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THE MORRIS CANAL AN ECONOMIC WASTE

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Proposal to Abandon a Waterway That Has Been Use-  
less for Half a Century—Canal Boat Can Haul  
Only Seventy Tons of Coal Across New Jersey in  
Five Days, While Steam Locomotive Hauls Two  
Thousand Tons in Five Hours—Lessee Offers to  
Abandon Operation of Property and Convey to  
State All Rights It May Have to Divert Water  
from Lakes and Streams, Free of Cost

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Statement by Lehigh Valley Railroad Company,  
1911

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## To the Senate and General Assembly of the State of New Jersey.

### Statement by Lehigh Valley Railroad Company.

The recent communication of Mr. Thomas N. McCarter, President of the Public Service Corporation, to the Mayor of Newark, suggesting the use of the bed of the Morris Canal through Newark for a subway for street railway purposes, was a surprise to the Lehigh Valley Railroad Company, Lessee of the Canal.

The publication of Mr. McCarter's communication has led to much extravagant comment, similar to that which appeared six years ago when the report of the Commission, consisting of Ex-Governors Werts, Griggs and Voorhees, which favored and suggested legislation authorizing the abandonment of navigation on the canal, was published,

It is alleged "That the Canal Company controls three-fourths of the potable waters of North Jersey and desires to keep them after abandonment of navigation; that the property at stake is worth more than \$50,000,000; that the water rights at Hopatcong alone are worth more than \$5,000,000, the old Jersey City Tide-water Basin \$20,000,000, etc."

The fact is the entire property and rights of the Canal from the Delaware to the Hudson are valued by the State Board of Assessors at \$3,379,823, which the Company thinks excessive, especially in view of the fact that upon its entire issue of secur-

ities, which are only \$2,747,237.50, not one single dollar of interest or dividends is earned.

In its operation during the last twenty years the gross losses have been \$4,934,409.29, and in the last thirty-four years of its operation not one single dollar has been earned upon the outstanding securities, the contract obligations of which have been kept inviolate at the expense of the Lessee. The expenditure of this sum of money is clearly an economic waste; a waste which the State of New Jersey ought not to permit to continue, as in its final result it injures all and benefits none. Surely it would have been of greater benefit to the citizens of New Jersey to have received some value than to have insisted upon the continuance of so useless a waste.

The water rights which amount to a right to divert a few million gallons a day for eight (8) months a year from the Pompton River, a small amount from the Rockaway, and enough from Lake Hopatcong to keep up the summit level and feed both ways therefrom, and some from the Musconetcong, will all vanish on abandonment of the Canal, and the waters will flow down their ancient channels as they did before the opening of the Canal in 1831. The basin in Jersey City (the only one in which the Canal Company has any interest) and the other lands in Jersey City are valued by the State Assessors at \$400,000. Of the 106 miles of the right of way of the Canal four-fifths will immediately revert to the former owners on abandonment of navigation. All the Canal Company will have left of its original investment of more than \$5,000,000 will be the Jersey City basin, disjointed parts of the right of way which it owns absolutely, dams and lands at Lake Hopatcong and Greenwood Lake, Cranberry Lake and one or two other points, some mules and canal boats

and a few parcels of land not used for Canal purposes. With these it must pay off a bonded debt of \$500,000, satisfy stockholders holding \$2,247,237.50 of stock and scrip, and the claims of the State, to which the Canal, by the terms of the charter, is to go absolutely in 1974.

The old cry is raised that the Railroad Company has ruined the Canal by diverting business from it. The fact is the Railroad Company for nearly thirty years after taking the lease of 1871 deliberately diverted to the Canal from 250,000 to 300,000 tons of coal per year to give it something to do.

The subject is important, and the facts, owing to the lapse of years, are not as clearly before the minds of the people as they should be, although they were made perfectly plain by the Governors' Report in 1905, which shows the desirability of presenting these facts anew in order that many of the mis-statements to which reference is made above, may be corrected and the subject made clear to the people of the State.

The Lehigh Valley Railroad Company believes the public are entitled to the facts, and an opportunity to verify them, and has authorized this statement, desiring to withhold absolutely nothing, and willing to add any information that may be needed for a correct understanding.

It respectfully asks a hearing for the truth from the State authorities, the newspapers and all others legitimately interested. To be reasonably brief, it is necessary to condense, but sources of further information will be indicated. The Legislative Concurrent Resolution of 1903, the report of the Commission of Governors thereunder in 1905 and Statement of Facts laid before them by the Canal Company, the numerous briefs by counsel of special interests along the Canal (such as Jersey City, Newark, Hopatcong, Greenwood

Lake, etc.), and the Bill reported by the Commissioners will give any inquirer all the essential facts.

Those documents are voluminous, and it is with the hope of giving briefly the facts so that all may be informed that this statement is submitted.

#### EARLY HISTORY OF THE CANAL.

The Morris Canal and Banking Company was chartered in 1824 (P. L. 1824, p. 158) to construct a public waterway from the Delaware River (near Easton) to the tidewaters of the Passaic at Newark. The Act recited that the construction of such a Canal would "be of great public benefit and advantage to the people of New Jersey" and "for the encouragement of so great an undertaking as the erection of said Canal and in some measure to induce capitalists and others to subscribe to the same," banking powers were given to the Company for 31 years. The waterway of the Canal was perpetually exempted from taxation and broad powers were given to the Company, which was to provide and keep open a waterway which any person might use for his boats on paying certain tolls, the amount of which the Legislature kept within its own control. It was provided that the State might take the Canal at an appraised value in 1824; and, if that should not be done, the charter should continue "for the further term of fifty years, when it shall cease and the said Canal with its appurtenances become the sole property of this State."

It was a difficult work. Boats had to be lifted 900 feet, to the ridge on which Hopatcong is located, and again let down to the sea level. Many inclined planes and locks were used for this purpose. Shortly before the granting of the charter Anthracite coal had been discovered on the Lehigh River in Pennsylvania and its value was beginning

to be understood. There was no steam railroad on the globe. The Erie Canal was only half built. Other canals were being designed or built in Pennsylvania, Virginia, Massachusetts and Ohio as the best known method of overland freight transportation.

In 1828 the charter was amended allowing the Company to extend the Canal through to Jersey City. The Canal was actually opened for business from the Delaware to the Passaic in 1831, and the extension to Jersey City was opened in 1836. The scheme contemplated that the Canal Company by 31 years' use of special banking powers and by about 138 years' use of canal powers would be able to recoup its capital with profits and to turn the Canal over to the State. The plan was similar to the plan lately adopted by the City of New York in giving a corporation power to build and operate the subway. The Company had a very small income at first; failed in 1841; was reorganized in 1844, and the Canal enlarged and deepened to five feet in 1856. Its total cost was over five million dollars. As enlarged it was designed by the engineers to have a carrying capacity of one million tons per year each way. Its business increased gradually until 1866, in which year it carried 889,220 tons—the greatest amount it ever carried—its gross earnings in that year being \$616,350. Thereafter its tonnage rapidly fell off and its earnings still more rapidly, freight rates having decreased; so that in 1870 its tonnage was 707,572 and its earnings only \$391,549. In 1877 its gross revenues failed to pay operating expenses, and the business has ever since dwindled in tonnage and still more in revenue until the total amount is only nominal. It has never paid cost of operation since 1876.

The reasons for this decline are thus stated in

the report of Governors Werts, Griggs and Voorhees made in 1905:

"The competition by rail appears to have about entirely eliminated the revenue received from the transportation of ores, which was formerly a large and profitable portion of the business of the Canal, and has also practically eliminated the carriage of miscellaneous freight and to have left nothing for the Canal to do, except to carry such coal as may be trans-shipped into its boats at Phillipsburg. \* \* \* Practically of late years, the Canal has done no business of any consequence except the transportation of such coal as the Lehigh Valley Railroad Company has re-shipped from its cars to the boats at Phillipsburg." (Report, pp. 35, 36.)

The Commission adds:

"Ownership of the canal as a canal would be of no value to the State."

The Canal Company's power and duty, as contained in its charter, were to provide a waterway precisely as a toll road is provided, that others might move their vehicles thereon; but not to provide or operate boats, and for a time the Canal Company owned no boats whatever. But no freight boats of any other persons or corporations have offered to go through the Canal for about sixteen years, so that not a ton of freight would move on the Canal to-day but for the fact that the Canal Company, built boats and bought mules and began itself to conduct transportation on the Canal.

#### RUIN OF CANAL BY RAILROAD COMPETITION.

The Canal was never financially successful, except for a few years from about 1852 to about 1866. It paid dividends during that period but some of those were not cash but scrip dividends,

the scrip becoming a debt of the Canal Company which had to be paid by the Lessee long afterwards. The reason is quite plain. While the charter was being passed, George Stephenson was perfecting the invention of a locomotive, and the Stockton & Darlington railroad in England was opened, with steam transportation, nine months after the Canal was chartered. Railroad development thereupon became so rapid that in 1830, a year before the Canal was opened for use, the State of New Jersey had chartered the Camden & Amboy Railroad Company, and thereafter proceeded quickly to charter several others. The Morris & Essex Railroad, paralleling the Canal from end to end, was chartered in 1835, one year before the Canal was opened to Jersey City. Within ten years after the chartering of the Canal the bright expectations with which the charter had been taken began to be disappointed by this new and better method of transportation. The Directors' annual reports show the constantly growing stress of this competition. After steel rails were invented and put in use in the sixties, and the Lackawanna Railroad completed through to tidewater, and the Central Railroad of New Jersey built, freights fell to a point which made navigation on the Canal perfectly hopeless.

When it is remembered that the largest boat on the Canal carries but seventy tons and consists of two sections, which must be separated at twenty-two different inclined planes and pass through more than thirty locks to get over the mountains from the Delaware to the Hudson, and that the journey occupies five days, while a single locomotive will take two thousand tons of coal over the same trip in five hours—the result of such competition is perfectly obvious. Moreover, the Canal Company has to receive and trans-ship the coal at the

Delaware River from cars, and the coal has to be again lifted out of the Canal boats and put into cars and wagons when it reaches tidewater, adding another costly burden. The three railroads directly competing with the Canal—the Central Railroad of New Jersey, the Lackawanna Railroad and the Lehigh Valley Railroad of New Jersey—have each a carrying capacity of not less than ten million tons annually. So low have freights fallen that the tolls on the Canal will scarcely pay the wages of boatmen necessary to conduct the boats through the Canal. The Governors' Commission in their report of 1905 (p. 36) stated that the method of canal transportation, "while ingenious and unique and in its time useful, is at present obsolete and unprofitable. Apparently the Canal cannot be operated either by the Company itself or by its Lessee or by the State without a large annual loss."

#### DESCRIPTION OF THE CANAL.

The Canal from Phillipsburg to Jersey City has a length of about one hundred and two miles and, including the navigable feeder from Mountain View to Pompton, an aggregate length of 106.69 miles. It passes from Phillipsburg through Stanhope, Hopatcong, Dover, Boonton, Paterson, Bloomfield and Newark to Jersey City. The waters feeding it on the west or Delaware side of the divide come from the Musconetcong River and its tributaries and its source, Lake Hopatcong. Lake Hopatcong, being at the summit, also feeds some waters eastward therefrom to the Canal. The easterly or Hudson River side of the Canal is fed also from the Rockaway River at Boonton and the Pompton River at Mountain View. The chief reservoir for the western part of the Canal is Lake Hopatcong, and that for the eastern part of the Canal is Greenwood Lake. Both

of these lakes are expressly mentioned in the charter and supplements thereto, and the Company is given express authority to impound and use their waters. The State of New York by Act 1855 also gave the Canal Company express authority to use the waters of Greenwood Lake so far as they lay in the State of New York, on the making of compensation to the owners of the land flooded.

Under these powers the Canal Company acquired a considerable amount of land at the outlet of Lake Hopatcong, constructed a dam eleven feet high, thereby flooding forty-five acres of its own land and 415 acres of the lands of Riparian owners, acquiring this latter right through condemnation. At the outlet of Greenwood Lake, the Company acquired 668 acres of land, built a dam 16 feet high, which flooded its own land and the lands of others to the extent of about 800 acres, greatly enlarging Greenwood Lake. From Lake Hopatcong water is drawn to the extent necessary to keep up the Canal, the draught usually being from four to seven feet in the summer, and the water passing down through a feeder a mile long to the summit level of the Canal. From Greenwood Lake water is drawn in like manner to about the same extent. It passes down the Wanaque River and Pompton feeder to Mountain View, where it enters the Canal. Formerly, boats coming into the Canal at Phillipsburg came across the Delaware River and could pass up the Lehigh River by the Canal and slack water navigation therein provided by the State of Pennsylvania, but floods destroyed the dams and the Canal along the Lehigh River, and that connection has been entirely cut off for some years.

#### STATE GRANTS TO THE CANAL COMPANY.

By the Act of 1828 the Legislature authorized the Company to continue the Canal "to the waters

of the Hudson River at or near the City of Jersey." The City of Jersey was then what was called the Town of Jersey, and chiefly owned by the Associates of the Jersey Company which the Legislature had incorporated in 1804 and who had laid out old Powles Hook into lots and streets and had taken in a considerable portion of the Communipaw Bay in their map. To them the State had granted (P. L. 1804, p. 367) the privilege of erecting or building docks, wharves, and piers in Hudson's River and the bays thereof so far as necessary for the improvement of their property or the benefit of commerce, and to appropriate the same to their own use. From them the Canal Company bought by Warranty Deeds tracts of land in Communipaw Bay reaching out to the Hudson River front, whereon they constructed the Canal basin now commonly called the "Old Basin", which remains practically as it was constructed seventy-five years ago. It is a plot of about four hundred feet wide on the Hudson River front and about thirteen hundred feet long. It is the terminus of the Canal.

In 1867 (P. L. p. 251) the State granted to the Canal Company what is known as the "Big Basin", immediately to the south of the Old Basin, being a tract of 960 feet wide on the Hudson River with a depth of 1765 feet extending back to Washington Street. The width was reduced by the terms of the grant to 810 feet, the requirement being that a passageway through the grant from east to west should always be kept open at least 150 feet wide. This grant provided for a rental of \$25,000 a year to be paid to the State, which at any time might be commuted on a seven per cent. basis on making one payment of \$357,142. This was an enormous rental, by far the highest price ever inserted in any grant made by the State up to that time. The Canal Company practically made no use of this

land, but paid the rent thereon until 1871, after which the Lessee, the Lehigh Valley Railroad Company, paid the rent. This rent was to continue during the continuance of the charter of the Morris Canal Company, after which the lands granted, with the improvements thereon, should revert to the State on the same terms provided in the original charter.

In 1869 the General Riparian Act was passed, creating a Board of Commissioners with power to lease and sell the State's interest in riparian lands. In 1888 the Lehigh Valley Railroad Company applied to that Board for a grant of the State's reserved right in the Big Basin; and on July 12th, 1889, the Commissioners made a grant in fee simple to that Company for the reserved right in the Big Basin. That Company paid said sum of \$357,142, and the further sum of \$48,000, being \$50 per front foot fixed under the statute by the Commissioners for the reversionary interest of the State, the total payment being \$405,142. The Company also paid to the Canal Company \$500,000, which was immediately applied in part payment of its debts, and the Canal Company deeded its interest in the Basin to the Lehigh Valley Railroad Company. The said sum of \$48,000 was the "present value" in 1889, if computed at 4% compound annually, of \$1,294,320 if paid in 1974, the year when the State was to take the Canal; or if compounded at the rate of 5%, it was the present value of \$2,891,627; or, if compounded at the rate of 6%, was the present value of \$6,411,120.

On this terminal tract and the mud flat to the west of it known as the New Jersey West Line Grant, for which the Railroad Company paid the State \$250,000, the Company proceeded to build the terminal of the Lehigh Valley Railroad Company, which has been used and operated, and taxed

by the State as such, for the past twenty-two years. During the hearing before the Governors in 1903, after this property had been occupied as a terminal railroad yard for nearly fifteen years, the representatives of Jersey City raised the question that the Riparian Commissioners had no power to make the grant of July 12, 1889. The Board of Governors reported that that was a legal question for the courts and not for them.

In April, 1907, the Legislature passed a bill (P. L. p. 96) authorizing the Attorney General to attack the grant in Chancery, which he did in October, 1907. The case was tried at length and argued before Vice-Chancellor Stevens, June, 1910, and is awaiting his decision. The State does not in this attack attempt to disturb the present possession of the Lehigh Valley Railroad Company, but to have it now declared that, on repayment by the State of a fair sum to that Company for its expenditures (or on other equitable terms), the land shall revert to the State in 1974. The Morris Canal and Banking Company appears to have no further interest in any case and is not made a party to the suit, but the State claims that it should ultimately have back this land on terms. The State will be protected by the pending suit, whatever its rights may be; and it seems unnecessary to discuss this Basin of 1867 further in this connection. It has been thus far discussed to correct the misapprehension about it which appears to be very common. The subject has, however, been brought forward by both sides in the efforts made to reach a basis of abandonment of navigation. The State officers, as well as the Railroad Company, recognize the desirability of settling all questions that are in dispute.

## THE LEASE OF 1871 TO THE LEHIGH VALLEY RAILROAD COMPANY.

In 1855 the Legislature had passed an Act allowing the Canal Company to lay rails at Phillipsburg and connect its Canal with the Lehigh Valley Railroad, which was done. In 1871 the Legislature passed an Act authorizing the Canal Company to lease the Canal to any person "perpetually or for a shorter time;" and it was accordingly leased perpetually on May 4th, 1871, to the Lehigh Valley Railroad Company, a Pennsylvania corporation. The Court of Errors and Appeals afterwards approved this lease and held that the Lehigh Valley Railroad Company was a proper corporation to take the lease. *Stewart vs. Lehigh Valley R. Co.*, 9 Vr., 505. The Lessee took over the property in 1871, agreeing to pay a rental amounting to Ten per cent. per Annum on \$1,175,000 of Preferred stock, and Four per cent. per Annum on \$1,025,000 of Common stock.

It should be remembered that at the time the Lehigh Valley Railroad Company made this lease its line terminated at Easton, Pa.; it owned no railroad in the State of New Jersey and did not begin the construction of any until some time in 1872, more than a year after it acquired the lease of the Morris Canal. Its object in making the lease was to afford it protection from and parity with the Central Railroad of New Jersey, which then controlled the route across the State of New Jersey from the Delaware River at Phillipsburg to tidewater. That company, itself largely interested in the transportation of anthracite coal, made it especially difficult for the Lehigh Valley, a Pennsylvania corporation with its railroad terminating in the middle of the Delaware River between Easton and Phillipsburg, to secure fair treatment in the transaction of its business. It was believed

that this lease would act as a regulator and enable the Lehigh Valley to secure equitable treatment from its competitors upon its own business. It soon became apparent, however, that the canal was inadequate, either for the volume of business or for the purpose of controlling competition, especially as at this time came the discovery of steel rails resulting in lower rates of transportation and the concurrent rapid development of railroads. The result was that to protect itself the Lehigh Valley was compelled to construct the Easton & Amboy Railroad from Phillipsburg to Perth Amboy in the State of New Jersey. The construction of that line was begun in 1872 and formally opened for business in 1875. Subsequent to that the road was extended from South Plainfield to tidewater on the Hudson River at Jersey City.

Instead of the object of leasing the canal having been to do away with competition, the reverse was the condition. It was leased for the purpose of creating competition and protection to the lessee. The changed conditions surrounding the business of the country proved this to be an error, and in order to protect its tonnage from competing railroads the Lehigh Valley was compelled to construct its own road to tidewater.

#### WATER RIGHTS OF THE CANAL COMPANY.

By the charter the Company had power to take from the Musconetcong River and Lake Hopatcong and from the Pompton River and from Greenwood Lake and other places the amount necessary for navigation. By the Act authorizing the lease passed in 1871 (P. L. p. 44), it is made lawful for the Lessee

“to use the surplus waters of the canal of said Company, or any of its feeders, not needed for purposes of navigation, in furnishing and

supplying the inhabitants of any city, town or village along the line of said canal or in the vicinity thereof, with a sufficient quantity of pure and wholesome water for manufacturing or domestic or other uses; and to make contracts with the corporate authorities of any such city, town or village, or with individuals, for such supply of water. \* \* \* Provided, that nothing herein contained shall be held to authorize the diversion of the said canal from the purposes of navigation."

Just what was meant by "surplus waters" may be a matter of debate. The subject of water rights in New Jersey was not as well understood in 1871 as it now is; but it was thought that in some way the Canal Company might be authorized to use and sell the superabundance of water which was noticeable in the streams where it was taking water. Probably the scheme could not have been carried out without making compensation to the riparian owners below for this diversion for a new purpose, but this was never brought to a test for the scheme was never carried out. Paterson and Passaic were taking their water from the Passaic River below the Canal Company's intake, as were also Jersey City, Newark and other towns; and the question did not come up for settlement at all until 1888, when Newark, by reason of the pollution of its supply of Passaic water taken at Belleville, determined to go further up stream. It was then thought that the Morris Canal was an important factor in the problem because of this provision of the Act of 1871. In 1888 Newark caused to be passed the General Water Act (P. L. 1888, p. 366), enabling municipalities to contract for a water supply. The Legislature simultaneously passed (P. L. p. 300) an Act authorizing canal companies to abandon navigation on their canals. This was undoubtedly

intended to enable the Morris Canal Company to abandon navigation, the uselessness of the Canal having been already demonstrated; and this Act was passed for the further reason that the Canal Company with its water rights and its right-of-way could assist in solving the problem of getting the water for Newark and other towns. So impressed were the people having to do with water matters of that day with the necessity of obtaining the Morris Canal rights that the Newark contract, which was made September 24, 1889, was made with the Lehigh Valley Railroad Company, Lessee of the Canal, and the East Jersey Water Company, a corporation formed for the purpose of carrying out the contract. The first article in the contract was an assignment by the railroad company to the East Jersey Water Company of so much of the waters as might be necessary to enable it to supply Newark. The East Jersey Water Company proceeded to construct works, but it was soon found that the Canal Company had little or nothing which was really available for the work. An independent right of way was acquired and waters were taken from the Pequannock River in a way which really not at all materially interfered with the canal operation.

The Canal Company's right to divert waters from the streams was doubtless nothing more than a right to divert for canal navigation purposes, and upon the abandonment of the Canal they will flow back into their ancient channels, the Musconetcong, the Rockaway, the Pompton and the Passaic Rivers, and will flow down the same as they flowed in 1831, before the Canal commenced to use them. The mere abandonment of the canal would eliminate all water right questions so far as diversion is concerned.

At Lake Hopatcong and Greenwood Lake a some-

what singular situation arises. The Canal Company owns the dam and a large tract of land at the outlet of Lake Hoptacong in fee simple, and owns a good many acres of the land under the waters of the Lake. It has flowage rights, certainly for canal purposes if not for other purposes, around the shore of the Lake. The owners have built cottages and do not want the dam taken down when the Canal is abandoned, but want it forever kept up so that the water will stand higher. The Canal Company has been accustomed to draw down the Lake about four to six feet each summer, according to the dryness of the season, and the owners prefer to have it so rather than to have the dam torn down and the Lake permanently drawn down to its old level.

At Greenwood Lake a similar situation exists. The Canal Company owns the dam, about six hundred acres of the flowed land, and the right to flow as against many, if not all, of the shore owners. The draught on this Lake rarely exceeds six feet in any season. The owners around the Lake likewise want this dam kept up.

In both cases the absolute title of the Canal Company to its dams is unquestionable and its right to take down the dams is undoubted. Probably its right to keep them up will be found to be equally clear. The dams ought not to be taken down, but maintained as desired by the shore owners of the lakes, and for the other value they have, which it would be folly to waste and throw away. Hopatcong is less valuable than Greenwood Lake. The reasonable maintenance of the water of Hopatcong for the protection of the cottage owners is desirable, and the stored water has some (but not very great) value for the use of mill and power plants which may be built along the Musconetcong River. The amount of storage which might be drawn for power

would of course be limited if the level of the water in the lake is to be reasonably maintained for the advantage of the cottage owners. The value of the Canal Company's property rights and dam thus limited would possibly be worth Two hundred and fifty thousand dollars.

At Greenwood Lake the storage has value for equalizing the flow to the existing mills and to the power plants which might be built on the Wanaque River, and also for equalizing the flow to such water supply plants as may be established along the Wanaque or Passaic Rivers. At present the only one is the plant at Little Falls supplying Paterson, Passaic, Bayonne, Harrison, Montclair, etc., a total of some twenty-two million gallons of water per day. Doubtless other plants will be ultimately established by the State or by municipalities. It is difficult to say what the Lake will be worth for these purposes, but with a reasonably limited draught such as would protect the cottage owners around the Lake, the value would perhaps be five hundred thousand dollars.

The Company's right to divert water will *ipso facto* cease upon the abandonment of the Canal and its only water rights remaining of any value will be its rights at the two Lakes. Indeed, it has no other water rights except as it owns the land covered by Cranberry Lake and such ponds, which may be sold for mill ponds and like purposes, but have no other value. To solve the problem of Greenwood Lake and Lake Hopatcong, the managers of the Canal propose that upon abandonment the property owned at these two lakes shall be conveyed directly to the State of New Jersey, including the land, dams and all water rights of every nature. The State will then be in the position to dispose of them or utilize them in any way the Legislature may see fit. They are valuable and can be made much more valuable.

## SALE OF WATER RIGHTS BY CANAL COMPANY.

On November 30, 1894, the Morris Canal and Banking Company, as Lessor of the Lehigh Valley Railroad Company, contracted to sell to the New Jersey General Security Company, upon the abandonment of the canal, all the surplus waters which it might then have for the sum of \$400,000, which has been paid. In view of the present development of affairs, the Railroad Company has made a contract with the Security Company, whereby the latter is to relinquish any rights which it obtained by virtue of that contract and the Railroad Company is to pay back the consideration therefor to the Security Company, so that the Canal Company and its Lessee will be at liberty to convey to the State its remaining water rights, if any, without hindrance upon the abandonment of the Canal.

The amount of water which the Canal Company has heretofore used has been variously estimated and frequently greatly exaggerated. The most important point of intake is at Mountain View where it is supplied by the Pompton feeder. The amount taken there is probably from eleven to twelve million gallons per day during the summer months.

## LANDS OF THE CANAL COMPANY.

The Canal Company owns the land constituting the 106.69 miles of right of way; 85.66 miles were acquired by condemnation or by deeds containing reversionary clauses, which, upon abandonment of navigation, will forthwith revert to the former owners. 7.82 miles were acquired by gift, occupation or adverse user, and 13.21 by absolute deed. Of this last item, 1.54 miles are in Jersey City and 1.53 are in Newark. In Jersey City the Canal Company has the Old Basin and several other parcels of land, all of which are assessed by the

State Board of Assessors at \$400,000. It has other small parcels along the line, the principal ones being at Stanhope reservoir, Cranberry Lake, Bear Swamp and Phillipsburg. These, with small parcels here and there, comprise all the real estate of the Canal Company.

#### PERSONAL PROPERTY OF THE CANAL COMPANY.

There is no personal property except a small number of boats, with mules, tools, harness, etc. The whole has an indefinite but small value.

#### WINDING UP THE CANAL COMPANY.

Upon the abandonment of navigation the Canal Company will have the disjointed pieces of right of way which they own absolutely and therefore will not revert to the original owners, various parcels along the line, the Old Basin in Jersey City and the mules and boats to divide among its owners. The holdings of the owners are preferred stock, \$1,175,000; common stock, \$1,025,000, holders of mortgage bonds \$500,000; old outstanding dividend scrip, \$47,237.50; or a total of \$2,747,237.50. Under the Governors' bill which passed the House in 1905 the Lehigh Valley Railroad Company must at its own risk make settlement with all these interests, and the stockholders' shares must be condemned if they cannot be obtained by agreement. Then there is the claim of the State to have the Canal in 1974 without payment. This claim of the State ought to be waived, particularly if the Canal Company conveys Lake Hopatcong and Greenwood Lake to the State. The Governors have reported that the Canal as such would be worth nothing to the State, but assuming that it will have great value in 1974, it will be seen that the present value is small. In the Attorney General's attack upon the Big Basin grant it was proved without dispute that \$48,000 paid in

December, 1889, compounded annually at 4%, would amount to \$1,294,320 in December, 1974; compounded annually at 5% would amount to \$2,891,627; and compounded annually at 6% would amount to \$6,411,120. It therefore will be seen that the present value of the State's interest in the property is very small. In view of the State's course with respect to taxation, hereinafter mentioned, it should be entirely waived.

#### EXEMPTION FROM TAXATION.

By the charter the State waived all taxation on the waterway and necessary appurtenances of the Canal, and stood by its contract until 1886, when it began to assess this property under the new Railroad and Canal Tax Act. The Canal Company protested from year to year, but the Board never gave any relief, and for many years the Canal Company paid one-half of one per cent. upon about three million two hundred thousand dollars, the value of the Canal. During the last three years the Board has continued to assess the property at about three million two hundred thousand dollars. The tax rate is now the average rate of taxation of this State, or about \$1.80, making a total tax of about fifty thousand dollars. The Canal Company has appealed from this tax, but it has been sustained by the State Courts and the question is now pending in the Supreme Court of the United States. The State does not deny the contract, but claims that because the tax is to be paid by the Lehigh Valley Railroad Company instead of by the Morris Canal Company, the privilege of exemption is gone, and yet the State claims full benefits on its side, to wit, the reverter of the property in 1974. It even claims the right to reverter of the Big Basin. There certainly is no fairness in this. That the Lessee should be compelled to keep up the obsolete canal, which is not

only useless but to many people offensive and objectionable, and to pay taxes upon it contrary to its contract, besides spending a vast sum each year in maintaining this worthless property, is truly a great hardship and one which the managers believe the people of the State, when they understand the facts, will not justify. The economic waste of such a course is positively wrong. The Lessee in the forty years since 1871 has paid out \$10,578,670.21 in excess of all that it has received from the earnings of the Canal, and it has done its best to make the Canal pay. It cannot be made to pay unless railroads are abandoned. While it reaches the waters of the sea at the east, it reaches no navigable waters at the west. It covers but a short haul, and its capacity is so small as to be positively ridiculous at the present day. The managers understand perfectly well that certain great ship canals connecting important waters may be made profitable, although even the Erie Canal three hundred miles long, and connecting the Lakes with the Hudson River, became so unprofitable that the State abandoned all tolls upon it, and it has been maintained at enormous annual loss for the last twenty-five years. The freights upon it have dwindled from more than thirteen million tons to about four million tons per annum, and the State of New York is now expending one hundred million dollars to increase its depth to twelve feet, in the desperate effort to attempt freights to use it—an experiment still exceedingly doubtful. The Morris Canal, a trivial affair in size, one hundred miles in length, climbing over great hills and reaching nowhere, is an utterly hopeless proposition. No amount of expenditure can be conceived of to make it anything but a dead loss. Its only value is its salvage value, which may be obtained by judicious sale of its fragments for other uses. Its owners ask nothing from the State of New Jersey but the power to

abandon what everybody in the State wants abandoned—this useless, outgrown ditch.

The State has not in the past approached this question from the viewpoint of meeting its contract obligations, but has notwithstanding the exemption from taxation provided by the charter, assessed taxes against the property since 1884, amounting to \$865,102.48, the right of which the Lessee has been compelled to litigate, and the question is now before the Supreme Court of the United States. And notwithstanding the fact that the Railroad Company fully complied with all legal requirements and received from the State a deed, under the Great Seal of the State, of the Big Basin, it has been compelled to defend its rights in the Court and the matter is still in abeyance. This, however, does not enter into the question of the abandonment of navigation on the Morris Canal, but is simply quoted as an example of the injustice that in many instances has attended the present attacks upon corporations. The public mind has been confused by misleading statements and sensational publications.

The Railroad Company has held back nothing with respect to the property, and it has nothing to conceal with respect to it. It is to be regretted that agitation of the subject by certain parties and newspapers, without a full understanding of the facts, has heretofore served to mislead the public in regard to what is merely a simple business proposition, and has rendered it practically impossible to obtain a fair hearing, although everything above stated was developed by a serious report over the signatures of three ex-Governors of the State six years ago; but the Lehigh Valley Railroad Company still believes that a hearing may be had and that the Legislature, when they fully understand the matter, will rise above the senseless clamor that has been

raised and permit the passage of a bill in the interests of the State, of its water supply and of the stockholders of the Canal Company, to whom the State owes at least good faith. The investors in the canal project contributed first and last fully six million dollars to the enterprise. They received return for a few years only. On the first failure, their holdings were cut down to half of the former amount. The losses of the Lehigh Valley Railroad Company under its lease are still more grievous. These losses grow primarily out of the profound change in methods of transportation involved in the invention of steam railroads, a change which none could have foreseen. The investors must bear their loss, but there is no propriety in their losses being exaggerated and increased by the continued listening to the silly cries of persons uninformed as to the facts and having no good purpose to serve in the interests of the public or any legitimate interest.

The Lehigh Valley Railroad Company asks that the Legislature pass a bill substantially as recommended by the Commission of Governors, permitting the abandonment of navigation on the Canal and the sale of the remaining fragments of property for the payment of the debts of the Canal Company and the stockholders, as far as the money will extend; and, if other conditions are made satisfactory, offers to convey all land and water rights at Lake Hopatcong and Greenwood Lake to the State of New Jersey; and if desired expressly by deed and covenant to relinquish to the State all its rights to divert waters from any streams or sources whatever in this State.

LEHIGH VALLEY RAILROAD COMPANY,

By E. B. THOMAS,  
President.

February, 1911.