

No. 129, Original

In The
Supreme Court of the United States

◆

COMMONWEALTH OF VIRGINIA,

Plaintiff,

v.

STATE OF MARYLAND,

Defendant.

◆

**REPORT OF THE SPECIAL MASTER
APPENDICES**

◆

RALPH I. LANCASTER, JR.
Special Master
One Monument Square
Portland, Maine 04101
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December 9, 2002

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APPENDIX A
PROPOSED DECREE
COMMONWEALTH OF VIRGINIA
v.
STATE OF MARYLAND
No. 129, Original

Decided _____

Decree Entered _____

Decree effecting this Court's Opinion of ____,
__ S. Ct. __ (2002).

DECREE

The Court having exercised original jurisdiction over this controversy between two sovereign States; the issues raised having been tried before the Special Master appointed by the Court; the Court having received briefs and heard oral argument on the parties' exceptions to the Report of the Special Master; and the Court having issued its Opinion on all issues announced in __ S. Ct. __ (2002),

IT IS HEREBY ORDERED, ADJUDGED, DECLARED, AND DECREED AS FOLLOWS:

1. Article Seventh of the Compact of 1785 between the Commonwealth of Virginia and the State of Maryland, which governs the rights of the Commonwealth of Virginia, its governmental subdivisions and its citizens to withdraw water from the Potomac River and to construct improvements appurtenant to the Virginia shore, applies to the entire length of the Potomac River, including its non-tidal reach.

2. Virginia, its governmental subdivisions, and its citizens may withdraw water from the Potomac River and construct improvements appurtenant to the Virginia shore of the Potomac River free of regulation by Maryland.

3. Any conditions attached to the construction/water appropriation permit granted by Maryland to the Fairfax County Water Authority on January 24, 2001 are null and void and the State of Maryland is enjoined from enforcing them.

4. The Court retains jurisdiction to entertain such further proceedings, enter such orders, and issue such writs as may from time to time be considered necessary or desirable to give proper force and effect to this Decree or to effectuate the rights of the parties.

5. The party States shall share equally in the compensation of the Special Master and his assistants, and in the expenses of this litigation incurred by the Special Master.

APPENDIX B

Compact of 1785

1786 Md. Laws c. 1

At a SESSION of the GENERAL ASSEMBLY of MARYLAND, begun and held at the CITY of ANNAPOLIS, on Monday, the 7th of November, in the year of our Lord 1785, and ended the 12th day of March, 1786, the following laws were enacted.

WILLIAM SMALLWOOD, ESQUIRE, GOVERNOR.

CHAP. I.

An ACT to approve, confirm and ratify, the compact made by the commissioners appointed by the general assembly of the commonwealth of Virginia, and the commissioners appointed by this state, to regulate and settle the jurisdiction and navigation of Patowmack and Pocomoke rivers, and that part of Chesapeake bay which lieth within the territory of Virginia. Lib. TBH. No. A. fol. 584.

Whereas, at a meeting of the commissioners appointed by the general assemblies of the commonwealth of Virginia and the state of Maryland, for forming a compact between the two states, to regulate and settle the jurisdiction and navigation of Patowmack, Pocomoke rivers, and that part of Chesapeake bay which lieth within the territory of Virginia, to wit: George Mason and Alexander Henderson, Esquires, on the part of the commonwealth of Virginia, and Daniel of Saint Thomas Jenifer, Thomas Stone and Samuel Chase, Esquires, on the part of the state of Maryland, at Mount Vernon, in Virginia, on the twenty-eighth day of March, in the year one thousand seven hundred and eighty-five, the following compact was mutually agreed to by the said commissioners. First, The commonwealth of

Virginia disclaims all right to impose any toll, duty or charge, prohibition or restraint, on any vessel whatever sailing through the capes of Chesapeake bay to the state of Maryland, or from the said state through the said capes outward bound, and agrees that the waters of Chesapeake Bay, and the river Pocomoke, within the limits of Virginia, be for ever considered as a common highway, free for the use and navigation of any vessel belonging to the said state of Maryland, or any of its citizens, or carrying on commerce to or from the said state, or with any of its citizens, and that any such vessel, inward or outward bound, may freely enter any of the rivers within the commonwealth of Virginia as a harbour, or for safety against an enemy, without the payment of port duties, or any other charge; and also that the before-mentioned parts of Chesapeake and Pocomoke river be free for the navigation of vessels from one port of the state of Maryland to another. Second, The state of Maryland agrees, that any vessel belonging to the commonwealth of Virginia, or any of its citizens, or carrying on commerce to or from the said commonwealth, or with any of its citizens, may freely enter any of the rivers of the said state of Maryland as a harbour, or for safety against an enemy, without the payment of any port duty, or any other charge. Third, Vessels of war, the property of either state, shall not be subject to the payment of any port duty, or other charge. Fourth, Vessels not exceeding forty feet keel, nor fifty tons burthen, the property of any citizen of Virginia or Maryland, or of citizens of both states, trading from one state to the other only, and having on board only the produce of the said states, may enter and trade in any part of either state, with a permit from the naval-officer of the district from which such vessel departs with her cargo, and shall be subject to no port charges. Fifth, All merchant vessels

(except such as are described in the fourth article) navigating the river Patowmack, shall enter and clear at some naval-office on the said river in one or both states, according to the laws of the state in which the entry shall be made; and where any vessel shall make an entry in both states, such vessel shall be subject to tonnage in each state, only in proportion to the commodities carried to or taken from such state. Sixth, The river Patowmack shall be considered as a common highway for the purpose of navigation and commerce to the citizens of Virginia and Maryland, and of the United States, and to all other persons in amity with the said states trading to or from Virginia or Maryland. Seventh, The citizens of each state respectively shall have full property in the shores of Patowmack river adjoining their lands, with all emoluments and advantages thereunto belonging, and the privilege of making and carrying out wharfs and other improvements, so as not to obstruct or injure the navigation of the river, but the right of fishing in the river shall be common to, and equally enjoyed by, the citizens of both states; provided, that such common right be not exercised by the citizens of the one state to the hindrance or disturbance of the fisheries on the shores of the other state, and that the citizens of neither state shall have a right to fish with nets or seans on the shores of the other. Eighth, All laws and regulations which may be necessary for the preservation of fish, or for the performance of quarantine, in the river Patowmack, or for preserving and keeping open the channel and navigation thereof, or of the river Pocomoke within the limits of Virginia, by preventing the throwing out ballast, or giving any other obstruction thereto, shall be made with the mutual consent and approbation of both states. Ninth, Light-houses, beacons, buoys or other necessary signals, shall be erected, fixed

and maintained, upon Chesapeake bay, between the sea and the mouths of the rivers Patowmack and Pocomoke, and upon the river Patowmack, at expence of both states; if upon Patowmack river, at the joint and equal charge of both states, and if upon the before-mentioned part of Chesapeake bay, Virginia shall defray five parts, and Maryland three parts, of such expence, and if this proportion shall in future times be found unequal, the same shall be corrected. And for ascertaining the proper places, mode and plans, for erecting and fixing light-houses, buoys, beacons, and other signals, as aforesaid, both states shall, upon the application of either to the other, appoint an equal number of commissioners, not less than three or more than five from each state, to meet at such times and places as the said commissioners, or a major part of them, shall judge fit, to fix upon the proper places, mode and plans, for erecting and fixing such light-houses, beacons, or other signals, and report the same, with an estimate of the expence, to the legislatures of both states, for their approbation. Tenth, All piracies, crimes or offences, committed on that part of Chesapeake bay which lies within the limits of Virginia, or that part of said bay where the line of division from the south point of Patowmack river (now called Smith's Point) to Watkins's Point, near the mouth of Pocomoke river, may be doubtful, and on that part of Pocomoke river within the limits of Virginia, or where the line of division between the two states upon the said river is doubtful, by any persons not citizens of the commonwealth of Virginia against the citizens of Maryland, shall be tried in the court of the state of Maryland which hath legal cognizance of such offences. And all piracies, crimes and offences, committed on the before-mentioned parts of Chesapeake bay and Pocomoke river, by any persons not citizens of Maryland against any

citizen of Virginia, shall be tried in the court of the commonwealth of Virginia which hath legal cognizance of such offences. All piracies, crimes and offences, committed on the said parts of Chesapeake bay, and Pocomoke river, by persons not citizens of either state, against persons not citizens of either state, shall be tried in the court of the commonwealth of Virginia having legal cognizance of such offences. And all piracies, crimes and offences, committed on the said part of Chesapeake bay and Pocomoke river, by any citizen of the commonwealth of Virginia, or of the state of Maryland, either against the other, shall be tried in the court of that state of which the offender is a citizen. The jurisdiction of each state over the river Patowmack shall be exercised in the same manner as is prescribed for the before-mentioned parts of Chesapeake bay and Pocomoke river in every respect, except in the case of piracies, crimes and offences, committed by persons not citizens of either state, upon persons not citizens of either state, in which case the offense shall be tried by the court of the state to which they shall first be brought; and if the inhabitants of either state shall commit any violence, injury or trespass, to or upon the property or lands of the other, adjacent to the said bay or rivers, or to any person upon such lands, upon proof of due notice to the offender to appear and answer, any court of record, or civil magistrate, of the state where the offense shall have been committed, having jurisdiction thereof, may enter the appearance of such person, and proceed to trial and judgment in the same manner as if legal process had been served on such offender; and such judgment shall be valid and effectual against the person and property of such offender, both in the state where the offender shall have been committed, and also in the state where the said offender may reside, and execution may be issued by the

court, or magistrate, giving such judgment, in the same manner as upon judgments given in other cases; or upon a transcript of such judgment property authenticated being produced to any court of magistrate of the state where such offender may reside, having jurisdiction within the state or county where the offender may reside in cases of a similar nature, such court or magistrate shall order execution to issue upon such authenticated judgment, in the same manner and to the same extent, as if the judgment had been given by the court or magistrate to which such transcript shall be exhibited. Eleventh, Any vessel entering in any port on the river Patowmack, may be libelled or attached for debt by process from the state in which such vessel entered; and if the commercial regulations of either state shall be violated by any person carrying on commerce in Patowmack or Pocomoke rivers, the vessel owned or commanded by the person so offending, and the property on board, may be seized by process from the state whose laws are offended, in order for trial; and if any person shall fly from justice in a civil or criminal case, or shall attempt to defraud creditors, by removing his property, such person, or any property so removed, may be taken on any part of Chesapeake bay, or the rivers aforesaid, by process of the state from which such person shall fly, or property be removed; and process from the state of Virginia may be served on any part of the said rivers upon any person, or property of any person, not a citizen of Maryland, indebted to any citizen of Virginia, or charged with injury having been by him committed; and process from the state of Maryland may be served on any part of the said rivers upon any person, or property of any person, not a citizen of Virginia, indebted to a citizen of Maryland, or charged with injury having been by him committed. And in all cases of trial in pursuance of the jurisdiction

settled by this compact, citizens of either state shall attend as witnesses in the other, upon a summons from any court or magistrate having jurisdiction, being served by a proper officer of the county where such citizen shall reside. Twelfth, The citizens of either state having lands in the other, shall have full liberty to transport to their own state the produce of such lands, or to remove their effects, free from any duty, tax or charge whatsoever, for the liberty to remove such produce or effects. Thirteenth, These articles shall be laid before the legislatures of Virginia and Maryland, and their approbation being obtained, shall be confirmed and ratified by a law of each state, never to be repealed or altered by either without the consent of the other: And whereas this general assembly are of opinion, that the said compact is made on just and mutual principles, for the true interest of both governments, and if executed with good faith, will perpetuate harmony, friendship and good offices, between the two states, so essential to the prosperity and happiness of their people;

II. BE IT ENACTED, *by the General Assembly of Maryland*, That the said compact is hereby approved, confirmed and ratified, and that as soon as the said compact shall be approved, confirmed and ratified, by the general assembly of the commonwealth of Virginia, thereupon, and immediately thereafter, every article, clause, matter and thing, in the same compact contained, shall be obligatory on this state and the citizens thereof, and shall be for ever faithfully and inviolably observed and kept by this government, and all its citizens, according to the true intent and meaning of the said compact; and the faith and honour of this state is hereby solemnly pledged and engaged to the general assembly of the commonwealth of Virginia, and the government and citizens thereof, that this law shall

never be repealed or altered by this legislature of this government, without the consent of the government of Virginia.

APPENDIX C

Black-Jenkins Award of 1877

Act of March 3, 1879, ch. 196, 20 Stat. 481

Chap. 196 – An act giving the consent of Congress to an agreement or compact entered into between the States of Virginia and Maryland respecting the boundary between said States.

Whereas arbitrators duly appointed on the part of the State of Virginia and on the part of the State of Maryland for the purpose of ascertaining and fixing the boundary between the States of Virginia and Maryland, did proceed in the premises to examine into and ascertain the true line of said boundary, and did award as to the same in words following, to wit:

“Award.

“And now, to wit, January sixteenth, anno Domini eighteen hundred and seventy-seven, the undersigned, being a majority of the arbitrators to whom the States of Virginia and Maryland, by acts of their respective legislatures, submitted the controversies concerning their territorial limits, with authority to ascertain and determine the true line of boundary between them, having heard the allegations of the said States, and examined the proofs on both sides, do find, declare, award, ascertain, and determine that the true line of boundary between the said States, so far as they are coterminous with one another, is as follows, to wit:

“Beginning at the point on the Potomac River where the line between Virginia and West Virginia strikes the said river at low-water mark, and thence, following the meanderings of said river, by the low-water mark, to

Smith's Point, at or near the mouth of the Potomac, in the latitude thirty-seven degrees fifty-three minutes eight seconds, and longitude seventy-six degrees thirteen minutes forty-six seconds; thence crossing the waters of the Chesapeake Bay, by a line running north sixty-five degrees thirty minutes east, about nine and a half nautical miles, to a point on the western shore of Smiths Island, at the north end of Sassafras Hammock, in latitude thirty-seven degrees fifty-seven minutes thirteen seconds, longitude seventy-six degrees two minutes fifty-two seconds; thence across Smith's Island south eighty-eight degrees thirty minutes east, five thousand six hundred and twenty yards, to the center of Horse Hammock, on the eastern shore of Smith's Island, in latitude thirty-seven degrees fifty-seven minutes eight seconds, longitude seventy-five degrees fifty-nine minutes twenty seconds; thence south seventy-nine degrees thirty minutes east, four thousand eight hundred and eighty yards, to a point marked A on the accompanying map, in the middle of Tangier Sound, in latitude thirty-seven degrees fifty-six minutes forty-two seconds, longitude seventy-five degrees fifty-six minutes twenty-three seconds, said point bearing from Janes Island light south fifty-four degrees west, and distant from that light three thousand five hundred and sixty yards; thence south ten degrees thirty minutes west, four thousand seven hundred and forty yards, by a line dividing the waters of Tangier Sound, to a point where it intersects the straight line from Smith's Point to Watkin's Point said point of intersection being in latitude thirty-seven degrees fifty-four minutes twenty-one seconds, longitude seventy-five degrees fifty-six minutes fifty-five seconds, bearing from Jane's Island light south twenty-nine degrees west, and from Horse Hammock south thirty-four degrees thirty minutes east; this point of intersection

is marked B on the accompanying map; thence north eighty-five degrees fifteen minutes east, six thousand seven hundred and twenty yards, along the line above mentioned, which runs from Smith's Point to Watkin's Point until it reaches the latter spot, namely, Watkin's Point, which is in latitude thirty-seven degrees fifty-four minutes thirty-eight seconds, longitude seventy-five degrees fifty-two minutes forty-four seconds; from Watkin's Point the boundary line runs due east seven thousand eight hundred and eighty yards, to a point where it meets a line running through the middle of Pocomoke Sound, which is marked C on the accompanying map, and is in latitude thirty-seven degrees fifty-four minutes thirty-eight seconds, longitude seventy-five degrees forty-seven minutes fifty seconds; thence by a line dividing the waters of Pocomoke Sound, north forty-seven degrees thirty minutes east, five thousand two hundred and twenty yards, to a point in said sound marked D on the accompanying map, in latitude thirty-seven degrees fifty-six minutes twenty-five seconds, longitude seventy-five degrees forty-five minutes twenty-six seconds; thence following the middle of the Pocomoke River by a line of irregular curves, as laid down on the accompanying map, until it intersects the westward protraction of the boundary line marked by Scarborough and Calvert, May twenty-eighth, eighteen hundred and sixty-eight, at a point in the middle of the Pocomoke River and in the latitude thirty-seven degrees fifty-nine minutes thirty-seven seconds, longitude seventy-five degrees thirty-seven minutes four seconds; thence by the Scarborough and Calvert line, which runs five degrees fifteen minutes north of east, to the Atlantic Ocean: the latitudes, longitudes, courses, and distances here given have been measured upon the Coast Chart, number thirty-three, of the United States Coast

Survey (sheet number three, Chesapeake Bay) which is herewith filed as part of this award and explanatory thereof; the original charter line is marked upon the said map and shaded in blue; the present line of boundary, as ascertained and determined, is also marked and shaded in red, while the yellow indicates the line referred to in the compact of seventeen hundred and eighty-five, between Smith's point and Watkins' point; in further explanation of this award, the arbitrators deem it proper to add that –

“First. The measurements being taken and places fixed according to the Coast Survey, we have come as near to a perfect mathematical accuracy as in the nature of things is possible; but in case of any inaccuracy in the described course or length of a line, or in the latitude or longitude of a place, the natural objects called for must govern.

“Second. The middle thread of Pocomoke River is equidistant as nearly as may be between the two shores without considering arms, inlets, creeks, or affluents as parts of the river, but measuring the shore lines from headland to headland.

“Third. The low-water mark on the Potomac, to which Virginia has a right in the soil, is to be measured by the same rule, that is to say, from low-water mark at one headland to low-water mark at another, without following indentations, bays, creeks, inlets, or affluent rivers.

“Fourth. Virginia is entitled not only to full dominion over the soil to low-water mark on the south shore of the Potomac, but has a right to such use of the river beyond the line of low-water mark as may be necessary to the full enjoyment of her riparian ownership, without impeding the navigation or otherwise interfering with the proper

use of it by Maryland, agreeably to the compact of seven-
teen hundred and eighty-five.

“In testimony whereof we have hereunto set our hands
the day and year aforesaid

“J. S. BLACK

“Of Pennsylvania

“CHARLES J. JENKINS

“Of Georgia

“A. W. GRAHAM

“Secretary”

And whereas the said award has been ratified and con-
firmed by the legislatures of the States of Virginia
and Maryland respectively:

Therefore,

*Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assem-
bled,* That the consent of Congress of the United States is
hereby given to the said agreement or award, and to each
and every part and article thereof: *Provided,* That nothing
therein contained shall be construed to impair or in any
manner affect any right of jurisdiction of the United States
in and over the islands and waters which form the subject
of the said agreement or award.

Approved, March 3, 1879.

APPENDIX D
Black-Jenkins Opinion
OPINION OF ARBITRATORS

The undersigned are requested by the States of Virginia and Maryland to ascertain and determine the true line of boundary between them. Having consented to do this in the capacity of arbitrators, we are about to make our award.

To examine the voluminous evidence, historical, documentary, and oral; to hear with due attention the able and elaborate arguments of counsel on both sides, and to confer fully on the merits and demerits of this ancient controversy, required all the time we bestowed on it.

The death of Governor Graham in the midst of our labors was a great loss to the whole country; but to us it was a special misfortune, for it deprived us suddenly of the industry, the talent, the wise judgment, and the scrupulous integrity upon which we had relied so much. Though these high qualities were fully supplied by his distinguished successor, the vacancy occurring when it did, set back our proceedings nearly to the place of beginning and caused a delay of almost a year.

Our first intention was to make a naked award, without any statement of the grounds upon which it rested; but after more reflection it seemed that the weight of the cause, the dignity of the parties, and the wide differences of opinion, grown inveterate by centuries of hostile discussion, made some explanation of our judgment desirable, if not necessary.

The *charter* of Charles I to Cecilius, Baron of Baltimore, dated June 20th, 1632, gave to the grantee dominion over the territories described in it, and made him Governor of the colony afterwards planted there, with succession to his heirs at law. These rights, proprietary as well as political, became vested in the State of Maryland at the Revolution. Inasmuch as that State claims *under* the charter, she must claim *according* to it.

Virginia, by her first Constitution, as a free State (June 29th, 1776) disclaimed all rights of property, jurisdiction, and government over territories contained within the charters of Maryland and other adjoining colonies. The force of this solemn acknowledgment is not, in our opinion, diminished by the dissatisfaction which Maryland, as well as other States of the Confederation, afterwards expressed with Virginia's claim to a Northern and Western border, including all lands ceded by France to Great Britain at the pacification of 1763.

Inasmuch as both of the States are bound by the King's charter to Lord Baltimore, and both confess it to be the only original measure of their territory, it becomes a point of the first importance to ascertain what boundaries were assigned to Maryland by that instrument. By what lines was the colony of Maryland divided from those other possessions of the British Crown to which Virginia afterwards succeeded as a result of her independence?

The original patent delivered to Lord Baltimore by the King is irrecoverably lost, and it is denied – at least it is not admitted – that we have an accurate copy. It was registered in the High Court of Chancery when it passed the seal, and an attested transcript from the Rolls Office is produced. It is written in the law Latin of the period to

which it belongs, and many of the words are abbreviated. Another copy nearly, if not exactly, like that from the Rolls, was deposited in the Colonial Office, and thence removed to the British Museum. The latter copy was changed long subsequent to the date of the charter by a person who added some words, and extended others by interlining omitted terminations. This is alleged to have been done for the purpose of making it correspond with the original, which, according to the same allegation, was borrowed from a member of the Calvert family for that purpose. We reject this whole story as apocryphal. The interlineations were unauthorized except by the judgment of the person who wrote them that he was supplying elipses or giving in full the true words meant by the contracted orthography. We are obliged to believe that the patent was enrolled with perfect accuracy. The conclusive presumption of law is that the high and responsible officers charged with that duty did see it performed with all due fidelity. No doubt of this can justly be raised upon the fact that abbreviated words are found in the registry. Why should not these be in the original? Nay, why should we expect them not to be there? That mode of writing was the universal custom of the time. It was used in all legal papers and records as long as the law spoke Latin. A deed in which these abbreviations occurred was not thereby vitiated. What was the harm of writing A.D. for *anno domini*, fi. fa. for *fieri facias*, or ca. sa. for *capias ad satisfaciendum*? *Hered. et assignat.* was as good as *heredibus et assignatus suis*, if all legists understood that one as well as the other was a limitation of the fee to heirs and assigns. Adjectives and substantives without terminations to indicate gender, number, or case did not lose their meaning, and the omission of the concluding syllable might be some advantage to a conveyancer who was rusty in his syntax. This habit of

contracting words, pervades, not only the deeds, but the criminal pleadings of that time. A public accuser, doubtful if the offense he was prosecuting violated two acts of Parliament or only one, charged it as *contra formam statut.*, and read the last word *statuti* or *statutorum*, as the state of the case might require. The defendant's averment of his innocence was recorded as a plea of *non cul.* When the Attorney General reasserted the guilt of the accused and declared his readiness to prove it, he took one Latin and one Norman-French word, truncated them both, and said – *cul. prit.* Even the last and most tragical part of the record in a capital case, the judge's order to hang the prisoner by the neck, was curtly, but very intelligibly written – *sus. per col.*

We are satisfied that the office copy is true; that it is exactly like the original; and that the use of abbreviated words does not impair the validity of the instrument. Moreover, that part of the charter which defines the boundaries of the province speaks, not equivocally, but in terms so clear and apt that the intent is readily perceived. It remains to be seen whether we can apply the description to the subject-matter by laying the lines on the ground. To that end it is necessary to ascertain how the geography of the country was understood by the King and Lord Baltimore at the time when the charter was made.

In the great litigation between Penn and Lord Baltimore, a bill drawn up by Mr. Murray, (afterwards Lord Mansfield,) or by some equity pleader under his immediate direction, avers in substance that Charles I and the ministers whom he consulted on Lord Baltimore's application had the map of Capt. John Smith before them when the boundaries of the colony were agreed on. This was neither denied nor admitted in the answer of the

defendant, who, being third in descent from the applicant, had no personal knowledge about it. But we take the fact to be certainly true, not only because we have the assertion of it by Penn and his very eminent counsel, but because it is well known that Smith's map was the only delineation then extant of that region, and his History of Virginia, to which the map was prefixed, had been before, and continued for a long time afterwards, to be the only source of information concerning its geography. Besides, a comparison of the map with the charter will show by the similarity of names, spelling, &c., that one must have been taken from the other.

The editions of Smith's History, published by himself in 1612 and 1629, have been produced, with the map thereto prefixed. Besides, we have one printed in 1819 by authority of Virginia from the same plate used by Smith himself two hundred years before, and found, by a curious accident, in a promiscuous heap of old metal which had been imported from England to some town in Pennsylvania.

With the charter in one hand and the map in the other it may seem an easy task to run these lines. But there are difficulties still. The map, though a marvellous production, considering how and when it was made, is not perfectly correct. Smith could not see and measure everything for himself, nor always depend upon the observations of others. With his defective instruments he could not get the latitude and longitude truly. He laid down some points and places in the wrong relation to each other, and some not unimportant to us he left out altogether. There are inaccuracies here and there in the configuration of a coast, the shape of an island, or the course of a river. Unfortunately the style of his *History* is so confused and obscure that it throws no light on the dark parts of the map. As a writer

he had great ambition and small capacity. He could give some interest to a narrative of his own adventures, but any kind of description was too much for his powers. There is another trouble: scarcely any of the places marked on Smith's map are now popularly known by the names he gave them. Not only the names, but the places themselves have been much changed. Considerable islands are believed to have been washed away or divided by the force of the waters. Headlands which stretched far out into the bay have disappeared, and the shore is deeply indented where in former times the water line was straight, or curved in the other direction. Add to this a certain amount of human perversity with which the subject was handled in colonial days, and it is not surprising that representatives of the two States have, with the most upright intentions, failed to agree in their views of it. We are to reach, if possible, the truth and very right of the case.

The boundaries of Maryland are described in the charter as beginning at Watkins' Point and running due east to the sea, up the shore of the ocean and the Delaware Bay, to the fortieth degree of latitude; thence westward along that degree to the longitude of the headwater of the Potomac; thence southward to that river, and by it, or one of its banks, to Cinquack on the Chesapeake, and from Cinquack straight across the Bay to the place of beginning. With the eastern and western borders we have nothing to do. Our interest in the description of the Maryland line begins at the northwest angle, where her territory becomes contiguous to that of Virginia.

That line, on the western side, has been run and marked along its whole course, and at both termini, in a way which commands the acquiescence of both States. No question is raised here about the location of it. But it is

necessary to look somewhat narrowly into the call for it which the charter makes, because that may influence our judgment on the lines which run from the head of the river to the sea, every inch of which is contested.

The State of Virginia, through her Commissioners and other public authorities, adhered for many years to her claim for a boundary on the left bank of the Potomac. But the gentlemen who represent her before us expressed with great candor their own opinion that a true interpretation of the King's concession would divide the river between the States by a line running in the middle of it. This latter view they urged upon us with all proper earnestness, and it was opposed with equal zeal by the counsel for Maryland, who contended that the whole river was within the limits of the grant to Lord Baltimore.

When a river is called for as a boundary between two adjacent territories, (whether private property or public domains,) the line runs along the middle thread of the water. A concession of lands *to* a stream does not stop at one bank or cross over to the other, but finds its limit midway between them. But a river may be included or excluded, if the parties choose to have it so. If the intent is expressed that the line shall be upon one bank or another, the mere force of construction cannot put it anywhere else. The natural interpretation is the legal and proper one.

This is too obviously just to need the support of authority. But it was well illustrated by the Supreme Court of the United States, in the case of *Ingersoll v. Howard*, (13 How., 381.) Alabama claimed to the middle of the Chatahoochee by virtue of a boundary described in a concession from Georgia thus: "Beginning *on the western bank* of the Chatahoochee river, where the same crosses the boundary

line between the United States and Spain; running thence up the said river and *along the western bank* thereof,” &c. The court held that these words established the line of boundary upon the western bank. There is some resemblance between that case and the one under consideration.

The northern boundary of Maryland is by the charter to run westward to the true meridian of the first fountain of the Potomac. That point being ascertained, it shall turn at right angles and run towards (literally against) the south – “*vergendo versus meridiem*” – where? “*ad ulterioram predicti fluminis ripam*” – to the further bank of the aforesaid river. Approaching the river from the north, the further bank is the south bank of course. The description proceeds, without a pause, thus: “*et eam sequendo qua plaga occidentalis ad meridionalem spectat usque ad locum quendam appellatum Cinquack*.” Now, the words “*eam sequendo*” are a direction that something shall be followed in running the line between the point already fixed on the south bank of the Potomac, where it rises in the mountain and Cinquack, which is on the same side of the river, near to its mouth. What shall we follow? Clearly *eam ripam* and clearly not *id flumen*, if we take the grammatical sense of the phrase. Another consideration impresses us a good deal. Lawyers in the reign of Charles I wrote Latin in the idiom of the vernacular tongue. We would naturally expect to see the thought of these parties expressed by words arranged in the English order, thus: *ad ulterioram ripam predicti fluminis et sequendo eam*. The other and more classical collocation was not adopted for its euphony, but for the sake of precision. It brought *ripam* and *eam* into close juxtaposition, and made the antecession so immediate that it could not be mistaken.

The interjected phrase, “*qua plaga occidentalis ad meridionalem spectat*,” has had its share of the minute verbal criticism bestowed upon the whole document; but we see nothing in it except an attempt (perhaps not very successful) to describe the aspect of the Western Shore, where it turns to the south. Certainly there is nothing there which requires the line to leave the river bank. Apart from all this, it looks utterly improbable that the two *termini* of this line should both have been fixed on the south side of the river without a purpose to put the line itself on the same side. The intent of the charter is manifest all through to include the whole river within Lord Baltimore’s grant. It seems to us a clearer case than that decided in *Ingersoll v. Howard*.

For these reasons we conclude that the charter line was on the right bank of the Potomac, where the high-water mark is impressed upon it, and that line follows the bank along the whole course of the river, from its first fountain to its mouth and “*usque ad locum quendam appellatum Cinquack*.”

Where is the place called Cinquack? It must have had a certain degree of importance in Smith’s time as a landing place, a village, or the residence of some aboriginal chief. But there is now no visible vestige of it. Even its name has perished from the memory of living men. Nevertheless, the place where it once was can be easily found. The charter describes it as “*prope fluminis ostium*” – near the mouth of the river; and Smith has marked it on his map about six miles south of the place where the river joins the bay. This point was no doubt chosen as the terminus of the long river line, because it was the only place near the mouth of the Potomac, on that side, to which Smith’s map gave a name; and it furnishes one among many circumstantial

proofs that no other map was consulted in drafting the charter. Having found this corner, it becomes our duty to trace the lines which lead us thence over the bay and across the eastern shore to the sea.

From Cinquack to the ocean the charter gives only two lines. One, starting at Cinquack, goes straight to Watkins' Point, the other runs from Watkins' Point due east to the seashore. There will be no possible mistake about these lines if we can but find out the precise situation of Watkins' Point.

This point being the commencement and closing place of the boundary is twice named, and once its locality is given with reference to other objects. It is described as lying "*juxta sinum predictum prope flumen de Wighco*;" that is to say, on (or close to) the aforesaid bay (the Chesapeake) and near the river Wighco. Looking at Smith's map we find a cape extending southwestwardly from the mainland of the eastern shore. This cape is called Watkins' Point by Smith himself on his map, and he has marked the waters on one side *Chesapeack Bay*, and on the other *Wighco flumen*. Turning to the modern maps, and especially to those of the Coast Survey, where everything is measured with fractional accuracy, we find the same point of land laid down, not quite in the same latitude nor delineated with exactly the same shape, but bordered by the same waters, and with no variance which makes its identity at all doubtful. It is at present the extreme southwestern point of Somerset county in Maryland at Cedar Straits, *juxta* the Chesapeake and *prope* the Pocomoke, which is now the name for Wighco. Being the Watkins' Point of Smith's map, it is the Watkins' Point of the charter.

This conclusion appears to be inevitable from the premises stated; but it does not receive universal assent. We must therefore notice the principal grounds on which its correctness is impugned.

In the first place, the fundamental fact is denied that Smith by his own map affixed the name of *Watkins' Point* to the headland in question. In other words, it is alleged, that though the point is laid down and the name written in proximity to it, the one does not apply to the other. Let the map speak for itself. An inspection of it will show that all the names of such points are written in the same way. Nor is there any other point to which it can with reasonable propriety be referred.

The map has been uniformly read as we read it. Lord Baltimore showed how he understood it. In 1635, only three years after the date of his charter, he printed what he called a "Relation of Maryland," and prefixed to it a map on which Watkins' Point is laid down at Cedar Straits, with the beginning and closing lines of his boundary running from and to it. It is not likely that he could be mistaken, nor is it supposed that he fraudulently misstated the fact, and he was not contradicted by the ministers of the Crown or by anybody interested in the Virginia plantation.

In 1670 Augustin Herrman, the Bohemian, published a map fuller than the previous ones, and there we have Watkins' Point at Cedar Straits very conspicuously marked, and the two lines closing at its southern end. What makes this stronger is that in 1668 the line between the colonies had been marked east of the Pocomoke by Calvert and Scarborough on a latitude considerably higher than an eastern line from Watkins' Point; but Herrman

considered Watkins' Point so definitely fixed, and the call for a straight eastern line thence to the ocean so overruling, that he assumed the coincidence of the Scarborough line with his own, and so laid it down.

In the map of Peter Jefferson and Joshua Fry, of which a French copy was engraved and printed at Paris in 1755 and a second English edition at London in 1775, dedicated by the publishers to the Lords Commissioners of Trade and Plantations, we find Watkins' Point unmistakably laid down at the mouth of the Pocomoke, with the Scarborough and Calvert line from the sea to the Pocomoke so drawn that a westward extension of it would strike exactly or very nearly that place.

Mr. Thomas Jefferson published his Notes on Virginia in 1787, with a map, on which the strongly-marked boundary runs to the ocean by an East line from Watkins' Point at Cedar Straits; and he, like Herrman and the others, took it for granted that this, and no other, was the line marked by Scarborough and Calvert.

Mitchell's map (1750-1755) bears similar testimony to the situation of Watkins' Point. So do several others of the last century and many of more recent times.

It is useless to particularize more authorities like these. Let it be enough to say that all geographers for two centuries and a half have understood Smith's map as calling what is now the Southern extremity of Somerset County Watkins' Point; nor is it known otherwise in the general speech of the country. Smith's designation has adhered to it through all changes. If that be not its true name, it never had any name at all.

But the fact rests on stronger proof than that. It is established by the uniform and universal consent of both States and all their people. Maryland steadily claimed it as her actual border, and Virginia never practically denied the claim by taking territory immediately above it. Eastward and Westward, where the lines were invisible, both parties made mistakes. But Watkins' Point or the territory near it was not debatable ground. All men, except perhaps Col. Scarborough, recognized and respected the great landmark when they came within sight of it.

But even that is not all. In 1785 some of the most eminent men of the two States came together at Mount Vernon to arrange the difficulties between them. Standing face to face, those commissioners concurred in saying that Watkins' Point was the boundary mark to which the line from the Western shore should run; and they described its situation very unequivocally when they spoke of it as "Watkins' Point, near the mouth of the Pocomoke river." Remembering that this compact was drawn up with most conscientious care, agreed to after cautious examination, ratified by the Legislatures of both States, rigidly adhered to by all parties ever since, and still regarded as of such sacred obligation that all power to touch it is withheld from us, we feel ourselves literally unable to fix the Watkins' Point of the charter anywhere else than at the place then referred to as the true one.

It is suggested that the charter could not have meant the point at Cedar Straits, because it is called a *promontory*, which implies high land, whereas this is a dead level, rising but slightly above the waters on either side. That argument is easily disposed of. The map did not indicate whether the land was high or low, and therefore care was taken to employ two alternative terms, of which one would

surely fit the case if the other would not. The charter says that the beginning line shall run east to the ocean “*a promontorio SIVE CAPITE TERRE vocato Watkins’ Point;*” from the promontory *or* headland. The same abundant caution is observed again when the point comes to be mentioned as the terminus of the closing line, which is required to run “*per lineam brevissimam usque ad predictum promontorium SIVE LOCUM vocatum Watkins’ Point.*” Thus the controlling call of the charter is for Watkins’ Point, by its given name, whether it be a high promontory or a low headland, or merely a *place* whose character is not properly signified by either word.

We proceed to another objection. Smith, in his account of the explorations made by himself and others with him, says, in effect, that they landed at divers places mentioned, (among others Watkins’ Point,) and at all those places marked trees with crosses, as “a notice to any, Englishmen had been there.” Now there are not, and probably never were, trees capable of being so marked on the Watkins’ Point which lies at Cedar Straits; therefore it is argued that Watkins’ Point is not Watkins’ Point. Those who think this deduction legitimate would remove the point in question from the place where Smith puts it on his map, where all geographers have placed it, where the charter describes it to be, and where by the general consent it is, rather than believe that Smith, in his confused way of writing, exaggerated the truth or committed an error about so unimportant a matter as that of marking trees at *all* points where he landed.

It is alleged that another place, higher up the shore and near to the mouth of the Annamessex, is the true Watkins’ Point of the charter. There is (or rather there was) a point there of considerable magnitude and some elevation,

which has now entirely disappeared. Smith noted it as a triangular extension of the mainland into the bay; in 1665 persons, who had then recently seen it, described it as “a small spiral point,” whatever that may mean; and later evidence shows that there was a peach orchard upon it. In a sworn affidavit of Captain Jones, used in 1665 by Virginia, it is referred to as “a small point described on Capt. Smith’s map without a name.” Why should we suppose this to be the place called for in the charter as Watkins’ Point? It was not so nominated on the map, or anywhere else. Smith, so far from ever speaking or writing about it as Watkins’ Point, gave it another and a different name. Dr. Russell, who was with him when he made his explorations, says that it was called Point Ployer, “in honour of that most honorable house of Monsay, in Brittain, that in an extreme extremity once relieved our Captaine.” Can anything be more complete than the failure of this effort to substitute the place *called* Point Ployer for the place *called* Watkins Point?

But it said that Scarborough and Calvert agreed in 1668 that the line from the sea should run to the Annamessex, and not to the Pocomoke. That is not the point of the present question. We are now inquiring where the boundaries were originally fixed. A conventional arrangement of those Commissioners might bind their constituents for the after time, but it could not change the pre-existing facts of the case or make that a false, which before was a true, interpretation of the charter. Nor is any opinion or conclusion expressed or acted upon by them entitled to much consideration as evidence. If Philip Calvert *thought* that the charter limit was at Point Ployer, he was grossly deceived, and Col. Scarborough *knew* very well that it was *not* there, for he had previously declared on his corporal

oath that the “small spiral point” near the Annamessex was South of the charter call “about as far as a man could see on a clear day.”

Some stress is laid upon another fact. In 1851 the *Fashion*, a vessel of which John Tyler, a Marylander, was owner and master, was arrested for dredging in Maryland waters. The justice of the peace before whom the proceeding was instituted condemned her, but on appeal to the County Court the judgment was reversed. The record does not show the grounds of the condemnation or the reasons of the reversal; but Tyler himself deposes from memory that he was finally cleared on the testimony of two old men, who swore to a State line running across Smith’s Island about three-quarters of a mile above Horse Hammock, and over the Bay to the mouth of the Annamessex, which would throw the *locus in quo* of the offense within the jurisdiction of Virginia. If we assume that the issue, the evidence, and the legal reasons of the judgment, are correctly reported by an unlearned man a quarter of a century after the trial, the inference is a fair one that the court of Somerset county believed the line to be where the witnesses said it was, and not at Horse Hammock on one side of Tangier Sound, or at Watkins’ Point on the other. But are we now bound to accept that evidence as infallibly true? If it were delivered before us in the pending cause by the witnesses themselves, we would take it at its worth. Its probative force is certainly not increased by being fished up from the oblivion of twenty-five years and produced to us at second hand. We do not understand that anybody supposes the judgment itself to be binding as a determination of the subject-matter between the two States. The traditionary line of Tyler’s grandfather and old Mr. Lawson must stand or fall by the natural strength of

the facts which support and oppose it. Now it is perfectly ascertained that Virginia in 1851 did not pretend to have any claim on Smith's Island above Horse Hammock, nor within the limits of Somerset county on the Bay shore above Watkins' Point. This record of the Fashion case, considered as evidence of a line at Annamessex, is illegal, insufficient, and unsatisfactory, while the proofs which show that in truth the line was at Watkins' Point are irresistible and overwhelming.

If we are right thus far, it follows that the original line as fixed and agreed by the King and Lord Baltimore runs from Cinquack by a straight line to the extreme southwestern part of Somerset county, Maryland, which we find to be the true Watkins' Point of the charter, and thence by a straight line to the Atlantic ocean. These lines will be seen on the accompanying map, marked and shaded in blue.

But this is not the present boundary. How firmly so-ever it may have been fixed originally, a compact could change it, and long occupation inconsistent with the charter is conclusive evidence of a concession which made it lawful.

Usucaption, prescription, or the acquisition of title founded on long possession, uninterrupted and undisputed, is made a rule of property between individuals by the law of nature and the municipal code of every civilized country. It ought to take place between independent States, and according to all authority it does. There is a supreme necessity for applying it to the dealings of nations with one another. Their safety, the tranquility of their peoples, and the general interests of the human race do not allow that their territorial rights should remain uncertain, subject to dispute, and forever ready to occasion

bloody wars. (See Vattel, Book II, chap. 11, and Wheaton, Part II, chap. 4, sec. 4, citing Grotius Puffendorf and Rutherforth.) The length of time which creates a right by prescription in a private party raises a presumption in favor of a State, that is to say, twenty years. (Knapp's Rep., 60 to 73.) It is scarcely necessary to add that the exercise of a privilege, the perception of a profit, or the enjoyment of what the common law calls an easement, has the same effect as the possession of corporeal property. It behooves us, then, to see whether the acts or omissions of these States have or have not materially changed their original rights and modified their boundaries, as described in the charter. We will look first at the Potomac.

The evidence is sufficient to show that Virginia, from the earliest period of her history, used the South bank of the Potomac as if the soil to low water-mark had been her own. She did not give this up by her Constitution of 1776, when she surrendered other claims within the charter limits of Maryland; but on the contrary, she expressly reserved "the property of the Virginia shores or strands bordering on either of said rivers, (Potomac and Pocomoke,) and all improvements which have or will be made thereon." By the compact of 1785, Maryland assented to this, and declared that "the citizens of each State respectively shall have full property on the shores of Potomac and adjoining their lands, with all emoluments and advantages thereunto belonging, and the privilege of making and carrying out wharves and other improvements." We are not authority for the construction of this compact, because nothing which concerns it is submitted to us; but we cannot help being influenced by our conviction (Chancellor Bland notwithstanding) that it applies to the whole course of the river above the Great Falls as well

as below. Taking all together, we consider it established that Virginia has a proprietary right on the south shore to low water-mark, and, appurtenant thereto, has a privilege to erect any structures connected with the shore which may be necessary to the full enjoyment of her riparian ownership, and which shall not impede the free navigation or other common use of the river as a public highway.

To that extent Virginia has shown her rights on the river so clearly as to make them indisputable. Her efforts to show that she acquired, or that Maryland lost, the islands or the bed of the river, in whole or in part, have been less successful.

To throw a cloud on the title of Maryland to the South half of the river, the fact is proved that in 1685 the King and Privy Council determined to issue a *Quo Warranto* against the Proprietary of Maryland, “whereby the powers of that charter and the government of that province might be seized into the King’s hands” for insisting on “a pretended right to the *whole* river of Potowmack” and for other misdemeanors. This was a formidable threat, considering what a court the King’s Bench was at that time; but it never was carried out, and we can infer from it only that the then Lord Baltimore was not in favor with the ministry of James II.

What is called the Hopton grant was confirmed to the Earl of St. Albans and others in 1667 by Charles II. It included all the land between the Rappahanock and the Potomac, *together with the islands within the banks of those rivers and the rivers themselves*. The rights of the original grantees became vested in Lord Fairfax and his heirs, who sold large portions of it, and as to the rest, the Commonwealth first took it by forfeiture and afterwards bought out the

Fairfax title from the alienees of his heirs. It is not pretended that this grant could, *proprio vigore*, transfer the title of the Potomac islands from Lord Baltimore to the Earl of St. Albans; but it is argued that, as Lord Baltimore must have known of it, and did not protest or take any measure to have it cancelled, his silence, if not conclusive against him by way of equitable estoppel, was at least an admission that he did not own the islands or the bed of the river in which they lay. We answer that he had a right to be silent if he chose; his elder and better title, which was a public act, seen and known of all men, spoke for him loudly enough. Besides that, his subsequent possession of the islands was the most emphatic contradiction he could give to any adverse claim, or pretense of claim, under the Hopton grant.

But these conflicting grants of the islands increased the importance of knowing how and by whom they had been occupied. The exclusive possession of Maryland was affirmed and denied upon evidence so uncertain that we thought it right to postpone our determination for several weeks, so as to give time for the collection of proper proofs. When these came forth they showed satisfactorily that Maryland had granted all the islands, taxed the owners, and otherwise exercised proprietary and political dominion over them. Three Virginia grants were produced which purported to be for islands in the Potomac, but on examination of the surveys it appeared that they were not *in*, but *upon*, the river. One is in Nomini Bay, and the other two are called islands only because they lie with one side on the shore, while the other sides are bounded by inland creeks. All are on the Virginia side of the low water-mark, which we have said was the boundary between the States.

It being thus shown that there is nothing to deflect the line from the low-water mark, we are next to see whether its eastern terminus has been changed. That it certainly has. Cinquack was quietly ignored so long ago that no recollection, nor even tradition, exists of any claim by Maryland on the Bay Shore below the Potomac. When the Compact of 1785 was made, Smith's Point, precisely at the mouth of the river, on the south side, was assumed by both States to be the starting place of the line across the bay.

Nor does the line now run from Smith's Point, *per lineam brevissimam*, to Watkins' Point. It holds a course far north of that, so as to strike Sassafras Hammock, on the western shore of Smith's Island, and take in Virginia's old possession there. It reaches Watkins' Point, not by the one straight line called for in the charter, but by a broken line, or rather by several lines uniting at angles more or less sharp. Before we explain how this came about it is necessary to observe some facts in the general history of the eastern-shore boundary.

While the situation of Watkins' Point at the mouth of Pocomoke was not doubted, nobody knew where the lines running to and from it would go, or what natural objects they would touch in their course. East and west, wherever the solitary landmark could not be seen, a search for the boundary was mere guess-work, and some of the conjectures were amazingly wild. The people there seem to have had none of that ready perception of courses and distances which an Indian possesses intuitively, and which a pioneer of the present day acquires with so much facility.

Almost immediately after the planting of the Maryland colony, some of its officers claimed jurisdiction on the Eastern Shore, nearly twelve miles south of a true east

line from Watkins' Point. Sir John Harvey, then Governor and Captain-General of Virginia, with the advice of the council, conceded the claim, and on the 14th of October, 1638, issued a proclamation, declaring the boundary to be on the Ananock, and commanding the inhabitants of his colony not to trade with the Indians north of that river. We discredit the allegation that this was a fraudulent collusion between the Governor of Virginia and the agents of the Maryland proprietary. It was a mutual mistake – a very gross one to be sure – and not long persisted in. It serves now only to show how loose were the notions of that time about these lines.

Soon after this (but the time is not ascertained) a similar blunder was made westward of Watkins' Point. This was not a claim by Maryland below the true line, but by Virginia above it. Smith's Island lies out in the Chesapeake Bay, quite north of any possible line called for by the charter. But the relative situation of that island being misapprehended, Virginia took quiet and unopposed possession upon it, and holds a large part of it to this day.

No wilful [sic] transgression of the charter boundary took place before 1664. Then rose Col. Edmond Scarborough, the King's Surveyor General of Virginia. His remarkable ability and boldness made him a power in Virginia, and gave him great mental ascendancy wherever he went. He had no respect for Lord Baltimore's rights, and, when he could not find an excuse for invading them, he did not scruple to make one. At the head of forty horsemen, "for pomp and safety," he made an irruption into the territory of Maryland, passing Watkins' Point and penetrating as far as Monoakin, where he arrested the officers of the Proprietary and harried the defenseless people.

To justify this proceeding he referred to an act of the Grand Assembly of Virginia, (passed without doubt by his influence,) which declares Watkins' Point to be above Manoakin, authorizes the Surveyor General to make publication commanding all persons south of Watkins' Point to render obedience to His Majesty's Government of Virginia, and requiring Col. Scarborough, with Mr. John Catlett and Mr. John Lawrence, or one of them, to meet the Maryland authorities upon due notice, (if they were not fully convinced of their intrusions,) and debate and determine the matter with them. Scarborough did none of these things. His conduct throughout violated the act of the Virginia assembly as grossly as it violated the Maryland charter.

To vindicate the claim for a boundary as high up as Manoakin, he put in his own affidavit and that of seven others that the place described in Capt. Smith's map for Watkins' Point, was not at the Pocomoke nor at the Annamessex, but as far above the small spiral point at the mouth of the latter river as a man could see in a clear day, and that the Pocomoke was never called or known by the name of Wighco. This was sworn to in the very face of the map itself, where Watkins's Point was described as lying on the Pocomoke, and where the Pocomoke was distinctly named the Wighco.

In June, 1664, Charles Calvert, Lieutenant Governor of Maryland, sent Philip, the Chancellor, on a special mission to Sir William Berkeley, then Governor of Virginia, to demand justice upon Scarborough for entering the Province of Maryland in a hostile manner, for outraging the inhabitants of Annamessex and Manoakin by blows and imprisonment, for attempting to mark a boundary thirty miles north of Watkins' Point, and for publishing a

proclamation at Manoakin wholly unauthorized. Col. Scarborough was too great a man to be punished, but his acts were repudiated, the claim for his spurious boundary was disavowed, Watkins' Point was again fully acknowledged to be where it always had been, and so the land had rest for a season.

But the quiet time did not last long. The very next year we find Colonel Scarborough on the east side of the Pocomoke, north of the boundary, cutting out a large body of Lord Baltimore's' land, and dividing it by surveys to himself and his friends. The necessity was manifest for having the true line traced and marked on the ground between Watkins' Point and the sea. To do this Colonel Scarborough was appointed a commissioner on one side, and Philip Calvert on the other. But, instead of closing the controversy as their respective constituents intended, their work was done so imperfectly that it has been a principal cause of error and misunderstanding ever since.

Their instructions, as recited by themselves, required them to "meet upon the place called Watkins' Point." That they did meet there does not appear, but they say that, "after a full and perfect view of the point of land made by the north side of Pocomoke Bay and the south side of Annamessex, we have and do conclude the same to be Watkins' Point, from which *said point, so called*, we have run an east line, agreeable with the extremest part of the western angle of said Watkins' Point, over the Pocomoke river, to the land near Robert Holston's, and there have marked certain trees which are continued by an east line to the sea," &c.; and they agreed that this should be received as the bounds of the two provinces "on the eastern shore of the Chesapeake Bay." Whosoever shall try to get at the sense of this document, will find himself

“perplexed in the extreme.” What was it that they concluded to be Watkins’ Point? Not the whole body of the territory between the Annamessex and the Pocomoke. Nobody understands it in that way. Not Point Ployer; for they both knew, and one of them swore, it was not there. Did they actually run any line west of the Pocomoke? If yes, they must have known with perfect certainty where the true line would cross the river; and in that case, what was the necessity for founding a mere conclusion about it upon the lay of the land between the two bays? If it was then ascertained by actual demonstration with the compass that a western extension of the marked line would strike Watkins’ Point, why does it not strike that point now, instead of terminating, where it does, far above, at the Annamessex? Again, why was it not marked? Why was it never recognized, acknowledged, or claimed by either party afterwards? Our rendering may seem a strain upon the words, but we infer from the paper and the known facts of the case, that the commissioners, instead of meeting at Watkins’ Point, came together on the east bank of the Pocomoke, from thence took a view of the country on the other side, and thereupon erroneously concluded that an east line running from Watkins’ Point would cross the Pocomoke at the place near Holston’s, where they marked certain trees. This being satisfactory to themselves, they proceeded, without further preliminary, to mark the eastern end of the line between the river and the sea.

Scarborough may have known that he was not on the true line, but if so, he kept his knowledge to himself. It is very certain that Calvert had full faith in the correctness of his work. No doubt he lived and died in the belief that the marks he assisted to make were on a due east line from the westernmost angle of Watkins’ Point, properly so

called. If any one thinks this a blunder too gross to be credited, let him remember by whom it was shared. Herrman and all subsequent mapmakers place the marks on the straight line where Calvert thought it was. All the public men of the colonies had the same opinion. The error was not discovered, nor even suspected, for more than a hundred years.

But it is argued that the call of the charter is for a straight line; that commissioners were appointed to ascertain where it ran; that they did ascertain it, and marked a part of it; that their judgment being conclusive, the whole line is established as certainly as if it had been marked. So far as this is a geometrical proposition, it is undoubtedly true. But mathematics cannot determine this case against law and equity.

Their own description of the line they agreed upon is inconsistent with itself. They call it an east line from Watkins' Point, and give it an outcome by a course corresponding with Holston's tree. If this be a straight line, how shall we find it? If we begin at Watkins' Point and run east to the sea, we go far below the marked line; if we begin at the marks and run west to the bay, we reach the Annamessex, which is equally wide of the fixed terminus at that end. Yet by one way as much as by the other, we follow the agreed line of the commissioners. We reconcile these contradictions, and carry out the whole agreement, if we run the east line from Watkins' Point until it begins to conflict with the marked line, and from there to the ocean let the marked line be taken for the exclusively true one.

Plainly, it never was intended by the commissioners, or anybody else, that the territory west of the Pocomoke should be divided by a line extending westward from

Holston's to the mouth of the Annamessex. If that was the technical effect of the agreement it was instantly repudiated by the common consent of both provinces. Maryland had held before, and continued afterwards to hold and possess, all the territory between the Pocomoke and the Bay down to the latitude of Watkins' Point, granting the lands, taxing them in the hands of her grantees, and ruling all the inhabitants according to her laws and customs. Her jurisdiction was not intermitted, nor any of her rights suspended, for a moment. Virginia never expressed a suspicion that this possession of Maryland was inconsistent with any right of hers under the agreement. Scarborough himself acquiesced in it to the day of his death as a true construction of his covenants with Calvert.

Our conclusion is that Virginia, by the agreement and her undisturbed occupancy, has an undoubted title to the land east of the Pocomoke, as far north as the Scarborough and Calvert line, while Maryland, by the charter and by her continued possession under it, has a perfect right to the territory west of the Pocomoke and north of Watkins' Point.

We must now go back to Smith's Island. That island is clearly north of the charter line, and all the rights which Virginia has there must depend on the proofs which she is able to give of her possession. The commissioners, agents, and counsel on both sides have, with infinite labor, collected a great volume of evidence on this part of the case, and discussed it at much length.

In early times Virginia granted lands high up on the island; and Maryland, without expressly denying the right of Virginia, made grants of her own in the same region. The lines of these grants are so imperfectly defined by the

surveys that it is not at all easy to tell where they are, and some of them are believed to lie afoul of others. The occupancy, like the titles, was mixed and doubtful. The inhabitants did not know which province they belonged to; at least that was a subject on which there were divers opinions.

A line running nearly across the middle of the island was at first claimed by Virginia as being the old boundary; but a subsequent personal examination and a more careful reconsideration of the evidence brought the counsel themselves to the opinion that a claim by that line could not be supported. They insisted, however, and do still insist, that another line, which runs about three-quarters of a mile above that from Sassafras Hammock to Horse Hammock was and is the true division. There is some evidence that this was once thought to be the boundary.

Two grants, one by Maryland and one by Virginia, each calling for the divisional line between the States, without describing where the divisional line was, were so located on the ground that they met on the line in question. It is inferred from this that a line had been previously run at that place, which was understood to be the division between the provinces or the States. But this argument *a priori* is all that supports the theory of a State line there. If it ever was actually run, it cannot now be told by whom, when, for what purpose, by what authority, or precisely where. All the evidence relating to it is very doubtful. It dates back to what may be called the prehistoric times of the island. Some witnesses affirm and others deny, on the authority of their forefathers, that this was the dividing line of the States. But none of them can give any substantial grounds for his belief.

Out of this contradictory evidence and above the obscurity of vague tradition there rises one clear and decisive fact, which is this: That for at least forty years last past Maryland has acknowledged the right of Virginia up to a line which, beginning at Sassafras Hammock, runs eastward across the island to Horse Hammock, and Virginia has claimed no higher. By that line alone both States have limited their occupancy for a time twice as long as the law requires to make title by prescription. By that line Maryland has bounded her election district and her county. North of it all the people vote and pay taxes in Maryland, obey her magistrates, and submit to the process of her courts. South of it lies, undisturbed and undisputed, the old dominion of Virginia. We have no doubt whatsoever that we are bound to regard that as being now the true boundary between the two States. There are not two adjoining farms in all the country whose limits are better settled by an occupancy of forty years, or whose owners have more carefully abstained from all intrusion upon one another within that time.

We have thus ascertained to our entire satisfaction the extent and situation of the territory which each State has held long enough to make a title by prescription, and the boundary now to be determined must conform to those possessions, no matter at what expense of change in the original lines. We know therefore how the land is to be divided. But how does prescriptive title to land affect the right of the parties in the adjacent waters?

It has been argued with great force and ingenuity that a title resulting merely from long possession can apply only to the ground which the claimant has had under his feet, together with its proper appurtenances; that a river, a lake, or a bay is land covered with water; that land cannot

be appurtenant to land; that therefore title by prescription stops at the shore. But this is unsound, because the water in such a case is not claimed as *appurtenant* to the dry land, but as *part* of it. One who owns land to a river owns to the middle of the channel. Upon the same principle, if one State has the territory on both sides the whole river belongs to her. Nor does it make any difference how large or how small the body of water is. The Romans called the Mediterranean *Mare Nostrum*, because her territory surrounded it on all sides. This construction applies with equal certainty to every kind of title, whether it be acquired by express concession, by lawful conquest, or by the long continuance of a possession which, at first, may have been but a naked trespass. In the last case the silent dereliction of the previous proprietor implies a grant of his whole right as fully as if it had been given by solemn treaty.

A few observations upon the several sections of the broken line which we adopt in place of the straight line of the charter will suffice to apply the principles we have endeavored to set forth.

We run to Sassafras Hammock and from that to Horse Hammock, because we cannot in any other possible way give Virginia the part of Smith's Island to which she shows her right by long possession.

We go thence to the middle of Tangier Sound and from thence downward we divide Tangier Sound equally between the two States, because the possession of Virginia to the shore is proof of a title whose proper boundary is the middle of the water. We give Maryland the other half of the sound for the same or exactly a similar reason, she

being incontestibly the owner of the dry land on the opposite shore.

The south line dividing the waters stops where it intersects the straight line from Smith's Point to Watkins' Point, because this latter is the charter line, as modified by the compact, and Maryland has no rights south of it.

From that point of intersection to Watkins' Point we follow the straight line from Smith's Point, there being no possession or agreement which has changed it since 1785.

At Watkins' Point the charter line has stood unchanged since 1632, and the call for a due east line from thence must be followed until it meets the middle thread of the Pocomoke. At the place last mentioned the boundary turns up the Pocomoke, keeping the middle of the river until it crosses the Calvert and Scarborough line. It divides the river that far because the territory on one side belongs to Maryland and on the other to Virginia.

From the angle formed by the Scarborough and Calvert line with the line last described through the middle of the Pocomoke, the boundary follows the marked line of Scarborough and Calvert to the seashore.

It will be readily perceived that we have no faith in any straight-line theory which conflicts with the contracts of the parties, or gives to one what the other has peaceably and continuously occupied for a very long time. The broken line which we have adopted is vindicated by certain principles so simple, so plain, and so just, that we are compelled to adopt them. They are briefly as follows:

1. So far as the original charter boundary has been uniformly observed and the occupancy of both has

conformed thereto, it must be recognized as the boundary still.

2. Wherever one State has gone over the charter line taken territory which originally belonged to the other and kept it, without let or hindrance, for more than twenty years, the boundary must now be so run as to include such territory within the State that has it.

3. Where any compact or agreement has changed the charter line at a particular place, so as to make a new division of the territory, such agreement is binding if it has been followed by a corresponding occupancy.

4. But no agreement to transfer territory or change boundaries can count for anything now, if the actual possession was never changed. Continued occupancy of the granting State for centuries is conclusive proof that the agreement was extinguished and the parties remitted to their original rights.

5. The waters are divided by the charter line where that line has been undisturbed by the subsequent acts of the parties; but where acquisitions have been made by one from the other of territory bounded by bays and rivers, such acquisitions extend constructively to the middle of the water.

Maryland is by this award confined everywhere within the original limits of her charter. She is allowed to go *to* it nowhere except on the short line running east from Watkins' Point to the middle of the Pocomoke. At that place Virginia never crossed the charter to make a claim. What territory we adjudge to Virginia north of the charter line she has acquired either by compacts fairly made or else by a long and undisturbed possession. Her right to this

territory, so acquired, is as good as if the original charter had never cut it off to Lord Baltimore. We have nowhere given to one of these States anything which fairly or legally belongs to the other; but in dividing the land and the waters we have anxiously observed the Roman rule, *suum cuique tribuere*.

J.S. BLACK,
Pennsylvania.

CHAS. J. JENKINS,
Georgia.

A.W. GRAHAM,
Secretary.

OPINION OF JAMES B. BECK, OF KENTUCKY

I agree with my colleagues in the conclusion they have reached as to the rights of Maryland on the Potomac river. But I regret to be compelled to differ with them as to the location of the “Watkins Point” of Lord Baltimore’s charter, and consequently to the true line of division between the States on the eastern shore of the Chesapeake Bay. . . .

[REMAINDER OF DISSENTING OPINION OF JAMES B. BECK DELETED AS IRRELEVANT TO THE PRESENT CASE.]

JAMES B. BECK,
Of Kentucky.

APPENDIX E

The Potomac River Compact of 1958

REPORT OF THE COMMISSIONERS TO THE GOVERNORS OF MARYLAND AND VIRGINIA, *THE POTOMAC RIVER COMPACT OF 1958*, REPRINTED IN VIRGINIA HOUSE DOCUMENT NO. 22 (1960)

Mount Vernon, Virginia

December 20, 1958

To

THE HONORABLE THEODORE R. MCKELDIN,
Governor of Maryland

and

THE HONORABLE J. LINDSAY ALMOND, JR.,
Governor of Virginia

This report is respectfully submitted to perpetuate and improve the fisheries of the Potomac River to the mutual advantage and enjoyment of the citizens of the State of Maryland and the Commonwealth of Virginia.

The legislative proposals attached to this report are necessary and are brought about by the accidents of geography and history. When the colony of Maryland was formed, its southern boundary was the Potomac River. Virginia was given the Capes which form the entrance to the Chesapeake Bay and its tributaries.

When the colonies separated from England, each became to all intents and purposes a sovereign and independent nation. The rights which the citizens of the two new "nations" sought to exercise soon brought about conflict. Maryland controlled the Potomac River and Virginians could not enjoy the fisheries thereof while Virginia

controlled the Capes and the Maryland citizens could not pass through the Capes without the payment of toll.

It was not long before those men who had the vision and courage to separate from England saw the need for a solution to the problems confronting the citizens of their two states.

The commissioners from the two states who were appointed to compose the differences, and who were successful in doing so, met at Mount Vernon on March 28, 1785, upon the invitation of that towering figure of American history – George Washington. The success of the conference is undoubtedly due in large measure to his wisdom, although each state was well represented by men of broad vision well endowed with capacities which had met the test of the dark days of the American Revolution. The work of these men in agreeing to the Compact of 1785 led directly to the call for the Constitutional Convention in Philadelphia and subsequently to the adoption of the Constitution of the United States.

The commissioners prepared a compact which was thereafter submitted to the respective legislatures and approved in 1785. The compact dealt with matters other than the fisheries and free passage of the Capes, for these were sovereign contracting parties intending to agree upon all subjects of possible dispute.

Many of the provisions of the original compact became obsolete with the adoption of the Federal Constitution in 1789 which gave the federal government sole jurisdiction over interstate trade and maritime matters. Notwithstanding this, the other provisions of the compact have long enjoyed unquestioned vitality and have been honored by the two states.

The means employed for regulation of the fisheries was the adoption by the two states of similar concurrent legislation. Over the years, it was the custom for the states to adopt the same legislation governing the fisheries upon the Potomac River. In the early years of the compact these fisheries were not sufficiently important to require the adoption of similar concurrent legislation concerning the Potomac River. This process went on and a striking degree of similarity was achieved and maintained in the laws of the two states dealing with the Potomac River fisheries.

All thinking citizens realize the adoption of laws does not insure their enforcement. The problems of enforcement may arise from honest difference of opinion as to the proper means for engaging in certain activities, or a calculated disregard of the law, or sympathy on the part of local juries sitting in the trial of cases of persons charged with violation of law. Whatever the reasons, enforcement of the Potomac River statutes became increasingly difficult. As the problems of enforcement increased, so did the expenditures for enforcement. Violation of the Potomac River statutes has not been the exclusive privilege of the citizens of either state.

In recent years attempts have been made from time to time to establish a bi-state commission to regulate the fisheries of the Potomac River. Differences of opinion have arisen as to the scope of the commission's jurisdiction and the method of appointment. Some bitterness has developed over alleged failure or refusal to enforce the Potomac River statutes and, after a long series of disagreements, the State of Maryland in 1957 adopted an act purporting to repeal the Compact of 1785. At the same session Maryland also repealed portions of her concurrent Potomac River statutes and assumed exclusive jurisdiction and

control over the Potomac River. There was further legislation at Annapolis following the repeal, which provided that the citizens of Virginia should receive the same treatment as to the issuance of licenses and other matters having to do with fisheries on the river as the citizens of Maryland.

Virginia also in 1957 instituted a proceeding to invoke the original jurisdiction of the Supreme Court of the United States and to have the court rule invalid the Maryland acts which were designed to repeal the compact and place exclusive jurisdiction of the Potomac River in Maryland. After taking jurisdiction of the case, the Supreme Court of the United States assigned Mr. Justice Stanley Reed to act as a Special Master in the taking of evidence and the preparation of a report for the Court. In discussions among Mr. Justice Reed and Messrs. C. Ferdinand Sybert, Attorney General of the State of Maryland, and A.S. Harrison, Jr., Attorney General of Virginia, it was suggested that the parties should attempt to resolve their differences by the appointment of commissioners from each state to meet and discuss the matters in dispute with a view to arriving at a satisfactory settlement of the controversy out of court if possible.

The appointment of the Commission arose from the situation in the Potomac River, and the jurisdiction of the Commission was restricted to that area.

Pursuant to this suggestion, Governor McKeldin appointed as commissioners to represent the State of Maryland the following: Carlyle Barton, Esquire, M. William Adelson, Esquire, Judge Stephen R. Collins, Judge Edward S. Delaplaine and William J. McWilliams, Esquire. Governor Almond appointed as commissioners to represent Virginia the following: Mills E. Godwin, Jr., Esquire, John

Warren Cooke, Esquire, Howard H. Adams, Esquire, Robert Y. Button, Esquire and Edward E. Lane, Esquire. The commissioners from each state were assisted by the respective officials in charge of the fisheries program, Attorneys General and staffs, and staffs of the legislative councils.

Following the organization of each commission, a joint meeting was held at Mount Vernon on May 19, 1958. A general discussion was had of the problems confronting the two groups and some tentative proposals were made for further consideration. Thereafter, on June 23-24, 1958, a joint meeting of the two commissions was held in Annapolis and testimony was received concerning the scientific aspects of the Potomac River fisheries. The commissioners from Virginia were the guests of Governor and Mrs. McKeldin. Subsequently the two commissions held joint hearings in LaPlata, Maryland, on the morning of July 12 and in Warsaw, Virginia, on that afternoon.

We were impressed by the desire of those dependent upon the Potomac fisheries for a living whereby some means might be found for improving the fisheries instead of seeing a constant decline in this production from the Potomac. There seemed to be no major differences of opinion among them as to what ought to be done.

We also heard the testimony of expert marine biologists who assured us that the Potomac River fisheries are on the decline, large areas of the river are barren, and a program is badly needed in which the two states might unite in jointly restoring the fisheries of the Potomac River. There also appeared no area of disagreement between the scientific personnel of Maryland and Virginia as to the problems of the Potomac River.

Upon the conclusion of the hearings, the two commissioners went to Williamsburg and held a joint meeting on the 14th day of July. While in Williamsburg Governor and Mrs. Almond entertained the commissioners and their wives. At the Williamsburg meeting agreement was reached upon many matters and it was then decided that a bi-state agency offered the most practical solution to the conservation and development of the Potomac River Fisheries. The staffs were directed to prepare drafts of measures to carry out the general agreements.

The respective commissions held frequent separate meetings after appointment, but the next joint meeting of the commission was held on November 14, 1958, at the Decatur House in Washington, D.C. Final agreement was reached upon all but a few minor matters and committees were appointed to reach satisfactory conclusions upon these. Mr. Justice Reed was present for luncheon and was informed of the progress being made.

The final meeting of the commission took place at Mount Vernon on December 20, 1958, at which time agreement was reached upon all matters which were entrusted to the two commissions. A new compact governing the Potomac River fisheries was unanimously approved by the members of the two commissions and a copy marked Appendix I is attached to this joint report, which is signed by all the members of each commission.

The solution proposed is a new compact entitled "The Potomac River Compact of 1958". It sets forth in general the reasons leading to the adoption of the Compact, the jurisdictional area of the Potomac River Fisheries Commission, creates the Commission and provides that it shall consist of six members with three each to be chosen from

the respective fisheries commissions of Maryland and Virginia. The Commission is vested with the necessary powers as to employment of personnel, establishment of offices, etc., to enable it to discharge its duties. The Commission is required to make a survey of the oyster bars, required to conduct research relative to the conservation and repletion of fisheries resources, and is empowered to regulate the taking of finfish, crabs, oysters and clams. It may issue licenses to the citizens of each state on the same terms for taking fish and shellfish, and may call upon the agencies of the respective states to assist it in its duties. It may impose a license tax on oysters taken within the limits of the Potomac River but not to exceed 25¢ per bushel. The Commission is authorized to adopt rules and regulations and provision is made for due notice thereof; judicial review is provided in case of appeal from any such rule or regulation.

It should be pointed out that the laws of Maryland in force on December 1, 1958, and applicable to the Potomac River will remain in force until changed by regulation of the Commission. No regulation may be adopted unless concurred in by at least four members of the Commission, which, it is felt, adequately protects both states. Regulations of the Commission may be amended, modified or rescinded by joint action of the General Assemblies of each of the states.

Enforcement of the regulations will be through the law enforcement agencies of each of the two states. Penalties are provided for violations of the regulations and violators may be taken to an appropriate court in either state in a county adjacent to that part of the Potomac River where the offense occurred. Fines imposed are to be paid to the state in which the case was tried.

Each state pledges that it will appropriate not less than \$25,000.00 a year for the expenses and other purposes of the Commission. Provision is made for auditing the expenditures of the Commission.

The new compact would take the place of the Compact of 1785 and would become effective at the expiration of sixty days after the completion of the last act necessary to make it legally effective. It would also provide that once the new Compact was adopted and ratified by each state, neither could repeal or alter the same without the consent of the other. Thus further litigation between the States before the Supreme Court would be unnecessary and the case would be dismissed.

Clause VII of the Compact of 1785 is reflected in Section 4 of Article 3 and in Section 1 of Article 7 of the new Compact and carries forward certain rights of the citizens of Maryland and Virginia which have not been in controversy. Clause XIII is contained in Article VIII of the new Compact and provides that once ratified, the Compact is not to be repealed or amended without the mutual consent of the two states.

We contemplate and respectfully suggest to Your Excellencies that the attached bill be introduced and enacted into law at the first session of your General Assemblies occurring after the making of this report. We further suggest that arrangements be made for the introduction of the Compact in the Congress of the United States, and that steps be taken to assure its adoption in the Congress. As soon as the Compact has been approved by the two states and the Congress, it will become effective upon the expiration of sixty days.

CONCLUSION

We have been impressed by the spirit of cooperation and good will which has prevailed in all of our meetings. In an undertaking of this kind there is seldom a winner or a loser. Those who have participated in the framing of the newly-proposed Compact have approached this task in a spirit which they hope is worthy of that exhibited by George Washington and the commissioners from the two states who first met at Mount Vernon and reconciled their differences. The shadow of this influence and the imprint of history have inspired us. We have sought to measure up to the responsibilities and trust conferred upon us and in a spirit of mutual confidence, we now submit to Your Excellencies, "The Potomac River Compact of 1958".

Respectfully submitted,
For the State of Maryland:

CARLYLE BARTON
WILLIAM J. MCWILLIAMS
M. WILLIAM ADELSON
STEPHEN R. COLLINS
EDWARD S. DELAPLAINE

Commissioners

For the Commonwealth of Virginia:

MILES E. GODWIN, JR.
HOWARD H. ADAMS
EDWARD E. LANE
ROBERT Y. BUTTON
JOHN WARREN COOKE

Commissioners

PREAMBLE

Whereas, Maryland and Virginia are both vitally interested in conserving and improving the valuable fishery resources of the tidewater portion of the Potomac River, and

Whereas, certain provisions of the Compact of 1785 between Maryland and Virginia having become obsolete, Maryland and Virginia each recognizing that Maryland is the owner of the Potomac River bed and waters to the low water mark of the southern shore thereof, as laid out on the Matthews-Nelson survey of 1927, and that Virginia is the owner of the Potomac River bed and waters southerly from said low water mark, as laid out, and the citizens of Virginia have certain riparian rights along the southern shore of the River as shown on said Matthews-Nelson survey, and in common with the citizens of Maryland, the right of fishing in said River. Maryland and Virginia have agreed that the necessary conservation and improvements of the tidewater portion of the Potomac fishery resources can be best achieved by a Commission comprised of representatives of both Maryland and Virginia, charged with the establishment and maintenance of a program to conserve and improve these resources, and

Whereas, at a meeting of the Commissioners appointed by the Governors of the State of Maryland and the Commonwealth of Virginia, to-wit: Carlyle Barton, M. William Adelson, Stephen R. Collins, Edward S. Delaplaine and William J. McWilliams, Esquires, on the part of the State of Maryland, and Mills E. Godwin, Jr., Howard H. Adams, Robert Y. Button, John Warren Cooke and Edward E. Lane, Esquires, on the part of the Commonwealth of Virginia, at Mount Vernon, in Virginia, on the

twentieth day of December, in the year one thousand nine hundred and fifty-eight, the following Potomac River Compact of 1958, between the Commonwealth of Virginia and the State of Maryland was mutually agreed to by the said Commissioners:

Now, Therefore, Be It Resolved by the Commissioners appointed by the Governors of the State of Maryland and the Commonwealth of Virginia, meeting in joint session, that they do unanimously recommend to the said respective Governors that there be a new Compact, to be designated as the "Potomac River Compact of 1958," and that the said new Compact be referred as promptly as possible to the Legislatures of the State of Maryland and the Commonwealth of Virginia for appropriate action, and to the end that after ratification and adoption by said Legislatures the same be submitted to the Congress of the United States for approval.

ARTICLE I. COMMISSION – MEMBERSHIP AND ORGANIZATION

SECTION 1. *Commission Created*

The Potomac River Fisheries Commission, hereinafter designated as "Commission," is hereby created.

SECTION 2. *Members*

The Commission shall consist of six members, three from Maryland and three from Virginia. The Maryland members shall be the members of the Tidewater Fisheries Commission of Maryland or its successor agency and the Virginia members shall be the members of the Virginia Fisheries Commission or its successor agency. If the membership of either of the respective State Commissions

exceeds three, then the three Commission members from that state shall be selected by the Governor thereof from the members of the State Commission; and if the membership of either of the respective State Commissions is less than three, the three Commission members from that state shall be the member or members of the State Commission, and such additional person or persons who shall be appointed by the Governor, as may be necessary to constitute a total of three Commissioners.

SECTION 3. *Term, Vacancies*

The term of Commissioners who are members of their respective State Commissions shall be coterminous with their term on their State Commission. The term of Commissioners who are not members of their State Commission shall be four years. Vacancies on the Commission shall be filled by appointment of the Governor of the state entitled to fill the vacancy, except that where the State Commission has three members, the person filling a vacancy on the State Commission shall *ex officio* become a member of the Commission.

SECTION 4. *Chairman*

The Chairman of the Commission shall alternate from year to year between representatives of Maryland and Virginia. Subject to such alternation, the Chairman shall be elected by the Commissioners for a term of one year.

SECTION 5. *Compensation, Expenses*

Commissioners shall be entitled to receive from the General Fund of the Commission compensation of twenty-five dollars (\$25.00) for each day or portion thereof spent in the performance of their duties, and reimbursement for

reasonable expenses incident to the performance of their duties.

SECTION 6. *Meetings, Quorum*

Commission meetings shall be held at least once each quarter, and at such other times as the Commission may determine. Four members shall constitute a quorum for the transaction of business.

SECTION 7. *Office and Employees*

The Commission shall establish and maintain an office at such locations as it may select, and may employ an Executive Secretary who shall serve at the pleasure of the Commission, and such other administrative, clerical, scientific, and legal personnel as it deems necessary. The powers, duties and compensation of all employees shall be as prescribed by the Commission and the employees shall not be subject to the provisions of Article 64A of the Annotated Code of Maryland nor to the provisions of the Virginia Personnel Act, as the same may be from time to time in effect. The Commission may extend to any employee or employees membership in the Virginia Supplemental Retirement System or the Maryland Employees' Retirement System, whichever is applicable, subject to the laws relating to each such retirement system.

ARTICLE II. JURISDICTIONAL BOUNDARIES

The territory in which the Potomac River Fisheries Commission shall have jurisdiction shall be those waters of the Potomac River enclosed within the following described area:

Beginning at the intersection of mean low water mark at Point Lookout and an established line running from Smiths Point to Point Lookout, marking Chesapeake Bay waters; thence following the mean low water line of the shore northwesterly across the respective mouths of all creeks to Gray Point at the westerly entrance into Rowley Bay; thence in a straight line northwesterly to the southerly extremity of Kitts Point; thence along the mean low water line to the southwesterly point of St. Inigoes Neck; thence in a straight line westerly to the most easterly point of St. Georges Island; thence following the mean low water line in a general northwesterly direction, across the respective mouths of all creeks and inlets to the southwesterly point of Huggins Point; thence in a straight line southwesterly to the eastern extremity of the sand bar known as Heron Island; thence northwesterly following the ridge of Heron Island Bar to its westerly extremity; thence southwesterly in a straight line to the most southerly point of Blackiston Island; thence in a straight line northwesterly to the southern extremity of Colton's Point; thence following the mean low water line, westerly, excluding all creeks and inlets, to the point marking the southeasterly entrance into St. Catherine Sound; thence westerly in a straight line to the southern extremity of St. Catherine Island Sandbar; thence northwesterly, along the westerly edge of said sand bar continuing along the mean low water line of the southwesterly side of St. Catherine Island to the northwesterly point of said island; thence westerly in a straight line to Cobb Point Bar Lighthouse; thence northwesterly along the ridge of Cobb Point Sandbar to the southerly extremity of Cobb Point; thence following the mean low water line in general northwesterly and northerly directions across the respective mouths of all creeks and inlets to a point at the easterly entrance

into Port Tobacco River, due east of Windmill Point; thence in a straight line westerly to Windmill Point; thence southwesterly following the mean low water line across the respective mouths of all creeks and inlets to Upper Cedar Point; thence southwesterly in a straight line across the mouth of Nanjemoy Creek to a point on shore at the village of Riverside; thence following the mean low water line, southwesterly, northwesterly and northerly, across the respective mouths of all creeks and inlets to Smith Point; thence northerly in a straight line to Liverpool Point; thence northerly in a straight line to Sandy Point; thence following the mean low water line northerly, across the respective mouths of all creeks and inlets to Moss Point; thence northerly in a straight line across Chica-muxen Creek to the southernmost point of Stump Neck; thence following the mean low water line northeasterly, across the respective mouths of all creeks and inlets, to a point at the southerly entrance into Mattawoman Creek; thence in a straight line northeasterly across the mouth of Mattawoman Creek to the southwesterly point of Cornwallis Neck; thence following the mean low water line northeasterly, across the respective mouths of all creeks and inlets, to Chapman Point; thence in a straight line northeasterly to Pomonkey or Hollis Point; thence following the mean low water line in a northerly direction across the respective mouths of all creeks and inlets, to a point on Marshall Hall shore, due south of Ferry Point; thence northeasterly in a straight line to Bryan Point; thence northeasterly in a straight line to the northwest extremity of Mockley Point; thence northeasterly in a straight line to Hatton Point; thence northerly in a straight line to the southwestern-most point of Indian Queen Bluff; thence following the mean low water line northerly across the respective mouths of all creeks and inlets, to Rosier Bluff

Point; thence in a straight line northerly to the intersection with the District of Columbia Line at Fox Ferry Point; thence following the boundary line of the District of Columbia southwesterly to a point on the lower or southern shore of the Potomac River, said point being the intersection of the boundary line of the Commonwealth of Virginia with the boundary line of the District of Columbia; thence following the mean low water line of the Potomac River on the southern, or Virginia shore, as defined in the Black-Jenkins Award of 1877 and as laid out in the Matthews-Nelson Survey of 1927, beginning at the intersection of the Potomac River and the District of Columbia Line at Jones Point and running to Smiths Point; and thence in a straight line across the mouth of the Potomac River on the established line from Smiths Point to Point Lookout, to the mean low water mark at Point Lookout, the place of beginning.

ARTICLE III. COMMISSION POWERS AND DUTIES

SECTION 1. *Oyster Bars*

The Commission shall make a survey of the oyster bars within its jurisdiction and may reseed and replant said oyster bars as may from time to time be necessary.

SECTION 2. *Fish and Seafood*

The Commission may by regulation prescribe the type, size and description of all species of finfish, crabs, oysters, clams and other shellfish which may be taken or caught within its jurisdiction, the places where they may be taken or caught, and the manner of taking or catching.

SECTION 3. Research

The Commission shall maintain a program of research relating to the conservation and repletion of the fishery resources within its jurisdiction, and to that end may cooperate and contract with scientists and public and private scientific agencies engaged in similar work, and may purchase, construct, lease, borrow or otherwise acquire by any lawful method such property, structures, facilities, or equipment as it deems necessary.

SECTION 4. Licenses

- (a) The Commission shall issue such licenses as it may prescribe which shall thereupon be required for the taking of finfish, crabs, oysters, clams, or other shellfish from the waters within the jurisdiction of the Commission, and for boats, vessels and equipment used for such taking. Recognizing that the right of fishing in the territory over which the Commission shall have jurisdiction is and shall be common to and equally enjoyed by the citizens of Virginia and Maryland, the Commission shall make no distinction between the citizens of Virginia or Maryland in any rule, regulation or the granting of any licenses, privileges, or rights under this Compact.
- (b) Licenses for the taking of oysters and clams and the commercial taking of finfish and crabs within the jurisdiction of the Commission shall be granted only to citizens of Maryland or Virginia who have resided in either or both states for at least twelve months immediately preceding the application for the license. Within six months after the effective date of this Compact, the Commission shall adopt a schedule of licenses, the privileges granted thereby, and the fees therefor,

which may be modified from time to time in the discretion of the Commission.

- (c) The licenses hereby authorized may be issued at such places, by such persons, and in accordance with such procedures as the Commission may determine.

SECTION 5. *Expenditures*

The Commission is authorized to expend funds for the purposes of general administration, repletion of the fish and shellfish in the Potomac River, and the conservation and research programs authorized under this Compact, subject to the limitations provided in this Compact.

SECTION 6. *Grants, Contributions, Etc.*

The Commission is authorized to receive and accept (or to refuse) from any and all public and private sources such grants, contributions, appropriations, donations, and gifts as may be given to it, which shall be paid into and become part of the General Fund of the Commission, except where the donor instructs that it shall be used for a specific project, study, purpose, or program, in which event it shall be placed in a special account, which shall be administered under the same procedure as that prescribed for the General Fund.

SECTION 7. *Cooperation of State Agencies*

The Commission may call upon the resources and assistance of the Virginia Fisheries Laboratory, the Maryland Department of Research and Education, and all other agencies, institutions, and departments of Maryland and Virginia which shall cooperate fully with the Commission upon such request.

SECTION 8. Regulations

The Commission shall have the power to make, adopt and publish such rules and regulations as may be necessary or desirable for the conduct of its meetings, such hearings as it may from time to time hold, and for the administration of its affairs.

SECTION 9. Inspection Tax

The Commission may impose an inspection tax, in an amount as fixed from time to time by the Commission, not exceeding 25¢ per bushel, upon all oysters caught within the limits of the Potomac River. The tax shall be paid by the buyer at the place in Maryland or Virginia where the oysters are unloaded from vessels and are to be shipped no further in bulk in vessel, to an agent of the Commission, or to such officer or employee of the Virginia Fisheries Commission or of the Maryland Department of Tidewater Fisheries, as may be designated by the Commission, and by him paid over to the Commission.

**ARTICLE IV. COMMISSION REGULATIONS –
PROCEDURES AND REVIEW**SECTION 1. Notice, Hearing, Vote

No regulation shall be adopted by the Commission unless: (a) a public hearing is held thereon, (b) prior to the hearing the Commission has given notice of the proposed regulation by publication thereof at least once a week for three successive weeks in at least one newspaper published, or having a general circulation in each county of Maryland and Virginia contiguous to the waters within the Commission's jurisdiction. The first such publication to be at least thirty days but not more than 45 days prior to

the date of the hearing; (c) a copy of the proposed regulation is mailed at least 30 days but not more than 45 days prior to the hearing, to the clerk of the court of each county of Maryland and Virginia contiguous to the waters within the Commission's jurisdiction, who shall post the same in a conspicuous plat at or in the courthouse; and (d) the regulation is approved by at least four members of the Commission.

SECTION 2. Recording, Effective Date

- (a) Regulations of the Commission shall be exempt from the provisions of Chapter 1.1 of Title 9 of the Code of Virginia (1950 Edition, as amended from time to time), and of Section 9 of Article 41 of the Annotated Code of Maryland (1957 Edition, as amended from time to time). Copies of Commission regulations shall be kept on public file and available for public reference in the offices of the Commission, the office of the clerk of court in each county of Maryland and Virginia contiguous to the waters within the Commission's jurisdiction, the office of the Virginia Division of Statutory Research and Drafting, the office of the Maryland Department of Legislative Reference, the office of the Virginia Fisheries Commission, and the office of the Maryland Department of Tidewater Fisheries.
- (b) No regulation of the Commission shall become effective until thirty (30) days after the date of its adoption, or such later date as may be fixed by the Commission.

SECTION 3. Review

Any person aggrieved by any regulation or order of the Commission may at any time file a petition for

declaratory judgment with respect to the validity or construction thereof, in the circuit court of any county in Maryland or Virginia contiguous to the waters within the Commission's jurisdiction. A review of the final judgment of the circuit court may be appealed to the court of highest appellate jurisdiction of the state in accordance with the rules or laws of procedure in such state.

SECTION 4. *Revision by Legislative Action*

Regulations of the Commission may be amended, modified, or rescinded by joint enactment of the General Assembly of Maryland and the General Assembly of Virginia.

ARTICLE V. ENFORCEMENT OF LAWS AND REGULATIONS: PENALTIES

SECTION 1. *Responsibility for Enforcement*

The regulations and orders of the Commission shall be enforced by the law enforcement agencies and officers of Maryland and Virginia.

SECTION 2. *Penalties*

The violation of any regulation of the Commission shall be a misdemeanor. Unless a lesser punishment is provided by the Commission, such violation shall be punishable by a fine not to exceed one thousand dollars (\$1,000.00) or confinement in a penal institution for not more than one (1) year, or both, in the discretion of the court, and any vessel, boat, or equipment used in the taking of finfish, crabs, oysters, clams, or other shellfish from the Potomac River in violation of any regulation of the Commission or of applicable laws may be confiscated

by the court, upon the abandonment thereof or the conviction of the owner or operator thereof.

SECTION 3. *Jurisdiction of Court*

The officer making an arrest or preferring a charge for violation of a regulation of the Commission or an applicable state law respecting the waters within the Commission's jurisdiction shall take the alleged offender to a court of competent jurisdiction in either State, in a county adjacent to the portion of the Potomac River where the alleged offense occurred, which shall thereupon have jurisdiction over the offense.

SECTION 4. *Disposition of Fines and Forfeitures*

All fines imposed for violation of regulations of the Commission or applicable state laws respecting the waters within the Commission's jurisdiction shall be paid into the court in which the case is prosecuted, and accounted for under the laws applicable to that court. Any property confiscated under the provisions of this Compact shall be turned over to the Commission, which may retain, use or dispose of as it deems best.

ARTICLE VI. COMMISSION FINANCES

SECTION 1. *Budget*

The Commission shall approve and adopt a proposed annual budget showing estimated income, revenues, appropriations, and grants from all sources, and estimated necessary expenditures and shall send a copy thereof to the Governors of Maryland and Virginia.

SECTION 2. Appropriations

The said Governors shall place in the proposed Budget of their respective states for each year the sum of not less than twenty-five thousand dollars (\$25,000.00) for the expenses and the other purposes of the Commission for that year; and the General Assembly of each of the two states agrees to appropriate annually not less than this sum to the Commission.

SECTION 3. General Fund

- (a) The General Fund shall consist of: (1) all income and revenue received from the issuance of licenses under this Compact; (2) the proceeds of the disposition of property confiscated pursuant to the provisions of this Compact; (3) the proceeds of the inspection tax upon oysters imposed pursuant to this Compact; and (4) the funds appropriated to the Commission by the two states.
- (b) The General Fund of the Commission shall be kept in such bank or depository as the Commission shall from time to time select. The General Fund shall be audited annually by the Auditor of Public Accounts of Virginia and the State Auditor of Maryland acting jointly, and at such other times as the Commission may request.

ARTICLE VII. EFFECT ON EXISTING LAWS AND PRIOR COMPACT**SECTION 1.**

The rights, including the privilege of erecting and maintaining wharves and other improvements, of the citizens of each State along the shores of the Potomac River adjoining their lands shall be neither diminished,

restricted, enlarged, increased nor otherwise altered by this Compact, and the decisions of the courts construing that portion of Article VII of the Compact of 1785 relating to the rights of riparian owners shall be given full force and effect.

SECTION 2. *Existing Laws*

The laws of the State of Maryland relating to finfish, crabs, oysters, and clams in the Potomac River, as set forth in Article 66C of the Annotated Code of Maryland and as in effect on December 1, 1958, shall be and remain applicable in the Potomac River except to the extent changed, amended, or modified by regulations of the Commission adopted in accordance with this Compact.

SECTION 3. *Existing Licenses*

The rights and privileges of licensees to take and catch finfish, crabs, oysters, clams, and other shellfish in the Potomac River, which are in effect at the time this Compact becomes effective, shall continue in force subsequent to the adoption of this Compact, subject to the power of the Commission, by regulation, to modify or abolish any class of licenses or the rights of any particular class of licensees.

ARTICLE VIII. EFFECT OF RATIFICATION

These articles shall be laid before the Legislatures of Virginia and Maryland, and their approbation being obtained, shall be confirmed and ratified by a law of each state, never to be repealed or altered by either, without the consent of the other.

ARTICLE IX. EFFECTIVE DATE

This Compact, which takes the place of the Compact of 1785 between Maryland and Virginia, shall take effect at the expiration of 60 days after the completion of the last act legally necessary to make it operative, and thereupon the said Compact of 1785 shall no longer have any force or effect.

IN TESTIMONY WHEREOF, the Commissioners, on the part of the State of Maryland and the Commonwealth of Virginia, evidence their agreement to the provisions of this Compact by becoming parties signatory this, the twentieth day of December, in the year one thousand, nine hundred and fifty-eight, at Mount Vernon, in Virginia; and now witnesseth:

Commissioners on the
Part of Maryland

CARLYLE BARTON

WILLIAM J. MCWILLIAMS

M. WILLIAM ADELSON

STEPHEN R. COLLINS

EDWARD S. DELAPLAINE

Commissioners on the
Part of Virginia

MILES E. GODWIN, JR.

HOWARD H. ADAMS

EDWARD E. LANE

ROBERT Y. BUTTON

JOHN WARREN COOKE

APPENDIX F**Disposition of Preliminary Issues Presented by
Motions Filed with the Special Master****I. *Amicus Curiae***

Early in the proceedings before the Special Master, the Audubon Naturalist Society (“ANS”), the Loudoun County Sanitation Authority (of Virginia), and Loudoun County, Virginia filed motions seeking to participate as *amicus curiae* in the proceedings before the Special Master. Each of those movants submitted a supporting brief, and the State parties submitted briefs supporting or opposing various of the *amicus* applications.

Rule 37 of the Rules of the Supreme Court of the United States governs the filing of *amicus curiae* briefs with the Court. In proceedings before a Special Master, however, the Federal Rules of Civil Procedure (“FRCP”) are to be taken as guides. *See* Supreme Court Rule 17.2. The FRCP themselves do not contain any standard for granting or denying motions to participate as an *amicus curiae* during the trial of a case in federal court. However, by well-established case law, federal trial courts have broad discretion on the question of whether to grant or deny *amicus curiae* status to a nonparty. *See Bryant v. Better Business Bureau*, 923 F.Supp. 720, 728 (D. Md. 1996); *Waste Management of Pennsylvania, Inc., v. City of York*, 162 F.R.D. 34, 36 (M.D. Pa. 1995); *Liberty Lincoln Mercury, Inc. v. Ford Marketing Corp.*, 149 F.R.D. 65, 82 (D.N.J. 1993).

Because the complaint raises legal issues that Virginia and Maryland, through competent counsel, could address adequately and completely and because both States were perfectly capable of evaluating and advancing

any arguments suggested to them by the three *amicus* movants, I began with a presumption that *amicus* motions should be granted only if the movants would provide some added value or net benefit to the resolution of this matter that the State parties would not provide.

By clear authority, a court may grant *amicus* status to those who, as traditional “friends of the court,” can serve to provide helpful analysis of the law, protect their own special interests in the subject matter of the suit, contribute to the court’s understanding, provide needed supplementary assistance to the parties’ counsel, and insure a complete presentation of the issues. *See Bryant v. Better Business Bureau*, 923 F. Supp. at 728; *Liberty Lincoln Mercury, Inc. v. Ford Marketing Corp.*, 149 F.R.D. at 82; *United States v. Gotti*, 755 F. Supp. 1157, 1158 (E.D.N.Y. 1991). Here, no movant demonstrated that its participation as an *amicus* would provide a net benefit to these proceedings in serving any of those listed roles.

In addition, each movant focused on its own “special interests” in supporting the position of the party with which it is aligned. Although there is no rule that *amici* must be totally disinterested, case law is clear that *amicus* participation is disfavored where, as here, the motives of the applicants appeared to be primarily partisan. *See Liberty Lincoln Mercury, Inc. v. Ford Marketing Corp.*, 149 F.R.D. at 82 (when party seeking to appear as *amicus curiae* is perceived to be an advocate of one of the parties, *amicus* status should be denied); *Concerned Area Residents for the Environment v. Southview Farm*, 834 F. Supp. 1410, 1413 (W.D.N.Y. 1993) (partiality of *amicus* is a factor to consider); *United States v. Gotti*, 755 F. Supp. at 1159 (*amicus* applicant did the court a disservice by coming only as an advocate for one side). An *amicus*

should be a friend of the court, not a friend of a particular party.

Because of those considerations, I denied each of the motions for *amicus* status, but explicitly left open the opportunity for any movant to renew its motion if new, compelling reasons developed to support its participation as an *amicus curiae*. No movant renewed its motion during the proceedings before me.

II. Case and Controversy

With its motion seeking *amicus* status, ANS submitted a motion to dismiss for lack of subject matter jurisdiction. I denied that motion and ANS submitted a motion for reconsideration of my denial. I denied the ANS motion to reconsider, with prejudice, on the grounds that an actual controversy existed to support Virginia's request for declaratory relief and that the Court had implicitly decided as much in granting Virginia's motion for leave to file this original action. ANS then filed with the Court a Motion for Review of the Special Master's Finding of Subject Matter Jurisdiction, to which each of the party States responded. In an Order dated February 20, 2001, the Court denied ANS's Motion, 531 U.S. 1140 (2001).

III. Mootness

On January 24, 2001, the Maryland Department of the Environment issued to the Fairfax County Water Authority ("Authority") a waterway construction permit (the "Permit") for the construction of an intake pipe to carry water from the Potomac River to Virginia, and the issuance of the Permit became final and nonappealable a

few months later. See State of Maryland, Department of the Environment, Water Management Administration, Waterway Construction Permit No. 96-NT-0024/199661481 (MX 1024). Based upon that factual development, Maryland filed a Motion to Dismiss on the Basis of Mootness, contending that the final issuance of the construction permit for the drinking water intake resolved in Virginia's favor the actual controversy underlying the case.

For the reasons set forth below and on the basis of the judicial precedents discussed below, I ruled that the final issuance of the Maryland water intake construction permit to the Authority did not resolve the actual controversy supporting Virginia's request for declaratory relief. Because Maryland continues to insist that Virginia must comply with the conditions placed on the permit, the Court can still order effective relief that will affect the rights of the parties.

In making my decision, I was guided by the Court's test to determine whether a controversy between States is justiciable, as set forth in *Massachusetts v. Missouri*, 308 U.S. 1, 15 (1939), as follows:

To constitute such a controversy [a justiciable controversy between the states], it must appear that the complaining State has suffered a wrong through the action of the other State, furnishing ground for judicial redress, or is asserting a right against the other State which is susceptible of judicial enforcement according to the accepted principles of the common law or equity systems of jurisprudence.

Virginia's Complaint seeks a declaratory judgment of its rights under the Compact of 1785 and the Black-Jenkins Award of 1877, as well as injunctions to preserve

those rights. In asserting that this case is moot, Maryland mischaracterized the right Virginia asserts and the injury about which Virginia complains. The predicate for Maryland's argument that the Permit issuance moots the case was its assumption that the "actual controversy" between Virginia and Maryland is limited to the Authority's permit application for the intake pipe. Maryland urges that, once the Permit issued and Maryland's appellate rights expired, the finality of that process ended the controversy, making Virginia's Complaint moot. What Maryland failed to recognize is that the issuance of the Permit has no bearing on the relief requested and no effect whatever on the justiciability of this case.

The Court has declared that a "case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Powell v. McCormack*, 395 U.S. 486, 496-97 (1969). In deciding a motion to dismiss on mootness grounds, "[t]he starting point for analysis is the familiar proposition that 'federal courts are without power to decide questions that cannot affect the rights of litigants in the case before them.'" *DeFunis v. Odegaard*, 416 U.S. 312, 316 (1974) (quoting *North Carolina v. Rice*, 404 U.S. 244, 246 (1971)). Similarly,

[i]t has long been settled that a federal court has no authority "to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." For that reason, if an event occurs while a case is pending on appeal that makes it *impossible for the court to grant "any effectual relief whatever"* to a prevailing party, the appeal must be dismissed.

Church of Scientology v. United States, 506 U.S. 9, 12 (1992) (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895) (citations omitted) (emphasis added)); *see also Los Angeles County v. Davis*, 440 U.S. 625, 631 (1979) (“[J]urisdiction, properly acquired, may abate if the case becomes moot because . . . interim relief or events have completely and irrevocably eradicated the effects of the alleged violation.”).

According to these principles and based on the behavior complained of and the nature of the relief requested, the issuance of a waterway construction permit to the Authority does not moot this case. Virginia has not asked the Court to order Maryland’s Department of the Environment to issue a waterway construction permit to Virginia. If Virginia had requested such relief, and only that relief, this case would indeed be moot. However, Virginia’s Complaint seeks both declaratory and injunctive relief to prevent Maryland from *requiring* any waterway construction permit *at all*.

A request for declaratory relief is not, in itself, sufficient grounds for the exercise of jurisdiction in the absence of an actual controversy.¹ Here, that controversy is clearly still a live one, for Maryland has continued its insistence that Virginians apply for waterway construction permits,

¹ See 28 U.S.C. § 2201:

In a case of *actual controversy* within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.

(emphasis added).

and has issued a Permit subject to conditions with which the Authority must continue to comply or face the threat of civil or criminal sanctions. *See* Permit, Condition 4 (“If [the Authority], its employees, agents or contractors fail to comply with Permit or Approved Plan, the Administration may, in its discretion, issue an administrative order requiring [the Authority], its employees, agents and contractors to cease and desist any activities which violate [the] Permit, or the Administration may take other enforcement action available to it by law, including filing civil or criminal charges.”).

As the Court’s precedents quoted above make clear, the controversy remains a live one if the Court can still order effective relief. Here, there can be no doubt that if the Court were to grant the relief Virginia has requested in its Complaint, the immediate impact would be to relieve the Authority from complying with the Permit and to remove the explicitly stated threat of sanctions for failure to comply. This concrete relief would result from the requested injunction and declaratory judgment, if granted. A declaratory judgment, if issued, would also make it clear that other Virginians, such as the Loudoun County Sanitation Authority, could build improvements appurtenant to the Virginia shore without seeking approval from Maryland. Virginia has asked the Court to relieve its citizens from the burden of Maryland’s waterway construction and water appropriation permit requirements. Whether that relief comes during the application process or during the compliance and enforcement regime under the Permit as issued is not dispositive; the requested relief, and its effect if granted, would be the same.

This is not to suggest that a live controversy exists solely by virtue of Maryland’s assertion of jurisdiction or

solely by the existence of its statutes. Virginia has demonstrated since the inception of this suit, and continues to demonstrate, that the Authority “has sustained . . . some direct injury as a result of [the statute’s] enforcement, and not merely that [it] suffers in some indefinite way in common with people generally.” *Massachusetts v. Mellon*, 262 U.S. 447, 488 (1923). It is indeed the “acts of the official[s of Maryland],” *id.*, and not its statute alone, of which Virginia complains. Maryland continues to require Virginians to apply for and comply with waterway construction permits and to insist that the Authority comply with its Permit conditions or face civil or criminal penalty. It is precisely these “official acts” from which Virginia seeks relief.

Finally, Maryland contended that the Maryland courts are an adequate alternative forum to resolve any recurrence of the dispute that underlies the Complaint in this action. The argument is that since Virginia obtained its Permit through the administrative and judicial avenues available in Maryland, the United States Supreme Court should not meddle in what is a state law issue. Again misconstruing the relief Virginia has requested, Maryland has mistakenly assumed that Virginia can obtain the relief it seeks in the Maryland courts. Although it is true that Virginia has at least conditionally succeeded in its current permit application, Maryland has overlooked: (1) the sole authority of United States Supreme Court to decide definitively issues of Compact interpretation in disputes between sovereign States, and (2) Maryland’s continued insistence on Virginia’s compliance with the terms of the Permit. Here, as noted, Virginia seeks a judgment declaring that the 1785 Compact gives it a right to construct improvements appurtenant to the Virginia shore upstream

of the tidal reach of the Potomac River – a right that, according to Virginia, exists free of any requirement to seek a Maryland permit and a right that Maryland continues to deny.

APPENDIX G-1

**Index of Evidentiary Materials
Submitted by Virginia
(Prepared by Virginia)**

NO.	DESCRIPTION	DATE FILED	VX NO.
STATUTES, REGULATIONS AND LEGISLATIVE MATERIALS			
1	1755 Va. Acts ch. XII, <i>reprinted in</i> 6 Hening's Statutes at Large 494 (1819)	2/28/01	7
2	<i>Proceedings and Acts of the General Assembly of Maryland at a Session Held at Annapolis, February 22-March 26, 1755</i> , 52 Md. Archives 280 (1935)	2/28/01	101
3	1757 Va. Acts ch. X, <i>reprinted in</i> 7 Hening's Statutes at Large 125 (1820)	2/28/01	8
4	1761 Va. Acts ch. IX, <i>reprinted in</i> 7 Hening's Statutes at Large 401 (1820)	2/28/01	9
5	1765 Va. Acts ch. XXXII, <i>reprinted in</i> 8 Hening's Statutes at Large 146 (1821)	2/28/01	10
6	1766 Va. Acts ch. XLIII, <i>reprinted in</i> 8 Hening's Statutes at Large 263 (1821)	2/28/01	11
7	Act of June 15, 1768, <i>Proceedings and Acts of the General Assembly of Maryland 1766-1768</i> , 61 Md. Archives 427 (1944)	2/28/01	12
8	1769 Va. Acts ch. XXV, <i>reprinted in</i> 8 Hening's Statutes at Large 368 (1821)	2/28/01	13
9	1772 Va. Acts ch. XXVII, <i>reprinted in</i> 8 Hening's Statutes at Large 554 (1821)	2/28/01	14
10	1772 Va. Acts ch. XXXI, <i>reprinted in</i> 8 Hening's Statutes at Large 570 (1821)	2/28/01	15
11	1776 Va. Const., <i>reprinted in</i> 9 Hening's Statutes at Large ch. II (1821)	2/28/01	16
12	<i>Journal of the House of Delegates of the Commonwealth of Virginia</i> (1777)	2/28/01	85

NO.	DESCRIPTION	DATE FILED	VX NO.
	(White ed. 1827)		
13	1784-85 Md. Laws ch. XXXIII	2/28/01	17
14	1784-85 Va. Acts ch. XLIII, <i>reprinted in</i> 11 Hening's Statutes at Large 510 (1823)	2/28/01	18
15	1784-85 Md. Laws, Resolution (appointing Commissioners)	2/28/01	19
16	1784-85 Va. Acts ch. XLIV, <i>reprinted in</i> 11 Hening's Statutes at Large 525 (1823)	2/28/01	20
17	<i>Journal of the House of Delegates of the Commonwealth of Virginia</i> (1784) (White ed. 1828)	2/28/01	86
18	Compact of 1785, 1785-86 Md. Laws ch. I, 1785-86 Va. Acts ch. XVII, <i>reprinted in</i> 12 Hening's Statutes at Large 50 (1823)	2/28/01	1
19	1785-86 Md. Laws ch. III	2/28/01	21
20	1785-86 Va. Acts ch. XI, <i>reprinted in</i> 12 Hening's Statutes at Large 42 (1823)	2/28/01	22
21	1785-86 Va. Acts ch. XXIII, <i>reprinted in</i> 12 Hening's Statutes at Large 68 (1823)	2/28/01	23
22	1786-87 Md. Laws ch. II	2/28/01	24
23	1787-88 Va. Acts ch. XXIV, <i>reprinted in</i> 12 Hening's Statutes at Large 508 (1823)	2/28/01	25
24	1788 Md. Laws ch. XLVI, <i>reprinted in</i> 2 William Kilty, <i>The Laws of Maryland</i> (1800)	1/17/02	329
25	1789 Va. Acts ch. XXXII, <i>reprinted in</i> 13 Hening's Statutes at Large 43 (1823)	2/28/01	27
26	Act of July 16, 1790, ch. 28, 1 Stat.	1/17/02	282(A)

NO.	DESCRIPTION	DATE FILED	VX NO.
	130 (1790)		
27	1790 Md. Laws ch. XXXV	2/28/01	26
28	1790-91 Va. Acts ch. LVII, <i>reprinted in</i> 13 Henning's Statutes at Large 187 (1823)	2/28/01	28
29	1791-92 Va. Acts ch. XXXIV, <i>reprinted</i> <i>in</i> 13 Henning's Statutes at Large 275 (1823)	2/28/01	29
30	1793-94 Va. Acts ch. XXVII	2/28/01	30
31	<i>Votes and Proceedings of the Senate of</i> <i>the State of Maryland</i> , November Session, 1795 (excerpts)	4/24/02	336
32	1798 Va. Acts. ch. LX, 2 Va. Stat. 122 (1835)	1/17/02	315
33	1797-98 Md. Laws ch. XCIII	2/28/01	31
34	1797-98 Va. Acts ch. 3	2/28/01	32
35	1800 Va. Acts ch. 62	2/28/01	33
36	Act of Feb. 27, 1801, ch. 15, § 2, 2 Stat. 103, 105 (1801)	1/17/02	282(B)
37	1802-03 Md. Laws ch. LXXXIV	2/28/01	34
38	1802-03 Va. Acts ch. LXXV	2/28/01	35
39	2 Code of Virginia ch. 237, § 8 (1819)	2/28/01	36
40	1820-21 Va. Acts ch. 62	2/28/01	38
41	1820-21 Md. Res. No. 26	2/28/01	37
42	1823-24 Va. Acts ch. 38	2/28/01	39
43	1824-25 Md. Laws ch. 79	2/28/01	40
44	Act of Mar. 3, 1825, ch. 25, 4 Stat. 802 (1846)	2/28/01	42
45	<i>Chesapeake & Ohio Canal</i> , H.R. Rep. No. 90, 19th Cong., 2d Sess. (1827)	2/28/01	70
46	Sen. Doc. 610, 26th Cong., 1st Sess. (1840)	2/28/01	113
47	Act of July 9, 1846, ch. 35, 9 Stat. 35 (1846)	1/17/02	282(C)
48	Senate Exec. Doc. 48, 32d Cong., 2d	1/17/02	271

NO.	DESCRIPTION	DATE FILED	VX NO.
	Sess. (1853)		
49	Act of March 3, 1853, ch. 97, 10 Stat. 189, 206 (1853)	1/17/02	283
50	1853 Md. Laws ch. 179	1/17/02	317
51	1854 Va. Acts ch. 5	1/17/02	294
52	Act of April 8, 1858, ch. 14, 11 Stat. 263 (1858)	1/17/02	284
53	1859-60 Va. Acts Res. No. 20	2/28/01	41
54	<i>Report Relative to the Boundary Line Between Maryland and Virginia, Virginia Sen. Doc. No. 21 (1874)</i>	2/28/01	103
55	1874 Va. Acts ch. 135	2/28/01	44
56	1874 Md. Laws ch. 247	2/28/01	43
57	Commission (Maryland) on Boundary Lines Between Virginia and Maryland (1870-1874), <i>Report and Journal of Proceedings of the Joint Commissioners to Adjust the Boundary Line of the States of Maryland and Virginia, Authorized by the Act of 1872, chapter 210 (Annapolis 1874)</i>	2/28/01	68
58	Commission (Virginia) on Boundary Lines (1870-1874), <i>The Report of the Commissioners on Boundary Lines Between the State of Virginia, and the States of Maryland, North Carolina and Tennessee [microform]: read in the Senate, Jan. 17, 1872</i>	2/28/01	104
59	1875 Va. Acts ch. 48	2/28/01	45
60	<i>Board of Arbitrators to Adjust the Boundary Line Between Maryland and Virginia: Opinions and Award of Arbitrators on the Maryland and Virginia Boundary Line (M'Gill & Witherow 1877)</i>	2/28/01	64

NO.	DESCRIPTION	DATE FILED	VX NO.
61	Black-Jenkins Award, 1878 Md. Laws ch. 274, 1878 Va. Acts ch. 246, Act of March 3, 1879, ch. 196, 20 Stat. 481 (1879)	2/28/01	2
62	Act of July 15, 1882, ch. 294, 20 Stat. 168 (1882)	1/17/02	285
63	1894 Va. Acts ch. 564	2/28/01	47
64	1894 Md. Laws ch. 63	2/28/01	46
65	1896 Va. Acts ch. 627	2/28/01	48
66	1896 Md. Laws ch. 427	2/28/01	49
67	<i>Potomac River from Washington, D.C. to Cumberland, Md.</i> , H.R. Doc. No. 893, 63rd Cong., 2d Sess. (1914)	2/28/01	100
68	Act of April 14, 1926, ch. 140, Pub. L. No. 69-118, § 1, 44 Stat. 251 (1926)	1/17/02	286
69	1933 Md. Laws ch. 526	1/17/02	318
70	Carl N. Everstine, Research Division, Maryland Legislative Council, <i>Research Report No. 26: The Compact of 1785</i> (1946)	2/28/01	73
71	Act of June 26, 1947, ch. 149, § 1, Pub. L. No. 80-118, 61 Stat. 181 (1947)	1/17/02	287
72	1949 Md. Laws ch. 484	2/28/01	50
73	Md. Code Ann. Art. 66C, § 669 (Michie 1951)	1/17/02	319
74	1957 Md. Laws ch. 757	1/17/02	321
75	1957 Md. Laws ch. 766	2/28/01	51
76	1957 Md. Laws ch. 767	2/28/01	52
77	1957 Md. Laws ch. 770	2/28/01	53
78	Md. Code Ann. Art. 66C, § 720 (Michie 1957)	1/17/02	320
79	Potomac River Compact of 1958, 1958 Md. Laws ch. 269, 1959 Va. Acts ch. 28, Pub. L. No. 87-783, 76 Stat. 797 (1962)	2/28/01	3

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80	Report of the Commissioners to the Governors of Maryland and Virginia, <i>The Potomac River Compact of 1958</i> , reprinted in Virginia House Document No. 22 (1960)	2/28/01	105
81	Potomac River Basin Advisory Committee, <i>Potomac River Basin Compact</i> (October 1968)	1/17/02	267
82	<i>Potomac River Basin Report</i> , H.R. Doc. No. 343, 91st Cong., 2d Sess. (1970) (excerpts)	2/28/01	99
83	<i>Potomac River Basin Report</i> , H.R. Doc. No. 343, 91st Cong., 2d Sess. (1970) (excerpts)	1/17/02	268
84	Report of the Virginia Advisory Legislative Council to the Governor and the General Assembly of Virginia, <i>The Proposed Potomac River Basin Compact</i> (1970)	1/17/02	270
85	1970 Va. Acts ch. 464	1/17/02	295
86	1971 Md. Laws ch. 30	1/17/02	322
87	1973 Md. Laws ch. 4	1/17/02	323
88	H.R. 12215, 94th Cong., 2d Sess. (introduced Mar. 2, 1976)	1/17/02	288
89	S. 3326, 94th Cong., 2d Sess. (introduced Apr. 26, 1976)	1/17/02	289
90	<i>Potomac River: Hearings & Markup Before the Subcomm. on Bicentennial Affairs, the Environment, and the International Community, and the House Comm. on the District of Columbia</i> , 94th Cong., 2d Sess. 22 (1976) (Subtitled "On the State of the Potomac River, 1976, as to Water Supply and Water Pollution, and on H.R.	1/17/02	269

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	15434, to Provide for Equitable Water Rates and Encourage Water Conservation”), Serial No. 94-20 (excerpts)		
91	<i>Omnibus Water Resources Development Act of 1976: Hearings before the Subcomm. on Water Resources of the Senate Comm. on Public Works, 94th Cong., 2d Sess. (1976) (excerpts)</i>	1/17/02	266
92	<i>Water Resources Development Act of 1976: Hearings before the Subcomm. on Water Resources of the House Comm. on Public Works & Transportation, 94th Cong., 2d Sess. (Aug. 31 & Sept. 9, 1976) (excerpts)</i>	1/17/02	274
93	<i>Water Resources Development Act of 1976, Sen. Rep. No. 94-1255, 94th Cong., 2d Sess. (Sept. 16, 1976) (excerpts)</i>	1/17/02	272
94	<i>Water Resources Development Act of 1976, H.R. Conf. Rep. No. 94-1755, 94th Cong., 2d Sess. (Oct. 1, 1976) (excerpts)</i>	1/17/02	262
95	Water Resources Development Act of 1976, Pub. L. No. 94-587, § 181, 90 Stat. 2939 (Oct. 22, 1976)	1/17/02	290
96	<i>Hearings before the Subcomm. on Water Resources of the Sen. Comm. on Envir. & Public Works, 95th Cong., 1st Sess. (Apr. 25, 1977) (excerpts)</i>	1/17/02	261
97	Virginia Sen. Bill No. 440 (offered Feb. 6, 1978)	1/17/02	308
98	Virginia Sen. Bill No. 440 (Feb. 1979) (Amendment in the Nature of a Substitute)	1/17/02	309
99	1979 Va. Acts ch. 307	1/17/02	296

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100	<i>District of Columbia Water Supply: Hearing before the Subcomm. on Gov'l Efficiency & the District of Columbia of the Senate Comm. on Gov'l Affairs, 96th Cong., 1st Sess. (Oct. 10, 1979)</i>	1/17/02	260
101	Act of June 28, 1980, Pub. L. No. 96-292, § 2, 94 Stat. 609 (1980)	1/17/02	291
102	1987 Md. Laws ch. 234	1/17/02	324
103	1990 Va. Acts ch. 179	1/17/02	297
104	Va. Code Ann. §§ 36-97 through 36-119.1 (Michie 1996 & Supp. 2001)	1/17/02	304
105	Md. Code Ann., Envir., §§ 5-501 through 5-514 (1996 & Supp. 2001)	1/17/02	325
106	Va. Code Ann. § 15.2-102 (Michie 1997)	1/17/02	300
107	Va. Code Ann. § 15.2-2134 (Michie 1997)	1/17/02	301
108	Md. Regs. Code tit. 26, § 26.01.07 (1998)	1/17/02	326
109	Va. Code Ann. §§ 7.1-1, 7.1-3, 7.1-7 (Michie 1999)	2/28/01	54
110	Interstate Commission on the Potomac River Basin, Report No. 99-6, <i>Washington Area 1999 Drought Operations</i> (October 1999)	1/17/02	263
111	2000 Md. Laws ch. 557 (S.B. 729)	2/28/01	55
112	Interstate Commission on the Potomac River Basin, Report No. 00-6, <i>Year 2000 Twenty-Year Water Demand Forecast and Resource Availability Analysis for the Washington Metropolitan Area</i> (October 2000) (Erik R. Hagen, Roland C. Steiner)	1/17/02	264
113	42 U.S.C.S. § 1962d-11a (2000)	1/17/02	292
114	Bill File, H.B. 395 (2000 Session), at	1/17/02	327

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115	Bill File, S.B. 729 (2000 Session), at http://mlis.state.md.us/2000rs/ bill-file/sb0729.htm (last modified 12/19/2000)	1/17/02	328
116	Interstate Commission on the Potomac River Basin, <i>2000 Annual Report</i> (May 2001)	1/17/02	265
117	Va. Const. Art. I, §§ 5, 7; Art. III, § 1; Art. IV, § 1; Art. XI, §§ 1-2 (Michie 2001)	1/17/02	293
118	Va. Code Ann. § 2.2-114 (Michie 2001)	1/17/02	298
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120	Va. Code Ann. § 15.2-2143 (Michie Supp. 2001)	1/17/02	302
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122	Va. Code Ann. §§ 62.1-10 through 62.1-13 (Michie 2001)	1/17/02	305
123	Va. Code Ann. § 62.1-44.41 (Michie 2001)	1/17/02	306
124	Va. Code Ann. §§ 62.1-44.113 through 62.1-44.116 (Michie 2001)	1/17/02	307
125	Maryland S.B. 241 (2002 Session), at http://mlis.state.md.us/2002rs/ bill-file/sb0241.htm	3/6/02	330
126	Maryland H.B. 294 (2002 Session), at http://mlis.state.md.us/2002rs/ bill-file/hb0294.htm	3/6/02	331
127	Maryland General Assembly, 2002 Regular Session Bill Information, S.B. 241 & H.B. 294, "Environment - Water Management Fees, Penalties, and	4/24/02	335

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	Cost Recovery," at http://mlis.state.md.us/2002rs/billfile/sb0241.htm (last visited 4/19/02), http://mlis.state.md.us/2002rs/billfile/hb0294.htm (last visited 4/19/02)		
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129	18 Va. Regs. Reg. 3601-03 (Aug. 26, 2002)	9/12/02	342
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130	Letter from Peters & Richardson to Johnson of 10/16/1776, <i>reprinted in</i> 12 Md. Archives 355-56 (1893)	4/24/02	337
131	Letter from Mason to Carlton of 1/11/1804, Records Group 79, Entry 164, "Legal Proceedings 1792-1828," National Archives II, College Park, Maryland (and accompanying Declaration of Zayne Tweed)	2/28/01	88
132	Letter from Rich to Carter of 9/17/1971 [MD-MDE-16538]	1/17/02	144
133	Letter from McGarry to Coulter of 12/23/74 [MD-MDE-16439-42]	1/17/02	145
134	Letter from McGarry to Coulter of 9/26/75 [MD-MDE-22086-87]	1/17/02	146
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136	Letter from McGarry to Coulter of 1/19/76 [MD-MDE-22035-36]	1/17/02	148
137	Letter from Peterson to Gude of 2/9/76, attaching legislation [MD-MDE-22002-04]	1/17/02	149
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140	Letter from Hubler to Jensen of 2/25/76 [Sachs Dep. Ex. 3]	1/17/02	152
141	Letter from Sachs to Hubler of 5/21/76 [Sachs Dep. Ex. 4]	1/17/02	153
142	Letter from Burch & Rich to Coulter of 6/21/76 [Sachs Dep. Ex. 7]	1/17/02	154
143	Letter from Jensen to Sachs of 7/8/76 [VA-GEN-00224-225] [Sachs Dep. Ex. 6]	1/17/02	155
144	Letter from Jensen to Godwin of 7/20/76 [VA-SRC-002654-57]	1/17/02	156
145	Memorandum from Jones to Jensen of 8/17/76 [Sachs Dep. Ex. 11]	1/17/02	158
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148	Letters from Sachs & Bourassa to Gravel & Roberts of 9/7/76 [Sachs Dep. Ex. 19]	1/17/02	164
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150	Letter from Sachs to Jensen of 9/15/76 [Sachs Dep. Ex. 20]	1/17/02	166
151	Letter from Mathias, et al., to Gravel of 9/30/76 [MD-MDE-22225-26]	1/17/02	169
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155	Letter from Bourassa to Withers of 6/9/77 [Sachs Dep. Ex. 22; MD-MDE-21639-41]	1/17/02	177
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159	Letter from Fisher to Davis of 7/29/77 [VA-SRC-1321-23]	1/17/02	181
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161	Letter from Bourassa to Sachs of 8/5/77 [Sachs Dep. Ex. 26]	1/17/02	183
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167	Memorandum from Davis to Members, State Water Control Board and State Water Study Comm'n, of 12/5/77 [VA-SRC-2246-52]	1/17/02	193
168	Memorandum from Sachs to Peck of 12/5/77 [Sachs Dep. Ex. 28]	1/17/02	194

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171	Letter from Withers to Whom It May Concern, with Draft, Potomac River Low Flow Agreement, of 12/15/77 [Sachs Dep. Ex. 34]	1/17/02	198
172	Letter from Bourassa to Godwin of 12/28/77 [MD-MDE-21387-89]	1/17/02	199
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176	Letter from Hill to Kidd of 3/2/79 [VA-DEQW-477-78]	1/17/02	205
177	Letter from Bourassa to Dalton of 7/9/81 [VA-GEN-644-47]	1/17/02	206
178	Letter from Wolman to Brown of 3/30/83 [MD-MDE-23083]	1/17/02	208
179	Letter from Brown to Hughes of 2/19/86 [MD-MDE-23144]	1/17/02	210
180	Letter from MDE to Smedley of 1/16/96 [FCWA/MDE Joint Ex. 69]	1/17/02	211
181	Letter from Filar to Smedley of 4/10/96, attaching Water Appropriation and Use Permit [FCWA/MDE Joint Ex. 76]	1/17/02	212
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183	Letter from Steiner to Clark of 6/10/97 [FCWA/MDE Joint Ex. 125]	1/17/02	216
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185	Letter from White to Clark of 6/17/97 [FCWA/MDE Joint Ex. 131]	1/17/02	220
186	Letter from Hearn to Crowder of 6/25/97 [FCWA/MDE Joint Ex. 134]	1/17/02	217
187	Letter from Crowder to Hearn of 8/12/97 [FCWA/MDE Joint Ex. 156]	1/17/02	219
188	Letter from Jacobus to Clark of 8/21/97 [FCWA/MDE Joint Ex. 158]	1/17/02	220(A)
189	Letter from Crowder to Hearn of 8/29/97 [FCWA/MDE Joint Ex. 160]	1/17/02	221
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191	Letter from Hearn to Crowder of 12/10/97, enclosing Notice of Decision and Summary of Basis for Decision [FCWA/MDE Joint Ex. 175]	1/17/02	224
192	Letter from Hearn to Williams of 12/10/97 [FCWA/MDE Joint Ex. 176]	1/17/02	225
193	Letter from Roesser to Nishida of 12/12/97 [FCWA/MDE Joint Ex. 177]	1/17/02	226
194	Letter from Reardon to Sultan of 2/5/98 [FCWA/MDE Joint Ex. 185]	1/17/02	227
195	Letter from Friedman to Snyder, et al., of 11/24/98, enclosing Memorandum and Order on Prehearing Motions	1/17/02	240
196	Letter from Powell to Curran of 1/26/99 [MD-MDE-10407-08]	1/17/02	229
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199	Letter from Raphael to Baida of 8/29/01 (Ex. A, Virginia's Motion to Strike the Penultimate Paragraph of the Declaration of Jack R. Rakove)	1/18/02	N/A
200	Letter from Raphael to Baida of 9/21/01 (Ex. C, Virginia's Motion to Strike the Penultimate Paragraph of the Declaration of Jack R. Rakove)	1/18/02	N/A
201	Letter from Baida to Raphael of 12/5/01 (Ex. D, Virginia's Motion to Strike the Penultimate Paragraph of the Declaration of Jack R. Rakove)	1/18/02	N/A
202	Letter from Raphael to Baida of 12/6/01 (Ex. E, Virginia's Motion to Strike the Penultimate Paragraph of the Declaration of Jack R. Rakove)	1/18/02	N/A
203	Letter from Baida to Raphael of 12/10/01 (Ex. F, Virginia's Motion to Strike the Penultimate Paragraph of the Declaration of Jack R. Rakove)	1/18/02	N/A
204	Letter from Kilgore to Blount, et al., of 2/26/02	3/6/02	332
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205	1 W.W. Abbott & Dorothy Twohig eds., <i>The Papers of George Washington (Colonial Series)</i> (1983) (excerpts)	2/28/01	56
206	8 W.W. Abbott & Dorothy Twohig eds., <i>The Papers of George Washington (Colonial Series)</i> (1983) (excerpts)	2/28/01	57
207	2 W.W. Abbott & Dorothy Twohig eds.,	2/28/01	58

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	<i>The Papers of George Washington (Confederation Series)</i> (1992) (excerpts)		
208	Joseph K. Angell, <i>A Treatise on the Right of Property in Tide Waters and in the Soil and Shores Thereof</i> (1826) (excerpts) (offered at oral argument)	4/16/01	N/A
209	Cora Bacon-Foster, <i>Early Chapters in the Development of the Patomac Route to the West</i> (1912) (excerpts)	2/28/01	62
210	<i>Black's Law Dictionary</i> 1384, 1433 (7th ed. 1999) (offered at oral argument)	4/16/01	N/A
211	Chesapeake Research Consortium, Inc., CRC Public. No. 38, <i>Report on the Potomac River: An Investigation to Determine Navigability, prepared for the Baltimore District, Corps of Engineers, pursuant to Contract No. DAC W31-74-C-0</i> (March 1975)	1/17/02	275
212	2 <i>The Compact Edition of the Oxford English Dictionary</i> 738-39 (1979) (offered at oral argument)	4/16/01	N/A
213	Edward S. Delaplaine, <i>The Life of Thomas Johnson</i> (1927) (excerpts)	2/28/01	72
214	Carl N. Everstine, <i>The Potomac River and Maryland's Boundaries</i> , 80 Maryland Historical Magazine 355 (1985)	2/28/01	74
215	2 Max Farrand ed., <i>The Records of the Federal Convention of 1787</i> (Rev. ed. 1937) (excerpts)	1/17/02	276
216	The Federalist Nos. 80-81 (Alexander Hamilton) (C. Rossiter ed., 1961)	1/17/02	277
217	2 John C. Fitzpatrick, <i>The Diaries of</i>	2/28/01	76

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	<i>George Washington</i> (1925) (excerpts)		
218	1 John C. Fitzpatrick, <i>The Writings of George Washington</i> (1931) (excerpts)	2/28/01	77
219	3 John C. Fitzpatrick, <i>The Writings of George Washington</i> (1938) (excerpts)	2/28/01	78
220	27 John C. Fitzpatrick, <i>The Writings of George Washington</i> (1938) (excerpts)	2/28/01	79
221	28 John C. Fitzpatrick, <i>The Writings of George Washington</i> (1938) (excerpts)	2/28/01	80
222	James Haw, <i>Stormy Patriot: The Life of Samuel Chase</i> (1980) (excerpts)	2/28/01	81
223	Helen Hill, <i>George Mason: Constitutionalist</i> (1938) (excerpts)	2/28/01	82
224	1 A.E. Dick Howard, <i>Commentaries on the Constitution of Virginia</i> (1974) (excerpts)	1/17/02	278
225	A. Huslin, <i>Va. Assails Md. Plan for New Water Fees</i> , <i>The Washington Post</i> , Feb. 27, 2002, at A-11	3/6/02	333
226	Washington Irving, <i>George Washington: A Biography</i> (1994) (excerpts)	2/28/01	83
227	Thomas Jefferson, <i>Notes of Virginia</i> (2d ed. 1789) (excerpts)	4/24/02	338
228	Merril Jensen, <i>The New Nation: A History of the United States During the Confederation 1781-1789</i> (1950) (excerpts)	2/28/01	84
229	John Kobler, <i>They've Been Fighting 173 Years</i> , <i>The Saturday Evening Post</i> , Nov. 1, 1958, at 31	2/28/01	87
230	Jean B. Lee, <i>In Search of Thomas Stone, Essential Revolutionary</i> , 92 <i>Maryland Hist. Mag.</i> 285 (1997)	2/28/01	91
231	Jean B. Lee, <i>The Price of Nationhood: The American Revolution in Charles</i>	2/28/01	92

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	<i>County</i> (1994) (excerpts)		
232	Douglas R. Littlefield, Master's Thesis, University of Maryland, A <i>History of the Potomac Company and its Colonial Predecessors, 1748-1828</i> (1979) (excerpts)	2/28/01	89
233	Douglas R. Littlefield, <i>The Potomac Company: A Misadventure in Financing an Early American Internal Improvement Project</i> , 58 Business Hist. Rev. 562 (1984)	2/28/01	90
234	William H. Lowdermilk, <i>History of Cumberland</i> (1878) (1971 ed.) (excerpts)	2/28/01	93
235	1 James Madison, <i>The Debates in the Federal Convention of 1787 Which Framed the Constitution of the United States of America</i> (G. Hunt & J. Scott eds., 1987) (excerpts)	1/17/02	280(A)
236	2 James Madison, <i>The Debates in the Federal Convention of 1787 Which Framed the Constitution of the United States of America</i> (G. Hunt & J. Scott eds., 1987) (excerpts)	1/17/02	280(B)
237	Maryland Gazette, Nov. 3, 1774	2/28/01	94
238	Maryland Journal, Feb. 18, 1785	2/28/01	95
239	Angus W. McDonald, <i>Report to Gov. Letcher [of Virginia]</i> , reprinted in 9 The Historical Magazine and Notes & Queries Concerning the Antiquities, History & Biography of America 13 (1865)	2/28/01	96
240	John V.L. McMahon, <i>An Historical View of the Government of Maryland: From its Colonization to the Present</i>	2/28/01	97

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	<i>Day</i> (1831) (excerpts)		
241	Penelope M. Osburn, <i>Seven Ferries Served Loudoun in 1700s</i> , The Loudoun-Times Mirror, Sept. 26, 1957	2/28/01	98
242	John J. Reardon, <i>Edmund Randolph: A Biography</i> (1975) (excerpts)	2/28/01	102
243	Kate Mason Rowland, <i>The Mount Vernon Convention</i> , XI The Penn. Magazine of History & Biography 410 (1887)	2/28/01	106
244	2 Kate Mason Rowland, <i>The Life of George Mason</i> (1892) (excerpts)	2/28/01	107
245	1 Robert A. Rutland, <i>The Papers of George Mason</i> (1970) (excerpts)	2/28/01	108
246	2 Robert A. Rutland, <i>The Papers of George Mason</i> (1970) (excerpts)	2/28/01	109
247	8 Robert A. Rutland, <i>The Papers of James Madison</i> (1973) (excerpts)	2/28/01	110
248	9 Robert A. Rutland, <i>The Papers of James Madison</i> (1974) (excerpts)	2/28/01	111
249	2 J. Thomas Scharf, <i>History of Maryland</i> (1879) (1967 reprint) (excerpts)	2/28/01	112
250	1 <i>Correspondence of Governor Horatio Sharpe</i> , 6 Md. Archives (1888) (excerpts)	2/28/01	69
251	7 Dorothy Twohig ed., <i>The Papers of George Washington (Presidential Series)</i> (1998) (excerpts)	1/17/02	279(A)
252	8 Dorothy Twohig ed., <i>The Papers of George Washington (Presidential Series)</i> (1999) (excerpts)	1/17/02	279(B)
253	Paul Valentine, <i>Water Pipe Plan for Fairfax Stirs Concerns in Md.</i> , The Washington Post, May 22, 1997 [FCWA/MDE Joint Ex. 120]	1/17/02	214

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254	Virginia Gazette, Oct. 28, 1775	2/28/01	114
255	Virginia Journal, Nov. 25, 1784	2/28/01	115
256	Virginia Journal, Mar. 10, 1785	2/28/01	116
257	Virginia Journal, Mar. 17, 1785	2/28/01	117
258	George Washington Ward, <i>The Early Development of the Chesapeake and Ohio Canal Project</i> (1899) (excerpts)	2/28/01	118
259	Harry C. Ways, <i>The Washington Aqueduct: 1852-1992</i> (1992) (excerpts)	1/17/02	281
260	John M. Wearmouth, <i>Thomas Stone National Historic Site, Historic Resource Study</i> (1988) (excerpts)	2/28/01	119
261	Frank F. White, Jr., <i>The Governors of Maryland</i> (1970) (excerpts)	2/28/01	120
262	Woodrow Wilson, <i>The Making of the Nation</i> , 80 Atlantic Monthly 1 (1897)	2/28/01	124
OTHER EXHIBITS			
263	Agreement Between the United States of America and the District of Columbia, the Washington Suburban Sanitary Commission and the Fairfax County Water Authority for Future Water Supply Storage in the Bloomington Reservoir, July 22, 1982 [Sachs Dep. Ex. 36]	1/17/02	207(D)
264	Attorney General of Maryland, Brief of Appellant, <i>Wharton v. Wise</i> , No. 1054 (U.S. 1893)	2/28/01	61
265	Audubon Naturalist Society, Appeal from the Denial of the Audubon Naturalist Society's Motion to Intervene by the Office of Administrative Hearings, <i>Fairfax County Water Authority v. Maryland Department of Environment</i> , Case No. 98-MDE-	10/10/00	N/A

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	WMA-116-044 (Sept. 8, 1998) (Ex. 3, Virginia's Brief in Opposition to Motion of Audubon Naturalist Society for Leave to Participate as Amicus Curiae)		
266	Baltimore City Circuit Court, Memorandum Opinion Denying Request for Stay, <i>In re Petition of Maryland Department of Environment</i> , Civil Action No. 24C00006014 (Balt. City Cir. Ct. Jan. 16, 2001) (Cannon, J.)	1/17/02	256
267	Baltimore City Circuit Court, Memorandum Opinion, <i>In re Petition of Maryland Department of Environment</i> , Civil Action No. 24C00006014 (Balt. City Cir. Ct. Apr. 10, 2001)	1/17/02	257
268	<i>Binney's Case</i> , 2 Bland 99 (1829)	2/28/01	4
269	Bloomington Lake Payment Agreement, July 22, 1982 [Sachs Dep. Ex. 36]	1/17/02	207(E)
270	Chronology of Selected Events Related to the Mt. Vernon Compact of 1785 and its Progeny (Ex. 1, Virginia's Brief in Support of Motion for Partial Summary Judgment)	12/8/00	N/A
271	Commissioners of the District of Columbia, Selected Records	4/24/02	340
272	Commonwealth of Virginia, Bill of Complaint, <i>Virginia v. Maryland</i> , No. 12 Orig. (1957)	2/28/01	63
273	Jean Cryor, Press Release (Feb. 19, 2000) [MD-LEG-02344-45]	1/17/02	230
274	Declaration of Charlie C. Crowder, Jr. (4/27/00) (original filed 5/2/00)	1/17/02	125
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276	Declaration of Carol B. Gawen (12/20/01)	1/17/02	127
277	Declaration of Robert W. Grabb (12/28/01)	1/17/02	128
278	Declaration of Amy M. Hallett (3/1/02)	3/6/02	334
279	Declaration of Dale C. Hammes (6/7/01) (Ex. C, Virginia's Opposition to Defendant's Motion to Dismiss on the Basis of Mootness)	1/17/02 6/8/01	129
280	Declaration of Ellen D. Kennedy (1/11/02)	1/17/02	136
281	Declaration of Mark Kronenthal, II (4/27/00) (Ex. A, Virginia's Opposition to Defendant's Motion to Dismiss on the Basis of Mootness)	1/17/02 5/2/00	130
282	Declaration of Faye W. Lumpkin (12/21/01)	1/17/02	131
283	Declaration of Scott Mayausky (12/13/01)	1/17/02	132
284	Declaration of Kathryn D. Smedley (11/27/01)	1/17/02	133
285	Declaration of Roberta Smith (5/1/01) (Ex. D, Virginia's Opposition to Defendant's Motion to Dismiss on the Basis of Mootness)	1/17/02 6/8/01	134
286	Declaration of Roland C. Steiner, Ph.D, P.E.(Ex. 3, Virginia's Brief in Support of Motion for Partial Summary Judgment)	12/8/00	N/A
287	Declaration of Todd E. Thomas (12/18/01)	1/17/02	135
288	Declaration of Zayne R. Tweed	1/17/02	137

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289	Defendant's Answers to Requests for Admission (excerpts)	1/17/02	141
290	Defendant's Answers to Interrogatories (excerpts)	1/17/02	142
291	Defendant's Response to Requests for Production of Documents (excerpts)	1/17/02	143
292	Department of the Army, Corps of Engineers, Baltimore District, <i>Announcement of Public Meeting</i> (Aug. 8, 1977) [MD-MDE-21371-83]	1/17/02	184
293	Department of the Army, Corps of Engineers, Baltimore District, <i>Public Meeting Record: Potomac River Low Flow Allocation Agreement</i> (1978) (excerpts)	1/17/02	258
294	Department of the Army, Corps of Engineers, Baltimore District, <i>Metropolitan Washington D.C. Area Water Supply Study, Maryland, Virginia, and the District of Columbia: Main Report</i> (Sept. 1983)	1/17/02	259
295	Department of the Army, Corps of Engineers, Memorandum for the Record by Col. Carrol (Feb. 1, 2001) [VA-Gen-775-84]	1/17/02	232
296	Fairfax County Water Authority, Brief in Opposition to the Appeal of the Audubon Naturalist Society, <i>Fairfax County Water Authority v. Maryland Department of Environment</i> , Case No. 98-MDE-WMA-116-044 (Sept. 17, 1998) (Ex. 4, Virginia's Brief in Opposition to Motion of Audubon Naturalist Society for Leave to Participate as	10/10/00	N/A

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	Amicus Curiae)		
297	Fairfax County Water Authority, Reply to MDE's Pre-Hearing Memorandum, <i>Fairfax County Water Authority v. Maryland Department of Environment</i> , Case No. 98-MDE-WMA-116-044 (Nov. 2, 1998)	1/17/02	238
298	Fairfax County Water Authority, Proposed Findings of Fact and Conclusions of Law, <i>Fairfax County Water Authority v. Maryland Department of Environment</i> , Case No. 98-MDE-WMA-116-044 (Feb. 18, 2000) (excerpts)	1/17/02	246
299	Fairfax County Water Authority, Conditional Cross-Exception, <i>Fairfax County Water Authority v. Maryland Department of Environment</i> , Case No. 98-MDE-WMA-116-044 (June 7, 2000) (excerpts)	1/17/02	249
300	Fairfax County Water Authority, Brief in Opposition to Exceptions of the Maryland Department of Environment to the May 10, 2000 Proposed Decision of the Maryland Administrative Law Judge, <i>Fairfax County Water Authority v. Maryland Department of Environment</i> , Case No. 98-MDE-WMA-116-044 (July 13, 2000) (excerpts)	1/17/02	251
301	Fairfax County Water Authority, Response to Petition for Judicial Review, <i>In re Petition of Maryland Department of Environment</i> , Civil Action No. 24C00006014 (Balt. City Cir. Ct. Dec. 18, 2000)	1/17/02	255

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302	Final Report of Special Master, <i>Virginia v. Maryland</i> , No. 12, Orig. (Dec. 10, 1962)	2/28/01	75
303	Little Seneca Lake Cost Sharing Agreement, July 1, 1982 [Sachs Dep. Ex. 36]	1/17/02	207(A)
304	Map: Black-Jenkins Award of 1877	4/21/01	N/A
305	Map: Maryland, West Virginia, and Virginia (Ex. 2, Virginia's Brief in Support of Motion for Partial Summary Judgment)	12/8/00	N/A
306	Maryland Department of Environment, Press Release (June 26, 1997) [FCWA/MDE Joint Ex. 135]	1/17/02	218
307	Maryland Department of Environment, Position Statement (Feb. 24, 1998) [Pajerowski Dep. Ex. 7]	1/17/02	228
308	Maryland Department of Environment, Pre-Hearing Memorandum, <i>Fairfax County Water Authority v. Maryland Department of Environment</i> , Case No. 98-MDE-WMA-116-044 (Oct. 21, 1998)	1/17/02	236
309	Maryland Department of Environment, Response to the Pre-Hearing Brief of the Fairfax County Water Authority, <i>Fairfax County Water Authority v. Maryland Department of Environment</i> , Case No. 98-MDE-WMA-116-044 (Oct. 30, 1998)	1/17/02	237
310	Maryland Department of Environment, Final Order on Motion to Intervene of the Audubon Naturalist Society, <i>Fairfax County Water Authority v. Maryland Department of Envi-</i>	10/10/00	N/A

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	ronment, Case No. 98-MDE-WMA-116-044 (Nov. 20, 1998) (Ex. 2, Virginia's Brief in Opposition to Motion of Audubon Naturalist Society for Leave to Participate as Amicus Curiae)		
311	Maryland Department of Environment, Response to Fairfax County Water Authority's Motion for Summary Disposition, <i>Fairfax County Water Authority v. Maryland Department of Environment</i> , Case No. 98-MDE-WMA-116-044 (Dec. 22, 1998) (excerpts)	1/17/02	241
312	Maryland Department of Environment, Opinion of the Final Decision Maker, <i>Fairfax County Water Authority v. Maryland Department of Environment</i> , Case No. 98-MDE-WMA-116-044 (June 7, 1999)	1/17/02	243
313	Maryland Department of Environment, Proposed Findings of Fact and Conclusions of Law, <i>Fairfax County Water Authority v. Maryland Department of Environment</i> , Case No. 98-MDE-WMA-116-044 (Jan. 28, 2000) (excerpts)	1/17/02	244
314	Maryland Department of Environment, Argument, <i>Fairfax County Water Authority v. Maryland Department of Environment</i> , Case No. 98-MDE-WMA-116-044 (Jan. 28, 2000) (excerpts)	1/17/02	245
315	Maryland Department of Environment, Reply to the Fairfax County Water Authority's Proposed Findings of Fact and Conclusions of Law,	1/17/02	247

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	<i>Fairfax County Water Authority v. Maryland Department of Environment</i> , Case No. 98-MDE-WMA-116-044 (Mar. 1, 2000) (excerpts)		
316	Maryland Department of Environment, Exceptions to the Proposed Decision on Remand, <i>Fairfax County Water Authority v. Maryland Department of Environment</i> , Case No. 98-MDE-WMA-116-044 (June 8, 2000) (excerpts)	1/17/02	250
317	Maryland Department of Environment, Response to the Conditional Cross-Exception of the Fairfax County Water Authority, <i>Fairfax County Water Authority v. Maryland Department of Environment</i> , Case No. 98-MDE-WMA-116-044 (July 13, 2000) (excerpts)	1/17/02	252
318	Maryland Department of Environment, Final Decision, <i>Fairfax County Water Authority v. Maryland Department of Environment</i> , Case No. 98-MDE-WMA-116-044 (Nov. 6, 2000)	1/17/02	253
319	Maryland Department of Environment, Petition for Judicial Review, <i>In re Petition of Maryland Department of Environment</i> , Civil Action No. 24C00006014 (Balt. City Cir. Ct. Dec. 5, 2000)	1/17/02	254
320	Materials Concerning Dennis Griffith Map of 1794	4/24/02	339
321	Memorandum of Agreement between Maryland Water Resources Adm'n and Virginia State Water Control Board,	1/17/02	170

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	Oct. 8, 1976 [Sachs Dep. Ex. 21]		
322	Minutes of 6th Annual Meeting of LFAA (Apr. 27, 1984) [MD-MDE-23114-23]	1/17/02	209
323	Novation Agreement, July 22, 1982 [Sachs Dep. Ex. 36]	1/17/02	207(F)
324	Office of Administrative Hearings, Order on Motion to Intervene, <i>Fairfax County Water Authority v. Maryland Department of Environment</i> , Case No. 98-MDE-WMA-116-044 (Sept. 3, 1998) (Ex. 1, Virginia's Brief in Opposition to Motion of Audubon Naturalist Society for Leave to Participate as Amicus Curiae)	10/10/00	N/A
325	Office of Administrative Hearings, Memorandum and Order on Motion, <i>Fairfax County Water Authority v. Maryland Department of Environment</i> , Case No. 98-MDE-WMA-116-044 (Jan. 21, 1999)	1/17/02	242
326	<i>O'Neal v. Virginia & Maryland Bridge Co.</i> , 18 Md. 1 (1861)	2/28/01	5
327	Matthew G. Pajerowski, Deposition (Oct. 4, 2001) (excerpts)	1/17/02	140
328	Potomac River Fisheries Commission, Brochure (undated)	4/21/01	N/A
329	Potomac River Low Flow Allocation Agreement, Draft, Dec. 6, 1976 [VA-SRC-1133-47]	1/17/02	171
330	Potomac River Low Flow Allocation Agreement, Draft, Dec. 9, 1977 [Sachs Dep. Ex. 31]	1/17/02	196
331	Potomac River Low Flow Allocation Agreement, Jan. 11, 1978 [Sachs Dep.	1/17/02	201

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332	Potomac River Low Flow Allocation Agreement, Jan. 11, 1978, Memorandum of Intent, Modification No. 1, Modification No. 2, Ancillary Agreement No. 1, and Ancillary Agreement No. 2 [Sachs Dep. Ex. 33]	1/17/02	202
333	1926-27 Report of the Virginia Att'y Gen. 182	1/17/02	310
334	1954-55 Report of the Virginia Att'y Gen. 117	1/17/02	311
335	1978-79 Report of the Virginia Att'y Gen. 110	1/17/02	312
336	1981-82 Report of the Virginia Att'y Gen. 185	1/17/02	313
337	1991 Report of the Virginia Att'y Gen. 41	1/17/02	314
338	Herbert M. Sachs, Statement (Aug. 31, 1976) [Sachs Dep. Ex. 15]	1/17/02	161
339	Herbert M. Sachs, Handwritten Notes (Sept. 5, 1976) [Sachs Dep. Ex. 16]	1/17/02	162
340	Herbert M. Sachs, Typewritten Notes (Sept. 5, 1976) [Sachs Dep. Ex. 17]	1/17/02	163
341	Herbert M. Sachs, Statement (Sept. 8, 1977) [Sachs Dep. Ex. 27]	1/17/02	186
342	Herbert M. Sachs, Deposition (Sept. 26, 2001) (excerpts)	1/17/02	139
343	Savage Reservoir Cost Sharing Agreement, July 1, 1982 [Sachs Dep. Ex. 36]	1/17/02	207(B)
344	T.M. Schwarberg, Statement of Virginia State Water Control Board presented at September 13, 1977, Public Hearing, Falls Church, Virginia, entitled <i>Virginia's Position on</i>	1/17/02	187

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	<i>the Potomac River Low Flow Allocation Agreement</i> [VA-Gen-00235-37 & MD-MDE-16420-22]		
345	State of Maryland, Answer to Interrogatory No. 26 & Ex. 2 (Ex. B, Virginia's Motion to Strike the Penultimate Paragraph of the Declaration of Jack R. Rakove)	1/18/02	N/A
346	State of Maryland, Answer of the State of Maryland to the Cross-Bill of the State of West Virginia, <i>Maryland v. West Virginia</i> , No. 1, Orig., Transcript of Record, Vol. I (Jan. 30, 1893)	2/28/01	59
347	State of Maryland, Answer to Bill of Complaint, <i>Virginia v. Maryland</i> , No. 12, Orig. (Feb. 19, 1958)	2/28/01	60
348	State of Maryland, Brief for the State of Maryland, <i>Maryland v. West Virginia</i> , No. 1, Orig. (Oct. 19, 1909)	2/28/01	65
349	State of Maryland, Decree Proposed by the State of Maryland, <i>Maryland v. West Virginia</i> , No. 1, Orig. (Apr. 20, 1910)	2/28/01	71
350	State of West Virginia, Brief on Behalf of West Virginia, <i>Maryland v. West Virginia</i> , No. 1, Orig. (Oct. 21, 1909)	2/28/01	66
351	State of West Virginia, Brief of Counsel for West Virginia on Points Involved in the Settlement of the Final Decree, <i>Maryland v. West Virginia</i> , No. 1, Orig. (May 14, 1910)	2/28/01	67
352	Stipulation of Parties Concerning § 401 Water Quality Certification, <i>Fairfax County Water Authority v. Maryland Department of Environ-</i>	1/17/02	239

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	<i>ment</i> , Case No. 98-MDE-WMA-116-044 (Nov. 12, 1998)		
353	Summary, Selected Contemporaneous Uses of the Terms “Navigation,” “Navigable,” “Shore” and “Wharves” (offered at oral argument)	4/16/01	N/A
354	<i>United States v. The Great Falls Manufacturing Co.</i> , (Montgomery Co. 1858), <i>reprinted in</i> Sen. Ex. Doc. 42, 35th Cong., 2d Sess. 2 (1859)	2/28/01	6
355	1 United States Geological Survey, <i>Water Resources Data, Maryland and Delaware, Water Year 2000</i> (Water Data Report MD-DE-00-1) (March 2001) (excerpts)	1/17/02	273
356	Virginia State Water Control Board, News Release (Aug. 5, 1976) [Sachs Dep. Ex. 10]	1/17/02	157
357	Virginia State Water Control Board, Memorandum for Agenda of September 27-28, 1976 [VA-SRC-2756, 2764]	1/17/02	167
358	Virginia State Water Control Board, Excerpt from the Proceedings of the Board at its Meeting on September 27-28, 1976 [VA-SRC-2405-07]	1/17/02	168
359	Virginia State Water Control Board, Press Release (Dec. 7, 1976) [MD-MDE-23457-58]	1/17/02	173
360	Virginia State Water Control Board, Press Release (May 18, 1977) [MD-MDE-21667-71]	1/17/02	175
361	Virginia State Water Control Board, Press Release (Oct. 12, 1977) [VA-SRC-1121]	1/17/02	188
362	Virginia State Water Control Board,	1/17/02	201(A)

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	Press Release (Jan. 11, 1978) [VA-SRC-1442-43]		
363	Water Supply Coordination Agreement (and Drought Related Operations Manual), July 22, 1982 [Sachs Dep. Ex. 36]	1/17/02	207(C)
364	John C. "Rufus" Webb, <i>Maryland Water Belongs There</i> , The Fairfax Journal (Oct. 21, 1997)	1/17/02	222
365	William P. Whyte, Isaac D. Jones, <i>Boundary Line Between the States of Maryland and Virginia, Before the Hons. Jeremiah S. Black, William A. Graham, and Charles J. Jenkins, Arbitrators upon the Boundary Line between the States of Virginia and Maryland</i> (June 26, 1874)	2/28/01	121
366	W. Pinkney Whyte, Isaac D. Jones, <i>Evidence to Sustain the Claim of Maryland that the Charter to Lord Baltimore Granted to Him the Bed of the Potomac River, and All the Islands in it, to the South-Western Bank of that River</i> (1876)	2/28/01	122
367	W. Pinkney Whyte, <i>Synopsis of Argument made by Mr. Pinkney Whyte, of Counsel for Maryland, Boundary Line Between the States of Maryland & Virginia, Before the Board of Arbitrators</i> (Aug. 26, 1876)	2/28/01	123

APPENDIX G-2

**Index of Evidentiary Materials
Submitted by Maryland
(Prepared by Maryland)**

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
Statutes & Legislative Materials		
1	69 (Opp) ¹	Maryland Charter (1632)
2	CC-18 ²	<i>Proceedings of the Council of Maryland, 1636 to 1667</i> , at 17 to 22 (William Hand Browne Ed., 1885, reprinted 1965)
3	6 (Opp)	H.R. McIlwaine and John Pendleton Kennedy, eds., <i>Journals of the House of Burgesses of Virginia</i> , Vol. 4, 314-18, 322, 334, 337-38 [Dec. 10, 1769] (Richmond, 1905-15)

¹ Exhibits with parenthetical designation “Opp” were attached as exhibits to Maryland’s Brief in Opposition to Virginia’s Motion for Partial Summary Judgment (filed Feb. 6, 2001) and Maryland’s Surrebuttal Brief in Opposition to Virginia’s Motion for Partial Summary Judgment (filed March 23, 2001).

² Exhibits that have no parenthetical were attached as exhibits to the Brief in Support of Maryland’s Motion for Summary Judgment (filed December 7, 2001) and the Reply Brief in Support of Maryland’s Motion for Summary Judgment (filed February 14, 2002).

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
4	10 (Opp)	"An act for opening and extending the navigation of the river Potowmack from Fort Cumberland to tide water," February Session, 1772, <i>reprinted in</i> Hening, <i>Statutes at Large</i> , Vol. 8, 570-79 (Richmond, 1821)
5	12 (Opp)	John Ballendine, "Proposals for opening the navigation of the river Potomac," printed in London in 1773, by John Ballendine, in <i>Report of the Committee on Roads and Canals</i> (January 30, 1827), House Report No. 90, 19th Cong., 2d sess., 23-26.
6	17 (Opp)	Thomas Jefferson, Second Draft of the Virginia Constitution [c. June 1776], <i>reprinted in</i> Julian P. Boyd, ed., <i>The Papers of Thomas Jefferson</i> , Vol. 1, 347-55 (Princeton, 1950)
7	18 (Opp)	Thomas Jefferson, Third Draft of the Virginia Constitution [c. June 1776], <i>reprinted in</i> Julian P. Boyd, ed., <i>The Papers of Thomas Jefferson</i> , Vol. 1, 356-65 (Princeton, 1950)
8	19 (Opp)	Thomas Jefferson, The Virginia Constitution as Adopted [June 29, 1776], <i>reprinted in</i> Julian P. Boyd, ed., <i>The Papers of Thomas Jefferson</i> , Vol. 1, 377-86 (Princeton, 1950)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
9	20 (Opp)	<i>Proceedings of the Conventions of the Province of Maryland</i> (October 29-30, 1776), reprinted in <i>Archives of Maryland</i> , Vol. 78, 290-93 (Baltimore, 1836)
10	22 (Opp)	<i>Votes and Proceedings of the House of Delegates of the State of Maryland</i> , October Session, 1777, 8 [Nov. 8, 1777]
11	24 (Opp)	<i>Votes and Proceedings of the Senate of the State of Maryland</i> , October Session, 1777, 9-10, 25, 27-30 [Nov. 25-Dec. 22, 1777]
12	25 (Opp)	<i>Journal of the House of Delegates of the Commonwealth of Virginia</i> , October Session, 1777 [Dec. 9, 1777] 64-65 (Richmond, Va., 1827)
13	27 (Opp)	<i>Votes and Proceedings of the Maryland Senate</i> , April Session, 1782 [May 1782], 39-40, 44-45
14	28 (Opp)	Virginia resolutions, June 14, 1782, reprinted in William P. Palmer, <i>et al</i> , eds., <i>Calendar of Virginia State Papers and Other Manuscripts from January 1, 1782, to December 31, 1784</i> , 192-93 (Richmond, Va., 1883; reprint, New York, 1968)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
15	39 (Opp)	Resolutions Appointing Virginia Members of a Potomac River Commission (June 28, 1784), <i>reprinted in</i> Robert A. Rutland, ed., <i>The Papers of James Madison</i> , Vol. 8, 89-90 (Chicago 1973-present)
16	40 (Opp)	<i>Journal of the House of Delegates of Virginia</i> , June 28, 1784 (Richmond, 1828)
17	49 (Opp)	<i>Journal of the House of Delegates of Virginia</i> , October Session, 1784 [Dec. 4, 7, 9, 13, 1784], 58, 61, 63, 68
18	50 (Opp) 70 (Opp)	“An ACT for establishing a company for opening and extending the navigation of the river Patowmack,” [Dec. 28, 1784] <i>reprinted in</i> Alexander Contee Hanson, ed., <i>Laws of Maryland</i> , November Session, 1784, chap. 33 (Annapolis, 1787)
19	51 (Opp)	Report of the Maryland and Virginia Commissioners, [December 28, 1784], <i>reprinted in</i> W. W. Abbot, et al., eds., <i>The Papers of George Washington: Confederation Series</i> , Vol. 2, 236-40 (Charlottesville, Va., 1992-present)
20	52 (Opp)	Resolutions of the Maryland Legislature, [December 28, 1784], <i>reprinted in</i> W. W. Abbot, et al., eds., <i>The Papers of George Washington: Confederation Series</i> , Vol. 2, 245-46 (Charlottesville, Va., 1992-present)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
21	54 (Opp)	Resolutions Authorizing an Interstate Compact on Navigation and Jurisdiction of the Potomac (December 28, 1784), <i>reprinted in</i> Robert A. Rutland, ed., <i>The Papers of James Madison</i> , Vol. 8, 206-07 (Chicago 1973-present)
22	56 (Opp) 71 (Opp)	“An act for opening and extending the navigation of Potowmack river,” October Session, 1784, <i>reprinted in</i> Henning, <i>Statutes at Large</i> Vol. 11, 510-25 (1819-23; reprint, Charlottesville, Va., 1969)
23	59 (Opp)	<i>Votes and Proceedings of the Maryland House of Delegates</i> , November Session, 1784 [Jan. 1785], 103, 105, 107, 113, 121, 125
24	60 (Opp)	<i>Votes and Proceedings of the Maryland Senate</i> , November Session, 1784 [Jan. 1785], 42-43, 50, 52, 58, 64, 67
25	63 (Opp)	The Compact between Maryland and Virginia relating to the Jurisdiction and Navigation of the Potomac and Pokomoke Rivers [Mount Vernon Compact] (March 28, 1785), <i>reprinted in</i> Robert A. Rutland, ed., <i>The Papers of George Mason</i> , Vol. 2, 816-21 (Chapel Hill, N.C., 1970)
26	DD-1	3 J. Elliot, <i>The Debates in the Several State Conventions on the Adoption of the Federal Constitution</i> , Vol. 1 at 75 (2nd Ed. 1836)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
27	CC-7	1789 Laws of Virginia, Ch. 32 (Dec. 3, 1789)
28	CC-1	1791 Laws of Maryland, Ch. 45 (December 19, 1791)
29	Opp. 96 ³	“An act for regulating inland navigation on Patowmac river, above tide water,” October Session, 1793, <i>reprinted in</i> Shepherd, <i>Statutes of Virginia, 1792 to 1806</i> , Volume 1, pp. 239-240
30	84 (Opp)	<i>Annals of Cong.</i> , 8th Cong., 2nd Sess., Nov. 28 and Dec. 11, 1804.
31	74 (Opp)	U.S. Congress, House Committee on Roads and Canals, <i>Chesapeake and Ohio Canal</i> , H. Rpt. 228, 19 Cong., 1 sess., 1825, at 64.
32	DD-2	<i>Congressional Globe</i> (Feb. 28, 1853), pp. 899-903
33	93 (Opp)	1859-60 Acts of the General Assembly of Virginia, Reso. 20 (Mar. 26, 1860), <i>reprinted in</i> Williams’ Index to Enrolled Bills, 1776-1910

³ This Exhibit was attached to Maryland’s April 20, 2001, letter responding to the written briefing materials and exhibits provided by Virginia at the April 16, 2001, oral argument on Virginia’s Motion for Partial Summary Judgment.

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
34	88 (Opp)	Abstract of Maryland Statement, <i>Report and Journal of Proceedings of the Joint Commissioners to Adjust the Boundary Line of the States of Maryland and Virginia Authorized by the Act of 1872, Chap. 210</i> (Annapolis, 1874)
35	87 (Opp)	Final Report of the Virginia Commissioners to the Governor of Virginia (Excerpt) (1874)
36	89 (Opp)	Report of the Maryland Commissioners to Settle and Adjust the Boundary Line between the States of Virginia & Maryland, Made to the General Assembly of Maryland at January Session 1872 (Baltimore, 1876)
37	92 (Opp)	1874 Acts of Virginia, Ch. 135 (March 25, 1874)
38	95 (Opp)	Synopsis of Argument made by Pinkney Whyte, Boundary Line Between the States of Maryland & Virginia, Before the Board of Arbitrators (August 26, 1876)
39	CC-2	1888 Laws of Maryland, Ch. 362 (April 4, 1888)
40	CC-3	1908 Laws of Maryland, Ch. 487 (April 8, 1908)
41	CC-4	1933 Laws of Maryland, Ch. 526 (April 21, 1933)
42	CC-5	1939 Laws of Maryland, Ch. 320 (May 3, 1939)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
43	DD-4	1973 Md. Laws Ch. 4 (excerpt showing re-codified definition of “person”)
44	CC-20	Statement by Herbert M. Sachs, Maryland Water Resources Administration, before House District Committee, Subcommittee on the Bicentennial, the Environment and the International Community (June 25, 1976)
45	DD-12	Executive Order 13061, “Federal Support of Community Efforts Along American Heritage Rivers,” (Sept. 11, 1997)
46	DD-13	Presidential Proclamation, “Designation of American Heritage Rivers By the President of the United States of America” (July 30, 1998)
47	6 (Moot) ⁴	2000 Md. Laws Ch. 557 (SB 729 – “Potomac River Protection Act”)
Correspondence		

⁴ Exhibits with parenthetical designation “Moot” were attached as exhibits to Maryland’s Reply to Virginia’s Opposition to Defendant’s Motion to Dismiss on the Basis of Mootness (filed June 14, 2001).

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
48	1 (Opp)	Letter from George Washington to Charles Carter (c. Aug. 1754), <i>reprinted in</i> , W. W. Abbot, <i>et al.</i> , eds., <i>The Papers of George Washington</i> : Colonial Series, Vol. 1, 196-98 (Charlottesville, Va., 1983-present)
49	2 (Opp)	Letter from Horatio Sharpe to Maj. Gen. Edward Braddock (Feb. 9, 1755), <i>reprinted in</i> Browne, ed., <i>Correspondence of Horatio Sharpe</i> , vol. 1, 6 Archives of Maryland 167-68 (Baltimore, 1888)
50	3 (Opp)	Letter from Horatio Sharpe to Lord Baltimore (Mar. 12, 1755), <i>reprinted in</i> Browne, ed., <i>Correspondence of Horatio Sharpe</i> , vol. 1, 6 Archives of Maryland 185-87 (Baltimore, 1888)
51	4 (Opp)	Letter from George Washington to a Participant in the Potomac River Enterprise [c.1762], <i>reprinted in</i> W. W. Abbot, <i>et al.</i> , eds., <i>The Papers of George Washington</i> : Colonial Series, Vol. 7, 175-78 (Charlottesville, Va., 1992-present)
52	5 (Opp)	John Semple's Proposal for Potomac Navigation [1769], <i>reprinted in</i> W. W. Abbot, <i>et al.</i> , eds., <i>The Papers of George Washington</i> : Colonial Series, Vol. 8, 284-90 (Charlottesville, Va., 1992-present)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
53	7 (Opp)	Letter from John Semple to George Washington (Jan. 8, 1770), <i>reprinted in</i> W. W. Abbot, <i>et al.</i> , eds., <i>The Papers of George Washington</i> : Colonial Series, Vol. 8, 291-94 (Charlottesville, Va., 1992-present)
54	8 (Opp)	Letter from Thomas Johnson to George Washington (June 18, 1770), <i>reprinted in</i> W. W. Abbot, <i>et al.</i> , eds., <i>The Papers of George Washington</i> : Colonial Series, Vol. 8, 349-53 (Charlottesville, Va., 1992-present)
55	9 (Opp)	Letter from George Washington to Thomas Johnson (July 20, 1770), <i>reprinted in</i> W. W. Abbot, <i>et al.</i> , eds., <i>The Papers of George Washington</i> : Colonial Series, Vol. 8, 357-60 (Charlottesville, Va., 1992-present)
56	11 (Opp)	Letter from Thomas Johnson to George Washington (May 10, 1772), <i>reprinted in</i> W. W. Abbot, <i>et al.</i> , eds., <i>The Papers of George Washington</i> : Colonial Series, Vol. 9, 43-44 (Charlottesville, Va., 1992-present)
57	13 (Opp)	Letter from Thomas Johnson to George Washington (January 24, 1775), <i>reprinted in</i> W. W. Abbot, <i>et al.</i> , eds., <i>The Papers of George Washington</i> : Colonial Series, Vol. 10, 242-44 (Charlottesville, Va., 1992-present)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
58	14 (Opp)	Letter from George Mason to George Washington (February 17, 1775), <i>reprinted in</i> Robert A. Rutland, ed., <i>The Papers of George Mason</i> , Vol. 1, 220-22 (Chapel Hill, N.C., 1970)
59	15 (Opp)	Letter from George Mason to George Washington (March [8], 1775), <i>reprinted in</i> Robert A. Rutland, ed., <i>The Papers of George Mason</i> , Vol. 1, 224-26 (Chapel Hill, N.C., 1970)
60	16 (Opp)	Letter from George Mason to George Washington (March 9, 1775), <i>reprinted in</i> Robert A. Rutland, ed., <i>The Papers of George Mason</i> , Vol. 1, 226-27 (Chapel Hill, N.C., 1970)
61	21 (Opp)	Letter from Richard Henry Lee to Thomas Jefferson (August 25, 1777), <i>reprinted in</i> Julian P. Boyd, ed., <i>The Papers of Thomas Jefferson</i> , Vol. 2, 29-31 (Princeton, 1950)
62	23 (Opp)	Letter from Richard Henry Lee to Patrick Henry (November 15, 1778), <i>reprinted in</i> James Curtis Ballagh, ed., <i>The Letters of Richard Henry Lee</i> , Vol. 1, 451-53 (New York, 1911)
63	26 (Opp)	Letter from Joseph Jones to Thomas Jefferson (June 30, 1780), <i>reprinted in</i> Julian P. Boyd, ed., <i>The Papers of Thomas Jefferson</i> , Vol. 3, 472-75 (Princeton, 1950)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
64	29 (Opp)	Letter from George Mason to Edmund Randolph (October 19, 1782), <i>reprinted in</i> Robert A. Rutland, ed., <i>The Papers of George Mason</i> , Vol. 2, 746-56 (Chapel Hill, N.C., 1970)
65	30 (Opp)	Letter from Virginia Delegates to Benjamin Harrison (April 10, 1783), <i>reprinted in</i> Robert A. Rutland, ed., <i>The Papers of James Madison</i> , Vol. 6, 446-49 (Chicago 1973-present)
66	31 (Opp)	Letter from Thomas Jefferson to Benjamin Harrison (November 11, 1783), <i>reprinted in</i> Julian P. Boyd, ed., <i>The Papers of Thomas Jefferson</i> , Vol. 6, 351-53 (Princeton, 1950)
67	32 (Opp)	Letter from Thomas Jefferson to James Madison (February 20, 1784), <i>reprinted in</i> Julian P. Boyd, ed., <i>The Papers of Thomas Jefferson</i> , Vol. 6, 544-51 (Princeton, 1950)
68	33 (Opp)	Letter from Thomas Jefferson to George Washington (March 15, 1784), <i>reprinted in</i> Julian P. Boyd, ed., <i>The Papers of Thomas Jefferson</i> , Vol. 7, 25-27 (Princeton, 1950)
69	34 (Opp)	James Madison to Thomas Jefferson (March 16, 1784), <i>reprinted in</i> Robert A. Rutland, ed., <i>The Papers of James Madison</i> , Vol. 8, 6-15 (Chicago, 1973-present)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
70	35 (Opp)	George Washington to Thomas Jefferson (March 29, 1784), <i>reprinted in</i> W. W. Abbot, <i>et al.</i> , eds., <i>The Papers of George Washington</i> : Confederation Series, Vol. 1, 237-41 (Charlottesville, Va., 1992-present)
71	36 (Opp)	Thomas Jefferson to James Madison (April 25, 1784), <i>reprinted in</i> Julian P. Boyd, ed., <i>The Papers of Thomas Jefferson</i> , Vol. 7, 118-121 (Princeton, 1950)
72	37 (Opp)	James Madison to Thomas Jefferson (April 25, 1784), <i>reprinted in</i> Robert A. Rutland, ed., <i>The Papers of James Madison</i> , Vol. 8, 19-22 (Chicago. 1973-present)
73	38 (Opp)	Thomas Jefferson to James Madison (May 25, 1784), <i>reprinted in</i> Julian P. Boyd, ed., <i>The Papers of Thomas Jefferson</i> , Vol. 7, 288-90 (Princeton, 1950)
74	41 (Opp)	James Madison to Thomas Jefferson (July 3, 1784), <i>reprinted in</i> Robert A. Rutland, ed., <i>The Papers of James Madison</i> , Vol. 8, 92-96 (Chicago 1973-present)
75	42 (Opp)	George Washington to Stephen Sayre (September 1, 1784), <i>reprinted in</i> W. W. Abbot, <i>et al.</i> , eds., <i>The Papers of George Washington</i> : Confederation Series, Vol. 2, 65-66 (Charlottesville, Va., 1992-present)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
76	43 (Opp)	George Washington to Benjamin Harrison (October 10, 1784), <i>reprinted in</i> W. W. Abbot, <i>et al.</i> , eds., <i>The Papers of George Washington: Confederation Series</i> , Vol. 2, 86-98 (Charlottesville, Va., 1992-present)
77	44 (Opp)	Letter from George Plater to George Washington (October 20, 1784), <i>reprinted in</i> W. W. Abbot, <i>et al.</i> , eds., <i>The Papers of George Washington: Confederation Series</i> , Vol. 2, 102-03 (Charlottesville, Va., 1992-present)
78	45 (Opp)	Letter from George Washington to George Plater (October 25, 1784), <i>reprinted in</i> W. W. Abbot, <i>et al.</i> , eds., <i>The Papers of George Washington: Confederation Series</i> , Vol. 2, 106-10 (Charlottesville, Va., 1992-present)
79	46 (Opp)	Letter from Benjamin Harrison to George Washington (November 13, 1784), <i>reprinted in</i> W. W. Abbot, <i>et al.</i> , eds., <i>The Papers of George Washington: Confederation Series</i> , Vol. 2, 134-35 (Charlottesville, Va., 1992-present)
80	47 (Opp)	Letter from Henry Lee, Jr., to George Washington (November 18, 1784), <i>reprinted in</i> W. W. Abbot, <i>et al.</i> , eds., <i>The Papers of George Washington: Confederation Series</i> , Vol. 2, 139-41 (Charlottesville, Va., 1992-present)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
81	48 (Opp)	Letter from George Washington to James Madison and Joseph Jones (December 3, 1784), <i>reprinted in</i> W. W. Abbot, <i>et al.</i> , eds., <i>The Papers of George Washington: Confederation Series</i> , Vol. 2, 165-68 (Charlottesville, Va., 1992-present)
82	53 (Opp)	Letter from George Washington to James Madison (December 28, 1784), <i>reprinted in</i> W. W. Abbot, <i>et al.</i> , eds., <i>The Papers of George Washington: Confederation Series</i> , Vol. 2, 231-35 (Charlottesville, Va., 1992-present)
83	55 (Opp)	Letter from James Madison to George Washington (January 1, 1785), <i>reprinted in</i> Robert A. Rutland, ed., <i>The Papers of James Madison</i> , Vol. 8, 208-10 (Chicago 1973-present)
84	57 (Opp)	Letter from James Madison to Thomas Jefferson (January 9, 1785), <i>reprinted in</i> Robert A. Rutland, ed., <i>The Papers of James Madison</i> , Vol. 8, 222-34 (Chicago 1973-present)
85	58 (Opp)	Letter from James Madison to George Washington (January 9, 1785), <i>reprinted in</i> Robert A. Rutland, ed., <i>The Papers of James Madison</i> , Vol. 8, 234-35 (Chicago 1973-present)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
86	61 (Opp)	Letter from James Madison to the Marquis de Lafayette (March 20, 1785), <i>reprinted in</i> Robert A. Rutland, ed., <i>The Papers of James Madison</i> , Vol. 8, 250-55 (Chicago 1973-present)
87	62 (Opp)	Letter from George Washington, Diary Entries (March 20-29, 1785), <i>reprinted in</i> , Donald Jackson <i>et al.</i> , eds., <i>The Diaries of George Washington</i> , Vol. 4, 104-9 (Charlottesville)
88	64 (Opp)	Letter from Maryland and Virginia Commissioners to the President of the Executive Council of the Commonwealth of Pennsylvania (March 28, 1785), <i>reprinted in</i> Robert A. Rutland, ed., <i>The Papers of George Mason</i> , Vol. 2, 822-23 (Chapel Hill, N.C., 1970)
89	65 (Opp)	Letter from James Madison to Thomas Jefferson (April 27, 1785), <i>reprinted in</i> Robert A. Rutland, ed., <i>The Papers of James Madison</i> , Vol. 8, 265-72 (Chicago 1973-present)
90	66 (Opp)	Letter from George Mason to James Madison (August 9, 1785), <i>reprinted in</i> Robert A. Rutland, ed., <i>The Papers of George Mason</i> , Vol. 2, 826-28 (Chapel Hill, N.C., 1970)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
91	67 (Opp)	Letter from George Mason to James Madison (December 7, 1785), <i>reprinted in</i> Robert A. Rutland, ed., <i>The Papers of George Mason</i> , Vol. 2, 835-38 (Chapel Hill, N.C., 1970)
92	78 (Opp)	Letter from Edward Colston to the Potomac Company (Nov. 6, 1817)
93	80 (Opp)	Letter from James Mason to James K. Smith (Aug. 7, 1820)
94	94 (Opp)	Letter from John R. Saunders, Attorney General, Commonwealth of Virginia, to Swepson Earle, Commissioner, Maryland Conservation Department (June 23, 1927)
95	CC-19	Letter from George H. Badger, Jr., Virginia Commission of Fisheries, to R.C. Rector (April 20, 1967)
96	CC-21	Letter from Eugene J. Jensen, Virginia State Water Control Board, to Herbert M. Sachs, Maryland Water Resources Administration (July 8, 1976)
97	CC-22	Letter from Eugene Jensen, Virginia State Water Control Board, to Governor of Virginia (July 20, 1976)
98	CC-23	Memorandum by D.F. Jones, Virginia State Water Control Board (August 17, 1976)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
99	DD-5	Memorandum of Agreement Between Maryland Water Resources Administration and Virginia State Water Control Board Concerning Implementation of a Water Supply Program for the Washington Metropolitan Area (Oct. 8, 1976)
100	CC-24	Letter from J. Leo Bourassa, Virginia State Water Control Board, to G.K. Withers, Army Corps of Engineers (June 9, 1977)
101	CC-25	Letter from J. Leo Bourassa, Virginia State Water Control Board, to Herbert M. Sachs, Maryland Water Resources Administration (August 5, 1977)
102	CC-26	Letter from Herbert M. Sachs, Maryland Water Resources Administration, to J. Leo Bourassa, Virginia State Water Control Board (August 23, 1977)
103	DD-7	Memorandum from R.V. Davis, State Water Control Board, to Members of the State Water Study Commission (Aug. 4, 1977) attaching Summary of July 27, 1977 meeting of the State Water Study Commission

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
104	DD-8	“Water Supply and Allocation Problems in Virginia: Report of the Legal Study Subcommittee of the State Water Study Commission” (Nov. 23, 1977), attached to State Water Control Board Memorandum from R.V. Davis to Members of the State Water Control Board (November 25, 1977)
105	DD-9	Letter from Anthony F. Troy, Attorney General, Commonwealth of Virginia, to M. Robert V. Davis, Executive Secretary, State Water Control Board (Jan. 11, 1978)
106	CC-27	Correspondence among William M. Haussmann, Virginia Marine Resources Comm’n, and Virginia State Water Control Board (April 2, 1979 and May 3, 1979)
107	DD-10	Memorandum from J.P. Godfrey, Virginia State Water Control Board, to Subcommittee Members (Aug. 21, 1984)
108	DD-11	Memorandum from Dale F. Jones, Virginia State Water Control Board, to W.L. Woodfin, Jr. (Sept. 20, 1984), attaching Draft Report of the Interjurisdictional, Interstate and Interbasin Transfers of Water Subcommittee of the State Water Plan Advisory Committee

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
109	CC-28	Letter from Owen W. Bludau, Northern Virginia Planning District Commission, to Councilman Mitchel P. Raftalis (February 6, 1991)
110	CC-29	Letter from Mel Bridgett, Charles County Administrator, to William F. Bruton, Jr., Town Manager for Colonial Beach (January 10, 1990)
111	CC-30	Letter from Jack Green, King George County Land Use Administrator, and Jay M. Woodward, Virginia Marine Resources Commission, to Don MacGlashan (September 28, 1992 and September 17, 1992)
112	DD-32	Letter from Hugh J. Eggborn, Engineering Field Director, Virginia Department of Health, to Fairfax County Water Authority (January 24, 1994)
113	DD-33	Letter from Jeffrey P. Madden, Environmental Engineer, Virginia Marine Resources Commission, to Fairfax County Water Authority (January 31, 1996)
114	DD-35	Letter from John E. Tyler, Town Attorney for Colonial Beach, Virginia, to Matthew A. Mathes (October 15, 1998)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
115	3 (Moot)	Letter from Mark L. Early, Attorney General, Commonwealth of Virginia, to the Honorable Fred C. Morin, Chairman, Fairfax County Water Authority (July 27, 1999)
116	4 (Moot)	Letter from Charlie C. Crowder, General Manager, Fairfax County Water Authority, to Amanda Sigillito, Maryland Department of the Environment (January 31, 2001)
117	5 (Moot)	Letter from Amanda Sigillito, Maryland Department of the Environment, to C. David Binning, Fairfax County Water Authority (April 30, 2001)
118	DD-36	Letter from Jeffrey R. B. Notz, Assistant County Attorney for Prince William County, to Russel Johnson, Chief Ranger (May 14, 2001)
119	4 (Strike) ⁵	Letter from Stuart Raphael, Hunton & Williams, to Andrew H. Baida, Office of the Maryland Attorney General (September 21, 2001)
Books, Periodicals, & Other Publications		

⁵ Exhibits with parenthetical designation “Strike” were attached as exhibits to Maryland’s Opposition to Virginia’s Motion to Strike the Penultimate Paragraph of the Declaration of Jack N. Rakove (filed Feb. 15, 2002).

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
120	68 (Opp)	Thomas Jefferson, <i>Notes on the State of Virginia</i> 12 (Philadelphia, 1825)
121	DD-6	Evans, David E., Assistant Attorney General, Commonwealth of Virginia, "The Legal Issues – Possible Solutions," attached to Program agenda, Virginia State Bar, Environmental Law Committee (June 10, 1977)
122	DD-37	Fairfax County, Virginia, "Water Supply Issues," from county website (www.co.fairfax.va.us) (dated October 2, 2001)
Other Exhibits		
– Attorney General Opinions		
123	CC-8	1906 Va. Op. Atty. Gen. 87 (June 23, 1906)
124	CC-9	1935 Va. Op. Atty. Gen. 147 (June 21, 1935)
125	CC-10	1944 Va. Op. Atty. Gen. 91 (September 1, 1944)
126	91 (Opp)	1945 Va. Op. Atty. Gen. 90 (April 26, 1945)
127	90 (Opp) CC-11	1948 Va. Op. Atty. Gen. 118 (July 13, 1948)
128	CC-12	1952 Va. Op. Atty. Gen. 116 (July 30, 1952)
129	CC-6	1956 Md. Op. Atty. Gen. 335 (Feb. 3, 1956)
130	CC-13	1967 Va. Op. Atty. Gen. 48 (April 25, 1967)
– Proceedings of the Potomac Company		

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
131	72 (Opp)	Proceedings of the General Meetings of the Potowmack Company, 1785-1796 (Aug. 6, 1792)
132	73 (Opp)	Proceedings of the General Meetings of the Potowmack Company, 1785-1796 (Aug. 3, 1795)
133	75 (Opp)	Proceedings of the Board of President and Directors of the Potowmack Company (Jan. 20, 1800)
134	76 (Opp)	Proceedings of the Board of President and Directors of the Potowmack Company (Oct. 19, 1791)
135	77 (Opp)	Proceedings of the Board of President and Directors of the Potowmack Company (Aug. 3, 1812)
136	79 (Opp)	Proceedings of the Board of President and Directors of the Potowmack Company (Dec. 22, 1819)
137	81 (Opp)	Proceedings of the Board of President and Directors of the Potowmack Company (March 6, 1813)
138	82 (Opp)	Proceedings of the Board of President and Directors of the Potowmack Company (Nov. 24, 1813)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
139	83 (Opp)	Proceedings of the Board of President and Directors of the Potowmack Company (June 22, 1822)
– Unpublished Judicial Opinions		
140	85 (Opp)	Opinion, Circuit Court for Montgomery County, Maryland, <i>United States v. Great Falls Manufacturing Co.</i> , reprinted as Sen. Doc. 42, 35th Cong., 2d Sess. (1859)
141	86 (Opp)	Opinion, Circuit Court for Washington County, Maryland, <i>Middlekauff v. LeCompte</i> (1925)
142	1 (Moot)	Memorandum Opinion, Circuit Court for Baltimore City, Maryland, <i>In re Fairfax County Water Authority Potomac River Intake</i> (2001)
– Discovery Materials		
143	CC-14	Stipulations Relating to Designee Depositions
144	CC-15	Virginia's Answers to Interrogatories, Nos. 4, 5, 7, 8, 10, & 13
145	CC-16	Virginia's Responses to Requests for Admissions, Nos. 16, 17, 18, 19, 29, 88, 95, 162
146	CC-17	Deposition of Herbert M. Sachs, pp. 110 to 111
147	DD-3	Virginia's Responses to Requests for Admissions, Nos. 64-66, 68-70
148	2 (Strike)	Brief Summary of Expected Testimony of Jack N. Rakove
– Affidavits & Declarations (with supporting documentation)		

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
149	BB	Affidavit of Richard J. Ayella, Chief of the Tidal Wetlands Division, Water Management Administration, Maryland Department of the Environment
150	BB-1	Maryland Wetlands License issued to Leona Dorsey (April 1, 1971) authorizing dredging of material from Potomac River at Widewater, Virginia
151-153	BB-2-4	Maryland authorizations of work proposed to be completed on the Virginia shoreline of the Potomac River, including VMRC letters referring Virginia applicants to Maryland
154	BB-5	Maryland Wetlands License issued to the Mansion House Yacht Club (October 11, 1972) authorizing construction of a double-bulkheaded breakwater and dredging from the Potomac River, with related correspon- dence from the Virginia State Water Control Board regarding Maryland's jurisdiction over the Potomac
155-165	BB-6-16	Maryland authorizations of work proposed to be completed on the Virginia shoreline of the Potomac River, including VMRC letters referring Virginia applicants to Maryland

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
166	BB-17	Documents relating to Maryland authorization of the construction of a bulkhead in the Potomac by Henry T. H. Liem, including letter from Norman E. Larsen, VMRC, to Mr. Liem (July 11, 1983) copying Maryland Department of Natural Resources on letter informing applicant that Virginia does not have jurisdiction over Potomac River beyond low water mark
167-169	BB-18-20	Maryland authorizations of work proposed to be completed on the Virginia shoreline of the Potomac River, including VMRC letters referring Virginia applicants to Maryland
170	BB-21	Documents relating to application by S. E. Veazey for authorization of groins, breakwaters, and boat ramp in the Potomac, including letter from Norman E. Larsen, VMRC, to the King George County Wetlands Board (November 9, 1983) clarifying limits of Virginia's regulatory jurisdiction over the Potomac River and discussions with Maryland regarding Maryland's permitting process

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
171-173	BB-22-24	Maryland authorizations of work proposed to be completed on the Virginia shoreline of the Potomac River, including VMRC letters referring Virginia applicants to Maryland
174	BB-25	Documents relating to application by James M. Thomas for authorization of a private pier in the Potomac, including unsigned letter from Madeline Grulich, VMRC, to Mr. Thomas (March 27, 1984) stating that pier on Virginia shoreline is subject to the jurisdiction of the State of Maryland and recommending that the applicant contact the Maryland Department of Natural Resources
175-186	BB-26-37	Maryland authorizations of work proposed to be completed on the Virginia shoreline of the Potomac River, including VMRC letters referring Virginia applicants to Maryland (Exhibit number 34 is intentionally left blank)
187	BB-38	Documents relating to application by Mr. Jim Woodrow for authorization for groin and riprap project in the Potomac River, including letter from J. H. Lipscomb, Jr., VMRC, to Mr. Woodrow (May 6, 1988), advising him that groin portion of project is regulated by the State of Maryland

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
188-207	BB-39-58	Maryland authorizations of work proposed to be completed on the Virginia shoreline of the Potomac River, including VMRC letters referring Virginia applicants to Maryland
208	BB-59	Documents relating to application by Colonial Beach School Board for authorization to construct a pier in the Potomac River, including letters from Jay M. Woodward, VMRC, to Ms. Roberta Raines and Frederick and Beverly Jackson (April 12, 1991) noting that Maryland has jurisdiction over the project and referring complaints to Maryland Department of Natural Resources
209-381	BB-60-232	Maryland authorizations of work proposed to be completed on the Virginia shoreline of the Potomac River, including VMRC letters referring Virginia applicants to Maryland

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
382	BB-233	Documents relating to application by Virginia Department of Conservation and Recreation for authorization to construct a pier in the Potomac River, including letters from Palmer N. Stearns, III, Department of Conservation and Recreation, to VMRC, noting that because pier extends beyond low water mark, the application is being forwarded to the Maryland Department of the Environment, and to Maryland Department of the Environment, seeking to conform pier to requirements Maryland laws and regulations (Dec. 11, 1998)
383-417	BB-234-268	Maryland authorizations of work proposed to be completed on the Virginia shoreline of the Potomac River, including VMRC letters referring Virginia applicants to Maryland
418	BB-269	Documents relating to application by Mr. Richard H. Bickford for authorization to construct a pier platform in the Potomac River, including a letter from Jeffrey P. Madden, VMRC, to Mr. Bickford (August 1, 2001) acknowledging Maryland's jurisdiction over projects in the Potomac River

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
419-437	BB-270-288	Documents relating to Virginia shoreline projects for which Maryland asserted jurisdiction but for which no paper record of the issuance of a Maryland authorization exists
438	BB-289	Documents relating to groin and revetment project constructed by Mr. Dudley Staples in the Potomac River, including letter from Jay M. Woodward, VMRC, to Mr. Peter von Freiburg (May 7, 1996) referring complaint to the Maryland Department of Natural Resources
439-440	BB-290-291	Documents relating to Virginia shoreline projects for which Maryland asserted jurisdiction but for which no paper record of the issuance of a Maryland authorization exists
441-466	BB-292-317	Documents relating to Virginia shoreline projects reflected in the Maryland Department of the Environment's Department's computer database for which the VMRC referred the applicant to Maryland, but for which no paper record of the issuance of a Maryland authorization exists

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
467	BB-318	Documents relating to application by Vernon D. Gutjahir for authorization of riprap revetment in the Potomac River, including letter from Ben Stagg, VMRC, to Mr. Gutjahir (March 31, 2000) confirming results of investigation to determine whether project will extend channelward of mean low water into Maryland waters
468-494	BB-319-345	Documents relating to Virginia shoreline projects reflected in the Maryland Department of the Environment's Department's computer database for which the VMRC referred the applicant to Maryland, but for which no paper record of the issuance of a Maryland authorization exists
495	BB-346	Letters from the Commonwealth of Virginia, Marine Resources Commission to Virginia applicants referring them to Maryland for review and authorization of projects along the Virginia shoreline of the Potomac River for which a Maryland application or authorization does not exist, including Letter from Madeline Grulich, VMRC, to Mrs. Mary E. Mozinsky (April 4, 1984) indicating that Maryland's jurisdiction over the Potomac River stems from the Compact of 1785 (VA-MRC-F-00354)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
496	BB-347	Documents relating to application by the City of Alexandria, Virginia, for a license to dredge material from the Potomac River in the area of the City's pier, including letter from Alexandria (March 4, 1975) withdrawing application because project is located on the Virginia side of the low water mark
497	BB-348	Documents relating to application by the Southern Marine & Salvage Company for dredging related to the proposed construction of the Dano Resource Recovery facility in King George County, Virginia, including a letter from R.V. Davis, Executive Secretary of the Virginia State Water Control Board, to the Honorable Calvin G. Sanford, Member, Virginia House of Delegates (January 25, 1979) noting that potential impacts on seafood would occur beyond low water mark and be subject to Maryland's jurisdiction
498	BB-349	Summary of Maryland authorizations issued for work on the Virginia shoreline of the Potomac River reflected in Maryland Department of the Environment records
499	K	Declaration of Lisa Bailey, Clerk to Charles County Board of License Commissioners

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
500	K-1	Charles County Board of License Commissioners meeting minutes (1951) reflecting investigations of establishments built on piers in the Potomac River off shore of Colonial Beach, Virginia
501	K-2	Charles County Board of License Commissioners meeting minutes (1952) reflecting consideration of liquor license applications from entities operating on piers from the Virginia shoreline
502	K-3	Charles County Board of License Commissioners meeting minutes (1953) reflecting consideration of liquor license applications from entities operating on piers from the Virginia shoreline
503	K-4	Charles County Board of License Commissioners meeting minutes (1955) reflecting consideration of liquor license applications from entities operating on piers from the Virginia shoreline
504	K-5	Charles County Board of License Commissioners meeting minutes (1957) reflecting consideration of liquor license application from Belvedere Beach Pier, Inc., Belvedere Beach Virginia
505	K-6	Charles County Board of License Commissioners meeting minutes (1959) reflecting consideration of liquor license applications from entities operating on piers from the Virginia shoreline

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
506	K-7	Charles County Board of License Commissioners meeting minutes (1962) reflecting consideration of liquor license applications from entities operating on piers from the Virginia shoreline
507	K-8	Charles County Board of License Commissioners meeting minutes (1965) reflecting consideration of liquor license application for a building to be constructed on the Monte Carlo Pier, off-shore Colonial Beach, Virginia
508	K-9	Charles County Board of License Commissioners meeting minutes (1966) reflecting investigation of claims that Little Reno, off-shore Colonial Beach, Virginia, was operating without proper drinking water and sewerage facilities
509	K-10	Charles County Board of License Commissioners meeting minutes (1967) reflecting consideration of liquor license application from Little Reno, Inc., Offshore Colonial Beach, Virginia
510	K-11	Charles County Board of License Commissioners meeting minutes (1974) reflecting preparation of order to show cause why liquor license issued to Little Reno, Inc., Colonial Beach, Virginia should not be revoked

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
511	K-12	Charles County Board of License Commissioners meeting minutes (1982) regarding renewal of liquor license for Little Reno Pier and Restaurant
512	K-13	Charles County Board of License Commissioners meeting minutes (1983) regarding liquor license application from Starlight Pavilion, Offshore Fairview Beach, Virginia
513	K-14	Charles County Board of License Commissioners meeting minutes (1985) approving transfer of liquor license for Reno of Colonial Beach, Inc., Colonial Beach, Virginia
514	K-15	Charles County Board of License Commissioners meeting minutes (1987) regarding investigation of Reno of Colonial Beach, Colonial Beach, Virginia
515	K-16	Charles County Board of License Commissioners meeting minutes (1989) reflecting conditional approval of liquor license transfer for the Fairview Beach Crab House, Off-shore Fairview Beach, Virginia
516	K-17	Charles County Board of License Commissioners meeting minutes (1990) reflecting renewal of liquor license for Reno of Colonial Beach, Inc. pending payment of Maryland taxes

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
517	K-18	County Board of License Commissioners meeting minutes (1991) reflecting consideration of liquor license applications from entities operating on piers from the Virginia shoreline
518	K-19	Charles County Board of License Commissioners meeting minutes (April 14, 1992) reflecting renewal of the liquor license for Fairview Beach Crab House pending payment of Maryland taxes
519	K-20	Charles County Board of License Commissioners meeting minutes (1993) reflecting consideration of liquor license applications from The Pier at Fairview Beach, on the Potomac River, Charles County, Maryland and the Fairview Beach Crab House
520	K-21	Charles County Board of License Commissioners meeting minutes (1995) reflecting approval and later rescission of liquor license to the Fairview Beach Crabhouse Restaurant, Fairview Beach, Virginia
521	K-22	Charles County Board of License Commissioners meeting minutes (1998) reflecting conditional approval of transfer of liquor license for Jamaica Joe's Crab House

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
522	K-23	Charles County Board of License Commissioners meeting minutes (October 21, 1999) reflecting imposition of license suspension and fines on Fairview Beach Crabhouse Restaurant, Fairview Beach, Virginia, and Riverboat on the Potomac for selling alcohol to minors
523	K-24	Application for Maryland liquor license renewal for the Belvedere Beach Pier (1970)
524	K-25	Application for Maryland liquor license renewal for the Starlight Pavilion, Inc. (1983)
525	K-26	Applications for Maryland liquor license renewal for the Starlight Pavilion T/A Fairview Beach Crab House and Starlight Pavilion Offshore Fairview Beach, Virginia (1984-1989)
526	K-27	Plat showing location of the Fairview Beach Crab House (1983)
527	K-28	Application for Maryland liquor license for Starlight Pavilion t/a Fairview Beach Crabhouse (1991)
528	K-29	Applications for Maryland liquor license renewal for Fairview Beach Crab House (1994-1996)
529	K-30	Application for Maryland liquor license for Starlight Pavilion T/A Jamaica Joes (1998)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
530	K-31	Applications for Maryland liquor license renewal for Starlight Pavilion T/A Jamaica Joes (1999-2001)
531	K-32	Application for Maryland liquor license for Reno of Colonial Beach, Inc. (1984)
532	K-33	Applications for Maryland liquor license renewal for Reno of Colonial Beach, Inc. (1985-1990)
533	K-34	Permit allowing transfer of Maryland liquor license from Reno on the Potomac, Inc. to Reno of Colonial Beach, Inc. (1991)
534	K-35	Application for Maryland liquor license renewal for Reno on the Potomac, Inc. (1991)
535	K-36	Application for Maryland liquor license for Riverboat on the Potomac (1991)
536	K-37	Applications for Maryland liquor license renewal for Riverboat on the Potomac, Inc. (1992-2000)
537	K-38	Letter from the Charles County Board of License Commissioners to the Sheriff of Charles County (September 22, 1983) requesting background check on the owners of Starlight Pavilion, Inc.
538	K-39	Memorandum from Sergeant William Mancuso (February 15, 1991) providing results of background check for Reno on the Potomac, Inc.

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
539	K-40	Memorandum from Sergeant Mancuso (November 19, 1991) providing results of inquiry into the owners of Riverboat on the Potomac
540	K-41	Letter from the Comptroller of the Treasury to the Charles County Board of License Commissioners (September 30, 1983) certifying that Starlight Pavilion, Inc. had paid all Maryland taxes
541	K-42	Letter from the Maryland Comptroller of the Treasury to the Charles County Board of License Commissioners (Jan. 23, 1985) regarding failure to pay Maryland taxes by Little Reno, Inc.
542	K-43	Letters from the Maryland Comptroller of the Treasury to the Charles County Board of License Commissioners (October 14, October 3, 1986) regarding seizure of liquor license held by Little Reno, Inc. for failure to pay Maryland taxes
543	K-44	Letter from the Maryland Comptroller of the Treasury to the Charles County Board of License Commissioners (March 7, 1991) regarding failure to pay Maryland taxes by Reno of Colonial Beach, Inc.

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
544	K-45	Letter from the Charles County Department of Health to the owner of the Starlight Pavilion (September 7, 1983) regarding issuance of food and drink permit
545	K-46	Permit issued by Maryland Department of Health and Mental Hygiene to Starlight Pavilion, Inc. (August 31, 1983) authorizing operation of food service facility
546	K-47	Permit issued by Maryland Department of Health and Mental Hygiene to Fairview Beach Crab House (March 31, 1989) authorizing operation of food service facility
547	K-48	Permit issued by Maryland Department of Health and Mental Hygiene to Reno on the Potomac, Inc. (September 30, 1991) authorizing operation of food service facility
548	K-49	Permit issued by Maryland Department of Health and Mental Hygiene to Riverboat on the Potomac (February 14, 1992) authorizing operation of food service facility
549	K-50	Certificate of Use and Occupancy issued by the Charles County Department of Public Works for Reno on the Potomac, Inc. (Feb. 6, 1991)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
550	K-51	Certificate of Use and Occupancy issued by the Charles County Department of Public Works for Jamaica Joe's Crab House, requiring that the deck around the restaurant be removed and replaced (July 2, 1998)
551	K-52	Certificate of Use and Occupancy issued by the Charles County Department of Public Works for for the Fairview Beach Crab House (February 6, 1989)
552	K-53	Articles of incorporation filed with the Charles County Board of License Commissioners by Reno on the Potomac (1988)
553	K-54	Articles of incorporation filed with the Charles County Board of License Commissioners by Starlight Pavilion, Inc. (1961)
554	K-55	Resolution and Corporate Bylaws filed with the Charles County Board of License Commissioners by Starlight Pavilion, Inc. (1988)
555	K-56	Corporate records received filed with the Charles County Board of License Commissioners by Starlight Pavilion, Inc. (1983)
556	K-57	Letter from the Charles County Board of License Commissioners to the owners of Reno of Colonial Beach, Inc. (Feb. 16, 1989) regarding change in ownership

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
557	K-58	Corporate minutes filed with the Charles County Board of License Commissioners by Starlight Pavilion, Inc. (1986) describing change in ownership
558	K-59	Lease between Reno of Colonial Beach, Inc. and Reno on the Potomac, Inc. (1991)
559	K-60	Lease between Riverboat on the Potomac, Inc. and Flanagan's of Colonial Beach, Inc. (1991)
560	K-61	Deed for sale of property to Reno of Colonial Beach, Inc. (1985)
561	K-62	Contract for sale of Little Reno to Reno of Colonial Beach (1984), making sale contingent upon the maintenance and transfer of Maryland liquor and lottery licenses
562	K-63	Letter from the Chairman of the King George County Service Authority to the Charles County Board of License Commissioners (June 10, 1998) expressing concerns of King George County, Virginia, regarding renewal of the liquor license for Jamaica Joe's Crab Shack
563	K-64	Petition signed by residents of Fairview Beach, Virginia, and submitted to the Charles County Board of License Commissioners supporting request to transfer liquor license to Jamaica Joe's Crab House (June 1998)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
564	K-65	Letter from the Charles County Board of License Commissioners to Jamaica Joe's Crab House (June 16, 1998) granting request to serve alcoholic beverages on its outside deck
565	K-66	Letter from the Charles County Board of License Commissioners to Jamaica Joe's Crab House (July 29, 1998) authorizing live entertainment on the outside portion of restaurant
566	K-67	Report from the Sheriff of Charles County regarding compliance check at Riverboat on the Potomac (Aug. 5, 1999)
567	K-68	Order of the Charles County Board of License Commissioners (July 16, 1987) imposing suspension of Reno of Colonial Beach's liquor license for violations of Maryland liquor laws
568	K-69	Letter from the Charles County Board of License Commissioners to the owner of Reno of Colonial Beach (1987) requiring surrender of license
569	K-70	Order by the Board (November 1, 1999) imposing fine on Riverboat on the Potomac
570	B	Declaration of Frederick E. Davis, Sheriff, Charles County, Maryland

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
571	B-1	Town Manager of Colonial Beach, Virginia, to Charles County, Maryland (Sept. 26, 1989) requesting permission for Colonial Beach police to exercise authority over activities on Colonial Beach pier
572	B-2	Memorandum of Understanding between Charles County, Maryland, and the Town of Colonial Beach, Virginia (May 19, 1998) granting permission for Colonial Beach police to exercise authority over activities on Colonial Beach pier
573	B-3	Memorandum of Understanding between Charles County, Maryland, and King George County, Virginia (July 8, 1999) granting permission for Sheriff's Office of King George County, Virginia to patrol the pier and businesses located on the Fairview Beach Pier
574	B-4	Offense Report (September 4, 1970) reflecting investigation by the Charles County Sheriff's Office into Possession Of and Payoff On Slot Machines at the Reno Restaurant, Inc. at Colonial Beach, Virginia

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
575	B-5	Offense Report (June 20, 1974) reflecting investigation by the Charles County Sheriff's Office of Gambling and Possession of Slot Machines at the Little Reno, off shore, Colonial Beach, Virginia
576	B-6	Offense Report (July 5, 1974) reflecting investigation by the Charles County Sheriff's Office of Gambling and Possession of Slot Machines at the Little Reno, off shore, Colonial Beach, Virginia
577	B-7	Application For Statement of Charges and Statement of Probable Cause (August 20, 1978) reflecting investigation by the Charles County Sheriff's Office of a robbery with a handgun at the Little Reno Bar off shore, Virginia
578	B-8	Vice Complaint (August 31, 1979) reflecting investigation by the Charles County Sheriff's Office of illegal gambling occurring in the Little Reno Restaurant
579	B-9	Investigation Report (August 5, 1981) reflecting investigation by the Charles County Sheriff's Office of a murder at the Reno Pier, Colonial Beach, Virginia

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
580	B-10	Continuation of an Investigation Report (August 5, 1981) reflecting investigation by the Charles County Sheriff's Office of a murder at the Reno Pier, Colonial Beach, Virginia
581	B-11	Documents pertaining to an investigation by the Charles County Sheriff's Office of a July 20, 1992 military aircraft crash into the Potomac River.
582	B-12	Incident Report (March 29, 1994) reflecting investigation by the Charles County Sheriff's Office involving a burglary on the Town Pier at Colonial Beach, Virginia
583	B-13	Offense/Incident Report (August 12, 1995) reflecting investigation by the Charles County Sheriff's Office of a death/accidental drowning at Colonial Beach, Virginia
584	B-14	Offense/Incident Report (August 18, 1996) reflecting investigation by the Charles County Sheriff's Office at the Fairview Beach Crab House on Crain Highway, Fairview Beach on the Virginia Shoreline, Maryland
585	B-15	Offense/Incident Report (February 2, 1997) reflecting investigation by the Charles County Sheriff's Office of a theft at the Riverboat Restaurant, Colonial Beach, Virginia

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
586	B-16	Charles County Sheriff Of- fense/Incident Report (July 24, 1998) describing recent history of burglaries at Jamaica Joe's Caribbean Crab Shack
587	B-17	Charles County Sheriff Of- fense/Incident Report (August 16, 1998) detailing apprehension of people for acting disorderly on the Town Pier
588	B-18	Charles County Sheriff Of- fense/Incident Report (September 26, 1998) detailing rock-throwing incident at the Riverboat Bar & Restaurant
589	B-19	Charles County Sheriff Of- fense/Incident Report (August 5, 1999) detailing report of rape in the waters off the Colonial Beach, Virginia shore
590	B-20	Charles County Sheriff Of- fense/Incident Report (June 15, 1999) describing intoxicated and disorderly subject on Colonial Beach pier
591	B-21	Charles County Sheriff Of- fense/Incident Report (May 7, 2000) stating that victim and accused were involved in a verbal altercation at the end of the Colonial Beach Town Pier

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
592	B-22	Charles County Sheriff Of- fense/Incident Report (June 6, 2001) detailing the discovery of a deceased victim in the Potomac River, in the area of Belvedere Beach, King George, Virginia
593	B-23	Charles County Sheriff Of- fense/Incident Report (July 15, 2001) detailing assault on the Town Pier at Colonial Beach, Virginia
594	B-24	Charles County Sheriff Of- fense/Incident Report (August 2, 2001) reporting that unknown suspects left restaurant off of Virginia shore without paying after eating there, and then fled area by way of water
595	T	Declaration of Janice C. DeAtley, Supervisor of Land and License Records, Circuit Court for Charles County, Maryland
596	T-1	Charles County computerized license records reflecting that Riverboat on the Potomac, Inc. obtained traders licenses (1994- 2000)
597	T-2	Charles County business license records indicating that Riverboat on the Potomac, Inc. obtained a Maryland traders license and a restaurant license (2001)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
598	T-3	Charles County license records indicating that Fairview Beach Crabhouse obtained Maryland traders licenses (1994-1998)
599	T-4	Application for a Maryland business license submitted by Fairview Beach Crabhouse, of offshore King George, Virginia, for traders license, cigarette, special cigarette and restaurant licenses (1998)
600	T-5	1998 Maryland business license issued to Fairview Beach Crabhouse of offshore King George, Virginia, covering traders, cigarette, special cigarette and restaurant licenses
601	F	Declaration of Robert C. Farr, Supervisor of Assessments for Charles County office of the Maryland State Department of Assessments and Taxation
602	F-1	Maryland SDAT tax assessment documents for a restaurant and bar located at the end of a pier extending into the Potomac River off the Virginia shoreline known as the "Belvedere Beach Pier"
603	F-2	Maryland tax assessment form for the Belvedere restaurant (1962)
604	F-3	Maryland tax assessment worksheet for the Belvedere restaurant (1957)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
605	F-4	Maryland tax assessment record for the "Fairview Pier" (1953)
606	F-5	Maryland tax assessor work-sheets for the Fairview Beach property (1957-1962)
607	F-6	Maryland tax assessor work-sheets for the Fairview Beach property (1965-1979)
608	F-7	Maryland tax assessor work-sheets for the Fairview Beach property (1979-1981)
609	F-8	Maryland Field Card and tax assessor worksheets for the Fairview Beach property (1981-1996)
610	F-9	Maryland Field Card and tax assessor worksheets for the Fairview Beach property (1990-2001)
611	F-10	Maryland tax assessment work-sheets reflecting property tax assessments for the Colonial Beach restaurant (1957, 1962)
612	F-11	Maryland Field Card and tax assessment worksheet reflecting assessments for the Colonial Beach property (1968-1979)
613	F-12	Maryland tax assessment work-sheets reflecting assessments for the Colonial Beach property (1979-1988)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
614	F-13	Maryland Field Card and tax assessment worksheets reflecting property tax assessments for the Colonial Beach property (1982-1997)
615	F-14	Photographs of the Colonial Beach property and the Maryland Field Card and tax assessment worksheet (1999)
616	N	Declaration of Rick Forrester, Regional Manager for Maryland State Lottery Agency
617	C	Declaration of Francis "Buddy" Garner, Former Sheriff of Charles County, Maryland
618	U	Declaration of Faye Gatton, Supervisor of Land and License Records, Circuit Court for St. Mary's County, Maryland
619	U-1	St. Mary's County Circuit Court licensing records indicating that Coles Point Tavern held Maryland traders, cigarette, special cigarette, restaurant, music box, and billiards licenses (1980-2001)
620	P	Declaration of Patricia Herriman, Program Manager for the Charles County Health Department
621	P-1	Applications for Maryland food service permits filed by Little Reno, Inc. (1982-1984)
622	P-2	Void Maryland food service permits not issued to Little Reno, Inc. (1982, 1983) and permits issued to Little Reno (1983, 1984)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
623	P-3	Applications for Maryland food service permits filed by the owners of Reno of Colonial Beach (1985-1990)
624	P-4	Maryland food service permits issued to Reno of Colonial Beach (1985-1991)
625	P-5	Maryland food service permit applications and renewal applications for Reno on the Potomac, Inc. (1990, 1991)
626	P-6	Maryland food service permits issued to Reno on the Potomac (1990, 1991)
627	P-7	Maryland food service permit applications for Riverboat on the Potomac (1992 to present)
628	P-8	Maryland food service permits issued to Riverboat on the Potomac (1992 to present)
629	P-9	Maryland food service permit applications Fairview Beach Restaurant and Fairview Beach Crabhouse, owned by Starlight Pavilion, Inc. (1983-1992)
630	P-10	Maryland food service permits issued to Starlight Pavilion, Inc. (1983-1992)
631	P-11	Maryland food service permit applications for Fairview Ventures, Inc. (1993)
632	P-12	Maryland food service permits issued to Fairview Ventures, Inc. (1993)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
633	P-13	Maryland food service permit applications for Fairview Beach, Inc. (1994-1998)
634	P-14	Maryland food service permits issued to Fairview Beach, Inc. (1994-1998)
635	P-15	Maryland food service permit applications for Jamaica Joe's (1999-2001)
636	P-16	Maryland food service permits issued to Jamaica Joe's (1999-2001)
637	P-17	Final Notice letter from Charles County Health Department to the owners of Jamaica Joe's regarding failure to apply for renewal of license
638-641	P-18-21	Maryland workers compensation certifications submitted by the owners of Riverboat on the Potomac, the Fairview Beach Restaurant, the Fairview Beach Crabhouse, and Jamaica Joe's
642	P-22	Charles County Health Department inspection report for Little Reno (May 10, 1967) reflecting that the pier had burned in 1958 and food service started again in 1966
643	P-23	Charles County Health Department inspection report for Little Reno (August 9, 1967)
644-648	P-24-28	Charles County Health Department inspection reports for Little Reno (1976-1980)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
649	P-29	Letter from Charles County Health Department to the owners of Little Reno (March 11, 1982) regarding failure to have a valid food and drink permit
650-655	P-30-35	Documents relating to Charles County Health Department inspections conducted at Little Reno (1983-1984)
656-663	P-36-43	Charles County Health Department inspection reports for Reno of Colonial Beach (1985-1988)
664-666	P-44-46	Charles County Health Department inspection reports for Reno on the Potomac (1991)
667-684	P-47-64	Charles County Health Department inspection reports for Riverboat on the Potomac (1992-2001)
685-687	P-65-67	Charles County Health Department inspection reports for Starlight Pavilion/Fairview Beach Crabhouse (1977-1978)
688	P-68	Letter from Charles County Health Department to the owners of Starlight Pavilion (March 11, 1982) regarding failure to have a valid food and drink permit
689-703	P-69-83	Charles County Health Department inspection reports for Starlight Pavilion/Fairview Beach Crabhouse (1983-1992)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
704-707	P-84-87	Charles County Health Department inspection reports for The Pier at Fairview Beach (1993-1994)
708-711	P-88-91	Charles County Health Department inspection reports for Fairview Beach Crabhouse (1995-1997)
712-719	P-92-99	Charles County Health Department inspection reports for Jamaica Joe's (1998-1999)
720	P-100	Letter from Charles County Health Department to the owners of Starlight Pavilion (October 30, 1985) regarding violations at the restaurant
721	P-101	Letter from Charles County Health Department to the owners of Little Reno (October 10, 1978) regarding violations
722	P-102	Letters from Charles County Health Department to the owner of the Fairview Beach Crabhouse (1992) regarding violations
723	P-103	Letters from Charles County Health Department to the Riverboat on the Potomac (1995) regarding violations
724	P-104	Letter from Reno of Colonial Beach to Charles County Health Department (July 25, 1985) regarding resolution of violations

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
725	P-105	Letters from Fairview Beach Crabhouse to Charles County Health Department (April 1986, April 1988) regarding resolution of violations
726	P-106	Charles County Health Department inspection notes for Jamaica Joe's (July 1999)
727	P-107	Letter from Charles County Health Department to Riverboat on the Potomac (July 29, 1996) regarding health violations
728	P-108	Letter from Charles County Health Department (October 23, 1985) notifying restaurants located in the Potomac River of Maryland's prohibition on the use of phosphate detergents in order to protect the water quality of the State waters from nutrient pollution
729	P-109	Letter from Charles County Health Department to Starlight Pavilion (January 8, 1986) regarding health practices
730	P-110	Letter from Charles County Department of Public Works building inspector to Starlight Pavilion (April 3, 1978) requiring owner to repair unsafe pier
731	P-111	Letter from the Charles County Department of Public Works to Charles County Health Department (August 18, 1987) advising of conditions at Little Reno

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
732	P-112	Record of Complaint form documenting a complaint initially received by the King George County Health Department about a leaking sewer line at the Fairview Beach Restaurant and referred to Charles County Health Department because it was beyond the low water mark
733	P-113	Documents regarding complaint referred to Charles County Health Department from King George County (July 1985) regarding sewage being discharged into the Potomac by the Fairview Beach Restaurant
734	P-114	Letter from Charles County Department of Health to the King George County Health Department (July 29, 1985) regarding Charles County inspection of sewage discharge at Fairview Beach
735	P-115	Charles County Health Department Complaint Form documenting an August 8, 1996 complaint regarding possible food poisoning at Fairview Beach Crabhouse, reflecting that the complaint was referred to Charles County Health Department by the King George County Health Department

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
736	P-116	King George County Health Department Complaint Form (September 19, 1996) reflecting the referral from King George County to Charles County Health Department of a complaint made by the King George County Director of Utilities regarding a possible sewer line break off of the Virginia shore
737	P-117	Maryland inspection notes reflecting conversation with Virginia officials regarding sewer line break
738	P-118	Maryland inspection report reflecting that Maryland inspected the sewer main and found that the sewer line had been fixed (September 20, 1996)
739	P-119	Charles County Health Department Complaint Form reflecting sanitary violations at Jamaica Joe's (June 7, 1999)
740	P-120	Letter from Gary Switzer, Environmental Health Manager for the Rappahannock Area Health District, to Charles County Health Department (September 20, 1996) acknowledging that sewage disposal system at the Fairview Beach restaurant was under the jurisdiction of the Charles County Health Department

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
741	P-121	Telephone message from Gary Switzer, Environmental Health Manager for the Rappahannock Area Health District (July 20, 1993) regarding sewage disposal system at the Fairview Beach restaurant
742	P-122	Letter from Mr. Switzer to Charles County Health Department (September 24, 1993) withdrawing Virginia's objection to the opening of the Fairview Beach restaurant
743	P-123	Bacteriological Reports on Swimming Water generated by the Maryland Department of Health and Mental Hygiene at Colonial Beach (July 25, 2001)
744	P-124	Letter from Charles County Health Department to the Maryland Department of the Environment (June 4, 1998) regarding water quality at Colonial Beach, Virginia
745	P-125	Diagram of the sampling sites for the swimming waters off of Fairview Beach (June 6, 2001)
746	P-126	Letters sent to the Westmoreland County Health Department, King George County Health Department, and other Virginia agencies, informing them of the results of Maryland's water quality testing (1998-2001)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
747	P-127	Memorandum from the Rappahannock Area Health District to Charles County Health Department (July 16, 1999) regarding closure of beach at Fairview Beach as a result of Maryland's water testing
748	P-128	Test reports reflecting that the bacteriological content of the waters near the Fairview Beach and Colonial Beach restaurants has been periodically tested since at least 1992
749	P-129	Wastewater analyses for Fairview Beach restaurant (1992-1997)
750	P-130	Tests performed by Charles County Health Department of the drinking water at Fairview Beach and Colonial Beach restaurants (1983)
751	P-131	Hazard Analysis reports for Riverboat on the Potomac (1996, 1999) evaluating risk of contamination
752	P-132	Sanitation Surveys conducted by Charles County Health Department of Reno of Colonial Beach (1988) and Starlight Pavilion (1983)
753	A (Opp)	Affidavit of Prof. Ronald Hoffman, "The Mount Vernon Compact of 1785"

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
754	L	Declaration of Patricia Insley, Alcoholic Beverage Administrator for St. Mary's County Alcoholic Beverage Board
755	L-1	Maryland Liquor license issued to the Coles Point Tavern (April 27, 2001), with application
756	L-2-14	Maryland liquor licenses issued annually to the Coles Point Tavern, with the corresponding applications (1988-2000)
757	L-15-20	Applications for annual liquor licenses for the Coles Point Tavern (1982-1987, in reverse chronological order)
758	L-21-22	Annual liquor licenses issued to the Coles Point Tavern, with the corresponding applications (1981, 1980)
759	L-23	Application for annual liquor license for the Coles Point Tavern (1979)
760	L-24	Liquor license issued to the Coles Point Tavern for the year 1975, with the corresponding application
761	L-25	Correspondence from Patricia Insley requiring Loren L. Landman, owner of Cole's Point Tavern, to become re-certified in an approved Alcohol Awareness Program in order to retain his liquor license

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
762	L-26	Alcoholic Beverage Inspection Report for the Coles Point Tavern noting discovery of violations of Maryland's fire safety regulations
763	L-27	Alcoholic Beverage Inspection Report for the Coles Point Tavern, August 1992
764	L-28	Correspondence dated September 23, 1975 from Fire Inspector Charles Donaldson detailing the results of an inspection of the Coles Point Tavern
765	L-29	Correspondence dated August 13, 1979 regarding subsequent inspection of Cole's Point Tavern
766	L-30	Report by the St. Mary's County Sheriff's Office regarding investigation of burglary at the Coles Point Tavern on July 6, 1996
767	L-31	Request by Loren L. Landman requesting permission from the alcoholic beverage Board to remain open beyond normal closing hours on New Years' Day, 1999
768	L-32	August 8, 1979, newspaper article describing the closing of the Cole's Point Tavern by the Maryland State Police, the State Fire Marshal, and the St. Mary's Health Department

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
769	L-33	Letter from Robert E. Pogue, Alcoholic Beverage Board, to the personal representative of Loren L. Landman (December 5, 1974) informing her that license must be transferred to a resident of St. Mary's County for not less than two years
770	E	Declaration of Dennis W. Leland, Corporal, Maryland Natural Resources Police
771	E-1	Maryland Natural Resources Police report regarding drowning at Belvedere Beach, Virginia (June 6, 2001)
772	B (Opp)	Affidavit of Douglas R. Littlefield, Ph.D
773	J	Declaration of James Loftus, Assistant Director of the Compliance Division, Maryland Office of the Comptroller
774	J-1	Summary of the sales and use tax records for Starlight Pavilion, Inc., T/A Jamaica Joe's, generated from the Maryland Comptroller's computer system
755-776	J-2-3	Summaries of the sales and use tax records for Fairview Beach Crabhouse, generated from the Maryland Comptroller's computer system
777	J-4	Maryland sales and use tax filings for Fairview Beach Crabhouse (1995-1997)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
778	J-5	Summaries of the admissions and amusement tax records for Reno on the Potomac Inc., Colonial Beach, Virginia, generated from the Comptroller's computer system
779	J-6	Admissions and Amusement Tax filings by Reno on the Potomac Inc. (1991)
780	J-7	Sales and use tax records for Cole's Point Tavern generated from the Comptroller's computer system (1970, 1991-2001)
781	J-8	Admissions and amusement tax records for Cole's Point Tavern generated from the Comptroller's computer system (1982, 1991-2000)
782	J-9	State sales and use tax and admissions and amusement tax filings by Cole's Point Tavern (1991-2001)
783	V	Declaration of Elinor A. Mattingly, Permits Technician, St. Mary's County Department of Planning and Zoning
784	V-1	St. Mary's County Department of Planning & Zoning records reflecting Coles Point Tavern's payment of \$100 annual nuisance tax for operation of a pool table from 1997 to 2001
785	Z	Declaration of Sheila McDonald, Executive Secretary, Maryland Board of Public Works

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
786	Z-1	Maryland Board of Public Works meeting minutes (June 5, 1907) reflecting request by the Norfolk and Western Railway Company, a Virginia corporation, to build a bridge over the Potomac River
787	Z-2	Maryland Board of Public Works meeting minutes excerpts (August 28, 1913, July 6, 1916, and July 19, 1916) reflecting the Board's grant of permission to the Cumberland Valley Railroad Company to build a bridge across the Potomac River
788	Z-3	Maryland Board of Public Works' meeting minutes (August 23, 1930) reflecting the Board's approval of a request by the Western Maryland Railway Company to build a bridge across the Potomac River
789	Z-4	Maryland Board of Public Works meeting minutes (January 14, 1966 and March 14, 1966) reflecting the Board's approval of request to dredge for sand and gravel in the Potomac River at Dyke Marsh, Fairfax County, Virginia and to string an aerial wire crossing over the Potomac River

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
790	Z-5	Maryland Board of Public Works meeting minutes (June 20, 1967 and September 6, 1967) reflecting the Board's authorization of submarine cables and aerial wire crossings across the Potomac River
791	Z-6	Maryland Board of Public Works meeting minutes (February 27, 1968) reflecting the Board's grant of a permit to the Town of Leesburg, Virginia for use of the Potomac River as a water supply
792	Z-7	Maryland Board of Public Works meeting minutes (September 18, 1969) reflecting the Board's authorization of bulkheads and dredging by the Fairview Beach Yacht Club, King George County, Virginia
793	Z-8	Board of Public Works meeting minutes (April 1, 1970) reflecting the Board's approval of a permit to the United States Marine Corps to dredge at Marine Corps Base, Quantico, Virginia
794	Z-9	Maryland Board of Public Works meeting minutes (November 5, 1970) reflecting the Board's approval of Maryland licensing procedures

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
795	Z-10	Maryland Board of Public Works meeting minutes (February 8, 1971) reflecting the Board's approval of a permit to the Potomac Electric Power Company for aerial electric transmission line across Potomac
796	Z-11	Board of Public Works meeting minutes (March 13, 1972) reflecting the Board's consideration of a request by the Mansion House Yacht Club of Fairfax, Virginia, to construct bulkhead on Virginia shoreline
797	Z-12	Board of Public Works meeting minutes (December 6, 1972) reflecting the Board's approval of the permit requested by the Mansion House Yacht Club
798	Z-13	Maryland Board of Public Works meeting minutes (April 16, 1975) reflecting the Board's approval of a request to modify the location where a natural gas pipeline crossed the Potomac River
799	Z-14	Maryland Board of Public Works meeting minutes (June 4, 1975) reflecting the Board's approval of a permit to the Mansion House Yacht Club to construct breakwaters and dredge in accordance with a revised plan

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
800	Z-15	Maryland Board of Public Works meeting minutes (October 29, 1986) reflecting the Board's authorization of communications cable across the Potomac between Charles County, Maryland and Fort Belvoir, Virginia, and imposing license fee
801	R	Declaration of Walter Miles, Former Chief Sanitarian for St. Mary's County
802	AA	Affidavit of Doldon W. Moore, Jr., Wetlands Administrator, Maryland Board of Public Works
803	AA-1	Letter Thomas C. Andrews, Director of the Water Resources Administration, Maryland Department of Natural Resources to Lawrence B. Goldstein, Wetlands Administrator for the Board of Public Works (August 5, 1983) regarding discussions with Virginia officials about Maryland's licensing of Virginia projects
804	AA-2	Letter from Norman E. Larsen, Assistant Commissioner for Environmental Affairs, Commonwealth of Virginia, Marine Resources Commission, to Tom Andrews (December 29, 1983) regarding meeting with Maryland officials

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
805	AA-3	Letter from Harold Cassell, Wetlands Permits Division, Maryland Water Resources Administration, to Mr. Norman E. Larsen, Virginia Marine Resources Commission (January 3, 1984) regarding Maryland's licensing of projects within Maryland waters along the Virginia shore of the tidal portion of the Potomac River
806	AA-4	Letter from Harold Cassell, Wetlands Administrator, Maryland Board of Public Works, to Norman E. Larsen, VMRC (May 20, 1986) circulating for Virginia's review draft policy regarding licensing requirements for projects along the Virginia shore of the tidal portion of the Potomac
807	AA-5	Letter from Norman Larsen to Frederick S. Fisher, Assistant Attorney General (June 23, 1986) describing arrangements with Maryland officials regarding Virginia shoreline projects and asking for legal advice
808	AA-6	Draft of Maryland "Policy Clarifying License Requirements for Projects in Maryland Waters Along the Virginia Shore of the Tidal Portion of the Potomac River"

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
809	AA-7	Letter from Frederick S. Fisher to Norman Larsen (July 9, 1986) suggesting no changes to Maryland policy
810	AA-8	Letters from wetlands boards of King George County, Virginia, and Westmoreland County, Virginia, to Virginia Marine Resources Commission (July 1986) regarding Maryland licensing policy
811	AA-9	Letter from Michael G. Kelly, Environmental Engineer, Commonwealth of Virginia, Marine Resources Commission to Harold M. Cassell, Wetlands Administrator for the Maryland Board of Public Works (September 16, 1986) enclosing comments of wetlands boards and Mr. Fisher and thanking Maryland for developing the policy
812	AA-10	Letter from Harold M. Cassell, Wetlands Administrator for the Maryland Board of Public Works, to Norman E. Larsen, Virginia Marine Resources Commission (August 13, 1987) enclosing the final policy
813	AA-11	Policy Clarifying Wetlands License Requirements for Projects in Maryland Waters Along the Virginia Shore of the Tidal Portion of the Potomac River (August 12, 1987)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
814	AA-12	Letter from Norman E. Larsen, VMRC, to representatives of Virginia counties along the Potomac River (August 28, 1987) enclosing policy
815	AA-13	Code of Maryland Regulations (COMAR) 23.02.04.21 (codifying 1987 policy)
816	I	Declaration of Edward Muth, Program Manager of the Personal Property Division of the Maryland State Department of Assessments and Taxation
817	I-1	Summary of the property taxes and filing fees assessed against Riverboat on the Potomac, Inc. since 1995, generated from the Maryland State Department of Assessments and Taxation (SDAT) computer system
818	I-2	Tax Return and Amended Tax Return filed for Riverboat on the Potomac, Inc. (2001)
819	I-3	2000 personal property tax return filed by Riverboat on the Potomac, Inc., for business conducted in the year 1999
820	I-4	1999 personal property tax return filed by Riverboat on the Potomac, Inc., for business conducted in the year 1998
821	I-5	1997 personal property tax return filed by Riverboat on the Potomac, Inc., for business conducted in the year 1996

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
822	I-6	Summary of the property taxes and filing fees assessed against Starlight Pavilion, Inc. since 1997, generated from SDAT computer system
823	I-7	2000 Tax Return filed by Starlight Pavilion, Inc., for business operated under the name "Jamaica Joe's" on the Potomac River
824	I-8	1999 Tax Return filed by Starlight Pavilion, Inc., for "Jamaica Joe's."
825	I-9	Form filed by Starlight Pavilion, Inc., memorializing transfer of personal property from Ralph and Ruthann Bott
826	I-10	Summary of the property tax assessments and filing fees over the past five years for "Fairview Beach Crabhouse" owned by Ralph C. Bott, generated from SDAT computer system
827	I-11	Personal Property Entity Maintenance screen for Fairview Beach Crabhouse
828	I-12	1997 personal property return filed by Ralph Bott for Starlight Pavilion, Inc. reflecting that the restaurant had been in operation since June 1, 1959

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
829	I-13	Summary of the personal property taxes and filing fees assessed to Loren Landman since 1997 for Cole's Point Tavern, generated from SDAT computer system
830	I-14	2001 tax return filed by Loren Landman reflecting that Cole's Point Tavern has been operated by Loren Landman in St. Mary's County, Maryland, since at least May 1973
831	I-15	Tax return for the Coles Point Tavern for 2000
832	I-16	Tax return for the Coles Point Tavern for 1997
833	I-17	Tax return for the Coles Point Tavern for 1996
834	EE	Declaration of Jane T. Nishida, Secretary, Maryland Department of the Environment
835	EE-1	Affidavit of Terrance W. Clark attaching and summarizing representative comment letters received in course of 1997 Fairfax County Water Authority permit application process
836	G	Declaration of Joseph W. Norris, Treasurer, Charles County, Maryland
837	G-1	Computer database print screens reflecting real property taxes paid 1991-2001 on improvements on Potomac owned by Fairview Beach, Inc.

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
838	G-2	Screen print-out from Charles County Treasurer's Office's "Property Tax" computer database reflecting payment of Maryland real property taxes between 1992 and 2001 on offshore improvements at Colonial Beach owned by Flanagans of Colonial Beach, Inc.
839	G-3	Summary of Charles County microfiche tax records reflecting real property taxes paid to Charles County, Maryland on the Fairview Beach property (1966-1990)
840	G-4	Charles County microfiche tax records reflecting real property taxes paid to Charles County, Maryland on the Fairview Beach property (1966-1990)
841	G-5	Summary of Charles County microfiche tax records reflecting real property taxes paid to Charles County, Maryland on the Colonial Beach property (1973-1991)
842	G-6	Charles County microfiche tax records reflecting real property taxes paid to Charles County, Maryland on the Colonial Beach property (1973-1991)
843	X	Affidavit of Matthew G. Pajerowski, Chief of the Water Rights Division, Water Management Administration, Maryland Department of the Environment

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
844	X-1	June 5, 1970, letter from the Director of the Maryland Department of Water Resources to Mr. Robert J. McLeod, Washington Suburban Sanitation Commission (WSSC) indicating that a water appropriation permit was issued to WSSC on January 20, 1938, authorizing the withdrawal of water from the Patuxent River
845	X-2	Signature page of the permit issued to WSSC on January 20, 1938, and the amended permits issued in 1941 and 1949 authorizing the withdrawal of water from the Patuxent River
846	X-3	September 23, 1955 correspondence between the U.S. Army Corps of Engineers and the Maryland Department of Geology, Mines, and Water Resources indicating that the Potomac Electric Power Company planned to apply to the Maryland Department of Geology to withdraw water from the Potomac in connection with the operation of a power plant on the Virginia shore
847	X-4	Maryland water appropriation permit application submitted by PEPCO on March 14, 1956

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
848	X-5	Maryland water appropriation permit issued to PEPCO on May 1, 1956, indicating that the PEPCO plant was eventually sited in Montgomery County, Maryland
849	X-6	Maryland water appropriation permit application submitted by Fairfax County, Virginia, to the Maryland Department of Geology (October 10, 1956)
850	X-7	Maryland water appropriation permit issued to Fairfax County, Virginia (February 25, 1957)
851	X-8	Letter from the Fairfax County Water Authority to the Maryland Department of Geology requesting transfer of permit from Fairfax County to the Authority (January 24, 1958)
852	X-9	Amended Water Appropriation Permit substituting the Authority for Fairfax County as of April 10, 1958
853	X-10	Correspondence between the Fairfax County Water Authority and the Maryland Department of Geology regarding the Authority's repeated requests to extend its Maryland water appropriation permit

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
854	X-11	Correspondence between the Fairfax County Water Authority and the Maryland Department of Geology regarding extension request
855	X-12	Letter from Fairfax County Water Authority to the Maryland Department of Geology indicating that it currently purchased water from the City of Falls Church, Virginia, but considered further extensions of its permit advisable so as to insure another source of supply whenever the need might arise."
856	X-13	Decision of the Maryland Department of Geology declining to extend the permit beyond 1964 (February 17, 1964)
857	X-14	Letter from the Authority to Maryland Department of Geology (March 6, 1964) regarding Maryland's decision not to extend its permit further
858	X-15	Maryland water appropriation application and permit for the Great Eastern Utilities Corporation's withdrawal of water from the Potomac River in connection with a large housing development and industrial park located in Loudoun County, Virginia (1964)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
859	X-16	Maryland water appropriation permit issued to the Potomac Electric Power Company for withdrawal of water from the Potomac for use in connection with the irrigation of a golf course at Loudoun County Employee Recreational Center (November 10, 1966)
860	X-17	Maryland water appropriation permit application (August 7, 1967) and permit (April 1, 1968) issued to the Town of Leesburg, Loudoun County, Virginia, authorizing the withdrawal of water from the Potomac
861	X-18	"Town Ponders Bond Referendum," Loudoun Times, regarding Town of Leesburg's receipt of Maryland permit
862	X-19	Maryland water appropriation permit to the Fairfax County Water Authority authorizing the withdrawal of water from the Potomac River on the Virginia shoreline opposite the mouth of Seneca Creek, Montgomery County, Maryland, with permit application (June 14, 1974)
863	X-20	Maryland water appropriation permit to the Town of Leesburg, Virginia, authorizing the withdrawal of water from the Potomac River (June 20, 1975), with letter from Leesburg requesting renewal of permit

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
864	X-21	Maryland water appropriation permit to the Northern Virginia Regional Park Authority authorizing the withdrawal of water from the Potomac River from the Virginia bank for use at a golf course at the Potomac Electric Power Company' Employees' Recreational Center in Loudoun County, Virginia (March 30, 1976)
865	X-22	Maryland water appropriation permit to Consolidated System L.N.G. Company authorizing the withdrawal of water from the Potomac River from the Virginia shoreline for use in the hydrostatic testing of a natural gas pipeline (April 15, 1976)
866	X-23	Maryland water appropriation permit to the Fairfax County Water Authority authorizing the withdrawal of water from the Potomac River on the Virginia shoreline (March 31, 1982) with September 1, 1981, letter from the Authority requesting amendment of its permit
867	X-24	Maryland water appropriation permit to the Northern Virginia Regional Park Authority authorizing the withdrawal of water from the Potomac River at Algonkian Regional Park, Loudoun County, Virginia, for irrigation of a golf course, with application (May 1, 1986)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
868	X-25	Maryland water appropriation permit to the Town of Leesburg, Virginia, authorizing the withdrawal of water from the Potomac River, with permit application (October 1, 1986)
869	X-26	Maryland water appropriation permit to the Fairfax County Water Authority authorizing the withdrawal of water from the Potomac River, with application (January 1, 1987)
870	X-27	Maryland water appropriation permit to the Town of Lovettsville, Virginia, authorizing the withdrawal of water from the Potomac River on the Virginia shoreline downstream of Harpers Ferry, opposite Brunswick, Frederick County, Maryland, for use as a municipal supply, with application and cover letter (February 1, 1988)
871	X-28	Maryland water appropriation permit to the Transcontinental Gas Pipeline Corporation authorizing the withdrawal of water from the Potomac River on the Virginia shoreline approximately two miles upstream from Great Falls Park, Montgomery County, Maryland, for use in the hydrostatic testing of a natural gas pipeline, with application and cover letter (June 1, 1988)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
872	X-29	Maryland water appropriation permit to P.D. Gravett authorizing the withdrawal of water from the Potomac River at a point located on the Virginia shoreline in Fairfax County, Virginia, for use in maintaining water levels and filling a recreational pond (with application and cover letter) (October 1, 1988)
873	X-30	Maryland water appropriation permit to the Town of Lovettsville, Virginia, authorizing the withdrawal of water from the Potomac River at a point on the Virginia shoreline approximately 3 miles downstream of Harpers Ferry for use as a municipal supply (with cover letter indicating that the Town requested a renewal of its permit) (February 1, 1990)
874	X-31	Maryland water appropriation permit to the Fairfax County Water Authority authorizing the withdrawal of water from the Potomac River on the Virginia shoreline for use as community water supplies (with April 5, 1990, letter requesting amendment of permit) (April 1, 1990)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
875	X-32	Maryland water appropriation permit to the Town of Leesburg, Virginia, authorizing the withdrawal of water from the Potomac River for use as a municipal supply (with application with cover letter) (August 1, 1991)
876	X-33	Maryland water appropriation permit to the Xerox Realty Corporation authorizing the withdrawal of water from the Potomac River at Leesburg, Loudoun County, Virginia for the irrigation of turf and ornamental plants (with application) (October 1, 1991)
877	X-34	Maryland water appropriation permit to the Bondy Way Development Corporation authorizing the withdrawal of water from the Potomac River at Lowes Island across from Seneca Creek State Park for irrigation of the Cascades at Lowes Island Golf Course (with application) (July 1, 1992)
878	X-35	Maryland water appropriation permit to the River Creek Limited Partnership authorizing the withdrawal of water from the Potomac River west of Goose Creek, Loudoun County, Virginia, for irrigation at the River Creek Golf Course (with application) (June 1, 1994)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
879	X-36	Maryland water appropriation permit to the Fairfax County Water Authority authorizing the withdrawal of water from the Potomac River on the Virginia shoreline for use as a community water supply (with application and June 22, 1995, letter providing information in support of request for permit amendment) (August 1, 1995)
880	X-37	Maryland water appropriation permit to the Fairfax County Water Authority authorizing the withdrawal of water from the Potomac River at an intake 725 feet north of the Virginia shoreline opposite the mouth of Seneca Creek, Montgomery County, Maryland, for use as a community water supply (with application) (April 1, 1996)
881	X-38	Maryland water appropriation permit to University Development Co., LLC, authorizing the withdrawal of water from the Potomac River at a point on the Virginia shoreline 0.5 miles south of Goose Creek, 2.5 miles east of Leesburg for use as golf course and landscape irrigation (with application) (June 1, 1996)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
882	X-39	Maryland water appropriation permit to the Northern Virginia Regional Park Authority authorizing the withdrawal of water from the Potomac River at Algonkian Regional Park, Loudoun County, Virginia, for irrigation of a golf course (with application) (July 1, 1998)
883	X-40	Maryland water appropriation permit to the Town of Leesburg, Virginia, authorizing the withdrawal of water from the Potomac River for use as a municipal supply (with application) (September 1, 1999)
884	X-41	Maryland water appropriation permit to the Williams Gas Pipeline – Transco authorizing the withdrawal of water from the Potomac River on the Virginia shoreline approximately two miles upstream from Great Falls Park, Montgomery County, Maryland, for use as in the hydrostatic testing of a natural gas pipeline (with application) (September 1, 2000)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
885	X-42	Maryland water appropriation permit to Lansdowne Conservancy, Inc. authorizing the withdrawal of water from the Potomac River at a point on the Virginia shoreline 0.5 miles south of Goose Creek, 2.5 miles east of Leesburg for use as golf course and landscape irrigation (with application) (November 1, 2000)
886	X-43	Maryland water appropriation permit to the Town of Lovettsville, Virginia, authorizing the withdrawal of water from the Potomac River at a point on the Virginia shoreline approximately 3 miles downstream of Harpers Ferry, for use as a municipal supply (with application and cover letter) (March 1, 2001)
887	X-44	Letter from Horace M. Hallett, Managing Director, Loudoun County Sanitation Authority, to Maryland Department of Water Resources (December 12, 1967) opposing application for Town of Leesburg, Virginia
888	X-45	"Summary Statement of Proceedings" from continued hearing on the Town of Leesburg's permit application indicating that the Loudoun County Sanitation Authority urging Maryland Department of Water Resources to limit Leesburg permit to 3 mgd (December 12, 1967)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
889	X-46	Letter from Stanley M. Franklin, counsel for the Loudoun County Sanitation Authority, to the Maryland Department of Water Resources (December 18, 1967) regarding Leesburg permit application
890	X-47	Letter from Executive Secretary of the Virginia State Water Control Board (SWCB) to Francis B. Francois, Metropolitan Washington Council of Governments (October 20, 1967) regarding Leesburg's application to withdraw water from the Potomac River
891	X-48	Draft letter from Maryland Governor Spiro T. Agnew to Virginia Governor Mills E. Godwin, Jr., (dated February 2, 1968) indicating that Governor Godwin had inquired about the Leesburg permit
892	X-49	Letter from Thomas P. Cradle of the Commonwealth of Virginia Governor's Office to Mr. James W. Ritter, Town Manager of Leesburg, Virginia (June 17, 1970), regarding Leesburg's permit application
893	X-50	Letter from the Commonwealth of Virginia, Office of the Governor, to Mr. James W. Ritter, Town Manager of Leesburg, Virginia (August 10, 1971) regarding Leesburg permit

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
894	X-51	Letter from Robert S. Noe, Jr., Town Manager of the Town of Herndon, Fairfax County, Virginia, to the Maryland Water Resources Administration (July 11, 1973) requesting that Maryland impose conditions on permit issued to Fairfax County Water Authority
895	X-52	"Proposed Statement" for the Town of Leesburg (dated July 11, 1973) indicating that the Town of Leesburg raised concerns about application of the Fairfax County Water Authority
896	X-53	Record of July 12, 1973, public hearing held on the Fairfax County Water Authority's application indicating Virginia State Water Control Board's support for the permit and concerns raised by the Towns of Herndon and Leesburg, Virginia
897	X-54	Letter from E.T. Jensen, Executive Secretary, Virginia State Water Control Board, to the Maryland Water Resources Administration (July 16, 1973) expressing Board's support for the Fairfax County Water Authority application and requesting that Maryland allocated withdrawals during times of low flow)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
898	X-55	Letter from R.K. Sheen, Chairman of the Loudoun County Sanitation Authority, to the Maryland Water Resources Administration (June 28, 1973) regarding Fairfax County Water Authority's Potomac River water supply plant)
899	X-56	Letter from the County of Fairfax, Virginia, to the Maryland Water Resources Administration (August 7, 1973) enclosing a resolution of the Board of Supervisors of Fairfax County, Virginia, stating that the State of Maryland has jurisdiction over the upper Potomac
900	X-57	Letter from Prince William County, Virginia, to Maryland Governor Marvin Mandel (February 27, 1974) enclosing a resolution of the Prince William County Board of Supervisors supporting Fairfax County Water Authority permit
901	X-58	Letter from William C. Bauknight, Counsel for the Fairfax County Water Authority, to the Maryland Water Resources Administration (September 28, 1973) regarding the Administration's permitting authority and low flows

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
902	X-59	Letter from James J. Corbalis, Engineer Director of the Fairfax County Water Authority, to Herbert M. Sachs, Director of the Maryland Water Resources Administration (November 7, 1973), regarding processing of application
903	X-60	Letter from James J. Corbalis, Engineer Director of the Fairfax County Water Authority, to Herbert M. Sachs, Director of the Maryland Water Resources Administration (June 11, 1976) regarding permit extension request
904	X-61	Correspondence concerning water appropriation permit application submitted to the Maryland Department of Geology by Great Eastern indicating involvement of Virginia governmental entities in permit process (with transcription)
905	X-62	Letter from Paul Eastman, Executive Director of the Interstate Commission on the Potomac River Basin, to the Maryland Water Resources Administration (July 1973) enclosing a "Statement on Fairfax County Water Authority Request for Appropriation and Use of Potomac River Water"

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
906	X-63	Letter from Roland Steiner, Associate Director, Water Resources, ICPRB, to the Maryland Water Resources Administration (June 26, 1991) supporting Maryland permit conditions requiring water conservation
907	X-64	Letter from Roland Steiner, Associate Director, Water Resources, ICPRB, to the Director of the Maryland Water Resources Administration (August 6, 1991) supporting conditions requiring water conservation in Maryland permit to Leesburg, Virginia
908	X-65	Letter from the Government of the District of Columbia, Department of Environmental Services, to the Maryland Water Resources Administration (July 1973) regarding Maryland's legal control over Potomac
909	X-66	Memorandum from Mark W. Eisner, Maryland Department of the Environment, to the Town of Lovettsville water appropriation file (November 24, 1987) memorializing teleconference with Town's representative concerning Maryland policy of restricting permitted withdrawals to the amount needed

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
910	X-67	Letter from David Schultz, Water Resources Administration, to Mr. David V. Brown, Northern Virginia Regional Park Authority (March 1, 1976) informing Authority of new permit condition restricting withdrawals during times of low flow
911	X-68	Letter from David V. Brown, Northern Virginia Regional Park Authority, to David Schultz, Water Resources Administration (March 12, 1976) objecting to low flow permit condition
912	X-69	Letter from David Schultz, Water Resources Administration, to David Brown, Northern Virginia Regional Park Authority (March 17, 1976) explaining why it was retaining the low flow condition
913	W	Declaration of Edward C. Papenfuse, Archivist for the State of Maryland
914	W-1	Summary of Charles County traders, cigarette, special cigarette, restaurant, music box soda fountain, amusement device, billiard and dance license records issued from 1949 to 1976 and 1980 and 1986 to establishments located offshore of Virginia.

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
915	W-2	Charles County traders, cigarette, special cigarette, restaurant, music box soda fountain, amusement device, billiard and dance license records issued to establishments located offshore of Virginia (1949-1976, 1980, 1986)
916	W-3	Charles County Circuit Court Amusement Device Operators License [slot machines] records from 1958
917	W-4	Charles County Circuit Court liquor license records reflecting issuance of Maryland licenses to Virginia entities (1952-1986)
918	W-5	Complaint filed in <i>Miedzinski v. Landman</i> , 218 Md. 3 (1958) identifying the 1958 operators of casinos located in Charles County in waters offshore of Virginia
919	W-6	Stipulations and Circuit Court's opinion in <i>Miedzinski v. Landman</i>
920	W-7	"Court Bans River Slot Machines," The Baltimore Sun (October 15, 1958)
921	W-8	License records of the Circuit Court for St. Mary's County reflecting that Loren Landman or James V. Mattingly on his behalf obtained coin operated machine (slot) licenses (1954-1958)
922	W-9	1958 Maryland coin-machine [slot] license issued to Loren Landman

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
923	W-10	Summary chart of St. Mary's Circuit Court license records showing references for licenses issued to Mr. Landman (1954-1980)
924	W-11	Articles of Incorporation formed under the laws of Maryland for Belvedere Beach Pier, Inc. (August 10, 1953)
925	W-12	Certificate of Incorporation formed under the laws of Maryland for Freestone Yacht Club, Inc. (January 31, 1957)
926	W-13	Certificate of Incorporation formed under the laws of Maryland for Freestone Amusement Company, Inc. (January 31, 1957)
927	W-14	Certificate of Incorporation formed under the laws of Maryland for Aqua-Land, Inc. (August 5, 1959)
928	W-15	Articles of Incorporation (October 5, 1951), Stock Issuance Statement (October 19, 1951), and Articles of Revival (June 22, 1962) filed in Maryland for Little Reno, Inc.
929	W-16	Articles of Incorporation formed under the laws of Maryland for Starlight Pavilion, Inc. (May 15, 1959)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
930	W-17	1960, 1964, and 1976 deeds for property known as "Loren's or Landman's restaurant, pier and Bar", recorded in the Circuit Court for St. Mary's County
931	W-18	Petition For Authorization to Convey Real and Personal Property and to Settle Claims of the Estate of Loren Lee Landman seeking authorization of the Orphans' Court of St. Mary's County, Maryland to convey the wharf and restaurant known as "Cole's Point Tavern"
932	W-19	Order of the Orphan's Court for St. Mary's County, Maryland (August 14, 1975) authorizing conveyance of Cole's Point Tavern
933	W-20	Agreement filed in the Orphan's Court for St. Mary's County, Maryland between the Personal Representative for the Estate of Loren Lee Landman and Loren Leo Landman for the purchase of the Cole's Point Tavern from the Estate
934	W-21	Deed recorded in the Circuit Court for St. Mary's County, Maryland conveying the Cole's Point Tavern property (March 11, 1985)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
935	W-22	Quit claim deed recorded in the Circuit Court for Charles County conveying title to “Little Reno Pier” along with all associated riparian rights, including those arising under the “compact of 1785 of the states of Maryland and Virginia, and any and all wharves, piers, pilings, structures built on piers. . . . in the waters of the Potomac River, lying in Charles County, Maryland.” • (November 22, 1993)
936	W-23	Deeds recorded in the Circuit Court for Charles County conveying title to a parcel of land in Fairview Beach, Virginia, “including the pier extending into the Potomac River, and any and all other appurtenances assessed in Charles County, Maryland. . . .” (September 2, 1964, May 4, 1983)
937	W-24	Deeds recorded in the Circuit Court for Charles County, Maryland conveying title to “[i]mprovements on Water – Fairview Beach - Starlight Pavilion located in the Third Election District of Charles County, Maryland . . .” (May 12, 1993, September 27, 1993)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
938	W-25	St. Mary's County real property tax assessment records for a commercial building constructed on a pier extending into the Potomac River from the Virginia shoreline off Cole's Point, Virginia (1963-1982)
939	W-26	Charles County, Maryland tax assessment records for tangible personal property at the "Little Reno" (March 12, 1951)
940	W-27	Charles County tangible personal property tax assessment records for property owned by Bruce Shymansky, owner of the Monte Carlo, Colonial Beach, Virginia (1956-1958)
941	W-28	Charles County tangible personal property tax assessment records for "Monte Carlo" (1953)
942	W-29	Real property tax assessment for improvements constructed on the Starlight Pavilion pier extending into the Potomac River from Fairview Beach on the Virginia shoreline (1952-1986)
943	W-30	Washington County, Maryland tax assessment records for bridge over the Potomac River between Shepherdstown, West Virginia and Ferry Hall Plantation in Washington County, Maryland (1896 <i>et seq.</i>)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
944	W-31	2001 Maryland SDAT Real Property System database account printout for the Cole's Point Tavern located in the Potomac River offshore of Virginia
945	W-32	2001 Maryland SDAT Real Property System database account printout for the Fairview Beach Starlight Pavilion located on the Potomac River.
946	W-33	Excerpts from the Board of Natural Resources' annual reports from 1956, 1957, 1959 to 1965, and 1968
947	W-34	Addendum to the minutes of the Board of Natural Resources (October 15, 1956)
948	A 1 (Strike)	Affidavit of Prof. Jack N. Rakove, W.R. Coe Professor of History and American Studies, Professor of Political Science, Stanford University
949	S	Declaration of Walter Raum,, Former Environmental Health Director for St. Mary's County
950	Q	Declaration of Ann Rose, Environmental Health Director for St. Mary's County

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
951-964	Q-1-14	St. Mary's County Health Department documents relating to Maryland licenses issued between 1987 and 1995 for the operation of a food service facility at Cole's Point Tavern, off the Virginia shoreline.
965-974	Q-15-24	St. Mary's County Health Department documents relating to inspections of the food service facility at Cole's Point Tavern (August 1979-December 1999)
975-978	Q-25-28	St. Mary's County Health Department documents relating to water quality sampling conducted at Cole's Point Tavern (August 1979-May 1998)
979	FF	Declaration of Herbert M. Sachs, Director of Special Projects, Maryland Department of the Environment
980	FF-1	Excerpts from Deposition of Herbert M. Sachs (September 26, 2001)
981	FF-2	Letter from Herbert M. Sachs to Eugene T. Jensen, Executive Secretary, Virginia State Water Control Board (September 15, 1976) concerning a draft agreement between the two states on Potomac River water supply issues

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
982	FF-3	Table of Contents and excerpts from Corps transmission to Congress of Interim Report on the North Branch of the Potomac River Bloomington (1962) recommending the construction of a reservoir on the North Branch of the Potomac River, with Virginia comment letter
983	FF-4	MD. CODE ANN., ENVT. ART. • 5-401 <i>et seq.</i> (1996 Repl.)
984	FF-5	Herbert M. Sachs, "Payment of Non-Federal Costs for Water Storage in Federal Reservoirs – the Bloomington Example" (1969)
985	FF-6	Agreement Between the United States of America and the State of Maryland Department of Natural Resources for a Feasibility Study of Storage Reallocation at Jennings Randolph Lake, Bloomington, Maryland (August 30, 1998), reflecting Maryland's intention to serve as the non-Federal sponsor of a Corps study evaluating the possibility of shifting some of the reservoir's storage capacity from flood control to water supply
986	FF-7	MD. CODE ANN., ENVT. ART. • 5-501 <i>et seq.</i> (2001 Supp.) (Maryland water appropriation permitting statute)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
987	FF-8	Code of Maryland Regulations (COMAR) 26.17.06 (Maryland water appropriation permit regulations)
988	FF-9	Code of Maryland Regulations (COMAR) 26.17.07 (Maryland consumptive use regulations)
989	O	Declaration of Kenneth A. Schertle, Executive Director, Maryland Racing Commission
990	O-1	Minutes for February 9, 1994, public hearing and meeting concerning proposed off-track betting permit at Riverboat on the Potomac
991-993	O-2-4	Maryland Racing Commission records relating to permit issued to Flanagan's of Colonial Beach, Inc., to engage in off-track betting at Riverboat on the Potomac, Colonial Beach, Virginia
994	O-5	November 12, 1993, Agreement between the Laurel Racing Association Limited Partnership and the Maryland Jockey Club of Baltimore City, Inc. and Flanagan's of Colonial Beach, Inc., authorizing Flanagan's of Colonial Beach, Inc., to use Riverboat on the Potomac as an off-track betting facility

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
995-997	O-6-8	Maryland Racing Commission records relating to permit issued to Flanagan's of Colonial Beach, Inc., to engage in off-track betting at Riverboat on the Potomac
998	O-9	Letter from the Charles County Maryland Planning Office to Kenneth Schertle, Maryland Racing Commission (December 3, 1993) concluding that the use of Riverboat on the Potomac as an off-track betting facility was consistent with State and Charles County development policies
999	O-10	Maryland Racing Commission record relating to permit issued to Flanagan's of Colonial Beach, Inc., to engage in off-track betting at Riverboat on the Potomac
1000	O-11	Memorandum from Joseph Poag to Kenneth Schertle regarding information submitted to the MRC from Flanagan's of Colonial Beach, Inc. facility
1001-1005	O-12-16	Maryland Racing Commission records relating to background investigations into Flanagan's of Colonial Beach, Inc.
1006	Y	Affidavit of Amanda Sigillito, Chief of the Nontidal Wetlands and Waterways Division, Water Management Administration, Maryland Department of the Environment

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
1007	Y-1	Maryland waterway construction permit issued to the Town of Leesburg, Virginia (April 1, 1968) authorizing Leesburg to construct water intake structure in Potomac River
1008	Y-2	Maryland waterway construction permit issued to James K. and Joyce S. Rocks of McLean, Virginia (November 29, 1973) authorizing construction of a bridge from Virginia shoreline to Mason Island in the Potomac (with application)
1009	Y-3	Maryland waterway construction permit issued to the Potomac Electric Power Company (November 5, 1973) authorizing the construction of an aerial transmission line across the Potomac (with application and cover letter)
1010	Y-4	Maryland waterway construction permit issued to the Northern Virginia Regional Park Authority (December 1, 1975), authorizing installation of bank stabilization to control erosion and sedimentation (with application)
1011	Y-5	Maryland waterway construction permit issued to James K. Rocks of McLean, Virginia (May 11, 1976) authorizing installation of riprap wingwall protection on the approaches of a bridge (with application letter)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
1012	Y-6	Maryland waterway construction permit issued to the Fairfax County Water Authority (April 27, 1977) authorizing construction of water intake on the Virginia shore (with application and cover letter)
1013	Y-7	Maryland waterway construction permit dated November 17, 1977 and issued to James K. Rocks of McLean, Virginia, authorizing Mr. Rocks to construct a 16" pipe 40' long under an existing bridge connecting the Virginia shoreline with Mason Island in Frederick County, Maryland
1014	Y-8	Maryland waterway construction permit issued to the Northern Virginia Regional Park Authority (August 2, 1979) authorizing replacement of boat ramp
1015	Y-9	Maryland waterway construction permit issued to the Colonial Pipeline Company of Richmond, Virginia (June 2, 1980) authorizing construction of pipeline across permit (with application)
1016	Y-10	Maryland Permit for Temporary Construction in a Waterway issued to the Town of Leesburg, Virginia (July 24, 1980) authorizing installation of water intake structure (with application)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
1017	Y-11	Maryland waterway construction permit issued to the Maryland State Highway Administration (June 11, 1984) authorizing various construction activities related to bridges across the Potomac River
1018	Y-12	Maryland waterway construction permit issued to AT&T Communications (April 12, 1988) authorizing installation of fiber optic communications cable across the Potomac
1019	Y-13	Maryland Authorization to Proceed issued to the Colonial Pipeline Company of Herndon, Virginia (October 22, 1993) authorizing excavation in Potomac River from Virginia shore (with application)
1020	Y-14	Maryland Authorization to Proceed issued to the Town of Leesburg, Virginia (February 27, 1995) authorizing the installation of water discharge pipe
1021	Y-15	Maryland Letter of Authorization After-the-Fact issued to the Columbia Gas Transmission Corporation (retroactive to October 8, 1997) authorizing repairs to gas transmission pipes in the Potomac River

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
1022	Y-16	Maryland Authorization to Proceed issued to Washington-Virginia Traditional Development Sites, Inc. of Great Falls, Virginia (January 28, 1999) authorizing construction of municipal wastewater treatment plant outfall pipe into the Potomac River (with modification of fees charged)
1023	Y-17	Maryland Authorization to Proceed issued to Mark R. Mill-sap of Potomac Falls, Virginia (July 16, 1999) authorizing construction of a boat ramp and pier
1024	Y-18 2 (Moot)	Maryland waterway construction Permit issued to the Fairfax County Water Authority (January 24, 2001) authorizing construction of a concrete water intake structure on the Potomac River
1025	Y-19	Letter from Town Manager of Leesburg, Virginia, to Maryland Department of the Environment (March 20, 1969) requesting extension of permit
1026	Y-20	Letter from the Fairfax County Water Authority to Maryland Water Resources Administration (December 4, 1978) requesting extension of waterway construction permit

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
1027	Y-21	Letter from the Maryland Department of Natural Resources to the Northern Virginia Regional Park Authority (November 4, 1982) regarding inspection of boat ramp on Virginia shoreline
1028	Y-22	Letter from the Northern Virginia Regional Park Authority to the Maryland Department of Natural Resources (November 30, 1982) regarding installation of rip rap to protect against erosion
1029	Y-23	Letter from the Maryland Department of Natural Resources to James K. Rocks of McLean, Virginia (June 6, 1973) initiating enforcement action for unpermitted construction of waterway obstruction between the Virginia shore of the Potomac and an island in the River
1030	Y-24	Order of the Maryland Department of Natural Resources (July 3, 1973) requiring Mr. Rocks to remove the obstruction and restore the subject site
1031	Y-25	Permit application filed by Mr. Rocks (August 2, 1973)
1032	Y-26	Record of September 10, 1973, Public Hearing describing Mr. Rocks' presentation to the Maryland Department of Natural Resources

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
1033	Y-27	Letter from the Maryland Department of Natural Resources to Mr. Rocks (September 24, 1973) regarding proposed work
1034	Y-28	Letter from William M. Haussmann, Northern Virginia Regional Park Authority, to Maryland Department of Natural Resources (May 6, 1979) regarding Maryland's permitting jurisdiction over the Potomac River
1035	Y-29	Letter from the Chairman of the Fairfax County Board of Supervisors to the Maryland Water Resources Administration (January 19, 1977) supporting Fairfax County Water Authority request for Maryland permit
1036	Y-30	Letter to the Maryland Department of Natural Resources from the Regional Representative of the Virginia Historic Landmarks Commission (January 10, 1977) regarding Fairfax County Water Authority application
1037	Y-31	Letter from the Virginia Governor's Office to the Town Manager of Leesburg, Virginia (June 17, 1970) concerning Leesburg's water supply

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
1038	Y-32	Letter from the Maryland Department of Natural Resources to the Executive Director of Virginia's "Governors Council on the Environment" (September 10, 1973) regarding Potomac Electric Power Company permit application
1039	Y-33	Letters from the Potomac Electric Power Company's Associate General Counsel to the Board of Supervisors of Prince William County and the Prince William County Executive (August 23, 1973) informing them of hearing
1040	Y-34	Affidavit of Publication for Potomac Electric Power Company permit stating that notices regarding Maryland hearing were published in a Manassas, Virginia newspaper
1041	H	Declaration of James W. Spence, Supervisor of Assessments for St. Mary's County office of the Maryland State Department of Assessments and Taxation
1042	H-1	Maryland tax assessment form for Coles Point restaurant (1961)
1043	H-2	Maryland tax assessment form for Coles Point restaurant reflecting assessed values (1967, 1975-1978)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
1044	H-3	Maryland tax assessment form reflecting assessed value of Coles Point restaurant (1981-1984, 1987-1988, 1990, 1993, and 1996)
1045	H-4	Maryland tax assessment form reflecting assessed value of Coles Point restaurant (1999-2001)
1046	D	Declaration of Richard Voorhaar, Sheriff of St. Mary's County, Maryland
1047	D-1	St. Mary's County Sheriff's Department case file reflecting investigation of breaking and entering at Cole's Point Tavern
1048	M	Declaration of Michael Williams, Sales/Agent Administration Manager for Maryland State Lottery Agency
1049	M-1	Application for designation as Maryland Lottery Agents for Riverboat on the Potomac, Inc. (1991)
1050	M-2	On-Line Terminal Survey for Riverboat on the Potomac (January 1992) indicating that the facility had been a licensed Lottery location since 1976
1051	M-3	Maryland Lottery's requests for criminal background checks on the owners of Riverboat on the Potomac, Inc.
1052	M-4	Maryland Lottery check-off form for Riverboat on the Potomac, Inc., regarding licensing process

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
1053	M-5	Acknowledgement filed by Riverboat on the Potomac, Inc. that they have received and will abide by the Maryland Lottery's rules and regulations
1054	M-6	Agreement by new owners of Riverboat on the Potomac, Inc. concerning payment of outstanding winning tickets
1055	M-7	Letter from Maryland Lottery to the new owners of Riverboat on the Potomac (February 6, 1992) requiring payment of \$20,000 bond and other security
1056	M-8	Personal guaranty filed by owners of Riverboat on the Potomac, Inc.
1057	M-9	Bond filed by Riverboat on the Potomac, Inc. (February 1992)
1058	M-10	Maryland Lottery inspection report for Riverboat on the Potomac, Inc.
1059	M-11	Maryland Lottery's checklists used to evaluate Riverboat on the Potomac's applications to operate Keno (December 1992 and March 1993)
1060	M-12	Forms signed by the owners of Riverboat on the Potomac (December 1992 and March 1993) agreeing to abide by Maryland Lottery rules and regulations

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
1061	M-13	Approval letters from the Maryland Lottery (December 1992 and March 1993) appointing Riverboat on the Potomac as a Special Agent licensed to sell Keno
1062	M-14	Bond provided by Riverboat on the Potomac in order to operate the "Keno" game (January 1993)
1063	M-15	Bond provided by Riverboat on the Potomac (March 1993)
1064	M-16	Personal guaranties provided by owners of Riverboat on the Potomac to operate Keno (January 1993 and March 1993)
1065	M-17	Request by the Riverboat on the Potomac to place additional terminals on the location (November and December 1993)
1066	M-18	On-Line Agent Surveys recommending that Riverboat on the Potomac be approved to operate seven lottery terminals (December 1993)
1067	M-19	Maryland Lottery check off forms reflecting receipt of Riverboat on the Potomac's financial information
1068	M-20	Maryland Lottery's approval letters for additional terminals at Riverboat on the Potomac (December 23, 1993)
1069	M-21	Riverboat on the Potomac's application for designation as "Agent Plus" location (1997)

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
1070	M-22	Maryland Lottery check-off form reflecting receipt and evaluation of financial statements for Riverboat on the Potomac
1071	M-23	Maryland Lottery's review sheet summarizing the results of evaluation of Riverboat on the Potomac application
1072	M-24	Riverboat on the Potomac, Inc.'s authorizations for criminal background check (1997)
1073	M-25	Maryland Lottery's approval of Riverboat on the Potomac as an Agent Plus Location (July 6, 1998)
1074	M-26	Personal guaranty submitted by the owners of Riverboat on the Potomac (August 6, 1998)
1075	M-27	Letter from the Maryland Lottery informing Riverboat on the Potomac regarding requirements applicable to Agent Plus Location (December 10, 1998)
1076	M-28	Certification by the owners of Riverboat on the Potomac that it carries adequate workers' compensation insurance as required by Maryland State law (December 2, 1998)
1077	M-29	Certification by the owners of Riverboat on the Potomac that it is accessible to people with physical disabilities (December 2, 1998)
- Other Miscellaneous Exhibits		

EXHIBIT NO.	ORIGINAL EXH. NO.	DESCRIPTION
1078	7 (Moot)	Application for Maryland Water Appropriation Permit submitted by Fairfax County Water Authority (requesting 2000 million gallon per day maximum withdrawal)
1079	CC-31	September 2, 1993 Regional Permit from U.S. Army Corps of Engineers
1080	CC-34	August 28, 1998 Regional Permit from U.S. Army Corps of Engineers
1081	CC-38	Westmoreland County Property Tax Assessments
1082	DD-14 3 (Strike)	Curriculum Vitae of Prof. Jack N. Rakove
1083	EE-1 ⁶	Enlarged portion of map provided as Virginia Exhibit 339, depicting mouth of the Chesapeake Bay

⁶ The Exhibit denoted “EE” was attached to a May 1, 2002, letter from Maryland responding to exhibits offered by Virginia at the oral argument held on April 24, 2002.
