

APPENDIX

TABLE OF CONTENTS

	Page
Letter from M. Jane Brady, Delaware Attorney General, to Hon. William K. Suter, Clerk, United States Supreme Court (Aug. 4, 2005)	1a
Letter from Peter C. Harvey, New Jersey Attorney General, to Ryan P. Newell, Connolly Bove Lodge & Hutz LLP (Nov. 30, 2005)	4a
Letter Order, <i>State v. Mick, et al.</i> , Crim. Nos. 83-05-0092-93, <i>et al.</i> (Del. Super. Ct. May 2, 1984)	5a

[SEAL OMITTED]

M. JANE BRADY
ATTORNEY GENERAL

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

[Addresses/Phone Numbers Omitted]

PLEASE REPLY TO: New Castle County

August 4, 2005

By Federal Express

Honorable William K. Suter
Clerk of the Court
Supreme Court of the United States
One First Street, NE
Washington, DC 20543

**Re: The State of New Jersey v. The State of Delaware
Case No. 11, Original**

Dear Mr. Suter:

This office represents the defendant, the State of Delaware, in the above matter. On behalf of the State of Delaware, we respectfully request an extension of 60 days to respond to Plaintiff's Motion to Reopen and for a Supplemental Decree ("Plaintiff's Motion") and its brief in support thereof. Plaintiff's Motion was docketed on August 1, 2005; consequently, the brief in opposition must currently be filed on or before August 11, 2005. For the reasons set forth below, the State of Delaware is respectfully requesting an extension until October 10, 2005, to file its opposing brief.

The State of Delaware is currently in the process of retaining Supreme Court counsel. In addition, due to certain scheduling conflicts related to upcoming vacations for outside counsel and key individuals employed by the State of Delaware, including potential affiants, counsel

will need additional time to prepare a response that adequately and properly addresses the legal and factual issues raised in Plaintiff's Motion and brief.

By way of background, the substantive issues related to the matters in dispute were only presented to the State of Delaware in one exchange of letters and brief telephone calls prior to this filing. Other than these cursory exchanges, there had been no other prior substantive discussions between the States of Delaware and New Jersey about the Compact of 1905 and the jurisdiction of Delaware and New Jersey. In fact, representatives of the State of Delaware were informed only days before Plaintiff's Motion was filed that the State of New Jersey was planning on filing such a Motion, and were unaware of the extent of the filing. Specifically, the State of Delaware was unaware that the State of New Jersey had requested and received permission to file a separate brief under Supreme Court Rule 21.1.

While there has been recent litigation in Delaware concerning permits to use Delaware's lands, that litigation did not involve the State of New Jersey or the Compact of 1905 between the States. Previously, Delaware's Department of Natural Resources and Environmental Control was involved in a dispute with Crown Landing LLC, a wholly owned subsidiary of British Petroleum, p.l.c., about whether Crown Landing LLC's proposed liquefied natural gas facility (which is located in Delaware waters) was a "permitted use" under Delaware's Coastal Zone Act. While the case was decided by the Coastal Zone Industrial Control Board (filed on February 15, 2005 and decided on April 8, 2005), that Board did not address any issues related to the Compact of 1905, and the Board's decision did not address issues related to riparian rights.

Moreover, the preparation of a response to Plaintiff's Motion and brief will require a significant amount of factual investigation. The State of New Jersey has submitted a brief that has seven affidavits, some with multiple

exhibits including historic documents covering the past 75 years. Given the threshold issues that exist about whether the Supreme Court should grant the motion, and the wide range of factual issues that the State of New Jersey has raised in its motion, the State of Delaware will need to do a detailed search of historic records. In addition, the State of Delaware may need to submit multiple affidavits supporting its position, and all of this would result in a significant hardship to accomplish those tasks in the very near future.

By copy of this letter, we are concurrently informing Plaintiff's counsel of our request. Thank you for your courtesy and prompt consideration of this request.

Very truly yours,
/s/ M. JANE BRADY
M. Jane Brady
Attorney General

MJB:mah

CC: Rachel J. Horowitz, Deputy Attorney General of
New Jersey

[SEAL OMITTED]

RICHARD J. CODEY
Acting Governor

PETER C. HARVEY
Attorney General

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box 093
TRENTON, NJ 08625-0093

November 30, 2005

Via Overnight Mail

Ryan P. Newell, Esq.
Connolly Bove Lodge & Hutz LLP
The Nemours Building
1007 North Orange Street
PO Box 2207
Wilmington, Delaware 19801

Re: State of New Jersey v. State of Delaware

Dear Mr. Newell:

Enclosed please find a CD containing a cleaner version of the Record and Transcript of New Jersey v. Delaware I. The enclosed CD contains the three (3) volumes and Record.

Furthermore, kindly forward to us any documents on behalf of Delaware in New Jersey v. Delaware I.

Sincerely yours,

PETER C. HARVEY

ATTORNEY GENERAL
OF NEW JERSEY

By: /s/ JULIE K. GOLDMAN
Julie K. Goldman
Attorney Assistant

SUPERIOR COURT
OF THE
STATE OF DELAWARE

Claud L. Tease
Judge

Court House
Georgetown, DE 19947

May 2, 1984

Michael J. Malkiewicz, Esq.
P. O. Box 1901
Dover, DE 19903

F. Michael Parkowski, Esq.
Parkowski, Noble & Guerke
P. O. Box 308
Dover, DE 19901

Bonnie M. Benson, Esq.
Parkowski, Noble & Guerke
P. O. Box 308
Dover, DE 19901

RE: State v. Mick, Parsons, Crow and Willey
83-05-0092-93, 0094-95, 0081-0091
0071-0080, 1080, 2080, 3080, 1091,
2091, 3091

Gentlemen and Madam:

The parties do not dispute the fact that in 1905 Delaware and New Jersey entered into an interstate compact relating to disputes over territory, jurisdiction, and the taking and catching of fish in the Delaware River and Bay.

The compact authorized the passage of uniform laws by the states but did not require them to be passed.

In 1907, contrary to the position taken by defendants, the states did not enact uniform laws pursuant to the compact and this lack of uniformity is obvious from an examination of the pertinent provisions of the 1907 legislation.

Consequently, the various laws regulating the taking of fish, enacted by the Delaware General Assembly between 1907 and today, are valid and enforceable.

Aside from the obvious substantive differences in the content of the 1907 Delaware and New Jersey statutes, historians, individuals, organizations and legal advisors have consistently agreed over the years that the 1907 laws were not uniform in many important respects.

Since the provisions of Article IV of the compact, authorizing the states to pass uniform laws, were never put into effect, the states have been free to enact their own legislation regulating the fishing in the bay and ocean.

An excellent in-depth review of this question is found in the State's answering brief filed on September 7, 1983, pp. 16-35.

Defendant's argument relating to the 1915 Delaware Code "revisions" is without merit because the changes were simply proposed, and New Jersey had then, and has since had, its own statutes dealing with the taking of fish, different in substance from Delaware's.

Because no uniform laws ever existed in 1907, nor since, the Delaware General Assembly has never been bound by any of the provisions of the compact.

* * * * *

Defendants challenge the pertinent statutes on the ground of vagueness and the consequent failure to give notice as to what type of conduct is prohibited. Such challenges must be examined in the light of the facts of the particular case at hand. U.S. v. Maguire, 419 U.S. 544 (1975); Upshur v. State, Del. Supr., 420 A.2d 165 (1980).

(There are no First Amendment rights raised by defendants.)

It is abundantly clear from the facts of record in these cases that defendants knew what type of conduct would be considered unlawful under 7 Del. C. §910 and 936.

* * * * *

I find no inconsistencies in Chapter 9 of 7 Del. C. sufficient to support a constitutional attack on any of the sections of that chapter. When read and analyzed together they are reasonably clear and consistent.

A comprehensive resources management plan, whether put into effect by statute or regulation enacted pursuant to statute, is necessarily suspect and subject by its very nature to arguments relating to vagueness and inconsistency; but the administrators and the courts must be slow to throw them aside because of the importance of resources management to society, absent a clear showing of inconsistency.

* * * * *

The question raised by the parties regarding the duty of the Delaware General Assembly to modernize the fin fishing laws has been recently mooted. The duty of the courts, in most cases, is to interpret the law without regard to whether it comports with good public policy. And if a statute is antiquated or may produce a hardship to a special class of persons or may lead to an unwise result, it is for the legislative branch of government to act, not the judicial branch.

* * * * *

Defendants' non-enforcement argument has previously been disposed of by the Delaware Court of Chancery in Delaware Watermen's Assoc. v. DNREC, et al., C.A. 789 (1983), Kent County, Brown, Chancellor.

For the reasons set out herein the defendants' motions to dismiss must be, and they are hereby, denied.

Sincerely yours,

/s/ CLAUD L. TEASE

Claud L. Tease

CLT:llf

cc: Prothonotary
Case Scheduling Office