



P E N N S Y L V A N I A LANDOWNER

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Posting in Wyoming and Susquehanna Counties!

Land Use Education Makes A Difference!



PLA member Dean Stang (L) relates his optimism to PLA director Norm Clark (R) regarding the successful results of the "Posting for Support" program in educating the recreationalists wishing to access private property.

Newly appointed PLA director Norm Clark calls it one of the most effective ways to reach large numbers of ordinary citizens! He's talking about "Posting for Support."

A farmer and bluestone operator from Susquehanna county, located in northeastern Pennsylvania, Norm has become increasingly frustrated with overwhelming environmental regulations on the use of his land. Not only was he facing problems with wetlands, archaeological listings and nutrient management issues, but now environmental interests were pushing for a state scenic river designation on Meshoppen Creek which flowed right through Norm's property. Concerned with the land use effects such a designation could have on his property, Norm knew that *something* had to be done to make the voices of landowners heard and to expose the unfairness of land use regulations if things were to ever change. Shortly thereafter, Norm heard about PLA's "Posting for Support" program and the organization's work on property rights issues. He picked up the phone and contacted PLA to find out more about the program and the organization's insight on scenic river designations and other land use policies. That phone call was all it took!

After talking to PLA and receiving information and guidance on both federal and state scenic river designations, Norm and several other property owners went to work conducting public meetings to inform other landowners and the general public about the effects such designations could potentially have on the use of private land. Meetings were held with the state Department of Environmental Resources and landowners expressed their opposition to such designations. Stated Norm, "... Meshoppen Creek is already well

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maintained by private landowners owning land along the creek. The creek's water quality is in good condition and that must certainly say something for private stewardship! Why must a designation be placed upon a creek that will just impose further regulation on the use of private property which is already fully regulated under a number of other state and federal statutes?"

After several months of meetings and educational forums, the active group of property owners in Wyoming and Susquehanna counties were victorious in getting the Department to drop its plan to push for scenic river status, at least temporarily. But Norm and others know that one victory doesn't win a war and many of these property owners have committed themselves to staying informed and active in defending their property rights. They realize that for things to change, education and activism are critical. And that is why thousands of acres within Wyoming and Susquehanna counties are now posted with PLA signs. To pass on an educational message and the "other side of the story" to those who often only hear one side. Hunters, trappers, fishermen, and many other urban recreationalists have used private land for centuries for their personal enjoyment because of the kindness of private landowners. And under PLA's program, they can continue to do so! As long as they seek permission from the landowner before entry and become informed of the unfair land use policies now being advocated by environmental extremist and anti-development regulatory agencies. "It's just a matter of letting these people know what's going on," said Norm. "Most of these individuals are shocked when you tell them what you can't do with your land. A common quote is often 'but the government can't do that!' We tell them, yes they can! They're often not adhering to the U.S. Constitution, but they do it anyway!"

The posting program also gets the attention of legislators and regulatory agencies and prompts questions from them as well. Within four days of being posted, the PA Fish Commission contacted Norm to discuss the association's program and why land was posted. After a lengthy conversation with a regional officer and explaining the frustration that landowners have with current environmental regulations, many of which are enforced by the Fish Commission

themselves, the officer claimed to understand many of the concerns and promised to provide a detailed report to the Harrisburg office. Many informational materials from PLA were also provided to the officer for review by the Commission. A response from the Harrisburg office is still pending.

The attention to this program by regulatory agencies, individuals, and the media only proves that the signs really do make a difference. Property owners from Wyoming and Susquehanna counties, as well as across the state, continue to promote "Posting for Support" and encourage other landowners and recreational users to join PLA in the struggle to retain private property rights. It is always the privilege of each individual property owner as to whether membership must be a requirement for land access. However, with the continued moral and financial support generated by the program, the chances of preserving private property rights are greatly improved.

"Posting for Support" has also caught on in several other states throughout the country through the promotion of the Environmental Conservation Organization (ECO), a national property rights advocate of which PLA is a member. In the words of ECO Vice-President Henry Lamb, "To change the law, we must get the attention of the lawmakers. We must tell them what the problems are and how they can be resolved. And we must do it in massive numbers. Posting for Support is a responsible way to get the attention of lawmakers and of the public that remains unaware of the rapid erosion of property rights in America. You can demonstrate your support by joining with ECO and your state property rights organization and participating in our Posting for Support program."

Editors note: If you wish to become a participant in this program, call the PLA office to order signs, or place your order through the order form on the back of this publication. If you are already a participant, please continue to keep your signs in neat appearance and highly visible. In addition, please include your name or telephone number, as indicated on the sign, to assist individuals wishing to access your property. Thanks to those who are promoting "Posting for Support!"

GOOD NEWS

MEDIA BEGINNING TO WAKE-UP

On April 30, 1993, the Pittsburgh Post Gazette chided U.S. Rep. Bill Clinger for using The Wild & Scenic Rivers Act to block the Concord Resources waste incinerator project in Clarion, Pennsylvania. The editors apparently recognized that politicians should not subvert federal environmental laws to pander to a narrow, special interest constituency. The P. G. said Clinger "stretched the wild and scenic river protection statute."

NO ENVIRONMENTAL BILLS IN 1993

No environmental bills are likely to clear Congress in 1993, Rep. John Dingell (D-Mich) told a meeting of manufacturers recently. The chairman of the House Energy and Commerce Committee says consideration of health-care reform and economic stimulus packages will preclude fast action on new environmental bills.

The related bad news is that the same may be said for crucial environmental reform bills such as H.R. 1330.

EHB SOCKS IT TO DER

Recently the Environmental Hearing Board (EHB) awarded Carl Oermann of York, PA \$4,358 under the Costs Act for legal costs incurred in defending a DER penalty assessment. The Board found that DER was not substantially justified in its action and noted that "DER was miffed" because Mr. Oermann had not gotten in touch with DER to report a problem he was in the process of solving. Knowing how DER operates, who would want to get in touch with them?

STANDING UP TO SPOTTED OWLS

The first case seeking compensation for restrictions on timber development imposed to preserve spotted owl habitat in Washington has been filed by SDS Lumber Company. After the company received a permit to harvest 230 acres of its own land, the Department of Wildlife discovered that a spotted owl pair had moved its "activity center" into SDS's second growth forest. The permit was then withdrawn. The company is seeking \$5.7 million for the land, plus lost profits. This case could set precedent for private landowners seeking compensation under the Endangered Species Act.

BAD NEWS

MINNESOTA FEDERAL COURT DEFINES ADJACENT WETLANDS

In a recently reported opinion, a U.S. District Court held in *Slagle v. U.S.A.* that "wetlands adjacent to waters of the United States" included a wetland adjacent to a "tributary of a water of the United States" which tributary is not "navigable-in-fact." The wetland in question was adjacent to a lake which discharged to a river which fed another lake which empties into the Mississippi River. If this decision is followed by other courts, apparently the Corps of Engineers' jurisdiction will extend into "wetlands adjacent to headwater streams." It had been hoped that courts would limit the extent of federal jurisdiction to wetlands which actually are adjacent to a water of the United States, and not a tributary. In Pennsylvania, such duplicative federal jurisdiction is unnecessary because headwater wetlands are stringently regulated under DER's regulations.

COMMONWEALTH COURT TURNS DOWN CONRAD MOCK ON TAKING CLAIM

Purporting to apply the recent U.S. Supreme Court *Lucas* decision, Commonwealth Court ruled 4 to 1 that DER's refusal to permit a wetlands fill did not result in an unconstitutional taking which would have required just compensation. Apparently the Court believes that citizens must be denied all use of property and deprived of any residual value by state regulation before a taking occurs. The Court said: "Although we find substantial evidence to support the board's finding that the Mocks' property is valueless in its present condition, that finding does not put the Mocks in the same situation as the land owner in *Lucas*."

The import of the board's finding, that the land in its current state is valueless, is simply to state that the Mocks' undeveloped property at present is without economic value. That finding does not mean that the Mocks' property must remain undeveloped and devoid of value in the future because of the department's environmental regulations.

Therefore, although we accept the board's finding that the land in its present state is essentially valueless, the Mocks failed to prove that their land lost all of its residual value when the department denied their fill permit. The Act does not compel the Mocks to leave their land in its present undeveloped state. . .

In a dissent, Judge James R. Kelly said that the property was rendered economically valueless by denial of the permit. "(T)he facts of the instant case do fall within the parameters as determined by *Lucas v. South Carolina*."

PLA has been advised that Mr. Mock has filed a petition for allowance of appeal to the PA Supreme Court which will decide whether or not to hear the appeal. It is not an appeal of right.

NOTE TO READERS:

Don't forget we elect Commonwealth Court Judges. Don't for a minute believe that judicial races are unimportant.

LANDOWNER CONTINUES FIGHT AGAINST ALL ODDS

PLA member Joe Ferko is not afraid to take a stand for his land!

In the late 1980's, Mr. Ferko took on the Fish Commission which attempted to block (under the guise of wetlands protection) his land improvement activities. Mr. Ferko held his ground and the Fish Commission felt compelled to reimburse him for the costs he incurred in complying with what must have been an improper order by a Waterway Conservation Officer (WCO).

Unfortunately, Mr. Ferko has also been ensnared in very complex litigation to protect his land from the claims of adjoining property owners. The litigation has not gone well and the deck appears to be stacked against Mr. Ferko. He is pursuing this matter in a variety of forums to seek vindication of his constitutional rights but is facing a difficult, uphill struggle.

Mr. Ferko believes in his cause and is willing to discuss his plight with other interested landowners who may face the prospect of litigation to protect their land. He can be reached at (814) 725-1726

DER and Township Officials in Warren County Clash; Rural Landowners' Rights Threatened

In typical fashion, the DER as part of its review and approval of Act 537 Sewage Plan revisions is "urging" rural municipalities to adopt a model on-lot management ordinance. PLA is told that there is great pressure to adopt the model ordinance "as is." In other words, DER says "If you want your plan revision approved, you had better adopt this ordinance." It should come as no surprise that compliance with the ordinance will be costly to both the townships and to their residents. Individuals whose on-lot systems may have alleged malfunctions are exposed to precipitous remediation orders and enforcement actions under new (and expensive to comply with) standards.

As usual, DER is perceived as cramming its view down the throats of the local townships and their residents apparently without due consideration or regard for the rights of either.

PLA has learned that the adverse reaction to DER's on-lot initiative was so strong that DER Secretary Davis had to travel to Warren to try to smooth things over and quiet things down. It is truly regrettable that the only way to really get DER's attention is to hang your shoe on the table and scream "enough is enough!" It never seems to occur to DER officials to try to communicate with the regulated community before the action is taken. Instead, DER always seems to bull ahead, and is usually perceived as acting unilaterally, arbitrarily and arrogantly in utter disregard of the rights of ordinary citizens. It will be tough for Secretary Davis to overcome this perception and what's worse, it may be the reality!

Until regulatory agencies are reigned in by our legislators and are no longer allowed to initiate regulations at their own discretion, problems such as this will ultimately continue to occur.

Environmental Extremists Denounce "Common Sense" Wetlands Proposal

EDITORS NOTE

Recently, several environmental organizations attacked the most comprehensive and common sense wetlands legislative proposal introduced to date within the Commonwealth. Known as the Wetlands Conservation & Management Act, H.R. 1353 was introduced by Rep. Howard Fargo (R-8) on April 21, 1993, and mirrors the major components of H.R. 1330, the favored federal bill of PLA and hundreds of organizations nationwide. In their usual custom, these groups have distorted the facts and misrepresented the proposal's legislative intent. For our members' information, we have reprinted the letter which was delivered to every state representative and endorsed by these environmental organizations. We have also reprinted, with permission, the response to these accusations by Rep. Fargo which was also delivered to every member of the House of Representatives. We believe the letters are self-explanatory. For further information on the wetlands issue, see "Updates" on page 11.

Dear Representative:

We have recently been made aware of plans to introduce legislation that would dramatically weaken wetlands protection in Pennsylvania. This proposal, to be sponsored by Representative Howard Fargo, is called the Wetlands Conservation and Management Act. In reality, it will make the conservation of wetlands in our Commonwealth much more difficult.

You may have been asked to support and/or cosponsor this proposal. We respectfully urge you to decline to cosponsor and to vote in opposition to this or any other wetlands proposal that results in a weakening of state wetlands laws or regulations.

The Fargo proposal is modeled after an equally objectionable federal proposal (HR 1330), which has been opposed by many of our organizations. In the last Congress, many representatives initially agreed to cosponsor HR 1330 and then later had to request that they be removed as cosponsors once they understood the full impact of the proposal on the public and the environment.

A fundamental problem with the Fargo proposal is its attempt to redefine what constitutes a wetland. The bill ignores the existing scientifically-based definition of a wetland and replaces it with a politically motivated definition. If adopted, the new definition would eliminate protection for an estimated 50 to 70 percent of wetlands currently protected by state and federal laws and regulations.

The Fargo proposal is inconsistent, because although it says the state delineation regulations shall be no more restrictive than the federal standards, it establishes state standards that are in conflict with existing federal standards. This will result in permit applicants having to deal with vastly different wetlands delineation standards, which will significantly increase their costs to prepare for the permitting process.

The bill states that:

"Wetlands play an integral role in maintaining the quality of life through material contributions to economy, food supply, water supply and quality, flood control, fish, wildlife and plant resources. Wetlands are critical to the health, safety, recreation and economic well-being of citizens of the Commonwealth. Wetlands serve important ecological and natu-

ral resource functions, such as providing essential nesting and feeding habitat for waterfowl, other wildlife and many rare and endangered species; providing fisheries habitat; enhancement of water quality; and natural flood control."

This bill, however, does not offer adequate protection to the valuable functions a wetland performs. Wetlands functions that are eliminated through the destruction of wetlands often cannot be replaced. This bill will open up thousands of acres of land that is unsuitable for development, posing a substantial threat to the unsuspecting buyers' investment. There are numerous examples of homeowners experiencing cracked foundations, flooded basements, and even the loss of their homes. The general public is also adversely affected by increased flooding and reduced water quality. The cost to taxpayers to correct these problems is enormous.

Another serious concern with the Fargo proposal is the requirement that the state undertake a major project to identify and classify wetlands of the Commonwealth. This is a major shift in responsibility from developers to the taxpayers of the Commonwealth.

DER Secretary Arthur Davis has estimated that a wetlands identification and classification project of this magnitude could cost up to \$20 million. Nowhere in the Fargo proposal is there identified a funding source to pay for a process that is currently paid for by those who wish to profit by development of wetlands areas. Agreeing to support this bill is agreeing to ask the taxpayers to pay \$20 million for wetlands identification and classification currently paid for by developers.

Another problem with the Fargo proposal is the attempt to eliminate the existing power of the courts to determine what constitutes a "taking" that would require compensation. The bill would establish a dangerous precedent in Pennsylvania law by requiring compensation as if a taking had occurred, regardless of additional remaining economic benefits that land may offer. This opens a Pandora's Box of challenges to any number of reasonable land use controls established by state or local government.

The enforcement section of the proposed bill is extremely weak. It does not provide for criminal penalties and it has a weak citizen par-

URGENT!
**Environmental,
Sportsmen's,
and Conservation
Groups Urge
Representatives
Not to Cosponsor
Bad Wetlands Bill**

participation section. The language found in this proposed legislation is not consistent with existing related statutes, such as the Clean Streams Law, and with more recent statutes, such as the Clean Air Act.

There are numerous other areas in the Fargo proposal that would cause us to oppose the proposal. We are listing the above as examples of major problems with the proposal.

In summary, the undersigned organization and their representatives urge you to decline to cosponsor and to oppose the Fargo wetlands bill. We wish to work cooperatively with you to ensure true wetlands protection for the Commonwealth.

Sincerely,

Jeff Schmidt

Sierra Club

Robert Hoyt

Chesapeake Bay Foundation

Mark Henry

PA Federation of Sportmen's Clubs

Marci Mowry

Audubon Council of PA

John Wilmer

Raymond Proffitt Foundation

Jeff Schmidt

Pennsylvania Sierra Club

P.O. Box 663

Harrisburg, PA 17108

Dear Jeff:

What a surprise! I never thought that I would be thanking you and your merry band of environmental extremists for your assistance. But I must say thanks since you have unexpectedly announced to the House of Representatives (irresponsibly and untruthfully) that many "evils" are hidden throughout my wetlands proposal.

How, you may ask has this helped me? Jeff, I've been wanting to tell you this for a long, long time but never had an appropriate opportunity until now. You see, while you and your followers self-righteously believe that the entire world supports your mission in life to save the environment at all cost,

most reasonable people, including a large percentage of my colleagues in the House, actually believe that environmental extremism, by today's standards, is no virtue. And that, ironically, is where you have come to my assistance. Although it came as no surprise to me that you publicly lambasted my proposal prior to personally contacting me, your support of current DER practices, has, in essence, reinforced the perception that the leadership of the various environmental groups want nothing less than their own way in every debate. Compromise is not a word in your vocabulary. Personal property freedom which is reasonably guaranteed under the Constitution is a foreign concept to you and your activists.

By endorsing the status quo, you are telling Pennsylvania's property owners, business people, farmers, and many others, that a wetland is a wetland, regardless of significance, size, or role. Furthermore,

because DER, in its infinite wisdom, is the only state agency that can somehow identify wetlands, issue permits, and enforce the regulations, you are saying that their word is gospel and should not be challenged. Well, I think you are wrong and as a matter of fact, so do a lot of others across the state. So many, in fact, that we have said enough of this craziness. We must bring a common sense approach back to this debate. And Jeff, one more thing. We're not going to tolerate you and other radical environmentalists trying to convince the people of Pennsylvania that a reasonable approach to preserving wetlands will ultimately destroy them. It just will not work. I think that the average person recognizes the importance of maintaining significant wetlands, but saving insignificant ones at the expense of jobs and declining property values will not be acceptable any longer.

Jeff, what you have done by sending out your letter has strengthened the resolve of many to continue supporting this legislation and encouraged other members to sign on simply because you are against it. Not only have you filled your correspondence

with half-truths, I believe your aim is to strike fear in the minds of many that I'm actually out to destroy wetlands. Your accusations and insinuations are outrageous.

My approach, while easing the current standards, will preserve, more so than even the federal legislation, every significant wetland in Pennsylvania. For instance, the federal bill which you referenced would allow the government to consider permitting, under certain conditions, a class A wetland; the

highest or most significant of all wetland areas. My legislation expressly prohibits permits in these areas with no exceptions while allowing for review in class B areas only. Unfortunately, you failed to mention this in your diatribe. Additionally, you imply that the current system of permitting is a good one. In my mind, no one should have to waste so much time, money, and energy as DER now requires under existing regulations.

Under my plan, clearer delineation standards are a priority in identifying these areas as well as clearly establishing time constraints on permit decisions. Delays and confusions will be greatly reduced if my legislation is passed.

These are only a few of the items on which we disagree. Philosophically, we also are on opposite sides with respect to land owner compensation. Clearly, these and other issues separate us now and will continue in the future. Because of your unwillingness to compromise for the good of a large majority of Pennsylvania citizens, we will always be fundamentally opposed to one another when the General Assembly weighs the personal freedoms, economic issues, and environmental concerns against one another. I believe that the members who have signed on to my bill believe that a proper balance is critical in this debate and will not be influenced by those of you who are insensitive to the needs of the larger community.

Jeff, again my personal thanks.

Sincerely,

Howard L. Fargo

**Rep. Fargo
Responds
to Accusations –
Sets the Record
Straight
on Wetlands
Proposal**

PLA Presents Testimony to Republican Caucus

On April 29, 1993, at the invitation of the Northwest Republican Delegation, PLA voiced concerns to House members regarding several environmental issues affecting the use of private property. Issues addressed included wetlands, endangered species, scenic river designations and natural heritage inventory programs. PLA Executive Director Rhonda McAtee told members of the committee that in recent years "... environmental activists and regulatory agencies have embarked on a 'preservation crusade' aimed at eliminating virtually all forms of land use." She stated that the preservation agenda contradicted long standing conservation policies of our government, which in the past, have promoted the wise and systematic use of our natural resources. In describing the effects of regulatory policies upon private landowners, she informed committee members that "many private landowners stand to lose millions of dollars from being unable to access their natural resources." She suggested that a state private property protection act could help to protect property owners from environmental regulations which amount to unconstitutional takings of property and urged members to endorse Rep. Teresa Brown (R-Crawford County) in her efforts to promote such a proposal.

Joyce Kline, President of the PA Independent Petroleum Producers (PIPP) also testified before the committee and urged the delegation to curb the ability of the DER to change policies at will. "Business and industry in Pennsylvania need only look as far as one state agency to find the main reason for our state's economic stagnation - the Department of Environmental Resources," she said.

PLA member Richard Wood of Woods Gravel Company also spoke to the committee about the costs and effects current historical and archeological regulations are having upon his business. Woods stated that after applying for an extension on his mining permit with the DER he was informed that the PA Historical Museum Commission would be inspecting his property for possible artifacts due to the presence of flint on his property. "I was told that I must hire an archaeologist at my expense. I couldn't believe that just because someone thought by some chance my land might have artifacts on it that I must hire someone to prove them wrong. I had to spend \$3,400 on a consultant to prove no artifacts existed just to receive my permit," he stated.

McAtee also pointed out to committee members afterward that Woods' expenses only covered a Phase I delineation. "Had any type of artifacts been found, Mr. Woods undoubtedly would have had to spend thousands more on a Phase II and possibly Phase III study, only to be denied the use of his land had actual artifacts been found. That is why the passage of a private property protection act is so important for private landowners," she said.

Activist Mary Wirth Addresses National Convention



Shown left to right are panel participants: Valerie Johnson, Oregon Lands Coalition; Mary Wirth, AHUG and regional director for PLA; Debbie Evashenko, American Pulpwood Association moderator; Nadine Bailey, Trinity County Concerned Citizens; and Dixy Lee Ray, former Washington state governor.

The 59th Annual Meeting of the American Pulpwood Association was held April 23-28 in Seattle, Washington with the theme, "Paper Chase: Fiber Demand in the 21st Century." The secondary theme which went hand in hand was "Forestry Activism - Part III," back by popular demand. The activism segment included a panel of speakers led by former Washington state governor Dixy Lee Ray and prominent forestry activists Nadine Bailey from Trinity County Concerned Citizens, Valerie Johnson of Oregon Lands Coalition and Mary Wirth, Executive Director of Allegheny Hardwood Utilization Group (AHUG) and Regional Director for PLA. The panel was very well received and addressed issues such as the lack of science in environmental decisions, the need for forestry professionals to be much more active and specific actions that can make a difference. The APA voted at their Annual Board Meeting to make "Activism" the number one priority this year, a bold statement of the problems the industry is facing and the need for a more active role of all industry professionals.

PLA representative Mary Wirth also recently gave a presentation at the West Virginia Forestry Alumni Symposium on environmental issues, private property rights, and activism, using the PLA video "Wetlands: Our Environment, Who's Property?" She will also be speaking with the West Virginia Forestry Association, the West Virginia Farm Bureau, Alabama Society of American Foresters and the National Hardwood Lumber Association in the upcoming months.

Activism Pays Off!

Group Seeking Scenic River Designation Withdraws Plans for State Status



PLA director Harry Fox, Jr. of York County.

Activism really does pay! PLA members in York County hosted several educational meetings to inform both private landowners and environmental interests of their concerns with the potential designation of Muddy Creek as a scenic river. With the help of PLA directors Harry Fox of York County and Norm Clark of Susquehanna County, members explained the 'unknown aspects' of these well sounding designations, including the establishment of land corridors and subsequent restrictions that can occur with both state and federal designations. Following is reprint of a letter received by the Muddy Creek Coalition, the group originally pushing for scenic status. Their letter verifies that education and getting involved really does pay off!

March 19, 1993

Dear Landowner:

As you are aware, recent efforts were undertaken to look into the feasibility of acquiring PA Scenic River status for the Muddy Creek watershed. As this program supports local efforts in acquiring this designation and is dependent upon 'grass roots' and landowner support, our efforts were initially directed towards disseminating information about this program to both the landowners and the townships/municipalities involved.

Due primarily to concern over governmental influence over landowner rights as well as misguided information relating to what PA Scenic River designation may or may not do, it has become apparent that there is significant opposition by some landowners in this regard.

It was the intention of the Muddy Creek Coalition, as concerned citizens from York County who also include landowners bordering Muddy Creek, to work cooperatively in an effort to, in some fashion, recognize and preserve the natural treasure that the Muddy Creek area is to York County. It was not the intent to force something unwillingly upon the people who reside in this area. In light of this, we feel it is appropriate to discontinue our efforts at this time towards achieving the PA Scenic River designation.

When and if the landowners along Muddy Creek, as well as the townships/municipalities involved, feel that coordinated efforts in this regard are important enough to warrant some local initiative on their part, then we would be ready and willing to discuss this in the cooperative spirit initially intended.

Thank you for your time in this matter.

Yours truly,

The Muddy Creek Coalition

Educating Our Youth

PLA has actively been striving to bring a message of environmental balance into our educational system on every level, pre-school through college curriculums. It is the belief of many grassroots organizations, including PLA, that the entire scientific story relevant to environmental issues is not being impartially represented within our private and public schools. The youth of our country are not being presented with all the facts, ultimately, diminishing the opportunity for common sense and balanced determinations as adults.

Recently, PLA welcomed the opportunity to discuss the "other side" of the wetlands issue with seventh grade students at J. S. Wilson Jr. High School in Erie, PA. Many questions involving private land ownership, bureaucratic intervention and the need for compensation to be addressed through legislation for regulatory takings were raised by the students. If all the facts are presented, don't underestimate the competence of these young minds!

PLA encourages all members to actively become involved in the environmental education of your children and grandchildren who need to be aware of the "whole story" for the benefit of future generations.



PLA Assistant Executive Director, Lorraine Bucklin, with students from J. S. Wilson Jr. High School.

Take A Look At The Map

By Henry Ingram, Esq.

After several years, Pennsylvania landowners are coming to realize that "environmental regulation" involves not just pollution prevention. In the early days of environmental regulation, the thrust was to control pollution of our streams and air and limit the indiscriminate use and disposal of toxic materials and other substances which might create health hazards. The direct cost of "first generation" pollution control measures was assigned to the private sector industries whose activities created the potential pollution. These costs by and large could be passed on to consumers of goods and products manufactured by these industries.

Gradually, as water discharges and smoke stack emissions were "cleaned up," attention turned to clean-up of polluted sites (land areas adversely affected by past industrial or waste disposal activities). The costs of subsequent initiatives to clean-up or, to use the fancy word, "remediate" polluted sites turned out to be enormous and both private industry capital and our tax dollars were tapped to fund the clean-up costs.

The trend that has emerged in the last decade is to control the natural environment in such a way that no pollution or environmental harm will occur. An unfortunate corollary has also emerged — that mere land use and development itself is the functional equivalent of environmental harm.

The first truly burdensome example of this trend in Pennsylvania came with wetlands protection enforcement at both the state and federal level beginning about five years ago. Readers of the *Landowner* are already well familiar with the excesses in the wetlands protection programs in all levels of the bureaucracy. To briefly reiterate a long story, about 75% of all wetlands are located

on private property and about 100% of the wetlands regulators don't want to see any wetlands, however created or important, disturbed in any way. Lip service is paid to the "theoretical" possibility that an ordinary citizen could get a permit to fill a wetland but for all practical purposes only large, well financed developers, who can afford the tremendous costs involved, have any chance to secure "official" authorization to disturb a wetland of any size.¹

Now, landowners must recognize that other modern "environmental" programs are intended to and in fact have the same effect on privately owned lands as wetlands

“An unfortunate corollary has also emerged – that mere land use and development itself is the functional equivalent of environmental harm.”

preservation does. The terms used in the titles of the Acts creating these programs disguise their coverage and impact on ordinary citizens. For example, implementation of the Endangered Species Act of 1973,

the Wild & Scenic Rivers Act of 1968, the Federal Eastern Wilderness Act, the Historic Sites Act (protecting "natural" landmarks) and even the Coastal Zone Management Act, can all affect dramatically private property rights in Pennsylvania. These new preservationist initiatives are not limited to Glacial National Park or some isolated river in Maine. It is going on in your backyards.

What is happening is that regulatory programs under these Federal Acts are extending their "no disturbance" tentacles throughout rural and otherwise undeveloped areas of Pennsylvania.² If some species is declared "endangered" by a federal bureaucrat and that particular species can (not does) live on or near your land, you are affected and your right to use your land as you choose is endangered, perhaps even more than that bureaucrat's newly identified species.

The same is true if you own land in or near a Wild and Scenic River corridor or which contains a natural landmark. Your rights are diminished.

Many of you have learned that "Rails to Trails" doesn't just mean a few hikers in the real backwoods areas where a railroad abandons a line. It can mean serious intrusions on the peace and tranquility of your communities. We have also learned that Congress was all too willing to "suspend" your reversionary interest in abandoned railroad rights-of-way to pander to recreationists who in turn were all too willing to take something (your rights) for nothing. The same is true for these other preservation programs.

On the preservationist front, Pennsylvania environmental bureaucrats usually march in lock step with their federal counterparts (although Pennsylvania is often ahead of the federal beat). We have

1. Because there has been "selective" enforcement of wetlands regulations, particularly against individuals who are perceived as challenging the "system," and plain old "looking the other way," unauthorized wetlands fills abound in Pennsylvania. Hopefully, some of the "looking the other way" is motivated by recognition of the unfairness of wetlands preservation enforcement on private land.
2. In coming months PLA will be holding information meetings and graphically identifying on a map areas of Pennsylvania which are affected by anti-development, preservationist land use control regulations.

parallel programs in all these trendy, new areas of anti-development regulation and our bureaucrats often seem to be watering at the mouth to do their federal big brothers one better. In terms of getting ahead of the beat, even the Feds haven't come up with Special Protection Watershed designations which can eliminate all development in a given area. These are state-of-the art, anti-development/preservationist devices.

And what you have to be sure to recognize is that all these programs are directed at private property, not just public lands.

Our elected officials have given land-use control bureaucrats broad powers over your property and the horde of preservation police roaming around these days is just that — enforcement officers with real police powers. Readers of the *Landowner* know that violations of these regulations can lead to serious fines and jail terms which seem to be, and often are, more stringent than those imposed on drug pushers, drive-by shooters and stock-fraud con men. Do you ever get the feeling the “system” is out-of-balance?

These programs are based on a political philosophy which would intentionally restrict one of our most fundamental freedoms and ultimately erodes the underpinnings of the free enterprise system. Nevertheless, you must also recognize there are probably no evil motives involved here — by and large persons inside and outside of government who subscribe to the anti-development/preservationist philosophy believe they are acting in the best interests of everyone. Although they won't admit it, they just have the view that they can make better choices about the use and development of private property than the ordinary citizens who own it can.

As layer after layer of land use regulation — wearing the cloth of environmental protection — is added, the resulting diminution in land value — referred to previously in the *Landowner* as a hidden tax — has the effect of redistributing wealth in this country — just as surely as taking your wealth by a direct tax does.

If the Government takes money from you and me in taxes and gives it to somebody else — say in the form of government subsidized health care, we know what is going on. We recognize this for what it is — a transfer payment which has become the hallmark of the modern welfare state. We also recognize, if we think about it, the

question of what percentage of our wealth the Government should transfer as a political question (most of us would agree that as a general moral or ethical proposition, taking something from the strong and wealthy and giving it to the weak and poor is not wrong).

However, already burdened with increasingly higher taxes, high crime rates, violence in our streets and a bloated bureau-

“In the land use area, the winds continue to blow the wrong way for the landowner.”

cracy which spends a large amount of its time cramming down our throats its ideas (about which there is no true consensus,) as to how people should live their lives and order their own affairs, we now wake up to find ourselves shackled by intrusive preservation regulations which are impairing our fundamental freedom to own and use private property.

Hopefully there is some reason to believe that ordinary citizens still have the ability to take a stand and draw the line if things get too bad. For example, Jimmy Carter was turned out of office apparently when a majority of the people got fed up with the high reading on the misery index. Somehow it translated into a revolt against a profligate tax and spend Government and inside-the-Beltway arrogance. After a decade or so of Reaganomics, we have sent ourselves back into the tax and spend cycle and more intrusive Government (although in fairness to the electorate it would have been hard for the ordinary Joes among us to figure out that Candidate Clinton's remonstrations about “cutting taxes and the deficit” really meant increasing both!)

I make the point here because burgeoning land use regulations and preservationist programs must be understood for what they are. They impose hidden taxes on ordinary citizens, effect transfers of pri-

vate wealth and shackle individual freedom by eliminating choices among uses to which privately owned land may be put. Forget about right and wrong. It is extremely difficult to attack, morally or ethically, a particular Government imposed choice; for example, choosing to “save” spotted owl habitat rather than preserving timber industry jobs. Or why should a landowner give up the right to use his land to protect habitat just so a scientist can learn a little bit more about how organisms become different species — one of “usual” justifications for “protecting” endangered species. The trouble is that both choices may be good, just as, viewed alone, increasing the level of health care for people who can't pay is good. The problem at the present moment is that the choices being made are being made by persons (elected officials) who have apparently tested the political wind and decided that it is blowing in favor of the anti-development/preservationist philosophy, just as sometimes in the past it has blown in favor of the welfare state/transfer payment philosophy. Apparently in today's political climate, the selection between two “good” choices is not going to favor landowners and others who have to earn a living by putting their land to use and for whom the free enterprise system is the machine which enables them to earn those livings and take care of their families.

In the land use area, the winds continue to blow the wrong way for the landowner. At the moment, the voices of those who subscribe to anti-development, preservationist philosophy are the loudest and property rights are in peril. You can't expect to get anywhere on moral or ethical grounds. This is a political battle. It is a situation where the ordinary citizen must stand up and be counted. The line must be drawn.

Henry Ingram is Chairman of the Natural Resources & Environmental Law Section of Buchanan Ingersoll, P.C. and has practiced law for over 20 years. Mr. Ingram and his associate, John Ward, also serve as legal counsel for PLA. Questions or comments regarding this article or any other legal issue may be directed to Mr. Ingram in Pittsburgh at (412) 562-1695 or Mr. Ward in Harrisburg at (717) 237-4815.

PLA On The Move

Working to Protect Your Property Rights

Through the voluntary efforts of PLA directors and staff, look where your message has been taken! These individual "defenders of property rights" continue to work hard representing our members!

- Coalition Educational Meeting, Kane, PA - co-host with William Perry Pendley - guest speaker, President and Chief Legal Officer of Mountain States Legal Foundation
- Elk County Farmers' Association, Boot Jack, PA - guest speaker
- State Representative Teresa Brown (R-6), Waterford, PA - meeting regarding wetlands and private property rights legislation
- Allegheny Hardwood Utilization Group (AHUG) Annual Dinner Meeting, St. Mary's, PA - represented
- PLA Informational Meeting/Pennsylvania Sewage Regulations, Youngsville, PA - host
- Ben Roach Steering Committee Semi-Annual Meeting - represented
- Rotary Club of Erie, Erie, PA - guest speaker
- Warren County Township Supervisors Meeting, Warren, PA - represented/participated
- Pamona Grange District Meeting, Warren, PA - represented/participated
- Northwestern Pennsylvania Feed Association, Conneaut Lake, PA - guest speaker
- J. S. Wilson Jr. High School, Erie, PA - wetlands presentation
- Northwestern Pennsylvania Republican Caucus, Meadville, PA - testimony regarding environmental issues
- Armstrong County Farmers' Association, Kittanning, PA - guest speaker
- Waterford Garden Club, Waterford, PA - guest speaker
- J. S. Wilson Jr. High School, Erie, PA - panelist wetlands debate
- Property Rights Educational Meeting, York, PA - guest speaker
- Media Interviews, WJET-TV; Brown-Thompson Newspapers, Thompson Newspaper, Washington, D.C.
- Pennsylvania Fish Commission Informational Exchange, Springville, PA
- Pennsylvania Forest Stewardship Committee, Harrisburg, PA - represented
- Township Supervisors of Warren County Annual Spring Dinner Meeting, Tidioute, PA - represented
- Erie Area Chamber of Commerce Wetlands Seminar, Erie, PA - represented
- Earth Day Project/George Washington Memorial Park, Waterford, PA
- National Wetlands Coalition Members Meeting, Washington, DC - represented
- Woodlands Extension Office Seminar, Clarion, PA - represented
- Department of Environmental Resources Public Meeting, Warren, PA - represented
- Warren Chamber of Commerce Breakfast Meeting/Department of Environmental Resources, Warren, PA - represented
- Agricultural Legislative Review/State Representative Teresa Brown (R-6), Cambridge Springs, PA - participated

ACTIVISM

(Continued from page 7)

Earth Day Project

In recognition of Earth Day 1993, the Pennsylvania Landowners' Association has continued their beautification efforts in the George Washington Memorial Park in Waterford, PA. The park was adopted as an Earth Day project in 1991 and each year additional improvements have been made through the generosity of several businesses and volunteer efforts of PLA members. In addition to general clean-up efforts and improved landscaping, one of the most noted improvements to the park this year was the illumination of the George Washington statue.

The park is noted for its historical value and is visited annually by several thousand visitors. In recent years, the park had fallen into disarray and as a contribution to the community in which PLA offices are located the park project was chosen to commemorate Earth Day.

PLA felt the George Washington Memorial Park was an appropriate project as George Washington was the founding father of our country in which private property ownership was considered a fundamental principal.



(photo courtesy of Brown-Thompson Newspapers)

Volunteers assisting in the Earth Day project include (L-R) Beverly Bruce, Ramona Johnson, Bonnie Turben, Lorraine Buchlin and Rhonda McAtce. Absent from photo is Janet Percy, whose help was donated on behalf of Johnson Auto Parts.

FOR YOUR INFORMATION...

The PLA 1992 financial statement has been completed by Monahan & Monahan Certified Public Accountants of Erie, PA and is available for membership review at the PLA office.

UPDATES

Wetlands...

Rep. Howard Fargo (R-8) introduced H.B. 1353 on April 21, 1993. The bill is the most comprehensive wetlands legislation introduced to date in the Commonwealth and mirrors several of the aspects of H.R. 1330, the Ridge-Hayes bill in Congress. Both bills address wetland categorization, streamlined permitting, a "wetter" definition, and compensation for regulatory takings.

State Representative Teresa Brown (R-6) is a supporting cosponsor of H.B. 1353, but has plans of her own to introduce additional wetlands legislation regarding mitigation costs for private landowners, utilizing state lands for wetland replacement projects to reduce economic impacts upon local municipalities and private landowners and addressing clearer and more sensible procedures regarding wetland enforcement and fines procedures.

Members are urged to contact both their state representatives and U.S. Congressman and Senators in support of the above mentioned proposals.

Endangered Species...

On March 25, 1993, Rep. Billy Tauzin (D-LA) introduced H.R. 1490, The Endangered Species Act Procedural Reform Amendments of 1993. Tauzin's bill takes into account more of the economic impacts of listing a species on the endangered list, whereas current regulations do not. A few of the key elements in the proposal include:

- Immediate emphasis on a recovery plan after a species is listed. Currently, it is often 3 or 4 years after a listing before a plan for a species is initiated.
- Emphasis on initiating a recovery plan BEFORE the species is actually listed by working with local governments, private landowners, affected industry, environmental groups, and Fish & Wildlife Service.
- Specify that an economist sit on the "recovery team." Currently, only biologists and scientists are appointed. In addition, local government may appoint a private individual to a position on the team.
- Compensation for private property owners - Similar to H.R. 1330, Tauzin

will amend the current act with a provision calling for compensation for private property owners whose property loses its economic value and use through the ESA.

Members should contact their U.S. Representatives to encourage their cosponsorship of this bill. It has currently been endorsed by the AFL-CIO, The American Farm Bureau, The U.S. Chamber of Commerce, and the National Fisheries Institute.

Land Sale Dilemma To Conservancy Still Pending...

On May 4, 1993, the dilemma confronting the citizens of President Township, Venango County, was scheduled to finally be resolved. After a lengthy dispute, the court ordered a "private-sale" or auction to settle the conflict involving the lands owned by six heirs to President Oil Company. However, the decision has been postponed indefinitely pending an agreement between the heirs and the Conservancy.

In retrospect, five of the six heirs want to sell 11,300 acres of the land to the Western Pennsylvania Conservancy for \$7,000,000. The remaining heir objected and offered to purchase the land from her five co-owners. As previously stated, upon closing the sale, the Conservancy plans to make the property available to the Pennsylvania Game Commission for game lands. To date, 1,500 acres of game lands already exist within President Township and concern continues for the reduction of the tax base through transfer of private property to government or other tax exempt entities.

Private Property Protection Act...

In the 103rd Congress, several Private Property Protection Acts have been introduced and are gaining cosponsorship. The intent of these bills are to enforce compliance of Executive Order 12630 issued by President Ronald Reagan and the Fifth Amendment of the United States Constitution.

Congressman Gary A. Condit (D-CA) recently introduced H.R. 561, the Private Property Protection Act of 1993. This legislation will serve as an effective tool in the operation of regulatory programs and may make them more efficient since it will require regulators to better understand the result of their actions.

According to a recently released report by the Congressional Research Service, property owners won regulatory takings cases before the federal courts in 1990 more often than not. This is astonishing when you con-

sider the federal government wins nine out of ten times in other areas of law.

The fact that property owners who can afford to mount legal battles against their own government are winning in the courts is no consolation. For every property owner who wins such a battle, there are thousands who lack either the time or the money to defend their rights in court.

In the Commonwealth, an attempt at such a bill has been recently introduced by Representative George Saurman (R-151) Montgomery County. His efforts should be commended. However, PLA believes additional language should be incorporated to adequately protect private property rights. Representative Teresa Brown (R-6) Crawford County is dedicated to the introduction of such proposals and is currently seeking recommendations from PLA.

When and if such a legislative proposal is passed, regulatory agencies would be required to access economic impacts of proposed environmental regulations by adhering to strict guidelines in accessing such impacts, prove to the Attorney General that such regulatory proposals would not create "takings" of private property under the state and federal constitutions, and make regulatory agencies responsible for payment when such regulations do create takings.

Natural Heritage Inventory Study...

Many PLA members are anxiously awaiting the Erie County Department of Planning's preliminary draft report regarding the Natural Heritage Inventory study as contracted by the Western Pennsylvania Conservancy in early 1992.

As reported by the Department of Planning, the field and aerial surveys were completed during the third week of October 1992. As of October 28, 1992, 137 sites had been surveyed. To date, the county has made payment to the Western Pennsylvania Conservancy in the amount of \$24,664.94. The total project cost is \$40,000 including \$20,000 of county funds, \$15,000 from the PA Department of Community Affairs and \$5,000 from the Western Pennsylvania Conservancy. Nearly 18 months have passed since the approval for the study, and PLA is concerned about getting information out to the public and affected landowners and believes that full disclosure of the listed properties is essential to inform the public regarding the Natural Heritage Inventory program. Concerns are also pending regarding the listing of private property to inventory lists without the knowledge or consent of private landowners.

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Pittsburgh, PA

Scott Miller

Warren, PA

Mark Troyer

Waterford, PA

Mike Wise

Waterford, PA

Eva Foster

Westown, PA - 215/399-1846

Mark Madison

Marienville, PA - 814/968-5941

Bob McColly

Ligonier, PA - 412/238-2880

Tedd Ochs

Lucinda, PA - 814/744-9301

Victoria Pozsgai-Khoury

Morrisville, PA - 215/295-9554

Eric Thomas

Grove City, PA - 412/458-7291

Mary Wirth

Kane, PA - 814/837-8944

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Please Enroll Me As A Member Of PLA To Help Secure The Right Of The Individual While We Respect The Environment

PLA Membership Categories

Please indicate: New Member Renewal

INDIVIDUAL I 25.00
Any individual supportive of private property rights
(owning 0 to 15 acres)

INDIVIDUAL II 35.00
(owning 16 to 100 acres)

INDIVIDUAL III 50.00
(owning 101 to 250 acres)

INDIVIDUAL IV 100.00
(owning 251 to 500 acres)

INDIVIDUAL V 200.00
(owning over 500 acres)

ASSOCIATE I 100.00
Any business entity supporting the free
enterprise system and the principle of private
ownership (*local businesses in communities*)

ASSOCIATE II 250.00
Trade Associations (*state organizations
supportive of private property rights*)

ASSOCIATE III 300.00
Major suppliers to land use entities (*resource
development, construction, agriculture*)

AFFILIATE 50.00
Local or regional grass roots, non-profit
organizations

BUSINESS I 750.00
Corporations or other business entities whose
activities involve ownership, use and/or
development of acreage in excess of 100 acres
but less than 500 acres.

BUSINESS II 1,250.00
Same as I but in excess of 500 acres

Any land owning member (*excluding Individual I*) purchas-
ing PLA signs and participating in the "Posting For Sup-
port" program is entitled to a 50% reduction in
membership fees for the current membership year.

POSTING FOR SUPPORT PROGRAM

Yes, I wish to become a participant in this program.
Please send me _____ signs.

I have enclosed 60¢ for each sign ordered.

I am a current participant in the
"Posting for Support" program

I am a new participant in the
"Posting for Support" program

PART - Political Action Response Team
Yes, I wish to participate in this program sponsored
through PLA's national affiliate ECO. Please put me
on the PART mailing list.

Wetlands Videotape (VHS) Part I Part II
"Our Environment, Whose Property?"
\$15.00 Donation each. Please send me a copy of
this limited edition PLA videotape.

YES! I wish to subscribe to ECO-LOGIC, the
monthly publication of the Environmental Conserva-
tion Organization. I understand ECO is a national
property rights organization of which PLA is affiliated.
I have enclosed \$15.00 for this annual subscription.

PLEASE NOTE: All membership fees of \$100 or
more are inclusive of 12 complimentary issues of
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Please complete this information:

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Phone Number _____

Township _____

How many acres of land posted? _____ acres

Membership Amount \$ _____

Less 50% reduction in fee if

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Amount of signs purchased + \$ _____

Additional contribution (If any) \$ _____

Total remittance enclosed \$ _____

**Membership dues and contributions may be
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Enclose form with check or money order payable to:

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