



# PENNSYLVANIA LANDOWNER

VOLUME VI • NUMBER 1

MARCH 1993

## Grassroots Defender —

by BONNIE HOWARD

We are your neighbors, proud working men and women. We are husbands and wives, fathers and mothers, sons and daughters. We are Americans who believe that the government should be a government of all the people not just of the special interest groups who have enough money to make their voice heard.

We committed to giving a voice to "just folks" believing that once we pointed out the truth-the facts-things would change, common sense would prevail and our lives would be "normal" again.

Our lives changed. The phone rings 7 days a week from 6 a.m. to 11 p.m. We are high tech: answering machines, call waiting, fax machines, VCR's, photocopiers, computers and modems, all housed in the family room or the bedroom converted when the eldest left for school. One sure way to tell a grassroots defender is by the height of the piles of papers on the kitchen table.

The sacrifices are many. Reading for pleasure is a thing of the past, it is now research. We struggle through legislation, meeting minutes, court transcripts, scientific data, etc., all in an effort to stay informed. We've forced ourselves to make speeches so that we can inform others. The hours are long. There is always something else to read or someone else to talk with.

It means acquiring a taste for cold hamburgers for it seems that the telephone and doorbell are somehow linked to your chair, ringing as soon as you sit down to eat.

Today our children, the sons and daughters of grassroots defenders suffer the most. Our canoe has hung in the barn for 3 years, the boys have outgrown, not worn out, their hiking

boots. They can't use the phone to call friends because Dad is expecting an important call. They've been sent to school to learn and their teacher tells them that loggers are tree murderers; and so they look at the floor and mumble when their friends ask where their Dad works.

Just when you thought you'd heard it all the phone rings. The injustices tear your heart out, and so you pack your suitcase, now stored in the bedroom rather than the attic, and you get to the airport and read the tickets so you know where you're going this week. And your spouse deals with the children, the frozen water pipes and the influx of phone calls and mail. You do what needs to be done; you unite your neighbors, people in all 50 states whose lives have been torn apart. Today they know they are not alone.

And, you cry. There's nothing to can this year. There wasn't time to tend the garden. You have enough money to pay the phone bill or buy oil but can't do both. You must have a phone! A neighbor delivers a cord of firewood, no charge. "You're fighting for me," he says. The guy who fixes your car says "half price - YOU'RE FIGHTING FOR ME, it's the least I can do."

And, you get angry. Time after time you read an Audubon or Sierra news article stating emphatically that you get hundreds of thousands of dollars from big industry. Yet, you know that your son won't get jeans for his birthday. The store clerk won't accept your credit card, it's maxed. It's those plane tickets, hotel bills and copy paper.

We know now that we have made a life-long commitment to take an active part in our government. The cost is

*(Continued on page 2)*

**it's not a job; it's a way of life.**

# Grassroots Defender —

(Continued from front page)

dear: time, emotions and money. Many have paid more than should be asked of any American. To defend our rights and freedoms they have lost their homes and jobs. Yet, each and every one will tell you, it is all worthwhile. I'd do it again without hesitation. The principle is honorable and people of this great country deserve nothing less than a government of, by, and for the people.

**"We committed to giving a voice to 'just folks' believing that once we pointed out the truth - the facts - things would change, common sense would prevail and our lives would be 'normal' again." —BONNIE HOWARD**

This commitment is not without rewards. On a particularly trying day a logger from Oregon called. "I was worried about you," somehow he knew.

An Idaho rancher sent a note: "Thank you and God Bless."

My husband and I have asked a lot of one another and I can only marvel that this life path has brought us closer to one another and God.

My teenager came home from school the other day and asked for help putting together data on property rights because he knew the teacher was only presenting one side of the issue and he asked for and received time to present his facts. With true parental pride I knew that our sacrifices had been worthwhile, my son has become a man of honor, willing to stand up for what is right.

*Bonnie Howard is the wife of Alliance for America Vice President for Property Rights, David Howard. They live in Bleeker, New York which is within the Adirondack State Park.*

## GOOD NEWS

### PLA MEMBERS FIGHT BACK AND WIN

**Ed McDanniels Wins Wetlands Enforcement Case**—On December 16, 1992, after a trial in May, 1990, the Pennsylvania Environmental Hearing Board ("EHB") vacated a DER order which had been issued on January 15, 1988, to Ed McDanniels which had directed him to remove fill material from and restore a purported wetland on his property on Iroquois Avenue in Erie. The estimated cost of the restoration exceeded \$160,000 and Mr. McDanniels' property would have become unuseable and for all practical purposes valueless had the site been returned to the condition it was in before Mr. McDanniels developed it. Mr. McDanniels attacked the order on several grounds. The EHB concluded that DER could not order "restoration" of the site after advising him that no permit was necessary for his fill activity and that DER had abused its discretion. The Order was entirely vacated.

Mr. McDanniels is seeking an award of counsel fees against DER under the Costs Act and plans to seek compensation for losses suffered during the four years his property was tied up.

**E. L. Heard Secures Substantial Reduction In DER Civil Penalty Assessment**—On May 5, 1992, DER filed a \$20,400 Civil penalty assessment against E. L. Heard & Sons for 33 alleged violations of the Pennsylvania Storage Tank Act which DER's Joe "Rambo" Williams claimed to have occurred when Heard filled underground storage tanks of customers who apparently had failed to register their tanks under the Act. Heard appealed to the EHB and was prepared to prove among other things that no spills or harm of any kind occurred, that DER did not follow proper procedures in making the assessment and that the DER'S practice of "jacking-up" the penalty to coerce a settlement at a lower figure was abusive and unconstitutional. As the date for trial approached, in an effort to avoid the additional time and expense involved in a trial and briefing, Heard offered to settle the 33 alleged violations for \$30 each and the entire assessment was finally settled for \$975, a very substantial reduction from the original assessment, and obviously more suited to "fit the crime."

### FISH COMMISSION CRIMINAL PROSECTIONS FAIL

**Even The Commission Has to Prove Its Case**—Don Nonneman of Mount Pleasant Mills, PA was prosecuted (or persecuted) criminally by Fish Commission Waterways Conservation Officer, Larry Baker, for "disturbing" a stream without a DER permit based on a hearsay report of events which occurred 2 or 3 years before. At a preliminary hearing, Mr. Nonneman moved to have the misdemeanor charges dismissed but WCO Baker, seeing the handwriting on the wall, withdrew the charges and moved over to the next County and refiled them there. A new District Justice held Mr. Nonneman over for Court but ultimately the charges were dismissed because the Fish Commission simply could not prove its case.

Mr. Nonneman has had other bad experiences with the Fish Commission and plans now to bring a Civil Rights action against the Fish Commission seeking compensation for improper exercise and abuse of criminal enforcement powers. There are serious questions about the extent of the Fish Commission's criminal enforcement powers and its questionable practice of threatening criminal prosecutions to coerce money settlements.

Mr. Nonneman has accumulated a lot of information about the Fish Commission's "enforcement practices" and would be interested in hearing about similar horror stories. His number is (717) 444-3815.

**Why We Have Laws and A Constitution**—On October 21, 1992, Judge Richard McCormick of Westmoreland County threw out a Fish Commission criminal prosecution against CSX Transportation Co.

Three years before, as a result of heavy rainfall and flooding, railroad tracks were washed out from under the CSX's railroad cars in South Huntingdon Township, Westmoreland County. This resulted in spillage of certain substances into the Youghioghny River, allegedly potentially harmful to fish. The Fish Commission charged CSX with pollution of waters.

"The failure of the statute to create a standard by which the defendant can be fairly required to conform its conduct could be found to violate the due process rights of the defendant, under both the state and federal constitutions," Judge McCormick said.

Although he dismissed the charge for other technical reasons, the judge said he "might well find a basis for declaring the legislative enactment herein, the Fish and Boat Code, 30 Pa. C.S.A. 2504(a) (2), unconstitutional..."

## RAILS TO TRAILS

**Tucker Act Remedy Illusory**—In 1989 in the Preseault case the U. S. Supreme Court refused to decide whether the Federal Rails to Trails Act ("Act") which, in effect, suspended reversions of abandoned railroad right of ways back to the original landowners, was unconstitutional because, the Court's unanimous majority stated, if the Act did work a taking of private property, the landowner could bring an action for compensation under the Tucker Act and until such a claim was adjudicated, the landowner's constitutional claim was not "ripe" for adjudication. As expected, the landowners filed a Tucker Act claim. On November 1992, the U. S. Court of Federal Claims, in an extremely pro-government, anti-property rights opinion, held that there was no taking and thus no compensation due the landowner, even though a trail was established on the Preseault's land (physical invasions had been thought to be per se taking), because the landowner had no reasonable expectation that the right-of-way would not be subject to intrusive government control.

Hopefully the appellate courts will take a different view.

## CLINTON APPOINTMENTS

**Environmentalist Nominated For Sub-Cabinet Position**—Washington, February 23 — President Clinton announced that he had chosen the president of the Wilderness Society, George T. Frampton, Jr., to be an Assistant Secretary of the Interior.

If confirmed by the Senate, Mr. Frampton will supervise the National Park Service and the Fish and Wildlife Service.

Mr. Frampton, a graduate of Harvard Law School, was law clerk for Associate Supreme Court Justice Harry A. Blackmun and was a member of the Watergate Special Prosecution Force. He has been president of the Wilderness Society since 1986.

The President also appointed Bonnie Cohen, a Senior Vice President with the National Trust for Historic Preservation, as Interior's Assistant Secretary for Policy, Management, and Budget.

Not surprisingly, environmental groups are looking on these appointments as a victory for the "green cause." Rob Smith, the southwestern director of the Sierra Club, was quoted in the Washington Post as saying: "No one can say the administration isn't coming through with the commitment on the environment... They are not only environmentalists, but they are also very competent in their fields."

## DER AND USFWS INITIATIVES

**DER Proposes To Include Wetlands Protection Program Into Water Quality Program**—Under pressure from the EPA and Fish & Wildlife Service, DER is proposing to integrate its Chapter 105 Wetlands Program into its Water Quality Standards Program. This may sound like little more than bureaucratic paper shuffling but beware. If wetlands are treated as "waters of the Commonwealth," discharges from uplands, including run-off could be subject to effluent limitations. In theory, drainage from your upland into your lowland could be a violation of the Clean Streams Law and Federal Water Pollution Control Act. Similarly, an isolated wetland located in a "special protection (HQ or EV) watershed" could be "upgraded" from its classification as "other wetlands" — for which you could get a permit to affect — to Exceptional Value — where for all practical purposes you couldn't get any permit. PLA has filed comments opposing DER's proposal.

**Fish and Wildlife Service Advances On All Fronts**—The FWS is not an enforcement agency as such but it acts like one, thinks like one and appears to be assuming other powers as well. It is bad enough that it recently identified over 800 new species as "endangered" under the Federal Endangered Species Act ("ESA") but Interior Secretary Babbitt says endangered species is his top priority so you can't expect his underlings to back away from adding more species under the ESA. However, its actions by engaging in lobbying against state wetlands reform legislation in Harrisburg and attempting to issue enforcement orders in Pennsylvania under laws it is not authorized to enforce suggests that the FWS is a rogue agency running amok.

## State and National Advocates for Property Rights

Since its inception in 1987, PLA has networked with literally hundreds of organizations nationwide. Networking has enabled us to get our messages on wetlands and other private property rights issues to landowners and organizations in other states, while they in turn informed us on scenic river designations, endangered species, and issues affecting land use in their regions of the country. Networking has also allowed the grassroots movement the ability to have a much greater impact upon Congress and our state legislatures through this information exchange and through fax networks and political action response teams established nationwide.

**"People who don't  
have time to write  
letters can now  
touch a couple of  
buttons and tell their  
Congressman what  
they think."**

This networking led PLA and a group of organizations concerned with environmental issues and their affects on private property rights to meet in 1989 to discuss the formal organization of a national property rights advocate. And from that meeting came the Environmental Conservation Organization (ECO), an association promoting environmental stewardship while recognizing the legitimate rights of private landowners. Since its formal inception, ECO has grown into a well-known and highly

*Continued on Page 4*

respected organization leading the way on major property rights issues.

This was evident at the annual ECO Convention held in Reno, Nevada, February 18-20. Noted speakers were on hand to inform grassroots leaders about a host of national issues including wetlands, endangered species, global warming, water quality, property rights on both public and private lands and a host of other topics.

Several PLA directors attended the Reno conference to hear these important messages, as well as to relay the grassroots perspective on how and where improvements can be made to make the national property rights movement even more effective. Attorney Hank Ingram and Consulting Forester Robert McColley were on hand to assist at PLA's exhibit and PLA Vice-President Robert Brace discussed political strategy ideas before a live audience with representatives from several organizations including the American Farm Bureau, American Sheep Industry, James Madison Institute, and Putting People First, a grassroots organization promoting the use of animals for medical research while maintaining humane and ethical standards in their treatment.

"Posting for Support" was an issue promoted by PLA and discussed at length with several representatives as a "national" way to educate the uninformed general public, media, state legislatures and Congress about critical property rights issues. "In today's preservationist movement and era of regulatory takings, private property has become a landowner's biggest liability; yet, it

can still be his best asset in retaining his property rights if he uses it to educate the uninformed," stated Robert Brace. "But only if it is done on a massive scale and a united effort will landowners be able to prevail. Time is running out of we are to make a real difference."

**"...private property has become a landowner's biggest liability; yet, it can still be his best asset in retaining his property rights if he uses it to educate the uninformed."**

Another unique and exciting program was unveiled at the conference which will make the efforts of concerned grassroots activists even more effective. Known as "ECO-ACCESS," the program will provide ECO members and members of affiliated organizations with the ability to directly access key policy makers. "People who don't have time to write letters can now touch a couple of buttons and tell their Congressman what they think," stated ECO Vice-President Henry Lamb.

Be sure to read more about this exciting new system from the insert in this newsletter and order your ECO-ACCESS card today!



PLA Vice-President Robert Brace (L) and Director Hank Ingram (R) spend time at PLA's exhibit at the Reno ECO Convention.

## ECO CONFERENCE GUEST SPEAKERS

**Michael Rothschild, President**  
Bionomics Institute

**Lee Wray Russell**  
Associated General Contractors

**John Hozemann, Chief Economist**  
American Farm Bureau

**William Hazelline, Ph.D., B.C.E.**  
Environmental Consultant

**Ruth Kaiser, Executive Director**  
National Federal Lands Conference

**Senator Steve Symms**

**Clark Collins, Executive Director**  
Blue Ribbon Coalition

**Joe Wrabek, Author**

**Nancie Marzulla, President &  
Chief Legal Counsel**  
Defenders of Property Rights

**Dr. Hugh W. Ellsaesser**  
Participating Guest Scientist

**Dr. Robert Balling**  
Lawrence Livermore National Laboratory

**Dr. Dixy Lee Ray**  
Former Governor, WA  
Former Chair, Atomic Energy Commission

**Gen. Richard Lawson, President**  
National Coal Association

**Kathleen Hartnett, Associate Director  
of Private Lands**  
National Cattleman's Association

**Rhod Shaw**  
Office of Congressman Jimmy Hayes

**Tom McDonald, Executive Director**  
American Sheep Industry

**Robert Brace, Executive Vice-President**  
Pennsylvania Landowners' Association

**John Cooper, Executive Director**  
James Madison Institute

**James Catron, Legal Counsel**

**Ronald J. White, Resource Management  
Consultant**

**Henry Lamb, Executive Vice-President**  
Environmental Conservation Organization

**Candace Crandall, Executive Vice-President**  
Science & Environmental Policy Project

**Fred Singer, President**  
Science & Environmental Policy Project

**Herb Manig, Natural Resource Director**  
American Farm Bureau

**Kathleen Marquardt, Chairman**  
Putting People First

**Trent Clark, Executive Secretary**  
Idaho Private Property Coalition

# Property Rights Activist Urges Landowners to Fight Government Agencies

The Pennsylvania Landowners' Association annual membership meeting was held at Fort LeBoeuf High School Auditorium on February 1, 1993 with about 325 individuals in attendance. The evening's guest speaker was Charles Cushman, Executive Director of the National Inholders Association, an organization representing private land holdings and natural resources within national park boundaries.

Cushman's program centered on government policies affecting land use, including the federal Wild and Scenic Rivers Act and the Endangered Species Act. "Somewhere along the line you are going to have to draw a line in the sand and begin to fight back," stated Cushman. "You must resign yourself to the fact that you are going to have to deal with people who have a different outlook on these (property rights) issues."

Cushman called most people in the environmental movement "preservationists" who are bent on imposing greater limits on land use. "They want to take control of the land and throw you and your neighbor off," he claimed. He added that "We (landowners) do not oppose clean air and clean water.

We're not talking about trashing the environment. But you ought to be afraid of the U.S. Environmental Protection Agency because they have plans to control a lot of land."

He criticized the federal Wild and Scenic Rivers Act, claiming "It's all about land-use control and has nothing to do with clean water." Last year, portions of approximately 30 streams in Pennsylvania were proposed for Congressional authorization for study status under the Federal Act. In addition, segments of virtually hundreds of streams within the Commonwealth have been targeted for inclusion under the Pennsylvania Act. "And if these potential designations aren't enough for property owners to worry about," stated Rhonda McAtee, PLA Executive Director, "individuals are

**"It's all about land-use control and has nothing to do with clean water."**

now being faced with high quality and exceptional value stream designations which can effect land use within an entire watershed."

Several visual aides were on hand for attendees including a Pennsylvania map depicting special protection watersheds within the state, as well as rivers targeted for, or already designated under the federal Wild and Scenic Rivers Act, including portions of the Allegheny and Delaware rivers.

Members also received updates on several land use issues including wetlands and natural heritage listings, as well as being informed once again of the importance and effect of PLA's "posting for support" program and the plight of the grassroots movement in educating the general public, our legislators, and the media about the unfair and confiscatory land-use policies being promoted by preservation groups nationwide. Various signs used by property rights groups across the nation were on hand for

**"Somewhere along the line you are going to have to draw a line in the sand and begin to fight back"**

viewing to show that the concept of using private land as an educational resource is not new and one that needs to be used on a much larger scale. PLA feels that its program

is unique, however, because it doesn't seek to eliminate land access, but rather seeks to educate the uninformed public and solicit crucial support, exposure and funding for the organization. "This trend continues to grow as more states discover the positive effects such a program can have if implemented and properly promoted," stated Rhonda McAtee. "Posting is the best way to initiate a silent, but highly effective grassroots rebellion to the unconstitutional taking of private property. The sooner landowners realize this and stand united, the closer we'll be to retrieving our lost property rights."

*Editors Note: A sampling of just a few posters being used in other states are illustrated at the right. Additional information regarding posting and priority areas targeted for state listings under the Pennsylvania Wild and Scenic Rivers Act follow on pages 6-9.*

## NO HUNTING

WITHOUT WRITTEN PERMISSION

If you are a member of, or affiliated with:  
The National Wildlife Federation,  
The N.D. Wildlife Federation, National  
Audubon Society, D.U. or  
U.S. Fish & Wildlife....

**DON'T EVEN ASK!**

Name \_\_\_\_\_ Date \_\_\_\_\_  
Member of North Dakota Landowners' Association



MEMBER OF  
Pennsylvania Landowners'  
Association, Inc.

IN AFFILIATION WITH  
NATIONAL ENVIRONMENTAL  
CONSERVATION ORGANIZATION

## Private Property

Entry With Permission Only  
Due to Government Land Use Over-Regulation  
MEMBERSHIP ENCOURAGED

## PRIVATE PROPERTY

The Use of This Land Is a Privilege

If you are a member of ONRC,  
Wilderness Society, Sierra Club,  
Audubon Society, USFW or other  
Preservationist Group

**ACCESS MAY BE DENIED**

Please ask me why

Name \_\_\_\_\_  
Sponsored By Oregon Lands Coalition

## POSTED

NO TRESPASSING

Trespassers will be prosecuted  
due to the loss of our  
property rights by Act 200.

**THIS LAND IS CLOSED TO ALL  
FORMS OF RECREATION**

Call your legislators and  
make your voice heard!

Support  
**LANDOWNERS UNITED**  
P.O. Box 682 • Newport, Vermont 05855

# Pennsylvania Scenic Rivers System: First Priorities

## GROUP A

### DELAWARE RIVER BASIN

#### List A

1. Delaware River

#### List C

2. Bush Kill
3. Delaware River

#### List D

4. Mud Run
5. Jeans Run
6. Glen Onoko Falls
7. Lehigh River

#### List E

8. Delaware River

#### List F

9. Schuylkill River

#### List G

10. West Branch Brandywine Creek
11. East Branch Brandywine Creek
12. Brandywine Creek

### SUSQUEHANNA RIVER BASIN

#### List I

13. Schrader Creek
14. Susquehanna River

#### List L

15. Black Moshannon Creek
16. Moshannon Creek
17. Mosquito Creek
18. Driftwood Branch Sinnemahoning Creek
19. Sinnemahoning Creek
20. Hammersley Fork
21. Lick Run
22. North Fork Beech Creek
23. Beech Creek
24. Pine Creek
25. Loyalsock Creek
26. West Branch Susquehanna River

#### List M

27. Penn Creek
28. Susquehanna River

#### List N

29. Spruce Creek
30. Little Juniata River
31. Tuscarora Creek
32. Juniata River

#### List O

33. Laurel Run
34. Stony Creek
35. North Branch Muddy Creek
36. South Branch Muddy Creek

37. Muddy Creek
38. East Branch Octoraro Creek
39. Stewart Run
40. West Branch Octoraro Creek
41. Octoraro Creek

### OHIO RIVER BASIN

#### List Q

42. Kinzua Creek
43. Brokenstraw Creek
44. East Branch Tionesta Creek
45. Tionesta Creek
46. West Branch French Creek
47. South Branch French Creek
48. Muddy Creek
49. Cussewago Creek
50. Lake Creek
51. Sugar Creek
52. French Creek
53. Allegheny River

#### List R

54. Clarion River

#### List S

55. North Fork
56. Allegheny River

#### List U

57. Squaw Run

#### List V

58. Laurel Hill Creek
59. Casselman River
60. Meadow Run
61. Cucumber Run
62. Jonathan Run
63. Indian Creek
64. Dunbar Creek
65. Youghiogheny River

#### List W

66. Wolf Creek
67. Slippery Rock Creek
68. Connoquenessing Creek

## GROUP B

### DELAWARE RIVER BASIN

#### List E

69. Tohickon Creek

#### List F

70. South Branch French Creek
71. French Creek

### SUSQUEHANNA RIVER BASIN

#### List K

72. Susquehanna River

#### List L

73. South Branch Bennett Branch
74. Cross Fork
75. Kettle Creek
76. Left Branch Young Womans Creek
77. Young Womans Creek
78. Fishing Creek
79. West Branch Susquehanna River

#### List N

80. Sinking Run
81. Raystown Branch Juniata River
82. Juniata River
83. Juniata River

#### List O

84. Sherman Creek
85. Letort Spring Run
86. Mountain Creek
87. Yellow Breeches Creek

### OHIO RIVER BASIN

#### List Q

88. Oil Creek

#### List R

89. Bear Creek

#### List U

90. Buffalo Creek

#### List V

91. Youghiogheny River

#### List W

92. Dutch Fork
93. Buffalo Creek
94. Enlow Fork
95. Dunkard Fork

### LAKE ERIE BASIN

#### List X

96. Little Elk Creek
97. Elk Creek
98. Walnut Creek

### POTOMAC RIVER BASIN

#### List Z

99. West Branch Conococheague Creek

## GROUP C

### DELAWARE RIVER BASIN

#### List C

100. Bushkill Creek

#### List D

101. Jordan Creek
102. Lehigh River

#### List E

103. Cooks Creek

#### List F

104. Maiden Creek
105. Perkiomen Creek
106. Wissahickon Creek

### SUSQUEHANNA RIVER BASIN

#### List I

107. Meshoppen Creek
108. Mehoopany Creek

#### List L

109. Kettle Creek
110. Muncy Creek

#### List N

111. Frankstown Branch Juniata River
112. Little Juniata River
113. Detweiler Run
114. Standing Stone Creek
115. Great Trough Creek

#### List O

116. Conodoguinet Creek
117. Conestoga River
118. Susquehanna River

### OHIO RIVER BASIN

#### List P

119. Allegheny River

#### List S

120. Allegheny River

#### List U

121. Allegheny River

#### List V

122. Youghiogheny River

#### List W

123. Connoquenessing Creek
124. North Fork Little Beaver Creek
125. Aunt Clara Fork Kings Creek

Source: Scenic Rivers Inventory Department of Environmental Resources Bureau of Water Resources Management, Division of Rivers and Wetlands Conservation and the Pennsylvania Wild and Scenic Rivers Task Force: Harrisburg, PA, April 1990.

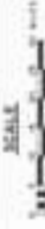
#### Editors Note:

Portions of the above listed rivers targeted for classification can be identified by referencing the "list" categories with the proper drainage basins further illustrated in the Scenic Rivers Inventory booklet available through the Department of Environmental Resources, Bureau of Scenic Rivers Office at (717) 541-7803.

# Special Protection Watersheds of Pennsylvania



HIGH QUALITY WATERSHEDS  
 EXCEPTIONAL VALUE WATERSHEDS



ORIGINAL MAP PRINTED IN 1979 FOR THE  
 DEPARTMENT OF ENVIRONMENTAL RESOURCES BY  
 THE LYCOMING COUNTY PLANNING COMMISSION  
 REVISED 1982

Source: Department of Environmental Resources  
 Bureau of Water Quality Management

# SIGNS OF A

## Landowners, Angry at Pemigewasset Initiative...

By Paula Tracy

A statewide land posting initiative by a property rights group has sent shock waves through the hunting, fishing and environmental communities.

Members of the New Hampshire Landowners Alliance are promoting the "educational" signing to convey concerns about government over-regulation.

They expect to have over 100,000 private acres in New Hampshire posted by spring. Posting is the legal act of placing a sign on one's property to bar access.

"The response has been tremendous. In one week, we got over 10,000 acres, including three miles on the Pemi," said Cheryl A. Johnson of Campton, president of the landowners alliance.

Thirty miles of the Pemigewasset River are under study for federal designation as a Wild and Scenic River. The legislation would protect the river from federal dams and other impoundments.

The decision to ask landowners to post land came as a result of the landowners' opposition to Wild and Scenic designation.

The signs cite "government land-use over-regulation," as reason for the signs. Concern for the state's efforts to create more public space and access to water bodies are also a chief concern, Johnson said.

The initiative will have at least two signs: one that bars access without permission and a second that states that use of the land is not a right but a privilege.

In the legal sense, most agree that the first sign is legally the same as posting while the second could be construed as informational.

But representatives of organizations for hunters, bird watchers, hikers, canoe-

ists, anglers and timberland owners have sounded the alarm over the initiative.

"It's a self-acknowledged, environmental backlash," said John W. Corrigan, chair of New Hampshire Council of Trout Unlimited.

"Access is a general problem in New Hampshire and posting goes against the fine New Hampshire tradition that the land is open to responsible users," he said.

Others said they fear it could lead to further erosion of what access they currently enjoy.

Johnson of the landowners alliance said that fear is unfounded.

"This is not designed to alienate anyone. It's an educational sign," she said. She stressed they do not bar access, but draw

attention to the private property owners who take care of it.

"That is debateable.... There is no question access is changing for the worse in this state and this effort doesn't help us," said Mary J. Shriver, executive director of the New Hampshire Wildlife Federation.

The state affiliate of the National Wildlife Federation, Shriver's is a non-profit environmental group with 56,000 members, 95 percent of which are New Hampshire residents.

"We represent people who spend time in the woods—hunters, hikers and trappers. We always encourage our members to ask permission. But when people are encouraged to post their land, it shuts off a resource which is there and belongs to everyone," Shriver said.



Cheryl Johnson of Campton, head of the New Hampshire Landowners Alliance, holds one of several types of signs to be used by landowners across the state.

(Photo Courtesy of The Union Leader)

# BACKLASH

## Plan Statewide 'Postings'

She said the group has come out in support of Pemi Wild and Scenic designation.

Charles R. Niebling, executive director of the New Hampshire Timberland Owners Association said the posting effort is "very counterproductive."

"I understand their frustrations but I have to ask what regulations do they feel are so onerous," Niebling said. "If there was a serious issue of property rights infringement in this state, we would be in the middle of it. I am at a loss."

**"...when people are encouraged to post their land, it shuts off a resource which is there and belongs to everyone."**

—MARY J. SHRIVER  
Executive Director  
New Hampshire Wildlife  
Federation

Johnson said there are far too many regulations for her to list.

But she has publicly expressed concern for the Clean Water Act, The Clean Air Act and the Endangered Species Act in addition to the Wild and Scenic Rivers Act.

Corrigan said "those are very important laws that responsible hunters and fishermen in New Hampshire have been pushing for years, and they are against them?"

The posting program of the New Hampshire Landowners Alliance is in conjunction with the Environmental Conservation Organization (ECO), which is behind similar programs in 18 states.

Niebling said the effort could affect some of the three million acres in the state

that is held in current use, which allows a property tax break for the landowners.

"A lot of people in this state feel if you get a tax break you shouldn't be able to post your land," he said, "the problem with posting is it will exacerbate the issue, which comes up perennially."

"Any landowner who enrolls in that is going to lose their 20 percent recreation deduction," he warned.

Johnson said that would only apply to one of the signs, which requires permission for property usage.

She said support for the posting initiative and the NHLA has its strongholds in the Plymouth area, but also has seen support for residents who live along the Upper Contocook River.

Property rights group leaders gathered here Friday and yesterday for a series of talks, sponsored by the landowners alliance entitled "Take a Stand for Your Land." The posting initiative, a cornerstone for the weekend, was announced at a press conference at the beginning of the weekend.

Not far from the site of the press conference, the Plymouth Town Common, a group of residents handed out leaflets in support of Wild and Scenic designation.

One group which has pushed for the establishment of the Vote "Yes" for the Pemi

organization has been the Society for the Protection of New Hampshire Forests.

Richard Ober, forest society spokesman, said the posting "flies in the face of all sorts of conservation issues."

But Johnson stresses the posting is not meant to get anyone upset.

"The public needs to be educated that the scenic beauty of New Hampshire is due to careful stewardship and conservation efforts of the private landowner," she said.

Reprint permission of *New Hampshire Sunday News*, Manchester, NH, February 7, 1993

## HIGHLIGHTS

The New Hampshire Owners Alliance is promoting "educational posting" to fight government over-regulation.

The group expects that more than 100,000 private acres will be posted by spring.

Hunting and fishing groups fear it will block access to wilderness areas.

Timberland owners fear it will lead to new debate on wilderness property tax credits.

### Editors Note:

PLA found it strange that the New Hampshire Timberland Owners Association (NHTOA) was so unaware of excessive government land use policies such as those mentioned by Cheryl Johnson of the Landowners' Alliance. The timber industry in Pennsylvania, as well as across the country, has been very hard hit with excessive environmental and land use regulations in recent years. In discussions with Cheryl Johnson, it was indicated that the NHTOA was involved with various state subsidy programs and feared losing "tax breaks" on certain timber lands if signs were posted. They have obviously missed the "bigger picture," however, not realizing that programs such as Wild & Scenic River designations can totally prohibit any timber production. Just ask landowners in other parts of the country who have already experienced a Wild or Scenic designation. Additionally, New Hampshire timberland owners need to ask themselves if a tax break is worthy of sacrificing their private property rights.

# ECO-VILLAINS?

**No — just pawns in the federal land-grab scam**

**H**is prison ID number is 27445-037. His name is William B. Ellen. On November 30th of last year, after losing a three-year legal battle that pitted him against the United States Justice Department, the FBI, the Army Corps of Engineers, the Soil and Conservation Service, and the Environmental Protection Agency, Bill Ellen entered the Petersburg Correctional Camp, a federal prison at Petersburg, Virginia.

In the closing days of 1992, thousands of petitions, letters, phone calls, and telegrams poured into the White House appealing to President George Bush to pardon Ellen. The pardon effort was organized by the Fairness to Land Owners Committee (FLOC) and Alliance for America, organizations networking with property owners groups nationwide to defend property rights. But the United States government had expended enormous resources — manpower, tax dollars, and political capital — to put this dangerous felon behind bars and President Bush was not about to release this menace to society at the behest of some motley, misguided letter-writing campaign.

What kind of heinous criminal is Ellen that authorities would decide to throw the full weight and power of the federal government into the effort to bring him down? A top lieutenant to Mafiosa don John Gotti or Colombian drug kingpin Pablo Escobar, you guess? Not even close. An Iraqi-paid assassin, mass murderer, car-jacker, or kiddie porn ringleader? Wrong again.

Ellen is not the kind of man one usually associates with "America's Most Wanted." But to the powerful environ-

*Mr. Jasper is senior editor of THE NEW AMERICAN and author of Global Tyranny ... Step by Step.*



Ocle and Carey Mills went to jail for making improvements to their half-acre parcel

mental lobby that apparently controls the Justice Department's prosecution priority list, the Bill Ellens of this world are vicious "environmental criminals" who rank in the "Public Enemy Number 1" category.

The 47-year-old eco-villain was convicted in January 1991 on five of six counts of violating Section 404 of the federal Clean Water Act by destroying wetlands without a federal permit. Truly

dastardly acts deserving of the harshest punishment say the green crusaders. Yes, filling a wetland is very serious stuff these days. It conjures up ugly images of greedy capitalists bulldozing the Everglades, dumping tons of mercury into pristine riparian ecosystems, or paving over the last aquatic habitat of the snowy egret and the furbish lousewort.

But that isn't what Ellen was doing.

WILLIAM F. JASPER

Indeed, Bill Ellen was *creating* wetlands. Yes, Bill Ellen was constructing a waterfowl sanctuary, complete with duck ponds, marshes, and wetland vegetation — on what was previously dry land. He was planning “to create duck heaven.” For this “crime” he is now serving time in the federal slammer — as a wetland *destroyer*. Confusing? As we shall see, there is very little in the absurdly convoluted and muddled federal wetlands policies that isn’t confusing.

**B**ill Ellen’s troubles started in 1987 when he accepted a job creating wetlands on the 3,200-acre Maryland estate of wealthy New York commodities trader Paul Tudor Jones. Jones had in mind to create, as the centerpiece of his estate, a 103-acre wildlife sanctuary that would attract and support geese, ducks, and other wildlife. Ellen, a conservationist and marine engineer, was hired to supervise construction of the waterfowl habitat on uplands that were so dry water had to be sprayed on the soil as a dust suppressant when work crews began moving dirt around. Ellen consulted frequently with local, state, and federal agencies, including the Army Corps of Engineers, the Soil Conservation Service, the Maryland Department of Natural Resources, and the Dorchester County Planning and Zoning Board. He obtained over two dozen permits and hired environmental consultants to complete ecological surveys of the property to make sure no wetlands were filled.

In 1989 the Bush Administration redefined wetlands. Overnight the total “wetland” area in Dorchester County jumped from 84,000 acres to 259,000 acres. Virtually the entire county had been declared a wetland. The Army Corps sent Jones a cease-and-desist order for all work at the estate. On March 3, 1989, Army Corps official Alex Dolgas and Soil and Conservation Service wetlands expert Jim Brewer visited the Jones estate and ordered all work shut down.

Ellen immediately shut down all work at the sanctuary except for construction on the management complex, a three-acre site where a couple of houses and a kennel were under construction. He pointed out to Dolgas and Brewer that Brewer had inspected the area only a month previously and had agreed that it did not contain wetlands.

Work on the complex was already behind schedule and Ellen was facing penalties from architects and contractors if he delayed further. Ellen told the two regulators he could have another wetlands survey done by an independent consultant within 48 hours and would shut down work on the complex if the survey showed that the area did indeed include wetlands. But he did not want to shut down and break contractual obligations, only to find that the federal government’s fickle paper shufflers had goofed again. (As the judge presiding over Ellen’s trial noted: “The fact that a government employee says a permit is required does not necessarily make it so.”)

According to Ellen, Dolgas wouldn’t accept the offer for a new survey and “got in a huff, jumped back in his truck and left.” Ellen went to a phone and called the landscape architect who was the overall supervisor of Jones’ project. After talking to the architect and reconsidering the matter, Ellen decided to comply with the Corps order. He told the foreman to halt the project. It was too late. Two truckloads of clean fill dirt had already been dumped on the dry ground of the work site. That was enough to cost Ellen his freedom.

**A** similar fate potentially awaits millions of property owners and contractors who have the misfortune to get stuck in the wetlands quagmire, a nightmarish political quagmire of ever-changing regulations, definitions, and rulings. There is not an actual federal wetlands law. The federal government claims jurisdiction over so-called “wetlands” under Section 404 of the Clean Water Act of 1972, which makes it illegal to discharge dredged or fill material into “the navigable waters of the United States” without first obtaining a permit from the Army Corps of Engineers. Federal authority over “navigable waters” is asserted under Article 1, Section 8 of the U.S. Constitution, which grants Congress power “to regulate commerce ... among the several States.”

Wetlands were not even mentioned in the Clean Water Act. Regulation of wetlands has come through judicial and bureaucratic usurpation. In 1975 the District of Columbia Circuit Court of Appeals ruled in *Natural Resources Defense Council v. Calloway* that the 1972

legislation pertained not only to the nation’s bays, lakes, streams, and rivers, but to wetlands that drain into those waterways. This sounds reasonable on the surface, since toxins dumped into wetlands draining into Section 404 waters might end up polluting our rivers. But it has provided an avenue for federal encroachment and regulation far beyond anything reasonably inferred from the wording of the law.

The Army Corps of Engineers defines “waters of the United States” to include “all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce ... tributaries [of such waters] ... [and] wetlands adjacent to [such] waters.”

But how does this apply to isolated wetlands? No problem. The federal regulators simply used ducks, geese, and other migratory birds — “interstate waterfowl” — as their nexus for “interstate commerce.” And since virtually any water hole is a potential habitat for these federally regulated feathered friends, the Corps’ jurisdiction is expanded to cover every puddle in the country and its surrounding wetlands. Every time it rains, every time a river bank overflows, every time a farmer turns on his irrigation water, new regulatable “wetlands” are created. In fact, says Senator Jake Garn of Utah, “We are getting to the point where you won’t be able to spit on the ground without the Army Corps of Engineers coming up behind you and declaring it a wetland.”

But what constitutes a wetland? There is no political or scientific consensus today on what is a wetland, says attorney Mark L. Pollot, author of *Grand Theft and Petit Larceny: Property Rights in America*. “The term ‘wetlands’ itself is not a scientific term and only began appearing recently in scientific literature,” Pollot told THE NEW AMERICAN. “But it is being defined and applied in outrageous ways by environmentalists, politicians, judges, and bureaucrats to deny property owners their rights guaranteed by the Constitution.”

Under the Carter Administration, wetlands were defined as areas flooded or saturated with ground water often enough that, under normal circumstances, they would support “vegetation typically adapted for life in saturated soil conditions.” The definition emphasized that wetlands were limited “to

only aquatic areas" — i.e. bogs, swamps, and marshes. That alone was a good-sized bite of new federal power.

But that didn't satisfy for long. Since then definitions have changed drastically and have extended Washington's jurisdiction over vast areas of dry land. Wetlands are now delineated by three highly elastic technical factors: hydrology (the wetness of the soil), the presence of "hydric" soil (usually soil with a peat, muck, or mineral base), and the presence of hydrophytic vegetation (plant varieties that tolerate standing water or waterlogged soil).

The land grabbers realized that the wetland vegetation parameters presented limitless possibilities. The Corps of Engineers, which is in charge of issuing permits for all activities on wetlands — with the EPA holding veto power — developed guidelines using a classification system of five plant types to help distinguish swamp vegetation from that found on dry land. It is those guidelines, which have evolved into a list of some 7,000 "indicator species," that have been used by the Corps and the EPA to wreak havoc with property owners. The vegetation guidelines were incorporated into the *Federal Manual for Identifying and Delineating Jurisdictional Wetlands*. This has provided the regulatory socialists with defining parameters sufficiently broad and arbitrary to claim jurisdictional control over not only every mud puddle in the country, but over completely dry land that could not be considered wetlands by the furthest stretch of the imagination. Eureka, bureaucrat heaven!

**T**he EPA insisted on including "facultative vegetation" — plant species that appear in uplands as often as wetlands — as a wetland-defining parameter. The presence of Kentucky bluegrass, poison ivy, impatiens, ash trees, dogwood trees, or any of hundreds of other facultative species now provides the federal wetlands gestapo with sufficient cause to ruin your day — and your life. According to Robert Pierce, a former Corps of Engineers regulator who helped write the guidelines for Section 404, the vegetation parameters have been transmogrified into completely nonsensical and tyrannical policy. One of the most common facultative plants, he notes, is the red maple tree, which can grow in standing wa-



Elen's unjust conviction has meant hardship for his young family

ter — or on the top of a mountain! "What is being called a wetland," says Pierce, "is not functionally different from uplands."

The original 1989 *Wetland Manual*, says Dr. Jay H. Lehr, a world renowned water scientist, "condemns as much as 300 million acres of mostly private property to a useless future in spite of the fact that it may appear high and dry to the 'untrained' eye."

Dr. Lehr warns that "the rank-and-file citizenry, which has often been willing to stand up for the rights of swamp critters, is being ambushed by the broad new definition of a wetland being fostered by environmental zealots. It is aimed far more at limiting the rights of the individual in favor of the higher causes of 'society' rather than actually giving two hoots for the native flora and fauna of our strange new dry, and often barren, 'wetlands.'"

Woe unto you if you should turn a spade of soil in a wetland without a federal permit from the Army Corps. No matter if that "wetland" happens to be in your wheat field, your drainage ditch, or your backyard. "In 99 percent of the cases that the Corps regulates, there is no threat of a true pollutant getting into drinking water," says Mark Pollot, who was a special assistant to the U.S. Attorney General during the 1980s when these tyrannical policies were being developed. "Most often, the pollutant in question is dirt, and usually dirt dumped on the same land it was dug from." No

matter. The U.S. Fifth Circuit Court of Appeals ruled in *Avoyelles Sportsmen's League v. Marsh* (1985) that a "redeposit" of soil from the same site may constitute an unlawful "discharge" under Section 404.

Such judicial malfeasance has allowed the eco-nazis to run wild. *Reason* magazine assistant editor Rick Henderson noted in a 1991 article that a "recent Army Corps ruling suggests that when owners pull tree stumps from their land, if any chunks of dirt fall from the stumps, that may constitute filling a wetland."

Or, for a real flight of fancy, try this incredible scenario: Suppose you're playing a game of sandlot baseball in your pasture, which by current definitions is deemed a wetland. You step up to the plate and, in typical baseball ritual, tap the dirt off your cleats with the end of your bat. As that trace of "hydric soil" hits the ground, an EPA-crut jumps out from behind a facultative shrub and cites you for a technical violation of Section 404 — "filling" without a permit. Ridiculous, you say? Absolutely — but government policy nonetheless. According to the late Warren Brookes ("The Strange Case of the Glancing Geese," *Forbes*, September 2, 1991), that is the scenario defense attorney John Arens laid out for one of the EPA's experts during cross examination in a wetlands trial. Yes, admitted the EPA-crut, you would technically be in violation of the Clean Water Act!

**Y**ou begin to appreciate the pickle Bill Ellen was in. For an even better appreciation, consider this courtroom colloquy on duck scatology between Judge Frederic Smalkin of the U.S. District Court in Baltimore and Charles Rhodes, one of the EPA's top wetlands experts and a star witness for the prosecution against Ellen. Judge Smalkin was puzzled. Is it not true he asked, that Ellen was replacing dry, forested "wetlands" with duck ponds?

"The sanctuary pond," replied Rhodes, "is designed to have a large concentration of waterfowl, and before the restoration plan was implemented, all that fecal material [from the ducks and geese] was geared to be discharged right into the wetlands, whereas now it is actually designed to go through like a treatment system through the wetlands. So that would have a negative impact, a water quality impact."

Judge Smalkin, not being a wetlands "expert," and, apparently, not sure he hadn't missed something in the explanation, asked incredulously: "Are you saying that there is pollution from ducks, from having waterfowl on a pond, that pollutes the water?"

To which the EPA's Rhodes replied: "Your honor, when you concentrate a large number of ducks —"

Judge Smalkin: "Have you ever been on the Eastern Shore, Mr. Rhodes?"

Rhodes: "Yes, your honor."

Smalkin: "Aren't there ponds naturally that have large concentrations of ducks and geese?"

Rhodes: "Yes, your honor."

Smalkin: "Are they polluted?"

Rhodes: "Your honor, a lot of those are tidally flushed."

Smalkin: "A lot of them aren't."

Rhodes: "Yes, your honor."

Smalkin: "Aren't there a lot of fresh water ponds?"

Rhodes: "Yes, your honor."

Smalkin: "And is it against the law to have ducks and geese on them?"

Rhodes: "No, your honor."

You begin to see the precise science and complex nuance of these cases! So how did the government deal with this fragile ecosystem that was so delicate Bill Ellen had to be thrown in the slammer for building a few ponds that might encourage too many ducks to poop there? Why, the Army Corps simply brought in dynamite to blast a 400-

yard channel to connect the offending ponds to the Atlantic Ocean's salty brine in Chesapeake Bay, of course. Trouble is, that brilliant scheme backfired. Yes, the Corps' eager beavers succeeded in blasting tons of the precious habitat to smithereens and raining dirt clods all over the surrounding area. But when the dust and smoke cleared the proposed "channel" had not materialized as planned.

So the government double-demes brought in a hackhoe and other heavy equipment to finish the job. Just your typical sledge-o-matic solution from the we-know-what's-best-for-the-environment bureaucrats. Like Procrustes, the mythical Greek figure who stretched his guests or sawed off their legs to fit his bed, the government had forced man and nature to fit its Procrustean dictates: Bill Ellen was in the hoosegow and the non-wet "wetland" was remediated.

To U.S. Attorney Breckenridge Wilcox, who headed the crusade to jail Bill Ellen, the conviction sends "a clear message that environmental criminals



**Pozsgai thought he had left oppressive government behind in native Hungary**

will, in fact, go to jail." Indeed, he said, "those who commit criminal environmental insults will come to learn and appreciate the inside of a federal correctional facility." The government wanted a prison term of 33 months, but Judge Smalkin sentenced the "scofflaw" to the minimum term allowed under the congressionally-mandated sentencing guidelines: six months in jail, four

months of home detention, and one year of supervised release.

Bill Ellen is hardly your typical eco-villain. A lifelong conservationist and environmentalist, Bill and his wife Bonnie have run a nonprofit animal rehabilitation center called Wildcare on their seven-acre farm in Mathews County, Virginia since 1986. They have saved over 2,000 injured ducks, geese, hawks, eagles, egrets, deer, and other animals. They were contributors to Greenpeace, the World Wildlife Fund, the National Wildlife Federation, and the Audubon Society. Until she became a mother, Bonnie ran the county's humane society. To support his family and the always growing menagerie of nature's unfortunates, Bill has worked as an environmental consultant. For several years prior he worked as a state wetlands regulator.

Bill's incarceration means both economic and emotional hardship for Bonnie and the couple's two young sons, but she's "sure that we'll make it through," she told THE NEW AMERICAN. Volunteers from throughout the county are helping with the animals. Friends, family, and total strangers have helped with important moral support. "My husband pays for all our animals' feed and some of it, like the fawn's milk, is very expensive. Without Bill's income it's very tough." Then there's the mortgage and legal expenses, of course.

**B**ut Ellen's punishment is not as severe as that meted out to fellow enviro-criminals John Pozsgai or Ocie and Carey Mills. Pozsgai, a self-employed mechanic, was sentenced to 27 months in prison and a fine of \$202,000. His crime: cleaning up thousands of tires and rusting car parts that littered the property he had bought for the purpose of building a new repair shop. After removing the tons of junk, he spread clean fill dirt on part of the site, an activity that state officials told him required no permit (see THE NEW AMERICAN, June 1, 1992, "Net Loss of Freedom"). But federal officials said the presence of "skunk cabbage" and "sweet gum trees" made it a wetland. He spent nearly two years in Allenwood Federal Prison for his "crime." Now out of jail, John Pozsgai must still battle the envirocrats to get permission to build on his own land.

"It's destroyed our business, it's been

absolutely devastating to our family, financially and emotionally," Pozsgai's daughter, Victoria Pozsgai-Khoury, said of the prolonged struggle in a recent telephone interview with THE NEW AMERICAN. "No American family should have to go through what we have gone through." The experience sorely tried Mr. Pozsgai's faith in the American system of justice, one of the attractions that had led him to flee to this country from Hungary in 1956.

"When you put dirt on top of dry dirt in your own back yard, where the water table is nine feet below the ground and they throw you in prison, what kind of justice do we have?" Mrs. Pozsgai-Khoury asks. "My family escaped from a communist country where the government can take your land away and came to America where that kind of thing is not supposed to happen. It's as though the government is trying to make it impossible for the private citizen to own property, or to enjoy the freedom and prosperity that comes from owning your own land."

"All we have been saying," says Pozsgai-Khoury, "is 'No confiscation without compensation,' which is what the Fifth Amendment of the Bill of Rights guarantees us." Indeed it does. The "supreme law of the land," which every public official swears to defend and protect, declares: "No person shall be ... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

Under American constitutional law, if the government has a compelling need for land — for, say, a military base or a prison — it may exercise its power of eminent domain and compel an owner to sell, but the owner must be paid a "just compensation."

With the rise of environmental regulation, government "takings" has taken on new meaning. In most instances the enviro-regulators do not take private property outright. But they often regulate its use so tightly that it becomes unusable to the owner. Designations of private property as wetlands, endangered species habitat, natural landmark, or national park land are prime examples of this kind of taking.

Fortunately for property owners, some long-awaited judicial relief came last year with the U.S. Supreme Court's ruling in the case of David Lucas. In

1986 Lucas purchased two lots in coastal South Carolina. In 1988 the state's new coastal zoning law effectively barred him from building any structures on his property. Lucas filed suit against the state seeking compensation for the lots' purchase price under the Fifth Amendment's takings clause. In a landmark decision on June 29, 1992, the U.S. Supreme Court ruled in Lucas' favor.

Justice Antonin Scalia, writing for the Court, said in the decision, "affirmatively supporting a compensation requirement, is the fact that regulations that leave the owner of land without economically beneficial or productive options for its use — typically, as here, by requiring land to be left substantially in its natural state — carry with them a heightened risk that private property is being pressed into some form of public service under the guise of mitigating serious public harm." Property rights advocates have justly hailed the Lucas decision as a great victory, but recognize that it is only a battle in a long war that currently involves millions of real and potential casualties — property owners whose livelihoods and life savings are at stake.

In the case of Ocie and Carey Mills, the father and son team was sentenced to 21 months in the penitentiary and fined \$5,000 for cleaning out an existing drainage ditch and placing fill dirt on part of their half-acre parcel of land in Santa Rosa County, Florida. Their activities had been authorized by the state Department of Environmental Regulation and constituted no threat to man or nature. The state DER said the area they were filling, to build a house for Carey, was uplands. The Army Corps said it was wetlands.

The Millses finished their prison term in November 1990. But their ordeal wasn't over. In March 1991, the government went to court claiming the Millses had not restored the property within 90 days of their prison release, a term of their probation. The Millses claimed they had complied. The judge sided with the defendants. He noted that the Corps-mandated "restoration" had left the lots in question "totally denuded and ugly" and that further "restoration" as demanded by the Corps would destroy the property's value.

In his ruling in *United States v. Ocie*

*Mills and Carey C. Mills*, Judge Roger Vinson of the United States District Court for the Northern District of Florida wrote:

After having heard all of the evidence and having personally inspected Lot 20, I find that the elevation of Lot 20 is now at, or in some instances, below, the elevation as it existed in December of 1985. The Government's contention that ten more inches of soil need to be removed from Lot 20 would result in turning Lot 20 into a pond, an undesirable condition. The lot is now totally denuded and ugly, in stark contrast to the beautiful lot that existed prior to 1986. Although there are detectable amounts of clay remaining on the lot, I find that the defendants have met the requirements of the site restoration plan insofar as it applies to the elevation.

The ditch lying between Lots 20 and 19 is now a stagnant pond. It needs to be further filled, and allowed to function as a natural drain into East Bay.... In sum, however, I find that both defendants have substantially complied with the site restoration plan which was required as a condition of their supervised release. The petition for a finding of a violation of their supervised release condition is, therefore, DENIED.

"God works in mysterious ways," Ocie Mills said after Judge Vinson's ruling. "And I hope in some ways he uses my misery and the ordeals I've put my family through in the best interest of preserving freedom and property rights throughout America." But the Millses' tribulations are not over yet. After the Millses' court victory the Army Corps issued still another cease and desist order to keep the persecuted property owners from continuing work on their land. The State DER also sued them. The courts ruled against the state. Florida appealed and lost again. Ocie and Carey are now pressing a \$25 million civil lawsuit against the federal government and are suing to have their criminal conviction (for which they already served the time) set aside to clear their records.

As one might imagine, the Mills fam-

ily has paid a heavy price. "It totally destroyed us financially since it put both breadwinners in jail," Ocie Mills told THE NEW AMERICAN. "And all the while, of course, the government was able to use our tax dollars against us." The family has been continuously on the verge of losing their home. "Our banker has been very good and understanding of our situation and worked out an arrangement for us just to pay the interest," says Mills. While they were in prison they were able to get by ("just barely") though a number of times they missed even the interest payments. "We've been just a step ahead of foreclosure, hanging on by the skin of our teeth, you might say."\*

To the thousands of members of property rights organizations across the country, the Ellen, Mills, and Pozsgai families are heroes, and symbols of the injustice that landowners all too often face when confronted by federal land use policies. But to government eco-zealots like Lance D. Wood, assistant chief counsel for environmental law and regulatory programs for the Army Corps of Engineers, they are "egregious scofflaws" who deserve no sympathy. At a San Francisco conference on "Regulatory Takings" sponsored by the Pacific Legal Foundation last year, Wood unblinkingly defended the government's hounding of Ellen, Mills, and Pozsgai. "The fact is," said Wood, "that criminal prosecutions are only brought against the most egregious scofflaws, individuals who repeatedly, flagrantly thumb their noses at the law."

Moreover, said the Corps' attorney, "my study of the Pozsgai case, Bill Ellen's case, the Ocie Mills Case, the universal rule seems to be that only when these individuals perform as scofflaws, thumbing their nose at the law, and in the case of some of these individuals, defying federal court orders that they stop illegal fill activity, do they receive federal prosecution and the judges throw the book at them." "So how much sympathy you want to have for people who virtually invite this kind of criminal action is up to you," Wood continued. "But from what I've seen of these cases, for their own ideological reasons [they have] brought this kind of prosecution on themselves. They have taken this kind of illegal and irresponsible actions [sic] and they must face the

consequences."

Those who take the time to study the above cases and many similar ones across the country are more likely to conclude that it is government officials like Wood who are the egregious scofflaws, thumbing their noses at due process and the rights of law-abiding, tax-paying citizens. And Wood's colleagues in the Justice Department who are throwing Americans into jail for alleged violations of these idiotic regulations know that they are involved in an enormous scam. Evidence of this knowledge includes a January 1989 memorandum from Assistant U.S. Attorney General Stephen Markham concerning one of the government's wetlands cases. After repeatedly admitting that federal wetland policies are built on legal quicksand, the memo concluded: "The Corps and the EPA appear to have circumvented the Constitution's requirements ... and the federal and circuit courts have not corrected them."

The Army Corps and the EPA would have you believe that the Ellen, Mills, and Pozsgai cases are rare exceptions, that most landowners breeze through the permit process without a hitch. The permit process has been streamlined and 95 percent of applications are approved, officials claim. Journalists accept these statistics uncritically and parrot them to show that wetlands policies are not as onerous as property owners claim. Have the bureaucrats streamlined the process? "In their imaginations only," says Victoria Pozsgai-Khoury, who has become an outspoken leader in the property rights movement. "For the average property owner it's practically impossible to get through the maze."

Margaret Ann Reigle agrees. When Mrs. Reigle retired as vice president of finance at the *New York Daily News* and moved with her husband to Dorchester County, Maryland, becoming a crusader was the furthest thing from her mind. But when she saw the devastating effect of the wetlands policies on her neighbors, she founded the Fairness to Land Owners Committee to fight back, help landowners, and lobby Congress. Since its beginning on July 3rd of 1990 the group has attracted 11,000 members — "abused landowners" — from 45 states.† "Most of our members — probably 90 percent — are wetlands cases," she says. And that is just the tip of the iceberg. Property rights groups have

sprung up in every state. Faced with this growing rebellion, EPA chief William Reilly admitted in March 1991: "Everywhere I traveled I heard a local wetlands horror story — not just from farmers, but from developers and respected political leaders."

Those who are hoping for regulatory relief from Reilly's replacement, Carol Browner, should talk to Ocie Mills. As head of the Florida DER she was anything but a champion of property rights. That Clinton reportedly named her to the top EPA post on the recommendation of her "good friend," Vice President Al Gore, should also speak volumes about her deep green bonafides.

The opportunity to abolish the wetlands gestapo is fast approaching. One of the issues likely to be scheduled for early consideration in the new Congress is reauthorization of the Clean Water Act. The preservationist fanatics will be lobbying mightily for far more stringent and abusive "wetland protection." The Capitol should be *swamped* with letters and telephone calls from earnest constituents demanding that their congressional representatives get Washington out of the wetlands regulatory business altogether. ■

\* The full story of the Millses' saga is told in their soon-to-be-released book, *Shadow on East Bay*. Ocie Mills can be contacted at his American Environment Foundation, telephone: (904) 939-4078.

† FLOC, 1730 Garden of Eden Road, Cambridge, MD, 21613.

Reprinted with permission from  
*The New American*  
Volume 9, No. 3, February 8, 1993

# Updates

## REP. THOMAS RIDGE ANNOUNCES CANDIDACY FOR PA GOVERNOR....

Rep. Thomas Ridge, co-author of H.R.1330, the Wetlands Conservation & Management Act and co-sponsor of previously introduced property rights legislation, announced on February 1, 1993 that he will seek the office of Governor of Pennsylvania in 1994. This is encouraging news for property rights advocates who have witnessed a very unsupportive role regarding landowner rights by current Governor Robert P. Casey.

## PROPERTY RIGHTS PREVAIL IN NATIONWIDE SURVEY....

Recently, PLA urged member participation through telephone calls in response to a January 24, 1993 USA Weekend article debating environmental policy for the new administration. "Face-off on the Environment" featured William Perry Pendley, President and Chief Legal Officer of Mountain States Legal Foundation and Denis Hayes, President of a Seattle based environmental group. Mr. Pendley's viewpoint in the article argued against extreme environmental policies of this country that lack scientific research yet are costing the American people dearly. Readers were asked to call in and cast a vote for the side they agreed with in order to send a message to the Clinton administration on the direction environmental policy should take. The results: 62% for Mr. Pendley - 38% for Mr. Hayes. Thanks to all members who participated in the polling and apologies to those who were persistent but unsuccessful in their attempts to locate the USA insert. PLA was not advised that the insert would only appear in various editions in cities nationwide.

## PRIVATE PROPERTY RIGHTS ACT....

The freedom to own and use private property has been an issue under attack by preservationists for years and an issue still very much a priority concern with individual advocates, grassroots organizations, and many legislators at both the state and federal levels.

Presently, two states, Delaware and Arizona, have each passed their own state acts. The intent of such an act is to establish a process whereby the attorney general is

required to evaluate newly proposed regulations to ensure that passage will not result in regulatory takings of private property. Statistics released in 1990 revealed that the federal government alone faced over one billion dollars (\$1,000,000,000) in outstanding takings claims filed by U.S. citizens and companies due to excessive land use regulations.

PLA is currently working with legislators in seeking introduction of such a bill within the Commonwealth. Additionally, it

## PLA On the Move Working to Protect Your Property Rights

Look where your message has been taken recently - primarily at the expense of each individual representing YOU - not out of the PLA fiscal budget!

- Public Radio Panel Discussion, PROBE, Erie, PA—wetlands
- Public Broadcasting Service interview, FOCUS, Erie, PA—wetlands
- Media interviews—WJET-TV; WTCU-TV; WSEE-TV
- Master Farmers Roundtables, Camp Hill, PA—participant
- Wetlands Educational Meeting, Fairview, PA—host
- Pennsylvania Forest Stewardship Committee, Harrisburg, PA—represented
- Pennsylvania Land Improvement Contractors (PLICA), State College, PA—guest speaker
- Pennsylvania State Grange, Harrisburg, PA—guest speaker
- Lions Club, Union City, PA—wetland videotape presentation
- Pennsylvania Farmers' Association Annual Convention, Hershey, PA—participant
- Pennsylvania Landowners' Association Annual Meeting, Waterford, PA—Chuck Cushman guest speaker, National Inholders Association
- Scenic Rivers Educational Meeting, York, PA—PLA host with Chuck Cushman guest speaker, National Inholders Association
- Young Farmers and Ranchers, Lancaster, PA—guest speaker
- Young Farmers and Ranchers, Huntingdon, PA—guest speaker
- Westfield-Mayville Rotary Club, Westfield, NY—guest speaker
- Water Quality Standards Program Incorporation of DER's Existing Wetlands Protection Program; Public Hearing, Harrisburg, PA—represented
- Erie County Department of Planning Watershed Designation; Public Hearing, Erie, PA—represented
- State Representative Karl Boyes, Erie, PA—wetlands meeting
- Leadership Conference for Rural Northwest Pennsylvania, Sharon, PA—guest speaker, potential protection designations for French Creek
- Annual ECO Conference, Reno, Nevada—speaker/participant "Political Strategies" and conference exhibitor
- Forest County Planning Commission and Forest County Conservation District, Tionesta, PA—guest speaker

# Updates

Continued from Page 10

is anticipated that a Private Property Rights Act which passed the U.S. Senate last year will again be reintroduced in the 103rd session of Congress. When introduction of such bills occur, PLA will notify members so that letters of support can be written.

## WETLANDS....

The wetland issue is one that is still very much alive in the 103rd Congress. The federal Clean Water Act is up for reauthorization so wetlands is sure to be a priority issue. H.R. 1330, The Wetlands Conservation & Management Act and the favored bill of PLA and hundreds of organizations nationwide in the 102nd Congress, is to be reintroduced in early March. Both co-authors, Rep. Tom Ridge (R-PA) and Rep. Jimmy Hayes (D-LA) plan to reintroduce the bill in its original format. Additionally, the bill number of H.R. 1330 has been reserved by the Congressmen since individual advocates and grassroots organizations have become so well identified with this number.

Several other bills dealing with the issue have also been introduced or are planned for introduction, but none addressing the issue with the comprehensive approach as that of H.R. 1330. Two proposals worthy of noting are The Wetlands Delineation Fairness Act and The Wetlands Simplification Act. The Wetland Delineation Fairness Act, sponsored by Rep. Larry Combest (R-TX), would require all wetlands to be judged by the same criteria with emphasis placed on hydrology, while The Wetland Simplification Act, sponsored by Rep. Jim Bunning (R-KY), seeks to reduce the number of agencies that have jurisdiction over determining agricultural wetlands. Bunning's bill would place identification with the Soil Conservation Service in consultation with the U.S. Fish & Wildlife Service.

H.R. 1330, however, addresses both of these issues, in addition to a host of other problems which need to be addressed, including compensation for regulatory takings.

Rep. Don Edwards (D-CA) has again gone to bat for the preservationists by reintroducing his bill from the 102nd session of Congress. Known as Wetlands Reform Act, the bill allows the Environmental Protection

Agency (EPA) to retain its veto power over the Corps of Engineers (COE), gives the U.S. Fish & Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) a stronger role in the permitting process, tightens up the entire nationwide permitting process, appropriates additional funding to the Corps and the EPA for additional personnel, as well as for wetland "educational" programs. In his January 5, 1993 introduction, Rep. Edwards stated "The bill has the support of all the key environmental organizations..." Two PA Congressmen, Rep. Curt Weldon (R-7th) and Rep. Lucien Blackwell (D-2nd) are supporting co-sponsors of this bill. PLA members should contact these representatives voicing strong opposition to a bill so void of private property rights protection.

At the state level, Rep. Theresa Brown and Rep. Howard Fargo plan to introduce comprehensive legislation in the near future. PLA will be working with these legislators to address the legitimate rights of landowners and the regulated community.

Watch for future information on this issue regarding what you as a member can do. As always, continue to call your state and federal legislators to let them know that you support wetland reform and that addressing protection of property rights is as equally important as addressing wetland protection.

## FRIEND OF THE COURT FILED....

On behalf of the PLA, Buchanan Ingersoll, P.C. recently filed an Amicus Curiae Brief (friend of the court) in the case of Richard and Jennifer Olon v. Commonwealth of PA, Department of Corrections and Department of General Services pending before the Pennsylvania Supreme Court. The case involves the acquisition and renovation of a former college site in Cambridge Springs, PA for use as a state prison. The state agencies involved did not follow clear mandates of Pennsylvania law regarding the obligations of such agencies to comply with local zoning regulations. PLA's interest in the case stems from its concerns for the interests of private landowners, individual citizens and local government whose rights are often ignored or trampled by state government. PLA believes and will argue to the Supreme Court that state agencies must obey the law at all times irrespective of the merit of any particular action the state wishes to take and that observance of specified procedural safeguards is essential in this era of expanding government power.

## ENDANGERED SPECIES....

The endangered species list continues to expand and with that expansion comes more bureaucratic control and potential land and water use restrictions for landowners.

On February 22, 1993, the U.S. Fish and Wildlife Service officially added to the list two small freshwater clams, the northern riffleshell mussel and the clubshell mussel. One or both of these clams are found specifically in the Allegheny River in Crawford County; Conneaut Outlet in Crawford County; French Creek in Crawford and Venango counties; and LeBoeuf Creek in Erie County.

The addition of these federal listings will require an emphasis on "preserving" the clams habitat, which means further "protection" of the already pristine streams and maintaining water quality in which the species are located. French Creek has been targeted for primary emphasis as it holds the single, largest population of the riffleshell mussel. The two mussels were first proposed for listing less than a year ago!

## TIMBER RIGHTS PROTECTED....

Prior to the close of the 1992 legislative session, SB 1505, The Right to Practice Forestry, was given final passage by the PA General Assembly. Promoted largely by the Hardwood Lumber Manufacturers Association and the PA Landowners' Association, the amendment to the PA Municipalities Planning Code recognizes that forestry practices are a legitimate land use activity and one that should not be prevented through unreasonable regulation, as has previously occurred throughout Pennsylvania. Specifically, the new language states, "zoning ordinances may not unreasonably restrict forestry activities." Notably, the bill passed the House 196-0 and the Senate 49-0.

## PA FARMERS' ASSOCIATION ADOPTS "POSTING FOR SUPPORT" CONCEPT....

Members of the PA Farmers' Association (PFA) voted to adopt the concept of using posted land as an educational tool at their annual meeting in Hershey, PA held November 16-18, 1992. Several PLA members, who are also supporting members of the farmers' association, had the opportunity to discuss the importance of such a program and why more PA farmers need to become actively involved in the process of educating the uninformed public about confiscatory land use policies forcing already burdened farmers and landowners out of business.

Who  
**THE**  
Sent  
**HIDDEN**  
In  
**COST**  
The  
**OF**  
Clowns?  
**GOVERNMENT**

By Henry Ingram, Esq.

In a recent issue of the *Landowner*, I pointed out the gradual erosion of the ordinary citizen's individual economic freedom which flows from heavier and heavier taxes. Simply stated, the more money the Government takes from you in taxes and spends or gives to somebody else, the less economic freedom you have. You have to work harder or longer or both to maintain your standard of living and as Government taxing and spending increases, your individual freedom to influence the economy is reduced. As taxes increase, whether imposed directly on individuals or indirectly in the form of higher prices passed on to consumers by businesses which have their taxes increased, individuals have less money to spend. Take a simple example. You may want (and may be saving) to buy a river-front lot on which to build a cabin you and your family and friends can use and enjoy. If Uncle Sam (or Uncle Bob) takes more money from you in the form of increased taxes, you may be deprived entirely of the opportunity to spend your hard earned money for what you want. What is worse yet is that Uncle Sam (or Uncle Bob) may decide to acquire, with taxpayers' money, that river-front lot (and a lot more) for himself. And you can bet in today's world that Uncle Sam (or Uncle Bob) probably won't be making that river-front property available for your use and benefit. More likely, he will be saying that the property can't be used for anything.

It doesn't take an economist or a philosopher to recognize the compound negative involved here. You're out the tax money and collectively, we've all lost a little more freedom to choose and influence how economic decisions are to be made. The ultimate result always is that the more Government takes in taxes the less freedom you have.

I recently suggested in these pages (somewhat optimistically it turns out) that Government may be reaching the outer limits of our collective tolerance to more taxes and the resulting expansion of Government control over our lives. I warned at that time that an assault on another of our fundamental freedoms - this one more subtle - was occurring. This is the individual's freedom to own, use, buy and sell land.

I may have been wrong about our tax tolerance. If the polls cited by the new

Administration are accurate, the perception (at least on the part of President Clinton) is that we are willing to shoulder an even greater tax burden. Admittedly, he doesn't call it "taxes." He calls it "shared sacrifice" or "contributions" to the Nation's well-being. Whatever you call it, the effect is the same. You don't get the river-front cabin and the Government buys the river-front for itself, pays for some else's health insurance, brings in a boatload of illegal aliens or does whatever else you (through your elected representatives) allow it to do.

Although I may have underestimated our collective tolerance to even more taxes, let's assume we will decide at some point that enough is enough. We won't tolerate more direct taxes unless we get something we want. Let's also assume that Senators Wofford and Specter and our Representatives in Congress agree that enough is enough and refuse to vote for more taxes (any smiles forming on your faces?), and we stop the direct assault on our individual economic freedom, can we simply go back to normal lives and resume our efforts to save enough for the cabin on the river? A resounding NO is the answer!

As I warned earlier, the institutionalization of the anti-development/preservationist philosophy in our Government manifested by intrusive environmental regulations continues unabated and our freedom to own and use land is under attack. This phenomenon can also be viewed as a "hidden tax" being levied by Government.

We all know that the value of privately owned land diminishes as the uses to which it may be put are restricted. In the hands of the ordinary citizen, a river-front lot is not so valuable if he can't build the cabin. The oil and gas deposit or gravel bed is worthless if you can't recover it. The "back forty" that can't be used unless drainage is re-established becomes a liability rather than an asset if some agency objects to drainage. We may recognize that our economic freedom is being eroded by taxes but we must also recognize that Government, by imposing substantial restrictions on land use, is also increasing costs to ordinary citizens and landowners. In the typical situation, the ordinary citizen can't pass these increased costs on to someone else (like utilities and producers of consumer goods can) and so he has to absorb them. In a very real sense, when Government restricts your freedom to use your land, it is for effect imposing a

new tax, albeit an indirect tax, by taking from you the amount by which the value of your land is diminished by the particular Government regulation or action involved. Economists may refer to this effect as "rent" but for all practical purposes it is a tax and this form of taxation usually falls into the category of "taxation without representation."<sup>1</sup>

Just a few examples of the kinds of increased costs which result in indirect taxation will illustrate my point.

First, let's look at something called the Conservation Easement Program (CEP). This program is being implemented by the Farmers Home Administration (FmHA) under a 1987 Memorandum of Understanding (MOU) with the U.S. Fish and Wildlife Service (FWS), tenuously based on an

---

**We may recognize that our economic freedom is being eroded by taxes but we must also recognize that Government, by imposing substantial restrictions on land use, is also increasing costs to ordinary citizens and landowners.**

---

Executive Order issued by President Jimmy Carter in 1977. (As an aside, keep your guard up any time regulatory agencies do business by MOUs. It usually means either they do not have clear regulatory or statutory authority to do what they are doing or are trying to avoid public scrutiny of it.) Under the CEP, whenever the FmHA forecloses on a loan made on an agricultural property, it allows the FWS to encumber the property with what is euphemistically referred to as a "conservation easement," which is really a perpetual set of stringent land-use restrictions on the property including:

- A. No dwellings, barns, outbuildings or other structures shall be built within the easement area.
- B. The vegetation or hydrology of the described easement area will not be altered in any way or by any means or activity on the property conveyed by this deed, or property owned or under the control of the landowner, including: (1) cutting or

mowing; (2) cultivation; (3) grazing; (4) harvesting wood products; (5) burning; (6) placing of refuse, wastes, sewage, or other debris; (7) draining, dredging, channeling, filling, discing, pumping, diking, impounding and related activities, or (8) diverting or affecting the natural flow of surface or underground waters into, within, and out of the easement area.

- C. "...the landowner shall be responsible for compliance with all federal, state and local laws for the control of noxious or other undesirable plants on the easement areas."

In conservation easements under the CEP the federal government is given authority "at its sole discretion" to manage the easement area with the following rights:

- A. The right of ingress and egress...
- B. The right to install, operate, and maintain structures for the purpose of reestablishing, protecting, and enhancing wetlands functional values including taking of construction material to and from said sites.
- C. The right to establish vegetation...
- D. The right to manipulate vegetation, topography and hydrology on the easement areas through diking, pumping, water management, excavating, island construction, burning, cutting, pesticide application, fertilizing, and other appropriate practices.
- E. The right to conduct predatory management activities.
- F. The right to construct fences...
- G. The right to prohibit or regulate hunting or fishing...
- H. The right to exclude landowner and/or public entry...

These conservation easements are forever.

You don't have to be an economist, engineer or lawyer to understand that if the FWS imposes a conservation easement, a former owner of farm property seeking to redeem it after foreclosure will reacquire substantially less than he had before the FmHA foreclosed (and that won't affect the redemption price) and the land will be encumbered going forward. If the original owner can't redeem the property, in many instances the conservation easement will so burden the property that it won't be pur-

chased by another farmer. The property then moves from private ownership to, in all likelihood, unproductive Government ownership. Henry Lamb of the Environmental Conservation Organization reports that the FWS has recommended over 1650 ease-

---

**Any time regulatory agencies do business by MOUs, it usually means either they do not have a clear regulatory or statutory authority to do what they are doing or are trying to avoid public scrutiny of it.**

---

ments affecting more than 322,500 acres and estimates, if current trends continue, a cost to taxpayers (that's us folks!) of \$700 million with 1,400,000 acres of land taken out of productive use.

The CEP was not voted on by Congress or subjected to any public scrutiny in formal rulemaking procedures (which are intended to give notice to the public and potentially affected parties and an opportunity to comment on and shape regulatory proposals). Rather, it apparently was cooked up by anti-development/preservationist bureaucrats in the two agencies and foisted off on the farming community and general public without debate or discussion. The net effect of the CEP is more restriction on land use, more land grabbing by Government and more costs to ordinary citizens.

The CEP is a good example of "sur-reptitious" regulation which imposes a form of indirect taxation. Let me turn now to another example of Government "activity" which imposes additional costs on the ordinary citizen and landowner. This one we will refer to as "delay damages." Some of you may be familiar with the concept in personal injury litigation. A court may award a successful plaintiff an extra amount over the award for pain and suffering and property damage to compensate the injured party for the delay between the time of the injury and actual payment of the award by the defendant. The law recognizes and authorizes delay damages in that kind of situation. It appears to me that ordinary citizens and

*Continued on Page 14*

1. We used to echo Will Rogers who said "we're lucky we don't get all the Government we pay for." Now, it may be that we are lucky we don't get the representation we pay for.

Continued from Page 13

landowners almost always suffer "delay damages" when they get caught up in Government regulatory programs.

Take the well-publicized power transmission line proposed by two major electric utilities, the Duquesne Light Company and General Public Utilities, which is known as the "DQE/GPU Project." The DQE/GPU Project involves the construction of a high voltage powerline from Shippingport Borough west of Pittsburgh to Londonderry near Harrisburg, a distance of approximately 225 miles. The object is to transmit coal-fired electric power generated in Western Pennsylvania for use in the East. It is believed that the new line will create hundreds of construction, mining and related jobs, boost the Pennsylvania economy and provide cheaper electricity on the Eastern seaboard.

---

**You don't have to be an economist, engineer or lawyer to understand that if the FWS imposes a conservation easement, a former owner of farm property seeking to redeem it after foreclosure will reacquire substantially less than he had before the FMHA foreclosed.**

---

Vocal, if unquantified, opposition to the DQE/GPU Project has developed. Some of the opposition is based on health and environmental concerns arising from the construction and operation of the powerline. Some comes from the no growth, anti-development/preservationist movement which often, it appears, opposes almost everything. Some is based, legitimately, on concerns of landowners and residents who live within or near the 225 mile long, 2000 foot wide right-of-way "corridor" in which the powerline ultimately will be located on a 200 foot wide easement.

The DQE/GPU Project powerline is subject to the regulatory jurisdiction of the Pennsylvania Public Utility Commission (PUC) which must determine if the Project is in the "public interest." If it is, the utilities can pass the costs of construction through to electric ratepayers (again, that's us folks). As part of the regulatory process, the PUC held numerous hearings and the utilities

---

**ECO reports that the FWS has recommended over 1650 easements affecting more than 322,500 acres and estimates, if current trends continue, a cost to taxpayers of \$700 million with 1,400,000 acres of land taken out of productive use.**

---

conducted an elaborate public education campaign to address and attempt to assuage the concerns referred to above. Originally, the PUC found the project to be in the public interest and it seemed that the Project would move to the next phase, the identification of the precise location of the 200 foot right-of-way within the 2000 foot corridor and the right-of-way acquisition.

It was to be during this phase that landowners (hopefully with assistance from their legal advisors) within the corridor would be able to assess accurately how they would be affected. No matter what side you take on the myriad of issues raised by the Project, at least during this phase it was thought, the direct impacts on affected landowners could be identified and assessed and available remedies pursued.

Unfortunately for everyone involved, except importuning politicians and seemingly feckless PUC bureaucrats, the Project has been delayed while the PUC conducts further investigations. Most of us have seen the full page newspaper ads taken out by Pittsburgh based corporate and business leaders criticizing the delay. There is no question that these leaders believe the project is good for business and Pennsylvania and should go forward. But now the Project is stalled and its future is clouded with uncertainty.

Little, however, is being said for the ordinary citizens and landowners in the corridor who will bear the actual brunt of the Project and may have their properties "taken" for the right-of-way. Delay clearly harms them. Take our original hypothetical of the guy who wants to buy the river-front lot and build the cabin and then assume his site is within the corridor. What does he do now? What about the developer who has acquired a large tract of land to build a new townhouse complex before the corridor was laid out and now finds that his property is in the corridor. Can he proceed? Probably not

until he is certain that the Project will (or will not) go forward. In the meantime, interest and real estate tax payments must continue. Similarly, do you rotate a crop into or pasture livestock in a possible right-of-way area? The point is that the bureaucratically imposed delay is causing "delay damages" to landowners. This is another cost of government and to me this cost falls clearly within the category of "indirect taxation." These indirect taxes are imposed because politicians and bureaucrats generally like to avoid making, accepting responsibility for, and following through on tough decisions. The typical reaction of these fellows when faced with a tough choice is to stall and look for some way to deflect responsibility and avoid decisions they are charged by law to make. That's a "fact of life," you may think to yourself, but also think about what Government imposed delay in implementing private economic decisions costs the private sector.

As a final illustration of abusive Government action that costs us money, let's focus some light on a new, anti-development/preservationist scheme devised by the Pennsylvania Fish Commission (our old friends!). In a deal between DER and the Fish Commission - perhaps by MOU (and I warned you about MOUs), - DER imposes "special conditions" on all mining permits

---

**The net effect of the CEP is more restriction on land use, more land grabbing by government and more costs to ordinary citizens.**

---

potentially affecting streams classified as sensitive streams by the Fish Commission. You can take it from me that "special conditions" means a higher cost of doing business and maybe so high that the business can't be done at all. But what are "sensitive streams?" As you might have guessed, they are whatever the Fish Commission says they are. Streams are designated as "sensitive" by the Fish Commission unilaterally and arbitrarily, I would say, on a case-by-case basis. A DER official put it this way:

"We met with the Pennsylvania Fish Commission to develop the list [of sensitive streams] that you requested. It turned out to be a more difficult proposition than we had expected. The Fish Commission cannot de-

velop a sensitive stream list because much of the information that goes into designating a stream as sensitive is not collected until the Fish Commission conducts their field reviews in connection with surface mine permit applications. If they find a stream that contains a native trout population and there is already some impact occurring in that stream in the vicinity of a proposed surface mine permit, they classify that section of the stream as sensitive. The impact could be sedimentation from other mine sites in the area, sedimentation from logging, or any other existing condition that is already creating stress for the native trout population."

"C'mon" you say, "Government can't behave like this. Haven't the Courts of Pennsylvania said that requirements like this (i.e. requirements which impose new substantive burdens on the regulated community across-the-board) must go through the formal rulemaking process before they are enforced by an agency?" You're right, the Courts have said that but DER and the Fish Commission must think that their "noble cause" puts them above or beyond the law and that such Court imposed restrictions apply only to us "ordinary citizens." Implementation of this type of program costs plenty. It imposes indirect taxation in the form of higher costs of doing business and inflicts "delay damages" on natural resource developers all while the Fish Commission tinkers around out in the field.

In all three examples, ordinary citizens and landowners have to "pick up the tab." I hope you will agree with me that something should be done about this. You might think "but what can I do about it?" The answer is we must stop letting the clowns run the Circus! We have to speak-up and put an end to abusive Government before it takes any more of our money and land. We have to get organized and get involved. The best place to start is with these legislators we continue to elect and reelect. Tell them to get the Clowns out of management!

*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.*

## MARK YOUR CALENDARS

### COALITION TO HOST MEETING ON PROPERTY RIGHTS....

William Perry Pendley, President and Chief Legal Officer of Mountain States Legal Foundation will be the guest speaker for a property rights/wise use coalition consisting of the PLA, Allegheny Hardwood Utilization Group (AHUG), PA Forest Industry Association (PFIA), Hardwood Lumber Manufacturers Association (HLMA), and the Allegheny Wise Use Coalition (AWUC). The meeting is scheduled for March 16th, 7:00 p.m. at the Kane Middle School Auditorium in Kane, PA. Mr. Pendley will address environmental issues and private property rights. The public is encouraged to attend. For further information call Mary Wirth, AHUG Executive Director at 814-837-8550 or the PLA office.

### PLA LANCASTER MEETING....

PLA will be hosting a meeting in Lancaster, Pennsylvania, on Monday, March 15, 1993, with Congressman Tom Ridge as guest speaker. The meeting is slated to begin at 7:00 p.m. at the Farm and Home Center of Lancaster County, 1383 Arcadia Road, Lancaster, PA. Members are encouraged to attend and hear about the Congressman's efforts in Congress to enact comprehensive wetland reform, as well as to ask the Congressman questions about his future agenda on property rights issues and his plans to bring regulatory agencies under control within the Commonwealth. The meeting is open to the public and members are encouraged to bring a friend.

## Landowner Murdered in Malibu

On October 2, 1992, Donald P. Scott, a 61-year old California rancher, was shot and killed by police officers in a drug bust gone awry. At least 11 vehicles and 24 officers, including National Park Service police, descended on the Trail's End Ranch while Scott and his wife slept. Aroused by the banging on the door, Scott, recovering from cataract surgery, grabbed a gun to confront the unknown intruders. Told to lower the gun by officers, as he did so he was shot and killed by several shots to the chest. No drugs have been found.

According to the Malibu Surfside News (Oct. 8, 1992) Scott's wife, Francis Plante, and his longtime friend and attorney Nick Gutsue point to the highly irregular involvement of the National Park Service police and visits late this summer from NPS officials that suggest the drug raid was bogus and that it was possibly inspired by NPS in a complicated scheme to seize the ranch for the federal government.

Laws in recent years have been passed by Congress which allow the federal government to seize property, including real estate, if the property may have been involved in drug-related violations. The warrant used to enter Scott's property asserted that 50 marijuana plants had been spotted by air surveillance. The plants have never been found.

Scott's widow cites an incident in August that began with Scott's complaint to NPS rangers at Santa Monica National Recreation Area, which adjoins the Trail's End Ranch, that bulldozers from federal property were being thrown onto his land. The Malibu Surfside News reported that Superintendent David Gackenbach came himself in response to the call. According to Plante, he came with a six-pack of beer for Scott, a known heavy drinker, and asked to walk the property. Gackenbach told the Malibu Surfside News that he took advantage of the opportunity to see the ranch "that has been off limits to the agency because of Scott's known distrust of the government agencies." Plante believes there is a connection between the visit and the fatal drug bust.

Charles Cushman of the National Inholders Association said (Malibu Surfside News, Oct. 15, 1992) he would ask for an Interior Department Inspector General investigation of the National Park Service's role in the drug raid that resulted in the death of the man described by the Malibu Surfside News as "a vocal critic of government and an ardent supporter of strictly interpreted property rights."

*Reprint courtesy of Land Rights Letter*

# PENNSYLVANIA LANDOWNER

**Keith Klingler**  
President

Titusville, PA

**Robert Brace**

Vice-President

Waterford, PA

**Rhonda McAtee**

Executive Director

Waterford, PA

**Lorraine Bucklin**

Asst. Executive Director

Harborcreek, PA

**Nancy Cubbon**

Oil City, PA

**Herman Espy**

Spruce Creek, PA

**Harry Fox**

Dillsburg, PA

**Hank Ingram, Esq.**

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

## 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 grassroots, 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) pur-  
chasing PLA signs and participating in the "Posting For  
Support" 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  
ECO-LOGIC.

### Please complete this information:

Name \_\_\_\_\_

Address \_\_\_\_\_

County \_\_\_\_\_

Acreage Owned \_\_\_\_\_

Phone Number \_\_\_\_\_

How many acres of land posted? \_\_\_\_\_ acres

Membership Amount \$ \_\_\_\_\_

Less 50% reduction in fee if

"Posting for Support" participant - \$ \_\_\_\_\_

Amount of signs purchased + \$ \_\_\_\_\_

Additional contribution (If any) + \$ \_\_\_\_\_

Total remittance enclosed \$ \_\_\_\_\_

**Membership dues and contributions are deductible  
as a "Business" expense.**

Enclose form with check or money order payable to:

**Pennsylvania Landowners' Association**

P. O. Box 391

Waterford, PA 16441

Please allow up to 4 weeks for delivery of membership card.

**Pennsylvania Landowner** is pub-  
lished quarterly as a member ser-  
vice by the Pennsylvania Landown-  
ers' Association, Inc. (PLA)—Re-  
production or use of editorial or  
graphic contents in any manner is  
welcomed with permission. To re-  
produce or to comment on news-  
letter content, change of address  
notices or subscription, requests  
should be directed to the Pennsyl-  
vania Landowners' Association,  
Inc., P.O. Box 391, Waterford, PA  
16441, 814/796-3578.

### Pennsylvania Landowners' Association, Inc.

P.O. Box 391

Waterford, PA 16441

Address Correction Requested

BULK RATE  
U.S. POSTAGE  
PAID  
Permit No. 7  
Waterford, PA