION.

Under the provisions of the act of the Legislature, approved April 4th, 1891, making it the duty of this Commission, in co-operation with persons duly authorized by the adjoining State, to examine, during the year 1893 and every three years thereafter, monuments marking the boundary lines of this State, and to repair and replace the same where necessary at the joint expense of the States, such examination has been made during the past year.

For a detailed description of the monuments marking the boundary line of the State in the waters of Raritan Bay, Arthur Kill Sound, Newark Bay, Kill Von Kull, and the Hudson River, reference is made to the printed reports of the Commissioners appointed under the authority of the Legislature in 1886 and 1888, and as to the northern boundary line of the State, to the report made by the Commission appointed in 1881.

RARITAN BAY.

The monuments marking the boundary line in Raritan bay were found in good condition, excepting as follows:

Morgan No. 2: The Range Flag set in 1890, on the line from Romer Stone Beacon, through the permanent monument in Raritan bay, has disappeared, and as all of the buoys placed in the bay in 1890, on the range between the permanent monument and Romer Stone Beacon, were carried away by the ice during the first winter after they were placed, and as they were never replaced, there has been nothing to mark the boundary-line between the points above

named since 1890. Disputes between the oystermen operating in these waters, as to the location of the boundary-line are of frequent occurrence, and the Engineer of this Board has been in communication and conference with the New York State Engineer with a view of devising some means of marking this boundary-line that will be practical and effective.

A suitable range beacon placed on the shore at Morgan No. 2, would serve for a part of the distance seaward of the permanent monument; but as the greater part of this line runs through the deepest water of the bay, anything of a permanent character to mark the line would be an obstruction and menace to navigation; it is possible that buoys placed on the line at suitable intervals to be set in the spring and taken up in the fall would serve the purpose, and I have this matter now under consideration with the New York State engineer, and respectfully suggest that the conclusion reached be presented to the Legislature for consideration.

ARTHUR KILL, NEWARK BAY AND KILL VON KULL.

The monuments marking the boundary line in these waters were found to be in good condition, excepting as follows:

Monument No. 11, Seawaren.—This monument was near the side of a private driveway, and in the regrading of the property and the widening of the driveway, it became necessary to re-set the monument.

Monument No. 24, at Carteret, has during the erection of some buildings for the Williams & Clark Company, and the grading of the grounds, been covered up, and I would suggest that the monument be re-set.

The glue factory at Elizabethport, which ranged with Monuments Nos. 42 and 45 for the location of point B in the Arthur Kill, has been demolished, and a new point must be established to replace same.

Monument No. 53, on the Staten Island shore, at Livingstone, could not be found, and is probably five feet under ground, as the level of the ground in that vicinity was raised when the borax factory was replaced by the erection of the new electric power-house; this monument will have to be dug up and re-set.

NEW YORK BAY AND HUDSON RIVER.

The locating points on the shores of these waters being mainly church spires, chimneys and permanent buildings, were not included in the examination.

NORTHERN BOUNDARY LINE.

The monuments marking the northern boundary line of the State, between the Hudson river opposite Hastings and the Delaware river at Port Jervis, were found to be in good condition, excepting as follows :

Monument No. 16, or Mile-stone No. 5.—This monument is in a locality where there is no probability of its having been disturbed ; but, after a careful examination, it could not be found.

Monument 44, or Road No. 3, on the New York, Lake Erie and Western Railroad, at Sufferns, N. Y.—This monument is said by the section foreman to be in place, but about two feet under the ballast. No effort was made to uncover it, as it can readily be found by ranging between Monuments 43 and 45, which are near by.

Monument No. 56, or Mile-stone No. 21.—This monument could not be found, but Monument No. 57, about 300 feet from it, was found. There is no doubt that this monument is in place, but is probably covered with leaves and vegetation. It is in the mountains, and, as night was coming on, no further attempt was made to uncover it.

I would respectfully urge upon the Commission the importance of securing an increased appropriation for the next examination of the Boundary Line Monuments of the State. As time passes, property changes owners ; land-marks disappear ; new roads are laid out and old ones are abandoned and obliterated ; persons familiar with the location of the monuments and the surroundings die or move away, and each year the examination becomes more difficult and occupies more time.

I would suggest that an appropriation be asked for sufficient to cover the time necessary to secure such descriptions of surroundings of each monument, and the execution of such sketches as will enable anyone to readily find each monument. Some of these monuments are in obscure and unfrequented sections, and days may easily be consumed

in finding them, even by a person who has been over the line before. I would suggest that the appropriation for the work be doubled at least, in order to accomplish the result suggested.

Respectfully submitted,

JOHN C. PAYNE,

Sec'y and Engineer.

October 31st, 1899.

Financial Statement

Of Amounts Received and Paid by the Riparian Commissioners
for Salaries of Employes and Office Expenses of the
Commission for the Year Ending October 31st, 1899.

1898.		DR.						
Dec.	7.	To amount received from State Treasurer.....						\$479 95
1899.								
Jan.	6.	" " " " " "					456 67	
Feb.	1.	" " " " " "					455 50	
March	11.	" " " " " "					455 98	
April	5.	" " " " " "					453 50	
May	3.	" " " " " "					461 73	
June	1.	" " " " " "					468 50	
July	7.	" " " " " "					468 43	
Aug.	12.	" " " " " "					509 41	
Sep.	14.	" " " " " "					460 38	
Oct.	13.	" " " " " "					252 05	
								\$4,922 10

1899.		CR.						
Oct.	31.	By amount paid for salary of Secretary and Engineer.....						\$2,998 65
		" " " " " " General Counsel						1,375 00
		" " " " " " rent of office.....						366 68
		" " " " " " surveys and maps, stationery and incidental office expenses.....						181 77
								\$4,922 10

JOHN C. PAYNE,
Secretary.

APPENDIX.

Directions for Applicants to the Riparian Commission of the State of New Jersey for the Lands Under Water.

Applicants for lands of the State under the tide-water will observe the following directions :

First. Furnish a description by metes and bounds of the lands owned by the applicant in front of which the lands applied for lie, accompanied by a survey and map of the same made by a competent surveyor, showing the exact frontage of said land on the shore at mean high-water mark, and the names of the owners of the adjoining lands.

Second. State whether the lands under water applied for are now or are hereafter to be used for commercial or other purposes, and if so, what ; whether they have been improved in whole or in part, or are authorized to be improved under any grant or license protected by the provisions of the supplement of the Riparian act of March 31st, 1869 ; also, if any oyster land, fishery or privilege therefor is embraced within the limits of the land under water applied for.

Third. State whether a grant in fee-simple or a lease in perpetuity, with privilege to convert the same into a fee, is desired.

[NOTE.—For a grant in fee-simple, the principal sum is required to be paid. For a lease, a rental at the rate of seven per cent. per annum on the principal sum is payable semi-annually in advance to the State Treasurer.]

Fourth. An abstract of the title to the land owned by the applicant, prepared by a practitioner of the law of this State or by the Clerk of the county in which the land is situated, must be furnished with the application before the same will be considered by the Commissioners.

Blank forms for applications and all further information required will be furnished by John C. Payne, Secretary of the Commission. Office, Jersey City, N. J.